

THE UNITED STATES AND
INTERNATIONAL CRIMINAL
TRIBUNALS

An Introduction

Harry M. RHEA



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Harry M. Rhea

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PREFACE

This study was originally submitted as a Ph.D. thesis to the School of Law, National University of Ireland, Galway, in 2012. The book examines the policies put forth by the United States during international debates that developed international and other forms of special tribunals after the First World War. These tribunals were established to prosecute persons alleged to have committed international crimes, namely, genocide, crimes against humanity, war crimes, and aggression. Arguably, the United States's policies on these institutions have had the greatest impact, both positive and negative, on international criminal tribunals. For example, the United States policy after the First World War prevented the creation of an international criminal court. Though the International Criminal Court is currently functioning, the lack of financial and personnel support from the United States has had a negative impact on it.

Conversely, the United States greatly contributed to the establishment and success of the International Military Tribunal, International Military Tribunal for the Far East, International Criminal Tribunal for the former Yugoslavia, International Criminal Tribunal for Rwanda, Special Tribunal for Sierra Leone, and Special Tribunal for Lebanon. By no means has the United States been alone in its support for these tribunals; however, as a super power in the international community, the United States has had the greatest impact on the successes and failures of each international criminal tribunal. As a result, the United States is most often both praised and criticized for its policies on international criminal tribunals.

The Rome Statute of the International Criminal Court was adopted on 17 July 1998 and entered into force on 1 July 2002. Since its adoption, the attitude of the United States towards the International Criminal Court has changed, but its policy regarding the Court has not. In each era covered in this book, there have been some members of the United States government and its general population who supported establishing the International Criminal Court; however, the majority of people have not. The United States's policy regarding the International Criminal Court did not begin in 2002, 1998, or even 1989. At the very latest, the policy began in 1919. To understand and attempt to resolve the issues the United States has with the International Criminal Court, it is important to understand United States policy regarding international criminal tribunals during each international debate, beginning as early as 1919. That is what this book attempts to achieve.

Harry M. Rhea
Miami, 14 August 2012

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The idea for the thesis on which this book is based was born in 2006 during a conference held by Professor William A. Schabas at the Irish Centre for Human Rights in Ireland. At the time, there had been much literature written on the relationship between the United States and the International Criminal Court, most of which was critical of the United States's refusal to accede to the Rome Statute. Conversely, there had been much literature written immediately after the Second World War on the leadership the United States displayed in establishing the International Military Tribunal and the International Military Tribunal for the Far East. While there was a library of literature on the individual international criminal tribunals, I recognized there was nothing written on United States policy overall concerning international criminal tribunals. As a former United States Marine, this question was important enough for me to pursue my doctorate on the topic.

My acknowledgments here are of no insignificance and the names I mention will remain with me for years to come. I am greatly indebted to Professor William Schabas for his guidance in developing the research question: What is the overall policy of the United States regarding international criminal tribunals? Professor Schabas was my research supervisor from 2006 to 2012 at the Irish Centre for Human Rights. I learned much not only from his academic excellence, but also his fine qualities as a mentor. I thank Professor Roger S. Clark for the time he spent with me discussing both my research project and international criminal justice. I thank Benjamin B. Ferencz for our discussions on international criminal justice and for taking me to lunch at the Harvard Club in NYC during the meeting of the American Branch of the International Law Association in 2008. I also thank those who spared their time to share their knowledge and experiences relating to my topic. These include M. Cherif Bassiouni, John B. Bellinger III, David M. Crane, Richard J. Goldstone, Sandra Hodgkinson, William K. Lietzau, John F. Murphy, Brett D. Schaefer, Michael P. Scharf, David J. Scheffer, David Tolbert, and Ruth Wedgwood.

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To

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Mr. Ernest Leven

and

Mr. Ed Ruff

SUMMARY OF CONTENTS

This study examines the policies put forth by the United States during international debates that established international criminal tribunals from the pre-First World War era to 2012. Each chapter closely considers the United States's role and position during each era. The first chapter covers the era prior to the First World War, including the development of the Lieber Code and the prosecution of Henry Wirz. The second chapter analyzes the United States's position on establishing an international criminal court for the prosecution of Germany's former Emperor, William II, at the Paris Peace Conference in 1919. Chapter three covers the interwar period. Chapter four covers the post-Second World War era and the United States's role in establishing the International Military Tribunal and the International Military Tribunal for the Far East. Chapter five considers the Cold War era and the United States's policy during the debates in the General Assembly, Genocide Convention, and Apartheid Convention on the topic of establishing an international criminal court. Chapter six considers the post-Cold War era and includes discussions in the United States to establish an international criminal tribunal for Iraq, as well as the United States's role in establishing the international criminal tribunals for the former Yugoslavia and Rwanda and the special courts for Sierra Leone and Lebanon. Furthermore, this study devotes two chapters to the relationship between the United States and the International Criminal Court. Chapter seven analyzes the period immediately following the Cold War from 1989 through the Rome Conference in 1998. Chapter eight analyzes the United States's position on the International Criminal Court during the period following the Rome Conference to the present time, including the last two years of William Clinton's presidency, the eight years of George W. Bush's presidency, and the first term of Barack Obama's presidency.

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