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Home > UN, Statute of the ICTR

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## A. The Statute and annex Art. 1 to 11

[Source: UN Doc. S/RES/955 (November 8, 1994)]

**N.B. As per the disclaimer <sup>[1]</sup>, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents.** Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

**Statute of the International Criminal Tribunal  
for the Prosecution of Persons Responsible for Genocide  
and Other Serious Violations of International Humanitarian Law  
Committed in the Territory of Rwanda and Rwandan Citizens Responsible  
for Genocide and Other such Violations Committed  
in the Territory of Neighbouring States,  
between January 1, 1994 and December 31, 1994**

The Security Council,

[...]

*Having considered* the reports of the Secretary-General pursuant to paragraph 3 of resolution 935 (1994) of July 1, 1994 (S/1994/879 and S/1994/906), and *having taken note* of the reports of the Special Rapporteur for Rwanda of the United Nations Commission on Human Rights (S/1994/1157, annex I and annex II),

*Expressing appreciation* for the work of the Commission of Experts established pursuant to resolution 935 (1994), in particular its preliminary report on violations of international humanitarian law in Rwanda transmitted by the Secretary-General's letter of October 1, 1994 (S/1994/1125),

*Expressing once again* its grave concern at the reports indicating that genocide and other systematic, widespread and flagrant violations of international humanitarian law have been committed in Rwanda,

*Determining* that this situation continues to constitute a threat to international peace and security,

*Determined* to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

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

*Believing* that the establishment of an international tribunal for the prosecution of persons responsible for genocide and the other above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed,

*Stressing* also the need for international cooperation to strengthen the courts and judicial system of Rwanda, having regard in particular to the necessity for those courts to deal with large numbers of suspects, [...]

*Acting* under Chapter VII of the Charter of the United Nations,

1. *Decides* hereby, having received the request of the Government of Rwanda (S/1994/1115), to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between January 1, 1994 and December 31, 1994 and to this end to adopt the Statute of the International Criminal Tribunal for Rwanda annexed hereto;
2. *Decides* that all States shall cooperate fully with the International Tribunal and its organs in accordance with the present resolution and the Statute of the International Tribunal and that consequently all States shall take any measures necessary under

their domestic law to implement the provisions of the present resolution and the Statute, including the obligation of States to comply with requests for assistance or orders issued by a Trial Chamber under Article 28 of the Statute, and requests States to keep the Secretary-General informed of such measures;

3. *Considers* that the Government of Rwanda should be notified prior to the taking of decisions under articles 26 and 27 of the Statute; [...]

## *Annex*

### **Statute of the International Tribunal for Rwanda**

Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations, the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between January 1, 1994 and December 31, 1994 (hereinafter referred to as “the International Tribunal for Rwanda”) shall function in accordance with the provisions of the present Statute.

#### **Article 1: Competence of the International Tribunal for Rwanda**

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between January 1, 1994 and December 31, 1994, in accordance with the provisions of the present Statute.

#### **Article 2: Genocide**

1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.
2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a. Killing members of the group;
  - b. Causing serious bodily or mental harm to members of the group;
  - c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
  - d. Imposing measures intended to prevent births within the group;
  - e. Forcibly transferring children of the group to another group.
3. The following acts shall be punishable:
- a. Genocide;
  - b. Conspiracy to commit genocide;
  - c. Direct and public incitement to commit genocide;
  - d. Attempt to commit genocide;
  - e. Complicity in genocide.

### **Article 3: Crimes against humanity**

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

- a. Murder;
- b. Extermination;
- c. Enslavement;
- d. Deportation;
- e. Imprisonment;
- f. Torture;
- g. Rape;
- h. Persecutions on political, racial and religious grounds;
- i. Other inhumane acts.

### **Article 4: Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II**

The International Tribunal for Rwanda shall have the power to prosecute persons

committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of August 12, 1949 for the Protection of War Victims, and of Additional Protocol II thereto of June 8, 1977. These violations shall include, but shall not be limited to:

- a. Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- b. Collective punishments;
- c. Taking of hostages;
- d. Acts of terrorism;
- e. Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- f. Pillage;
- g. The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;
- h. Threats to commit any of the foregoing acts.

#### **Article 5: Personal jurisdiction**

The International Tribunal for Rwanda shall have jurisdiction over natural persons pursuant to the provisions of the present Statute.

