LEGAL RECORDKEEPING IN AN AFRICAN CONTEXT – THE CASE OF THE RWANDAN GENOCIDE ARCHIVES

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Abstract
Ten years on from the horrors of the civil war in Rwanda in 1994, the International Criminal Tribunal for Rwanda [ICTR] has come a long way in terms of its recordkeeping practices. In four years since 2000 many innovative and sustainable practices have been adopted. The main focus of the work of the Judicial Records and Archives Unit has been to provide a service based on satisfying the users' requirements. The court proceedings are the raison d'etre of the work of all staff at ICTR. We have developed some innovative and feasible solutions to practical problems. This article sketches some of the challenges we faced in managing records of ICTR.

Legal recordkeeping in an African context – the case of the Rwandan Genocide Archives

The issue of specialisation within the recordkeeping and archival profession is one that has intrigued many of us. It has seemed to be the case that it was something of an artificial construct to propose the notion that there was in fact a medical, architectural, legal or any other type of specialisation within the recordkeeping profession. Was there ever any theoretical difference between these areas of information management? Is recordkeeping not just recordkeeping whether one was located in Arusha, Washington, Ljubljana, or Singapore? Is recordkeeping not just recordkeeping whether one is dealing with military, industrial or personnel records? The simple answer may be that yes there is overall conformity as far as theoretical principles are concerned but that a subtle distinction can be made in the case of some specialisations such as legal recordkeeping. To further the distinction it is suggested that the recordkeeping practices at the International Criminal Tribunal for Rwanda [ICTR] are in a way an African inspired solution to the unique issues faced by this judicial institution. The Rwandan genocide of 1994 has left a huge impact not only on that country but also on many neighboring countries in terms of refugees and border instability. The ICTR has developed into a first class organisation in many respects and the information management regime now in place is one that can be sustained for present operational requirements as well as for future generations.

Globalisation is a multi-faceted phenomenon. An international criminal justice recordkeeping tradition is emerging in part due to globalisation of the justice process. It is emerging because there are some unique issues that need to be addressed when creating and maintaining the records of international criminal justice cases. The Registrar of the ICTR has spoken eloquently on the mood of an international community that will no longer stand by to watch so-called internal conflicts result in the deaths of innumerable of the citizens of nations in turmoil (Dieng 2001). Recent examples abound with international intervention since the horrendous events of

1994 in Rwanda. The United Nations admits that it was at fault to a certain degree when it withdrew from the Great Lakes nation in 1994 in an era when international interventionist policy was being pared back after the televised drama of Somalia. [1] More recently, Sierra Leone and East Timor are examples of what the international community under the auspices of the United Nations can do. In East Timor the United Nations (UN) Prosecutor-General of UN Transitional Administration in East Timor (UNTAET) has already filed several indictments [2] and preparations are well advanced for the establishment of the Special Court for Sierra Leone. [3]

The other fundamental issues surrounding recordkeeping in this environment are historical revisionism, the value of records, and melding different and varied national systems into one global body of jurisprudence and legal practice. On the issue of revisionism and the concept of minimisation of the evidence, it has been said, “As every attorney knows, it is often easier to create doubt and win than it is to prove what actually took place” (Totten, Parsons & Charny 1997:xxi-xxii). The concept of burden of proof and evidential value of the ‘record’ should be the fundamental raison d’être of any recordkeeping program in the legal field. On the point of melding into a homogenous entity people from all over the world, the Prosecutor of the ad-hoc Tribunals Mme Carla del Ponte remarked,

> Holding together an international team of lawyers is itself no easy feat. Their methods of working and their approach to evidence are so different that forging a mutually accepted legal process is highly challenging. Lawyering can be a frustrating business in the bureaucratic milieu of the UN, whose rules must be respected by the tribunals (Kennedy 2002).

If one takes time for a moment to look back at where the current basis for international criminal justice recordkeeping has come from then one sees a relatively short history. The following examples are merely indicative of what has gone before and other developments in the field apart from the two ad-hoc Tribunals of ICTR and the International Criminal Tribunal for the former Yugoslavia [ICTY].

