



SPECIAL REPORT

Rwanda: Accountability for War Crimes and Genocide

A Report on a United States Institute of Peace Conference

ABOUT THE CONFERENCE

On September 16, 1994, the United States Institute of Peace convened a meeting to explore options for dealing with war crimes and genocide in Rwanda. Participants in the session included senior U.S. and United Nations officials, scholars on Rwanda and the region, experts on war crimes and international law, the prime minister of Rwanda (by telephone from Kigali), the ambassador of Burundi in Washington, and the chief prosecutor of the UN war crimes tribunal for the former Yugoslavia.

In a seven-hour discussion, conducted under not-for-attribution rules, the participants examined the general situation in Rwanda and explored options for the establishment of an international war crimes tribunal, separate trials for war crimes and genocide before Rwandan courts, and alternatives to prosecution. They also considered the consequences of these decisions for reconciliation within Rwanda, resolution of the refugee crisis, and tensions in Burundi.

Many of the options proposed at the conference were incorporated into a UN Security Council resolution on November 8, 1994, establishing a tribunal for Rwanda. This report contains in-depth analysis of these options in the context of the resolution and makes recommendations for enhancing the effort to bring perpetrators of atrocities in Rwanda and neighboring countries to justice. The report is based in part on comments by conference participants but does not imply unanimity of opinion on every point. For further information, please contact Neil J. Kritz, acting director, Rule of Law Initiative, at (202) 429-3888.

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Key Points

The Need for Justice

- Justice and accountability must be established with respect to those individuals who perpetrated the atrocities that occurred in Rwanda during the spring and summer of 1994. This is necessary to
 - exorcise the long-entrenched culture of impunity and collective guilt in Rwanda,
 - achieve a sense of justice necessary for reconciliation,
 - stem vigilante retribution,
 - facilitate a return of refugees, and
 - deter a new round of violence in Rwanda and Burundi.
- Debate over whether trials should be conducted before an international tribunal or before Rwandan courts has been an unhelpful distraction. Both are necessary and should get under way as quickly as possible.

The International Tribunal

- To have an impact in Rwanda, the tribunal should conduct its hearings in Kigali, not elsewhere in Africa or in the Hague.
- The international tribunal should focus its prosecution efforts on the central core of individuals who planned and organized the genocide (approximately 100 to 300 persons).
- Without diluting its primary focus on the atrocities of April-July in Rwanda, the tribunal can also ameliorate the situations in Zaire and Burundi by exercising its jurisdiction over certain crimes committed in those countries.

Trials Before Rwandan Courts

- The Rwandan government should begin its own prosecutions as soon as possible, not postpone these national proceedings

until the conclusion of trials before the international tribunal.

- The international community should immediately provide judges, lawyers, investigators, and monitors for the Rwandan trials. Individuals in the first three categories would not merely act as advisors, but actually function in their respective roles in the Rwandan court system.
- Estimates of potential defendants in the trials before Rwandan courts range from 20,000 to 100,000. Attempts to prosecute such large numbers would drain needed resources, result in less fair proceedings, and have a destabilizing effect rather than contributing to national reconciliation. Despite declarations by the Rwandan government that every participant in the atrocities must be tried and punished, a method must be found to significantly reduce the number of possible defendants.
- Rwandan courts should not impose harsher penalties—including the death penalty—in their trials of second- or third-tier defendants than the penalties the international tribunal will impose on the organizers of the genocide.
- The Rwandan government must firmly and visibly oppose vigilantism by prosecuting and punishing those who commit crimes of retribution. If Rwandan authorities do not prosecute such cases, the international tribunal should do so.

Alternatives to Prosecution

- Other approaches that have been taken in countries emerging from violence and repression may complement the prosecution effort, such as the use of a commission of inquiry and the compensation of victims.

The views expressed in this report do not necessarily reflect the views of the United States Institute of Peace, which does not advocate particular policies, or the views of the organizations of which the participants are members.

Introduction

Within a matter of weeks this past spring, the name "Rwanda" became synonymous with carnage and violence on a massive scale. Images of executions and massacres flooded the media, shocking the international community. An organized campaign of violence was carried out, during which the Tutsi were referred to as "cockroaches" and "the enemy," and Rwandan radio broadcasters exhorted every Hutu to kill Tutsi, complaining that "graves are still only half full." In less than four months, between 500,000 and a million people were killed. Before 1994, Rwanda was the most densely populated country in continental Africa. Between April and August 1994, that statistic shifted radically, as Rwanda lost 20 percent to 40 percent of its population to slaughter or exile.

As one participant in the Institute conference stated, "Genocide has worked in Rwanda." Precise figures are difficult to obtain. Over the past thirty years, however, the cycle of violence and counter-violence in Rwanda and neighboring Burundi has resulted in the killing of between 300,000 and 600,000 people—and that was before the carnage in 1994. Elites maneuvering for power have, for decades, been able to manipulate ethnic rivalries for political ends without any fear of being called to account for their actions. Rejection of this culture of impunity will be crucial to ending the cycle of violence and achieving authentic national reconciliation. To this end, the Rwandan government and the international community must provide a clear and public demonstration that those who organize or engage in such genocidal activity will be held accountable.

The United Nations Security Council has taken the first important step toward the goal of accountability by establishing the "International 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 neighboring States, between 1 January 1994 and 31 December 1994." The approach adopted by the Security Council largely affirms the conclusions reached at the Institute's conference, at which a variety of options and approaches for establishing an international tribunal were analyzed and debated by senior officials and policymakers from Rwanda, the United States, and the UN, and by several academic experts. This report discusses the choices made by the UN Security Council on key features of the International Tribunal for Rwanda and recommends several further steps to be taken.

Background

The population of Rwanda is composed primarily of two ethnic groups, the Hutu (85 percent) and the Tutsi (14 percent). In 1959, Rwanda's Hutu majority rebelled against their former Tutsi overlords. By 1960, the Hutu-dominated party, Parmehutu, had gained political control of Rwanda, which it retained after the country achieved independence in 1962. Ethnic violence erupted in December 1963, with the killing of more than 20,000 Tutsi and the exodus of 100,000. Tutsi refugees tried un-

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successfully to invade Rwanda from neighboring countries a number of times. After each failed invasion, the Tutsi in Rwanda faced severe reprisals; one attack in late 1963 for instance, resulted in the killing of 10,000 Tutsi. After a few years of relative calm, tensions between Hutu and Tutsi again escalated in the early 1970s. In 1973, Juvenal Habyarimana seized power in a *coup d'etat*, citing the need to establish order, and continued as president for the next twenty-one years.

