International Justice and Domestic Rebuilding:
An Analysis of the Role of the International Criminal Tribunal for Rwanda

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1. Introduction

As long as the problem of war has existed, so too has the problem of reconstructing societies in the aftermath of war. The question of how to address legacies of political violence is often a primary concern for countries emerging from internal conflict and massive human rights abuses. Many states, particularly those that have made transitions toward democracy in the current Third Wave of Democratization,[1] have become increasingly aware that creating mechanisms of accountability to address the political violence of the past is an integral part of forging reconciliation and establishing peaceful political orders.[2] Accountability,[3] however, can have vastly different meanings and different implications depending on the form it takes and the social and political context in which it is introduced.[4] Indeed, accountability is not a cure-all. Processes of accountability may threaten a nation’s stability in large part because the authors of human rights abuses often continue to play a prominent role in politics. This threat may prompt leaders to curtail the accountability process, as in the Argentinean case,[5] or may lead the electorate to choose amnesty over accountability, as in the Uruguayan case.[6] In other countries, such as Sierra Leone, accountability processes can trigger renewed conflict and instability.[7] In what circumstances different processes of accountability aid the process of reconciliation and democratization and in what circumstances they may undermine them is a matter of debate and empirical research.

A critical dimension of this issue is the role of the “international community,”[8] particularly international criminal tribunals, in domestic processes of rebuilding and reconciliation.[9] Through an examination of the Rwandan case, this paper seeks to assess the role that international criminal tribunals might play in the aftermath of intra-state conflict and human rights abuses. In this paper, I suggest that the capacity of the International Criminal Tribunal for Rwanda (ICTR) to aid rebuilding in Rwanda has been significantly limited by three different types of conflicts with the Tutsi-led Rwandan government that have undermined the Tribunal’s legitimacy in the government’s eyes. First, the most formidable conflict between the ICTR and the government concerns philosophical differences over what constitutes the proper punishment for genocide. This conflict has its origins in the different orientations and interests that distinguish international humanitarian law from Rwanda’s legal system. Whereas the ICTR grows out of a tradition of international law based on the protection of universal human rights and the concept of an independent judiciary, the Rwandan court system emerges from a colonial and post-colonial history of inter-ethnic division and zero-sum politics characteristic of a number of other African states. Second, political conflict over the international community’s failure to intervene during the genocide has been a persistent source of resentment in Kigali that has in turn undermined the legitimacy of the United Nations and the ICTR in the government’s view. Third, pragmatic conflict over the manner and pace in which the ICTR administers justice has further eroded the credibility of the Tribunal in
Kigali. Today, however, five years after the ICTR was established by the United Nations Security Council, the cooperation between the ICTR and the Rwandan government has increased and signs of overt conflict between the Tanzania-based court and Kigali have decreased to some degree. The first convictions at the Tribunal appear to have tempered the government’s pessimistic view of the court. As the Rwandan case shows, the conflict and disagreement between international tribunals and particular governments need not be static and unchanging.

In the remainder of this section, I will place the Rwandan case in a larger context of international-domestic interaction over responses to human rights abuses. In section two, I will discuss the relevance of studying international criminal tribunals. In section three, I will assess the Tribunal’s mission from the perspective of the international community. In section four, I will analyze the three-fold conflict between the Tribunal and the Tutsi-led Rwandan government and discuss how this conflict has undermined the legitimacy of the Tribunal within the government. In section five, I will summarize my findings.

A comprehensive inquiry ideally would involve a comparative study of the two ad hoc international tribunals in operation, the ICTR and the International Criminal Tribunal for the former Yugoslavia (ICTY). However, due to space constraints I will focus on one aspect of this problem – the ICTR. I have chosen this court for analysis because of the relative lack of attention it has received in comparison to the ICTY and because of the political importance of the Rwandan genocide, one of the worst cases of mass murder in this century.[10] The magnitude and premeditated nature of the killing, the speed and manner in which the killings took place,[11] the continuation of Tutsi-Hutu violence, and the related regional war in neighboring Congo,[12] combine to make the Rwandan genocide and its aftermath a critical case for both Rwandans and the world to examine.

To understand the ways in which international criminal tribunals may affect states and their judicial and reconciliation processes, it is first important to place this question in a larger context of international-domestic interaction over responses to human rights abuses. As shown in Table 1, international and domestic actors often differ sharply over how to respond to the aftermath of political violence. This typology — which includes instances of actual and potential conflict — suggests that the international community and certain states may frequently clash over the pursuit of different interests and different norms. The ways in which these clashes play out is critical to the construction of human rights norms, state building, and the continued interaction between international and domestic actors.

Table 1: A Typology of International-Domestic Interaction over Human Rights Abuses[13]

<table>
<thead>
<tr>
<th>International</th>
<th>Domestic</th>
<th>Case</th>
<th>Date</th>
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<tbody>
<tr>
<td>Justice (hypothetical)</td>
<td>Truth</td>
<td>South Africa</td>
<td>—</td>
</tr>
<tr>
<td>Justice</td>
<td>Partial Truth</td>
<td>Chile</td>
<td>1998-</td>
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<tr>
<td>Justice</td>
<td>Impunity</td>
<td>Former Yugoslavia</td>
<td>1993-</td>
</tr>
<tr>
<td>Justice</td>
<td>Justice</td>
<td>Rwanda</td>
<td>1994-</td>
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<tr>
<td>Truth</td>
<td>Truth</td>
<td>Guatemala</td>
<td>1999-</td>
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As shown in the first line of Table 1, a decision by the international community to prosecute human rights violations, for instance, may conflict with a state’s decision to seek full or limited truth about the past without prosecutions. Such a conflict would occur if international actors sought prosecutions of former leaders of the Apartheid government against the wishes of the new South African state that has offered amnesty to those who publicly disclose the extent of their participation in political crimes. The case of Guatemala — in which a recently released truth commission report was the product of domestic and international collaboration — shows that agreement between international and domestic actors on how to respond to human rights abuses is possible. Another type of conflict has arisen in Spain’s efforts to extradite General Augusto Pinochet, the former Chilean head of state, for crimes against humanity committed during his seventeen-year military reign. This quest for accountability conflicts with Chile’s decision to issue a general amnesty and to seek a partial accounting of political crimes through its Truth and Reconciliation Commission. In other instances the international community may desire justice, while the state where the human rights abuses occurred seeks neither truth nor justice, but impunity. Such a conflict exits in Yugoslavia, where President Slobodan Milosevic has refused to recognize the jurisdiction of the ICTY. Another potential conflict pits the international community’s attempt to uncover the extent of human rights abuses against a country’s bid for impunity. Such was the case following Laurent Kabila’s 1997 military victory over President Mobutu Sese Seko in the former Zaire. Following Kabila’s victory, the United Nations began to investigate allegations of wide-spread massacres of Rwandan Hutus in the eastern and northern parts of the Congo. But Kabila’s interference brought the investigations to an early halt.

This typology provides a sense of the type and range of international-state conflict that may occur over how best to address human rights abuses. It is important to note, however, that even when the international community and a particular state in which the human rights violations occurred agree on the same general approach, they may still clash over key elements of each other’s response. The international community’s conception of justice, for example, may be at odds, in part or in whole, with the type of justice pursued by that particular state. This is precisely what has occurred in the aftermath of the Rwandan genocide. While both the international community and the Rwandan government favor prosecutions for suspected genocidaires, their notions of what constitutes justice and their logistical approaches to the judicial process have differed significantly. This conflict undermines the Tribunal’s legitimacy and interferes with its ability to positively influence reconciliation and rebuilding.