#### **Article 6: Individual criminal responsibility**

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime.
2. The official position of any accused person, whether as Head of state or government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.
3. The fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal

responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.

#### **Article 7: Territorial and temporal jurisdiction**

The territorial jurisdiction of the International Tribunal for Rwanda shall extend to the territory of Rwanda including its land surface and airspace as well as to the territory of neighbouring States in respect of serious violations of international humanitarian law committed by Rwandan citizens. The temporal jurisdiction of the International Tribunal for Rwanda shall extend to a period beginning on January 1, 1994 and ending on December 31, 1994.

#### **Article 8: Concurrent jurisdiction**

1. The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for such violations committed in the territory of the neighbouring States, between 1 January 1994 and 31 December 1994.
2. The International Tribunal for Rwanda shall have the primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda.

#### **Article 9: *Non bis in idem***

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal for Rwanda.

2. A person who has been tried before a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal for Rwanda only if:
  - a. The act for which he or she was tried was characterised as an ordinary crime; or
  - b. The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.
3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal for Rwanda shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

#### **Article 10: Organization of the International Tribunal for Rwanda**

The International Tribunal for Rwanda shall consist of the following organs:

- a. The Chambers, comprising two Trial Chambers and an Appeals Chamber;
- b. The Prosecutor; and
- c. A Registry.

#### **Article 11: Composition of the Chambers**

[as modified by Security Council Resolution 1512 (2003)]

1. The Chambers shall be composed of sixteen permanent independent judges, no two of whom may be nationals of the same State, and a maximum at any one time of nine *ad litem* independent judges appointed in accordance with article 12 *ter*, paragraph 2, of the present Statute, no two of whom may be nationals of the same State.
2. Three permanent judges and a maximum at any one time of six *ad litem* judges shall be members of each Trial Chamber. Each Trial Chamber to which *ad litem* judges are assigned may be divided into sections of three judges each, composed of both permanent and *ad litem* judges. A section of a Trial Chamber shall have the same powers and responsibilities as a Trial Chamber under the present Statute and shall render judgement in accordance with the same rules.
3. Seven of the permanent judges shall be members of the Appeals Chamber. The



Appeals Chamber shall, for each appeal, be composed of five of its members.

4. A person who for the purposes of membership of the Chambers of the International Tribunal for Rwanda could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.

## **Art. 12 to 32**

### **Article 12: Qualification and Election of Judges**

The permanent and *ad litem* judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers and sections of the Trial Chambers, due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

### **Article 12 bis: Election of Permanent Judges**

1. Eleven of the permanent judges of the International Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:
  - a. The Secretary-General shall invite nominations for permanent judges of the International Tribunal for Rwanda from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;
  - b. Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in article 12 of the present Statute, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge who is a member of the Appeals Chamber and who was elected or appointed a permanent judge of the International Tribunal for the Prosecution of Persons Responsible

for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter referred to as ‘the International Tribunal for the Former Yugoslavia’) in accordance with article 13 *bis* of the Statute of that Tribunal;

- c. The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twenty-two and not more than thirty-three candidates, taking due account of the adequate representation on the International Tribunal for Rwanda of the principal legal systems of the world;
  - d. The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect eleven permanent judges of the International Tribunal for Rwanda. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.
2. In the event of a vacancy in the Chambers amongst the permanent judges elected or appointed in accordance with this article, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of article 12 of the present Statute, for the remainder of the term of office concerned.
  3. The permanent judges elected in accordance with this article shall be elected for a term of four years. The terms and conditions of service shall be those of the permanent judges of the International Tribunal for the Former Yugoslavia. They shall be eligible for re-election.

#### **Article 12 *ter*: Election and Appointment of Ad litem Judges**

1. The *ad litem* judges of the International Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:
  - a. The Secretary-General shall invite nominations for *ad litem* judges of the

International Tribunal for Rwanda from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

- b. Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to four candidates meeting the qualifications set out in article 12 of the present Statute, taking into account the importance of a fair representation of female and male candidates;
  - c. The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than thirty-six candidates, taking due account of the adequate representation of the principal legal systems of the world and bearing in mind the importance of equitable geographical *distribution*;
  - d. The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the eighteen *ad litem* judges of the International Tribunal for Rwanda. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected;
  - e. The *ad litem* judges shall be elected for a term of four years. They shall not be eligible for re-election.
2. During their term, *ad litem* judges will be appointed by the Secretary-General, upon request of the President of the International Tribunal for Rwanda, to serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including, three years. When requesting the appointment of any particular *ad litem* judge, the President of the International Tribunal for Rwanda shall bear in mind the criteria set out in article 12 of the present Statute regarding the composition of the Chambers and sections of the Trial Chambers, the considerations set out in paragraphs 1 (b) and (c) above and the number of votes the *ad litem* judge received in the General Assembly.

