

Let's Be Friends

The United States, Post-Genocide Rwanda, and Victor's Justice in Arusha

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ABSTRACT: The International Criminal Tribunal for Rwanda completed the trial phase of its mandate without prosecuting anyone from the victorious Rwandan Patriotic Front. This article examines whether the ICTR was doomed from the start to be a court of 'victor's justice.' I explore the issue by re-examining the politics of its creation. Interviews with (former) US and UN ambassadors and hundreds of declassified diplomatic telegrams ('cables') and intelligence reports of the US Department of State shed new light on this process. My analysis concentrates on the strategy of the RPF vis-à-vis the international community and the responses of the United Nations and United States. I argue that understanding the evolution of the relation between Washington and Kigali – from an early, almost accidental support of the RPF to nearly unconditional backing – can help explain RPF impunity. I do not suggest that Washington planned to shield Kagame from international prosecution, or that the US was the only Security Council member to embrace him. However, once Washington entered into a partnership with the 'new' Rwanda, it was committed to moving forward – and this implied burying the past and oftentimes also ignoring the present. The result was victor's justice in Arusha – and seemingly endless war in neighboring Congo.

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ICTR Registrar Adama Dieng ‘said the possible indictment of RPF officers is a “huge shadow” looming over the court, and said Kagame would not cooperate with the court in any way on this issue. He asked rhetorically “How could the ICTR close its doors without indictment of at least some RPF officers?” This issue impacts the entire credibility of the ICTR, he said, but would it be possible to indict anyone without effectively reaching Kagame?’¹

Ubwenge is one of the three most important Rwandan virtues: ‘It is our self-control, our vigilance. You promise something temporarily, because then you remain without obligations. You answer vaguely, add or delete something, or say smiling that you don’t know. Sometimes you even lie.’²

‘The actual truth will alwz (*sic*) finally prevail.’³

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¹ **Document 1** US Embassy Dar Es Salaam 000540, 16 March 2005, ‘ICTR Registrar Briefs Diplomats’, para 7 (obtained from WikiLeaks < <http://wikileaks.org/>>).

² K Peeters, *Duizend Heuvels (De Bezige Bij: Antwerpen)* 2012, 121 (my translation).

³ Tweet from Rwandan President Paul Kagame, 3 December 2012, in response to a UN report that his government was sponsoring and directing the M23 rebel group in east Congo. Available at <<https://twitter.com/PaulKagame>>.

I. INTRODUCTION

The year 2011 was not business as usual at the International Criminal Tribunal for Rwanda (ICTR) based in Arusha, Tanzania. In June, *Trial Chamber I* rendered judgment in the longest trial in the history of international criminal justice.⁴ The decision was uncontroversial but anybody who expected the Tribunal to dispose similarly of the remaining cases and quietly close down⁵ was in for a surprise. Two decisions issued in December 2011 have come to undermine the dominant narrative that the genocide against the Tutsi was a carefully orchestrated crime. First the *Appeals Chamber* reduced the responsibility of Colonel Théoneste Bagosora (alleged mastermind of the genocide) and lowered his life sentence to 35 years.⁶ A week later, *Trial Chamber III* in the ‘MRND trial’ cast more doubt on the dominant narrative by stating that ‘the Prosecution has not proved beyond a reasonable doubt that Karemera and Ngirumpatse, or other leaders, planned the massacre of Tutsis in advance of the assassination of President Habyarimana’⁷ and acknowledged ‘that the genocide may have started as a spontaneous reaction to the assassination of President Habyarimana, which was fuelled by the belief that the Tutsi-led RPF was responsible, and prior anti-Tutsi propaganda’.⁸

Thus after seventeen years of investigations and trials costing \$1.6 billion,⁹ the Prosecution has failed to prove a conspiracy by Hutu extremists to exterminate the Tutsis. As Stephen Smith, the former Africa editor of *Le Monde*, wrote in March 2011, ‘In 1994 a genocide was committed against the Tutsi minority in Rwanda. All else about this small East African country, “the land of a thousand hills”, is open to question and, indeed, bears re-examination’.¹⁰

The official Rwandan response to the judgments was uncharacteristically muted. Whereas in the past the government of Rwanda had always been quick to express ‘outrage’ and orchestrate anti-ICTR demonstrations in the capital Kigali,¹¹ it probably realized that it has little leverage over a tribunal that is winding down. Arguably the ICTR only became truly independent in its final stages when the cost of ignoring the Rwandan government became negligible. This late-found

⁴ *Prosecutor v Nyiramasuhuko et al*, Judgment and Sentence, Case No. ICTR-98-42-T, 24 June 2011. The judgment of 24 June 2011 came ten years after the commencement of the trial and sixteen years after the arrests of some of the accused.

⁵ The ICTR completed its trial work in July 2011 and delivered its final verdict on 20 December 2012; the appeals work is expected to be completed by the end of 2014.

⁶ *Théoneste Bagosora and Anatole Nsengiyumva v. the Prosecutor*, Case No. ICTR 98-41-A.

⁷ *The Prosecutor v. Édouard Karemera et al.*, Case No. ICTR-98-44-T, para 75 oral summary.

⁸ *Ibid.*

⁹ M Wierda and A Triolo, ‘Resources’ in L Reydams, J Wouters, and C Ryngaert (eds), *International Prosecutors* (Oxford: Oxford University Press, 2012) ch 4, 118.

¹⁰ ‘Rwanda in Six Scenes’ (2011) 33 (6) *London Review of Books*.

¹¹ Eg ‘Kigali Protest Against UN Tribunal’, *BBC News* (online), 15 November 1999; ‘Rwanda: Thousands Demonstrate Against UN Tribunal’, *Hirondelle News Agency*, 29 February 2004.

independence, however, does not undo the failure to prosecute Paul Kagame and his victorious Rwandan Patriotic Front/Army (RPF/RPA)¹² for war crimes and crimes against humanity.¹³

The question arises whether the ICTR was doomed from the start to be a court – and instrument – of ‘victor’s justice.’ I will explore this issue by re-examining the politics of the ICTR’s creation. Although legally established in November 1994, the period under study starts in October 1990 at the beginning of the civil war and goes on to cover the two years before the Tribunal became fully operational in early 1997. Going back to 1990 allows me to describe the political context of the Great Lakes region and show how, when, and where Kagame and his RPF emerged, and how the international community, the United States in particular, reacted to and became involved in the Rwandan crisis. Hundreds of declassified diplomatic telegrams (‘cables’) and intelligence reports of the US Department of State shed new light on this whole period.¹⁴

My analysis concentrates on the strategy of the RPF vis-à-vis the international community and the responses of the United Nations and United States. In a previous publication, I claim that US leadership is a necessary (but not a sufficient) condition for successful international prosecutions.¹⁵ Building on that research, I argue that understanding the evolution of the relation between Washington and Kigali – from an early, almost accidental support of the RPF to nearly unconditional backing – can help explain RPF impunity. I conclude that, barring a *coup* and regime change in Rwanda, RPF accountability became an illusion from 16 December 1994 on when a US Air Force Boeing 737 landed in Kigali carrying the National Security Advisor, Anthony Lake, and a dozen staff from the National Security Council, the Pentagon, and the Department of State landed in Kigali. On that day, Rwanda became a partner of the United States and one of the consequences, I submit, was RPF immunity from Security Council censure and,

¹² The Rwandan Patriotic Front was the political branch of the Rwandan Patriotic Army but in the literature and media the acronyms RPF and RPA often are used interchangeably. This article follows the practice of ICTR circles which usually speak about ‘the RPF question’.

¹³ RPF crimes *have* been investigated under Chief Prosecutor Carla Del Ponte (1999-2003) but her successor Hassan Jallow terminated the so-called ‘Special Investigations’ and made a deal with the Rwandan government. See C Del Ponte, *Madame Prosecutor: Confrontations with Humanity’s Worst Criminals and the Culture of Impunity* (New York, NY: Other Press, 2009), 82-92, 231-4, 239-40; V Peskin, *International Justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation* (Cambridge: Cambridge University Press, 2008), 225-31; V Peskin, ‘Victor’s Justice Revisited: Rwandan Patriotic Front Crimes and the Prosecutorial Endgame at the ICTR’ in S Straus and L Waldorf (eds), *Remaking Rwanda: State Building and Human Rights After Mass Violence* (Madison, WI: University of Wisconsin Press, 2011), 173-82; and L Waldorf, ‘A Mere Pretense of Justice: Complementarity, Sham Trials, and Victor’s Justice at the Rwanda Tribunal’ (2011) 33 *Fordham International Law Journal* 1221.

¹⁴ I used the Rwandan Declassification Collection available at <<http://www.state.gov/m/a/ips/c45584.htm>> and the Rwanda Documents Project available at <<http://www.ihli.org/rwanda-documents-project>>. In addition to declassified cables, there are also some relevant ‘WikiLeaked’ cables. All cables referenced in this article are declassified, unless stated otherwise.

¹⁵ L Reydam and J Wouters, ‘The Politics of Establishing International Criminal Tribunals’ in L Reydam, J Wouters, and C Ryngaert (eds), *International Prosecutors* (Oxford: Oxford University Press, 2012) ch 2, available at <<http://reydams.wordpress.com/>>.

by extension, from international prosecutions. My examination of US and UN–Rwandan relations on human rights and security issues over the following two years supports this hypothesis.

For clarity, I do not suggest that Washington *planned* to shield Kagame from international prosecution, or that the US was the only Security Council member to embrace him. The British government and Prime Minister Tony Blair personally became perhaps even stauncher defenders of the Rwandan strongman. However, once Washington (and London) entered into a partnership with the ‘new’ Rwanda, it was committed to moving forward – and this *implied* burying the past and oftentimes also ignoring the present. I also should like to emphasize that my focus on the RPF is intended to challenge the dominant narrative of the events in 1994 and demonstrate the existence of a serious impunity gap. This does not mean that I deny or excuse the crimes of the former regime. As a final caveat, my criticism of the ICTR’s one-sidedness is not meant to detract from its success in prosecuting the former regime.

The article consists of four parts: I) Introduction, II) ‘The Politics of the Establishment of the ICTR Revisited’, III) Conclusion and IV) Postscript. It draws on published accounts¹⁶ of and interviews¹⁷ with former US and UN diplomats, a review of hundreds of declassified US diplomatic cables and intelligence reports, official UN documents, and the vast body of secondary literature on Rwanda¹⁸ and the ICTR.¹⁹ It should be noted that the cables come exclusively from the Department of State (not any other US agency), that they have only been

¹⁶ D Scheffer, *All the Missing Souls: A Personal History of the War Crimes Tribunals* (Princeton, NJ: Princeton University Press, 2012); J Shattuck, *Freedom on Fire: Human Rights and America’s Response* (Cambridge, MA: Harvard University Press, 2003) ; DP Rawson, ‘Prosecuting Genocide: Founding the International Criminal Tribunal for Rwanda’ (2007) XXXIII *Ohio Northern University Law Review* 641; TP Odom, *Journey into Darkness: Genocide in Rwanda* (College Station, TX: Texas A&M University Press, 2005); RE Gribbin, *In the Aftermath of Genocide: The U.S. Role in Rwanda* (Lincoln, NE: iUniverse, 2005); H Cohen, *Intervening in Africa: Superpower Peacemaking in a Troubled Continent* (Basingstoke: Palgrave Macmillan, 2000); SM Khan, *The Shallow Graves of Rwanda* (London and New York, NY: I.B. Tauris & Co, 2001).

¹⁷ I sincerely thank Ambassadors David Rawson and David Scheffer for meeting with me, Ambassador Robert Gribbin for talking to me on the phone, and Ambassadors Hans Corell and John Shattuck for answering my queries by email. Very informative – and oftentimes surprisingly candid – are also the interviews with Ambassadors Leonard Spearman, Robert Gribbin, Herman Cohen, Prudence Bushnell, Joyce Leader, and Richard Bogosian in the *Foreign Affairs Oral History Collection*, Association for Diplomatic Studies and Training, Arlington, VA, available at <www.adst.org>.

¹⁸ The most comprehensive account of the events of 1994 still is A Des Forges, *Leave None to Tell the Story: Genocide in Rwanda* (New York: Human Rights Watch, 1999).

¹⁹ On the ICTR I recommend T Cruvellier, *Court of Remorse: Inside the International Criminal Tribunal for Rwanda* (Madison, WI: University of Wisconsin Press, 2010); C Del Ponte (n 13); K Mughalu, *Rwanda’s Genocide: The Politics of Global Justice* (New York, NY: Palgrave MacMillan, 2005); and R Goldstone, *For Humanity: Reflections of a War Crimes Investigator* (London and New Haven, CT: Yale University Press, 2000).

declassified selectively, and that some cables are heavily redacted. Copies of the cables and reports used for this article have been made available on a website and can be examined.²⁰

II. THE POLITICS OF THE ESTABLISHMENT OF THE ICTR REVISITED

My re-examination of the political and legislative history of the ICTR proceeds chronologically and is broken down into four periods: 1 October 1990 (start of the war) – 5 April 1994; 6 April 1994 (resumption of the war) – 18 July 1994 (RPF victory); 19 July 1994 – 16 December 1994 (visit of Anthony Lake to Kigali); and 17 December 1994 – February 1997 (opening first trial in Arusha and overhaul of Tribunal).

1 October 1990 – 5 April 1994

In his review of Jason Stearns' *Dancing in the Glory of Monsters: the Collapse of the Congo and the Great War of Africa* (2011)²¹ Adam Hochschild observes that United States' support of Rwandan strongman and current President Paul Kagame has contributed to Congo's suffering. Hochschild remarks: 'How this media-savvy autocrat has managed to convince so many American journalists, diplomats and political leaders that he is a great statesman, is worth a book in itself.' Such a book, which has yet to be written, could help explain RPF impunity because, as the quotation from ICTR Registrar Adama Dieng at the beginning of this article suggests,²² Kagame *was* the RPF and vice versa. The sections below briefly summarize the origins of the RPF, the rise of Kagame, US attitudes during the first phase of the Rwandan crisis, and the RPF's early determination to keep foreign interference out.

The RPF and Paul Kagame²³

The Rwandan Patriotic Front was founded in 1987 in Uganda by Tutsi exiles who had fought on the side of Yoweri Museveni in the 'Ugandan Bush War' (1981-1986). After the war, many of them joined the new Ugandan army as did Paul Kagame, who was soon promoted to become head of administration of the Chieftaincy of Military Intelligence. This position provided him with an opportunity to pursue his ambition to return to Rwanda – and restore Tutsi rule.²⁴ He

²⁰ Available at <<http://reydams.wordpress.com/>>.

²¹ A Hochschild, 'Explaining Congo's Endless Civil War', *New York Times*, 3 April 2011, p. 12 of the *Sunday Book Review*.

²² *Supra* n 1.

²³ Based on J Stearns, *Dancing in the Glory of Monsters: the Collapse of the Congo and the Great War of Africa* (New York, NY: PublicAffairs, 2011), 47-50 and Gribbin (n 16), 53-61.

²⁴ The first ICTR judgments dismissed as Hutu propaganda the warning that Kagame and his RPF wanted more than a seat at the table in Kigali, but a 2008 survey by the US Embassy there vindicates the alarmists. **Document 69** US Embassy Kigali 000525, 5 August 2008, 'Ethnicity in Rwanda – Who Governs the Country?', para 3 (obtained from WikiLeaks <<http://wikileaks.org/>>):

Post analyzed 118 senior positions in the government, from ministries to parastatals to independent regulatory bodies, as well as the defense and security establishments to

plotted together with other Rwandan Tutsi refugees who had risen to positions of power in the Ugandan army.²⁵ They stockpiled weapons and recruited other Rwandans to their cause. Ugandan President Museveni did not get in their way because having Rwandans play such an important role in his government was a political liability for him.²⁶

In mid-1990, Kagame was invited to the United States in the context of the International Military Education and Training program (IMET).²⁷ On 1 October 1990, while Kagame was still in the US, thousands of Rwandans deserted their posts in the Ugandan army and crossed into Rwanda under the command of Fred Rwigema. But this operation ended in disaster. Rwigema was killed and his troops were repelled. For Kagame this was the trigger to return to Uganda and assume command of the RPF.

The United States and the Rwanda Crisis

Some see these events as ‘part one’²⁸ of a geopolitical plot to expand Anglo-Saxon influence in francophone Africa but it probably was just a coincidence. Until then, CIA and Pentagon officials were, reportedly, unaware that the IMET participant from Uganda was in fact a Rwandan and a co-founder of the RPF. According to the then US Assistant Secretary of State for African Affairs Herman Cohen, who cannot be suspected of RPF sympathies, Washington had not received any reports from Kampala indicating that something was happening.²⁹ ‘I was absolutely flabbergasted’ said Leonard Spearman, the then US Ambassador in Kigali.³⁰

Still, Kagame’s stint in the US gave him an opportunity to establish contacts in US military circles and, as he later acknowledged, to learn the power of communications and information

assess the ethnic composition of the current Rwandan government (GOR). Post’s review of ethnic membership showed two thirds of the senior positions are occupied by Tutsis -- including ministers, ministers of state and secretaries general in the various ministries, the heads of the armed services and security services, and the heads of dozens of government offices. This according of senior positions has held steady over time -- Post has reviewed internal embassy surveys of ethnic breakdowns of senior positions from several years ago and found a similar two-thirds/one-third breakdown. These percentages are far different from the ethnic breakdown commonly accepted for the two groups, at 15 percent Tutsi and 85 percent Hutu.

²⁵ RPF co-founder Fred Rwigema became deputy army commander-in-chief. One of the reasons Rwandans rose quickly in the ranks of the Ugandan army was that they were better educated than the average Ugandan, in no small part thanks to scholarships from the international community through the Office of the United Nations High Commissioner for Refugees. This is an historical irony because once in power in Rwanda, they would hate and denounce the UN.

²⁶ Cohen (n 17), 114.

²⁷ More details about this episode can be found in Gribbin (n 16), 59-61. As Deputy Chief of Mission in Kampala, Robert Gribbin was responsible for US military assistance programs.

²⁸ ‘Part two’ in this scenario is the Rwandan invasion of Congo/Zaire in 1996 (see below).

²⁹ Cohen (n 17), 115.

³⁰ Spearman (n 17), 16.

warfare.³¹ However, it would be wrong to attribute more significance to this episode. It did not mean that the US assisted the RPF – although neither did they oppose it.

In his assessment of the period spent representing US interests in Africa, Herman Cohen later wrote:

Looking back at the first day of the crisis, 1 October 1990, why did we automatically exclude the policy option of informing Ugandan President Museveni that the invasion of Rwanda by uniformed members of the Ugandan army was totally unacceptable, and that the continuation of good relations between the United States and Uganda would depend on his getting the RPF back across the border? That the RPF were children of the Tutsi refugees of 1959-63 who were forbidden to return gave the event a certain romantic poignancy. Had we analyzed the potential for disaster, however, we would not have silently acquiesced in the invasion. The fact that tens of thousands of Rwandans immediately became internally displaced as the RPF advanced should have served as a warning. Rwandans, including Tutsis, clearly did not view the RPF as liberators.³²

At the time, the international donor community favored Uganda under Museveni's leadership because of its successful economic reforms, its substantial economic growth, and its revival of Ugandan society after the disastrous years of Idi Amin and Milton Obote. We had no desire to challenge Museveni over Rwanda and thus quietly looked for other avenues of conflict management.³³

State Department cables from that period reveal an evenhanded approach consisting of quiet demarches by US ambassadors in Kigali and Kampala. But unlike the RPF leadership which enjoyed sanctuary in Uganda and was not so heavily pressed by the international community, the Rwandan government was vulnerable to military pressure from the RPF and to political and economic pressures from donor countries. As a result, a US intelligence analyst noted, 'The RPF has been far less willing than the government to compromise. ... It is likely that, while professing a willingness to talk and by being tactically flexible, the RPF will seek to delay substantive progress as long as possible and wait for Kigali to lower its bottom line'.³⁴ The analyst concluded that if the peace talks fail, '*the possibility of a genocidal war will loom*'.³⁵

The analyst was referring to the Arusha peace process that had been launched in July 1992 with US (and French) technical and financial assistance.³⁶ Washington eventually became an official observer of the peace process but nothing more. Deeper involvement was resisted at the highest

³¹ N Gowing, 'New Challenges and Problems for Information Management in Complex Emergencies: Ominous lessons from the Great Lakes and Eastern Zaire in late 1996 and early 1997', paper presented at a conference entitled 'Dispatches from Disaster Zones' in London, May 1998, 16, available at http://repository.forcedmigration.org/show_metadata.jsp?pid=fmo:1848.

³² Cohen (n 16), 177-8. See further Cohen (n 17) 113-8.

³³ Cohen (n 16), 178.

³⁴ **Document 2** US Department of State 310659, 23 September 1992, 'INR/AA'S African Trends – 9/18/92 (No. 19)', para 40.

³⁵ *Ibid*, para 2 (emphasis added).

³⁶ Gribbin (n 16), 69-72.

levels of the Department of State and other Departments.³⁷ ‘It was not a Kuwait-level event. It was Africa.’³⁸

Talking Peace, Waging War

The RPF took advantage of this hands-off approach to escalate the conflict, even resorting at one point to starvation tactics by threatening to block grain shipments to Rwanda³⁹ as well as launching a major attack in February 1993.⁴⁰ A State Department cable shows Kagame talking tough during a meeting with US officials following the February attack: ‘Kagame said that the RPF greatly prefers a negotiated end to the war, but cautioned that if events in Rwanda similar to the January killings again transpired, the RPF “would not permit its hands to be tied by international opinion”’.⁴¹

Meanwhile US intelligence⁴² continued to offer gloomy but, in hindsight, remarkably accurate, assessments of the crisis, as shown by this dispatch of 25 February 1993:

1. [...]

