THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA: JUSTICE BETRAYED

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On November 8, 1994, the Security Council of the United Nations adopted Resolution 955 creating an ad hoc international criminal tribunal to judge individuals responsible for violations of international humanitarian law committed in Rwanda between January 1, 1994 and December 31, 1994. This initiative by the Security Council is controversial and open to serious criticism. In its form and structure, the Tribunal does not respect basic legal requirements of independence, impartiality, and broad international acceptance required of a tribunal set up in international law. Furthermore, its mandate - limited in time, limited in who can be indicted, and narrowly limited in jurisdiction to violations of international humanitarian law - will prevent any light from being shed on the real issue raised by the Rwandan conflict, namely that of armed military intervention in Rwanda from Uganda, the root cause of the conflict.

The likely result of its hearings and judgments will be the reinforcement of a distorted one-sided view of the crisis in Rwanda, and a justification for further genocide against the Hutu populations of the region by the Tutsi minority now in power. It will legitimate further interventionist policies in Africa and elsewhere to the detriment of established principles of international law and institutionalize the de facto impunity for the members and supporters of the present government of Rwanda who undoubtedly committed many serious crimes between October 1, 1990 and the present presente 1. It will likely prevent the international community from learning about the causes of the terrible events which took place in Rwanda from 1990 to the present.

INHERENT STRUCTURAL PROBLEMS2

Does the International Criminal Tribunal for Rwanda respect the basic standards required of an international criminal tribunal?

Since the end of the second World War, the world community has invested considerable time and energy with the aim of creating an international criminal court serving, amongst other purposes, to

punish those responsible for the serious human rights violations throughout the world. The world is rightfully preoccupied with impunity for those who plan and organize wars, massacre civilian populations, or commit willful genocide or other serious human rights violations. Authors of wars of aggression and other major human rights violations rights should be held responsible for their actions. The elimination of impunity will be a useful deterrent for future crimes.

This fifty years of thought and reflection concerning the creation of such a Court should be taken into consideration when the Rwandan issue is addressed. Improvisation can only discredit any effort to create such an international criminal tribunal. Unfortunately the Tribunal for Rwanda improvised in a few short months ignores all previous studies and does not satisfy minimal standards for such an important international court. It is rather an ad hoc appendage of the Security Council designed to play an enforcement role with little preoccupation for truth, impartiality and fundamental justice as conceived by the community over the past fifty years.

An international criminal court should only be founded by an agreement of the international community based on the legal equality of all countries. The United Nations has a body in which all countries are equal: the General Assembly. On the other hand, the Security Council with its five permanent members with veto power and the ten temporary members in no way reflects the legal equality of all sovereign countries. The Security Council created the Tribunal for Rwanda by resolution 955 without any vote by the General Assembly.

In 1992, the Working Group of the International Law Commission completed its report on the issue of the international criminal court. This report considered it paramount to draw on the experience of the International Court of Justice, the European Court of Human Rights and the Inter-American Court of Human Rights for the organization of an international criminal court. These Courts were all created by treaties binding adhering states. The United Nations Charter created the International Court of Justice. The same applied to regional courts. The Inter-American Court of Human Rights was created by chapter VII of the American Convention on Human Rights and the European Court of Human Rights was created by Convention. The authority and credibility of these courts are based on the consensus of the states adhering to the conventions.

The General Assembly adopted a resolution on the question of the international criminal court. Its Resolution 46/54, paragraph 3 (1991) provides that it is the responsibility of the General Assembly

to make any directives on this issue. This authority is based on Articles 10 and 13 of the United Nations Charter. The Security Council could be considered as usurping power from the General Assembly when it assumes the role of creating an international criminal court.

The Tribunal for Rwanda was created by the Security Council under Chapter VII of the Charter of the United Nations. Chapter VII deals with coercion by the Security Council when action is required to prevent aggression, or maintain peace. The Tribunal created under article 29 of the United Nations Charter is therefore an organism subsidiary to the Security Council pursuant to the exercise of its policing functions under Chapter VII of the Charter.