II. Why Study International Criminal Tribunals?

A consensus does not exist – either among lay people, academics, or politicians – over the utility and importance of international criminal tribunals. In fact, even some of those sympathetic to the ideals of international law regard the ICTR and the ICTY as ineffective instruments of an ineffective United Nations. This attitude is reflected and bolstered by the fact that news of the tribunals, at least in the United States, infrequently makes its way to the general public. In addition to the tribunals’ obscurity, many people, both within and outside academia and policy circles, are informed by a realist world view that emphasizes the primacy of diplomacy and military force over international law and
criminal courts. While it is not within the scope of this paper to examine public conceptions of international law, it is important to consider them briefly. This skepticism toward tribunals raises a challenge to explain how, if at all, the study of international law and international tribunals may be useful and relevant.

International criminal tribunals are likely to become more prominent in the years to come, thus making it more important to understand their design, dynamics, and consequences. Examination of the two ad hoc tribunals may provide insight which others may use to improve the structure, operation, and orientation of these courts. Furthermore, an understanding of the ways in which these tribunals interact with the domestic politics of Rwanda as well as those of the former Yugoslavia may provide a basis to better understand the pitfalls that the International Criminal Court (ICC) might confront when it is established. The creation of the ad hoc tribunals for Rwanda and the former Yugoslavia, and the agreement to establish the ICC,[22] demonstrate that such courts are becoming an increasingly significant part of the international community’s response to intra-state conflict.[23]

That international tribunals are likely to play a more prominent role does not necessarily mean they will gain global legitimacy outside state institutions and the human rights community. The legitimacy of these courts may grow stronger as a result of a more visible and activist role taken by their officials.[24] However, depending on their operation and on the conflict in question, these international tribunals may spark a backlash in the media and in the public at large. Furthermore, the actual or perceived failure of tribunals to carry out their mandate, or their slowness in adjusting prosecutorial strategies in response to new human rights violations. The global legitimacy and long-term viability of international tribunals, particularly the ICC, may be undermined by the decision of key states not to support the process financially and politically. In this regard, it is important to consider the possible negative ramifications of the United States’ opposition to the ICC.[25] Nevertheless, international criminal tribunals appear to be playing an increasingly prominent role on the stage of world politics.

An anticipated continuation in intra-state conflict may provide a steady case load for future tribunals and a further justification for their existence. As armed conflicts persist and new ones flare up, a range of human rights violations may arise for the international community to adjudicate. While the end of the Cold War has led to the resolution of some conflicts, it has also created new geo-political realities that have led to new antagonisms and new wars. From Chechnya in the Caucasus to Kosovo in the Balkans, intra-state conflicts show little sign of dissipating. Furthermore, new types of conflict have emerged where none existed before. In the Congo, for instance, up to six countries have joined sides in a civil war that marks a departure from African states’ long-standing agreement not to challenge borders and participate in regional conflict.[26] This could trigger, some analysts fear, a larger regional war on the continent and subsequent human rights violations. In addition, not all Cold War-era intra-state conflicts have subsided. Indeed, the on-going civil war in The Sudan[27] and the reignited civil war in Angola show little sign of abating. The proliferation of conflicts, however, does not ensure the proliferation of international trials. The ICC’s jurisdiction is narrow, and consequently, the initiation of trials in the aftermath of human rights violations will not be a forgone matter.[28] In addition, the possible increase in international tribunals will not necessarily translate into a wellspring of global support for them. However, the creation of the ad hoc tribunals, the ICC, and other recent developments in international law, such as the attempt to extradite Pinochet, appears to have contributed to a new confidence in the efficacy of international law and the potential of international tribunals.[29]

III. Assessing International Criminal Tribunals
International criminal tribunals can be assessed in two complementary ways. First, there is the question of what international tribunals can accomplish internationally. In other words, how, if at all, might tribunals influence the global formation of human rights norms as well as a community of like-minded states? The second question – and the primary focus of this paper — concerns what tribunals can accomplish domestically. To discern what tribunals may achieve domestically, I will focus on two general sets of inquiries. First, I will briefly analyze the ICTR’s progress to date. Second, I will evaluate how the Tutsi-led Rwandan government perceives the Tribunal. Since I am ultimately concerned with the Tribunal’s impact on the government, I will pay more attention to this line of inquiry. Even if Tribunal officials and members of the international community come to regard the ICTR as a success, the key question in this paper is whether the Rwandan government considers it a success. Indeed, justice does not only concern the reality of what transpires inside the courtroom, but how this reality is perceived beyond its walls. In order to be a relevant factor in domestic rebuilding and reconciliation, the Tribunal must have a substantial degree of legitimacy in Rwanda. The ICTR’s task is far more elusive than that of an organization such as the United States Agency for International Development which seeks to influence a country with the direct transfer of material benefits. This is because the ICTR seeks to influence Rwanda through the “transfer” of the amorphous commodity of justice. In essence, the challenge that the ICTR faces vis a vis Rwanda is one of legitimacy. In this section, I will briefly evaluate the Tribunal’s efforts as viewed by international actors. Evaluating the ICTR’s attempts to carry out its mission relies, to a large extent, on whether one sees the criminal dock as half full or half empty. Until recently, many commentators have viewed the dock as half empty due to a range of operational problems that have undermined the Tribunal’s efficacy and reputation within and beyond Rwanda’s borders. Infrastructural problems and administrative difficulties have plagued the legal body, especially during its early years. These organizational factors have hampered the Tribunal’s ability to carry out its mandate. To a large degree, the ICTR — located in the Tanzanian city of Arusha — operates in obscurity, as detached from neighboring Rwanda as it is from the rest of the world. Physical factors such as inadequate infrastructure — which place the Tribunal at a greater disadvantage than that faced by the ICTY, located in The Hague — underscore the fact that the ideals of justice often depend on the fine details of bureaucratic organization. The Tribunal faces the formidable challenge of informing Rwanda of its progress, a problem that is exacerbated by the insufficient resources devoted to this task and the difficulty of disseminating news in a predominately rural and economically undeveloped country such as Rwanda. Other problems, such as lack of funding for the ICTR’s witness protection program, has also threatened to undermine the pace of prosecutions and international confidence in the Tribunal. Unfavorable reports have comprised much of the limited international media coverage of the ICTR. These problems have raised serious doubts about the Tribunal’s capacity to fulfill its mission in a timely manner.

Despite the multitude of problems, the ICTR has recently made some notable progress, both administratively and in terms of arrests and prosecutions. The Former Rwandan Interim Prime Minister Jean Kambanda’s guilty plea in May, 1998 and his life sentence in September, 1998, as well as the genocide conviction of Jean-Paul Akayesu in September, 1998 have led to a new optimism as reflected by a number of media reports and statements by Tribunal officials. To date, there have been five convictions at the Tribunal. Some of the organizational problems appear to have been overcome by a number of reforms, such as the hiring of a new chief administrator and the opening of a third courtroom.

IV. Evaluating the Tribunal: The View from Rwanda
The Tribunal’s capacity to positively affect reconciliation and rebuilding in Rwanda ultimately depends on Rwandan views of the Tribunal. While recent administrative reform in Arusha is a positive sign, the success of these reforms will finally be measured by perceptions in Kigali. I will limit the following analysis to the Tutsi-led government’s perceptions of the Tribunal, while acknowledging that the perceptions of other segments of Rwandan society — such as Tutsi survivors and the majority Hutu population — are critical for a comprehensive understanding of the Tribunal’s current and future progress and its ability to influence events in Rwanda. The government’s opinion of the ICTR has been skeptical at best and scornful at worst. Indeed, from the first day, the court has suffered from a crisis of legitimacy in the eyes of the Rwandan government. However, this crisis has not remained static. The government’s perception of and attitude toward the Tribunal have changed in certain respects. Despite Rwanda’s initial objections to the terms of the Tribunal’s formation, it has formally accepted the international body and has agreed to a division of labor that channels the most serious genocide suspects to Arusha while leaving four lesser categories of suspects to be tried by the national court system.[38] But beneath this formal cooperation, the Tribunal suffers from government suspicion and a crisis of legitimacy that continues to undermine the ICTR’s ability to shape norms and behavior in Rwanda. The Tribunal’s legitimacy crisis is rooted in three different types of conflicts between the Rwandan government and the international community. The first conflict is political in nature and concerns political disputes between the government and the international community that have soured the government’s opinion of the United Nations, and in turn, the ICTR. The second conflict is pragmatic in nature and concerns Rwandan disagreements and disillusionment over the ICTR’s administration of justice and the slow pace of prosecutions. The third conflict is philosophical in nature and concerns fundamental conceptions of what constitutes justice.

