

Helmut Strizek

## The Influence of the International Background on the Creation of the International Criminal Tribunal for Rwanda (ICTR)

An Historian's View

**This paper intends to point out the importance of the Rwandan Patriotic Front's (RPF) influence on parts of the private human rights movement and the UN Commission on Human Rights in the establishment of the ICTR.**

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The idea to ask for a Criminal Tribunal for Rwanda is closely linked to the RPF's accusation that the Habyarimana regime planned the genocide against the Tutsi population before the RPF attack on 8 February 1993. The RPF rebels based their claim on the report of the "International Commission of Investigation on Human Rights Violations in Rwanda since October 1, 1990" (ICI)<sup>1</sup>. The Commission had been dispatched to Rwanda from 7 to 21 January 1993<sup>2</sup> at the request of Rwandan human rights groups opposed to President Habyarimana. The ICI Report indeed contained such accusations. The RPF and its supporters were aware that the ultimate conquest of power in Kigali could lead to mass murders against the Tutsi population. The rebels had the idea to use this possibility for their cause from the beginning. They undertook the necessary steps to create a situation where desperate Hutu would in fact perpetrate mass murder against the Tutsi; however, it was crucial that the Rwandan Government first be accused of planning genocide. This allegation would justify their aggression, hence inevitably creating the situation in question. The genocide was conceived to convince the world that the subsequent military regime, lead by the RPF, would be the only solution to stabilize Rwanda after such an event. Jean-Marie Vianney Ndagijimana recently summarized this fact in a breathtaking booklet, in which he explains how Paul Kagame sacrificed the Tutsi population within Rwanda with this intent.<sup>3</sup> The ICI Report proved very successful in hiding the intentions of the RPF and blaming "Hutu extremists" in advance for all the evil that would occur. The RPF succeeded in soon having the ICI conclusions published in official UN documents.

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<sup>1</sup> As far as I could verify, the report was never published in English. It was handed out to the press in early March 1993 with the mention "Embargo 8 mars 1993, 11:00" in French with a short English summary by Africa Watch/New York and Fédération Internationale des Droits de l'Homme (FIDH)/Paris. The original title is: „Commission Internationale d'Enquête sur les Violations des Droits de l'Homme au Rwanda depuis le 1er octobre 1990 (7-21 janvier 1993). Rapport final“.

<sup>2</sup> The ICI was composed – under the influence of persons like Gasana Ndoba, et al. – by a group of "like-minded" legal experts (William Schabas, Eric Gillet, René Degni-Ségui, et al.) and human rights activists (Jean Carbonare, Alison Des Forges, Philippe Dahinden, et al.). The ICI was mainly financed by Africa Watch (later named Human Rights Watch)/New York and FIDH/Paris. The technical organization at the Africa Watch headquarters in New York was undertaken by Alison Des Forges who at that time appeared on the international pro-RPF scene after Rakiya Omaar had to leave Africa Watch because of her US-critical position following the deployment of Operation Restore Hope in Somalia in late 1992.

<sup>3</sup> Ndagijimana, Jean-Marie Vianney. 2009. *Paul Kagame a sacrifié les Tutsi*. Orléans: Editions La Pagaie. 164 p.; ISBN 978-2-916380-07-0.

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## The ICI Report

Historically the first persons to use the word “genocide” in connection with the Rwandan Government were Canadian law professor William Schabas and French human rights activist Jean Carbonare, both members of the ICI. On 22 January 1993 in a press statement published in Paris after returning from Kigali, they accused President Habyarimana of having already committed genocide against the Tutsi under the pretext of the RPF war launched on 1 October 1990. In a television broadcast with Bruno Masure on 28 January 1993, Jean Carbonare was given the opportunity to repeat the accusation to an audience of millions.<sup>4</sup>

The RPF took the accusations of Carbonare, Schabas et al. as a pretext for breaking the existing ceasefire and launching the long-since planned resumption of the war on 8 February 1993. Officially, the ICI waited until the end of the RPF aggression in February 1993 before publishing its final report on 8 March 1993. As in the meantime the whole world had become aware of the thousands of victims of this RPF aggression and the resulting one million displaced Hutu in the country, the organizers of the ICI were more cautious on the question of genocide.

