

**PREDRAG RAOSAVLJEVIC**

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**BOSNIA AND RWANDA - HISTORICAL AND LEGAL COMPARISON OF THE  
TRAGEDY**

## **Introduction**

In the early 1990s, in the wake of 21<sup>st</sup> century, the public of the world was confronted with two events unremembered since the horrors of WWII and German Holocaust against its own citizens. Genocides that occurred on territory of former Yugoslavia between 1991 and 1995 and similar events in Rwanda in 1994 terrified civilized world which lost its tolerance toward this grief violation of basic human values. Two ad-hoc Tribunals were promptly established and this gave a necessary impetus for establishment of permanent criminal court with authority over crimes that represented a concern to a humanity as whole. While the exact number of the victims is still disputed, while the causes for both tragedies are bounced from one side to another, and the reaction and involvement of international community in these events was all but straightforward, there are more common elements to both tragedies than it may seem. Many important conclusions can be drawn by analyzing and comparing these two events.

The roots of the hatred and the ferocity of the clash can largely be attributed to foreign invaders during course of history. Artificial division between same groups of people was encouraged according to the old Roman maxim "*divide et impera*"(divide and rule). While the Ottoman Turks pursuing their policy of indirect rule, reinforced the conversion of Slavic people of Bosnia ( Serbs, partly Croats ) to Islam, same can be observed in Rwanda during colonial period in the first half of twentieth century; Catholic church and Belgian colonizers strengthened ethnic and socio-economic divisions between Tutsi and Hutu. It is exactly between these groups of people where the horrors of genocide took the most frantic appearance. In both cases there were more than two participants in the conflict; Croat troops in Bosnia and Uganda troops and Twa tribes in

Rwanda. However, the horrors were perpetrated between the brothers; Serbs and Muslims and Hutu against Tutsies.

Although the response of international community was somewhat uneven in dealing with these two events, establishment of the ad hoc Tribunals was a major step forward in the development of international criminal law. Just as statutes and practice of the Tribunals serve as a evidence of this relatively new branch of law, different approaches and standards to each of these tragedies points towards the main concerns and ambiguities, the practitioners and scholars of international criminal law are confronted with. Finally, in the process of reconciliation and discovery of truth, Rwandan tribes, from hills of Sub-Saharan Africa, are progressing much faster and justifiably deserving more respect from international community than quarreled tribes in the heart of Europe. Also, Rwandan judiciary has proved as more professional and capable of impartially delivering justice. In response, many of the trial have been deferred by the Arusha Tribunal to the domestic courts, a status of which courts of Bosnia, Serbia and Croatia can only dream of.<sup>1</sup>

### **Beginnings of the tragedy**

On February 29 and March 1, 1992 a following referendum was held in Bosnia and Herzegovina:

“Are you in favor of a sovereign and independent Bosnia-Herzegovina, a state of equal citizens

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<sup>1</sup> According to the the statistics, former Yugoslavia, until 1990, was the most progressive and most developed country in whole middle and eastern Europe, with over \$1000 GDP (per capita) in late 1980-ies. Its army was the fourth strongest army in the continent and eight strongest army in the world. Unfortunately, nations of Yugoslavia used it against each other.

and nations of Muslims, Serbs, Croats, and others who live in it?" Majority of Bosnian Serbs, who formed 31% of the population boycotted the referendum. Still, some 63% of the voting population gave a positive answer. As soon as independence was affirmed, pandemonium ensued. At least twenty main streets and crossroads of Sarajevo quickly were barricaded and snipers were set up in select locations. During the course of the evening, Serbian and Muslim militants were persuaded to pull down at least some of the barricades by the end of the night, but a great deal of the city was still occupied by morning. Bosnian Serb's leadership said on local television that they are not going to accept an independent Bosnia-Herzegovina, claiming their right to self-determination in the same manner as Bosnia seceded from until then unified Socialistic Federal Republic of Yugoslavia. Unlike the other former Yugoslav states, which were generally composed of a dominant ethnic group, Bosnia was an ethnic tangle of Muslims (44%), Serbs (31%), and Croats (17%), and this mix contributed to the duration and savagery of its fight for independence.

The following morning situation slipped out of control. The result of the referendum was exacerbated by the murder of a Serb- Nikola Gardovic from Sarajevo, carrying a Serbian flag during a wedding procession in Sarajevo city center- Bas Carsija. This was the first victim in the ethnic clash that was to follow in next 3 years, ending with more than 150,000 dead, 500,000 refugees and over a million internally displaced persons.

More than 10 000 miles away, in a small rural country about half of the size of Bosnia and Herzegovina, a civil war was already long under way. On October 1 1990, the Rwandese Patriotic Front (RPF), or more specifically its military wing, RPA (Rwandese Patriotic Army), began to invade the North Rwanda from Uganda. Eventually some 7000 Tutsi troops crossed the border.

