

Articles

JUSTICE AND RECONCILIATION IN THE GREAT LAKES REGION OF AFRICA: THE CONTRIBUTION OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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I. INTRODUCTION

The end of the Cold War, which paralyzed the United Nations from its inception, was a cause for celebration and hope. Following the historic Security Council Summit Meeting of January 1992, the then Secretary-General of the United Nations, Boutros Boutros-Ghali, spoke of a growing conviction “among nations large and small, that an opportunity has been regained to achieve the great objectives of the U.N. Charter (Charter)—a United Nations capable of maintaining international peace and security, of securing justice and human rights and of promoting, in the words of the Charter, ‘social progress and better standards of life in larger freedom.’”¹ He warned, however, that this opportunity “must not be squandered,” and that the United Nations “must never again be crippled as it was in the era that has now passed.”²

In the months that followed, the international community was to experience shocking aberrations, reminiscent of a dark and seemingly remote past. Reports of “ethnic cleansing” and “death camps” surfaced from Bosnia-Herzegovina, only to be followed by the singular cataclysm of Rwanda in which nearly one million people perished in

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1. *Report of the Secretary General on the Work of the Organization*, U.N. GAOR, 47th Sess., para. 3, U.N. Doc. A/47/277, S/24111 (1992).

2. *Id.*

just three months.³ These events led one commentator to observe that “genocide has become a growth industry.”⁴

Calamity acted as catalyst, however, and the post-Cold War political context allowed for the unprecedented establishment by the Security Council of two ad hoc international criminal jurisdictions to punish serious violations of humanitarian law. On May 25, 1993, having determined that “widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia . . . constitute a threat to international peace and security,”⁵ and that “in the particular circumstances of the former Yugoslavia the establishment [of] an *ad hoc* . . . international tribunal . . . would contribute to the restoration and maintenance of peace”⁶ within the ambit of Chapter VII of the Charter, the Security Council adopted Resolution 827 pursuant to which it established the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law committed in the Territory of the Former Yugoslavia since 1991 (Yugoslav Tribunal).⁷ Similarly, on November 8, 1994, having determined that the “genocide and other systematic, widespread and flagrant violations of international humanitarian law . . . committed in Rwanda . . . constitute a threat to international peace and security,”⁸ the Security Council adopted Resolution 955 whereby it established the International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda (Rwanda Tribunal).⁹

3. See *Report of the Situation of Human Rights in Rwanda Submitted by Mr. R. Degni-Séqui, Special Rapporteur of the Commission on Human Rights*, U.N. ESCOR Commission on Human Rights, 51st Sess., Prov. Agenda Item 12, para. 24, U.N. Doc. E/CN.4/1995/7 (1994) (“[T]he number of persons killed throughout the territory is to be numbered in the hundreds of thousands, estimates ranging from 200,000 to 500,000. In fact, even the latter figure is probably less than the reality. Some observers think that the figure is close to a million. It is not sure that the exact number of victims will ever be known.”).

4. David J. Scheffer, *International Judicial Intervention*, FOREIGN POL’Y, Spring 1996, at 34.

5. S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg., paras. 3-4, U.N. Doc. S/RES/827 (1993).

6. *Id.* para. 6.

7. *Id.* For an overview of the establishment of the Yugoslav Tribunal, see James C. O’Brien, *The International Tribunal for Violations of International Humanitarian Law in the Former Yugoslavia*, 87 AM. J. INT’L L. 639 (1993).

8. S.C. Res. 955, U.N. SCOR, 49th Sess., 3453rd mtg., para. 4, U.N. Doc. S/RES/955 (1994).

9. *Id.* For an overview of the establishment of the Rwanda Tribunal, see Payam Akhavan, *The International Criminal Tribunal for Rwanda: The Politics and Pragmatics of Punish-*

It is instructive to note that it was not the massive and systematic scale of the human rights violations as such which triggered Security Council action, but rather, the determination that such violations, in the particular circumstances of the former Yugoslavia and Rwanda, constituted a "threat to international peace and security"¹⁰ as required by Chapter VII of the Charter.¹¹ In other words, it is conceivable that even unconscionable atrocities may fall short of the juridical threshold required for collective enforcement action by the United Nations. However invidious this instrumentalization of human rights may be from a moral perspective, the political significance for world order of the linkage between international criminal justice and the maintenance of peace should not be disparaged. In effect, the establishment of the Yugoslav and Rwanda Tribunals is an unprecedented institutional expression of the indivisibility of peace and respect for human rights. It represents a radical departure from the traditional realpolitik paradigm which has so often and for so long ignored the victims of mass murder and legitimized the rule of tyrants in the name of promoting the purported summum bonum of stability.¹²

Despite the significance of the Yugoslav and Rwanda Tribunals, the path ahead is fraught with obstacles and difficulties. A paradigm shift at the level of policy making does not instantaneously transform everyday reality, especially in a society which has experienced genocide. The question is, therefore, whether and to what extent an ad hoc international criminal jurisdiction can contribute to the reconciliation process in the wake of mass violence.

The choice of focus of this article on the Rwanda Tribunal and its potential impact on peace in the Great Lakes region of Africa¹³ was not an arbitrary one. While it is recognized that any attempt at "comparative calamity" with a view to measuring human suffering is ultimately a futile and obscene exercise, the tragedy which befell Rwanda in 1994 deserves a special place in the blood-stained pages of history.¹⁴ The Rwandan genocide merits distinction not only because

ment, 90 AM. J. INT'L L. 501 (1996).

10. S.C. Res. 827, *supra* note 5, at 1; S.C. Res. 955 *supra* note 8, at 1.

11. U.N. CHARTER art. 39.

12. For example, the international community tolerated the participation of the murderous Khmer Rouge in a coalition government representing Cambodia at the United Nations until 1993, despite the group's heinous crimes against its own civilian population. See, e.g., Payam Akhavan, *Enforcement of the Genocide Convention: A Challenge to Civilization*, 8 HARV. HUM. RTS. J. 229, 247-48 (1995).

13. The Great Lakes region of Africa consists of the countries bordering Lake Victoria, Lake Kivu and Lake Tanganyika, including Uganda, Rwanda, Burundi, Tanzania and Zaire.

14. The U.N. Special Rapporteur observed in 1994: "The Rwandese have indeed been the

of its shocking efficiency, its scale and its proportional dimensions among the victim population,¹⁵ but also because the international community could have prevented at least its most revolting aspects but refused to intervene.¹⁶ It is also befitting to focus on the Rwanda Tribunal because its significance has been overshadowed by the proceedings of the Yugoslav Tribunal. It is telling that the fugitive Bosnian Serb leader Radovan Karadzic has become a media celebrity whereas the March 1996 arrest of Colonel Bagosora, a leading member of the former Interim Government in Rwanda during the mass killings of 1994, has hardly been noticed. One is tempted to ask a question with far-reaching consequences on the future of international justice: Was it simply Western cultural proximity with the Yugoslav victims which provoked the cries of indignation that resulted in the establishment of an International Tribunal? Had the Rwandan genocide occurred first, would we have resigned ourselves to the view of Africa as a continent where horror is commonplace, and where an International Tribunal would make no appreciable difference?

