

NEW ENGLAND SCHOOL OF LAW
RWANDA GENOCIDE PROSECUTION PROJECT

THE PRIVILEGES AND IMMUNITIES OF THE RWANDA
TRIBUNAL RELATING TO LIABILITY

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TABLE OF CONTENTS

I.	Introduction and Summary of Conclusions	1
A.	Introduction	1
B.	Issue	1
C.	Summary of Conclusions	2
II.	Factual Background	3
III.	Legal Discussion	4
A.	Approach	4
B.	The Privileges and Immunities Relating to the International Criminal Tribunal of Rwanda, its Staff and Senior Officials	4
1.	United Nations	6
2.	Staff of the Prosecutor and Registrar of the Rwanda Tribunal	7
3.	Senior Officials of the Rwanda Tribunal	9
4.	Rwanda Tribunal Headquarters Agreement	11
a.	Senior Officials	12
b.	Staff	13
c.	Rwanda Tribunal as an Entity	14
C.	Privileges and Immunities of Other International Judicial Bodies	15
1.	The Privileges and Immunities Relating to the International Criminal Tribunal for the Former Yugoslavia, its Staff and Senior Officials	15
a.	United Nations	16
b.	Staff of the Yugoslavia Tribunal	17

c.	Senior Officials of the Yugoslavia Tribunal	18
d.	Yugoslavia Tribunal Headquarters Agreement	19
i.	Senior Officials	20
ii.	Staff	21
iii.	Yugoslavia Tribunal as an Entity	21
2.	The International Court of Justice	22
IV.	Conclusion	25

Source Notebook Index

	<u>Tab #</u>
Rwanda Tribunal Rules of Procedure and Evidence	1
An Insider's Guide to the International Criminal Tribunal for Rwanda pp. 49-77	2
An Insider's Guide to the International Criminal Tribunal for Rwanda pp. 411-415	3
An Insider's Guide to the International Criminal Tribunal for Rwanda pp. 545-552	4
An Insider's Guide to the International Criminal Tribunal for Rwanda pp. 687-694	5
United Nations Security Council Resolution 955 (1994) with annexed Rwanda Tribunal Statute	6
Headquarters Agreement between United Nations and United Republic of Tanzania Concerning the Rwanda Tribunal	7
Charter of the United Nations	8
Convention on the Privileges and Immunities of the United Nations	9
Vienna Convention on Diplomatic Relations	10
United Nations Security Council Resolution 827 (1993)	11
Article 30 of the Statute of the Yugoslavia Tribunal	12
Headquarters Agreement between the United Nations and the Kingdom of the Netherlands Concerning the Yugoslavia Tribunal	13
International Court of Justice - General Information from Website	14
Statute of the International Court of Justice	15
Headquarters Agreement between the United Nations and the Kingdom of the Netherlands Concerning the International Court of Justice	16

I. INTRODUCTION AND SUMMARY OF CONCLUSIONS

A. Introduction

On November 8, 1994, the Security Council of the United Nations adopted Resolution 955, which implemented the International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States, Between 1 January 1994 and 31 December 1994. The statute that governs the Rules of Procedure and Evidence of the Tribunal provides for protective measures for victims and witnesses who will, or have already given evidence against the accused.¹ The provisions, however, provide no guidance regarding liability of the Tribunal as an international organization should a victim or witness suffer injury or death during investigation, trial, or after having given evidence.

B. Issue

To what extent can the International Criminal Tribunal of Rwanda, as an international organization, be held liable in case a victim or witness suffers injury or death during investigation, trial or after having given evidence?

¹ Rules of Procedure and Evidence of the Rwanda Tribunal (as amended in January and July 1996 and June 1997), Rules 34, 66, 75 and 79.

C. Summary of Conclusions

The plethora of United Nations documents that create, operate and apply to the Rwanda Tribunal strongly indicate that the Tribunal can not be held liable in the instance that a victim or witness suffers injury or death during investigation or trial or after having given evidence. Various documents that both confirm the United Nations and the Rwanda Tribunal as entities are granted privileges and immunities with regard to liability. Furthermore, those who would be involved in taking action pursuant to the Rwanda Statute (i.e. the judges, the Prosecutor and Registrar) are granted similar privileges and immunities shielding them from any liability resulting from these actions.