To our knowledge, no studies in the past have suggested that an international criminal tribunal should play a role in Security Council coercive activities. It takes mental gymnastics for a jurist to justify the creation of a court as an appendage to an international organ of policing and coercion. In this active international policing role, an international criminal court cannot meet the requirement of neutrality and independence which must be the hallmark of any tribunal, and all the more of an international tribunal requiring the respect and support of all nations.

An international criminal court should be permanent and not ad hoc. This is one way in which it differs from a Commission of inquiry. We note that the mandate of the Tribunal for Rwanda is limited to judging certain individuals concerning events in Rwanda and neighboring countries during the calendar year 1994. In its very essence, it is limited and ad hoc resembling more a commission of inquiry than a criminal court.

The Nuremberg experience after the Second World War was the source of a rich body of law serving to punish the authors of wars of aggression and of genocide. Because of the context and as a first experience, the Nuremberg was an ad hoc tribunal. Nuremberg has been criticized as a victor's tribunal where the losers in the war were judged for their crimes. The international community has sought to move on from Nuremberg and create an international criminal court permanent in nature in order to guaranty its independence and impartiality. It is inappropriate to return to the point of departure that Nuremberg represented in a totally different context.

The Tribunal for Rwanda does not respect the basic criteria required of an international criminal court. It is not independent, not impartial and not permanent. Nor does it reflect any international

consensus created by the General Assembly of the United Nations or by treaty based on the sovereign equality of all nations. It does not live up to the criteria of independence and impartiality set forth in Art 14.1 International Covenant on Civil and Political Rights.

It is an ad hoc victor's Tribunal created by the Security Council of the United Nations upon request by the victorious party in a civil war, the new Government of Rwanda dominated by the Rwandese Patriotic Front(RPF). It is an instrument created for coercion according to the Charter of the United Nations. Democratic jurists, human rights activists and human rights organizations should be outraged by the violations of basic justice underlying the formation of the this Tribunal. The very worthy enterprise of the creation of an international criminal court deserves a more serious approach.

SUBSTANTIVE PROBLEMS

The Tribunal for Rwanda is also fraught with serious substantive problems in its mandate. Its inherent bias, its mandate limited in time to 1994 and in content - violations of international humanitarian law - will prevent any light from being shed on the issues which caused the Rwandan tragedy and prevent it from judging those responsible.

The Tribunal's mandate is to judge individuals responsible for violations of international humanitarian law. It is limited to judging individuals for crimes committed on Rwandan soil and Rwandan citizens responsible for such violations committed in neighbor countries between January 1, 1994 and December 31, 1994. As we have seen, the Security Council adopted Resolution 955 upon request of the RPF Government of Rwanda, victors in the four year war. The resolution is based on the premise that there is overwhelming evidence of acts of genocide against the Tutsi group carried out by the Hutu group in a concerted planned and methodical way and that there was no evidence of such planning by the Tutsi elements against the Hutus[3]. As we shall see, these investigators and the Secretary General ignored the Gersony report[4] accepted by the High Commissioner for Refugees that the victorious RPF had massacred at least thirty thousand persons, mostly Hutus between June and September 1994.

The general wisdom would state that this type of tribunal is necessary in the world wide fight against impunity in order to prevent a recurrence of Rwanda type tragedies elsewhere in the world. Unfortunately, this Tribunal with its mandate limited to the narrow scope humanitarian law, and with its factual premises and limited time scope will fail abysmally to prevent future catastrophes

but rather perpetuate and exacerbate the crisis in Rwanda, Burundi and the surrounding countries and lead to more tragedies in the future.

