

# Rwanda and the Criminalisation of International Justice: Anatomy of War Crimes Trials

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*The Nato ordered indictment of Muammar Gaddafi by the International Criminal Court (ICC) during the Nato attack on Libya in 2011 echoed the indictment of President Milosevic by International Criminal Tribunal For Yugoslavia, during the Nato attack on Yugoslavia in 1999. Both men ended up dead as a direct consequence. The indictments of these two men, had only one purpose, to serve as propaganda to justify Nato's aggression and the elimination of governments that refused to bend the knee.*

*The international criminal justice machine has become a weapon of total war, used not to prosecute the criminals who conduct these wars, but to persecute the leaders of the countries who resist.*

Milosevic and Gaddafi are not the only victims of this criminalised international legal structure. The list is long:

President Saddam Hussein of Iraq,

President Charles Taylor of Liberia,

Prime Minister Jean Kambanda of Rwanda,

President Laurent Gbagbo of Ivory Coast,

President Bashir of Sudan and

President Uhuru Kenyatta of Kenya.

The charges against them trumped up, created out of whole cloth. Recently there was talk in the western press of charges against President Putin. We all see how absurd and surreal the game has become.

The structural role these tribunals have played in the attempt by the USA and its Nato allies to create a New World Order has been analysed and described by distinguished jurists and writers around the world. Since I am a trial lawyer, I wanted to contribute to your understanding of the criminal nature of this international justice machine by relating to you some of my experience defending a particular political prisoner held by it. I could tell you about the scandalous practices of the ICTY in the Milosevic trial in which I was involved through his international defence committee but these are well known and have been recounted by a number of eminent persons and writers. There are many victims of these tribunals but I will focus on this one particular case because it stands as an exemplar of the many. However, the criminality was so deep and so extensive that when I began writing

down the history of this trial I realised I would need a book to relate it all. So, in the time permitted us, I decided to provide you with a sketch of how these trials work.

So I am going to talk about the Rwanda tribunal because it is the most familiar to me and because the war in Rwanda is used time and again by the United States in its propaganda to justify its wars of intervention, so-called. The US claims that the violence that occurred in Rwanda in 1994 would not have happened if only America and others had acted instead of standing by and doing nothing. But now, after 15 years of trials and investigations, we know that the America and its allies did directly intervene. It was they who controlled that war and it was they who unleashed violence of an unprecedented magnitude and savagery simply in order to overthrow a regime that was an obstacle to greater conquests and riches in the Congo. Their forces, we now know, did most of the killing and Bill Clinton's lie that the US was not involved is one of the great lies of history. As Boutros-Ghali told the Canadian writer on Rwanda, Robin Philpot, in 2004, "The Americans are 100% responsible for what happened in Rwanda." Clinton's big lie has been accepted and acted on because of the propaganda campaign that accompanied it in the media and the key to that propaganda campaign are the show trials at the Rwanda Criminal Tribunal, set up and financed by the same Nato countries and corporations and Soros connected ngos as control the Yugoslav, Sierra Leone and Hariri tribunals.

In January, 2000, General Augustin Ndidiliyimana, the former Chief of Staff of the Rwanda gendarmerie and most senior ranking Rwandan military officer in 1994, was arrested in Belgium based on an indictment issued by Carla Del Ponte, then prosecutor of the International Criminal Tribunal For Rwanda, the ICTR. He fled to Belgium in June 1994 after receiving threats on his life. His entry into Belgium was authorised by the then Belgian Foreign Minister, Willy Claes, later Secretary-General of Nato, who stated at the time that he had saved the lives of many Rwandans.

It is with the arrest that the criminality begins to appear. It was speculated in the Belgian press at the time that it was for political reasons and indeed, 11 years later, this speculation was confirmed when the trial judges delivered their judgement.

They stated, in the judgement dated May 17, 2011 the following: General Ndidiliyimana was considered a political "moderate" during the Rwanda War of 1990-94, a Hutu respected by Tutsis and Hutus alike and, as attested to by many witnesses including witnesses for the prosecution, his gendarmes did not commit crimes against civilians but tried to protect them where they could. So why was he arrested?

