



Remarks on the Status and Future of State Cooperation with the ICTR

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Overview

In November 1994, in response to the genocide and mass atrocity committed in Rwanda, the Security Council established the ICTR “to prosecute persons responsible for serious violations of international humanitarian law”.¹ Pursuant to its Chapter VII powers, the Security Council required member states to cooperate fully with the Tribunal including by taking “any measures necessary under their domestic law” to meet their obligations towards the Tribunal.² Article 28 of the ICTR Statute obligates states to “cooperate with the Tribunal . . . in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.” States must “comply without undue delay” with any request for assistance or Trial Chamber order in the areas of:

- (a) the identification and location of persons;
- (b) the taking of testimony and the production of evidence;
- (c) the service of documents;
- (d) the arrest or detention of persons; and
- (e) the surrender or the transfer of the accused to the Tribunal.³

As a general proposition, the obligation of States to comply with requests from the Tribunal stems from membership of the UN. All members of the UN are bound by the principles of the UN Charter and are required to “*give the United Nations every assistance in any action it takes*”

¹ Article 1 of the ICTR Statute (herein “ICTR Statute”) annexed to UN Security Council Resolution 955 (1994)

² Resolution 955 (1994), p. 2, ¶ 2. The cooperation of member states in the tracking and arrest of fugitives has been reiterated in subsequent UN Security Council Resolutions notably S/RES/978 (1998), S/RES/1503 (2003) and S/RES/1534 (2004).

³ Article 28 ICTR Statute

in accordance with” the Charter.⁴ Additionally, under Article 25 of the UN Charter, Members agree to accept and carry out the decisions of the Security Council.⁵ Under Article 49, Members are required to “*join in affording mutual assistance in carrying out the measures decided upon by the Security Council*”.⁶

More specifically however, the Tribunal, having been established under Chapter VII of the UN Charter, is a subsidiary organ of the Security Council and its decisions or requests for assistance have been equated to decisions or requests of the Security Council itself.⁷

In the absence of any enforcement or coercive machinery of its own the Tribunal must rely on State cooperation in the execution of its mandate. Indeed without such cooperation for the arrest and transfer of fugitives, the transfer and protection of witnesses and obtaining evidence abroad the Tribunal would not be able to function.

As such, ICTR judges or a Trial Chamber are authorized under the Tribunal rules to “issue such orders, summonses, subpoenas, warrants, and transfer orders as may be necessary for the purposes of an investigation or the preparation or conduct of trial,”⁸ an authority that is utilized generally to secure states’ compliance with Article 28 obligations. In the event of a state’s non-compliance with Article 28 obligations, the Prosecutor, a Judge, or a Chamber may request that the President of the Tribunal report the non-compliance to the Security Council for enforcement measures.⁹

⁴ Article 2 (5) UN Charter

⁵ Chapter VII provides that the Security Council has the power to determine whether a situation constitutes a threat to or breach of international peace and security. After the Security Council has determined that there has been threat to or breach of the peace, it will make recommendations or decide what measures are to be taken “to maintain or restore international peace and security” (Article 39). Once it decides what measures not involving the use of armed force are to be employed, the Security Council “may call upon Members of the United Nations to apply such measures” (Article 41).

⁶ See articles 48 and 49 UN Charter generally.

⁷ See *Prosecutor v. Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Case No. IT-94-1-AR72, Appeals Chamber, 2 October 1995 para 15. See also Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808 (1993), UN Doc. S/25704 (1993) which states that, “*an order by a Trial Chamber (...) shall be considered to be the application of an enforcement measure under Chapter VII of the Charter of the United Nations*”.

⁸ Rule 54 of the ICTR Rules for Procedure and Evidence, amended 14 Mar. 2008, p. 51.

⁹ Rule 7 *bis* of the ICTR Rules for Procedure and Evidence, amended 14 Mar. 2008, p. 5.

Article 28 does not limit states' obligations to assist the Tribunal to the five areas previously listed. Thus, cooperation may be sought in other areas, such as the implementation of protective measures for witnesses,¹⁰ logistical provisions for the acquitted,¹¹ and enforcement of sentences¹² – functions which require state cooperation now, and in some cases, in the future continuing past the completion of the ICTR in 2010.¹³

Four areas exist where cooperation has been and remains vital as the Tribunal winds down to completion of its mandate: (1) the collection and provision of evidence and other information; (2) apprehension and transfer of the accused to the Tribunal; (3) the referral of indictments to States for trial in the appropriate court of a national jurisdiction; and (4) the maintenance and management of evidence repositories of which the ICTR Office of the Prosecutor is currently the custodian.

