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The Rwanda Genocide and the Role of the Security Council of the UN

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To my grandfather.

CHAPTER 1: THE CRIME OF GENOCIDE

1.1 The Armenian massacre

In 1908, the Young Turks, a group of junior army officers, seized power in the Ottoman Empire and began a revolution which was meant to bring the Empire back to its former glory. It was a period of crisis, especially along the borders of the Empire and especially because of conflicts between the various ethnicities. This was the case of the Armenians, a Christian minority largely concentrated in Eastern Anatolia.

In 1914, when the Ottoman Empire entered World War I on the side of Germany against Britain, France and Russia, they immediately attacked east in order to conquer Russian territories and expand their own. However, when the Ottoman army lost the battle of Sarikamish¹ against the Russians in January 1915, the Imperial government, led by the Young Turks, blamed the Armenians living in the area for the defeat and accused the whole Armenian minority of collusion with the Russians. There were, indeed, Armenian nationalists who cooperated with the Russians, but they were a significant minority.

On April 25, 1915, some 250 Armenian intellectuals were captured, tortured and killed in Constantinople by the Three Pashas² - Mehmed Talaat, Minister of the Interior, Ismail Enver, Minister of War and Ahmed Djemal, Minister of Public Works. All Armenians were disarmed, expelled from the Ottoman army and enlisted to transport supplies to the front. This was the beginning of an operation of systematic deportations of the Armenian population, officially disguised as resettlement campaigns to facilities in Syria which were never prepared. Official proclamations³ began circulating in the Empire with specific

¹ The battle of Sarikamish took place between December 1914 and January 1915 and it resulted in a Russian victory partly thanks to the rigid winter conditions to which the Ottoman Army was not accustomed to.

² The Three Pashas were the three men who led the Young Turks revolution in Turkey and, after seizing power, became the effective rulers of the Ottoman Empire. As leaders of the Ottoman Empire, they were responsible for its entry in World War I and are largely considered responsible for the Armenian Massacre.

³ "Our Armenian fellow countryman, (...) because (...) they have (...) attempted to destroy the peace and security of the Ottoman state, (...) have to be sent away to places which have been prepared in the interior (...) and a literal obedience to the following orders, in a categorical manner, is accordingly enjoyed upon all Ottomans: 1. With the exception of the sick, all Armenians are obliged to leave within five days from the date of this proclamation (...) 2. Although they are free to carry with them on their journey the articles of their movable property which they desire, they are forbidden to share their land and their extra effects, or to leave them here and there with other people (...)" - S. POWER, *A Problem from Hell - American and the Age of Genocide*, London, 2003, II edition, p. 2.

orders to oblige all Armenians to leave their homes and to forbid them to leave their belongings to anyone. All material belongings of the Armenians were left to whoever could steal them from the now empty houses. The targeted population was forced to walk to their destinations and was subject to poor treatment and acts of violence, including rape and beatings, by the Ottoman soldiers guarding their march.

The mind behind the massacre was mainly Mehmed Talaat, who wrote “By continuing the deportation of the orphans to their destinations during the intense cold, we are ensuring their eternal rest”⁴.

Because the atrocities began in wartime, the dead Armenians could be disguised as “collateral damage” of the War; moreover, there was very little proof of what was happening in Turkey. Germany, as a Turkish ally, was generally covering up the slaughter and reinforcing the Turkish position claiming the need for decisive action against a rebellious minority. On the other hand, France and Britain, which were on the other side of the conflict, tried to expose the atrocities by publishing photos of groups of Armenians marching and even issued a declaration aiming to condemn what they called “crimes against humanity and civilization”⁵. Their first concern was, however, defeating the Empires in order to win the war. The United States were largely absent in the debate on the Turkish situation, despite receiving information about what was happening. In fact, President Woodrow Wilson wanted to remain neutral and to avoid entering the conflict, so, since no American interest nor right had been violated, he chose not to take any stance.

⁴ S. POWER, *A Problem from Hell - American and the Age of Genocide*, London, 2003, II edition, p. 2.

⁵ “(...) In view of those new crimes of Turkey against humanity and civilization, the Allied governments announce publicly to the Sublime-Porte that they will hold personally responsible [for] these crimes all members of the Ottoman government and those of their agents who are implicated in such massacres (...)” - EDITORS AT THE NEW YORK TIMES, *Allies to Punish Turks Who Murder* in *The New York Times*, May 24, 1915, p. 1.

Years later, in 1989, David Fromkin, an American lawyer and historian, described the atrocities against the Armenians in his book about the transition between the Ottoman Empire and the modern Middle East, *A Peace to End All Peace*, as follows:

“Rape and beating were commonplace. Those who were not killed at once were driven through mountains and deserts without food, drink or shelter. Hundreds of thousands of Armenians eventually succumbed or were killed”⁶.

When World War I began, there were two million Armenians in the Ottoman Empire; by the end of the War, approximately one million were killed and by 1923, they had almost completely disappeared.

1.2 The term “genocide”

The term “genocide” is a combination of the Greek term γένος (*genos*; *i.e.* race, people) and the Latin verb *caedere* (*i.e.* to kill) and it was coined by Raphael Lemkin, a Polish-Jewish jurist, in his book *Axis Rule in Occupied Europe* in 1944⁷.

The process that brought Lemkin to the development of this now famous term was long and certainly not easy. It started in 1921, when Lemkin was in University studying linguistic and he came across a piece of news concerning the assassination of Mehmed Talaat⁸. Lemkin was puzzled, he could not understand how a man responsible for the death of more than a million people did not stand trial while the man who assassinated him did⁹. This was the beginning of the work which led him to draft, in 1933, a law to be presented to

⁶ D. FROMKIN, *A Peace to End All Peace*, New York City, 1989.

⁷ R. LEMKIN, *Axis Rule in Occupied Europe*, Washington D.C., 1944.

⁸ Mehmed Talaat was murdered in Berlin on March 14, 1921 by a young Armenian, Soghomon Tehlirian, who had survived the massacre of his people and was the only member of his family to have survived it. He shot Talaat in order to avenge the death of his family.

⁹ Lemkin brought the “case” to the attention of a Professor of his, who replied that there was no law under which he could be arrested or stand trial.

a legal conference in Madrid in which he banned two practices which he considered strictly linked together: barbarity and vandalism¹⁰. Lemkin's first proposition was, however, unsuccessful.

When Germany invaded Poland in 1939, Lemkin, because of his Jewish background, began a journey to escape Nazi rule that brought him through Eastern Poland, Lithuania, Sweden, the USSR, Japan, Canada and, finally, the United States. There, he began teaching but also spreading his knowledge of the atrocities being perpetrated in Europe by the Nazis. He had been collecting proof of said atrocities ever since his time as a refugee in Sweden, but very few seemed to believe him.

Lemkin realized he needed to coin a new term, something that could be associated to the atrocities perpetrated by the Nazis against the Jews but that could also be used for other similar situations in the future. It needed to be something with no other meaning, but also short and that would stick in people's minds. In 1944, he published his book *Axis Rule in Occupied Europe*, in which he described what had been happening in Germany and he tried to generalize the idea behind it, putting together the concepts he previously referred to as barbarity and vandalism. The new term, genocide, was a hybrid, and it was described as follows:

“Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be the disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the

¹⁰ With the term “barbarity”, Lemkin denoted “the premeditated destruction of national, racial, religious and social collectives”, while. With the term “vandalism” he referred to “the destruction of works of art and culture, being the expression of the particular genius of these collectives. Lemkin believed that barbarity and vandalism were so much linked together that one necessarily followed the other.

personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups”¹¹.

Lemkin’s belief for the need of a new word turned out to be correct. In fact, the same week as the publication of his book, the US government (led by F. D. Roosevelt, who had previously turned down Lemkin’s request for more concrete measures against Hitler) officially backed European accusations of the Nazis’ mass executions.

After World War II ended on May 8, 1945 and the Nazi extermination camps were freed, they revealed the extent of Hitler’s mad design and finally showed the world that 6 million Jews and 5 million Communists, Poles, Roma, etc. had been slaughtered because of it. Lemkin believed the world was finally ready to listen. The Nuremberg International Criminal Tribunal was instituted by the winners to prosecute the atrocities committed by the Nazis during the war (which they called “crimes against humanity” as they had defined the slaughter of the Armenians by the Turks in 1915)¹². Although he did not agree with the linking of the slaughter to the war period, *i.e.* after Hitler invaded Poland, thus crossing an internationally recognized border, he saw an opportunity to put genocide in the counts for which the defendants were tried. The first official mention of the term genocide in a legal setting came in October 1945, during the Nuremberg Trials, although none of those who were convicted at the end of the Trials were convicted for genocide.

1.3 The 1946 General Assembly resolution

Despite the mention of the term genocide as one of the counts of the indictment of 1945 during the Nuremberg Trials, the nineteen (out of twenty-four) defendants who, in late 1946, were convicted, were pronounced guilty on

¹¹ R. LEMKIN, *Axis Rule in Occupied Europe*, Washington D.C., 1944, p. 79.

¹² On August 8, 1945, the United Kingdom, the United States, France and the USSR signed the *Agreement for the Prosecution of the Major War Criminals of the European Axis*, which instituted the Nuremberg International Criminal Tribunal and served as its statute.

counts of crimes against peace, war crimes and crimes against humanity with no mention of genocide.

Roughly at the same time, the newly instituted United Nations¹³ General Assembly was beginning to plan its autumn agenda for 1946. Upon hearing about this, Lemkin, who was still in Europe, decided to return to New York and he worked on a draft resolution about genocide on the plane. He wanted genocide not to be confined to crimes perpetrated after crossing a border, but also to include those committed inside national borders. Lemkin arrived at the UN headquarters on October 31, 1946 and he began lobbying representatives and members of the press. A Resolution on genocide was put on the General Assembly's agenda for its first session thanks to Britain's UN delegate who noted that the failure to accept Lemkin's proposal in the 1930s was what allowed Hitler and the Nazis not to be convinced for the crimes committed before the beginning of the war.

This recognition encouraged Lemkin to begin lobbying delegates in order to obtain as much support as he could get. He tried to make the delegates identify with the destruction and devastation that genocide caused by trying to make them think about the loss caused by the destruction of entire ethnic groups or culture as something that would affect mankind as a whole, not only the victims or the countries where the victims were from. He also tried to move smaller countries by convincing them that they needed all the protection they could get from International Law since they did not have the level of protection that bigger countries got from their armies. He was able to obtain support from both the United States and the Soviet Union, despite them being politically on opposite sides.

On December 11, 1946, the United Nations General Assembly unanimously passed Resolution 96(I) on the crime of genocide, which defined it and paved the way to a following convention on the same topic. The relevance of this Resolution lies in the fact that it described genocide as a matter of international concern, but also in the invitation, addressed to all Member States, to take

¹³ The UN was instituted on October 24, 1945 when its Charter took effect. The UN Charter was signed in San Francisco on June 26, 1945 and it entered into force after having been ratified by the original five permanent Members of the Security Council: the United States, the United Kingdom, France, the USSR and the Republic of China (Taiwan).

action against this new crime. Another greatly important issue is that the Resolution made no distinction between possible perpetrators nor between possible causes: the condemnation was extended to private individuals but also to statesmen; for any possible reason. The Resolution states:

“Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations.

Many instances of such crimes of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part.

The punishment of the crime of genocide is a matter of international concern.

The General Assembly, therefore,

Affirms that genocide is a crime under international law which the civilized world condemns, and for the commission of which principals and accomplices - whether private individuals, public officials or statesmen, and whether the crime is committed on religious, racial, political or any other grounds are punishable;

Invites the Member States to enact the necessary legislation for the prevention and punishment of this crime;

Recommends that international co-operation be organized between States with a view to facilitating the speed prevention and punishment of the crime of genocide, and, to this end,

Requests the Economic and Social Council to undertake the necessary studies, with a view to drawing up a draft convention on

the crime of genocide to be submitted to the next regular session of the General Assembly”¹⁴.

1.4 The 1948 Convention on the Prevention and Punishment of the Crime of Genocide

The 1946 Resolution itself tasked the UN to begin drafting the following step in the journey to define and, subsequently, prevent and punish the crime of genocide, a convention, and Lemkin himself was asked by the then Secretary-General of the UN, Trygve Lie. After the draft was completed, the official UN process and work had to begin, so Lemkin decided to stand down, although he never left the law being written. He closely followed the whole process and attended every meeting and review of the draft, actively participating in the process by sending notes to the Delegates so that they could make it better and capture the multitude of aspects regarding the new crime. In fall 1948, the UN General Assembly Legal Committee approved the draft of the Convention and sent it to the General Assembly itself, where it went up for vote on December 9, 1948 in Paris and was approved.

The 1948 Convention takes the 1946 Resolution as a starting point and many Articles of the Convention can be seen as expansions of parts of the previous Resolution. The Convention begins by repeating that genocide is a crime under international law, both in time of war and peace. Perhaps the most famous part of the Convention is Article II, where genocide is defined as follows:

“In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;

¹⁴ Resolution A/RES/96(I) of the UN General Assembly of December 11, 1946, on The Crime of Genocide.

- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group”¹⁵.

Although very broad and leaving quite a lot of leeway, this definition did serve its purpose to be able to prosecute criminals and states in international courts. It is important to note that intent plays a significant role in the definition of genocide; in fact, a person can, paradoxically, be convicted after having committed only one murder if that was committed with the specific intention of destroying a group.

The novelty of the Convention, however, lies in Article III, where it provides a list of all the acts which should be considered genocide and, punished as such:

“The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide”¹⁶.

