

NEW ENGLAND SCHOOL OF LAW
INTERNATIONAL WAR CRIMES PROJECT
RWANDA GENOCIDE PROSECUTION

MEMORANDUM FOR
OFFICE OF THE PROSECUTOR

ISSUE # 11

INDIVIDUAL CRIMINAL RESPONSIBILITY
OF CIVILIANS VIOLATING
COMMON ARTICLE 3 TO THE
GENEVA CONVENTION

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MEMORANDUM

TO: ICTR Prosecutor

FROM: Jeffrey Azia, New England School of Law

SUBJECT: Individual Criminal Responsibility of
civilians violating Common Article 3 to
the Geneva Convention

DATE: May 6, 1999

I. Introduction and Summary of Conclusions

The Nuremberg Tribunal established how Individual Criminal Responsibility should be handled in regards to International Law. The Nuremberg Tribunal established that previous decisions in International Law in regards to Individual Criminal Responsibilities, are not adequate and need to be updated as the crimes being committed today are different than the crimes that were committed in the past.

It was submitted that international law is concerned with the actions of sovereign States, and provides no punishment for

individuals; and further, that where the act in question is an act of State, those who carry it out are not personally responsible, but are protected by the doctrine of the sovereignty of the State. In the opinion of the Tribunal, both these submissions must be rejected. That international law imposes duties and liabilities upon individuals as well as upon states has long been recognized...individuals can be punished for violations of international law¹

The International Criminal Tribunal for Rwanda (hereinafter "ICTR") was incorrect in its decision not to hold Jean-Paul Akayesu (hereafter "Akayesu") individually responsible for his criminal actions. This decision was based on the ICTR using a narrow view of International Law. Akayesu was the Bourgmestre, and as Bourgmestre, Akayesu was responsible for maintaining law

¹ See 1 Virginia Morris & Michael Scharf, *The International Criminal Tribunal for Rwanda* (1998) See Also Nuremberg Judgement at 52. "The principle of individual responsibility and punishment for crimes under international law recognized at Nuremberg is the cornerstone on international criminal law. This principle is the enduring legacy of the Nuremberg Charter and Judgement which gives meaning to the prohibition of crimes under international law by ensuring that the individuals who commit such crimes incur responsibility and are liable to punishment." Draft Code of Crimes Against the Peace and Security of Mankind commentary to art. 2(1), *Report of the International Law Commission to the General Assembly*, 51 U.N. GAOR Supp. (No. 10), at 19, U.N. Doc. A/51/10 (1996), reprinted in [1996] 2 Y.B. INT'L L. COMM'N, U.N. Doc. A/CN.4/SER.A/1996/Add.1 (Part 2). For a discussion of the development of the principle of individual criminal responsibility under international law, See UNITED NATIONS WAR CRIMES COMMISSION, HISTORY OF THE UNITED NATIONS WAR CRIMES COMMISSION AND THE DEVELOPMENT OF THE LAWS OF WAR 262 et seq (1948). See Also UNITED NATIONS, THE CHARTER AND JUDGEMENT OF THE NURENBERG TRIBUNAL: HISTORY AND ANALYSIS 39 (1949)

and public order in his commune.² All people in positions of authority can be held liable for war crimes committed by subordinates if they do nothing to stop killings and other unlawful actions that they knew of and have to power to stop.

II. Factual Background

Jean-Paul Akayesu was bourgmestre of Taba commune from April 1993 to June 1994.³ He had the exclusive control over the communal police, as well as gendarmes put at the disposition of his commune. He also was responsible for the execution of laws and regulations and the administration of justice in his commune.⁴ While the murders were taking place, he had the power and control to stop it, but he did nothing. Akayesu was charged and should be found guilty of Individual

² *The Prosecutor vs. Jean-Paul Akayesu*, 1998 ICTR-96-4-T (Judgement Sept. 2, 1998) at 4, (<http://www.un.org/icttr/english/judgements/akayesu.html>) [hereinafter ICTR Judgement] during the time of his control of the commune as Bourgmestre at least 2000 tutsis were killed between April 7 and the end of June 1994, while he was still in control. The killings were open and so widespread that, as Bourgmestre, Akayesu must have known about them. Although he had the authority and responsibility to stop the killings he never did.