3. The attack by the Rwandan Patriotic Front (RPF) into Northern Rwanda, with reports of widespread atrocities, indicates the rebels are not seriously committed to powersharing with president Habyarimana. Rather, the RPF, controlled by ethnic Tutsi, seeks to control the Kigali government.

5. Contrary to their initial public claims, the rebels appear to seek more than reprisal for last month’s anti-Tutsi violence. Considering the sustained nature of their attack and statements by RPF officials that they had been planning to strike for months, it appears the RPF wants more than mere tactical advantage at the Arusha peace talks. Rather than power sharing with Habyarimana, the RPF seems bent on his early capitulation.

7. The RPF appears determined to force a settlement--or series of settlements--that would give it a dominant role in the government and the security forces ... In the meantime, any truces or peace settlements the RPF agrees to should be seen as tactical moves which would be broken when no longer useful.

³⁷ Email from Ambassador David Rawson to the author. See also Bushnell (n 17), 58 and S Power, ‘Bystanders to Genocide: Why the United States Let the Rwandan Tragedy Happen’, *The Atlantic Monthly* September 2001, 84-108. Power notes that Secretary of State Warren Christopher (1993-1997) had little interest for Africa.

³⁸ Gribbin (n 16), 68.

³⁹ **Document 3** US Embassy Kampala 07299, 29 December 1992, ‘ICRC Reports that RPF Threats Are Continuing to Hold Up Food for Rwanda, Sees “Starvation” Approach’.

⁴⁰ On the timing and meaning of the attack, which violated a seven month cease-fire, see Des Forges (n 18), 109-11.

⁴¹ **Document 4** US Embassy Kampala 01485, 27 February 1993, ‘U.S. Meeting with RPF Military Commander’, para 6.

⁴² ‘US intelligence’ in this article refers to the Intelligence Bureau of the Department of State, not any other US intelligence agency.

10. The RPF probably hopes to limit foreign intervention to promoting and giving international blessing to a negotiated settlement in which the RPF agrees to end the war in exchange for a dominant role in the government and security services.

11. Bloody outlook. While the RPF's recent actions demonstrate its military strength, they also show an intransigence that makes Habyarimana and the MRND fear accommodation more than ever. With his authority eroded, Habyarimana may lash out at the RPF, the Tutsis and other opponents. Even if he refrains, elements of the MRND, the CDR, and other Rwandan Hutu probably will intensify revenge killings. Fear of an RPF takeover could eventually motivate some elements in the anti- Habyarimana internal opposition parties to join in attacks on Tutsis and the RPF.

12. RPF leaders are well-insulated from such pressures as long as they control the military situation and stay away from concentrations of armed Hutu. Anti-Tutsi violence mainly hurts civilians and gives the RPF an excuse for its own atrocities. Moreover, with a safehaven and logistical base in Uganda, the RPF can hold out indefinitely, destabilizing Rwanda until Kigali agrees to its terms.

13. Given the hard-line attitudes and actions that all sides have been demonstrating, Rwanda probably will be gripped by spasms of intense violence until the RPF is appeased--and probably after.⁴³

Keeping Foreigners Out

Any discussion of the period October 1990 – March 1994 must mention the ‘International Commission of Inquiry into Violations of Human Rights in Rwanda since 1 October 1990’.⁴⁴ The report of this non-governmental body provided the first indications of how the RPF dealt with ‘outsiders’. The Commission visited Rwanda from 7 to 21 January 1993 and, according to the report, the government did not impede its investigation.⁴⁵ In contrast, the RPF allowed the commissioners less than two hours to visit the territory under its control and RPF soldiers would eavesdrop and sometimes film interviews with witnesses.⁴⁶ Restricting foreigners and even keeping them out would become a hallmark RPF strategy during the 1994 war, and thereafter.⁴⁷

⁴³ **Document 5** US Department of State 060346, 25 February 1993, ‘INR Analysis – Rwanda: RPF Goals’.

⁴⁴ Available at <<http://www.usip.org/files/file/resources/collections/commissions/Rwanda93-Report.pdf>>.

⁴⁵ Ibid, 6-7 and 9-11.

⁴⁶ Ibid, 69-70.

⁴⁷ See eg Report of the International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events (7 July 2000), ch 22, point 3:

Even during the months towards the end of and after the genocide when the RPF was just establishing its control, it was remarkably successful in restricting access by foreigners, including journalists and human rights investigators, to certain parts of the country, a pattern it has followed to this day.

A major RPF attack shortly after the Commission's visit (see above) brought the number of internally displaced Rwandans to one million, out of a population of 7.5 million.

Arusha Accords and Events in Burundi

The Arusha talks produced a comprehensive peace and power-sharing agreement in August 1993. However, events in neighboring Burundi further aggravated the humanitarian situation and tense political atmosphere. The electoral victory in Burundi of a predominantly Hutu party called FRODEBU in the first free elections since the mid-1960s wrested power away from the Tutsi minority. But the FRODEBU victory was short-lived. On 21 October 1993, the newly elected Hutu President was killed by a member of the Tutsi-dominated army. The assassination triggered mass violence. By the end of the year, 50,000 Burundians had been killed and 400,000 (mainly Hutu) had fled to Rwanda.⁴⁸ The events prompted Robert Flaten, the departing US Ambassador to Rwanda, to warn both Habyarimana and Paul Kagame personally 'that whoever resumed the war would be responsible for killings like those that had just occurred in Burundi'.⁴⁹

6 April 1994 – 18 July 1994

On the evening of 6 April 1994 President Habyarimana, two cabinet ministers, the army chief of staff, and Burundi's interim President returned from talks in Dar Es Salaam (Tanzania). As the presidential aircraft approached Kigali that evening, it was hit by two surface-to-air missiles and crashed, killing all those on board. This incident triggered a resumption of the war and the massacres of civilians. The following pages describe how the RPF resisted humanitarian intervention and cease-fires all the while insisting that the massacres of Tutsi be labeled as genocide. Also discussed are US demarches to stop the violence and to lay the groundwork for the establishment of an international criminal tribunal. The period under study ends on 18 July 1994 when the RPF proclaimed Rwanda 'liberated'.

Resisting Humanitarian Intervention

From the outset the two sides took opposite positions regarding humanitarian intervention. The RPF, according to a senior diplomat at the US mission to the United Nations in New York, lobbied to 'slow down the peacekeeping train'.⁵⁰ For example, when on 9 April the Belgian Foreign Minister Willy Claes – in reaction to the murder of ten Belgian troops of the United

The Panel of Eminent Personalities was established by the heads of states and governments of the then Organization of African Unity. See also Des Forges (n 18), 723–4: 'The RPF closed whole regions to UNAMIR and other foreign observers for weeks at a time'.

⁴⁸ P Uvin, 'Ethnicity and Power in Burundi and Rwanda: Different Paths to Mass Violence' (1999) 31 *Comparative Politics* 253; A Ould-Abdallah, *Burundi on the Brink, 1993–95: a UN Special Envoy Reflects on Preventive Diplomacy* (Washington D.C.: United States Institute of Peace Press, 2000), 37.

⁴⁹ Ambassador Robert Flaten testimony before the ICTR, 30 June 2005, quoted in *Major Ntabakuze Final Trial Brief*, 138, available at <<http://www.rwandadocumentsproject.net/gsd/collect/brief/index/assoc/HASH9c5d.dir/138-174.pdf>>.

⁵⁰ Scheffer (n 16), 62.

Nations Assistance Mission for Rwanda (UNAMIR)⁵¹ – proposed either to reinforce UNAMIR and widen its mandate or to withdraw the force all together,⁵² the RPF warned that ‘one should not try to transform peace-keeping into peace-making’.⁵³

The Rwandan government, on the other hand, militarily on the defensive, pleaded to UN Secretary-General Boutros Boutros-Ghali to do just that.⁵⁴ In response, on 29 April, the Secretary-General urged the Security Council ‘to consider again what action, including forceful action, it could take ... in order to restore law and order and end the massacres’.⁵⁵

The RPF immediately countered that it was ‘categorically’ opposed to an intervention,⁵⁶ which was reinforced by Kagame who threatened that ‘if an intervention force is sent to Rwanda, we will fight it’.⁵⁷ The rebels feared that such a force might not be strictly humanitarian or might include troops from France, which was an ally of the Rwandan government. RPF opposition contributed to the Security Council’s decision to temporarily withdraw most of UNAMIR, although it was not the decisive factor (see below).

UNAMIR Commander Roméo Dallaire later wrote that 5,000 disciplined, well-trained troops would have been able to stop the massacres but not if they had to fight the RPF at the same time.⁵⁸ Rwanda expert Alison Des Forges likewise wondered ‘how many lives would have been saved had the RPF welcomed the new force and had the U.S. and other U.N. member states been in turn galvanized to send military aid rapidly.’⁵⁹

Rejecting Cease-Fires

The RPF rejected several unilateral cease-fire offers during the first two weeks of the war⁶⁰ as well as an internationally mediated truce on May 6.⁶¹ Moreover, it ignored a plea by the Security

⁵¹ UNAMIR was deployed under the Arusha accords.

⁵² See extensively Des Forges (n 18), 600-23. Partly because of RPF opposition, the Security Council decided to withdraw most of UNAMIR (Resolution 912 of 21 April), only to later expand its mandate (Resolution 918 of 17 May) and size (Resolution 925 of 8 June).

⁵³ Report of the Parliamentary Commission of Inquiry into the Events in Rwanda, Belgian Senate 1-611/7, 17 december 1997 at 3.8.4.2, available at <<http://www.senate.be/english/rwanda.html>>.

⁵⁴ Special Report of the Secretary-General on the United Nations Assistance Mission for Rwanda, UN Doc S/1994/470 of 20 April 1994, 6, para 14.

⁵⁵ Letter Dated 29 April 1994 from the Secretary-General Addressed to the President of the Security Council, UN Doc S/1994/518 of 29 April 1994, 2.

⁵⁶ **Document 6** Statement by the Political Bureau of the Rwandese Patriotic Front on the Proposed Deployment of a U.N. Intervention Force, 30 April 1994, 5.

⁵⁷ R Dallaire, *Shake Hands with the Devil: the Failure of Humanity in Rwanda* (London: Arrow Books, 2004), 342.

⁵⁸ General Roméo Dallaire testimony before the ICTR, 27 January 2004, quoted in *Major Ntabakuze Final Trial Brief* (n 47), 138.

⁵⁹ Des Forges (n 18), 701.

⁶⁰ A Kuperman, ‘Provoking Genocide: A Revised History of the Rwandan Patriotic Front’ (2004) 6 *Journal of Genocide Research* 61, 79. See also **Document 7** US Department of State 111918, 28 April 1994, ‘RGF Willing to Negotiate’ [RGF = Rwandan government forces].

Council ‘that all parties to the conflict immediately cease hostilities, agree to a ceasefire, and bring an end to the mindless violence and carnage engulfing Rwanda’.⁶² To the despair of international mediators, RPF representatives kept adding new preconditions to a cease-fire. Several observers claim that the RPF leadership was willing to risk genocide against Tutsi inside Rwanda in order to ensure a complete military victory.⁶³

This is significant because after the war the RPF-dominated Rwandan government accused the international community of ‘abandoning the victims to their butchers’.⁶⁴ This self-serving revisionist account of the 1994 events would be repeated over and over, and was rarely challenged.⁶⁵ Not only did the RPF resist intervention, the rebel army, according to UNAMIR Kigali sector Commander Luc Marchal, ‘fed the chaos and never opposed the genocide in any

⁶¹ The truce was mediated by the Secretary-General of the Organization of African Unity, Salim A Salim, and US Assistant Secretary of State for Democracy, Human Rights and Labor John Shattuck. See **Document 8** US Department of State 119285, 5 May 1994, ‘OAU Secretary General Issues Press Statement on Rwanda’ and **Document 9** US Department of State, Information Memorandum from John Shattuck, 9 May 1994, ‘My Trip to East and Central Africa’. See also ‘Fierce Fighting Is Reported in Rwanda as Talks Falter’, *New York Times*, 6 May 1994.

⁶² UNSC Res 918 (1994) UN Doc S/RES/918, operative part A, para 1. The resolution also expanded the mandate of UNAMIR.

⁶³ M Barnett, *Eyewitness to a Genocide: the United Nations and Rwanda* (Ithaca, NY: Cornell University Press, 2002) 137; A Kuperman (n 60), 79; K Mills and RJ Norton, ‘Refugees and Security in the Great Lakes Region of Africa’ (2002) 5 *Civil Wars* 1; R Dallaire (n 57) 358 writes that when he expressed concern about the fate of the Tutsi, and mentioned the ability of the RPF to save them, Kagame responded: ‘There will be many sacrifices in this war. If (they) have to be killed for the cause, they will be considered as having been part of the sacrifice’; G Prunier in *The Rwanda Crisis: History of a Genocide* (New York, NY: Columbia University Press, 1995) states that the invading RPF displayed ‘disdain’ and ‘callous indifference’ for the fate of the interior Tutsi (p 15). ‘It considered them collaborators who deserved what happened to them’ (p 19).

⁶⁴ See eg President Pasteur Bizimungu’s address before the UN General Assembly on 6 October 1994, UN Doc A/49/PV.21, 3: ‘[UNAMIR] troops, misled by the authors of the apocalypse – the Rwandese authorities at the time – were, alas, forced to serve as witnesses to the carnage. We regret that their mandate prevented them from acting effectively at the moment of the tragedy’; or the comments of the Rwandan representative during the Security Council meeting establishing the ICTR, UN Doc S/PV.3453, 14: ‘When the genocide began, the international community, which had troops in Rwanda and could have saved hundreds of thousands of human lives by, for example, establishing humanitarian safe zones, decided instead to withdraw its troops from Rwanda and to abandon the victims to their butchers. The Rwandese Patriotic Front had to fight alone from April to July in order to stop the carnage.’

⁶⁵ Notable exceptions are Des Forges (n 18), Kuperman (n 60), and A Guichaoua, *Rwanda: de la guerre au génocide: Les politiques criminelles au Rwanda (1990-1994)* (Paris: La Découverte, 2010).

way'.⁶⁶ Roméo Dallaire likewise later opined that 'he came to believe that Kagame did not *want* the situation to stabilise'.⁶⁷ Yet in many Western countries – particularly Anglophone countries with little knowledge about Rwanda prior to 1994 – the common currency was, and often still is, that the Hutu political and military elites were the arsonists and the RPF rebels the firemen, and that the international community did nothing to stop the genocide against the Tutsi.

Demanding Judicial Intervention

The RPF did not oppose (at least not at that point) judicial intervention. On 13 April, the RPF representative in New York sent a letter to the President of the Security Council stating that 'genocide had been committed against the Rwandan people in the presence of a United Nations force' and requesting the immediate establishment of a war crimes tribunal.⁶⁸ Two weeks later, when the UN Secretary-General urged the Security Council to take action to end the massacres (see above), the RPF issued another statement rejecting humanitarian intervention while requesting the international community 'to exert pressure on the murderers ... by ... setting in motion the process of establishing without delay war crimes tribunals and other mechanisms for bringing the persons responsible for the atrocities to justice'.⁶⁹ On 3 June, the RPF sent a letter to the Secretary-General expressing its satisfaction with his reference to genocide in his latest report and calling on the Security Council to follow suit.⁷⁰

These various communiqués reflect the RPF's ambivalence about the unfolding genocide and suggests a calculation that it was more useful to let the *génocidaires* do their work – preferably in front of western TV cameras – and prosecute them later.⁷¹

US Initiatives

Within days of the resumption of the war on 7 April, Ambassador David Rawson and his staff were evacuated to the United States.⁷² From then the US communicated with the RPF through the organization's representatives in Kampala, Washington, and New York until the reopening of the mission in late July. During the period 7 April – 18 July there were many US demarches to try and bring about a ceasefire,⁷³ including a personal message from President Bill Clinton.⁷⁴ The RPF invariably answered that 'the killings must first stop'. US intelligence briefs explain why:

⁶⁶ L Marchal, 'Une certaine justice internationale en cause', 3, available at <http://www.tpirheritagedefense.org/Conference2/Papers/Luc_Marchal_Une_certaine_justice_internationale_en_cause.pdf>.

⁶⁷ Dallaire (n 57), 438 (emphasis added).

⁶⁸ Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda, UN Doc S/1999/1257 of 15 December 1999, 68.

⁶⁹ **Document 6** (n 56), 4.

⁷⁰ Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda, (n 68), 72.

⁷¹ A Kuperman, in the context of Darfur, calls this 'strategic victimhood': 'Strategic Victimhood in Sudan', *New York Times*, 31 May 2006 (Op-Ed page).

⁷² The story of their dramatic evacuation is recounted by Leader (n 17), 61-3.

⁷³ **Document 10** US Embassy Kampala 02968, 14 April 1994, 'RPF Launches Diplomatic Offensive', para 11; **Document 11** US Department of State 104015, 20 April 1994, 'Department

19 May: The RPF will continue to reject a cease-fire that might limit its military and political options or boost the prestige of the interim government.⁷⁵

10 June: Unless its advance stalls completely, the RPF will not agree to any lasting cease-fire at least until Kigali falls. Any talks the RPF agrees to before then will be calculated to weaken its opponents ... and to impress the international galleries.⁷⁶

11 June: The RPF continues to insist on an end to massacres by Hutu extremists as a cease-fire precondition. By talking, the RPF is trying to impress the international community with its reasonableness while driving a wedge between the professional military and government hard-liners. No cease-fire will hold so long as RPF leaders believe they retain the military initiative.⁷⁷

24 June: The war in Rwanda will continue until the RPF feel they have killed all, or nearly all, those responsible for the massacres. ... Once that is completed, the RPF will begin a dialogue with 'responsible Hutu officials' to establish a government.⁷⁸

On 14 July, in a rare telephone conversation with Kagame,⁷⁹ US officials – backed by a statement from the President of the Security Council⁸⁰ – pressed the RPF commander for an immediate cease-fire to avert a humanitarian catastrophe:

Kagame said RPF was planning to call a cease-fire in a few days but needed to consolidate their position first. [Deputy Assistant Secretary of State for African Affairs] Bushnell replied that the world could not wait, the fighting had to stop now. She pointed out that the region faced a humanitarian catastrophe and that the world perception was that the RPF was at fault for insisting on advancing on Gisenyi, forcing hundreds of thousands of Rwandans to flee into Zaire and the French safe zone. Shortly before the Bushnell/Kagame call, Rawson and [Africa Desk Officer] Aiston convoked the RPF Reps in Washington Murigande and Gahima to urge an immediate cease-fire. Rawson pointed out that the enormous dislocations of populations caused by the continued fighting was overwhelming the international community and that we faced a humanitarian disaster of incredible proportions. While we have been calling for a cease-fire for weeks, the humanitarian crisis made it an imperative of the highest proportion. We were particularly concerned at the growing number of preconditions the RPF seemed to be setting for a cease-fire. Rawson noted that elements of the GOR [Government of Rwanda] forces had made conciliatory overtures [Desk Officer] pointed out the illogical position of the RPF. They could not expect the millions of civilians in the government zone to stay put or return to their homes behind RPF lines as long as the RPF continued its advance. ... As for their goal of getting "control" over the criminals, it made no sense to displace millions of innocent civilians in an

Tells RPF to Stop Fighting Now', para 3; **Document 12** US Department of State 138779, 24 May 1994, 'Moose Urges RPF to Agree to Cease Fire', para 5.

⁷⁴ **Document 13** Presidential Message on Rwanda, 5 May 1994.

⁷⁵ **Document 14** US Department of State, INR Foreign Affairs Brief, 19 May 1994, 1.

⁷⁶ **Document 15** US Department of State, INR Foreign Affairs Brief, 10 June 1994, 1.

⁷⁷ **Document 16** US Department of State, INR Foreign Affairs Brief, 11 June 1994, 2.

⁷⁸ **Document 17** US Defense Intelligence Agency, 24 June 1994, 2.

⁷⁹ The RPF commander himself, according to Ambassador Rawson, was rarely willing to take telephone calls from Washington (author's interview with Rawson). Shaharyan Khan, the Special Representative in Rwanda of the UN Secretary-General describes a similar experience: Khan (n 16), 27.

⁸⁰ UN Doc S/PRST/1994/34 of 14 July 1994.

attempt to capture a few hundred leaders of the genocidal campaign who could easily step across to border into Zaire right before the RPF reaches Gisenyi. The RPF would then be faced with a hostile force across the border with a large refugee population possibly supporting it. This was certainly not in their interest.⁸¹

The next day (15 July) Ambassador Shaharyar Khan, the Special Representative in Rwanda of the UN Secretary-General, presented Kagame with a ceasefire document:

He read it carefully and indicated his broad agreement with some reservations: made three annotations on documents. In the end he agreed to my going public on the ceasefire. On return to UNAMIR headquarters, I made the announcement to the swarm of about 80 media representatives. ... The next day, 16 July, the news of an imminent ceasefire was carried by CNN and the BBC, but no actual announcement was forthcoming from RPF headquarters. I tried desperately to find General Kagame, but he told me frankly, at a later date, that he had deliberately avoided meeting me. ... The ceasefire was then announced, 48 hours too late to prevent the humanitarian tragedy which then ensued in Goma.⁸²

After the RPF declared a cease-fire, US Assistant Secretary of State for African Affairs George Moose told Kagame that the RPF must do more and advised to withdraw his troops from the Zaire border area so that the 1.4 million refugees (or expellees) could return.⁸³ Kagame responded that 'the RPF is being unfairly blamed for causing the massive flight into Zaire. It was the IGOR [interim government of Rwanda] which caused the people to panic and flee'.⁸⁴ On studying the battlefield situation, however, the Dutch Minister for Development Cooperation Jan Pronk expressed reservation about the RPF's intentions vis-à-vis the refugees and suggested that the RPF was pursuing an exodus strategy.⁸⁵ It is important to note that in the days following its victory the RPF called upon the Tutsi diaspora to return to Rwanda⁸⁶ and that some 400,000 did.⁸⁷

International Criminal Accountability

The first step to hold individuals criminally accountable at an international level was taken in the Security Council on 30 April. New Zealand, which held the presidency of the Council, forged a nonbinding Presidential Statement asking the Secretary-General to make proposals to investigate

⁸¹ **Document 18** US Department of State 189038, 15 July 1994, 'RPF to Halt Offensive by Friday Night?' para 3-5.