Because he was a potential leader of the country, because he refused to cooperate with the RPF regime installed by the United States after the war, because he knew too much about what really happened in Rwanda and who was really responsible for the violence, because he knew that UN and American forces, despite Clinton's denials, were directly involved in the final RPF offensive of 1994 and the murder of President Habyarimana. All these reasons were no doubt involved in his arrest but it quickly became clear that the prosecutor used his arrest to pressure him to give false evidence against Colonel Theoneste Bagosora, the former deputy minister of defence in Rwanda who was their primary target, the "big fish" of the prosecution.

The criminal methods used against him began immediately on his arrest. He and his counsel in Brussels met with two ICTR prosecution staffers who informed him that the indictment

was just a formality to give the ICTR jurisdiction over him and that the real reason for his arrest was to accompany them to Arusha, Tanzania, the home of the ICTR, to meet with the prosecutor to be interviewed regarding events in Rwanda. The Rules of Procedure require that an accused be shown the indictment on arrest. He was shown nothing. Yet he voluntarily accompanied the ICTR staffers to Tanzania, and was immediately thrown in prison.

In June 2000 Ndindiliyamana contacted me by letter and asked me to be his counsel. I agreed and he submitted my name to the registrar to have me assigned. But their immediate reaction was to try to dissuade him from engaging me, stating that I had no experience, that I could not speak French, (he spoke no English) both false and attempted to persuade him to take counsel they preferred. This was a frequent occurrence at the ICTY and R and is now the norm at the ICC. Defence counsel who are seen to be too effective and willing to bring out the all the facts and let justice be done though the sky may fall, or, as Kant phrased, it "to let justice reign even if all the rascals in the world should perish from it", are prevented from representing accused by various means in favour of counsel who are either active agents of the western powers or who will only put up token defences. The few strong defence counsel who are able appear are hampered in every way possible and even thrown in prison on charges trumped up by the prosecution, and the intimidation of counsel trying to defend them, as we recently saw in the Bemba case at the ICC. Nevertheless, Ndindiliyamana persisted and, finally, I was allowed to represent him and to meet him later that summer.

The first thing to do obviously was to get hold of the indictment and see what the charges were. But that proved to be very difficult. The indictment was not a simple statement of a criminal charge. It was, instead, a 65 page propaganda tract, setting out the mass media version of the war, all of it false, all of it meant to prejudice the accused in the eyes of the judges but, more especially, meant for public consumption and prosecution press releases. In other words it was pure propaganda, and written as such. The other surprise was that entire lines, sections and even entire pages of the indictment were blacked out, including the names of co-accused.

On his arrival in Arusha the general was not taken immediately before a judge for an initial appearance as required by the ICTR Rules of Procedure. Instead he was held incommunicado for almost 4 months and did not make his first appearance before the judges of the tribunal until April 28th of that year. The delay was a deliberate tactic meant to soften him up psychologically. The same tactic was used against other prisoners, one example being Prime Minister Jean Kambanda, who instead of being brought before a judge on arrest was taken to a location hundreds of kilometres from the tribunal, held incommunicado for nine months and threatened by two Canadian police officers every day to make him confess to crimes he had not committed.

When Ndindiliyamana was finally brought before a judge the lack of a proper indictment was raised by the duty counsel who stated the accused was being asked to plead to a document that was half blank. The judge did nothing.

Upon my arrival at the tribunal, in July 2000, an American woman approached me in a hallway of the tribunal offices and informed me that she was in charge of the prosecution staff and wanted to talk with me. She informed me that she was not only a lawyer. She was also a Colonel in the US Air Force Reserves. She asked to meet me the next day to discuss a

deal which was strange considering the charges they had made against my client of genocide. The next day, about 20 people walked into the meeting room where I was sitting alone. The attempt to intimidate me was clear. The American colonel made various proposals for a deal if we agreed to cooperate and testify for the prosecution. Our response was that the charges, so far as we could make them out, were false, that we could not accept his arrest and detention as a means of forcing him to give false testimony and demanded to have a trial. As an aside, I heard a number of times in private meetings with UN staffers, some at high levels, that everyone at the tribunal knew the general was a good man and not guilty of any thing but, as one insider told me, that's the way the Americans "are playing things here", and to watch my back.

