

Module 4

Dealing with violations



Why is dealing with violations important?
In what ways can violations be addressed?



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Module 4

Dealing with violations

4

EXPLORATIONS (7 sessions)

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4C Non-judicial options (two sessions)	42

CONCEPTS

Implementation
Enforcement
Civilian/ combatant distinction
Social pressure
War crime

In all modules:

Human dignity
Obstacles to humanitarian behaviour
Consequences
Multiple perspectives
Dilemmas

SKILLS PRACTISED

Perspective taking
Identifying consequences
Legal reasoning

➤ If you have limited time and are unable to work through all the explorations, we recommend that you follow at least the short pathway of explorations marked with this icon.

Exploration 4A: Rationales and options for dealing with IHL violations

4A

Module 3 took up the subject of violations of international humanitarian law (IHL), and students discovered why such violations occur. They learned about the dilemmas that may arise in applying the law and the difficulties related to responsibilities, using a case study.

Module 4 is designed to broaden students' understanding of the ways in which IHL is implemented. It presents a number of ways of dealing with IHL violations, such as bringing perpetrators to trial, uncovering the truth, reconciliation and forms of reparation.

Exploration 4A first asks students to consider some reasons for dealing with violations of IHL. It then invites them to explore ways of doing this and touches upon the responsibilities of the different actors involved.

Module 4: Dealing with violations

OBJECTIVES

- to understand how dealing – or not dealing – with IHL violations can affect the well-being of a society after armed conflict
- to recognize that there are a number of ways of dealing with IHL violations

STUDENT RESOURCES

- 4A.1 Graphs: Opinions on what to do with people breaking the rules of war
- 4A.2 To forget or not to forget? Views on dealing with violations of IHL
- 4A.3 What is a war crime?
- 4A.4 Worksheet: Responsibilities for implementing IHL
- 4A.5 A look at societal silence after violations
- 4A.6 Is it too late?

PREPARATION

Choose the question you will use for the writing assignment in step 1.

In the *Methodology Guide*, review teaching methods 1 (Discussion), 7 (Writing and reflecting), 9 (Small groups) and 10 (Gathering stories and news). If possible, view the relevant chapter of the training film for teachers (*Module 4*).

TIME

Two 45-minute sessions

The exploration

1. WHAT SHOULD BE DONE WHEN THE LAW HAS BEEN BROKEN? (25 minutes)

Begin a class discussion based on situations familiar to students.

[For example: breaking 'house rules' or 'rules of friendship'; flouting certain generally accepted moral principles]

Possible questions:

- > If you break a rule or misbehave, what should you do? Why?
- > What should happen to you? Why?

Continue the discussion with examples of breaking the law.

Possible question:

- > What happens to people accused of committing a crime, such as stealing or murder?

Use recent examples from local news. For every example, ask students to offer possible reasons for it.

Expand the discussion to situations of armed conflict.

Possible questions:

- > What happens to people accused of violating IHL?
- > What are the similarities and differences between everyday crimes and breaking the rules of war?

Select one of the two questions in the table below. Ask students to recall serious violations of IHL that they know of before choosing one of the answers listed. Tell them to write down the reasons for their choice.

Question 1:	Question 2:
Should people who break the rules of war be punished?	When the war is over, should people who have broken the rules of war:
<ul style="list-style-type: none"> • yes • no • don't know 	<ul style="list-style-type: none"> • be put on trial? • be exposed to the public but not put on trial? • be forgiven? • be granted amnesty? • be forgotten about because the war is over?

NOTE

'Amnesty' is a governmental decision barring the prosecution of a particular group of persons for certain actions.

Discuss the question and the views expressed by students. Have them compare their thoughts with the views expressed in the graph "Opinions on what to do with people breaking the rules of war."

STUDENT 4A.1 RESOURCES

Possible question:

- > How might someone's response be affected by the experience of living through armed conflict?

The exploration

2. CONSEQUENCES OF FORGETTING OR ADDRESSING VIOLATIONS OF IHL

(20 minutes)

Present “To forget or not to forget? Views on dealing with violations of IHL,” and assign one of the four sets of quotations to pairs of students or to small groups.

STUDENT
4A.2 **RESOURCES**

Reconvene the class, and have students identify the reasons given in their set of quotations for action and for inaction.

Discuss these reasons.

Possible questions:

- > What are some of the consequences of either choice for:
 - the victims?
 - the perpetrators?
 - the society as a whole in the aftermath of armed conflict?
- > How do you react when you feel that somebody has harmed you?

History, despite its wrenching pain, cannot be unlived, and if faced with courage, need not be lived again.
– Maya Angelou,
American poet

Through class discussion, have students contribute ideas to record in the following table.

After violations of IHL, what are the effects:			
	on the victims?	on the perpetrators?	on the society?
of taking action			
of doing nothing			

3. TRYING AND PUNISHING WAR CRIMES (25 minutes)

Discuss the following IHL rule:

All States must establish laws to try and to punish those who commit grave breaches of the Geneva Conventions.
– Paraphrased from Article 49/50/128/146 common to the four Geneva Conventions

Possible question:

- > What would you consider to be a grave breach of IHL?

Ask students to give examples from history and current events.

The exploration

Then use “What is a war crime?” to give them a sense of the kinds of violations that constitute war crimes.

STUDENT
4A.3 RESOURCES

Possible question:

> Why do you think grave breaches of IHL qualify as war crimes?

List students’ responses to this second question where all can see.

Using the worksheet “Responsibilities for implementing IHL,” have students write down their ideas about what action can be taken after an armed conflict by:

STUDENT
4A.4 RESOURCES

- commanders of armed forces or groups;
- the government;
- the courts.

Then discuss their ideas.

Stress the importance of the responsibility of each of the above parties in bringing alleged perpetrators to court.

- **Commanders** of armed forces or groups are responsible for monitoring the application of IHL and must stop violations; they must report all violations of the law and take disciplinary measures. They are also responsible for bringing to court martial persons under their authority who commit grave breaches.
- The **government** is responsible for enacting national laws prohibiting and punishing grave breaches. It is ultimately responsible for searching for and prosecuting persons accused of committing grave breaches. It must also ensure that its military commanders take action against those under their authority who commit grave breaches.
- The **courts** are responsible for trying and punishing persons who have committed grave breaches.

NOTE

In the EHL programme the term ‘war crimes’ covers ‘grave breaches’ and any other serious violations of IHL.

4. WHAT ELSE CAN BE DONE? (15 minutes)

Point out that bringing people to trial is not the only way to deal with IHL violations.

Use the following statement to inspire students to generate ideas about what else could be done after the end of a period of violence to try to bring closure for the victims and to facilitate the society’s return to peace.

In the six years prior to 1982 nearly 30,000 people ‘disappeared’ in what is often referred to as Argentina’s ‘Dirty War.’ On orders from their superiors, naval officers dumped ‘the disappeared’ – still alive after being tortured – from airplanes into the South Atlantic.

Make a list of their suggestions.

[For example: attempts to bring about a reconciliation between the perpetrators and victims’ relatives, efforts to find the remains of the ‘disappeared’ and to return them to their families, public apologies, financial compensation to relatives for their loss, establishing memorials]

The exploration

Review and discuss their suggestions.

Possible questions:

- > Who do you think could initiate these efforts?
[For example: the international community, the government, non-governmental organizations, relatives of the victims, concerned citizens]
 - > Who do you think could carry them out?
[For example: the international community, the government, the navy, the perpetrators, those who gave the orders]
 - > What is the aim of these measures if not to punish the perpetrators?
[For example: to bring relief to the relatives of the victims, to reconcile people, to heal wounds, to contribute to social reconstruction, to prevent future abuses, to move from violence to peace]
-

5. CLOSE (5 minutes)

Discuss the following question:

- > After an armed conflict, what could ordinary citizens do to help bring justice and heal the wounds of war?

! KEY IDEAS

- People who commit grave breaches of IHL must be tried and punished.
- The responsibility for enforcing IHL lies primarily with governments, but others can play a significant role as well.
- Bringing perpetrators to trial is not the only way to deal with violations of IHL.

Extension activities

ECHOS OF SILENCE

Read “A look at societal silence after violations,” and then find an example of a country that has chosen to forget past abuses.

STUDENT
4A.5 **RESOURCES**

Write an essay in response to these words of the human rights activist Aryeh Neier:

Peaceful coexistence seems much less likely if those who were victimized see no one called to account for their suffering.

Does the experience of the country that you chose support or refute Neier’s statement?

HISTORY

Who, in your country’s history, has been accused of inhumane behaviour in armed conflict? What was done about it? What was the outcome?

IS IT TOO LATE?

Using the section titled “A public debate in France” in “Is it too late?”, prepare a short essay in response to these questions:

> After so much time has elapsed, what can be done about the violations in this situation? What would the purpose be?

Then, from the “Voices” section of “Is it too late?” choose the quotation that best reflects your views on the subject.

STUDENT
4A.6 **RESOURCES**

Present your essay, and explain how your proposals would help prevent future violations, promote the healing process for the victims and benefit both France and Algeria.

Compare your ideas with those of others.

Extension activities

WHAT'S THE DIFFERENCE?

Consider the following statements:

Once a civil war is over, one must forgive and forget.

– Paul Thibaud, essayist

Too much forgiving and forgetting stops the wound from healing.

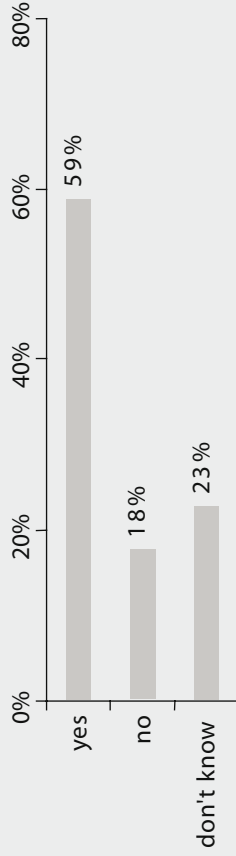
– Louis Joinet, magistrate and UN Special Rapporteur on impunity

Choose the point of view you wish to advocate, and prepare arguments in favour of it. Include your thoughts on the following questions in your presentation.

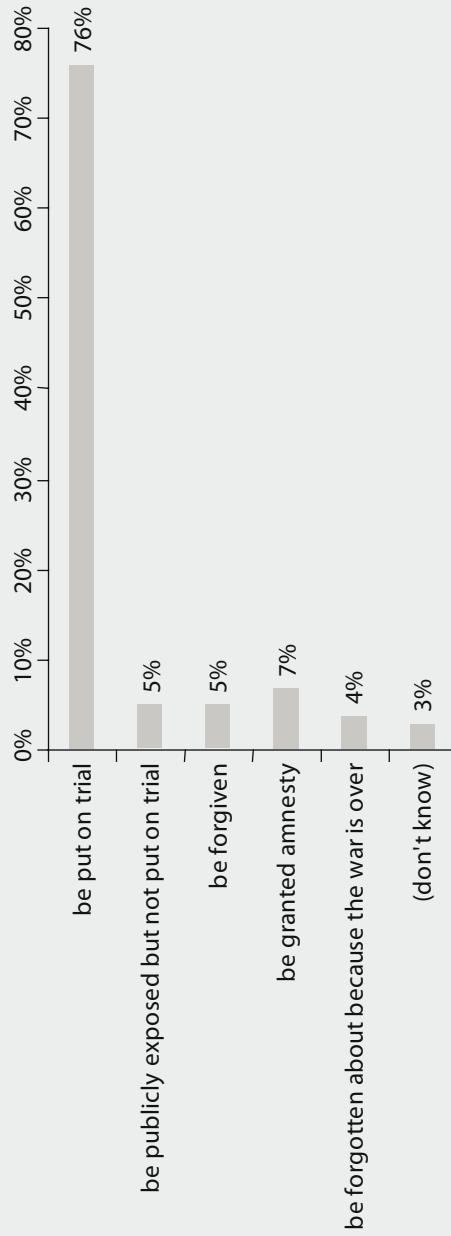
- > What does forgetting mean?
- > If not forgetting involves taking some action, what might such action entail?
- > What does forgiving mean?
- > What are the possible consequences of forgiving? Of not forgiving?
- > What does each man recommend?
- > How would their words apply to an example you have studied or know of?