⁸² Khan (n 16), 26-8.

⁸³ **Document 19** US Department of State 194079, 20 July 1994, 'A/S Moose July 19 Telcon with RPF Commander', para 4.

⁸⁴ Ibid, para 5.

⁸⁵ Johan Pottier, *Re-imagining Rwanda: Conflict, Survival and Disinformation in the Late Twentieth Century* (Cambridge: Cambridge University Press, 2002) 157-8.

⁸⁶ Khan (n 16), 36.

⁸⁷ Figure taken from Report from the Secretary-General on Security in Rwandese Refugee Camps, UN Doc S/1994/1308 of 18 November 1994, para 12. For an insightful briefing about the return of the Tutsi diaspora, see **Document 20** US Embassy Kigali 02299, 23 November 1994, 'Rwanda's Tutsis: A Glimpse Behind the Looking Glass'.

serious violations of international humanitarian law in Rwanda during the conflict.⁸⁸ New Zealand probably acted in concert with the United States where, at the end of April, the National Security Council had decided to call for an arms embargo and an investigation of those responsible for instigating the killings.⁸⁹ On 17 May, the Security Council, acting under Chapter VII of the UN Charter, declared an arms embargo on Rwanda⁹⁰ and formally requested the Secretary-General ‘to present a report as soon as possible on the investigation of serious violations of international humanitarian law in Rwanda during the conflict’.⁹¹

A parallel initiative was launched at the United Nations office in Geneva where, on 9 May, Canada’s permanent representative requested a Special Session of the Human Rights Commission. This initiative came on the heels of a press conference in Geneva by John Shattuck, the US Assistant Secretary of State for Democracy, Human Rights and Labor who just had crisscrossed East Africa and consulted with leaders in the region.⁹² The Special Session met in Geneva on 24-26 May and unanimously adopted a resolution that provided for the appointment of a Special Rapporteur to investigate the human rights situation in Rwanda firsthand and to submit a preliminary report within four weeks.⁹³

By early June, State Department officials began contemplating the next step, viz. prosecution of suspects. A senior US diplomat suggested expanding the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (ICTY) through a Security Council resolution. This, he argued, was ‘the fastest way of taking international action to punish the guilty’ and ‘may undo some of the political damage from our earlier action’.⁹⁴ The need to act swiftly was a constant theme in State Department memos and cables. The main aim was to preempt another cycle of violence if the RPF won, as was expected, especially as US intelligence warned that the RPF was planning ‘to administer justice on the battlefield’.⁹⁵ Expanding the jurisdiction of the ICTY instead of creating a new tribunal was understandable as setting up the ICTY had taken well over a year. Given the enormity of the crimes, Washington also did not see the need of going through a Commission of Experts with investigative powers, as had been the case with the ICTY. After all, the UN Special Rapporteur had been asked to submit his preliminary report before the end of June.

⁸⁸ UN Doc S/PRST/1994/21 of 30 April 1994, 3. It will be recalled that the UN Secretary-General had urged the Security Council the day before ‘to consider again what action, including forceful action, it could take ... in order to restore law and order and end the massacres’ (see n 52).

⁸⁹ Shattuck (n 16), 44-5 and Scheffer (n 16), 60-1. The US National Security Council had advocated in April 1994 the near-total withdrawal of UNAMIR. See Scheffer (n 16), 54 and Power (n 37), 98-103.

⁹⁰ UNSC Res 918 (1994) UN Doc S/RES/918, para 13.

⁹¹ Ibid, para 18.

⁹² Shattuck (n 16), 45-9; **Document 9** (n 59), 2.

⁹³ UN Doc E/CN.4/S-3/4 of 30 May 1994, para 18 and 20.

⁹⁴ **Document 21** US Department of State, Memorandum from Ambassador Marrero, 3 June 1994, ‘Rwanda: Bringing the Guilty to Justice’, 2-3.

⁹⁵ **Document 17** (n 76), 2.

But the US fast track plan was frustrated when Spain's permanent representative to the Security Council circulated a draft resolution on 10 June requesting that the Secretary-General establish, as a matter of urgency, an impartial Commission of Experts. Meanwhile Special Rapporteur, René Degni-Ségui submitted his first report which included a recommendation that the UN 'establish an ad hoc tribunal, or alternatively, extend the jurisdiction of the ICTY'.⁹⁶ Even so, on 1 July, the Security Council adopted the Spanish draft resolution and requested the Secretary-General to report on the findings of the Commission of Experts within four months if its establishment.⁹⁷

The new Rwandan government later cited this convoluted process as another example of the international community dragging its feet and failing the Rwandan people. But the (former) rebels themselves had said nothing since April about an international tribunal and it is doubtful that they still wanted one. One can see two reasons why they would not: fear that their own crimes might be uncovered⁹⁸ and apprehension about the prospect of the long term presence of the 'eyes and ears' of dozens of UN investigators in Rwanda.

Before I move on to the post-war period, some conclusions can be drawn. The rebel leaders and their representatives in the west exploited horror and chaos to confound the international community and create a narrative of savages (Hutu), victims (Tutsi), saviors (RPF), and cowards (UN). However, and contrary to the dominant perception, the RPF *resisted* UN intervention out of fear that this could impede its offensive. The RPF's longstanding policy of keeping foreigners out also suggests that its call for an international tribunal within days of the resumption of the war was more an attempt to criminalize its opponents and brand them as *hostis humani generis*, or enemies of mankind,⁹⁹ than a request for help from the loathed international community. The point is underscored by the RPF's silence about an international tribunal once victory became likely.

Washington, despite its limited interests and presence in Rwanda, was remarkably well informed – or at least, the intelligence was available – about the dynamics of the conflict and RPF strategy and goals. Thus contrary to opinion, Washington was not naïve or fooled but, arguably made the 'mistake' of trying to be an honest broker and resorting to 'rote diplomacy'.¹⁰⁰ The State Department's diplomatic legwork in May and June to set up an international criminal tribunal seems to have been a sincere yet desperate effort to end the violence. In any event, there is no indication in the sources from this period that the planners envisaged a tribunal that would try only one side.

⁹⁶ UN Doc E/CN.4/1995/7 of 28 June 1994, para 75.

⁹⁷ UNSC Res 935 (1994) UN Doc S/RES/935, operative part paras 1 and 4. The Commission was established on 29 July. See UN Doc S/1994/906 of 29 July 1994.

⁹⁸ See below the interim report of the Commission of Experts on Rwanda.

⁹⁹ Cf. S Nouwen and W Werner, 'Doing Justice to the Political: The International Criminal Court in Uganda and Sudan' (2011) 6 *European Journal of International Law* 941. Nouwen and Werner demonstrate how in other conflicts warring parties have used the ICC to brand opponents as *hostis humani generis* and to present themselves as friends of the ICC, and thus friends of the international community.

¹⁰⁰ Expression used by Cohen (n 16), 178, and meaning 'routinely calling for a cease-fire and negotiations'.

19 July 1994 – 16 December 1994

The period studied in this section begins with the installation in Rwanda of the Broad-Based Government of National Unity on 19 July and ends with the visit of US National Security Advisor Anthony Lake to Kigali on 16 December. The section explores significant events in between, including an important change at the US Embassy in Kigali; Operation Support Hope for Rwandan refugees in eastern Zaire; John Shattuck's visit to Kigali; the first revelations of RPF atrocities; the Gersony report and US and UN reactions; Rwandan objections to the US–New Zealand proposal for an ad hoc international tribunal; concessions to the Rwandan government; Rwanda's ultimate 'no' vote; and finally, the Pentagon's invitation to Paul Kagame.

Rwandan Broad-Based Government of National Unity

For purposes of the discussion it is necessary to know some of the members of the new Rwandan government: Pasteur Bizimungu (Hutu, President), Faustin Twagiramungu (Hutu, Prime Minister), Paul Kagame (Tutsi, Vice President, Minister of Defense, and Commander of the RPA), Alphonse-Marie Nkubito (Hutu, Minister of Justice), Seth Sendashonga (Hutu, Minister of the Interior), and Patrick Mazimhaka (Tutsi, Minister of Youth and Sports). As this brief list shows, the Broad-Based Government of National Unity had a Hutu majority, but as one diplomat noted – and as US intelligence had predicted¹⁰¹ – 'no one, especially Rwandans, was fooled into the belief that security and ultimate power lay elsewhere than within the inner circle of the Rwandan Patriotic Army. ... [Kagame] and his high command exercised total control'.¹⁰²

Changes at US Embassy Kigali

Before the genocide, the US mission in Rwanda was among the smallest of its kind with just four diplomats.¹⁰³ The addition of a Defense Attaché (there had been no one from the Pentagon until then) marked the beginning of a steady expansion of the mission¹⁰⁴ and the militarization of US policy in Rwanda and the wider Great Lakes region. Important to know is that Thomas Odom, the new Defense Attaché, had served as Defense Attaché in Zaire just before his deployment to Rwanda.

In his memoir *Journey into Darkness: Genocide in Rwanda* Odom describes how Ambassador Rawson worked with the office of the new President while his task was to build a good relationship with the new Rwandan military.¹⁰⁵ Odom became immediately enamored with 'the

¹⁰¹ **Document 22** US Department of State, INR Foreign Affairs Brief, 14 July 1994, 1: 'Though the new government probably will have a Hutu majority and be nominally based on the powersharing formulas agreed to at Arusha, it will be dominated by the RPF and its military commander, Paul Kagame. ... As in Uganda, the illusion of consensus politics will be cultivated to disguise the centralization of power.'

¹⁰² Gribbin (n 16), 82.

¹⁰³ Leader (n 17), 60.

¹⁰⁴ In 2008, the number of US diplomats in Kigali had reached 38. **Document 70**, US Department of State, Doc. C05273735 (obtained by author under Freedom of Information Act).

¹⁰⁵ Odom (n 16), 180-1.

boys' (*sic*) from the RPF¹⁰⁶ as they were everything the Zairian military was not: 'The troops wore their uniforms with pride, and they looked like soldiers. I was so accustomed to seeing Zairian military thugs in mirror shades. I never saw an RPA soldier in a pair of sunglasses. Any military that has to rely on props like sunglasses to look tough probably is not. The RPA was tough and had no need to prove it'.¹⁰⁷ (Australian soldiers who served with UNAMIR in Rwanda hold very different views: 'A mob ... the furthest thing from being military', 'a typical thug type army'.)¹⁰⁸ Odom's admiration for the RPF, with whom he could converse in English,¹⁰⁹ was matched by his disdain for everything Hutu. The presence in the US Embassy of an unabashed RPF sympathizer with a direct communication line to the Pentagon would serve the RPF well.

Operation Support Hope

In the days and weeks following the RPF's declaration of victory on 18 July 1994, the United States took the lead on two fronts. The State Department began consultations with Rwanda and other countries to lay the groundwork for an international tribunal (see below).¹¹⁰ The Pentagon, on the other hand, which so far had not been involved in the Rwandan crisis, launched Operation Support Hope to support – but in fact lead – a massive multinational¹¹¹ relief effort for Rwandan refugees in eastern Zaire.¹¹² Between 22 July and 30 September, the Department of Defense deployed a total of 2,100 US military personnel to the region.¹¹³ Secretary of Defense William Perry personally visited Goma on 31 July. Kigali later seized upon the relief operation to shame the US and the other contributing countries into feeling that they owed Rwanda something (see below).

John Shattuck in Kigali

By coincidence, Rwanda held a seat on the UN Security Council in 1994. The State Department sent John Shattuck to Kigali¹¹⁴ to seek the support of the new Rwandan government for the creation of an international tribunal.¹¹⁵ Shattuck and his team were briefed by the US Ambassador to Uganda, Johnnie Carson, at a stopover in Entebbe. Shattuck wrote:

¹⁰⁶ Ibid, 187-90.

¹⁰⁷ Ibid, 160.

¹⁰⁸ K O'Halloran, *Pure Massacre: Aussie Soldiers Reflect on the Rwandan Genocide* (Newport, Australia: Big Sky Publishing, 2010), 188-9.

¹⁰⁹ Errors in nearly every French quote in Odom's book suggest that he is much less conversant in French than in English.

¹¹⁰ **Document 23** US Department of State 198848, 26 July 1994, 'Rwanda War Crimes'.

¹¹¹ Other countries contributing military resources were the United Kingdom, Canada, Belgium, France, the Netherlands, Australia, New Zealand, Japan, Germany, Israel and Ireland.

¹¹² On Operation Support Hope, see Odom (n 16), 130-58.

¹¹³ Report to Congress on US Military Activities in Rwanda, 1994 – August 1997, available <<http://www.dod.mil/pubs/rwanda/summary.html>>.

¹¹⁴ Ambassador David Rawson had not yet returned to Kigali.

¹¹⁵ **Document 24** US Department of State 209882, 5 August 1994, 'A/S Shattuck Visit to Rwanda: Objectives'. According to Ambassador Rawson (n 16), 648, Shattuck was also speaking for the Security Council.

Carson knew my task in Kigali would be to persuade Kagame to endorse a War Crimes Tribunal for Rwanda. He was skeptical that this would be possible in light of the Tutsi commander's bitter attitude toward the United Nations and the international community. 'Kagame plans to go it alone, since that's how he's gotten where he is,' Carson told me.¹¹⁶

In Kigali the Americans were welcomed by Justice Minister Alphonse-Marie Nkubito. After opening pleasantries, Nkubito told them that the final decision on the tribunal would be made by Kagame and that they should raise the issue directly with him.¹¹⁷ John Shattuck:

Before leaving his office I gave Nkubito a draft letter¹¹⁸ endorsing the tribunal for the Rwandan government to consider sending to the UN Security Council. I told the minister that if Rwanda endorsed the tribunal, it would be created. If not, I feared the Security Council might drop the whole effort.¹¹⁹

So the US delegation went to see Paul Kagame. Shattuck recalls his conversation with the Vice-President as follows:

'You are committing two grave errors', Kagame told me, 'leaving us with no option but to correct them ourselves. ... Your relief workers are sheltering those who committed genocide in the refugee camps at our borders, and you are doing nothing to bring those criminals to justice.' ... I asked Kagame if he would call for the creation of an international tribunal. He told me he would do so if the world could assure him that the criminals would be arrested and that justice would be speedy. 'Otherwise', he said, 'we will have to do it ourselves'.¹²⁰

John Shattuck then left for the refugee camps in Goma (Zaire) but travelled back to the US via the Rwandan capital. He reported:

On my return to Kigali August 8, which had permitted two days of reflection by GOR/RPF, I met again with RPF leader/vice president/defense minister Paul Kagame and Rwanda's new justice minister. This time I also met with Prime Minister Twagiramungu. Both the substance and the tone were extremely positive. On Monday the government was considerably stronger than on Saturday; it indicated that Rwanda enthusiastically accepts the proposal that an international tribunal judge those responsible for genocide.¹²¹ ... Moving from words to action, the GOR officials informed me that they had immediately dispatched to the Secretary-General the draft letter I had presented them during my first round of meetings.¹²²

At a press conference in Kigali on 8 August, Shattuck announced the successful outcome: 'The new Government of Rwanda agreed today to support an international war-crimes tribunal to judge those accused of genocide during the civil war, and not to prosecute or punish the

¹¹⁶ Shattuck (n 16), 61.

¹¹⁷ Ibid, 62.

¹¹⁸ The draft letter is reproduced in **Document 25** US Embassy Bujumbura 02676, 9 Augustus 1994, 'International Tribunal on Rwanda: Further Thoughts', para 10.

¹¹⁹ Shattuck (n 16), 62.

¹²⁰ Ibid, 63. See also **Document 26** US Embassy Kampala 06337, 9 Augustus 1994, 'Interim Trip Report – Kigali and Goma', paras 3-5.

¹²¹ **Document 25** (n 114), para 3.

¹²² Ibid, para 5.

criminals itself'.¹²³ However, he was not to know that his draft letter never arrived at the United Nations in New York.¹²⁴ As a consequence, John Shattuck returned to Washington (and to the UN Security Council) with only a private verbal commitment from the Rwandan government.

Washington was triggered into doing everything it could to get the tribunal established. A Rwanda War Crimes Interagency Working Group was set up in the US government with the objective of establishing an 'expanded international criminal tribunal covering Rwanda with supremacy over domestic courts.'¹²⁵ To speed up the process of creating a tribunal – and to appease Rwandan government – the US provided personnel and resources to the Commission of Experts and pressured it to produce an interim report before the 30 November deadline imposed by the Security Council.¹²⁶

'Liberators' Become Killers

Washington's efforts coincided with the publication of the first reports about mass killings by the RPF. Until then the RPF had managed to shape the narrative of the conflict by keeping foreigners out¹²⁷ and, as Kagame put it, by waging 'communication and information warfare better than anyone.'¹²⁸ *New York Times* star investigative journalist Raymond Bonner – famous for breaking the story of the El Mozote massacre in El Salvador in 1981 – reported how the RPF, during a major military sweep in the south, had 'killed everyone, Hutu and Tutsi, without asking for identification cards'.¹²⁹ Speaking to the *Los Angeles Times*, a senior international relief agency leader accused the Rwandan government of harassing refugees and pushing them toward another mass stampede out of the country:

The official spoke out after weeks of what he described as frustration and double-speak in dealing with the new Rwandan Patriotic Front (RPF) government. ... The RPF has said repeatedly that refugees will be safe, if they stay here or return home – except those guilty of massacres of rival Tutsis. ... But the veteran relief agency leader said that public posturing by the new government

¹²³ 'Rwanda Agrees to a U.N. War-Crimes Tribunal', *New York Times*, 9 August 1994.

¹²⁴ I checked this with the UN legal counsel at the time, Ambassador Hans Corell: there is no trace of a Rwandan letter in the UN archives. Had there been one, the Security Council would not have failed to mention it in subsequent resolutions on the ICTR.

¹²⁵ Scheffer (n 16), 72.

¹²⁶ **Document 27** US Department of State 228408, 24 August 1994, 'Demarche for International Tribunal in Rwanda'; **Document 28** US Department of State 233449, 30 August 1994, 'Temporary Duty of DOS Employee to Assist Commission of Experts Activities in Rwanda'; **Document 66** US Department of State 253116, 18 September 1994, 'USG Interview Trip to Rwanda'; **Document 29** US Mission Geneva 08160, 22 September 1994, 'WGRW02: Proposed Investigations to be Conducted for the Commission of Experts on Rwanda'.

¹²⁷ *Supra* n 46-7.

¹²⁸ Gowing (n 31), 4. See also 'Rwanda Rebels: Army of Exiles Fights for a Home', *New York Times*, 9 June 1994, noting the use of 'a sophisticated public relations network throughout the diaspora in Africa, Europe and the United States'; and the International Panel of Eminent Personalities, which investigated the 1994 events, describing the RPF as 'masters of shrewd communication strategies', (n 47), ch 22, point 36.

¹²⁹ 'Mass Killings by Rwandan Rebels Are Reported', *New York Times*, 5 September 1994.

has not been matched by the actions of its military administrators across the border from the French safe zone. 'Lots of people are being harassed ... The conditions for a return to normalcy are not in place,' the relief leader said ... When it comes to the kinds of subtle signals the refugees look for, the relief agency leader said the RPF army 'has never shown any interest in keeping this population. Rwanda was overpopulated. Now they have an abundance of fields.'¹³⁰

The story in the *Los Angeles Times* confirmed what US Intelligence already knew. An assessment of 31 July stated that 'the RPF, seeking recognition and support from the international community, will cooperate with foreigners so long as this does not conflict with its security concerns. Concerned mainly with consolidating its power over the vast Hutu majority, the RPF is more interested in the appearance of cooperation than in the reality of rapid repatriation [of Hutu refugees]'.¹³¹ The United Nations High Commissioner for Refugees (UNHCR) estimated the number of Hutu refugees at that moment at 200,000 in Burundi; 322,000 in Tanzania; 1.4 million in Zaire, and 10,500 in Uganda.¹³²

GerSONY Affair¹³³

More troubling news came from a UNHCR team led by Robert Gersony¹³⁴ tasked with organizing the voluntary repatriation of refugees. On 19 September, Assistant Secretary of State George Moose informed Madeleine Albright, the US Permanent Representative to the United Nations:

The September 17 debriefing of members of a UNHCR team that spent July and August in Rwanda revealed that the Rwandan Patriotic Army ... has engaged in a pattern of systematic killing of Hutu civilians in the south and southeast of Rwanda. The UNHCR team witnessed Hutu men with arms bound in the company of RPA troops and Tutsi civilians. The soldiers possessed two-way radios and knew the "party-line", indicating that their activities were not unknown to the authorities in Kigali.

