

THE ROLE OF THE UNITED NATIONS IN CREATION OF INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

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Abstract

On November 8, 1994 International Criminal tribunal for Rwanda was established by United Nations Security Council. The occurrence was in response to genocide, mass human rights and other serious violations of International Humanitarian Law caused by the new wave of civil confrontation that had occurred in Rwanda since April 6, 1994. Establishing International Criminal Tribunal for Rwanda was a matter of great importance and a turning point on the way of historical development of permanent International Criminal Court and modern International criminal law.

Despite the establishment of the Tribunal, all the measures having been taken in response to the current events in Rwanda, still remain the subject to criticism of international community and mostly, United Nations Organization. The abovementioned work is dedicated to analysis of the issues concerning the foundation of ICTR (International Criminal Tribunal for Rwanda) by United Nations Security Council.

The present article refers to the period from April 6, 1994 to November 8, 1994, analyzing on the one hand, the activities concerning the establishment of International Criminal Tribunal for Rwanda by different organs of United Nations Organization, on the other hand, the article tells about the activities by United Nations Organization in relation to the current events in Rwanda.

Keywords: *Genocide, Security Council, Conflict*

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Introduction

The development of international criminal law has a long history¹ and the idea of an international criminal court was not new by the end of the twentieth century, but before the beginning of the 1990s, the International military courts such as the so-called „Nuremberg”² and „Tokyo”³ tribunals, were unlikely to be set up, but in response to the ongoing armed conflict in the former Yugoslavia and Rwanda, relevant international tribunals were set up by the United Nations Security Council.⁴

The Ad Hoc tribunals⁵ for the Former Yugoslavia (ICTY)* and Rwanda (ICTR)** were the first international criminal tribunals established by the United Nations which *„demonstrated that international criminal justice was possible.”* (Ford, 2019). For researchers in the field of International Criminal and International Public Law, it may seem to be a somewhat equally important phenomenon, however, in this case, the present article aims to highlight the role of the United Nations only in connection with the establishment of the International Criminal Tribunal for Rwanda.

Since April 6, 1994, as a result of a new wave of decades of civil strife and genocide⁶ in Rwanda Hundreds of thousands of people have lost their lives.⁷ The international community⁸ and the United Nations proved

¹ See. Bassiouni, C., 1991 The Time Has Come for an International Criminal Court. Indiana International & Comparative Law Review 1 Ind. Int'l. & Comp. L. Rev.

² See: Agreement by The Government of The United Kingdom and Northern Ireland, The Government of The United States of America, The Provisional Government of The French Republic and The Government of The Soviet Socialist Republics for the Prosecution and Punishment of The Major War Criminals of The European Axis. Signed at London, on 8 August 1945.

³ Charter of The International Tribunal For The Far East, Tokyo, 1946.

⁴ * ICTY – International Criminal Tribunal for the former Yugoslavia.

** ICTR – International Criminal Tribunal for Rwanda.

See Cryer, R., Friman, H., Robinson, D., Wilmschurst, E., 2014 An Introduction to International Criminal Law and Procedure, Third Edition, United Kingdom: Cambridge University Press, Tj International Ltd. Padstow Cornwall, at 127.

⁵ „An ad hoc tribunal is a temporary international tribunal established in the aftermath of war or other crime against human rights abuses in a given state to bring to justice international crimes committed during those events under the statute of the interim tribunal”. – Turava, M. (2015)

⁶ On December 9, 1948, the General Assembly of the United Nations adopted the Convention on the Prevention and Punishment of the Crime of Genocide according to which „Genocide, whether committed in time of peace or in time of war, is a crime under international law”. which means any of the following acts committed with intent to destroy, in whole or in a part, national, ethnical, racial or religious group, as such: a) killing members of the group; b) causing serious bodily or mental harm to members of the group; c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) Imposing measures intended to prevent births within the group; e) Forcibly transferring children of the group to another group. See: General Assembly resolution 260 (III), Adoption of the Convention on the Prevention and Punishment of the crime of genocide, and text of the Convention, A/RES/260 (III)[A], Art. I-II.

