How to Judge the Rwandan Genocide?

The paradoxes of the International Criminal Tribunal for Rwanda

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Whether it is a matter of prosecuting ordinary crimes or genocide, meting out justice is a process that involves the law, legal institutions and individual human interactions. International justice is still in its infancy, and the International Criminal Tribunal set up in Arusha, Tanzania to prosecute those responsible for the 1994 Rwandan genocide is hampered by a number of difficulties. Liora Israël, a sociologist of law, went to Arusha for a first-hand look at some of the complications and paradoxes underlying international justice.

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Arusha, the third-biggest city in Tanzania, situated not far from Mount Meru in northern Tanzania, is generally only known for its tourist attractions, for it serves as the point of departure for a great many safaris in the surrounding national parks. In addition to this advantageous location and enviable tranquility, Arusha, nicknamed "the Geneva of Africa," is a hub of international institutions, in particular the site of one of the two *ad hoc* international law tribunals established by the UN, namely the International Criminal Tribunal for Rwanda (ICTR). Under a UN Security Council resolution adopted in November 1994, the ICTR tries people suspected of having played a significant part in the massacre of Tutsis and moderate Hutus in 1994. These suspects have been arrested abroad and then extradited, or have turned themselves in to the tribunal, in most cases from a neighboring country to which they had flown. They have been indicted by the ICTR on the basis of their political, military or civilian responsibilities at the time of the genocide: the suspects include cabinet ministers, mayors, prefects, Rwandan army and police officers, even singers and heads of the major media in Rwanda.

This tribunal is an outgrowth of new international criminal law, whose express object is to combat impunity. In the name of humanity, those responsible for atrocities, genocide, crimes against humanity and violations of the Geneva Conventions are tried here in an international framework, which, modeled on the International Criminal Tribunal for the Former Yugoslavia (ICTY) in The Hague, gives material expression to the universalist and humanist aspirations of international law. Most of the controversies surrounding and critiques of this institution concern legal debates about developments in international law and their

implementation in these recently created courts[1], or, conversely, are the upshot of political sparring that tends to reduce these institutions to travesties of justice in the international relations arena. This last dimension is well illustrated by current tensions between France and Rwanda, one facet of which being France's reluctance to extradite to Arusha certain Rwandan suspects who have taken refuge on its soil. Most of the existing social science research in this field also takes a critical angle, pointing up the emergence of an "international law market" or the "imperial" — if not imperialistic — dimension of this new legal order[2].

At some remove from the research focusing on the legal provisions or, conversely, on the strategies of various actors for which these provisions provide a pretext, it would seem pertinent to address the concrete form such an institution has taken, as in the work of John Hagan and his team[3] or Élisabeth Claverie[4] regarding the ICTY. The physical existence of the tribunal reflects its complexity in a different light, as human rights reified or as the crystallization in an internationalized bureaucracy of a Rwandan conflict uprooted and artificially transported to Arusha. Though far from answering all the questions raised by such an approach, I can set forth some reflections on the conditions in which justice is administered at the tribunal based on a recent study I conducted there, albeit of short duration, using an approach based on the sociology of law[5].

Tribunal of humanity?

The ICTR in Arusha dispenses justice under a UN Security Council mandate on the basis of widely-accepted international criminal law in an *ad hoc* institution which directly employs a thousand people, six hundred of whom are international civil servants, including a score of judges, most of whom previously presided over the supreme courts in their respective countries. The total budget allocated by the UN to the tribunal between 1995 and 2007 came to over $1 billion[6]. And yet, who actually knows nowadays that such a tribunal even exists, let alone the verdicts it has handed down? While the leading French national dailies do occasionally note rulings on the main trials, the journalists who actually go to Arusha are a rare breed indeed. The head of the press agency Hirondelle, which provides ongoing coverage

[1] Cf. Mireille Delmas-Marty, among other things her *Leçon inaugurale au Collège de France. Études juridiques comparatives et internationalisation du droit*, Paris, Fayard, 2003.

