

**Report on conference**  
**“Human Rights and the Administration of Justice through Military Tribunals”**  
**Geneva, 26-28 January 2004**  
**organised by the International Commission of Jurists:**

**Monday 26 January**

Mr Federico Andreu-Guzman, Senior Legal Adviser for the ICJ in Geneva opened the conference. He highlighted that the conference aimed at opening a debate on military jurisdiction and international law and learning from various experiences and practices from all over the world. In order to make the conference more realistic, participants were invited to focus on specific cases/countries.

Major General APV Rogers highlighted how the military jurisdiction works in the UK. He compared it with the “civilian justice system”. He went on concluding that there was not much difference between the two systems. Both offer the same quality in terms of due process of law guarantees to those appearing before these courts. The only noticeable point was that in the military jurisdiction, everyone involved would wear army uniforms, including defence counsels. Questions focused on the independence of counsels/attorneys wearing army uniforms.

Major General DM Howell, Director of Army Legal Services, UK, made a comparative analysis between military offences, *stricto sensu*, and common law offences and military jurisdiction. For instance, when a member of the armed forces commits a common law offence while s/he is on duty, it is argued that the body, which will have jurisdiction over this offence, is the military jurisdiction. But in case the same offence has been committed while the serving officer/soldier is not on duty, then the civilian court will have jurisdiction. He went on saying that the army has also its specific offences. On these military tribunals will have jurisdiction even if the serving officer was not on duty at the time this offence was committed.

Participants also emphasised that national armies are subjected to those international instruments to which that State is a party to. The only exception is when a State-party has expressed specific reservations in relation to that instrument.

The debate continued in the afternoon with Colonel Prudencio Garca, from the Institute of Science and Society in Spain.

**Tuesday 27 January**

Wilder Tayler, Legal and Policy Director, Human Rights Watch, presented the topic on trials of civilians by military tribunals. Several countries are involved in this practice, which is contrary to international human rights law. This situation is more likely to happen when a State is at war or fighting with rebel groups within its territory. Louis Joinet, UN Independent Expert on the situation of human rights in Haiti, confirmed the same trend as outlined by Wilder Tayler.

Sarah Burton, Lawyer, Service of the execution of the judgments of the European Court of Human Rights, and Roberta Arnold, Legal Adviser, Laws of Armed Conflict Section of the Swiss Department of Defence, discussed at length military criminal procedures and judicial guarantees of military personnel accountable for military offences.

The afternoon discussion focused on the Swiss practice.

James Ross, Senior Legal Adviser, Human Rights Watch, presented a broad picture on armed conflict and military tribunals. Horst Fischer, Director, Institute for International Law and Peace and Armed Conflict, highlighted that, for some countries, subjecting civilians to military tribunals in a situation of armed conflict is a form of punishing those who are not supporting the government. Gabor Rona, Legal Adviser, ICRC, supported the above views.

### **Wednesday 28 January**

Françoise Hampson and Major General Jerry S.T. Pitul, QC, Judge Advocate General Canadian Forces, dealt with armed forces abroad, peacekeeping operations and military tribunals. They discussed the implications of international tribunals.

Rachel Brett, UN Quakers Office, argued why conscientious objectors should not be tried to military tribunals.

Conclusions of the conference will be made available at a later stage. The conference was attended by participants representing most geographical locations. Among these, military attachés from diplomatic missions, representatives from some UN agencies and NGOs.