Award Ceremony

Presentation of the Human Rights Award 2003 of the Friedrich-Ebert-Stiftung

to the

International Criminal Tribunal for Rwanda

FRIEDRICH EBERT STIFTUNG

ICTR • TPIR

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on Tuesday,
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Human Rights Award of the Friedrich-Ebert-Stiftung 2003

INVITATION

The International Criminal Tribunal for Rwanda

Following the grave violations of international humanitarian law in Rwanda in 1994, the International Criminal Tribunal for Rwanda was set up by the UN Security Council under Resolution 955 of November 8th, 1994 pursuant to Chapter VII of the United Nations Charter. This decision was intended to contribute to the process of national reconciliation in Rwanda and to support the maintenance, or restoration, of peace in the region. Under Resolution 977 of February 22nd, 1995, the Security Council decided to situate the Tribunal in Arusha in Tanzania. The Tribunal is to bring to justice those individuals who committed acts of genocide and other severe violations of human rights on the territory of Rwanda during the period from January 1st to December 31st, 1994. It also applies to Rwandan citizens who perpetrated such crimes in the neighbouring countries of Rwanda during the same period.

The activities of the Tribunal also need to be assessed against the background of the problems caused by the belated response of the international community to various warnings of impending genocide. The Secretary General of the United Nations, Kofi Annan, personally admitted that the UN had failed in this particular instance. While in session, the Tribunal has been subject to repeated criticism from the most diverse sources, especially considering the fact that it must attempt to uphold the principles of the rule of law and criminal justice in a legal vacuum.

Owing to subsequent developments in world politics in connection with both the crisis in the Balkans and later in Iraq, and the additional threat of international terrorism, the difficult and important mission of the Tribunal is threatened to fade into the background. It is the aim of the Human Rights Award of the Friedrich-Ebert-Stiftung to honour and encourage the Tribunal and its work. This corresponds with the donors' intention whose aim it was „to acknowledge the tedious and persistent groundwork rather than spectacular success", as stated in the foundation document of 1988.

Panel Discussion

„International Criminal Justice: For the Rule of Law, against Despotism and Violence"

Participants:

Ms. Navanethem Pillay
Presiding Judge of the ICTR

Professor Dr. Christian Tomuschat
Humboldt University,
Berlin

Dr. Thomas Läufer
Adviser on International Law to the
Federal Government
Head of the Legal Department of the
Foreign Office

Rudolf Bindig, MP
Spokesperson on Human Rights Issues
and Humanitarian Aid
of the SPD-Parliamentary Group

Moderator:
Cornelia Czymoch, PHOENIX

Tuesday,
May 20th, 2003
at 14:00 hrs

in the
large meeting hall
of the Friedrich-Ebert-Stiftung
Berlin

simultaneous translation English-German

Award Ceremony

Presentation of the
2003 Human Rights Award*
of the Friedrich-Ebert-Stiftung

to the
International Criminal Tribunal for Rwanda (ICTR)

by
Anke Fuchs
President of the Friedrich-Ebert-Stiftung
Vice-President of Parliament, retd

Eulogy
Brigitte Zypries
Federal Minister of Justice

Brief Speech by
the Laureate

Tuesday,
May 20th, 2003
at 17:00 hrs

in the
large meeting hall
of the Friedrich-Ebert-Stiftung
Berlin

simultaneous translation English-German

** The Human Rights Award of the Friedrich-Ebert-Stiftung is funded from the legacy of the couple Karl and Ida Feist/Hamburg.*

Brigitte Zypries, Anke Fuchs, Navanethem Pillay

Preface

Rwanda is called the country of a thousand hills. In April 1994, it turned into a country of not a thousand, but hundreds of thousands of murders. Over a period of just a hundred days of "Hutu power", some 800,000 people were dismembered with machetes, stabbed to death with iron bars, knives and blades, struck dead with cudgels and killed by drowning in rivers and sewers – on orders from the Government before the very eyes of the international community. The intention was to wipe out the Tutsi once and for all. Among the dead were also Hutu who refused to take part in the genocide.

It was a premeditated well-organized genocide starting with the death of Hutu President Juvenal Habyarimana when Hutu militias took over power. Prior to that, container-loads of machetes had been imported from China. A radio station broadcast death lists and urged the murderers on: "Make a proper job of it". It could not have been done more thoroughly.

By setting up a criminal tribunal, the world community is now attempting the seemingly impossible: to bring to justice those responsible – and perhaps even to contribute to a process of reconciliation. Established on the basis of UN-Security Council Resolution 955 of November 8th, 1994 and functioning since January 9th, 1997, the International Criminal Tribunal for Rwanda (ICTR) is now prosecuting the main perpetrators of the genocide who are guilty of crimes against humanity and other grave violations of human rights committed during those horrible weeks. In a memorandum, Kofi Annan, Secretary General of the United Nations, stated: There can be no healing without peace; there can be no peace without justice; and we will not attain justice unless we show respect for human rights and the rule of law.

By setting up a criminal tribunal, the world community is now attempting the seemingly impossible: to bring to justice those responsible – and perhaps even to contribute to a process of reconciliation.

The Tribunal, which follows in its judgements the legal precedents set by the Nuremburg trials after the Second World War, is situated in the small town of Arusha in Tanzania. According to information from the Tribunal, 65 of the 80 most wanted criminals have to date been caught and brought under the jurisdiction of the Tribunal in Arusha. Eleven judgements involving 13 individuals have been rendered, for example against the former Prime Minister Jean Kambanda and Information Minister Eliezer Niyitegeka who have both been put behind bars for the rest of their lives.

In the meantime, there have been repeated attempts to deny the Tribunal's legitimation and competence and to question its impartiality. Arusha is too slow and too expensive, it is said, the courtrooms are air-conditioned, the hearings take place 800 kilometers away from the scene of the crimes where tens of thousands of Rwandans are kept in prison awaiting trial under conditions far below international standards.

The Rwanda Tribunal is setting standards in international criminal jurisprudence by interpreting, for example, the Genocide Convention of 1948 and recognizing rape as an act of genocide for the first time.

But the Rwanda Tribunal is setting standards in international criminal jurisprudence by interpreting, for example, the Genocide Convention of 1948 and recognizing rape as an act of genocide for the first time. And its very existence is proof of the fact that even those at very the top will not go unpunished and that a culture of the rule of law can ultimately prevail over the rule of force.

In addition to the trials at the ICTR, there are so-called Gacaca proceedings in Rwanda itself which are based on a traditional justice system at village level. Each of these local courts deals with alleged crimes committed in a specific community, except the very serious cases. This is where the victims are given a voice: for the first time they are offered the opportunity to tell their story in public. The Gacaca proceedings, in addition to the Criminal Tribunal in Arusha, might assist in promoting reconciliation amongst Rwandans, similar to what truth commissions did in other countries.

This year's Human Rights Award of the Friedrich-Ebert-Stiftung is awarded to the Presiding Judge of the ICTR, Navanethem Pillay, the Registrar of the Tribunal, Adama Dieng and Press Officer Roland Amoussouga on behalf of the Tribunal.

„Those who cannot remember the past are condemned to repeat it".

"Those who cannot remember the past are condemned to repeat it", says Navanethem Pillay in her speech of gratitude for the Human Rights Award. "The ICTR, through its jurisprudence and trial proceedings, is establishing a historical record of what happened in Rwanda between April and July 1994 – a record which will help keep alive the world's collective memory."

The couple Karl and Ida Feist from Hamburg put up the money for the Human Rights Award of the Friedrich-Ebert-Stiftung with the aim of honouring the tedious and persistent groundwork in the area of human rights, human dignity and peace – including cases which are not in the public limelight. The Award currently amounts to 10,000 Euro. The laureates of previous years include: Marie-Schlei-Verein (1994), Prof. Dr. Ewa Łętowska, former "Citizens' Commissioner" of the Polish Parliament (1995), General Olusegun Obasanjo, the current President of Nigeria (1996), Petar Anđelović, OFM, Provincial of the Franciscan Order in Sarajevo (1997), Omar Belhouchet, journalist and editor of "El Watan" in Algeria (1998), Kailash Satyarthi, coordinator of the „Global March against Child Labour" from India (1999), the Association of the Russian Soldier's Mothers Committee (2000), the Serb Resistance Movement OTPOR (2001) and the Israeli-Palestinian Peace Coalition IPPC (2002).

Adama Dieng, Roland Amoussouga

Opening Speech

Anke Fuchs
President of the Friedrich-Ebert-Stiftung

Madam President, distinguished Mrs. Pillay, Mr. Dieng, Mr. Amoussouga, Ladies and Gentlemen, dear Friends,

it is a great pleasure to us that you have joined us today in order to honour the International Criminal Tribunal for Rwanda with the Human Rights Award of the Friedrich Ebert Stiftung.

Our foundation is not really a human rights organisation in the proper sense of the word even though major parts of our work in many countries of the world are directly concerned with the protection and implementation of human rights. Compliance with international standards on which the community of nations has agreed following the second World War, while still being haunted by its horrors, takes centrestage in our activities as well. It is thus one of our noblest tasks to support and promote all individuals who are working for the implementation of basic political and social rights across the globe.

Democracy, social justice and solidarity are at the centre of activities of the Friedrich Ebert Stiftung in the field of societal policy. Through our international activities we are attempting to contribute to better general conditions for democracy and the rule of law and, in so doing, to lay the foundations for enabling individuals in all parts of the world to live a life in peace and freedom without deprivation. Human rights provide both the framework for this and a benchmark with which to measure its success or failure.

We are all aware of the fact that we still have a long way to go to achieve our goals; indeed, it seems at times as if we are moving further and further away from them. It therefore continues to be our task to proceed with our efforts in spite of all the setbacks if we wish to meet our own expectations.

It was in this spirit that the couple Karl and Ida Feist from Hamburg entrusted us with the capital with which we fund the Human Rights Award of the Friedrich Ebert Stiftung. It is explicitly intended not to honour spectacular success but „tedious and persistent groundwork", as stated in the foundation document of the year 1988. It is, in particular, in the international system of criminal law and its attempts to bring about justice by prosecuting and punishing severe violations of human rights that we rarely experience spectacular successes. It is therefore the more urgent to give support and recognition to the tireless and unselfish work of all those who have not wavered in their efforts to reinforce the law – an indispensable precondition for individuals who wish to share this world together.

Following the severe violations of international humanitarian law in Rwanda in 1994, in the course of which almost a million lives were lost according to reports in the media, the UN-Security Council set up the International Criminal Tribunal for Rwanda on the basis of Resolution 955 of November 8th, 1994. This measure was intended to contribute to the process of na-tional reconciliation in Rwanda and to support the maintainance of peace in the region, or to restore it. Kofi Annan, the Secretary General of the United Nations, said in a statement: „there can be no healing without peace; there can be no peace with-out justice; and we will not attain justice unless we respect human rights and the rule of law".

