United Nations Security Council [UNSC]; International Criminal Tribunal for Rwanda [ICTR]

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Subject(s):
Jurisdiction — International criminal law — International humanitarian law — International courts and tribunals, powers
Core Issues

1. The relevance of customary international law in relation to the International Criminal Tribunal for Rwanda’s jurisdiction.

2. The relationship between the International Criminal Tribunal for Rwanda and domestic jurisdictions.

3. The features shared by the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia.

This headnote pertains to: Statute of the International Criminal Tribunal for Rwanda, an instrument the text of which has been prepared by and/or adopted in the framework of an international organization. Jump to full text

Background

The Statute of the International Criminal Tribunal for Rwanda (‘Statute’) regulated the functioning of the International Criminal Tribunal for Rwanda (ICTR). It was the first International Criminal Tribunal (ICT) set up for Africa and constituted the second ICT established by the United Nations (UN) Security Council (SC) acting under Chapter VII of the Charter of the United Nations. As such, it was commonly referred to as ‘the sister Tribunal’ of the International Criminal Tribunal for the former Yugoslavia (ICTY). The Statute, having been adopted as an Annex to United Nations Security Council Resolution 955 (1994) on the establishment of an International Criminal Tribunal for Rwanda and adoption of the Statute of the Tribunal (‘Resolution 955’), was binding upon UN Member States. The Statute and the subsequent case law of the court furthered international criminal law substantively, procedurally, and institutionally. Furthermore, it contributed to the enforcement of international humanitarian law (‘IHL’) and human rights law.

On 6 April 1994, the aircraft carrying the Presidents of Rwanda and Burundi returning from a meeting in Tanzania regarding the implementation of the Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front (RPF) (‘Arusha Accords’) (4 August 1993) was shot down as it landed in Kigali. All on board were killed. This incident is considered to be what triggered the armed conflict. The killing of Tutsi and Hutu who supported the Arusha Accords by the presidential guard and militia commenced on 7 April 1994 and lasted until 18 July 1994, when the RPF—the Tutsi-dominated rebel group—entered Kigali. The genocide unfolded alongside the armed conflict between the RPF and the Rwandan Armed Forces (RAF).

The Report of the Secretary-General on the Situation in Rwanda to the UN SC called for a proper investigation. United Nations Security Council Resolution 935 (‘Resolution 935’) urged the Secretary-General to establish an impartial Commission of Experts (‘Commission’). In its Preliminary Report (Preliminary Report of the Commission of Experts established pursuant to United Nations Security Council Resolution 935 (1994)) the Commission recommended the prosecution of the crimes of genocide and other serious violations of IHL before an ICT. The Final Report of the Commission of Experts established pursuant to Security Council Resolution 935 (1994) concluded that there existed ample evidence that the Hutu had committed acts of genocide against the Tutsi ethnic group, and that crimes against humanity and serious violations of IHL had been committed by both parties to the conflict.
On 28 September 1994, the new government of Rwanda requested of the UN the establishment of an ICT (see Letter dated 28 September 1994 from the Permanent Representative of Rwanda to the United Nations addressed to the President of the Security Council (29 September 1994) UN Doc S/1994/1115). Paradoxically, Rwanda—a non-permanent Member State of the UN SC—voted against the adoption of Resolution 955 advancing several critiques, in particular those related to the jurisdiction *ratione temporis* prescribed for the ICTR. On 22 February 1995, the UN SC adopted United Nations Security Council Resolution 977 (1995). Arusha, Tanzania, was designated as the seat of the ICTR in recognition of the fact that the peace negotiations had been undertaken there and it was considered neutral territory. The Statute entered into force on 29 June 1995.

The ICTR's mandate concluded on 31 December 2015. The continuation of the ICTR's juridical capacity and residual functions were entrusted to the International Residual Mechanism for Criminal Tribunals (see United Nations Security Council Resolution 1966 (2010) on the establishment of the International Residual Mechanism for Criminal Tribunals with two branches and the adoption of the Statute of the Mechanism ('Resolution 1966')) whose branch for the ICTR commenced functioning on 1 July 2012. Accordingly, the Statute was subjected to transitional arrangements set out in Annex 2 of Resolution 1966.