II. SPECTATORS OF THE ARCHETYPAL AFRICAN GENOCIDE: PREVENTION BEFORE PUNISHMENT

When speaking of justice in the wake of cataclysm, it is often assumed that mass violence is an inevitable human phenomenon. On the contrary, systematic mass violence and large scale atrocities necessarily require organization, planning and preparation, often accomplished under the authority of government. A consequence of this simple fact is that such cataclysms can be foreseen, and thus prevented by an observant international community.

Organization and planning was certainly at work in Rwanda, where an estimated one million people from a total population of 7.5 million were slaughtered in less than three months.¹⁷ As the Rwandan representative to the Security Council stated, "On the same

victims of a number of massacres in the past, notably in 1959, 1963, 1966, 1973, 1990, 1991, 1992 and 1993. However, those being perpetrated at present are unprecedented in the history of the country and even in that of the entire African continent. They have taken on an extent unequalled in space and in time." U.N. Doc. E/CN.4/1995/7, *supra* note 3, para. 20.

15. See *supra* note 3.

16. See *infra* Part II.

17. See *The Situation Concerning Rwanda: Establishment of an International Tribunal for the Prosecution of Persons Responsible for Violations of International Humanitarian Law in the Territory of Rwanda and Rwandan Citizens Responsible for Such Violations Committed in the Territory of Neighboring States*, U.N. SCOR, 49th Sess., 3453rd mtg., at 14, U.N. Doc. S/PV.3453 (1994).

scale, in a country the size of the United States this would be equivalent to the loss of over 37 million Americans in under three months.”¹⁸ In its own gruesome way, such efficiency is an impressive feat of organization, especially in a developing country. Accordingly, the Rwandan genocide cannot simply be dismissed as an unforeseeable and spontaneous outburst of primordial bloodlust. This simplistic “tribal war thesis” is often a reflection of ethnocentrism, if not an expedient absolution from apathy in the face of immense human suffering.

Such apathy and ethnocentrism are reflected by the fact that the international community was aware of the widespread violence in Rwanda well before April 1994, but refused to take sufficient measures to end the suffering. As early as March 1993, an International Commission of Inquiry, comprised of representatives from four respected human rights non-governmental organizations, issued a report suggesting that the then horrific human rights abuses against the Tutsi in Rwanda may qualify as genocide.¹⁹ Similarly, after his mission to Rwanda in April 1993, the U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, submitted a report to the Human Rights Commission in which he concluded that there existed widespread and systematic abuses, including incitement to ethnic hatred and violence against the Tutsi.²⁰ Accordingly, the assassination of President Juvénal Habyarimana on April 6, 1994, was simply “the spark to the powder keg which set off the massacre of civilians” and not the root cause of the genocide as some seem to suggest.²¹ As the Rwandan representative to the Security Council pointed out:

[T]he genocide the world witnessed in April 1994 was the result of a long period of planning during which pilot projects for extermination were successfully tested The international community, through its diplomatic representatives and international organiza-

18. *Id.*

19. *Rapport de la commission internationale d'enquête sur les violations des droits de l'homme au Rwanda depuis le 1er octobre 1990 (7-21 janvier 1993), Rapport Final*, March 1993, at p. 96. The four human rights NGOs were, respectively: Fédération Internationale des Droits de l'Homme (Paris), Africa Watch (New York), Union Interafricaine des Droits de l'Homme et des Peuples (Ouagadougou), and Centre International des Droits de la Personne et du Développement Démocratique (Montréal).

20. *See Report by Mr. B.W. Ndiaye, Special Rapporteur, on his Mission to Rwanda from 8 to 17 April 1993*, U.N. ESCOR Commission on Human Rights, 50th Sess., Prov. Agenda Item 12, paras. 19-20, U.N. Doc. E/CN.4/1994/7/Add. 1 (1993).

21. U.N. Doc. E/CN.4/1995/7, *supra* note 3, para. 19.

tions in Kigali as well as many reports by human rights organizations, was well aware of these massacres and cannot claim that it became cognizant of the situation only in the wake of the tragedy of April 1994.²²

Furthermore, the actions of the international community after the outbreak of mass violence in April 1994 betrayed a lack of interest in intervening against this cataclysm. In October 1993, the Security Council had established the United Nations Assistance Mission in Rwanda (UNAMIR), a 2,500 member observer force, to monitor implementation of the Arusha Peace Agreement,²³ concluded in August 1993 between the Government of Rwanda and the insurgent Rwandese Patriotic Front (RPF).²⁴ On April 20, 1994, several days after the airplane crash resulting in the death in Kigali of the Presidents of Rwanda and Burundi, Juvénal Habyarimana and Cyprien Ntamyira, the U.N. Secretary-General issued a Special Report in which reference is made to the "torrent of widespread killings" which appears to have "both political and ethnic dimensions," indicating that the deaths "could possibly number tens of thousands."²⁵ Earlier, the Government of Belgium had decided to withdraw its battalion from Rwanda following the murder by Rwandan government forces of ten members of the Belgian contingent serving with UNAMIR.²⁶

In view of the critical situation, the Secretary-General offered three alternatives for the consideration of the Security Council. The first and preferred alternative of the Secretary-General was the "immediate and massive reinforcement of UNAMIR and a change in its mandate so that it would be equipped and authorized to coerce the opposing forces into a cease-fire, and to attempt to restore law and order and put an end to the killings."²⁷ The second alternative was the retention in Kigali of a small group, headed by the Force Commander, with necessary staff "to act as intermediary between the two parties in an attempt to bring them to an agreement on a cease-

22. U.N. Doc. S/PV.3453 (1994), *supra* note 17, at 14-15.

23. See S.C. Res. 872, U.N. SCOR, 48th Sess., 3288th mtg., U.N. Doc. S/RES/872 (1993).

24. The Arusha Peace agreement was concluded under the auspices of the United Nations and the Organization of African Unity (OAU).

25. *Special Report of the Secretary-General on the United Nations Assistance Mission for Rwanda*, U.N. SCOR, 49th Sess., para. 2, U.N. Doc. S/1994/470 (1994).

26. See Donatella Lorch, *Anarchy Rules Rwanda's Capital and Drunken Soldiers Roam City*, N.Y. TIMES, April 14, 1995, at A3.