Over the next two decades, although President Habyarimana claimed to have instituted a program to ease ethnic tensions and create a balance between the two ethnic groups, most observers saw the initiative as perpetuating discrimination against the Tutsi. Worsening economic conditions in the late 1980s also increased opposition to Habyarimana. Responding to both international and domestic pressures, Habyarimana had recently announced a new program of political reform when the Rwandan Patriotic Front (RPF) invaded Rwanda from bases in Uganda on October 1, 1990. The government responded by arresting and imprisoning 8,000-10,000 people around the country, primarily Tutsi and suspected opponents of Habyarimana, and holding many of them without charge for several months. The conflict continued through 1991 and 1992, resulting in the deaths of thousands and the displacement of an estimated 100,000 persons.

Early in 1992, political organizations affiliated with President Habyarimana formed two militias—the *Interahamwe* (“Those Who Attack Together”) and the *Impuzamugambi* (“Those Who Have the Same Goal”). Trained and supplied by the Rwandan army, the militias were involved in the killing of more than 2,000 civilians, mostly Tutsi. They would play a central role in the atrocities that commanded the world’s attention in 1994.

During late 1992 and 1993, the Rwandan government and the RPF negotiated a series of agreements in Arusha, Tanzania, culminating in the signing of a comprehensive accord in August 1993 that provided for a programmed demobilization, the creation of an integrated army, a new transitional government with a prime minister acceptable to both sides, and multiparty general elections with the full participation of the RPF. Hutu extremists, including many close to Habyarimana, were vehemently opposed to the accords and the consequent reduction of their own power.

Unfortunately, the tentative peace resulting from the Arusha Accords was short-lived. Massive ethnic massacres in Burundi in October 1993 fueled tensions in Rwanda. Political assassinations and a reign of terror by the militias increased. On April 6, 1994, a plane carrying Habyarimana and Burundian President Cyprien Ntaryamira crashed near Kigali airport, killing both men and igniting an explosion of violence and brutality.

Hutu extremists immediately accused the RPF of assassinating President Habyarimana. Almost instantly, Hutu soldiers, the presidential guard, and the militias began to hunt down and kill Tutsi civilians. Sufficient evidence exists to confirm that the slaughter that ensued was not chaotic, uncontrolled violence, but rather a planned and organized campaign of genocide. Hutus suspected of opposing extremist policies were also targeted for slaughter, including moderate members of Habyarimana’s cabinet who were searched out and killed within hours of the plane crash.

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In many countries that have suffered a campaign of massive violations of human rights, the violence has been perpetrated mainly by military and political organizations associated with the regime, leaving the rest of society to go about its business with relatively clean hands. In striking contrast, the Rwandan atrocities were characterized by the deliberate attempt to force public participation on as broad a basis as possible, co-opting everyone into the carnage against Tutsis and moderate Hutus. The militias were tightly organized throughout the country, inciting civilians to participate in the massacres. Many Hutu were forced to choose between killing or being killed. If Tutsi deaths were not of sufficient number in a region, experienced killers were brought in from other areas to intensify the massacres.

Fighting between the Rwandan army and the RPF resumed on April 7, the day after the plane crash. On July 18, 1994, with the Hutu-dominated Rwandan government in flight, the RPF declared victory and established a new government of national unity. After three months of fighting, between 500,000 and a million Tutsi had been exterminated. Up to two million refugees, overwhelmingly Hutu and constituting 25 to 30 percent of the pre-April population of Rwanda, are estimated to have fled the country for refugee camps in Zaire and Tanzania. The capital city, Kigali, was left in ruin. Of the 350,000 inhabitants before the war, only 40,000 to 50,000 remained. There was no running water, no electricity, no government infrastructure, and nearly every building was damaged.

On July 1, 1994, the UN Security Council called for the appointment of a Commission of Experts to investigate and make recommendations concerning "grave violations of international humanitarian law" and "evidence of possible acts of genocide" in Rwanda. On September 29, 1994, the Commission of Experts submitted a preliminary report to the Security Council in which it recommended the establishment of an international tribunal to prosecute war crimes and genocide committed in the country since April 6 of this year.¹ Rather than awaiting the commission's final report and recommendations, the Security Council voted on November 8 to create the tribunal. In accordance with its mandate, the Commission of Experts submitted its final report at the end of November.

In the absence of a formal judicial process, it has been difficult to contain a surge of counter-violence and revenge killings of returning refugees suspected of participation in the April-July massacres, as RPF soldiers and civilians dispense a more brutal form of "justice." These violent incidents of collective vengeance not only threaten the international assistance that the new government desperately needs to rebuild the country, but also impede the return of the refugees and risk plunging Rwanda into a new round of widespread violence. The prompt beginning of a visible prosecution process is required to demonstrate that people need not take the law into their hands.

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The International Tribunal

Relationship of the International Tribunal for Rwanda to its Counterpart for the Former Yugoslavia

"The Security Council,...

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

Acting under Chapter VII of the Charter of the United Nations... Decides hereby, having received the request of the Government of Rwanda, 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..."

— Security Council Resolution 955

On May 25, 1993, the UN Security Council created 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," in the belief that accountability would "contribute to the restoration and maintenance of peace." The tribunal has its seat in the Hague. It is made up of eleven judges from as many countries, divided into two trial chambers and an appellate chamber. The tribunal's 1994 budget was \$11 million in UN funds plus several million dollars in voluntary contributions of funds, personnel, and equipment from various countries.

In establishing an international criminal tribunal for Rwanda, the Security Council had three options: (1) expansion of the mandate of the existing tribunal for the former Yugoslavia to include Rwanda; (2) creation of a wholly separate entity under UN auspices, with its own charter, judges, personnel, facilities, etc.; (3) creation of a separate Rwanda tribunal, sharing administrative staff, facilities, and other resources with the Yugoslavia panel.