The ICI made the Rwandan state responsible for almost 2,000 Tutsi victims since October 1990 and stated under the heading, “The question of genocide”, in chapter 4 that some legal experts believe that this number does not suffice to qualify these massacres as genocide. However, ultimately the authors suggest this conclusion by affirming that the victims were killed because they were part of a “specific group” mentioned as condition in the Genocide Convention of 1948.<sup>5</sup>

Apart from the political effect achieved by sustainably discrediting President Habyarimana, the ICI also achieved the planned effects of the Belgian Government terminating its cooperation with the Rwandan Government. After the publication of the ICI Report some governments established arms embargos against the Rwandan state.

The ICI Report is based mainly on the videotaped testimony of a certain Janvier Afrika. He affirms that the Habyarimana family was behind a killer gang named “Escadrons de la mort”. He even affirmed to have been present at a meeting presided by Habyarimana preparing the killings.<sup>6</sup>

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<sup>4</sup> In a Dailymotion clip this broadcast is dated 24 January 1993; however, Pierre Péan speaks of 28 January 1993.

<sup>5</sup> In the ICI Report written in French this part reads: “*Certains juristes estiment que le nombre de tués est un élément d’importance pour que l’on puisse parler de génocide. Les chiffres que nous avons cités, certes considérables pour le Rwanda, pourraient, aux yeux de ces juristes, rester en deça du seuil juridique requis. La Commission estime que, quoi qu’il en soit des qualifications juridiques, la réalité est tragiquement identique: de nombreux Tutsis, pour la seule raison qu’ils appartiennent à ce groupe, sont morts, disparus ou gravement blessés et mutilés.*”

<sup>6</sup> Excerpt from the Commission’s Report of 8 March 1993: “*Outre ces preuves qui ressortissent des événements eux-mêmes et des témoins oculaires, il y a encore le témoignage présenté par quelqu’un qui a, a-t-il dit, participé à des réunions pour organiser ces massacres. Le journaliste Janvier Afrika a travaillé comme agent du Service Central de Renseignement jusqu’au début de la guerre; après quoi il a travaillé directement pour la Présidence. Il affirme qu’il a assisté à des réunions du groupe connu sous le nom d’Escadron de la Mort. Il dit qu’il se souvient d’une réunion qui s’est tenue à 2 heures du matin en janvier 1991 avant la prise de la ville de Ruhengeri. Participaient à cette réunion Joseph Nzirorera (alors Ministre des Mines et de l’Artisanat), Charles Nzabagerageza (alors préfet de Ruhengeri), Côme Bizimungu (alors préfet de Gisenyi) et Casimir Bizimungu (alors Ministre des Affaires Etrangères). Après la libération de la ville, ils ont décidé de tuer les Bagowe.*”

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As Janvier Afrika admitted in an open letter to the Security Council on 14 November 1994<sup>7</sup> that he was at the time an agent of the RPF, the credibility of this witness has been destroyed.<sup>8</sup> Pierre Péan, as well as others such as Ferdinand Nahimana, have in the meantime proven that Janvier Afrika was in fact lying. Colonel Michel Robardey helped as Adviser to the Rwandan Gendarmerie to prove that Janvier Afrika had never “attended the meetings he described”.<sup>9</sup> A Rwandan governmental commission led by the former Minister of Economy Mathieu Ndirirwa refuted – without being heard – the accusations contained in the report of the ICI. Robin Philpot already provided the most important hints in 2003<sup>10</sup> that the ICI was an invention of the RPF and that Jean Carbonare was an “RPF submarine” in the commission. Filip Reyntjens, who participated in the preparation of the ICI, finally did not take part in the mission because of the role played by Gasana Ndobwa by infiltrating Jean Carbonare into the group of “investigators”.<sup>11</sup>