¹⁵ Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948 (hereinafter Convention on the Prevention and Punishment of the Crime of Genocide), p. 2

¹⁶ *Ibidem*.

In article IV then, the Convention repeats, as the 1946 Resolution had stated, that every person responsible of acts of genocide shall be punished, regardless of their role or political position:

“Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals”¹⁷.

The Convention on the Prevention and Punishment of the Crime of Genocide entered into force on January 12, 1951, ninety days after having been ratified by twenty States - as required by article XIII of the Convention itself¹⁸.

1.5 The *ad hoc* Tribunals and the International Criminal Court

When the Convention was drafted and approved, Lemkin and his colleagues, despite wanting to see justice for the horrific crime they were describing, felt that the world was not quite ready for the institution of an International Tribunal to have jurisdiction on the matter, for it would mean a too great concession of sovereignty on the part of the Member States. Therefore, the Convention states, in article VI, that the jurisdiction on the crime of genocide should be of competent Tribunals in the country where the atrocities have occurred or an International Tribunal whose jurisdiction has been accepted by the State in question¹⁹. Special Tribunals could be established as organs of the United Nations as stated in Article 7 of the UN Charter of 1945²⁰. The first instances when an International Tribunal was required were in the 1990s, more specifically in 1993 and 1994, for the crimes committed,

¹⁷ *Ibidem*.

¹⁸ “(...) The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession. (...)” - Convention on the Prevention and Punishment of the Crime of Genocide, article XIII, paragraph 2.

¹⁹ “Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as many have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.” - Convention on the Prevention and Punishment of the Crime of Genocide, article VI.

²⁰ “(...) 2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter”.

respectively, in the former Yugoslavia and Rwanda. These Tribunals were established with jurisdiction on the crimes committed during the conflicts regardless of the nationality of the culprits.

The International Criminal Tribunal for the former Yugoslavia (ICTY) was established with Security Council Resolution 827 of May 25, 1993²¹ following the atrocities that had been taking place in the Balkans, especially Croatia and Bosnia Herzegovina, since the beginning of the 1990s. It was tasked with prosecuting several kinds of crimes being committed in the area and genocide was among them. In fact, article 4 states:

“Article 4: Genocide

1. The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.
2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
 - (a) killing members of the group;
 - (b) causing serious bodily or mental harm to members of the group;
 - (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - (d) imposing measures intended to prevent births within the group;
 - (e) forcibly transferring children of the group to another group.
3. The following acts shall be punishable:
 - (a) genocide;

²¹ “(...) 2. Decides hereby to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace and to this end to adopt the Statute of the International Tribunal (...)” - Resolution S/RES/827(1993) of the UN Security Council of May 25, 1993, page 2, paragraph 2.

- (b) conspiracy to commit genocide;
- (c) direct and public incitement to commit genocide;
- (d) attempt to commit genocide;
- (e) complicity in genocide”²².

The Tribunal convicted some criminals for genocide, mainly those responsible for the Srebrenica mass massacre of 1995. The ICTY assumed a particularly important significance in that it prosecuted criminals from all sides of the conflict and belonging to different nationalities and religions, thus proving that, whether belonging to the winners or the losers, a person who is responsible of a crime must face justice.

A little over a year after the ICTY was established, the UN Security Council established, with Resolution 955 of November 8, 1994, the International Criminal Tribunal for Rwanda (ICTR) for the atrocities committed in the region earlier that year²³. Genocide is the first crime cited in article 2 the ICTR Statute²⁴, which is identical to article 4 of the ICTY Statute. Although it was established more than a year later than the ICTY, the ICTR was the first international Tribunal to deliver sentences against people accused of genocide and also the first to apply the definition of genocide laid in the 1948 Convention. The ICTR assumed great significance also because it was the first Tribunal which defined rape as a crime under international law and included it in the means of perpetrating genocide.

Later came the International Criminal Court (ICC), a permanent international Tribunal formally established on July 8, 2002, after its Statute, also known as the Rome Statute, was ratified by sixty Member States of the UN. The ICC has jurisdiction on for categories of crimes, called “core crimes”,

²² Resolution S/RES/827(1993) of the UN Security Council of May 25, 1993, adopting the Statute of the International Criminal Tribunal for the Former Yugoslavia, article 4. This article is, in its paragraphs 2 and 3, taken *verbatim* from articles II and III of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (see quotations on pages 11-12 of this document).

²³ “(...) 1. Decides hereby (...) to establish an international tribunal for the sole purpose of prosecuting 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 in the territory of neighboring States, between 1 January 1994 and 31 December 1994 and to this end to adopt the Statute of the International Criminal Tribunal for Rwanda (...)” - Resolution S/RES/955(1994) of the UN Security Council of November 8, 1994, hereinafter: S/RES/955(1994), page 2, paragraph 1.

²⁴ S/RES/955(1994), page 3.

which are: genocide, war crimes, crimes against humanity and crimes of aggression²⁵. The establishment of the ICC, however, has not stopped *ad hoc* tribunals to be instituted in specific areas, whether national, international or hybrid (including a mix of international and national judges)²⁶.

²⁵ J. KLABBERS, *International Law*, Cambridge, 2017, II ed., p. 243.

²⁶ Examples of *ad hoc* tribunals include the ones in Cambodia and Sierra Leone.

CHAPTER 2: THE RWANDA GENOCIDE AND THE UN RESPONSE

2.1 Hutus and Tutsis

Rwanda is a small, landlocked country in central-eastern Africa, with an area of roughly 26,000 km² and a population of little more than 6 million in 1994, when the genocide happened. The *banyarwanda*, i.e. the population of Rwanda, is composed of three main ethnicities: the Hutu, the Tutsi and the Twa. The latter were the original settlers, but are now only 1% of the populace, while the Hutu are the ethnic majority - 85% - and the Tutsi the remaining 14%.

Throughout the twentieth century, the country's mostly agricultural economy was quite flourishing and it was one of the most preferred destinations for Westerners to visit Africa. The two main ethnic groups lived, despite the evident physical differences²⁷, peacefully with one another, speaking the same language and getting along. The passage of the country, then a colony, from Germany to Belgium after World War I²⁸ did not shake the equilibrium that had been built several centuries before. In the 1920s, the Belgian rulers, however, imposed a socio-economic structure in which the Tutsis, despite being an ethnic minority, occupied a higher position than the Hutus. This division brought about significant anti-Tutsi sentiments within the Hutus, which culminated, in 1957, in the birth of the *Parmehutu*, a far-right political party advocating for Hutu supremacy. Members of the *Parmehutu* organized a Hutu rebellion against the Belgian rulers and the Tutsis which caused some 150,000 Tutsis to flee to Burundi - which borders Rwanda in the southern part of the country. The next year, the Hutus began gaining institutional power when they won the municipal elections which the Belgians had held.

²⁷ The Tutsis are physically more similar to Europeans, mainly because of their tall height; the Hutus are, on the other hand, generally shorter.

²⁸ The Treaty of Versailles of 1919 divided all former German colonies between states who had fought against Germany during the War. Some of them, including Rwanda, became protectorates of the League of Nations, which then assigned their administration to some European country.

When Belgium withdrew from Rwanda (and neighboring Burundi) between 1961 and 1962, it left a power vacuum which both Hutus and Tutsis tried to fill; in the end, the Hutus installed the leader of the *Parmehutu*, Gregoire Kayibanda, as president of the new Republic of Rwanda. This caused thousands of Tutsis to flee the country and seek refuge in one of the bordering states. In 1973, Juvenal Habyarimana, the Chief of the Army and a Hutu extremist seized the presidency and went on to create a one-party state with very limited room for the Tutsis both politically and economically. This drastic exclusion caused a group of Tutsi extremists who had fled to bordering Uganda to form an Army, the Rwandan Patriotic Front (RPF) to fight the Hutu extremist rulers of Rwanda who failed to ensure a solution to the 500,000 Rwandans living outside their country.

In 1990, hard-line Hutu paper *Kangura!* (*i.e.* Wake up!), published the *Ten Commandments of the Hutu*, which were quite similar to Hitler's Nuremberg Laws against the Jews. They were deliberately against Tutsis and read:

“Ten Commandments of the Hutu.

1. Every Hutu should know that a Tutsi woman, wherever she is, works for the interests of her Tutsi ethnic group. As a result, we shall consider a traitor any Hutu who:
 - Marries a Tutsi woman;
 - Befriends a Tutsi woman;
 - Employs a Tutsi woman as a secretary or concubine.
2. Every Hutu should know that our Hutu daughters are more suitable and conscientious in their role as woman, wife and mother of the family. Are they not beautiful, good secretaries and more honest?
3. Hutu women, be vigilant and try to bring your husbands, brothers and sons back to reason.
4. Every Hutu should know that every Tutsi is dishonest in business. His only aim is the supremacy of his ethnic group. As a result, any Hutu who does the following is a traitor:
 - Makes a partnership with a Tutsi in business;

- Invests his money or the government's money in a Tutsi enterprise;
 - Lends or borrows money from a Tutsi;
 - Gives favors to a Tutsi in business (obtaining import licenses, bank loans, construction sites, public markets...)
5. All strategic positions, political, administrative, economic, military and security should be entrusted to Hutu.
 6. The education sector (school pupils, students, teachers) must be majority Hutu.
 7. The Rwandese Armed forces should be exclusively Hutu. The experience of the October [1990] war has taught us a lesson. No member of the military shall marry a Tutsi.
 8. The Hutu should stop having mercy on the Tutsi.
 9. The Hutu, wherever they are, must have unity and solidarity, and be concerned with the fate of their Hutu brothers.
 - The Hutu inside and outside of Rwanda must constantly look for friends and allies for the Hutu cause, starting with their Bantu²⁹ brothers;
 - They must constantly counteract the Tutsi propaganda;
 - The Hutu must be firm and vigilant against their common Tutsi enemy.
 10. The Social Revolution of 1959, the Referendum of 1961, and the Hutu Ideology, must be taught to every Hutu at every level. Every Hutu must spread this ideology widely. Any Hutu who persecutes his brother Hutu for having read, spread and taught this ideology, is a traitor³⁰.

In October 1990, the militants of the RPF invaded northern Rwanda from Uganda and clashed with the Rwandan Army. This was the beginning of a bloody civil war which lasted almost two years, until July 1992, when

²⁹ The Hutu ethnicity is said to have come from a group of African ethnicities called *bantu* and hard-liners insisted that the Tutsis had a different origin. These theories found support in the different physical features characterizing the two groups, causing Tutsis to be defined as “false black people”.

³⁰ S. POWER, *A Problem from Hell - American and the Age of Genocide*, London, 2003, II edition, p. 338-339.

negotiations began for the Arusha Accords. The Accords were signed in August 1993 and allowed the return of Tutsi refugees to Rwanda as well as establishing a new, power-sharing, government and their enforcement was to be supervised by UN peacekeepers.

2.2 Paving the Way to the Genocide

Soon after the Arusha Accords were signed, in September 1993, Hutu extremists who opposed the Accords began training and arming the *interahamwe*, their army, to exterminate the Tutsi minority. They were incited by the calls of Radio *Mille Collines*, which referred to their targets as *inyenzi*, *i.e.* cockroaches. They began receiving guns, grenades and, most of all, machetes by planeloads; 581,000 machetes were available to the killers. Death-lists were being prepared with the names, addresses and license plates of the victims and a person's ethnicity was put on every Rwandan's ID card. In March 1994, several political assassinations began.

In the night of April 6, 1994, president Habyarimana's falcon jet was shot down near Kigali airport³¹ - this was probably a false flag operation orchestrated by the Hutu extremists in order to have something concrete to accuse the Tutsis of. The president died, and the Hutu extremists did indeed accuse the Tutsis of the RPF of having killed their leader. The authorities instituted a curfew and Hutu militants, together with government soldiers, erected roadblocks around and inside the capital. The extremists took control of the army under the command of Colonel Théoneste Bagosora and they seized control of Kigali. The Tutsis were not the only targets, moderate Hutus and supporters of the Arusha Accords were also in danger. This was the beginning of what Samantha Power³² defined "(...) the fastest, most efficient killing spree of the twentieth century"³³, which counted roughly 800,000 Tutsis and

³¹ The jet was carrying Rwandan president Habyarimana and Burundian president Cyprien Ntaryamira.

³² Samantha Power is an American journalist and writer who covered the war in the former Yugoslavia in the 1990s. She then became a Professor at Harvard University and was appointed, from 2012 to 2016, as the USUN Ambassador by Barack Obama.

³³ S. POWER, *Bystanders to Genocide - Why the United States Let the Rwandan Tragedy Happen* in *The Atlantic Monthly*, September 2001, p. 84.

moderate Hutus brutally murdered by Hutu extremists in little more than one hundred days, from April to July 1994.

On April 7, militants of the government army started venturing the streets of Kigali carrying a machete in one hand a transistor radio in the other, so they could hear the death-lists being broadcast by Radio *Mille Collines*. A group of militants encircled the house of the moderate Prime Minister, now officially acting as Head of State, Agathe Uwilingiyimana, who was being protected by UN peacekeepers. When she tried to escape to her neighbor's (American diplomat Joyce Leader) house, the soldier who was trying to get through before her to see if it would be safe was shot and killed by the Rwandan troops who were closely monitoring any movement in order to kill her. She later managed to escape to a UN Development Program compound with her husband and children but was tracked down in the yard and killed with her family.