There can be no healing without peace; there can be no peace without justice; and we will not attain justice unless we respect human rights and the rule of law.

In its Resolution 977 of February 22nd, 1995, the Security Council selected Arusha in Tanzania to be the seat of the Rwanda Tribunal. The Tribunal was to bring to justice those individuals who had committed acts of genocide and other severe violations of human rights on the territory of Rwanda during the period from January 1st to December 31st, 1994. It also applied to Rwandan citizens who committed such crimes in the neighbouring countries of Rwanda during the same period.

According to its own information, the Tribunal has so far been able to close 13 trials, 62 are in the process of being tried, while eight defendants are still at large.

According to its own information, the Tribunal has so far been able to close 13 trials, 62 are in the process of being tried, while eight defendants are still at large.

The activities of the Tribunal need also to be seen against the background of the problems caused by the late response of the international community to the serious warnings of genocide. Kofi Annan himself admitted that the UN had failed in this particular instance. While in session, the Tribunal has repeatedly been subject to various forms of criticism from the most diverse sources, in particular in view of the fact that it attempts to uphold the principles of the rule of law and criminal jurisprudence in a legal vacuum.

As could not be expected otherwise, there have been repeated attempts in the meantime to deprive the Tribunal of its legitimation and powers and to question its impartial attitude. It goes without saying that this has not made its work easier, including the relationship with the Government of Rwanda.

In view of other developments on the world stage – first in connection with the crisis in the Balkans and then the Iraq crisis and the additional threat of international terrorism – the complex and important mission of the Tribunal is being threatened to fade into the background. It is the purpose of the Human Rights Award of the Friedrich Ebert Stiftung to give it recognition and to encourage it.

The Award document reads as follows:

The Human Rights Award 2003 of the Friedrich-Ebert-Stiftung is conferred on the International Criminal Tribunal for Rwanda in recognition and appreciation of

- its unwavering efforts to maintain the due course of law against all who have done wrong – in spite of many difficulties and setbacks,
- its contribution to the goal of national reconciliation following the atrocious crimes of genocide,

- its strong commitment to the binding nature of law and the administration of justice in Rwanda and
- the building-up of confidence as the basis for peace and democracy – not only for Rwanda and its neighbours, but for the entire world.

I should like to wish you, Mrs. Pillay, as the presiding Judge at the Criminal Tribunal for Rwanda, courage and determination in this mission, and also for your future work at the International Criminal Court in The Hague.

To the Criminal Tribunal for Rwanda, I should like to wish all the success necessary to create a new and lasting basis for a peaceful coexistence and positive development of the peoples in this long-suffering part of Africa.

Der Menschenrechtspreis 2003
The Human Rights Award 2003
der Friedrich-Ebert-Stiftung
of the Friedrich-Ebert-Stiftung
wird verliehen an die
is conferred on the

Internationalen Strafgerichtshof
International Criminal Tribunal
für Ruanda
for Rwandafor Peace (IPPC)

in Anerkennung und Würdigung
In recognition and appreciation of

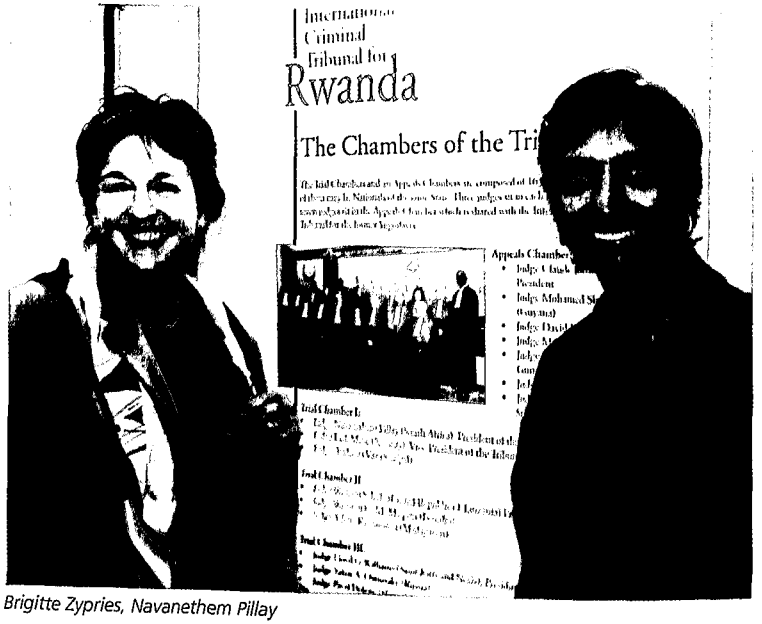
- seiner trotz unbeirrten Bemühungen um die Durchsetzung des Rechts gegen alle, die sich schuldig gemacht haben – trotz vieler Schwierigkeiten und Rückschläge,
its unwavering efforts for the due process of law against all who have done wrong – inspite of many difficulties and setbacks,
- seines Beitrags zum Ziel der nationalen Versöhnung nach den unsäglichen Verbrechen des Völkermordes,
its contribution to the goal of national reconciliation following the atrocious crimes of genocide,
- seines engagierten Eintretens für die Verbindlichkeit von Recht und Gerichtsbarkeit in Ruanda und
its strong commitment to the binding nature of law and the administration of justice in Rwanda and
- der damit verbundenen Schaffung einer Vertrauensgrundlage für Frieden und Demokratie – nicht nur für Ruanda und seine Nachbarn, sondern auch weltweit.
the building-up of confidence as the basis for peace and democracy – not only for Rwanda and its neighbours, but for the entire world.

Berlin, 20. Mai 2003
Berlin, May 20th, 2003

Vorsitzende
President
Friedrich-Ebert-Stiftung

Der Menschenrechtspreis der Friedrich-Ebert-Stiftung wird aus dem von ihr verwalteten *Feist-Fonds* in Erfüllung des Vermächtnisses von Karl und Ida Feist vergeben.
The Human Rights Award of the Friedrich-Ebert-Stiftung is funded by the Feist Fund, fulfilling the legacy of Karl and Ida Feist.

Navanethem Pillay, Anke Fuchs



Brigitte Zypries, Navanethem Pillay

Eulogy

Brigitte Zypries
federal Miniter of Justice

Mrs. Fuchs, Madam President Pillay, your Excellencies, Ladies and Gentlemen from Parliament, Ladies and Gentlemen,

I.

Horrifying news shocked the world in spring 1994. A dreadful massacre was taking place in the Central African country of Rwanda. Within 3 months more than 800,000 people were savagely killed. Members of one ethnic group – men, women and children – were killed by members of another ethnic group in the most brutal manner conceivable, some of them in the open street. People did not hesitate to kill their neighbours, even within families atrocious crimes were committed. The killing of the victims was systematically planned by State bodies and accompanied by a media campaign. The majority of the victims were members of the Tutsi minority, but thousands of Hutu died with them who had rejected the killing or had attempted to protect the Tutsi.

The massacre appeared incomprehensible to the world both in respect of its scale and the brutality of individual crimes. Another piece of news also dismayed the international public: UN peace-keeping troops on the spot were unable to prevent the killing. The events of spring 1994 have left deep scars in Rwandan society which have not yet healed completely. In addition, the terrible events confronted the international com-munity with the question of its own responsibility in this situation.

The massacre appeared incomprehensible to the world both in respect of its scale and the brutality of individual crimes.

Kofi Annan, Secretary General of the United Nations and at the time in charge of the peace-keeping forces, publicly apologised in December 1999 for the inactivity of the peace-keeping troops.

He said: „All of us must deeply deplore that we did not do more to prevent this genocide. Troops of the United Nations were in the country at the time, but they had neither the mandate nor the equipment to intervene energetically and in a manner which would have prevented or stopped the genocide. I admit this failure on behalf of the United Nations and deeply regret it."

II.

To do everything to bring peace to Rwandan society and to achieve reconciliation between its ethnic groups has been one of the major goals of both national and international efforts in this region since the genocide of 1994. One of the contributions to peace made by the United Nations was the establishment of the International Criminal Tribunal for Rwanda: by adopting Resolution 955 of November 8th, 1994 it decided to put it into action. Jurisdiction of the ICTR includes the crimes of genocide, crimes against humanity and other criminal offences committed either by Rwandans or on the territory of Rwanda in the year 1994. The Security Council decided to situate the Tribunal in the Tanzanian town of Arusha.

To do everything to bring peace to Rwandan society and to achieve reconciliation between its ethnic groups has been one of the major goals of both national and international efforts in this region since the genocide of 1994.

Since then, the International Tribunal for Rwanda has made an invaluable contribution to the enforcement of international humanitarian law, and thus to the security of law in general. I should like to congratulate it warmly to the Human Rights Award presented to it today by the Friedrich Ebert Stiftung. I am convinced that the accomplishments of this institution more than justify the Award and I am greatly pleased that its President Mrs. Pillay has personally come to Berlin to receive the honour on behalf of the entire Tribunal.

III.

In three chambers 16 independent trial judges, both men and women, are working incessantly, supported by more than 850 members of staff from more than 80 states[1], in order to come to terms with the events of 1994. A joint Appeals Chamber has been set up for both this Tribunal and the International Criminal Tribunal for the former Yugoslavia; the Chief Prosecutor is also working at both courts. The deep respect felt by the Federal Republic of Germany with regard to the achievements of the International Criminal Tribunal for Rwanda finds expression in the support of both a material and non-material kind it provides: Germany supports the Tribunal within the framework of judicial assistance and makes a financial contribution of 7.5 million US-$ per annum in addition to some voluntary support.

In three chambers 16 independent trial judges, both men and women, are working incessantly, supported by more than 850 members of staff from more than 80 states, in order to come to terms with the events of 1994.

On November 22nd, 1995, the first public indictment was issued by the International Criminal Tribunal for Rwanda involving the charge of genocide – it concerned the killing of thousands of men, women and children in several locations of Rwanda. The ICTR has so far put on trial more than 70 individuals, rendered 11 judgments, involving 10 sentences and one acquittal. The Appeals Chamber has confirmed seven convictions, one appeal is still pending. At the moment, 8 cases are being tried involving a total of 20 accused. 60 persons are presently held in custody in the newly-built prison complex in Arusha.

The work of the International Criminal Tribunal for Rwanda is not easy: it has been challenged to develop a greatly differentiated jurisdiction in the field of international humanitarian law.

1 No German staff is working at the ICT Rwanda – with the exception of a woman trainee

Moreover, the events of spring 1994 have traumatised major parts of the population. The hearing of evidence is not easy as a result. Serious diseases such as AIDS, which unfortunately greatly afflict the Rwandan population, have resulted in a high mortality rate amongst the general public – and thus also amongst potential witnesses. The International Criminal Tribunal for Rwanda functions in spite of all these difficulties and in the process greatly contributes to the enforcement of international humanitarian law, to peace in the region and the development of international criminal justice. It stands as a symbol of a culture in which the rule of law prevails. It deserves our respect and gratitude for this.