27. U.N. Doc. S/1994/470 (1994), *supra* note 25, para. 13.

fire.”²⁸ The third alternative, which the Secretary-General did not favor, was the “complete withdrawal of UNAMIR.”²⁹

On April 21, the Security Council opted for the second alternative and adopted Resolution 912 whereby the force level of UNAMIR was reduced to a small group of 270 soldiers.³⁰ As the horrors of the genocide were unfolding, in the euphemistic terminology typical of such predicaments, the Security Council resolution simply demanded an end to the “mindless violence and carnage which [were] engulfing Rwanda” without proposing any corresponding enforcement measures.³¹ Thus, an unpleasant reality was “sanitized” through the antiseptic rhetoric of international diplomacy, and the pleas of the Secretary-General that “downsizing was not the answer” fell on deaf ears.³² The policy of evasion was so amazingly entrenched that some members of the Security Council went so far as to instruct their representatives “not to describe the deaths there as genocide, even though some senior officials believe that is exactly what they represent.”³³ A month later, on May 25, evidently exasperated by the enormity of what had transpired and reluctance of the Security Council to take more forceful action, the Secretary-General admitted international culpability with exceptional candor and equanimity. “We are all responsible for this disaster, not only the super-powers, but also the African countries, the non-governmental organizations, the entire international community. There has been a genocide, and the world is talking about what it should do. It is a scandal.”³⁴

Indeed, it is ironic that one of the first indictments before the Tribunal, the case of *Prosecutor v. Rutaganda*,³⁵ appears to be as much an indictment of the international community as it is of the accused. The statement of fact clearly suggests that the defendant was

28. *Id.* para. 15.

29. *Id.* para. 19.

30. See S.C. Res. 912, U.N. SCOR, 49th Sess., 3368th mtg., para. 8, UN Doc. SC/RES/912 (1994).

31. *Id.* para. 6.

32. *Letter Dated 29 April 1994 of Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, 49th Sess., U.N. Doc. S/1994/518 (1994).

33. Douglas Jehl, *Officials Told to Avoid Calling Rwanda Killings Genocide*, N.Y. TIMES, June 10, 1994 at A8.

34. *Un “Scandal” dont “Tout le Monde est Responsable”*, LE MONDE, May 27, 1994 at 6.

35. Indictment, *Prosecutor v. Rutaganda*, U.N. Doc. ICTR-96-3-I (International Criminal Tribunal for Rwanda 1996). Georges Rutaganda was charged with genocide, crimes against humanity and violations of article 3 Common to the Geneva Conventions for his part in the brutal killing of civilian Tutsis in Kigali and Gitarama throughout April of 1994. See *Id.* at 1-5.

able to massacre innocent civilians only after the withdrawal of UNAMIR:

Following the death of President Habyarimana, as violence escalated in Kigali, thousands of unarmed Tutsi men, women and children and some unarmed Hutus sought refuge at the ETO school . . . [which] . . . was considered a safe haven because Belgian soldiers, part of the United Nations Assistance Mission for Rwanda forces, were stationed there. On April 11, 1994, immediately after the Belgians withdrew, members of Rwandese Armed Forces, gendarmerie and militia, including the *Interahamwe*, attacked the school and killed people with machetes, grenades and guns.³⁶

The genocide of 1994 was anything but a surprise for the international community. It was the culmination of many years of cynical indifference and willful blindness to the plight of the Rwandan people. In the words of the Rwandan representative to the Security Council:

Since 1959 Rwanda has repeatedly experienced collective massacres, which, as early as 1964, were described by Pope Paul VI and two Nobel Prize winners—Bertrand Russell and Jean-Paul Sartre—as the most atrocious acts of genocide this century after that of the Jews during the Second World War. But whenever such tragedies occurred the world kept silent and acted as though it did not understand that there was a grave problem of the violation of human rights.³⁷

Thus, in 1994 the international community became a spectator to what may aptly be called “the archetypal African genocide,” the attempted extermination of an entire people.

It is apparent that ex post facto punishment of genocide is no substitute for effective preventive action. The establishment of the Rwanda Tribunal cannot undo the damage that resulted from the failure to intervene. Nor can it now bring instantaneous relief through justice and reconciliation to a society traumatized beyond imagination. If the Tribunal has brought instantaneous relief, it has been for the benefit of the spectators whose conscience has been eased, and whose credentials as “civilized nations” have been reaffirmed. In the wake of such a monstrous cataclysm, the achievements

36. *Id.* at 3-4.

37. U.N. Doc. S/PV.3453 (1994), *supra* note 17, at 13-14.

of the Tribunal in the short-term can be described as modest, at best.

III. CONFRONTING THE ENTREPRENEURS OF HATE: ERADICATING A CULTURE OF IMPUNITY

The potential contribution of the Tribunal to national reconciliation in Rwanda depends on understanding the root causes of the 1994 genocide. It is obvious that an essential ingredient of this tragedy was historical rivalry and ethnic fear between Hutu and Tutsi.³⁸ But this ingredient, though necessary, was not sufficient. It was necessary to transform these tensions into systematic mass violence, a feat which could only be achieved through careful planning and execution under the direction of political elites.

In 1994, the United Nations Special Rapporteur on the human rights situation in Rwanda identified three causes of the genocide which were “immediately apparent.”³⁹ The first was the “rejection of alternate political power” typical of the region, but which “takes on a special form in Rwanda, where it has strong ethnic overtones.”⁴⁰ The Special Rapporteur observed that the mass killings of Tutsi “is not ethnic as such, but rather political, the aim being the seizure of political power, or rather the retention of power, by the representatives of one ethnic group, previously the underdogs, who are using every means, principally the elimination of the opposing ethnic group, but also the elimination of political opponents within their own group.”⁴¹

The second identified cause of the genocide was the “incitement to ethnic hatred and violence.”⁴² In this respect, the most significant instrument was Radio-Télévision Libre des Mille Collines (RTLM), the propaganda organ of the Hutu extremists: “RTLM does not hesitate to call for the extermination of the Tutsi and it is notorious for the decisive role that it appears to have played in the massacres. It is known as the ‘killer radio station’, and justifiably so.”⁴³ According to Reporters sans frontières, RTLM proclaimed that by May 1994, “the cleansing of the Tutsi must be completed” and that “the grave is still only half full, who will help us to fill it?”⁴⁴ This systematic campaign

38. For an excellent overview of the historical roots of the rivalry between Hutu and Tutsi, see GÉRARD PRUNIER, *THE RWANDA CRISIS: HISTORY OF A GENOCIDE 9-40* (1995).

39. U.N. Doc. E/CN.4/1995/7, *supra* note 3, para. 55.

40. *Id.* para. 56.

41. *Id.*

42. *Id.* at 14.