On the basis of interviews with refugees/individuals, the UNHCR team concluded that a pattern of killing had emerged. The RPA convened meetings of displaced persons to discuss peace and security. Once the displaced persons were assembled, RPA soldiers moved in and killed them. ... The team estimated that RPA and Tutsi civilian surrogates had killed 10,000 or more Hutu civilians per month, with the RPA accounting for 95% of the killings.

The UNHCR team speculated that the purpose of the killing was a campaign of ethnic cleansing intended to clear certain areas in the south for Tutsi habitation. The killings also served to reduce the population of Hutu males and discourage refugees from returning to claim their lands.¹³⁵

¹³⁰ 'Rwanda's New Leaders Accused of Harassing Refugees: New Exodus to Zaire is Feared', *Los Angeles Times*, 16 August 1994.

¹³¹ **Document 30** US Department of State, INR Foreign Affairs Brief, 31 July 1994, 1.

¹³² **Document 31** Chronology of U.S. Government Humanitarian Assistance to Rwanda, 13.

¹³³ See extensively Khan (n 16), 50-6 and Des Forges (n 18), 726-32.

¹³⁴ Robert Gersony, an American citizen, was contracted by the United States Agency for International Development (USAID) to work for UNHCR in Rwanda.

¹³⁵ **Document 32** US Department of State, Information Memorandum from George E. Moose, 19 September 1994, 'New Human Rights Abuses in Rwanda', 1-2.

More details followed on 20 September:

The team travelled unaccompanied practically throughout Rwanda ... met privately with 200 of the 300 refugees/individuals who were interviewed on a random basis. Six different translators were used, two were Rwandan AID employees.¹³⁶ ... Gersony did speculate that the purpose of the killings appeared to be to clear out certain areas; reduce the number of Hutu males and discourage the return of refugees.¹³⁷ ... Gersony noted that earlier reports of Hutu intimidation within camps was not borne out in the interviews.¹³⁸ ... You can well imagine the repercussions if the substance of their report becomes public before they make their report.¹³⁹

Help Us Help You

The revelations came at the time when Washington was planning to convene the first 'Friends of Rwanda' meeting (see below). The State Department immediately dispatched Timothy Wirth, the Under Secretary of State for Global Affairs (who happened to be in Egypt), to Kigali. On his arrival, Wirth was told by Thomas Odom, the Defense Attaché, that the Gersony story was overblown. Odom said he had 'been out with UNAMIR looking at these sites and found nothing'.¹⁴⁰ Nevertheless, Wirth took Prime Minister Twagiramungu to task about the Gersony report, but the minutes of the meeting also show the American envoy imploring the Prime Minister to *help us help you* and offering advice on how to diffuse the crisis:

Wirth delegation met September 20 with Rwanda PM Twagiramungu to deliver demarche regarding issues raised by Gersony report. ... Wirth noted potential for serious damage to international support for new Rwandan government by UNHCR-commissioned report which detailed alleged human rights abuses by RPA. (PM had been briefed the night before by UN Kofi Annan on contents of the report). US was pushing hard to help Rwanda on justice issues such as the international tribunal, human rights monitors and investigators, Wirth said, but a report of this kind could greatly complicate those efforts. ... Wirth urged PM to get out in front on the issue, to come up with an immediate plan of action. In this regard, [Wirth] suggested a number of steps the government could take. ... The best response was to be proactive, not reactive. ... PM agreed to consider these measures and seemed particularly interested in the suggestion that the GOR invite UN agencies to help with their investigation of the report.¹⁴¹

The Gersony affair caused a rift between the UN Secretariat in New York and UNHCR in Geneva. Foreseeing the embarrassment that would result from revelations that UNAMIR had been unaware of the RPF massacres, Boutros Boutros-Ghali sent Under-Secretary-General for Peacekeeping Kofi Annan to Kigali. On 19 September, in a two hour briefing, Gersony put forward evidence of what he described as 'calculated, preplanned, systematic atrocities and genocide against Hutu by the RPA whose methodology and scale, he concluded, (30,000 massacred) could only have been part of a plan implemented as a policy from the highest

¹³⁶ **Document 33** US Department of State 254232, 20 September 1994, 'UNHCR Team Finds Evidence in Rwanda', para 6.

¹³⁷ **Document 34** US Embassy Kigali 01606, 23 September 1994, 'Demarche to GOR on Reports of RPA Atrocities', para 10.

¹³⁸ *Ibid*, para 11.

¹³⁹ *Ibid*, para 14.

¹⁴⁰ Odom (n 16), 176. At that moment Odom had been only a few days in Rwanda.

¹⁴¹ **Document 33** (n 136), paras 2, 3, 6, 7.

echelons of the government'.¹⁴² The main difference with the Hutu massacre of Tutsi was that 'the RPA acted with subtlety and finesse, covering their tracks with greater dexterity'.¹⁴³ After the briefing, Annan accompanied by Gersony called on the Rwandan Minister of Interior, the Minister of Foreign Affairs, and the Prime Minister. Gersony gave a full account of his findings to his interlocutors who rejected them as part of planted evidence.¹⁴⁴ Before leaving Kigali, Annan ordered that 'the report, "if there was in fact a written report" ... should stay in the folder as public airing would be sensationalising findings and conclusions that had not been checked and/or verified'.¹⁴⁵ The report was never released, and Gersony was instructed to speak with no one about his mission.¹⁴⁶

In return for a promise that the information would be kept quiet, Rwandan authorities agreed to investigate the allegations.¹⁴⁷ On 21 September UN Ambassador Shaharyar Khan met with ministers Seth Sendashonga and Patrick Mazimhaka and it was agreed that the government would announce a joint investigation by four UN representatives and four Rwandan ministers (as suggested by Timothy Wirth, see above). The joint team, which included Ambassador Khan, left Kigali late the next day, travelled for two hours – and found 'no evidence except a mass grave dating back to April or May'.¹⁴⁸ The Gersony team, it should be noted, had spent more than a month visiting 91 sites and interviewing 300 witnesses.¹⁴⁹

The joint team shared its conclusions with the visiting US delegation.¹⁵⁰ At a subsequent briefing in Washington, Wirth rejected Gersony's conclusion that the killings were widespread and systematic and suggested that Gersony had been misled by prejudiced informants.¹⁵¹ The Department of State further absolved the RPF in its 1994 Country Report on Human Rights Practices: 'Following the RPF military triumph in July, RPF soldiers and Tutsi civilians

¹⁴² **Document 35** UNAMIR, Cable from Shahayar Khan, 14 October 1994, 'The Gersoni (*sic*) "Report" Rwanda', para 4.

¹⁴³ Khan (n 16), 51.

¹⁴⁴ **Document 35** (n 142), para 5.

¹⁴⁵ *Ibid*, para 10.

¹⁴⁶ Des Forges (n 18), 730-1.

¹⁴⁷ *Ibid*, 730.

¹⁴⁸ Khan (n 16), 54.

¹⁴⁹ Des Forges (n 18), 727:

From August 1 through September 5, the team visited ninety-one sites in forty-one of the 145 communes of Rwanda and gathered detailed information about ten others. In these places as well as in nine refugee camps in surrounding countries, they conducted more than two hundred individual interviews and another one hundred discussions with small groups. They found the information provided by witnesses detailed and convincing and they confirmed the most important parts of accounts by independent sources in other camps or inside Rwanda. ... The team noted that field officers of the UNHCR, operating completely independent of themselves, had collected similar accounts from refugees fleeing Rwanda at various points along the border.

¹⁵⁰ Khan (n 16), 55.

¹⁵¹ Des Forges (n 18), 732.

reportedly killed an unknown number of Hutus. There is no evidence that the new Government condoned or sanctioned these acts.’¹⁵²

Filip Reyntjens, an expert on Rwanda and prosecution witness in numerous genocide trials, later commented that had the Gersony allegations ‘been followed up at the time, not buried, the massacres in Congo in the following years might have been avoided. .. I profoundly believe that because there was no threat of prosecution for the R.P.F. for the acts of 1994 it emboldened them to act with impunity later. Had we held some people responsible, we might not have seen the subsequent devastation of the Congo, but instead we have gone from one Rubicon to the next.’¹⁵³

Shortly after the Gersony affair Defense Attaché Odom visited the Ntarama genocide site. As he drove back to Kigali, he later wrote in his memoir, ‘I remember rolling the figures of the Gersony report over in my head, thinking about the alleged fifty thousand (*sic*) dead ... My initial mental response was “so what?” But as I brooded on Ntarama, the fifty thousand dead came again to mind, and my response became, “Not enough.”’¹⁵⁴

US–New Zealand Tribunal Proposal and Rwandan Objections

On 28 and 29 September 1994, the United States sent the members of the Security Council a joint US–New Zealand proposal for a tribunal sharing the prosecutor and appeals chamber with the Yugoslav Tribunal.¹⁵⁵ The British, French, and Belgians signaled their acceptance of the proposal and their desire that the tribunal be approved as quickly as possible.¹⁵⁶ Madeleine Albright’s senior advisor David Scheffer then met with Rwanda’s new ambassador to the United Nations in New York. Scheffer wrote:

While [the Rwandan Ambassador] was very grateful for U.S. support on building a tribunal, he insisted it be based in Kigali and asked that we trust his government. He strongly supported rapid establishment of the international tribunal but warned that the new government in Rwanda would more likely render “justice” itself – any way it could – if the tribunal were not established soon.¹⁵⁷

[The Rwandan Ambassador] summarized his government’s demands: (1) a July 1994 end date for jurisdiction, thereby exempting post-July actions by the new government’s forces; (2) no coverage of war crimes, thereby arguably exempting the Tutsi militia and soldiers accused of attacking Hutus; (3) incarceration of convicted persons only in Rwanda; (4) no primacy for the tribunal, thus preventing it from seizing jurisdiction when a national court starts to try a suspect; and (5) trials in Kigali, giving the government physical control of the proceedings.¹⁵⁸

¹⁵² United States Department of State, Bureau of Democracy, Human Rights and Labor, *1994 Country Report on Human Rights Practices*, Rwanda, Section 1(a).

¹⁵³ Quoted in ‘Dispute Over U.N. Report Evokes Rwandan Déjà Vu,’ *New York Times*, 30 September 2010.

¹⁵⁴ Odom (n 16), 180.

¹⁵⁵ Scheffer (n 16), p 78.

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*, 78-9.

¹⁵⁸ *Ibid.*, 79.

On 4 October, the Commission of Experts released an interim report which concluded ‘on the basis of ample evidence, that individuals from *both sides* to the armed conflict in Rwanda during the period 6 April 1994 to 15 July 1994 have perpetrated serious breaches of international humanitarian law . . . , that ample evidence indicates that individuals from *both sides* to the armed conflict perpetrated crimes against humanity . . . , that there exists overwhelming evidence to prove that acts of genocide against the Tutsi group were perpetrated by Hutu elements in a concerted, planned, systematic and methodical way’.¹⁵⁹

On 10 October, several US officials, including David Scheffer, met with the Rwandan delegation in New York to discuss their objections to the draft statute for the tribunal. Scheffer:

The Rwandans revised their requested start date for the tribunal’s jurisdiction to October 1993, or six months before the genocide began. *As for the end date of the tribunal’s jurisdiction, we argued it was premature to set it, as there remained a strong possibility of a recurrence of genocidal massacres in the refugee camps.* The Rwandans were willing to have the administrative seat of the tribunal outside Rwanda but still insisted on the trials being held in Rwanda so that the government could convince its citizens that justice was being rendered. We told them that there might be a chance of some proceedings in Rwanda, but there could be no requirement that all trials be held there. We agreed to shift the focus of the crimes to genocide by placing that crime as the first one referenced in the tribunal statute.¹⁶⁰

Accommodating the Rwandan Government

Over the next two weeks State Department officials went to great lengths to convince the Rwandan government to drop its objections and support the resolution in the Security Council. On 19 October, Timothy Wirth requested the US Embassy in Kigali urgently to arrange a conference-call with Bizimungu and Kagame. Wirth’s cable contains a number of talking points for the call:

I believe our interests are essentially the same in this area. We want a vigorous prosecutor who will focus above all on bringing to justice those responsible for the mass killings that occurred this spring’ (as opposed to RPF war crimes later on) . . . Our mission in New York has made every effort to accommodate your concerns about the current proposed resolution and statute for the tribunal. If we can make further reasonable accommodations, we will of course do. However, I hope that your government will not insist on changes that will cripple the tribunal or give the appearance of subjecting it to control of any government or of exempting anyone who might be responsible for such atrocities. For example, the tribunal needs to have jurisdiction over both genocide and war crimes to be sure that all the mass killings during the spring can be effectively prosecuted. *Likewise, we cannot end the tribunal’s jurisdiction until we have reasonable confidence that there will not be a recurrence of the kind of mass killings that occurred earlier.*¹⁶¹

The follow-up cable from the Embassy suggests that the call never took place: ‘Kagame is playing hard to get, and we have been unable to confirm if either he or Bizimungu established

¹⁵⁹ UN Doc S/1994/1125 of 1 October 1994, paras 146-148 (emphasis added).

¹⁶⁰ Scheffer (n 16), 80 (emphasis added).

¹⁶¹ **Document 36** US Department of State 283000, 19 October 1994, ‘Rwanda War Crimes’, paras 2 and 3 (emphasis added).

telephone contact with [Under-Secretary] Wirth.¹⁶² According to Ambassador Rawson, the real decision makers would avoid direct contact with US officials and send out ‘subordinates’ to take the heat.¹⁶³ Meanwhile negotiations in New York continued and eventually an agreement was reached with the Rwandan representative on a draft resolution and statute for an international tribunal.

An important concession – in light of the subsequent developments in Rwanda and the Great Lakes region – was that the tribunal’s temporal jurisdiction would not be open-ended. No less important was the compromise to have the seat of the Tribunal in Arusha (Tanzania) but the Office of the Prosecutor (OTP) in Kigali. This would enable the Rwandan government to monitor OTP activities and communications. Both Louise Arbour¹⁶⁴ and Carla Del Ponte,¹⁶⁵ the Tribunal’s second and third Chief Prosecutor, have stated that their office was infiltrated and that the Rwandan government read their mail. ‘The Rwandans ... knew, hour by hour, what the tribunal’s investigators were doing.’¹⁶⁶

‘No’ Vote on Horizon

As John Shattuck and Shaharyar Khan already had found out, a ‘yes’ from the Rwandan government could be qualified or withdrawn at any time. And indeed, the real players in Kigali reneged on the agreement, as this urgent cable from the State Department to the US Embassy shows:

2. US mission UN New York reports that despite agreement negotiated ad referendum with Rwandan emissary on, GOR [Government of Rwanda] has instructed Rwandan PermRep to achieve all changes demanded prior to Wednesday’s negotiations.
3. AMEmbassy Kigali should demarche appropriate senior Rwandan officials at the highest level possible, and as soon as possible, to urge GOR agreement to adoption of the resolution and statute as negotiated this week.
4. *We have accepted a terminal date for the tribunal’s jurisdiction, December 31, 1994, but cannot accept July, 1994* [blacked out] for it to be credible, the tribunal must be perceived as impartial, with no immunity for anyone.
5. We have accepted the primacy of genocide as the subject for the court’s jurisdiction, but must insist on war crimes and crimes against humanity as well. ... The Prosecutor would be crippled because he needs war crimes jurisdiction in order to indict individuals involved in the genocide but against whom not enough evidence can be obtained to prove a charge of genocide.
6. We have accepted inclusion of language that emphasizes the importance of holding trials in Rwanda. We have left open, for further consideration, of the Security Council, the question of where the seat of the tribunal should be located. ...

¹⁶² **Document 37** US Embassy Kigali 01883, 20 October 1994, ‘Follow-Up Demarches on Rwanda War Crimes Tribunal Resolution: Prime Minister and Minister of Justice’, para 9.

¹⁶³ Author’s interview with Ambassador Rawson.

¹⁶⁴ C Off, *The Lion, the Fox, and the Eagle: a Story of Generals and Justice in Rwanda and Yugoslavia* (Toronto: Vintage Canada, 2000) 331.

¹⁶⁵ Del Ponte (n 13), 183.

¹⁶⁶ Ibid.

7. Neither we nor any other council member can accept a Rwandan government veto over the membership of the tribunal, which would effectively be imposed by requiring Rwandan approval of the nominees. ...
12. The international community is determined to prosecute the perpetrators of the Rwandan genocide. If the Rwandan government tries to block such prosecution, it would be a tragic denial of the applicability of international law in Rwanda, and would run contrary to GOR's own goal to end the cycle of revenge killings that has plagued Rwanda.
13. AMEMBASSY Kigali should urge the GOR to vote in favor of the resolution as negotiated this week, drawing on the following talking points:
 - we had understood that all members of the Security Council had reached agreement on the text of the resolution to create the international tribunal for Rwanda. We regret that your government raised objections to that text during consultations in New York on October 28.
 - we understand that the resolution will be voted on Monday (October 31). We know that you support the tribunal and full accountability, and we hope that when the tribunal is established by the Security Council, it will have your favorable vote.
15. Post should inform department of Rwandan responses immediately by cable.¹⁶⁷

The US Embassy reported back that 'Kagame spent Saturday travelling about to meet RPA soldiers and Sunday presiding over festivities associated with a football match',¹⁶⁸ and that Justice Minister Nkubito was the only appropriate official on hand:

The discussion began with suggested talking points and moved into point by point examination of contentious issues:

- Jurisdiction date: Nkubito said that the December 31, 1994 ending date was acceptable [...]
- Primacy of genocide: he asked if the mention of war crimes and crimes against humanity meant that the tribunal would target the RPF. Chargé said that genocide would be the tribunal's main concern, but that all sides must be willing to answer to criminal charges if the tribunal were to be credible.
- Trials in Rwanda: [...] He did not object to the tribunal seat in The Hague.
- Veto over membership: [blanked out]
- [...]

Chargé [= Robert Whitehead] observed that past indications of flexibility in Kigali had not been reflected in Rwandan negotiating positions in New York. The resolution text would be tabled as it now stood. He asked if Nkubito were authorized to instruct the Rwandan [permanent representative] on which points he could concede. If not, who was? [many sections blanked out]. Chargé has requested a meeting with Kagame today.¹⁶⁹

As David Scheffer notes, 'there was a committee of officials in Kigali who determined the final negotiating position, and while [Nkubito] was a member of the committee, he did not control its decisions. The committee consisted entirely of Rwandan Patriotic Front veterans except for himself, and it included RPF leader Paul Kagame.'¹⁷⁰ The State Department continued to try to reach the real decision makers in Kigali:

¹⁶⁷ **Document 38** US Department of State 293420, 28 October 1994, 'Rwanda Tribunal Demarche on GOR' (emphasis added).

¹⁶⁸ **Document 39** US Embassy Kigali 02020, 31 October 1994, 'Demarche to GOR on Rwanda Tribunal', para 3.

¹⁶⁹ *Ibid*, paras 4 and 5.

¹⁷⁰ Scheffer (n 16), 83.

We should use the additional time to press the GOR, at a minimum, to abstain if they are unwilling to vote yes on the resolution. Post should demarche appropriate officials having input on this issue at the highest possible level, should reiterate points contained in ref (a), and should add the following points for our fallback position on abstention:

-- [...]

-- We encourage your government, as a matter of furthering its own interest in this process, to vote for or abstain on the resolution when it comes to a vote on November 7, and thereafter to take a cooperative attitude toward the new tribunal's activities in Rwanda. We will encourage the new prosecutor, Richard Goldstone, to consult with your government to work out a basis for mutual cooperation, and we hope you will work closely with him to this end.¹⁷¹

The Embassy's follow-up cable describes how Chargé d'Affaires *ad interim* Robert Whitehead by chance learned that Rwanda intended to vote 'no':

Chargé ran into minister of youth and sports Patrick Mazimhaka on the morning of November 7 and raised the subject of the Rwanda war crimes tribunal. Mazimhaka, an RPF insider who has been on "secret" GOR commission on the tribunal from the beginning, said that the GOR was prepared to vote no¹⁷²

Comment. The hardliners have won, apparently with ease. ... We would be interested in a readout on where Kagame stands, since he managed to duck the German Ambassador, us and thereby the war crimes issue for the past two weeks. Our conversations with the prime minister and justice minister have convinced us that Kagame would not yield on contentious points but was reluctant to take a direct hit.¹⁷³

Although Kagame eluded US and other Western officials, he took the time to sit down for an interview with Raymond Bonner of the *New York Times*.¹⁷⁴ He told Bonner that Rwanda intended to vote against the proposed Security Council resolution but that if a tribunal was set up over Rwanda's objections, his government would accept that. Kagame also flatly called for the replacement of Ambassador David Rawson whom he called 'a disaster'. 'If the Ambassador had provided better counsel to Washington, the genocide might have been prevented', he said. (Joyce Leader, the Deputy Chief of Mission at US Embassy Kigali, later opined that the new Rwandan leaders were unhappy with David Rawson because he understands Kinyarwanda.)¹⁷⁵

The Security Council went ahead, and on 8 November, Resolution 955 establishing the International Criminal Tribunal for Rwanda was adopted. Rwanda was the only country to cast a negative vote¹⁷⁶ despite assurances of the representative of New Zealand that 'the focus of the jurisdiction is not on war crimes, but on genocide'.¹⁷⁷ The French representative tried to justify

¹⁷¹ **Document 40** US Department of State 295651, 2 November 1994, 'Follow-Up Demarche to GOR on Tribunal', paras 2 and 3.

¹⁷² **Document 41** US Embassy Kigali 02114, 7 November 1994, 'Rwanda War Crimes Tribunal: A "No" Vote on the Horizon', para 2.

¹⁷³ *Ibid*, para 4.