The RPF invasion started a continuous crisis that would escalate dramatically after the shooting down in April 1994 of the plane with Rwandan president on board. On 6 April at approximately 8:30 in the evening Kigali time, the plane carrying Habyarimana was shot down as it was returning from Dar-es-Salaam, Tanzania where president and his counterpart from Burundi were attending a peace meeting. What followed in the next 24 hours was the almost simultaneous occurrence of a military coup, renewed civil war, systematic political assassinations, and commencement of genocide. By the evening of 7 April, the UNAMIR<sup>2</sup> command had put together some major pieces of the picture: the Prime Minister and other key moderate and opposition leaders have been killed; the well known extremist, Colonel Bogosora, appeared to be in charge of the coup; 10 Belgian UNAMIR soldiers had been overpowered and subsequently murdered by Rwandese government soldiers who accused the Belgians of having shot down the President's plane; the RPF unit in Kigali was breaking out of its quarters while the main RPF force in the north prepared to move down; the militia were manning roadblocks and civilians were being killed<sup>3</sup>. The Force Commander knew that a military coup and politicide (systematic political assassinations) had taken place. He knew civilians were being killed, but did not recognize that genocide was under way.<sup>4</sup> The scale of the atrocities was enormous and exceeded

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<sup>2</sup> United Nations Assistance Mission to Rwanda

<sup>3</sup> Trying to find out what was happening, general Dallaire, commander of UN troops in Rwanda, rushed into a meeting of the top officers on the evening of 6 April. Col. Bagosora was in charge. When Dallaire asked him to help maintain stability by recognizing the Prime Minister as the acting head of state, Bagosora put down the idea, contending she was inept and untrustworthy. By the next morning she had been killed. Dallaire also learned of the murders of 6 others moderate cabinet ministers. On the evening of 7 April, he went to the hospital to identify the bodies of the 10 Belgian soldiers.

<sup>4</sup> Initially, the focus was on safety of UN personnel. In the letter to the Security Council dated 8 April, the Secretary General raised the possibility that UNAMIR might have to take the main responsibility for evacuating UN civilian personnel, in which case an expanded mandate and strength would be required. A further deterioration of the situation could justify an evacuation of UNAMIR itself, and if so, he was ready to make that decision. While the

the one in Bosnia: approximately 800,000 slain Tutsi and moderate Hutu civilians, 2 million persons who had fled the country as refugees and one million internally displaced, out of which 500,000 in camps.

### **Historical roots of Bosnian tragedy**

Since the time of the Roman Empire, the Balkans has been a crossroads of religions and civilizations. Called Illyricum in ancient times, the area now called Bosnia and Herzegovina was conquered by the Romans in the 2nd and 1st centuries B.C. and folded into the Roman empire during the first centuries of Christian era. In the 4th and 5th centuries A.D. Goths overran that portion of the declining Roman Empire and occupied the area until the 6th century, when the Byzantine Empire claimed it. Slavs began settling the region during the 7th century. Once the area was predominantly populated by Slavic nationalities, Serbs and Croats, it became a meeting ground between two powerful sources of influence, Hungary which included Croatia to the north and west and Serbian monarchy to the east. It also became a meeting ground between two great churches, Roman Catholic and Serbian Orthodox church. Around 925, Bosnia was briefly ruled by Tomislav, the king of Croatia. In following centuries, until the Ottoman invasion in mid XV century, Bosnia was mainly ruled by Serbian monarchs and was considered as one of the two Serbian lands.<sup>5</sup>

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Secretariat and the council were discussing these options, France, Belgium and Italy launched evacuation operations of their own, the French giving New York and the UNAMIR Force Commander 45 minutes notice before landing at Kigali airport on 9 April.

<sup>5</sup> The original Bosnia or “small land of Bosnia” (to horion Bosona) was for the first time mentioned in the middle of the 10<sup>th</sup> century in the work of Constantine Porfirogenet (*De administrando imperio*), as part of Duke Caslav’s Serbia, but however clearly separated from Serbia proper.

When Bosnia fell to Ottomans in 1463, and the subsequent process of Islamisation that ensued, was a key historical turning point. In order to rule the newly conquered country more effectively, since it was the most distant province of Ottoman Empire, Turks divided its subjects by religion rather than nationality. Predominantly Christian population of Bosnia was, by many means, forced to convert to Islam thus creating a new religious (and later ethnic) group- Bosnian Muslims. Unlike most of the rest of Ottoman Empire, a majority of local Muslims were native Bosnian Christians- Serbs and Croats, who had converted.

Clearly favored was the Islamic millet, and Christians were second-class citizens, with various restrictions in dress and occupation and in how much display their services could have.

The Muslims also controlled the land, so in most regions Muslim landlords ran estates manned by serfs. Social tensions were created. The Ottomans, in dividing the people into millets and favoring the Muslims did not try to create the state in which all had equal rights. Ottoman leadership was made up by Muslims from the whole empire, with many urban Bosnian Muslims receiving a higher education before going off to become members of the Ottoman establishment. Some of the Bosnians became major figures among the ulema, and several Bosnians served in the role of Shejul-Islam, the highest position in the religious structure. Muslim and Christian population of Bosnia was subject to uneven restrictions in both private and public sphere of life. Christians were not required to join the army but they payed a special tax called *jizya* (glavarina in Bosnia). Many Christian children, regardless of whether Orthodox or Catholic, were forcibly separated from their families and raised to be members of the “Yeni Ceri” (new troops) and became Muslims. The practice was known as “devsirme” or *blood tax*. However, a Jannisyary held a very high position in Ottoman society during the empire’s golden age, prompting many Muslims to voluntarily send their children away.

This construction of cultural identities and ethnic groups, introduced by the foreign power will appear as a key component in the conflict 500 years later.