**Summary**

The Statute vested the ICTR with jurisdiction *ratione materiae* over: genocide; crimes against humanity; and violations of common Article 3 of 1949 Geneva Conventions—ie the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; the Geneva Convention Relative to the Treatment of Prisoners of War; and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War; ('common Article 3') and Protocol II Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts ('AP-II'). [Arts 2-4] Customary international law elements of the *chapeau* of crimes against humanity were included, ie their occurrence as part of a widespread or systematic attack against any civilian population in times of war or peace. However, this was limited by the requirement that the crimes were to have been committed on discriminatory grounds—ie national, political, ethnic, racial, or religious. [Art 3] The genocide provision adopted verbatim the definition and punishable acts under Articles 2 and 3 of the Convention on the Prevention and Punishment of the Crime of Genocide ('Genocide Convention').

While concurrent jurisdiction with national jurisdictions was provided for, the ICTR had primacy and was thus empowered to request the deferral of any domestic proceedings. [Art 8] In the context of the ICTR's—and ICTY’s—completion strategy, an inverse process of referral (to domestic courts) was provided for (see United Nations Security Council Resolution 1503 (2003) on the implementation of Completion Strategies of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda ('Resolution 1503') and United Nations Security Council Resolution 1534 (2004) on necessity of trial of persons indicted by the International Criminal International Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda).

The judges initially adopted the International Criminal Tribunal for the former Yugoslavia Rules of Procedure and Evidence with changes as necessary for the conduct of proceedings.
before the ICTR. [Art 14] The ICTR Rules of Procedure and Evidence (‘ICTR RPE’) were amended by the judges twenty-three times.

Full cooperation with the ICTR was binding upon UN Member States by virtue of paragraph 2 of Resolution 955, and was articulated in the Statute. [Art 28] Requests for judicial assistance and cooperation orders were, therefore, binding.

Sentences were enforced in countries that concluded agreements with the ICTR or could also be served in Rwanda provided that human rights standards were met. [Art 26] Penalties were limited to imprisonment and orders of restitution could be issued. [Art 23] Protective measures for victims and witnesses were elaborated in the ICTR RPE. [Art 21]

The organs of the ICTR included Chambers, the Prosecution, and the Registry. [Art 10] Three Trial Chambers functioned within the ICTR premises in Arusha. However, the Appeals Chamber was common to both the ICTY and ICTR, as was the Prosecutor until 2003 when the prosecutorial functions were split by virtue of paragraph 8 of Resolution 1503. [Art 13(4)]

Analysis

With the ICTR having been established within a relatively short time of the ICTY’s establishment, it was to be expected that the Statute would draw upon the Statute of the International Criminal Tribunal for the former Yugoslavia (‘ICTY Statute’). Some distinguishing features, however, were incorporated in the ICTR’s jurisdictional provisions.

The judicial guarantees provided for in the Statute, which mirrored those of common Article 3(d) of the 1949 Geneva Conventions, may be considered particularly relevant in view of the fact that Rwanda’s legal system contemplated capital punishment at the time the Statute was adopted (Article 26 Republic of Rwanda Decree-Loi 21/77, Criminal Code).

Interpretation of Statute’s provisions

The Statute required crimes against humanity be committed on discriminatory grounds. This was absent in the ICTY Statute and other statutes of ICTs. This was considered to be a reflection of the factual situation in Rwanda as opposed to a departure from customary international law (see Prosecutor v Akayesu (Jean-Paul), Appeal judgment, paras 464-465 (‘Akayesu Appeal Judgment’)). It was further regarded as a narrower definition than that in customary international law (Prosecutor v Bagilishema (Ignace), para 74 (‘Bagilishema Judgment’)).