⁷ Des Forges, A., 1999. „Leave None to Tell the Story”, Unites States of America: Human Rights Watch, at 15.

⁸ As Rene Degni-Segui, Special Representative of the United Nations Economic and Social Commission for Human Rights, described „The term „international community” must be interpreted lato sensu as encompassing not only United Nations bodies but also member States and the various non-governmental organizations helping to safeguard human lives in the field”. United Nations, Economic and

powerless to prevent genocide, the signs of which existed long before April 6, 1994.⁹ In response to the events in Rwanda, an international tribunal was established on 8 November 1994 by the United Nations Security Council.¹⁰ Nevertheless, criticism of the international community and, in large part, of the United Nations for its actions or inaction in response to the events in Rwanda continues, as, it is widely believed that the ongoing violence in Rwanda in 1994 was *“the most unambiguous case of genocide,”* (Gourevitch, 1999) since World War II and that the Security Council’s response to the mass killings in Rwanda was politically highly ambiguous – *„it refrained as much as possible from directly interfering in the problem and declaring the massacre as genocide.”* (Khutsishvili, 2010).

The purpose of this article is to study the measures taken by the United Nations in connection with the establishment of the International Criminal Tribunal for Rwanda, which has been improperly presented and studied in the Georgian scientific space, and to present the position of the United Nations on the developments in Rwanda.

According to the United Nations Secretary-General Boutros Boutros-Ghaili, On the evening of 6 April 1994, the President of Rwanda, Juvenal Habyarimana, and the President of Burundi, Cyprien Ntaryamira, were returning by plane to Kigali when it was hit by a rocket near Kigali Airport. Subsequently the plane exploded and all passengers were killed instantly¹¹ and – *„the death of the President of Rwanda set off a torrent of killings mainly in Kigali but also in other parts of the country.”*¹²

The United Nations responded to the deaths of the presidents at a meeting of the Security Council on 7 April 1994.¹³

On behalf of the Security Council, the President of the Council expressed deep concern over the „tragic incident”. The Security Council condemned the acts of violence and *„urges the Rwandese security forces and military and paramilitary units to put an end to these attacks and to cooperate fully with UNAMIR in the implementation of its mandate.”*¹⁴ According to a statement issued by the President, the Security Council has already provided verbal information from the United Nations Secretariat on the ongoing killings in Rwanda.¹⁵ In connection with the incident, the Security Council requested Secretary-General to collect all available information with all means at his disposal and report to the Council as soon as possible.¹⁶

A special report by UN Secretary-General Boutros Boutros-Ghali on the situation in Rwanda was submitted to the Security Council on 20 April 1994. By the report *“The cause of the crash cannot be determined without a full investigation, which so far has not been feasible.”*¹⁷ It is noteworthy that in the same report, the Secretary-General also referred to the ethnic grounds of criminal acts.¹⁸ At the same time, the killing of 10 Belgian

Social Council, Commission on Human Rights, Report on the Situation of Human Rights in Rwanda Submitted by Mr. R. Degni-Segui, Special Rapporteur of the Commission on Human Rights Under Paragraph 20 of Commission Resolution E/CN.4/S-3/1 of 25 May 1994, E/CN.4/1995/12 (12 August 1994), para. 27.

⁹ On October 1, 1990, the Rwandan Patriotic Front – RPF (a military-political organization composed mainly of Tutsi exiles in Uganda in the 1950s and 1960s) launched a massive military attack against the Rwandan central government with 7,000 fighters from Ugandan territory. As a result of international military support, the Rwandan government army managed to expel the Rwandan Patriotic Front to the Ugandan border within a month. Despite retreating, the reorganized Patriotic Front turned to guerrilla warfare in 1991. In response to an attack by the Rwandan Patriotic Front in 1990, the facts of mass human rights violations and genocide against the Tutsis in Rwanda since 1990 have not been resolved. The United Nations and Rwanda, 1993-1996 (1996). New York: The United Nations Blue Book Series, Volume X, United Nations Reproduction Section, para. 29-57.

