

### III. THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

#### A. THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

The International Criminal Tribunal for Rwanda (ICTR) was created by the Security Council on 8 November 1994 under resolution 955. Its purpose is to try those responsible for genocide, crimes against humanity and other serious violations of international humanitarian law committed during 1994 in Rwanda, or by Rwandans in neighbouring countries.<sup>11</sup> The Security Council decided that the Tribunal should sit in Arusha, Tanzania.<sup>12</sup>

There are three parts to the ICTR:

- three courts or divisions (the third has just been created) each composed of three judges elected by the General Assembly of the United Nations for a period of four years;
- the Public Prosecutor's Office;
- the Clerk's Office.

The five judges sitting on the Appeal Court of the Tribunal for the former Yugoslavia in The Hague have also been appointed to the Appeal Court of the ICTR. The Public Prosecutor at the Tribunal for the former Yugoslavia, in charge of investigations and legal proceedings, holds the same responsibility for the ICTR, but remains based in The

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<sup>11</sup> The temporal jurisdiction of the ICTR covers the whole of 1994. This was a bone of contention when the Tribunal was being set up and is recognised as one of its weaknesses. The Rwandan government raised two main objections. The first objection concerned the government's claim that the Tribunal's jurisdiction should cover the period from 1 October 1990 to 17 July 1994, thus allowing it to investigate the crimes committed against Tutsis and moderate Hutus since the beginning of the war in 1990 up until the final victory of the Rwandan Patriotic Front (RPF). That this extension not accepted was the main reason why Rwanda's representatives to the United Nations voted against resolution 995. Some observers point out that acts committed between 1 October 1990 and 17 July 1994 could nevertheless be included if a causal link could be proved between them and the crimes committed in 1994.

The government's second objection concerned the extension of the Tribunal's jurisdiction to the period after 17 July 1994. The Security Council chose to extend its jurisdiction up until the end of 1994 so that it might investigate violations of international humanitarian law that might have been committed by the RPF after the creation of the government of national unity.

The ICTR's territorial jurisdiction covers Rwanda and other countries on whose territory Rwandan nationals committed international humanitarian law violations. The intention was to thereby include Hutu militias and members of the former Rwandan Armed Forces (ex-FAR) who continued to intimidate and kill civilians from their bases in refugee camps in Zaire, Tanzania and Burundi. This extension of the Tribunal's area of jurisdiction is criticized as an infringement of the national sovereignty of states.

<sup>12</sup> The debate over the location of the ICTR had a political dimension. Although a commission of experts recommended that the Tribunal should sit in The Hague in order to ensure its impartiality and independence, the Rwandan government called for it to be located in Kigali. The Security Council chose Arusha in Tanzania with a view to providing a calmer atmosphere for debate and better logistics and administrative facilities. These are not convincing reasons. The first reflects a lack of confidence in regard to the Tribunal itself and to the Rwandan authorities who committed themselves to full co-operation with the ICTR. The second has been disproved by the logistic and material difficulties encountered in Arusha, which have seriously handicapped the Tribunal's work.