I should like to comment on the above-mentioned functions in detail:

Enforcement of international humanitarian law

The International Criminal Tribunal for Rwanda is making an invaluable and important contribution to the practical application of international humanitarian law. By punishing crimes such as genocide, it ensures the enforcement of the rules of international law – on the basis of the rule of law. The ICTR acts, in parallel with the judicial processes in the national courts, in order to come to terms with the events of 1994; it renders judgements according to international criminal law. Violations of international law always affect the entire international community. It is therefore generally recognised today that such offences are not exclusively the internal problem of the state concerned but the responsibility of the international community as a whole. It is, in particular, in the field of international law that efforts need to be made to ensure that the rules which the world community has adopted for itself are properly implemented. By setting up international criminal tribunals, crimes against

It is, in particular, in the field of international law that efforts need to be made to ensure that the rules which the world community has adopted for itself are properly implemented.

Ernst-J. Kerbusch (FES), Navanethem Pillay, Anke Fuchs, Adama Dieng, Brigitte Zypries, Roland Amoussouga

humanity, in particular violations of human rights, are prosecuted effectively. In view of the inconceivable scale of the crimes committed in Rwanda, the decisions of the International Criminal Tribunal bring back a ray of hope to both a traumatised society and the international community of peoples by upholding the principles of fair trial and the rule of law. We cannot value this contribution highly enough.

The second aspect concerns legal peace

By dispensing justice, the International Criminal Tribunal for Rwanda also contributes to legal peace in the region.

Acts of violence, such as those committed in Rwanda in 1994, are deeply disturbing because of both their brutality and scale. To investigate the causes behind them appears almost impossible considering the dimensions involved. And yet an explanation for such cyclical acts of violence can be found in the long-standing enmity between two ethnic groups – and I cannot

comment on the causes for it – which resulted in a vicious circle of violence and retaliation and reached its terrifying peak in spring 1994.

Amongst other things, the International Criminal Tribunal for Rwanda helps to break this spiral of violence.

Amongst other things, the International Criminal Tribunal for Rwanda helps to break this spiral of violence.

Indeed, it is the goal of every court of law to individualise crimes by establishing the personal guilt of individuals. In so doing, it is possible to make the perpetrators accountable, and to respond accordingly. When individuals can be brought to justice for their deeds, a collective diffamation of one ethnic group can be averted. This also helps to prevent acts of vengeance. Past, yet never punished crimes cannot be used to justify new violence when individual crimes and individual perpetrators have been identified and made accountable.

ICTR-contributions to international criminal justice

Another outstanding accomplishment of the International Criminal Tribunal for Rwanda is its contribution to the development of international criminal justice. The International Criminal Tribunal for the former Yugoslavia and also the ICTR are ad hoc tribunals. The scope of the ICTR is limited both geographically and in terms of time. Special note needs therefore to be taken of its contribution to the development of international criminal justice. The ICTR, through its decisions, has supplied important components for the interpretation of international criminal law. It has expanded, for example, the legal definition of the term "rape" by recognising that rape may constitute an act of genocide in specific cases. I am sure that this and other interpretations of international criminal law will also be considered by the International Criminal Court in The Hague which has been established on the basis of the Rome Statute of 1998. They will thus leave an indelible mark on the development of law beyond individual cases. Not least owing to this important groundwork, several high-ranking representatives of other international criminal tribunals travelled to Arusha in order to profit from the experience and expertise of the ICTR.

I should like to draw your attention to another important aspect: in dispensing justice, the Tribunal sets a signal for the social and political development not only of the African continent but the entire international community – it stands for a change of attitude from the toleration of crude force and impunity towards a culture of responsibility which contributes to the prevention of crimes against humanity. Its activities are guided by the rule of law. Its decisions, in particular, are proof of the fact that those who have deprived major parts of the population of their right to life and to be free from physical harm and subjected them to sexual abuse and political and religious persecution will and must be brought to justice.

The Tribunal sets a signal for the social and political development not only of the African continent but the entire international community.

The decisions of the International Criminal Tribunal for Rwanda called to account the main perpetrators and instigators of the genocide. The conviction of the former Rwandan Prime Minister Jean Kambanda and the recent sentencing of the former Minister of Information, who authorised the mass media of his country to indulge in hate speech and genocide, showed that members of a government, in particular, must not go unpunished if they have been guilty. In this context, the Tribunal has set an important example for other relevant cases in the field of international criminal law dealing with the issue of the criminal responsibility of heads of government for crimes such as genocide and other crimes against humanity. Key names to be recalled in this context are Pinochet and Milosević; they speak for themselves.

IV.

Ladies and Gentlemen,

every judgment is preceded by the search for the truth. Ideally, decisions of the courts are to achieve two things above all else: to observe the law and to bring about justice. The International Criminal Tribunal for Rwanda, through its decisions, serves one more purpose – it facilitates reconciliation.

At the ad hoc Tribunal for the former Yugoslavia, counsel for the prosecution made the following statement in one of the trials:

"Finding out the truth is a pillar of the rule of law and a fundamental step towards reconciliation; because it is the truth that will cleanse ethnic and religious hatred and initiate the process of healing."[2]

The work of the International Criminal Tribunal for Rwanda also puts into practice a demand made by Kofi Annan in his Annual Report for 2000:

"When circumstances arise in which generally-accepted human rights are violated on a massive scale, it is our responsibility to act."[3]

The ICTR has accepted this responsibility in an exemplary manner. Its very existence and functioning are proof of the worldwide respect for the rule of law which the international community has demonstrated by founding the United Nations.

Only if everyone is conscious of the fact that the law will be upheld and enforced can a civil society develop which by itself ensures compliance with its standards through institutions it has itself created.

The Tribunal, through its activities, is leaving a mark on human rights compliance – including in the sense of preventing similar crimes from being committed. Only if everyone is conscious of the fact that the law will be upheld and enforced can a civil society develop which by itself ensures compliance with its standards through institutions it has itself created. While the mandate of the International Tribunal for Rwanda is limited in time and its work will be concluded in a few years[4], its achievements will have a lasting effect. Greater respect for the rule of law, for legal peace and the worldwide recognition that there is ultimately no alternative to the rule of law will become firmly rooted.

In this spirit, I should like to extend again my most cordial congratulations to the International Tribunal for Rwanda and to wish it the best of success in its future work.

2 The representative of the prosecution, case Drazen Erdemović, Judg. of 5-3-1998, paragraph 21 (IT-96-22-T)

3 Minutes of the 55th assembly of the UN, supplement 1 (A/55/1), paragraph 37

4 probably by the year 2008

Adama Dieng, Brigitte Zypries, Anke Fuchs

The Rule of Law and the Role of the Individual in the Pursuit of Human Rights

by Judge Navanethem Pillay,
President of the ICTR

It is my great honour to receive the Friedrich-Ebert-Stiftung Human Rights Award for 2003 on behalf of the International Criminal Tribunal for Rwanda. It is a singular tribute to the Rwandan Tribunal, its objectives and accomplishments, to be acknowledged by Germany's oldest political foundation, created in 1925 as a legacy to the ideals of the German nation's first democratically elected president, Friedrich Ebert.

The International Criminal Tribunal for Rwanda, known as the ICTR, owes its legacy to the Nuremburg and Tokyo Tribunals, born from the embers of the Holocaust and the lessons of World War II. It is very timely for the ICTR to receive the Friedrich-Ebert-Stiftung award at this moment in history, when the world' nations are confronting increasingly complex issues and great political challenges. Will the rule of law prevail over the rule of force? The international community has acted over the past fifty years and particularly in the past ten years to create an international legal framework to address conflict including gross abuses of human rights. The ICTR is one such legal entity, created by the Security Council of the United Nations, pursuant to Chapter VII of the UN Charter, following the 1994 crisis in Rwanda, specifically to punish those responsible for genocide and serious violations of international humanitarian law.

The ICTR is directly mandated to investigate alleged crimes, to determine the guilt or innocence of the alleged perpetrators of those crimes, and to punish those, who, on the basis of the evidence presented, are determined beyond a reasonable doubt

to be guilty of the crimes charged. Yet the Security Council has also related the work of the Tribunal to a wider context with long-term objectives, specifically: to end impunity, to promote national reconciliation, and to restore peace.

How can criminal trials achieve these long-range goals articulated by the Security Council? Firstly, by establishing the fundamental role of the rule of law, under which the guilty are held accountable for their offences, and, secondly, by underscoring the role of the individual who refuses to remain silent, and tacitly tolerant, about violations of human rights. In the trial process, survivor victims and witnesses are given voice, barriers to reconciliation are penetrated, and, through the law's engagement with the crimes prosecuted, opportunities for justice and peace are enhanced.

The rule of law has come to play an increasingly vital role in the pursuit of human rights since the establishment of the Nuremberg and Tokyo Tribunals. There, for the first time in history, impunity was challenged juridically. Leaders were held accountable for their actions in authorizing crimes of war and what were formally recognized as crimes against humanity. For the first time, judicial power, enforced by punishment, was exercised on behalf of the international community.

The rule of law has come to play an increasingly vital role in the pursuit of human rights since the establishment of the Nuremberg and Tokyo Tribunals.

Yet the legal precedents established by the Nuremberg and Tokyo Tribunals, representing the law's first great efforts to submit mass atrocity to principled judgement, lay dormant until the end of the twentieth century. The international community tolerated more than fifty years of impunity in which more than 170 million civilians were killed by their own governments, with no hope of bringing their killers to justice. To refer to only a few examples: there was no international accountability in Cambodia's killing fields, in Uganda, in Iraq, in El Salvador and South Africa.

Navanethem Pillay

In the words of Edmund Burke, "The only thing necessary for the triumph of evil is for good men to do nothing". But good men – and women – have begun to do something. In the last decade, the Security Council of the United Nations, freed from its Cold War paralysis, responded to the mass brutalities committed in two parts of the world – in the former Yugoslavia and in Rwanda – and created two *ad hoc* tribunals, the ICTY, in 1993, and eighteen months later, in 1995, the ICTR. The tribunals were established to "put an end to ... genocide and other systematic, widespread and flagrant violations of international humanitarian law "[1]

In February 1995, the Security Council decided to situate the Rwandan Tribunal in the small, dusty town of Arusha, in northern Tanzania, where there existed little in the way of infrastructure, reliable electricity, not even gravel roads or basic facilities for working or living. Nevertheless, the Tribunal, with extremely limited resources, began its investigative work to locate suspects, witnesses, and supporting documentary evi-

1 UN document S/RES/955 of 8 November 1994.

dence. The ICTR issued its first indictment in November 1995, and the first accused persons were extradited from cooperating nations six months later. I remember being summoned from my home in Durban, South Africa, to hold the first indictment hearing in a hotel room in Arusha, Tanzania, and preparing the first Order on a borrowed typewriter on a rickety table. There were no premises for the ICTR, no courtrooms, no staff, no equipment, and virtually no communications system with the wider world outside of Arusha.