Throughout the history, with minor differences, all peoples of Bosnia spoke the same language, called Serbo-Croatian, have same Slavic origins and ancestry, same appearance, share the same history, culture and territory. A relatively secular society, intermarriage among religious groups was not unknown.

The division between these same groups of people was further encouraged by Axis powers during World War II.

Dissatisfaction with the new, united country- Kingdom of Yugoslavia was obvious, between two world wars, the most vocal being the Croats. Animosity grew that the Germans were able to play upon after their conquest of Yugoslavia in April 1941. Yugoslavia was partitioned, and Bosnia was joined to the fascist puppet state of Croatia, which was led by a terrorist group called the Ustase; even though Bosnia had only a small number of Croats; at the time Bosnia's ethnic make-up was roughly 20 per cent Croats, 35 per cent Muslims and 42 per cent Serbs. The Croatian regime, strongly nationalistic, immediately set about ethnic cleansing, particularly of Serbs. As Croats were minority in Bosnia, the Ustase decided to woo the Muslims. Again, the seed of hatred was planted among the brotherly ethnic groups as new cultural identities were invented. Nationalists had for previous decades been claiming that all Muslims were Croats who simply converted, and a few Muslims were won over. Some of the initially persuaded, however, quickly abandoned the cause when they saw what the Ustase were about. Thus the ethnic warfare of World War II had a definite religious dimension.

At the end of World War II, Bosnia and Herzegovina were reunited into a single state as one of the six republics of the newly reestablished Communist Yugoslavia under Marshall Tito. His



authoritarian control kept the ethnic enmities of his patchwork nation in check. Tito's communistic, secular regime with equal respect for all national and ethnic groups was seen as a suitable time for Bosnian Muslims to become a separate nation rather than just a religious group as they were regarded by that time.

As Yugoslavia progressed (and progress it did) and, as it turned out and to its detriment, followed a policy of increasing decentralization, ethnicity became more and more central to the politics. Those of Muslim background, who on the whole still did not see themselves as Muslim Serbs or Muslim Croats, realized that they needed to form an ethnic group and proceeded to do so, becoming an officially recognized nation in 1968 under the label of "Muslim". Since that time, the term "Muslim" has had a double meaning, denoting a religious community and also an ethnic one- the same twin aspects that characterize the term "Jew" in America. And since 1968, the vast majority of references to Muslims in Bosnia have been to so-called ethnic group.

Tito died in 1980, and with growing economic dissatisfaction and the fall of the iron curtain over the next decade, Yugoslavia began to splinter.

Yugoslavia's unraveling was hastened by the rise of nationalism: Bosniaks led by Alija Izetbegovic, Serbs led by Slobodan Milosevic and Croats led by Franjo Tudjman. Bosnia and Herzegovina was the only Yugoslav Republic where there was no majority of a single ethnicity, and its capital Sarajevo was the prime example of inter-ethnic mixing and tolerance. But in the 1990s fate had twisted and Bosnia became a particularly problematic area. In 1990, Slovenia declared independence which caused a short conflict with the Yugoslav People's Army (JNA) which tried to prevent the secession. Later that year, Croatia did the same and JNA responded the same way, but with the Serb majority in Krajina separating from Croatia. Bosnia was ethnically

heterogenous and there could not be a remotely clear delimitation between the areas that wanted to seceded and those that did not. The Constitution of Bosnia -Herzegovina provided for three constitutional nations: the Serbs, the Croats and Bosniaks<sup>6</sup>, so no major constitutional changes were to be granted short of unanimous agreement from all three sides. This was pretty much a guarantee that the warfare would be very bloody. Alija Izetbegovic was jailed in 1983 for publishing his infamous “Islamic Declaration”, openly advocated Bosnia as an Islamic state. His banned manifesto was reprinted in 1990. Slobodan Milosevic and Franjo Tudjman met on March 25, 1991 in Karadjordjevo and reportedly discussed and agreed upon a division of Bosnia and Herzegovina between their two states. Each had a following among the Bosnians of their respective nationalities. The connection of Bosnian Croats with the Croats in Croatia was particularly obvious given that Tudjman’s political party had an eponymous sister-party in Bosnia, the Croatian Democratic Union of Bosnia and Herzegovina. In 1992, the Bosnian government held a referendum on independence. The Bosnian Croats and Muslims mostly voted on the referendum in favor. The Bosnian Serbs mostly boycotted it, because of its unconstitutionality as the Serb delegates in parliament did not approve it. Muslim and Croat representatives in Bosnia’s parliament declared the republic’s independence on April 5, 1992. The Serb delegates, having previously left over the violation of the Constitution, declared their own state Republika Srpska on midnight between April 6<sup>th</sup> and April 7<sup>th</sup>. Most European countries and the U.S. recognized the independence of Bosnia and Herzegovina by April 7<sup>th</sup>, and the country was admitted to the United Nations on May 22<sup>nd</sup>. Being in the middle of a wider