[2] See the very last two issues of the journal *Actes de la Recherche en Sciences Sociales*, "Pacifier et punir" (1&2), 173-174, 2008, in particular the articles by Sara Dezalay, co-coordinator of these issues, in Vol. 1 "Crimes de guerre et politiques impériales. L'espace académique américain entre droit et politique", p. 44-61, and in Vol. 2, "Des droits de l'homme au marché du développement. Note de recherche sur le champ faible de la gestion des conflits armés", p. 70-79.

[3] E.g. in Heather Schoenfeld, Ron Levi and John Hagan, "Crises extrêmes et institutionnalisation du droit criminal international", *Critique international*, No. 36, 2007/3, p. 37-54. This research is generally based more on a survey carried out at the public prosecutor's office.

[4] Élisabeth Claverie, "Questions de qualifications. Un mufti bosnien devant le ICTY", *Terrains*, No. 51, "Religion et politique", September 2008, p. 78-93. This article focuses mainly on the question of testimony as given before such an institution.

[5] This study was carried out while I was attending a summer school course for East African students on social science methods. The course was held in Arusha under the aegis of several institutions: in France, l'Institut de recherche pour le développement (IRD), le Centre national de la recherche scientifique (CNRS), le Centre d'étude de la population et du développement (CEPED), l'École des hautes études en sciences sociales (EHESS); in Switzerland, l'Institut universitaire d'étude du développement (IUED, Geneva) with support from the IRD's Département soutien et formation des communautés scientifiques du Sud (DSF), the IFRA (Institut français de recherche en Afrique); and the cultural departments at the French embassies in Kenya, Uganda and Tanzania.

[6] Source: "ICTR Facts", official brochure distributed by the ICTR, 2007.

of the tribunal[7], says he has met fewer than a dozen Western journalists there since he arrived four and a half years ago. Moreover, whereas the trials in The Hague are rebroadcast on television and widely followed even in the former Yugoslavia – albeit only to revile the tribunal and root for the accused in many cases –, Rwandans seem by and large uninformed about the Arusha verdicts, probably owing in part to the tension between the current regime and the ICTR, which the regime regards as an encroachment on Rwandan sovereignty and a tacit disparagement of its legal institutions[8]. On the face of it, the ICTR does not appear to be highly visible on the international scene or to have any real resonance among the Rwandan people, even though its object is to play a part in their reconciliation. Oddly enough, moreover, the proceedings do not allow claims for civil damages, so they seem to be ignoring the victims[9]: survivors are only allowed to appear as witnesses in the trials.

The trials are held inside the Arusha International Conference Center, in which the tribunal has gradually become ensconced over the years. The documentary images of the first trial back in 1996 show a makeshift set-up in cramped rooms with inadequate interpreting systems – for the tribunal operates in three languages (French, English and Kinyarwanda). The courtrooms look fine now, furnished in light wood, the three judges seated before a blue UN flag backdrop, the other participants in the proceedings divided up on various levels according to their function: bailiffs, the prosecutor surrounded by members of his or her team, the defendants sitting in the same dock as their lawyers and defense team, plus any witnesses. This is international justice, reflected in the diversity of the professionals here from all over the globe, with Pakistani, Swedish or Jordanian judges, Quebecois, sometimes British, Belgian or more seldom Kenyan or Cameroonian lawyers, Senegalese or French bailiffs. The interpreters sit behind slightly tinted windows in a booth on one side of the courtroom, from which the public seating area projects perpendicularly, often holding only scattered spectators, who, like all the participants, are equipped with headphones on which to choose which of the three available languages to follow the proceedings in. These black headsets are not the only audiovisual equipment present: there are a great many screens in the courtroom livecasting the hearings, which are filmed by cameras mounted on mobile arms and simultaneously edited by a director in another booth. So despite the physical proximity of the participants (the room is only about 30 feet long), they tend to watch one another on the screens situated in front of each seat and listen to one another on their headphones: this technological mediation slightly distorts their interactions, particularly by slowing down their speaking so that arguments can be simultaneously interpreted and taken down in shorthand.

