

30 ARTICLES ON THE 30 ARTICLES

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AT 70: STILL WORKING TO ENSURE FREEDOM, EQUALITY AND DIGNITY FOR ALL

Article 11: Presumption of Innocence and International Crimes

At first glance, Article 11 says that every human being is innocent until proven guilty, a fundamental element of fair trials and the rule of law, and a concept everyone can understand. But dig a little deeper into this Article, and we uncover a fascinating story about the development of international courts with the power to hold individuals accountable for the most heinous crimes known to humankind.

Over the last 70 years, the world has come to accept that the world's worst abusers of human rights should be held responsible for their crimes. They cannot evade prosecution because they were rulers of countries or military leaders. No one should be above the law.

This includes, in recent years, the president and military commander of the Bosnian Serb republic (Republika Srpska) for crimes committed during the Bosnian war in the early 1990s. Radovan Karadžić was found guilty of the genocide in Srebrenica, war crimes and crimes against humanity, while his top general, Ratko Mladić was found responsible for the siege of Sarajevo and the Srebrenica massacre in which some 8,000 people, mostly men and boys, were killed. In total he was convicted of 10 charges – one of genocide, five of crimes against humanity and four of violations of the laws or customs of war. Similarly, former Rwandan prime minister Jean Kambanda is the only head of government to plead guilty to genocide – for his role in the massacre of 800,000 people in 1994.

The second paragraph of Article 11 is a ban on retroactive laws, already a feature of many constitutions in 1946-1948 when the Universal Declaration of Human Rights (UDHR) was being drafted. Paragraph 2 says: "No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed."

The UDHR was being drafted just after the Nuremberg war crimes trial of the top Nazi leadership had ended, and a similar trial was still under way in Tokyo. Although Article 11's respect for the presumption of innocence was agreed on quickly, the drafters struggled over the wording of the

"The important principle of innocence until proved guilty ... represented great progress from the inquisitorial trial concepts of the Middle Ages to which Nazi Germany had reverted."

– Alexei Pavlov, UDHR drafter
from the Soviet Union

second paragraph. They were concerned that a ban on retroactivity could be used as an argument that the Nuremberg trials had been illegal. They had tried “crimes against peace” and “crimes against humanity” which previously did not exist in national laws.

The wording finally agreed upon in Article 11 paved the way for the formal adoption, in 1968, of a UN convention which stated there is no statute of limitations on war crimes and crimes against humanity. Beginning in the 1990s, with the understanding that certain crimes fall within international jurisdiction, tribunals or special courts were set up for Sierra Leone, Cambodia, the former Yugoslavia, Rwanda and others.

The determination to end impunity for such heinous crimes led to the establishment of the International Criminal Court (ICC) in 2002. Such a court was foreseen in the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the UN on 9 December 1948, the day before adoption of the UDHR. The Genocide Convention holds individual perpetrators responsible “whether they are constitutionally responsible rulers, public officials or private individuals.”

“For almost 20 years I have witnessed war crimes committed against women, girls and even baby girls, not only in my country, the Democratic Republic of Congo, but also in many other countries.”

– Denis Mukwege, Congolese physician and Nobel Peace Prize laureate

The list of crimes for which they could be convicted was expanded by the Rome Statute that established the ICC. It clearly stated that rape and gender-based crimes were on the list of crimes against humanity and war crimes, building on a growing perception that rape was not just committed by soldiers on a rampage, but, in the 20th century, had become an actual tactic of war.

The committee that awards the Nobel Peace Prize sought to further underline the world’s revulsion towards such acts in 2018, when it awarded the Peace Prize to Congolese doctor Denis Mukwege and Nadia Murad, a Yazidi campaigner, for their efforts to end the use of sexual violence as a weapon of war and armed conflict. As the Nobel Committee noted: “A more peaceful world can only be achieved if women and their fundamental rights and security are recognised and protected in war.”

This is one in a series of articles published by the Office of the High Commissioner for Human Rights (OHCHR) to mark the 70th anniversary of adoption of the Universal Declaration of Human Rights on 10 December 1948. All rights enshrined in the UDHR are connected to each other, and all are equally important.