¹⁷⁴ 'Top Rwandan Criticizes U.S. Envoy', *New York Times*, 8 November 1994.

¹⁷⁵ Leader (n 17), 47.

¹⁷⁶ The Rwandan representative on the Council cited not less eight reasons for his country's negative vote: UN Doc S/PV.3453 of 8 November 1994, 13-16.

¹⁷⁷ *Ibid*, 5.

the cut-off date of the ICTR's temporal jurisdiction by saying that 'if major infractions, together with violations of humanitarian law, were repeated after the end of 1994, the Security Council would be entitled to extend the Tribunal's competence beyond the time period envisaged at present'.¹⁷⁸ However, as this came from a country that had been Rwanda's former ally and that had just suffered a humiliating foreign policy defeat, the statement was more a hypothetical consideration than a warning.

Pledging Cooperation

After the 'no' vote, the US pressed Kigali for a public statement that it would cooperate with the Tribunal.¹⁷⁹ Never one to hurry, the Rwandan representative on the Security Council waited two months, until 22 February, before declaring that his country would cooperate 'to the extent that the interests of the Rwandan people are not put at risk'.¹⁸⁰ Resolution 955, it should be noted, was adopted as a sanction measure under Chapter VII of the UN Charter. Rwanda, like any other country, therefore was obliged to co-operate *unconditionally* with the Tribunal. Victor Peskin interprets the Rwandan objections and no-vote as follows:

Rwanda's vehement and long-standing criticism of Security Council insensitivity created an inaccurate impression among many international observers that Rwanda came away empty-handed in the negotiations preceding the creation of the ICTR. By doing so, the government, from an early date, often successfully cast the UN and the Tribunal as spoilers with little regard for Rwandan victims and survivors. Abandoned by the UN during the massacres of Spring 1994, Rwanda claimed to be abandoned again by the UN when it came to designing the international legal response to the genocide in the Fall of the same year. In this way, the government laid the foundations for its later efforts to exert influence over the tribunal by shaming the UN and the court for doing too little, too late for Rwanda. The government's vote against the tribunal signaled its ongoing determination to fight for its conception of international justice, and underscored the uncertainty of its future cooperation with the tribunal.¹⁸¹

Kagame Visits Washington

The negative vote and Rwandan contempt of State Department officials notwithstanding, Secretary of Defense William Perry invited Kagame to visit Washington in December.¹⁸² In meetings at the Pentagon and the State Department, Kagame expressed frustration with UNAMIR¹⁸³ and decried US support for what he called 'the international misery industry' of refugee relief that sheltered genocide killers.¹⁸⁴ More details about the meetings can be found in

¹⁷⁸ Ibid, 3.

¹⁷⁹ **Document 42** US Department of State 304744, 10 November 1994, 'Cooperation on Tribunal / Aid Benchmarks', paras 2-3; **Document 43** US Embassy Kigali 02235, 17 November 1994, 'Fence-Mending by the RPF', para 2.

¹⁸⁰ UN Doc S/PV.3502 of 22 February 1995, 2.

¹⁸¹ Peskin 2008 (n 13), 168.

¹⁸² **Document 44** Letter of William Perry to Paul Kagame, 8 November 1994.

¹⁸³ Odom (n 16), 199.

¹⁸⁴ Shattuck (n 16), 72. International assistance for emergency relief to Rwandese refugees and displaced persons (mostly Hutu) in the period April-December 1994 is estimated to have cost \$1.4 billion. Source: Danish International Development Assistance, *Rwanda: Synthesis report*

a draft memo of Arlene Render, director of the Office of Central African Affairs at the State Department:

During his December 1994 visit to Washington, Vice President Kagame said he would like the U.S. to resume IMET [International Military Education and Training]. He further called for the lifting of the UN arms embargo and other restrictions so that RPA might receive (essentially non-lethal) material assistance, such as communications gear and vehicles. According to DOD's [Department of Defense] reporting cable, Secretary Perry told Kagame that "we are seeking legislative relief to re-initiate IMET in FY95 [fiscal year 1995]." Perry then noted that the UN arms embargo and executive order prohibit the USG from providing military equipment to the RPA. ... He advised Kagame to raise the issue of the UN Embargo in his meeting at State. Kagame subsequently raised the point in his meeting with U/S Wirth, who merely acknowledged the request without further comment or discussion.¹⁸⁵

Since Kagame's visit, DOD has been pressing for action to repeal the restriction on IMET so that FY95 IMET funds might be programmed for Rwanda. The Pentagon also favors lifting or modifying the UN Embargo so that the RPA would at least be able to obtain communications gear and trucks.¹⁸⁶

Arlene Render then offers her views on both issues: 'yes' on resuming the IMET program but 'no' on lifting the arms embargo.

We should not pursue lifting the UN arms embargo at this time. From a political perspective, we do not want to encourage the Rwandans to resolve their differences through more fighting. ... From a practical perspective, the RPA does not need the embargo lifted in order to defend itself or prevent another genocide ... Moreover, the GOR/RPA has very limited resources and much better ways to spend their money. ... We do not believe that we should become a military equipment supplier for the new government, when we were not a supplier to the pre-April 1994 government. Otherwise, we may be viewed as favoring the RPF/Tutsi.¹⁸⁷

As already stated, Render's memo was a draft and it is unclear whether it was approved by George Moose and became State Department policy.

Let's Be Friends

On 16 December, just days after Kagame's trip to Washington, a US Air Force Boeing 737 carrying National Security Advisor Anthony Lake and a dozen staff from the National Security Council (NSC), the Pentagon, and the Department of State landed in Kigali for a follow-up

joint evaluation of emergency assistance to Rwanda, available at

http://reliefweb.int/sites/reliefweb.int/files/reliefweb_pdf/node-114079.pdf.

¹⁸⁵ **Document 45** US Department of State 017117, 23 January 1995, 'Draft Memo from Arlene [Render] to A/S Moose on IMET and the UN Arms Embargo', 3-4.

¹⁸⁶ *Ibid*, 5.

¹⁸⁷ *Ibid*, 6-7. See also **Document 46** US Department of State, Comprehensive USG Talking Points for Kagame Visit, 8 December 1994, 4: 'Rwanda has suffered enough from war. More arms are certainly not the answer. You should be focused on reconciliation, not renewed warfare.'

visit.¹⁸⁸ It is important to know that the National Security Council and the Pentagon had led the charge in April against maintaining or reinforcing UNAMIR because the situation in Rwanda did not meet the criteria of President Clinton's forthcoming Presidential Decision Directive on Multilateral Peacekeeping, or PDD-25.¹⁸⁹ Susan Rice, a rising star on the NSC responsible for peacekeeping and international organizations, was a member of the high level delegation. In April, she had come out in favor of a drastic troop drawdown.¹⁹⁰

At a press conference in Kigali, Anthony Lake stated that 'Rwanda is of tremendous importance to the American people, to this Administration and specifically to President Clinton. We intend to remain involved in doing everything we can to help create the conditions of security and progress'.¹⁹¹ Lake also praised ICTR Chief Prosecutor, Richard Goldstone who would visit Kigali a few days later: 'We are extremely pleased at the appointment of Justice Goldstone. ... I have met him, I was extremely impressed with him and I have very great confidence that he will move this along as rapidly as humanly possible and we will offer our support'.¹⁹²

For Defense Attaché Thomas Odom, the visit was a watershed event in US–Rwandan relations:

It marked the end of a State filter on information flowing out of the country. The president's national security advisor does not go to a region unless there is a need for a fresh set of high-level eyes on the program. Looking back, it is clear that there was a vast difference in the views of Defense and State. Kagame's visit to D.C. and his reception at the Pentagon had heightened those tensions. Lake was there to make the final decision, and based on what I heard Susan [Rice] say, the decision would be one of action – long overdue with regard to Rwanda. ... Our actions from that point forward would be aimed at helping the new government rather than standing back and criticizing it ... Lake's visit ... served notice to the newly formed Rwandan government as well as its supporters and its detractors in the international arena that the Clinton Administration was at last fully engaged in Rwandan affairs and fully supportive of the new government.¹⁹³

Washington's shift from 'cautious' to 'constructive' engagement meant that the new regime would henceforth receive the benefit of the doubt. The visit arguably was also signal to the State Department that the National Security Council and the Pentagon were taking control of US policy in Rwanda (and the Great Lakes region). Over the former's objections, Lake promised that the UN weapons embargo would soon end and that US assistance would follow in a variety of forms.¹⁹⁴ Before long the State Department and the Embassy in Kigali fell in line with the Pentagon and strategic considerations trumped human rights. Alison Des Forges put it as follows:

¹⁸⁸ This was the second high level US delegation since the genocide. In late August, a 'presidential delegation' of about twelve people had traveled to Kigali for a day of meetings with the new leaders. Leader (n 17), 65.

¹⁸⁹ Scheffer (n 16), 52-9. See on this episode also Power (n 35), 98-103.

¹⁹⁰ Ibid, 54.

¹⁹¹ **Document 47** US Department of State, Transcription of Press Conference USIS Kigali, 16 December 1994, 2.

¹⁹² Ibid, 3.

¹⁹³ Odom (n 16), 201-2.

¹⁹⁴ Ibid.

Before the genocide, U.S. officials encouraged Rwanda human rights organizations, both by offering some financial assistance and by listening ... to their reports.... Embassy staff found their reports increasingly credible and passed them on to Washington. From 1994 through 1998 activists critical of the Rwandan government felt shut out of the US Embassy ... In late 1999 USAID was supporting local nongovernmental organizations working in such areas as health but was giving no assistance to human rights groups. ... Similarly, representatives of international human rights organizations whose data and analysis were welcomed before, during, and immediately after the genocide found their information rejected after 1995 when it included criticism of RPA abuses. ... Human Rights Watch shared confidential information with State Department officials, only to find it later in the hands of Rwandan authorities.¹⁹⁵

The following conclusions can be drawn for the period 19 July – 16 December 1994. After the RPF victory, top US and UN diplomats went out of their way to make amends for what they (naively) perceived as failure on *their* part and to reconcile with ‘the Rwandan people’. If a revelation or incident threatened to complicate these efforts, Washington and UN headquarters were quick to send emissaries to convey ‘polite expressions of disapproval’¹⁹⁶ and advise Kigali on how to control the damage. Once in power, the former rebels no longer showed any real interest in an international tribunal. The ‘no’ vote despite significant concessions was a major snub to the State Department and the UN Security Council. Yet a month later, the Pentagon rolled out the red carpet for the self-proclaimed liberator of Rwanda.¹⁹⁷

I suggest that the reason for Washington’s embrace of Kagame and his RPF was a combination of remorse, opportunism, and optimism. Remorse: Anthony Lake, William Perry, and perhaps President Clinton himself, wanted to make up for their opposition against maintaining or strengthening UNAMIR in April.¹⁹⁸ Opportunism: the Pentagon saw in Kagame and his RPF capable partners who could be useful in case Zaire would become unstable after the departure or death of its ailing President – and longtime US ally – Mobutu Sese Seko. (Kigali is geographically much closer to the mineral rich Kivu region than Kinshasa.)¹⁹⁹ Optimism: Washington identified and was eager to cultivate a new, post-Cold War generation of African leaders (more below), and Kagame was an obvious candidate because he spoke the new donor language of markets, good governance, and reconciliation. The fact that Washington courted

¹⁹⁵ A Des Forges, ‘U.S. Human Rights Policy in Rwanda’ in Debra Liang-Fenton (ed), *Implementing U.S. Human Rights Policy* (Washington DC, United States Institute of Peace Press, 2004) 29, 45-6. Ambassador David Rawson explained to me that personnel changes at the US Embassy explain in part why human rights activists may have felt ‘shut out’ at the US Embassy after the genocide. For years Deputy Chief of Mission (DCM) Joyce Leader had been the Embassy’s contact person for human rights issues. She did not return to Kigali after the genocide and in her place came several temporary DCMs.

¹⁹⁶ Cf **Document 48** Letter of Christopher Smith, Chairman of the Subcommittee on International Relations and Human Rights to President Clinton, 28 August 1997, denouncing US support for the Rwandan regime.

¹⁹⁷ The US was the first foreign power to engage in military cooperation with the new regime. Gribbin (n 16), 121.

¹⁹⁸ Gribbin (n 17), 88 concedes that US policy towards Rwanda was driven by ‘an element of guilt’.

¹⁹⁹ This is not to say or suggest that Washington was thinking of using Rwanda to bring about regime change in Zaire (see below).

Kagame more than the other way round put the Rwandan leader in a position to set the terms partnership.

17 December 1994 – February 1997

The period under study here represents the two years that the ICTR was establishing itself. February 1997 was chosen as end date because of two events: the opening in Arusha of the first trial and the replacement of the Deputy-Prosecutor and Registrar following a devastating audit. Several other events during this period are also discussed: the creation of two informal groups called the ‘Friends of Rwanda’ and the ‘Friends of the ICTR’; the Kibeho tragedy/massacre and the reaction of the international community; the lifting of the UN arms embargo against the Rwandan government; the forced departure of UNAMIR; the battle between the ICTR Prosecutor and Kigali over a high-level genocide suspect; the Rwandan invasion of Zaire to ‘rescue’ Hutu refugees; the arrival in Kigali of a new US Ambassador; the appointment of Kofi Annan as UN Secretary-General; the reshuffling of the Clinton administration; the formulation and adoption of a new US Africa policy; and finally, the Hourigan story.

‘Friends of Rwanda’ and ‘Friends of the ICTR’

As Operation Support Hope in the refugee camps was winding down (see above), the State Department started planning post-genocide Rwanda. To coordinate and push efforts on issues such as refugee repatriation and aid for reconstruction, the Department created the Rwanda Operational Support Group. This umbrella organization, also known as the ‘Friends of Rwanda’,²⁰⁰ comprised eleven countries, the UN, the Organization of African Unity, and the European Union.²⁰¹

At an international donor conference convened by the Group in Geneva in January 1995, some representatives opined that the amount of aid Rwanda was asking was rather high (\$830 million for 1995/1996). Prime Minister Twagiramungu retorted, however, that there ‘is a capacity – both within Rwanda to absorb assistance and within the international community to find the money’.²⁰² To atone for their perceived failings and compensate for ‘feeding the killers’ in the refugee camps, donors pledged \$587 million without political conditions – despite the rapidly deteriorating human rights situation. At a second donor conference in June 1996, the Rwandan government received another \$617 million in pledges.²⁰³ The United States (\$111 million), the

²⁰⁰ **Document 49** US Department of State 261936, 27 September 1994, ‘Friends of Rwanda Political Group’; **Document 50** Meeting of the Rwanda Operational Support Group Opening Remarks, 17 November 1994.

²⁰¹ **Document 51** Rwanda OSG Opening Remarks: U/S Timothy Wirth, 14 December 1994; **Document 52** US Department of State, U.S. Policy Toward Rwanda.

²⁰² **Document 53** US Department of State 017612, 24 January 1995, ‘Rwanda PM Says Yes to Bujumbura Conference’, para 5.

²⁰³ Source: University of Notre Dame, Kroc Institute for International Peace Studies, *Peace Accords Matrix*, available at <https://peaceaccords.nd.edu/matrix/status/63/donor_support>.

Netherlands (\$88 million), and the United Kingdom (\$54 million) emerged as the country's best friends in terms of aid,²⁰⁴ even though they had virtually no ties to Rwanda before 1994.²⁰⁵

Having spearheaded the legal establishment of the ICTR, the US was also instrumental in helping the Tribunal start up materially and operationally. The first task was to set up, equip, and staff the Office of the Prosecutor in Kigali. To this effect the State Department helped organize a meeting in Kigali on 19 of May with a group of countries that eventually became known as the 'Friends of the ICTR'.²⁰⁶ With the notable exception of France, these countries were mostly also part of the 'Friends of Rwanda'. This was to be expected because although the Tribunal was a sanction measure under Chapter VII of the UN Charter, it was presented to Rwanda as a form of judicial assistance.

At that first meeting of 'Friends of the ICTR', the US pledged personnel (investigators and prosecutors)²⁰⁷, vehicles, 'secure' communication equipment and computers,²⁰⁸ and funds. The US also promised to supply 'all U.S. intelligence and other information ... that might be relevant for prosecution of the criminal leaders who will be the targets of the Tribunal's work'.²⁰⁹ Washington also threw its diplomatic weight behind the Tribunal. Madeleine Albright shepherded a resolution through the UN Security Council urging states to arrest and detain suspected *génocidaires*,²¹⁰ and US Embassies in Africa were instructed to press their host

²⁰⁴ The numbers are for 1995 and 1996. Source: Organization for Economic Cooperation and Development, *Geographical Distribution of Financial Flows to Aid Recipients: 1995/1999* (Paris: Organization for Economic Cooperation and Development, 2001), 216-7.

²⁰⁵ Neither the Netherlands nor the UK had an Embassy in Rwanda before 1994.

²⁰⁶ The group met for the first time as 'Friends of the ICTR' on 25 February 2005 in Dar Es Salaam. See **Document 1**, para 2.

²⁰⁷ One of the first US detailees was Pierre-Richard Prosper, a young Assistant United States Attorney. Prosper served as lead attorney for the prosecution in the first trial but is better known in the history of the ICTR for his role – as US Ambassador-at-Large for War Crimes Issues – in the removal of the Tribunal's third Chief Prosecutor, Carla Del Ponte. See Del Ponte (n 13), 230-41. To be fair to Ambassador Prosper, it appears that he was only the executioner because WikiLeaks cables reveal that the initiative to split the ICTY/ICTR prosecutorial functions and create a new chief prosecutor position for the ICTR came from the British Foreign Office. **Document 71** US Embassy The Hague 001730, 7 July 2003, 'ICTY: UK Draft UNSCR on the Completion Strategy', para 4 (obtained from WikiLeaks <<http://wikileaks.org/>>). Furthermore, nothing in this or any other WikiLeaks cable suggests that Del Ponte's removal at the ICTR was motivated by her pending indictment of RPF members.

²⁰⁸ 'Secure' but apparently not secure enough to prevent the Rwandan government from reading the Prosecutor's email (see above).

²⁰⁹ John Shattuck, 'Opening Remarks at a State Department Press Briefing', Washington DC, 25 May 1995, US Department of State Dispatch, 12 June 1995, Vol. 6 No. 24, available at <<http://dosfan.lib.uic.edu/ERC/briefing/dispatch/1995/html/Dispatchv6no24.html>>.

²¹⁰ UNSC Res 978 (1995) UN Doc S/RES/978 of 27 February 1995. On this US initiative, and French resistance against it, see D Scheffer (n 16), 109-11.

countries to enact laws which would enable them to cooperate with the ICTR.²¹¹ US interventions were crucial to the arrest of Ferdinand Nahimana and three other high profile Rwandans by Cameroonian authorities.²¹² According to Richard Goldstone, the ICTR's first Chief Prosecutor, no country was more helpful than the US.²¹³

Kibeho Tragedy (or Massacre)

In the final days of the war, Kagame's forces pursued a double strategy to consolidate their power over the Hutu masses: they pushed 1.4 million Hutu into neighboring Zaire (see above) and herded together hundreds of thousands in camps inside Rwanda.²¹⁴ Starting in December, the RPF forcibly began to close these camps.²¹⁵ By April only the one at Kibeho remained. On or around 16 April, RPF soldiers chased the more than 100,000 camp residents from their huts and herded them on to a mountain plateau. The plan, if there was one, was to truck or bus the terrified refugees to their villages – a huge logistical operation even under the best of circumstances – but no vehicles were forthcoming. Linda Polman, a Dutch journalist embedded with the Zambian UNAMIR battalion (ZamBat) that guarded the camp, wrote:

When I first see them, they have been standing there for almost three days. ... There's no room to sit down on the plateau. The refugees are squeezed together above their belongings, their legs spread across the bodies of old people and children too tired to stand. Rwandan troops in long raincoats, guns slung over their shoulders, some wearing black berets, are posted every ten meters around the throng they've driven together. ... The two roads winding through the mountains to Kibeho have been closed. Food and water convoys from aid organizations are being stopped and sent back. As of the day before yesterday, the Rwandans have forbidden all refugee aid.²¹⁶

After five days of siege and not knowing what to do with the starving refugees, Rwandan troops began to drive them off the plateau:

I can see government soldiers trying to get people move in our direction by beating them and firing shots in the air. A wave of people starts to roll toward us. ... Then the barrier collapses with a bang and the human wave comes tumbling into the parking lot. The barbed wire disappears under the people. People disappear under people. ... Six hours later, all is quiet outside the gates. The government troops panicked in the chaos and bombarded the crowd with mortar shells and grenades for hours. All we can do is drag away the corpses.²¹⁷

²¹¹ Scheffer (n 16), 109-12; Gribbin (n 16), 117: 'I became the channel through which the deputy-prosecutor would request U.S. government support in intervening with foreign governments to make arrests of *génocidaires* in their territory.'

²¹² **Document 54** US Department of State 090123, 13 April 1995, 'Rwanda War Crimes'. See also Scheffer (n 16), 111-2 on the US role in the arrest and detention in Cameroon of Théoneste Bagosora.

²¹³ Goldstone (n 19), 114.

²¹⁴ *Supra* n 45, para 22.4.

²¹⁵ Report of the Representative of the Secretary-General, Mr. Francis Deng, submitted pursuant to Commission on Human Rights resolution 1993/95, Addendum, Note on the mission to Rwanda, UN Doc E/CN.4/1995/50/Add.4 of 16 February 1995, para 14.

²¹⁶ Linda Polman, 'The Problem Outside' (1999) 67 *Granta* 219, 222.

²¹⁷ *Ibid.*, 231-3.