In its November 8 resolution, the Security Council selected a combination of the three approaches. The International Tribunal for Rwanda is established as a separate entity with its own trial judges, registry system, and administrative staff. On the other hand, the same persons who serve as chief prosecutor and appeals judges for the International Tribunal for the Former Yugoslavia will also carry out those functions for the Rwanda tribunal. The Rwanda tribunal will adopt the rules of evidence and procedure that have been developed for its Yugoslavia counterpart. The decision to link the two tribunals bodes well for a number of reasons, including the following:

Questions of cost: Collecting contributions of staff and resources for the International Tribunal for Yugoslavia from various donor states has been a difficult and time-consuming process. At its offices in the Hague, the Yugosla-

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via tribunal already has in place sophisticated computer facilities for maintaining investigatory information and court records, training programs for investigators dealing with the sensitive tasks of interviewing victims of the atrocities as well as suspects, a "Victims and Witnesses Unit" to provide counseling and support, a prosecution staff of sixty persons, and an appellate chamber of five judges elected by the UN. While some of these resources will require modification or expansion to accommodate the additional Rwanda responsibilities, this will be much less costly—in a time of zero-growth budgets at the UN—than complete duplication for a separate Rwanda tribunal.

Start-up time: It took a year and a half for the Yugoslavia tribunal to issue its first indictment (on November 7, 1994), and the first trials are not expected until early 1995. These delays have hurt the tribunal's credibility. As noted above, timing is extremely important to the effectiveness of the Rwanda proceedings, both to deter vigilante retribution and to resolve the refugee problem. Establishing an entirely new tribunal would likely have delayed the Rwandan process by some months.

Contradictions in substantive international law: Rwanda and Yugoslavia are the first two cases since the post-World War II war crimes trials in Nuremberg and Tokyo in which such an international tribunal will function. As was true of the earlier proceedings, the tribunal's interpretation and application of evolving international norms with respect to war crimes, crimes against humanity, and genocide will affect this field for years to come. Wholly separate tribunals could well arrive at conflicting interpretations of these international norms, putting them at cross-purposes and undercutting their credibility. Rather than clarifying and strengthening international standards, the result of "dueling" tribunals could muddy an area of law that is already somewhat murky. Use of a single appeals chamber for both tribunals will ensure that these evolving international norms are interpreted and applied consistently by both of these groundbreaking bodies.

Procedural contradictions: Aside from creating conflicts in substantive international law, completely separate tribunals would potentially also develop two different systems of investigation, rules of procedure, and standards of evidence, raising questions of fairness and possibly negative comparisons between the tribunal established for a European case and the one created with an African focus.

It is important to note that the statute of the Rwanda tribunal does not completely eliminate the possibility of such procedural dissonances. It provides:

The judges of the International Tribunal for Rwanda shall adopt ... 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.* (emphasis added)

— Statute of the International Tribunal, Article 14

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The correct question has never been whether to opt for a UN court or a Rwandan one; it is how each will function and how to coordinate their respective jurisdictions and the timing of their proceedings.

For the reasons stated above, the judges of the new tribunal should take a highly restrictive approach in adapting the Yugoslavia tribunal's rules of evidence and procedure to the Rwandan case, minimizing the disparities between the two and maintaining a uniform set of rules.

Jurisdiction of the International and Rwandan Tribunals: The Debate

Before the passage of the November 8 Security Council resolution, there was much debate over whether prosecution of those implicated in the Rwandan genocide should take place before an international tribunal established under UN auspices or before a Rwandan court. In its September 29 report, the UN Commission of Experts strenuously argued that prosecution "would better be undertaken by an international, rather than a municipal, tribunal"² and warned that convictions by Rwandan courts would likely be perceived not as justice but as simple retribution.

An international tribunal is better positioned to (1) convey a clear message that the international community will not tolerate such atrocities, deterring future carnage of this sort not only in Rwanda but worldwide—and notably in Burundi; (2) be staffed by experts able to apply and interpret evolving international law standards; (3) be more likely to have the necessary human and material resources at its disposal; (4) function—and be perceived as functioning—on the basis of independence and impartiality rather than retribution; (5) advance the development and enforcement of international criminal norms; (6) have a much greater chance than Rwandan courts of obtaining jurisdiction over the majority of senior officials who are no longer in Rwanda.

Prosecution before domestic courts, on the other hand, could enhance the legitimacy of the new Rwandan government and of the judiciary, be more sensitive to nuances of local community, emphasize that Rwandan society would henceforth hold individuals accountable for their crimes, and stress a local alternative to vigilante justice.

The debate over which approach is better, however, has been an unhelpful distraction. While details may remain under discussion, it is now a certainty that the genocidal acts of April 6-July 15, 1994 will be prosecuted by the new international tribunal *and* by Rwandan courts. The Rwandan trials are necessary both because of the enormous number of potential defendants—*not more than one percent of whom will likely be brought before the international tribunal*—and for reasons of justice and catharsis within the country. The correct question has never been whether to opt for a UN court or a Rwandan one; it is how each will function and how to coordinate their respective jurisdictions and the timing of their proceedings.

The UN Security Council resolution correctly acknowledges this need for proceeding on both levels, confirming that the "International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law...."

Jurisdiction of the International and Rwandan Tribunals: Sorting Out the Cases

The decision to allow for concurrent jurisdiction of the international tribunal and Rwandan courts makes it necessary to determine where each will place its emphasis. How should the tasks of investigation and prosecution be divided? To maximize the efficiency and effectiveness of both the domestic and international prosecutions, some coordination and understanding of their respective caseloads will be required.

The International Tribunal for Rwanda will likely follow the precedent set by the Nuremberg trials, hearing cases against the smaller number of principals responsible for the genocide. Like Nuremberg, it will focus on senior leaders of the former government, military, and the militias, and may expand the list of defendants to include representatives of other segments of Rwandan society particularly implicated in the atrocities.³

Officials of the new Rwandan government have estimated as many as 20,000 to 30,000 potential defendants to be tried for genocide and war crimes. These numbers can be made more manageable by classifying potential defendants into three tiers of culpability:⁴

1. The central core—a tightly organized group of an estimated 100 to 300 persons. These were the people who planned and organized the genocide. In Kigali, this core, known as the “zero network,” included many close associates of the late President Habyarimana as well as political, military, and economic elites; beyond the capital, it included regional and local relays—mayors, political party heads, and militia leaders. This first tier would likely also include the leadership of Radio de Milles Collines.
2. Local leaders who were not part of the zero network but who were able to personally order local killings, including a number of municipal officials and administrative authorities; this second tier may comprise 1,000 to 3,000 individuals.
3. All those who have killed, including many who were themselves victimized and were forced to kill or be killed. This last tier of culpability could far surpass the 20,000 to 30,000 number that has been mentioned by officials of the new Rwandan government.