³ ICTR Judgement pg. 4

⁴ ICTR Judgement pg. 4

Criminal Responsibility for his non-action in the events that took place on his commune.

Legal Discussion

A. Applicable Law

"Incorporating violations of Common Article 3 in the pantheon of crimes which give rise to individual criminal responsibility, regardless of the nature of the conflict, is a tremendous advance in international law and for prosecutions in the ICTR."⁵ Common Article 3 has long been a crime but since it was not a "grave breach," it was not regarded as a crime under international humanitarian law.⁶ "One commentator has asserted that the criminalization of violations of Common Article 3 is a major development with enormous normative importance and the tribunal statute thus enhances the prospects for treating egregious violations of human rights law—not

⁵ Prosecuting genocide in Rwanda: A Lawyers Committee report on the ICTR and National Trials (1997), when discussing the Tadic decision and ensuing law

⁶ Prosecuting Genocide in Rwanda: A Lawyers Committee report on the ICTR and National Trials (1997) pg. 5

only of international humanitarian law—as offenses under international law.”⁷

The Rwanda Tribunal had the opportunity to set a precedent with the Akayesu case, but decided to interpret the laws too narrowly and did not find him guilty of violating Common Article III. Using such a strict standard, it is going to be difficult to find others guilty of such crimes. The ICTR raised the requirements of individual criminal responsibility by stating that Akayesu was not guilty because it was not proven beyond a reasonable doubt that he acted “either for the Government or the Hutu military in the execution of their respective conflict objectives.”⁸ The ICTR felt that in order for Akayesu to be individually criminal responsible, the prosecution must have shown “by virtue of his authority, he is either responsible for the outbreak of, or is otherwise directly engaged in the conduct of hostilities.”⁹ These standards are higher than that of the underlying law and should be lowered to hold more people responsible.

⁷ Prosecuting Genocide in Rwanda: A Lawyers Committee report on the ICTR and National Trials (1997) pg. 5, see also T. Meron “The International Criminalization of Internal Atrocities,” 89 American Journal of International Law 554 at 559, 568 (July 1995)

⁸ ICTR Judgement pg. 108

⁹ ICTR Judgement pg. 108

Article 4 of the Rwanda Statute is what gives the tribunal authority to use Common Article 3 to prosecute people thought to have committed war crimes.¹⁰ Article 4 of the Tribunal states that:

"The International Tribunal for Rwanda shall have the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1997. These violations shall include, but shall not be limited to:

- a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- b) Collective punishments;
- c) Taking of Hostages;
- d) Acts of Terrorism;
- e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- f) Pillage;
- g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are

¹⁰ Theodor Meron, *International Criminalization of Internal Atrocities* 89 A.J.I.L. 554 (1995)

recognized as indispensable by
civilized peoples;

h) Threats to commit any of the
foregoing acts."¹¹

Article 4 of the statute, enumerated above, is a safety net for all crimes committed that violate common article 3 of the Geneva Convention and Additional Protocol II that do not reach the "grave breach" standard. This is more expansive than past tribunals that never made these crimes punishable.¹² The article was more expansive than past tribunals so no serious charges were missed due to minor procedural shortcomings of the statute.¹³

A recent report by the UN Secretary-General recognizes that;

the security council has elected to take a more expansive approach to the choice of the applicable law than the one underlying the statute of the Yugoslav

¹¹ ICTR Judgement 1.3 pg. 10 is showing the expansiveness of article 4 of the tribunal.