¹⁰ United Nations, Security Council Resolution 955 (1994), Statute of the International Tribunal for Rwanda, S/RES/955 (8 November 1994).

¹¹ The United Nations and Rwanda: 1993-1996. The United Nations Blue Book Series, Volume X, United Nations Reproduction Section, New York, NY 1996. Para 102.

¹² Ibid, para 103.

¹³ U.N. SCOR, 49th Sess., 3361st. mtg., U.N. Doc S/PV.3361 (Apr. 7, 1994).

¹⁴ The United Nations Assistance Mission for Rwanda – UNAMIR – was established by the United Nations Security Council in 1993, in order to implement the peace agreement reached on August 4, 1993 in Arusha between the parties to the armed conflict (Rwanda Central Government and the RPF). United Nations, Security Council resolution, 872 (1993) S/RES/872, (5 October 1993).

¹⁵ According to available information *„There has been considerable loss of lives, including the deaths of Government leaders, many civilians and at least ten Belgian peace-keepers as well as the reported kidnapping of others.”* United Nations, Security Council, Statement by the President of the Security Council, S/PRST/1994/16 (7 April 1994).

¹⁶ Ibid.

¹⁷ United Nations, Security Council, Special report of the Secretary-General on the United Nations Assistance Mission for Rwanda, S/1994/470 (20 April 1994), para. 1.

¹⁸ *„The violence appears to have both political and ethnic dimensions”* – Ibid, para. 2.

soldiers by Rwandese Government Forces (RGF)¹⁹, the mortar attacks on concentrations of displaced civilians under UNAMIR protection and direct attack on the peacekeeping headquarters on April 19, – „it became impossible for UNAMIR to continue the tasks emanating from its mandate”.²⁰ This situation was accompanied by the immediate withdrawal of its military contingent by the Belgian government²¹, which – „introduced a new critical element into the deteriorating situation”.²²

In the light of the circumstances, the Secretary-General presented three alternatives to the Council. First – to increase the contingent of several thousand troops to the UNAMIR, to change the mandate of the mission, and to grant the powers provided for in paragraph 7 of the UN Charter. According to the second alternative, only a small part of the mission remained in Kigali, while the third proposal was aimed at the complete withdrawal of peacekeepers from Rwanda.²³

The members of the Security Council unanimously supported the so-called the second alternative,²⁴ which in turn meant reducing the peacekeeping contingent of 1,705 people left in Rwanda to 200-300.²⁵

According to the UNAMIR's Force Commander lieutenant-General Romeo Dallaire, only The President of Security Council, Colin Keating was in favor of increasing the peacekeeping mission.²⁶

Despite the unanimous adoption of the April 21 resolution, on April 29, Boutros-Ghali called on the Security Council to reconsider it, saying that the violence following the April 6 incident „reawakened deep-rooted ethnic hatreds, which have plagued Rwanda in the past and which have again led to massacres of innocent civilians on a massive scale.”²⁷ According to the Secretary General, existing „humanitarian catastrophe” could be stopped and prevented only by restoring order, which went beyond the mandate given to the UNAMIR. In a letter to the Security Council, Ghali also said that in the future, it would be necessary to use additional resources, both material and human, on a scale which member states were reluctant to talk about in the past. As Ghali mentioned – „I am convinced that the scale of human suffering in Rwanda and its implications for the stability of neighbouring countries leave the Security Council with no alternative but to examine this possibility. although the current situation left the United Nations with no alternative.”²⁸

¹⁹ In response to the killing of Belgian soldiers, The government of Belgium in his address to Secretary-General requested suspend the activities of UNAMIR forces without delay. According to the Belgian Government's position „ the continued presence of the Belgian contingent would expose it to unacceptable risks and would constitute an obstacle to UNAMIR action as a whole. Indeed, Belgium notes that an extremist political faction is waging an anti-Belgian campaign and inciting people to murder Belgian soldiers. Having already suffered the loss of 10 soldiers, the Belgian contingent cannot takesuch threats lightly”. Also, According to the Belgian Government, the continuation of the UNAMIR operation has become pointless within the terms of its present mandate and it was imperative to suspend the activities of its forces without delay, – „until such time as the conditions are met for the resumption of the peace process.” United Nations, Security Council, Letter Dated 13 April 1994 From The Permanent Representative of Belgium to The United Nations Addressed to The President of the Security Council, S/1994/430 (13 April 1994).

