



## THE TEMPORAL JURISDICTION OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR) AND ITS IMPACT ON THE ESTABLISHMENT OF EVIDENCES OF CONSPIRACY TO COMMIT GENOCIDE: Case of Théoneste Bagosora, Ferdinand Nahimana and their co-defendants

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### Abstract

The International Criminal Tribunal for Rwanda (ICTR) was created by the Resolution 955 of 8 November 1994. This tribunal was established for 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 of international law committed in the territory of neighbouring States, between 1<sup>st</sup> January and 31<sup>st</sup> December 1994. This article analyzes the trial rendered by the ICTR for defendants who were prosecuted for the crime of conspiracy to commit genocide for acts committed in the years prior to 1994. The case of Colonel Théoneste Bagosora, Ferdinand Nahimana and their co-defendants have served us as examples to examine whether or not the period of the temporal jurisdiction of ICTR had an impact on the establishment of evidence presented by the Prosecutor. In these trials, the prosecutor was criticized by the judges for presenting the evidences of crimes that were committed outside the temporal jurisdiction, thus, the accused of the crime of conspiracy to commit genocide were acquitted.

**Keywords:** Temporal Jurisdiction, ICTR, Conspiracy to commit genocide.

### Introduction

The International Criminal Tribunal for Rwanda (ICTR) was created following the request of the Government of Rwanda and after examining various official reports from the United Nations which showed that acts of genocide and other widespread, systematic and gross violations of international humanitarian law were committed in Rwanda<sup>1</sup>.

Acting under Chapter VII of the UN Charter, the Security Council adopted Resolution 955 creating the ICTR, to prosecute persons responsible for serious violations of international humanitarian law, to restore and maintain peace in Rwanda and contribute to the reconciliation process. Under ICTR Statute, the Tribunal is empowered 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<sup>st</sup> January and 31<sup>st</sup> December 1994.

However, the Rwandan government had not approved the limitation of the temporal jurisdiction of the Tribunal, as this restriction left unpunished acts prior to 1994. As pointed out by the representative of Rwanda to the United Nations at the close of voting on the resolution of the ICTR Statute, "the genocide the world witnessed in April 1994 was the result of a long period of planning during which pilot projects for extermination were successfully tested".<sup>2</sup> Therefore, the Rwandan Government had proposed to account for the period from 1<sup>st</sup> October 1990 - the beginning of the war, until 17<sup>th</sup> July 1994 - end of the war, but the proposal was rejected.<sup>3</sup>

This article aims to examine whether or not the temporal jurisdiction of the ICTR limited between 1<sup>st</sup> January and 31<sup>st</sup> December 1994 has had an impact on providing evidence for the crime of conspiracy to commit genocide for crimes committed prior to 1994.

### Historical context of the creation of the International Criminal Tribunal for Rwanda ( ICTR)

In order to set up an International Criminal Tribunal that would 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, representatives of countries members of United Nations Security Council met on 8<sup>th</sup> November 1994, under the chairman of United Nations Security Council, Mrs Madeleine Albright of the United States, with the agenda "the situation concerning the Rwanda"<sup>4</sup>. The representatives of the Member's countries of the Security Council were seized by several documents, inter-alia, the letter dated 28<sup>th</sup> September

<sup>1</sup>Minutes of the meeting of the Security Council of the United Nations at its 3453rd meeting of 8 November 1994 on the establishment of the International Criminal Tribunal for Rwanda (ICTR), S/PV.3453, p.14

<sup>2</sup>Idem, p.14

<sup>3</sup>For the Rwandan government, the period from 1<sup>st</sup> October 1990 to 17<sup>th</sup> July 1994 would give access to the court to prosecute crimes that were committed in the range of this period including the planning of the genocide.

<sup>4</sup>The following countries were represented at this meeting: The United States of America, Argentina, Brazil, China, Djibouti, Spain, Russia, France, Nigeria, New Zealand, Oman, Pakistan, Czech Republic, United Kingdom of Great Britain and Northern Ireland and Rwanda.