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In early 1990s, Bosnian Muslims embraced term “Bosnjaks” as a proof of a newly established national identity, with claims over the whole territory of Bosnia and Herzegovina, rather than just a portions of territory inhabited by Bosnian Muslims

conflict, the situation in Bosnia quickly escalated, even before the referendum results were announced. Similarly, the conflict in Rwanda commenced even before the official investigation on the cause of the plane crash was concluded. The war between the three constitutive nations turned out to be probably the most chaotic and bloody war in Europe since World War II. Numerous cease-fire agreements were signed, only to be broken again when one of the sides felt it was to their advantage. Initially it was Bosnjaks and Croats together against the Serbs on the other side. The Serbs had the upper hand due to heavier weaponry (despite less manpower) and established control over most of the Serb- populated rural and urban regions excluding the larger towns of Sarajevo and Mostar. Most of the capital Sarajevo was held by the Bosniaks and in order to prevent the Bosnian army from being deployed out of the town, the Bosnian Serb Army surrounded it, deploying troops and artillery in the surrounding hills. The Serbs held on to a few Sarajevo suburbs (Grbavica and parts of Dobrinja) who were also shelled by the Bosnian government forces as well. The civilian death count in Sarajevo would pass 11,000 by the end of the war. Mostar was also surrounded for nine months, and much of its historic city was destroyed by shelling. In June 1992 the United Nations expanded the role of UNPROFOR<sup>7</sup> (then in Croatia) into Bosnia and Herzegovina, initially to protect Sarajevo International Airport to permit humanitarian assistance to be delivered. This role was expanded again in September to assist in the delivery of the relief. To make matters even worse, in 1993 the Bosnian Croats and Bosniaks began fighting over the 30 percent of Bosnia they held. This caused the creation of even more ethnic enclaves and even further bloodshed.

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<sup>7</sup> United Nations Protection Force

While crimes in Rwanda have predominantly committed by one ethnic group- Hutus, the atrocities in Bosnia were committed by all three warring sides, resulting at ICTY indictments against the all three nationalities. Some of the gravest incidents, which occurred in Bosnian in 1992-1995 period are:

-expulsion and the attacks against the Bosnian Muslim civilians in Mostar municipality, committed by Bosnian Croats Mladen Naletilic and Vinko Martinovic,

-detention camps for Bosnian Muslims held by Bosnian Serbs in Prijedor area, Keraterm and Omarska;

-Brcko-Luka concentration camps where hundreds of Muslims and Croats were killed by Serb paramilitary forces

-Stupni Do incident- where HVO, Croatian paramilitary forces, attacked the village inhabited by 250 Muslim civilians, killing 16 of them, forcing others to flee

-Lasva Valley atrocities- where hundreds of Muslim civilians were killed by Croatian army, led by Marinic and Kupreskic

-Kazan and Celebici detention camps near Sarajevo, where Serbs were detained in inhuman conditions by Muslim forces, many of which did not survive the mistreatment.

A particularly disturbing and problematic incident happened in July 1995, when, reportedly in retaliation to previous incursions by Naser Oric's troops, Serb troops under general Ratko Mladic occupied the UN "safe area" of Srebrenica in eastern Bosnia, after which some 7000 Bosniak males were killed.

The war continued through most of 1995, and with Croatia taking over the Serb Krajina in early August, the Bosniak-Croat alliance gained the initiative in the war, taking much of western Bosnia from the Serbs. At that point, the international community pressured Milošević, Tudjman and Izetbegovic to the negotiation table and finally the war ended with the Dayton Peace Agreement signed on November 21, 1995 (the final version was signed December 14, 1995 in Paris).

In the end, the war in Yugoslavia caused an estimated 278,000 dead and missing persons and another 1,325,000 refugees and exiles.

### **Historical roots of Rwandan tragedy**

Most historians agree that the first inhabitants of Rwanda were hunter-gatherers and forest-dwellers, whose modern day descendants are the Twa, today's small minority who have inhabited the country from as early as 2,000 B.C. Around 1,000 A.D., a migration of farmers, Hutu, began to displace them. This migration was part of the so-called Bantu expansion, which, in the case of Rwanda, can be followed from the savannahs of present Cameroon to the Great Lakes area. By the 15<sup>th</sup> century many Hutu were organized into "statelets". Each of them was controlled by a dominant clan and composed of several different lineages under a ruling lineage headed by mwami (chief or king), who was a land chief as well as ritual leader in charge of rain-making. Tutsi seem to have been part of larger pastoralists migration and Tutsi settlement was achieved through both conquest and peaceful assimilation. Over period of 400 years, Tutsi were assimilated by Hutu. They took over the language spoken by Hutu (kinyarwanda) and incorporated Hutu tradition and cults. Moreover, they shared the same hills- there was no

segregation of people- and they intermarried and bore the same names. In large part, during the pre-colonial period, Tutsi, Hutu and Twa corresponded to occupational rather than ethnic categories. Hutu and Tutsi were even less sharply distinct, and individuals could and did move between the categories as their fortunes rose and fell. Up to about the middle of the 19<sup>th</sup> century, clan identities overrode the Tutsi-Hutu-Twa categorization.

The description of Rwandese “ethnic groups” was upheld and diffused by outsiders, colonial agents, ethnographers, anthropologists, historians etc. and came to represent the generalized Western view of Rwandese people.

What appears to have kept people together is the institution of the ubuhake- a highly personalized relationship between two individuals of unequal social status. This patron/client relationship involved reciprocal bonds of loyalty and exchange of goods and services. The patron was mostly Tutsi, but the client could be Hutu or Tutsi of inferior social status. One person could be client as well as patron.