FACTUAL BACKGROUND 5

The present crisis began following the military intervention in Rwanda from Ugandan soil by the joint efforts of the Rwandese Patriotic Army (RPA) and the Ugandan Army (National Resistance Army - NRA) 6 on October 1, 1990. The Tutsis were the former semi-aristocratic minority who had established a domination over the Hutu majority in pre colonial times. Many had left Rwanda with the Royal Family after independence from Belgium in 1959. The history of Rwanda has been punctuated by mutual killings in particular in 1959, 1963, 1964, and 1973. Most Tutsi refugees have consistently refused to accept Hutu electoral preeminence in both Rwanda and Burundi. The 1963 and 1964 killings were triggered by a Tutsi militia invasion of Rwanda. The 1973 crisis followed massive killings of Hutus by the Tutsi-dominated army in Burundi. In 1991 according to the Census, the population of Rwanda was approximately 7,500,000 of whom 6,877,500 (91.7%) were Hutus, 615,000 (or 8.2% were Tutsis and 7,500(.1%) were Twas7.

The Bay of Pigs style invasion of Rwanda from Uganda in October 1990 by the joint efforts of the RPF and the Ugandan army created a dynamic in the country which lead directly to the 1994 catastrophe. There began a large displacement of Hutu residents from northern Rwanda. The majority Hutu population developed an acute phobia8 of the Tutsi population. The civil war lasted almost four years. There were significant losses on the part of both Hutu and Tutsi communities. In 1993, there was a series of killings of Hutu leaders in the area. The Hutu President of Burundi was assassinated in October 1993. In February 1994, two Hutu government leaders were murdered. A few days prior to April 6, 1994, RPF leaders from all over the world held a meeting in Bobo-Dioulasso, Burkina Faso during which the leaders urged that the first priority be the elimination of Rwandan Hutu President Juvénal Habyarimana at all costs.

On April 6, 1994, President Habyarama was assassinated with his Burundi counterpart, Cyprien Ntaryamira while both were landing at the Kigali airport protected ostensibly by Belgian troops with the United Nations. There is no definitive proof who was responsible for these murders9. The Hutu population, deprived of its leaders, felt encircled and threatened with elimination. Rwanda was set on fire and there was a mutual bloodletting in which probably over one million people were killed.

LEGAL ISSUES

The tribunal has a mandate limited to judging persons responsible for serious violations of international humanitarian law committed on Rwandan territory or by Rwandan citizens in states neighboring Rwanda during the calendar year of 1994[10]. This myopic perspective limited to international humanitarian law is totally inadequate[11]. It cannot indict those responsible for planning and waging aggressive war. The temporal jurisdiction for the year 1994 is artificial and will further prevent the Tribunal Prosecutor from laying the appropriate charges for the planning and organisation of the war and undertaking any proper inquiry with respect to the causes of the conflict. Furthermore, limiting the jurisdiction to crimes committed in Rwanda or by Rwandan citizens in neighboring countries excludes from the Court's jurisdiction judging crimes committed by non Rwandan individuals outside Rwanda. Because of the many exclusions, the Tribunal will be weakened in its theoretical role of preventing future conflicts of this type.

INTERNATIONAL HUMANITARIAN LAW, INTERNATIONAL LAW AND HUMAN RIGHTS LAW, NUREMBERG

The Tribunal for Rwanda can only deal with violations of international humanitarian law. International humanitarian law regulates the conduct of war. Individuals who break the rules such as killing civilians, trying to exterminate an entire ethnic group or using illegal weapons could therefore be held criminally liable for their violations of basic principles of international humanitarian law. International humanitarian law serves to regulate hostilities in order to limit hardship. International humanitarian law has two branches: the law of Geneva and the law of the Hague. The law of Geneva - humanitarian law- has as its purpose to safeguard military personnel who are out of combat and persons not taking part in the hostilities. The law of the Hague - the law of warfare - determines the rights and duties of the parties in the carrying out of wartime operations and restricts the choice of wartime methods[12].