ZamBat put the death toll at more than 5,000.²¹⁸ Using pace counters, medics of the Australian UNAMIR contingent (AusMed) counted about 4,000 dead and 650 wounded – until the RPF stopped them.²¹⁹ An Australian medic later opined that if he and his colleagues had not been there as witnesses, ‘the RPA would have killed every single person in the camp’.²²⁰ Thomas Odom, who visited the site on 23rd of April, was more lenient (‘a difficult operation had gone bad, and people had died’)²²¹ and even cynically asked his RPF liaison: ‘So Charles, when are you going to do this in Goma?’²²²

Facing international condemnation over the massacre, the Rwandan government invited the diplomatic corps and NGO representatives to Kibeho on 27 of April.²²³ What followed then was a most bizarre and surreal spectacle.²²⁴ President Bizimungu publicly asked Francis Sikaonga, the ZamBat commander, for his estimate of the casualties. Sikaonga cautiously put it at 4,000. The President was not amused and coldly replied ‘I think you’re exaggerating’.²²⁵ Stunning the foreign dignitaries, Bizimungu then ordered Hutu civilians to exhume the alleged mass graves there and then. UN Ambassador Khan: ‘This process took about three hours with gruesome scenes of graves being opened in full view. Eventually, we returned to the press tent where the President requested the Foreign Minister to provide the “results of the investigation”. The Foreign Minister then announced that the graves had been opened and a total of 338 had been counted!’²²⁶

The Kibeho tragedy (or massacre) caused a rift within the international donor community between mainland Europe on the one hand and Britain and the US on the other.²²⁷ The Netherlands suspended a contribution of \$5.5 million to the United Nations Development Program Trust Fund for Rwanda while Belgium, Germany, and the European Union froze their bilateral aid. London and Washington, however, accepted the version of the Rwandan government that its soldiers had panicked and reacted in self-defense.²²⁸ Hence there was no reason for the two permanent Security Council members to protest or suspend their aid – let alone hint at the possibility of extending the temporal jurisdiction of the ICTR beyond 1994.

²¹⁸ **Document 55** US Embassy Lusaka 03470, 22 May 1995, ‘UNAMIR Mandate Review: Zambian Analysis of Rwanda Situation and Version of Kibeho Incident’.

²¹⁹ O’Halloran (n 108), 164.

²²⁰ P Jordan, ‘Witness to Genocide – A Personal Account of the 1995 Kibeho Massacre’ available at <<http://www.anzacday.org.au/history/peacekeeping/anecdotes/kibeho.html>>.

²²¹ Odom (n 16), 229.

²²² Ibid, 228.

²²³ See extensively Pottier (n 85), 160-70 and Khan (n 16), 104-19.

²²⁴ Pottier (n 85), 160.

²²⁵ Polman (n 216), 239. The UN immediately whisked Sikaonga out of Rwanda to protect him from harm by the RPF. Polman (n 216), 240 and Khan (n 16), 115.

²²⁶ Khan (n 16), 115-6.

²²⁷ Pottier (n 85), 164-6.

²²⁸ This may be true according to Linda Polman, but she also notes that the whole operation was carried out with ‘complete indifference’ to the fate of the refugees (author’s personal interview with Linda Polman).

The UN Secretary-General moved to control the political damage of yet another massacre in the presence of UN troops and for the second time urgently dispatched a Special Envoy.²²⁹ At the suggestion of the Special Envoy, Aldo Ajello, the Rwandan government set up an international commission of inquiry. However, its terms of reference were defined exclusively by the government²³⁰ and nine commissioners were drawn from members of the Rwanda Operational Support Group. The tenth commissioner was an RPF official. UN Ambassador Shaharyar Khan expressed confidence that the commission would provide conclusions ‘to suit all the parties involved’.²³¹ The Commission’s final report²³² – a mere twelve pages of which *only two* deal with the actual events – assigned no responsibility for the killings: ‘The tragedy of Kibeho neither resulted from a planned action by Rwandan authorities to kill a certain group of people, nor was it an accident that could not have been prevented’.²³³ Citing logistic and time constraints, the report refrained from giving any figure on the actual death toll. Significantly, the commission had little interest in Linda Polman’s eye witness account.²³⁴

The commission’s conclusion and recommendation ‘that the international community continue encouraging and assisting Rwanda in its efforts to achieve justice, national reconciliation and reconstruction’ cleared the way for the resumption of aid by the other ‘Friends of Rwanda’. By citing deficiencies in the RPF’s communication systems, equipment, and training as contributing factors,²³⁵ the report also implicitly made a case for providing Rwanda with ‘non-lethal’ military aid. It is noteworthy that Washington already had begun laying the groundwork in the Security Council for exempting such aid from the arms embargo (see below).

US intelligence on the meaning and impact of Kibeho is again very illuminating: ‘the regime – referring constantly to last year’s genocide – will try to increase foreign aid while reducing foreign influence’ and ‘some Hutu moderates may soon desert the government’.²³⁶ This is exactly what happened. On 21 May, Kagame told UN Ambassador Shaharyar Khan and UNAMIR Commander Guy Tousignant²³⁷ ‘We need our freedom. We need to be able to handle our own problems. The sooner we disengage the better,’²³⁸ and on 12 June the chief of staff of the Rwandan Prime Minister resigned and fled to Nairobi. In his resignation letter, Jean Damascène Ntakirutimana urged ‘the governments who support the regime in Kigali (the Netherlands and the United States in the first place) to take their responsibilities and exert the

²²⁹ Report of the Secretary-General on the United Nations Assistance Mission For Rwanda, UN Doc S/1995/457 of 4 June 1995, para 13.

²³⁰ Khan (n 16), 115.

²³¹ Pottier (n 85), 162.

²³² Letter Dated 19 May 1995 from the Secretary-General Addressed to the President of the Security Council – transmitting the Report of the Independent International Commission of Inquiry into the Events at Kibeho in April 1995, UN Doc S/1995/411.

²³³ *Ibid*, para 56.

²³⁴ Author’s personal interview with Linda Polman.

²³⁵ *Supra* n 232, para 50.

²³⁶ **Document 56** US Department of State 110269, 5 May 1995, ‘INR Assessment – Rwanda: Meaning of the Massacres’.

²³⁷ Guy Tousignant had succeeded Roméo Dallaire in mid August 1994.

²³⁸ **Document 57** US Embassy Kigali 01584, 22 May 1995, ‘GOR Goes Public on UNAMIR Mandate; Tweaks UNAMIR on Fugitive Flight’, para 4.

necessary pressure to bring the RPF back to political reality. If not they lend moral support to a regime which turns double speak, sectarianism, and hypocrisy into a system of government'.²³⁹ In mid August, the Prime Minister himself resigned, as did the Justice Minister and the Interior Minister.²⁴⁰ Alison Des Forges later lamented that Washington's refusal 'to use its leverage left unchallenged those who favored brutal repression and left unsupported those who opposed it'.²⁴¹

Lifting the UN Arms Embargo

Earlier it was mentioned that in December 1994, National Security Advisor Anthony Lake had promised the Rwandan government that the US would seek to end the UN arms embargo on Rwanda.²⁴² Now it was up to the State Department to convince the members of the UN Security Council to adopt a resolution to that effect. France, Russia, and even the United Kingdom expressed reservations when the US floated the idea in March 1995:

French DPR [Deputy Permanent Representative] Ladsous said France would prefer not to touch the embargo at all, as they believe relaxation of the embargo will deter refugees from feeling confident about returning to Rwanda. The incursions across the borders into Rwanda were small-scale and did not pose a serious threat to Rwanda's security. Therefore, there was no reason for Rwanda to rearm.

Russian DPR Sidorov doubted the legal need for a resolution, indicating that the sanctions committee could take decisions to allow non-lethal equipment into Rwanda. Russia is not enthusiastic about tinkering with the embargo.

UK DPR Gomersall disagreed with the U.S. desire to send a political signal of support for the GOR [government of Rwanda], which refugees could interpret as a spur to prepare to defend themselves.

Amb. Inderfurth countered some of the remarks of the French and Russians, noting that although incursions were small-scale at this point, we had observed military training in Zaire. He reiterated that the USG [United States government] intention was a partial lifting of the embargo related to *non-lethal equipment, not rearmament* by the GOR.²⁴³

Undeterred by the Security Council members' lukewarm response – and unfazed by the events at Kibeho – Washington continued its diplomatic offensive. On 7 August 1995, Secretary of Defense William Perry had good news for his Rwandan counterpart:

When we met in August [1994] and again when you visited me last December [1994], I said that I would do what I could to help. You asked me to assist you win support within my government for lifting the arms embargo that had been applied so justly to the murderous regime you ousted and

²³⁹ **Document 58** Letter of Resignation from Jean Damascene Ntakirutimana to the Prime Minister, 12 June 1995, 1.

²⁴⁰ There is discussion whether they resigned or were fired. Khan (n 16), 147-50; **Document 62** US Embassy Kigali 02768, 29 August 1994, 'Cabinet Reshuffle: First Departures'.

²⁴¹ Des Forges (n 195), 42.

²⁴² In place since UNSC Res 918 (1994) UN Doc S/RES/918 of 17 May 1994.

²⁴³ **Document 59** US Mission New York 00870, 8 March 1995, 'Rwandan Arms Embargo: Perm 5 Views' (emphasis added).

which was still incongruously in effect against your country's liberators (*sic*). As your Chargé has informed you, I have done so.²⁴⁴

Prime Minister Twagiramungu, however, discreetly warned Perry's deputies, Joseph Nye and Vincent Kern, that the RPA was not a national army, but a 'personal army of Kagame'.²⁴⁵ He delivered similar messages to Ambassadors Rawson²⁴⁶ and Khan.²⁴⁷ Nevertheless, on 16 August 1995, the Security Council unanimously suspended *all* restrictions regarding the sale or supply of *arms and related materials* to the government of Rwanda, with the further proviso that they automatically would terminate after a year, unless the Council decided otherwise.²⁴⁸

This was quite a coup because, in his initial consultations on the matter, US Ambassador Inderfurth had stressed that *rearmament* of Rwanda was not on the table (see above). The Security Council also ignored a prophetic warning by the Minister of Foreign Affairs of Zaire:²⁴⁹

By suspending the embargo on the supply of arms to Rwanda for a trial period of one year, the Security Council would authorize Rwanda to obtain military equipment and other modern, sophisticated war materiel at a time when it is barely concealing its warlike intentions and when it is threatening to attack refugee camps in Zaire. It is also a time when Rwanda is not promoting a climate of understanding and national reconciliation, but, rather, is encouraging new flows of refugees to Zaire, which has the appearance of the expulsion of Rwanda's own nationals for political, ethnic and tribal reasons. ... *I would like to ask the Security Council to bear in mind what I have said the next time it considers the situation in Rwanda and to take it to heart.*²⁵⁰

The threat of a RPF invasion was not paranoia because it since has been revealed that Kagame began planning military action against the camps in Zaire within a year of the genocide.²⁵¹ In August/September 1996 (i.e. weeks after the termination of the UN arms embargo) thousands of Rwandan troops crossed into Zaire, starting the so-called First Congo War. Ten months later, these troops and their Zairian proxies marched into the capital Kinshasa and toppled the Mobutu regime (see below).

The fact that Washington had lobbied to end the UN arms embargo does not mean, as many Congolese and Rwandan Hutu believe, that the US materially aided the Rwandan invasion. David Rawson's successor, Ambassador Robert Gribbin, is adamant in this regard. 'We had reached an agreement with the Rwandan government on a package of 'non-lethal' military assistance just before Rwanda invaded Zaire. [Because of the invasion] the agreement was never

²⁴⁴ **Document 60** Letter from William Perry to Paul Kagame, 7 August 1995.

²⁴⁵ W Madsen, *Jaded Tasks – Brass Plates, Black Ops & Big Oil* (Waterville, OR: Trine Day, 2006), 20.

²⁴⁶ **Document 61** US Embassy Kigali 00856, 21 March 1995, 'Ambassador's Meeting with Prime Minister Twagiramungu: Preaching to the Choir'.

²⁴⁷ Khan (n 16), 99 describes the Prime Minister as 'increasingly dejected and despondent'.

²⁴⁸ UNSC Res 1011 (1995) UN Doc S/RES/1011 of 16 August 1995, operative part para 7.

²⁴⁹ Zaire was invited by the Security Council to participate in the discussion.

²⁵⁰ UN Doc S/PV.3566 of 16 August 1995, 2-3 (emphasis added).

²⁵¹ Stearns (n 23), 15. See also 'Rwandans Led Revolt in Congo', *Washington Post*, 9 July 1997: 'The decision to prepare for a second war, Kagame said, was made in 1996, although rebels in Congo have said they were training for a year before the uprising began in October.'

signed and the materiel never delivered.²⁵² Claims that the First Congo War was ‘part two’²⁵³ of an Anglo-Saxon plan or conspiracy²⁵⁴ therefore cannot be taken seriously. As in 1990, Washington neither assisted nor opposed the RPF,²⁵⁵ even if this time the invasion was not a surprise (see below).

Getting Rid of UNAMIR

After initially withdrawing most of UNAMIR (see above), the Security Council decided on 8 June 1994 to increase the number of troops to 5,500. The new Rwandan government resorted to tactics to delay the actual deployment of the new troops²⁵⁶ and restricted their movement in violation of the status-of-mission agreement.²⁵⁷ Nonetheless, on 30 November 1994, when the Security Council voted to extend UNAMIR’s mandate until 9 June 1995, Rwanda voted in favor. It could hardly afford to do otherwise after the negative vote on the ICTR earlier in November. The upcoming international conference of donor countries in Geneva (see above) may have played a role too.

In any event, not long after countries had pledged \$ 587 million, Kigali’s relationship with UNAMIR became outright confrontational. On 9 April, the UN Secretary-General reported that ‘UN vehicles and staff have been searched and supplies of goods and equipment have been stopped at Kigali airport. ... Last month, Radio Rwanda initiated a propaganda campaign of

²⁵² Author’s telephone interview with Robert Gribbin. See also his online review of F Reyntjens, *The Great African War – Congo and Regional Geopolitics, 1996-2006* (Cambridge: Cambridge University Press, 2009), available at http://www.unc.edu/depts/diplomat/item/2010/0912/book/book_gribben_greatafricanwar.html.

²⁵³ ‘Part one’ in this scenario was the RPF invasion of Rwanda in October 1990 (see above).

²⁵⁴ Eg investigative journalist W Madsen, *Genocide and Covert Operations in Africa 1993-1999* (Lewiston, NY: Edwin Mellen Press, 1999). A summary of Madsen’s allegations can be found in his prepared statement of 17 March 2001 to the Subcommittee on International Operations and Human Rights of the US House of Representatives, available at <http://globalresearch.ca/articles/MAD111A.html>. See also the conflicting witness testimonies ‘The Democratic Republic of Congo: Problems and Prospects’, Hearing before the Committee on International Relations of the US House of Representatives, 16 July 1997.

²⁵⁵ See the very interesting analysis and comments by R Bock from Goma (Zaire): ‘Lost in Africa: How the US Landed on Sidelines in Zaire’, *Wall Street Journal*, 22 April 1997.

²⁵⁶ **Document 63** US Department of State 167690, 23 June 1994, ‘Ugandan Help with APC’s; RPF Hostile Attitude’, paras 3 and 8:

The RPF has been holding up shipments to UNAMIR and reportedly blocked entry into Rwanda of UN APC’S [Armored Personnel Carriers] transferred from Somalia ... Post should ... insist on full cooperation with UNAMIR, free flow of UNAMIR supplies and equipment, in particular APC’S, and an immediate end to any harassment or threatening behaviour toward Americans or other expatriates.

²⁵⁷ Progress report of the Secretary-General on the United Nations Assistance Mission for Rwanda, UN Doc S/1994/1133 of 6 October 1994, para 29.

surprising virulence and broadcast unfounded allegations of misconduct by UNAMIR personnel'.²⁵⁸

The anti-UN campaign only intensified after Kibeho. Two days before the arrival of the international commission of inquiry, demonstrators in Kigali accused UN agencies and NGOs of grossly exaggerating events.²⁵⁹ The Secretary-General's report of the period April-May speaks of 'an attitude of non-co-operation, even hostility at the middle and lower levels of the Rwandan Government', searches and confiscations of UNAMIR vehicles, and participation by the RPF in anti-UNAMIR demonstrations.²⁶⁰

When Kagame discussed the future of the mission after 9 June 1995 with John Shattuck, he repeated what he had said earlier to UN Ambassador Khan and UNAMIR Commander Touseignant: 'We need our freedom. ... The sooner we disengage the better.'²⁶¹ The fact that he also wanted the UN arms embargo lifted gave Washington some leverage. 'We told the RPA that allowing UNAMIR to remain in country for another six months would reduce opposition to security assistance to the Rwandan military'.²⁶² On 9 June, the Security Council decided to extend the mandate of UNAMIR until 8 December 1995 (without saying that the extension was final). However, protection of internally displaced persons (IDPs), refugees, and civilians at risk was no longer part of the mandate and the size of the mission was reduced to 2,330 troops by August and to 1,800 by September.²⁶³ Although Rwanda voted in favor, the date of the Security Council decision suggests the Rwandan government opposed until the last moment. The Rwandan representative used the opportunity to 'urgently' request the Council to review the arms embargo.²⁶⁴ Two months later the Security Council obliged (see above).

As UNAMIR began its phased withdrawal, the Rwandan Foreign Minister asked UN Secretary-General Boutros Boutros-Ghali for its equipment and materials to be *donated* to the Rwandan government. 'Though a drop in the ocean, [this] would be a significant contribution to the efforts of the Government of Rwanda by the United Nations'.²⁶⁵ The request, it should be noted, came after the RPF had already plundered the UNAMIR vehicle pool.²⁶⁶

²⁵⁸ Progress report of the Secretary-General on the United Nations Assistance Mission for Rwanda, UN Doc S/1995/297 of 9 April 1995.

²⁵⁹ UN Department of Humanitarian Affairs, ref. DHAGVA-95/0052, 4 May 1995.

²⁶⁰ Progress report of the Secretary-General on the United Nations Assistance Mission for Rwanda, UN Doc S/1995/457 of 4 June 1995, paras 8 and 9.

²⁶¹ **Document 57** (n 228).

²⁶² Odom (n 16), 252; **Document 64** US Embassy Kigali 01641, 26 May 1995, 'Renewing UNAMIR's Mandate: the GOR Line Holds Firm', para 8: 'We could gain leverage, for example, by turning our position on the arms embargo into a hook, offering strong support for the partial lifting if the GOR eases its position.'

²⁶³ For more details, see Khan (n 16), 122-8.

²⁶⁴ UN Doc S/PV.3542 of 9 June 1995, 16.

²⁶⁵ Letter dated 13 August 1995 from the Minister for Foreign Affairs and Cooperation of Rwanda addressed to the Secretary-General, UN Doc S/1995/1018.

²⁶⁶ Odom (n 16), 190.

On 24 November, the Foreign Minister informed the Secretary-General and, through him the Security Council, because UNAMIR 'does not respond to our priority needs' its mandate would terminate on 8 December 1995'.²⁶⁷ In an attempt to find a solution to the Rwandan ultimatum, the Council on 8 December extended the mandate of UNAMIR for four days, until 12 December,²⁶⁸ and extended this on 12 December 'for a final period until 8 March 1996.'²⁶⁹ The Council also requested that the Secretary-General reduced the number of troops to 1,200 troops and to examine the feasibility of transferring UNAMIR non-lethal equipment to the Rwandan government.²⁷⁰ Only the representative of Canada had the courage to denounce Rwanda's intransigence and arrogance:

During the discussions between the United Nations and the Government of Rwanda over the past six months, the Government of Rwanda has tried to dictate the force structure necessary to accomplish the mandate which you, the members of the Security Council, will assign to the force. It has even refused to accept that UNAMIR should contribute to the safety of international personnel in the case of need. In short, the Government of Rwanda has, ever more stridently, sought to impose unacceptable and unworkable constraints on the continuation of UNAMIR. In June a troop reduction from 5,500 to 1,800 was accepted by the Council. It was understood by the members of the Council, by the Secretariat and by troop contributors alike to be below the bare minimum for a credible mission. ... The further reduction of the strength of UNAMIR by one third, which the Council is about to decide, is, we believe, an unfortunate development. It is unfortunate because we have allowed the Government of Rwanda to set its own conditions on the mandate and the structure of the Mission, independent of expert advice as to what is required. It is unfortunate, as well, because the Security Council will be compromising the integrity of a peace-keeping mission and the credibility of the Organization to fulfill the short-term, politically expedient requirement of retaining the Mission in place at all costs. It is particularly unfortunate because UNAMIR will not be able to do the job which it was designed to accomplish. ... The United Nations must not allow itself to be put in the position of supplicant, of pleading with any Government to receive or retain a peace-keeping operation. In this case we believe it would have been preferable to withdraw UNAMIR immediately, as the Secretary-General had indicated in his report he intended to do.²⁷¹

At a subsequent press conference, Boutros Boutros-Ghali took the rare step of distancing himself from the Security Council:

If a Government says that it does not want United Nations forces, you have two choices: either you pull out or you decide to maintain the forces on the basis of Chapter VII. Here is the problem. It is a very simple problem. The whole problem has now been postponed for a period of three months, but we know quite well that we have 2 million refugees in Goma and Bukavu and on the border of the United Republic of Tanzania. There is a crisis of confidence and the refugees do not

²⁶⁷ Letter dated 24 November 1995 from the Minister for Foreign Affairs and Cooperation of Rwanda addressed to the Secretary-General, UN Doc S/1995/1018.