The United Nations Convention on the Prevention and Punishment of the Crime of Genocide adopted in December 1948 states in Article 1: that The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish. [4] It is upon this basis that the current international courts are based. The soon to be established permanent International Criminal Court [ICC] will also have as one of its founding principles this UN Convention. In the words of Boutros-Boutros Ghali when he spoke of the events in Rwanda in 1994:

> We are all to be held accountable for this failure, all of us, the great powers, African countries, the NGOs, the international community. It is genocide.... I have failed.... It is a scandal. [5]

Sentiments such as these galvanized the opinion of the international community at the time to do something to prevent this from happening again. It is undeniable that the events of 1994 in Rwanda were of the basest kind. Man’s inhumanity to man was unfortunately highlighted once again. Figures of between 500,000 and 1,000,000 are routinely quoted for the number of Rwandan citizens killed during a period of 100 days. The crash of an aircraft carrying the Rwanda and Burundi presidents was the spark that ignited the fury of internecine conflict. Of course, the incidents of such

internalised hostility were not new in Rwandan recent history. What made these events more tragic was that the international community could have done more to prevent these events from degenerating into such a frenzy of mass killing.

So it is that crimes such as extermination, attempted or otherwise, crimes against humanity which includes the crime of rape, acts of mass atrocities, complicity to commit genocide and also incitement to commit genocide are all punishable in the context of international criminal justice. The records of any organisation dealing with such crimes will be directly related to a specific judicial process and this judicial process, which is still forming, is a complex and in certain circumstances, can be an extremely long one. The records of these proceedings are usually compound records in various formats and on different media. Dispersion of records can easily occur due to the many distinct phases in the process of their creation. The initial trial phase records could be deposited in archives when a review is called for, and another phase in the judicial process is begun. These linkages and relationships need to be established and maintained over time. This is what is unique about the records of international courts dealing with genocide and other crimes against humanity. The records will relate directly to the accused person or group of people.

The Malta Tribunal and the Armenian Genocide records: "The forgotten genocide"

The points raised about dispersion and the potential fragility of these unique international criminal justice records is highlighted by the records of the Armenian Genocide of 1915 in the Ottoman territories of present day Turkey and Georgia. One such document states, "it appears that a campaign of race extermination is in progress under a pretext of reprisal against rebellion. [6] There is little doubt that a violent and horrendous sequence of events occurred in 1915 that caused the deaths of a large proportion of the Armenian population. However, the point here is that many documents upon which the genocide is documented are from the collection of United States and British archival resources. The documentary evidence of the genocide is very tenuous. The documentary evidence available today is contradictory. To this very day a fierce battle of words rages between all parties involved.

The post-World War I Peace Treaty of Sevres required the Ottoman government to hand over to the Allied Powers people accused of what were termed "massacres." One hundred and forty-four Ottoman officials were arrested and deported to the island of Malta for trial by the British. Access to Ottoman records was unfettered as the British and French occupied and controlled Istanbul at the time. The investigators revealed a lack of evidence demonstrating either sanctioned or encouraged killings of minorities. At the conclusion of the investigation, the British Procurator General determined that it was "improbable that the charges would be capable of proof in a court of law", and exonerated and released all 144 detainees. [7]

Nuremberg and Tokyo 1945-48

It is understood that the events of 1939 to 1945 in both the European and the Asian theatres of war were at times unbelievable. Brutality on a massive scale and the

concept of a ‘total war’ was relatively new to humanity. As with most armed conflicts, atrocities were committed on both sides. The winning side was, however, able to dispense its own justice for whatever reason on accepting the surrender of the losing antagonists. [8]

The Nuremberg and Tokyo War Trials were momentous in that they were the first attempt at an international type of criminal court. They were extremely specific, both had one aim, and that was to prosecute those responsible for the acts of aggression that led to the Second World War. Once that objective had been achieved, they were disbanded. In a sense they were similar to the two current ad-hoc criminal tribunals but the major difference is that the ICTR and the ICTY are both closely aligned with the developments surrounding the establishment of the permanent International Criminal Court [ICC]. The surviving archival record of the proceedings from Tokyo and Nuremberg has become a valuable research tool for many of the current practicing lawyers at both the ICTR and ICTY. This indicates that from the late 1940’s to 1993 or 1995 [9] there were no other instances of criminal justice on an international scale. [10] Precedents are of a vital nature to legal proceedings and this is the case now at the ICTR where judgments and decisions refer on a regular basis to the events and judicial rulings and decisions of Nuremberg and Tokyo. [11]