From the beginning of colonial era, Europeans decided to favor a policy of indirect rule. Just as Ottoman Turks relied on local, previously converted, Muslim leadership in Bosnia, Europeans went for the full use of what was to be made of the existing political system in Rwanda, because of a shortage of colonial personnel.

After World War I, the League of Nations mandated Belgium to administer Rwanda. During 40 years of Belgian administration, we observe the disintegration, distortion or bastardization of indigenous social and political structures and their consequences. For example, while the indigenous pre-colonial patron/client relationship was flexible and contained an important element of reciprocity, the Belgian colonizers actually rigidified the system and did away with mutual obligations. The colonizers, in this way, introduced forced labor and strengthened the socio-economic divisions between Tutsi and Hutu. Among the European civil servants and

Catholic church missionaries, operating in the Great Lakes region at the turn of the century, the so-called Hamitic thesis became generalized. According to this thesis “everything of value in Africa had been introduced by the Hamites, supposedly a branch of the Caucasian race”. For Europeans, the attractiveness of this hypothesis lay in the fact that it allowed for linking physical characteristics with mental capacity: The “Hamites” were supposed to be born leaders and, in principle, had a right to a history and a future almost as noble as that of their “European” cousins. In Rwanda, the “Hamites” were Tutsi: “they resemble negro only in color of their skin, but before becoming black, these people were tanned.”

This racist thesis was expressed in numerable ways, but in short, Tutsi were considered to be related to Europeans and, therefore, Europeans could easily work with them. Similarly credible theories were supported in Yugoslav conflict by local leaders and most of international community: “Croats originate from the hills of Iran, while Muslims descended from XIII century religious sect “bogumili”, exterminated by Hungarians upon pope’s request- and therefore have nothing in common with fellow Slavic nations such as Serbs or Montenegrins.”

In Rwanda, upon recommendation of French Catholic missionaries, a policy favoring protection and strengthening of a Tutsi hegemony was vigorously pursued. The Hutu chiefs and deputy-chiefs were removed and replaced by Tutsi. Accentuation of the ethnic divisions culminated by the introduction of identity cards in 1933. Every Rwandese was henceforth (on the basis of quite arbitrary criteria) registered as Tutsi, Hutu or Twa. Same can be observed today in Bosnia and Herzegovina, where infamous CIPS project, under auspices of OHR office, is enforcing new system of identification for Bosnian citizens. This system has never been subjected to democratic vote and adds to criticism of further dividing the already polarized Bosnian society.

Finally, in Rwanda, the possibilities of most Hutu were further limited by the discrimination introduced in the Catholic schools, which represented the dominant educational system

throughout the colonial period. To accommodate and further encourage the ethnic cleavage, the Church adjusted its educational policies and openly favored Tutsi and discriminated against Hutu. With some exceptions, Hutu received only the education required for working in the mines. Similar parallels may be drawn by analyzing the shameful involvement of the Catholic church in the Holocaust against European Jews and other civilian population and the fact that the power struggles in former Yugoslavia were also stroked by the meddling of Vatican, which was the first country to recognize the independence of Croatia and Slovenia, a pre-mature act, that, according to many historians, has sparked the war.

This colonial intervention in Rwanda caused the groups to become distinct political categories. As a result, from the mid-1950s, political demands in Rwanda were formulated in ethnic terms. It is no surprise that, once the Hutu became emancipated, they saw Tutsi as foreigners and Hutu as Rwandese national to whom the land belonged. Hutu revolution of 1959-1961 to overthrow Tutsi elite was successful, and the republic was established. This time, Belgians favored Hutu and supported the revolt. A similar, radical change of mind occurred within the Catholic church, as exemplified by the pastoral letter issued by Monsignor Andree Perraudin in the late 1950s, in which he adopted a pro-Hutu attitude by stating that the social discrimination faced by Hutu was no longer consistent with a sound organization of Rwandese society.

In 1959, ethnic violence broke out and ensuing riots led to a widespread Hutu uprising, during which hundreds of Tutsi were killed. The Belgian government responded by sending troops to the country. Contrary to contemporary expectations, however, the Belgian military did not attempt to crush the Hutu revolt, but adopted a de facto pro-Hutu policy through the installation of a military-led administration and the appointment of more than 300 Hutu chiefs and sub-chiefs to replace those Tutsi incumbents who had been disposed, killed or had fled during the initial stages of the uprising. Soon thereafter- in May 1960- the Belgian authorities confirmed the new



policy through the setting up of an indigenous military territorial guard of 650 men, based on ethnic proportionality, with 85% Hutu and 15% Tutsi. This is exactly the same practice pursued today in Bosnia and Herzegovina, by international community and Office of High Representative who are insisting on artificial division of power based on population statistics thus deepening the cut between the parties in conflict. Percentages in Bosnia are somewhat different: 40% Muslims, 40% Serbs, 20% Croats. This ratio is coherently reinforced through all branches of government, from tri-part (and therefore ineffective) presidency to composition of court chambers and police units.