²⁶⁸ UNSC Res 1028 (1995) UN Doc S/RES/1028.

²⁶⁹ UNSC Res 1019 (1995) UN Doc S/RES/1029.

²⁷⁰ Ibid, operative part, paras 5 and 7.

²⁷¹ UN Doc S/PV.3605 of 12 December 1995, 3-4. Canada, a contributor to UNAMIR, had requested to be heard in the Security Council.

want to return. Everybody is afraid that a new genocide may happen, this time not by the Hutu against the Tutsi but by the Tutsi against the Hutu.²⁷²

Kigali reacted with the usual ‘indignation’:

How can [the Secretary-General] suggest that one group of people in Rwanda has the potential to plan another genocide when that group has not been able to recover from repeated massacres and the worst genocide this century – especially since that group has received minimal support from the international community to help it to recover from the trauma of that crime? The impact of this statement undermines the Government of Rwanda by suggesting that there would be another genocide of Tutsi against Hutu.²⁷³

The Council’s main rationale for extending UNAMIR’s mandate on 9 June 1995 and again on 12 December 1995 was that the presence of a UN force would contribute to creating the conditions for a voluntary return of the refugees.²⁷⁴ Zaire and Tanzania, the two countries most affected, were particularly insistent that UNAMIR should stay on, arguing that its departure would send the wrong signals to Rwandan refugees within their borders.²⁷⁵ Donor country ambassadors conveyed similar messages to President Bizimungu and Vice-President Kagame.²⁷⁶ Rwandan leaders, however, countered that the refugees would not come home as long as UNAMIR was there, ‘because refugees would see the situation in Rwanda as artificial.’²⁷⁷ In a last-ditch effort, Washington dispatched Ambassador Richard Bogosian, the newly appointed Coordinator for Rwanda and Burundi. The envoy returned empty handed from his first trip to Kigali. ‘Utterly humorless’ and ‘a no-nonsense group in an extreme sense’ is how he characterized the new Rwandan leaders.²⁷⁸ Their bottom line was that they wanted to be ‘masters in their own house’.²⁷⁹

There is an interesting postscript to the question of extending UNAMIR. On 31 December 1995, a fortnight after the Security Council decision on the mandate, President Julius Nyerere of Tanzania called UN Ambassador Shaharyar Khan to let him know that after a personal demarche, Kagame had changed course and agreed to accept the presence of UNAMIR after 8 March. On 16 January, Nyerere briefed the UN Secretary-General about this development but the latter reacted guardedly because he had not noticed any change in Rwandan policy since Nyerere’s demarche. The Tanzanian President then returned to Kigali to ask if there had been a departure from the commitment given earlier. Kagame assured him that this was not the case. ‘The issue had been discussed in great depth in the RPF High Command,’ and although he himself might not be convinced, ‘since the advice came from President Nyerere, whom the

²⁷² Transcript of a press conference by Secretary-General Boutros Boutros-Ghali held at United Nations headquarters, UN Doc SG/SM/5854, 18 December 1995.

²⁷³ Letter dated 21 December 1995 from the Permanent Representative of Rwanda to the United Nations addressed to the President of the Security Council, UN Doc S/1995/1055.

²⁷⁴ Gribbin (n 17), 90.

²⁷⁵ Khan (n 16), 178.

²⁷⁶ Ibid.

²⁷⁷ Gribbin (n 17), 89.

²⁷⁸ Bogosian (n 17), 144.

²⁷⁹ Gribbin (n 17), 91.

government greatly respected, the government's decision was to extend the mandate.²⁸⁰ But Mwalimu²⁸¹ could have saved himself the effort of travelling to Kigali. The mandate was *not* extended and the last UNAMIR troops unceremoniously withdrew on 19 April 1996. They had been given six weeks after 8 March to pack up and leave *under penalty of arrest*.²⁸²

Rwanda incurred little political costs for its refusal to extend UNAMIR. National Security Advisor Anthony Lake brought another visit to Kigali²⁸³ and donors pledged another \$617 million in aid.²⁸⁴ The White House and the US Congress reportedly were under 'astonishing pressure' from humanitarian NGOs in the months and years after the genocide to play a leadership role and make resources available.²⁸⁵ As Ambassador Rawson pointed out, 'US assistance was tied to benchmarks related to reintegration and reconciliation within Rwanda. But once you launch an assistance program you have a vested interested, you are launched on a special relationship, development initiatives take on their own inertia energy, and we never pulled the plug on any program, so far as I am aware.'²⁸⁶

The Battle for Froduald Karamira²⁸⁷

Although the ICTR had primacy over Rwandan and all other national courts, the Rwandan government was determined to bring a high-level genocide suspect to trial in front of a domestic court in Kigali if and when the opportunity arose. In 1996, Rwandan officials located Froduald Karamira in Mumbai and were successful in convincing India to send him back to Rwanda. However, during a stopover at Addis Ababa airport, Karamira eluded his guards and briefly escaped. The incident came to the attention of the ICTR Prosecutor, Richard Goldstone, who quickly issued a request to the Ethiopian authorities to transfer him to the Tribunal. Attorneys for Karamira also tried to have their client sent to Arusha – where he could not face execution.

Under the ICTR Statute, Ethiopian authorities were legally bound to honor Goldstone's request. Before he heard back from them, however, Goldstone 'got a huge protest from Kigali to say that [Karamira] had been sent from India to Ethiopia at their request'. Rwanda threatened to suspend all cooperation with the Tribunal if he went ahead with his efforts to obtain custody of Karamira and bring him to trial in Arusha. The ICTR Prosecutor backed off and Karamira was put on Rwanda-bound plane six weeks after his escape.²⁸⁸

'Politically I don't think I had any options,' Goldstone later said. 'It would have been the end of our relationship and the end of cooperation'.²⁸⁹ He apparently believed that it was futile to involve the Security Council – or Washington for that matter. The safety of Tribunal staff may

²⁸⁰ Khan (n 16), 181-2.

²⁸¹ Nyerere's nickname in Swahili, meaning 'teacher'.

²⁸² Khan (n 16), 185.

²⁸³ UN Department of Humanitarian Affairs, 'Rwanda Weekly Bulletin', 10-16 May 1996.

²⁸⁴ *Supra* n 203.

²⁸⁵ Gribbin (n 17), 89.

²⁸⁶ Author's interview with Ambassador Rawson.

²⁸⁷ Based on Peskin 2008 (n 13), 172-7 and Cruvellier (n 19), 9-18.

²⁸⁸ After a three day trial in Kigali, Karamira was sentenced to death and executed.

²⁸⁹ Cruvellier (n 19), 13.

also have been a consideration because a few months earlier Rwandan soldiers had stopped a UN vehicle in downtown Kigali and beaten the three ICTR investigators inside.²⁹⁰ As Victor Peskin observed, the outcome of the battle for Karamira helped establish a pattern of Rwandan intimidation and accommodation by the Tribunal.²⁹¹

‘Rescuing’ the Refugees

Earlier we saw that in the final days of the 1994 war, US diplomats had warned Kagame that creating a large refugee population outside Rwanda was not in his interest. Though probably no one understood this better than Kagame, his troops kept up the pressure and pushed 1.4 million Hutu into Zaire. Before long, members of the former Rwandan army and paramilitary Interahamwe created the *Armée pour la libération du Rwanda* or ALiR and started a guerilla war.

With UNAMIR gone, the arms embargo terminated, and \$ 617 million in fresh donor pledges, Kagame did what he had been planning (and saying) for months and moved against ALiR and the refugee camps in eastern Zaire. Between October 1996 and February 1997, the RPF and its proxy, the *Alliance des forces pour la libération du Congo-Zaire* or AFDL, forcibly repatriated hundreds of thousands of refugees and ‘hunted down’²⁹² and killed additional tens of thousands.²⁹³ Refugees were pursued and massacred as far as Kisangani (600 km) and Mbandaka (1,500 km).

At a press conference in Kigali, Rwandan Foreign Minister Anastase Gasana strongly denied that Rwandan troops were fighting in Zaire alongside the AFDL. ‘In no way is Rwanda involved in this,’ Gasana assured foreign diplomats and journalists.²⁹⁴ A letter from the Permanent Representative of Rwanda to the UN Security Council accused the Zairian government – without any irony – of waging a ‘disinformation crusade’ and went on to say that the Council ‘might well be advised that the crisis in eastern Zaire should be treated as purely internal to Zaire’.²⁹⁵

As mentioned above, Boutros Boutros-Ghali had provoked the ire of the Rwandan government in December 1995 by suggesting that ‘a new genocide may happen, this time ... by the Tutsi against the Hutu.’ An investigative team appointed by his successor Kofi Annan found that

²⁹⁰ Lawyers Committee for Human Rights, *Prosecuting Genocide in Rwanda: a Lawyers Committee Report on the ICTR and National Trials* (July 1997), part VI.

²⁹¹ Peskin 2008 (n 13), 172.

²⁹² UN Doc S/1998/581 of 29 June 1998, 22, para 81.

²⁹³ The actual number may never be known. K Emizet, ‘The Massacre of Refugees in Congo: a Case of UN Peacekeeping Failure and International Law’ (2000) 38 *Journal of Modern African Studies* 163 estimates that 232,000 were killed. Robert Gribbin and Richard Bogosian maintain a much lower number (\pm 30,000). See Gribbin (n 16), 198-9; Gribbin (n 17), 101; and Bogosian (n 17), 153-5. See also ‘Refugees in Easter Zaire and Rwanda’, Hearing before by the Subcommittee on International Operations and Human Rights of the US House of Representatives, 4 December 1996.

²⁹⁴ ‘As Fighting in Zaire Spreads, Rwanda Rules Out Talks’, *New York Times*, 29 October 1996.

²⁹⁵ Letter dated 4 February 1997 from the Permanent Representative of Rwanda to the United Nations addressed to the President of the Security Council, S/1997/109 of 5 February 1997, 4.

The attacks on camps in the North Kivu in 1996 were intended, in part, to force the residents to return to Rwanda, but the circumstances surrounding attacks on camps in the interior of the country in 1997, including the ‘mopping up’ operations carried out after such attacks and the massacre of persons trying to cross the border into the Republic of Congo, reveal the intent to eliminate those Rwandan Hutus who had remained in Zaire. One possible interpretation of this phase of the operations carried out by the AFDL with Rwandan support is that a decision was taken to eliminate this part of the Hutu ethnic group as such. If proved, this would constitute genocide.²⁹⁶

In a complete U-turn, Rwanda’s Representative to the Security Council conceded that Rwandan troops had crossed into Zaire but rejected the report as ‘incomplete, biased and totally misleading’. His government, he stated, ‘categorically denies and resents the insinuation in the report that Rwandan Government soldiers committed any human rights violations against a section of its own people or anyone else, in the then Zaire.’ Quite the contrary, these soldiers had *rescued* Rwandans abroad: ‘The Rwandan refugees in the then Zaire had been held hostage by the ex-FAR [Forces Armées Rwandaises], Interahamwe militia and the FAZ [Forces Armées Zairoises]. The United Nations was well aware of this. It was the duty of the Government of Rwanda to rescue its people, and this was successfully done’.²⁹⁷ What he did not say was that in November-December 1996 his government had resisted²⁹⁸ the UN Secretary-General’s plan²⁹⁹ to deploy in eastern Zaire a multilateral force to ensure the safety of the refugees then being ‘rescued’ by Rwandan soldiers.

The team appointed by Annan proposed expanding the jurisdiction of the ICTR to include the crimes in eastern Congo.³⁰⁰ However, chances that the Security Council would amend the ICTR Statute in that sense were slim as the team had not been mandated by the Council.

There remains controversy about whether or not Washington had given a green light for the invasion. It is known that the issue was on the agenda of a meeting on 8 August 1996 at the Pentagon between Paul Kagame and Secretary of Defense William Perry. One of the talking points for the meeting read as follows: ‘Advise that RPA cross-border incursions into eastern Zaire would generate negative reactions here.’³⁰¹ The wording ‘advise’ rather than ‘urge’ – like in other talking points – and ‘reactions’ rather than ‘consequences’ hardly sounds like a warning.

²⁹⁶ Report of the Secretary-General’s Investigative Team charged with investigating serious violations of human rights and international humanitarian law in the Democratic Republic of the Congo, UN Doc S/1998/581 of 29 June 1998, 7. See also Roberto Garretón, Special Rapporteur of UN Human Rights Commission E/CN.4/1999/31, 8 February 1999, para 141.

²⁹⁷ Letter dated 25 June 1998 from the Permanent Representative of Rwanda to the United Nations addressed to the Secretary-General, UN Doc S/1998/583 of 29 June 1998.

²⁹⁸ ‘Resisted’ is my interpretation of what Ambassador Bogosian called ‘not completely negative’ in ‘Refugees in Easter Zaire and Rwanda’, Hearing before the Subcommittee on International Operations and Human Rights of the US House of Representatives, 4 December 1996, 9.

²⁹⁹ Letter dated 7 November 1996 from the Secretary-General addressed to the President of the Security Council, UN Doc S/1996/916.

³⁰⁰ *Supra* n 276, 26.

³⁰¹ **Document 65** Memorandum for Secretary of Defense and Deputy Secretary of Defense, 2 August 1996, ‘Your Meeting with Rwandan Vice President Kagame’, 1.

According to Ambassador Robert Gribbin, Perry thought he had laid down a clear marker that unilateral action was ‘not advisable’ while his Rwandan visitor mistakenly thought he got an okay. ‘Each went away happy,’ Gribbin noted.³⁰² Perry’s neither yes nor no was the beginning of the Congolese drama, although the question remains whether a ‘no’ would have stopped Kagame. He may be a partner of the US, but he is not a client.

The Security Council took notice of the report and issued a Presidential Statement – not a resolution – calling on the Governments of the Democratic Republic of the Congo and Rwanda ‘to investigate without delay, in their respective countries, the allegations contained in the report of the Investigative Team and to bring to justice any persons found to have been involved in these or other massacres, atrocities and violations of international humanitarian law.’³⁰³ Thus the Rwandan government and the new pro-Rwanda government in Kinshasa were expected to carry out an investigation of themselves. The timid response of the Security Council was an unmistakable signal to the ICTR prosecutor that it would be futile to confront Kigali over war crimes and crimes against humanity committed in 1994.

Welcoming an Old Acquaintance

Relations between US Ambassador David Rawson and Paul Kagame had been uneasy (see above). In January 1996, Rawson was replaced by Robert Gribbin who had been Deputy Chief of Mission in Kampala from 1989 to 1992. As the person responsible for US military assistance programs to Uganda, Gribbin had a hand in sending Kagame to the US for training in the context of IMET (see above).³⁰⁴ ‘Rwanda’s new leaders were glad to see me’, Gribbin wrote, and ‘we reminisced about old times in Kampala’.³⁰⁵ The new Ambassador did not disappoint them. From then on the US Embassy stood firmly behind the government in Kigali. As Peter Rosenblum notes:

Ambassador Robert Gribbin and his deputy, Peter Whaley, produced a steady stream of reports supporting the Rwandan perspective on the war [in Zaire-Congo]: no Rwandan troops, no refugee problem, no massacres of Hutus (or at least, “no proof”). Meanwhile, the [US] embassy in Kinshasa was reporting the war as a foreign invasion. ... Ambassador Dan Simpson, in Kinshasa, lost his temper and officially lashed out at the reports coming out of Rwanda. ... [But] Washington simply backed the embassy in Rwanda and did little to distinguish its position from Rwanda’s.³⁰⁶

After the operation in Zaire-Congo, Kagame embarrassed Ambassador Gribbin by boasting in a startling interview with the *Washington Post* that his government had *planned and directed* the

³⁰² Gribbin (n 16) 175-6.

³⁰³ UN Doc S/PRST/1998/20 of 13 July 1998.

³⁰⁴ Gribbin (n 16), 59-61.

³⁰⁵ Ibid, 97. Ambassador Gribbin is open about his sympathy for Paul Kagame, as shown by a photograph on his website <[www.http://regribbin.com](http://regribbin.com)>.

³⁰⁶ P Rosenblum, ‘Irrational Exuberance: The Clinton Administration in Africa’ (2002) 101 *Current History* 195, 201. See also ‘Lost in Africa: How the US Landed on Sidelines in Zaire’, *Wall Street Journal*, 22 April 1997.

rebellion that toppled Mobutu and that Rwandan troops had led the rebel forces.³⁰⁷ He also praised the United States for ‘taking the right decisions to let [Rwanda] proceed.’³⁰⁸

Failure and Redemption

Personnel changes of more significance took place in early 1997. At the United Nations in New York, Kofi Annan succeeded Secretary-General Boutros Boutros-Ghali. Before that Annan had headed the UN Department of Peacekeeping Operations (DPKO). On 11 January 1994, DPKO received Roméo Dallaire’s famous ‘genocide fax’ requesting permission to raid Hutu arms caches.³⁰⁹ Annan’s deputy responded – probably correctly – that the operation contemplated in the fax could not be allowed under UNAMIR’s mandate. He instructed Dallaire to share the information with President Habyarimana and the French and US Ambassadors in Kigali. In a ‘mission of healing’ to Rwanda in May 1998 Annan acknowledged failure: ‘Looking back now, we see the signs which then were not recognized. Now we know that what we did was not nearly enough ... We will not deny that, in their greatest hour of need, the world failed the people of Rwanda.’³¹⁰ A UN Secretary-General wearing sackcloth and ashes before the Rwandan parliament could hardly be expected to press the ICTR on RPF accountability.

In Washington too, several officials mentioned earlier moved up to higher positions at the start of President Clinton’s second term in early 1997. Madeline Albright became Secretary of State, Susan Rice Assistant Secretary of State for African Affairs, and David Scheffer Ambassador-at-Large for War Crimes Issues. In her previous position of permanent representative to the UN, Albright had endorsed the withdrawal of most of UNAMIR in April 1994. She later wrote that ‘My deepest regret from my years in public service is the failure of the United States and the international community to act sooner to halt these crimes.’³¹¹ Susan Rice had been responsible for advising the US National Security Council on peacekeeping and international organizations. She had recommended in 1994 to leave a token UNAMIR behind.³¹² In an interview many years later, Rice said that she was too ‘junior’ at the time to have affected decision-making, but that ‘everyone who lived through that feels profoundly remorseful and bothered by it.’³¹³ David Scheffer’s ‘sin’ was that he had cleared the instruction cable to Madeline Albright about the UNAMIR drawdown.³¹⁴ He later wrote: ‘I cannot justify why I did not refuse clearance at that critical moment.’³¹⁵ The fact that Albright, Rice, and Scheffer – like Kofi Annan – were tainted by the Rwanda debacle undermined their political and moral authority to push for RPF accountability, had they ever wanted to.

³⁰⁷ ‘Rwandans Led Revolt in Congo’, *Washington Post*, 9 July 1997.

³⁰⁸ *Ibid.*

³⁰⁹ P Gourevitch, ‘The Genocide Fax: The United Nations was warned about Rwanda. Did anyone care?’ *The New Yorker*, 11 May 1998, 42-6.

³¹⁰ Press Release, UN Doc SG/SM/6552 AFR/56 of 6 May 1998.

³¹¹ M Albright, *Madam Secretary: A Memoir* (Miramax Books, 2003) 147.

³¹² Scheffer (n 16), 54

³¹³ M Hirsh, ‘Susan Rice: Benghazi May Be Least of Her Problems’, *National Journal*, 16 November 2012 (online).

³¹⁴ Scheffer (n 16), 55.

³¹⁵ *Ibid.*, 57.

‘New Generation of African Leaders’

Madeline Albright and Susan Rice became the architects of a new US Africa policy during Clinton’s second term. They believed in an ‘African renaissance’ and saw a ‘new generation of African leaders’ comprising Yoweri Museveni (Uganda), Meles Zenawi (Ethiopia), Isaias Afwerki (Eritrea), Laurent Kabila (Democratic Republic of Congo), and Paul Kagame (although he was *not* his country’s president). ‘Africa’s best new leaders have brought a new spirit of hope and accomplishment to their countries and that spirit is sweeping across the continent’, Albright said on her 1997 Africa trip.³¹⁶ Rice explained in a hearing before the US Senate Subcommittee on African Affairs that the US would move from neocolonialism to partnership in Africa:

This is a pivotal time in both African and American history. Our relationship with the continent is being recast from one of indifference or dependency to one of genuine partnership based on mutual respect and mutual interest. There is a new interest in individual freedom and a movement away from repressive, one-party systems. *It is with this new generation of Africans that we seek a dynamic, long-term partnership for the 21st Century.*³¹⁷

However, Senator John Ashcroft, the Chairman of the Subcommittee, expressed strong reservations:

Such effusive statements do not correspond to the political realities in the countries of these new leaders. Without more cautious pronouncements from senior administration officials, I fear we will wake up in several years and find a new generation of African leaders has become an old generation of African strong men.³¹⁸

Democracy, human rights, and accountability became the enemies of the new policy which focused on individual leaders rather than institutions.³¹⁹ For Albright and in particular Rice, it was impossible to reverse course vis-à-vis Kagame without admitting a grave error of judgment. What was intended to be a story of peacemaking and economic development became instead a story of never-ending war, unimaginable suffering, and – as feared by Ashcroft – the remaking of old African despots.³²⁰

³¹⁶ Secretary of State Madeleine K. Albright's Remarks at the Economic Commission for Africa December 9, 1997, Addis Ababa, Ethiopia As released by the Office of the Spokesman U.S. Department of State, available at <http://www.africa.upenn.edu/Urgent_Action/apic_111797.html>.