Thousands of Tutsis began trying to flee their homes in order to save their lives, only to be brutally killed at one of the numerous checkpoints. The bodies and body parts that came as a consequence of the murders were not disposed of, but just thrown on the roadside or piled up in the hospitals, schools or churches where they were seeking refuge and they were found and killed. Children of mixed marriages were killed mercilessly and in front of their parents. A Hutu woman who married a Tutsi and had eleven children tried to escape in order to save the lives of her children, only to see them being killed in front of her and to hear her youngest, a three-year old, say "Please don't kill me, I'll never be Tutsi again" right before meeting the same fate as his older siblings³⁴.

On April 15, around 5,000 Tutsis gathered inside a Catholic church in Nyarubuye, Eastern Rwanda, hoping to be safe, hoping that nobody would kill people in a church. Among them was a 12-year-old schoolgirl named Valentina with her parents. When the soldiers arrived, they began shooting and were soon after joined by regular people, mostly farmers, who began butchering them with their machetes. In an interview³⁵, Valentina recalled hiding under piles of dead bodies and pretending she was dead in order to save her life. The blood

³⁴ S. POWER, *A Problem from Hell - American and the Age of Genocide*, London, 2003, II edition, p. 334.

³⁵ Valentina was interviewed by Frontline during the realization of the 2004 documentary *Ghosts of Rwanda*.

coming from the corpses under which she was hiding covered her and convinced members of the *interahamwe* that she was, in fact, dead. She recalls hearing one of them say, after having kicked her, “This thing is dead.” and leaving. She hid in a small room in the church for 43 days and was the only survivor of the massacre.

The leaders of the hard-line Hutu faction who were orchestrating the killing sprees and giving the orders had to make sure that their soldiers, the ones actually perpetrating the killings, had their minds solely set on their goal. In order to achieve this, they would get them drunk every morning and sometimes even drugged, so as to be completely sure that they would not turn against them or refuse to carry out their tasks. Furthermore, they would perform regular brain washing sessions to convince them that they were doing what was best for their country and for the ethnic group to which they belonged. The propaganda was centered on the ideas that the Tutsis were not originally from Rwanda but had come from some other place in Africa and that their only aim was to conquer the Hutu territories and enslave them. A farmer who entered the Nyarubuye church and butchered people with his machete, when interviewed years after the genocide, stated that they were not themselves and were acting as if they were possessed by Satan, otherwise they would not have started killing people with machetes³⁶.

2.3 The UN Involvement: the Peacekeeping Operation

In March 1993, a ceasefire was instituted between the Rwandan government and the RPF in order “(...) to allow the delivery of humanitarian supplies and the return of displaced persons (...)”³⁷. Furthermore, the governments of Rwanda and Uganda asked for international observers to be deployed at the border between the two nations. The UN Security Council invited the Secretary-General Boutros Boutros-Ghali to examine the “(...) possible

³⁶ Gitera Rwamuhizi, a farmer of Eastern Rwanda, was interviewed by Frontline during the realization of the 2004 documentary *Ghosts of Rwanda*.

³⁷ Resolution S/RES/812(1993) of the UN Security Council of March 12, 1993, hereinafter: S/RES/812(1993), page 2, paragraph 1.

establishment of an international force under the aegis of the OAU³⁸ and the United Nations (...)”³⁹.

In April 1993, W.B. Ndiaye, a Special Rapporteur of the UN Commission on Human Rights, was sent to Rwanda on extrajudicial, summary or arbitrary executions. He reported massacres and several violations of human rights which were taking place in Rwanda at the time and noted that these violations could possibly lead to genocide, since he saw “very clearly that the victims of the attacks, Tutsis in the overwhelming majority of cases, have been targeted solely because of their membership of a certain ethnic group and for no other objective reason.”⁴⁰ Based on these considerations, Ndiaye emphasized the serious risk of a genocide happening in Rwanda and made recommendations on possible ways to prevent said genocide from happening. Ndiaye’s report was, however, largely ignored by those holding the reins of the United Nations system, both within the UN itself and outside.

In June 1993, after having stressed the importance given by the UN to the negotiations in Arusha, the Security Council agreed to the request by the governments of Rwanda and Uganda three months before:

“(…) 2. Decides to establish the United Nations Observer Mission Uganda-Rwanda (UNOMUR) that will be deployed on the Ugandan side of the border, for an initial period of six months (...)
3. Decides that UNOMUR shall monitor the Uganda/Rwanda border to verify that no military assistance reaches Rwanda (...)”⁴¹.

UNOMUR was sent on a reconnaissance mission in August 1993 in order to assess the situation and determine the resources needed for a peacekeeping operation in compliance with the Arusha Accords. Both parties involved in

³⁸ The Organization of African Unity was an intergovernmental organization founded in 1963 with the aim of promoting peace and cooperation, both political and economical, between African countries and definitively eradicate all forms of colonialism in the continent. It was dissolved and replaced by the African Union in 2002.

³⁹ S/RES/812(1993), page 2, paragraph 2.

⁴⁰ Letter from the Secretary-General of the UN addressed to the President of the Security Council and annexes of December 16, 1999, on the Report of Independent Inquiry, UN doc. S/1999/1257, p. 7.

⁴¹ Resolution S/RES/846(1993) of the UN Security Council of June 22, 1993, page 2, paragraphs 2-3, hereinafter S/RES/846(1993).

signing the Accords officially told the UN convoy that they were committed to maintaining the peace, but they left out important parts of the country while on their visit: those where the extremists had established their headquarters. The UN mission was led by Brigadier-General Romeo A. Dallaire⁴², a Canadian with no knowledge of Rwanda.

After this first reconnaissance mission returned from Rwanda, the following step was to effectively deploy UN peacekeeping troops and the Department of Peacekeeping Operations offered the commander post to Dallaire himself, who immediately accepted. Although he had been to Rwanda on the previous mission, he had no idea of just how precarious the holding of the Accords was and nobody gave Dallaire a copy of the alarming report from the Special Rapporteur⁴³. The peacekeeping operation was officially established at the beginning of October by a Resolution of the UN Security Council “(...) under the name ‘United Nations Assistance Mission for Rwanda’ (UNAMIR) for a period of six months (...)”⁴⁴. Dallaire initially asked for 5,000 troops, but was only granted 2,500; some, like the Belgians, were well equipped for combat, while others, like the Ghanaians, were not and Dallaire was denied funds or arms to get them ready for combat. Moreover, he lacked intelligence, intelligence capability and international support. The rather small Department of Peacekeeping Operations, then run by Kofi Annan⁴⁵, was overwhelmed and was able to provide very little assistance⁴⁶.

A few months after having been deployed, the results were exactly the opposite of what the UN was expecting: Rwanda was becoming increasingly militarized. In January, Dallaire received information from an anonymous Hutu

⁴² Romeo Dallaire had been the commandant of a brigade of the Canadian army which sent troops to Cambodia and Bosnia with peacekeeping operations, but he had never experienced actual combat before being deployed to Rwanda.

⁴³ According to Dallaire’s executive assistant Major Brent Beardsley, “We flew to Rwanda with a Michelin road map, a copy of the Arusha Agreement, and that was it. We were under the impression that the situation was quite straightforward: there was one cohesive government side and one cohesive rebel side, and they had come together to sign the peace agreement and had then requested that we come in to help them implement it.”

⁴⁴ Resolution S/RES/872(1993) of the UN Security Council of October 5, 1993, page 2, paragraph 2. In paragraph 3, the Security Council laid out UNAMIR’s mandate very specifically.

⁴⁵ Kofi Annan is a Ghanaian diplomat who ran the Department of Peacekeeping Operation of the UN before becoming its Secretary-General in 1997.

⁴⁶ Madeleine Albright, at the time USUN Ambassador, stated, about the Department of Peacekeeping Operations: “The global nine-one-one was always either busy or nobody was there.”

informant who told him about the extremists' intentions and described how they were training and arming the *interahamwe*. The informant, who became known as "Jean-Pierre", claimed to be a high-level official in the Rwandan government and disclosed some very detailed pieces of information to convince Dallaire of his sincerity⁴⁷. Dallaire immediately reported back to New York asking for permission to raid Hutu compounds to search for arms but was forbidden to do so. Instead, he was told to notify president Habyarimana and the Western ambassadors in Kigali of the new intelligence he collected. When he tried to obtain reinforcements and an extension of his mandate, he was told that he would not get support for those requests, especially from the United States. He was also told not to fire nor respond to fire.

In April, when Habyarimana's plane was shot down and the genocide began, the informant's claims proved to be true. Dallaire immediately contacted the army officials and, in particular, Colonel Bagosora, who assured him of their commitment to peace and to putting an end to the killings. What Dallaire did not know was that they were the people planning the slaughter. On April 7, after having killed Prime Minister Agathe Uwilingiyimana, the Hutu extremists captured the peacekeepers who had been trying to protect her. After having let the Ghanaians go, they killed and butchered the Belgians, hoping to trigger Belgian withdrawal from the operation.

On April 8, Dallaire sent a cable to the UN headquarters in New York in which he defined what was happening in Rwanda as mostly political killing, nevertheless recognizing that ethnicity was one of the dimensions motivating the murders. Despite claims by the Hutu authorities that the widespread violence was out of control he noted that it was a "very well-planned, organized, deliberate and conducted campaign of terror initiated principally by the Presidential Guard"⁴⁸. The following day, Dallaire's executive assistant, Major Brent Beardsley, received a radio call from some Polish UN observers who were at a Polish church on the other side of Kigali saying "Come get us,

⁴⁷ Jean-Pierre informed Dallaire about the registrations of Tutsis which had been happening and he revealed his suspicion that the purpose of such registrations was to exterminate them. He also revealed the extremists' plan to kill the Belgian peacekeepers, so as to cause Belgium to withdraw from the country.

⁴⁸ S. POWER, *A Problem from Hell - America and the Age of Genocide*, London, 2003, II edition, p. 349.

they are massacring people here”. On his way to the church, Beardsley had to go through about twenty roadblocks. He recalls:

“When we arrived, I looked at the school across the street, and there were children, I don’t know how many, forty, sixty, eighty children stacked un outside who had all been chopped up with machetes. Some of their mothers had heard them screaming and had come running, and the militia had killed them, too. We got out of the vehicle and entered the church. There we found 150 people, dead mostly, though some were still groaning, who had been attacked the night before. The Polish priests told us it had been incredibly well organized. The Rwandan army had cleared out the area, the gendarmerie had rounded up all the Tutsi, and the militia had hacked them to death”⁴⁹.

On April 10, Dallaire had definitively realized that the Hutu militiamen, under the command of Colonel Bagosora were committing a campaign of crimes against humanity, targeting anyone in possession of a Tutsi ID card. He said:

“Only when I saw with my own eyes the militias at the roadblocks pulling people out of their vehicles did it really become clear. At that point you couldn’t argue anymore that it was just politically motivated slaughter”⁵⁰.

On that same day, Dallaire requested an expansion of both his mandate and the dimension of the forces under his command. He was denied both.

The Belgian government did indeed push to end UNAMIR and asked for US support in doing so. The USUN Ambassador Madeleine Albright⁵¹, however, saw the wrongfulness of that proposal and refused to comply, instead

⁴⁹ *Ibidem*.

⁵⁰ S. POWER, *A Problem from Hell - America and the Age of Genocide*, London, 2003, II edition, p. 350.

⁵¹ Madeleine Albright declared, in an interview to Frontline while realizing *Ghosts of Rwanda* that “In retrospect, it all seemed very clear but when it happened, it was not.”

advocating only for a partial withdrawal⁵². Withdrawing the UN peacekeepers altogether would have meant letting the Hutu killers have full power to carry out their mission. In fact, the forces commanded by Dallaire had an incredibly high deterrent effect on the murderers: they were reluctant to go on with their executions when foreigners were also present, and it did not matter whether they were armed or not. Dallaire commanded his remaining forces to establish UN protected zones, so that every Tutsi who could reach them making it past the several roadblocks could be safe. It is estimated that some 25,000 Tutsis were saved by the UN peacekeepers thanks to these safe zones⁵³.

It was only in the second half of May that the UN Security Council expanded “(...) the UNAMIR force level up to 5,500 troops”⁵⁴ and asked “(...) Member States to respond promptly to the Secretary-General’s request for the resources required, including logistical support capability for rapid deployment of the UNAMIR expanded force level and its support in the field”⁵⁵.

2.4 The International Community and its Role in the Genocide

At the time of the genocide in Rwanda, the international community, and especially the United States, was skeptical about another intervention in Africa, especially if it was an ethnic conflict.

When Bill Clinton was sworn into office as the forty-second President of the United States of America in January 1993, the US experienced a decisive shift in foreign policy, especially regarding military interventions, towards peacekeeping and humanitarian intervention. However, Clinton inherited from his predecessor, George H.W. Bush, Operation Restore Hope, an intervention on humanitarian grounds in Somalia approved by the UN and largely

⁵² In an interview to Frontline during the realization of the documentary *Ghosts of Rwanda*, Samantha Power noted that the extent of the dissent about the evolving situation in Rwanda at the top level of the US government was only about the time and size of UNAMIR’s withdrawal instead of questioning the withdrawal altogether.

⁵³ Major Brent Beardsley recalls: “If there was any determined resistance at close quarters, the government guys tended to back off.” - S. POWER, *A Problem from Hell - America and the Age of Genocide*, London, 2003, II edition, p. 368.

⁵⁴ Resolution S/RES/918(1994) of the UN Security Council of May 17, 1994, hereinafter: S/RES/918(1994), page 3, paragraph 5.