#### **Article 12 quater: Status of *Ad litem* Judges**

1. During the period in which they are appointed to serve in the International Tribunal for Rwanda, *ad litem* judges shall:

- a. Benefit from the same terms and conditions of service *mutatis mutandis* as the permanent judges of the International Tribunal for Rwanda;
  - b. Enjoy, subject to paragraph 2 below, the same powers as the permanent judges of the International Tribunal for Rwanda;
  - c. Enjoy the privileges and immunities, exemptions and facilities of a judge of the International Tribunal for Rwanda;
  - d. Enjoy the power to adjudicate in pre-trial proceedings in cases other than those that they have been appointed to try.
2. During the period in which they are appointed to serve in the International Tribunal for Rwanda, *ad litem* judges shall not:
- a. Be eligible for election as, or to vote in the election of, the President of the International Tribunal for Rwanda or the Presiding Judge of a Trial Chamber pursuant to article 13 of the present Statute;
  - b. Have power:
    - i. To adopt rules of procedure and evidence pursuant to article 14 of the present Statute. They shall, however, be consulted before the adoption of those rules;
    - ii. To review an indictment pursuant to article 18 of the present Statute;
    - iii. To consult with the President of the International Tribunal for Rwanda in relation to the assignment of judges pursuant to article 13 of the present Statute or in relation to a pardon or commutation of sentence pursuant to article 27 of the present Statute.

### **Article 13: Officers and Members of the Chambers**

1. The permanent judges of the International Tribunal for Rwanda shall elect a President from amongst their number.
2. The President of the International Tribunal for Rwanda shall be a member of one of its Trial Chambers.
3. After consultation with the permanent judges of the International Tribunal for Rwanda, the President shall assign two of the permanent judges elected or appointed in accordance with article 12 *bis* of the present Statute to be members of the Appeals Chamber of the International Tribunal for the Former Yugoslavia and eight to the

Trial Chambers of the International Tribunal for Rwanda.

4. The members of the Appeals Chamber of the International Tribunal for the Former Yugoslavia shall also serve as the members of the Appeals Chamber of the International Tribunal for Rwanda.
5. After consultation with the permanent judges of the International Tribunal for Rwanda, the President shall assign such *ad litem* judges as may from time to time be appointed to serve in the International Tribunal for Rwanda to the Trial Chambers.
6. A judge shall serve only in the Chamber to which he or she was assigned.
7. The permanent judges of each Trial Chamber shall elect a Presiding Judge from amongst their number, who shall oversee the work of that Trial Chamber as a whole.

#### **Article 14: Rules of Procedure and Evidence**

The judges of the International Tribunal for Rwanda shall adopt, for the purpose of proceedings before the International Tribunal for Rwanda, the rules of procedure and evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters of the International Tribunal for the Former Yugoslavia with such changes as they deem necessary.

#### **Article 15: The Prosecutor**

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.
2. The Prosecutor shall act independently as a separate organ of the International Tribunal for Rwanda. He or she shall not seek or receive instructions from any government or from any other source.
3. The Office of the Prosecutor shall be composed of a Prosecutor and such other qualified staff as may be required.
4. The Prosecutor shall be appointed by the Security Council on nomination by the

Secretary-General. He or she shall be of high moral character and possess the highest level of competence and experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor shall serve for a four-year term and be eligible for reappointment. The terms and conditions of service of the Prosecutor shall be those of an Under-Secretary-General of the United Nations.

5. The staff of the Office of the Prosecutor shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

#### **Article 16: The Registry**

1. The Registry shall be responsible for the administration and servicing of the International Tribunal for Rwanda.
2. The Registry shall consist of a Registrar and such other staff as may be required.
3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the International Tribunal for Rwanda. He or she shall serve for a four-year term and be eligible for re-appointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.
4. The Staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar.