Neither school of humanitarian law envisages criminal liability for planning or waging wars of aggression, or wars of invasion nor do they look at causes of conflicts and assign responsibility. He who makes war, who invades another country is not per se violating humanitarian law.

International law, international human rights law and the legacy of Nuremberg are not so limited, so myopic. The violation of national sovereignty, the planning and waging of a war of aggression are

among the greatest crimes which exist and are established concepts universally recognized in international law. In the search for peace and truth, in the quest to understand the causes of war, a tribunal set up to judge participants in a war must first indict the aggressor, those make the wars. The Tribunal for Rwanda cannot deal with this primary responsibility.

The modern Rwandan conflict began with the invasion of Rwanda from Uganda in the north by the foreign RPF/NRA(Ugandan) army on October 1, 1990. This well planned and well organized invasion was followed by the four year war which ended with the military victory of the RPF in July 1994. Questions raised by this war include: the violation of Rwandan sovereignty and the planning and waging of the war by President Museveni of Uganda and by the leaders of the RPF, and the conduct of the war by the Rwandese Patriotic Army (RPA) and by the defenders of Rwanda.

In this conflict, there have been violations of basic principles of international law, of important modern African treaties and charters and of international humanitarian law. An examination of these violations should shed significant light on the legal and factual issues at stake. Most important are the responsibilities for bringing about the invasion and the terrible conflict which ensued. International humanitarian law is of little use because it is limited to analyzing the conduct of war. It chooses to put its head in the sand concerning the causes of the conflict.

The principle of sovereignty is enshrined in international law: a country must not intervene in the internal affairs of another country. An army cannot therefore invade a neighboring country. African law and African human rights law have created additional important duties concerning refugees and invasions from neighbor countries based on the particularities of modern African history.

Modern history and international relations have been marked by the repudiation of the invasion of one country by another. Initiating aggressive war is the most reviled conduct in international relations. The Charter of the United Nations prohibits the type of invasion that was undertaken from Uganda13. In 1960, the General Assembly of the United Nations when dealing with the granting of independence for colonized peoples resolved that all member countries must abstain from intervening in the internal affairs of a country and respect the sovereignty and territorial integrity of all peoples14.

Modern African leaders have been preoccupied with the problems of their national sovereignty and military intervention from neighbor countries. Treaties and human rights instruments reflect this

preoccupation. With decolonization, and displacement of minorities opposed to these changes, for example the large numbers of the Rwandan Tutsis who left Rwanda after independence, and with the frequently artificial nature of African borders, African leaders have been haunted with the problem of exiled armies, potential invasion and destabilization. These leaders went to great lengths to sign treaties creating positive obligations for African countries to prevent armies from using their territories as launching pads for wars of invasion of neighboring countries. The Charter of the Organisation of African Unity signed on May 25, 1963 (Art III) requires members to respect the following principles:

1. the sovereign equality of all Member States;
2. non-interference in the internal affairs of states;
3. respect for the sovereignty and territorial integrity of each state and for its inalienable right to independent existence;
4. peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration;
5. unreserved condemnation, in all its forms, of political assassination as well as of subversive activities on the part of neighboring states of any other state15;

Rwanda and Uganda are members of the OAU and are bound by the OAU Charter.

The 1969 Oau Convention Governing The Specific Aspects of Refugee Problems in Africa (Art III par 2.) requires Signatory states "to undertake to prohibit refugees residing in their respective territories from attacking any State Member of the OAU, by any activity likely to cause tension between Member States, and in particular by use of arm, through the press, or by radio." Art II par. 1 provides that refugees "shall also abstain from any subversive activity against any Member State of the OAU. This Convention was signed by Uganda and Rwanda on September 10, 196916.