Compared to the ICTY Statute, the chapeau in the ICTR Statute did not require the connection with an armed conflict. This was interpreted as constituting a requirement due to the prevailing situation in the former Yugoslavia (see Akayesu Appeal Judgment, para 465).

Rape and other acts of sexual violence were held to amount to genocide under Article 2(2)(b) of the Statute (‘causing serious bodily or mental harm to members of the group’) in Prosecutor v Akayesu (Jean-Paul) (‘Akayesu Trial Judgment’), which constituted the first international conviction for genocide and incitement to commit genocide (see Akayesu Trial Judgment, paras 731-734).

The inchoate forms of genocide provided for in the Genocide Convention—ie conspiracy and incitement to commit genocide—were subject to prosecution. In interpreting and applying the Statute, the case law differentiated incitement from instigation, and highlighted the role of the media in connection with incitement (see Akayesu Trial Judgment, paras 481-482; and Prosecutor v Muhimana (Mikaeli), para 504). Superior responsibility was found
applicable in relation to incitement to commit genocide. Hate speech was elaborated upon in relation to incitement and persecution as a crime against humanity on the basis of ethnicity (see Prosecutor v Nahimana (Ferdinand) and ors, Judgment and sentence, paras 1072-1073).

The threshold applicable in determining the existence of an armed conflict under common Article 3 and AP-II was articulated in the ICTR case law. It was held, *inter alia*, that if the higher threshold posed by AP-II was factually established, the threshold of common Article 3 applied *ipso facto* (see Bagilishema Judgment, paras 99-100). Following the ICTY case law, the nexus requirement—ie that there should exist a close relationship between the alleged offence and the armed conflict—was further articulated in the ICTR case law (see Rutaganda (Georges Anderson Nderubumwe) v Prosecutor, paras 569-570).

**Structural aspects**

The adoption of a common Appeals Chamber, as well as largely similar rules of procedure and evidence, reflected that achieving uniformity and coherence in jurisprudence and the conduct of proceedings in both the ICTY and ICTR was seen as an important goal (see Prosecutor v Kanyabashi (Joseph) para 8).

**Impact**

The interpretation of the crimes falling within the ICTR’s jurisdiction as articulated in the early case law proved to be particularly influential. In fact, the International Criminal Court’s (ICC) Elements of Crimes (2002) explicitly stated that serious bodily or mental harm could be caused by, *inter alia*, rape and acts entailing sexual violence (see footnote 3, Element 1 of Article 6(b) of the Elements of Crimes). Likewise, the finding that under Articles 3(i) and 4(e) of the Statute (other inhumane acts and outrages upon personal dignity respectively) acts of sexual violence could amount to crimes against humanity and war crimes, was similarly incorporated by the Rome Statute of the International Criminal Court (‘Rome Statute’) (see Akayesu Trial Judgment, paras 688, 731–734). The Rome Statute criminalised acts of sexual violence as both crimes against humanity and war crimes in international and non-international armed conflicts.

To the extent that Article 3 of the Statute explicitly incorporated customary international law elements of the *chapeau* of crimes against humanity, it was followed in subsequent provisions, such as Article 7 of the Rome Statute and Article 2 of the Statute of the Special Court for Sierra Leone.

The elucidation of the criteria underpinning the so-called residual clause of crimes against humanity, ie ‘other inhumane acts’ (Article 3(i) of the Statute), contributed to dispelling concerns as to its compatibility with the *lex certa* component of the principle of legality. Such criteria, as initially identified in the Akayesu Trial Judgment (para 578), were adopted in the ICC’s Elements of Crimes. In turn, the requirement of a similar character to other acts enumerated as crimes against humanity, and that the act be committed with the knowledge that it forms part of the overall attack, were enunciated in Prosecutor v Kayishema (Clément) and Ruzindana (Obed) (para 154).

The Statute is thought to be the impetus for Rwanda adopting specific legislation to prosecute genocide incorporating the aforementioned case law developments. The abolition of the death penalty in 2007 (Rwanda Organic Law No 31/2007, Relating to the Abolition of Death Penalty) is also considered to have been influenced by the requirements that had
been imposed by Rule 11bis of the ICTR RPE regarding the transfer of cases to domestic courts (see Prosecutor v Munyakazi (Yussuf) para 20).