⁵⁵ S/RES/918(1994), page 3, paragraph 9.

sponsored by the US⁵⁶. After the initial success of the humanitarian intervention, the Clinton Administration and the UN decided to intervene again in order to restore peace and stability in the country. In October 1993, while trying to capture Mohammed Farrah Adid⁵⁷, several American Special Ops soldiers were killed and dragged on the street. The murder was filmed and broadcast on TV, which caused a great humiliation to the US. Therefore, Clinton announced the withdrawal of all American troops in Somalia by March 1994. At the same time, the US was also involved both with the UN and with NATO in the conflict happening in the former Yugoslavia, an ethnic conflict. These circumstances caused the US to be rather suspicious of further interventions on humanitarian grounds, especially if they could cause the loss of other American lives.

When the UN reconnaissance mission was deployed to Rwanda, there was also an International Commission of Investigation on the ground in the country. It was composed of twelve people from eight countries and they spent three weeks interviewing people who described a series of crimes being perpetrated by the Hutus which were nearly impossible to believe. In March 1993, the Commission reported government sponsored Tutsi detainments (more than 10,000), over 2,000 killings and at least three massacres. They also warned of the possibility of a genocide. Other reports were provided by the intelligence community, yet none managed to shift the sentiment of the international community towards a new humanitarian intervention, especially in Africa.

When the news of Habyarimana's plane crash broke out, the very first concern of the western governments was the repatriation of their own citizens. On April 9, three days and already thousands of deaths into the slaughter, around 1,000 paratroopers from France, Belgium and Italy arrived at the airport in Kigali with the specific mandate of bringing their fellow countrymen back home safe. They arrived with several journalists who followed them to the places where their compatriots were hiding. A Belgian convoy went to the

⁵⁶ Resolution S/RES/794(1992) of the UN Security Council of December 3, 1992, page 3, paragraphs 7-11. Operation Restore Hope was a humanitarian mission aimed at protecting the delivery of food and other humanitarian assistance to the population of Somalia which was starving to death. Although backed by the UN, the cost of the Operation was borne mostly by the US, both in terms of military personnel and economic involvement.

⁵⁷ Mohammed Farrah Adid was a Somali warlord who largely opposed international interventions in Somalia.

psychiatric hospital, where the Belgian staff had been trapped, along with several Tutsis, for three days. They had been surrounded by the militia and some Tutsis had already been killed. While the paratroopers went inside to rescue the staff, the Tutsi prisoners hurried out of the hospital hoping to be saved as well. When they realized they were not going to be saved, they appealed to the journalists who, however, had no means to help them. As soon as the convoy left the hospital, the militiamen started shooting and cutting with their machetes. At the same time, after Clinton announced the decision of withdrawing all American citizens and to close the Embassy in Kigali on April 8, they were being escorted out of the country on five different convoys travelling by land in order to avoid the perils linked with taking off on a plane from Kigali⁵⁸. Laura Lane⁵⁹ remembers witnessing the beginning of the atrocities and the desire to try and keep the Embassy open in order to save some Rwandan lives. But the decision was not up to her. When all US citizens were out of the country, the events of Rwanda were largely cast aside by the Administration. Anthony Lake⁶⁰ recalls: “I was obsessed with Haiti and Bosnia during that period, so Rwanda was, in journalist William Shawcross’s words, a ‘sideshow’, but not even a sideshow - a no-show”⁶¹. It took a total of three days to evacuate around 4,000 foreigners who were in Rwanda at the beginning of the genocide and, in that same amount of time, around 20,000 Rwandans were killed.

⁵⁸ After the evacuation had been completed, on April 10, US Secretary of State Warren Christopher took great pride in declaring, in an interview on American TV, that all American citizens who wanted to leave the country had successfully done so. On the same day, the Republican Senate minority leader, Bob Dole, stated: “I don’t think we have any national interest there, the Americans are out and, as far as I’m concerned, in Rwanda, that ought to be the end of it.”

⁵⁹ Laura Lane was an American diplomat working at the Embassy in Kigali at the time of the genocide. She remembers thinking, about the events that were unfolding in Kigali before the evacuation of the American citizens: “It was almost impossible to conceive something so awful being so meticulously planned and carried out”. Interestingly, the same thing was said about Hitler’s rumored plans of exterminating the Jews during WWII when Lemkin tried to shine light on the Holocaust before the end of the War.

⁶⁰ Anthony Lake was Clinton’s National Security Advisor at the time of the genocide in Rwanda. He held the position from 1993 to 1997, during Clinton’s first mandate as President.

⁶¹ S. POWER, *A Problem from Hell - America and the Age of Genocide*, London, 2003, II edition, p. 364.

Recognition of the slaughter as genocide came hard - and late - as well. The use of the term genocide, in fact, almost implied a responsibility of the other countries to intervene, through the UN, to put an end to the killings⁶². In the Western press, however, the atrocities were depicted quite clearly. Dallaire insisted that journalists should go to Rwanda and report what was going on so as to try and make Western governments realize the extent of the atrocities⁶³. Joyce Leader⁶⁴, an American diplomat who was evacuated from Rwanda a few days after the beginning of the massacres, explained to her State Department colleagues that there were three different categories of killings happening in Rwanda: war casualties, politically motivated murders and genocide. US special forces were sent to Kigali on a reconnaissance mission and in the following month, several reports of the intelligence community strengthened what Leader and Dallaire were describing.

In late May, a U.S. official who had been keeping a diary throughout the whole Rwandan crisis, expressed his exasperation and indignation at the tendency towards obstructionism of the bureaucrats in the Western institutions:

“A military that wants to go nowhere to do anything - or let go of their toys so someone else can do it. A White House cowed by the brass (and we are to give lessons on how the armed forces take orders from civilians?). An NSC that does peacekeeping by the book - the accounting book, that is. And an assistance program that prefers whites (Europe) to blacks. When it comes to human rights we have no problem drawing the line in the sand of the dark continent (just don't ask us to do anything - agonizing is our specialty), but not China or any place else business looks good.

⁶² Article VIII of the Convention on the Prevention and Punishment of the Crime of Genocide (1948) states: “Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide (...)”.

⁶³ Dallaire recalls: “At that point, the journalists were really all I had.” - S. POWER, *A Problem from Hell - America and the Age of Genocide*, London, 2003, II edition, p. 355.

⁶⁴ Joyce Leader was the deputy chief of mission at the American Embassy in Kigali. She recalls: “By 8am the morning after the plane crash, we knew what was happening, that there was systematic killing of Tutsi. People were calling me and telling me who was getting killed. I knew they were going door-to-door. - S. POWER, *A Problem from Hell - America and the Age of Genocide*, London, 2003, II edition, p. 354.

We have a foreign policy based on our amoral economic interests run by amateurs who want to stand for something - hence the agony - but ultimately don't want to exercise any leadership that has a cost.

They say there may be as many as millions massacred in Rwanda. The militias continue to slay the innocent and the educated. (...)⁶⁵.

The Tutsi Rwandan Patriotic Front publicly accused the Rwandan government of carrying out genocide against them and asked for Western support and help, and even sent a direct letter to the UN Security Council and the UN Secretary-General drawing a parallel with the Holocaust⁶⁶. On April 19, Human Rights Watch⁶⁷ released an estimate of the number of deaths to be 100,000 and insisted that the Security Council start using the term "genocide". The estimate and the term were immediately picked up by the media, by other NGOs and by humanitarian organizations. The Red Cross, which had hospitals on the ground in Rwanda, publicly denounced what was happening and issued a statement saying that the killings amounted to "at least 100,000, but perhaps as many as 300,000".

While drafting a Security Council resolution in May, the use of the term "genocide" was suggested, but the US opposed said word. The resolution, therefore, recites:

"(...) Recalling in this context that the killing of members of an ethnic group with the intention of destroying such a group, in whole or in part, constitutes a crime punishable under international law (...)"⁶⁸.

⁶⁵ S. POWER, *A Problem from Hell - America and the Age of Genocide*, London, 2003, II edition, p. 385.

⁶⁶ "When the institution of the UN was created after the Second World War, one of its fundamental objectives was to see to it that what happened to the Jews in Nazi Germany would never happen again." - S. POWER, *A Problem from Hell - America and the Age of Genocide*, London, 2003, II edition, p. 357.

⁶⁷ Human Rights Watch is a New York based NGO whose aim is defending human rights. At the time of the genocide in Rwanda, it had solid intelligence on the situation because of a good net of sources on the ground.

⁶⁸ S/RES/918(1994), page 2.

It was only at the end of May that the Western governments, and in particular the Clinton administration, allowed their spokespeople to refer to the situation in Rwanda as genocide. This allowed the UN Security Council to use the term, too:

“(…) Noting with the gravest concern the reports indicating that acts of genocide have occurred in Rwanda and recalling in this context that genocide constitutes a crime punishable under international law (…)”⁶⁹.

Only at the end of June, some governments⁷⁰ autonomously decided to deploy their own forces to Rwanda in order to try and stop the killings. Others responded to the UN Security Council call for more resources to help UNAMIR⁷¹.

The genocide in Rwanda ended in July.

⁶⁹ Resolution S/RES/925(1994) of the UN Security Council of June 8, 1994, hereinafter: S/RES/925(1994), page 1.

⁷⁰ Mainly France, which preceded to seize parts of the country after the deployment of their troops on June 23.

⁷¹ “(…) 6. Calls upon all Member States to respond urgently to the secretary-General’s request for resources, including logistical support, in order to enable expanded UNAMIR to fulfil its mandate effectively as soon as possible (…)” - Resolution S/RES/929(1994) of the UN Security Council of June 22, 1994, page 2, paragraph 6.

CHAPTER 3: THE AFTERMATH AND THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

3.1 The Aftermath and the Victims

The genocide in Rwanda did not end because of foreign interventions, not because of the UN and definitely not because of Western powers and their efforts. The genocide in Rwanda ended because the Tutsi members of the Rwandan Patriotic Front managed to progressively seize control of parts of the country, taking them from the Hutu extremists. In fact, the RPF forces, under the command of Paul Kagame, managed to capture Kigali on July 4 and, by July 18, also the rest of the country. While seizing control of the territory and putting a stop to the killings, the RPF did kill some Hutus only because of suspicions that they might be involved in the assassination of their families. Because of this, among the roughly 2 million refugees who fled to the neighboring countries⁷², there were also several hundreds of Hutus who had taken part in the genocide. Thousands of machetes were left at the borders and piled up as the refuge seekers were forced to get rid of them before crossing their national border. One million survivors and perpetrators were displaced inside Rwanda because of the destruction brought about by the slaughter. 95,000 children were left orphans. 250,000 girls and women were raped. Mothers saw their sons murdered and their daughters raped in front of them. Wives and children saw their husbands and fathers killed. People walked down the streets along piles of dead bodies, sometimes being eaten by dogs. Mass graves appeared throughout the country. Many people lost touch with their relatives and did not know whether they were dead or still alive.

On July 19, the new government of national unity of Rwanda, composed of members of the RPF, was sworn in. Two months had passed since the UN Security Council had approved an increase in the number of the troops of peacekeepers commanded by Dallaire and yet he was still commanding the same 500 soldiers who had decided to remain when the Security Council had insisted for a partial withdrawal of UN forces. The swearing in of the new

⁷² Hutu refugees tried to escape mainly to Tanzania and Zaire (now Democratic Republic of the Congo).

government triggered a series of interventions of sorts by the international community⁷³ and by the UN. Rwanda was one of the rotating members of the UN Security Council at the time of the genocide⁷⁴. It never occurred, for the whole length of the genocide, to any other Member State, nor to the Presidency of the Council, to ask the representatives of a government which was sponsoring genocide to step down. On August 25, 1994, however, the UN Security Council decided that the delegation of Rwanda would not be allowed to take its stance as president of the Council:

“(…) The Security Council has decided to suspend the operation of rule 18 of the provisional rules of procedure so as to allow the Presidency of the Security Council to be held in September 1994 by Spain. The timing of the Presidency of the Council by Rwanda will be addressed later”⁷⁵.

After the genocide had stopped, a new humanitarian crisis was hitting the population of Rwanda and the international community: the conditions in which Rwandans refugees were living in the neighboring countries, especially Zaire, were terrible and quickly deteriorating. This time, President Clinton demanded that Congress approve a plan of humanitarian relief for the people dying of hunger, thirst and cholera. By the end of July, American troops were flying into Kigali so as to assure the direct distribution of the necessary humanitarian relief. Even then, however, the American government made perfectly clear that they were not sending troops into Rwanda for peacekeeping, valuing American lives above all else⁷⁶.

⁷³ After the new government was sworn in, the Clinton Administration ordered to close the Rwandan Embassy in Washington D.C. and to freeze all the assets belonging to Rwandan diplomats.

⁷⁴ Rwanda was elected as one of the rotating members of the UN Security Council in 1993 to occupy a seat in the Council for the years 1994-1995.

⁷⁵ Statement by the President of the Security Council of August 25, 1994, UN doc. S/PRST/1994/48.

⁷⁶ “(…) A U.S. officer was wondering precisely how many Rwandans had died. Dallaire was puzzled and asked why he wanted to know. ‘We are doing our calculations back here’, the U.S. officer said, ‘and one American casualty is worth about 85,000 Rwandan dead’”. - S. POWER, *A Problem from Hell - America and the Age of Genocide*, London, 2003, II edition, p. 381.