43. *Id.* para. 59.

44. *Id.*

of incitement to ethnic hatred and violence was “made more dangerous by the fact that the generally illiterate Rwandese rural population listens very attentively to broadcasts in Kinyarwanda; they hold their radio sets in one hand and their machetes in the other, ready to go into action.”⁴⁵

The third cause was “impunity” which, like incitement, was “a recurrent cause of the massacres.”⁴⁶ Impunity is the cumulative effect of the rejection of alternate political power and the incitement to ethnic hatred and violence. Because, at the time of the genocide in 1994, “[n]o legal steps [had] been taken against those responsible for the earlier and present massacres, although they [were] known to the public and the authorities,”⁴⁷ there was no fear of punishment.

The 1994 Rwandan genocide was not unique. In fact, it was typical of past genocidal violence. A leading historical survey observed:

[I]n order to perform a genocide the perpetrator has always had to first organize a campaign that redefined the victim group as worthless, outside the web of mutual obligations, a threat to the people, immoral sinners, and/or subhuman. Even after such a campaign of vilification and dehumanization the actual performance of the mass killing seems to have required a good deal of coercion and centralized control . . . it seems that mass killing is extremely difficult for ordinary people to carry out; it requires the recruitment of pathological individuals and criminals.⁴⁸

In *Eichmann in Jerusalem*, Hannah Arendt points out that the murderers of the notorious *Einsatzgruppen*⁴⁹ “were not sadists or killers by nature . . . Hence the problem was how to overcome not so much their conscience as the animal pity by which all normal men are affected in the presence of physical suffering.”⁵⁰ She observes:

[J]ust as the law in civilized countries assumes that the voice of conscience tells everybody ‘Thou shalt not kill’, even though man’s natural desires and inclinations may at times be murderous, so the

45. *Id.*

46. *Id.* para. 60.

47. *Id.* para. 61.

48. FRANK CHALK & KURT JONASSOHN, *THE HISTORY AND SOCIOLOGY OF GENOCIDE* 28 (1990).

49. The *Einsatzgruppen* were special Nazi forces responsible for the extermination of enemy civilians in occupied territories during World War II.

50. HANNAH ARENDT, *EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL* 105-06 (2d ed. 1992).

law of Hitler's land demanded that the voice of conscience tell everybody: 'Thou shalt kill,' although the organizers of the massacres knew full well that murder is against the normal desires and inclinations of most people.⁵¹

Even those who posit deeply rooted anti-Semitism as the cause of the Holocaust do not deny the essential role of political elites in transforming that hatred into systematic genocide. In the words of Daniel Goldhagen in *Hitler's Willing Executioners*:

The road to Auschwitz was not twisted. Conceived by Hitler's apocalyptically bent mind as an urgent, though future, project, its completion had to wait until conditions were right. The instant that they were, Hitler commissioned his architects, Himmler and Heydrich, to work from his vague blueprint in designing and engineering the road. They, in turn, easily enlisted ordinary Germans by the tens of thousands, who built and paved it with an immense dedication born of great hatred for the Jews whom they drove down that road.⁵²

As different as the contexts may seem, there are certain similarities between the "Final Solution" under Nazi Germany and its 1994 Rwandan variant. A leading commentator explained how centralized state control through a comprehensive administrative apparatus, together with a culture of faithful obedience to authority, was indispensable for the Rwandan genocide:

The efficiency of the massacres bore witness to the quality of Rwandese local administration and also to its responsibility. If the local administration had not carried out orders from the capital so blindly, many lives would have been saved . . . [T]here had always been a strong tradition of unquestioning obedience to authority in the pre-colonial kingdom of Rwanda. This tradition was of course reinforced by both the German and the Belgian colonial administrations. And since independence the country has lived under a well-organized tightly-controlled state. When the highest authorities in that state told you to do something you did it, even if it included killing. There is some similarity here to the Prussian tradition of the German state and its ultimate perversion into the disciplined obedience to Nazi orders.⁵³

51. *Id.* at 150.

52. DANIEL JONAH GOLDHAGEN, *HITLER'S WILLING EXECUTIONERS: ORDINARY GERMANS AND THE HOLOCAUST* 425 (1996).

53. PRUNIER, *supra* note 38, at 244-45 (1995).

Returning to the three apparent causes of the Rwandan genocide, the inter-linked pattern of justice and reconciliation emerges. First, at the political level, those who have used genocide as a means of rejecting alternate political power must be openly stigmatized and permanently removed from public office or any other position of authority. The Rwanda Tribunal provides an impartial and authoritative judicial forum before which the culpability of such persons may be established. Only the most cynical and short-sighted would accept the proposition that those who thrive on hatred and mass violence can be relied upon to build a peaceful society. There is a distinction between Bosnia-Herzegovina and Rwanda insofar as the former has to contend with the reality that the genocidal killers are still in positions of authority whereas the latter has the advantage of their military defeat and exile.⁵⁴ Even so, the Hutu extremists in the refugee camps of neighboring countries continue to be a major source of conflict, throughout the Great Lakes region.⁵⁵

In this respect, the indictment and prosecution of Hutu extremist leaders by the Rwanda Tribunal has the potential to play a vital role in contributing to lasting reconciliation by facilitating the repatriation of refugees. The continued displacement of some 1.1 million Rwandans who sought refuge in Zaire after the RPF victory in July 1994 is a major source of instability in the Great Lakes region.⁵⁶ Indeed, it must be remembered that the armed conflict from 1990 to 1994 between the Habyarimana regime and the RPF itself was the culmination of a festering refugee problem which began with the political violence of the decolonization period between 1959 and 1963, and the consequent mass exodus of Tutsis to neighboring countries such as Uganda and Burundi.⁵⁷ Similarly, the continued displacement of Hutu refugees would most probably lead to a renewal of armed conflict accompanied by the massacre of civilians.⁵⁸

54. For a discussion of justice and reconciliation in the former Yugoslavia, see Payam Akhavan, *The Yugoslav Tribunal at a Crossroads: The Dayton Peace Agreement and Beyond*, 18 HUM. RTS. Q. 259 (1996).

55. See James McKinley Jr., *Strife on the Zaire Border Erupts Into Open War with Rwanda*, N.Y. TIMES, Nov. 2, 1996, at A1.

