CHAPTER 10

The Contribution of the ICTR to the Rule of Law

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1 Introduction

It is a privilege to contribute to this festschrift in honor of Hassan Bubacar Jallow, Chief Prosecutor of the International Criminal Tribunal for Rwanda. Prosecutor Jallow’s career has been dedicated to strengthening the rule of law, fighting impunity and promoting capacity building in the area of judicial and democratic institutions. It is also an opportunity to reflect upon the work accomplished by him and by the Tribunal that he served for so many years, and is particularly apt given the recent commemorative events held in remembrance of the twentieth anniversary of the Rwandan genocide.

This is a crucial juncture in the ICTR’s history, as well as a moment charged with mixed emotions: Pride at nearly completing the work the Tribunal was charged with doing; but pride mixed with sadness at seeing so many staff leave after their long investment in the common undertaking that has been the ICTR – including Prosecutor Jallow – and pride mixed with concern about the future legacy of the Tribunal. I cannot, in this short essay, thoroughly cover the seventeen-year history of the ICTR, nor would I presume to do so. Nor can I comment, except tangentially, upon the work of the ICTR as viewed by the Rwandan government and the Rwandan people, leaving a discussion of that important subject for another time and place. Yet what perhaps I can offer is an outsider’s perspective on the work of the ICTR, situate it in historical context, and offer some suggestions about future actions that may help consolidate the legacy of this Tribunal and the great and recent experiment of international criminal justice more generally.

In my view, the ICTR has had a profound short- and medium-term effect locally, regionally and internationally. This effect has been felt in local, regional and international politics, it has flowed through the thousands of people whose lives have been touched by the work done here, and it has resulted in the establishment of new institutions of international criminal justice that will succeed the ICTR. A more difficult question is what long-term impact the Tribunal’s work will have, and I will turn to that issue in closing.
From Nuremberg to Arusha

The idea which surfaced after the First World War – that individuals controlling the apparatus of a State used that power to commit genocide, crimes against humanity or war crimes\(^1\) – was not realized until the establishment of the Nuremberg Tribunal in 1945. While it is not always useful to recall the Nuremberg precedent in modern times and the conditions of that tribunal’s work were very different than those extant today, I believe there are useful parallels to be drawn from that first experiment with international justice. That tribunal was established quickly, in a matter of months, as an international occupation court whose judges and prosecutorial staff were from the four allied powers only. Germany and Europe lay in ruins, and Germany had unconditionally surrendered to the Allies. The IMT tried twenty-two defendants and acquitted three; twelve were sentenced to death by hanging, the others to varying terms of imprisonment.\(^2\) Its establishment and judgment was an important watershed event in international law by finding that those who troubled the peace and security of the world and attacked their own people – as well as their neighbors – could be made to answer for their actions before an international tribunal. International crimes, the tribunal wrote, are “committed by men, not by abstract entities,” who may be held criminally responsible for transgressing international law.\(^3\) Thus was born – as a practical matter – the field of international criminal law. The inverse of the Nuremberg accountability principle – that all human beings not only have duties but rights under international law – spawned the modern era of international human rights.

As is well known, the promise to build upon the Nuremberg trial and judgment remained unfulfilled for nearly fifty years, and the international criminal tribunal promised in Article VI of the 1948 Genocide Convention\(^4\) was never established. Indeed, the Nuremberg precedent notwithstanding, it is worth recalling that in 1994, as genocide was engulfing Rwanda, there was no

\(^{1}\) See, e.g., Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties, Report Presented to the Preliminary Peace Conference 14 Am. J. Int’l L. 95 (1920).


\(^{3}\) Göring et al., supra note 2, at 221 (1947).