¹² Theodor Meron, International Criminalization of Internal Atrocities 89 A.J.I.L. 554 (1995) pg.5

¹³ Barrett Prinz, The Treaty of Versailles to Rwanda: How the International Community Deals with War Crimes.. The appeals chamber decided to make the article so expansive because it is now accepted in International Law that crimes against humanity no longer has to be associated with international armed conflicts. The "Grave Breach" standard require that the conflict be 1) International in Nature and 2) the offenses that are committed must be against a "protected class of people".

Tribunal, and included within the subject-matter jurisdiction of the Rwanda Tribunal international instruments regardless of whether they were considered part of customary international law or whether they have customarily entailed the individual criminal responsibility of the perpetrator of the crime. Article 4 of the statute, accordingly, includes violations of Additional Protocol II, which as a whole, has not yet been universally recognized as part of customary international law, and for the first time criminalizes common Article 3"¹⁴

Common Article 3 to the Geneva Convention as well as protocol II clearly expand what individuals will be criminally responsible for in the area of war crimes. Criminals that would not have been guilty in the past for higher crimes will still have to stand trial for their actions, even if they do not meet the "Grave breach" standard. This will make sure that individuals that are guilty of crimes will be held individually responsible, whether or not the conflict is Internal or International in nature.

¹⁴ Theodor Meron, International Criminalization of Internal Atrocities 89 A.J.I.L. 554 (1995) pg. 5 See also UN Doc. S/1995/134 (1995)

B. INDIVIDUAL CRIMINAL RESPONSIBILITY

Individuals must be found responsible for their own actions if Rwanda ever wants to regain any sense of normalcy. If the ICTR and the courts of Rwanda can find the individuals responsible for the crimes that occurred and prosecute the individuals who participated in the killing "it may be able to demonstrate that the cause of the 1994 tragedy can be attributed to specific individuals. By individualizing responsibility, the government may be able to show its commitment to both the rule of law and to rooting out generalized ethnic hatred and fear. This line of reasoning concludes that only by eliminating communal antagonisms and replacing it with proven guilt and responsibility of individual actors may Rwanda make progress toward a lasting peace."¹⁵ The ICTR should set the example for the domestic courts in Rwanda and allow their power to become a model for the local courts.

¹⁵ Mariann Meier Wang, *The International Tribunal For Rwanda: Opportunities for Clarification, Opportunities for Impact*. pg. 7

More people will be prosecuted for war crimes as a result of the expansive nature of Common Article 3 and the additional protocol of the Geneva Convention. The Rwanda Tribunal has the power to set the new standard of liability for individuals in the area of International Law. Under Article 6 of the ICTR Individuals will have Criminal Responsibility for their actions. Article 6 states:

" 1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 4 of the present statute, shall be individually responsible for the crime.

2. The official position of any accused person, whether as Head of State of Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.

3. The fact that any of the acts referred to in articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such

acts or to punish the perpetrators thereof.

4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal for Rwanda determines that justice so requires.¹⁶

The Language of the Article establishes Criminal Responsibility for all parties to a crime and all parties that contribute to a crime shall be held accountable for their actions.¹⁷ The Article's language is so expansive because the Security Council recognized that crimes were committed not only by the actual perpetrators, but also by others that contributed to the

¹⁶ ICTR Judgement 1.3 article 6 pg. 10

¹⁷ 1 Virginia Morris & Michael Scharf, *The International Criminal Tribunal for Rwanda* (1998) pg. 233 see also "the notion of the criminal responsibility of the principle and the secondary parties to a grave breach on international humanitarian law is discussed in the commentary to Protocol I to the 1949 Geneva Conventions, as follows:

Humanitarian law provides that those who have committed a grave breach and those who ordered a grave breach to be committed must be punished. Thus the principle (offenders) as well as the secondary parties (joint offenders) are liable to punishment, i.e., those who have personally performed acts (including failure to act), which includes those who did abet or organize the crime.