56. See *id.* See also *infra*, note 58.

57. See PRUNIER, *supra* note 38, at 41-92.

58. Editor's Note: Since the writing of this article in July 1996, events in the Great Lakes region have amply demonstrated the author's prognosis regarding destabilizing effects of the Hutu refugee population. The refugee camps in neighboring Zaire were used by the remnants of the Hutu extremist leadership to launch military operations into Rwanda as well as neigh-

In this respect, the remnants of the Hutu extremist leadership appear to be the primary impediment to the repatriation efforts of the United Nations. A 1994 report of the Secretary-General on security in the Rwandan refugee camps observed that:

There are approximately 230 Rwandese political leaders in Zaire, including former ministers, senior civilian and military officials, members of parliament and other political personalities, many of whom live in good conditions in hotels and houses outside the refugee camps These leaders exert a hold on the refugees through intimidation and the support of military personnel and militia members in the camps They are determined to ensure by force, if necessary, that the refugees do not repatriate to Rwanda. They also make it difficult for relief agencies to carry out their work in safety, because they attempt to control the agencies' activities in the camps and prevent relief supplies from reaching those in need. It is believed that these elements may be preparing for an armed invasion of Rwanda and that they may be stockpiling and selling food distributed by relief agencies in preparation for such an invasion. There have already been some cross border incursions.⁵⁹

This strategy is characteristic of deposed leaders for whom the hapless refugee population is at once a political constituency, a source of income, and a territorial base for launching military offensives. It is reminiscent of the activities of the Khmer Rouge leadership in exile after their overthrow by the 1979 Vietnamese invasion of Cambodia.⁶⁰

While there should be no compromise whatsoever with those Hutu leaders in exile who were responsible for the 1994 genocide, no

boring Burundi, both of which had Tutsi dominated regimes. These hostilities also created tensions between the Hutu and Tutsi populations indigenous to the region of Zaire around Lake Kivu. Military counter-offensives by Rwandan forces and escalating tensions within Zaire eventually led to a major rebel movement under the leadership of Laurent Kabila which, as of the time this article went to press, had captured virtually all of Zaire and threatened imminently to overthrow President Mobutu Sese Seko. Hundreds of thousands of Hutu refugees were forcibly and voluntarily repatriated to Rwanda while numerous others fell to starvation, disease and revenge massacres. See, e.g., *Great Lakes of Blood: Africa's Hutu-Tutsi Wars May Go On and On*, THE ECONOMIST, Nov. 2, 1996, at 16; *Waiting for the Rebels*, THE ECONOMIST, Mar. 8, 1997, at 43; *Liberating Zaire Is the Easy Bit*, THE ECONOMIST, Apr. 12, 1997, at 35; *Zaire: Time for Revenge*, THE ECONOMIST, Apr. 26, 1997, at 42.

59. *Report of the Secretary-General on Security in the Rwandese Refugee Camps*, U.N. SCOR, 49th Sess., paras. 7-8, U.N. Doc. S/1994/1308 (1994).

60. A leading historian explained that by 1982 the Khmer Rouge "had become an effective, well-equipped military force" and that their "dependents, who were treated as political refugees, were fed and housed by United Nations agencies." DAVID P. CHANDLER, A HISTORY OF CAMBODIA 231 (1993).

effort should be spared to encourage the participation of Hutu moderates in the Government of Rwanda, many of whom themselves were victims of the mass killings.⁶¹ Hutu extremism cannot be replaced by Tutsi extremism, because it will guarantee yet another repetition of the mass violence which has plagued Rwanda for decades. Accordingly, the prosecution of Hutu extremist leaders before the Rwanda Tribunal should not degenerate into a political weapon by which the power sharing arrangements envisaged under the 1993 Arusha Peace Agreement are undermined. On the contrary, the Tribunal should become an instrument by which those responsible for the genocide are distinguished from moderate Hutu leaders who have a legitimate right to participate in the government of their country.

While the prosecution of former leaders is an essential ingredient for reconciliation at the political level, there has to be a corresponding transformation of values among the Rwandan people who have been subjected to decades of incitement to ethnic hatred and violence, whether as victim or as obedient perpetrator. The Tutsi must absolve the Hutu of indefinite collective responsibility for the genocide while also having a legitimate means of vindicating their suffering through a "collective catharsis." The Rwanda Tribunal, in concert with appropriate national trials, can play a decisive role in this respect. As Richard Goldstone explained with respect to the International Military Tribunal at Nuremberg:

[The trials of war criminals] ensured that guilt was personalised—when one looks at the emotive photographs of the accused in the dock at Nuremberg one sees a group of criminals. One does not see a group representative of the German people—the people who produced Goethe or Heine or Beethoven. The Nuremberg Trials were a meaningful instrument for avoiding the guilt of the Nazis being ascribed to the whole German people. Then, too, the Nuremberg Trials played an important role in enabling the victims of the Holocaust to obtain official acknowledgment of what befell them.⁶²

The victims must see that justice will be done so that collective vengeance against Hutu can be discouraged, whether in the form of reprisal killings, or the arbitrary detention of tens of thousands of

61. See U.N. Doc. E/CN.4/1995/7, *supra* note 3, para. 49.

62. Richard J. Goldstone, *50 Years after Nuremberg: A New International Criminal Tribunal for Human Rights Criminals*, in CONTEMPORARY GENOCIDES: CAUSES, CASES, CONSEQUENCES 215, 215-216 (Albert J. Jongman ed., 1996).

“suspected” *génocidaires* in inhumane conditions.⁶³ In this respect, every effort must be made to expedite the prosecution of such accused with a view to the immediate release of all persons who are not culpable. With its very limited resources, the International Tribunal cannot even attempt to replace the role of Rwandan national courts in delivering fair trials to the approximately 85,000 persons presently detained.⁶⁴ The Prosecutor of the Tribunal has already indicated that the “essential objective” of his office is “to bring to justice those most responsible both at the national and local level for the mass killings that took place in Rwanda in 1994,” referring in particular to persons in positions of leadership and authority.⁶⁵ The symbolic effect of prosecuting even a limited number of such leaders before an international jurisdiction would have considerable impact on national reconciliation as well as deterrence of such crimes in the future. Nevertheless, it is only the Rwandan courts that can attempt to deliver justice to the tens of thousands languishing in overcrowded prisons.

Although the Tribunal enjoys primacy over national courts, Article 8 of its Statute provides for the concurrent jurisdiction with national courts.⁶⁶ The Rwandan judiciary, however, was decimated in 1994, and only forty magistrates remained after the genocide.⁶⁷ Furthermore, the amount of resources required for prosecuting tens of thousands of suspects within a reasonable time period would be considerable even in a wealthy state. In this respect, the November 1995 Kigali Conference on Genocide and Impunity recommended the establishment of a specialized judicial mechanism for expediting the prosecution of genocide, a proposal which the Rwandan government

63. The U.N. Special Rapporteur referred to the burgeoning prison population as a major source of human rights violations in Rwanda: “The prison population was estimated respectively at 29,400 persons in the 13 official detention centres as of 29 May 1995, and at 46,000 in all prisons as of 10 June. Those figures have increased substantially, having risen, as at 6 December 1995, to 44,712 and about 61,210, respectively. They will certainly have to be revised upwards because of the increase in persons incarcerated in isolation cells.” *Report of the Situation of Human Rights in Rwanda Submitted by Mr. Rene Degni-Segui, Special Rapporteur of the Commission on Human Rights, Under Paragraph 20 of Resolution S-3/1 of 25 May 1994*, U.N. ESCOR Commission on Human Rights, 52d Sess., Prov. Agenda Item 10, para. 89, U.N. Doc. E/CN.4/1996/68 (1996).