In Eastern Africa, years between 1959 and 1990 were marked by ethnic exacerbations, violent clashes for power, flood of refugees (mainly Tutsi) to neighboring countries and expulsion of Tutsi from political and social life of the country. The international community, and in particular France and Belgium, played a predominant role throughout the conflict. Some sources claim that France gave active support both in 1990 and 1993. During the later clashes, the French were observed “assisting the Rwandese army mortaring RPF-positions. French soldiers were deployed at least 40 kilometers north of the capital on the road to Byumba, just south of RPF’s recognized zone of control. No French citizens or other Western expatriates are known to be living there”<sup>8</sup>

During the armed clashes between 1990-1994, many agreements and cease-fires were signed but hostility did not diminish. On the contrary, Rwandan society tended to polarize more and more in anti- and pro- RPF (and Tutsi) parties and groups.

Within the hours of the plane crash, the Presidential Guard had set up the roadblocks around the capital of Kigali and had begun liquidating key members of the moderate opposition and human rights activists. The Presidential Guard was joined by the party militias, and within a week these

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<sup>8</sup> Human Rights Watch, Arms Project, 1994

forces had killed an estimated 20,000 people in Kigali and its immediate environs. The international community responded by evacuating foreign nationals, the first step in its withdrawal from crisis. Perhaps encouraged by this retreat, the leaders of the genocide extended its scope outside the capital to the east and the southwest. Beginning on April 15, when most foreigners had departed, authorities distributed large quantities of firearms, including automatic and semi-automatic rifles and pistols, to militia and other supporters of Habyarimana. Many people were killed in their homes, but others were slain in hospitals and churches, places usually recognized as sanctuaries. Among the worst such incidents were the following:

-Kibungo-2800 people gathered in a church center where slaughtered in a four-hour period, approximately 40 people survived

-Cyahinda- 6000 Tutsi who had taken refuge in a church were attacked by militia who left only about 200 to live

-Kibeho- 4000 people killed in a church

-Mibirizi parish- 2000 slain

-Shangi parish- 4000 killed

-Kigali and Butare- hundreds of patients and staff were killed in hospitals

-Butare orphanage- twenty-one children, selected solely because they were Tutsi, were slain as well as thirteen Rwandan Red Cross volunteers who tried to protect them

-Gikongoro- eighty-eight pupils were slaughtered at their school

The civil war resumed after the killings began. Once the RPF had launched its offensive, it progressed rapidly. In the meantime, on June 19, France suddenly offered to send its own force, but under French command and control. Operation Turquoise was launched and executed in a manner suggesting mixed motives, both humanitarian and political in nature. From the north,

RPF advanced all through April and May, but not fast enough to halt the massacres. Kigali was taken on 6 July and on 18 July, 1994, RPF declared the war to be over. It announced a cease-fire and formed a new government.

### **Establishment and the work of Tribunals**

On May 25, 1993, Resolution 827 approving Secretary General's Statute for International Criminal Tribunal for Yugoslavia was adopted by a unanimous vote of the fifteen member of the Security Council. Year and a half later, on November 8, 1994, the Security Council of the United Nations created International Criminal Tribunal for Rwanda by Resolution 955. Both resolution were adopted under Chapter VII of the United Nations Charter, authorizing Security Council to undertake all necessary measures in response to a world peace and security. It was pointed out that this use of Chapter VII authorities represents a precedent, as it was nowhere prescribed that Security Council may establish a judicial body. However, the exigencies of the situation did not allow any further legal debate.

Yugoslavia Tribunal was to be located in Hague, Netherlands, while the Tribunal in Rwanda was to be located in neighboring Tanzania, in Arusha. It seems that international community realized from the beginning, that the solution in Eastern Africa is to be best found by the warring nations themselves, while any such attempt, to leave the nationalities in Yugoslavia to prosecute impartially each other, seemed more than impossible. Although Tribunals were located in different locations, they shared the Appeals Chamber and the Office of the Prosecutor, which too were based in Hague, the Netherlands.

Remarkably, while the conflict in former Yugoslavia was considered at least in part, to be of international character, the conflict in Rwanda was qualified as a primarily of a non-international nature. The Security Council, however, regarded the concept of crimes against humanity as universally applicable and in doing so it extended the scope of this category of international crimes to encompass both internal and international conflicts.<sup>9</sup> The Security Council nevertheless does acknowledge a distinction between these two types of conflict; it also defines the concept of “crimes against humanity” differently in the ICTY and ICTR Statutes. Whereas Article 5 of ICTY Statute states that a connection is required between these crimes and the presence of an “armed conflict”- regardless of whether it is of an international or internal nature Article 3 of the ICTR Statute does not explicitly state such a link but merely adds that the conduct be “widespread” or “systematic”<sup>10</sup> One possible explanation for this difference is that the ICTY drafters may have anticipated challenges to the legality of the Statute and therefore chose for some link with an armed conflict requirement. As the Rwandan conflict drew less political attention in Western society and the Government of Rwanda consented to the ICTR’s establishment, the connection to “any armed conflict”, so it was argued, was politically superfluous.<sup>11</sup> The creation of ICTY was based on Security Council Resolution, which was not a party to Yugoslav conflict as such, nor were any of its members at the time. Moreover, the decision about the content of the ICTY Statute was passed on by the Security Council to an entirely non-state entity, the Office of the Secretary-General in actuality, the UN Office of Legal