The fate of the records of Nuremberg makes quite an interesting story in its own right. One group of personal papers and records kept by Gen. William J. "Wild Bill" Donovan during the Nuremberg trials of Nazi war criminals are now housed in the Cornell Law Library, of the Cornell University. The Avalon Project of Yale Law School has made the bulk of the records available on the Internet. The International Court of Justice [ICJ] in The Hague and NARA in the US [12], house the archival collection of records from The Nuremberg trials. Then the PRO in the UK holds the records about the imprisonment of Rudolf Hess in Spandau Prison, Berlin, Germany. [13]

The records of the trial proceedings, any appeal and the judgments and decisions should naturally form the basis of the case files. Records of transfer and detention should also form a part of the case file. This is particularly important if the case were ever to be reheard or reopened in a future court hearing. If the person was pardoned or released early; all these records should form part of the case file. In the case of Nuremberg at least it was not seen as one ongoing case from indictment and arrest to eventual release or death in detention. This is the crux of the matter as regard to the case files of international criminal justice. The ‘case file’ is an amalgam of various and varied formats and media. The challenge is to bring together these, at times incongruous elements into one homogenous whole. Researchers to this day find it difficult to consult both the Nuremberg and Tokyo records. It is hoped that the trial records of both the ICTR and ICTY with all its components will be accessible at one location and using one system of intellectual control. [14] This point should drive the archival custody of these records and be the crux of archival access policy once the two ad-hoc tribunals have completed their mandated work.

ICC, ICTY, ICTR, East Timor

As international criminal justice is a relatively new phenomenon there are few

procedures and principles in place to guide the recordkeepers of these institutions. Both the ICTY and the ICTR have Rules of Procedure and Evidence [RPE], which have developed over time. They are still being refined and each year both Tribunals hold plenary sessions to fine-tune these RPE. On recordkeeping aspects, the RPE are detailed or specific [15] only to a certain point. This is understandable given that the RPE is a high level document. The Directive for the Registry of the ICTR – Judicial and Legal Services Division, Court Management Section is more specific when it stipulates in Article 7, Paragraph 2 that all staff are under a duty of confidentiality not to reveal any non-public information which they have access to; Article 9: The Court Management Section. Among other duties the Section shall be responsible for confidentiality of any non-public documents and records; Articles 10 to 33: All of these articles refer in one or other way to the handling, storage and access to judicial documents. In particular Article 14 on the principles governing management of confidential documents and Articles 32 and 33 on public access to the archives; and Article 52: Inter-sectional management of the Tribunal's web-site. Public documents shall be made available via the Internet.

There is little common ground between recordkeeping practices of the ICTR and ICTY. This is not necessarily a negative situation. Both tribunals have different recordkeeping requirements, which have developed in relative isolation for up to nine years. It is not feasible technically, operationally or financially to now say we have to converge our systems. There is acknowledgement of this situation from high levels of both tribunals. Effort is being made to ensure more harmony between future developments.

The International Criminal Court [ICC] in The Hague, is now an operational organisation and according to their website they are already investigating certain issues such as the conflict in the Democratic Republic of Congo and in Uganda. Fortunately many staff members from both the ICTY and the ICTR have joined the new ICC and will bring with them a wealth of knowledge on a wide range of matters including recordkeeping practices.

Special Court for Sierra Leone, Cambodian Tribunal and other possible international judicial bodies

Fortunately, it has transpired that the UN is still involved in establishment of the Cambodian Tribunal. [16] There was concern in mid-2002 that due to politically motivated reasons on the part of the Cambodian authorities, the proposed tribunal was not going ahead. The earlier Cambodian Genocide Tribunal of 1979 has left researchers with records of the Cambodian national prosecution of Khmer Rouge suspects. [17]

The Special Court for Sierra Leone [SCSL] is now fully operational. Although the Special Court for Sierra Leone is quite dissimilar to the current two ad-hoc tribunals for Rwanda and the former Yugoslavia, recordkeeping principles will again have to be rethought in the light of a national jurisdiction having input into the operations of the court. Prior to the civil war in Sierra Leone the country had a well-established tradition of British-based civil service recordkeeping. Now there are few traditions on which to build. There is much work being undertaken to ensure that there is a

degree of cooperation between the ICTR, ICTY and SCSL. These are the beginnings of an established international criminal jurisprudence based recordkeeping regime. There are enough practitioners from which to build further on the already excellent work in this area. The field is still emerging but a solid foundation has already been laid.