Consequently, the hearings leave a mixed impression: on the one hand, there is the whole ritualization and dramaturgy of courtroom proceedings, the stuffy decorum of the verbal exchanges, the robes of the judges, bailiffs and lawyers, attesting to their far from "normal" functions and interactions – in a word, a general solemnity presides over the hearings. On the other, there is no real public presence in the courtroom, which is located in an impersonal edifice that looks less like a courthouse than an office building – albeit a pretty well-guarded one, which indeed it is. The formality of the trials befits the gravity of the matters at issue and the meticulousness with which the exhibits and witnesses are examined and cross-examined by the prosecution and the defense as well as the authority displayed by

[7] http://www.hirondellenews.com/

[8] See e.g. Philippe Bernard's article in *Le Monde* of May 31, 2008, "Le tribunal de l'ONU exprime sa défiance à l'égard du régime rwandais," relating the ICTR's criticisms of Rwandan justice when the tribunal refused to comply with a request for the extradition of a Rwandan detained in Arusha.

[9] NB: The International Criminal Court being set up in The Hague will be different from the ICTY and ICTR in this regard.

the presiding judge in responding to motions by either party. Nonetheless, this formality and solemnity are undercut and offset in a way by various obstacles disrupting the narrative continuity of the trials. Firstly, the growing number of mass trials, with cases grouped together along regional (as in the so-called "Butare Group" trial) or functional ("Military I & II" trials, respectively) lines, initially intended to expedite the proceedings, produces an impression of confusion when testimony, exhibits, examinations and cross-examinations concerning more or less distinct cases are all thrown together in the same trial. Furthermore, the material difficulties inherent in the translating and interpreting process, in transporting witnesses from Rwanda, in sorting sealed documents and transmitting them between the parties are a cumulative drag on the hearings, which are encumbered and sometimes even postponed as a result.

Lastly, the strategy employed by the defense attorneys, which often consists in raising objections, challenging evidence, demanding verification or contesting points of order, considerably slows the pace of the trials as well. As a result, some of them have been dragging on in the court of first instance for five years (Government II), six years (Military I) or seven years (Butare). The defense teams themselves have often been changed, sometimes the judges are not the same either, and spectators who venture into the courtroom for a few hours or even a few days have a very hard time getting their bearings. On the other hand, they do have a huge quantity of documents to fall back on, including dispatches from the tribunal's press service, fairly succinct daily minutes of the hearings and the complete transcripts of the proceedings. The latter are only made available to the public six months later, however, and come to twenty or thirty pages for each day of hearings. Lastly, not all the hearings are open to the public: for their own protection, some witnesses (many of whom have been flown in from Rwanda) are examined and cross-examined *in camera*, or in public sessions but concealed behind a curtain to protect their anonymity (their names and distinctive traits being kept from the public as well).

So procedural constraints, the parties' strategies and the peculiar complexity of the Rwandan genocide itself combine to obscure the visibility of these trials held in Arusha, a small Tanzanian city of 300,000 inhabitants far from the international political and media scenes. The ICTR, which is an international tribunal in terms of its personnel (including UN officials of 85 different nationalities), its mission as defined by the UN Security Council and its universalist goals sustained by international law, is at the same time an isolated, scarcely visible institution, whose workings are slow and complex and whose impact is not easy to determine.

Defending the indefensible?

One of the minor details one comes across in the hallways and courtrooms of the tribunal is the prevalence of Quebecois accents, which one gradually comes to associate with a very specific group, namely the counsel for the defense. This Quebecois concentration, which might seem a trivial observation, nonetheless got me wondering about the presence of these French Canadian lawyers. In fact, while the tribunal staff report to the UN, the counsel for the defense (the only lawyers present in the absence of complainants claiming damages) is made up of attorneys in private practice who have flown all the way to Arusha to defend those accused of having taken part in or encouraged the genocide.