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<sup>9</sup> M. Cherif Bassiouni, *Crimes Against Humanity in ICL* 194 (1999) which refers to the conclusion of the Commission of Experts in its First Interim Report of the Commission of Experts established pursuant to SC Resolution 780 (1992), UN Doc.S/25274 of 10 February 1993; this finding was confirmed by the ICTY Appeals Chamber in *Prosecutor vs. Tadic*, Case No. IT-94-1-AR72, 2 October 1995

<sup>10</sup> See Bassiouni, *supra* note 9, at 194

<sup>11</sup> See Bassiouni, *supra* note 9, at 195

Affairs (OLA). Apparently, the reason for this step was that the Security Council as an organ could potentially be influenced by states, whereas the risk appears less concrete with regard to the Secretary-General.<sup>12</sup> It can be concluded that the Secretary-General was afforded an unprecedented power to vest the ICTY and its Statute. Although the Statute of the ICTR was likewise promulgated by the Security Council, its drafting process was approached in a different manner than that of the ICTY Statute. The ICTR Statute was promulgated by the U.S. and New Zealand in conjunction with Rwanda, which, at that time, was a member of the Security Council. The drafting process was exceptional in two ways:

(1) certain parts of the membership of the Security Council retained, in themselves, the right to draft ICTR Statute; and

(2) the State which was to be subjected to the jurisdiction of ICTR (Rwanda) was put in a position where it could not only contest any element of the provisions in the Statute, but also influence the formulation itself.

Therefore, the ICTR Statute embodies, more than ICTY Statute, a negotiated outcome. This may explain why Rwanda voted against Security Council Resolution 955, establishing the ICTR; the Statute included crimes which Rwanda did not wish to include. As Rwanda was a non-permanent member of the Security Council, it was not empowered to veto the creation of ICTR itself, although, as noted, it did vote against it. Importantly, the ICTR is therefore the first example of an international criminal tribunal where there is “(...) not a total separation between the authority

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<sup>12</sup> See Robert Cryer, “The Boundaries of Liability of ICL, or Selectivity by Stealth,” 1 *Journal of Conflict & Security Law* 3-10 (2001)

creating the tribunal and the State (or nations thereof) which was to be the subject of the tribunal.<sup>13</sup>

When the ICTY was established by the Security Council in May 1993, it held the promise of being the first international criminal tribunal to prosecute the crime of genocide.<sup>14</sup> The Charters of both the Nuremberg and Tokyo War Crimes Tribunals were, at that time, not equipped to deal with the crime of genocide and its judicial parameters. The first international instrument containing a more universal definition of crime of genocide was the United Nation Convention for the Prevention and Punishment of the Crime of Genocide of 1948, also called the Genocide Convention.<sup>15</sup>

The first modern day conviction for genocide, by an international court occurred on September 4, 1998 in Arusha, Tanzania where ICTR sentenced former Rwandan Prime Minister, Jean Kambanda to life in prison for his role in the 1994 slaughter of more than 500,000 Rwandans.

In Aug. 2001, Radislav Drstic, a Bosnian Serb general, was found guilty of genocide in the killing of up to 8,000 Bosnian Muslims in Srebrenica in 1995. It was the first genocide conviction in Europe since the UN genocide treaty was drawn up in 1951.

Both the ICTY and the ICTR tribunals are unprecedented in that they include victim-witness protection provisions. Further, both Tribunals allow hearsay evidence provided it can be shown to be reliable and trustworthy. Finally, the Security Council was unable to agree on the imposition of the death sentence because many states consider the death penalty inhumane.

Others argued that the death penalty was a greater sanction than could be dispensed under domestic law; still others objected to the lack of a death sanction. The compromise in the statutes

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<sup>13</sup> See Cryer, *supra* note 4, at 9

<sup>14</sup> See William A. Schabas, "Was Genocide Committed in Bosnia and Herzegovina? First Judgements of ICTY," *Fordham International Law Journal* 23 (2001)

<sup>15</sup> See Convention of 9 December 1948, G.A. Res. 260 A (iii), UN Doc. A/810, 1948

of each tribunal gives the courts power to impose a maximum penalty of life imprisonment. Despite lobbying for the creation of ICTR, the Rwandan Government voted against Security Council Resolution 827, because, among else, it lacked the death penalty sanction. Rwanda has the death penalty and argued that the Tribunal should provide nothing less. The resolution was adopted by the Security Council by a vote of 13 in favor to 1 against (Rwanda), with 1 abstention (China). Because the Tribunal is incapable of imposing the death penalty or prosecuting all responsible persons, the Rwandan government is pursuing independent prosecutions.

### **Cooperation, reconciliation and post-conflict progress**

The both Tribunals require the cooperation of all states. The Serbs denied ICTY's jurisdiction. Republic of Croatia and Croatian Ministry of Defense are reluctant to produce the evidence to the ICTY prosecutors and the ICTY has no mechanism to enforce its will upon states. Especially in the cases where the chain of command must be established, the prosecutors are most in need of evidence from a state's military archives. In Tihomir Blakic case, a Bosnian Croat accused for crimes against Bosnian Muslims, prosecutors, for the first time, resorted to issuance of subpoena. In contrast to the former Yugoslavia, the Rwandan crimes generated sufficient international pressure to ensure that arrests would be made. Although some African countries, such as Kenya, were reluctant to cooperate in the arrest and transfer of indictees to the ICTR, Rwanda itself and all the neighboring indirectly involved nations, are fully cooperating and respecting the Tribunal's authority.