1994 from the permanent representative of Rwanda at the United Nations addressed to the President of Security Council, the note by the Secretary-General transmitting the reports of the Special Rapporteur of the Commission on the Human Rights on the situation of the human rights in Rwanda, the text of draft resolution 955 elaborated by some members of the Security Council<sup>5</sup>, etc. Most of these documents presented to the United Nations Security Council showed the situation that prevailed in Rwanda and suggested the establishment of a permanent international criminal jurisdiction or an ad hoc tribunal that would elucidate facts and judge the perpetrators. After reviewing these documents, different personalities representing their countries in the United Nations Security Council put emphasis on the need to establish an International Criminal Tribunal for Rwanda. The majority of them voted in favor, with the exception of Rwanda who voted against and China which abstained (S/PV.3453, p.3)<sup>6</sup>.

Regarding the temporal jurisdiction of the tribunal as stated in the minutes meeting, it is competent to deal with offenses committed between 1<sup>st</sup> January and 31<sup>st</sup> December 1994. As mentioned by Mr. Mérimée, the France representative to the United Nations Security Council in 1994, the choice of this period would make it possible to take into account possible acts of planning and preparation of genocide which took place beginning on 6<sup>th</sup> April 1994.

However, the representative of Rwanda to the United Nations Security Council, Manzi Bakuramutsa, expressed how the Government of Rwanda was not satisfied with this text and the Statute of the international Tribunal for Rwanda, for the following reasons:

*"The dates set for the *ratione temporis* competence of the International Tribunal for Rwanda, from 1 January 1994 to 31 December 1994 are inadequate. The genocide that was perpetrated after the events of 6 April 1994 was the implementation of planned months in advance before his execution"*<sup>7</sup>.

In this regard, Manzi Bakuramutsa gave examples of massacres which have preceded the event of 6 April 1994 and therefore, be taken into account:

*(...) "the extermination of a subgroup of Tutsis known as the Bahima in the Mutara, in October 1990; the extermination of another Batutsi sub-group, the Bagogwes, in the region of Gisenyi and Ruhengeri in January-February 1991; the massacre of over 300 Tutsi in Bugesera, in March 1992, and massacres of more than 400 other Tutsi in Gisenyi in January 1993"*<sup>8</sup>.

The Rwandan government wished that the temporal jurisdiction of the ICTR began on 1<sup>st</sup> October 1990 until 17<sup>th</sup> July 1994 to enable the court to seize all the crimes that were committed in different years cited above, including the planning of the genocide.

### **Competence of the International Criminal Tribunal for Rwanda (ICTR)**

Under the terms of resolution 955 of United Nations Security Council, the ICTR is empowered to judge persons responsible for acts of genocide or 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 and 31 December 1994.

According to its Statute, the tribunal is competent to hear crimes committed between 1<sup>st</sup> January and 31<sup>st</sup> December 1994 (temporal jurisdiction); crimes committed in the territory of Rwanda and in the territory of neighbouring States in the event of serious violations of international humanitarian law committed by Rwandan citizens (geographic jurisdiction), Genocide (art. 2), crimes against humanity (art. 3), violations of article 3 common to the Geneva Conventions of 1949 and additional Protocol II of 1977. The tribunal is responsible also for prosecution of physical persons (personal jurisdiction, art. 5). The ICTR has no monopoly on prosecution and punishment of violations of international humanitarian law committed in Rwanda. It exercises jurisdiction in competition with national courts. However, the ICTR has primacy over the latter, and may, in the interest of justice, request for deferral of a national court in an investigation or a particular case, at any stage of the proceedings. On the other hand, national justice can judge crimes within the jurisdiction of the ICTR, the latter retaining a right of first refusal on all these cases, even after a national judgment.

