

## International Criminal Tribunal for Rwanda

The United Nations (UN) International Criminal Tribunal for Rwanda (ICTR) is the ad hoc international war crimes tribunal created by the UN Security Council to address *génocidaires*, the perpetrators of the 1994 Rwandan genocide. On November 8, 1994, acting under Chapter VII of the UN Charter, the Security Council adopted Resolution 955 to establish the ICTR. The statute constituting the ICTR was annexed to this Security Council resolution. The *ratione materiae* (subject-matter jurisdiction) of the ICTR was limited to genocide, crimes against humanity, and violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. The *ratione tempore* (temporal jurisdiction) was limited to crimes committed between January 1 and December 31, 1994. Finally, the *ratione personae et ratione loci* (personal and territorial jurisdictions) were limited to crimes committed by Rwandans in the territory of Rwanda or of neighboring states, as well as by non-Rwandan citizens for crimes committed in Rwanda. Security Council Resolution 977, adopted on February 22, 1995, located the seat of the ICTR at Arusha, Tanzania.

### Political Background

The Rwandan genocide of primarily ethnic Tutsi but also some politically moderate ethnic Hutu erupted on April 6, 1994, when assailants who are still unknown shot down a plane carrying the Rwandan and Burundian presidents, both Hutu, and their entourage (see entry on Rwanda). Soon, officials of individual states and the UN, plus some Rwandans, began denouncing the atrocities and declaring a need for accountability. One week after the genocide began, Claude Dusaidi, the representative of the Rwandan Patriotic Front (RPF, then an organization of Tutsi in the diaspora but now the ruling political party in Rwanda) to the UN, wrote to the Security Council that a “crime of genocide” had been committed in Rwanda and requested that the Security Council immediately establish an international tribunal and apprehend and try those responsible for the killing. Two weeks later, on April 30, the Security Council suggested that the response to atrocities in Rwanda should take the form of prosecution, but did not endorse a specific forum.

In May 1994, the UN sent its High Commissioner for Human Rights, José Ayala Lasso, to Rwanda to investigate allegations of serious violations of international humanitarian law and to publish a report of his trip. On June 28, René Degni-Ségui, the UN Commission of Human Rights’ Special Rapporteur on the situation of human rights in Rwanda, published a report of a visit to Rwanda he also made in May that recommended the establishment of an ad hoc international criminal tribunal for Rwanda or an expansion of the jurisdiction of the UN International Criminal Tribunal for the Former Yugoslavia (ICTY; see separate entry) to include Rwanda. On July 1, the Security Council passed Resolution 935, which declared that Rwandan atrocity perpetrators would be held individually accountable and requested the UN Secretary-General to establish a commission of experts to collect evidence of those crimes.

The genocide ceased in mid-July, approximately 100 days after it began, when the RPF defeated the remaining genocidal forces. The RPF then gave Degni-Ségui a list of fifty-five people it considered to be the core group of *génocidaires*. Meanwhile, Rwanda’s new

government was sworn in and began lobbying for the establishment of an international tribunal for Rwanda. The government of Tanzania declared its willingness to cooperate fully with the international community in bringing *génocidaires* to justice, a pledge that would later prove important to establishing the ICTR in that state.

On October 1, the commission of experts on Rwanda published its interim report. The report recommended prosecuting *génocidaires* by an international, rather than a “municipal,” tribunal. And, like Degni-Ségué’s June 28 report, the commission’s report discussed two specific options: establishing a new tribunal specifically for Rwanda or expanding the jurisdiction of the ICTY to include the Rwandan genocide. The commission of experts stated its preference for the latter option, because, the commission argued, such a shared tribunal would be more efficient and more likely to maintain consistency in the interpretation and application of international law. Three days later, the newly formed government of Rwanda publicly declared its preferences: that proceedings take place in Rwanda and that convicted *génocidaires* receive the death penalty. Rwandan President Pasteur Bizimungu also stated that the tribunal should be created through the UN’s Chapter VII powers, so that the tribunal could compel state compliance.

Despite the commission of experts’ support for expanding the jurisdiction of the ICTY to cover Rwanda, members of the Security Council began to coalesce around a different design, in part because some of these states, such as France and Russia, were concerned that an expanded ICTY might evolve into a permanent international criminal court, and also because other Security Council members, such as Rwanda itself, believed an expansion of the ICTY would be insufficient – symbolically and practically – to deal with the enormity of the Rwandan genocide. The alternative, known as the New Zealand approach, after the state that proposed it, sought the establishment of a separate tribunal for Rwanda but featuring an appeals chamber and chief prosecutor shared with the ICTY. The Rwandan government conditionally endorsed this proposal, which would eventually become the ICTR. The Rwandan government stated that it wanted a voice in the selection of tribunal staff and a veto over all releases and pardons, that all convicted *génocidaires* should be incarcerated only in Rwanda, and that because atrocities committed before 1994 should also be punished and were inextricably linked to events in 1994, they should be included in the tribunal’s jurisdiction.