²⁰ United Nations, Security Council, Special report of the Secretary-General on the United Nations Assistance Mission for Rwanda, S/1994/470 (20 April 1994), para. 4.

²¹ As the Deputy Prime Minister and Minister for Foreign Affairs of Belgium Claes in his letter to the president of the security Council wrote „the Belgian Government has decided that the Belgian battalion in UNAMIR will be withdrawn in any event without delay” and asked President of The Security Council „to instruct the Secretariat and the Commander of UNAMIR to: „a) Release the Belgian contingent immediately”. United Nations, Security Council, Letter Dated 15 April 1994 From The Permanent Representative of Belgium to The United Nations Addressed to The President of The Security Council S/1994/446 (15 April 1994).

²² United Nations, Security Council, Special report of the Secretary-General on the United Nations Assistance Mission for Rwanda, S/1994/470 (20 April 1994), para. 5.

²³ It should be noted that, Ghali himself did not support the third alternative, because in his opinion, „in view of the extreme nature and dimensions of the violence and mass killings over the last two weeks, there is little ground for hope that effective commitments could be obtained and it must be kept in mind that the consequences of complete withdrawal, in terms of human lives lost, could be very severe indeed. There could also be similar repercussions in neighbouring countries where citizens of the ethnic groups found in Rwanda reside”. Ibid, para.19.

²⁴ U.N. SCOR, 49th Sess., 3368th. mtg., U.N. Doc S/PV.3368 (Apr. 21, 1994).

²⁵ United Nations, Security Council resolution 912 (1994) On Adjustment of the Mandate of the UN Assistance Mission for Rwanda Due to the Current Situation in Rwanda and Settlement of the Rwandan Conflict, S/RES/912 (21 April 1994).

²⁶ Dallaire, R., 2003. Shake Hands with the Devil: The Failure of Humanity in Rwanda, Canada: Random House Canada, at 298.

²⁷ According to report, „Due to some estimates, as many as 200,000 people may have died during the last three weeks.” United Nations, Security Council, Letter Dated 29 April from The Secretary-General Addressed to the President of The Security Council, S/1994/518 (29 April 1994), at 1.

²⁸ Ibid, at 2.

Despite the position of the Secretary-General, the issue of increasing the contingent of the mission in Rwanda was not discussed at the next meeting of the Security Council.

On April 30, Security Council President Kitting on behalf of the Council condemned the breaches of International Humanitarian law in Rwanda and called on the leadership of all parties to commit themselves to ensuring that persons who instigate or participate in such attacks are prosecuted and punished. Also, the Council reminded the parties to the conflict that promoting and participating in such actions could be a cause for individual liability. In this context, the Security Council also stated that „*the killing of members of an ethnic group with the intention of destroying such a group in whole or in part constitutes a crime punishable under international law*“.²⁹ Although the council directly refrained from using the term „genocide“³⁰, it did in fact confirm that a possible act of genocide had taken place in Rwanda.