The relative abundance of mostly French-Canadian lawyers can be attributed to their objective skills, i.e. their knowledge of common law[10] and of both French and English: their bilingualism enables them both to communicate with French-speaking Hutus and to work within the framework of a UN institution. It should also be pointed out that the Quebecois lawyers came to Arusha gradually and belatedly: the Belgian and French lawyers got there first, for reasons having to do with their countries' colonial and diplomatic past, but faced difficulties due to their unfamiliarity with the adversarial system. Interviewing first the Quebecois lawyers, and then the other (English Canadian, Cameroonian and Rwandan) lawyers for the defense, gave me some insight into the various initial motives that brought these defending attorneys to Arusha.

A special type of law

International criminal tribunals like the ICTR, ICTY and the International Criminal Court (ICC) established by the UN under the Rome Statute (1998), try individual defendants, as opposed to the International Court of Justice (ICJ, aka World Court), which adjudicates disputes between states. The law in force at the ICTR, as defined by its own statutes, is a mix of common and civil law: i.e. the two main legal traditions, one of English origin and used in the US, based on the body of precedent and an adversarial system (equality of the parties before a neutral judge, predominantly oral proceedings), the other of Roman-Germanic origin, based on codes of law and the so-called inquisitorial system (in which examining magistrates and written arguments play a more important part). However, the ICTR procedure, which has evolved significantly since its creation[11], is in fact far closer to the common law tradition, particularly with regard to the roles of the public prosecutors and the counsel for the defense and the limited intervention of the judges during the hearings.

Christopher Black[12], an English Canadian lawyer and one of the most infamous figures at the tribunal, previously spent twenty years as a criminal lawyer in Toronto defending for the most part underprivileged defendants. A member of the Canadian Communist Party, he began taking an interest in international law during the NATO intervention in the former Yugoslavia. Along with several other lawyers, mostly fellow alumni of the prestigious Osgoode Hall Law School in Toronto, he made an ultimately abortive attempt to get all the NATO leaders and officers charged for war crimes in 1999. Black subsequently continued working in international law, which he disparages as a tool of American imperialism, and wrote several articles that caught the attention of the defense team for those already in the dock in Arusha. After initially declining the offer, he eventually agreed to defend Rwanda's former police chief, who was arrested in Belgium in the summer of 2000 and is still on trial today. At his client's behest, as Black emphasizes, his line of defense consists in denying the legitimacy of the tribunal itself, decrying it as a puppet institution at the bidding of the Tutsi-led Rwandese Patriotic Front (RPF, currently in power) and the United States. This defense strategy clearly lies in the tradition that runs from

[10] The law in force in Quebec is mixed: common law is used there as in the rest of Canada for matters of criminal law, but a civil law system is retained in areas of provincial jurisdiction for matters of private law.

[11] See in particular on the tribunal's web site the Rules of Procedure and Evidence, which have been amended 16 times since their adoption on June 29, 1995.

[12] Black agreed to be cited in this article.

Leninist-style trials[13] to the "*procès de rupture*[14]" of "Devil's advocate" Jacques Vergès – to whom Black was close, having teamed up with him to defend Milosevic in The Hague.

The only Rwandan lawyer currently registered with the tribunal in Arusha exhibits a second type of political filiation, with ties to the inculpated regime. A former law professor and legal advisor to Rwandan President Juvénal Habyarimana at the time of the Arusha Accords (1992), he currently resides in Kenya. He initially joined a defense team as an investigator, tasked specifically with finding defense witnesses for an accused. He has only been registered as a lawyer with the tribunal for two years.

While these two lawyers were called to Arusha by virtue of their personal sensibilities, specifically with regard to issues of international jurisdictions and Rwanda's political history, respectively, these two key aspects of the trials were unfamiliar to most of the other defense lawyers, including the three French Canadian lawyers I was able to interview, before they were asked to come to Arusha. One of the latter, an experienced criminal lawyer from Montreal, was called in by his companion, a criminal lawyer herself who had been brought in by a Belgian colleague to defend a Rwandan former cabinet member under indictment in Arusha. So she suggested that her companion join her on the defense team, and a few years later he contacted his partner at the law firm in Montreal to handle a new case. This is how one Canadian criminal lawyer after another has ended up in Arusha. They are sought after for their experience in the adversarial system prevailing at the ICTR, and they come, to quote these two lawyers from Montreal, to embark on a new adventure, to take on a new challenge. They feel these cases are more about "criminal" than "international" law, the main difference being merely the number of victims. Unlike Christopher Black and the aforementioned Rwandan lawyer, these other lawyers have come to Tanzania without any real preconceived notions about Rwandan history or the institution of the ICTR and without knowing how long they are going to stay.