The African Charter on Human and Peoples' Rights17 signed on June 27, 1981 creates the obligation for a signatory state to defend national sovereignty of other signatory states from invasion by subversive elements on its territory. Article 23 paragraph 1, reaffirms explicitly the principles implicitly affirmed by the Charter of the United Nations and the Charter of the OAU. Paragraph 2 requires that States ensure that an individual enjoying the right of asylum not engage in subversive activities against his country of origin. The State must also ensure that its territory not be used as bases for subversive activities or terrorist activities against the people of any other signatory State.

Both Uganda and Rwanda are bound by the African Charter. It is interesting to note the title of this Charter, which refers to "Human and Peoples' Rights". African human rights experts clearly understood the inextricable link between individual human rights and a peoples' collective rights and the risk to national groups by invasion. They were preoccupied by the problem and took steps under treaty to avoid such invasions.

The instruments in question, the Charter of the Organisation of African Unity, the Oau Convention Governing The Specific Aspects of Refugee Problems in Africa, and the African Charter on Human and Peoples' Rights were to no avail in the face of joint RPF - Ugandan resolve to take power by force in Rwanda. War was initiated from Uganda with active Ugandan military participation in flagrant violation of all principles of international law affecting these African nations.

We know that international law contemplates the crime of planning and undertaking wars of aggression as a legacy of Nuremberg. Many of the principles of international humanitarian law were strengthened as a result of Nuremberg but Nuremberg went much beyond simply punishing individuals for the manner in which war is conducted. Nuremberg went to the heart of the issue : the planning and waging of a war of aggression.

Before the UN had declared Genocide a crime in the 1948 Convention on the Prevention and Repression of the Crime of Genocide, the victorious powers had tried and punished the Nazi leaders in the London Nuremberg trials. The Nuremberg trials became the basis of international law for the prevention of genocide and the search for peace. Fundamental was the declaration of the crime under international law of the crime of preparing and waging a war of aggression. Pursuant to General Assembly Resolution 177, it was adopted by the International Law Commission[18]:

Crimes against peace:

a. Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;
b. Participation in a common plan or conspiracy for the accomplishment of any of the acts in (i);

The law is clear on this question. And is it not also clear that the most serious crime is the planning and implementation of aggressive war in violation of established principles in international law? Is it not all the more serious when such a war - the invasion of

Rwanda from Uganda by joint Ugandan - RPF forces - is specifically forbidden by the major African legal instruments? The Tribunal for Rwanda cannot address these issues.

Even if the Tribunal satisfied the basic criteria necessary for an international criminal court : permanent, impartial, based on acceptance through the General Assembly, its limited mandate would prevent it from carrying out the important duties of a criminal court: namely, punishing those Ugandans and RPF leaders responsible for wars of aggression and violations of fundamental human rights.

CONCLUSION: WHAT THE TRIBUNAL WILL NOT DO

The Tribunal will not envisage indictment of leaders of the Rwandese Patriotic Front for the planning the April 6 murder of Rwandan President Juvénal Habyarimana and President Cyprien Ntaryamira of Burundi nor for the elimination of ethnic Hutus during the four year war nor for the continuing arbitrary murder of Hutus in Rwanda19. Nor will it or can it examine potential indictment of Belgian, American or Ugandan Government officials for the April 6, 1994 murder of these two Hutu Presidents in spite of ample evidence that such crimes deserve serious investigation20.

The Independent Commission of Experts commissioned in accordance with Security Council Resolution 935(1994) to make recommendations for the creation of the ad hoc Tribunal for Rwanda found that Tutsi elements had not perpetrated acts committed with intent to destroy the Hutu group within the meaning of the Genocide Convention of 194821. This conclusion ignored the Gersony Report prepared for the High Commissioner for Refugees(HCR) which accused the RPF of the summary killings of 30,000 people mostly Hutus in the four months between June and September 199422. The Gersony Report, accepted by the HCR, has been smothered and ignored by the United Nations. It was therefore decided in advance that the Tribunal will deal only with acts undertaken by Hutu forces against Tutsi aggressors. It is not surprising given that the Tribunal was set up at the request of the Tutsi RPF victors, now speaking as the new Government of Rwanda.