On my next trip to Arusha, a couple of months later, to argue a motion for his release, I found that he had "disappeared" from the prison. The UN and Tanzanian guards refused to tell me where he was. It took a day of angry arguing with obstructive officials to find out that he had been transferred to a UN safe house in the town of Arusha. The excuse given to me was that he was in danger from other prisoners but in reality it was to keep him isolated psychologically, to weaken him, to soften him up, and to discredit him with the other prisoners by making it look like he was "making a deal."

We demanded that he be taken back to the UN Detention Unit but all our legal efforts to effect that were useless until I raised the issue in the press and to avoid further scandal, two days after the press raised the issue, he was returned to the UN prison, where, soon after, he was elected head of the prisoners' committee.

Over the next 4 years we faced constant obstructions in trying to find out what was going on, what charges he actually faced, what they were going to do and when he was going to have a trial. During this period, repeated offers were made by the prosecutors, including dropping all the charges but all were refused; our position being simply that his arrest and detention to pressure him to testify were illegal and immoral and that he would only cooperate as a free man.

Demands for a speedy trial were met with shrugs of indifference. We were not given any relevant disclosure and even at the end of the trial the prosecution kept hidden thousands of documents that were exculpatory and only came to light by accident. So, in effect we never got any disclosure and had to create a defence for what we thought the general charges to be. To compound the problems, we were also refused sufficient investigative missions to locate and meet with witnesses to build our defence.

Two Irish lawyers found out through sympathetic contacts in the UN security office that defence office phones and fax lines were tapped. We learned that at least one defence lawyer was an agent of the prosecutor. Lawyers noticed they were followed and hotel rooms were broken into. Attempts were made to put women net to us who worked for the Tanzanian and Rwandan intelligence services. Rumours were spread in the UN detention unit to discredit defence counsel with their clients.

In 2003, a Scottish lawyer, Andrew McCarten, representing another accused at the ICTR, came to see me in Toronto stating he knew all about how the US and CIA controlled the tribunal at every level and that he feared for his life. He was very agitated. He had just arrived from New York where had tried to meet with Bill Clinton, and had been thrown out of his office. He told me details of the US military and CIA penetration of the tribunal and said

he was going to send me documents of even darker things. The tribunal accused him of financial irregularities and kicked him out. Two weeks later he was dead. The police could find no cause for his car going off a cliff in Scotland. He was Scotland's foremost military lawyer.

On a visit to Arusha just after that I was visited by a major in American army intelligence, accompanied by an intelligence officer from the American State Department Research Intelligence Bureau who wanted to know what our trial strategy was and what my client's views were of African politics.

The defence lawyers were not the only ones who faced problems. In 1997, Louise Arbour ordered an investigation into the shoot-down of the presidential plane, which resulted in the massacre of all on board, including the Hutu President of Rwanda, Habyarimana and the Hutu president of Burundi, Ntaryamira and the Army Chief of Staff. The invading Ugandan-RPF forces and Americans claimed that Hutu "extremists" shot down the plane.

An Australian lawyer, Michael Hourigan, was assigned to lead the investigation and in due course he reported to Arbour that his team had determined that it was in fact the RPF that had shot down the plane with the help of a foreign power and the CIA was implicated. Arbour, he stated in an affidavit, seemed enthusiastic when he first informed her by telephone but when he was summoned to The Hague to meet with her, her attitude had totally changed to open hostility. He was ordered to hand over his evidence and ordered off the case.

To this day that file has been kept secret and no one named in his report has been charged.