#### **Article 17: Investigation and Preparation of Indictment**

1. The Prosecutor shall initiate investigations *ex officio* or on the basis of information obtained from any source, particularly from governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.
2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.
3. If questioned, the suspect shall be entitled to be assisted by Counsel of his or her own choice, including the right to have legal assistance assigned to the suspect without payment by him or her in any such case if he or she does not have sufficient means to pay for it, as well as necessary translation into and from a language he or she speaks

and understands.

4. Upon a determination that a *prima facie* case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

#### **Article 18: Review of the Indictment**

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a *prima facie* case has been established by the Prosecutor, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.
2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

#### **Article 19: Commencement and Conduct of Trial Proceedings**

1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.
2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the International Tribunal for Rwanda, be taken into custody, immediately informed of the charges against him or her and transferred to the International Tribunal for Rwanda.
3. The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial Chamber shall then set the date for trial.
4. The hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its Rules of Procedure and Evidence.

#### **Article 20: Rights of the Accused**

1. All persons shall be equal before the International Tribunal for Rwanda.
2. In the determination of charges against him or her, the accused shall be entitled to a

fair and public hearing, subject to Article 21 of the Statute.

3. The accused shall be presumed innocent until proven guilty according to the provisions of the present Statute.
4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:
  - a. To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;
  - b. To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;
  - c. To be tried without undue delay;
  - d. To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interest of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;
  - e. To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
  - f. To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the International Tribunal for Rwanda;
  - g. Not to be compelled to testify against himself or herself or to confess guilt.

#### **Article 21: Protection of Victims and Witnesses**

The International Tribunal for Rwanda shall provide in its Rules of Procedure and Evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim's identity.

#### **Article 22: Judgement**

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties



on persons convicted of serious violations of international humanitarian law.

2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

### **Article 23: Penalties**

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.
2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

### **Article 24: Appellate Proceedings**

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:
  - a. An error on a question of law invalidating the decision; or
  - b. An error of fact which has occasioned a miscarriage of justice.
2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers.

### **Article 25: Review Proceedings**

Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the International Tribunal for Rwanda an application for review of the judgement.

### **Article 26: Enforcement of Sentences**

Imprisonment shall be served in Rwanda or any of the States on a list of States which have

indicated to the Security Council their willingness to accept convicted persons, as designated by the International Tribunal for Rwanda. Such imprisonment shall be in accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal for Rwanda.

### **Article 27: Pardon or Commutation of Sentences**

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the International Tribunal for Rwanda accordingly. There shall only be pardon or commutation of sentence if the President of the International Tribunal for Rwanda, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law.

### **Article 28: Cooperation and Judicial Assistance**

1. States shall cooperate with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.
2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including but not limited to:
  - a. The identification and location of persons;
  - b. The taking of testimony and the production of evidence;
  - c. The service of documents;
  - d. The arrest or detention of persons;
  - e. The surrender or the transfer of the accused to the International Tribunal for Rwanda.

### **Article 29: The Status, Privileges and Immunities of the International Tribunal for Rwanda**

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal for Rwanda, the judges, the Prosecutor and his or her staff, and the Registrar and his or her staff.

2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.
3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under Articles V and VII of the Convention referred to in paragraph 1 of this article.
4. Other persons, including the accused, required at the seat or meeting place of the International Tribunal for Rwanda shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal for Rwanda.

#### **Article 30: Expenses of the International Tribunal for Rwanda**

The expenses of the International Tribunal for Rwanda shall be expenses of the Organisation in accordance with Article 17 of the Charter of the United Nations.

#### **Article 31: Working Languages**

The working languages of the International Tribunal for Rwanda shall be English and French.

#### **Article 32: Annual Report**

The President of the International Tribunal for Rwanda shall submit an annual report of the International Tribunal for Rwanda to the Security Council and to the General Assembly.

## **B. Security Council Resolution 1534 (2004)**

[Source: S/RES/1534 (2004), Resolution 1534 (2004), Adopted by the Security Council at its 4935th meeting, on 26 March 2004.]

The Security Council, [...]

*Recalling and reaffirming* in the strongest terms the statement of 23 July 2002 made by the

President of the Security Council (S/PRST/2002/21) endorsing the ICTY's completion strategy and its resolution 1503 (2003) of 28 August 2003,

*Recalling* that resolution 1503 (2003) called on the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) to take all possible measures to complete investigations by the end of 2004, to complete all trial activities at first instance by the end of 2008, and to complete all work in 2010 (the Completion Strategies), and requested the Presidents and Prosecutors of the ICTY and ICTR, in their annual reports to the Council, to explain their plans to implement the Completion Strategies, [...]