On November 8, the Security Council adopted Resolution 955, establishing the ICTR through the UN Charter’s Chapter VII authority in order to compel state compliance with, among other things, arresting and extraditing suspected *génocidaires*. Thirteen states (Argentina, Brazil, the Czech Republic, Djibouti, France, New Zealand, Nigeria, Oman, Pakistan, Russia, Spain, the United Kingdom, and the United States) voted in favor of the resolution, one (China) abstained, and one (Rwanda) voted against. China’s representative to the UN explained that his government abstained both because it was opposed, in principle, to overreaching the Security Council’s authority by invoking Chapter VII to establish an international criminal tribunal through a Security Council resolution, and because China believed that the Security Council should have consulted the Rwandan government further on the matter. The Rwandan government had its own concerns about the ICTR, as established by Resolution 955: the temporal jurisdiction was too limited; the ICTR did not include enough trial chambers judges and inappropriately shared an appeals chamber and chief prosecutor with the ICTY; the subject-matter jurisdiction was too broad and did not prioritize any of the crimes, including genocide, as the most important; the Security Council member states that participated in the

Rwandan civil war, most notably France, would inappropriately be able to propose and vote on judicial candidates; suspects and convicts would inappropriately be held outside of Rwanda in states that would make decisions regarding these detainees; and the ICTR should include the death penalty and be located in Rwanda itself. Security Council members voted for Resolution 955 over Rwanda's objection for various reasons, including a wariness that some members of the Rwandan government themselves may have participated in the genocide, a concern that Rwanda was too unstable in the immediate aftermath of the genocide to host the ICTR, and a sense that momentum within the Security Council to establish the ICTR had built so much by November 1994 that it was too late to accommodate the Rwandan government's requests lest the entire effort might be jeopardized.

### **Mission, Organization, and Activity**

Security Council Resolution 955, establishing the ICTR, included introductory clauses that articulated the Security Council's mission concerning the tribunal. The resolution stated that the Security Council sought through the ICTR to halt atrocities in Rwanda, to pursue accountability for their perpetrators, and to provide effective redress for their victims; to promote reconciliation and peace within Rwanda; to strengthen Rwanda's judicial system and capacity; and to deter atrocities elsewhere in the world by making an example of the Rwandan genocide.

The ICTR is composed of three organs: the Chambers, which are the judges elected by the Security Council to adjudicate the cases; the Office of the Prosecutor, which is responsible for investigating and trying crimes within the ICTR's jurisdiction; and the Registry, which manages the ICTR and assists the Chambers and the Office of the Prosecutor. As of July 2011, the president, or chief judge, of the ICTR is Khalida Rachid Khan, of Pakistan; the prosecutor is Hassan Bubacar Jallow, of The Gambia; and the registrar is Adama Dieng, of Senegal. The UN General Assembly allocated to the ICTR a budget for 2010–2011 of US\$245,295,800 gross and a staff of 693 posts for 2010 and 628 posts for 2011. Since its inception, the ICTR has spent approximately US\$1 billion.

When established in 1994, the ICTR shared an appeals chamber and chief prosecutor with the ICTY. In 2003, the Security Council divided the combined chief prosecutor into two separate positions, declaring that the Council was convinced such a change would enable the two tribunals to meet their respective objectives more efficiently and expeditiously. The Security Council thus implicitly indicated that it had overestimated the ability of a shared ICTY/ICTR chief prosecutor to handle both caseloads and that a separate chief prosecutor was needed to devote more resources and attention to the Rwandan cases. However, former ICTY/ICTR chief prosecutor Carla del Ponte, who had her ICTR duties removed, claimed that the Security Council made this decision because influential Council members were persuaded by the Rwandan government's objections to her investigation and prosecution of RPF officials for their alleged crimes during and after the genocide.

According to the sixteenth annual report by the ICTR's president to the Security Council and the UN General Assembly, dated July 29, 2011, the ICTR has completed judgments at the first instance of fifty-eight people and judgments at the appellate level of thirty-five people.

In accordance with Security Council Resolution 1503 of 2003, that year the ICTR established a “Completion Strategy” to complete investigations by the end of 2004, all trial activities at first instance by the end of 2008, and all of its work in 2010. The fourteenth biannual report of the Completion Strategy by the ICTR president to the Security Council, dated December 7, 2011, projected that all trial work would be finished by June 2012 and all appeals work would be completed by late 2014. Beside the revised schedule of its concluding work, these reports note other problems and developments. The ICTR faced the challenge of retaining and recruiting competent, knowledgeable, and experienced staff; struggled with relocating acquitted and convicted individuals; continued to consider referring cases from the ICTR to national jurisdictions, including Rwanda, although some requests, including from Rwanda, had been rejected; and continued to promote public awareness of its work through its outreach program and to train Rwandan attorneys, judges, and court staff on international criminal law, adversarial criminal procedures, and court administration and information management.