It is paramount importance to note that the temporal jurisdiction of the ICTR is limited for acts committed between 1<sup>st</sup> January and 31<sup>st</sup> December 1994. The limitation of temporal jurisdiction is one of the reasons that caused the government of Rwanda in voting against the resolution establishing the ICTR, although it was created following his request. As stated by representative of Rwanda in the United Nations Security Council in 1994, the Statute doesn't cover the entire period of preparation of genocide. Even though the United Nations Security Council extended the temporal Jurisdiction of ICTR starting from January 1994 so that acts of planning are included, it is clear that the planning of genocide began even before 1994.

### **Conspiracy to commit genocide**

The Conspiracy to commit genocide is part of acts specified in Article III of the Convention on the Prevention and Punishment of Genocide of 9 December 1948, and in Article II (3) (b) of the Statute of the International Criminal Tribunal for Rwanda.

The notion of conspiracy to commit genocide is not new in the legal sphere. According to the "*Travaux Préparatoire*" of Genocide Convention, the concept of conspiracy relied upon the Anglo-Saxon doctrine of conspiracy

<sup>5</sup>Countries that participated in the drafting of resolution 955 are: United States of America, New Zealand Argentina, France, Russian Federation, Spain, and United Kingdom of Great Britain and Northern Ireland. see Minutes of the meeting of the Security Council of the United Nations at its 3453rd meeting dated November 8, 1994, p.2

<sup>6</sup>Minutes of the meeting of the Security Council of the United Nations at its 3453rd meeting of 8 November 1994 on the establishment of the International Criminal Tribunal for Rwanda (ICTR),

<sup>7</sup>Minutes of the meeting of the Security Council of the United Nations at its 3453rd meeting, 8 November 1994, p.14

<sup>8</sup>Idem, p.14-15

and is defined as an offence consisting in the agreement of two or more persons to effect any unlawful purpose (Case No: ICTR-96-13-T, p.62). For Raafat, the representative of Egypt in the *Travaux Préparatoire* commission, noted that the notion of conspiracy had been introduced into Egyptian law and meant the connivance of several persons to commit a crime, whether the crime was successful or not.

Under Common Law, the crime of conspiracy is constituted when two or more persons agree to a common objective, the objective being criminal. However, Civil Law distinguishes two types of *actus reus*, qualifying two "levels" of 'complot' or conspiracy. Following an increasing level of gravity, the first level concerns simple conspiracy, and the second level conspiracy followed by material acts. Simple conspiracy is usually defined as a concerted agreement to act, decided upon by two or more persons, while the conspiracy followed by preparatory acts is an aggravated form of conspiracy where the concerted agreement to act is followed by preparatory acts. Both forms of 'complot' require that the following three common elements of the offence be met: (1) an agreement to act, (2) concerted wills and (3) the common goal to achieve the substantive offence (Case No: ICTR-96-13-T, p.63).

In this regards, the ICTR trial chamber notes that under both Civil and Common Law systems, conspiracy is an inchoate offence ("*infraction formelle*") which is punishable by virtue of the criminal act as such and not as a consequence of the result of that act (Case No: ICTR-96-13-T, p.64).

In addition, in the case of Ferdinand Nahimana, Jean Bosco Barayagwiza and Ngeze, the Trial Chamber considers that the conspiracy to commit genocide can be inferred from the coordinated actions of individuals towards a common purpose and act in a unified framework. Thus the constituent mental element of this offense lies in the concerted intent to commit genocide, that is to say, to destroy, in whole or in part, a national, ethnical, racial or religious group as such (Case No: ICTR-96-13-T, p.346).

It should be noted that in several cases, the ICTR also had to decide on whether or not the conspiracy is repressed in the absence of the Crime of Genocide. On this issue, the Tribunal concluded that the crime of conspiracy to commit genocide is punishable even if it has not been followed by effect. For this purpose, the essential element of the offense of conspiracy to commit genocide is constituted by the act of agreement *per se*, ie, in other words, the process of the agreement and not its outcome. The agreement is thus punishable regardless of whether or not there was commission of the crime of genocide. The ICTR considers that, due to its severity and the magnitude of the number of victims, the crime of genocide is logically planned, even if such planning in international law is not required so that the genocide is established. However, article 211-1 of the French penal code provides that the destruction of the protected group must occur "in the execution of a concerted plan."