The Secretary-General of the United Nations once again addressed the Security Council on 13 May 1994, requesting an increase in the number of UNAMIR.³¹ A draft resolution on the issue was submitted to the Security Council on 16 May,³² which was supported by the Council the following day.³³ In accordance with the same resolution, the Security Council, stressing the fact that the situation in Rwanda was a threat to the peace and security of the region as a whole, enacted the actions provided for in Chapter VII of the Charter of the Organization³⁴ and imposed a military embargo on Rwanda. In addition, the Secretary-General of the United Nations was requested to submit a report as soon as possible on the violations of international humanitarian law committed during the conflict in Rwanda.³⁵

In order to implement the resolution, the Secretary-General's special envoys were presented in Rwanda from 22 to 27 May 1994, and the next report, based on the information received, was submitted to the Security Council on 31 May. It should be noted that Ghali, who describes the dire situation in Rwanda in this report, notes that the United Nations, due to a lack of collective political will, was unable to make adequate decisions and,³⁶ in fact, silently tolerated the killings. However, in assessing the current situation in Rwanda, the term „genocide“ is used for the first time in this report.³⁷ – „*On the basis of evidence that has emerged, there can be little doubt that it constitutes genocide, since there have been large-scale killings of communities and families belonging to a particular ethnic group.*“³⁸

Following the Secretary-General's reference to „genocide“, following was the Security Council, which used the term in Resolution 925 of 8 June to assess the situation in Rwanda, although the resolution did not provide specific mechanisms for prosecuting offenders.³⁹

On July 1, 1994, on the way of the establishment of the Rwandan Tribunal, the United Nations Security

²⁹ U.N. SCOR, 49th Sess., 3371st. mtg., U.N. Doc S/PV.3371 (Apr. 30, 1994).

³⁰ The term genocide was first used in 1944 by the lawyer Rafael Lemkin to refer to the occupation policy pursued by Hitlerite Germany on the continent of Europe to destroy the nations in the occupied territories. According to Lemkin – „By „genocide: we mean the destruction of a nation or of an ethnic group. This new word, coined by the author to denote an old practice in its modern development, is made from the ancient Greek word *genos* (race, tribe) and the Latin *cide* (killing), thus corresponding in its formation to such words as tyrannicide, homicide, infanticide, etc. Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. (Lemkin, 1944).

³¹ United Nations, Security Council, Report of The Secretary-General on the Situation in Rwanda, S/1994/565 (13 May 1994).

³² United Nations, Security Council, Draft Resolution, S/1994/571 (16 May 1994).

³³ The draft resolution was supported only by 14 state member of the Security Council because Rwanda which during this period of time was a non-permanent member of the Council did not support the draft. U.N. SCOR, 49th Sess., 3377th. mtg., U.N. Doc S/PV.3377 (May 16, 1994), at 10-11.

³⁴ See Charter of The United Nations and Statute of The International Court of Justice, San-Francisco, 1945, Chapter VII.

³⁵ Security Council Resolution 918 (1994), S/RES/918 (17 May 1994).

³⁶ United Nations, Security Council, Report of the Secretary-General on The situation in Rwanda, S/1994/640 (31 May 1994), para. 43.

³⁷ It should be noted that, few days earlier the term genocide was used in the resolution adopted by the Government of Israel. According to the resolution, The Government of Israel was shocked by the genocide being carried out in Rwanda. „The Jewish people, who endured the most bitter experience of the Nazi holocaust, and their country – the State of Israel – cannot stand idly by in the face of the horror in Rwanda. The Government of Israel calls on the international community to act urgently to stop the massacre and announces that it is prepared to take part in humanitarian activities to rescue people in this unfortunate country“ United Nations, Security Council, Letter Dated 23 May 1994 from the Permanent Representative of Israel to The United Nations Addressed to The Secretary-General, S/1994/608 (24 May 1994).

³⁸ United Nations, Security Council, Report of the Secretary-General on The situation in Rwanda, S/1994/640 (31 May 1994), para. 36

³⁹ United Nations, Security Council resolution 925 (1994), S/RES/925 (8 June 1994).