II. FACTUAL BACKGROUND

Rwanda has been plagued with conflict between two primary groups that have lived in the country for hundreds of years, the Hutu majority and the Tutsi minority. For twenty-one years preceding 1994, Rwanda was an authoritarian State which was ruled by President Juvenal Habyarimana, a Hutu extremist, who developed support within the Hutus by maintaining a policy of violence and hatred against the “common enemy”--the Tutsis.² Exiled Tutsis often attempted to invade Rwanda from neighboring countries in order to overthrow the government.

On April 6, 1994, the plane carrying President Juvenal Habyarimana was shot down by a surface-to-air missile, which was the catalyst for widespread extreme violence against the Tutsis, amounting to mass genocide of the Tutsi people in the span of only a few months. Approximately seven months later, the International Community responded by implementing an International Criminal Tribunal for Rwanda in order to prosecute those persons responsible for genocide in the year of 1994.

² Morris & Scharf, *An Insider's Guide to the International Criminal Tribunal for Rwanda*, p.54 (1997).

III. LEGAL DISCUSSION

A. Approach

Various United Nations documents must be examined when analyzing the issue of liability of the Rwanda Tribunal as an international organization. Many U.N. documents involving the Rwanda Tribunal are linked together in that they refer to other U.N. documents within their texts. These links are essential because, although a particular document may not directly address the issue of liability, another document that is incorporated by reference may indeed address this issue (i.e. documents involving reference to privileges and immunities of U.N. bodies and officials). Also, by examining the relationships between the documents, one can discover the particular U.N. instrument or body that grants the power to create or enforce whatever is contained in the document. This gives the document legal validity and significance, and its language or contents can be used as another reference point to perhaps infer certain conclusions about the issue. A “flow of documents” approach, starting with the United Nations Charter, has thus been taken in the analysis of Tribunal and staff liability.

B. The Privileges and Immunities Relating to the International Criminal Tribunal of Rwanda, its Staff and Senior Officials

The foundation of the United Nations is the United Nations Charter, from which stems all of its power. The Charter of the United Nations (1946) grants the Security Council the power to establish such subsidiary organs as it deems necessary for the performance of its functions.³ The Security Council has decided that one of its functions

³ U.N. CHARTER, art. 29

is to bring to justice those responsible for genocide and human rights violations in the state of Rwanda.⁴ The Security Council therefore adopted Resolution 955 (1994), which created the necessary subsidiary organ, the International Criminal Tribunal of Rwanda (Rwanda Tribunal), in order to carry out this function. Resolution 955 also adopted the governing Statute of the Rwanda Tribunal.⁵

In the governing Statute of the Rwanda Tribunal, Article 21 directs that the Rules of Procedure and Evidence should provide for the protection of victims and witnesses involved.⁶ There are a number of Rules which accomplish this directive.⁷ For example, Rule 34 sets up a Victim and Witnesses Unit under the authority of the Registrar consisting of qualified staff to develop short and long term plans for the protection of witnesses who have testified before the Tribunal and who fear a threat to their life, property or family.⁸

This may include anything from psychological counseling to physical protection. Another rule provides that the Prosecutor may request special protection measures for victims and witnesses before or after the commencement of the trial under Rules 69 and

⁴ S.C. Res. 955 (1994), preliminary comments.

⁵ S.C. Res. 955 (1994), operative para. 1.

⁶ Article 21 of the Statute of the International Tribunal for Rwanda provides as follows: “The International Tribunal for Rwanda shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim’s identity.”

⁷ Rules of Procedure and Evidence of the Rwanda Tribunal (as amended in January and July 1996 and June 1997), Rules 34, 66, 75 and 79.

⁸ Rules of Procedure and Evidence of the Rwanda Tribunal (as amended in January and July 1996), Rule 34(A)(iii).

75.⁹ Rule 75 states that the Trial Chamber may order that the press and the public be excluded from all or part of the proceedings for reasons of safety, security or non-disclosure of the identity of a victim or witness.¹⁰ No provisions address whether the Rwanda Tribunal and staff, as an international organization, can be held liable should it fail to adequately protect witnesses or victims under these various rules. These answers lie elsewhere in related U.N. documents, which discuss the privileges and immunities granted to the Rwanda Tribunal, its Prosecutors and various staff members.