Much progress has taken place in a relatively short time. At present the ICTR has 949 authorized posts for its three operative sites: Arusha, Tanzania; Kigali, Rwanda; and The Hague, Netherlands, where the Appeals Chamber is located. We used a basement with no windows for our first courtroom. Now there are three modern, high-tech courtrooms, with closed-circuit video and simultaneous interpretation in three languages. To date, the ICTR has delivered eleven judgements, involving sentences ranging from ten years to life imprisonment, which is the maximum sentence allowed under the ICTR Statute. There has been one acquittal. Of these eleven judgements, two were rendered only last week, on 15 May, by Trial Chamber I, of which I am presiding judge, and by Trial Chamber III, presided, for this judgment, by Judge Yakov Ostrovsky from Russia. It is expected that at least two more ICTR judgments will be rendered in 2003. Now in its second four-year term, the ICTR has tried or is currently trying nearly half of the 65 persons who have been brought into custody in Arusha. Such positive developments, to be truly appreciated, must be seen in light of the Tribunal's early years of hardship.

We used a basement with no windows for our first courtroom. Now there are three modern, high-tech courtrooms, with closed-circuit video and simultaneous interpretation in three languages.

During my eight years in office as a judge and my four years as President of the ICTR, I have witnessed both the Tribunal's growing pains and its accomplishments. Since those early days, the ICTR has evolved and has made, and continues to make, a noteworthy imprint on the development of international criminal jurisprudence. The first ICTR judgement rendered in 1998 in *Prosecutor v. Jean-Paul Akayesu*[2] is a landmark case as the first conviction in history for the crime of genocide. It is also noteworthy with regard to crimes of sexual violence. It is the first time that an individual has been found guilty of rape as an act of genocide, and it sets forth a new conceptually based definition of rape that marks a departure from mechanical definitions of rape, toward one more in line with the experiences of victims that goes to the essence of this crime of sexual violence.

Almost immediately following the *Akayesu* Judgement, in 1998 the ICTR convicted the former Prime Minister of the Interim Government of Rwanda in 1994, Jean Kambanda, and sentenced him to life imprisonment. In pleading guilty, Mr Kambanda acknowledged that genocide took place in Rwanda and was planned at the highest civilian and military levels of government. This conviction by the ICTR represents the first time in history that an international criminal tribunal has held a a head of government accountable for atrocities committed by his regime – four years before the current ICTY trial of Slobodan Milosevic, former President of the Yugoslav Federation of Serbia and Montenegro. The *Kambanda* case is monumentally significant in challenging the traditional notion that a sovereign is immune from prosecution and cannot be brought to justice.

In other Judgements the Tribunal has held regional and community leaders responsible for their participation in criminal acts that were committed against individuals in Rwanda.[3] Among the 18 accused presently on trial before the Tribunal, there are government ministers, priests, military officers, local

2 See Prosecutor v. Jean-Paul Akayesu, Case No. ICTR 96-4-T, Judgement, Tr. Ch 2 September 1998.

3 See Prosecutor v. Jean-Paul Akayesu, Case No. ICTR 96-4-T, Judgement, T.C. 2 September 1998; Prosecutor v. Clément Kayishema and Obed Ruzindana, Case No. ICTR 95-1-T 21, Judgement, T.C. 21 May 1999.

officials, and even one woman – a former Minister in the Interim Government. These cases illustrate a new accountability and recognize that heads of State and government institutions, like civilians, may be prosecuted for violations of human rights.

It is significant to note that the Tribunal is not a "victor's court", where the victorious parties in a conflict cast judgement on the defeated, a charge sometimes leveled at the Nuremberg and Tokyo Tribunals. Rather, the ICTR, composed of judges from 16 different countries who are elected by the UN General Assembly, has a mandate to consider impartially all cases brought before it. The rights of the accused, including the right to be tried without undue delay, must be respected. To this end, to expedite its heavy caseload with a view to finishing all trial proceedings by 2008, the ICTR has requested the Security Council for judicial assistance in the form of *ad litem* judges. This request has been approved, and we expect, with the arrival of four *ad litem* judges in the near future, a significant acceleration in our trial proceedings.

It is significant to note that the Tribunal is not a "victor's court", where the victorious parties in a conflict cast judgement on the defeated, a charge sometimes leveled at the Nuremberg and Tokyo Tribunals.

Through its experience with judges, lawyers, public officials, and administrators from differing legal backgrounds, the ICTR – like the ICTY – is also establishing procedural norms which will influence the development of other international tribunals, such as those in East Timor, Sierra Leone, and Cambodia, as well as the newly created permanent International Criminal Court, the ICC, to which I have been elected as a judge.

The strengths and weaknesses of the ICTR – and the ICTY – have become evident from our experience and should be translated into lessons that can be applied to other initiatives in support of international criminal justice. Several of the weaknesses of the two *ad hoc* tribunals have already been addressed by the new ICC. For example, the exclusion of victims from representation in the judicial process has been remedied by the inclusion of a provision in the ICC STATUTE that allows for their participation in trial proceedings.

In tandem with the rule of law, the participation of the individual is essential to foster respect for human rights and to achieve the long-range goals articulated by the Security Council: to end impunity, to promote national reconciliation, and to restore peace. Individuals who refuse to keep silent about atrocities, who, as past victims of violent crimes, courageously relate their true stories, and work for the protection of human rights: these are the actors whose courage gives life to the rule of law as a standard for human conduct in the world. These are the brave human beings whose actions, writings, testimonies, and lives will remain in our collective memory. They have made justice possible.

International criminal justice should be a model for account-ability at the national level, and many countries emerging from conflict have created various institutions to facilitate peace and reconciliation. Rwanda represents an excellent example of a post-conflict society that is using several transitional justice measures, in concert, to carve out a path between retributive and restorative justice. In addition to the international criminal trials at the ICTR in Arusha and the trials in domestic Rwandan courts, there are the newly created Gacaca courts, which represent a traditional community-based justice system with which Rwandans are culturally familiar. Each Gacaca court addresses alleged crimes committed in a specific community. The proceedings are public and are usually held in the open air before members of the community concerned. Elected representatives from the community conduct each court session and render the judgments and sentences.

International criminal justice should be a model for account-ability at the national level, and many countries emerging from conflict have created various institutions to facilitate peace and reconciliation.

The Gacaca proceedings, in which all but the most serious alleged crimes of genocide are heard, may fulfill a similar pur-

pose of reconciliation as do Truth Commissions, which have been established in a number of other countries, including my own – South Africa. By acknowledging the suffering of individual victims and their families, and by allowing both victims and accused persons to publicly relate their stories, the Gacaca proceedings may assuage feelings of collective guilt within the community, complement the process of the rule of law, facilitate national reconciliation, and impart to the individual participants a renewed sense of dignity and empowerment.

It is increasingly recognized that there can be no lasting peace without justice. Justice also serves as an important deterrent to those who would violate fundamental human rights with impunity. The ICTR is an important part of a new and desperately needed ray of hope for recognition of international law in the terrain of lawlessness that has plagued our history and threatens to plague our future. We are the standard bearer of international norms of conduct and must serve with credibility as a neutral adjudicator unbending to political considerations.

The world in which we live has forever been altered by the legal legacy of the past sixty years. It is increasingly possible to contemplate a world in which leaders can no longer act with impunity to deprive citizens of the right to life, of the right to be free from physical harm, from sexual violation and from ethnic, religious or political persecution.

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It has been said that "those who cannot remember the past are condemned to repeat it."[4] The ICTR, through its jurisprudence and trial proceedings, is establishing a historical record of what happened in Rwanda between April and July 1994 – a record which will help keep alive the world's collective memory.

4 George Santayana.

Ultimately, it is up to us to keep that memory sacred and rely on it to change the course of history. I was very moved by an incident that occurred in Rwanda in 1997 and was reported in the New York Times as follows:

Gunmen attacked a school in northwestern Rwanda last Monday. The Attack took place after the Hutu gunmen ordered the girls to separate into groups of ethnic Hutu or Tutsi, and the students refused to comply.[5]

In refusing to identify their ethnicity and so betray their friends, these seventeen brave girls were killed.

In response to the courage of these young Rwandan students, a friend of mine wrote the following lines:

> They stupify us, these small, nameless girls
> In whose name Love linked arms with her best friend.
> ... Let me be worthy of such children.[6]

How can we be worthy of such children? We live in a world that seems to be getting more rather than less dangerous. The rule of law is essential to the maintenance of peace and justice, and the creation of conditions that foster the social and economic development that is so urgently needed in so many countries. We are engaged in a great experiment with the ICTR, the ICTY and the ICC. It is fragile, though, and will need all the support it can get – from governments, from individuals, from NGOs, and from foundations like Friedrich-Ebert Stiftung – to overcome the rule of force that continues to dominate much of our political landscape. I want to thank Friedrich-Ebert Stiftung for this Human Rights Award, which has great meaning to all of us at the ICTR.

5 NYT, 30 April 1997

6 Robin Morgan, "Invocation", A Hot January, Poems (New York: W.W. Norton & Company, 1999), 62.

Survey of Judgements Delivered by the ICTR

1.	2-9-1998	AKAYESU, Jean Paul (mayor):	for life
2.	4-9-1998	KAMBANDA, Jean (Prime Minister):	for life
3.	5-2-1999	SERUSHAGO, Omar (military leader):	15 years in prison
4.	21-5-1999	KAYISHEMA, Clément (prefect):	for life
5.	21-5-1999	RUZINDANA, Obed (businessman):	25 years in prison
6.	6-12-1999	RUTAGANDA, George (businessman):	for life
7.	27-1-2000	MUSEMA, Alfred (factory manager):	for life
8.	1-6-2000	RUGGIU, Georges (journalist):	12 years in prison
9.	7-6-2001	BAGILISHEMA, Ignace (mayor):	acquittal
10.	21-2-2003	NTAKIRUTIMANA, Elizaphan (pastor):	10 years in prison
11.	21-2-2003	NTAKIRUTIMANA, Gérard (doctor):	25 years in prison
12.	15-5-2003	Semanza, Laurent (mayor):	25 years in prison
13.	16-5-2003	NIYITEGEKA, Eliezer (Information Minister):	for life

The Hard Road to Justice
UN-Tribunal for Rwanda receives Human Rights Award
by Christoph Link
Hannoversche Allgemeine Zeitung, 20-5-2003

Nairobi. The killers have fled to all corners of the world, but are gradually returning to East Africa, extradited by their countries of refuge. Nine years after the genocide in Rwanda, 50 of the most prominent perpetrators of the genocide are still awaiting trial before the UN-Criminal Tribunal in the Tanzanian town of Arusha. Little has so far been achieved by the Tribunal: no more than twelve judgements have been rendered to date.