³¹⁷ US Senate Hearing 105-559, 12 March 1998, ‘Democracy in Africa: The New Generation of African Leaders’ (emphasis added), available at <<http://www.gpo.gov/fdsys/pkg/CHRG-105shrg48230/html/CHRG-105shrg48230.htm>>.

³¹⁸ Ibid.

³¹⁹ Cf Hirsh (n 313). In a 2009 speech to the Parliament of Ghana, US President Barack Obama implicitly took swipe at this policy when he stated that ‘Africa doesn’t need strongmen, it needs strong institutions’. The White House – Office of the Press Secretary, July 11, 2009, ‘Remarks by the President to the Ghanaian Parliament.’

³²⁰ For a critique of nearly two decades of Kagame rule, see F Reyntjens, *Political Governance in Post-Genocide Rwanda* (Cambridge: Cambridge University Press: 2013).

Opening First Trial and Tribunal Overhaul

The first trial in Arusha of a Rwandan *génocidaire* opened on 9 January 1997. (To make a point, Rwanda had started its own genocide trials in December.) Thus a little more than two years after its legal establishment, the Tribunal finally was operational, or so it seemed. The following month, the UN Office of Internal Oversight Services (OIOS) published a damaging report:

In reviews of the records of the Tribunal and interviews of present and former staff members, both United Nations-assigned and seconded, OIOS became aware of serious operational deficiencies in the management of the Tribunal. Such deficiencies have developed virtually from its inception and continued through November 1996 when OIOS conducted this review at Kigali, Arusha, United Republic of Tanzania and at United Nations Headquarters.³²¹

The report was grist to Kigali and further weakened Kofi Annan who had just become Secretary-General. The standing of the ICTR Prosecutor was also hurt. The report found ‘administrative, leadership and operational problems’ in the Office of the Prosecutor in Kigali. ‘Functions were hampered by lack of experienced staff as well as lack of vehicles, computers and other office equipment and supplies. ... Prosecution strategy deficiencies were noted.’³²² This was a most unfortunate start for Louise Arbour who had succeeded Richard Goldstone a few months earlier. As Thierry Cruvellier so aptly put it, the ICTR was *un tribunal de vaincus* (a tribunal of losers),³²³ and Kigali never failed to exploit this moral handicap.

Hourigan Story

One of the most perplexing stories of Louise Arbour’s tenure at the ICTR – and Kofi Annan’s time as UN Secretary-General – comes from Michael Hourigan, a former ICTR investigator. Soon after his arrival at the Office of the Prosecutor in Kigali in mid 1996, this former Crown Prosecutor with the Director of Public Prosecutions in Adelaide (Australia) was made leader of a team of twenty investigators. Chief Prosecutor Richard Goldstone, Deputy Prosecutor Honoré Rakotomana, and Director of Investigations Alphonse Breaux instructed Hourigan’s so-called ‘national team’ to investigate four matters, including the assassination of President Habyarimana on 6 April 1994. It should be noted that the Security Council in 1994 repeatedly had invited the UN Secretary-General to ‘collect information on the responsibility for the tragic incident that resulted in the deaths of the Presidents of Rwanda and Burundi’.³²⁴ The following paragraphs are taken from a sworn affidavit by Hourigan submitted by the defense in the *Bagosora* case:³²⁵

5. Together with my investigators we conducted investigations into these matters throughout the next year. During the course of 1996 I was called upon to brief Judge Goldstone and then his

³²¹ UN Office of Internal Oversight Services, Audit and Investigation of the International Criminal Tribunal for Rwanda, UN Doc A/51/789 of 6 February 1997 para 1 (summary).

³²² *Ibid.*, para 3 (summary).

³²³ T Cruvellier, *Le tribunal des vaincus: un Nuremberg pour le Rwanda?* (Paris: Calmann-Lévy, 2006). This is the original French version of Cruvellier (n 19).

³²⁴ UNSC Res 918 (1994) UN Doc S/RES/918 of 17 May 1994, para 12; Statement by the President of the Security Council, UN Doc S/PRST/1994/16 of 7 April 1994, para 1; UNSC Res 912 (1994) UN Doc S/RES/912 of 21 April 1994, para 2 operative part.

³²⁵ **Document 68** ICTR-98-41-T, Affidavit by Michael Andrew Hourigan, Exhibit # DNT 365.

replacement Judge Louise Arbour and other senior prosecutors on the progress of our investigations into Bagosora, Nsengiyumva, the Presidential Guard and the rocket attack upon President Habyarimana's aircraft.

6. At no time did Judge Goldstone, Judge Arbour or any other member of the ICTR ever indicate to me that our investigations into the downing of the President Habyrimana's aircraft were outside the ICTR mandate. On the contrary, it was made clear to me that our investigations into the rocket attack upon the President's aircraft was an act of international terrorism which clearly fell within the ICTR statute Article 4 Violations of Article 3 common to the Geneva Conventions.

...

7. I am pleased to say that the National Team was successful and we achieved the following results:

7.1. Located, arrested and charged Colonel Theoneste Bagosora with Genocide and Crimes Against Humanity;

7.2 ...

7.3 ...

7.4. In late January or early February 1997 members of the National Team were approached by three (3) informants (either former or serving member of the R.P.F.) claiming direct involvement in the 1994 fatal rocket attack upon the President's aircraft. Their evidence specifically implicated the direct involvement of President Paul Kagame, members of his administration and military. The informants also advised that the Kagame administration was actively involved in covert operations aimed at murdering high profile expatriate Rwandans – once such murder was the death of Seth Sedashonga in Nairobi.

8. With respect to the highly sensitive information from the three informants regarding the plane crash I immediately informed my Commander Jim Lyons. My Director Mr. Alphonse Breau was out of the country and I arranged for him to be told by telephone.

Since Hourigan (rightly) suspected that the Rwandan government was eavesdropping on ICTR communications,³²⁶ he arranged for an urgent 'secure' telephone call between him at the US Embassy in Kigali and Louise Arbour at the US Embassy in The Hague. Hourigan:

10. Commander Jim Lyons and I attended at the US Embassy in Kigali and I made a call to Judge Arbour at the US Embassy in the Hague using an encrypted ('secure') STU III telephone. I informed Judge Arbour in considerable detail about the information implicating President Kagame. She was excited by the break through and advised me that the information corroborated some other information she had just learnt from Alison Des Forge the week before. At no time did she suggest that our investigations were improper. On the contrary, I would describe her mood as upbeat and excited that at last we were making significant progress into the events surrounding the plane crash.

11. Judge Arbour was concerned about the safety of the informants and my men. I advised her that the informants' identities had been kept secure and if she so directed me I would arrange for my investigators involved in the plane crash to leave Rwanda. She directed that my investigators should leave and I agreed to have them travel from the country on suitable inquiries in Nairobi. As for me I declined to leave Rwanda and advised her that I wanted to stay with my team and

³²⁶ Supra n 164, 165, and 166.

assist them complete other important investigations. She consented to this but asked me to keep in touch with her while she considered what to do with this sensitive information.

12. During the next week I was directed by senior members of the UN in Kigali that I was required to travel to the ICTY in the Hague in order to meet with Judge Arbour and brief her on our investigations in the rocket attack upon President Habyarimana's aircraft.

13. Some days later I was approached at the ICTR headquarters in Kigali by Mr. Michael Hall, UN Deputy Security (NY). He advised me that I would be flying to Arusha the next day on the ICTR aircraft and from there board an international KLM flight to Amsterdam. Mr. Hall asked me to give him any information that I had on air crash and he would convey it to the airport in a UN diplomatic pouch. I then gave Mr. Hall a single floppy disc containing a memorandum I had prepared for Judge Arbour.

14. The next day Mr. Hall conveyed me to the Kigali airport where I checked in for the UN flight. There Mr. Hall and I were told that the flight was overbooked and that I could not [go] to Arusha. Mr. Hall became agitated and told the UN flight officer that the UN Secretary General Mr. Kofi Annan had personally ordered my attendance in Arusha for an international connection the next day. As a consequence I was given a seat on the UN flight and flew to Arusha.

15. The next day I flew to the Hague and over-nighted in a hotel near the ICTY [International Criminal Tribunal for the former Yugoslavia].

16. The following morning I met with Mr. Al Breaux and briefed him on the information concerning the plane crash. Together we discussed forming a special ICTR investigations unit based outside of Kigali to investigate the plane crash.

17. Following breakfast Mr. Breaux and I attended at the ICTY and met with Judge Arbour. Also present was Mr. Mohammed Othman, Acting [Deputy] ICTR Prosecutor.

18. I briefed Judge Arbour on the informants and their information regarding the involvement of President Kagame and members of the RPF in the downing of President Habyarimana's aircraft.

19. I presented her with a copy of a memo I had prepared entitled '*Secret National Team Inquiry – Internal Memorandum*' and this document which is undated is attached to this statement. This document detailed the information provided by the three informants.

20. To my surprise Judge Arbour was aggressive and questioned me about the source of the information regarding the informants and the quality and potential reliability of their information. I advised her that the information was given to me by members from my team - the National Team. Those members were Amadou Deme and Peter Dnistriansky. I advised her that I held both investigators in the highest regard. I did say that I was not able to provide any advice as to the reliability of their information as it had not been tested. However, I did suggest that it was very detailed and this in itself meant that it could be subjected to considerable forensic examination.

21. Mr. Al Breaux also expressed his strong view that both Amadou Deme and Peter Dnistriansky were highly effective and reliable men.

22. Judge Arbour then advised me that the National Team investigation was at an end because in her view it was not in our mandate. She suggested that the ICTR's mandate only extended to events within the genocide, which in her view began 'after' the plane crash.

23. I was astounded at this statement. I pointed to the temporal mandate of the ICTR being 1 January 1994 until 31 December 1994 and this clearly covered the time of the plane crash. I also addressed the ‘terrorism’ and ‘murder’ provisions of the ICTR statute.

24. More particularly I also told her that this was the first time she had ever suggested that this was outside the ICTR mandate. I reminded her that I had personally briefed her before about our investigations into the plane crash and that she had never ever expressed a view that this matter should be part of an ICTR inquiry.

25. I expressed my strong view to her that these Rwandan informants were courageous and were deserving of our protection. I cautioned her that the UN had a history of abandoning informants in Rwanda and I specifically reminded her of the UN’s abandonment of Jean Pierre Turatsinze in 1994.

26. Judge then became hostile and asked me if I was challenging her authority to direct to end our investigations into the plane crash.

27. I told her that I was not questioning her authority only her judgement. I informed her that I was her servant and I would obey her direction.

28 Judge Arbour then asked me if the memo that I had prepared for her was the only copy. I told her that it was and she said she was pleased to hear that and placed in her office filing cabinet.

29. She then asked me to leave the room.

30 I was extremely concerned at Judge Arbour’s decision and felt that it was wrong both in law and policy.

31. I returned to Kigali and a short time later resigned from the ICTR.

Louise Arbour declined to comment on the substance of the affidavit for this article.³²⁷ Ambassador Gribbin confirmed that ICTR officials occasionally used his Embassy’s secure line but added that ‘we did not have the capacity [to monitor calls]’.³²⁸ Michael Hourigan speculated that ‘unknown persons from within the UN leadership and possibly elsewhere’ pressured Arbour to end his team’s investigation into the assassination of President Habyarimana.³²⁹ At the ICTY Louise Arbour was bold enough to indict – in the wake of a NATO bombing campaign – Yugoslav President Slobodan Milosevic. At the ICTR she declined to resolve one of the great enigmas of recent African history. The new international inquiry into the death of UN Secretary-General Dag Hammarskjöld in 1961³³⁰ holds hope that it is never too late for the truth to emerge.

³²⁷ Email exchanges with Arbour’s assistant at the International Crisis Group. In 2004 Kofi Annan nominated Arbour to become UN High Commissioner for Human Rights.

³²⁸ Author’s telephone interview with Ambassador Gribbin. I am willing to believe that Embassy Kigali did not have the capacity, but not Embassy The Hague or US intelligence services. One can imagine their curiosity when the Chief Prosecutor of the ICTR asked permission to use the Embassy’s ‘secure’ telephone line for a briefing by one of her investigators in Kigali.

³²⁹ **Document 68**, supra (n 315), para 36.

³³⁰ ‘New Inquiry into the Death of UN Secretary-General Dag Hammarskjöld 1961’, Press statement by the Enabling Committee on the launch of the inquiry, 19 July 2012, available at

The upcoming twentieth anniversary of the assassination of President Habyarimana should be seized as an opportunity to do what the ICTR was prevented from doing.

III. CONCLUSION

Investigating and prosecuting the RPF would have been difficult under any circumstances. Already during the conflict in 1994, the RPF successfully spun a simplistic, self-serving narrative of ‘victims-*rescapés*-Tutsi’, ‘perpetrators-*génocidaires*-Hutu’, ‘bystanders-cowards-United Nations’, and ‘liberators-saviors-RPF’. Who would have dared to question the actions of an army that did what the international community failed to do? Even then, the RPF had won a decisive military victory and was able to quickly establish total control over the Rwandan territory and population. So access to crime scenes and witnesses would have been a major problem. Moreover, being located in Kigali – rather than in Arusha or The Hague – the Office of the Prosecutor (OTP) was, in a way, a hostage of the Rwandan government. The threat of interference or being shut down was always looming. It is significant that the agreement with Tanzania about ICTR headquarters was signed in 1996 but that it took Rwanda and the United Nations more than four years to work out a Memorandum of Understanding regarding the OTP.³³¹ Moreover, the Memorandum was signed pending the conclusion of a comprehensive agreement which the parties were negotiating³³² but such an agreement never materialized.

These psychological and practical obstacles alone do not explain RPF impunity. The arrest and extradition of Slobodan Milosevic, Radovan Karadzic, and Ratko Mladic to the International Criminal Tribunal for the former Yugoslavia, of Charles Taylor to the Special Court for Sierra Leone, and of Lockerbie suspects Ali Mohmet al-Megrahi and Lamin Khalifah Fhimah to a Scottish court sitting in the Netherlands show that with patience and the necessary political support anybody can be brought to justice. However, these individuals did not have any friends among the friends of the tribunals they eventually faced. In contrast, the friends of the ‘new’ Rwanda were also the friends of the ICTR. Paul Kagame frequented the same diplomatic circles as the successive ICTR Chief Prosecutors and the latter could not have failed to notice the warm welcome he received. Neither could the Prosecutors have ignored the expiatory pilgrimages to Kigali of foreign leaders and dignitaries, or their conspicuous silence whenever troubling news came from Rwanda or eastern Congo.

In the weeks and months after the genocide the United States almost unwittingly emerged as one of the best friends of the ‘new’ Rwanda. Before April 1994, Washington deliberately had remained on the sideline in the Rwanda crisis. Because it had not thwarted the RPF’s quest for power and because it was *the* superpower at the time (and perhaps also because it had prevented Security Council action), the US was an obvious potential partner for the new Rwandan government. However, Washington, not Kigali, took the initiative ‘to be friends’ and it was Washington that implored the Rwandan government to ‘help us help you’. This put Paul Kagame

<<http://www.dhf.uu.se/wordpress/wp-content/uploads/2012/08/Dag-Hammarskjold-death-new-inquiry-17-July-20.16.pdf>>.

³³¹ Available at <http://untreaty.un.org/unts/144078_158780/7/9/1548.pdf>.

³³² See ICTR Annual Report (1999), UN Doc A/54/315 and S/1999/943 of 7 September 1999, paras 117-9.

in a position to set the terms of the emerging partnership. Establishing and sponsoring an international tribunal to prosecute and punish *génocidaires* was one of the ways Washington wanted to help the new government. Rwanda's ultimate 'no' vote was not only a signal that national (RPF) interests would trump cooperation with the Tribunal but also that its friendship with the US should not be taken for granted.

Perhaps it was this brazenness and Kagame's military 'genius' that triggered the interest of the Pentagon in a country which before the genocide was hardly on its map. But there was more. In April 1994, the Department of Defense and the National Security Council had prevailed in the debate within the US government about expanding or withdrawing UNAMIR. Pentagon chief William Perry and the National Security Advisor Anthony Lake possibly wanted to make up for having been bystanders to genocide. Before long, the US and Rwanda were launched on a special relationship in which human rights took a second seat to 'security' concerns. The start of the first trial in Arusha in early 1997 coincided with important changes in Washington. Several US policy makers tainted by the Rwandan debacle were promoted. They adopted in their new positions at top of the State Department an Africa policy aimed at fostering 'a new generation of African leaders', which included Kagame. Without much effort from his side, the former rebel leader enjoyed by early 1997 the confidence (and protection) of the Pentagon, the National Security Council, and the Department of State. The result was victor's justice in Arusha – and seemingly endless war in neighboring Congo.

IV. POSTSCRIPT

As the final ICTR trial concluded in the summer of 2012, fighting in eastern Congo flared up again. A commission of experts mandated by the UN Security Council found compelling evidence of direct Rwandan support to armed groups operating there, including the recently established M23.³³³ Susan Rice, now US Ambassador to the United Nations, attempted to suppress the commission's report, insisting that the Rwandan government be given a right of reply first.³³⁴ When the document was eventually released, a defiant Paul Kagame ridiculed the 'experts'³³⁵ and twittered that 'the actual truth will alwz (*sic*) finally prevail.'³³⁶ (Many months later, when pressed on the issue at the end of a long interview by Jeffrey Gettleman of the *New York Times*, Kagame admitted that some Rwandan soldiers were indeed fighting inside Congo, but he insisted they were deserters.)³³⁷

For the first time since 1994, Washington suspended \$200,000 military aid to Rwanda³³⁸ (or ±1% of total US annual aid). It had to, because under the Consolidated Appropriations Act 2012,

³³³ Addendum to the Interim Report of the Group of Experts on the Democratic Republic of the Congo (S/2012/348) Concerning Violations of the Arms Embargo and Sanctions Regime by the Government of Rwanda, UN Doc S/2012/348/Add.1 of 27 June 2012.

³³⁴ J Stearns, 'Rwandan Ghosts: Benghazi isn't the biggest blight on Susan Rice's record', *Foreign Policy*, 29 November 2012 (online).

³³⁵ BBC HARDtalk, Interview with Paul Kagame, 12 July 2012, available on *YouTube*.

³³⁶ *Supra* n 3.

³³⁷ 'The Global Elite's Favorite Strongman', *New York Times*, 4 September 2013.

³³⁸ 'U.S. Cutting Military Aid to Rwanda', *New York Times*, 21 July 2013.

‘Funds appropriated by this Act under the heading “Foreign Military Financing Program” may be made available for assistance for Rwanda or Uganda unless the Secretary of State has credible information that the Government of Rwanda or the Government of Uganda is providing political, military or financial support to armed groups in the Democratic Republic of Congo (DRC) that are involved in the illegal exploitation of minerals out of the DRC or have violated human rights.’³³⁹

Shortly after Kagame’s mocking tweet, the White House published the ‘readout’ of a telephone call to the Rwandan leader:

President Obama underscored that any support to the rebel group M23 is inconsistent with Rwanda’s desire for stability and peace. President Obama emphasized to President Kagame the importance of *permanently ending all support to armed groups in the DRC*, abiding by the recent commitments he made in Kampala along with Presidents Kabila and Museveni, and reaching a transparent and credible political agreement that includes *an end to impunity for M23 commanders and others who have committed serious human rights abuses*.³⁴⁰

President Obama’s action was long overdue because as a US Senator he had sponsored the Democratic Republic of the Congo Relief, Security, and Democracy Promotion Act of 2006, which states that it is the policy of the United States ‘to engage with governments working to promote peace and security throughout the [DRC] and hold accountable individuals, entities, and countries working to destabilize the country’.³⁴¹

On 15 January 2013, Obama signed into law the Department of State Rewards Program Update and Technical Corrections Act of 2012. An accompanying statement specified that

the legislation could be used to enhance ongoing regional efforts to counter the Lord’s Resistance Army, which has terrorized civilians across central Africa for decades and whose leaders have been charged by the International Criminal Court with crimes against humanity and war crimes. *It could also be used to combat impunity for commanders of other armed groups in the Democratic Republic of the Congo who face similar charges at the International Criminal Court*.³⁴²

Two months later, M23 Commander Bosco Ntaganda – wanted by the ICC since 2006 – ‘surrendered’ to the US Embassy in Kigali and requested to be transferred to the International Criminal Court in The Hague.³⁴³ When I asked a senior US diplomat who had just returned from

³³⁹ Sec. 7043 (a) (1) of the Consolidated Appropriations Act 2012, Public Law 112-74–Dec. 23, 2011.

³⁴⁰ The White House – Office of the Press Secretary, 18 December 2012, ‘Readout of the President’s Call with President Kagame’ (emphasis added). See also the interview with the US Ambassador-at-Large for Global Criminal Justice, Stephen Rapp, in *Le Potentiel* (online), ‘Des conflits récurrents dans l’Est de la RDC sont un échec pour tout le monde’ (Kinshasa, 23 May 2013).

³⁴¹ US Public Law 109-456, Sec. 101 (14).

³⁴² ‘Enhancement of State Department Rewards Programs’, Media Note, Office of the Spokesperson, Washington, DC, January 16, 2013.

³⁴³ ‘Why did infamous war criminal Bosco Ntaganda just surrender at a U.S. embassy?’ *Washington Post*, 18 March 2013; ‘Bosco Ntaganda: A Surprising Surrender’, *Economist*, 19 March 2013.

a trip to Kigali and Kinshasa whether this stunning development meant that the US was rethinking its relationship with Rwanda, he intimated – on condition of anonymity – that ‘certain personalities’ in Washington stand in the way of a policy change.³⁴⁴ The following week Susan Rice became President’s Obama new National Security Advisor.

³⁴⁴ Author’s interview, The Hague 27 May 2013.