

Agreement between the International Criminal Tribunal for the former Yugoslavia and the ICRC on procedures for visiting persons held on the authority of the Tribunal

On 5 September 1995, three ICRC delegates, including a doctor and an interpreter, visited the only person being held at the time on the authority of the International Criminal Tribunal for the former Yugoslavia in The Hague.¹ Since then, another visit has taken place during which this detainee was seen again and two others were visited for the first time. The detainees are being held in a prison in the Netherlands, in a wing set aside for the Tribunal and specially converted to house people detained on its authority.

The purpose of the ICRC's visits is to examine conditions of detention, in accordance with the institution's customary procedures.

In an exchange of letters, the President of the International Criminal Tribunal for the former Yugoslavia, Mr Antonio Cassese, and the President of the International Committee of the Red Cross, Mr Cornelio Sommaruga, came to an agreement as to visiting procedures. The full text of the two letters appears below.

The Review

¹ *International Tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, set up by resolution 827 (1993) of the United Nations Security Council.*

Letter from Antonio Cassese, President of the International Criminal Tribunal for the former Yugoslavia, to Cornelio Sommaruga, President of the International Committee of the Red Cross, of 28 April 1995

Dear President,

I have the honour to refer to resolution 827 (1993) of 25 May 1993 by which the Security Council established the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (the "Tribunal").

I also have the honour to refer to the Rules of Procedure and Evidence adopted by the Judges of the Tribunal in February 1994, as subsequently amended, and in particular to Rule 24(v) which provides that the Judges of the Tribunal shall determine or supervise the conditions of detention.

I further have the honour to refer to the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal (the "Rules of Detention"). Rule 6 of the Rules of Detention provides for regular and unannounced inspections of the detention unit by qualified and experienced inspectors appointed by the Tribunal, to examine the manner in which detainees are treated.

With reference to these legal provisions and to our previous discussions, I propose that the International Committee of the Red Cross (the "ICRC"), being an independent and impartial humanitarian organization of long-standing experience in inspecting conditions of detention in all kinds of armed conflicts and internal strife throughout the world, undertake, in accordance with the modalities set out below, the inspection of conditions of detention and the treatment of persons awaiting trial or appeal before the Tribunal or otherwise detained on the authority of the Tribunal in the Penitentiary Complex or in the holding cells located at the premises of the Tribunal (the "Detention Unit").

1. The role of the ICRC shall be to inspect and report upon all aspects of conditions of detention, including the treatment of persons held at the Detention Unit, to ensure their compliance with internationally accepted standards of human rights or humanitarian law.

2. The Tribunal shall provide the ICRC with the following facilities to carry out its inspections:
 - a. full information on the operation and practice of the Detention Unit;
 - b. unlimited access to the Detention Unit including the right to move inside the Detention Unit without restriction; and
 - c. other information which is available to the Tribunal and necessary for the ICRC to carry out its inspections, in particular the notification of the detention of persons.
3. Each detainee may freely communicate with the ICRC. During an inspection of the Detention Unit, the detainee shall have the opportunity to talk to members of the ICRC delegation out of the sight and hearing of the staff of the Detention Unit.
4. The ICRC may communicate freely with any person whom it believes can supply relevant information.
5. The inspections shall take place on a periodic basis. The frequency with which visits will occur will be determined by the ICRC.
6. Inspections of the Detention Unit shall be unannounced. Copies of this Exchange of Letters and a specific written request to allow inspections without notice at any time will be provided by the Tribunal to the Dutch prison authorities and United Nations security personnel.
7. All costs associated with an inspection visit will be borne by the ICRC. The provision of inspections is to be considered a donation to the Tribunal by the ICRC.
8. After each visit, the ICRC shall draw up a confidential report on the facts found during the visit, taking account of any observations which may have been submitted by the Registrar or the President. The report, containing any recommendations which the ICRC considers necessary, shall be transmitted to the Tribunal.
9. The ICRC may, if it deems necessary, communicate its observations to the Commanding Officer (as defined in the Rules of Detention) and the Registrar of the Tribunal immediately after the visit. The Registrar shall immediately pass along any such communication to the President.

10. The information gathered by the ICRC in relating to an inspection visit and the ICRC's consultations with the Tribunal shall be confidential.
11. The Tribunal may, after securing the ICRC's agreement, have the report, together with the comments of the Tribunal, made public. In no event shall personal data relating to the detainees be published without the express written consent of the person concerned.
12. The Registrar of the Tribunal shall be the authority competent to receive communications from the ICRC. The Registrar shall inform the ICRC of the name of the liaison officer for the Detention Unit when such a person is appointed by the Tribunal.
13. The President of the ICRC shall be the authority competent to receive communications from the Tribunal.

If the above provisions meet with your approval, I would propose that this letter and your reply thereto constitute an Agreement between the Tribunal and the ICRC on inspection of conditions of detention of persons held in the Detention Unit, with immediate effect.

Accept, Sir, the assurance of my highest consideration.

(signature)

Letter from Cornelio Sommaruga, President of the International Committee of the Red Cross, to Antonio Cassese, President of the International Criminal Tribunal for the former Yugoslavia, 5 May 1995

Dear President,

I have to honour to refer to your letter of 28 April 1995 regarding visits of the International Committee of the Red Cross (the "ICRC") to detainees held under the authority of the International Criminal Tribunal for the former Yugoslavia ("the Tribunal").

It is indeed within the mandate of the ICRC to visit persons detained in relation to armed conflicts and internal strife. Therefore, the ICRC is ready to carry out visits to detainees held under the authority of the Tribunal in its Detention Unit in accordance with the

conditions outlined in your letter of 28 April 1995. Those conditions correspond to the traditional modalities under which the ICRC assesses the conditions of detention and the treatment of detainees, in particular by interviewing them in private, and makes the appropriate recommendations to the authorities concerned.

As you proposed, our respective letters shall constitute with immediate effect an agreement between the Tribunal and the ICRC on the inspection of the conditions of detention and treatment of persons held in the Detention Unit. I noted that the ICRC will be provided with the necessary facilities, including the notification of the detention of persons.

Our detention division will contact the Commanding Officer and the Registrar of the Tribunal to arrange details of the visits.

On behalf of the ICRC, I thank you for your support for the humanitarian activities of the ICRC.

Trusting in the success of the Tribunal's endeavour to play an essential role to improve respect for international humanitarian law, I remain,

Yours very respectfully,
(signature)