In January 2004 the defence lawyers organised a strike to protest the political nature of the charges and trials, the poor working conditions for the defence, the searches of defence counsel when they went to meet with their clients, and the isolation and conditions for the prisoners. A few weeks after the strike the strike leader, Jean Degli, a Congolese lawyer based in Paris, an excellent advocate and a strong leader of the defence lawyers' association, was implicated by the prosecution in a financial scandal and forced out from the defence of a senior military officer. He had to go and he was gone. Once he left the tribunal the defence lawyers' association fell apart and never took any effective action again.

British and American lawyers would sometimes appear in the prison and announce to several accused that they had been appointed their lawyers. But the prisoners had not asked for them, did not know them, did not want them and became convinced that they were sent in by western intelligence agencies to control the outcome of the cases. The prisoners themselves created a list of defence lawyers they believed to work for western intelligence agencies. For those cases the tribunal could not control through friendly counsel the prosecution tried to insert someone inside the defence team to pass on information and to influence defence tactics and strategy. We detected several people who were working for the prosecution as spies.

They sabotaged our team by trying to trap and arrest our lead investigator, a former Rwandan police major, very useful to us in locating witnesses. On the very day that he arrived in Arusha, I was informed by a sympathetic official that they intended to arrest him on genocide charges, that his work programme had been suspended and that I better get him out of the country. So we had to quickly smuggle him out of Tanzania, at considerable

cost, to avoid his arrest or worse. The charges were patently false, as he had been cleared by UN security and Rwanda well before he was engaged as our investigator. But the prosecution tactic effectively crippled our defence for over a year and we were never able to locate an investigator again with his experience and contacts. To this date, our demands to know why he was charged have been met by silence but it is worth noting that after this episode he was accepted into the Dutch police force which did a complete security check on him and determined that he had no involvement in the events of 1994.

The pressure increased when the prosecution circulated rumours that indicated they were intending to charge the general's wife as well.

Finally, almost 5 years after the general's arrest, the trial began, in September, 2004. To our complete surprise, at the very start of the trial the prosecutor stood up and filed a brand new indictment containing dozens of new charges including allegations of massacres we had never heard of and personal murders allegedly committed by the general himself. The accusations were of the worst and most sensational kind. It was clear they were meant to prejudice the accused in the eyes of the judges before the trial got going and in fact, as we saw in their judgement many of those were dropped without any evidence ever being presented. It was all a sham. We protested and demanded a delay to prepare a defence. We were denied and forced on and so had to prepare a defence on the run. At that point I was alone without co-counsel as the registrar refused to allow us to have counsel we wanted. The judges' attitude from the first day was openly hostile and they refused to allow us to discuss certain issues, or to cross-examine witnesses as we wanted. They openly sided with the prosecutors and sat back and did nothing as, each day, the prosecutors launched into vicious personal attacks on defence counsel and the accused.

The prosecution witnesses were mainly Hutu prisoners of the RPF, held without charge for ten years or more, in terrible conditions, many tortured, none of their testimony agreeing with the statements they had made prior to trial, much of it, double and triple hearsay. No RPF officers were called to testify though they did call a few witnesses who were members of Rwandan government propaganda groups. The only evidence they had came out of the mouths of these Hutu prisoners and government agents.

Nevertheless, a number of them, once on the stand, had the courage to state that they had been forced to sign statements and testify falsely in return for release, favours or to avoid execution. We learned from these witnesses that the regime had set up schools in the prisons to recruit and train false witnesses, and the judges heard detailed accounts of how witnesses were recruited in these prisons, and that prosecution staff at the tribunal were involved in this scandal. What the fate of these prisoners was when they returned to Rwanda we do not know but the fate of those that cross the Rwanda regime is always unpleasant and permanent.

Even the judges, selected and groomed to be hostile to the defence, began slowly to become uncomfortable with what they were hearing and disturbed on learning that all the witness statements disclosed to us post-dated the general's arrest.

The judges threatened my self and other counsel with arrest if we continued lines of questions they didn't want us to pursue, and there were daily angry confrontations in court between the judges and defence counsel when we tried to protect the rights of the accused and insisted on a fair trial. Throughout the trial, evidence came out that the enemy forces



had committed mass atrocities against civilians but instead of the judges asking the prosecution why these forces were not charged they tried to silence us.