Further Analysis and Relevant Materials

Leading Comments


(2008) 14(2) *New England Journal of International and Comparative Law*


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**Appeals Chamber ((ICTR))**

*Prosecutor v Akayesu (Jean-Paul)*, Appeal judgment, 1 June 2001, Case no ICTR-96-4-A; ICL 951 (ICTR 2001)

*Rutaganda (Georges Anderson Nderubumwe) v Prosecutor*, Appeals judgment, 26 May 2003, Case no ICTR-96-3-A

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**Trial Chamber I ((ICTR))**

*Prosecutor v Akayesu (Jean-Paul)* Trial judgment, 2 September 1998, Case no ICTR-96-4-T; ICL 90 (ICTR 1998)

*Prosecutor v Bagilishema (Ignace)*, Trial judgment, Case no ICTR-95-1A-T, 7 June 2001

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Elements of Crimes (9 September 2002) UN Doc PCNICC/2000/1/Add.2

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Convention for the Prevention and Punishment of the Crime of Genocide (signed 9 December 1948, entered into force 12 January 1951) 78 UNTS 277
Charter of the United Nations (signed 26 June 1945, entered into force 24 October 1945) 892 UNTS 119

**United Nations (UN)**


**United Nations Secretary-General (UNSG)**


**Other treaties**

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (signed 12 August 1949, entered into force 21 October 1950) 75 UNTS 31

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (signed 12 August 1949, entered into force 21 October 1950) 75 UNTS 85
Related Cases

**Appeals Chamber (ICTR)**

* Nahimana (Ferdinand) and ors v Prosecutor, Appeals judgment, 28 November 2007, Case no ICTR-99-52-A

* Prosecutor v Ntakirutimana (Elizaphan) and Ntakirutimana (Gérard), Appeals judgment, 13 December 2004, Case No ICTR-96-10-A; Case No ICTR-96-17-A

**Appeals Chamber (ICTY)**

* Sarajevo, Prosecutor v Galić (Stanislav), Appeal judgment, 30 November 2006, Case no IT-98-29-A; ICL 510 (ICTY 2006)

* Prijedor, Prosecutor v Tadić (Dusko), Decision on the Defence motion for interlocutory appeal on jurisdiction, 2 October 1995, Case no IT-94-1-AR72; ICL 36 (ICTY 1995)

Related Materials

**United Nations Security Council (UNSC)**


**Reporter(s):** Elizabeth Santalla Vargas

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As amended by the Security Council acting under Chapter VII of the Charter of the United Nations, the International Criminal 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 such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 (hereinafter referred to as “The International Tribunal for Rwanda”) shall function in accordance with the provisions of the present Statute.

**Article 1: Competence of the International Tribunal for Rwanda**

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the
territory of neighbouring States between 1 January 1994 and 31 December 1994, in accordance with the provisions of the present Statute.

**Article 2: Genocide**

1. The International Tribunal for Rwanda shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this Article or of committing any of the other acts enumerated in paragraph 3 of this Article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

   (a) Killing members of the group;
   (b) Causing serious bodily or mental harm to members of the group;
   (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
   (d) Imposing measures intended to prevent births within the group;
   (e) Forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

   (a) Genocide;
   (b) Conspiracy to commit genocide;
   (c) Direct and public incitement to commit genocide;
   (d) Attempt to commit genocide;
   (e) Complicity in genocide.

**Article 3: Crimes against Humanity**

The International Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

   (a) Murder;
   (b) Extermination;
   (c) Enslavement;
   (d) Deportation;
   (e) Imprisonment;
   (f) Torture;
   (g) Rape;
(h) Persecutions on political, racial and religious grounds;

(i) Other inhumane acts.

**Article 4: Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II**

The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

(a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(b) Collective punishments;

(c) Taking of hostages;

(d) Acts of terrorism;

(e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(f) Pillage;

(g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilised peoples;

(h) Threats to commit any of the foregoing acts.