The International Criminal Tribunal for Rwanda, established in neighbouring Arusha in the wake of the genocide, receives today the Human Rights Award of the Friedrich-Ebert-Stiftung in Berlin. The key-note speech is delivered by the Federal Minister of Justice, Ms. Brigitte Zypries (SPD). The judges of the Tribunal are undoubtedly in need of encouragement and recognition. The small town of Arusha in the remote parts of Tanzania is a tourist attraction from which safaris and climbing tours to Mount Kilimanjaro are easily arranged, but even by African standards sleepy Arusha finds itself in the middle of nowhere. This probably also explains the continuous shortage of staff at the International Tribunal. But the Tribunal is under even greater pressure owing to continued criticism from the Rwandan Government: the Tribunal is corrupt, the punishment not severe enough, the proceedings too slow.

The Tribunal had been established at the behest of the UN-Security Council. The first judges arrived in autumn 1996 und moved into the three-winged high-rise building as tenants of the East African Community. Since then, twelve judgements have been delivered: six times a life sentence for genocide, six times a prison sentence of between ten to 25 years, one acquittal.

The slow progress of work was once explained by the Nigerian spokesman of the Tribunal, Kingsley Moghalu, who said: "this is a very special system of justice, it is unique and perfectionist." While the courts back in Rwanda put on trial perpetrators from the lower ranks, the Arusha Tribunal focuses on members of the political elite who took part in the genocide in 1994. Spurred on by Hutu officials at the time, the

agitated Hutu masses murdered some 800,000 Tutsi and moderate Hutu in the most brutal manner imaginable.

Rwanda is being regarded as the Prussia of Africa. In retrospect, the manner in which the genocide was planned and organized appears utterly horrifying – including the purchase of thousands of machetes from China and hate speeches broadcast on the radio. Several prominent perpetrators have finally been convicted in Arusha, the most prominent amongst them former Prime Minister Jean Kambanda who serves his life sentence in a prison in Mali, as do five other prisoners.

Mayors, prefects, journalists, priests and military leaders are amongst those on trial in Arusha. The majority of them had found refuge abroad – in Kenya, the Congo and also in Belgium and the USA. The Seventh-Day Adventist and Pastor Elizaphan Ntakirutimana, aged 78, for example, successfully fought his extradition from the US-State of Texas with the help of American lawyers for years.

However, in February this year the Arusha Tribunal sentenced him to ten years in prison, while his son was given 25 years. Both were found guilty of genocide and crimes against humanity because they took part in a massacre in their church – killing people who had sought refuge there from Hutu death squads.

The armchair criminals either condoned the mass killings or actively prepared them. In some cases, they personally killed civilian victims: for example, former Minister of Information, Eliezer Niyitegeka, was just given a life sentence for organizing genocide, inciting to it and actually taking part in massacres. The 50-year old has been convicted of having killed in an atrocious manner on two occasions: a Tutsi named Kabanda whom he killed with his own hands, decapitated and then castrated. In the second case he is thought to have killed a woman and then ordered Hutu militias to ram a piece of wood into her genitals. The violated corpse was left lying in the street.

It will take the Tribunal in Arusha at least another six years to deal with the crimes in Rwanda. UN-Secretary General Kofi Annan has finally agreed to appoint 36 ad litem judges to assist the eleven permanent judges in Arusha.

Rwanda in Search of Justice
Human Rights Award for the International Criminal Tribunal in Arusha

By Martin Ling
Neues Deutschland, 21-5-03

The 1994 genocide in Rwanda took just a few months. For a short while it made the headlines. The difficult attempt to deal with it in legal terms goes largely unnoticed by the international public. The Friedrich-Ebert-Stiftung has now recognized the painstaking work of the International Criminal Tribunal for Rwanda by awarding it the 2003 Human Rights Award.

It is really a mission impossible for a tribunal to deal with the massacres which occurred in Rwanda in spring 1994, in the course of which more than 800,000 people lost their lives – men, women and children. The majority of victims came from the Tutsi minority, but with them died thousands of Hutu who had refused to take part in the collective bloodbath or even attempted to shield Tutsi. Yet efforts are being made – at international, national and local levels – to punish by law what appears inconceivable. Yesterday, the International Criminal Tribunal for Rwanda (ICTR), which was set up by the UN on November 8th, 1994, received the Human Rights Award in Berlin which the Friedrich-Ebert-Stiftung has awarded for the last ten years. It happens at a time when there are warning voices heard at the UN-Headquarters in New York comparing the early phases of the genocide in Rwanda with the current bloody fighting between Hendu and Lema in East Congo.

In her laudatory speech, the Federal Minister of Justice, Ms Brigitte Zypries, referred to the failure of the international community by quoting UN-Secretary General Kofi Annan, in charge of the peace forces at the time, who had said: "All of us must deeply deplore that we did not do more to prevent this genocide. Troops of the United Nations were in the country at the time, but they had neither the mandate nor the equipment to intervene energetically and in a manner which would have prevented or stopped the genocide. On behalf of the United Nations, I acknowledge this failure and express my deep remorse."

One result of this development has been the International Criminal Tribunal for Rwanda which is situated in the Tanzanian town of Arusha.

According to Zypries, 16 independent judges are working tirelessly in three chambers with the aim of coming to terms with the events of 1994. The result so far: eleven judgements have been delivered against the instigators of the genocide, according to information provided to the press by the South African-born President of the Tribunal, Ms Navanethem Pillay, involving one acquittal and sentences ranging from long-term to life imprisonment. Ms Pillay, who has been in office for eight years, sees her personal motivation in the responsibility for the survivors.

According to information from Ms Pillay, 60 accused are currently being held in custody in Arusha. Amongst them are 12 political functionaries, 13 military leaders and 3 leading journalists and clergy each, added the press officer of the Tribunal, Roland Amoussouga. Some 30 accused have been waiting for their trial for more than five years. When Jean-Paul Akayesu was sentenced in September 1998, it was the first time ever that an international tribunal convicted an individual of genocide. The same year, the former Prime Minister of Rwanda, Jean Kambanda, was convicted of being responsible for the genocide – as was the former Minister of Information, Eliezer Niyitegeka, only a few days ago.

The Registrar of the Tribunal, Mr. Adama Dieng, stated that the activities of the International Tribunal were being supplemented by proceedings in the national courts in Rwanda and, more recently, by the so-called Gacaca proceedings. In accordance with the traditional tribal justice system, 260,000 lay judges were trained in a short period of time and would be expected to deliver judgements in some 11,000 Gacaca proceedings for less serious cases. More than 100,000 alleged criminals guilty of genocide were still being held in custody in Rwanda, some of them for years. It would take the ordinary courts 200 years to deal with all these cases, said Dieng, who explained why the Gacaca tribunals were set up. He also criticized the lack of support from the international public and the UN-Security Council. Until the present day, the judges could only hear a limited number of witnesses because, in spite of repeated requests, the United Nations had failed to establish a fund in support of the victims of the 1994 genocide. The Human Rights Award which amounts to a sum of 10,000 Euro will do little to change this. Nevertheless it provides motivation in the continued search for justice.

2003 Human Rights Award of the Friedrich-Ebert-Stiftung Goes to the International Criminal Tribunal for Rwanda

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„International Criminal Justice, for the Rule of Law, against Despotism and Violence" was the motto of this year's Human Rights Award presented by the Friedrich-Ebert-Stiftung (FES) in Berlin on May 20th, 2003. The laureate honoured in this manner was the International Criminal Tribunal for Rwanda.

Prior to the award ceremony, representatives from politics and academia had held a lively discussion on various aspects of international criminal justice and its scope with the Tribunal's President, Ms Nevanethem Pillay; the audience took part in this as well. The extent to which the implementation of international humanitarian law by means of international criminal justice may also act as a deterrent is a question which is becoming increasingly more pressing, not least in view of the current developments in the Congo.

The International Criminal Tribunal for Rwanda deals with crimes committed during the genocide in Rwanda in spring 1994. More than 800,000 people lost their lives at the time as a result of the massacres – before the very eyes of the international community. In her laudatory speech, the Federal Minister of Justice, Ms Brigitte Zypries, referred to the fact that the international community had failed in this instance and quoted the Secretary General of the United Nation, Kofi Annan, who later publicly apologized for the inactivity of the peace forces for whom he had been responsible at the time of the genocide – based on a mandate of the UN-Security Council.

Further development of international humanitarian law is necessary.

The establishment of the Rwanda Tribunal – following a decision of the United Nations in November 1994 which aimed at restoring peace in Rwandan society and reconciling its ethnic groups – had therefore been particularly important, explained Ms Zypries. It emphasized the fact that crimes in violation of international law concerned the entire community of nations and were therefore part of their responsibility. Through its

work, the Tribunal contributed to the enforcement of international humanitarian law, according to Zypries, and played a decisive role in the further development of international criminal jurisprudence.

This aspect was also emphasized by the Presiding Judge and President of the International Criminal Tribunal for Rwanda, Ms Nevanethem Pillay, who received the 10,000 Euro Award together with the Tribunal's Registrar, Adama Dieng, and its Press Officer Roland Anoussouga. To stand up for "a culture of the rule of law" and to demonstrate that even government members may be prosecuted for their involvement in the violation of human rights was part of her motivation in serving at the Tribunal, stated Ms Pillay. In so doing, she wished to pay tribute to the victims' courage and willingness to fight for punishment of the serious violations of human rights and a due process of law for the crimes committed at the time. Both the procedures at the Tribunal in Arusha (Tanzania), the trials in the national lawcourts and the Gacaca proceedings in Rwanda itself, which are based on a traditional notion of village tribunals, facilitated a comprehensive debate of past events. In conclusion, Ms Pillay stated that the ensuing public discussions represented a first step towards a process of reconciliation.

Progress in Rwanda despite adverse conditions

Three chambers at the seat of the Tribunal with a total of 16 judges, both men and women, deal with crimes of genocide, crimes against humanity and other offences committed at the time by Rwandans or on the territory of Rwanda. When the Tribunal started to work in 1995 it had great difficulties to do its job properly, both as regards staff and logistics: There were no courtrooms and next to no technical equipment. Nevertheless, it issued its first public indictment as early as November 1995. Since then, more than 70 persons have been put on trial and 13 judgements rendered, including the conviction of Jean Kambanda, former Prime Minister of Rwanda.

The difficult conditions of work faced by the judges at the time when the Tribunal was established have improved in the meantime. There are now three courtrooms in Arusha and a total of 900 members of staff working for the Tribunal.

But – as the President of the Friedrich-Ebert-Stiftung, Ms Anke Fuchs, explained – the work of the Tribunal continued to be subject to severe criticism owing to the fact that it was setting new precedents and

that the prolonged and tedious process of coming to terms with the genocide was repeatedly overshadowed by other current events. Therefore the persistent efforts made despite all the setbacks deserved special recognition. It was in this spirit that the couple Karl and Ida Feist from Hamburg had originally entrusted the Friedrich-Ebert-Stiftung with the capital for the fund. Anke Fuchs emphasized that the Award was intended to honour not so much spectacular success but the tireless and persistent work of all those "who do not waver in their efforts to reinforce the law – an indispensable precondition for individuals who wish to share this world together".