Opinions on what to do with people breaking the rules of war

SHOULD PEOPLE WHO BREAK THE RULES OF WAR BE PUNISHED?



WHEN A WAR IS OVER, SHOULD PEOPLE WHO HAVE BROKEN THE RULES OF WAR:



In 1998-1999, a survey entitled *People on War* was conducted by the International Committee of the Red Cross in 16 countries (12 of which had recently experienced armed conflict). These graphs show the views of the respondents.

To forget or not to forget? Views on dealing with violations of IHL

CAMBODIA

Voice 1

How could I forget? I was 30 at the time, and it [the violence committed by the Khmer Rouge in Cambodia in the 1970s] is imprinted indelibly in my memory. All the victims feel as I do; we want the Khmer Rouge leaders to bear the consequences of their deeds.
– a survivor of a torture centre where 17,000 people were tortured and killed

Voice 2

What difference would it make to the average Cambodian if Ta Mok [Khmer Rouge leader] went on trial? All I want is for Cambodia to stay peaceful.
– a taxi driver, who lost his father and five brothers and sisters

CHILE

Voice 1

Putting the politicians on trial should prompt the community in which the crimes were committed to examine its own conscience. Putting Pinochet on trial in Chile is worth doing, because the people of Chile know full well that half of them were in favour of the coup d'état.
– an essayist

Voice 2

There will be no reconciliation without truth and justice. We need to know where the bodies are of those who 'disappeared.'
– a journalist, political prisoner for over two years

SIERRA LEONE

(three Sierra Leonean points of view)

Voice 1

The amnesty will not only fail to resolve the problems of this country, it will maintain the vicious circle of violence and impunity. Amnesties don't work.
– a lawyer

Voice 2

What would I do if I met my torturers in the street? I'd just tell them that one day the Almighty will choose between their families and mine. If we don't forgive, more people are going to lose their hands.
– a person who had both his hands chopped off by rebels as punishment for covering his daughter's escape

Voice 3

I'm a man of principle and I believe that crime should be punished. But who's going to judge whom? No one is really in control. If the government were to say 'We're going to put you on trial,' the rebels would start fighting again.
– a pastor

SIERRA LEONE

(two foreigners' points of view)

Voice 1

The amnesty is just re-starting the cycle of impunity. (...) The crimes were so dreadful that we simply can't expect a lasting peace.
– a researcher from Human Rights Watch

Voice 2

Amnesty is totally unacceptable. I'm disgusted. But then I see the kids we feed and look after and I let it pass. The people of Sierra Leone know what they want – peace, now, rather than justice. In a way, an amnesty is a scandal. But in a way perhaps it's wise.
– a humanitarian worker

What is a war crime?

War crimes are serious violations of IHL that are committed in relation to an armed conflict.

For example, certain acts committed against wounded or sick combatants and prisoners or civilians qualify as war crimes. These include:

- wilful killing;
- torture, inhuman or degrading treatment;
- wilfully causing great suffering or serious injury;
- wilfully depriving someone of the right to a fair trial.

The following acts are also war crimes:

- intentionally attacking the civilian population or civilian objects;
- destruction of property not required by military necessity;
- starving civilians;
- using human shields to protect military objectives;
- killing or wounding a surrendering combatant;
- ordering or threatening that there shall be no survivors;
- killing or wounding an enemy while pretending to be a civilian;
- taking hostages;
- unlawfully forcing civilians to move to another location;
- using prohibited weapons or methods of warfare;
- sexual violence;
- recruiting children into armed forces or groups or using them in armed conflict;
- intentionally attacking persons or objects lawfully using the red cross/red crescent/red crystal emblems;
- misusing the red cross/red crescent/red crystal emblems

Source: Paraphrased from Article 8 of the Rome Statute of the International Criminal Court.

Worksheet

Responsibilities for implementing IHL

In order to bring alleged war criminals to trial, what actions can be taken by:

- > commanders of armed forces or groups?
- > the government?
- > the courts?

I think...	
commanders should:	
the government should:	
the courts should:	

A look at societal silence after violations

When the weapons of war fall silent and the killings, tortures, rapes and terror are over, how should governments confront the past and the war crimes which may have occurred? The question is how best to weave a new and healing social fabric. Some people and governments argue that the past is over and the society should concentrate on building the future. Forgetting the past, or State-sanctioned 'collective amnesia', covers those situations where no government-sponsored accountability process has been put in place – no State review of responsibility for war crimes or civil terror, conducted. Societal silence may be the product of explicit choice, the outcome of the nation's need to get on with the business of governing

once the conflict is over. Where silence is an explicit choice, it is often linked with grants of amnesty or pardons. Such amnesty shields members of the former government from facing legal questions about violations that occurred during the time they controlled the machinery of state. In the short term, forgetting or ignoring the abuses of the past can appear to be the quickest means to shift from a wartime or totalitarian regime to a new form of governance. Choosing such silence is what many victims fear, for it implies lack of respect for the hurt that individuals and targeted groups may have suffered. Silence feels like denial. In her discussion of the failure to prosecute the Stasi (former East German Secret Police) who enforced Communist rule until 1989, Tina

Rosenberg observes that since no one was punished for torture and other abuses the feeling was, "it must not have happened."¹ In the words of scholar Aryeh Neier, "Peaceful coexistence seems much less likely if those who were victimized see no one called to account for their suffering."² A policy of forgetting can mean that resentment lies buried in the victim's heart, allowing it to fester, without offering a healing alternative.

Source: Crystal C. Campbell, unpublished paper.

1 Tina Rosenberg, *The Haunted Land, Facing Europe's Ghosts After Communism*, Vintage Books, New York, 1996.

2 Aryeh Neier, *Brutality, Genocide, Terror and the Struggle for Justice*, Times Books, New York, 1998.

Is it too late?

A PUBLIC DEBATE IN FRANCE

From 1954 to 1962, France waged war on pro-independence fighters in Algeria, then a French colony. Atrocities were committed by both sides. The war ended in 1962, and Algeria became an independent country. A general amnesty was proclaimed for those on both sides who had committed atrocities. For almost the next 40 years in France the excesses of the French army in Algeria would be condemned in books and in articles. However, there would be no broad public debate on the subject.

Then, in 2000, Louise Ighilahriz, a former Algerian militant who was tortured for three months in 1957, spoke out publicly. French generals implicated by her account reacted, and a broad public debate finally got under way in France. Sides were taken and a great many articles, books and documentaries were produced. The views of historians and politicians were sought and given.

A group of French scholars called on the French government to set the record straight by recognizing and condemning the incidents of torture

that took place during the war in Algeria. Over 300 generals who had served in Algeria signed a declaration in support of this effort. They claimed that torture and other crimes had indeed been committed, but on a very small scale; they stressed that the political authorities had given the army too much freedom at the time. The prime minister of France said that he did not believe that uncovering the truth would weaken the nation. On the contrary, he claimed that it would strengthen the nation by allowing it to build its future on the lessons of the past. The president of the country took a different view and argued against reopening old wounds. Some members of the French parliament proposed that a commission of inquiry be set up to look into the crimes committed by France. The commission would seek to establish the truth and suggest ways to compensate the victims. This proposal was eventually rejected.

In 2001, General Paul Aussaresses, who served as an intelligence officer in Algeria from 1955 to 1957, published a book in which he claimed that the French government tolerated the use of torture and summary

executions; the author admitted to taking part in such acts himself.

A number of suits were soon filed against the General. Louise Ighilahriz was among those who sued. However, as the result of a French law of 1968, which gave amnesty for all acts committed during the Algerian war, a judge refused to take action against the General. The decision was confirmed on appeal. In another case, the General was forced to pay a fine of 7,500 euros, as punishment for his actions in Algeria. Two months later, the highest court in France confirmed that he could not be tried for committing crimes against humanity.

Is it too late?

VOICES

Senior French officers who served in the Algerian war:

No, torture is not indispensable in times of war. One can perfectly well manage without. It saddens me when I think back to Algeria, because torture was part of the mindset of the period. We could have done things differently.
– General Jacques Massu

I've never liked torture, but I decided I was going to have to use it when I arrived in Algiers. It was already standard practice by then. Given the same circumstances, I'd do the same again; I don't believe there's any alternative. Having said that, I should add that I usually obtained good results without any torture whatsoever. I would even say that my greatest successes were achieved without a single blow to the person under interrogation. But there are situations where that just doesn't work, when you're operating under great time pressure.

I would be opposed to the idea of the French State apologizing today. We have nothing to apologize for. Acknowledge specific facts, by all means, but without generalizing. I personally have no regrets.
– General Paul Aussarresses

My sole concern is to understand how a civilized people can slip back into barbarism. If we are to prevent such a shameful episode from recurring we must look it square in the face – tell the truth about the political background to the torture. We do not want our sons to discover horror along their road through life, and shame in their hearts, just because their fathers lied.
– Jacques Julliard, former officer who served in Algeria

About soldiers:
Veterans feel they are being maligned by the way accusations of torture are levelled at all two million of those who served in this war and have a clear conscience on the subject.
– Wladyslas Marek, French corporal in Algiers from 1960 to 1962

Very few conscripts got involved in torture. But many of them knew about it, saw it, and said nothing, because resisting military discipline requires an above-average degree of courage. There was a general climate of racism and, above all, of contempt inherent in the colonial wars that made it possible to take this passive attitude towards violence.

– Georges Doussin, President of the French Veterans and War Victims Association

Conscripts were afraid of what would happen to them if they argued or refused to carry out orders, especially with regard to torture. All of them, without exception, at least heard or saw torture being carried out. They tell me their real trauma stems from the fact that they didn't say no at the time; that they were 20 years old and couldn't bring themselves to take a stand.
– Marie-Odile Godard, French psychologist

About responsibility:
Primary responsibility rests with the political authorities, who knew full well what was going on and should not have given *carte blanche** to the military.
– Hugues Dalleau, President of the French National Union of Veterans

* *Carte blanche*: unlimited authority to do as one pleases.

If the French government did not want torture, it should have said so clearly and officially. If, in the absence of clear instructions, the army did not want torture – to preserve its own honour or that of France – the hierarchy should have said so explicitly.
– Roger Monié, lieutenant in the French reserve army

Is it too late?

<p>As for the recognition of all this by the French State, if that were to happen – and the sooner it did, the better – it would help rehabilitate your country and confirm its tradition of respect for human values.</p> <p>– Driffa Ben M'Hidi, sister of Larbi Ben M'Hidi (who was murdered in the presence of General Aussaresses)</p> <p><i>I am asking for moral reparation. I am asking the French authorities to recognize that they resorted to the despicable practice of torture during the Algerian War.</i></p> <p>– Louise L'ghilahriz</p> <p>To many in France at the time, torture seemed a basically justified response to the atrocities committed by the Algerian nationalists.</p> <p>– Benjamin Stora, French history professor</p>	<p>The French State is responsible for its army and for what its army did during the Algerian war. It should therefore help establish the truth. And if French honour has been tarnished by crimes against humanity, then France must accept responsibility before the court of history and adopt the appropriate attitude.</p> <p>– Mahfoud Kaddache, Algerian historian</p> <p>About forgetting or uncovering the truth:</p> <p>For the time being, I am not in favour of a penal solution. It would be better to end these memory wars rather than to keep them alive forever. It might be possible to set up a truth and reconciliation commission, composed of lawyers, people of honour and integrity, political figures and historians, to enable the memory of what happened to circulate among the various groups.</p> <p>– Benjamin Stora, French history professor</p>	<p>Nothing is more important to the victims and their families than to see the truth emerge. Until it does, the grieving process cannot be completed; no relief is possible. The same applies to nations. Acknowledging the past – however tragic and painful – is essential for the future, because nations – like people – cannot live a lie forever. What is needed is quite simply for both France and Algeria to establish the reality of the crimes committed by both sides during the Algerian war.</p> <p>– Robert Badinter, former French minister of justice</p> <p>If we do not have reconciliation, we will not be able to heal the wounds; they will remain open. We live in a society where individuals are part of a group, and we fear that there will be actions of revenge and vendetta.</p> <p>– Daho Djerbal, Algerian historian</p>	<p>There is a need to facilitate discussion of these shameful episodes: open up the archives more, gather accounts from witnesses, listen to different points of view. A country can learn more from the blacker pages of its history than from those in which it portrays itself as a dashing hero or innocent victim.</p> <p>– Tzvetan Todorov, Franco-Bulgarian literary theorist</p> <p>To recognize those crimes would clear the air and establish a sound basis for the alliance treaty. I am not of those who believe we must constantly dwell on the past, but ignorance of the past can be dangerous. We must accept the facts of our own history. I would like to see the two countries draw closer, but not at the price of erasing history.</p> <p>– Bachir Boumaza, Algerian politician</p>
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Exploration 4B: Judicial options

Exploration 4A introduced students to the reasons for dealing with violations of international humanitarian law (IHL) and to different ways of doing so. Explorations 4B and 4C look more closely at specific mechanisms for addressing serious violations of IHL.