Besides the case of Janvier Afrika, it is also proven that the accusation that the Mayor of Kinigi, Thaddée Gasana, organized anti-Tutsi massacres in 1991 is not founded. On the contrary, when he was filmed shocked by the skeletons he saw behind the communal office, he did not plead guilty, but was distressed by the memory of what had really happened in January 1991. The victims identified as Tutsi were in fact Hutu, who had been killed by the RPF in its attack in the Ruhengeri region in January 1991. In order to prevent Thaddée Gasana from testifying against Carbonare and others, the RPF killed him when the war resumed on 8 February 1993, just some days after the appearance of Jean Carbonare on French television and long before the publication of the written report on 8 March 1993.<sup>12</sup>

The ICI Report lays down the entire strategy on how the RPF would construct its future media campaign to affirm that genocide was planned long before it really happened. Those who conceived the ICI were quite aware of the usefulness in disposing of documents, proving that the genocide was planned in advance. The ICI Report should, to a certain extent, play the role of the Wannsee Protocols of 20 January 1942, in which the German Government's plans for genocide are proven in an irrefutable way.

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<sup>7</sup> Letter reproduced in: Péan, Pierre, *Noires fureurs, blancs menteurs*, Paris 2005, pp.528-534.

<sup>8</sup> I admit that I do not understand how Filip Reyntjens, who was the first to meet Janvier Afrika in prison some weeks before the Commission came to Rwanda and who recommended to the Commission to see him, still maintains that Afrika's information is credible. On 14 May 2007 he wrote in a communication to the Forum DHR: “*Les constats faits en septembre 1992 l'ont été après une enquête assez brève (2 semaines) mais sérieuse. Les données recueillies à Kigali ont été recoupées avec celle du terrain dans le Bugesera. Afrika n'était pas la seule source, puisqu'il y avait en outre plusieurs politiciens (du MRND) et des officiers supérieurs. Ce n'est pas en m'appelant gratuitement “blanc menteur” que vous me convaincrez que ces constats étaient faux. Au contraire, je crois qu'ils étaient vrais et ils ont par la suite été confirmés par des événements survenus ultérieurement.*”

<sup>9</sup> Personal communication of Michel Robardey.

<sup>10</sup> See Philpot, Robin. 2003. *Ça ne s'est pas passé comme ça à Kigali*. Montréal, Québec: Editions Les Intouchables. 224 p. ISBN 2-89549-097-X. The English translation of the book titled “Colonialism dies hard” is published online at: [http://www.taylor-report.com/Rwanda\\_1994/](http://www.taylor-report.com/Rwanda_1994/)

<sup>11</sup> See F. Reyntjens, *Les risques du métier*, Paris, 2009, p. 69. Despite the recognized RPF-bias of the ICI, Reyntjens maintains that the result of the Commission is “globally reliable” (“dans son ensemble fiable”). As evidence Reyntjens puts forward the fact that Bacre Waly Ndiaye in his report of 11 August 1993 extensively quotes the ICI report and gives him credibility. However, this paper will later show that the report was merely a copy of the ICI findings.

<sup>12</sup> The Kinigi case and the fate of Thaddée Gasana has been described in detail by Ferdinand Nahimana in his book *Rwanda. Les virages ratés*, Lille 2007, pages 163-169.

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And indeed, the ICI Report was presented by the prosecutor of the ICTR and its expert witness Alison Des Forges as an irrefutable piece of evidence for the planning of genocide by "Hutu extremists" for a number of years. When the background of the so-called investigation became evident it lost its significance and the prosecutor tried to prevent other witnesses from referring to the report and disclosing the manipulation of the truth contained in it.