¹⁰ See Mohamed Othman, *The 'Protection' of Refugee Witnesses by the International Criminal Tribunal for Rwanda*, 14 Int'l J. Refugee L. 495, p. (2002) (discussing *Prosecutor v. Pauline Nyiramasuhuko* and other cases in which the Tribunal recognized that it had no power to order any state to grant refugee status to a witness, although the Tribunal could solicit cooperation in this regard pursuant to Article 28); see also Rule 75(A) of the ICTR Rules for Procedure and Evidence, amended 14 Mar. 2008, p. 81 (authorizing a Tribunal Judge or Chamber to “order appropriate measures to safeguard the privacy and security of victims and witnesses”).

¹¹ See *Prosecutor v. Rwamakuba*, Decision on Appropriate Remedy, ICTR-98-44C-T (31 Jan. 2007), ¶¶ 77-79, (following the acquittal and release of the defendant, Trial Chamber II ordered that the Tribunal Registrar, under Article 28, “seek the good offices of the State” where the acquitted resided “to facilitate some temporary status for him”).

¹² See Mary Margaret Penrose, *Lest We Fail: The Importance of Enforcement in International Criminal Law*, 15 Am. U. Int'l L. Rev. 321, 387-390 (1999-2000) (discussing the need for long term cooperation from states with *ad hoc* tribunals in the area of imprisonment).

¹³ However, it should be noted that the Appeals Chamber has recently emphasized that paragraph 2 of Article 28, which lists a number of specific matters which could form the basis of a request for assistance by a Trial Chamber, also reflects the limited context of States' obligation to cooperate. Such an obligation pertains solely to the investigation and prosecution of persons accused of committing serious violations of international humanitarian law. As a result, there is, for example, no legal duty under Article 28 for States to cooperate in the relocation of acquitted persons. See *In Re. André Ntagerura*, Decision on Motion to Appeal the President's Decision of 31 March 2008 and the Decision of Trial Chamber III of 15 May 2008, ICTR-99-46-A28 (18 November 2008), ¶ 15, with reference in footnote nr. 61 to *Prosecutor v. Tihomir Blaškić*, Judgment on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, ICTY Case No. IT-95-14-Ar 108 *bis* (29 Oct. 1997) [see also, *infra*, footnote nr. 17].

Four Specific Areas of Cooperation

1. Collection and Provision of Evidence by States to the Tribunal

In fulfillment of their Article 28 obligations, states may be required to assist in the collection and transfer of evidence or other information in one of at least three different scenarios. First, upon request from the Prosecutor, a state must transmit *forthwith* information the state holds related to investigations or criminal proceedings that are within the jurisdiction of the Tribunal.¹⁴ Second, the Prosecutor is empowered to seek the assistance of any state authority, as well as INTERPOL, in summoning and questioning of suspects, victims, and witnesses; the collection of evidence and on-site investigations; and generally taking measures deemed necessary for supporting an investigation and prosecution.¹⁵ Finally, if a Trial Chamber requests that a state defer prosecution of certain crimes to the competence of the Tribunal, states are to comply *without undue delay* and forward investigation results and court records to the Tribunal.¹⁶

In the ICTY case *Blaškić*, the Appeals Chamber interpreted provisions under the ICTY Statute similar to ICTR Article 28 and determined that, when less formal cooperative processes are inadequate, a tribunal may issue binding orders and requests for documents to invoke the obligations held by all UN member states under the relevant tribunal statute.¹⁷ States may be reported for their failure to comply with binding orders and requests to the Security Council for enforcement and sanctioning with the aim of compelling compliance.¹⁸

In *Blaškić*, while recognizing the Trial Chamber's power to issue binding orders and requests, the Appeals Chamber clearly stated that a Trial Chamber does not have the power to issue a *subpoena duces tecum* to a sovereign state.¹⁹ Some commentators and practitioners have critiqued this limit on the power of an international tribunal.²⁰ In practice, the ICTR relies on the

¹⁴ Rule 8 of the ICTR Rules for Procedure and Evidence, amended 14 Mar. 2008, p. 7.

¹⁵ Rule 39 of the ICTR Rules for Procedure and Evidence, amended 14 Mar. 2008, p. 29.

¹⁶ Rules 9-11 of the ICTR Rules for Procedure and Evidence, amended 14 Mar. 2008, p. 7, 9.

¹⁷ *Prosecutor v. Tihomir Blaškić*, Judgment on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, ICTY Case No. IT-95-14-Ar 108 *bis* (29 Oct. 1997), ¶¶ 26-31.

¹⁸ *Id.* at ¶¶ 33-37.

¹⁹ *Id.* at ¶ 25.

²⁰ See Mark B. Harmon and Fergal Gaynor, *Prosecuting Massive Crimes with Primitive Tools: Three Difficulties Encountered by Prosecutors in International Criminal Proceedings*, J. of Int'l Crim. Justice 2 (2004), 403, 418

bona fide cooperation of states. While enforcement mechanisms are available through the Security Council and attempts have been made in the past to exert pressure to comply with requests through the Security Council,²¹ but ultimately, the only timely and practical approach for accomplishing the purpose of the Tribunal involves the voluntary cooperation of states in recognition of their duties under Article 28.