It should be recalled that accessory accomplices are also punishable, i.e., anyone who has not taken part as a direct or principle actor in materially committing the breach, but who has helped the offender or joint offenders in preparing or perpetrating the breach and who has incidentally co-operated. CLAUDE PILLOUD ET AL., COMMENTARY ON THE ADDITIONAL PROTOCOLS O F8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, at 979 (1987) (citation omitted)

commission of a crime.¹⁸ As a result, it is possible to have more than one person responsible for one criminal act, for example either as principle or accomplice.¹⁹

At common law there are four different levels of criminal responsibility for serious crimes; they are:

1) The principle in the first degree (the actual perpetrator),

2) the principle in the second degree (the accomplice who contributed to the commission of the crime and was present at the scene of the crime,

3) the accessory before the fact (the accomplice who contributed to the commission of the crime, but was not present at the scene of the crime...

4) accessory after the fact, which covered individuals who provided assistance only after the crime had been committed."²⁰ The addition of accomplice liability is important in order to find high-level officials responsible for the formation of criminal plans or the policies that caused criminal activity carried out by others.²¹

¹⁸ 1 Virginia Morris & Michael Scharf, *The International Criminal Tribunal for Rwanda* (1998) pg. 23.

¹⁹ 1 Virginia Morris & Michael Scharf, *The International Criminal Tribunal for Rwanda* (1998) pg. 233

²⁰ 1 Virginia Morris & Michael Scharf, *The International Criminal Tribunal for Rwanda* (1998) pg. 233

²¹ 1 Virginia Morris & Michael Scharf, *The International Criminal Tribunal for Rwanda* (1998) Pg.233

Article 6 of the Rwanda statute (as shown above) sets out individual criminal responsibility for the entire planning and execution of the criminal act. Article 6 assigns Individual Criminal Responsibility for 5 types of criminal conduct. If the act is planned and never executed, article 6 does not impose any criminal liability, but article 2 of the statute does with respect to genocide.²²

C. THE DIFFERENT LEVELS OF CRIMINAL ACTIVITY:

The first level of criminal activity that is recognized by Article 6 of the statute is a person that planned the criminal activity. These types of crimes are usually carried out by high level governmental officials or military commanders.²³ The Statute does not show any deferential

²² 1 Virginia Morris & Michael Scharf, *The International Criminal Tribunal for Rwanda* (1998) Pg. 235

²³ 1 Virginia Morris & Michael Scharf, *The International Criminal Tribunal for Rwanda* (1998) Pg.237 Article 2 of the draft code coincides with Article 6 of the Rwanda statute. Article 2(3)(e) of the draft code addresses responsibility for the planner or co-conspirator "participating in planning or conspiring to commit such a crime" Subparagraph (e) is intended to make sure that high level official and military commanders are held responsible for their actions by making sure that people responsible for the planning are responsible for the criminal activity that follows the planning stages. Akayesu as Bourgmestre of his commune should have been found guilty under this principle.

treatment to the individuals based on their occupation, position, or status in the community.²⁴ "Crimes covered by the Rwanda Tribunal Statute may be committed by government officials, the military or private citizens. Prior to the Second World War, there was some question as to whether war crimes could be committed by government officials or civilians as well as military personnel. This question was answered affirmatively by the Nuremberg Tribunal and the subsequent military tribunals which recognized that the principle of individual responsibility for crimes under international law applied to all persons regardless of their position or occupation."²⁵ The fact that an individual acted under a Government mandate or order from a superior does not relieve the individual of responsibility, but it may be a mitigating factor when deciding the punishment.²⁶

The second type of criminal conduct covered by Article 6(1), in which an individual can be held individually criminally responsible for is the

²⁴ 1 Virginia Morris & Michael Scharf, *The International Criminal Tribunal for Rwanda* (1998) Pg. 243

²⁵ 1 Virginia Morris & Michael Scharf, *The International Criminal Tribunal for Rwanda* (1998) Pg. 243

