Universal Jurisdiction over Atrocities in Rwanda: Theory and Practice

1. INTRODUCTION

The atrocities in the former Yugoslavia and Rwanda have within a short span of time, triggered the creation of two international criminal ad hoc tribunals. The jurisdiction of both tribunals is predicated on the right of all states to assert jurisdiction over the alleged offences on the basis of the principle of universal jurisdiction. Following the establishment of the tribunals, judicial authorities in third states have asserted jurisdiction over crimes committed in the former Yugoslavia and Rwanda.

The statutes of both international tribunals constitute extremely important developments in international humanitarian law with regard to the criminal character of the norms governing armed conflict. A remarkable interplay between national and international prosecutions has reinforced those developments, and a recent decision by the Appeals Chamber of the International Tribunal for the former Yugoslavia fully corroborates the new direction in international law: internal atrocities are crimes under international law and therefore universally punishable.


2. The official names are '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 and Rwandan citizens responsible for genocide and other such violations in the territory of neighbouring states, between 1 January 1994 and 31 December 1994' and 'The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991'.

3. Regarding the former Yugoslavia, the author has knowledge about prosecutions in Denmark (The Prosecution v. Refic Saric, 3rd chamber of the Eastern Division of the Danish High Court, judgment delivered on 25 November 1994) and Switzerland (cf. letter of the Juge d'instruction in charge of the investigations; on file with author). See also R. Maison, 'Les premiers cas d’application des dispositions pénales des Conventions de Genève par les juridictions internes', 6 European Journal of International Law (1995) pp. 260-273.


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This article gives an overview of public legal actions in third states against individuals suspected of active involvement in the massacres in Rwanda.

In Part 2 we give a brief description of the factual context in Rwanda in 1994: a non-international armed conflict in which hundreds of thousands of civilians were murdered.

Part 3 introduces the reader to the legal implications of the facts and explains the notions of criminality versus illegality under international law, direct versus indirect enforcement and territorial versus universal jurisdiction.

Part 4 presents the norms of international law applicable to the conflict in Rwanda and recent developments in their legal status.

Part 5 deals briefly with the Statute of the International Criminal Tribunal for Rwanda which is the international community's collective response to the massacres.

Part 6, the core of the article, gives the overview of states' individual practices. The countries which took some legal action independently from any request by the International Criminal Tribunal for Rwanda are Belgium, Canada, France and Switzerland. The inventory does not include any of the African countries because insufficient information was available.

The article concludes that in each of the countries involved, the judicial authorities were slow to act and their initiatives followed the establishment of the International Tribunal for Rwanda. Nevertheless, very important precedents have been set in each country. The possibility in some states for private citizens to initiate criminal proceedings over crimes giving rise to universal jurisdiction opens extraordinary avenues for human rights litigators.

5. Public legal actions as opposed to private legal actions (civil suits). A civil law suit is filed by Rwandese citizens in the United States against Jean Bosco Barayagwiza who, at the time of the massacres, was the acting president of the Rwandese Hutu political party CDR. (Mushikiwabo et al. v. Barayagwiza, 94 Civ. 3627, in the District Court for the Southern District of New York). Plaintiffs assert universal civil jurisdiction of American federal courts under the Alien Tort Claims Act (28 U.S.C. § 1350) which provides that 'the district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States'. The role of the United States Government in this case was limited to advising the court that the Government of Rwanda had waived any immunity that M. Barayagwiza might enjoy under international law (he was served with process while in New York on United Nations business), and that the United States had no foreign policy objection to the litigation's going forward. (cf. letter of the United States Department of State to the author). Prior to the Barayagwiza case, a similar law suit was filed against Bosnian Serb leader Radovan Karadzic (Doe v. Karadzic, 866 F. Supp 734 S.D.N.Y. 1994). Both suits build upon the decision in Filartega v. Peña-Irala, 630 F.2d 876 (2d Cir. 1980) which recognized that the Alien Tort Claims Act validly creates federal court jurisdiction for suits alleging torts committed in the world against aliens in violation of the law of nations.