Panel Discussion

International Criminal Justice: For the Rule of Law, against Despotism and Violence

Participants:

Navanethem Pillay
Presiding Judge, ICTR, Arusha, Tanzania
Prof. Dr. Christian Tomuschat
Expert on International Law, Humboldt University, Berlin
Dr. Thomas Läufer
Head of the Legal Department of the Foreign Office
Rudolf Bindig, MP
Spokesperson on Human Rights Issues and Humanitarian Aid of the SPD-Parliamentary Group

Moderator: **Conny Czymoch**, Phönix

Ms Pillay, please describe to us one day at the Criminal Tribunal in Arusha!

Pillay: I think I should start with my day in the morning because it never happens in my home in Durban in South Africa: you have to turn off all the mosquito-repellent kits that are on; then I boil water, cool that and filter it for the day, because we do not have clean water in Arusha. This means I have extra household chores before I get to work.

My day in the courtroom, like for all the other trial judges, is from 9 a.m. to 5.30 p.m., but very often we sit longer than that, till 6 p.m. and sometimes 7 p.m. in order to complete a witness. These witnesses are brought from faraway places; they are very conscious of their security and want to be out of Arusha as

quickly as possible. I have never seen that a court accommodates the witnesses to this extent. They all come on a voluntary basis – and most of those who come from Rwanda are sick. This means we have to halt the court process so that the UN doctor can provide them with medicines. Then in between, during the lunch break and tea breaks and all the evening until 8 p.m., I do my work as President: apart from the administrative duties, I assign cases to the judges and attend to motions. There is also a procedure where the decisions taken by the Registrar are reviewed by the President and, of course, a great deal of meetings. I know that sounds dull. I know that you are kind of interested in the actual court proceedings ...?

I am interested in the language problems.

The languages are English and French, which are the official UN languages. Most of the accused people, and the people of Rwanda, speak Kinyarwanda. So the testimony is given in Kinyarwanda and then translated into French and from French into English. It is a very long process by the time the question is translated and the answer comes back. This morning I said that, like five out of ten times, the answer that slowly comes back is: "Can you repeat the question?" It takes us three times longer. Very recently, the Registrar had these interpreters trained. There is now simultaneous interpretation from Kinyarwanda into English and French. They are now specially trained, and so we save one quarter of the court's time.

In connection with international law: why is the Tribunal in Arusha so important for Rwanda?

Tomuschat: I should like to comment first on the history of international criminal justice. It all started with the trials in Nuremberg and Tokyo. In Nuremberg, those mainly responsible for the criminal policy of the Third Reich were put on trial. In

Christian Tomuschat, Navanethem Pillay, Conny Czymoch, Thomas Läufer, Rudolf Bindig

Tokyo, it was members of the government who had been responsible for the wrongdoings of imperialist Japan. These trials were based on the conviction that individuals can be made directly accountable under international law. It is really quite a horror scenario for a trained expert in criminal law because he expects a precise definition of an offence to be incorporated in the penal code before it can be prosecuted. In contrast, the underlying assumption in Nuremberg has been that there are indeed crimes which go against fundamental legal principles of humanity to such an extent that no such prior codification is required. The message of the Nuremberg trials was: wars are fought by individuals not states. This was the argument for punishment for a war of aggression.

The message of the Nuremberg trials was: wars are fought by individuals not states. This was the argument for punishment for a war of aggression.

Of course, this calls for institutions. In the post-Nuremberg and Tokyo period, the United Nations were called upon to establish a general system which applied not only to Germany and Japan. During the period of the Cold War, however, all

efforts to establish such a general international system of criminal justice turned out to be in vain. In fact, the very notion of direct individual accountability on the strength of international law was called into question. In Geneva, the International Law Commission, of which I was a member in the 1980s, tinkered with the draft for the statute of an international criminal court in rather a desultory manner without great conviction.

I believe it was the great changes in 1990 which finally paved the way for such efforts. Falling back on the drafts which had been formulated by the International Law Commission, the Security Council – with two resolutions of 1993 – established first the International Tribunal for former Yugoslavia because of the atrocious crimes committed in that country, and then the following year the Rwanda Tribunal. Faced with these horrible acts of genocide, the international community felt somewhat concerned and guilty because it had not intervened earlier. Some critics said at the time that this was merely some kind of compensatory action for consolation in order to cover up the failure of the international community in both Yugoslavia and Rwanda. And it is, in fact, true: there has been failure on a major scale. A great deal of what occurred in Yugoslavia, and also during the genocide in Rwanda, could have been prevented. But this development must not be called into question as a result. Finally, the Rome Statute for the International Criminal Court was drawn up which was completed in just one month during a conference in Rome in 1998, with major involvement of non-governmental organizations such as amnesty international. I think it was, in fact, mainly due to the pressure which they exerted that the Statute was completed in the shortest possible time.

There has been failure on a major scale. A great deal of what occurred in Yugoslavia, and also during the genocide in Rwanda, could have been prevented.

This Statute is based on the notion of complementarity, or what is often called subsidiarity: the International Criminal Court (ICC), which has existed by force of law since July 1st, 2002, is not mandated to deal with all crimes relevant to international law; the system is based on the notion that it is first the national courts which are called upon to prosecute such crimes and that the international level will take over if the national bodies are either unwilling or unable to punish the crimes in an adequate manner. But there is a problem of magnitude: the number of judgements rendered by both the Yugoslavia and the Rwanda Tribunal is limited, also in view of the costs incurred. Inevitably, the trials therefore need to concentrate on the main perpetrators, those mainly responsible, the "armchair criminals". I believe that the Rwanda Tribunal is a good example of this because it sentenced a large number of government ministers who had been in power at the time. The Yugoslavia Tribunal, in contrast, while having put Milosević on trial in the meantime, who was one of the main perpetrators, it has not yet caught those in charge of the massacres in Srebenica, such as the head of government of the Serb Republic Karadzić, and also General Mladić. This will be quite unacceptable in the longer term. The main perpetrators must be brought to justice. Only then will the system of international criminal justice prevail.

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To what extent does the German Government contribute to the International Criminal Court in The Hague?

Läufer: The International Court has been functioning since March this year. In February, the 18 judges were elected by the Assembly of States Parties in New York. About a month ago, the Argentinian Luis Moreno Ocampo was appointed Chief Prosecutor; he is a prominent lawyer who strongly opposed violations of human rights and took action against the Junta; he is now fighting corruption in his country and has been a human rights activist for a long time. He is one of the best possible choices for appointment to the International Court. It is the Chief Prosecutor who actually gives an international criminal court a face

because he picks up the cases independently and investigates them with, hopefully, the support of a strong Prosecutor's Office and then brings them before the court. Of course, he or she cannot deal with every case. Each of these international tribunals, and also the International Criminal Court, operates with what might be termed imperfect justice: "imperfect" not in respect of the actual facts of the case committed for trial – largely cases of genocide, war crimes and crimes against humanity. The Prosecutor can present the facts to the Court but he or she will never be able to catch all the persons responsible. This is why he or she must select prominent cases which act as a kind of symbol for the administration of justice. In order to execute a sentence, the Court relies on the members of the Assembly of States Parties who undertake both to put the persons convicted behind bars and to protect the witnesses. We have already noted that the willingness to give testimony depends on the extent to which we are able to protect witnesses effectively and to shield them against future acts of vengeance. The States Parties are very active in this context in order to put in place such witness protection schemes. This includes the Federal Republic of Germany.

Can you quantify justice? How qualified can be the work of such an ad-hoc tribunal?

Pillay: The intention of the United Nations was clearly that the Prosecutor targets the most serious violators – and I think to a logical extent she has done that. Since the beginning, we have had three different Prosecutors for the RwandaTribunal and the current one is Ms Del Ponte. We have tried the Prime Minister and almost eight to twelve ministers of government, the military leaders, the prefects, the burgomasters and religious leaders. I would say that one should not judge the Tribunal by the number it reaches but by the importance of the individual's responsibility for the atrocities.

I come from South Africa where Apartheid had been declared a crime against humanity ... But there was no prosecution, there was no avenue for us to take our grievances, but assuming just those in leadership who were enforcing this policy were made accountable, that would have given us in South Africa a sense of justice. And I feel that this is how the Rwandans see this as well. They have the problem of 120,000 people in custody for almost ten years. We should all ask how they are going to cope – even if they do fifty cases a year. That is a problem of numbers. I would say that if the people who are most responsible are brought to justice, it is at least some achievement on the part of the international community.

There have been 120,000 people in custody in Rwanda for almost ten years. We should all ask how they are going to cope – even if they do fifty cases a year.

In fact, the Sierra Leone Statute clearly says: those most responsible. Our statutes do not.

So Sierra Leone is a development from ours. I imagine that the ICC will also function in that way. The international tribunals, as the professor said, have contemporaneous jurisdiction with national courts. I think that is proper. National courts should also have a national statute and the responsibility, if they wish, to carry on prosecutions in their countries. The International Tribunal has concurrent jurisdiction for these prosecutions and also primacy over the national courts.

So there is, for instance, Colonel Bagosora, who is the head of the military. The Belgian Government wanted him extradited from Cameroon because they held him responsible for the deaths of the ten Belgian blue helmets who were part of the UN peacekeeping force. And Rwanda wanted him because they saw him as a very important figure in respect of the responsibility for the genocide; but the Cameroon Government had to comply with the UN regulations and send him to the Tribunal. So that is how I see the fact that you have both national and international jurisdiction.

What was the role of the media in the genocide? You, Ms Pillay, are currently trying such a case.

Pillay: Yes, the way these trials are conducted – they are multiple trials of a number of accused persons – and so the plan is a joint trial of government ministers, a joint trial of the military. I preside in the trial of what is called the media. There is this professor of history who is accused of having set up the radio station which is called the RTLM (Mille Collines). That radiostation is accused of having broadcast propaganda and even published lists of names and communicated with the killers at the roadblocks. That is the allegation. Then you have Hassan Ngeze, the editor of the Kangura newspaper. The other person is Barayagwiza, who is a party member of the CDR party. The prosecution is trying to prove a conspiracy between government and media with regard to this level of propaganda. We just finished hearing the evidence over two and a half years and will now start hearing the arguments.

I was mentioning this morning that some of the arguments of the prosecution are saying that this is a propaganda of hate speech, similar to the writings of Streicher and the utterances against Jews in Nazi Germany. And Streicher, as you know, was sentenced to death for publishing his book. The defence argues that it is freedom of speech that is on trial and that this journalist and radio station did not control what went on as a result of people listening to the radio or reading the newspaper. It called up, for instance, Winston Churchill asking people to fight over land and sea; and it said: "That is fighting talk, would you prosecute him for genocide"? These are the two main focuses of the prosecution and defence. I am limited in the way I could comment on this case because it is ongoing at the moment. But there is no similar case, it is once again a first.