²⁶ 1 Virginia Morris & Michael Scharf, *The International Criminal Tribunal for Rwanda* (1998) Pg. 263

"initiation of the instigation of a crime". This type of crime was typically committed by radio broadcasters and were used to incite the Rwandan people to commit Genocide against the Tutsis.²⁷

The third type of criminal conduct covered by Article 6(1), in which an individual can be held individually criminally responsible for is for ordering another individual to commit a crime. This type of criminal conduct is usually carried out by mid level government officials of military officers. In some regards these individuals have a greater responsibility for the crimes carried out because they put the criminal mental intent into the minds of the actors.²⁸

The fourth type of criminal conduct covered by Article 6(1), in which an individual can be held

²⁷ 1 Virginia Morris & Michael Scharf, *The International Criminal Tribunal for Rwanda* (1998) Pg. 238. Article 2(3)(f) of the Draft Code provides that an individual, who directly and publicly incites people to commit a crime, shall incur individual responsibility for that crime. This subparagraph assigns responsibility only applies to direct and public incitement. The element of direct incitement requires the urging of other individuals to take immediate criminal actions, rather than making a suggestion. The element of public incitement requires communicating to a large audience in a public nature either by mass media, or by speaking to a large group of people.

²⁸ 1 Virginia Morris & Michael Scharf, *The International Criminal Tribunal for Rwanda* (1998) Pg. 240. Article 2(3)(b) of the Draft Code addresses the responsibility of a superior that orders criminal activity. The superior will incur criminal responsibility for the crimes committed by their subordinates. The superior is responsible for the actions of the subordinates if the superior by their actions, incites the subordinate to commit a crime.

individually criminally responsible for is for actually committing a crime. The actual perpetrator may incur responsibility for his/her unlawful act or omission.²⁹

The fifth and final type of criminal conduct covered by Article 6(1), in which an individual can be held individually criminally responsible for is an actor aids and abets the planning, preparation or the execution of the crime.³⁰

D. Command Responsibility

Military Commanders may be criminally responsible for the actions of their subordinates if he knew or should have known about the crimes they were committing. Article 6(3) of the Rwanda Tribunal Statute imposes

²⁹ 1 Virginia Morris & Michael Scharf, *The International Criminal Tribunal for Rwanda* (1998) Pg. 241 Article 2(3)(a) of the Draft Code addresses the responsibility of the actual actor that commits the crime. The actor can be responsible by taking an affirmative action and by taking no action at all, that will apply if the actor has a duty to act and doesn't.

³⁰ 1 Virginia Morris & Michael Scharf, *The International Criminal Tribunal for Rwanda* (1998) Pg. 243 Article 2(3)(d) of the Draft Code addresses the responsibility of an individual that "assists...in the commission of such a crime" This subparagraph provides responsibility for an individual that aids, abets or otherwise assists" in the commission of a crime by another individual. In order for an individual to be responsible under this subparagraph, that individual must provide the type of assistance which contributes directly and substantially to the commission of the crime.

individual criminal responsibility on superiors for the actions of their subordinates if two criteria are met. The criteria is 1) the superior must have known or had reason to know that his subordinates had committed or were about to commit a crime and 2) the superior must have failed to take the necessary and reasonable measures available at the time to prevent the subordinate from committing the crime, to stop the subordinate engaged in criminal activity and to punish the subordinate for the crime, and deter other criminal activity.³¹ This criminal responsibility applies to all superiors, even if the relationship is not affiliated with the military.³²

E. Military Capacity

As indicated above, All people regardless of occupation or position in the community, one can be held responsible for Individual for War Crimes they committed. This criminal responsibility applies to both

³¹ 1 Virginia Morris & Michael Scharf, *The International Criminal Tribunal for Rwanda* (1998) Pg. 256-257, this does not mean that all cases will have criminal responsibility for superiors, the negligence has to be so serious that it tantamount to intent.