In 2005, during my cross-examination of a Belgian Army colonel concerning what is known as the Dallaire genocide fax, we learned that the translators were reading from scripts prepared by the prosecution instead of translating actual testimony of the witness. We demanded an investigation and demanded the prosecutors be charged. The judges again sat there stone-faced and despite our demands, did nothing.

It was during this cross-examination that the Dallaire fax was proved to be a forgery and placed in UN files by a colonel in the British Army. But the prosecution was so embarrassed by this revelation that the fax was never again mentioned in any of the trials at the ICTR and though it was claimed to be the most important prosecution document in our trial, the prosecution never again raised it.

In 2006, the prosecution arranged to have the Appeal Chamber make the astounding declaration that the “genocide” was a judicially noticed fact despite the clear denial by the defence, despite the contrary evidence in the trials and despite the fact that the primary charge all the accused faced was genocide. In effect the tribunal stated the defence could not deny the principal charge against them.

But we persisted in presenting our defence in spite of this decision and in our case, at least, the judges gave up fighting with us day after day and we continued to present the facts.

In September 2006 the well-known prosecution expert, Dr Alison Des Forges, testified in our trial and prepared an expert report for that purpose. The problem was that she removed from that report statements she had made in an earlier report that Ndindiliyimana was a man opposed to genocide and had tried to protect civilians. When she was confronted in cross-examination as to why she had attempted to mislead the judges she refused to answer the questions but it was clear from the reaction of the prosecutors that she had removed those exculpatory statements in an attempt to obstruct justice and did so on the orders of the prosecution. The trial judges took the rare step of censuring Dr. Des Forges for this deceit in the trial judgement.-

In 2007 we witnessed another bizarre scene in which the Judges and prosecutors held a secret meeting on how to eliminate the unwanted testimony of a Tutsi prince, son of the last Tutsi king, and well known personality in Rwanda, named Antoine Nyetera, who testified that the RPF had done all the killing and not the government and that he was a witness to it. Not liking the fact a prominent Tutsi was stating that the mass media version of events was false and that the RPF forces the prosecution refused to charge were responsible for most of the killings, they decided, in a secret meeting with the prosecutors, to announce in court that they were going to eliminate his testimony from the record. When all the defence counsel objected, we were met by a stone wall. To cover up what they did the daily minutes for that day were doctored as well.

Transcripts were doctored. We were given draft transcripts each day in the morning but when we received the final version, certain words or key phrases were changed to the benefit of the prosecution, Again, complaints went nowhere. We were being surveilled by UN security officers when meeting with witnesses in hotels. This was done quote openly and the effect was clearly to intimidate us.

In July 2008, a senior American ICTR official approached me in a café in Arusha, and told me he was a CIA officer, that they had murdered others who went too far at the tribunal, including an American prosecution counsel who he stated was poisoned after ignoring a warning to reveal sensitive information. He told me that if I did not stop my defence work they were going to kill me too. I reported this bizarre conversation to the President of the Tribunal the Norwegian judge, Mose, but again I was met with complete indifference. This was not the first time such a threat had been made. A member of the Rwandan government approached me at the beginning of the trial after watching me cross-examine their witnesses and told me that if I continued I did not have long to live. Complaints to the judges and UN security led nowhere. Tanzanian secret police approached me several times over the years and made similar remarks and it has not stopped even now. In July of this year Canadian intelligence officers came to see me in Toronto to tell me I was on a Rwandan hit list and asked me if I was going to stay active in the Rwandan file. It seemed to me they used the device of warning me of a threat to convey one.

In November 2005 Juvenal Uwilingiyimana, a former cabinet minister in Rwanda, who was being interviewed by two Canadian investigators working for Stephen Rapp, then chief of prosecutions at the ICTR, disappeared when he went to meet these investigators in Lille, France. These were the same Canadians who had kept Prime Minister Kambanda incommunicado for 9 months to extract a false confession from him. Weeks later, Uwilingiyimana's body was found in a canal in Brussels, naked, with its hands cut off. Just before he disappeared he wrote a letter to the tribunal stating that Rapp and his men were pressuring him to give false testimony and that they had threatened to kill him and cut his body into pieces unless he cooperated. I and other counsel raised this letter and the murder in court and demanded that the prime suspects in the murder, Stephen Rapp and the two Canadians, be suspended and detained pending an investigation. Nothing was done. The Belgian police did no investigation and Rapp was promoted to the position of US roving ambassador for war crimes.