He who speaks of genocide inevitably asks for the punishment of those responsible. Thus it was obvious to seek inspiration in the establishment of the International Criminal Court for the Former Yugoslavia (ICTY) in The Hague in spring 1993 - the first ad hoc international tribunal after the Nuremberg and Tokyo trials in the aftermath of the Second World War. However, formally no such claim appears in the ICI Report.<sup>13</sup>

### The next step: the Ndiaye Report on his mission in April 1993

The ICI Report was to a certain extent transformed into an official UN document by Bacre Waly Ndiaye<sup>14</sup>, Special Rapporteur of the Geneva-based UN Commission on Human Rights (linked to ECOSOC). He had refused to be a member of the ICI due to his official position within the UN Commission on Human Rights. On 1 March 1993, when he had enough information on the ICI Report, which was due to be published on 8 March 1993, he asked President Habyarimana to be invited to Rwanda. *"On 8 March 1993, the President of the Rwandese Republic kindly complied with that request by inviting the Special Rapporteur to visit Rwanda."*

The report of B.W. Ndiaye on his mission to Rwanda in April 1993<sup>15</sup> was only submitted on 11 August 1993 just after the conclusion of the Arusha Peace Agreement. However, his conclusions were known before and increased the pressure on President Habyarimana to sign this agreement on 4 August 1993.

Despite the fact that President Habyarimana and Prime Minister Nsengiyaremye had refuted<sup>16</sup> in a written statement the government's responsibility in the massacres described in the ICI Report, Ndiaye wrote that Habyarimana and Nsengiyaremye: *"recognize the substance of the allegations contained in the report"*. He came to the conclusion: *"After cross-checking, the Special Rapporteur concluded that the substance of the allegations contained in the Commission's report could, by and large, be regarded as established. He none the less proceeded to collect information on events after the report."*

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<sup>13</sup> I was unable to verify which organization first called for an international tribunal or in which document it first appears.

<sup>14</sup> Normally this Senegalese name is written: N'Diaye. In this paper I maintain the form in which it appears in the report.

<sup>15</sup> ECOSOC Document E/CN.4/1994/7/Add.1, 11 August 1993.

<sup>16</sup> In this respect he wrote: *"The justifications given are as follows: shortcomings in the judicial system and failure of certain authorities adequately to ensure the security of persons and their property, "uncontrolled behaviour" by certain undisciplined members of the armed forces, and the existence of criminal organizations. The facts denounced by the report are therefore recognized, even though the Joint Statement is critical of the methods of the International Commission of Inquiry, especially the lack of balance between denunciations levelled at the authorities and those aimed at the FPR, and the fact that the persons accused of human rights violations were not heard by the investigators. The Commission of inquiry is also reproached for not having drawn the attention of the international community sufficiently to the critical situation of persons displaced by war, and for giving the impression that human rights violations in Rwanda are directed against a particular ethnic group. The Joint Statement concludes with a series of recommendations along the same lines as those contained in the report of the International Commission of Inquiry."*

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This information, of course, confirmed his preconceived condemnation of the Rwandan Government in the interest of the RPF, although he had to recognize: *“because of the shortage of time and of material and human resources available to the Special Rapporteur (he stayed only about 10 days, from 8 to 17 April 1993), there was no question of undertaking an in-depth fact-finding or verification mission, which would have entailed, inter alia, substantial logistic and scientific resources; for example, experts in forensic medicine would have been needed to verify the existence of mass graves.”*

The very beginning of this report makes clear that the pro-RPF part of the international human rights movement had already won the affection of the majority of ECOSOC's Commission on Human Rights: *“1. In recent years, Rwanda has attracted the attention of the human rights protection mechanisms established by the Commission on Human Rights. Reference was thus made to the human rights situation in that country in several reports submitted to the Commission at its forty-ninth session; of particular relevance is the information contained in the report of the Special Rapporteur on the question of torture (E/CN.4/1993/26, paras. 386 to 390), and in that Working Group on Enforced or Involuntary Disappearances. (E/CN.4/1993/25, paras. 441 to 446). 2. Mr. Wako, the previous Special Rapporteur, included allegations of violations of the right to life in Rwanda in his report to the commission at its forty-eighth session (E/CN.4/1992/30, paras. 461 to 467). During 1992, the current Special Rapporteur received reports and allegations relating to extrajudicial, summary or arbitrary executions of unarmed civilians by the Rwandese security forces in connection with the armed conflict between government security forces and the Rwandese Patriotic Front (FPR) since October 1990.”*