³² Major Marsha V. Mills, *War Crimes in the 21st Century* (1999)

private and public actors and has been in existence since the Nuremberg Tribunal and confirmed subsequently by the 1948 Genocide Convention and the 1949 Geneva Conventions.³³

Jean Paul Akayesu served as Bourgmestre of Taba from April 1993 until June 1994, prior to that he was a teacher and a school inspector.³⁴ As Bourgmestre, Akayesu had many responsibilities in the commune.³⁵ The responsibilities of the Bourgmestre, include the following, performance of executive functions and the maintenance of public order within his commune, he also had exclusive control over the communal police, as well as any gendarmes put at the disposition of his commune. He was responsible for the execution of laws and regulations and the administration of justice.³⁶ With these responsibilities should have come Individual Criminal Responsibility under the Rwanda Statute. He was in control of the Police, and was responsible for the

³³ 1 Virginia Morris & Michael Scharf, *The International Criminal Tribunal for Rwanda* (1998) Pg. 243 The 1948 Genocide Convention recognized that "genocide could be committed by public officials and private individuals." The 1949 Geneva Convention recognized that the state must recognize the obligation of International Humanitarian law to the "military and civilian authorities and the population under it's authority."

³⁴ ICTR Judgement pg. 4

³⁵ ICTR Judgement pg. 4

³⁶ ICTR Judgement pg. 4

execution of laws and regulations in his commune.³⁷
While Taba was under his control at least 2000 Tutsis
were killed, the killings were so widespread that
Akayesu must have known about them and he did nothing.³⁸

F. Comparison to Yamashita:

Akayesu's role of authority is like that of
Yamashita as military governor of the Philippines during
World War II.³⁹ "Even though it is not charged that the
individual (Yamashita) so accused personally committed
or directed the commission of such acts, where he was
the army commander in charge of the personnel who have
committed such acts, for, as such commander he is
charged by international law...with the affirmative duty
to take such measures as are within his power and
appropriate in the circumstances to protect...the civilian
population of enemy."⁴⁰ This is very similar to Akayesu
in the manner that Akayesu had the power to stop the

³⁷ ICTR Judgement pg. 4

³⁸ ICTR Judgement pg. 4-5

³⁹ In Re Yamashita, 327 U.S. 1, 27 (1946)

⁴⁰ In Re Yamashita, 327 U.S. 1, 3 (1946)

atrocities that took place in Taba while he was Bourgmestre, but stood back and did nothing.⁴¹ Yamashita was found responsible for the actions of the forces under his command.⁴² While Yamashita had a military rank (general), he was found criminally liable in his capacity as governor, which is similar to Akayesu's position. Using Yamashita as precedent, Akayesu should be individually held responsible for the actions that took place in his commune while he was Bourgmestre.

G. Comparison To Tadic:

Dusko Tadic was found guilty for violations for Common Article III and Additional Protocol II under The International Criminal Tribunal for Yugoslavia. "The

⁴¹ ICTR Judgement pg. 4 as Bourgmestre, Akayesu controlled the police and was responsible for the execution of laws.

⁴² In Re Yamashita, 327 U.S. 1, 14 (1946) "The commission concluded : "That a series of atrocities and other high crimes have been committed by members of the Japanese armed forces under command of (Yamashita)...that were not sporadic in nature but in many cases were methodically supervised by Japanese officers and noncommissioned officers...that during the period in question (Yamashita)...failed to provide effective control of...[his] troops, as were required by the circumstances...where murder and rape and vicious, revengeful actions are widespread offenses , and there is no effective attempt by a commander to discover and control the criminal acts, such a commander may be held responsible, even criminally liable, for the lawless acts of his troops"

Tadic Judgement reaffirmed that a single act by a perpetrator taken within the context of a widespread or systematic attack against a civilian population entails individual criminal responsibility and an individual perpetrator need not commit numerous offences to be held liable."⁴³ Tadic, like Akayesu was a civilian leader with no military affiliation. Tadic was a traffic cop and Chairman of the Serb Party in the town of Korarac.⁴⁴ These positions are similar to Akayesu, who was Bourgmestre. Akayesu was also affiliated with the ruling party in Rwanda that was responsible for the war crimes.⁴⁵

Tadic was found to be guilty of war crimes in the internal armed conflict under Common Article III and Additional Protocol II of the Geneva Conventions. The ICTY did not require that Tadic acted for the Serb government or the Serb military, as the ICTR required with respect to Akayesu.