**Article 5: Personal Jurisdiction**

The International Tribunal for Rwanda shall have jurisdiction over natural persons pursuant to the provisions of the present Statute.

**Article 6: Individual Criminal Responsibility**

1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of state or government or as a responsible government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
4. The fact that an accused person acted pursuant to an order of a government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.

**Article 7: Territorial and Temporal Jurisdiction**

The territorial jurisdiction of the International Tribunal for Rwanda shall extend to the territory of Rwanda including its land surface and airspace as well as to the territory of neighbouring States in respect of serious violations of international humanitarian law committed by Rwandan citizens. The temporal jurisdiction of the International Tribunal for Rwanda shall extend to a period beginning on 1 January 1994 and ending on 31 December 1994.

**Article 8: Concurrent Jurisdiction**

1. The International Tribunal for Rwanda and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens for such violations committed in the territory of the neighbouring States, between 1 January 1994 and 31 December 1994.

2. The International Tribunal for Rwanda shall have the primacy over the national courts of all States. At any stage of the procedure, the International Tribunal for Rwanda may formally request national courts to defer to its competence in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal for Rwanda.

**Article 9: Non Bis in Idem**

1. No person shall be tried before a national court for acts constituting serious violations of international humanitarian law under the present Statute, for which he or she has already been tried by the International Tribunal for Rwanda.

2. A person who has been tried before a national court for acts constituting serious violations of international humanitarian law may be subsequently tried by the International Tribunal for Rwanda only if:

   (a) The act for which he or she was tried was characterised as an ordinary crime; or

   (b) The national court proceedings were not impartial or independent, were designed to shield the accused from international criminal responsibility, or the case was not diligently prosecuted.

3. In considering the penalty to be imposed on a person convicted of a crime under the present Statute, the International Tribunal for Rwanda shall take into account the extent to which any penalty imposed by a national court on the same person for the same act has already been served.

**Article 10: Organisation of the International Tribunal for Rwanda**

The International Tribunal for Rwanda shall consist of the following organs:

(a) The Chambers, comprising three Trial Chambers and an Appeals Chamber;
(b) The Prosecutor;

(c) A Registry.

**Article 11: Composition of the Chambers**

1. The Chambers shall be composed of sixteen permanent independent judges, no two of whom may be nationals of the same State, and a maximum at any one time of nine *ad litem* independent judges appointed in accordance with article 12 *ter*, paragraph 2, of the present Statute, no two of whom may be nationals of the same State.

2. Three permanent judges and a maximum at any one time of six *ad litem* judges shall be members of each Trial Chamber. Each Trial Chamber to which *ad litem* judges are assigned may be divided into sections of three judges each, composed of both permanent and *ad litem* judges. A section of a Trial Chamber shall have the same powers and responsibilities as a Trial Chamber under the present Statute and shall render judgement in accordance with the same rules.

3. Seven of the permanent judges shall be members of the Appeals Chamber. The Appeals Chamber shall, for each appeal, be composed of five of its members.

4. A person who for the purposes of membership of the Chambers of the International Tribunal for Rwanda could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.

**Article 12: Qualification and Election of Judges**

The permanent and *ad litem* judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers and sections of the Trial Chambers, due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

**Article 12 bis: Election of Permanent Judges**

1. Eleven of the permanent judges of the International Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

   (a) The Secretary-General shall invite nominations for permanent judges of the International Tribunal for Rwanda from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

   (b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in article 12 of the present Statute, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge who is a member of the Appeals Chamber and who was elected or appointed a permanent judge of 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 (hereinafter referred to as ‘the International Tribunal for the Former Yugoslavia’) in accordance with article 13 bis of the Statute of that Tribunal;

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twenty-two and not more than thirty-three candidates, taking due account of the adequate representation on the International Tribunal for Rwanda of the principal legal systems of the world;

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect eleven permanent judges of the International Tribunal for Rwanda. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

2. In the event of a vacancy in the Chambers amongst the permanent judges elected or appointed in accordance with this article, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of article 12 of the present Statute, for the remainder of the term of office concerned.