In Exploration 4B, students explore the efforts that have been made at various levels, since World War II, to bring perpetrators of serious IHL violations to trial. They look at examples of national, international and 'hybrid' courts and compare these different ways of administering justice.

OBJECTIVES

- to recognize that States must bring to trial those who commit grave breaches of IHL, regardless of the nationality of the perpetrator or the victim or where the crime took place
- to acquire an understanding of the different judicial ways of dealing with war crimes (national, international, 'hybrid' courts)
- to realize that these judicial approaches complement each other and that all contribute to the international community's efforts to bring war criminals to justice

TEACHER 4B RESOURCES

4B.1 Judicial options

STUDENT 4B RESOURCES

- 4B.2 'Foreign cases' before national tribunals
- 4B.3 Voices from Nuremberg
- 4B.4 The Nuremberg Principles
- 4B.5 Towards a new type of court
- 4B.6 Ad hoc international criminal tribunals
- 4B.7 The permanent International Criminal Court
- 4B.8 'Hybrid' courts
- 4B.9 How can national courts help ad hoc international criminal tribunals?

PREPARATION

Choose which tribunal (Rwanda or the former Yugoslavia) you will use in step 4.

Plan how to work through the exploration in light of available class time. Assign all preparatory reading and writing for homework (the reading and writing in step 3 and the reading in preparation for the debate in step 6).

In the *Methodology Guide*, review teaching methods 1 (Discussion), 5 (Role-playing), 7 (Writing and reflecting), 9 (Small groups) and 10 (Gathering stories and news).

TIME

Three 45-minute sessions (longer if all work is done during class sessions)

The exploration

1. INTRODUCTION (5 minutes)

Find out what students know about judicial efforts to address war crimes.

Possible question:

> Do you know of any war criminals who have been brought to trial?

2. NATIONAL WAR CRIMES TRIBUNALS (20 minutes)

Remind students that the Geneva Conventions require governments to try and punish those who commit grave breaches of IHL.

Explain that these crimes are so serious that governments are, in fact, obliged to try and punish any person, regardless of:

- his or her nationality;
- the nationality of the victim; or
- the place where the crime occurred.

Then divide the class into small groups. Assign one of the examples in “Foreign cases’ before national tribunals” to half the groups and the other example to the other half.



Instruct the groups to study the case assigned to them and to prepare answers to the questions at the end.

After about 10 minutes, have each group report to the class.

During their reports, list the reasons given by students and explain anything they may not have understood.

3. THE PRECEDENT SET AT NUREMBERG (45 minutes, additional time, if the reading is done in class)

With the help of the teacher resource, present the basic facts about the first international military tribunal, convened in 1945 in Nuremberg, Germany (make a brief reference to the similar tribunal established in Tokyo, Japan).



Give each student one of the three pages from “Voices from Nuremberg”:

- “On the purpose of the Nuremberg trials” – excerpts from prosecutors’ statements, which reflect their sense of the importance of the Tribunal;
- “Defendants’ final statements” – excerpts from statements made by four of the defendants, which reflect their views on their actions and whether they thought they were guilty of wrongdoing;
- “The Tribunal’s rulings” – excerpts from the judges’ statements, which reflect their responses to the arguments presented.



The exploration

Instruct students to read their pages and to answer the questions as homework.

In class, have them discuss their answers with a partner or with a small group of students who were given the same page.

After about 10 minutes, reconvene the class and discuss all the questions.

Conclude by having students read “The Nuremberg Principles” to focus on the law that was developed by the tribunal.

STUDENT
4B.4 RESOURCES

4. AD HOC INTERNATIONAL TRIBUNALS (30 minutes)

Check that students understand what ad hoc means. Give them an example of its use in a sentence.

Next, encourage students to share what they know about the violence that occurred during the 1990s in the former Yugoslavia or in Rwanda.

NOTE

If needed, tell students that the term ‘ad hoc’ generally refers to a solution designed for a specific problem. The literal meaning of the term is ‘for this purpose.’

Distribute copies of the “Towards a new type of court: The situation in the former Yugoslavia” page or the “Towards a new type of court: The situation in Rwanda” page, depending on the case you have chosen.

STUDENT
4B.5 RESOURCES

Divide students into small groups, and have each group write down their ideas for setting up an ad hoc international criminal tribunal to deal with the case that has been chosen. Ask them to make use of the questions at the end.

When they have done this, distribute “Ad hoc international criminal tribunals.”

STUDENT
4B.6 RESOURCES

Instruct the groups to compare their ideas with the information given in the fact sheet.

Explain that the fact sheet tells them about another ad hoc tribunal as well (one established to deal with war crimes committed in a context different from the one they have been asked to think about, either the former Yugoslavia or Rwanda). Note the acronym for each.

Then reconvene the class to discuss what they have learned.

Possible questions:

- > Did anything in the fact sheet surprise you?
- > What are the similarities between the two tribunals?
- > What are the differences between them?

The exploration

5. THE PERMANENT INTERNATIONAL CRIMINAL COURT (25 minutes)

Ask students to read “The permanent International Criminal Court” and to discuss the question at the end.

 **STUDENT**
4B.7 RESOURCES

Then have them work in pairs to prepare some quiz game questions about the International Criminal Court (ICC). If time permits, they can also prepare a few bonus questions on the similarities and differences between the ad hoc international criminal tribunals and the ICC, using “Ad hoc international criminal tribunals.”

 **STUDENT**
4B.6 RESOURCES

Conduct a quiz game based on their questions. Divide the class into two quiz teams. Have students from each quiz team take turns posing one of their questions to the other quiz team. A team earns a point when one of its members answers correctly.

6. ‘HYBRID’ COURTS (25 minutes, additional time, if the reading is done in class)

Tell students that following recent war crimes trials in both national and international courts, a new approach is emerging. It takes the form of ‘hybrid’ courts, which try to take advantage of the most useful elements of both national and international courts.

Possible question:

- > If you were to design a new type of court that combined elements of international and national courts, what would your court be like?

Divide the class into four debate teams. Distribute the “‘Hybrid’ courts: Special Court for Sierra Leone” page to two of the groups and the “‘Hybrid’ courts: Special Panels for Serious Crimes in Timor-Leste” page to the other two.

 **STUDENT**
4B.8 RESOURCES

Explain that each team must be prepared to either support or oppose the following statement:

‘Hybrid’ courts are more effective than international or national tribunals.

Assign debate positions:

- Team 1: Sierra Leone – support the statement;
- Team 2: Sierra Leone – oppose the statement;
- Team 3: Timor-Leste – support the statement;
- Team 4: Timor-Leste – oppose the statement.

As homework, ask students to read the fact sheet and to think about their assigned debate positions. Give the groups time in class to prepare for the debate.

Have students choose one speaker to represent each group.

Decide the order of the proceedings (for example, you might have Sierra Leone, pro and con, followed by Timor-Leste, pro and con, or you might have those supporting the statement go first, followed by those opposing it).

Hold the debate.

The exploration

7. CLOSE (5 minutes)

Possible questions:

- > How do you think trials and punishments could deter people from committing war crimes?
- > Why do you think there are so many ways of trying and punishing war criminals?

! KEY IDEAS

- States must bring to trial and punish those who commit grave breaches of IHL, regardless of the nationality of the perpetrator or the victim or where the crime took place.
- Efforts have been made at different times and at various levels to try and to punish war criminals.
- While judicial ways of dealing with IHL violations may differ, they complement each other and contribute to the common effort of the international community to bring war criminals to court.

Extension activities

HISTORY, LITERATURE, CURRENT EVENTS

After reading “The Nuremberg Principles,” use examples taken from history, literature or current events to illustrate and clarify the meaning of Nuremberg Principles I-V.

 **STUDENT**
4B.4 **RESOURCES**

A CRITICAL RESPONSE TO NUREMBERG OR A MORE RECENT TRIBUNAL

Write an essay or a research paper in response to one of the following questions:

- > Does the fact that the victorious Allies sat in judgment over their defeated enemies undermine the credibility of the Nuremberg and Tokyo tribunals?
- > Does the fact that the ad hoc international criminal tribunals were established by the United Nations (UN) Security Council cast doubt on their independence?

A VICTIM’S STORY (Creative writing or dramatization)

Write the story of someone (real or imaginary) who was the victim of a war crime. Cast your story as a first-person narrative. Describe the war crime (who was involved, who suffered, who else was affected, and so on). Give the victim’s reasons for wanting a particular type of court to prosecute those who were responsible.

Present the character’s story in writing or as an oral monologue.

Use information from the student resources of this exploration; draw on the news media and the Internet, if possible.

MORE ROLES FOR NATIONAL COURTS

Read “How can national courts help ad hoc international criminal tribunals?” and respond to the questions at the end in one of the following ways:

- Write down your ideas;
- Discuss the questions with a fellow student or in a small group.

 **STUDENT**
4B.9 **RESOURCES**

Extension activities

ESSAY

Write an essay in response to one of the following statements, which express some of the aspirations and the limits of the International Criminal Court.

The governments that have made this enlightened move clearly understand that the permanent International Criminal Court represents no threat to States with an organized criminal justice system. On the contrary, it is designed only to protect those most vulnerable people whose own government, if they have one, is unable or unwilling to prosecute those who violate their most fundamental human rights.

– Kofi Annan, then UN Secretary-General

I believe the Court not only can dissuade potential executioners but also can have extraordinary educational virtues...

– William Bourdon, lawyer and Secretary-General of the International Federation of Human Rights

An international court (...) can judge no more than 50 accused persons a year. A permanent court concerning all the countries will have the same problem and should thus select those it will pursue according to their high level of responsibility. It is thus impossible to imagine that the struggle against impunity can rely only on international justice. It is necessary that in the medium term the national courts get involved and work actively toward a solution.

– Louis Joinet, magistrate and UN Special Rapporteur on impunity

Judicial options

Although there are many different ways of addressing violations of international humanitarian law (IHL), the judicial approach has been preferred to others in many instances. A range of judicial options has been developed – national, international and ‘hybrid’ courts. They differ from one another in certain respects, but they all contribute to the international community’s efforts to bring alleged war criminals to trial.

NATIONAL COURTS

As with all bodies of law, there have to be ways of implementing and enforcing IHL. The Geneva Conventions require States to prevent and suppress all violations of IHL. They also require States to enact laws to prohibit grave breaches of IHL and punish those who commit them, and to search for and prosecute such persons.

In general, a State’s criminal law applies only to acts committed by its own citizens or within its territory. IHL goes further. It requires States to search for and punish all those who have committed grave breaches, regardless of the perpetrators’ or the victims’ nationality or where the crime was committed. This principle is called ‘universal jurisdiction.’

Many countries have revised their criminal codes to enable them to try – without restrictions – persons accused of committing war crimes, genocide and crimes against humanity. They have conducted trials for such acts on the basis of universal jurisdiction, irrespective of where the alleged crime was committed and the nationality of the alleged perpetrators or victims.

States might be particularly eager to try foreigners accused of committing war crimes before their national courts for a variety of reasons. For instance, the authorities of a particular State might feel that courts in other countries would be less zealous in pursuing injustices committed against its citizens. Also, trying foreigners for war crimes can increase a government’s popularity among its people and improve its standing in the international community.

Some early trials of this kind were connected to World War II. More recent ones include trials related to the armed conflicts in the former Yugoslavia, Rwanda and Afghanistan.

INTERNATIONAL COURTS

Despite the obligation imposed on States to search for and punish persons alleged to have committed grave breaches of IHL, the sheer number of atrocities and the limits of national courts in trying such crimes have led the international community to assume a greater role in enforcing the law. Since the end of World War II, the international community has made significant progress in the effort to end impunity and to bring perpetrators of IHL violations to trial. Today, the administration of IHL is no longer confined to States.