A. Political Conflict

The central political dispute concerns the United Nations’ failure to intervene to stop the genocide. Another major political dispute concerns the UN’s post-genocide humanitarian assistance to Hutu refugees in the border areas of eastern Congo and its failure to separate suspected genocidaires from Hutu refugees. A related conflict concerns international objections to Rwanda’s on-going military involvement in the Congo crisis.[39] To a great extent, the Rwandan government does not differentiate between the international community that failed to intervene in the genocide and the international community that is running the trials in Arusha. As one Rwandan Minister of Justice official said, “The Rwandan people know this is the same international community that stood by and watched them get killed.”[40] Thus, to a large degree, the Rwandan government would agree with the assessment that the Tribunal was “born in an act of evasion.”[41] [42]

To the Rwandan government, abandonment is the enduring motif of the international community’s role during the genocide. Rwanda’s anger over international inaction has been exacerbated by the particular way in which the United Nations and leading states avoided intervention. Rather than merely failing to come to the rescue of Tutsis and moderate Hutus, the international community beat a hasty retreat in the early days of the mass killing.[43] An example of the Rwandan government’s criticism of international inaction during the genocide can be seen in the following comments of the Rwandan representative to the Security Council in the meeting in which the Tribunal was established:
“When the genocide began, the international community, which had troops in Rwanda and could have saved hundreds of thousands of human lives by, for example, establishing humanitarian safe zones, decided instead to withdraw its troops from Rwanda and to abandon the victims to their butchers.”[44] A UN peacekeeping force had been stationed in Rwanda since the December, 1993 signing of a power-sharing agreement between the majority Hutus and the minority Tutsis. But shortly after Hutu extremists murdered ten Belgian peacekeepers — in what was later determined to be a deliberate move to force the international presence out of Rwanda — the UN decided to remove most of its forces from Rwanda. Some of the remaining UN personnel did play a role in saving Tutsis. The head of the UN force in Rwanda estimated that he could have halted the genocide with five thousand troops.[45] Efforts to equip an African-led force were stymied by American reluctance to provide equipment. The only substantial international intervention came from the French, which according to several accounts, actually provided a safe haven for fleeing Hutu genocidaires.[46] [47]

It is difficult to determine how this history, which continues to reverberate in the government’s relationship with the international community, will affect the court’s future standing in Rwanda. Bitterness may dissipate as cooperation and interaction between Rwanda and the world increase. The recent willingness of members of the international community to acknowledge their failure to intervene in the genocide, as well as a recently begun independent inquiry into the UN’s role in the genocide,[48] may go some way toward tempering the government’s anger and mistrust of the international community and the Tribunal.

B. Philosophical Conflict

The most enduring conflict, and the central focus of this analysis, concerns the divergent orientation and interests that differentiate the Tribunal’s form of justice from the Rwandan government’s form of justice. The origins and orientations of these two modes of justice have created a barrier that renders it difficult for either side to accept the other side’s judicial process as fully legitimate even when formal cooperation exists. This underlying conflict, which stems from the different origins, aims, and conceptions of the respective legal systems, stands as the most serious impediment to the Tribunal’s capacity to play a positive role in the rebuilding of Rwandan society. This conflict does not always lead the government to oppose the Tribunal or actively disagree with it. Nevertheless, this conflict remains a major obstacle, especially since it frequently is hidden behind the veneer of cordiality and cooperation. This fundamental conflict over judicial principles often fades into the background as other more immediate conflicts emerge in the daily course of governance and diplomacy.

The crisis of legitimacy that plagues the Tribunal is rooted in the conflicting orientations and political assumptions that drive the ICTR and the Rwandan national legal system. The legitimacy of international humanitarian law is, on the whole, relatively stronger in countries whose internal legal principles coincide with international legal principles. Thus, for instance, international humanitarian law usually finds the greatest acceptance in Western nations that have firmly established traditions of a democratic rule of law.[49] Conversely, the legitimacy of international law tends to be weakest in countries, like Rwanda, that have little or no domestic experience with a democratic rule of law. This observation — which is partly informed by Liberal international relations theory[50] — posits a relationship between a state’s domestic legal system and its acceptance of international law, at least in the area of human rights. This notion suggests that Rwanda’s history of authoritarianism and militarism
might block full acceptance of the ICTR as legitimate. What constitutes a legitimate legal order means something very different in Rwanda, a country that has known no political consensus or democracy in its three and half decades of independence, than it does in the states of the pluralistic West. In Rwanda, notions of a legitimate legal and political order have been forged in the crucible of exclusionary national politics and by the socio-political forces that since colonial times have perpetuated zero-sum norms of governance and inter-ethnic relations. Whereas Western legal systems are rooted in an independent judiciary designed to guarantee the protection of individual rights, authoritarian systems like Rwanda’s are based on a fusion of legal and political authority that often leads to the denial of individual rights.

In Rwanda, ethnicity has provided extremists with a convenient basis for exclusion and political mobilization. As ethnic cleavages have widened, Rwandan leaders, at various points in the country’s history, have sought to solidify a corporate conception of ethnicity. This rigid notion of ethnicity was used as a central strategy by the Hutu extremists who planned the 1994 genocide. This “corporate view of ethnicity” was also evident in the massacres that took place during the Rwandan Revolution of 1959 and during other periods of political violence that preceded the genocide. In this polarized political climate, individuals are primarily judged by their membership in an ethnic group as opposed to any personal characteristics or actions of their own. The conflation of the individual with an ethnic group has led to what Catharine Newbury calls “the generalization of blame.” Thus, just as all Tutsis lost their individuality and became associated with the alleged wrongdoing of their group in 1994, “all Hutus became portrayed as genocidaires” in the aftermath of the genocide. This view, Newbury argues, “seemed to be part of a political program of vengeance directed against Hutu(s).” This vengeance has manifested itself militarily, in the Rwandan Patriotic Army’s (RPF) killings of fleeing Hutus in Zaire, as well as institutionally, in the creation of a legal process that, according to many observers, has not done enough to individualize Hutu guilt for the genocide. Thus, “the generalization of blame” and the exclusionary notion of political governance has been carried over to the functioning of the Rwandan legal system and to the system’s response to the genocide. In contrast to the type of justice being pursued by the ICTR, the Rwandan government has pursued a harsh form of justice that resembles revenge to many international observers. As Mahmood Mamdani argues in the following passage, a strong case can be made that the government’s legal response to the genocide is a continuation of Rwanda’s zero-sum politics:

As Bahutu ran into exile by the millions and Batutsi returned from exile by the hundreds of thousands, property – particularly land and dwellings – changed hands. It was, and is, a world in which to be a Hutu was to be presumed a killer. For a returning Hutu, it was and is a world where to lay claim to one’s land and house is to invite the accusation of being a killer. As the number of detainees grew … prisons became crowded and conditions deplorable. In a changed political context, was the genocide turning into a license that returning Batutsi in competition with resident Bahutu over scarce resources could draw on to accuse the latter of being ‘genociders’? Once again, justice – or precisely, delayed justice – had turned into revenge.