Instead of accusing the invaders of having unilaterally broken the ceasefire agreements on 8 February 1993 he justifies - as a consequence of alleged Hutu provocations - the attack, which caused the killings of thousands of Hutu and led to one million internally displaced Hutu peasants. He looked only in the direction of the Rwandan Government: *“On 15 February 1993, an urgent appeal was sent to the Rwandese Government following reports of a resumption of the killings and of reprisals and acts of intimidation against persons who had collaborated with or testified before the ICI”*. The RPF bias could not be more outspoken.

Ndiaye continues: *“Since 8 February 1993, the date on which the RPF violated the ceasefire agreement concluded at Arusha, at least 300 Tutsi and political opponents are said to have been killed, mainly in the prefectures of Gisenyi, Ruhengeri, Kibuye and Byumba.”*

With regard to the murders committed by the RPF during the February 1993 attack, Ndiaye provides a very one-sided picture, seen from the knowledge available today: *“A number of alleged violations of the right to life attributable to forces of the Rwandese Patriotic Front have been brought to the attention of the Special Rapporteur. Although several accusations of massacres of civilian populations levelled against the FPR are lacking in credibility, the fact remains that reliable sources have revealed that the FPR has in fact perpetrated executions in the areas under its control. (...) It is accordingly important that a more extensive investigation should be held, covering not only the areas under FPR control, but also certain border regions situated in Ugandan territory. Such an investigation could be carried out by an international team of experts providing every guarantee of independence and impartiality, such as the team which visited Rwanda in January 1993. The contacts which the Special Rapporteur had in Rwanda with the FPR indicate that the latter would be willing to receive a fact-finding mission of this kind.”*

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In the light of RPF's behaviour in refusing all investigations on what happened in 1994 and up to now, the last part of this quotation makes it clear that Ndiaye affirms a readiness of the RPF to accept investigations that never existed.

The accusation that the 2nd Rwandan Republic used racist arguments against the Tutsi invaders of October 1990 and in so doing prepared for the global anti-Tutsi genocide contained in the ICI Report is fully maintained.

Thus the Ndiaye Report is the first official document<sup>17</sup> to more or less openly accuse the Rwandan Government of preparing for genocide. In the "Conclusions" chapter, Art. 11 is titled "The Genocide Question" Para. 78 starts with the following formulation: "*The question whether the massacres described above may be termed genocide has often been raised. It is not for the Special Rapporteur to pass judgement at this stage, but an initial reply may be put forward.*" Para. 79 of the Ndiaye Report reads as follows and gives an affirmative answer to the raised question: "*The cases of intercommunal violence brought to the Special Rapporteur's attention indicate very clearly that the victims of the attacks, Tutsis in the overwhelming majority of cases, have been targeted solely because of their membership of a certain ethnic group, and for no other objective reason. Article II, paragraphs (a) and (b), [of the Genocide Convention of 1948] might therefore be considered to apply to these cases.*"

Even if the question of an International Tribunal against the Habyarimana regime was not mentioned in the Ndiaye Report the de facto accusation that the Rwandan President was preparing for genocide called for juridical prosecution.

### The evolution of the political situation

In the climate prepared by the ICI and B.W. Ndiaye the international condemnation of the Habyarimana regime increased despite the conclusion of the Arusha Accords. Habyarimana was accused of not implementing the agreements.

The decision to bring the RPF to power in Kigali with a military takeover was taken in Washington D.C. after the Mogadishu disaster on 3 October 1993. Two days later the American Government refused to honour its commitment to participate in the peacekeeping force foreseen in the Arusha Peace Agreement. The assassination of the newly-elected Burundian President Melchior Ndadaye on 21 October 1993 marks the beginning of the planning for the military takeover in Rwanda. The implementation of this planning starts with the assassination of President Habyarimana and President Cyprien Ntaryamira, the successor of Melchior Ndadaye on 6 April 1994. This attack also served to decapitate the military command of the Rwandan Armed Forces.