Based on what has been discussed above, the concept of conspiracy to commit genocide refers directly to the notion of planning, to understand when, how, where and by whom the genocide was organized.

### **Impact of the temporal jurisdiction of ICTR in providing evidence of Conspiracy to commit Genocide for acts prior to 1994**

The temporal jurisdiction of the ICTR has implications in providing evidence for conspiracy to commit genocide. The prosecutor's difficulties in providing evidence of conspiracy are largely party-related to the evidence for the crimes committed in the years prior to 1994. These difficulties are common in various trials and are due primarily to the limit of the temporal jurisdiction of the ICTR, which extends the period from 1 January to 31 December 1994.

Indeed, in various allegations containing the crime of conspiracy to commit genocide presented by the Prosecutor, the ICTR judges have criticized the prosecutor to present evidences of facts of events prior to 1994. The case of Colonel Bagosora, Ferdinand Nahimana and his co-defendants show the difficulties encountered by the prosecutor when it came to establish evidence of conspiracy to commit genocide.

In the case of Colonel Bagosora, General Gratien Kabiligi, Major Aloys Ntakabuze and Colonel Anatole Nsengiyumva<sup>9</sup>, it is alleged in the indictments that between late 1990 and July 1994, the four defendants "conspired among themselves and with others to develop a plan with the intent to exterminate the Tutsi population and eliminate members of the opposition so that they could remain in power (Case No. ICTR-98-41-T, p.531). According to the indictment submitted by the Prosecutor, this plan was to resort to hatred and ethnic violence, to train militia and distribute weapons to them, as well as to make lists of people to eliminate (Case No. ICTR-98-41-T, p.531). To establish this agreement, the Prosecutor argued that to a large extent, genocide was designed and planned before 1994, and executed mainly through acts perpetrated between April and July 1994.

Referring to indictments presented by the prosecution, the Trial Chamber notes that a number of the allegations presented by prosecution precede the Tribunal's temporal jurisdiction of 1st January to 31st December 1994. In this regards, the prosecutor was criticized for relying on evidence of conspiracy that are outside the temporal jurisdiction. The Chamber is mindful that it can only convict the accused of criminal conduct occurring in 1994 (Case No. ICTR-98-41-T, p.533). As stated by ICTR Judges, the evidence of facts dating before 1994 must be presented if the parties have continued to "constantly subscribe to the agreement" to commit genocide and to the extent that it provides to judges important elements that would help them to assess and better understand the behavior of the accused and may therefore have probative value (Case No. ICTR-98-41-T, p.533 ). Furthermore, the trial chamber was not persuaded by the elements of the evidence presented by the Prosecutor. Thus, it considers that it has not established proof beyond reasonable doubt.

Regarding the crime of conspiracy to commit genocide, it is impossible, due to the scope of the temporal jurisdiction to report all evidence demonstrating the existence of the planning of the genocide in a period of three months. Even though the court has advanced other reasons justifying the acquittal of Colonel Bagosora and his co-accused on the

<sup>9</sup>Colonel Théoneste Bagosora was the *directeur de cabinet* of the Ministry of Defence, General Gratien Kabiligi, the head of the operations bureau (G-3) of the army general staff, Major Aloys Ntabakuze, the commander of the elite Para- Commando Battalion, and Colonel Anatole Nsengiyumva, the commander of the Gisenyi operational sector.

charge of conspiracy to commit genocide, such as the reliability of the evidence presented by the prosecutor, it is still unacceptable that the court take decisions based on the facts that are outside its jurisdiction. This is emphasized in the ICTR Statute that *"the court have 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"* (ICTR Statute, Art.1).