• The Nuremberg and Tokyo trials

World War II ended in 1945 after exacting a terrible human toll. Millions of Jews and other members of social and political minority groups were systematically put to death, many of them exterminated in concentration camps. Millions of civilians were killed or bombed or forced to leave their homes. Millions of soldiers were captured and detained. Cities were destroyed by unrelenting and systematic bombing; and the first use of atomic bombs razed the cities of Nagasaki and Hiroshima in Japan.

Following World War II, Nazi German and Japanese war criminals were tried by national courts in various countries around the world (among them, Australia, Belgium, Canada, China, Czechoslovakia, France, Great Britain, Greece, the Netherlands, Norway, the Philippines, Poland, the Soviet Union, the United States and Yugoslavia).

In order to supplement efforts undertaken at the national level and to ensure that all major war criminals were brought to court, the victorious ‘Big Four’ States (Great Britain, France, the Soviet Union and the United States) created the International Military Tribunal (IMT) in the German city of Nuremberg in 1945 to try 22 high-ranking Nazi defendants for grave violations of international law. One year later, a similar body, the International Military Tribunal for the Far East (IMTFE), was established in Tokyo to hear charges against 28 Japanese defendants of significance. The newly established courts were composed mainly of prosecutors and judges from the victorious Allied Powers.

Judicial options

The Nuremberg and Tokyo tribunals charged defendants with crimes against peace, war crimes and crimes against humanity. At Nuremberg, 19 defendants were convicted and three acquitted. The Tokyo tribunal convicted all the defendants. The Nuremberg judgments, in particular, formed the basis of the most important set of guidelines on individual criminal responsibility under international law: the Nuremberg Principles.

These trials played an important role in bringing perpetrators of the most serious international crimes to court. Moreover, they showed that a group of States could act together to hold individuals accountable for violating IHL and sent a powerful signal that the international community would not tolerate certain crimes. The trials also gave impetus to the development of IHL treaties.

Their value was nevertheless called into question by claims that they were no more than ‘victors’ justice.’ It was alleged also that soldiers from the States represented in the tribunals had committed some of the same crimes, but were not being brought to trial.

- **Ad hoc international criminal tribunals**

About 40 years after the Nuremberg and Tokyo trials, the international community again took action to establish international tribunals, in response to the atrocities committed in the former Yugoslavia and in Rwanda.

In the former Yugoslavia, national authorities were largely unwilling to bring perpetrators to court, whereas in Rwanda, owing to the enormous caseload, they were simply unable to do so.

The United Nations (UN) Security Council established two international criminal tribunals to prosecute persons accused of committing war crimes, crimes against humanity and genocide, and granted them primacy over national courts.

The International Criminal Tribunal for the former Yugoslavia (ICTY) was created in 1993 in The Hague, to prosecute such crimes committed since 1991 in the former Yugoslavia. The next year, the International Criminal Tribunal for Rwanda (ICTR) was set up in Arusha in Tanzania, to prosecute such crimes committed in 1994 either in Rwanda or by Rwandan nationals in neighbouring countries.

The establishment of these tribunals represented a major development in the enforcement of IHL, beyond the so-called ‘victors’ justice’ of the Nuremberg and Tokyo trials. The courts’ decisions have also significantly contributed to the development of IHL case-law.

However, some people have argued that such special tribunals are not the most effective way to enforce IHL, since it takes a concerted international effort, and a great deal of time and money, to establish and run them. Others have claimed that the limited jurisdiction of the tribunals detracts from efforts to bring perpetrators in other parts of the world to trial.

- **The permanent International Criminal Court**

The idea of having a permanent international criminal court had been considered at various times since the Nuremberg and Tokyo trials. The creation of the two ad hoc international criminal tribunals was a milestone in the effort to try and to punish those accused of committing serious violations of IHL. However, the jurisdiction of these ad hoc international tribunals was limited in both time and place.

A few States opposed the establishment of a permanent international criminal court. Some argued that such a court would have too much power and would be susceptible to misuse for political purposes. Others feared that some of their own practices would fall within the court’s purview. For example, States expressed their concern that such a court could try members of their armed forces who were deployed overseas, without the benefit of the safeguards available in their national courts.

Despite such objections, and after long preparatory discussions, the international community convened a diplomatic conference in Rome in 1998 and adopted the Statute of the International Criminal Court (ICC).

The ICC has jurisdiction over genocide, crimes against humanity and war crimes. Its authority does not supersede that of national courts; it complements the work of those national courts that are unable or unwilling to investigate or prosecute individuals responsible for the most serious crimes of international concern. The ICC’s jurisdiction is not limited to specific situations or to a certain time period.

Judicial options

The establishment of the ICC is proof of the international community's commitment to ensuring that individuals who commit serious IHL violations do not go unpunished. As a permanent court, the ICC brings an element of continuity to efforts to enforce IHL.

'HYBRID' COURTS

'Hybrid' courts combine international and national elements and try to maximize the advantages of each. In light of the lessons offered by the experience of both national and international courts, 'hybrid' courts have raised great expectations in some parts of the world.

Examples of 'hybrid' courts include the Special Court for Sierra Leone, the Extraordinary Chambers in the courts of Cambodia and the Special Panels for Serious Crimes in Timor-Leste.

'Hybrid' courts try to make use of some important advantages provided by international courts. They offer access to an infrastructure that might no longer exist on the national level. They attempt to profit from expertise in investigating, prosecuting and trying complex international crimes, which may not be available on the national level. 'Hybrid' courts also use the abilities of international experts in order to prosecute more perpetrators in less time. An impartial international staff and the availability of international financial resources also contribute to their effectiveness.

At the same time, 'hybrid' courts include some important features of national courts. 'Hybrid' courts rely on local judges and prosecutors, who are familiar with the circumstances in which the crimes were committed, use local languages and know national law. Such elements bring 'hybrid' courts closer to the

'local' realities and may make them more acceptable to the local population. Owing to the inclusion of certain national elements, 'hybrid' courts are also considered more efficient and less expensive than international courts and to have a lasting impact on the development of national structures.

Although the work of 'hybrid' courts is promising, some problems have arisen, which may pose serious obstacles to their functioning. They are often understaffed. They may not receive adequate funding or might cause funds to be diverted from the local judicial system. Also, local governments might be able to influence the judges in 'hybrid' courts and might refuse to recognize the legitimacy of such courts.

Sources: Irwin Cotler (ed.), *Nuremberg Forty Years Later*, McGill-Queen's University Press, Montreal, 1995. Telford Taylor, *The Anatomy of the Nuremberg Trials*, Little, Brown and Co., Boston, 1992. Machteld Boot (ed.), *Genocide, Crimes Against Humanity, War Crimes: Nullum Crimen Sine Lege and the Subject Matter Jurisdiction of the International Criminal Court*, Intersentia, Antwerp, 2002. The United Nations War Crimes Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War*, His Majesty's Stationery Office, London, 1948. Yuki Tanaka, *Hidden Horrors*, Westview Press, Boulder CO, 1996. Timothy L.H. McCormack, Gerry J. Simpson (eds), *The Law of War Crimes*, Kluwer International Law, The Hague, 1997. Sarah M.H. Nouwen, "Hybrid courts' - The hybrid category of a new type of international crimes courts," *Utrecht Law Review*, Vol. 2, No. 2, December 2006. Robin Gei, Noëmi Bulinckx, "International and internationalized criminal tribunals: a synopsis," *International Review of the Red Cross*, Vol. 88, No. 861, March 2006. Benjamin B. Ferencz, *An International Criminal Court. A Step Toward World Peace: A Documentary History and Analysis*, Vol. I, Oceana Publications, Inc., New York, 1980. Opening statement of the Secretary-General of the United Nations to the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June -17 July 1998. Official Records Volume II, Summary records of the plenary meetings and of the meetings of the Committee of the Whole: A/CONF.183/13 (Vol. 11). Explanation of vote by Mr Dilip Lahiri, head of the Indian delegation, on the adoption of the Statute of the International Court, 17 July 1998 (<http://www.un.org/icc/speeches/717ind.htm>). Robinson Everett, "American service members and the ICC," in Sarah B. Sewall, Carl Kaysen (eds), *The United States and the International Criminal Court*, Rowman and Littlefield, Lenham MD, 2000.

Judicial options

	IMT*	IMFTE*	ICTY*	ICTR*	ICC*	SPSC*	SCSL*
Establishment	International treaty concluded by four of the victorious allies after WW II	Order of the supreme commander of Allied forces in the South Pacific after WW II	UN Security Council Resolution		International treaty open to all States	Regulation of UN administration in Timor-Leste	Agreement between UN Secretariat and Government of Sierra Leone
Judges	8 (two from each of the four victorious Allied Powers)	11 (one from each of the 11 victorious Allied Powers)	16 from around the world		18 from around the world	2 international, 1 from Timor-Leste	7 international, 4 named by Sierra Leone
JURISDICTION							
What?	Crimes against peace War crimes Crimes against humanity	Crimes against peace War crimes Crimes against humanity	War crimes Crimes against humanity Genocide	War crimes Crimes against humanity Genocide	Aggression War crimes Crimes against humanity Genocide	War crimes Crimes against humanity Genocide Certain crimes under national law	War crimes Crimes against humanity Certain crimes under national law
Who & Where?	Committed by German nationals and nationals of Allied Powers	Committed by Japanese nationals and nationals of Allied Powers	Committed by someone on the territory of the former Yugoslavia	Committed by someone on the territory of Rwanda or by Rwandan nationals in neighbouring countries	Committed by someone on the territory of a State party to the treaty or by its nationals elsewhere	Committed by someone in relation to the events in Timor-Leste	Committed by someone on the territory of Sierra Leone
When?		During WW II	Since 1991	During 1994	After 1 July 2002	Between 1 January and 25 October 1999	Since 30 November 1996
Relationship with national courts		Primacy over national courts			Complementary to national courts – only acts if national courts are unwilling or unable to act	Exclusive jurisdiction over offences listed	Primacy over national courts

* Footnote:

IMT: International Military Tribunal of Nuremberg; **IMFTE:** International Military Tribunal for the Far East; **ICTY:** International Criminal Tribunal for the former Yugoslavia; **ICTR:** International Criminal Tribunal for Rwanda; **ICC:** International Criminal Court; **SPSC:** Special Panels for Serious Crimes in Timor-Leste; **SCSL:** Special Court for Sierra Leone

‘Foreign cases’ before national tribunals

Under the Geneva Conventions, States are responsible for bringing violators of international humanitarian law (IHL) to court, regardless of the nationality of the perpetrator or the victim or whether the crime was committed in the State trying the case or somewhere else. Here are two instances of perpetrators being brought before foreign courts.

EXAMPLE 1:

The mayor of Mushubati (a district of Rwanda) was brought before a Swiss military court in 1999. He was convicted of a range of crimes committed during the 1994 genocide, including war crimes and murder. The conviction was upheld on appeal.

Some people argue that when a court in one country tries foreigners for crimes committed beyond that country’s borders, the court is interfering in another country’s internal affairs.

Questions:

- > Do you agree? Why or why not?
- > What reasons might a tribunal give for trying such ‘foreign cases’?

EXAMPLE 2:

Maksim Sokolovic, a Bosnian Serb, was brought to trial in Germany for crimes he had allegedly committed during the conflict in the former Yugoslavia. A German court found him guilty in 1999 of genocide and war crimes and sentenced him to nine years in prison. On appeal, the court ruled that no link was required between Germany and the crime, the perpetrator, or the victim for German courts to act in such cases.

Voices from Nuremberg

ON THE PURPOSE OF THE NUREMBERG TRIALS

From the opening statement of Chief Prosecutor Robert H. Jackson:
The privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility. (...) That four great nations, flushed with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgement of the law is one of the most significant tributes that Power has ever paid to Reason.

...There is a dramatic disparity between the circumstances of the accusers and of the accused that might discredit our work if we should falter (...) in being fair and temperate. (...) We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow.

...Civilization asks whether law is so laggard as to be utterly helpless to deal with crimes of this magnitude by criminals of this order of importance. It does not expect that you [the Tribunal] can make war impossible. It does

expect that your juridical action will put the forces of international law, its precepts, its prohibitions and, most of all, its sanctions, on the side of peace...