### The Degni-Ségui Reports in 1994

The RPF did not lose its sympathy within the Geneva Commission on Human Rights as B.W. Ndiaye was succeeded by René Degni-Ségui a law professor from the Ivory Coast, who had been a member of the ICI! This fact was very important when the war was again resumed by the RPF rebels on 6 April 1994.

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<sup>17</sup> Thus Linda Melvern was wrong when she wrote in *The Independent* on 16 December 1997: "*There was no doubt in Dusaidi's mind that this was genocide and he was the first person to use the word in relation to Rwanda in an official document, in an RPF press release on 12 April 1994.*"

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On 25 May 1994, when the massacres – that the US Government refused to call genocide – were in full swing Degni-Ségui was mandated by the Commission on Human Rights to report on the situation prevailing in Rwanda. He delivered three reports in 1994, finally convincing the Security Council to establish the ICTR.

His first report was presented on 29 June 1994. When he arrived in Rwanda on 9 June 1994, accompanied by his predecessor B.W. Ndiaye, the RPF had already called for the establishment of an international tribunal to prosecute the genocide that, according to the RPF, had been planned long ago by the Habyarimana regime.<sup>18</sup> This had been done in a letter addressed to the Security Council and written by the RPF Representative in New York, Claude Dusaidi, on 13 April 1994 – four days after the formation of the interim government. The date indicates that the RPF took up the accusations already contained in the ICI Report over a year earlier. Only six days after the resumption of war by the RPF and affirming the responsibility of Hutu extremists for the downing of the Rwandan presidential aircraft, the RPF started to implement the strategy laid down in the ICI Report with the support of the Clinton administration.

The Degni-Ségui Report of June 1994 is often quoted because he points out, that the attack of the presidential airplane on 6 April 1994 is “*the immediate cause of the grievous and tragic events which Rwanda is currently undergoing. (...) The death of President Juvénal Habyarimana was the spark to the powder keg which set off the massacre of civilians.*” However, this neutral diagnosis is followed by clearly pro-RPF biased messages. He states that in the territory under the influence of the interim government “*most of the massacres are carried out by the militias... Interahamwe and ... Impuzamugabi. (...) In the area controlled by the FPR, the cases of massacres reported are rather rare, indeed virtually non-existent perhaps because little is known of them.*” (paras. 21 and 22)

In June 1994, when Degni-Ségui and Ndiaye were in Rwanda, the Security Council had – under the pressure of Paul Kagame and Bill Clinton – already sealed the fate of the Tutsi with its decision on 21 April 1994, which essentially rendered the UNAMIR, the only force capable of providing shelter to the Tutsi, powerless. However, the envoys of the Commission on Human Rights failed to even criticize the United Nations for what was probably the most horrible decision the Security Council had ever made.

Without the possibility of investigation, Degni-Ségui and Ndiaye estimated the figures of Tutsi victims at 500,000 and held “Hutu extremists” accountable. However, “*Some observers think that the figure is close to a million.*” Although there is no serious evidence to back up this figure, the RPF continues to use the figure until today.

The report reads as a repetition of the ICI Report of March 1993. It already designs the complete strategy that the ICTR prosecutors will use later.