1. United Nations

Article 29, Paragraph 1 of the governing Statute of the Rwanda Tribunal, establishes that the Convention on the Privileges and Immunities of the United Nations¹¹ applies to the International Tribunal for Rwanda.¹² The provisions of the Convention on the Privileges and Immunities of the United Nations shields the United Nations, its property and assets, wherever located and by whomsoever held from every form of legal process, unless waived.¹³ It further states that the premises of the United Nations shall be inviolable, and that its property and assets, wherever located and by whomsoever held,

⁹ Morris & Scharf, *An Insider's Guide to the International Criminal Tribunal for Rwanda*, p.412 (1997).

¹⁰ Rules of Procedure and Evidence of the Rwanda Tribunal (as amended in January and July 1996), Rule 79(A)(ii).

¹¹ Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15.

¹² Article 29, Section 1 of the Statute of the International Tribunal for Rwanda provides as follows: "The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal for Rwanda, the judges, the Prosecutor and his or her staff, and the Registrar and his or her staff.

¹³ Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15, Article II, Section 2.

shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.¹⁴ United Nations documents, wherever located, are also inviolable.¹⁵ The Security Council of the United Nations has implemented and funds the Rwanda Tribunal as a subsidiary organ. The immunities enjoyed by the United Nations can certainly be inferred to apply to the Rwanda Tribunal as a United Nations judicial body. Property and assets of the Rwanda Tribunal would be implied to be immune from all legal action arising out of events relating to acts of the Tribunal.

2. Staff of the Prosecutor and Registrar of the Rwanda Tribunal

Article 29, Paragraph 3 of the Statute of the Rwanda Tribunal specifically alludes to the privileges and immunities enjoyed by the staff of the Prosecutor and the Registrar: “The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this article.”¹⁶ These immunities are important to address because this is yet another approach in analyzing the liability issue. The staff of the Prosecutors and Registrar are some of the people who make up the Tribunal itself. But for those who make up the Tribunal, no Tribunal would exist. If those who make up the Tribunal enjoy privileges and immunities relating to legal liability, then it follows that the

¹⁴ Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15, Article II, Section 3.

¹⁵ Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15, Article II, Section 4.

¹⁶ Statute of the International Tribunal for Rwanda, Article 29, Paragraph 3.

Tribunal itself enjoys these immunities as well. It is significant when making this apparently logical inference that the Convention states that privileges and immunities are granted to officials *in the interests of the United Nations* and not for the personal benefit of the individuals themselves.¹⁷ This suggest that the privileges and immunities of the Officials of the United Nations are not altogether separate from the United Nations and its subsidiary organs (such as the Rwanda Tribunal) as international organizations. The Convention on the Privileges and Immunities of the United Nations must then be referenced in assessing what privileges and immunities are in fact accorded to officials of the United Nations.

Language that suggests that the Rwanda Tribunal and staff of the Prosecutor and Registrar, can not be held liable for events or decisions made related to the acts of the Rwanda Tribunal are found in Article V, Section 18(a) of the Convention on the Privileges and Immunities of the United Nations. Section 18(a) reads, “Officials of the United Nations shall: (a) be immune from legal process in respect of words spoken or written *and all acts performed by them in their official capacity.*”¹⁸

The staff of the Prosecutors and Registrar are considered “Officials of the United Nations” for the purpose of defining their privileges and immunities.¹⁹ They are immune

¹⁷ Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15, Article V, Section 20 (emphasis added).

¹⁸ Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15, Article V, Section 18(a) (emphasis added).

¹⁹ Statute of the International Tribunal for Rwanda, Article 29, Paragraph 3

from all legal process with respect to acts performed by them in their official capacity.²⁰ Any decision made or action taken by these Officials of the Tribunal with respect to the Rules of Procedure and Evidence, specifically in regards to rules dealing with the protection of victims and witnesses, would certainly be within their official capacity. The staff of the Prosecutors and Registrar are immune from any liability for events related to such decisions. Since these immunities have been granted in the interest of the United Nations (and not in the interests of the individual)²¹, the Rwanda Tribunal as a subsidiary organ would have implied immunity.

3. Senior Officials of the Rwanda Tribunal

Senior officials that make up the Rwanda Tribunal include the judges, Prosecutor and the Registrar. The privileges and immunities of the senior officials of the Tribunal are referred to in Article 29, Paragraph 2 of the Statute of the Rwanda Tribunal, which states: “The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.”²² The international law that governs diplomatic relations is the Vienna Convention on Diplomatic Relations.²³ Privileges and immunities of diplomatic

²⁰ Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15, Article V, Section 18(a).