For reasons of both practicality and policy, the international tribunal can be expected to limit its prosecutions to some portion of the first tier. The authorities at Nuremberg faced a similar dilemma in determining how far down the chain of command to focus their efforts—and with much more substantial resources than those which will be available to the Rwanda tribunal. At peak staffing in 1947, the Nuremberg proceedings required the services of nearly 900 Allied employees and about an equal number of Germans. Even with such a large-scale and costly operation, the Nuremberg trials ultimately involved the prosecution of 200 defendants, grouped into thirteen cases and lasting four years.

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This limited focus for the International Tribunal for Rwanda will leave tens of thousands of additional cases for consideration by the Rwandan government, judiciary, and society. Prosecutions before Rwandan courts should focus primarily, if not exclusively, on defendants from the second tier of responsibility.

Location

[T]he 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,... 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;... an office will be established and proceedings will be conducted in Rwanda, where feasible and appropriate, subject to the conclusion of ... appropriate arrangements.

— Security Council Resolution 955

The location of the seat of the tribunal and the site of its hearings have been a subject of debate among policymakers. The September 29 Commission of Experts report concluded that “for the purposes of independence, objectivity and impartiality, there are advantages in having trials conducted by an international criminal tribunal in a place such as the Hague for the very reason that there would be a certain measure of distance from the venue of the trial and the places where severe atrocities have been perpetrated.”⁵ Participants in the Institute conference firmly came to the opposite conclusion. While leaving the issue unresolved, the November 8 resolution leans in the right direction.

A key purpose of the UN tribunal, as described by the Commission of Experts, is unquestionably the “coherent development of international criminal law to better deter such crimes from being perpetrated in future not only in Rwanda but anywhere.”⁶ More immediately, however, the tribunal must provide Rwandans with a message and a visible image that justice is being done, that the atrocities in their country are being addressed within the framework of the rule of law. This very public display through the trials is vital in order to exorcise the long-entrenched culture of impunity, achieve a degree of reconciliation, stem vigilante acts of retribution, facilitate a return of the refugees to Rwanda, and deter a new round of violence. In the context of these goals, conference participants strongly believed that trials in the Hague, given the limited access to communications and media for millions of Rwandans, would not be effective. Again by way of comparison, the Nuremberg tribunals were conducted in Germany not simply as a matter of convenience, but to give them the greatest public impact in Germany—and that in a country with a communications infrastructure vastly superior to that of Rwanda.

Some observers have proposed a compromise approach, with the tribunal conducting its trials in the region but outside Rwanda. Under this scenario, the availability of UN facilities and infrastructure in Nairobi and Addis Ababa suggest these as possible locations. To have an impact on the atmosphere in Rwanda—and in the refugee camps and in Burundi—this would not be much more effective than sitting in the Hague. Most participants in the Institute conference, including Prime Minister Faustin Twagiramungu, strongly urged that the tribunal conduct its hearings in Rwanda. President Pasteur Bizimungu has recently emphasized this point as well. As stated by one participant, “It is essential that the trials be conducted in a location such that the victims of human rights abuses not feel irrelevant.” In addition, on a practical level, witnesses and evidence are in Rwanda, making it a more efficient venue for the tribunal.

Should the seat of the tribunal be established in the Hague, Nairobi, or elsewhere, trials before the tribunal could and should still take place on-site in Kigali. The Rules of Procedure and Evidence governing the Yugoslavia tribunal (which, as noted, will be adopted for the Rwanda tribunal) already authorize that body’s trial or appellate chamber to “exercise its functions at a place other than the seat of the Tribunal ... in the interests of justice.”⁷

Security concerns need to be addressed as well. UN forces, along with the police and/or military personnel of the new Rwandan government, will have to ensure the safety of defendants, particularly senior officials who may be returned to Rwanda to stand trial before the tribunal.

Obtaining Custody of Suspects: A Step in Resolving the Refugee Problem

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...
 - (d) The arrest or detention of persons;
 - (e) The surrender or the transfer of the accused to the International Tribunal for Rwanda.

—Statute of the International Tribunal, Article 28

The Rwandan government has placed approximately 6,500 people in detention to date on suspicion of participation in the April-July atrocities. Most of the senior architects and perpetrators of the genocide, however—the first tier referred to earlier—have fled the country, and detaining them for investigation and prosecution is more complicated. The two reports of the Commission of Experts did not address this issue of locating and detaining potential defendants, particularly in the refugee camps in Zaire.

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"We need very much for these [refugees] to come back. Otherwise, if they don't come back, we are surely preparing another conflict."

— Rwandan Prime Minister Twagiramungu

Long-term continuation of the refugee problem will not only be a drain on the host countries but, by enabling the ousted leadership to exercise control over such a large portion of the Rwandan population, will also constitute a very real threat to the stability of Rwanda under the new government. An estimated 30,000 members of the defeated Rwandan army currently control the refugee camps in Zaire—reportedly retaining their command structure, and continuing their training and still receiving salaries from Rwandan treasury funds brought from Kigali. The ousted Rwandan leadership has repeatedly declared its intention to mount an armed invasion from Zaire. Prime Minister Twagiramungu confirmed this assessment during the Institute conference, noting, "We need very much for these people to come back. Otherwise—if they don't come back—we are surely preparing another conflict."

As they have since July, Rwanda's former political, military, and militia leaders continue to terrorize the refugees and prevent their return. They have coerced refugees to remain outside the country through physical intimidation, murder, control of—and profit from—the distribution of relief supplies, and the broadcast of propaganda stating that returnees face certain slaughter at the hands of the RPF. These former leaders have also coerced and threatened international relief workers, prompting several relief organizations to consider withdrawing their operations. In a new development, members of the militias are reported to be killing witnesses to the genocide in the refugee camps, presumably to prevent future testimony against them.