3. The permanent judges elected in accordance with this article shall be elected for a term of four years. The terms and conditions of service shall be those of the permanent judges of the International Tribunal for the Former Yugoslavia. They shall be eligible for re-election.

**Article 12 ter: Election and Appointment of Ad litem Judges**

1. The *ad litem* judges of the International Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

   (a) The Secretary-General shall invite nominations for *ad litem* judges of the International Tribunal for Rwanda from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

   (b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to four candidates meeting the qualifications set out in article 12 of the present Statute, taking into account the importance of a fair representation of female and male candidates;

   (c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than thirty-six candidates, taking due account of the adequate representation of the principal legal systems of the world and bearing in mind the importance of equitable geographical distribution;

   (d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the eighteen *ad litem* judges of the International Tribunal for Rwanda. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected.
Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected;

(e) The *ad litem* judges shall be elected for a term of four years. They shall not be eligible for re-election.

2. During their term, *ad litem* judges will be appointed by the Secretary-General, upon request of the President of the International Tribunal for Rwanda, to serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including, three years. When requesting the appointment of any particular *ad litem* judge, the President of the International Tribunal for Rwanda shall bear in mind the criteria set out in article 12 of the present Statute regarding the composition of the Chambers and sections of the Trial Chambers, the considerations set out in paragraphs 1 (b) and (c) above and the number of votes the *ad litem* judge received in the General Assembly.

**Article 12  *quater*: Status of *Ad litem* Judges**

1. During the period in which they are appointed to serve in the International Tribunal for Rwanda, *ad litem* judges shall:

   (a) Benefit from the same terms and conditions of service *mutatis mutandis* as the permanent judges of the International Tribunal for Rwanda;

   (b) Enjoy, subject to paragraph 2 below, the same powers as the permanent judges of the International Tribunal for Rwanda;

   (c) Enjoy the privileges and immunities, exemptions and facilities of a judge of the International Tribunal for Rwanda;

   (d) Enjoy the power to adjudicate in pre-trial proceedings in cases other than those that they have been appointed to try.

2. During the period in which they are appointed to serve in the International Tribunal for Rwanda, *ad litem* judges shall not:

   (a) Be eligible for election as, or to vote in the election of, the President of the International Tribunal for Rwanda or the Presiding Judge of a Trial Chamber pursuant to article 13 of the present Statute;

   (b) Have power:

      (i) To adopt rules of procedure and evidence pursuant to article 14 of the present Statute. They shall, however, be consulted before the adoption of those rules;

      (ii) To review an indictment pursuant to article 18 of the present Statute;

      (iii) To consult with the President of the International Tribunal for Rwanda in relation to the assignment of judges pursuant to article 13 of the present Statute or in relation to a pardon or commutation of sentence pursuant to article 27 of the present Statute.
Article 13: Officers and Members of the Chambers

1. The permanent judges of the International Tribunal for Rwanda shall elect a President from amongst their number.

2. The President of the International Tribunal for Rwanda shall be a member of one of its Trial Chambers.

3. After consultation with the permanent judges of the International Tribunal for Rwanda, the President shall assign two of the permanent judges elected or appointed in accordance with article 12 bis of the present Statute to be members of the Appeals Chamber of the International Tribunal for the Former Yugoslavia and eight to the Trial Chambers of the International Tribunal for Rwanda.

4. The members of the Appeals Chamber of the International Tribunal for the Former Yugoslavia shall also serve as the members of the Appeals Chamber of the International Tribunal for Rwanda.

5. After consultation with the permanent judges of the International Tribunal for Rwanda, the President shall assign such ad litem judges as may from time to time be appointed to serve in the International Tribunal for Rwanda to the Trial Chambers.

6. A judge shall serve only in the Chamber to which he or she was assigned.

7. The permanent judges of each Trial Chamber shall elect a Presiding Judge from amongst their number, who shall oversee the work of that Trial Chamber as a whole.

