

**ANNOTATED LEADING CASES OF  
INTERNATIONAL CRIMINAL TRIBUNALS**

**VOLUME X:  
THE INTERNATIONAL CRIMINAL TRIBUNAL  
FOR RWANDA 2001-2002**

**André KLIP and Göran SLUITER (eds.)**

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André Klip and Göran Sluiter (eds.)  
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## PREFACE

This is the tenth volume in the series “Annotated Leading Cases of International Criminal Tribunals” and contains the most important decisions of the International Criminal Tribunal for Rwanda (ICTR) over the period from 1 May 2001 to 1 January 2003. It is the third volume in the series containing decisions of the ICTR.

At the time of writing this preface – August 2006 – the ICTR is fully engaged in its completion strategy. In a letter to the Security Council dated 14 December 2005, the ICTR President informed the Council that it is estimated that the cases involving the 26 accused whose trials are currently in progress will be completed from 2006 onwards. Trials of the up to 14 persons at large will commence in 2007 and 2008. On the basis of the information presently available, it is estimated that by 2008, the Tribunal would have completed trials involving 65 to 70 persons.

Whether the 2008 deadline is still realistic will also depend on the transfer of cases to national jurisdictions, either pursuant to Rule 11*bis* or outside the framework of Rule 11*bis* where no indictment yet exists. One reads in the December 2005 letter that some 40 cases were earmarked for transfer to national jurisdictions. In the particular context of the ICTR, one may envisage two important obstacles: respect for the rights of the accused, particularly when transferred to Rwanda, and the ability of national jurisdictions to prosecute genocide. It was with some surprise that we read in a Dutch newspaper that a case had been transferred to Norway, even though that country was said not to have not penalised genocide under domestic law and would thus prosecute the charged acts as ‘ordinary crimes’.

Even more so, the effective execution of the completion strategy will depend on the output of the ICTR itself. One notices that the present volume covers the period from 1 May 2001 up to and including 13 December 2002. In that period, a variety of decisions has been taken, including five judgements. However, only one of them concerns a trial chamber judgement, which appears quite meagre given the ambitions of the completion strategy.

The present volume is in its approach and structure similar to the previous eight volumes. Thus, the book contains the full text of all the decisions and judgements, including separate, concurring and dissenting opinions, as well as annexes to the decisions. As in the previous volumes, the editors have ensured that the decisions are fully identical to the *written* original text as issued by the ICTR Press and Information Office and which bears the signature of the Judges. We are aware that more and more decisions are available on the internet. However, only the written decisions bearing the signatures of the Judges can be considered authoritative versions. In the course of our editorial work on this and previous volumes, we have discovered inconsistencies between the written original version of the decision and the internet version, if the latter is available at all. Much of our editorial efforts consist in making the texts in this series identical to the written original version.

We could only include the full text of the decisions in this volume by reducing their original format. Still, we wanted the reader to be able to identify the page number of the original text, which is throughout the text put in brackets [ ]. We are again very happy that a number of scholars in the field of international criminal law were prepared to write interesting and stimulating commentaries to the decisions.

A few words regarding the selection of decisions may give the user insight into our working method. In principle we select all final judgements. In addition, we publish decisions taken at any stage of the procedure that are important for other reasons: because they deal with a specific legal question, because they are representative for a specific type of decision or because they enter new legal waters. Of course we cannot publish all decisions. As a result we may not publish decisions in which issues have been decided in a way similar or identical to a decision that has already been selected.

The decisions are presented over different parts and under different headings.



Part 1 deals with preliminary matters, arising essentially prior to the commencement of the trial. As in previous volumes, this part contains decisions on the jurisdiction of the Tribunal and concerning (the form of) the indictment. All those matters can be considered ‘usual’ pre-trial matters.

To a certain degree those pre-trial matters have become routine, which is evidenced by the fact that only three decisions are included. Nevertheless, the decisions included clearly mark the present stage of the ICTR’s development. The reader will notice that the *habeas corpus* decisions fall under the procedural matters for the purpose of this volume. The reason for this change – generally provisional release decisions are pre-trial matters – is that the decisions under review are not confined to the pre-trial stage.