Identifying and detaining those among the refugees most culpable in the atrocities of April-July is important for at least two reasons: (1) to prevent the flight and disappearance of these defendants (such flight would undercut the authority and credibility of the international tribunal and increase the expenditures of time and resources needed to track down these people and bring them to trial) and (2) to segregate these people—most notably the former military and government leadership and the militias—from the much larger number of innocent Hutus in the refugee camps, facilitating the latter's security and repatriation.

In addition to establishing accountability for the genocide in Rwanda, the tribunal can send a strong message with respect to abuses taking place—again with impunity—in the refugee camps. Under Article 7 of its charter, the "territorial jurisdiction of the International Tribunal for Rwanda shall extend ... to the territory of neighboring States in respect of serious violations of international humanitarian law committed by Rwandan citizens." Many of the acts of terrorism, persecution, and intimidation that have been committed in the refugee camps are punishable under the tribunal's jurisdiction 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." By quickly prosecuting a few of the most egregious violations that have been perpetrated on the refugee population, the tribunal can improve the situation in the refugee camps and simultaneously facilitate the repatriation of refugees to Rwanda.

The statute of the Rwanda tribunal obliges all states to comply "without undue delay" with any request by the tribunal for assistance in locating, de-

taining, or transferring persons. Even assuming that authorities in Zaire and Tanzania are willing to act on such requests with respect to individuals in the refugee camps (several participants at the Institute conference expressed some skepticism on this point with respect to Zaire), the rules of the tribunal may make it difficult to promptly issue requests for detention or transfer of suspects.

The domestic criminal laws of many countries permit the arrest of a suspect on the basis of investigation and solid evidence prior to the issuance of a formal indictment. Under the rules of the Yugoslavia and Rwanda tribunals, "orders and warrants for the arrest, detention, surrender or transfer of persons" cannot be issued until the prosecutor first satisfies a tribunal judge that a *prima facie* case exists and the judge confirms the indictment—a lengthier process and higher burden of proof. Even in the most optimistic scenario, it is doubtful that detention orders will be issued before early or mid-1995, by which time the principal candidates for trial before the international tribunal—the architects of the Rwandan genocide and their senior henchmen—can leave the refugee camps and disappear from view.

Assuming that the statute of the tribunal is not amended to modify this process, the UN must devise an alternative mechanism to isolate and contain the senior echelons of the former Rwandan leadership. Bringing to account those responsible for the April-July genocide will deter an armed invasion by refugees from Zaire; isolating these leaders in the immediate term will buy time to permit the tribunal to demonstrate that accountability.

Questions of Timing

Consistent with the Nuremberg model, it would be reasonable to defer the trials in Rwanda's national courts until the international tribunal completes its work. The UN tribunal would prosecute the smaller number of principals implicated in the Rwandan atrocities. Only after this prosecution of those most culpable would the Rwandan authorities proceed against the much larger number of second- and possibly third-tier defendants. There is clear logic and sound policy to this progression. Various UN and foreign authorities have pressed the new Rwandan government to adhere to this approach; in August 1994, the government agreed to defer its own prosecutions accordingly.

To accomplish most of the goals outlined earlier, the trial process must begin quickly. Both the president and the prime minister have stated that the Rwandan government will be willing to postpone genocide trials in Rwandan courts only if the UN tribunal begins its prosecutions by January 1995. It is certain that the progress of the tribunal will not meet this deadline. Despite the fact that the Security Council has acted swiftly in establishing the tribunal and has chosen the most time-efficient course of action by sharing some elements of the Yugoslavia tribunal, it will still be necessary to hire additional staff, including deputy prosecutors, investigators, and registry personnel—a process that is now beginning. As soon as even a skeleton staff is in place, the prosecutor can begin the exhaustive investigation of cases and the preparation of indictments. The charter of the tribunal lays out a process for election of six trial judges by the Security Council and General Assembly,

By quickly prosecuting a few of the most egregious violations which have been perpetrated upon the refugee population, the tribunal can improve the situation within the reugee camps and simultaneously facilitate the repatriation of refugees to Rwanda.

which will likely be completed in early 1995. At that point, the process of indictment, location and detention of suspects, and pre-trial procedures will ensure that, despite all good intentions, the tribunal's first trials will not actually begin before mid to late 1995.

Thus, although the progression from international to domestic trials is preferable in principle, the realities of the Rwandan situation require otherwise. While creation of the international tribunal remains important for all of the reasons outlined earlier, the Rwandan government should begin to assemble its own prosecution program without delay, with extensive use of foreign assistance, participation, and observation. As noted earlier, close coordination will be necessary between Rwandan and UN officials to determine the categories of people to be investigated and prosecuted by their respective tribunals

Trials Before Rwandan Courts

Like most of its infrastructure, Rwanda's judiciary has been decimated. From a total of 300 judges and lawyers staffing the courts of first instance, appellate courts, and Supreme Court and 500 in the provincial courts before the events of April-July, only 40 jurists remain in the entire country. The process of establishing the rule of law in Rwanda, rebuilding the judiciary, training judges, prosecutors, defense lawyers, and investigators—in addition to police and corrections officers—will be a long-term proposition, but one to which the international community needs to quickly turn its attention and resources. The absence of a functioning judicial system in Rwanda has contributed significantly to a destabilizing sense of lawlessness in the country.

The task of rebuilding the legal infrastructure and training new personnel will take years to accomplish. More immediately—long before this process bears fruit—the Rwandan justice system must deal with the 6,500 people already detained for their role in the recent atrocities and the thousands more potential defendants whose cases will not come before the UN tribunal. If trials before the Rwandan courts are to serve the ends of justice and reconciliation, it is imperative that they maintain both the fact and the perception of fairness.

One element warranting attention is the need to afford defendants in the second- or third- tier, who will be tried in national courts, at least the same protections as the directors of the genocide will be guaranteed by the international tribunal, lest the subordinates be treated more harshly than the principals.⁹ Defendants should be afforded the due process and criminal procedure rights guaranteed them under international law, including their right "to trial within a reasonable time or to release."¹⁰ Unless the Rwandan trials are scrupulously fair, they will quickly be criticized as a vehicle of collective retribution rather than a means of justice and accountability, hindering rather than facilitating reconciliation.