*Acting* under Chapter VII of the Charter of the United Nations, [...]

4. *Calls* on the ICTY and ICTR Prosecutors to review the case load of the ICTY and ICTR respectively in particular with a view to determining which cases should be proceeded with and which should be transferred to competent national jurisdictions, as well as the measures which will need to be taken to meet the Completion Strategies referred to in resolution 1503 (2003) and urges them to carry out this review as soon as possible and to include a progress report in the assessments to be provided to the Council under paragraph 6 of this resolution;
5. *Calls* on each Tribunal, in reviewing and confirming any new indictments, to ensure that any such indictments concentrate on the most senior leaders suspected of being most responsible for crimes within the jurisdiction of the relevant Tribunal as set out in resolution 1503 (2003); [...]
9. *Recalls* that the strengthening of competent national judicial systems is crucially important to the rule of law in general and to the implementation of the ICTY and ICTR Completion Strategies in particular; [...]

## **Discussion**

1.
  - a. Does the Statute qualify the situation in Rwanda in 1994?
  - b. What is the difference between a genocide and an armed conflict? Can an armed

conflict be an act of genocide? Is every genocide an armed conflict to which at least Art. 3 common to the Conventions <sup>[2]</sup> is applicable? Why does IHL not explicitly prohibit acts of genocide? Can the same act fall under Arts 2 <sup>[3]</sup>, 3 <sup>[2]</sup>, and 4 <sup>[4]</sup> of the Statute?

- c. Which acts enumerated in Arts 2 <sup>[3]</sup> and 3 <sup>[2]</sup> of the Statute are not necessarily covered by Protocol II <sup>[5]</sup>?
2.
  - a. Were the genocide and the armed conflict in Rwanda, though non-international, a threat to peace (justifying measures under Chapter VII of the UN Charter)? Is the establishment of a tribunal to prosecute violations of IHL a proper measure to stop that threat? Can we today say whether it contributed to the restoration of peace in Rwanda? Does that (the end result) actually matter? Does the prosecution of (former) leaders not make peace and reconciliation more difficult?
  - b. Or are violations of IHL themselves threats to peace (justifying measures under Chapter VII of the UN Charter)? Even in non-international armed conflicts? Can the same be said of gross violations of human rights outside armed conflicts?
3.
  - a. Can the UN Security Council establish a tribunal? Is such a tribunal independent? Is it a “court established by law”? Does the creation of a tribunal competent to try acts committed before it was established itself violate the prohibition (in IHL and international human rights law) of retroactive penal legislation?
  - b. How else than by a Security Council resolution could the ICTR have been established? What are the advantages and disadvantages of those other methods?
4. Is the prosecution of serious violations of the IHL of non-international armed conflicts prescribed by IHL? Is it compatible with IHL?
5. Are Arts 2-4 of the Statute penal legislation or simple rules of competence of the ICTR?
6.
  - a. Is Art. 4 retroactive penal legislation, as neither Art. 3 common to the Conventions nor Protocol II foresee any individual penal responsibility for violations of the IHL of non-international armed conflicts? Were those acts prohibited under Rwandan legislation (as Rwanda was a party to Protocol II)? Would the fact that those acts were punishable under Rwandan legislation suffice to avoid a violation of the principle *nullum crimen sine lege*? Is that

- principle only respected if such legislation exists? Could Art. 3 common to the Conventions and Protocol II be considered as self-executing penal legislation?
- b. Why does Art. 4 copy just Art. 4(2) and no other provision of Protocol II? Does that have any significance for the qualification of other violations of Protocol II as serious violations? Could you give some other examples of provisions of Protocol II the violation of which definitely falls under Art. 4 of the Statute? Could you give some examples of provisions of Protocol II the violation of which does not fall under Art. 4 of the Statute?
7. Is Art. 9 compatible with the IHL of non-international armed conflicts? (GC I-IV, Art. 3 <sup>[6]</sup>; P II, Art. 6 <sup>[7]</sup>)
  8.
    - a. Are those detained under the authority of the ICTR (pending trial or having been sentenced) protected by Arts 5 <sup>[8]</sup> and 6 of Protocol II <sup>[9]</sup>? Are any provisions of the Statute incompatible with those guarantees of IHL?
    - b. Does the ICRC have the right to visit the accused?
- 

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