There has been a certain level of discussion on a possible Tribunal for the Democratic Republic of Congo and even Burundi. The Lusaka Agreement of August 1999, signed by all parties of the conflict in the Democratic Republic of Congo, has explicitly stated that the ICTR should deal with 'genocidaires' of that conflict. [18] However, given the recent statements of the United States with regard to the proliferation of these international judicial organs it seems unlikely that anything will come of the discussions or agreements for more ad-hoc or separate courts outside of the ICC framework. The current line of thinking being put forward by the United States is that control of justice should be given back to the national jurisdictions involved (Bravin 202).

Electronic records management systems at ICTR

In order to manage the large number of legal documents that were being generated, ICTR wisely decided to procure and implement an Electronic Records and Document Management Solution called Tower Records and Information Management (TRIM). Since the installation of the new system, physical records have been scanned and registered into the database for the purpose of efficient sharing and distribution in the organization. Further improvements were implemented to allow members of the public access to the judicial database from the Internet at the ICTR Web-site. One of the obstacles experienced was in the fact that professionals and legal staff at the ICTR relied so much on physical paper documents that the transition to a computer-aided delivery of records was often inhibited. Inadequate technology resources, computers, scanners, bandwidth, and skilled engineers presented an even bigger problem. Despite the problems, a lot has been achieved in terms of records and activity automation. Most staff are able to utilize the network resources and search for documents required more easily and securely and in the process, the Database has evolved into the corporate memory of ICTR.

The plan for future improvement is based on the need to improve overall efficiency in the creation, storage and delivery of records accurately and securely. Hence, workflow has now become a key word in the current improvement exercises. Records automation would move from its original archival function to importantly the "use" requirement introducing publishing, version and revision control, collaboration and many other concepts not traditionally considered records management functions. As a result, it is believed that activities like document translations, redactions, and vetting, would benefit a great deal. Also in the pipeline is the implementation of electronic filing of documents by parties by remote access and also through the Internet. It is hoped that with the extension of the system to allow e-filing while providing remote access would improve the quality and speed of delivery of the judicial processes at ICTR.

In order to achieve these objectives effectively, the system would be tightly

integrated to record making and information processing applications, for example, Word Processing, Presentation, Spreadsheet, Email, Imaging and other Line of Business applications commonly used at ICTR.

The Legal Records of ICTR

The importance of legal and judicial records can never be over-emphasized. The legal and judicial records are the bedrock on which the judicial service in any country is built and constitute the main administrative tools through which court decisions are determined. Compared to other kinds of records, legal and judicial records are more likely to have self-evident continuing primary values as evidence of rights and obligations, which may endure long beyond the lifespan of those who created them (Twining & Quick in Musembi 1999). In this case, the key issue in legal and judicial record keeping is not the protection of records alone but the provision of justice and the maintenance of an administrative environment that respects and upholds the rule of law.

In ICTR the Judicial Records and Archives Unit (JRAU) was established in mid-1998 with the purpose of taking an integrated "continuum of care" in management of legal records so as to facilitate the requirement of the judicial process. Structurally, the JRAU is under the Court Management Section (CMS) of the Judicial and Legal Services Division of the Registry and as such, it is charged with the management of the Court Management Section recordkeeping systems (CMSRKS). [19]

Like other sections of the Tribunal, the JRAU started with an ad hoc system of recordkeeping coupling with problems of qualified staff and infrastructures in place. Over time it has managed to put in place an electronic recordkeeping system based on core functions within an ICTR judicial setting as its long-term records management strategy. It is worth mentioning that the JRAU has developed a records management program with interface between the paper and electronic records not only for backup purposes but to protect the rights of the accused and for secondary research and historical reasons.

The CMS RKS is a hybrid system, using TRIM software to manage its electronic component, and represents a true recordkeeping system in use at the Tribunal that has been designed and developed with input from recordkeeping professionals and other stakeholders (Connelly-Hansen 2001). Apart from the TRIM databases [internal and external 'public'] there are numerous other systems used for budgetary, research and statistical purposes, which are maintained by JRAU staff.