The November 8 Security Council resolution stresses "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" in the genocide. In a December 13, 1994 press confer-

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ence in Washington, Vice President Paul Kagame discussed how the United States and the international community can aid in rebuilding and stabilizing Rwanda. The first order of business, he stated, is to provide assistance in rebuilding the country's justice system. The international community should immediately provide staff and equipment to help with this effort.

Prime Minister Twagimarungu, President Pasteur Bizimungu, and Minister of Justice Alphonse Nkubito have all indicated their desire to have foreign jurists serve not only as observers and advisors, but also as judges, lawyers, and investigators within the Rwandan legal system for the period of these trials.

Donor governments and nongovernmental organizations, including bar associations and other legal groups, should rapidly send qualified personnel to fill these roles, so that the trials can get under way relatively quickly. Such foreign monitoring and participation would also significantly enhance the likelihood and the perception that the prosecutions proceed on an impartial basis.

Foreigners who will serve as judges, prosecutors or defense attorneys in Rwandan courts will need French language training as well as education in a similar legal system. American or British attorneys, for example, would likely be less useful in these roles, but they could serve productively as investigators and monitors.

Limits to Prosecution

[I]n the particular circumstances of Rwanda, the prosecution of persons responsible for serious violations of international humanitarian law ... would contribute to the process of national reconciliation and to the restoration and maintenance of peace.

— Security Council Resolution 955

Participants in the Institute's conference, including Prime Minister Twagiramungu, emphatically argued that any broad-based amnesty for the April-July atrocities, proffered in the name of national reconciliation, would only perpetuate the culture of impunity in Rwanda, facilitating new rounds of violence. The best way to deter potential perpetrators of genocide in Rwanda—and Burundi—is to clearly and firmly replace that culture with one of individual accountability for participants in such crimes.

This firm rejection of amnesty, however, must be distinguished from the exercise of prosecutorial discretion. The sheer numbers of active participants in the genocide present a nettlesome dilemma for the international tribunal, and a much greater one for the Rwandan courts: defining limits in determining whom to prosecute.

While the trend in international law is increasingly opposed to impunity for certain particularly egregious violations of human rights, and while the Genocide Convention plainly requires that "persons committing genocide or [conspiracy, incitement, attempt or complicity in genocide] shall be pun-

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ished," it is less certain that international law demands the prosecution of every individual implicated in the atrocities. A symbolic or representative number of prosecutions of those most culpable may satisfy international obligations, especially where an overly extensive trial program will threaten the stability of the country. This approach has been adopted in Argentina and in some of the countries of Central and Eastern Europe in dealing with the legacy of massive human rights abuses by their ousted regimes. South Africa is currently contemplating an arrangement under which amnesty from prosecution will be granted to individuals who come forward and confess their crimes.

This option of limiting the number of prosecutions is particularly relevant to the Rwandan case. Even with a massive infusion of foreign assistance, an attempt to investigate and prosecute everyone in the three tiers outlined above—as many as 100,000 people by some estimates—would be far beyond the financial and personnel resources of the Rwandan judiciary. These numbers would be unwieldy even for a much larger and better financed judicial system. The Rwandan government has declared that "[e]very person who participated in the atrocities must not only be prosecuted but also punished." If attempted, such a prosecution program would necessarily drain resources from other aspects of rebuilding Rwandan society, inevitably dilute the standards of due process afforded to defendants in order to move such enormous numbers through the system, undercut the credibility of the trials, require several years to complete, and hinder progress toward national reconciliation.

One mechanism that has been suggested for reducing the numbers of defendants to a manageable range is the appointment of one or many special commissions, separate from the courts, with authority to grant immunity from prosecution to (a) the many people who were coerced to kill under the threat that refusal would result in their own death or that of their spouse or child; and/or (b) those who confess to their participation, compensate victims, and help them rebuild their destroyed property and communities. This approach, it was suggested, would also facilitate the repatriation of refugees, assuming they could be guaranteed safe passage in coming to testify before the commission.

Disparity of Penalties

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.... 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....

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.

— Statute of the International Tribunal, Articles 23, 26

Even with a massive infusion of foreign assistance, an effort to undertake investigation of everyone ... would be far beyond the financial and personnel resources of the Rwandan judiciary.

Under the rules of the UN tribunal for Rwanda, imprisonment and the return of ill-gotten assets are the only penalties that may be imposed on those found guilty of genocide, war crimes, or crimes against humanity. Rwandan Vice President Kagame and other officials of the new government had argued that the tribunal should be authorized to impose capital punishment. Despite its repeated calls for creation of the international tribunal, the Rwandan government ultimately voted against the November 8 Security Council resolution, largely in protest of this point.

Rwandan law permits use of the death penalty in cases of genocide, and Rwandan authorities have repeatedly stated their intention to impose it. This difference between the international and national approaches could result in an anomalous situation in which the large number of second- and third-tier defendants who will be prosecuted before Rwandan courts could be subject to a harsher punishment for their role than those most culpable in the atrocities—the top political, military, militia and other leaders who will presumably be tried by the international tribunal. This would severely undermine any sense of justice or fairness.

In addition to this incongruity, the use of capital punishment by Rwanda in such a politically and emotionally charged atmosphere will not contribute to the process of reconciliation, some conference participants believed. Rwandans may want to employ alternative penalties to imprisonment, including sentences of community service or orders to pay reparations to victims. Whether by legislative amendment or through the exercise of discretion, however, some conference participants urged the Rwandan government not to seek imposition of the death penalty in the trials before its national courts.

In the event that a Rwandan court does attempt to apply the death penalty, the international tribunal has the option of blocking its enforcement by taking the case under its own jurisdiction. Under the rules of the tribunal, it has “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,” effectively ending the domestic proceeding (emphasis added).