64. Allan Thompson, *Rebuilding a Whole Structure of Justice: In Rwanda, Revenge or Reconciliation?*, WORLD PRESS REVIEW, Feb. 1997, at 9.

65. See December 12, 1995, Press Statement by the Prosecutor of the International Criminal Tribunal for Rwanda, Justice Richard Goldstone.

66. See S.C. Res. 955, U.N. SCOR, 49th Sess., 3453rd mtg., Annex 1, art. 8, U.N. Doc. S/RES/955 (1994).

67. See UNITED STATES INSTITUTE OF PEACE, RWANDA: ACCOUNTABILITY FOR WAR CRIMES AND GENOCIDE, 15 (1994).

has accepted.⁶⁸ Furthermore, there have been various international efforts aimed at the training of judicial personnel and the development of judicial institutions.⁶⁹ Nonetheless, the Rwandan judicial system is still far from responding to the expectations of the administrators of justice and victims alike, and the obstacles to its rehabilitation persist.⁷⁰

The concurrent and expeditious prosecution of suspects before the International Tribunal and national courts is an important confidence-building measure which will greatly contribute to future peace in Rwanda. It is an essential means of preventing vengeful actions and thereby safeguarding the right to life, liberty and security of the person. Notwithstanding the obstructive role of Hutu extremists in refugee camps, such prosecutions are also an essential prerequisite for the repatriation efforts of the United Nations and, consequently, for the long-term stability of the entire Great Lakes region. As the report of the Secretary-General on the refugee situation noted, the Hutu extremists in exile are not the sole impediment to repatriation:

The refugees' fear of reprisals by the Government for atrocities committed against Tutsis and moderate Hutus seems to be another main reason for their hesitancy about returning to Rwanda. While this fear has been exacerbated by efforts on the part of political leaders, Rwandese government forces elements and militia to dissuade the refugees from returning home, it also appears to be rooted in the history of the relationship between Hutus and Tutsis in Rwanda.⁷¹

For their part, the Hutu must be disabused of their racist notions about the Tutsi which have been instilled into their minds by extremist leaders through indoctrination and misinformation.⁷² Most importantly, they must become aware of the whole truth of what transpired in 1994 so that they will not fall victim to the deception

68. Office of the President of the Republic of Rwanda, *Recommendations of the Conference Held in Kigali from November 1st to 5th, 1995 on Genocide, Impunity and Accountability: Dialogue for a National and International Response* (December, 1995).

69. See High Commissioner for Human Rights, Field Operation in Rwanda, *The Administration of Justice in Post-Genocide Rwanda*, U.N. Doc. HRFOR/JUSTICE/June 1996/E (1996).

70. See U.N. Doc. E/CN.4/1996/68, *supra* note 63, para. 45.

71. *Report of the Secretary-General on Security in the Rwandese Refugee Camps*, U.N. SCOR, 49th Sess., para. 13, U.N. Doc. S/1994/1308 (1994).

72. The Hutu commonly refer to the Tutsi as the *inyenzi*, or cockroach, which must be crushed.

and historical revisionism of Hutu extremists. A case in point is the open letter entitled "The Rwandese People Accuse," submitted on September 21, 1994, to the President of the United Nations Commission on Human Rights in Geneva by Agnès Ntamabyaliro, the Minister of Justice of the so-called Rwandan "government in exile" based in Bukavu, Zaire. This open letter, copies of which were sent to the Secretary-General as well as several heads of state, speaks of the "massacres of the Rwandese people" by the RPF and suggests that those who believe that hundreds of thousands were slaughtered by Hutu extremists have simply "allowed themselves to be manipulated and abused by the propaganda of the RPF and its African and European supporters."⁷³ In short, the genocide of 1994 is reduced to a deception of international opinion "created to serve imperialist interests."⁷⁴ A fundamental condition for reconciliation is widespread recognition of the truth that what transpired in 1994 was a genocide in which the Rwandan population was decimated and that there was nothing inherent or inevitable about the whirlwind of hatred and violence which swept through the country; and a recognition that Hutu and Tutsi walked the road to hell, victim and perpetrator alike, at the instigation of extremist leaders whose interests it served, and that the people of Rwanda are not doomed to repeat the mistakes of the past. Thus, through the International Tribunal, as well as national trials, the Rwandan people may be witness to the truth and thereby exorcise themselves from the spectres of the past.

In summary, it is apt to quote the words of the Rwandan representative before the Security Council who pointed out that "it is impossible to build a state of law and arrive at true national reconciliation" without eradicating "the culture of impunity" which has characterized Rwandan society for so long.⁷⁵ Those "who were taught that it was acceptable to kill as long as the victim was from a different ethnic group or from an opposition party, cannot arrive at national reconciliation unless they learn new values" which can only be achieved "if equitable justice is established and if the survivors are assured that what has happened will never happen again."⁷⁶ Through punishment of "those responsible for the Rwandese tragedy," the

73. Letter from Agnès Ntamabyaliro to the President of the United Nations Commission on Human Rights (Sept. 27, 1994) (on file with author; available from the Ministry of Information, Bukavu, Zaire).

74. *Id.*

75. U.N. Doc. S/PV.3453 (1994), *supra* note 17, at 14.

76. *Id.*

Tribunal “will help national reconciliation and the construction of a new society based on social justice and respect for the fundamental rights of the human person.”⁷⁷

The inter-linkage between justice and reconciliation notwithstanding, there are two caveats of which all concerned must be aware. First, in a country with an impoverished, largely rural and illiterate population, justice rendered by the International Tribunal in Arusha can have no reality or appreciable effect without a systematic effort aimed at the widespread dissemination of knowledge about the trials. To accomplish this end, the most accessible language, Kinyarwanda, and the most accessible medium, the radio, should be used. Because at present the only possibility for such broadcasts is through the state-controlled Radio Rwanda, it is imperative that all elements of the Rwandan government cooperate in this campaign of public information and education. Those whose interests reconciliation does not serve, for whom the grief and hatred of the victims is a political opportunity, bear a heavy responsibility if they deny the Rwandan people the right to see justice done.