The third Quebecois lawyer I interviewed is not a senior legal counsel, but an assistant to a defense team headed by an older Quebecois colleague. Specialized in administrative and refugee law, she began working at the ICTR on a case under appeal in 1998, then moved on to various other dossiers tried by the ICTR, repeatedly changing "bosses," before ending up in 2003 on the team she is still working for today. Her initial motives – besides the specific professional experience of such an institution and her interest in international criminal law – were primarily to practice law within the framework of a nascent international tribunal, where she feels that if defendants are to be convicted, that should be under good conditions, with due respect for their right to a fair trial, for the sake of the credibility of the institution itself. Although she came to defend what might be called the "cause of law"[15], and not the cause of any party to the proceedings, she has since grown disillusioned and now regards her activity

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[13] On this genealogy with regard to France, cf. Liora Israël and Sharon Elbaz, "L'invention du droit comme arme politique dans le communisme français. L'Association juridique internationale (1929-1939)", *Vingtième Siècle*, No. 85, 2005.

[14] A strategy based on the impossibility of dialogue between accusers and accused, according to Vergès, due to fundamentally conflicting values. This subversive approach involves denouncing the trial itself and using the proceedings to sway public opinion against the accusers. Cf. Verges interview http://michelcollon.info/Jacques-Verges-034-proces-de.html?lang=fr and Jonathan Widell, "Jacques Vergès, Devil's Advocate: A Psychohistory of Vergès' Judicial Strategy", PhD thesis, McGill University Faculty of Law: http://digitool.library.mcgill.ca/webclient/StreamGate?folder_id=0&dvs=1389460552240~93 —Translator's note

[15] See "La cause du droit", *Politix* , No. 62, 2003.

there chiefly as "a job"; in fact, she even intends to switch sides and work for the public prosecutor's office upon her return to Canada.

The last lawyer I interviewed, a Cameroonian national, has a different type of profile, at once political and "African." There are in fact a number of African lawyers registered with this tribunal on the African continent; their countries of origin, as mentioned on the list of registered lawyers, include Mali, Togo, Burundi, Kenya, Cameroon, Congo, Guinea and Tanzania. Having practiced law in Cameroon for 26 years, and a member of his country's bar association for 13, this particular lawyer is from a country which, like Quebec, is bilingual and knows both common and civil law. A former member of the opposition who has been retained as a lawyer in political trials in Cameroon, he is also involved in other politically or economically sensitive cases in Africa, especially in Sierra Leone. Unlike the Quebecois lawyers, this lawyer, who has been working in Arusha since 1998, has managed to continue his involvement in a wide range of cases, political or not, whereas many lawyers at the ICTR, given its distance from their own countries and the importance of the cases they are handling, but also to the lavish UN pay[16], confine their present activity to their work at the tribunal.

A necessary evil

Although the defense lawyers and their staff are fully integrated into the operation of the tribunal and the expat community around it, they are not international officials and it is actually important for their credibility in representing the accused to keep a certain distance from the institution that happens to be paying their salaries. Their offices are located in a separate wing of the tribunal, although the common areas are shared by everyone (even by other institutions, such as the East African Community, which also has offices in the same complex). The lawyers themselves describe the tribunal both as their place of work and as an institution they are fighting against, chiefly to enforce the rights of the defense.

The role of defense attorney at the ICTR does indeed involve some contradictions, which probably apply to other international frameworks as well. While necessary for reasons of form to satisfy the conditions of due process, and hence legitimate justice, defending the accused nonetheless remains a morally and politically problematic function for a number of actors. The lawyers find themselves in a paradoxical situation, which is important to realize in order to understand the institution as well as their specific sociology: while their role is necessary to legitimize the institution, their activity consists for the most part, at various levels, in challenging the legitimacy of the tribunal itself.