Prosecution of Abuses by RPF Soldiers and Others Since July 1994

Although the propaganda spread by the former Rwandan leadership in the refugee camps regarding retribution exacted by the RPF is vastly exaggerated and falsified, it is clear that some revenge killings against Hutus have been perpetrated by RPF soldiers and others since the assumption of power by the new government in July. Relief organizations, human rights groups, and the foreign press have verified the occurrence of such acts throughout the country. In one example, calling the situation “very dangerous,” Kigali’s prosecutor recently reported that after the city’s senior judge determined that there was no basis for the charges against some Hutu detainees and ordered their release, the judge was abducted from his home by soldiers in early October and has disappeared. In addition to those currently detained in Rwanda’s prisons in connection with the genocide, various RPF units are alleged to be taking many others to their own military detention camps.

[The difference] between the international and national approaches can result in the anomalous situation in which ... [lower-level] defendants ... before Rwandan courts could be subject to a harsher punishment for their role than those most culpable in the atrocities ... who will be presumably tried by the international tribunal.

It is essential not only that the prosecution process get under way with respect to those implicated in the genocide of April-July, but that the Rwandan government firmly and visibly demonstrate that crimes of vengeance are unacceptable.

Rwandan officials and foreign observers have warned that in the absence of justice being administered by the courts—international or domestic—victims will be more likely to take the law into their own hands. Some Rwandan government officials have also implied that the current acts of retribution do not warrant major attention, given that they are incomparable in scale to the earlier atrocities and do not constitute a planned genocide.

Given the gravity of the atrocities that were committed this past spring, individual acts of retribution are perhaps understandable, but they cannot be tolerated. It is essential not only that the prosecution process get under way with respect to those implicated in the genocide of April-July, but that the Rwandan government firmly and visibly demonstrate that crimes of vengeance are unacceptable. To permit impunity for the current abuses would block repatriation of the refugees to Rwanda, undercut the legitimacy of the new government in the eyes of many Rwandans and the international community, undermine any efforts at national reconciliation, and likely contribute to a new escalation in the cycle of violence.

The international tribunal can also address this issue. The November 8 resolution authorizes it to prosecute serious violations of international humanitarian law committed in Rwanda from January 1 *through December 31, 1994*, meaning that revenge killings and other crimes of vengeance committed through the end of this year fall within the jurisdiction of the tribunal. In its final report, the UN Commission of Experts noted that it “remains disturbed by ongoing violence committed by some RPF soldiers and recommends that investigation of violations of international humanitarian law and of human rights law attributed to the Rwandese (sic) Patriotic Front be continued by the Prosecutor [of the international tribunal].” If these dangerous acts of retribution continue or escalate, the Security Council should consider amending the temporal jurisdiction of the tribunal to permit it to prosecute crimes committed after December 31, 1994.

The more effective method to stem these acts of vengeance, however, will be through Rwandan domestic prosecutions, not through the tribunal. This, after all, is not a question of victor’s justice, but rather of the victor holding its own people to account. The Rwandan government has shown signs of willingness to enforce its laws against those who would take the law into their own hands. It has reportedly arrested some of the perpetrators of this vigilantism. Unless the civilians and RPF soldiers who are exacting revenge are promptly prosecuted and punished, the trial of those responsible for the genocide *will* be viewed as nothing more than victor’s justice.

In the event that Rwandan authorities succumb to local political pressures, turning a blind eye to these cases or prosecuting them perfunctorily, the international tribunal should exercise its jurisdiction, under Article 9 of its statute, to retry cases of serious violations of humanitarian law following domestic trials if 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.”

Complementary Approaches

In addition to proceeding with prosecution, other mechanisms may bolster the process of justice and reconciliation in Rwanda. Some of these measures may offset the necessary limits on prosecution discussed above.

Commission of Inquiry

Over the past decade, several countries attempting to deal with the aftermath of massive repression have established commissions of inquiry or "truth commissions" comprised of eminent citizens charged with investigating the violation of human rights under the old regime and producing an official history of those abuses. In many of these countries, as in Rwanda, much of what had occurred was already generally known; what the commissions added was a meaningful *acknowledgment* of past abuses by an official body perceived domestically and internationally as legitimate and impartial. Such an entity cannot substitute for prosecutions—and does not afford those implicated in their inquiry the due process protections to which they are entitled in a judicial proceeding—but it can serve some of the same purposes: permitting a cathartic public airing of the evil and pain that have been inflicted, resulting in an official record of the truth; providing a forum for victims and their relatives to tell their story, have it made part of the official record, and thereby provide a degree a societal acknowledgment of their loss; and establishing a formal basis for subsequent compensation of victims.¹¹

An advantage of a truth commission is that it could be organized and visibly begin functioning more quickly than the international or Rwandan trials, holding hearings and collecting testimony and documentation that can then be turned over for use in prosecutions.¹² Thus, a commission of inquiry could also buy time, relieving some of the immediate pressure for action while the courts and prosecutions are being organized.

While the war crimes trials will likely not examine abuses allegedly committed by the former government or the RPF before April 6, 1994, the commission of inquiry, following the example of such commissions in other countries, could provide the appropriate forum in which to explore and articulate the broader context of Rwanda's recent history, looking back at least to the beginning of the civil war in October 1990.¹³

Compensation

Compensation is also an element of justice for the victims of gross human rights violations such as those that occurred in Rwanda and for their survivors. Individual perpetrators may be held liable for paying reparations. In addition, a growing body of opinion suggests that when, by reason of commission or omission, state authorities bear responsibility for the violations, the government has an obligation under international law to provide compensation and rehabilitation to the victims.¹⁴ This obligation carries over to a successor democratic government. In addition to its

A growing body of opinion suggests that when ... state authorities bear responsibility for the violations, the government has an obligation under international law to provide compensation and rehabilitation to the victims.

obvious practical benefit to victims attempting to rebuild their lives, compensation constitutes an official societal acknowledgment of their suffering. Insofar as evaluation of individual claims requires an official verification of the facts of the case, a compensation program results in a detailed official historical record of the abuses. Finally, enforcing the obligation to pay compensation is generally viewed as a deterrent to future violations. Implementation of a compensation program would require international financial assistance.