We have had a number of firsts in the Rwanda Tribunal: the very first conviction for genocide since the Genocide Convention of 1949, the very first conviction for rape as constituting genocide. And now it could be the very first trial of the media by an international tribunal. As I looked through all the national decisions, I could see the US Supreme Court ruling in favour of freedom of speech of the individual, and I looked at the German Supreme Court cases which had to deal with the reality of hate speech and the Nuremberg decisions. We judges have this enormous task of writing international law and interpreting it in practice.

We judges have this enormous task of writing international law and interpreting it in practice.

What can and must still be done in international criminal jurisprudence with respect to its institutions?

Tomuschat: I think all international criminal tribunals are based on the legal guarantees provided under the International Covenant on Civil and Political Rights. It contains Article 14 which clearly spells out the rights of the accused. They are guaranteed. As regards the actual conduct of the trial, the big question was whether to follow the Anglo-American model in which the judge merely functions as an arbiter, while the actual "match" is fought out between the prosecution and the defence. The judge only intervenes on occasion when a foul is committed. Or the system which we have in Germany, for example, in which the judge plays a very decisive part in the conduct of the trial. A sensible compromise has been achieved and the judge plays an important part in the proceedings.

It is really not true that everything rests in the hands of the Prosecutor. The trials are running smoothly, it is simply a problem of the amount of material submitted. In the case against Milosević, for example, enormous and complex historical issues need to be investigated. This was also true for Nuremberg, although it was easier in that case: the Allies had occupied the whole of Germany and had access to all the filed material. The

two tribunals which are currently in operation largely depend on testimonial evidence. It is much more difficult to decide on the basis of oral evidence.

With the new International Criminal Court in The Hague, the big problem is the opposition of the USA. The USA have not yet ratified the Rome Statute and have declared that they will not do so, at least not in the foreseeable future. They went even further and adopted a national law, the American Service Members Protection Act, under which all American authorities are prohibited to cooperate with the International Criminal Court. In fact, this law even empowers the American Armed Forces to remove any American from custody who may be put on trial. It has therefore been given the somewhat sarcastic epithet of "The Hague Invasion Act."

The USA have worked themselves into a state of fundamental opposition to this International Criminal Court for fear of the Rome Statute being used against them. I believe that these fears are really unfounded because the principle of subsidiarity applies. Under the Rome Statute, the USA would first be given the opportunity to conduct a trial in their own courts of law and only then would the case be transferred to The Hague. This is where I see one of the major problems in international criminal justice. Not only must it be firmly anchored in terms of the law, but it also needs political backing. The accused rarely come voluntarily for trial, they have to be caught and brought before the Court. This is possible only if the States Parties cooperate. Those who have ratified the Rome Statute un-dertake to cooperate with the Court in any way necessary. Yet if a powerful state such as the USA puts pressure on other states not to support the International Criminal Court and not to ratify the Statute, then this institution is seriously in jeopardy. This does not apply to the existing Tribunals for former Yugoslavia and for Rwanda,

Yet if a powerful state such as the USA puts pressure on other states not to support the International Criminal Court and not to ratify the Statute, then this institution is seriously in jeopardy.

but then there is obviously no danger that one day an American will be brought before these courts.

It may be a general problem of current global politics that the Americans are entirely in favour of commitments made by other countries but are not willing to accept them for themselves.

How can the ICC be made to function successfully in spite of the opposition of the USA and the critical attitude of China and Russia?

Läufer: Of course, the right way to do this is to apply the law and to support the Court. Let us not get worked up into a state by the American position. The Americans are – if I may put it rather undiplomatically here – slightly phobic where this Court is concerned. They tie it down with a whole web of exception clauses. There is, first of all, Resolution 1422 which is currently up for review. For one year it ensured the exclusion of non-Member States from the jurisdiction of the Court. The battle is now on in the Security Council about extending the Resolution for another year.

At the same time, the Americans have adopted another tactic: they conclude so-called non-surrender agreements with a number of signatory States of the Rome Statute in order to prevent, on a bilateral basis, that American citizens are brought before this Court. To date, as many as 32 agreements of this kind have been signed and the next one appears to be in the pipeline. This amounts to more than one third of the original 89 States which have ratified the Statute and threatens the very core of the International Court and its effectiveness.

We provide advice to the States without any general anti-Americanism. There is no reason for "America bashing" on a broad scale. The point is to persist in our efforts and to convince them that this judicial system – which was not set up against the Americans but in which they had initially taken part – needs to operate successfully at the international level because it is, for

the time being, the end point of a long development in international law.

The Americans signed a large number of international agreements dealing with criminal acts in the context of international law: the Fourth Geneva Convention, the Genocide Convention of 1948; in the Preamble to the UN-Charta, they have undertaken to uphold world peace and security. They signed the Universal Declaration of Human Rights. I wonder why the Americans, after having taken part in the creation of this international law, are turning their back on it at this decisive point in time when the final stones are inserted to complete the building. There is something phobic about it.

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The Americans are involved in a number of global conflicts and attempt to act as a regulative force in this context. They are worried that their efforts might become less effective and convincing if threatened by prosecution. But this is only a temporary development in my view. It is a good thing that during the final phase in office, the Clinton-Administration supported the Statute by signing it. The time will come when another American government can be persuaded to ratify it. I see this as a period of transition in which the Americans have these reservations owing to their universal engagement.

We, the Federal Republic, are among the first to put the Americans clearly and convincingly on "the right track" in this matter. We have been amongst those who have pushed for this project from the very beginning. I might even say that without our active involvement in the debate, the International Court would never have been established in the first place. I have no doubt whatsoever that the Americans will support the ICC once they have entered a new phase of their responsibility in world politics.

Christian Chartier, ICTY (Den Haag)

How can Members of Parliament support the notion that there need to be standards in international jurisprudence?

Bindig: There is a broad range of bodies, so-called treaty bodies for the existing treaties. We are called upon to persistently request an active use of the entire "toolkit" against violations of human rights. We are paying a great deal of attention to the activities of the existing tribunals and the ICC.

Ms Pillay has already described the new legal problems which are now confronting us in large numbers. For example the chain of responsibility: must direct orders be given for a crime such as genocide or has someone just let it happen, has there been incitement to it in an indirect manner, have there been acts of instigation or hate speeches? To some extent, we are breaking new legal ground here. The existing tribunals make a very important contribution to this process. The International Criminal Court will have to continue along these lines and flesh things out. We from the Parliament can support it in this from time to time and make use of the experience already gained in the existing proceedings.

To what extent can the decisions of such a tribunal contribute to reconciliation inside a country?

Pillay: Well, first let me quote what witnesses tell us in the courtroom; they say: "We have waited for this day to see justice being done." Clearly, justice is such a important component to achieve peace. You have to have tribunals and courts, you have to have prosecution, you have to have retributive justice because that acts as a deterrent. I recall, for instance, when the late President Kabila of the DRC was asked to attend a meeting in Paris to discuss peace, he laid down the precondition that he was not to be arrested by any tribunal. And, of course, with Pinochet we have the very important principle that torture is not a legitimate activity of a head of government. So that is the importance of retributive justice.

Restitutive justice is totally absent in Rwanda and this is why the Rwandans are highly critical about the Tribunal: here we are spending millions of dollars in holding trials, but the victims receive no compensation. It is almost as if we pick up these witnesses, use them and then throw them right back into great poverty. Many of them have been sexually violated and need medical attention. Our Registrar, Mr Adama Dieng, and I have constantly pushed for the provision of compensation to victims that would respond to that situation.

Here we are spending millions of dollars in holding trials, but the victims receive no compensation. It is almost as if we pick up these witnesses, use them and then throw them right back into great poverty.

I agree, though, that criminal courts are not the only solution. There are multi-disciplinary approaches to how you would resolve conflict in my own country. In South Africa, we had the Truth and Reconciliation Commission; I can tell you that, as political activists, we were appalled by the very notion of forgiving people! My colleague, Judge Albie Sachs, was himself injured in a carbomb blast in Mozambique and lost his right arm. I often shared a panel with Judge Sachs and we talked of how he forgave the man who planted the bomb. And also from

Conny Czymoch, Thomas Läufer, Rudolf Bindig

our former President Mandela comes the message that for reconciliation you need to put the past behind you.

I was once on a panel with Archbishop Desmond Tutu. He explained the TRC, the Truth and Reconciliation proceedings, and even said how you saved costs. I did not think so, but that is what he said, that you save costs in that process. And so I leaned towards him and said: "You know, you almost convinced me". And he said: "No, no, no, no. You have to continue with what you are doing". So what he was really saying was that the processes are complementary, they are not in conflict – because both a truth-finding process and a criminal court uphold the principle of respect for the rule of law rather than acts of vengeance and killing.

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I was called to Guatemala, for instance, and while I was there, there were 25 hangings by villagers of people whom they targeted as killers. That is what we mean by "we have to find the mechanisms to ensure respect for the rule of law". When you have that, then you have people respecting their own legal systems; and you will have our future generations having faith in the principle of accountability. Otherwise they will think that

large-scale atrocities committed by leaders go unpunished; that, in fact, you make a lot of money that way. We want to leave the message with our younger and future generations: this is why we need all these processes; they will lead us towards the road to reconciliation and peace in my view.

To what extent do we need other institutions in which the law and reconciliation are pursued?

Tomuschat: What has not yet been mentioned is that prevention is more important than retrospective punishment. It has been our experience with the trials that only a few can be brought before an international tribunal, that we need to concentrate on the main perpetrators. And yet it is important to achieve national reconciliation after a national and societal disaster and to have people talk to each other and live together.

I myself had the privilege of chairing the National Truth Commission in Guatemala for two years. Such a truth commission can achieve at least one thing: it can provide information on a much broader basis than a court could do, it can attempt to describe the historical background. Such an institution may also disclose the institutional responsibilities. In other words, a truth commission can play an important part. We must realize that genuine reconciliation is possible only when the truth is known. Of course, there are always a few who believe that it would be best to sweep everything under the carpet, that people should look ahead and that the nation had more pressing matters to attend than to come to terms with the past. However, if a nation really wishes to come to its senses, it first needs to confront its own past.

We must realize that genuine reconciliation is possible only when the truth is known. If a nation really wishes to come to its senses, it first needs to confront its own past.

Läufer: We must observe the law as regards the activities of the criminal tribunals: there is the indictment and proceedings to hear the evidence, then there is a judicial finding and a judgement and a sentence. That is the mechanism of such a tribunal. Everything else would really be expected too much of the tribunal when you apply such a broadly-based approach. Criminal law at the national level provides for an approach which is intended to consider both the interests of the perpetrator and the victim; in other words, the aim is not only to administer justice but to create social peace beyond the due process of law. The judicial findings of an international criminal tribunal may certainly result in such a process, but that would be the responsibility of the body politic and of society and should be done with great attention to detail and care. It is my view that for the time being a new institution of international law such as the International Criminal Court should not be expected to take on such a burden.