From the opening statement of Chief Prosecutor Sir Hartley Shawcross:

The Governments of the United Kingdom and the British Commonwealth, of the United States of America, of the Union of Soviet Socialist Republics, and of France, backed by and on behalf of every other peace-loving nation of the world, have therefore joined to bring the inventors and perpetrators of this Nazi conception of international relationship before the bar of this Tribunal. They do so, so that these defendants may be punished for their crimes.

They do so, also, that their conduct may be exposed in all its naked wickedness and they do so in the hope that the conscience and good sense of all the world will see the consequences of such conduct and the end to which inevitably it must always lead.

From the opening statement of Chief Prosecutor Roman Rudenko:
In sacred memory of millions of innocent victims of the fascist terror, for the sake of the consolidation of peace throughout the world, for the sake of the future security of nations, we are presenting the defendants with a just and complete account which must be settled. This is an account on behalf of all mankind.

Question: What were the main ideas of each prosecutor? (Restate them in your own words.)



AP

Voices from Nuremberg

DEFENDANTS' FINAL STATEMENTS

Hermann Goering:

(Hitler's second-in-command who created the Gestapo, the official secret police of Nazi Germany, and the system of concentration camps)
The only motive which guided me was my ardent love for my people, its happiness, its freedom and its life.

Rudolph Hess:

(Hitler's third-in-command, Commandant of the concentration camp in Auschwitz)
I was permitted to work for many years of my life under the greatest son whom my people has brought forth in its thousand-year history. (...) I do not regret anything.

Wilhelm Keitel:

(Chief of the High Command of the German Armed Forces)
I believed, but I erred, and I was not in a position to prevent what ought to have been prevented. That is my guilt. It is tragic to have to realize that the best I had to give as a soldier, obedience and loyalty, was exploited for purposes that could not be recognized at the time, and that I did not see that there is a limit even for a soldier's performance of his duty.

...This trial must contribute towards preventing such degenerate wars in the future and towards establishing rules by which human beings can live together.

Question: How did these men justify their actions and what, in their view, were they responsible for? (Explain their positions in your own words.)



AP

Albert Speer:

(Minister of Armaments and War Production during the war, who allowed extensive use of forced labour by prisoners)
This war has brought an inconceivable catastrophe, and indeed started a world catastrophe. Therefore, it is my unquestionable duty to assume my share of responsibility for the disaster before the German people. (...) I, as an important member of the leadership of the Reich, therefore, share in the total responsibility, beginning with 1942.

Voices from Nuremberg

THE TRIBUNAL'S RULINGS

A plan in the execution of which a number of persons participate is still a plan, even though conceived by only one of them. (...) Hitler could not make aggressive war by himself. He had to have the cooperation of statesmen, military leaders, diplomats and businessmen. When they, with knowledge of his aims, gave him their cooperation, they made themselves parties to the plan. (...) That they were assigned to their tasks by a dictator does not absolve them from responsibility for their acts.

They [the defendants] have been responsible in large measure for the miseries and suffering that have fallen on millions of men, women and children. They have been a disgrace to the honourable profession of arms. (...) Many of these men have made a mockery of the soldier's oath of obedience to military orders. When it suits their defence they say they had to obey; when confronted with Hitler's brutal crimes (...) they say they disobeyed.

The truth is that they actively participated in all these crimes, or sat silent or acquiescent, witnessing the commission of crimes on a scale larger and more shocking than the world has ever had the misfortune to know. (...) Where the facts warrant it (...) those who are guilty of these crimes should not escape punishment.

Question: What reasons did the Tribunal give for finding defendants guilty? (Express them in your own words.)

Source: Telford Taylor, *The Anatomy of the Nuremberg Trials*, Little, Brown and Co., Boston, 1992.



AP

The Nuremberg Principles

- I. Anyone who carries out an act that is a crime under international law is responsible for it and should be punished.
- II. Even though a particular act may not be punishable under national law, if it is deemed a crime by international law, the person guilty of it will be held responsible.
- III. Anyone in a position of authority (a head of state or a government official, for instance) who carries out such acts in that capacity will be held responsible for them.
- IV. Anyone who carries out a criminal act under orders from a superior will be held responsible for it.
- V. A person charged with a crime under international law has the right to a fair trial.
- VI. International crimes are:
 - crimes against peace;
 - war crimes;
 - crimes against humanity.
- VII. Participation in any of the crimes listed in Principle VI is a crime under international law.

Source: The Nuremberg Principles (paraphrased), 1946.

Towards a new type of court

THE SITUATION IN THE FORMER YUGOSLAVIA

In a referendum held in Bosnia and Herzegovina in the spring of 1992, Bosnian Muslims and Croats voted for independence from the Federal Republic of Yugoslavia. At the same time, Bosnian Serbs, who had boycotted the referendum, established their own government. As a result of these events, an armed conflict broke out between Bosnian Muslim and Croat forces (backed by Croatia) and Bosnian Serb forces (backed by military units from Serbia). During the war, serious violations of international humanitarian law (IHL) occurred frequently: massacres, torture, rape, forced deportation of civilians and the establishment of concentration camps.

The fact that such serious violations were taking place was common knowledge throughout the Federal Republic of Yugoslavia. For a long time, however, national authorities were unable or unwilling to bring the perpetrators to court.

Questions:

- > **Why should an ad hoc international criminal tribunal be set up?**
- > **Who should set it up?**
- > **What crimes should it deal with?**
- > **Who should be the judges?**
- > **Where should it be located?**
- > **How should it work with national courts?**

THE SITUATION IN RWANDA

The roots of the armed conflict in Rwanda lay in old tensions between the Hutu and Tutsi ethnic groups, dating back to the colonial period when the Tutsi minority received benefits and enjoyed a higher social status than the Hutus. This caused much resentment among the Hutus.

When the Hutu majority came to power a few years before Rwanda's independence from Belgium in 1962, thousands of Tutsis were killed or forced to flee to neighbouring countries. The children of these exiled Tutsis then formed a rebel group, the Rwandan Patriotic Front (RPF). The RPF invaded Rwanda in 1990, setting off a civil war. The war, along with several political and economic crises, made ethnic tensions worse. In April 1994, roughly 800,000 Tutsis and moderate Hutus were killed in a large-scale genocide. About two million Hutu refugees fled to neighbouring countries.

The new Tutsi government arrested and jailed more than 110,000 people accused of participating in the genocide. However, because the State's judicial system had collapsed, national courts had to be set up again and judges had to be trained. The number of people awaiting trial was overwhelming and resources very scarce.

Questions:

- > **Why should an ad hoc international criminal tribunal be set up?**
- > **Who should set it up?**
- > **What crimes should it deal with?**
- > **Who should be the judges?**
- > **Where should it be located?**
- > **How should it work with national courts?**

Ad hoc international criminal tribunals

Why were they set up?

- The international community wanted:
- to ensure that important war criminals would not escape justice and would receive a fair trial;
 - to contribute to the process of national reconciliation and to the maintenance of peace.

Who set them up?

The United Nations (UN) Security Council set up the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993, and the International Criminal Tribunal for Rwanda (ICTR) in 1994.

What crimes do the tribunals deal with?



ICTY



AP

Who are the judges?

The UN General Assembly elects 16 judges for each ad hoc international tribunal. The judges serve for four years and are drawn from throughout the world.

Where are these tribunals located?

The ICTY has its seat in The Hague, The Netherlands.

The ICTR has its seat in Arusha, Tanzania.

How do they work with national courts?

The ICTY and the ICTR have primacy over national courts.

ICTY	ICTR
Each tribunal is authorized to prosecute and try persons responsible for the following offences committed in the former Yugoslavia since 1991:*	in Rwanda (or by Rwandans in neighbouring countries) in 1994:
	War crimes Genocide Crimes against humanity

* The court's authority is not limited in time, allowing it to continue prosecuting violations committed in the former Yugoslavia (e.g. in Kosovo in 1999 and in Macedonia in 2001).

The permanent International Criminal Court

Why was it set up?

Since the Nuremberg and Tokyo trials after the end of World War II, the international community had considered the creation of a permanent international criminal court. The creation of the two ad hoc international criminal tribunals to deal with the crimes committed in the former Yugoslavia and in Rwanda was a significant step. However, the authority of these tribunals was limited, in both time and place.

A permanent international criminal court was needed:

- to handle the most serious international crimes regardless of where and when they were committed;
- to guarantee that action could be taken more quickly (an ad hoc international criminal tribunal would have to be set up first before it could begin its work); and
- to serve as a stronger deterrent against violations of international humanitarian law (IHL).

Who set it up?

The International Criminal Court (ICC) was set up as an organization independent of the United Nations (UN), through a treaty (the Rome Statute) decided by 120 States in July 1998. The ICC began work on 1 July 2002.

What crimes does the court deal with?

The ICC has the authority to prosecute and try persons accused of committing the following crimes:

- Aggression;
- War crimes;
- Genocide;
- Crimes against humanity.

In principle, the ICC's authority is not limited in time or to a particular conflict, but it can try crimes committed only after 1 July 2002, when the treaty that established the court entered into force.

Who are the judges?

The Court is composed of 18 judges who are elected for a term of nine years by the States party to the Rome Statute.

Where is the court located?

The ICC is located in The Hague, The Netherlands.

How does it work with national courts?

The authority of the ICC complements that of national courts. The ICC acts only if a State is unable or unwilling to investigate or prosecute.

Question: How does the ICC differ from an ad hoc international criminal tribunal?



Wim van Cappellen/ICC-CPI

‘Hybrid’ courts: Special Court for Sierra Leone

‘Hybrid’ courts make use of both international and national law as well as foreign and local prosecutors and judges. They are able to try more cases than purely national or international courts can and to do so close to where the crimes were committed. Thus, they benefit from international expertise in prosecuting and trying war crimes and from knowledge of local circumstances, languages and cultural values.

Background to the armed conflict in Sierra Leone:

Sierra Leone suffered through an extremely violent civil war between 1991 and 1999, in which a rebel group called the Revolutionary United Front (RUF) fought the government. Control of the country’s mineral resources was one of the many issues that fuelled the war. Serious violations of international humanitarian law (IHL) were committed during the war. About 100,000 people were killed. Child soldiers were widely used. Sexual violence and the amputation of people’s limbs were some of the means used to terrorize civilians. More than two million people were forced to flee from their homes.

Who set it up?

The government of Sierra Leone and the United Nations (UN) jointly set up the Special Court for Sierra Leone (SCSL) in 2002.

What crimes does the court deal with?

The SCSL tries serious violations of IHL, crimes against humanity and certain offences under national law that have been committed in the country since 30 November 1996 (the date of a peace treaty between the government and the RUF, which later broke down).

Who are the judges?

There are currently 11 judges: seven appointed by the UN and four by the government of Sierra Leone. All of them serve for three years.

Where is the court located?

In Freetown, Sierra Leone.

How does it work with national courts?

The SCSL has primacy over the national courts of Sierra Leone.

Questions:

- > How does this court combine national and international elements?
- > Why might defendants be suspicious of a national court? Why might victims?
- > Why might victims mistrust an international court? Why might defendants?



Sylvain Savolainen

‘Hybrid’ courts: Special Panels for Serious Crimes in Timor-Leste

‘Hybrid’ courts make use of both international and national law as well as foreign and local prosecutors and judges. They are able to try more cases than purely national or international courts can and to do so close to where the crimes were committed. Thus, they benefit from international expertise in prosecuting and trying war crimes and from knowledge of local circumstances, languages and cultural values.

committed included mass killings, sexual offences and the systematic destruction of civilian property.

Who set them up?

Under international pressure, Indonesia gave up control of Timor-Leste in September 1999 and the territory was administered temporarily by the United Nations (UN), with the objective of preparing Timor-Leste for independence. In its role as the governing authority, the UN administration created a ‘hybrid’ tribunal called the Special Panels for Serious Crimes (SPSC).

Background to the armed conflict in Timor-Leste:

Timor-Leste had been a Portuguese colony since the sixteenth century. In 1975, discussions related to its independence from Portugal led to violent clashes between people favouring independence and others who wanted Timor-Leste to become part of Indonesia. During this period, Portugal left Timor-Leste and Indonesia invaded it. After the people of Timor-Leste voted for independence in 1999, the Indonesian army and pro-Indonesian Timorese militias murdered an estimated 1,400 people and forced some 400,000 to flee from their homes. The atrocities they

Where are the special panels located?