Electronic records systems are more than simply a combination of computer terminals, screens, printers and software. They also require a complex infrastructure consisting of specialised staff, agreements to provide servicing and spare parts and above all the systems that have to protect, authenticate, migrate, and make accessible legal records in digital format more efficiently. The digitisation of the ICTR archives holdings by using the TRIM software is but one step in the process of improved access, enhanced preservation of the records and provision for easier research upon the completion of the Tribunal's mandate. In other words, the introduction of electronic records in Judicial Archives was one mechanism for

ensuring that the accused were protected, tried and judged fairly for 'delayed justice is denied justice' just as 'hurried justice is buried justice'.

It is a fact that no reforms can be fully effective without capable personnel to manage the programme. The continual refinement of the work of the JRAU is a product of teamwork of the JRAU staff under the direction of the Chief Archivist. The Unit staff are a cocktail of many components of national work practices with heavily African-influenced and East African-taught paraprofessionals making up the bulk of staff (Adami 2002). The point in question is that, while the manner in which the records are created, processed, stored and used differs from country to country and from one geographic region to the next, Commonwealth countries in Africa share a common administrative and records management / archival heritage. To this extent, the structures and functions of government departments are similar as are the registry systems, which receive, process, store and make information available to the administrators. Most of the Archives staff are experienced and trained personnel from the national archives and national courts of justice in Eastern Africa. This is again an added advantage to the Unit's success story.

Access to legal records is the right of the public and they must be made accessible in a timely and efficient manner. In an environment where court records cannot be easily accessible, or where the incidence of missing and lost files is a common occurrence, we cannot expect efficient administration of justice. Access to judicial records is provided electronically to all ICTR stakeholders by using the TRIM system which has capability to perform both keyword (thesaurus) and free text searches ontitles. Whereas the internal staff can access all the judicial records through TRIM, remote external users can access the public judicial records via the Internet (e-Drawer) in the ICTR website and a recordkeeping metadata standard which is based largely on that of the National Archives of Australia standard. In fact TRIM created yet another bridge of communication between the ICTR and the public. In this case, the judicial records are widely viewed and used as research material in many academic fora.

Legal records management training

In March 2000 the Registrar of the ICTR restructured the Court Management Section [CMS] of which the Judicial Records and Archives Unit is part. This was in an effort to streamline some work practices that hampered efficiency rather than assist it. As a direct result, training was given a higher priority and work began on identifying the training needs of the CMS. Education and training in recordkeeping issues is an important component for sustainability of any information management program. No reform can be fully effective without effective and continuous training for personnel. In ICTR we have realised that for a records management program to succeed effectively, training should not be limited to recordkeepers but extend to all records creators and users, including judges, lawyers, clerks, and others responsible for legal and judicial records. The training efforts were made to ensure that the archival staff dealing with the implementation and maintenance of the CMSRKS was equipped with the appropriate skills and experience to carry out their roles and functions.

A detailed plan was formulated and a training facilitator was selected. The International Records Management Trust [IRMT] [20] was almost an obvious choice as they had previously undertaken much work in training provision within Africa. The focus of the training was to be 'legal records management'. The training was delivered in three phases. The initial phase was begun in September 2002 with two trainers coming to Arusha to undertake a one-week introduction to the program. Twenty-seven staff participated in the program, which was officially opened by the Registrar. Phase Two was designed as an on-line program with assignments set for group and individual work. This second phase was completed at the end of January 2003. To wrap-up the program, Phase 3 was a four-day summarizing session to bring together all the concepts and theories discussed over the previous five months. Six judges and the Deputy Registrar presided over the closing session.

The first phase of the course was developed and presented during face-to-face seminars and workshops. It gave an overview of the principles governing recordkeeping theory, legal terminology, judicial systems, ethics in recordkeeping, the 'records continuum', electronic record keeping as well as other related topics. The second phase learning focused on building up practical skills to staff by examining in detail the Phase One topics. The last phase included a briefing for senior managers on the business role of information management and provided a forum to look for a way forward.

The outcome of the legal records management training programme was multi-faceted. The ICTR now has a group of recordkeepers who speak and understand a common professional language. There is an understanding of how the recordkeeping function fits into the overall work of the ICTR. The legislative basis of their role was clarified. The recordkeeping staff understands the main theories involved in managing legal records. How they differ from other administrative records. The recordkeeping staff knows that their work is important in the context of passing on to future generations the fruits of the work. The archival aspects of their work were clarified and explained in detail. Issues to do with preservation and migration over time were dealt with in assignment work.