The Article 15 of the ICTR Statute also shows the limits of the Prosecutor in the exercise of the prosecution of those who have committed acts of violations of International Humanitarian Law in Rwanda. The mentioned article stipulates that:

*"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"*.

According to this article, the Prosecutor should only comply with the limits of the temporal jurisdiction of the ICTR when establishing proofs.

The problem of the temporal jurisdiction of the ICTR was also mentioned in the trial against Ferdinand Nahimana and his co-accused by the Appeal chamber<sup>10</sup>.

Ferdinand Nahimana, Jean Bosco Barayagwiza and Ngeze were guilty of the charge of conspiracy to commit genocide by the ICTR trial chamber. The chamber recognized the three defendants guilty to "knowingly acted in concert, using the institutions they controlled (Kangura RTLM and CDR) to promote a joint program, namely to target and destroy the Tutsi population". The Trial Chamber finds that Nahimana, Barayagwiza and Ngeze, collaborated between them and there was interaction between the entities they controlled. Consequently, the court found them guilty of conspiracy to commit genocide under Article 2.3.b (Case No. ICTR-99-52-T, p. 347). Ferdinand Nahimana and his co-defendants did recourse to the Appeals Chamber contending that the Trial Chamber exceeded its temporal jurisdiction in convicting them on the basis of acts prior to 1994 and as consequence, it affected the fairness of the trial in that they could only reasonably plan to prepare their defence in respect of acts falling within the jurisdiction of the Tribunal. They alleged that the Trial Chamber committed a mistake by a misinterpretation of the temporal jurisdiction (Case No. ICTR-99-52-A, p.92).

In this respect, the Appeals Chamber discussed the issue of temporal jurisdiction, and as a conclusion, Nahimana, Barayagwiza and Ngeze could not be convicted for crimes committed before 1994 (Case No. ICTR-99-52-A, p.95). Referring to the ICTR Statute Article 7 of the temporal jurisdiction, the Appeals Chamber stated that the court has jurisdiction to prosecute crimes that have been committed between 1st January and 31st December 1994. According to judges, an accused can be held responsible for crimes committed only in 1994 (Case No. ICTR-99-52-A, p.96). In this regard, the Appeals Chamber finds that the Trial Chamber was wrong insofar as it convicted Nahimana, Barayagwiza and Ngeze on the basis of criminal conduct that occurred before 1994 (Case No. ICTR-99-52-A, p.97).

The Appeal Chamber clearly explained the intention that had the designers of the ICTR statute by setting limits of the temporal jurisdiction. By setting this, explained the appeal chamber,

*"the Security Council appears to have intended to give the Tribunal jurisdiction to prosecute only criminal conduct having occurred in 1994, as is shown by the statements of certain delegations at the time of the adoption of Resolution 955 on the establishment of the Tribunal, Mr Jean-Bernard Mérimée, the representative of the French delegation, who noted with satisfaction that "the choice of the time period for the temporal jurisdiction (1<sup>st</sup> January to 31<sup>st</sup> December 1994) would allow the court to take into account possible acts of planning and preparation of genocide (Case No. ICTR-99-52-A, p.96).*

Contrary to this idea, the representative of Rwanda to the Security Council had requested to take into account the period before 1<sup>st</sup> January 1994 to enable the court to prosecute the accused who committed crimes in the years prior to 1994. The Government of Rwanda expressed regret against the ICTR Statute which does not give the opportunity to prosecute individuals who are responsible for acts of planning of genocide committed in the period prior to January 1, 1994 (Case No. ICTR-99-52-A, p.97).