In this way, the Tribunal is organized to reject in advance the basic thesis that the Hutu reaction after the series of murders of Hutu leaders culminating in the April 6, 1994 murder of the Hutu Presidents of Rwanda and Burundi was the direct result of the shock and the reigning tension leading to the tragic chain reaction which we are all aware of. After almost four years of war with the Tutsi RPA invaders where the RPA army had infiltrated almost all Tutsi

groupings, is it not feasible that the reaction and mutual bloodletting was one of extreme fear and of self - defence by the Hutu population? 23

The Tribunal will not indict President Museveni for the deployment in Rwanda of seven NRA battalions in February 1993. The RPF/NRA soldiers launched heavy attacks in the Ruhengeri and Byumba regions killing more than 40,000 innocent civilians, including women and children and causing the exodus of approximately 1,000,000 refugees24. The Tribunal with its present mandate cannot judge non-Rwandan citizens for acts committed outside Rwanda. President Museveni was certainly not in Rwanda in February 1993. Furthermore, with its mandate limited to 1994, it cannot deal with events occurring, for example, in 1993. It will not accuse RPF/RPA elements for the crimes they committed during the war or after the war25. This amounts to institutionalized impunity which can only undermine any attempt at reconciliation and reconstruction of Rwanda.

CONCLUSION - PERSPECTIVES

At the time of the writing of this paper, (September/October 1995) the perspectives are extremely dark for the two millions Hutu refugees waiting in camps in Zaire and elsewhere. They are afraid to return home and face massacres or loss of their land to new Tutsi masters. On August 28, Hutu Prime Minister Faustin Twagiramungu and three other Hutu ministers in the RPF government were removed from power removing any semblance of Hutu representation in the RPF administration. Amnesty International expressed its concern for the members of the Rwandan Government, in particular Prime Minister Twagiramungu, who apparently criticized deliberate and arbitrary killings by elements of the RPA26. We can conceive of a new Palestinian type problem where these people will be left in limbo for generations. The Security Council has suspended its embargo against delivery of arms to the RPF regime with the active support of the United States. President Museveni of Uganda has promised to intervene if the Hutus try to retake power militarily27.

Human rights activists, jurists and others must ask themselves some serious questions. Is it not important to avoid the trap of accepting basic "truths" set forth by the dominant powers? Is it not a danger that Non Government Organizations (NGO's) funded by national governments complacently accept government policies and in doing so act as propagandists without proper investigation. Human rights crusades are fraught with risks and can be easily manipulated. Human Rights Watch is now criticizing France for

allegedly supplying arms to the Hutus exiled in Zaire although it never condemned the armed invasion of Rwanda in October 1990. To our knowledge, no northern based human rights organisation condemned the invasion of Rwanda from Uganda. Do these organizations take seriously the African human rights treaties which, as we have seen, not only recognize individual and collective rights but also create obligations on Governments to prevent armed invasions of home countries by refugees residing in neighboring countries? Do they take into consideration the principles of Vienna whereby all human rights are considered as an inseparable whole?

Most of these organizations portray the RPF and the Tutsi population as the victims and the Hutus as authors of mass murder. No questions are asked about the RPF invasion. Few human rights organizations question the unilateral actions of the Security Council in creating international criminal tribunals which violate basic legal principles. Human rights organizations seem to have forgotten the principles of Vienna and the principles of Nuremberg. They forget that the planning of war and the violation of national sovereignty are probably the most serious violations of human rights that exist. By limiting human rights in war to the narrow scope of international humanitarian law, they are accepting the model set out by the dominant powers who control the Security council.