In Dili, Timor-Leste.

How do they work with national courts?

The SPSC have primacy over the national courts of Timor-Leste.

Questions:

- > How does this court combine national and international elements?
- > Why might defendants be suspicious of a national court? Why might victims?
- > Why might victims mistrust an international court? Why might defendants?



Lirio Da Fonseca AS/CP/Reuters

How can national courts help ad hoc international criminal tribunals?

Cooperation between States and ad hoc international tribunals

While States are obliged to bring to trial and punish those who commit grave breaches of international humanitarian law (IHL), the ad hoc international tribunals have primacy over States' actions.

Ad hoc international criminal tribunals can refer cases to the State where the crime was committed, to the State where the accused was arrested, or to any other State that is willing and able to take on such cases. War crimes trials have thus been held in Croatia, Bosnia and Herzegovina, Serbia and the Netherlands. In response to the deadline established by the United Nations Security Council for completing the tribunals' work by 2010, the tribunals are referring cases to national courts with increasing frequency. Bosnia and Herzegovina even set up a special War Crimes Chamber to cope with the volume of cases that have to be tried; the



Amel Emric/AP

national courts responsible for trying war criminals were reinforced in Croatia and Serbia as well. States are also required to cooperate with ad hoc international tribunals in the investigation and prosecution of persons accused of committing

serious violations of IHL. This means that States must arrest, detain, surrender or transfer such persons, and assist the tribunals in other ways too, whenever such assistance is requested. Many States – Belgium, Benin, Burkina Faso, Cameroon, Côte

d'Ivoire, Kenya, Mali, Namibia, South Africa, Switzerland, Togo and Zambia – have arrested such persons and transferred them to the International Criminal Tribunal for Rwanda (ICTR).

How can national courts help ad hoc international criminal tribunals?



the revived *gacaca* courts continued to pursue truth, justice and reconciliation, they also began to hold offenders accountable for their actions.

Judges in the *gacaca* courts are respected members of the community who are elected to their posts locally. These 'people's judges' are trained before they take up their new responsibilities.

The work of the *gacaca* courts, while comparable to that of the national courts, has one major limitation: *gacaca* courts may not try the most serious crimes; those cases remain

Gacaca* courts in Rwanda – a traditional means of administering justice

As the number of detained suspects in Rwanda continued to grow, the overcrowded prisons resulted in awful conditions and many deaths.

In addition, it was estimated that Rwandan national courts and the ICTR would need at least 100-150 years to try all the cases that awaited their attention. To speed up the process, in 2002 the Rwandan government decided to revive a traditional

Rwandan system of justice, known locally as *gacaca*.

The *gacaca* was the main system of justice in Rwanda before the colonization of the country. Its goal was reconciliation and community healing without punishment. While

the responsibility of the formal network of national courts.

By 2005, 12,000 *gacaca* courts had been established throughout Rwanda.

* *Gacaca* is a Kinyarwanda word that means 'justice on the grass' and refers to the strip of grass where people gathered to resolve conflicts through informal community tribunals.

Questions:

- > How do you think the work of courts at national and international levels complement each other?
- > What are the elements that give the *gacaca* courts their distinctive character?

Exploration 4C: Non-judicial options

Exploration 4A introduced students to the reasons for dealing with violations of international humanitarian law (IHL), and to different ways of doing so. Explorations 4B and 4C look more closely at specific mechanisms for addressing serious violations of IHL.

In Exploration 4B, students explored instances in which people accused of war crimes were brought to trial.

Exploration 4C looks at some non-judicial ways of dealing with violations of IHL. Students are introduced to options such as reconciliation, forgiveness and reparation. They learn that bringing perpetrators of war crimes to trial is not the only way to address IHL violations and to leave the legacy of armed conflict behind.

OBJECTIVES

- to understand certain non-judicial approaches that States have chosen to deal with IHL violations
- to consider the many perspectives involved – of victims and perpetrators and of the wider society – in efforts to build a peaceful future in the aftermath of IHL violations and human rights abuses
- to understand some of the advantages and limitations of non-judicial approaches

TEACHER RESOURCES

4C.1 Non-judicial options

STUDENT RESOURCES

- 4C.2 Worksheet: Addressing the needs of victims and of the community
- 4C.3 Worksheet: How do truth commissions work?
- 4C.4 A look at truth commissions
- 4C.5 Testimonies from truth commissions
- 4C.6 Voices on the advantages and limitations of truth commissions
- 4C.7 Apology and forgiveness

PREPARATION

Select the truth commission (from “Testimonies from truth commissions”) that you will use with your students for the ‘perspectives’ exercise in steps 3 and 4. Decide how to divide students into the five ‘perspective’ groups.

In the *Methodology Guide*, review teaching methods 1 (Discussion), 2 (Brainstorming), 5 (Role-playing), 7 (Writing and reflecting), 9 (Small groups) and 10 (Gathering stories and news).

TIME

Two 45-minute sessions

The exploration

1. INTRODUCE THE FOCUS ON NON-JUDICIAL WAYS (15 minutes)

At the end of Exploration 4A, students brainstormed about what else could be done to deal with violations of IHL apart from bringing alleged perpetrators to trial. Take up those ideas again and initiate a discussion.

Use those earlier suggestions that students made in order to introduce terms that people around the world have been using: 'amnesty,' 'apology,' 'forgiveness,' 'reparations,' 'truth commission,' 'truth and reconciliation commission.' Ask students to reflect on the meaning of these six terms.

Distribute the worksheet "Addressing the needs of victims and of the community."

 **TEACHER**
4C.1 RESOURCES

 **STUDENT**
4C.2 RESOURCES

Ask students to take notes on it as they brainstorm and discuss ideas for dealing with the aftermath of violence. As students offer suggestions, help them group their ideas under the appropriate categories on the worksheet.

Ask students to link the examples they give to their own experiences.

Possible question:

> If a victim remains traumatized and continues to suffer long after a violent event, how might he or she be helped?

[If needed, draw students' attention to some non-judicial options, such as the return of property, monetary compensation, public apology, psychological or medical services, creation of memorials, removal of officials from office or professionals from their jobs, community reconciliation events, revision of history books]

2. WHAT ARE TRUTH COMMISSIONS? (15 minutes)

Ask students what they know about truth commissions. Then distribute the worksheet "How do truth commissions work?". Together, read the quotation it contains. Ask for reactions.

 **STUDENT**
4C.3 RESOURCES

Possible question:

> What does this statement suggest about the way truth commissions work?

Instruct students, working in pairs, to write down their ideas about truth commissions on the worksheet.

Reconvene the class. Introduce "A look at truth commissions," and ask students to compare their ideas with the way truth commissions work in reality.

 **STUDENT**
4C.4 RESOURCES

The exploration

3. PERSPECTIVES TO CONSIDER (25 minutes)

Tell students that they will look at the work of one truth commission, drawing upon the facts of a particular case.

Distribute copies of the section of “Testimonies from truth commissions” (Timor-Leste, Sierra Leone, South Africa, Argentina or Peru) that you have decided to work on.



Explain that the work of truth commissions involves the following perspectives:

- **Perpetrators** present their stories to the truth commission, telling or explaining what crimes they committed during a situation of violence.
- **Victims** present their stories to the truth commission, telling or explaining what happened to them during a situation of violence.
- **Witnesses** present their stories to the truth commission, telling or explaining what they observed during a situation of violence.
- **Commissioners** hear testimonies and make recommendations about what should be done.
- **Members of the public** react to the information that becomes public and to the commission’s recommendations.

Divide the class into five groups, assigning one of the roles listed above to each.

Instruct each group to discuss the testimony from the perspective they have been assigned and then prepare their responses to the following questions:

- > What thoughts and feelings do you think this testimony might evoke?
- > What outcomes do you hope for?

Advise students to draw on their worksheets from steps 1 and 2, when they are preparing their responses to the second question.

After about 10 minutes, have each group report its responses to the first question. List their responses by perspective, and display the list where it can be seen by everyone.

Possible question:

- > What similarities and differences do you see in your responses?

4. EXPLORE POSSIBLE RECOMMENDATIONS (20 minutes)

Now have each group present its list of hoped-for outcomes, in response to the second question in step 3.

Again, lead a discussion on the similarities and differences in the responses.

Then have the class select two or three measures to promote healing and a peaceful future for the whole society.

Conclude by asking students to respond in writing to the following question:

- > How did the perspective you took influence your interpretation of events and your choice of outcome?

The exploration

5. THE VALUE OF TRUTH COMMISSIONS (10 minutes)

Distribute “Voices on the advantages and limitations of truth commissions.” Have students work in pairs to discuss the value of truth commissions, using the quotations as well as their own ideas.

STUDENT
4C.6 **RESOURCES**

Have each pair draw two columns on a sheet of paper and list the advantages and the limitations of truth commissions.

After a few minutes, reconvene the class and have students present their views.

6. CLOSE (5 minutes)

Stress that judicial and non-judicial ways of dealing with violations of IHL should complement each other.

Possible question:

> How do you think the work done by courts and other ways of dealing with violations complement each other?

Point out that both judicial and non-judicial options play a part in dealing with the past and in preventing atrocities in the future.

! KEY IDEAS

- There are various non-judicial ways to deal with IHL violations that may be used in addition to bringing alleged war criminals to trial.
- Many different perspectives must be considered to help societies move beyond the atrocities in their past.
- Truth commissions are useful instruments for uncovering the truth and for providing guidance on ways to deal with IHL violations.

Extension activities

APOLOGY AND FORGIVENESS

Read "Apology and forgiveness," and respond to Hauss' opinion in one of the three ways suggested.

 **STUDENT**
RESOURCES

A TORTURER CONFRONTS HIS MISDEEDS

Read the following excerpt:

At a hearing of the South African Truth and Reconciliation Commission, policeman Jeffrey Benzien demonstrated the 'wet bag' torture, which involved sitting on a prisoner's back, stuffing his head into a wet bag and suffocating him nearly to death. A former detainee, Tony Yengeni, confronted Benzien and demanded, 'What kind of man can do that kind of thing?' Benzien had no good answer.

'I (...) have asked myself that question to such an extent that I voluntarily (...) approached psychiatrists to have myself evaluated to find out what type of person I am,' Benzien replied.

> How do the victim and the perpetrator benefit from having an opportunity to talk to each other?

Contrast this with the words of the Russian writer Alexander Solzhenitsyn, who spent almost 10 years in a detention camp under harsh conditions:

If our tormentors had been in our shoes they would have behaved as we did. If we had been in their shoes, we would have been able to become as them.

Non-judicial options

To complement judicial ways of dealing with violations of international humanitarian law (IHL) and human rights abuses, various other mechanisms have emerged around the world. These approaches shift the focus from the perpetrator to the victim and may have reparative, truth-seeking and reconciliatory functions.

REPARATIVE FUNCTIONS

There have been a number of examples of efforts to compensate victims of IHL and human rights abuses for their losses and to repair the injury that was done to them.

- After the conflicts in Bosnia and Herzegovina and Kosovo, for example, commissions were established to resolve land disputes and to ensure that all wrongfully confiscated property was restored to its rightful owners (restitution).
- Germany has opted to provide financial compensation for survivors of the Nazi concentration camps and for families of those who perished in the camps (compensation).
- In Chile, the government has provided monthly cheques to family members of those who 'disappeared' or were killed under the military dictatorship of Augusto Pinochet (compensation).
- The United Nations (UN) set up a claims commission to compensate those who suffered as a result of Iraq's invasion and occupation of Kuwait in 1990-1991 (compensation).

Issuing public apologies is another way of attempting to make amends. In 1970, for example, Willy Brandt, the Chancellor of West Germany, sent a powerful message by falling on his knees in Warsaw, Poland, before the monument to the Warsaw ghetto uprising of 1943. Thirty-five years later, Gerhard Schroeder, the German Chancellor, expressed remorse and shame over the Holocaust to survivors of the Nazi concentration camps. In 1999, Kofi Annan, the Secretary-General of the UN, apologized for his organization's failure to protect the people of the former Yugoslavia and of Rwanda (satisfaction).