Article 14: Rules of Procedure and Evidence

The Judges of the International Tribunal for Rwanda shall adopt, for the purpose of proceedings before the International Tribunal for Rwanda, the Rules of Procedure and Evidence for the conduct of the pre-trial phase of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters of the International Tribunal for the former Yugoslavia with such changes as they deem necessary.

Article 15: The Prosecutor

1. The Prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994.

2. The Prosecutor shall act independently as a separate organ of the International Tribunal for Rwanda. He or she shall not seek or receive instructions from any government or from any other source.

3. The Office of the Prosecutor shall be composed of a Prosecutor and such other qualified staff as may be required.

4. The Prosecutor shall be appointed by the Security Council on nomination by the Secretary-General. He or she shall be of high moral character and possess the highest level of competence and experience in the conduct of investigations and prosecutions of criminal cases. The Prosecutor shall serve for a four-year term and be eligible for reappointment.
The terms and conditions of service of the Prosecutor shall be those of an Under-Secretary-General of the United Nations.

5. The staff of the Office of the Prosecutor shall be appointed by the Secretary-General on the recommendation of the Prosecutor.

**Article 16: The Registry**

1. The Registry shall be responsible for the administration and servicing of the International Tribunal for Rwanda.

2. The Registry shall consist of a Registrar and such other staff as may be required.

3. The Registrar shall be appointed by the Secretary-General after consultation with the President of the International Tribunal for Rwanda. He or she shall serve for a four-year term and be eligible for re-appointment. The terms and conditions of service of the Registrar shall be those of an Assistant Secretary-General of the United Nations.

4. The Staff of the Registry shall be appointed by the Secretary-General on the recommendation of the Registrar.

**Article 17: Investigation and Preparation of Indictment**

1. The Prosecutor shall initiate investigations ex-officio or on the basis of information obtained from any source, particularly from governments, United Nations organs, intergovernmental and non-governmental organizations. The Prosecutor shall assess the information received or obtained and decide whether there is sufficient basis to proceed.

2. The Prosecutor shall have the power to question suspects, victims and witnesses, to collect evidence and to conduct on-site investigations. In carrying out these tasks, the Prosecutor may, as appropriate, seek the assistance of the State authorities concerned.

3. If questioned, the suspect shall be entitled to be assisted by Counsel of his or her own choice, including the right to have legal assistance assigned to the suspect without payment by him or her in any such case if he or she does not have sufficient means to pay for it, as well as necessary translation into and from a language he or she speaks and understands.

4. Upon a determination that a *prima facie* case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to a judge of the Trial Chamber.

**Article 18: Review of the Indictment**

1. The judge of the Trial Chamber to whom the indictment has been transmitted shall review it. If satisfied that a *prima facie* case has been established by the Prosecutor, he or she shall confirm the indictment. If not so satisfied, the indictment shall be dismissed.

2. Upon confirmation of an indictment, the judge may, at the request of the Prosecutor, issue such orders and warrants for the arrest, detention, surrender or transfer of persons, and any other orders as may be required for the conduct of the trial.

**Article 19: Commencement and Conduct of Trial Proceedings**
1. The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the Rules of Procedure and Evidence, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

2. A person against whom an indictment has been confirmed shall, pursuant to an order or an arrest warrant of the International Tribunal for Rwanda, be taken into custody, immediately informed of the charges against him or her and transferred to the International Tribunal for Rwanda.

3. The Trial Chamber shall read the indictment, satisfy itself that the rights of the accused are respected, confirm that the accused understands the indictment, and instruct the accused to enter a plea. The Trial Chamber shall then set the date for trial.

4. The hearings shall be public unless the Trial Chamber decides to close the proceedings in accordance with its Rules of Procedure and Evidence.

**Article 20: Rights of the Accused**

1. All persons shall be equal before the International Tribunal for Rwanda.

2. In the determination of charges against him or her, the accused shall be entitled to a fair and public hearing, subject to Article 21 of the Statute.