The indiscriminate arrests of Hutu suspects, the harsh conditions of confinement, the lack of due process guarantees, and the public executions of convicted genocidaires demonstrate, in the eyes of many international observers, that the Rwandan court system is an extension of an authoritarian political regime that is determined, however arbitrarily, to settle political scores. This zero-sum politics is not likely to change significantly in the near future. The aftermath of war and violent conflict may, in certain countries like South Africa, provide some opportunity for a new beginning based on reconciliation. But given Rwanda’s deep societal and political cleavages and the on-going civil war in the northwest part of the country, the motivation for revenge appears to run deeper than the motivation for reconciliation. In contrast to other countries like Argentina that have tempered their response to human rights abuses because of political constraints, the Tutsi-led government confronts few such constraints. Having vanquished their Hutu enemies militarily the government has been left relatively unencumbered to pursue
In contrast to the Rwandan legal system, the international legal system as represented by the ICTR has very different origins and goals. An analysis of the Tribunal’s origin and orientation will help sharpen an understanding of its focus and the reason why it has a different philosophy toward genocide. The seeds of the ICTR (as well as the ICTY and the ICC) are to be found in the expansion of international humanitarian law beginning with the establishment of the Nuremberg and Tokyo tribunals after World War Two. While no international criminal tribunal was established during the Cold War years, the logic of international authority to judge egregious intra-state crimes of violence did not fade from the agenda of many key international actors, especially those of human rights organizations that rose to prominence during this period. Important human rights conventions were approved and human rights advocates became increasingly sophisticated in their organization and lobbying abilities. However, the geo-strategic imperatives of the Cold War forestalled the creation of international criminal tribunals as the United States and the Soviet Union protected client states from facing the scrutiny of international prosecution for human rights violations. The end of the Cold War has changed geo-strategic realities and empowered the United Nations to play a more prominent role in world affairs, including investigations and prosecutions of perpetrators of human rights abuses. This new reality created a political environment amenable to the creation of the ad hoc tribunals and the ICC. However, the tribunals did not appear simply as a result of this new climate. As Aryeh Neier points out, the tribunals grew out of sustained pressure and investigations from human rights organizations in the aftermath of the atrocities committed in the former Yugoslavia and in Rwanda. The logic of human rights and the global human rights movement — that people, regardless of the nature of their citizenship within a particular state, share certain universal rights — has established idealistic and not easily attainable goals. Indeed, the idea of human rights is based on a notion of the world not as it is for some people, but as it should be for all individuals. Inherent in this notion is a Kantian-inspired drive for the international promotion of individual rights. To Kant, “a necessary consequence of the progressive historical awakening of man’s awareness of his human dignity (as an individual dedicated to universal rights) is a movement to educate and mobilize a public opinion that keeps vigilant watch over the fate of human rights in all corners of the globe.” The inherent idealism of human rights often leads to an activist mindset aimed at strengthening imperfect guarantees of personal rights and security and expanding protections to cover areas once outside the realm of international legal scrutiny. The continual violations of human rights throughout the world helps explain the drive of human rights activists to strengthen and expand the protective arm of international law. The expansion of international humanitarian law is based on the development of precedents, the stepping stones of law. In this perspective, Nuremberg is regarded as a foundational and “triumphant” moment because it was the first time that international actors came together as an international community to prosecute breaches of human rights. In a similar vein, the ad hoc tribunals for Rwanda and the former Yugoslavia are seen as long overdue milestones along the long road of international law. In this sense, these courts are not simply regarded as ends in themselves, but as part of a continuing campaign to broaden human rights protections worldwide. Indeed, these tribunals have been regarded as critical precursors to the creation of the International Criminal Court. The tenuous nature of expanding international legal guarantees for human rights and the difficulty of forging consensus on the creation of legal institutions like the ICC may also motivate advocates to obtain as much as they can when opportunities arise. Sadly but logically, opportunity to strengthen international law often comes in the aftermath of tragedy. The Holocaust resulted in the Nuremberg trials, ethnic cleansing led to the ICTY and genocide led to the ICTR. While intended to deliver justice for the crimes of a particular time and place, the tribunals are fundamentally oriented toward delivering justice for the global community and establishing precedents for the further extension of international law.
important sense, the tribunals, according to the international community and especially the human rights community, are viewed both as a culmination of the Nuremberg promise and as yet another stepping stone in the long path toward greater protection for human rights. To a large degree, these institutions have become referendums on the future of international law. As one commentator observed, the ad hoc tribunals are “an experiment that may lead to the creation of a permanent international criminal court… Or, if it fails, may undermine for decades the idea that international humanitarian law can be not only written, but enforced.”[69] This pressure to succeed appears to create an institutional climate more suited toward fulfilling the international interests of an international audience than toward meeting the needs of domestic communities trying to recover from mass atrocity.

C. Philosophical Conflict: Capital Punishment

The controversy surrounding Rwanda’s use of capital punishment is perhaps the most central representation of the philosophical conflict that divides the Rwandan and international legal system and of the resulting inability of each system to view the other one as fully legitimate. In the eyes of the Tribunal, the death penalty is a barbaric and vengeful punishment that is both contrary to the spirit of international law and to the global trend toward abolition. To the Rwandan government, however, the death penalty lies at the heart of what it means to deliver justice for victims and survivors of the genocide.[70] It is important to analyze the different assumptions that inform each legal system’s notion of what constitutes an appropriate punishment for genocide. The Tribunal’s notion of a just punishment does not emerge from a particular analysis of the Rwandan genocide, but from the evolution of international humanitarian law in the years since Nuremberg. In short, the growing trend toward the international abolition of capital punishment stems from the belief that the protection of a “right to life” is a universal right and that the rendering of justice must respect this right.[71] However, to the Rwandan government, this standardization of punishment dilutes the meaning of justice by failing to differentiate between gradations of responsibility for the genocide and failing to consider the needs of victims and survivors. In his book, The Rwanda Crisis: History of a Genocide, Gerard Prunier encapsulates the Rwandan government’s position in the following way. Justice, he writes, is not necessarily humane and bloodless. “The Rwandese are right. The immensity of the crime cannot be dealt with through moderate versions of European criminal law made for radically different societies.”[72] Instead, justice is meant “to soothe survivors, to reassure the innocent and pardon the innocent killers.”[73] The death penalty, he writes, “is the only ritual through which the killers can be cleansed of their guilt and the survivors brought back to the community of the living.”[74] This need for vengeance is expressed in the following words of a Tutsi survivor of the genocide:

“I don’t want to lie… I expect vengeance. I want revenge. I am hurting so much inside. And do you think it is going to stop because we are safe now? So much death, so much grief, so many families wiped out, and we are to forget about it. The fire is out, at least here in Kabuga: but not the fear. And what about the fire inside?”[75]

Human rights advocates fear that the vengeance underlying capital punishment, and the way in which it has been turned into a public spectacle in Rwanda, will only polarize society further and spark a new round of political violence. This danger is especially acute in Rwanda, where alienation of the Hutu
population, who comprise approximately 85 percent of the population, can make the country ungovernable. The Rwandan government’s concern with assuaging the survivor’s need for justice through a public rendering of justice runs contrary to international humanitarian law, which is more oriented toward an impartial judgment of the accused that does not abridge his or her rights. In this view, loyalty to an impartial judicial process trumps accommodation to popular sentiments. This echoes Hannah Arendt’s criticism of the prosecution in the Eichmann trial which “was built on what the Jews suffered” and “not on what Eichmann had done.” To Arendt, a trial should resemble “a play in that both begin and end with the doer, not with the victim.” If the criminal suffers, “he must suffer for what he has done, not for what he has caused others to suffer.”[76] Just as in Western courts, the international tribunals do their work on behalf of the larger polity it serves — the international community — and not explicitly for the victims themselves. The contrasting logic of the Rwandan and international legal systems underscores the political distance separating the systems, and thus helps explain the crisis of legitimacy that plagues the ICTR.

D. Pragmatic Conflict

While this philosophical divergence represents the most persistent conflict between the government and the Tribunal, discord also occurs on a less abstract and more pragmatic level. In the eyes of the government, the Tribunal not only suffers from a crisis of legitimacy, but also from a crisis of credibility. Whereas legitimacy refers to the basic questions of justice, credibility refers to the pragmatic and administrative aspects of justice. From the day the ICTR was created, the government had strong objections to the way in which justice would be administered by the court. The following demands, which were registered in 1994 by Rwanda’s representative to the Security Council, have since been repeated and elaborated by government officials: 1) The Tribunal should have the authority to prosecute suspects accused of planning the genocide and participating in other human rights abuses from 1990 to 1994, rather than only during 1994. 2) Instead of sharing the same chief prosecutor with the ICTY, the Tribunal should have its own prosecutor. This complaint grows out of the perception in Kigali that the ICTR is a subset of the ICTY and is not on an equal footing with it. 3) The Tribunal should not prosecute certain cases that belong under the jurisdiction of the Rwanda courts.