The report of 29 June 1994 confirms that the use of the term genocide “*is appropriate*”. The justification of the ICTR is established and consequently para. 75 concludes: “*Pending the establishment of a permanent international criminal court, the UN should establish an ad hoc international tribunal to hear the evidence and judge the guilty parties, or, alternatively*

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<sup>18</sup> Excerpt from the Carlsson Report of 1994: “*The RPF Representative to the United Nations, Mr Claude Dusaidi, in his letter to the President of the Security Council, [13 April 1994], said that “a crime of genocide” had been committed against the Rwandan people in the presence of a United Nations international force. He requested the Council to immediately set up a United Nations war crimes tribunal and apprehend those responsible for the massacres.*”

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*should extend the jurisdiction of the international tribunal on war crimes in the former Yugoslavia.”*

This recommendation was submitted to the UN Plenary Session on 16 October 1994. The Security Council subsequently adopted Resolution 955 on 8 November 1994, establishing the ICTR against the vote of the new Rwandan Government.

Kagame probably saw that there was a danger that the tribunal would not only deal with the genocide against the Tutsi population, but also with war crimes perpetrated by the RPF. He would also have preferred the ICTR to be located in Kigali.

Whereas his wish to have the ICTR under his control in Rwanda could not be satisfied, his allies in Washington, London and elsewhere have to this day been able to protect him against any investigation concerning the crimes perpetrated by the RPF.

Neither various letters from Kenneth Roth (HRW) nor a request from a group of scholars on 1 June 2009 to ensure “ICTR Prosecutions for RPF War Crimes” are likely to induce a change of mind in Washington. And Degni-Ségui is not likely to be any more successful in this respect despite stressing that the ICTR would prevent reconciliation in Rwanda if it remained a victor's tribunal<sup>19</sup>.

### Conclusion

The ICTR, as the political brainchild of the RPF and its supporters – who were first united in the International Commission of Investigation of January 1993 – was conceived with the intent to justify the military regime that would follow the military victory of the RPF in the guerrilla war it waged called the “national liberation war”. The initiators of the ICTR took advantage of the fact that the ICTY had been established in The Hague in May 1993 – although with other objectives.

However, they were not truly satisfied with the child that was finally born in November 1994. The initial objective that the ICTR should only bring crimes perpetrated against the Tutsi population to justice and be placed under the supervision of the victors was not fully realized. UN Secretary General Boutros-Ghali hindered the implementation of these intentions to a certain extent. War crimes and crimes against humanity were finally included in the catalogue of crimes to be pursued by the tribunal. Despite the Prosecutors Office being in Kigali, the location of the tribunal in Arusha prevented Kagame from gaining full control of the ICTR.

Thus two major contradictions accompanied the tribunal throughout its lifetime, decisively influencing it:

- a) The political aim was set before the occurrence of the events that would serve as the pretext for its establishment and, in reality, the events did not fit the preconceived pattern properly.
- b) The victor's lack of control over the tribunal resulting in it issuing judgements that did not fit in scheme.

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<sup>19</sup> At an ICTR Colloquium in Geneva from 9 to 11 July 2009. Le MONDE wrote on 5 August 2009: “Ancien rapporteur spécial des Nations Unies sur le Rwanda, le professeur René Degni-Ségui se demande, dès lors, “*si la réconciliation peut-être possible si on y voit une justice de vainqueurs (...), j'ai bien peur qu'on ne puisse y voir la réconciliation, si on ne poursuit pas également l'autre partie, sans pour autant jouer les équilibristes*”. Il pointe encore l'opacité des procès tenus par le TPIR, dont les jugements ne sont pas traduits en kinyarwanda. “*Si la population n'a pas accès aux jugements, est-ce que vraiment cela aura une portée pour la réconciliation nationale ?*”

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### Contradiction a)

The creators did not abandon their objective to use the ICTR as a political instrument to whitewash the “most notorious war criminal in office” (Reyntjens)<sup>20</sup> and to prevent the judges from fulfilling their duty to prosecute all mass crimes perpetrated in Rwanda in 1994. In fact, the initiators of the ICTR actively attempted to suppress the search for what really had happened.