3. The accused shall be presumed innocent until proven guilty according to the provisions of the present Statute.

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

   (a) To be informed promptly and in detail in a language which he or she understands of the nature and cause of the charge against him or her;

   (b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing;

   (c) To be tried without undue delay;

   (d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interest of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it;

   (e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;

   (f) To have the free assistance of an interpreter if he or she cannot understand or speak the language used in the International Tribunal for Rwanda;

   (g) Not to be compelled to testify against himself or herself or to confess guilt.
Article 21: Protection of Victims and Witnesses

The International Tribunal for Rwanda shall provide in its Rules of Procedure and Evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim’s identity.

Article 22: Judgement

1. The Trial Chambers shall pronounce judgements and impose sentences and penalties on persons convicted of serious violations of international humanitarian law.

2. The judgement shall be rendered by a majority of the judges of the Trial Chamber, and shall be delivered by the Trial Chamber in public. It shall be accompanied by a reasoned opinion in writing, to which separate or dissenting opinions may be appended.

Article 23: Penalties

1. The penalty imposed by the Trial Chamber shall be limited to imprisonment. In determining the terms of imprisonment, the Trial Chambers shall have recourse to the general practice regarding prison sentences in the courts of Rwanda.

2. In imposing the sentences, the Trial Chambers should take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.

3. In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners.

Article 24: Appellate Proceedings

1. The Appeals Chamber shall hear appeals from persons convicted by the Trial Chambers or from the Prosecutor on the following grounds:

   (a) An error on a question of law invalidating the decision; or

   (b) An error of fact which has occasioned a miscarriage of justice.

2. The Appeals Chamber may affirm, reverse or revise the decisions taken by the Trial Chambers.

Article 25: Review Proceedings

Where a new fact has been discovered which was not known at the time of the proceedings before the Trial Chambers or the Appeals Chamber and which could have been a decisive factor in reaching the decision, the convicted person or the Prosecutor may submit to the International Tribunal for Rwanda an application for review of the judgement.

Article 26: Enforcement of Sentences

Imprisonment shall be served in Rwanda or any of the States on a list of States which have indicated to the Security Council their willingness to accept convicted persons, as designated by the International Tribunal for Rwanda. Such imprisonment shall be in
accordance with the applicable law of the State concerned, subject to the supervision of the International Tribunal for Rwanda.

**Article 27: Pardon or Commutation of Sentences**

If, pursuant to the applicable law of the State in which the convicted person is imprisoned, he or she is eligible for pardon or commutation of sentence, the State concerned shall notify the International Tribunal for Rwanda accordingly. There shall only be pardon or commutation of sentence if the President of the International Tribunal for Rwanda, in consultation with the judges, so decides on the basis of the interests of justice and the general principles of law.

**Article 28: Cooperation and Judicial Assistance**

1. States shall cooperate with the International Tribunal for Rwanda in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including but not limited to:

   (a) The identification and location of persons;
   (b) The taking of testimony and the production of evidence;
   (c) The service of documents;
   (d) The arrest or detention of persons;
   (e) The surrender or the transfer of the accused to the International Tribunal for Rwanda.

**Article 29: The Status, Privileges and Immunities of the International Tribunal for Rwanda**

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal for Rwanda, the judges, the Prosecutor and his or her staff, and the Registrar and his or her staff.

2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under Articles V and VII of the Convention referred to in paragraph 1 of this article.

4. Other persons, including the accused, required at the seat or meeting place of the International Tribunal for Rwanda shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal for Rwanda.
Article 30: Expenses of the International Tribunal for Rwanda

The expenses of the International Tribunal for Rwanda shall be expenses of the Organisation in accordance with Article 17 of the Charter of the United Nations.

Article 31: Working Languages

The working languages of the International Tribunal for Rwanda shall be English and French.

Article 32: Annual Report

The President of the International Tribunal for Rwanda shall submit an annual report of the International Tribunal for Rwanda to the Security Council and to the General Assembly.