Council adopted the most important, №935 Resolution, which was to fully identify the perpetrators and bring them to justice. According to resolution, the Security Council reiterated its condemnation of the large-scale, systematic, widespread violations of international humanitarian law in Rwanda, and stated that all individuals responsible for the above-mentioned violations were individually responsible and should be brought to justice. In order to carry out this task, the Council requested the Secretary-General to set up an impartial Commission of experts to submit relevant evidence and facts to the Secretary-General regarding serious violations of international humanitarian law in Rwanda and possible acts of genocide.⁴⁰

By the decision of Boutros Boutros-Ghali, the three-member Commission of experts⁴¹ set a deadline for gathering information and submitting it to the Secretary-General, no later than November 30.⁴²

According to the interim report of the Commission, the circumstances revealed that the Individuals from both sides to armed conflict have perpetrated serious breaches of international humanitarian law and crimes against humanity in Rwanda. In the case of genocide, according to the Commission, acts of genocide were perpetrated only by *“Hutu elements in a concerted, planned, systematic and methodical way”*.⁴³ It should be noted, that in administering justice to perpetrators of crimes committed in Rwanda, the Commission *“strongly recommended”* to exercise jurisdiction not over a national, but an independent and impartial international criminal tribunal,⁴⁴ as in the case of such serious crimes, pending trial by a national court, the proceedings could be turned into simple retribution without respect for fair trial.⁴⁵ According to experts, the current events in Rwanda have gone beyond its borders and in this case, the aim of justice was not only to punish the perpetrators, but also to prevent similar facts in the future.⁴⁶ It should be noted that, the Commission considered it appropriate *“to amend the Statute of the International Criminal Tribunal for the former Yugoslavia so that it can consider crimes under international law committed during the armed conflict in Rwanda.”*⁴⁷

On the issue of Rwanda, the idea of international criminal court was not first voiced in the report of the Commission of Experts within the United Nations. On June 28, 1994, a report by Special Rapporteur of the Commission on Human Rights René Degni-Segui was submitted to the Economic and Social Council in which the author called for the establishment of an Ad Hoc international criminal tribunal for Rwanda.⁴⁸

The process of reviewing the report submitted by the Commission of Experts and the relevant recommendation was finally completed on 8 November. On April 6, 1994, almost seven months later, the United Nations Security Council established International Criminal Tribunal for Rwanda to bring to justice the persons responsible for *“Genocide and Other Serious Violations of International Humanitarian Law Committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994”*⁴⁹, to *“contribute to the process of national reconciliation and to the restoration and maintenance of peace.”*⁵⁰

⁴⁰ According to the resolution Security Council – „Requests the Secretary-General to report to the Council on the establishment of the Commission of Experts, and further requests the Secretary-General, within four months from the establishment of the Commission of Experts“. United Nations, Security Council resolution 935 (1994), S/RES/935 (1 July 1994).

⁴¹ By the decision of Ghaili, following excepts were appointed as a members of a commission: Mr. Atsu-Koffi Amega (Togo), Member of the African Commission on Human and Peoples Rights, former President of the Supreme Court and former Foreign Minister; Mrs. Habi Dieng (Guinea), Attorney-General; and Mr. Salifou Fomba (Mali), Professor of International Law, Member of the United Nations International Law Commission. United Nations, Security Council, Letter Dated 29 July 1994 from Secretary-General Addressed to the President of The Security Council, S/1994/906 (29 July 1994).

⁴² United Nations, Security Council, Report of the Secretary-General on the Situations in Rwanda, S/1994/924 (3 August 1994), para. 30.

⁴³ United Nations, Security Council, Letter Dated 1 October 1994 from the Secretary-General Addressed to the President to the Security Council, S/1994/1125 (4 October 1994). at 1-2.

⁴⁴ Ibid, para. 150.

⁴⁵ Ibid, para. 136.

⁴⁶ Ibid, para. 138.

⁴⁷ Ibid, at 2.

⁴⁸ „Pending the establishment of a permanent international criminal court, the United Nations should establish an ad hoc international tribunal to hear the evidence and judge the guilty parties or, alternatively, should extend the jurisdiction of the international tribunal on war crimes committed in the former Yugoslavia.“ – United Nations, Economic and Social Council, Commission on Human Rights, Report on the Situation of Human Rights in Rwanda Submitted by Mr. R. Degni-Segui, Special Rapporteur of the Commission on Human Rights Under Paragraph 20 of Commission Resolution E/CN.4/S-3/1 of 25 May 1994, E/CN.4/1995/7 (28 June 1994). Para 75.