The jury decided that his actions did not meet the qualifications of "grave breaches" under Article 2

⁴³ Theodor Meron, War Crimes Law Comes of Age, pg. 3

⁴⁴ International Legal Materials Volume 36, Number 4 July, 1997 36 I.L.M. 908; INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA: EXCERPTS FROM JUDGMENT IN PROSECUTOR V. DUSKO TADIC, AND DISSENTING OPINION (hereinafter "Tadic Decision") (1997) p. 190

⁴⁵ ICTR Judgement pg. 17

because the victims were not covered under Article 4 of the Fourth Geneva Convention of 1949.⁴⁶ In order for Article 2 to be applicable, the victims must be protected persons, and the conflict must be international in character.⁴⁷ This shows the benefit of having an expanded statute that makes more crimes punishable by the Tribunals. In the Tadic case, if the Yugoslavia Tribunal had applied the narrow interpretation of the Rwanda Tribunal in the Akayesu case, Tadic would have been found innocent of all charges.

The ICTR should follow the precedent set by the Yugoslavia Tribunal and find Akayesu guilty Individually of the War Crimes that he committed. Akayesu and Tadic were similarly situated the same in their respective communities, committed similar crimes and should suffer the same consequences for there actions. It would be an injustice and set bad precedent for the ICTY to hold Tadic guilty individually of war crimes and the ICTR not to hold Akayesu guilty.

⁴⁶ Tadic Decision

⁴⁷ Tadic Decision

The ICTR has an obligation to the people of Rwanda and to the International Community to set a precedent on Individual Criminal Responsibility with respect to common article III of the Geneva Convention. "The effect of the Tribunal's decisions on the legal world, however, should not be overstated. Above all, the Tribunal's creation was caused by cataclysmic human events, and its most important accomplishment must be to address those events with real impact on Rwanda and on the world community. In describing the purposes of the Tribunal, President Cassese pointed out that above all it exists to try and punish those who have committed horrific crimes, to deter further similar crimes and finally, to reconcile the people who were ripped apart by these crimes by showing them that individuals who are truly guilty will bear the responsibility of their actions through the law. As Rwanda struggles to rebuild its justice system, the tribunal may provide necessary support for local Rwandan efforts by showing not only international concern, but an international belief that genocide occurred and that its perpetrators must be brought to justice."⁴⁸

⁴⁸ Mariann Meier Wang, *The International Tribunal for Rwanda; Opportunities for Clarification, Opportunities for Impact*. pg. 33

"Those suspected of outrages against humanity must be brought to justice at the international level; if found guilty, they must be sternly punished by a truly international and truly impartial body, before the very eyes of the whole international community...International justice must discourage further crimes...Wherever there are people in the Former Yugoslavia or Rwanda viciously intent on destroying others, they are now served notice: the international community will be inexorable in meting out condign retribution...True reconciliation [must be pursued]...How can we prevent someone from instinctively hating a whole ethnic group...? Collective responsibility must be replaced by individual responsibility."⁴⁹

⁴⁹ Mariann Meier Wang, *The International Tribunal for Rwanda; Opportunities for Clarification, Opportunities for Impact*. pg. 33. This shows how important Individual Criminal Responsibility is to Rwanda and the international community. It also is another reason why the ICTR should not have such a strict view of the international laws that have already been decided, and make the criminals responsible for their actions.