4) Judges from countries, such as France, that aided the Hutu extremists should not be eligible to serve on the Tribunal. 5) Hutu prisoners convicted by the ICTR should serve out their sentences in Rwanda, and not in other countries.[77] 6) The decision to locate the Tribunal outside of Rwanda undermines the visibility of justice and the potential for national reconciliation.[78]

The Rwandan government has also raised a range of other pragmatic demands that, in contrast to the above list of demands, are more amenable to change. These include improving its communication systems, increasing the presence of the chief prosecutor in Arusha, and quickening the pace of prosecutions. The most central objection concerns the slow pace of arrests and prosecutions. To the extent that the ICTR can carry out its mandate, it may be able to regain some of the legitimacy it lacks due to the political and philosophical conflicts. Prompt justice, even if it is not the Rwandan form of justice, may be provisionally accepted and go a long way toward improving the Tribunal’s image in Rwanda. However, the Tribunal’s management problems and delays in prosecutions have, until recently, undermined its credibility in the eyes of the government. In response to the delays and management problems, Seth Kamanzi, an adviser to the President, said in January, 1997 that “What is going on in Arusha today is a mockery of justice. We are extremely disappointed.”[79] Such harsh criticism has been leveled throughout much of the Tribunal’s tenure as it has struggled with management problems.
The ICTR’s delays combined with a perception that the Tribunal would not try more than a few dozen suspects, observed Philip Gourevitch, “only served to aggravate the feeling in Kigali that the UN court was not designed to serve Rwanda’s national interest, since the message to the vast majority of fugitive genocidaires was that they had nothing to fear: the international community would not help Rwanda get them, nor would it pursue them itself.”[80]

Until the first conviction was handed down in September, 1998, the Tribunal appeared to suffer continually from a three-fold loss of legitimacy related to the government’s political, philosophical, and pragmatic conflicts with the ICTR. This loss of legitimacy did not mean that cooperation between the government and the Tribunal came to a halt. On the contrary, cooperation has continued, and the government has even made a point to communicate this fact to the population.[81] The Tribunal’s five convictions have increased its visibility and raised its stature both in Rwanda and internationally. The response of Rwanda’s ambassador to Tanzania, Joy Mukanyange, is indicative of what appears to be a more optimistic government view of the ICTR: “The crime of genocide that was committed in Rwanda in 1994 is now recognized in its real state by the international community. Justice has been done. That’s what the people of Rwanda have been looking for.”[82] In an interview,[83] Pierie Ubligiro, a counselor for the Rwandan mission to the UN, said that “the Tribunal has gained momentum over the last few months and the government has acknowledged such improvements. Still, they need to do more… Justice delayed is justice denied.” Despite the apparent change, he said Rwandans are concerned with the Tribunal’s “incredibly slow” process.

The Rwandan government is of two minds when it comes to the Tribunal. It retains deep principled objections to the court, but also, as discussed below, has a strong interest in its success. This ambivalence is seen in the government’s changing and sometimes seemingly contradictory response to the Tribunal. In the immediate aftermath of the genocide, the government formally requested the creation of an international court, but then voted against it for the above stated reasons. Early in 1995, Rwandan officials made a reluctant peace with the Tribunal. Despite its cooperation with the ICTR, the government has remained resentful of the way its concerns were ignored when the Security Counsel created the Tribunal and established ground rules that seemed to privilege international interests over Rwandan concerns. This resentment has at times surfaced in statements that appear to convey a sense of disillusionment with the Tribunal and a denial of the government’s original support for the ICTR. Part of this ambivalence may be due to the fact that the Tribunal’s vulnerability as a legal institution renders it a convenient target of criticism that Rwandan officials can use to strengthen the country’s image as a victim that deserves special consideration in issues ranging from legal and economic assistance to the country’s military intervention in the Congo.

The government’s interest in international justice is due to a number of factors. First, justice, even imperfect justice, helps assuage the moral demands of the Tutsi population. As the Rwandan Prime Minister said at the judges’ first session in Arusha, “We must wash away shame and restore the dignity of the Rwandan people.”[84] Here, it would appear that the imperative of prosecutions outweighs disagreements over how to carry these prosecutions out. Together with the moral demand is a political one. Faced with reports of vigilante violence by some Tutsis, the government is under on-going pressure to implement justice. While the national courts possess the lion’s share of suspects, they face daunting administrative and financial problems that prevent it from prosecuting more than a small fraction of the accused. The international court can help diminish the domestic demand for prosecutions. This is because the ICTR is in possession of the most prized suspects — the “big fish” responsible for planning and carrying out the worst aspects of the genocide. In this sense, the government has an interest in seeing international justice realized, for the Tribunal’s success can also become the government’s success.[85] Conversely, as Anastase Gasana, Rwanda’s minister of foreign affairs and cooperation, said in May, 1998, “The failure of the ICTR would be a disaster for both Rwanda, the Great Lakes region, Africa and the UN itself.” The government also has an interest in the global dissemination of the truth of the
History is another reason why the government supports the Tribunal. A key element of political conflict in Rwanda involves a struggle over which version of the past will prevail into the future. The Tribunal’s work to establish the facts of the genocide can, therefore, become a political asset to the government that can be used to delegitimize any future moral claims that the genocidaires may make. The judgments of the international community do matter, and help support the Tutsi-led government’s claim that what happened in 1994 was a genocide, and not a war or a series of mutual massacres as many Hutu extremists argue.

V. Conclusion

The above analysis of the Rwandan government’s perceptions of the ICTR underscores the Tribunal’s limited capacity to effect change within Rwanda. These perceptions are expressed through three different conflicts between the government and the Tribunal — the political, the pragmatic, and the philosophical. First, philosophical conflict over what constitutes the right form of justice makes each side view the other as not fully legitimate. Second, political conflict between the government and the international community over the latter’s decision not to intervene during the genocide and its role in the post-genocide refugee crisis continues to breed resentment in Kigali toward the UN and the ICTR. Third, pragmatic conflict over the manner and pace in which the ICTR administers justice has eroded the credibility of the Tribunal in the government’s eyes. These conflicts are not necessarily static and unchanging. Their intensity may either increase or decrease depending on the circumstances. The political conflict, for instance, has recently shown signs of waning somewhat as the international community makes efforts to investigate and acknowledge its role during the genocide. Similarly, the pragmatic conflict appears to have decreased in the last several months as the Tribunal has begun to make more arrests and convictions as well as institute administrative reforms. The philosophical conflict, however, is the most deep-seated and resistant to change. Nevertheless, this gulf between the government and the Tribunal may narrow as interaction and cooperation increase between the two bodies. Furthermore, a decrease in the magnitude of political and pragmatic conflict may, in the long term, help soften some of the government’s philosophical objections to the Tribunal. Speeding up the Tribunal’s arrests and prosecutions, and instituting other reforms (such as having a chief prosecutor located permanently in Arusha and not in The Hague), could send a message to Kigali that the international community takes justice seriously. It is premature to make definite conclusions about the Tribunal’s long-term effect on Rwandan society and its legacy there. Ultimately, the ICTR’s legacy in Rwanda may rest more on its later years and final accomplishments than on its early years and initial problems. Thus, it is important to trace the role of the Tribunal longitudinally, and not only make determinations at this point, five years after the beginning of the genocide.