Part 2 is entitled procedural matters and deals with a variety of issues, which can sometimes be categorised under a common denominator only with some difficulty. This is exemplified by heading 3, including decisions dealing with joinder, right to a fair trial and rights of detained persons.

Heading 4 then deals with the more familiar group of decisions related to *habeas corpus*. However, the decisions are not confined to provisional pre-trial release, but deal with a variety of *habeas corpus* matters, which illustrates the richness of ICTR practice and also its particular working context.

Under heading 5 the reader will find decisions dealing with various aspects of legal assistance to the accused person and the broader right to an effective defence. The rights of the defence under international criminal law are constantly evolving. Fortunately, the issues become more and more transparent via the increasing body of jurisprudence. The issues were so diverse that we have invited two commentators for the decisions under this heading.

The recurring problems pertaining to witnesses and evidence, and disclosure – important battlefields in international criminal law – can be found in the decisions set out under headings 6 and 7.

Heading 8 then concentrates on a matter that has long been neglected but surprisingly – in light of the compelling completion strategy – now receives more and more jurisprudential attention, namely contempt of court. The decisions under this heading not only illustrate the hard fought adversarial nature of the ICTR trials, but are also indicative of the difficulties attached to applying the ICTR contempt law in practice.

Heading 9 deals with the question of finality in criminal law, *res judicata* and adjudicated facts, as a separate category. In light of compelling demands as to the expediency of international criminal justice – again inspired by the completion strategy – this matter may be expected to become increasingly interesting.

A novelty in our ICTR volumes is heading 10 containing two ‘Rule 98bis-decisions’, dealing with motions for acquittal half way through the trial. One of these decisions has been taken orally. Given its importance, we had to insert the relevant parts of the transcripts. This is again an interesting new part of ICTR case law, raising interesting questions as to the precise scope and meaning of Rule 98bis, particularly its relationship to the final judgement.

More familiar is Part 3 and heading 11, recurring in every issue so far (apart from volume 9 where this stage has not yet been reached): judgements. Four appeals judgements have been included: *Musema*, *Akayesu*, *Kayishema* and *Ruzindana*, and *Bagilishema*. We also included the Trial Chamber’s judgement in the latter case, *Bagilishema*. This illustrates the expeditious work of the Appeals Chamber, but also – to be honest – the fact that the appeals generally did not impose great legal difficulties for the Appeals Chamber.

The productivity of the *ad hoc* Tribunals makes it difficult to keep up with them, in terms of publication of their most important decisions. This volume will therefore soon be followed by volumes 11 and 12. Volume 11 will contain decisions taken by the ICTY and in volume 12 we return to the ICTR. In volume 9 we have already expanded our horizon with decisions taken by the Special Court for Sierra Leone.

In volume 13 we intend to continue that path by publishing the most important decisions taken by the East Timor Special Panels.

We owe acknowledgements to many persons without whom we could not have completed this tenth volume. These include our publisher Intersentia, in particular Hans Kluwer and Isabelle van Dongen, our student assistants Thom Dieben (Maastricht University) and Denis Abels (University of Amsterdam), who both assisted with the corrections of the text and other editorial work. Rosette Muzigo Morrison and the ICTR Press and Information Office have helped us to obtain the hard copies of all decisions. Steven Freeland from the University of Western Sydney, Australia, offered tremendous help by correcting our English. Last but not least, we wish to thank the distinguished authors for their commentaries to the decisions.

In respect of our highly valued authors, the sad news reached us that Gregory Lombardi passed away in Arusha, Tanzania, on 26 March 2006. Greg wrote commentaries for volumes 4 and 5 (together with Michael Scharf) and volumes 6 and 8, before he started working for the ICTR Prosecutor. His commentaries all displayed impressive academic skills and talent. He served the cause of international criminal justice by providing what was truly needed; positive and critical commentaries. He had a keen eye on and sense for fairness of criminal procedure as the backbone of a long-term credible international criminal justice system. We truly enjoyed working with him. He will be greatly and sadly missed by the academic community. Our thoughts are with his wife Christy and his son Cole.

We hope that this volume will contribute to the further dissemination of the important work of the ICTR and that it will provide access to its decisions to practitioners, academics and students.

André Klip and Göran Sluiter  
Maastricht/ Amsterdam, December 2006