The Tutsi survivors were facing different problems. Many of them had lost their families, in whole or in part. Many were forced to separate from their loved ones in order to escape the murderous force and lost trace of them. Some managed to survive by hiding under dead bodies and let their blood cover them so that it would look like they were dead. Others found refuge in the home of Hutu friends who were willing to hide them and pretend they were their children. Many women and girls got pregnant as a result of the repeated rape they had endured and were struggling to care for a child that reminded them so much of what they had gone through. Many survivors lost arms or legs as a consequence of the machete wounds they were inflicted. People did not know how to live their lives anymore and were not able to continue the jobs they had before the genocide because of the injuries they sustained.

There was one man who had not been a victim of the homicidal fury, but was terribly devastated by what had happened in Rwanda and by the guilt of not being able to do more to help or perhaps even to stop the killings: Romeo Dallaire. By the end of August 1994, he wanted nothing more than to die so as to join all the people who had been slaughtered on his watch and to stop feeling so guilty⁷⁷. He recounted his UNAMIR experience in an emotional parting cable:

“What we have been living here is a disgrace. The international community and the UN member states have on the one hand been appalled at what has happened in Rwanda while, on the other hand, these same authorities, apart from a few exceptions, have done nothing substantive to help the situation. (...) The [UN] force had been prevented from having a modicum of self-respect and effectiveness on the ground. (...) I acknowledge that this mission is a logistical nightmare for your [headquarters], but that is *nothing* compared to the living hell that has surrounded us, coupled with the obligation of standing in front of both parties and being the bearer

⁷⁷ “At the end of my command, I drove around in my vehicle with no escort practically looking for ambushes, I was trying to get myself destroyed and looking to get released from the guilt.” - S. POWER, *A Problem from Hell - America and the Age of Genocide*, London, 2003, II edition, p. 385.

of so little help and credibility. (...) Although Rwanda and UNAMIR have been at the center of a terrible human tragedy, that is not to say Holocaust, and although many fine words have been pronounced by all, including members of the Security Council, the tangible effort (...) has been totally, completely ineffective”⁷⁸.

3.2 The UN Response: Security Council Resolution 955 (1994) and the Institution of the International Criminal Tribunal for Rwanda

As the genocide in Rwanda was effectively coming to an end, on July 1, 1994, the UN Security Council adopted a resolution establishing a Special Commission tasked with investigating the events that had happened in Rwanda and giving recommendations about the UN’s future moves. The Security Council also urged all Member States and international organizations to provide as much information as possible, in order to make the investigation as detailed as possible:

- “(…) 1. Requests the Secretary-General to establish, as a matter of urgency, an impartial Commission of Experts to examine and analyse information submitted pursuant to the present resolution, together with such further information as the Commission of Experts may obtain through its own investigations or the efforts of other persons or bodies, including the information made available by the Special Rapporteur for Rwanda, with a view to providing the Secretary- General with its conclusions on the evidence of grave violations of international humanitarian law committed in the territory of Rwanda, including the evidence of possible acts of genocide;
2. Calls upon States and, as appropriate, international humanitarian organizations to collate substantiated information in their

⁷⁸ S. POWER, *A Problem from Hell - America and the Age of Genocide*, London, 2003, II edition, p. 382.

possession or submitted to them relating to grave violations of international humanitarian law, including breaches of the Convention on the Prevention and Punishment of the Crime of Genocide, committed in Rwanda during the conflict, and requests States, relevant United Nations bodies, and relevant organizations to make this information available within thirty days of the adoption of the present resolution and as appropriate thereafter, and to provide appropriate assistance to the Commission of Experts referred to in paragraph 1 (...)”⁷⁹.

The efforts of the UN Security Council were accompanied by the appointment of a Special Rapporteur of the Commission on Human Rights to “(...) investigate at first hand the human rights situation in Rwanda and to receive relevant, credible information on the human rights situation from Governments, individuals and intergovernmental and non-governmental organizations, including on the root causes and responsibilities for the recent atrocities”⁸⁰.

After receiving the information gathered by both the Commission of Experts and the Special Rapporteur, on November 8, 1994, the UN Security Council officially approved its resolution 955 and, so, instituted the International Criminal Tribunal for Rwanda (ICTR). It was established as a tool to put an end to the horrific crimes which had happened in Rwanda, but also as a starting point for the process of national reconciliation:

“(…) Expressing once again its grave concern at the reports indicating that genocide and other systematic, widespread and flagrant violations of international humanitarian law have been committed in Rwanda,

Determining that this situation continues to constitute a threat to international peace and security,

⁷⁹ Resolution S/RES/935(1994) of the UN Security Council of July 1, 1994, page 2.

⁸⁰ Report of the Secretary-General on the Establishment of the Commission of Experts Pursuant to Paragraph 1 of Security Council Resolution 953(1994) of 1 July 1994 of July 26, 1994, UN doc. S/1994/879, page 2.

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstance of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the process of national reconciliation and to the restoration and maintenance of peace,

Believing that the establishment of an international tribunal for the prosecution of persons responsible for genocide and the other above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed,

(...) Acting under Chapter VII⁸¹ of the Charter of the United Nations,

1. Decides hereby, having received the request of the Government of Rwanda (S/1994/1115), to establish an international tribunal for the sole purpose of prosecuting 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 in the territory of neighboring States, between 1 January 1994 and 31 December 1994 and to this end to adopt the Statute of the International Criminal Tribunal for Rwanda annexed hereto (...)”⁸².

⁸¹ Chapter VII of the Charter of the United Nations regards “action with respect to threats to the peace, breaches of the peace, and acts of aggression” and includes articles 39 to 51.

⁸² S/RES/955(1994), pages 1-2.

The annexed Statute of the ICTR defined its competences and the crimes over which it was to have jurisdiction: genocide, crimes against humanity and violations of Article 3⁸³ common to the Geneva Conventions⁸⁴ and of Additional Protocol II⁸⁵. It also formally specifies the Tribunal's geographic and temporal jurisdictions, as laid down in paragraph one of Resolution 955. Furthermore, it plainly states that "the International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons responsible for serious violations of international humanitarian law" committed within the territorial and temporal limits expressed in the Statute itself⁸⁶. Moreover and more significantly, the Statute clearly outlines, in its article 6, individual criminal responsibility:

"1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 [genocide, crimes against humanity or violations of Article 3 common to the Geneva Conventions and of Additional Protocol 2] of the present Statute, shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve or

⁸³ Article 3 common to the Geneva Conventions deals with conflicts not of an international character. It prescribes the protection and humane treatment for all those who are not directly involved in the conflict.

⁸⁴ The Geneva Conventions of 1949 include four Conventions and three Additional Protocols were added later, in 1977 and 2005. They are considered the core of international law concerning armed conflicts. Convention I regulates the protection of the wounded and sick members of the armed forces, Convention II regulates the protection of the wounded, sick and shipwreck members of the armed forces at sea, Convention III regulates the protection of prisoners of war and Convention IV regulates the protection of the civilian population.

⁸⁵ Annexed Protocol II to the Geneva Conventions was added to the Conventions in 1977 and it deals with the protection of the victims of non-international armed conflicts.

⁸⁶ According to the *non bis in idem* principle, the Statute states that, if a person has already been tried by the International Tribunal, the same person shall not be tried by any national court for the same crimes. On the other hand, if a person has been tried by a national court for the crimes laid out in the Statute, but they have not been properly characterized or the court has not been impartial, the same person can be tried by the International Tribunal for the same crimes.

her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires”⁸⁷.

The Tribunal was organized as consisting of two Trial Chambers and an Appeal Chamber, a Prosecutor and a Registry. The Chambers were to be composed of eleven judges⁸⁸, all pertaining to different nationalities, to be elected by the UN General Assembly from a list submitted by the UN Security Council. Three judges would serve in each Trial Chamber and five would serve in the Appeals Chamber. The ICTR was located in Arusha (Tanzania) with offices in Kigali and its Appeals Court in the Hague. It was officially closed on December 31, 2015, after convicting a total of 61 individuals⁸⁹.

3.3 Notable ICTR Decisions about the Crime of Genocide

Although it was established more than a year after the International Criminal Tribunal for the former Yugoslavia⁹⁰, the ICTR was the first international tribunal to deal with the crime of genocide and to convict someone for genocide. In doing so, the judges of the tribunal faced hard and important challenges in that they had to interpret the definition of the crime of

⁸⁷ S/RES/955(1994), pages 5-6.

⁸⁸ “(...) The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers due account shall be taken of the experience of the judges in criminal law, international law, including humanitarian law and human rights law. (...)” - S/RES/955(1994), page 8.

⁸⁹ Of the 61 individuals convicted by the ICTR, 32 are still serving their sentence, 22 already completed it and 7 died while serving it.

⁹⁰ The ICTY was established on May 25, 1993.

genocide which had been given in the 1948 Convention with no legal precedence. The tribunal had to establish whether certain situations and crimes constituted genocide or not. Because of this, some decisions of the ICTR assumed a particularly great significance in international law and in following cases.

3.3.1 ICTR-96-4-T: *The Prosecutor v Jean-Paul Akayesu*

Jean-Paul Akayesu is a Rwandan citizen who, at the time of the genocide, was *bourgmestre* of Taba commune (Prefecture of Gitarama)⁹¹ in Rwanda. Before becoming *bourgmestre* of Taba, he had been a teacher in the same commune, where he was born in 1953. Akayesu was arrested on October 10, 1995 in Zambia; upon his arrest, an investigation was immediately ordered by the Prosecutor of the ICTR. The first Indictment against him was submitted on February 13, 1996, later amended on June 17, 1997⁹². Akayesu appeared before Trial Chamber I for the first time on May 30, 1996 and pleaded not guilty to all the fifteen counts against him⁹³. He was charged of genocide, crimes against humanity, incitement to commit genocide and violations of article 3 common to the Geneva Conventions. The accused was charged for individual criminal responsibility according to both paragraph 1⁹⁴ and paragraph 3⁹⁵ of article 6 of the ICTR Statute.

The Akayesu trial is particularly significant because it is the first time in which rape is defined in international law and it is established that rape can

⁹¹ Rwanda was divided into eleven prefectures, under the control of a prefect. Each prefecture was further divided into communes, under the authority of a *bourgmestre*. At the communal level, the *bourgmestre* was the most important authority and was appointed directly by the President of the Republic (following a recommendation of the Minister of the Interior). The *bourgmestre* enjoyed a *de facto* authority which was much greater than the one he had *de jure*.

⁹² Judgement of the International Criminal Tribunal for Rwanda of September 2, 1998, ICTR-96-4-T, *The Prosecutor v Jean-Paul Akayesu*, hereinafter: ICTR-96-4-T.

⁹³ The trial began on January 9, 1997 before Trial Chamber I and its first part ended on May 24 of the same year. After the end of the first part, the Indictment was amended and, at the opening of the second phase, on October 23, 1997, the accused again pleaded not guilty.

⁹⁴ “1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 [genocide, crimes against humanity or violations of Article 3 common to the Geneva Conventions and of Additional Protocol 2] of the present Statute, shall be individually responsible for the crime. (...)” - S/RES/955(1994), pages 5-6.

⁹⁵ “(...) 3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. (...)” - S/RES/955(1994), pages 5-6.

constitute genocide. In this framework, paragraphs 12A and 12B of the indictment assume great importance:

“12A. Between April 7 and the end of June 1994, hundreds of civilians (hereinafter ‘displaced civilians’) sought refuge at the bureau communal. The majority of these displaced civilians were Tutsi. While seeking refuge at the bureau communal, female displaced civilians were regularly taken by armed local militia and/or communal police and subjected to sexual violence, and/or beaten on or near the bureau communal premises. Displaced civilians were also murdered frequently on or near the bureau communal premises. Many women were forced to endure multiple acts of sexual violence which were at times committed by more than one assailant. These acts of sexual violence were generally accompanied by explicit threats of death or bodily harm. The female displaced civilians lived in constant fear and their physical and psychological health deteriorated as a result of the sexual violence and beatings and killings.

12B. **Jean Paul AKAYESU** knew that the acts of sexual violence, beatings and murders were being committed and was at times present during their commission. **Jean Paul AKAYESU** facilitated the commission of the sexual violence, beatings and murders by allowing the sexual violence and beatings and murders to occur on or near the bureau communal premises. By virtue of his presence during the commission of the sexual violence, beatings and murders and by failing to prevent the sexual violence, beatings and murders, **Jean Paul AKAYESU** encouraged these activities”⁹⁶.

The Chamber heard many Witnesses during the trial in order to verify the allegations of sexual violence of which the accused was charged⁹⁷. The

⁹⁶ ICTR-96-4-T.

⁹⁷ The identity of the Witnesses was protected for the entire duration of the trial and they were referred to with letters of the alphabet (e.g. Witness JJ). Moreover, it is important to note that all Witnesses were cross-examined by the Prosecutor and by the Defense, so as to ensure maximum transparency.

testimonies led the Chamber to “(...) establish beyond reasonable doubt that during the events of 1994, Tutsi girls and women were subjected to sexual violence, beaten and killed (...)”⁹⁸. Moreover, the Chamber found that the evidence provided by the Witnesses proved “(...) beyond reasonable doubt that the Accused had reason to know and in fact knew that sexual violence was taking place (...)”⁹⁹.