On December 22, 2010, the Security Council established the International Residual Mechanism for Criminal Tribunals with two branches, one for the ICTR and the other for the ICTY. Because the envisaged dates for the Completion Strategy were not met, the Security Council established the Mechanism to continue the jurisdiction, rights, and obligations of the two tribunals, and to carry out their functions after their closure.

Whether the ICTR is fulfilling its mission has been a source of controversy since its formation. Critics charge that the tribunal has been consumed by nepotism, mismanagement, incompetence, inefficiency, waste, and insensitive treatment of witnesses. These individuals assert that in the seventeen years since its creation, the ICTR has spent too much money, expended too much time, and occupied too many staff members on the completion of too few cases. These critics also state that, because of a combination of the ICTR’s location in Tanzania and an ineffective outreach program, many Rwandans are unaware of the tribunal’s progress and existence. Some also criticize the ICTR for bias against Hutu, claiming that members of the RPF should also be tried for offenses they committed. Others point out that the advent of the ICTR has not halted atrocities in the region, particularly in the Democratic Republic of Congo, or further away, in, for example, Sudan (see entries on Congo, Democratic Republic; Sudan). Overall, the critics charge, the ICTR has not promoted reconciliation within Rwanda, has done little to help build Rwanda’s justice system, has brought a meager number of *génocidaires* to justice, and has not sufficiently deterred the commission of atrocities elsewhere in the world.

Proponents of the ICTR, some of whom concede errors, assert that the enormity and complexity of the task before the ICTR necessitates a significant budget, large staff, long timeline, and the selective investigation and prosecution of suspects. Even then, they claim, the ICTR has helped establish a historical record of the genocide, incapacitated extremists, and officially acknowledged the suffering of victims. Defenders of the ICTR also note the significant precedents and other contributions to international law and justice that the tribunal has made. In contrast to the ICTY and the Nuremberg and Tokyo tribunals, which addressed international conflicts, the ICTR is the first international court to have jurisdiction over atrocities committed during an internal conflict, to receive a guilty plea for genocide (from former Rwandan Prime Minister Jean Kambanda), to impose the first genocide conviction (on Jean-Paul Akayesu, former mayor of Taba, Rwanda), to indict and subsequently convict the first head of government for genocide

(Kambanda), to clarify the definition of rape in international law and hold that it could constitute genocide (Akayesu), and to pass the first genocide conviction of journalists (on Jean-Bosco Barayagwiza, Ferdinand Nahimana, and Hassan Ngeze). Its proponents thus claim that the ICTR, despite having what they assert as a limited mandate and resources, has indeed contributed to accountability, reconciliation, and peace in Rwanda and atrocity deterrence more widely, even if those achievements are not yet apparent and will be realized only in conjunction with other efforts, such as Rwanda's national and local justice systems, including *gacaca* (see separate entry).

### Conclusion

Along with the ICTY the only other ad hoc international war crimes tribunal the Security Council has established through the UN Charter's Chapter VII authority, the ICTR represents a significant development in transitional justice. The ICTR's ultimate success will likely be determined only after it completes its work. In the meantime, proponents and opponents alike will continue to weigh in on the tribunal's achievements and controversies.

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Cross-references: Congo, Democratic Republic; *Gacaca* Courts; Genocide; International Criminal Court; International Criminal Tribunal for the Former Yugoslavia; International Tribunals; Prosecute and Punish; Rwanda; Special Court for Sierra Leone.

### Further Readings

- Clark, P. and Z. D. Kaufman, eds. 2009. *After Genocide: Transitional Justice, Post-Conflict Reconstruction, and Reconciliation in Rwanda and Beyond*. New York: Columbia University Press.
- Morris, V. and M. P. Scharf, eds. 1998. *The International Criminal Tribunal for Rwanda*. 2 vols. Irvington-on-Hudson: Transnational Publishers.
- Schabas, W. 2006. *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda, and Sierra Leone*. Cambridge: Cambridge University Press.

## International Criminal Tribunal for the Former Yugoslavia

The International Criminal Tribunal for the Former Yugoslavia (ICTY) was created by UN Security Council (UNSC) Resolution 827 in May 1993 to prosecute persons responsible for genocide, war crimes, and crimes against humanity committed in the former Yugoslavia beginning in 1991. This encompasses the crimes resulting from the conflicts within and between Bosnia-Herzegovina, Croatia, Serbia, and Montenegro, Kosovo, and the Former Yugoslav Republic of Macedonia, following the fragmentation of Yugoslavia. The ICTY was created in the midst of war, and the UNSC resolution proclaimed that the tribunal would "contribute to the restoration and maintenance of peace" and ensure that violations "are halted and effectively redressed" (UNSC Resolution 808, 1993, preamble). Although conflicts continued in the region after the court's creation, the ICTY has been able to put some of the senior political and military leaders responsible on trial. The tribunal is still hearing cases at the time of this writing, although the UNSC has declared that it should conclude its work by 2013.