While former Yugoslavia has much greater resources and potential for adjudication of the crimes that occurred on its territory, Rwandan authorities had to start from the scratch.

As the new government took power in Rwanda, the country they found was in shock and complete economic and social disruption. Before the conflict, Rwanda was one of the world's poorest countries. When the genocidal regime fled in July of 1994, they looted the national treasury and destroyed or sabotaged whatever could not be carried away. They fled with every vehicle that could be driven. Not a single desk, chair, telephone, calendar, pen or paper clip was left behind. The new government faced the tasks of removing and burying the dead, caring for the injured, restoring order, a sense of security and restoring basic services. However, the most important task would be to arrest and try the accused, thereby ending the reigning culture of impunity. The country's prisons were not built to house more than 100,000 men, women and children charged with participating in genocide.

Despite the lack of resources and almost no trained professionals, Rwandan authorities are progressing much faster in the process of delivering the justice and ensuring impartial and fair trials to the extent possible, than the Bosnian, Croatian or Serbian authorities. The Rwandan government, the National Unity and Reconciliation Commission and the elite of the capital, Kigali, are at pains to stress the importance of reconciliation, the steps being taken to achieve it and the progress in this direction eight years since the 1994 genocide. Up to this date, no such bodies were established in the former Yugoslavia. With the aim to get justice done and to compensate for inability of international courts to prosecute large number of actors, Rwandan authorities resorted to customary practices and traditional proceedings.

One of the key components of that ongoing progress, in Rwanda, is the Gacaca court system.

The grass-roots "courts" - 673 of which began opening across the country on 25 November 1998 to be followed by a further 8,258 in March 2003 - aim to expedite the trials of those accused of



genocide crimes, to reveal the truth about what happened, to put an end to the culture of impunity in Rwanda, and to reconcile the Rwandan people and strengthen ties between them.

In the absence of a functional justice system able to cope with the challenge of judging over 100,000 prisoners - a year after the genocide Human Rights Watch reported that only 36 judges, and three prosecutors with formal legal training, were available - and little money or support from outside to mobilize and strengthen that system, Gacaca revives traditional and affordable means of resolving conflicts based on pre-colonial Rwandan culture. Conversely, Bosnia and Herzegovina, facing imminent fear of break-up and renewed violence, is placed under international supervision in form of UN mandated Office of High Representative. Despite the significant contributions, foreign loans and grants, Bosnian judiciary has not processed a single case involving persons indicted for war crimes.

Rwanda is a country where overcrowding in some detention sites is such that four inmates can occupy every single square meter of floor space in open courtyards, and six every square meter in dormitory buildings that surround the courtyards (HRW 1995).

While the Gacaca system is widely recognised as being flawed and a contravention of the “norms” of international justice systems, for many Rwandans it represents a great hope, as a participatory system, which forces people to tell the truth and to face up to their past.

At least people have to sit together, discuss what happened and try to find solutions. The traditional system hasn't offered them anything better.

The government is developing its policy on a reparation fund for genocide survivors (to replace

the Fond d'Appui Rescapes de Genocide, FARG, which supports families of survivors). The government also introduced a poverty reduction strategy in July 2002, and is developing a policy on land, which was one of “the main causes of conflict” in Rwanda, according to the director of the Rwanda Initiative for Sustainable Development. Quite the contrary, Croatian Government is doing all within its powers to permanently prevent the return of Serb minority in Croatian region- “Krajina”, thus deepening the collision and sparking the existing hatred between neighboring nations. As the Serbs still have no chance of sustainable return, government of Croatia declared their private land-“an abandoned property” and in most of cases confiscated it with no compensation.

It would appear that the potential of Gacaca to bring about reconciliation and forgiveness was greater than the complicated international system of justice.

Some of the most serious doubts and public criticism is directed toward Gacaca’s authority to grant partial reduction of sentence and release in some cases, in exchange for producing the truth by the defendants. Even if the government is prepared to reduce sentences to ease pressure in the prison population, uncertainty remains about the public's willingness to forgive.

Yet many Rwandans - who will finally find out who killed their families, and where they were buried - remain optimistic. “We are obliged to reconcile because we are neighbours,” Consolata Mukanyiligira of the Association of Genocide Widows, Avega, said.

Reconciliation and forgiveness between neighbors in Bosnia and Herzegovina is to be saved for some better times. Emina was a survivor of Bosnian war, living in Mostar, a city divided

between Muslims and Croats. On a Saturday evening in July 1998, she was sitting in an outdoor café on a packed street on the east bank enjoying the weather and socializing like hundreds other Mostarians. Suddenly, the other Mostar- the large Croat zone on the west bank- erupted in a cacophony of honking horns, slogan-shouting and celebratory gunfire. The football World Cup was in progress, and Croatia, playing in the quarter finals that evening against Germany, had just won the game. Several thousand rounds were fired on that evening from the Croat zone on the streets of east Mostar, predominantly populated by Muslims. One of the bullets hit Emina Catic in the neck. She toppled over and died instantly. Emina's grave is just another among hundreds in Mostar's cemeteries. The only unusual feature on her tombstone is the date- 1998, rather than 1993 or 1995, when the war supposedly ended.

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