Due to a special briefing session presented by the trainers, senior management was sensitized to the concepts of information management and increased efficiency. The theme was 'knowledge management' and the business role of records management. Overall visibility of the Judicial Records and Archives Unit was increased by attendance of most judges of the ICTR at the closing certificate awarding ceremony. In addition, several reports were published internally to make other staff aware of the training.

What can best practice recordkeeping do for the Rwandan Victims of 1994?

According to some observers (David in Adami 2003) by making publicly available the records and documents of the ICTR one will address several very important issues. These issues are central to the Rwandan community or in another sense the 'victims'.

- Catharsis: for those who remain, for those who lived the ultimate evil, for those who despaired of seeing the world react, the ICTR becomes a

tremendous place to speak. Mourning becomes possible.

- Memory: the ICTR is a unique way of fixing in history the unbearable narrative of baseness of which man is capable. It has at its disposal the means, of which a historian could only dream, by which to establish and clarify in all its horror the sordid reality of the Rwandan genocide and the indifference of what is sometimes called the "international community".
- Teaching: the jurisprudence of the ICTR is and must be a "treatise on behaviour for use by younger generations" (Vaneigem in Adami 2003), for use by all generations, even if we best not get carried away with its educational potential. The Nuremberg and Tokyo judgments could not prevent the subsequent massacres of millions from all parts of the globe.
- Law: the most normal but not the least task of the Tribunal is to serve as a touchstone for the development of international humanitarian law. The jurisprudence of the Tribunal helps give content to terms whose meaning has tended to be lost in the subjectivity of each person's personal experiences, terms that no-one had ever really sought to codify or define inasmuch as it seemed intolerable to want to codify or define notions like rape, persecution or inhuman, cruel, humiliating and degrading treatment. On a more technical level, the decisions of the ICTR are the expression of a procedural law. From this must be born a form of international criminal procedure to influence the system of procedure of the International Criminal Court and, in the longer term, perhaps to lead states themselves to rethink certain aspects of their own procedure.

The ICTR performs the four major tasks outlined above at the same time. It is from these variations on the theme of genocide – in which the voices of accuser and accused, of witnesses and victims, of judges last of all, moulded into one – that a judicial truth, unique but reproducible in the future, can be born. This is the prize to be won and what justifies the Tribunal's existence. It is this that underpins the desire of those responsible for this collection to distribute its fruits.

Conclusion

It is the case that one can say that records management and also archival practices at the ICTR are assisting genocide victims to get justice and to aid the reconciliation process within that country. One can safely make this claim because compared to just three years ago we have moved ahead in great strides in expanding the previously limited access regimes in place. Our public judicial records are now accessible to the public through our web site, granted that a large number of Rwandans are illiterate and cannot use or even access the Internet. The access system is now in place to provide the informational resource for future generations of Rwandans if not the citizens of today. More importantly, aspects of our audio-visual collection, through the ICTR's Outreach Program in Rwanda, are a vital link as a means of spreading the word of our work in a graphic way. Information dissemination in Rwanda is a difficult prospect given that the country has such a limited mass media infrastructure and such a large proportion of the population who are illiterate.

Therefore anything that the Tribunal in general and the Judicial Records and

Archives Unit more specifically can do to ensure long term preservation and access to these important documents is a positive step forward for the citizens of Rwanda for generations to come. These achievements have been carried largely unheralded and within the framework of the records continuum. The continuum model demands that we meet current and future community expectations through professional recordkeeping and meet daily operational requirements of the ICTR.

The development of international criminal justice records management and archival practice is still ongoing. It probably does not even exist as such as a definable sub-set of the larger records management or archival profession. Is it even something that we can highlight as having a very particular and specific methodological approach compared to medical, scientific or even general legal records management practice? International criminal justice recordkeeping practice will have certain dimensions of its work, which will be unique. To this end one can point to certain individual and isolated developments from the past decade or so. These include the nature of the records themselves; records of protected witnesses, rules on evidential qualities of records in an international framework, exhibits of horrific and graphic events [both physical and audio-visual], and the post-sentence administrative records of the accused who may be sent to third countries to serve their sentences. The accused may remain in detention for the rest of the lives, which may be up to 40+ years. The separations of what theoretically is the one distinct file into many constituent parts posses a potential dilemma. The maintenance and possible reconstitution of the compound records into one homogenous 'case file' should be a goal of any recordkeeper. It is already technically possible to establish the distributed management of a single file but it is not something that happens in many other contexts. Hopefully the permanent International Criminal Court will have more resources to investigate these issues further.