²¹ Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15, Article V, Section 20.

²² Statute of the International Tribunal for Rwanda, Article 29, Paragraph 2.

²³ Vienna Convention on Diplomatic Relations, 18 April 1961, 500 U.N.T.S. 95.

agents are set out in Article 31, Paragraph 1 of this document. Article 31(1) states that a diplomatic agent shall enjoy immunity from the receiving State's criminal and civil/administrative jurisdiction, with certain exceptions.²⁴ Additionally, because diplomatic agents are not obliged to give evidence as a witness²⁵, prosecution of a suit against the Tribunal would be difficult.

The immunities enjoyed by the senior officials of the Tribunal are broader than those enjoyed by their staff, in that the senior officials are not limited to acts performed in their official capacity in order to have immunity. Any act or decision relating to the protection of victims and witnesses pursuant to the Rwanda Tribunal Statute and the Rules of Procedure and Evidence would nonetheless be done in their official roles. These senior officials are essential representatives that make up the Rwanda Tribunal. Since the judges, Prosecutor and Registrar are immune from liability resulting from official acts or decisions, it can be implied that the Rwanda Tribunal as an separate entity is immune from liability as well.

²⁴ Article 31(1) of the Vienna Convention on Diplomatic Relations provides as follows:

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

- (a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

²⁵ Vienna Convention on Diplomatic Relations, 18 April 1961, 500 U.N.T.S. 95, Article 31, Paragraph 2.

4. Rwanda Tribunal Headquarters Agreement

An injured party claiming liability of the Rwanda Tribunal or staff may well bring an action in a domestic court where the Tribunal is seated. Therefore, the specific agreement between the host country and the United Nations concerning the operational aspects of the International Criminal Tribunal of Rwanda need to be addressed.

On February 22, 1995, the United Nations Security Council adopted Resolution 977 which decided that “subject to the conclusion of appropriate arrangements between the United Nations and the Government of the United Republic of Tanzania, the International Tribunal for Rwanda shall have its seat at Arusha.”²⁶ These ‘appropriate arrangements’ are found in the Agreement between the United Nations and the United Republic of Tanzania concerning the headquarters of the International Tribunal for Rwanda (Headquarters Agreement), which was entered into force on August 31, 1995. Included in the terms of the Headquarters Agreement are a number of provisions confirming that the privileges and immunities that apply to members of the Tribunal in fact apply within the jurisdiction of the host country (United Republic of Tanzania). The Headquarters Agreement (like the Statute of the Rwanda Tribunal) includes three categories that are granted these immunities: (1) the Judges, Prosecutor and Registrar,²⁷ (2) the staff of the Tribunal²⁸, and (3) the Rwanda Tribunal itself.²⁹

²⁶ S.C. Res. 977 (1994), operative para.

²⁷ Headquarters Agreement of the Rwanda Tribunal, art. XIV.

²⁸ Headquarters Agreement of the Rwanda Tribunal, art. XV.

²⁹ Headquarters Agreement of the Rwanda Tribunal, arts. V, VIII, IX.

a. Senior Officials

Article XIV, Section 1 of the Headquarters Agreement provides: “The Judges, the Prosecutor and the Registrar shall, together with members of their families forming part of their household and who do not have nationality of the United Republic of Tanzania, enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents, in accordance with international law and in particular under the General Convention and the Vienna Convention.”³⁰ These include personal inviolability, including immunity from arrest or detention³¹; immunity from criminal, civil and administrative jurisdiction in conformity with the Vienna Convention³²; and inviolability for all papers and documents.³³ These are again only afforded in the interest of the Tribunal and not for personal benefit of the individuals themselves,³⁴ tending to suggest Tribunal immunity as an international entity. The immunities are subject to waiver by the Secretary-General.³⁵ Article XIV of the Headquarters Agreement confirms Article 29, Section 2 of the Statute of the Rwanda Tribunal in that the Judges, Prosecutor and Registrar are diplomatic agents within the definition of the Vienna Convention and are bestowed the applicable immunities. As discussed *supra*, privileges and immunities of

³⁰ Headquarters Agreement of the Rwanda Tribunal, art. XIV, Section 1.