The second caveat concerns the delicate balance which must be struck between the integrity of the judicial process on the one hand, and the appeasement of victims' grievances on the other. While the Rwandan people must be full participants in the reconstruction of their society, there should be no illusions about the limited extent to which a fair and impartial judicial process can accommodate popular sentiments. Arendt warned against the temptations of turning a trial into a show trial: “Justice does not permit anything of the sort; it demands seclusion, it permits sorrow rather than anger, and it prescribes the most careful abstention from all nice pleasures of putting oneself in the limelight.”⁷⁸ In her critique of the Eichmann trial she claimed that the case of the prosecution “was built on what the Jews suffered” and “not on what Eichmann had done.”⁷⁹ Although every effort must be made to vindicate the suffering of the victim, it must not be forgotten that “[a] trial resembles a play in that both begin and end with the doer, not with the victim In the center of a trial can only be the one who did—in this respect, he is like the hero in the play—and if he suffers, he must suffer for what he has done, not for

77. *Id.*

78. ARENDT, *supra* note 50, at 6.

79. *Id.*

what he has caused others to suffer.”⁸⁰ Accordingly, the Rwanda Tribunal, or trials before national courts for that matter, cannot act as a substitute for a truth commission or, worse, degenerate into a public spectacle.

IV. THE RWANDAN PAST, THE BURUNDIAN FUTURE: THE CHALLENGE OF PREVENTION

If Rwanda is a genocide past, Burundi is a genocide in process. No analysis of justice and reconciliation in Rwanda can remain oblivious to its wider impact on the Great Lakes region of Africa. There is an inextricable relationship between the political and inter-ethnic situation in Rwanda and that in Burundi, which impacts upon neighboring countries and their regional geopolitical struggles. As a leading commentator observed, the assassination in October 1993 of the Hutu President Ndadaye by Tutsi extremists at the beginning of the democratic transition process in Burundi “adversely affected the peace process in Rwanda and dealt a fatal blow to the Arusha accord”⁸¹ whereas conversely “the genocide of Tutsi in Rwanda confirmed the worst fears of many Burundian Tutsi and strengthened them in their conviction that the control of the army was vital for their survival.”⁸² On the other hand, the “victory of the Tutsi-dominated RPF in Rwanda and the successful challenge to democracy by extremist Tutsi in Burundi is profoundly frustrating Hutu of both countries.”⁸³ Similarly, the Secretary-General characterized the deleterious consequences for Burundi of the mass violence in Rwanda as follows:

Much of the Tutsi minority, historically dominant, lives with the phobia of its physical elimination, while the Hutu majority demands proper political representation. The 1994 genocide in Rwanda has heightened the fears of the minority, leading extremist elements to undertake ruthless actions against Hutu populations. Hutu extremists, in turn, are reinforced and supported from outside the country by some of the perpetrators of the Rwandese genocide. In such an environment, the voices of moderation are being drowned out, silenced or eliminated altogether.⁸⁴

80. *Id.* at 9.

81. FILIP REYNTJENS, *BURUNDI: BREAKING THE CYCLE OF VIOLENCE* 20 (1995).

82. *Id.*

83. *Id.*

84. *Report of the Secretary-General on the Situation in Burundi*, U.N. SCOR, 51st Sess., para. 3, U.N. Doc. S/1996/116 (1996).

The human rights situation in Burundi is one of exceptional gravity. It would be no exaggeration to say that it represents a genocide in the making, or rather, a "double genocide," with the Hutu and Tutsi acting alternately as victim and perpetrator. According to the July 1994 report of an International Commission of Inquiry, comprising representatives of several human rights non-governmental organizations, an estimated 50,000 people were killed as a result of the political violence following the assassination of President Ndadaye in 1993.⁸⁵ In 1996, the number of deaths is estimated at up to 100,000 and the killings continue unabated.⁸⁶ According to the outspoken former American Ambassador to Burundi, Robert Krueger, "a reasonable estimate is that 100 people are killed daily in Burundi."⁸⁷ He draws a comparison with the notorious Oklahoma City bombing, pointing out that Burundi, as a small African nation, is suffering an equivalent death toll each day.⁸⁸ With the Rwandan tragedy in retrospect, will the world be spectator to yet another monstrous genocide in Africa?

Burundi is a test case for preventive action against genocide. In an unprecedented report to the Security Council, the Secretary-General put forward the stark reality of Burundi and the options of the international community. In clear terms, and relying variously on humanitarian concerns, security threats and cost-effectiveness, he asserted:

The objective of the international community must be to prevent the escalation of present tensions in Burundi into full-scale civil war, ethnic violence and genocide. The risk of such developments in Burundi has been demonstrated by the events of October 1993 and earlier outbreaks of violence. Apart from the casualties and the human suffering another such catastrophe would entail, it would almost certainly lead to massive flows of refugees into neighbouring countries. This in turn would lead to further regional

85. See *Rapport de la Commission Internationale d'Enquête sur les Violations des Droits de l'Homme au Burundi Depuis le 21 Octobre 1993, Rapport Final*, July 1994, at p. 176. The human rights NGOs were, respectively: Human Rights Watch, Fédération Internationale des Droits de l'Homme, Ligue des Droits de la Personne dans la Région des Grands Lacs, Organisation Mondiale Contre la Torture, Centre National pour la Coopération au Développement, Nationaal Centrum voor Ontwikkelingssamenwerking, and NOVIB.

86. See *Burundi After the Coup*, THE ECONOMIST, August 3, 1996, at 35.

87. Chris McGreal, *For Rwanda, Read Burundi*, THE OBSERVER REVIEW, July 7, 1996 at 3.

88. See *id.*

destabilization, as well as the expenditure of billions of dollars on humanitarian relief services over an extended period. The costs of preventive action must be examined in this context.⁸⁹

The report explained that although “preventive diplomacy should remain the preferred mode of conflict management and resolution,” when the parties to a dispute are not prepared to engage in a constructive dialogue and the situation threatens to escalate into ethnic violence and genocide, it then becomes necessary to consider “other steps of a preventive nature, including those with a military aspect, to persuade the parties to leave the path of confrontation.”⁹⁰ The Secretary-General expressed the view that “the situation in Burundi has reached this stage” and that “less than two years after the genocide in Rwanda, the international community must not again be caught unprepared.”⁹¹ Accordingly, he recommended the establishment of a “standby multinational military force” with the mandate—should it become necessary to undertake a humanitarian intervention in Burundi—“to deter massacres, to provide security to refugees, displaced persons and civilians at risk and to protect key economic installations.”⁹²

The Secretary-General referred to Burundi as a “test case” for the United Nations ability to take preventive action, noting that it could even contribute “to the continuing search for a workable system of collective security at a time when civil wars and ethnic conflicts are becoming increasingly frequent.”⁹³ He spoke of the “warning signs” in Burundi and concluded that “if another tragedy befalls the Burundian people and the international community again proves to be unprepared, despite all the warnings, it will cause untold human suffering and gravely damage the credibility of the United Nations.”⁹⁴

It is submitted that an effective preventive strategy must also include the credible threat of judicial intervention or individual criminal liability for serious violations of international humanitarian law. Extremist leaders must be warned in unequivocal terms that they cannot protect themselves behind the shield of the state, with or

89. U.N. Doc. S/1996/116 (1996), *supra* note 84, para. 22.

90. *Id.* para. 23.