Regarding the temporal jurisdiction, in the opinion of Appeal Chamber, it is clear that it was the intention of the framers of the Statute that the Tribunal should have jurisdiction to convict an accused only where all of the elements required to be shown in order to establish his guilt were present in 1994 (Case No. ICTR-99-52-A, p.97). Further, such a view accords with the principle that provisions conferring jurisdiction on an international tribunal or imposing criminal sanctions should be strictly interpreted. It is why, based on the temporal jurisdiction of the ICTR, the tribunal has the power to condemn the accused in the case or the evidence required to establish guilt refer only to acts committed in 1994.

### **Does the prosecutor have the right to recourse to evidences prior to 1994? If so, why was he challenged and criticized when relying on those evidences?**

As stated in Article 15 of ICTR, *"the prosecutor shall be responsible for the investigation and prosecution of persons responsible for serious violations of international humanitarian law, committed between 1<sup>st</sup> January and 31st December 1994"*, why did he bring evidence outside the temporal jurisdiction of ICTR?

According to the ICTR Rules of Procedures and Evidences in its 89<sup>th</sup> rules, a Chamber may admit any relevant evidence which it deems to have probative value. However, a Chamber may validly admit evidence relating to pre-1994 acts and rely on it where such evidence is aimed at clarifying a given context, establishing by inference the elements (in

<sup>10</sup>Ferdinand Nahimana, was co-founder of the Radio Télévision Libre des Mille Collines (RTLM). His co-accused are: Jean Bosco Barayagwiza, former leader of the CDR (Coalition for the Defence of the Republic), Hassan Ngeze, former director and editor of the newspaper Kangura.

particular, criminal intent) of criminal conduct occurring in 1994 and finally when demonstrating a deliberate pattern of conduct (Case No. ICTR-99-52-A, p.98).

It is in this regard that in providing evidence for conspiracy to commit genocide, prosecutor could rely on acts and events prior to 1994, but in most cases he was challenged and criticized when presenting this evidence. For example, in the case of Nahimana and his co-defendant, the accused contend that the Trial Chamber exceeded its temporal jurisdiction in convicting them on the basis of acts prior to 1994. In support of their assertions, the Appellants contend that the Trial Chamber's interpretation of its temporal jurisdiction is contrary to the language of Article 7 of the Statute<sup>11</sup>; the debate in the Security Council at the time of the Statute's adoption; and the principle that criminal law must be interpreted strictly (Case No. ICTR-99-52-A, p.93).

Answering the question regarding the strict interpretation of ICTR statute, the prosecutor emphasized that the article 7 of the Statute must be read in conjunction with Article 1<sup>12</sup>. In this connection, the Prosecutor submits that the ordinary sense of the words used in Article 1 show that the temporal jurisdiction of the Tribunal is established as long as the serious violation of international humanitarian law alleged against the accused occurred in 1994, even if the accused's actions were carried out before that year (Case No. ICTR-99-52-A, p.94).

Furthermore, as stated by the prosecutor, conspiracy to commit genocide is an inchoate offence<sup>13</sup>, and as such has a continuing nature that culminates in the commission of the acts contemplated by the conspiracy. For this reason, he said, acts of conspiracy prior to 1994 that resulted in the commission of genocide in 1994 fall with the temporal jurisdiction of the Tribunal (Case No. ICTR-99-52-T, p.345). This idea was supported by Judge Shahabuddeen arguments, stating that evidence of prior crimes can be relied on to establish a pattern, design or systematic course of conduct by the accused. However, with regard to the charge of conspiracy, where the conspiracy agreement might date back to a time prior to 1 January 1994, Judge Shahabuddeen expressed the view that so long as the parties continue to adhere to the agreement, they may be regarded as constantly renewing it up to the time of the acts contemplated by the conspiracy. Therefore a conspiracy agreement made prior to but continuing into the period of 1994 can be considered as falling within the jurisdiction of the Tribunal (Case No. ICTR-99-52-T, p.27).