⁴⁹ United Nations, Security Council Resolution 955 (1994), S/RES/955 (8 November 1994), at 2.

⁵⁰ Ibid, at 1.

Rwanda, which served as a non-permanent member of the Security Council during the period, did not support the establishment of the tribunal, although the country's government had asked the United Nations a few months earlier to establish a similar tribunal.⁵¹

A permanent representative of Rwanda at the United Nations explained the decision by the country's authorities for a number of reasons, namely: According to the UN ambassador, the jurisdiction of the court, which was limited from January 1, 1994 to December 31, 1994, was inadequate, because the genocide witnessed by the international community in April 1994, was only the result of long preparations, during which „pilot projects for extermination were successfully tested.“⁵² The Rwandan representative cited as an example the incidents that took place in different regions of the country in the early 1990s, which, according to him, were known to the international community even until April 1994. It is noteworthy that in 1993, the ongoing events in the country were assessed as genocide by independent international experts.⁵³ Accordingly, the Rwandan delegation proposed that *“account be taken of the period from 1 October 1990, the beginning of the war, to 17 July 1994, the end of the war.”*⁵⁴

The Rwandan authorities also objected to the fact that the tribunal was forced to consider only a number of cases due to limited financial and human resources, so not all perpetrators could be brought directly to justice by the tribunal, which according to the Rwandan ambassador hindered one of the tribunal's main goals – the national reconciliation process and the formation of a new society.⁵⁵ Also, the Rwandan authorities considered both the sentencing of Rwandans convicted in the future outside the country, as well as the seat of the tribunal itself to be improper.⁵⁶ In parallel with these issues, it can be said that the government of the country has expressed the greatest dissatisfaction in terms of the type of sanction imposed.

According to the ambassador, in the case of international justice, the death penalty was not provided for as a punishment, while the use of this measure was permitted under Rwandan penal code. According to the ambassador, only high-ranking officials suspected of planning, preparing and organizing genocide would be brought to the International Court of Justice. Consequently, these individuals would have escaped the capital punishment, whereas *„who simply carried out their plans would be subjected to the harshness of this sentence. That situation is not conducive to national reconciliation in Rwanda.”*⁵⁷ However, the position of the Rwandan Government was not welcomed from the majority of security council members.⁵⁸

Despite the dissatisfaction of the Rwandan government, International Criminal Court for Rwanda was established and it became in a short period of time the second ad hoc tribunal organized by the United Nations Security Council and – *„This led to renewed interest in establishing a permanent international criminal court”*. (Ford, 2019). The interest and hope for the idea of creating a permanent International Criminal Court was evident even on the day of the establishment of the Rwandan Tribunal.

According to Russian permanent representative to the United Nations Sergei Lavrov, *„I should like to note that the history of the establishment of international tribunals, first in the former Yugoslavia and now in Rwanda, reinforces our conviction that a permanent international criminal court must be established in the near future.”*⁵⁹ However, it is unlikely that the Russian ambassador thought that after 14 years, as Foreign Minister

⁵¹ United Nations, Security Council, Letter dated 28 September 1994 from the permanent representative of Rwanda to the United Nations Addressed to the President of the Security Council, S/1994/1115 (29 September, 1994).

⁵² U.N. SCOR, 49th Sess., 3453th. mtg., U.N. Doc S/PV.3453 (Nov. 8. 1994), at 14.

⁵³ See Report of the International Commission of Investigation on Human Rights Violations in Rwanda Since October 1, 1990, (January 7-21, 1993), Federation Internationale Des Droits De l'Homme – FIDH, Union Inter africaine Des Droits De l'Homme Et Des Peuples – UIDH, Centre Internationale Des Droits De la Personne Et Du Developpement Democratique – CIDPDD/ICHRDD, Africa Watch, at 51.