Some preliminary answers can be given, however, to the questions raised earlier about the role of international criminal tribunals. Despite the argument that tribunals are mostly designed to serve international interests, they may still play a constructive role in national reconciliation, rebuilding, and deterrence of further violence. However, even under ideal conditions, where political, pragmatic, and philosophical conflict between the international community and the domestic government are non-existent, courts are seriously constrained in their capacity to change the world of politics and social relations. Indeed, international tribunals, like domestic courts, are not panaceas. Their rulings cannot in and of themselves ease ethnic tensions, reconstruct societies, or instill a democratic rule of law.
Solutions to these problems depend in large part on the political, military, and economic policies of other international actors and on the internal dynamics of state and society in the country in question. Yet, the ICTR’s dependence on other international and domestic actors does not necessarily reduce the legal body to a “hollow hope.”[87] In many ways, the Tribunal operates on the margins of international and Rwandan politics. But, even on the margins, the Tribunal may contribute to change in Rwanda by altering the way the government and society think about the past and make use of the past to anticipate and plan for the future. Over time, these changes may moderate the dynamics of Rwanda’s polarized politics.

Perhaps the most lasting way tribunals can affect change is through depoliticizing “the politics of history.”[88] By establishing a more neutral account of the truth of the genocide, the Tribunal may be able to short-circuit the rivalry of competing Tutsi and Hutu histories that have fueled the fire of corporate ethnicity, collective blame, and mass atrocity. Indeed, the reality of the genocide is still disputed by many Hutus who have been influenced by the revisionist arguments of Hutu extremists. The rendering of truth as a basis for reconciliation is a central tenet of the Tribunal’s mission. As Pyam Akhavan writes, “through the International Tribunal, as well as national trials, the Rwandan people may be witness to the truth and thereby exorcise themselves from the spectres of the past.”[89] This may hold for many Rwandans. However, there is a tendency on the part of some outside observers, both in the case of Rwanda and in the case of South Africa’s Truth and Reconciliation Commission, to romanticize the transformative power of truth. In divided countries like Rwanda, hatred may be more dominant and have a longer half-life than truth. But that the truth will survive at all is perhaps the highest purpose of the Tribunal. One cannot say when, or even whether, it will be significantly actualized. One can only be sure that without the Tribunal to uncover and represent the truth, there will never be a chance for its recovery in Rwanda. It is precisely for this reason that international tribunals may be indispensable. Lying outside the contentious realm of domestic politics, the tribunals may not only be able to establish a record of human rights violations, but may also be able to hold norms of justice and truth in trust, so to speak, for countries like Rwanda, that are currently unable or unwilling to fully hold these values for themselves. Perhaps if and when circumstances change, this international record can be reclaimed by all Rwandans.

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Notes


[2] “The last ten years has seen a sea change, prompted both by the end of the cold war and by recognition that the seeds of future violations are sown, in part, in the failure to come to terms with past cycles of violations.” Roth-Arriza, Naomi, “Accountability for International Crime and Serious Violations of Fundamental Human Rights: Combating Impunity: Some Thoughts on the Way Forward,” 59 *Law & Contemp. Prob.* 93, Fall 1996. Also, see Manikas, Peter M. and Kumar,
Accountability is used in this paper to describe a broad range of legal and quasi-legal responses to the aftermath of political violence. Accountability does not necessarily result in justice, and in some instances accountability may undermine the prospects for justice. Aryeh Neier, former executive director of Human Rights Watch, makes essentially the same point in his new book, War Crimes: Brutality, Genocide, Terror, and the Struggle for Justice. New York: Times Books, 1998. To Neier, “justice requires due process as well as accountability. (p. 76).”

The range of accountability processes is illustrated in part by the following contemporary examples: trials in Greece and Argentina, lustration in Germany and the Czech Republic, a Truth & Reconciliation Commission in South Africa, and truth commission reports in Chile and Guatemala.


In Uruguay, the electorate in 1989 voted against a citizen-sponsored referendum to overturn an amnesty law for those who committed human rights abuses during the military regime. For a detailed account see Weschler, Lawrence, A Miracle, a Universe: Settling Accounts with Torturers. New York: Pantheon, 1990, pp. 81-236.

The current conflict in Sierra Leone was sparked in large part by the rebel Revolutionary United Front’s demand that President Tejan Kabbah release Foday Sankoh, the rebel leader, who was sentenced to death for treason in October, 1998 in connection with the May, 1997 coup that overthrew the President. See “Sierra Leone Rebels Kidnap 2 More Italian Missionaries by Trickery,” The New York Times, 1/99 & “Rebel Commander Says Cease-Fire Won’t Last Unless Sankoh Released,” Radio France Internationale, Paris, BBC Worldwide Monitoring, 1/14/99.

Throughout the paper, the term “international community” is used broadly to refer to the group of countries as represented in the United Nations. However, not all instances of international community action or policy discussed below have received formal UN approval. The notion of an “international community” suggests a vision of international cooperation and unity that runs counter to Realist conceptions of international relations. In this paper, I use the term “international community” as a convenient way to refer to international actors.

Reconciliation in this paper refers to the resolution of political, social, and/or ethnic divisions and enmities that have contributed to widespread political conflict. Rebuilding is a more comprehensive task that includes reconciliation as well as the restoration of destroyed infrastructure and government services, the reform and/or creation of new government structures, legislation, and enforcement mechanisms, and the improvement of previously existing government organizations. This definition of rebuilding is drawn from Kumar, Krishna, “The Nature and Focus of International Assistance for Rebuilding War-Torn Societies,” pp. 2-4, , in Kumar, Krishna, editor, Rebuilding Societies After Civil War: Critical Roles for International Assistance. Boulder, CO: Lynne Rienner Publishers, Inc., 1997.

The relative lack of attention paid to the Rwandan genocide and to the ICTR is underscored by Ian Williams, “Hearts Grown Brutal,” The Nation, 11/25/98, p. 66. “Yet while hardly a month goes by without a new book on the Balkan wars,” Williams writes, “you have to root around in
NGO reports and the obscure proceedings of the UN’s International Criminal Tribunal for Rwanda in Arusha to read about the crocodile feeding frenzy of Rwanda.” To Payam Akhavan, a legal advisor to the Office of the Prosecutor for the ad-hoc tribunals, the Rwandan genocide “deserves a special place in the blood-stained pages of history [because] of its shocking efficiency, its scale and its proportional dimensions among the victim population.” Akhavan, Payam, “The Contribution of the International Criminal Tribunal for Rwanda,” 7 Duke J. Comp & Int’l L. 325, Spring, 1997.

[11] The three-month genocide, which grew out of ethnic and political conflict dating back to the colonial period, left approximately 800,000 Tutsi and moderate Hutus dead out of a total population of approximately 7.5 million people. While it did not rise to the horror of the Holocaust, the Rwandan genocide does, in certain respects, share commonalities with that event. In key respects the genocide in Rwanda permeated Hutu society more than the Holocaust infiltrated German society. Whereas most of the killing in Germany took place in concentration camps removed from population centers, most of the killings in Rwanda took place amid the intersections of daily life, such as in streets, homes, and churches. For a detailed account of the precursors and dynamics of the genocide, see Prunier, Gerard, The Rwanda Crisis: History of a Genocide. New York: Columbia University Press, 1995; Destexhe, Alain, Rwanda and Genocide in the Twentieth Century. New York: New York University Press, 1995; Gourevitch, Philip, We Wish to Inform you that Tomorrow we will be Killed with our Families: Stories from Rwanda. New York: Farrar Straus and Giroux, 1998; Human Rights Watch World Report 1995, New York: Human Rights Watch, 1994, pp. 39-48.

[12] The on-going fighting between the Tutsi-led Rwandan government and the Hutu rebels in the aftermath of the genocide is one of the factors behind the current civil war in Congo, according to a number of analysts. See John Shattuck, “Ending Africa’s Tragedy,” The Christian Science Monitor, 8/14/97, p. 19.


[14] The political crimes under discussion encompass state-authorized violence as well as violence carried out by rebel or opposition groups, such as the FMLN in El Salvador and the ANC in South Africa.