³¹ Headquarters Agreement of the Rwanda Tribunal, art. XIV, Section 1(a).

³² Headquarters Agreement of the Rwanda Tribunal, art. XIV, Section 1(b).

³³ Headquarters Agreement of the Rwanda Tribunal, art. XIV, Section 1(c).

³⁴ Headquarters Agreement of the Rwanda Tribunal, art. XIV, Section 3.

³⁵ *Id.*

diplomatic agents are set out in Article 31, Paragraph 1 of the Vienna Convention stating that a diplomatic agent shall enjoy immunity from the receiving State's criminal and civil/administrative jurisdictions³⁶ and are not obliged to give evidence as a witness.³⁷

b. Staff

Privileges and immunities of the staff of the Tribunal are addressed in Article XV of the Headquarters Agreement. Article XV, Section 1 states: The staff of the Tribunal shall be accorded the privileges and immunities as provided for in articles V and VII of the General Convention. This language essentially repeats and reinforces Article 29, Section 3 of the Statute of the Rwanda Tribunal. The most applicable sub-section of Article XV of the Headquarters Agreement is 1(a), providing for enjoyment of immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Sub-section 1(a) incorporates the exact language in Article V, Section 18 of the Convention on the Privileges and Immunities of the United Nations. Decisions made or actions taken by the staff of the Tribunal with regards to the Rules of Procedure and Evidence involving witness or victim protection would be within the realm of official capacity. Therefore, the staff of the Rwanda Tribunal would indeed be immune from any claim of liability resulting from these acts or decisions.

³⁶ Vienna Convention on Diplomatic Relations, 18 April 1961, 500 U.N.T.S. 95, Article 31, Paragraph 1.

³⁷ Vienna Convention on Diplomatic Relations, 18 April 1961, 500 U.N.T.S. 95, Article 31, Paragraph 2.

c. Rwanda Tribunal as an Entity

Finally, the Headquarters Agreement protects the premises, property and funds of the Rwanda Tribunal.³⁸ These protection provisions are essentially the same as the those stated in the Convention on the Privileges and Immunities of the United Nations, except that: (1) the Tribunal is specifically named in the document (“the Tribunal) rather than the more general “United Nations” named in the Convention, leaving less room for ambiguity and (2) the Agreement is specifically between the United Republic of Tanzania and the United Nations covering the jurisdiction of the Republic of Tanzania.

The Headquarters Agreement states that the premises of the Tribunal shall be inviolable and that the property, funds and assets of the Tribunal, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.³⁹ Article VIII, Section 1 specifically shields the Tribunal from the domestic legal process: “*The Tribunal*, its funds, assets and other property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case the Tribunal has expressly waived its immunity . . .”⁴⁰ Article VIII is a strong indication of Tribunal immunity as an entity, as opposed to privileges and immunities granted to the individuals of the Tribunal (i.e.

³⁸ Headquarters Agreement of the Rwanda Tribunal, arts. V, VIII, IX.

³⁹ Headquarters Agreement of the Rwanda Tribunal, art. V, Section 1.

⁴⁰ Headquarters Agreement of the Rwanda Tribunal, art. VIII, Section 1 (emphasis added).

the staff or the senior officials). Article IX protects the archives and all documents of the Tribunal by making these materials inviolable.⁴¹ This assuredly protects the Tribunal from having to yield to any judicial discovery process used in the host country.

C. Privileges and Immunities of Other International Judicial Bodies

References to privileges and immunities in the documents that create and govern other international judicial bodies can be utilized in order to demonstrate analogies to the Rwanda Tribunal. For the purposes of this brief, two adjudicative entities under control of the United Nations have been selected: (1) The International Criminal Tribunal for the Former Yugoslavia (Yugoslavia Tribunal) and (2) The International Court of Justice.

1. The Privileges and Immunities Relating to the International Criminal Tribunal for the Former Yugoslavia, its Staff and Senior Officials

Although the International Criminal Tribunal of Rwanda has its own jurisdiction, deputy prosecutor, rules of procedure and registry, it is essentially based on the International Criminal Tribunal of the Former Yugoslavia.⁴² Their common goal is to prosecute persons responsible for crimes against humanity. The analysis of the privileges and immunities of the Yugoslavia Tribunal is almost identical to the above analysis of the

⁴¹ Headquarters Agreement of the Rwanda Tribunal, art. IX states: The archives of the Tribunal, and in general all documents and materials made available, belonging to or used by it, wherever located in the host country and by whomsoever held, shall be inviolable.

