The Contribution of the Jurisprudence of the ICTR to International Criminal Law

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Introduction

The ICTR, in common with its sister Tribunal in The Hague, was the first international judicial body post-Nuremberg to determine criminal responsibility in relation to the most serious international crimes known to humanity.

Through its judgements and decisions, the ICTR has bequeathed highly significant case law. In particular, the ICTR jurisprudence provides abundant interpretative material on the legal nature and factual realities of the crime of genocide. A number of other important themes in the ICTR’s jurisprudence are also particularly significant to the development of the corpus of international criminal law.

The ICTR’s importance to the development of international criminal law – and its jurisprudential legacy – is therefore immense.
Elucidation of the elements of genocide

First and foremost, the ICTR provides abundant interpretative material on the legal nature and factual realities of genocide. The comparatively fewer indictments for genocide before the ICTY mean that the ICTR jurisprudence is a particularly important source for both the definition and elucidation of the legal ingredients of this offence.

The place of rape in international criminal law

The Akayesu judgment was also groundbreaking for its affirmation of rape as an international crime. This judgment and its successors are also notable for finding that rape may comprise a constituent act of genocide. The ICTR case law had therefore had an important influence in underlining the location and significance of sexual violence to

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1 As the Genocide Convention was adopted only in 1948, the ICTR was the first international body to adjudicate the elements of that offence. (See Convention on the Prevention and Punishment of the Crime of Genocide (“Genocide Convention”), adopted by Resolution 260(III)A of the U.N. General Assembly on 9 December 1948, entered into force 12 January 1951).

2 The Akayesu Judgement was the first in which an international Tribunal was called upon to interpret the definition of genocide as defined in the Genocide Convention (see Prosecutor v. Akayesu, Trial Chamber Judgement, 2 September 1998. See also inter alia Prosecutor v. Kambanda, Trial Chamber Judgement, 4 September 1998, Prosecutor v. Kayishema and Ruzindana, Trial Chamber Judgement, 21 May 1999, Prosecutor v. Musema, Trial Chamber Judgement, 27 January 2000, Prosecutor v. Rutaganda, Trial Chamber Judgement, 6 December 1999, ibid, Appeal Chamber Judgement, 26 May 2003.

international criminal law. The ICTR further provides the first international prosecution of a female accused of such offences.4

Responsibility of state officials for international crimes

The ICTR was also the first international Tribunal post-Nuremberg to focus its efforts on the highest echelons of leadership for serious violations of international humanitarian law.5 Indeed, by the time of the transfer of the former Yugoslav President Slobodan Milošević to The Hague on 28 June 2001, the ICTR had, almost three years previously, already tried and convicted the Rwandan former Prime Minister.6 The Kambanda case was also one of the earliest sentences to be meted out by the ad hoc Tribunals following a plea of guilty.7

Freedom of expression vs. incitement to international crimes

The ICTR, in the Media case, developed a further legacy of the post-World War II case law. This is the first contemporary judgment to

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4 Pauline Nyiramasuhuko, whose trial is presently in progress, was the Rwandan Minister of Family and Women’s Affairs at the relevant time. She is charged, amongst other things, with incitement to commit rape and other forms of sexual violence as a crime against humanity.

5 Jean Kambanda was the Prime Minister of Rwanda during the relevant period, thus reaffirming the principle, embodied in the Statutes of both ad hoc Tribunals, that no individual enjoys impunity for such crimes on account of their official position. (See Prosecutor v. Kambanda, Trial Judgement, 4 September 1998).

6 The issue of immunity of heads of State for international crimes has subsequently become significant also before the International Court of Justice (see e.g. Case Concerning Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium), Judgement, ICJ, 14 February 2002).

7 See subsequently Prosecutor v. Bisengimana, Judgement, Trial Chamber, 13 April 2006 and Prosecutor v. Serugendo, Judgement, Trial Chamber, 12 June 2006, both also rendered following guilty pleas.
examine the role of the media in the context of mass crimes.\textsuperscript{8} This important case, which addresses the boundary between the right guaranteed under international law to freedom of expression and incitement to international crimes, was the first pronouncement by an international tribunal on these questions since the conviction of Streicher at Nuremberg.\textsuperscript{9}

\textbf{Responsibility of superiors}

The ICTR’s case law, which applied its Article 6(3) within a conflict which was both internal and with important non-military components, additionally endorses the application of the doctrine of command responsibility to the civilian leadership. In terms of direct modes of criminal participation too, the ICTR case law is also significant for grappling with the difficult delineation between collective or mass criminality and individual criminal responsibility, as expressed in notions such as co-perpetration, common purpose and joint criminal enterprise.\textsuperscript{10}

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\textsuperscript{8} Judgment, Trial Chamber, 3 December 2003. This case is presently on appeal.
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\textsuperscript{10} See most recently Prosecutor v. Simba, Judgement, Trial Chamber, 13 December 2005.
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Procedural norms

Aside from its judgments, the Tribunal has handed down more than 1,500 written decisions, as well as a considerable number of in-court oral rulings. These written and oral decisions form an important part of the Tribunal’s jurisprudence and clarify a wealth of mainly procedural issues arising under the Statute and the Rules.

General jurisprudential legacy

The principal beneficiary of the ICTR’s jurisprudence will be the International Criminal Court in The Hague. The ICTR case law will provide an important crucible for the ICC’s early adjudication of the crimes punishable under its Statute.

Additionally, the ICTR is the legacy of the UN Security Council’s increasing willingness to consider widespread violations of international humanitarian law as not merely local humanitarian catastrophes but as events which fundamentally threaten the entire international framework of peace and security. The Security Council’s decision to view the establishment of a judicial tribunal as properly within the aegis of its enforcement powers under Chapter VII of the UN Charter is likely to be of increasing significance as the Security Council strives to increase its

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11 The ICC, which was established as a permanent institution so as to combat impunity for serious violations of international humanitarian law, aspires to universal reach. (See Rome Statute of the International Criminal Court, A/CONF.183/9 of 17 July 1998; entered into force 1 July 2002).
capacity to grapple with complex humanitarian emergencies and their aftermath.\footnote{See \textit{A More Secure World: Our Shared Responsibility}, Report of the Secretary-General’s High-Level Panel on Threats, Challenges, and Change, United Nations (2004).}

**Conclusion**

In a nutshell, the ICTR has therefore already made a significant contribution to the development of international criminal law, human rights law and international humanitarian law. It has conducted trials in conformity with the highest standards of international due process, including the rights of the accused. Although a final assessment of the ICTR’s legacy must await the completion of its work, by conducting proceedings which are beyond reproach, the Tribunal has set an important precedent and has contributed to the development of the international rule of law.

Further, the ICTR has shown that international criminal justice actually works. Far from being a mere statement of lofty idealism, the ICTR has become a working reality, even under the most difficult of conditions.