So in the eyes of other actors, the ICTR lawyers seem to be performing a function that might be termed a "necessary evil." Their presence guarantees the balanced functioning of a justice frequently accused, as post-transitional or post-conflict justice often is, of being the victor's justice. Nevertheless, a certain number of dispositions, which the lawyers themselves underscore when asked, make it all the more problematic to enforce the rights of the defense: the fact that the accused did not initially have the right to choose their counsel as they saw fit (a right first granted in 1998) is one oft-cited example, as is the fact that the tribunal was initially tasked under Security Council Resolution 955 (November 8, 1994) with "trying persons presumed responsible for the genocide" (and not "presumed innocent" in conformity with Article 11 of the 1948 Universal Declaration of Human Rights). This wording, albeit morally comprehensible in view of the tribunal's function as defined by the Security Council

[16] The U.N. pays them up to $15,000 monthly salary, i.e. more than most of the international ICTR officials, and provides their offices and supplies.

(to prosecute those responsible for genocide), is particularly hard to accept for North American criminal defense lawyers trained in the adversarial system, who are incessantly calling for rights and powers truly equivalent to those accorded the prosecutors.

These recurrent problems in the history of the Arusha tribunal, which were decried in a general strike in 2003 by the defending attorneys, who incidentally have since formed an organization, the ADAD[17], to defend their own interests, also reflect an underlying moral problem. The very act of defending the accused under the aegis of an institution whose watchword is the struggle against impunity and for reconciliation in Rwanda jeopardizes the attainment of these objectives, which go far beyond the question of assigning individual guilt as conventionally effected through a criminal trial. In this context, the strategies employed by the defense, at the instigation of clients who are Rwandan military and political officials and therefore by definition "responsible" in some way or another for the genocide, are going to be aimed precisely at frustrating the administration of a justice that is geared towards restoring peace, by reviving the image of a conflict widely depicted as a civil war (allegedly started by the Tutsi-led Rwandese Patriotic Front (RPF)) and basically denying that a genocide took place.

This negationist strategy of denying the genocide is central to understanding the role of the defense lawyers at the Arusha tribunal. While only a small minority of them publicly endorse such a stance, they are frequently accused of being a mouthpiece or vehicle for it insofar as they represent people the vast majority of whom reject the term "genocide" and deny the legitimacy of the tribunal. The political combativeness of the accused is attributable to their particular profile as former Rwandan politicians, high-level officials or top brass, many of whom were trained at the best Belgian and French universities. This combativeness is illustrated by the fact that only a very small proportion of them agree to plead guilty, even though the tribunal, which has only judged 37 defendants since its inception in 1995 (27 are still on trial and nine awaiting trial, not counting appeals), persistently encourages the implementation of proceedings likely to induce the accused to admit to the crimes justifying the tribunal's existence and to reduce the duration and consequently the costs of these trials[18]. Furthermore, the social characteristics of the accused, which are definitely unlike those of criminal lawyers' usual clientele, have two types of effects. First of all, as they are allowed under the conditions of detention in Arusha to hold working meetings and political discussions amongst themselves, the accused are extremely active in drawing up collective statements, for example, to the tribunal and the press. Secondly, all the lawyers I interviewed spontaneously stressed that they were unaccustomed to having such "high-caliber" clients who take part intellectually in elaborating their defense; and that by force of circumstances, after five, six or even ten years of working together, strong ties are forged between the lawyers, who for the most part have only a single client during that whole period, and the clients, who find themselves incarcerated, far from their native country, and whose only remaining link to the outside world is often their defense team.

[17] Association des avocats de la défense devant le Tribunal pénal international pour le Rwanda (ICTR Association of Defense Counsel)

[18] As the tribunal's registrar says quite clearly regarding the case of Vincent Rutaganira, the first defendant who agreed to plead guilty, in "Towards Reconciliation," a film produced (June 2005) by the tribunal's publicity department. François Roux, Rutaganira's French trial lawyer, who negotiated several other guilty pleas as well with the prosecutor's office, is one of the lawyers to be interviewed in the follow-up to this research and whose relationship to the tribunal, particularly in view of this plea-bargaining, is probably different.