⁴² See Morris & Scharf, *An Insider's Guide to the International Criminal Tribunal for Rwanda*, p.74 and footnotes, (1997).

if by judicial action.⁴⁸ United Nations documents are also specifically held to be inviolable.⁴⁹

The Security Council of the United Nations has implemented and funded the Yugoslavian Tribunal as a subsidiary organ, as in the case of the Rwanda Tribunal. The immunities enjoyed by the United Nations would thus apply to the Yugoslavian Tribunal as a United Nations judicial body. Property and assets of the Yugoslavia Tribunal would be immune as well, from all legal action arising out of events relating to acts of the Tribunal.

b. Staff of the Yugoslavia Tribunal

Like Article 29, Paragraph 3 of the Statute of the Rwanda Tribunal, Article 30, paragraph 3 of the Yugoslavia Statute specifically grants privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention on the Privileges and Immunities of the United Nations.⁵⁰ These privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals,⁵¹ again suggesting that the privileges and immunities of the Officials of the United Nations are not altogether separate from the United Nations and its subsidiary organs as international entities (e.g. the Yugoslavia or Rwanda Tribunal).

⁴⁸ Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15, Article II, Section 3.

⁴⁹ Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15, Article II, Section 4.

⁵⁰ Statute of the International Tribunal for the Former Yugoslavia, Article 30, Paragraph 3.

⁵¹ Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15, Article V, Section 20 (emphasis added).

Yugoslavia Tribunal officials are treated the same as officials of the Rwanda Tribunal. Article V, Section 18(a) of the Convention on the Privileges and Immunities of the U.N. states that officials of the United Nations shall be immune from legal process in respect to all acts performed by them in their official capacity.⁵² The staff of the Prosecutors and Registrar are immune from claims of liability resulting from events related to actions taken/decisions made in their official capacity. Because these immunities are granted in the interest of the United Nations, the Yugoslavia Tribunal would have immunity as an organ of the United Nations.

c. Senior Officials of the Yugoslavia Tribunal

Senior Officials of the Yugoslavia Tribunal hold the same titles as the Rwanda Tribunal: judges, the Prosecutor and the Registrar. The privileges and immunities of the senior officials of the Yugoslavia Tribunal are referred to in Article 30, Paragraph 2 of the Statute of the Yugoslavia Tribunal conveying the same privileges and immunities as diplomatic envoys, in accordance with international law.⁵³ Article 31, Paragraph 1 of the Vienna Convention on Diplomatic Relations (the applicable international law on this subject) states that a diplomatic agent shall enjoy immunity from the receiving State's criminal and civil/administrative jurisdictions, with certain exceptions.⁵⁴ Diplomatic agents are also not obliged to give evidence as a witness.⁵⁵

⁵² Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15, Article V, Section 18(a) (emphasis added).

⁵³ Statute of the International Tribunal for the Former Yugoslavia, Article 30, Paragraph 2.

⁵⁴ Article 31(1) of the Vienna Convention on Diplomatic Relations provides as follows:

d. Yugoslavia Tribunal Headquarters Agreement

The United Nations also had a similar agreement as the Rwanda Tribunal with its host country. Article 31 of the Yugoslavian Statute provides that the International Tribunal shall have its seat at The Hague. This led to the Agreement Between the United Nations and the Kingdom of the Netherlands Concerning the Headquarters of the International Tribunal for the Former Yugoslavia (Headquarters Agreement). Included in the terms of the Headquarters Agreement are the same privileges and immunities provisions that are set out in the Headquarters Agreement with Tanzania for the Rwanda Tribunal. Again, three categories of persons or entities are granted these immunities: (1) the Judges, Prosecutor and Registrar⁵⁶ and (2) the staff of the Tribunal.⁵⁷ and (3) the Yugoslavia Tribunal itself.⁵⁸

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

⁵⁵ Vienna Convention on Diplomatic Relations, 18 April 1961, 500 U.N.T.S. 95, Article 31, Paragraph 2.

⁵⁶ Headquarters Agreement of the Yugoslavia Tribunal, art. XIV.

⁵⁷ Headquarters Agreement of the Yugoslavia Tribunal, art. XV.