I invite human rights organizations and activists, and lawyers' human rights organizations including the American Association of Jurists to undertake a serious reflection on these issues. It is our duty to help to resolve problems instead of compounding them. Human rights law must evolve and look for root causes. It must not ally itself blindly with the powerful and rich against the powerless and marginal peoples. It is no longer sufficient to tinker with crises which are ripe for explosions. The reinforcement of the principles of international law is a prerequisite for avoiding future Rwandan style crises. We hope that the Tribunal for Rwanda in its present form will not sit. Indeed Kenya has courageously decided not to cooperate with the Tribunal as it is now constituted because it doesn't deal with the cause of the crisis, namely the invasion of Rwanda from bases in Uganda and the killing of the former Presidents of Rwanda and Burundi on April 6, 1994. President Daniel Arap Moi has stated that anyone entering Kenya to serve a summons would be arrested on the spot[28].

Any solution to the Rwandan crisis must be political. If ever it sits, the present International Criminal Tribunal for Rwanda will only prosecute members of the losing side in the war, the Hutu majority of Rwanda. It will protect the Tutsi criminals, bolster their hold on power in Rwanda and institutionalize one - sided impunity for Tutsi

criminals. No political solution based on truth, punishment and justice will be found.

If the international community has a role to play in the reconstruction of Rwanda, it must be neutral and support examination of crimes committed by both sides in the conflict. Any mandate should not be limited to violations of international humanitarian law and must include a examination of the causes of the conflict including the invasion of Rwanda from Uganda in October 1990. An independent criminal tribunal with a mandate to judge and punish guilty individuals from both sides of the conflict would be a positive alternative to the present Security Council Tribunal.

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NOTES

1. Rwanda, Les Violations des droits de l'homme par le FPR/APR. Plaidoyer pour une enquête approfondie, S Desouter, F Reyntjen, Université d'Anvers, Institut de Politique de Gestion du Developpement, Centre d'Etude de la Région des Grands Lacs d'Afrique Centrale, Working Paper, Anvers, June 1995

2. Many of our comments on the structure of the Rwandan Tribunal are drawn from studies by the American Association of Jurists on the International Criminal Tribunal for the former Yugoslavia. The American Association of Jurists has already made public its criticisms of the International Criminal Tribunal for the former Yugoslavia. See: "Droits de l'Homme, Ne crée pas un tribunal de Nuremberg qui veut", Journal de Genève, June 14, 1993. and Alejandro Teitelbaum, Representative of the American Association of Jurists at the UN in Geneva. 49th Period of Sessions of the Human Rights Commission, February 1993, Theme 11. E/CN.4/1993/SR.44/Add.1 p. 12 ss.

3. Paragraph 1 of Resolution 955 of the Security Council, November 8, 1994.

4. S/1194/1125 Letter by Boutros BOUTROS-GHALI, Oct 4, 1994, in Annex, Preliminary report of the Independent Commission of Experts in accordance with Security Council Resolution 935(1994), par. 148

5. Our basic sources for this brief historical review are:
a) The paper by the International Centre for Peace and Reconciliation Initiative for Africa(ICPCRIA), Prof Agola Auma-Osolo,

March 25, 1995 The Rwanda Catastrophe : Its Actual Root-Cause and Remedies to Pre-Empt a Similar Situation In Rwanda. p. 33-39
b) Chronologie des Principaux évenéments Précurseurs à la Tragedie Rwandaise d'avril 1994., Cerclre Rwandais de Réflexion(CRR) Document N° 0152, Avril 1995
c) Physionomie de la Guere entre le FPR et le Rwanda, Quelques éléments explicatifs du conflit. Dr Joseph Kalinganire, Paix et Democratie. N° : 000 mars 1993
d) Rwanda, Les Violations des droits de l'homme parl le FPR/APR. Plaidoyer pour une enquête approfondie, S Desouter, F Reyntjen, Université d'Anvers, Institut de Politique de Gestion du Developpement, Centre d'Etude de la Région des Grands Lacs d'Afrique Centrale, Working Paper, Anvers, June 1995

6. Auma-Osolo, supra. p. 25. The RPF is the virtual creation of President Museveni of Uganda. The RPF and the Ugandan resistance army mirror each other. Their joint efforts succeeded in the overthrow of President Milton Obote in 1985.

