

EXPLANATORY MEMORANDUM TO
THE UNITED NATIONS (INTERNATIONAL RESIDUAL MECHANISM FOR
CRIMINAL TRIBUNALS) ORDER 2018

2018 No. 187

1. Introduction

1.1 This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order gives effect in the United Kingdom to powers which will enable the United Kingdom to cooperate with the International Residual Mechanism for Criminal Tribunals (“the Mechanism”) in the investigation and prosecution of persons accused of crimes in respect of which the Mechanism has competence under Article 1 of its Statute, and the punishment of persons convicted of such crimes.

2.2 The Mechanism was established by resolution 1996 adopted by the United Nations Security Council on 22 December 2010 (“resolution 1996”). Its Statute, containing its competence and powers, was annexed to resolution 1996, and is set out in the Schedule to this Order. Its role is to continue the jurisdiction, rights and obligations, and essential functions of the International Criminal Tribunal for the former Yugoslavia (“the ICTY”) (established by United Nations Security Council resolution 827 (1993)) and the International Criminal Tribunal for Rwanda (“the ICTR”) (established by United Nations Security Council resolution 955 (1994)). Those Tribunals have, by various United Nations Security Council resolutions, been called to close and any remaining matters are in the process of being transferred to the Mechanism.

2.3 This Order is required to satisfy the United Kingdom’s international obligation to cooperate fully with the Mechanism, under resolution 1996.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is not subject to any Parliamentary procedure, consideration as to whether there are other matters of interest to the House of Commons does not arise.

4. Legislative Context

4.1 This Order is made in exercise of statutory powers under section 1 of the United Nations Act 1946. This section permits Her Majesty to make by Order in Council such provision as appears necessary or expedient for enabling measures made under Article 41 of the United Nations Charter by the Security Council of the United Nations to be effectively applied.

- 4.2 This Order is also made under section 77(4) of the International Criminal Court Act 2001. This section provides that the power conferred by section 1 of the United Nations Act 1996 includes the power to make provisions in relation to a Tribunal of similar character to the International Criminal Tribunals for Rwanda and the former Yugoslavia in so far as they correspond to subsection 77(1) and 77(3), in this case, relating to state or diplomatic immunities and the enforcement of sentences of imprisonment. In this Order, those provisions can be found at Article 33.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom and, so far as the instrument relates to proceedings in a service court, at any place at which those proceedings are held.
- 5.2 The application of this instrument is to the United Kingdom and, so far as the instrument relates to proceedings in a service court, to any place at which those proceedings are held.

6. European Convention on Human Rights

- 6.1 As the instrument is not subject to parliamentary procedure, no statement is required.

7. Policy background

- 7.1 The ICTY was established on 25 May 1993. Its purpose was to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the Former Yugoslavia since January 1991.
- 7.2 The ICTR was established on 8 November 1994. Its purpose was to prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed on the territory of neighbouring States between 1 January 1994 and 31 December 1994.
- 7.3 These Tribunals were established in the particular circumstances of Rwanda and the former Yugoslavia as *ad hoc* measures contributing to the restoration of peace. From 2003 (notably by way of United Nations Security Council resolutions 1503 (2003) and 1534 (2004)), the Security Council began calling for the Tribunals to complete their investigations, setting out their “completion strategies”.
- 7.4 In that light, the Mechanism was established, with commencement dates to start functioning in two branches on 1 July 2012 (the ICTR branch) and on 1 July 2013 (the ICTY branch). The Mechanism’s powers mirror those enacted for the ICTR and ICTY, set out in its Statute and in supplementary Rules of Procedure and Evidence, which were adopted on 8 June 2012.

8. Consultation outcome

- 8.1 No Consultation has taken place.

9. Guidance

- 9.1 No guidance will be issued.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies in the United Kingdom.
- 10.2 There is no impact on the public sector in the United Kingdom.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses in the United Kingdom.

12. Monitoring & review

- 12.1 The Foreign & Commonwealth will continue to monitor the mandate of the Mechanism.

13. Contact

- 13.1 Ben Brzezicki at the Foreign & Commonwealth Office, telephone: +44 (0)20 7008 0460 or email: ben.brzezicki@fco.gov.uk, can answer any queries regarding the instrument.