One of the most significant aspects of this trial is the identification of rape as a form of perpetrating genocide. The definition given to the crime of genocide in the 1948 Convention is very broad, but it does include, in its article 2(d), “imposing measures intended to prevent births within the group”¹⁰⁰. It is in the framework of this paragraph of article 2 that the Chamber interpreted rape as a way to perpetrate genocide:

“(...) the measures intended to prevent births within the group, should be construed as sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes and prohibition of marriages. In patriarchal societies, where membership of a group is determined by the identity of the father, an example of a measure intended to prevent births within a group is the case where, during rape, a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother's group. Furthermore, the Chamber notes that measures intended to prevent births within the group may be physical, but can also be mental. For instance, rape can be a measure intended to prevent births when the person raped refuses subsequently to procreate, in the same way that members of a group can be led, through threats or trauma, not to procreate”¹⁰¹.

⁹⁸ ICTR-96-4-T.

⁹⁹ *Ibidem*.

¹⁰⁰ Convention on the Prevention and Punishment of the Crime of Genocide, 1948, article 2(d).

¹⁰¹ ICTR-96-4-T.

The importance of this identification lays in the precedence that it constitutes. In fact, having codified rape as a form of genocide under paragraph (d) of the definition of genocide itself, it allows future situations analogue to this to be solved in a much more straightforward way.

Moreover, in this Judgement, the Chamber also found itself in need of a definition of rape under international law. In fact, although a definition of that crime had already been provided in some national jurisdictions, some Witnesses had provided testimonies of acts which indeed constituted rape but were not fitting the available definition. First of all, the Chamber stated that “(...) rape is a form of aggression and (...) the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts (...)”¹⁰². It went on to delineate rape:

“The Chamber defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence which includes rape, is considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive. This act must be committed:

- a. as part of a widespread or systematic attack;
- b. on a civilian population;
- c. on certain catalogued discriminatory grounds, namely:
national, ethnic, political, racial, or religious grounds”¹⁰³.

His defense was based on the fact that he did not know about the brutal things happening in Taba and that, even if he had known, he would have had no way to stop them. The Defense basically insisted that he was treated like a scapegoat. On September 2, 1998, the verdict against Jean-Paul Akayesu was pronounced and it was the very first verdict of the International Criminal Tribunal for Rwanda. The Chamber unanimously found him guilty of genocide (including rape), of direct and public incitement to commit genocide and of crimes against humanity (extermination, murder, torture, rape and other

¹⁰² *Ibidem*.

¹⁰³ *Ibidem*.

inhumane acts). The Chamber found he had no individual criminal responsibility for the alleged violations of common article 3 to the Geneva Conventions (murder and cruel treatment), because there was no proof that he was acting as member of one of the Parties to the conflict happening in Rwanda at the time of the genocide. He was sentenced to life in prison, which was the maximum sentence allowed by the ICTR Statute in its article 23¹⁰⁴.

3.3.2 ICTR-97-23-S: *The Prosecutor v Jean Kambanda*

Jean Kambanda was born in 1955 in Gishamvu commune, Rwanda. He was Prime Minister of Rwanda from April 8, 1994 (after the assassination of Agathe Uwilingiyimana) to mid-July of the same year, when he fled his country after the RPF had seized control of it. He was arrested in Kenya, by Kenyan authorities, after a request had been sent to them by the Prosecutor. In the Indictment of October 1997¹⁰⁵, Kambanda was charged of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, complicity in genocide and crimes against humanity (murder and extermination) for a total of six counts.

When he first appeared in front of the Trial Chamber, on May 1, 1998, Kambanda pleaded guilty to all the six counts listed in the Indictment. The Chamber proceeded to verify the validity of the guilty plea by asking the accused three questions: if he pronounced the plea voluntarily and without pressures or threats; if he understood the charges against him and the meaning and consequences of a guilty plea and if he realized that he would not be able to refute his guilty plea in any moment¹⁰⁶. Because he answered positively to all these questions, the Chamber proceeded to consider all meaningful factors for the conveying of the verdict. He was found guilty of all six counts and sentenced to life imprisonment on September 4, 1998.

¹⁰⁴ “1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. (...)” - S/RES/955(1994), page 13.

¹⁰⁵ Indictment of the International Criminal Tribunal for Rwanda of October 28, 1997, ICTR-97-23-DP, *The Prosecutor v Jean Kambanda*, hereinafter: ICTR-97-23-DP.

¹⁰⁶ Judgement and Sentence of the International Criminal Tribunal for Rwanda of September 4, 1998, ICTR-97-23-S, *The Prosecutor v Jean Kambanda*, hereinafter: ICTR-97-23-S.

This judgement is particularly significant because it shows the application of the principle laid down in paragraph 2 of article 6 of the ICTR Statute¹⁰⁷, according to which the fact that a person who has been found guilty of one of the crimes under the jurisdiction of the tribunal shall not be relieved of his or her responsibility because of his or her institutional position. Jean Kambanda was, in fact, Head of the Government of Rwanda at the time of the genocide and, in that capacity, committed the crimes he was found guilty of. The Chamber considered the fact that he had plead guilty to all counts as a possible reason to diminish the punishment¹⁰⁸, but ruled against it. In fact, it stated that it found that “(...) the principle must always remain that the reduction of the penalty stemming from the application of mitigating circumstances must not in any way diminish the gravity of the offense (...)”¹⁰⁹. Because the crimes committed by Kambanda carried a great intrinsic gravity, his guilty plea was not enough to mitigate his sentence.

3.3.3 ICTR-99-52: *The Prosecutor v Jean-Bosco Barayagwiza*

Jean-Bosco Barayagwiza was born in Mutara commune, Gisenyi prefecture, Rwanda in 1950. After having been trained as a lawyer and having been a political director in the Ministry of Foreign Affairs, he was, in 1990, among the founders of the newspaper *Kangura*¹¹⁰. Furthermore, in 1992, he was among the founders of the *Coalition pour la Défense de la République* (CDR), a far-right Hutu party. He was also among the founders, in 1993, of the private company *Radio Télévision Libre des Mille Collines* and was a senior official at its radio station, exercising control over its reporters, announcers and broadcasters. He was a very influential person and a member of the inner circle of Colonel Bagosora¹¹¹. Barayagwiza was first captured in Cameroon in March

¹⁰⁷ “(...) 2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment. (...)” - S/RES/955(1994), page 6.

¹⁰⁸ A guilty plea is considered a factor to be taken into account for a mitigation of the sentence in many national law systems, including that of Rwanda.

¹⁰⁹ ICTR-97-23-S.

¹¹⁰ In December 1990, the newspaper *Kangura* published the *Ten Commandments of the Hutu*.

¹¹¹ Amended Indictment of the International Criminal Tribunal for Rwanda of April 13, 2000, ICTR-99-52, (*Nahimana et al. - Media Case*), *The Prosecutor v Jean-Bosco Barayagwiza*, hereinafter: ICTR-99-52, page 13.

1996. In February 1997, a formal request was made by the Rwandan Government for his extradition so that he could stand trial before the ICTR, but was denied and Barayagwiza was freed. A few days later, however, he was arrested and detained on the basis of a request of the Prosecution.

The initial indictment against the accused was filed in October 1997 charging him with seven counts: genocide, complicity to commit genocide, direct and public incitement to commit genocide, conspiracy to commit genocide and crimes against humanity (murder, extermination and persecution). The charge of extermination was later withdrawn by the Prosecution and, when Barayagwiza first appeared in front of Trial Chamber II on February 23, 1998, he pleaded not guilty to all the remaining six counts. Later on in the investigation, in June 1998, the Prosecution asked to amend the initial Indictment adding three counts: crimes against humanity (extermination), violations of article 3 common to the Geneva Conventions and of Additional Protocol II and an expansion of the charge of conspiracy to commit genocide. The amendment was granted on April 11, 2003¹¹². He refused to express his plea to the new counts, and so was assigned a non-guilty plea for all three new counts.

In the Amended Indictment, it is stated clearly that Barayagwiza had been among the masterminds behind the genocide:

“5.1 From 1990 until December 1994, **Jean-Bosco Barayagwiza**, Ferdinand Nahimana, Félicien Kabuga, Hassan Ngeze and Georges Ruggiu conspired among themselves and with others to work out a plan with the intent to exterminate the civilian Tutsi population and eliminate members of the opposition. The components of this plan consisted of, among other things, the broadcasting of messages of ethnic hatred and incitement to violence, the training of and distribution of weapons to militiamen, as well as the preparation of lists of people to be eliminated and the broadcasting of their

¹¹² Judgement and Sentence of the International Criminal Tribunal for Rwanda of December 3, 2003, ICTR-99-52-T, (*Nahimana et al. - Media Case*), *The Prosecutor v Ferdinand Nahimana, Jean-Bosco Barayagwiza and Hassan Ngeze*, hereinafter: ICTR-99-52-T, page 7.

identities. In executing the plan, they organized and ordered the massacres perpetrated against the Tutsi population and moderate Hutu, and at the same time incited, aided and participated in them”¹¹³.

After having heard several Witnesses and having closely examined the evidence provided by the ongoing investigation, Trial Chamber I unanimously found Barayagwiza guilty of conspiracy to commit genocide, genocide, direct and public incitement to commit genocide and crimes against humanity (extermination and persecution); it also found him not guilty of complicity in genocide, crimes against humanity (murder) and serious violations of article 3 common to the Geneva Conventions and of Additional Protocol II. He was sentenced to life in prison. However, the Appeals Chamber later ruled that, because his rights had been violated during his initial detentions, he should be compensated for such violations with a reduced sentence. Because of this ruling, he was sentenced to 35 years’ imprisonment, which were reduced to 27 years, three months and twenty-one days thanks to the seven years he spent in prison in Cameroon¹¹⁴.

The significance of this Judgement lays primarily in the fact that it recognized the importance of propaganda before and during the genocide, both through newspapers and the radio. In particular, it clearly states the pivotal role of *Radio Mille Collines* in the carrying out of the genocide as the means through which the killing lists were broadcast and shared with the killers. It also shows how the preparation for the genocide took approximately four years and how much importance was held by the killing lists in the carrying out of the atrocities.

¹¹³ ICTR-99-52, page 14.

¹¹⁴ ICTR-99-52-T, page 365.

3.4 A Recovering Rwanda

The toll of the genocide was extremely heavy on Rwanda and its citizens. Paul Kagame, leader of the RPF at the time of the genocide, is currently serving his third term as President of the Republic of Rwanda. It has taken a great deal of work to begin to recover from such a terrible event and a great deal of strength. Many Rwandans who survived the atrocities lost everything because of the genocide, they lost their homes but also the ability to work because of the injuries they sustained. Many survivors fled Rwanda and never went back; many others could not bear to live and tried to kill themselves multiple times.

Twenty-five years after the genocide, the process of national reconciliation is still in the making and is far from being completed. The new Rwandan adults are the children of the genocide and most of them are still haunted by the memories of the events.

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SUMMARY IN ITALIAN

Nel 1908, i Giovani Turchi presero il potere nell'Impero Ottomano e iniziarono un periodo di rivoluzione volto a riportare l'impero alla sua gloria passata. L'impero, infatti, stava attraversando un periodo di crisi, specialmente nelle zone di confine e per via delle diverse etnie che lo abitavano, tra cui gli Armeni, una minoranza cristiana concentrata principalmente nell'Anatolia orientale.

Quando, nel 1914, l'Impero Ottomano entrò in guerra alleato della Germania contro Regno Unito, Francia e Russia, attaccò subito ad est per conquistare territori russi. Dopo la pesante sconfitta nella battaglia di Sarikamish (gennaio 1915), il governo ottomano accusò gli Armeni che abitavano in quelle zone di essere responsabili per la sconfitta. Nell'aprile 1915, alcuni intellettuali armeni furono catturati, torturati e uccisi a Costantinopoli su ordine diretto del governo, guidato da Mehmed Talaat. Poco dopo, tutti i soldati Armeni vennero disarmati ed espulsi dall'esercito. Fu l'inizio di una serie di deportazioni sistematiche della popolazione armena, ufficialmente descritte come campagne di ricollocamento. Gli Armeni furono obbligati a muoversi a piedi, lasciando le proprie case e ogni bene di loro proprietà, sotto il controllo dell'esercito e sottoposti a numerosi atti di violenza, tra cui stupri e pestaggi.

Poiché le atrocità iniziarono in tempo di guerra, gli armeni morti vennero mascherati come "effetti collaterali" della guerra, anche grazie alle scarse prove disponibili di quanto stava accadendo. La Germania, alleata dell'Impero Ottomano, sostenne il governo di Talaat dichiarando che una azione decisa era necessaria contro una minoranza ribelle come quella degli Armeni. Francia e Regno Unito denunciarono pubblicamente quanto stava accadendo, ma non andarono oltre poiché l'obiettivo primario era vincere la guerra. Gli Stati Uniti rimasero fuori dal dibattito sulla questione degli Armeni poiché non avevano alcun interesse diretto in gioco.

All'inizio della prima guerra mondiale, c'erano circa 2 milioni di Armeni nell'Impero Ottomano; alla fine della guerra erano stati quasi dimezzati.

Il termine “genocidio” è una combinazione del termine greco γένος (*genos*), che significa razza, popolo, e del verbo latino *caedere*, che significa uccidere. Fu coniato da Raphael Lemkin, un giurista ebreo-Polacco, nel 1944. Il processo che portò Lemkin a sviluppare questo termine iniziò nel 1921, quando lesse una notizia relativa all’omicidio di Mehmed Talaat. Lemkin non si capacitava di come un uomo responsabile per la morte di un milione di persone potesse non essere sottoposto a processo, mentre il suo assassino sì. Questo episodio diede inizio ad un lavoro che portò Lemkin, nel 1933, a scrivere una proposta di legge, da presentare ad una conferenza giuridica, in cui venivano proibite le “barbarie” e il “vandalismo”. La proposta fu fallimentare.