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Endnotes

1. The ICTR public records database at http://www.ictr.org contains copies of the US State Department documents on Rwanda. To access them perform a 'title word' search using the term 'declassified'. Also, see comments by Koffi Annan "While the genocide in Rwanda will define for our generation the consequences of inaction in the face of mass murder, the more recent conflict in Kosovo has prompted important questions about the consequences of action in the absence of complete unity on the part of the international community." Secretary-General's Annual Report to the United Nations General Assembly, September 20 1999. http://www.globalpolicy.org/secgen/sg-ga.htm See also the information at http://www.willum.com/articles/information19nov1996/ on the controversy surrounding the detail of UN knowledge about events leading up to the 100 days of civil war in Rwanda from April 1994.
2. In late 2001, the UN Transitional Administration in East Timor (UNTAET) Prosecutor-General in the territory's capital, Dili, filed the first indictments containing charges of crimes against humanity committed in East Timor. The indictments were presented before the Dili District Court's Special Panel for Serious Crimes. The indictment accuses eleven persons of committing crimes against humanity, including murder, torture, deportation and forcible transfer of civilian population in Los Palos between 21 April and 25 September 1999.
3. The Special Court for Sierra Leone [SCSL] will not be like the ad-hoc Tribunals for Rwanda and the Former Yugoslavia. It will be fully integrated with the judicial system of Sierra Leone. The SCSL is not a UN organisation. This is a direct attempt to give ownership of the judicial process to the people of Sierra Leone with international assistance. There was a UN sponsored planning mission to Sierra Leone in January 2002 to 'lay the groundwork for the Special Court' according to the Terms of Reference of Planning Mission document prepared by Office of Legal Affairs, UN HQ.
4. See http://www.hrweb.org/legal/genocide.html for the full text of the Convention
5. United Nations Secretary General Boutros-Boutros Ghali at http://www.rudyfoto.com/RwandaQuotes.html.
6. Extract from document RG59, 867.4016/76 of US, NARA Record Group 59,

Records of the Department of State. Decimal File 867, Internal Affairs of Turkey.

Decimal File 860J, Internal Affairs of Armenia.

7. See http://www.turkey.org/politics/facts.htm.
8. Many reasons have been put forward for why certain decisions were made on

who was to stand trial and who was to be set free. Political, humanitarian, even personal reasons were probably involved in deciding how the justice of a victorious side was to be handed down. The Australia government did not readily accept the exclusion of the Emperor of Japan from any proceedings.

9. The ICTY was established by Security Council resolution 827, which was passed on 25 May 1993, and resolution 955 of 8 November 1994 established the ICTR. The Nuremberg trials of the International Military Tribunal [IMT] began in November 1945 and indicted 22 individuals it ended 11 months later in 1946. The Tokyo Trials of the International Military Tribunal for the Far East [IMTFE] began on May 3 1946 and lasted two and a half years when in November 1948 all of the 28 'Class A' defendants were found guilty. It should also be noted that around 5000 Japanese defendants were prosecuted by other courts established by various Asian nations and up to 900 were executed. Notably the Manila trials were responsible for prosecuting Generals Yamashita and Homma.

10. One of the main reasons that this was the case was the Cold War climate of distrust among the permanent members of the Security Council. It was unthinkable that the United States, Great Britain or France and the Soviet Union or China could have agreed to establish an international criminal justice organisation to prosecute those responsible for crimes that were of a grave nature or crossed national jurisdictions.

11. See The Prosecutor versus Jean-Paul Akayesu [ICTR-96-4-T] Judgement of Trial Chamber 1 of 2 September 1998 "Paragraph 486. Article 6(3) of the Statute deals with the responsibility of the superior, or command responsibility. This principle, which derives from the principle of individual criminal responsibility as applied in the Nuremberg and Tokyo trials, was subsequently codified in Article 86 of the Additional Protocol I to the Geneva Conventions of 8 June 1977."