Madeleine Albright succeeded in removing Boutros-Ghali and replaced him with the more “appreciative” Kofi Annan. Things went better for the creators of the tribunal under his influence. Kofi Annan was able to suppress the investigation into the downing of the presidential aircraft on 6 April 1994 and later helped to oust Carla Del Ponte, who had really been trying to investigate the war crimes committed by the RPF. Her successor Hassan Bubacar Jallow was more “reasonable” and made sure that the RPF was not molested any further. Bill Clinton for his part recently provided evidence of his perseverance in protecting Kagame at all costs when his Foundation affirmed that “*President Kagame has forged a strong, unified and growing nation with the potential to become a model for the rest of Africa and the world.*”

Under these circumstances, the costly efforts of the international community were unfortunately unable to promote the application and further development of international law.<sup>21</sup>

The fact that it was possible to prevent the prosecutors from investigating the war crimes committed by the RPF means that the ICTR remains a victor's tribunal to this day. It was unable to contribute to the establishment of legal peace and reconciliation. It did not even really contribute to depicting the entire picture of the crimes perpetrated against the Tutsi population. Judge Møse summarized this fact in the Bagosora Judgement of 18 December 2008: “*The process of a criminal trial cannot depict the entire picture of what happened in Rwanda, even in a case of this magnitude.*”

The creators of the tribunal, as well as both the Clinton and Bush Jr. administrations, were not interested in having the entire picture depicted.<sup>22</sup> As long as this fact prevails historians have no chance to put forward the whole truth and paint the entire picture.

### Contradiction b)

The Kagame regime's lack of complete control brought about the stratagem of history – the idea evoked by the German philosopher Hegel that history often results in the opposite of what some politicians intended – with the ICTR still rendering some beneficial knowledge on what had happened in Rwanda after 1 October 1990. The main reason was the long life of this

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<sup>20</sup> In an interview with LE SOIR on 13 January 2005 Reyntjens characterized Kagame as “le plus grand criminel de guerre en fonction”.

<sup>21</sup> My preliminary appreciation of the ICTR is laid down in a recent publication: Strizek, Helmut, *Das Arusha-Gericht. Die schwierige juristische Aufarbeitung einer Katastrophe. Eine vorläufige Zwischenbilanz*. In: *Entwicklung als Beruf. Festschrift für Peter Molt*, Baden-Baden, Nomos-Verlag, 2009, pp. 202-218. (ISBN: 978-3-8329-4967-9).

<sup>22</sup> This was recently confirmed by Christian Davenport and Allan C. Stam in a Miller-McCune Research Essay titled “What really happened in Rwanda?” published in Miller-McCune Online Magazine on 10 October 2009. See: [http://www.miller-mccune.com/culture\\_society/what-really-happened-in-rwanda-1504](http://www.miller-mccune.com/culture_society/what-really-happened-in-rwanda-1504)

**Helmut Strizek**

## The Influence of the International Background on the Creation of the International Criminal Tribunal for Rwanda (ICTR)

An Historian's View

“everlasting tribunal”, which failed to prevent the defence lawyers from revealing some of the contradictions in the “official reading” of the history already conceived by Alexander Kimneyi, Gasana Ndobu, José Kagabo and many others and transformed into an “International Commission of Investigation” by Alison Des Forges, William Schabas, Jean Carbonare, Eric Gillet et al. who became the spiritual creators of a tribunal to be established once the provocation of Hutu masses produced the intended “Hutu génocidaires”. The judgement of 18 December 2008 stating that the planning of the Tutsi genocide by the four accused high rank former Rwandan army officers could not be proven – is one of the main signs that the creators of the ICTR were unable to really control the output of the ICTR.

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It would be insincere to only blame the authors of the ICI Report and those who abided by it, for if it had not been with the help of some –English-speaking- “big fish” within the Security Council, their actions would have been of little significance.

Peter Erlinder has the merit of having drawn attention to the cover-up of the truth and the hidden agenda of some of these “big fish” in his writings and Robin Philpot was right when he said: “Ça ne s’est pas passé comme ça à Kigali” (That’s not what happened in Rwanda)<sup>23</sup>.

24 October 2009 in Bonn

Helmut Strizek

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<sup>23</sup> Allusion to Philpot’s already mentioned book of 2003.