In 2008, a prosecution witness in our trial recanted stating that he was forced, under threat of death, to give false testimony. The defence succeeded in getting the judges to order his recall to be questioned about it and he was brought from Rwanda to a UN safe house in Arusha. The day before he was to testify he disappeared from that safe house and has never been seen since. The UN could not explain how he could disappear from one of their safe houses. Another prosecution witness recanted stating the same thing but in this case the prosecution accused me of bribing him. Two investigations concluded he was telling the truth, which included the fact that a prosecution counsel was involved in suborning perjury.

At about the same time an RPF military intelligence officer who had fled the regime testified that all the sections of the tribunal were penetrated by western and RPF intelligence officers and that the translators all worked for Rwandan intelligence and that the judges were seen as useful puppets.

We noticed the presence several times during the trial of American army officers and senior members of the American Department of Justice sitting with the prosecutors. When we found out who they were we demanded that they be ejected and the judges were forced to order them removed from the courtroom. During the short cross-examination we were permitted of General Dallaire, by video link from Canadian Defence Headquarters in Ottawa, the cameraman made the mistake of pulling back from the close-up shot of the General's face and torso to a wide angle shot and we were shocked to see 5 senior Canadian Army



officers sitting next to him when we had been told he was alone in the room with the technician and a court official. When we demanded to know who they were and who had given them orders to be there they refused to answer and the judges refused to order their removal.

In 2008, I found hidden in prosecution files a letter from Paul Kagame, dated August, 1994, in which he refers to his and President Museveni's "plan for Zaire," in which he stated that the Hutus are in the way of that plan but that, with the help of the Americans, British and Belgians, the plan would go ahead. I raised this letter in court the next day as it indicated that the war in Rwanda was just the first phase for the greater war in the Congo that was planned probably as far back as 1990. The prosecution immediately accused me of forging this document, even though it came from their files, and that night I was openly followed by a Tanzanian police detective. I was forced to ask the judges for protection the next day who insisted that I be left alone.

In 2011, despite the overwhelming evidence that Ndindiliyimana had done all he could to save lives and to restore peace to Rwanda and that he was innocent of all the charges, the judges convicted him for failing to punish subordinates for two alleged crimes though they acquitted him on all the substantive charges and ordered his release. The convictions were absurd on their face as one of the alleged incidents had never occurred and in the other his men were not involved.

When the Appeal Chamber threw out those convictions on February 7 2014, I learned from an inside source that the judges felt they had to convict him of something despite his clear innocence because they were afraid of the consequences from the Americans if they acquitted. It was also speculated by a number of commentators that they had convicted him to justify his long illegal detention. As an aside, the day after the conviction was announced, I was surprised to receive an email from the American woman, the colonel, who had first dealt with the case in 2000 and offered us a deal. She is now a high official in the US State Department. She stated that she was angry that Ndindiliyimana had been convicted, that things were never meant to go that far and that, if ever I was in Washington, she would tell me what was really behind everything. But I have not gone to Washington.

Each trial has its own stories to tell. Each has its own anatomy but the disease is the same in all. It is a very depressing and dark picture. It was a very bitter experience. There is not much more I can say except that it seems to me that international justice worthy of the name cannot exist without an international order that is democratic; a world order in which the sovereignty and equality of nations is fundamental. Law and its legal structures reflect the social, economic and political relations of a society. To rebuild the legal architecture of international justice so that it is fair, impartial and universal we first have to change the fundamental economic, social and power relations that are its foundation. Without this mankind will continue down the path of reaction and war and the list of victims of these truly criminal tribunals will be long and the victims of a world war will include all of us. How is this to be done? I leave that to you.

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