How much can an international criminal tribunal act as a deterrent against abuses of power and human rights violations?

Bindig: We must note that despite the existing tribunals the most severe violations of human rights occur again und again. But it is our hope that it will have a deterring effect if people realize after a few years that those responsible for such conflicts have been made accountable. This might and should have a deterring effect in the long run. But in many respects, this presupposes another development, notably that major countries, or those potentially inclined to violate international law, come under the jurisdiction of the tribunals and that other countries stop opposing this form of jurisdiction. All this notwithstanding, I regard the whole process as a quantum leap in international law.

Tomuschat: It is difficult to tell. Unfortunately, there has been the very negative experience of former Yugoslavia. The Tribunal was established in 1993 and yet in 1999 the Government of Yugoslavia started the atrocious acts of genocide and ethnic

cleansing in the Kosovo – although it must have dawned on them by then that the Tribunal had been set up and would have the power to prosecute. Obviously, this did not deter individuals such as Milosević who deliberately took the risk.

Läufer: The activities of the international tribunals are also a process of public learning. The special tribunals, with perhaps the exception of Yugoslavia, have not really attracted a great deal of public attention for their activities. This will be quite different in future. Spectacular cases will be tried before the International Criminal Court and be given a great deal of publicity. People will see then how a dictatorship develops, what excesses it is capable of, how the mechanisms function. In the Milosević case it has become quite obvious from the testimonial evidence how State power was organized in this perverted area. A better understanding of the politics involved will develop, in my view, as a result of this public learning – and not only of the verdict and the sentence.

Pillay: I think the calls for accountability on the part of leaders were made as early as 2000 years ago. I researched this and you can look at what Grotius has written about this.What we have here is just the development of the last ten years. It is an incredible achievement if you think in terms of the history of our civilization. So it is too soon to say that because of the Rwanda Tribunal that particular leader stopped torturing in his country.The importance of it is that we now have a mechanism for accountability which we never had before. Before, leaders could commit any kind of atrocities and we see the consequences in the DRC – the Congo – today: atrocities could be committed with impunity. In Africa we say: "They all get to a safe haven on the French Riviera." Idi Amin is in Saudi Arabia, for instance. No accountability, there was just impunity. The cry of ordinary people is: "You're punishing me for stealing a loaf of bread to feed my family, but how come that at the highest level there has been impunity?" That is the importance of these international criminal institutions: wherever these leaders are they can be caught and prosecuted. Other countries are no longer prepared to shelter them, they want to hand them over. Because crimes against humanity cross sovereign borders now, there are crimes against the international peoples of the world.

The importance of it is that we now have a mechanism for accountability which we never had before. Before, leaders could commit any kind of atrocities with impunity.

Before I leave this point, I just like to comment on the issue of sentences. I think that I am addressing an audience here that has no difficulty in discarding the death penalty. But I work on a continent where the passions are really high about the death penalty being the only penalty that operates as a deterrent. Even in a question about reconciliation and peace that comes up, and even in South Africa where the Constitutional Court declared the death penalty unconstitutional, every time there is a crime, there is a section of the public demanding the death penalty. The United Nations have come a long way to establish the principle – which is observed in countries in the West – that the death penalty constitutes cruel and inhuman punishment and that life imprisonment is just a severe penalty. But I think Rwandans have still to develop and learn this, and to accept that the sentences imposed by the international tribunals are appropriate – rather than us going back towards accepting their value of life for a life.

(an interjection: „Just briefly. You mentioned earlier that, in fact, there has been something like a moratorium on the death penalty in Rwanda, sort of following the UN example?")

Yes, the Rwandans were holding their own trials. They held one trial which took place for four hours, for instance. At one point, they executed 22 people in a very short space of time. And one person who was executed was wanted by the defence counsel as a witness, and before we could issue the order: "Stop

that execution, the man is needed here", he was killed in Rwanda. We have been through these difficulties, I should think, about two or three years ago. And it is very interesting that they have called a moratorium on executions. So for the past two to two and a half years, they have stopped carrying out their sentences. They still impose death penalties in accordance with their law, but they have stopped carrying them out. They have also undertaken to waive the death penalty if we transfer some of our accused persons to their courts. I quote this because I feel that – to a certain extent – an international tribunal also sets standards, and we can influence the values inside a country. And that is the importance of what you mentioned.

We have to begin with education and values. I have sat in this courtroom for eight years and wondered: Had I been forced into that situation to take up a machete and kill and mutilate – would I do it? How can I guard against that? And I keep thinking that I must bring up my children with the proper values and expose them to education as a way of preventing these conflicts.

A final comment on prevention?

Tomuschat: Greater attempts could be made within the regional communities to stabilize unstable systems. I believe that Africa is a continent which has a responsibility of its own. Regrettably, the Organization of African States (AU) is not so firmly rooted and is certainly in need of assistance from the United Nations; but then a great deal can be done through the Security Council. In fact, the Security Council can take preventive action pursuant to Article 24 and 39 of the Charter: it may intervene even if it is only a threat to peace. An internal conflict which may erupt into heavy rioting is a threat to international peace.

We should not jump to conclusions and say that the Security Council is of no use. In my view it is is not really true. For example after September 11th, 2001, the Security Council has demonstrated that it is quite able to act. It is frequently attacked without good reason, but it might possibly have to assume greater responsibility. This affects, of course, the member States, including Germany, and means that German money, German forces, German lives may possibly be sacrificed when assistance is provided for other parts of the world. It is not an easy political decision.

Questions from the Audience

The Arusha Tribunal sets international legal standards. There are 120,000 people in custody in Rwanda accused of genocide whom it is now planned to put on trial in the Gacaca courts. In view of the large numbers involved, Rwanda is not actually able to implement such international legal standards.

The Rwanders have a hundred and twenty thousand in their prisons, held in custody for almost nine years now – men, women and children. Who are we to tell them how to do it?

Pillay: When I speak about what goes on inside Rwanda, then I am very, or a little bit more knowledgeable maybe than you, but to comment on what you have said: they have a hundred and twenty thousand in their prisons, held in custody for almost nine years now – men, women and children. Who are we to tell them how to do it?

I think that we, the public, can say: get on with it, do not keep people in custody for so long. What they have done is that they have graded the seriousness, and they have passed laws, so that the most serious are still subject to criminal trials and the death penalty, if convicted. So they have four scales, and the fourth scale of the cases would go before the Gacaca courts -which they say is their traditional village system of justice. They even have a fifth level of people whom they have now released from custody. The Registrar said he was there when they released twenty thousand people. But I understand, they have an overall figure of 40,000 whom they will release soon.

Now back to the Gacaca system. I did have misgivings because of our own experience in South Africa: when we were going through the transition period, and there was all this excitement about Mr Mandela and others coming out of prison, the so-called township courts started in all the townships and they were run by the youth. They would strip women and lynch them on the street as punishment. They would put tyres round the necks of people and set light to them. Even a person like

Winnie Mandela – you may have heard – made this public speech: "With our matches and our tyres we will win our freedom."

So I thought that they had to regulate these Gacaca courts. I spoke to the President and the Minister of Justice of Rwanda. It seems that they have done so. Firstly, they had a country-wide referendum to select the judges. I heard of one case where, when they were selecting the judge, a member of the village community said: "Oh, but you are the one who raped my wife or my daughter. You cannot sit as a judge." So they appeared to be democratic in the process of selecting the judges.

We come in at this point. Our values are that you have to have a counsel to represent the accused persons. Previously, when they started, no right to counsel, no right to defence. So that has been accepted there and is applied. Secondly, they understand now that there has to be sufficient proof before you convict anyone. So they are looking for evidence. On the basis of evidence, they convict people.

I do not know much else. It just looks very rudimentary: they sit under the trees and the villagers come and give testimony. I saw a video footage. It seems that some people are being acquitted because villagers are standing very honestly and say: "No, not him. Not number three accused. Yes, number two accused did it." That would be my answer.

What are the arguments for the convictions in Arusha?

Pillay: Well, my answer is in addition to Mr Läufer's answer. The importance of your question is that we all know you cannot try a person for a crime that did not exist at the time when the person committed it. Here we have both the tribunals set up after the day of committing the crimes. It goes against that legal principle we all know in Latin "no crime if there was no law". The Yugoslav Tribunal interpreted the position in the sense that there was a body of international customary law already in existence which was just codified in the Statute of the ICTY, and

two years later in the Statute of the ICTR. And of course, as Mr Läufer said, there is the Geneva Convention about crimes against civilians. For crimes against humanity, we rely very heavily on the interpretation of the Nuremburg Courts. That is where these laws come from. A little problem for us in our Tribunal since genocide was a crime under Rwandan national law. So we had no problem even dealing with objections to jurisdiction to the effect that these laws did not exist when the alleged crimes were committed.

Do you contribute to the setting of new norms in international jurisprudence as a result?

Pillay: We do not define new crimes. Norms may possibly result from the manner in which we interpret these laws. For instance, we interpreted the Genocide Convention to include rape because the intention was to wipe out the whole group of Tutsi women because they were Tutsi.

Norms may possibly result from the manner in which we interpret these laws. For instance, we interpreted the Genocide Convention to include rape.

That is the interpretation of the law and the way we applied them. A very interesting picture is that in Rwanda there was no international law involving two armies or two countries. And yet the Security Council found that the internal conflict in Rwanda was a threat to international peace because of the spill-over of refugees. They interpreted that as threat to international peace and then applied and set up an international tribunal in a country where there was just an internal conflict. This was another very interesting extension of the reach of international law.

Can international criminal law in the context of the Genocide Convention be extended to include the dimension of aiding or abetting, or failure to render aid? The Convention of 1948 calls upon States to prevent acts of genocide as soon as they learn about them. The Security Council deliberately avoided words such as genocide in 1994 although information was available at the time about such events in Rwanda.

Pillay: Aiding and abetting is part of the crime of genocide – that is very clearly spelt out in our Statute, which really follows word for word the Genocide Convention. Someone preventing, someone failing to prevent genocide when that person was in a position to have done something about it would, I think, appropriately fall under complicity to commit genocide because the language there is also "failing to stop" or "prevent". I liked your question about the avoidance of the use of the word "genocide". It is more a journalistic term. It was first used by one of the special rapporteurs, the UN special rapporteur reporting on Rwanda. Actually, your question alerted me to be careful because it is a judicial finding whether there was genocide or not. We begin with allegations of massacres, killings, lootings, rapes and murders and so on. We have to make a judicial finding whether the evidence establishes the genocidal intent – which is to kill a group of persons on political, racial, religious and ethnic grounds. So, for instance for the Defence there was no genocide because they did not all have this particular intent.

I should think that reporters will have no problems using the word because they want to convey the sense of mass killings. But courts have to be much more careful about the legal interpretation of the word "genocide".

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