⁵⁸ Headquarters Agreement of the Yugoslavia Tribunal, arts. V, VIII, IX.

i. Senior Officials

Article XIV, Section 1 of the Headquarters Agreement provides: “The Judges, the Prosecutor and the Registrar shall, together with members of their families forming part of their household and who do not have Netherlands nationality or permanent residence status in the host country, enjoy the privileges and immunities accorded to diplomatic agents, in accordance with international law and in particular under the General Convention and the Vienna Convention.”⁵⁹ These include personal inviolability, including immunity from arrest or detention⁶⁰; immunity from criminal, civil and administrative jurisdiction in conformity with the Vienna Convention⁶¹; and inviolability of all papers and documents.⁶² These are again only afforded in the interest of the Yugoslavia Tribunal and not for personal benefit of the individuals themselves,⁶³ tending to suggest Tribunal immunity as an international entity. The immunities are subject to waiver by the Secretary-General.⁶⁴ Article XIV of the Headquarters Agreement confirms Article 30, Section 2 of the Statute of the Yugoslavia Tribunal in that the Judges, Prosecutor and Registrar are diplomatic agents within the definition of the Vienna Convention and are conferred the applicable immunities. Privileges and immunities of diplomatic agents are set out in Article 31, Paragraph 1 of the Vienna Convention, stating

⁵⁹ Headquarters Agreement of the Yugoslavia Tribunal, art. XIV, Section 1.

⁶⁰ Headquarters Agreement of the Yugoslavia Tribunal, art. XIV, Section 1(a).

⁶¹ Headquarters Agreement of the Yugoslavia Tribunal, art. XIV, Section 1(b).

⁶² Headquarters Agreement of the Yugoslavia Tribunal, art. XIV, Section 1(c).

⁶³ Headquarters Agreement of the Yugoslavia Tribunal, art. XIV, Section 3.

⁶⁴ Id.

that a diplomatic agent shall enjoy immunity from the receiving State's criminal and civil/administrative jurisdictions⁶⁵ and are not obliged to give evidence as a witness.⁶⁶

ii. Staff

Privileges and immunities of the staff of the Tribunal are addressed in Article XV of the Headquarters Agreement. Article XV, Section 1 states: The staff of the Tribunal shall be accorded the privileges and immunities as provided for in articles V and VII of the General Convention, reinforcing Article 30, Section 3 of the Statute of the Yugoslavia Tribunal. The most applicable sub-section is Article XV of the Headquarters Agreement is 1(a), providing for enjoyment of immunity from legal process with respect to words spoken or written, and all acts performed by them in their official capacity. Sub-section 1(a) incorporates the exact language in Article V, Section 18 of the Convention on the Privileges and Immunities of the United Nations.

iii. Yugoslavia Tribunal as an Entity

The Headquarters Agreement protects the premises, property and funds of the Yugoslavia Tribunal.⁶⁷ These protection provisions are the same as the those stated in the Convention on the Privileges and Immunities of the United Nations, except that the Tribunal is specifically named in the document (rather than the more general "United

⁶⁵ Vienna Convention on Diplomatic Relations, 18 April 1961, 500 U.N.T.S. 95, Article 31, Paragraph 1.

⁶⁶ Vienna Convention on Diplomatic Relations, 18 April 1961, 500 U.N.T.S. 95, Article 31, Paragraph 2.

⁶⁷ Headquarters Agreement of the Yugoslavia Tribunal, arts. V, VIII, IX.

Nations” stated in the General Convention document), and the Agreement is specifically between the Netherlands and the United Nations.

Article V of the Headquarters Agreement states that the premises of the Tribunal shall be inviolable and that the property, funds and assets of the Tribunal, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.⁶⁸ Article VIII specifically shields the Tribunal from the Netherlands domestic legal process: “The Tribunal, its funds, assets and other property, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process, except insofar as in any particular case the Tribunal has expressly waived its immunity . . .”⁶⁹ Article VIII is a strong indication of Tribunal immunity as an entity, as opposed to privileges and immunities granted to the individuals of the Tribunal (i.e. the staff or the senior officials). Article IX protects the archives and all documents of the Tribunal by making these materials inviolable,⁷⁰ effectively protecting the Tribunal submitting documents for any legal purpose that may arise.