7. Auma-Osolo supra. p. 33. These figures are similar to those proposed by the 1978 census undertaken by the FNUAP(Fonds des Nations Unies pour les problèmes de population) which stated that 9.8% of the population was Tutsi compared to 89.8% Hutu.

8. The term phobia or Tutsi phobia was coined by Auma-Osolo, supra.

9. The RPF blames Hutu extremists for these murders. In Africa International, N° 272 May 1994. Marie-Roger Biloa makes a persuasive argument holding Belgium, the United States and Uganda responsible. Africa International, "Rwanda/Dossier La conspiration" p. 14

10. Article one of the Schedule to Resolution 955 of the Security Council, November 8, 1994

11. The mandate of the Commission of Experts granted by the Security Council on July 1, 1994 (Resolution 935(1994)) was limited to international humanitarian law. The Commission itself decided to limit itself to the period from April 6, 1994 to July 15, 1994.

12. International dimensions of Humanitarian Law, Henry Dunant Institute - Geneva, Unesco, Pairs, Martinius Hijhoff Publishers, Dordrecht/Boston/London, 1988

13. Article 1, paragraph 1

14. Déclaration sur l'octroi de l'indépendance aux pays et aux peuples coloniaux. Résolution 1514(XV) de l'Assemblée générale en date du 14 décembre 1960.

15. Charter of the Organisation of African Unity, Art III. The OAU charter was signed in Addis Ababa on May 25, 1963. It entered into force on September 13, 1963.

16. Oau Convention Governing The Specific Aspects of Refugee Problems in Africa. Adopted by the Assembly of Heads of State and Government at its Sixth Ordinary Session (Addis Ababa, 10 September, 1969. It entered into force on 20 June 1974.

17. The African Charter on Human and Peoples' Rights was adopted by the 18th Assembly of the Heads of State and Government of the Organization of African Unity on June 27, 1981 at Nairobi, Kenya. It entered into force in October 1986.

18. Yearbook of the International Law Commission[1950], Vol. II. p. 374-378

19. Desouter, Reyntjen, supra.

20. Biloa, supra.

21. S/1194/1125 Letter by Boutros Boutros-Ghali, Oct 1, 1994, in Annex, Preliminary report of the Independent Commission of Experts in accordance with Security Council Resolution 935(1994), par. 148.

22. "Des milliers de Hutus massacrés au Rwanda", Liberation. October 1 and 2, 1994

23. This theory is proposed by Auma-Osolo, supra.

24. UDC Newsletter, Vol. 3, No. 4. April 1993. The UDC is the Uganda Democratic Coalition.

25. Desouter, Reyntjen, supra. and S/1194/1125 Letter by Boutros boutros-ghali, Oct 1, 1994, in Annex, Preliminary report of the Independent Commission of Experts in accordance with Security Council Resolution 935(1994)

26. Amnesty International News Service: Internet. Rwanda: Human rights may be the main casualty of tensions in the Rwandese Government. Sender Amnesty International@io.org

27. Resolution 1011. The embargo was suspended until September 1, 1996. See also "L'embargo sur les armes au Rwanda suspendu", La Presse, Montréal, August 27, 1995.

28. Reuters, October 9, 1995, Nicholas Kotch. And the Montreal Gazette, October 6, 1995

29. The author is Secretary General of the American Association of Jurists(AAJ). He is a Criminal Defence attorney from Montreal, Quebec and member of the Jury of the International War Crimes Tribunal, New York, February 28-29, 1992. The opinions expressed in this paper represent the author alone. He may be contacted at 300 Léo Pariseau, suite 2201, Montréal, Québec, Canada H2W 2N1. Tel: 514 982 0144. Fax: 514 982 0149, philpotaaj@citenet.net