Nel 1939, quando la Germania invase la Polonia, Lemkin fu costretto a fuggire e intraprendere un viaggio che lo portò, attraverso vari Paesi europei, ad arrivare negli USA. Durante i suoi molteplici spostamenti, Lemkin raccolse documenti e prove di quanto stava accadendo nei Paesi sotto il controllo dei Nazisti e, una volta giunto negli USA, iniziò a divulgare i materiali che aveva raccolto. Poiché molti stentavano a credere a ciò che egli affermava, Lemkin realizzò che doveva coniare un nuovo termine che, nell’immaginario comune, rimandasse non solo a ciò che i nazisti stavano facendo contro gli ebrei, ma anche a ogni situazione futura che vi somigliasse. Così nacque il termine “genocidio”.

Alla fine della seconda guerra mondiale, con la liberazione dei campi di concentramento, la follia di Hitler venne rivelata in tutta la sua drammaticità, insieme ai 6 milioni di ebrei e 5 milioni di comunisti, rom, ecc. che ne furono vittime. La prima menzione ufficiale del termine “genocidio” avvenne in riferimento alle atrocità naziste durante i Processi di Norimberga.

Nonostante la prima menzione ai Processi di Norimberga, dei 19 individui condannati nel 1946 nessuno fu condannato per genocidio, ma soltanto per crimini contro la pace, crimini di guerra e crimini contro l’umanità.

Nello stesso periodo, l’Assemblea Generale delle neonate Nazioni Unite stava iniziando a pianificare l’agenda dei lavori per la sessione dell’autunno 1946. Lemkin tornò subito a New York e iniziò ad abbozzare una Risoluzione riguardante il genocidio. La sua insistenza nel tentativo di convincere i delegati

della necessità di prendere posizione riguardo al genocidio venne ripagata grazie al sostegno del delegato inglese e così la risoluzione fu inserita nell'agenda. Lemkin utilizzò la sua abilità comunicativa per ottenere quanto più sostegno possibile, modificando i suoi interventi a seconda degli interessi dello Stato rappresentato dal delegato con cui stava parlando. L'11 dicembre 1946, l'Assemblea Generale dell'ONU approvò all'unanimità la sua Risoluzione 96(I) sul genocidio, descrivendolo come una questione di interesse internazionale e senza distinzioni relative al responsabile né alle possibili cause.

La Risoluzione del 1946 incaricava le Nazioni Unite di iniziare la stesura di una Convenzione volta ad identificare, punire e prevenire il genocidio. Lemkin prese parte alla fase iniziale della redazione del documento su invito dell'allora Segretario Generale dell'ONU, Trygve Lie. Nell'autunno del 1948, la Commissione Legale dell'Assemblea Generale approvò la bozza della Convenzione per la Prevenzione e Punizione del Crimine di Genocidio, che venne approvata all'unanimità a Parigi il 9 dicembre 1948.

Molti articoli della Convenzione rappresentano espansioni di concetti espressi dalla Risoluzione del 1946. Il documento del 1948 inizia ripetendo che il genocidio è un crimine nel diritto internazionale, sia in tempo di guerra che in tempo di pace. Nell'articolo 2 viene definito il crimine di genocidio, e nell'articolo 3 vengono elencati gli atti che devono essere considerati genocidio e, in quanto tali, puniti. La Convenzione entrò in vigore il 12 gennaio 1951, dopo essere stata ratificata da venti Stati.

Nella Convenzione del 1948, la giurisdizione sui crimini di genocidio venne affidata a tribunali competenti nello Stato dove il crimine è stato commesso, oppure a un tribunale internazionale, la cui autorità sia riconosciuta dallo Stato in questione. Non venne istituito un tribunale internazionale permanente poiché i redattori ritennero che gli Stati Membri non fossero ancora pronti ad accettare una simile cessione di sovranità. Secondo l'articolo 7 della Carta delle Nazioni Unite, le stesse Nazioni Unite hanno l'autorità per istituire tribunali speciali

internazionali, che furono necessari, per la prima volta in materia di genocidio, nel 1993 e nel 1994, rispettivamente nella ex-Yugoslavia e in Rwanda.

Il Tribunale Penale Internazionale per la ex-Yugoslavia fu istituito nel maggio del 1993 in seguito alle atrocità commesse durante il conflitto nei Balcani dall'inizio degli anni '90. Fu istituito con giurisdizione su diverse categorie di crimini commessi nella regione, e il genocidio era tra questi. Le condanne per genocidio effettuate da questo tribunale riguardano principalmente i responsabili del massacro avvenuto a Srebrenica nel 1995.

Nel novembre 1994, il Consiglio di Sicurezza dell'ONU istituì il Tribunale Penale Internazionale per il Rwanda, con giurisdizione sulle atrocità commesse nella regione nella prima parte dello stesso anno. Anche se fu istituito dopo, fu il primo tribunale a condannare criminali per genocidio e ad applicarne la definizione.

Nel luglio 2002 fu istituita la Corte Penale Internazionale, un tribunale internazionale permanente con giurisdizione su quattro categorie di crimini: genocidio, crimini di guerra, crimini contro l'umanità e crimini di aggressione.

Il Rwanda è un piccolo Stato dell'Africa centro-orientale con una popolazione, nel 1994, di circa 6 milioni. Il *banyarwanda* (la popolazione del Rwanda) è formata da tre etnie principali: Hutu, l'85% della popolazione, Tutsi, il 14% e Twa, che furono i primi a stabilirsi nella regione ma oggi costituiscono solo l'1% della popolazione.

Negli anni '20 del 1900, i coloni belga imposero una struttura socio-economica in cui i Tutsi occupavano le posizioni di rilievo nonostante fossero una minoranza. Questo portò alla nascita di sentimenti razzisti nei confronti dei Tutsi da parte degli Hutu, che culminarono con la fondazione, nel 1957, del partito di estrema destra *Parmehutu*. L'abbandono del Paese dalla potenza coloniale tra il 1961 e il 1962 causò un vuoto di potere che sia Hutu che Tutsi cercarono di colmare; fu il leader del *Parmehutu* a diventare il primo presidente della Repubblica del Rwanda. Migliaia di Tutsi lasciarono il Paese per paura di ripercussioni. Nel 1973, un estremista Hutu assunse la presidenza e impose un sistema mono-partitico in cui i Tutsi vennero largamente

emarginati. Questo portò gli estremisti Tutsi a fondare un esercito, il Fronte Patriottico Rwandese, per combattere gli estremisti Hutu. Nell'ottobre del 1990 iniziò una sanguinosa guerra civile che durò fino al luglio del 1992, quando le parti avviarono le negoziazioni per gli Accordi di Arusha, che vennero firmati nell'agosto 1993.

Poco dopo la firma degli Accordi di Arusha, gli estremisti Hutu che non supportavano la pace con i Tutsi iniziarono ad addestrare e ad armare l'*interahamwe*, il loro esercito, per sterminare i Tutsi. Importarono armi, soprattutto machete e prepararono liste contenenti nomi e indirizzi delle vittime. *Radio Mille Collines* iniziò a trasmettere incitazioni alla violenza e i nomi delle vittime designate.

La notte del 6 aprile 1994, l'aereo presidenziale fu vittima di un attacco all'aeroporto di Kigali. Gli estremisti Hutu incolparono immediatamente i Tutsi del Fronte Patriottico Rwandese e le autorità imposero un coprifuoco e innalzarono posti di blocco in tutta la capitale. Gli estremisti presero controllo dell'esercito e di Kigali. Iniziarono una serie di brutali uccisioni che portarono, tra l'aprile e il luglio del 1994, alla morte di circa 800,000 persone tra Tutsi, Twa e Hutu moderati. Le uccisioni vennero perpetrate principalmente con machete e con l'aiuto delle liste di vittime trasmesse alla radio.

Nella prima metà del 1993, l'ONU inviò in Rwanda un Osservatore Speciale per monitorare il rispetto dei diritti umani nel Paese e la tenuta del cessate il fuoco. Nell'agosto, la Missione di Osservazione dell'ONU fu mandata sul campo per aiutare le parti a mantenere gli accordi di pace e fu seguita, a ottobre, da una Missione di *Peacekeeping*, capitanata dal Generale canadese Romeo Dallaire.

Nel gennaio 1994, Dallaire ricevette informazioni riguardanti l'addestramento dell'*interahamwe* ma, nonostante la richiesta di ampliamento del suo mandato, ricevette ordini di non intervenire. Anche quando iniziarono le uccisioni, la notte del 6 aprile, gli ordini per Dallaire e le sue truppe rimasero invariati. Il 10 aprile, Dallaire aveva compreso che le stragi che stavano accadendo in Rwanda erano motivate dalla differenza di etnia. Egli inviò

ripetute richieste per l'estensione del suo mandato e per l'aumento dei soldati sotto il suo comando, ma gli vennero entrambe negate, fino alla metà di maggio, quando il Consiglio di Sicurezza dell'ONU approvò una Risoluzione per l'aumento delle truppe.

Il genocidio in Rwanda avvenne in un momento in cui la comunità internazionale era molto scettica riguardo alla possibilità di un intervento in Africa. Infatti, nell'ottobre del 1993, gli Stati Uniti avevano subito una pesante umiliazione nell'ambito dell'operazione *Restore Hope* in Somalia, che portò l'Amministrazione guidata da Bill Clinton a spingere contro altre operazioni simili. Questo clima di sfiducia portò la comunità internazionale a sorvolare sulla gravità di ciò che stava accadendo in Rwanda.

Il 9 aprile, a tre giorni e già migliaia di morti dall'inizio della strage, le autorità di Belgio, Francia, Italia e Stati Uniti inviarono ciascuna delle truppe con il compito specifico di prelevare e portare in salvo i propri connazionali. Le stesse truppe abbandonarono le centinaia di Tutsi che chiesero loro aiuto.

Ci volle diverso tempo anche per ammettere che ciò che stava accadendo in Rwanda fosse genocidio. La comunità internazionale temeva, infatti, che utilizzare il termine "genocidio" avrebbe costituito per loro un obbligo ad intervenire per porre fine alle atrocità. Ciononostante, i media occidentali offrivano descrizioni accurate di ciò che stava accadendo in Rwanda, anche grazie alla disponibilità offerta da Dallaire, che li riteneva l'unico strumento a sua disposizione per smuovere i governi. Anche le persone evacuate dal Rwanda pochi giorni dopo l'inizio del genocidio tentarono di spiegare cosa stava succedendo, ma ebbero scarso successo. Il FPR denunciò pubblicamente il rifiuto dei governi occidentali di inviare loro supporto.

Varie organizzazioni internazionali pubblicarono stime che identificavano il numero di vittime tra 100,000 e 300,000 e chiesero formalmente al Consiglio di Sicurezza dell'ONU di iniziare ad usare il termine "genocidio". Era l'inizio di giugno quando il Consiglio di Sicurezza dell'ONU definì per la prima volta genocidio quello che stava accadendo in Rwanda, e solo la fine di giugno quando alcuni governi decisero autonomamente di inviare delle truppe per cercare di porre fine alla strage.

Il brutale genocidio in Rwanda finì nel luglio 1994. Durò poco più di tre mesi e causò tra 800,000 e 1,000,000 di vittime.

Anche se fu fondato più di un anno dopo il Tribunale Penale Internazionale per la ex-Yugoslavia, il Tribunale Penale Internazionale per il Rwanda fu il primo a trattare di genocidio e a condannare qualcuno per averlo commesso. Per questo motivo, i giudici del Tribunale per il Rwanda si ritrovarono a dover affrontare alcune sfide, in quanto dovettero interpretare la definizione di genocidio della Convenzione del 1948 senza alcun precedente. Dovettero inoltre stabilire se determinate situazioni costituissero genocidio oppure no. Alla luce di questo, è chiaro come alcune decisioni prese dal Tribunale per il Rwanda siano particolarmente significative.

La prima sentenza del Tribunale Penale Internazionale per il Rwanda fu pronunciata il 2 settembre 1998 contro Jean-Paul Akayesu. Durante il genocidio, egli ricopriva la carica di *bourgmestre* della *commune* di Taba, avendo quindi un ruolo di grande rilievo e una autorità *de facto* molto grande sul territorio. Nel processo a suo carico, che iniziò nel febbraio 1996, Akayesu fu accusato di genocidio, crimini contro l'umanità, incitamento al genocidio e violazioni dell'articolo 3 comune alle Convenzioni di Ginevra del 1949, per un totale di quindici capi d'accusa. Alla sua prima comparsa davanti al tribunale, egli si dichiarò innocente per tutti i quindici capi d'accusa.

Il processo contro Akayesu è particolarmente importante perché costituisce il primo caso in cui lo stupro viene definito nel diritto internazionale (fino a questo momento ne esistevano solo definizioni in alcuni sistemi giudiziari nazionali) e viene anche stabilito che lo stupro può costituire genocidio.

Akayesu fu condannato, nel settembre 1998, per genocidio (compresi gli atti di stupro), per incitamento al genocidio e per crimini contro l'umanità (sterminio, omicidio, tortura, stupro e altri atti inumani). Fu condannato all'ergastolo, la massima pena che il Tribunale per il Rwanda poteva stabilire.