2. The International Court of Justice

The International Court of Justice (I.C.J.) replaced the Permanent Court of International Justice and operates under the Statute of the I.C.J., which is an integral part

⁶⁸ Headquarters Agreement of the Yugoslavia Tribunal, art. V.

⁶⁹ Headquarters Agreement of the Yugoslavia Tribunal, art. VII.

⁷⁰ Headquarters Agreement of the Yugoslavia Tribunal, art. IX.

of the Charter of the United Nations.⁷¹ Its seat is at the Peace Palace in The Hague (Netherlands). All members of the United Nations are ipso facto parties to the Statute of the I.C.J.⁷² The I.C.J.'s role is to settle legal disputes in accordance with international law submitted to it by States, and to give advisory opinions on legal questions referred to it by duly authorized international organs and agencies.⁷³ It may only hear legal disputes between States.

Chapter XIV, Article 29 of the United Nations Charter establishes the International Court of Justice (I.C.J.) as the principal judicial organ of the United Nations. The I.C.J. provided a model for the consideration of the privileges and immunities of the two international criminal tribunals established within the framework of the United Nations.⁷⁴ The privileges and immunities of the Rwanda Tribunal and the Yugoslavia Tribunal parallel those applicable to the I.C.J.⁷⁵ Therefore, a brief investigation into the privileges and immunities of this United Nations entity provides a relevant basis for analogy to the Rwanda and Yugoslavia Tribunal.

As a principal organ of the United Nations, the I.C.J. enjoys the privileges and immunities applicable to the United Nations. These are once again found in the Convention on the Privileges and Immunities of the United Nations. Article II, Section 2

⁷¹ U.N. CHARTER, Art. 92.

⁷² U.N. CHARTER, Art. 93.

⁷³ See International Court of Justice Official Website, *General Information--The Court at a Glance*.
<http://www.icj-cij.org/igeninf/icjgnnot.html>

⁷⁴ Morris & Scharf, *An Insider's Guide to the International Criminal Tribunal for Rwanda*, p.688, (1997).

⁷⁵ Id.

of the Convention safeguards the United Nations, its property and assets, wherever located and by whomsoever held from every form of legal process, unless waived.⁷⁶ The Convention goes on to deem the premises of the United Nations inviolable, and that its property and assets, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.⁷⁷ United Nations documents, wherever located, are also inviolable.⁷⁸

Like the staff of the Rwanda Tribunal Prosecutor and Registrar, the members of the Court (15 judges) are granted the privileges and immunities of “Officials” pursuant to Article V, Section 18 of the Convention. Section 18(a) reads, “Officials of the United Nations shall: (a) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity.”⁷⁹ Furthermore, Article 19 of the Statute of the I.C.J. plainly states: “The members of the Court, when engaged on the business of the Court shall enjoy diplomatic privileges and immunities.”

Chapter 3, Article 42 of the Statute of the I.C.J. is as follows: 1. The parties shall be represented by agents; 2. They may have the assistance of counsel or advocates before the Court; 3. The agents, counsel, and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties. Only

⁷⁶ Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15, Article II, Section 2.

⁷⁷ Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15, Article II, Section 3.

⁷⁸ Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15, Article II, Section 4.

⁷⁹ Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15, Article V, Section 18(a).

States may be parties in front of the Court. Therefore, like the Prosecutors of the Rwanda Tribunal, the counsel representing each state in a matter before the Court has similar privileges and immunities.

The privileges and immunities of Article 19 and 42 of the I.C.J. Statute are confirmed by a headquarters agreement between the United Nations and the Kingdom of the Netherlands. The Agreement is simply an exchange of letters between the President of the I.C.J. and the Minister of Foreign Affairs of the Netherlands. Like the Headquarters Agreements for the Rwanda and Yugoslavia Tribunals, this agreement substantiates that the privileges and immunities of the I.C.J. Statute have force of law in the domestic legal realm of the Netherlands.

IV. CONCLUSION

The privileges and immunities that are afforded to the United Nations, the Rwanda Tribunal, and the Staff of the Tribunal, shield these entities and individuals from liability arising from actions taken with respect to the protection of victims or witnesses pursuant to the Rwanda Tribunal Rules of Procedure and Evidence. Immunity from liability is supported in the applicable primary United Nations and Rwanda Tribunal documents, as well as by referenced documents that pertain to the privileges and immunities of other analogous international judicial entities.