[15] In South Africa, amnesty can be denied if an applicant to the Truth and Reconciliation Commission fails to make a full disclosure of his crimes, if the applicant’s crimes were not politically motivated, or if the violence was disproportionate to the political goals. Goodman, David. Fault Lines: Journeys into the New South Africa. Berkeley: University of California Press, 1999, p. 63.


[17] Pinochet remains in Britain pending the outcome of the extradition issue. On March 25, 1999, the Law Lords, Britain’s highest court, ruled that Pinochet may still face extradition. However, the

[18] The extradition request conflicts with the Chilean amnesty. In addition, a conflict exists within Chile between human rights advocates favoring prosecution of Pinochet and those who support amnesty. This conflict underscores the fact that societies are often deeply divided over whether to pardon or to prosecute. There are indications that Chile’s internal conflict over this question has dissipated somewhat since Pinochet’s arrest late last year. Clifford Krauss, “In Chile, Opponents and Supporters View Ruling as a Victory,” The New York Times, 3/25/99, A6.


[21] This statement is based on my review of print media coverage of the ICTR. While the major U.S. newspapers have covered the main issues concerning the Tribunal, they have done so inconsistently.


[24] A recent example of such an activist role was the high-profile attempt, by Louise Arbour, the ICTY’s former chief prosecutor, to gain entry into Kosovo to investigate reported atrocities carried out by Serbian armed forces. See Jane Perlez, “U.S. Official Visits Kosovo Execution Site,” The New York Times, 11/10/98. Arbor’s efforts, captured in a front page photograph in The New York Times, conveyed an image of action that is seldom associated with the cloistered world of courts. Arbour was turned away at the border. Such an activist role, however, is uncommon for Tribunal officials in general and for Arbour in particular. Despite the above example, Arbour has been reluctant to take a position on the Kosovo crisis that may appear politically motivated. See, Raymond Bonner, “Crimes Court Not Ready to Punish Kosovo Violence,” The New York Times, 3/31/99, A11 and Marlise Simmons, “Militia Leader Arkan is Indicted in War Crimes: Yugoslavs are Warned,” The New York Times, 4/1/99, A16.


[27] The political violence and human rights abuses that have occurred during the long-running Sudanese civil war could, at some point in the future, become a focus of international legal scrutiny in the form of a case brought before the ICC. However, the Sudan case, along with other intra-state conflicts in certain Third World countries may remain outside the reach of legal scrutiny.
as well as international media attention because of its inaccessibility to the West. See, William Finnegan, “The Invisible War,” The New Yorker, 1/25/99, pp. 50-73.

[28] A major impediment to the initiation of ICC trials is the provision for complementarity which prevents ICC action unless a particular country is unable or unwilling to conduct prosecutions. For further discussion of complementarity, see Kenneth Roth, “The Court the US Doesn’t Want,” The New York Review of Books, 11/19/99, pp. 45-47 and the Rome Statute of the International Criminal Court, 7/17/98.

[29] One aspect of this new climate is the fear it has likely instilled in other former dictators. In the wake of the Pinochet case, the threat of arrest is likely to make dictators and others accused of atrocities more hesitant to travel far from home. “For them, since General Pinochet’s detention, the world is suddenly a more dangerous place.” John Ryle, “Disneyland for Dictators,” The New York Review of Books, 1/14/99, p. 8.

[30] It is also important to measure the degree to which the Tribunal’s work converges with the efforts of other international actors. The Tribunal’s ultimate success vis a vis Rwanda will in large part depend on whether the policies and actions of the United Nations and member states do not conflict with the ICTR’s mission of accountability. Some analysts have pointed to a discrepancy between the international community’s legal mission of prosecution and the diplomatic and military policies pursued by the UN and certain member states. One example of this discrepancy concerns the international community’s response to Hutu rebels outside Rwanda. While the international community supports the ICTR’s prosecutions of Hutu suspects, it does not do enough to take a firm stand against the on-going threat posed to Rwanda by Hutu rebels in Uganda and the Congo. This is the view expressed by Philip Gourevitch in an Op-ed article in The New York Times, “The Psychology of Slaughter,” 3/7/99. Gourevitch criticizes the lack of international protest against President Laurent Kabila of the Congo for his close association with these Hutu rebels.

[31] To gain a comprehensive understanding of how the Tribunal is perceived beyond its walls, it would be necessary to undertake an analysis of how non-governmental actors, especially Tutsi genocide survivors and suspected Hutu genocidaires, view the ICTR. The Tribunal cannot be successful in Rwanda if it only affects change within the government. This paper’s focus on the government’s perspective is intended as a first-stage analysis of the larger empirical question of whether the ICTR can affect change in Rwanda. In comparison to the government’s views of the Tribunal, many Hutus have much less regard for the ICTR and the international community. The recent murder of eight Western tourists in Uganda – carried out by Hutu rebels as a protest against the international community’s support of Rwanda’s Tutsi-led government -- highlights the deep divisions that separate many Rwandan Hutus from the international community.

[32] There are a range of yardsticks one can use to measure the success of the ICTR. First, its progress can be measured against the pace of prosecutions in the Rwandan courts. Second, it could be measured against the progress of the ICTY. Third, it could be measured against the pace of the Nuremberg and Tokyo trials. The ICTR proceedings could also be compared to the average pace of criminal trials in the U.S. and other Western countries. Some ICTR officials have made a case for judging the Tribunal against the difficult conditions they have faced in Tanzania. Laity Kama, the president of the ICTR, makes this case: “I think we’ve accomplished a great deal when you look at where we really are in Arusha, the conditions that really confront us.” United Nations Publications, UN Chronicle, 12/22/97. Each yardstick yields a different perspective on the “success” of the ICTR. In comparison to the ICTY, for instance, the ICTR has made more arrests of suspects considered to be “big fish.” See “Judgment on Genocide,” The Times, 9/3/98.
Ironically, the international community has often been better informed of the Tribunal’s proceedings, than people in Rwanda. While journalists and independent news agencies, such as Ubtabera and Foundation Hirondelle, have informed the world about the ICTR, “the majority of the [Rwandan] population knew little of what was happening at Arusha in the first years of the tribunal.” See Human Rights Watch, “Leave None to Tell The Story: Genocide in Rwanda,” Human Rights Watch, 1999, p. 742. As Human Rights Watch reports, this situation appears to have improved somewhat, in part because in 1998, state-controlled Radio Rwanda began making regular broadcasts about the ICTR.


For more information on the Tribunal’s prosecutions, see Human Rights Watch, “Leave None to Tell The Story: Genocide in Rwanda,” Human Rights Watch, 1999, pp. 743-745. The conviction of Akayesu, the former burgomaster of Taba, was hailed by ICTR officials since it was the first time an international tribunal has handed down a genocide conviction. It also marked the first legal recognition that rape is a form of genocide.


For more information detailing the political conflict between the Rwandan government and the international community over the refugee crisis and the war in the Congo, see Gourevitch, Philip, We Wish to Inform You that Tomorrow we will be Killed with our Families: Stories from Rwanda. New York: Farrar Straus and Giroux, 1998, pp. 256-353.

Ibid, p. 255.


The government’s criticism of the political origin of the ICTR may have softened overtime, as indicated by the following comment by Piere Ubligiro, an official at the Rwandan mission to the UN, during a recent telephone interview I conducted on 3/16/99. “There is surely some truth that [the ICTR was created because of the international community’s guilt], Ubligiro said. However, “once the damage is done, that’s all they could do.”


[46] The Government is also angry over the amount of time it took for the international community to designate the mass killings a genocide. Worried that news of the genocide would compel it to intervene, the United States government, for example, forbade its top officials from referring to the killings as genocide. Gourevitch, Philip, We Wish To Inform You that Tomorrow We Will be Killed with Our Families: Stories from Rwanda. New York: Farrar Straus and Giroux, 1999, pp. 152-154.