A number of former Soviet-bloc countries – Albania, Bulgaria, the Czech Republic, Germany, Hungary, Poland and Slovakia – have found yet another way to deal with past atrocities. Although they have refrained from bringing alleged perpetrators to trial, they have passed laws disqualifying and removing from office former Communist officials and collaborators (lustration).

States have also decided to construct memorials and museums, open up their archives or revise history books in order to face the past squarely (satisfaction).

TRUTH-SEEKING FUNCTIONS

Setting up truth commissions is another option that has been pursued in a number of contexts. Truth commissions play an important role: they investigate violations of IHL and human rights abuses to establish their causes, to help societies come to terms with the past and to prevent atrocities from happening again.

Truth commissions hear the testimony of victims, witnesses and perpetrators of IHL violations and human rights abuses. However, truth commissions are not trials; they are only forums of inquiry to determine the facts of past atrocities.

They are usually established by governments, although some have been set up by private organizations. They publish reports and make recommendations on how governments should deal with atrocities. In order to facilitate peace and community healing, they might propose different judicial and non-judicial approaches to deal with IHL violations.

Truth commissions have been created in a variety of circumstances: after a change in government, as part of a peace agreement, after a civil war or during a period of transition from military to civilian rule. They have been set up in a number of countries, including Argentina, Chad, Ecuador, El Salvador, Guatemala, Haiti, Nigeria, Panama and Uganda.

Argentina established the first truth commission (the National Commission on the Disappearance of Persons) in 1983 to investigate and uncover the truth about the disappearance of thousands of people under the military dictatorship between 1976 and 1983. After gathering more than 50,000 pages of evidence, the commission published its 1984 report, *Nunca Más* (Never Again), which documented the existence of 340 secret detention camps and the 'disappearance' of more than 8,900 individuals. The report revealed that victims were detained under inhumane conditions and subjected to humiliating and degrading treatment.

The commission's recommendations were to begin judicial investigations, to provide reparations to the victims and their families and to ensure that such violations of human rights never occur again.

Non-judicial options

RECONCILIATORY FUNCTIONS

In many instances, truth commissions have also sought to reconcile perpetrators with victims and their families. Truth and reconciliation commissions have been created in Chile, Timor-Leste, Ghana, Liberia, Morocco, Northern Ireland, Peru, Sierra Leone, South Africa and South Korea.

South Africa's Truth and Reconciliation Commission was created in 1995 to investigate and document serious human rights violations committed between 1960 and 1994 under the apartheid regime. The commission investigated crimes committed by members of the South African apartheid government as well as those committed by resistance groups such as the African National Congress. Its goal was to achieve personal and political reconciliation rather than to prosecute and punish.

Under the commission's 'amnesty for truth' policy, individual perpetrators were not brought to trial for politically motivated crimes if they confessed their misdeeds truthfully. Those who did not reveal all the details of their politically motivated crimes or whose crimes were motivated by personal reasons were not eligible for amnesty and were prosecuted under national law.

Testimony was taken from more than 23,000 victims and witnesses. Out of more than 7,000 applications for amnesty, the South African Truth and Reconciliation Commission granted amnesty to 849 people.

In 2002, the UN transitional administration in *Timor-Leste* established the Commission for Reception, Truth and Reconciliation to investigate human rights violations committed between 1974 and 1999, a period during which Timor-Leste was under Indonesian authority. The aims of the truth commission were to facilitate reconciliation and the re-integration of minor criminal offenders who submitted confessions and to recommend measures for preventing future abuses and for addressing the needs of victims.

The truth commission's report, which was released in 2005, was based on the testimony of more than 7,000 victims. The commission found that the deaths of nearly 103,000 Timorese people – by starvation and torture, for instance – were linked to the 24-year Indonesian rule.

The commission made recommendations for judicial proceedings against the perpetrators, initiated national reparation programs, helped with the process of reconciliation and suggested measures to the government for the prevention of further abuses.

In *Sierra Leone*, the Truth and Reconciliation Commission started its work in 2002 to create a historical record of the IHL violations and human rights abuses that occurred during the armed conflict in the country between 1991 and 1999. The commission also aimed to respond to the needs of victims, to promote healing and reconciliation, and to prevent further abuses.

The 5,000-page report, released in 2004, is based on the statements of 7,000 people. The report also contained a separate version for children, since children had played such a large role, both as victims and as perpetrators of violence, during the war. It revealed a wide range of serious violations of IHL and of human rights abuses and offered a number of recommendations for legal, political and administrative reform, with a special focus on strengthened protection for children and women.

A number of non-judicial solutions for addressing violations of IHL have emerged at different times and from different contexts. One feature common to them is the desire of many societies to find their way back to peace and to leave their legacy of armed conflict behind. By choosing non-judicial options to deal with IHL violations, States decide to acknowledge and analyse atrocities and to focus on victims' losses rather than on punishing perpetrators. The aim is to understand and learn from the past, in order to prevent atrocities in the future.

Sources: David Bloomfield, Teresa Barnes (eds), *Reconciliation After Violent Conflict: A Handbook*, International Institute for Democracy and Electoral Assistance, Stockholm, 2003. Emanuela-Chiara Gillard, "Reparation for violations of international humanitarian law," *International Review of the Red Cross*, Vol. 85, No. 851, September 2003. Pierre Hazan, "Measuring the impact of punishment and forgiveness: a framework for evaluating transitional justice," *International Review of the Red Cross*, Vol. 88, No. 861, March 2006. Laura Olson, "Mechanisms complementing prosecution," *International Review of the Red Cross*, Vol. 84, No. 845, March 2002. Elizabeth G. Salmón, "Reflections on international humanitarian law and transitional justice: lessons to be learnt from the Latin American experience," *International Review of the Red Cross*, Vol. 88, No. 862, June 2006.

Worksheet

Addressing the needs of victims and of the community

As your class brainstorm and discusses ideas, use this worksheet to write down your own ideas as well as those of your classmates.

Re-establishing the situation pre-violation (restitution)	Paying money for losses (compensation)	Remediating losses that cannot be paid for (satisfaction)	Restoring the victim's physical or psychological health (rehabilitation)	Removing officials from their positions (lustration)

Worksheet

How do truth commissions work?

Just imagine that every one of us carries in our pocket one small treasure. (...) It might be a memory or a piece of cloth or a fallen star. Or it might be the fragment of a broken heart. That is our very own story to tell. It will be most precious, and it may be very painful to recall. (...) If we study the truth very carefully, we will come to understand each other, and we will come to understand what happened in our country. (...) We will learn from the story how to make sure that [this horror] never happens again.
 – from the Truth and Reconciliation Commission Report: For the Children of Sierra Leone

What are truth commissions?	
Who establishes them?	
What might their goals be?	
What do they do?	

A look at truth commissions

Truth commissions hear the testimony of victims of international humanitarian law (IHL) violations and of human rights abuses. Perpetrators and witnesses testify before them. Truth commissions are not trials; they are forums for establishing the facts of past atrocities.

The most important aims of truth commissions are:

- to uncover the truth in order to help societies that have suffered as a result of armed conflict or other forms of violence;
- to come to terms with the past;
- to prevent atrocities from ever happening again.

Truth commissions may also seek to reconcile victims and perpetrators.

They are usually established by governments, although some have been set up by private organizations.

Truth commissions publish reports and make recommendations on how governments should deal with atrocities. In order to facilitate peace and community healing, they might propose the following measures:

- return of property or place of residence;
- monetary compensation;
- public apologies;
- psychological or medical services;
- setting up memorials;
- removing certain officials from public service;
- community events to promote social healing;
- revising history books to present the truth.

Testimonies from truth commissions

TIMOR-LESTE

In 1975, Indonesia invaded Timor-Leste (then a Portuguese colony). After the people of Timor-Leste voted for independence in 1999, the Indonesian army and pro-Indonesian Timorese militias murdered an estimated 1,400 people and forced some 400,000 to flee from their homes. The atrocities they committed included mass killings, sexual offences and systematic destruction of civilian property.

A truth commission was established in 2002 to investigate the human rights violations committed in Timor-Leste between 1974 and 1999, to help re-integrate perpetrators of less serious crimes into their communities and to recommend to the government measures to prevent further abuses.

When the Indonesian troops invaded they came straight to our house and shot my brothers Raul and Kaimauk in front of me. (...) The residents of Quintal Boot had all fled to the hills. My cousin and I chose to stay in the house. But as the situation became more chaotic both of us fled to Tereiro, and then [we] moved again to the Lahane Hospital. We stayed in Lahane for two days. We were very hungry because we did not have anything to eat. (...) The rest of my family was scattered. (...) I don't know where they ran to.

– Testimony of Benvinda Lopez

From the perspective of your group (perpetrator, victim, witness, commissioner, member of the public):

- > **What thoughts and feelings do you think this testimony might evoke?**
- > **What outcomes do you hope for?**



Beawiharta/Reuters

Testimonies from truth commissions

SIERRA LEONE

Sierra Leone suffered through an extremely violent civil war between 1991 and 1999, in which a rebel group called the Revolutionary United Front (RUF) fought the government. Control of the country's rich diamond mines was one of the many issues that fuelled the war. Serious violations of international humanitarian law (IHL) were committed during the war. About 100,000 people were killed. Child soldiers were widely used. Sexual violence and the cutting off of people's limbs were often the means used to terrorize civilians. More than two million people were forced to flee from their homes.

A truth commission was established in 2000 to create a historical record of the IHL violations and human rights abuses that were committed between 1991 and 1999, to respond to the needs of victims, to promote healing and reconciliation and to prevent further abuses.

We were drugged and made to kill and destroy our brothers and sisters and our mothers and fathers. We were beaten, amputated and used as sex slaves. (...)
Our hands, which were meant to be used freely for play and schoolwork, were used instead, by force, to burn, kill and destroy.
– from the Truth and Reconciliation Commission Report: For the Children of Sierra Leone

From the perspective of your group (perpetrator, victim, witness, commissioner, member of the public):

- > What thoughts and feelings do you think this testimony might evoke?
- > What outcomes do you hope for?



Brennan Linsley/AP

Testimonies from truth commissions

SOUTH AFRICA

In South Africa, serious violations of human rights were committed during the struggle (1948-1994) against apartheid. The South African apartheid regime restricted where non-white people could live, what jobs they could hold and what type of education they could receive.

A truth commission was established in 1995 to investigate and document gross violations of human rights committed between 1960 and 1994 and to attempt to bring about reconciliation. The truth commission offered 'amnesty for truth' to those perpetrators who were willing to confess their crimes.

Now eventually I was taken out of the house by the police. (...) They had a baton; immediately after I got out of the house, they beat me up with the baton all over my body. I tried to run. While I was still running, they tripped me and I fell, they were kicking me, I tried to cover my face because I didn't want my face at least to be injured but they were too many for me, they overpowered me.

...The whole agony lasted for 30 minutes. As a result of that I discovered that I couldn't write – I couldn't work well, and I was also affected mentally, my behaviour totally changed after that. (...) Even at school I encounter enormous problems, my memory is too short, that really affects me now at school. (...) I was 19 years old.

– Testimony of Mlandeli Walter Mqikela

From the perspective of your group (perpetrator, victim, witness, commissioner, member of the public):

- > **What thoughts and feelings do you think this testimony might evoke?**
- > **What outcomes do you hope for?**



Mike Hutchings/AP

Testimonies from truth commissions

ARGENTINA

From 1976 until 1983, Argentina was ruled by a succession of military regimes. During that period, people who were suspected of opposing the government were deliberately killed or tortured. It has been estimated that between 10,000 and 30,000 people 'disappeared'.

A truth commission was established in 1983 to investigate and to uncover the truth about the crimes committed under the various military regimes. The commission's task was to provide an unbiased account of the events and to pass on to the court system the criminal cases that it had identified.

Between 11 and 11.30p.m (...) I heard a loud knocking at the door of my home in Belgrano, Buenos Aires city. I was just finishing breast-feeding my son, Simón. The door was broken down, and between ten and fifteen men dressed in everyday clothes burst in. They identified themselves as members of the Argentine and Uruguayan armies. One of the officers said his name was Major Gavazzo, of the Uruguayan army. They found written material which showed I was working for the cause of freedom in Uruguay; they then began to torture and interrogate me. When they took me away, I asked what would happen to the boy. They told me not to worry, that he would stay with them, that they had no war against children. That was the last time I saw Simón or have had any news of him.