Consequences for Burundi

Rwanda shares more than a border with its neighbor Burundi. It also shares an identical population mix of 85 percent Hutu to 14 percent Tutsi and a history of manipulation of ethnic tensions for political purposes. In Burundi, unlike its northern twin, the Tutsi minority retained the reins of power from independence in 1962 until last year, violently suppressing periodic Hutu uprisings. Ethnic violence and killing have erupted numerous times over the past thirty years, with the worst occurrences in 1965, 1969, 1972, 1988, and 1991. The 1972 massacres alone resulted in an estimated 200,000 deaths, with Hutus accounting for 99 percent of the victims. A government report the following year called for the attainment of "parity through elimination of the Hutu surplus." Some 80,000 Hutu refugees fled into Rwanda during the 1988 violence, although most returned within the year.

During the late 1980s and early 1990s, President Pierre Buyoya launched a series of reforms to facilitate national reconciliation and the sharing of power. As a result of this opening, in June 1993, President Melchior Ndadaye was popularly elected as Burundi's first Hutu head of state. Ndadaye was brutally murdered three months later by Tutsi soldiers, however, plunging the country once again into ethnic violence in October. This latest round of massacres resulted in 100,000 deaths, nearly all Tutsi; 200,000 others fled to neighboring Rwanda and Tanzania.

Many observers believe that if the Burundian authorities and the international community had established justice and accountability for the 1993 massacre in Burundi, rather than allowing the decades-old cycle of violence and impunity to continue, the 1994 slaughter in Rwanda might have been avoided. Now, although a Hutu-led coalition government remains precariously in power, the death of Presidents Habyarimana and Ntaryamira in the April 1994 plane crash and the ensuing genocide in Rwanda have caused simmering tensions to intensify. Both the Tutsi-dominated army and Hutu militants are increasingly arming for battle. The lack of accountability for the Rwandan atrocities and the infusion of Rwandan Hutu extremists into Burundi have contributed to this escalation, with many members of the defeated Rwandan army reportedly assisting the Hutu militia. By mid-October 1994, these increasing tensions and killings in Burundi prompted an estimated 15,000 refugees to flee that country for Zaire. On October 24, in northern Burundi, uniformed gunmen killed fifty-four Rwandan Hutu refugees.

How the aftermath of war crimes and genocide is handled in Rwanda may have a significant impact on the tenuous situation in Burundi. It is likely that

Many observers believe that if the Burundian authorities and the international community had established justice and accountability for the 1993 massacre in Burundi ... the 1994 slaughter in Rwanda might have been avoided.

the implementation of the proposals discussed in this report—with the international community and the new Rwandan government visibly establishing a regime of accountability for those who engage in ethnic and political violence—will be closely watched in Burundi. This effort can contribute to preventing a new lethal outbreak and to ending the culture of impunity and collective violence in that country as well as in Rwanda.

Beyond this message of accountability, the International Tribunal for Rwanda can affect events in Burundi in more concrete terms as well. As noted earlier, the tribunal's jurisdiction extends to serious violations of international humanitarian law committed by Rwandan citizens on the territory of states neighboring Rwanda. Indictment and prosecution by the tribunal of members of the exiled Rwandan military or other Rwandans for their participation in these crimes in Burundi can help to stabilize the situation in Burundi. If these incursions continue or escalate, the Security Council should, as suggested above in a different context, consider amending the temporal jurisdiction of the tribunal to permit it to prosecute those crimes committed after December 31, 1994.

Endnotes

¹Preliminary Report of the Independent Commission of Experts Established in Accordance with Security Council Resolution 935 (1994) (hereinafter "Commission of Experts, Preliminary Report"). The Security Council followed a similar approach in the former Yugoslavia, first creating a commission of experts to investigate evidence of war crimes and crimes against humanity in that conflict and then, based on the commission's findings, establishing a tribunal to prosecute those crimes.

²Commission of Experts, Preliminary Report, p. 31. One of the eight chapters of the report, in fact, is devoted entirely to "The Question of Criminal Jurisdiction: Advantages and Disadvantages of International Prosecution of International Crimes Versus Municipal Prosecution of International Crimes."

³In addition to the prosecution of senior Nazi governmental and military leaders, the Nuremberg Tribunals conducted separate trials of elites representing specific sectors of German society—e.g., jurists, doctors, industrialists—which had played noteworthy roles in the commission of war crimes and crimes against humanity.

⁴One participant in the Institute conference noted that the Special Prosecutor in Ethiopia, dealing with thousands of potential defendants in the trials for crimes of the Mengistu regime, has prioritized the cases into essentially the same three categories, with the intent to pursue prosecution according to that order of priority.

⁵Commission of Experts, Preliminary Report, p. 31.

⁶*Ibid.*, p. 32.

⁷International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, *Rules of Procedure and Evidence* (IT/32, 14 March 1994), Rule 4.

⁸Aside from questions of political inclination, compliance with the orders of the tribunal may also raise domestic legal problems in some countries. In the United States, for example, extradition on charges of genocide is currently permitted only if the person in question is a U.S. citizen or committed genocide on Ameri-

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can territory; a legislative amendment will be required before any Rwandan indicted by the tribunal and found in the United States can be delivered to the Hague.

⁹The UN tribunal for the former Yugoslavia has adopted detailed rules in this regard. See, e.g., 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, *Statute*, Articles 18, 20 and 21 (UN Doc. S/25704, 3 May 1993), *Rules of Procedure and Evidence* (IT/32, 14 March 1994) and *Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Tribunal or Otherwise Detained on the Authority of the Tribunal* (IT/38, 10 May 1994).

¹⁰International Covenant on Civil and Political Rights, Article 9(3). Rwanda is a party to the covenant.

¹¹Conference participants related accounts from Ethiopia and El Salvador in which vengeance and prosecution were less important to the victims than the opportunity to relate what happened, to have someone listen to and then report the truth of what had occurred.

¹²This approach of having the commission precede and provide material for the trials was employed effectively in Argentina in 1984 in dealing with massive violations of human rights by the former regime.

¹³Official commissions of inquiry in Chile and El Salvador, for example, have adopted such a balanced, contextual approach in their reports. While the overwhelming focus of their attention has been on the egregious abuses committed by the former regime, they have also examined and reported on abuses committed by the former opposition.

¹⁴For a valuable overview of this issue, see Theo van Boven, Special Rapporteur, *Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms* (United Nations Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1993 (July 8, 1993)).

**DEALING WITH WAR CRIMES
AND GENOCIDE IN RWANDA**
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