Jean Kambanda fu Primo Ministro del Rwanda dall'8 aprile 1994 fino alla metà di luglio dello stesso anno, quando lasciò il Paese dopo che il Fronte Patriottico Rwandese ne prese il controllo. Il processo a suo carico iniziò nell'ottobre 1997 e Kambanda fu accusato di genocidio, incitamento al genocidio, complicità in genocidio, cospirazione per commettere genocidio e crimini contro l'umanità (omicidio e sterminio), per un totale di sei capi d'accusa. Alla sua prima comparsa davanti al tribunale nel maggio 1998, egli si dichiarò colpevole di tutti i capi d'accusa.

Questo processo è particolarmente significativo in quanto offre una prova del principio, enunciato per la prima volta nella Risoluzione del 1946, per cui coloro che sono colpevoli di genocidio devono essere puniti, anche se ricoprivano posizioni di rilievo istituzionali durante lo stesso.

Dopo aver verificato la sua sincerità nel dichiararsi colpevole e aver considerato tutti i fatti rilevanti per provare che lo fosse, il tribunale lo dichiarò colpevole per tutti i sei capi d'accusa e lo condannò all'ergastolo, con una sentenza datata 4 settembre 1998.

Jean-Bosco Barayagwiza fu, nel 1993, tra i fondatori dell'azienda privata *Radio Télévision Libre des Mille Collines* e, facendo parte del consiglio di amministrazione della stessa, esercitava un grande controllo sui programmi che trasmetteva e sui reporter. Nel processo a suo carico che iniziò nell'ottobre 1997, Barayagwiza fu accusato di genocidio, complicità in genocidio, incitamento al genocidio, cospirazione per commettere genocidio e crimini contro l'umanità (omicidio, sterminio e persecuzione), per un totale di sette capi d'accusa; egli si dichiarò innocente per tutti.

Barayagwiza fu identificato come uno dei primi ideatori del genocidio in Rwanda, i progetti del quale iniziarono nel 1990. Egli fu condannato all'ergastolo per genocidio, cospirazione per commettere genocidio, incitamento al genocidio, complicità in genocidio, crimini contro l'umanità (omicidio, sterminio e persecuzione) e violazioni dell'articolo 3 comune alle Convenzioni di Ginevra e del Protocollo Aggiuntivo II. Poiché, prima dell'inizio del processo a suo carico, era stato detenuto ingiustamente senza un mandato, la sua pena fu successivamente ridotta a 27 anni, 3 mesi e 21 giorni.

L'importanza di questa sentenza è rappresentata dal riconoscimento del ruolo fondamentale ricoperto dalla propaganda prima e durante il genocidio e che *Radio Mille Collines* fu uno dei mezzi attraverso cui il genocidio fu realizzato.

Il prezzo che il Rwanda e suoi abitanti dovettero pagare per il genocidio fu molto alto. Molti dei sopravvissuti dovettero modificare completamente la loro vita a causa di ferite invalidanti; altri fuggirono e non tornarono più in Rwanda; altri, non sopportando di essere sopravvissuti, tentarono il suicidio.

A 25 anni del genocidio, il processo di riconciliazione è ancora in corso ed è ancora lontano dal completamento. Gli adulti di oggi sono figli del genocidio, la cui memoria ancora li tormenta.

APPENDIX: S/RES/955(1994)



Security Council

Distr.
GENERAL

S/RES/955 (1994)*
8 November 1994

RESOLUTION 955 (1994)

Adopted by the Security Council at its 3453rd meeting,
on 8 November 1994

The Security Council,

Reaffirming all its previous resolutions on the situation in Rwanda,

Having considered the reports of the Secretary-General pursuant to paragraph 3 of resolution 935 (1994) of 1 July 1994 (S/1994/879 and S/1994/906), and having taken note of the reports of the Special Rapporteur for Rwanda of the United Nations Commission on Human Rights (S/1994/1157, annex I and annex II),

Expressing appreciation for the work of the Commission of Experts established pursuant to resolution 935 (1994), in particular its preliminary report on violations of international humanitarian law in Rwanda transmitted by the Secretary-General's letter of 1 October 1994 (S/1994/1125),

Expressing once again its grave concern at the reports indicating that genocide and other systematic, widespread and flagrant violations of international humanitarian law have been committed in Rwanda,

Determining that this situation continues to constitute a threat to international peace and security,

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the process of national reconciliation and to the restoration and maintenance of peace,

* Reissued for technical reasons.

Believing that the establishment of an international tribunal for the prosecution of persons responsible for genocide and the other above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed,

Stressing also the need for international cooperation to strengthen the courts and judicial system of Rwanda, having regard in particular to the necessity for those courts to deal with large numbers of suspects,

Considering that the Commission of Experts established pursuant to resolution 935 (1994) should continue on an urgent basis the collection of information relating to evidence of grave violations of international humanitarian law committed in the territory of Rwanda and should submit its final report to the Secretary-General by 30 November 1994,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides hereby, having received the request of the Government of Rwanda (S/1994/1115), to establish an international tribunal for the sole purpose of prosecuting 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 in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 and to this end to adopt the Statute of the International Criminal Tribunal for Rwanda annexed hereto;

2. Decides that all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall take any measures necessary under their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 28 of the Statute, and requests States to keep the Secretary-General informed of such measures;

3. Considers that the Government of Rwanda should be notified prior to the taking of decisions under articles 26 and 27 of the Statute;

4. Urges States and intergovernmental and non-governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel;

5. Requests the Secretary-General to implement this resolution urgently and in particular to make practical arrangements for the effective functioning of the International Tribunal, including recommendations to the Council as to possible locations for the seat of the International Tribunal at the earliest time and to report periodically to the Council;

6. Decides that the seat of the International Tribunal shall be determined by the Council having regard to considerations of justice and fairness as well as administrative efficiency, including access to witnesses, and economy, and subject to the conclusion of appropriate arrangements between

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the United Nations and the State of the seat, acceptable to the Council, having regard to the fact that the International Tribunal may meet away from its seat when it considers it necessary for the efficient exercise of its functions; and decides that an office will be established and proceedings will be conducted in Rwanda, where feasible and appropriate, subject to the conclusion of similar appropriate arrangements;

7. Decides to consider increasing the number of judges and Trial Chambers of the International Tribunal if it becomes necessary;

8. Decides to remain actively seized of the matter.

Annex

Statute of the International Tribunal for Rwanda

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, the International Criminal Tribunal for the Prosecution of 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 in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 (hereinafter referred to as "the International Tribunal for Rwanda") shall function in accordance with the provisions of the present Statute.

Article 1

Competence of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, in accordance with the provisions of the present Statute.

Article 2

Genocide

1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

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- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article 3

Crimes against humanity

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation;
- (e) Imprisonment;
- (f) Torture;
- (g) Rape;
- (h) Persecutions on political, racial and religious grounds;
- (i) Other inhumane acts.

Article 4

Violations of Article 3 common to the Geneva
Conventions and of Additional Protocol II

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

- (a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- (b) Collective punishments;
- (c) Taking of hostages;
- (d) Acts of terrorism;
- (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- (f) Pillage;
- (g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;
- (h) Threats to commit any of the foregoing acts.

Article 5

Personal jurisdiction

The International Tribunal for Rwanda shall have jurisdiction over natural persons pursuant to the provisions of the present Statute.

Article 6

Individual criminal responsibility

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present Statute, shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.

Article 7

Territorial and temporal jurisdiction

The territorial jurisdiction of the International Tribunal for Rwanda shall extend to the territory of Rwanda including its land surface and airspace as well as to the territory of neighbouring States in respect of serious violations of international humanitarian law committed by Rwandan citizens. The temporal jurisdiction of the International Tribunal for Rwanda shall extend to a period beginning on 1 January 1994 and ending on 31 December 1994.

Article 8

Concurrent jurisdiction

1. The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

2. The International Tribunal for Rwanda shall have primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda.

Article 9

Non bis in idem

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal for Rwanda.

2. A person who has been tried by a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal for Rwanda only if:

(a) The act for which he or she was tried was characterized as an ordinary crime; or

(b) The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal for Rwanda shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

Article 10

Organization of the International Tribunal for Rwanda

The International Tribunal for Rwanda shall consist of the following organs:

(a) The Chambers, comprising two Trial Chambers and an Appeals Chamber;

(b) The Prosecutor; and

(c) A Registry.

Article 11

Composition of the Chambers

The Chambers shall be composed of eleven independent judges, no two of whom may be nationals of the same State, who shall serve as follows:

(a) Three judges shall serve in each of the Trial Chambers;

(b) Five judges shall serve in the Appeals Chamber.

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Article 12

Qualification and election of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

2. The members of the Appeals Chamber of 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 (hereinafter referred to as "the International Tribunal for the Former Yugoslavia") shall also serve as the members of the Appeals Chamber of the International Tribunal for Rwanda.

3. The judges of the Trial Chambers of the International Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for judges of the Trial Chambers from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

(b) Within thirty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in paragraph 1 above, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge on the Appeals Chamber;

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twelve and not more than eighteen candidates, taking due account of adequate representation on the International Tribunal for Rwanda of the principal legal systems of the world;

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the six judges of the Trial Chambers. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-Member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

4. In the event of a vacancy in the Trial Chambers, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of paragraph 1 above, for the remainder of the term of office concerned.

5. The judges of the Trial Chambers shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Tribunal for the Former Yugoslavia. They shall be eligible for re-election.

Article 13

Officers and members of the Chambers

1. The judges of the International Tribunal for Rwanda shall elect a President.

2. After consultation with the judges of the International Tribunal for Rwanda, the President shall assign the judges to the Trial Chambers. A judge shall serve only in the Chamber to which he or she was assigned.

3. The judges of each Trial Chamber shall elect a Presiding Judge, who shall conduct all of the proceedings of that Trial Chamber as a whole.

Article 14

Rules of procedure and evidence

The judges of the International Tribunal for Rwanda shall adopt, for the purpose of proceedings before the International Tribunal for Rwanda, the rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters of the International Tribunal for the Former Yugoslavia with such changes as they deem necessary.

Article 15

The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

2. The Prosecutor shall act independently as a separate organ of the International Tribunal for Rwanda. He or she shall not seek or receive instructions from any Government or from any other source.

3. The Prosecutor of the International Tribunal for the Former Yugoslavia shall also serve as the Prosecutor of the International Tribunal for Rwanda. He or she shall have additional staff, including an additional Deputy Prosecutor, to assist with prosecutions before the International Tribunal for Rwanda. Such

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staff shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

Article 16

The Registry

1. The Registry shall be responsible for the administration and servicing of the International Tribunal for Rwanda.

2. The Registry shall consist of a Registrar and such other staff as may be required.

3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the International Tribunal for Rwanda. He or she shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.

4. The staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar.

Article 17

Investigation and preparation of indictment

1. The Prosecutor shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from Governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.

2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.

3. If questioned, the suspect shall be entitled to be assisted by counsel of his or her own choice, including the right to have legal assistance assigned to the suspect without payment by him or her in any such case if he or she does not have sufficient means to pay for it, as well as to necessary translation into and from a language he or she speaks and understands.

4. Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

Article 18

Review of the indictment

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a prima facie case has been established by the Prosecutor, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.

2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

Article 19

Commencement and conduct of trial proceedings

1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the International Tribunal for Rwanda, be taken into custody, immediately informed of the charges against him or her and transferred to the International Tribunal for Rwanda.

3. The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial Chamber shall then set the date for trial.

4. The hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its rules of procedure and evidence.

Article 20

Rights of the accused

1. All persons shall be equal before the International Tribunal for Rwanda.

2. In the determination of charges against him or her, the accused shall be entitled to a fair and public hearing, subject to article 21 of the Statute.

3. The accused shall be presumed innocent until proved guilty according to the provisions of the present Statute.

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4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;

(b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;

(c) To be tried without undue delay;

(d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

(f) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the International Tribunal for Rwanda;

(g) Not to be compelled to testify against himself or herself or to confess guilt.

Article 21

Protection of victims and witnesses

The International Tribunal for Rwanda shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

Article 22

Judgement

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.

2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

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Article 23

Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Article 24

Appellate proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:

- (a) An error on a question of law invalidating the decision; or
- (b) An error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers.

Article 25

Review proceedings

Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the International Tribunal for Rwanda an application for review of the judgement.

Article 26

Enforcement of sentences

Imprisonment shall be served in Rwanda or any of the States on a list of States which have indicated to the Security Council their willingness to accept convicted persons, as designated by the International Tribunal for Rwanda. Such

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imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal for Rwanda.

Article 27

Pardon or commutation of sentences

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the International Tribunal for Rwanda accordingly. There shall only be pardon or commutation of sentence if the President of the International Tribunal for Rwanda, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law.

Article 28

Cooperation and judicial assistance

1. States shall cooperate with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:

- (a) The identification and location of persons;
- (b) The taking of testimony and the production of evidence;
- (c) The service of documents;
- (d) The arrest or detention of persons;
- (e) The surrender or the transfer of the accused to the International Tribunal for Rwanda.

Article 29

The status, privileges and immunities of the International Tribunal for Rwanda

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal for Rwanda, the judges, the Prosecutor and his or her staff, and the Registrar and his or her staff.

2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this article.

4. Other persons, including the accused, required at the seat or meeting place of the International Tribunal for Rwanda shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal for Rwanda.

Article 30

Expenses of the International Tribunal for Rwanda

The expenses of the International Tribunal for Rwanda shall be expenses of the Organization in accordance with Article 17 of the Charter of the United Nations.

Article 31

Working languages

The working languages of the International Tribunal shall be English and French.

Article 32

Annual report

The President of the International Tribunal for Rwanda shall submit an annual report of the International Tribunal for Rwanda to the Security Council and to the General Assembly.