So the practical and symbolic difficulties faced in enforcing the rights of the defense within such a framework, and the good rapport with their clients, with whom they identify, or whom they appreciate for their intellectual prowess or social status, over the course of such extremely long-drawn-out trials, as well as more structural elements that tend to make the tribunal a one-sided arena (where only Hutus are prosecuted[19]), contribute to engendering in the lawyers a shared skepticism about the workings of the tribunal. This skepticism evolves in most cases[20] into a conviction that the truth about Rwanda was more complex than the construction the tribunal is trying to put on it. As a result, the lawyers end up embracing various hypotheses: that of a "double genocide," that of a "genocide theory" enabling the extension of an American imperialism that is embodied by the tribunal, or, even more widespread, doubts about the tribunal's independence from the current Rwandan government.

Thus, for reasons both social and structural, the difficult conditions for defending their clients at the tribunal tend to induce this potentially influential group of actors to challenge the generally shared view of the Rwandan genocide which the tribunal seeks to propagate[21]. Moreover, the limitations on exercising the rights of the defense – particularly with regard to standards of adversarial criminal proceedings – can be denounced by those who challenge the institution itself, primarily the accused and their political backers, as illustrated by the detainees' support for the defense lawyers' strike.

As it turns out, focusing on the defense lawyers brings out the problematic relationship between the ICTR's legitimacy and the exercise of the rights of the defense in its trials. If these rights are denied or eroded, they come to symbolize an unjust or biased justice. If they are respected – thanks in large part to the struggles of the lawyers, who have done a great deal to improve the rules of procedure and the jurisprudence – they become stepping-stones upon which to move from defending the accused to rallying to their cause[22]. While not all the lawyers necessarily endorse their clients' political cause, we have endeavored to show that certain social and structural characteristics of this relationship nevertheless help, in the context of the functioning of the ICTR, to make the lawyers who work there valuable resources for a critique of the institution.

This brief article is not intended to supplant the research that remains to be done on an institution like the ICTR. It does, however, suggest two approaches. The first consists in taking account of how the interactions proceed concretely on a day-to-day basis, even in an assessment of what seem to be the most imposing international institutions. For the operation of law, if not its very makeup[23], can probably only be really understood by considering the complexity of the relationships forged by such a tribunal between the history it is judging and the social practices it engenders. Secondly, taking into account the role of the defense lawyers is probably of interest not only in filling the general gap regarding consideration of defendants and their attorneys in the critique of international jurisdictions, but also in bringing to light the mechanisms that lead from practicing law to political commitment among lawyers[24], and

[19] In contrast to The Hague, where Croats and Bosnians are also tried.
[20] In five out of six interviews I conducted.
[21] A number of Quebecois lawyers, for example, came out in support of Pierre Péan's controversial book *Noires fureurs, blancs menteurs, Rwanda 1990-1994,* Paris, Mille et une nuits, 2005.
[22] Francis Chateauraynaud, "Les relations d'emprise. Une pragmatique des asymétries de prise", working paper, EHESS/GSPR, 1999.
[23] Bruno Latour, *La Fabrique du droit. Une ethnographie du Conseil d'État,* Paris, La Découverte, 2002.
[24] As already suggested in an important article by Ronen Shamir and Sara Chinski, "Destruction of Houses and Construction of a Cause: Lawyers and Bedouins in the Israeli Courts", in A. Sarat and S. Scheingold (dir.), *Cause Lawyering: Political Commitments and Professional Responsibilities*, New York, Oxford University

which involves close consideration of the very concrete conditions in which they exercise their profession. The law that ultimately interests lawyers, that of decisions after that of statute law, overlooks the whole indissociably social and legal space of actual hearings, a muted and yet violent theater in which one of the worst tragedies of the 20th century is being replayed in Arusha – amid widespread indifference and uncertainty as to the outcome of this re-presentation.

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Press, 1998, p. 227-257.