12. See NARA National Archives Collection of World War II War Crimes Records (Record Group 238) 1933-50 (bulk 1943-50) 2,220 cu. ft. 238.2 RECORDS OF THE OFFICE OF THE U.S. COMMISSIONER, UNITED NATIONS WAR CRIMES COMMISSION 1943-48 7 linear ft. History: Established in London, 1943, following the establishment, also in London, of the United Nations War Crimes Commission (UNWCC), by agreement of representatives various governments. Office of the U.S. Commissioner, and like offices of the other UNWCC members, submitted information to UNWCC on war crimes allegedly committed against their respective nationals. UNWCC, in turn, determined whether enough evidence for a case existed and periodically reported its findings to the member governments. Far Eastern and Pacific Subcommission of UNWCC established in Chungking, China, October 11, 1944. Pursuant to inactivation of UNWCC, May 1948, Office of the U.S. Commissioner officially abolished, May 15, 1948, with records placed in the custody of the Department of State.

13. See PRO record series "FCO 33/1161 1970 Imprisonment of war criminals in Spandau prison - Rudolph Hess; Also FCO 33/1162 1970, FCO 33/1163 1970, FCO 33/1164 1970

14. The judicial records of the ICTR comprise; the first instance trail stage [public and under seal documents], any appeal on merits and interlocutory appeals, the audio-visual records [audiotape, CD-ROM with digital sound files and videotape recordings of trial proceedings and witness testimony], the exhibits, the transcripts of hearing, and records of transfer for detention. The case file records should continue to include the records of administration of the sentence, and any subsequent release

or re-opening of the case. It should also include the witness record which are not currently part of the case files, defence lawyers records [administrative and judicial] and also the records of the Presidents' and Registrars' offices. Only in this manner can an overall picture be drawn of the administration of justice within the organisation.

15. The RPE for ICTR state among other things "Rule 32: Solemn Declaration. All staff members of the Tribunal are required to solemnly declare that they will carry out their duties and functions in all loyalty, discretion and good conscience. This would include ensuring security of any sensitive information; Rule 36: Record Book; Rule 41: Preservation of Information [prosecutors evidence]; Rule 43: Recording Questioning of Suspects; Rule 47: Submission of the Indictment by the Prosecutor. All indictments will be kept under seal subject to Rule 52 and 53; Rule 81: Records of Proceedings and Preservation of Evidence. A full and accurate record shall be kept of all proceedings. Any closed sessions will be kept under the application of Rule 79." See the full RPE at http://www.ictr.org.

16. There are numerous references such as http://www.globalpolicy.org/ on the history of negotiations between the Cambodian and UN authorities on the establishment of a Tribunal to prosecute the Khmer Rouge leaders deemed most responsible. In Feb. 2002, the UN has stated that it has reached an impasse with regard to negotiations and that it sees no scope for impartiality of any court if its suggestions on administration and jurisdiction are not heeded.

17. In January 1979, former Khmer Rouge functionaries overthrew the Pol Pot government, with substantial assistance from the army of Vietnam. In August 1979 a special court, the People's Revolutionary Tribunal, was constituted to try two of the Khmer Rouge government's leaders, Pol Pot and Ieng Sary. The charge against them was genocide as it was defined in the UN's genocide convention of 1948. Both men were tried in absentia as they were on the run in the Cambodian jungle leading the Khmer Rouge in a struggle to regain power. The trail records of the Genocide Tribunal remain in the Cambodian National Archives. Access restrictions are extremely tight on these records and permission is required from the Council of Ministers to consult them.

18. Chapter. 8.2.2 PEACE ENFORCEMENT -- A. Tracking down and disarming armed groups; B. Screening mass killers, perpetrators of crimes against humanity and other war criminals; C. Handing over "Genocidaires" to the ICTR." and "Chapter 9 - disarmament of armed groups. 9.1 the JMC with the assistance of the UN/OAU shall work out mechanisms for the tracking, disarming, cantoning and documenting of all armed groups in the DRC, including ex- FAR, ADF, IRA, UNREFIL, Interahamwe, FUNA, FDD, WNBF, UNITA and put in place measures for – A. Handing over to the un international tribunal and national courts, mass killers and perpetrators of crimes against humanity; http://www.congorcd.org/political/ceasefire.htm .

19. See http://www.ictr.org for a detailed organogram of the JRAU within CMS.

20. See http://www.irmt.org for more information on the training provided by IRMT in Africa.