⁵⁴ U.N. SCOR, 49th Sess., 3453th. mtg., U.N. Doc S/PV.3453 (Nov. 8. 1994), at 15.

⁵⁵ According to the permanent representative of France – *„It is obvious that, given the very large number of perpetrators of serious offences, all of them cannot be tried by the International Tribunal. The Tribunal itself will have to determine which cases it can appropriately deal with. The other suspects will remain subject to the national jurisdiction of Rwanda or of other States.”*, Ibid at 3.

⁵⁶ According to the United Nations Security Council resolution – *„The International Tribunal for Rwanda shall have its seat at Arusha”* (Tanzania), United Nations, Security Council Resolution 977 (1994), S/RES/977 (22 February 1994).

⁵⁷ U.N. SCOR, 49th Sess., 3453th. mtg., U.N. Doc S/PV.3453 (Nov. 8. 1994), at 16.

⁵⁸ According to the permanent representative of New Zealand – *„New Zealand could never support an international tribunal that could impose the death penalty. For over three decades the United Nations has been trying progressively to eliminate the death penalty. It would be entirely unacceptable — and a dreadful step backwards — to introduce it here.”*, Ibid, at 5.

⁵⁹ U.N. SCOR, 49th Sess., 3453th. mtg., U.N. Doc S/PV.3453 (Nov. 8. 1994).

himself, he would have to send a letter to the United Nations, that his country was not going to ratify the existing treaty on the International Criminal Court, Which in turn, is related to the investigation launched by the International Criminal Court as a result of the aggression carried out by the Russian Federation against Georgia and Ukraine.⁶⁰

Conclusion

The most famous phrase about the United Nations, which best represents the essence of the organization, belongs to United Nations Secretary-General Dag Hammarskjöld, who just like the Presidents of Rwanda and Burundi was killed in a plane accident, while on a peace mission in the Rwanda neighboring Congo in September 1961. According to the Secretary-General, „*The United Nations was not created to take mankind to heaven, but to save humanity from hell.*”

According to the widespread opinion, the United Nations in 1994, failed to ensure the salvation of ordinary Rwandans from „hell”, which is naturally true, and the relevant facts speak for themselves. The failure of the organization in the wake of the 1994 Rwandan tragedy has been acknowledged by Boutros Boutros-Ghali himself. However, as the Secretary-General mentioned „*the United Nations has failed to make adequate decisions due to a lack of collective political will.*”

In addition, if we extend the idea voiced by René Degni Segui, Special Representative of the United Nations Economic and Social Commission for Human Rights in Rwanda, that the international community includes not only the various bodies of the United Nations, but also the member states and various non-governmental organizations, and if we analyze in depth the events in the Security Council, surrounding the Rwandan case since April 6, 1994, we will come to the conclusion that the Rwandan tragedy was the result of the improper, inconsistent, and delayed actions or inactions of not only one single organization, or its staff, but the entire „international community” and in large part, the member states of the Security Council. Although the United Nations is the largest, most powerful, universal international organization, it is ultimately a „simple” political organization in which its member states act in their own interests, hiding behind the „Charter”.

However, despite delayed intervention and long-lasting discussions the United Nations led to the creation of a international tribunal of great historical significance – the tribunal on which, for the first time in human history, a person has been criminally prosecuted for a crime of genocide.

The establishment of the International Criminal Tribunal for Rwanda by the United Nations Security Council is an expression of the collective will to which all legal persons of international law should be directed in the future.

Despite all of the above-mentioned, and in many cases deserved criticism, the establishment of tribunals for the former Yugoslavia and Rwanda is the best example of international cooperation.

⁶⁰ „Moscow Defends Itself from The Hague”, „Novaia Gazeta”, (viewed 28 May 2020), <https://novayagazeta.ru/articles/2016/11/16/70557-pochemu-rossiya-otkazalas-ratifitsirovat-rimskiy-statut-mezhdunarodnogo-ugolovnogo-suda>

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