The ICTR chamber has the jurisdiction to convict for the crime of conspiracy and public incitement to commit genocide, even if they had begun before 1994, by characterizing them as continuing offences (Case No. ICTR-99-52-A, p.94), but both Judges and Prosecutors expressed different views on this issue. While the prosecution rely on evidence prior to 1994 for continuing crimes, the chamber argue that the Statute does not define how its jurisdiction should be interpreted in relation to continuing or inchoate offences such as conspiracy or incitement to commit genocide while at the same time there is no provision providing an exception to the temporal limitation for offences (Case No. ICTR-99-52-T, p.27).

The fact that the issue of Temporal Jurisdiction of ICTR raises discussion between Judges and prosecutors is due to lack of guidance that would have been elaborated by UN Security Council when drafting ICTR statute. This is illustrated in the following paragraph:

*"With regard to the offences of conspiracy and direct and public incitement, the Chamber notes that the Security Council debate cited by Judge Vohrah and Judge Nieto-Navia, in which discussion was held regarding the proposal that the jurisdiction of the Tribunal cover acts from October 1990, does not differentiate between these inchoate offences and others that are not by nature continuing in time. The Chamber considers, therefore, that the Security Council debate does not provide guidance on the application of temporal jurisdiction to these particular offences, which unlike the other crimes set forth in the Statute, occur both in and prior to 1994. The Chamber considers that the adoption of 1 January 1994 rather than 6 April 1994 as the commencement of the Tribunal's temporal jurisdiction, expressly for the purpose of including the planning stage, indicates an intention that is more compatible with the inclusion of inchoate offences that culminate in the commission of acts in 1994 than it is with their exclusion. It is only the commission of acts completed prior to 1994 that is clearly excluded from the temporal jurisdiction of the Tribunal"* (Case No. ICTR-99-52-T, p.27).

As stated by Rwandan representative at United Nation Security council during the vote of ICTR statute on 8th November 1994, the genocide against Tutsi in Rwanda that was perpetrated from 6<sup>th</sup> April 1994 was the result of a long period of planning during which pilot projects for extermination were successfully tested<sup>14</sup>.

The planning of genocide did not start on January 1994. However, as mentioned by French representative at United Nation Security Council in 1994, when affirming with satisfaction that the choice of the period (1<sup>st</sup> January to 31<sup>st</sup> December 1994), scope of Temporal Jurisdiction of ICTR), makes it possible to take into account possible acts of planning and preparation of genocide which took place beginning on 6 April 1994<sup>15</sup>. Even though this paper doesn't deal with the issue of planning and preparation of genocide against Tutsi in Rwanda, but as indicated in Théoneste Bagosora trial, there are certain indications in the evidence of a prior plan or conspiracy to perpetrate genocide as well as other politically motivated killings in Rwanda prior to January 1994 (Case No. ICTR-98-41-T, p.538).

<sup>11</sup>Article 7 of ICTR: 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.

<sup>12</sup>Article 1 of ICTR: 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.

<sup>13</sup>**Inchoate crime (offence)** it is a crime related to the planning of criminal acts, or activities preceding criminal acts that encourage or facilitate criminal acts.

<sup>14</sup>Minutes of the meeting of the Security Council of the United Nations at its 3453rd meeting of 8 November 1994 on the establishment of the International Criminal Tribunal for Rwanda (ICTR), S/PV.3453, p.14

<sup>15</sup>Idem, p.3

## Conclusion

The limit of the temporal jurisdiction of the ICTR, which ran from 1<sup>st</sup> January to 31<sup>st</sup> December 1994 was set at the meeting of United Nation Security Council, held on November 8, 1994. This limit prevent the prosecutor to recourse to acts committed in the years prior to 1994 to prove evidences of conspiracy to commit genocide. This causes a failure in the pursuit of those who have been or are being charged with conspiracy to commit genocide for crimes committed before 1994 and as consequence, the accused of the crime of conspiracy to commit genocide were acquitted, such as Ferdinand Nahimana and his co-defendants. The temporal jurisdiction of ICTR, could have adverse effects on the process of reconciliation among Rwandans as far as the culture of impunity is concerned.

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