– Testimony of the mother of Simón Antonio Riquelo

From the perspective of your group (perpetrator, victim, witness, commissioner, member of the public):

- > **What thoughts and feelings do you think this testimony might evoke?**
- > **What outcomes do you hope for?**



Daniel Garcia/AFP/Getty Images

Testimonies from truth commissions

PERU

From 1980 to 2000, Peru suffered through a violent civil war between government forces and two main guerrilla groups: the *Sendero Luminoso* (Shining Path) and the Tupac Amaru Revolutionary Movement (MRTA). In those twenty years, those involved in the fighting were responsible for widespread and systematic killings, brutal physical assaults, forced disappearances on a massive scale, extra-judicial executions, acts of torture and other unlawful forms of ill-treatment. A truth commission was set up in 2001 with a mandate to establish the circumstances surrounding the human rights abuses and violations committed between 1980 and 2000.

I asked them, 'Why are you taking my son away' and they said that he had to be a witness and that they would give him back to me at the door to the barracks. (...) When I caught up with them at the door, they pushed me and beat me. They wanted to put a bullet in me, they took my son from me and put him in the army truck and I started shouting like a mad woman. Since that day I have been going all over the place day and night trying to get them to return my son and when I went to see the army, they told me that he hadn't been taken there and so I walked around for another fortnight like a mad woman. At that point my son sent me a note from the barracks saying, 'Mother, I am here in the barracks, find a lawyer, get hold of some money to get me out.' That is my last memory of my son. That note is evidence that my son was there...

– Testimony of Angélica Mendoza

From the perspective of your group (perpetrator, victim, witness, commissioner, member of the public):

- > **What thoughts and feelings do you think this testimony might evoke?**
- > **What outcomes do you hope for?**



Silvia Izquierdo/AP

Sources: Commission for Reception, Truth and Reconciliation in Timor-Leste (<http://www.easttimor-reconciliation.org>). *Chega! The CAVR Report* (<http://www.cavr-timorleste.org/cheqaReport.htm>). *The Truth and Reconciliation Commission Report: For the Children of Sierra Leone* (<http://www.trcsierraleone.org/pdf/kids.pdf>). *The Final Report of the Truth & Reconciliation Commission of Sierra Leone* (<http://trcsierraleone.org/dhwebsite/publish/index.shtml>). South Africa: Truth and Reconciliation Commission Website (http://www.doj.gov.za/trc/trc_frameset.htm). Argentina: *Nunca Más (Never Again) – CONADEP report – 1984* (http://www.nuncamas.org/english/library/neveragain_nevagain_001.htm).

Voices on the advantages and limitations of truth commissions

In the quotations that follow, people who have been personally involved in determining appropriate ways of dealing with international humanitarian law (IHL) violations and human rights abuses give their views and raise questions about the value of non-judicial solutions.

We said we want to look at our past, we didn't want to pretend that it hadn't happened. Let us look the beast in the eye then move on. Forgiveness is not something nebulous, it is crucial in how you get to deal with the legacy of the past. Its opposite is retribution and revenge.
– Desmond Tutu, Nobel Peace Prize winner and Chairman of the South African Truth and Reconciliation Commission, 2003

In order for a society to be made whole afterward, it has to recognize what happened, repair the victims and punish those who did wrong. That doesn't mean you have to put abusers in jail, but at the very least they should be required to confess their sins and apologize.
– Martin Abregu, Director of the Centre for Legal and Social Studies, Argentina, 1998

The fact that, in front of the victim or the family of the victim, an executioner recognizes that he deliberately murdered somebody, that he stored a bomb in a church or somewhere else with the intent to kill, it is a beginning of justice. (...) Many victims are satisfied, because they were restored in their dignity, and their sufferings were recognized. Other victims are dissatisfied because they find that the murderers get off too lightly.
– Richard Goldstone, South African judge, former prosecutor for the International Criminal Tribunals for the former Yugoslavia and Rwanda, 1998

The Rwandan government was convinced that the only way to achieve national reconstruction and bring lasting peace to the people of Rwanda was to see to it that justice was done, and that it was an illusion to hope for any understanding or peaceful co-existence unless the people who were responsible for and involved in the crimes were first punished.
– Faustin Nteziyayo, Rwandan Minister of Justice, 1998

Justice is a necessary condition, but it is not sufficient for reconciliation. (...) [If] the conditions that led to the conflict are not changed, then clearly the conflict could re-ignite and the whole painful process of investigating the truth and administering justice will have been for nothing, as the solutions found will not resolve the basic problems that lead to violence.
– Salomón Lerner Febres, President, Truth and Reconciliation Commission, Peru, 2006

In the course of Japanese occupation, the Korean War, and authoritarian rule, many innocent people suffered from unjust and inhumane violence and massacres. We failed to uncover the truth and bring about reconciliation. On the contrary, for a long time the victims have been forced into silence by state agencies, and their families have been left in deep anguish. (...) We shall try to prevent such wrongs from occurring again in the future, leave the proper lessons for the generations to come, and promote the value of justice and human rights in the international community.
– Song Ki In, President of the Truth and Reconciliation Commission, Republic of Korea, 2006

Questions:

- > **Do you think people who admit their crimes and apologize should go unpunished?**
- > **How do you think non-judicial ways could supplement judicial ways?**

Apology and forgiveness

After situations of violence, societies search for ways to rebuild and to heal the physical and psychological damage suffered by individuals and the society as a whole. Public apologies by government leaders and perpetrators, as well as expressions of forgiveness from victims, are regarded by many as being constructive, and, therefore, important in healing the wounds of damaged societies.

The following excerpt is taken from the writings of Charles Hauss, a professor of political science and conflict resolution.

Apology and forgiveness are two sides of the same emotional coin.

They reflect the constructive ways the oppressors and the oppressed in conflict can come to grips with the pain and suffering the conflict produced.

The oppressors who committed human rights violations and other atrocities have to take responsibility for their actions and apologize. An apology has to be heartfelt and reflect true remorse for past actions. An apology can still matter if it is made by someone who is several generations removed from the abuses.

By the same token, the victims of those atrocities have to find the space in their hearts to forgive those who victimized them, even though the pain and suffering will never disappear.

But forgiving is just as important as apologizing in any society which wishes to put its struggles behind it and create a more peaceful and cooperative future.

Even after the fighting stops, people still feel the pain, hurt, anger, fear, and hatred that produced the conflict and its horrors in the first place. Without apology and forgiveness, people remain locked in the value systems that produced the conflict. Little progress beyond a ceasefire can be made.

Respond to the opinions of the author by presenting your own thoughts and feelings. Choose one of these ways for your response:

- **Write an essay explaining your views about the issues raised in Hauss' writing.**
- **Write a story about you or someone you know in which apologizing and forgiving were instrumental in easing a painful situation, or in which the act of apologizing had no impact on the situation.**
- **Prepare a short dramatization with a classmate in which a confrontation over an event in the past results in an apology on one side and forgiveness on the other. Present the dramatization to the class. Then discuss your reactions to it, and ask the class for theirs.**

Source: Charles Hauss, "Apology and Forgiveness," in Guy Burgess, Heidi Burgess (eds), *Beyond Intractability*. Conflict Research Consortium, University of Colorado, Boulder CO, September 2003 (http://www.beyondintractability.org/essay/apology_forgiveness/).

OBJECTIVE

- to become aware of efforts being made to deal with violations of international humanitarian law (IHL) at home and around the world

1. Select an article from a newspaper or magazine or a special report on television or radio about efforts to address IHL violations.
[For example: through national courts, military tribunals, international tribunals, truth commissions]
2. Describe the situation.
 - > What actions are being taken? By whom?
 - > What violations are at issue?
 - > What is the current status of the case?
 - > What do you think will happen next and why?
3. Continue to follow and report on the case you selected.

Assessment

METHODS OF ASSESSMENT

ONGOING ASSESSMENT

Exploring Humanitarian Law (EHL) provides teachers with daily opportunities to find out what their students are learning and what misconceptions they might have. Active teaching methods, such as class discussion, small group work, brainstorming and role-playing all provide such opportunities.

Take five minutes at the end of class to have students write down one- or two-sentence answers to the following questions:

- > What did you learn today?
- > What remaining questions do you have?

Read through their responses, and use them to build on students' knowledge and clarify any misconceptions for the next lesson.

PORTFOLIO OF STUDENT WORK

In each module, students are asked to carry out activities such as interviewing people, illustrating concepts with poems, plays or artwork and writing research papers on particular topics.

Keep a folder or portfolio for each student, containing written work, artwork, interviews and news clippings that he or she has contributed in class. Periodically go over the student's work with him or her to monitor progress in understanding international humanitarian law (IHL).

Post samples of students' work where all can see.

END-OF-MODULE QUESTIONS

After Module 4 is completed, you might want to devote the last class session to a written assessment of what students have learned. You could do this with one essay question (20-30 minutes) and two or three short-answer questions (10 minutes each).

Possible essay questions:

- > What are some of the difficulties faced in implementing IHL? Give concrete examples.
- > Describe the main judicial options for dealing with violations of IHL.
- > Describe the main non-judicial options for dealing with violations of IHL.

Possible short-answer questions:

- > What responsibilities do commanders of armed forces or groups have for bringing alleged perpetrators to court?
- > List some advantages that 'hybrid' courts may offer over purely national or purely international courts.
- > What are the key aims of truth commissions?

Assessment

You could ask students to formulate other questions in small groups and then select one of them as the essay question for the whole class. Or you could ask each student to propose a question and then answer it. (The student would be assessed on the quality of the question as well as on the answer.) Or you could select a quote from a newspaper article, a sidebar in the materials or another source and ask students to identify the main point being made in the quote and whether they agree or disagree with it.

CRITERIA FOR ASSESSMENT

An effective student response is one which:

- uses concepts, such as bystander, combatant, dilemma or chain reaction and other terms in the EHL materials;
- gives concrete examples to back up points;
- includes examples from a variety of sources, such as the news media, interviews, class discussion and outside reading.

The above techniques are simply suggestions to help you assess your students' work on the EHL materials. Feel free to adapt them to your needs.

Web resources

JUDICIAL OPTIONS

- International criminal jurisdiction, International Committee of the Red Cross (http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/section_ihl_international_criminal_jurisdiction?opendocument)
- Prosecuting war criminals under international humanitarian law, International Committee of the Red Cross (<http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/5kzmnu?opendocument>)
- International justice, Amnesty International (<http://web.amnesty.org/pages/jus-index-eng>)
- Nuremberg War Crimes Trials, Yale Law School (<http://www.yale.edu/lawweb/avalon/imt/imt.htm>)
- International Criminal Tribunal for the Former Yugoslavia (<http://www.un.org/icty>)
- International Criminal Tribunal for Rwanda (<http://www.icttr.org>)
- International Criminal Court (<http://www.icc-cpi.int>)
- Special Court for Sierra Leone (<http://www.sc-sl.org>)
- Court of Bosnia and Herzegovina (<http://www.sudbih.gov.ba/?jezik=e>)
- Special Panels for Serious Crimes in Timor-Leste (<http://www.jsmp.minihub.org/courtmonitoring/spsc.htm>)
- Trial Watch (<http://www.trial-ch.org/en/trial-watch.html>)

NON-JUDICIAL OPTIONS

- Timor-Leste: Commission for Reception, Truth and Reconciliation (<http://www.cavr-timorleste.org>)
- Sierra Leone: The Final Report of the Truth and Reconciliation Commission (<http://trcsierraleone.org/drwebsite/publish/index.shtml>)
- Sierra Leone: Truth and Reconciliation Commission Report for the Children of Sierra Leone (<http://www.trcsierraleone.org/pdf/kids.pdf>)
- South Africa: Truth and Reconciliation Commission (<http://www.doj.gov.za/trc>)
- Argentina: National Commission on the Disappearance of Persons Report – *Nunca Más* (Never Again) (http://www.nuncamas.org/english/library/nevagain/nevagain_001.htm)
- Peru: Final Report of the Truth and Reconciliation Commission (<http://www.cverdad.org.pe/ingles/pagina01.php>)
- International Centre for Transitional Justice (<http://www.ictj.org/en/index.html>)



ICRC