[47] As Philip Gourevitch reports, the French operation, Operation Turquoise, ended up rescuing about ten thousand Tutsis. Yet, he writes that “thousands more continued to be killed in the French-occupied zone.” Gourevitch, Philip, We Wish To Inform You that Tomorrow We Will be Killed with Our Families: Stories from Rwanda. New York: Farrar Straus and Giroux, 1999, p. 158.


[49] There are, of course, exceptions to this argument. For instance, the United States’ use of the death penalty is not in keeping with the abolitionist trend of Western democracies. Moreover, this trend is also occurring in non-democracies. In Africa, for example, most states have abolished capital punishment. For a detailed discussion of the role of international law and capital punishment, see Schabas, William A. The Abolition of the Death Penalty in International Law. Cambridge: Cambridge University Press, 1997, 2nd edition.

[50] Liberal international relations theory posits a relationship between the internal dynamics and political orientation of a state and its behavior and preferences in the international system. Thus, it is logical that a democratic state is more likely than an authoritarian state to accept the tenets of international humanitarian law, which is a body of rules that seeks to advance the protection of individual rights. In contrast to Realists who view states’ preferences as unchanging, “Liberals seek first to establish the nature and strength of those preferences as a function of the interests and purposes of domestic and transnational actors.” Slaughter, Anne-Marie, “International Law in A World of Liberal States,” 6 EJIL (1995), p. 508.


[53] Ibid., p. 7.

[54] Ibid., p. 7.


[56] Ibid., p. 7.

[57] Viewed against the course of Rwandan history, the genocide was not an aberration. However, the genocide is also distinct from the other massacres that have occurred in Rwanda. The exterminist aim of the Hutu forces that engineered the genocide raised the level of zero-sum politics to a level heretofore unknown.

[58] This description of the Rwandan legal system is vigorously disputed by government officials. The government insists that it is devoted to the creation of a fair and independent judiciary. In response to a report by Amnesty International that criticized the government’s handling of genocide trials, a Rwandan officials said: “It is our aspiration to build a competent, impartial and independent judiciary. We have already made tremendous progress in this direction. We would have achieved even more if the international community had put at our disposal resources of the magnitude that has for example been squandered on the International Criminal Tribunal for Rwanda. Radio Rwanda, BBC Worldwide Monitoring, 5/9/97.


[60] While the Rwandan government is free to impose a legal process of its choosing, it is constrained by a lack of financial resources and by the immensity of the task of prosecuting tens of thousands of suspected genocidaires. This task has been made much more difficult by the decimation of the Rwanda legal system and the killing of many judges and lawyers during the genocide. By mid-1998, there were approximately 135,000 suspected Hutu genocidaires in prison. The government has estimated that between 15 and 20 percent of the suspects are innocent. As of the end of 1998, less than 1,200 suspects had been judged by legal system. See Human Rights Watch, “Leave None to Tell the Story: Genocide in Rwanda,” Human Rights Watch, 1999, pp. 753-765. The burden of prosecution has prompted the government to offer plea bargaining arrangements for many suspects. See Alan Zarembo, “Judgment Day: In Rwanda, 92, 392 Genocide Suspects Await Trial,” Harper’s Magazine, April, 1997, pp. 68-80. “It’s materially impossible to judge all those who participated in the massacres, and politically it’s no good, even though it’s just,” RPF official Tito Rutermara said. See Gourevitch, Philip, We Wish To Inform You that Tomorrow we will be Killed with our Families: Stories from Rwanda. New York: Farrar, Straus and Giroux, 1998, p. 249.

[61] The pre-war developments in international law played an important role leading up to Nuremberg. For more information on the pre-World War II evolution of international humanitarian law, see Malanczuk, Peter, “History and Theory,” in Akehurst’s Modern Introduction to International Law, pp. 9-34, 7th rev. ed., 1997.


[64] The agreement to establish the International Criminal Court was signed in Rome in the Summer of 1998. The ICC will be formally established when sixty nations ratify the treaty. The vote was 120-7 in support of The Treaty of Rome. The United States, Iraq, Iran, China, Libya, Sudan, and Algeria voted in opposition. See Kenneth Roth. “The Court the US Doesn’t Want,” The New York Review of Books, pp. 45-47, 11/19/98.


[66] The following quote by Kingsley Moghalu, a Tribunal spokesperson, underscores the way in which many Tribunal officials and human rights advocates perceive the role of the ICTR. His quote is in response to the life sentence handed down to former Rwandan Prime Minister Jean Kambanda. “Kambanda’s sentence is absolutely a historical landmark in international criminal justice. It’s a perfect example of the international community’s will to confront impunity and it provides a basic precedent for the International Criminal Court.” Farah Stockman, “‘First’ for Punishing Genocide Makes Waves in Rwanda, World,” The Christian Science Monitor, 9/11/98, p. 7.


[68] The basis for the ICTR is set out in Resolution 955, which was approved by the Security Council on 11/8/94. The Tribunal was created, according to the resolution, because the situation in Rwanda posed “a threat to international peace and security” The need for justice and national reconciliation were listed as other reasons behind the Tribunal’s creation. For more information, see Morris, Virginia & Scharf, Michael P. The International Criminal Tribunal for Rwanda, Vol. 2. Irvington-on-Hudson, New York: Transnational Publishers, Inc, 1998, pp. 296-310.


[70] Those convicted of category one crimes are the only ones that may receive the death penalty under Rwanda’s genocide law. This category is reserved for the organizers and planners of the genocide. To date, twenty-two people have been executed. The April, 1998 executions, which took place in a number of public stadiums, reportedly drew thousands of onlookers. See Human Rights Watch, “Leave None to Tell the Story: Genocide in Rwanda,” Human Rights Watch, 1999, pp. 761-762.

[71] The “right to life” is part of the Universal Declaration of Human Rights which was adopted by the UN in 1948. For a discussion of the evolution of this concept, see Schabas, William A. The Abolition of the Death Penalty in International Law. Cambridge: Cambridge University Press, 1997, 2nd edition, pp. 23-45.

[73] Ibid., p. 354.

[74] Ibid., p. 355.


[77] This demand is based on a pragmatic as well as a philosophical objection, as indicated by the following comment by Rwandan Patriotic Army official Tito Rutereymara: “It doesn’t fit our definition of justice to think of the authors of the Rwandan genocide sitting in a full-service Swedish prison with a television.” Gourevitch, Philip. *We Wish to Inform you that Tomorrow we Will be Killed with our Families: Stories From Rwanda*. New York: Farrar Straus and Giroux, 1998, p. 255.


[81] An indication of the government’s communication of its cooperation with the ICTR is a *Radio Rwanda* broadcast of 11/5/97 which reported that the government transferred three prisoners to appear as witnesses in an ICTR trial. This, according to the broadcast, is “something that has been described by the tribunal as a highly symbolic decision which confirms the quality of the cooperation between the Rwandan government and the tribunal.”


[85] The following quote by Pierie Ubligiro, a counselor in the Rwandan mission to the UN, underscores why the existence of the ICTR is in the government’s bests interests. “I think the government has to work in close cooperation with the international community. These are crimes out of [our] reach.” Telephone interview conducted on 3/16/99.

[86] The need to disseminate the truth about the genocide in an international forum is strongly felt among some survivors. Indeed, survivors have testified in Arusha even though some of them face the risk of retaliation. For many, testifying provides a way of coping with the trauma of the
genocide. As Roland Gero Amoussouga, head of the UN’s witness protection program, said, “This opportunity to talk to the whole world gives them a new life, in a way. They thought they were forgotten and that nobody would know the truth.” Mike Blanchfield, “Reliving a Tutsi Woman’s Terror,” The Ottawa Citizen, 2/22/98, A 10.

[87] This term is taken from Rosenberg, Gerald N., The Hollow Hope: Can Courts Bring About Social Change? Chicago: The University of Chicago Press, 1993. Rosenberg argues against the view that the American courts had a strong effect on political and social change during the Civil Rights era. Rosenberg concludes that this pro-court position was a hollow hope.