91. *Id.* para. 24.

92. *Id.* para. 28.

93. *Id.* para. 44.

94. *Id.* para. 45.

without military intervention. The arrest and prosecution of former Rwandan leaders before the International Tribunal should send a message to the potential or existing perpetrators of genocide in Burundi that they will be held individually accountable for their crimes, irrespective of their official position. It should become clear to all that the international community will diligently and uncompromisingly pursue such genocidal killers. But the threat must be as direct as possible. While the immediate establishment of yet another ad hoc international jurisdiction for Burundi may be too burdensome for a Security Council experiencing atrocity fatigue, the international community should already put into place a mechanism for the systematic collection of evidence, both as a deterrence and a means of expediting prosecutions at a later stage as circumstances require. One possible option would be for the Security Council to establish a Commission of Experts which, with relative organizational efficiency and cost-effectiveness, could prepare the stage for prosecutions once the moment is opportune.

The prosecution of genocidal crimes in Burundi, however, should not be conditional on any particular political outcome, although it may be necessary to await a propitious political climate. If extremist leaders—whether Tutsi or Hutu—who have already committed mass killings are allowed to enjoy impunity, it will be extremely difficult to allow the voices of moderation and reconciliation to prevail on the political stage. In 1972, Tutsi extremists massacred an estimated 100,000 to 200,000 Hutu in Burundi, resulting additionally in the mass exodus of 300,000 refugees to neighboring countries.⁹⁵ Needless to say, this was an immense crime, but it was also one which “heralded a culture of impunity”⁹⁶ in Burundi: “The fact that no one was prosecuted has convinced those responsible for massive human rights violations that anything is possible, without fear of prosecution by either the domestic judicial system or the international community.”⁹⁷ As in Rwanda, therefore, lasting reconciliation is not possible in Burundi if a culture of impunity is allowed to continue.

95. See Kathleen Teltsch, *Killings Go On in Burundi, U.N. Statement Suggests*, N.Y. TIMES, July 29, 1972, at 1.

96. REYNTJENS, *supra* note 81, at 7.

97. *Id.*

V. CONCLUSION: FERTILE GROUND FOR JUSTICE AND RECONCILIATION IN THE HUMAN CONSCIENCE

The establishment of the Yugoslav and Rwanda Tribunals by the Security Council is the result of public outcry as well as the favorable confluence of political circumstances. It is upon the blood and misery of countless victims that the beginnings of a long-awaited international penal court can be discerned. The interdependence of justice and reconciliation in the wake of mass violence, the convergence of peace-building and respect for human rights, provides an auspicious opportunity for the world community to move towards a future free from the odious scourge of genocide.

While much has been said about the pragmatic dimension of punishing mass human rights violations as a preventive measure or as a means of post-conflict peace-building, relatively little has been said about the psychological and spiritual dimensions of justice and reconciliation. Evidently, ethnic hatred and violence is an ancient and intractable problem, and an infinitely complex phenomenon. Nonetheless, it is possible to posit the simple thesis that adverse distinctions exist first and foremost in our minds. The renowned African scholar, Ali A. Mazrui, noted that "violations of human rights are preceded by a process of psychic subhumanization" by which the violator "subhumanizes his victim in his own imagination," although "residual humanity is often necessary to give meaning to the sin of inter-human cruelty."⁹⁸ Such dehumanization, he explained, is the "reverse of the psychology of love" because no human being can love a non-human object "unless the object undergoes psychic humanization in the imagination of the lover."⁹⁹ When someone loves her dog "it is because the dog has been, in some sense, anthropomorphized," and when someone loves his "motherland" it is because his imagination "has invoked a metaphor of human kinship" with the territory.¹⁰⁰ The psychology of hate, on the other hand, requires "a partial reduction of humanity."¹⁰¹ Since it is difficult to hate an inanimate object or animal, the most fertile soil for hatred is that "intermediate area of sub-humanity" or "tendency on the part of the hater to reduce the humanity of the person hated."¹⁰²

98. Ali A. Mazrui, *Human Rights and the Moving Frontier of World Culture*, in PHILOSOPHICAL FOUNDATIONS OF HUMAN RIGHTS 243, 243 (1986).

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

Dehumanization always begins in our imagination and sometimes ends in the sort of cataclysm which the world witnessed in Rwanda during 1994. Before ordinary Hutu could participate in the slaughter of defenseless children, the Tutsi had to be portrayed as an inherently bloodthirsty and cruel people; they had to be denigrated as belonging to an alien Hamitic race that had invaded Rwanda from Ethiopia,¹⁰³ and therefore needed to be eliminated. In essence, this process of dehumanization is often a contrivance of populist leaders which feeds on the primitive impulse to denigrate others as a means of self-affirmation. It is telling to recall here the words of the leader of the Confederacy, Jefferson Davis, who argued before the U.S. Senate prior to the outbreak of the U.S. Civil War that African slavery is a means of achieving brotherhood: "One of the reconciling [*sic*] features of the existence of Negro slavery is the fact that it raises white men to the same general level, that it dignifies and exhorts every white man by the presence of a lower race."¹⁰⁴

In contrast to such racist mythology, justice in its deepest sense is an affirmation of the truth of human equality, a basic attribute of our social being without which lasting peace cannot be attained. It is an affirmation of the truth that the greatest struggle of all is not a war between peoples, but rather, a war between humanity and its negation. But justice and reconciliation cannot be relegated as the preserve of the victim and perpetrator alone, because our shared humanity dictates that those who were mere spectators in the face of inhumanity are also part of the equation. That genocide is a crime against humanity is not simply a pious juridical declaration; it is also an expression of the inescapable fact that in an interdependent world community, such immense suffering affects us all. It is an affirmation of the oneness and wholeness of the human race.

103. See *Rapport Final*, *supra* note 19, at 24-25.

104. Jefferson Davis, *quoted in Study on the Achievements Made and Obstacles Encountered During the Decades to Combat Racism and Racial Discrimination: Report by Mr. A. Eide, Special Rapporteur*, U.N. ESCOR Commission on Human Rights, 41st Sess., Prov. Agenda Item 5(a), para. 274, UN Doc. E/CN.4/Sub.2/1989/8 (1989).