Fulfillment of Article 28 duties requires that states act with no undue delay to respond to requests for cooperation. While a negotiated process may be called for to achieve compliance (in some situations), states (and the state officials in receipt of requests for cooperation) should resist dilatory obstruction of legitimate requests and avoid the invocation of baseless justifications for non-cooperation. Notably, in *Blaškić*, the Appeals Chamber rejected the argument that states can withhold documents requested by a tribunal for national security purposes, basing its conclusion on (a) a substantial body of international case law negating the existence of a national security exception, (b) the absence of such an exception under the ICTY statute, and (c) the reasoning that such an exception would effectively defeat the purpose of an international tribunal.²² The paradigm established by *Blaškić* is instructive when examining all areas of state cooperation required for the realization of the goals of the ICTR. On one hand, *Blaškić* emphasizes that the voluntary and good will compliance of states with requests for support of the Tribunal is the only practical and immediate way to realize the required state support. On the other hand, *Blaškić* affirms that the obligation states hold to cooperate is real, ultimately enforceable, and that refusals with no sound basis in law that defeat the purpose of the Tribunal are unacceptable.

By and large however States have been willing to share material with the OTP without recourse to the Article 28 procedure. In the course of an investigation or prosecution the OTP will, invariably, need evidence, intelligence or other information that may be in the possession of

(identifying tribunals' lack of power to enforce court orders as "an inherent weakness in the scheme of international justice").

²¹ See Marieke Wierda, *Procedural Developments in International Criminal Courts*, The Law and Practice of International Courts and Tribunals 1 (2002), pp. 630-31 (recounting Rwandan travel regulations that resulted in the non-appearance of witnesses and a subsequent report of non-compliance made to the Security Council in July 2002 leading to "a litigious" airing of disagreement between Rwandan authorities and the Tribunal before the Security Council).

²² *Prosecutor v. Tihomir Blaškić*, Judgment on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, ICTY Case No. IT-95-14-Ar 108 *bis* (29 Oct. 1997), ¶¶ 62-65.

States or organizations, acquired during the period of conflict when the crimes were committed. Some of this information may be open source while some of it may be classified as confidential by the holder. In case of the latter difficulties arise in the sharing of such information with the OTP while preserving its confidentiality. To overcome confidentiality concerns the ICTR (and ICTY) apply the provisions of Rule 70 which permit the receipt and preservation of the confidentiality of such material, with an undertaking that such material may be “*for police use only*” and that it may not be disclosed to third parties without the express permission of the source. Such information is normally used as a lead to generate evidence. The protections extended by this provision have encouraged States to disclose classified information to the OTP over the years.

2. Apprehension and Transfer of the Accused

Relying on state cooperation, the Tribunal has over the last thirteen years been able to secure the arrest and transfer of 74 fugitives from 24 countries. There do however remain deficiencies in state cooperation as a result of which thirteen indicted fugitives remain at large. The Office of the Prosecutor has been continuously engaged in efforts to secure the apprehension and transfer of these fugitives and has expended great resources on tracking and locating them and on diplomatic missions to several States with the objective of securing cooperation in their arrest.²³

State obligations under Article 28 to arrest, detain, and transfer the accused to the Tribunal prevail over any legal impediments under national laws or extradition treaties. States unable to execute an arrest warrant or transfer a witness must report the inability and the reasons for it to the Tribunal Registrar. The President of the Tribunal may inform the Security Council of failures to execute an arrest warrant and report the reasons for failure.²⁴ In addition, in urgent circumstances, states must comply forthwith with requests to arrest a suspect or prevent the flight of a suspect or accused. Tribunal Judges may order the transfer of suspects to the Tribunal for

²³ See Letter dated 12 May 2008 from the President of the ICTR to the President of the Security Council, S/2008/322, ¶ 43.

²⁴ Rules 58, 59, 61 of the ICTR Rules for Procedure and Evidence, amended 14 Mar. 2008, pp. 53, 55.

provisional detention. Under the rules of the Tribunal, states must respond promptly and with due diligence in the arrest of the accused and the transfer of witnesses.²⁵

Several arrests and transfers have occurred only after substantial diplomatic pressures have been exerted or after arduous battles in national courts. A few are recounted if only to highlight the challenges of cooperation.

a. Particularities of the Ntakirutimana Proceedings

In March of 2000, the United States transferred Elizaphan Ntakirutimana, who was accused of genocide and complicity to commit genocide, to Arusha for prosecution at the ICTR. The Ntakirutimana transfer came more than three years after his arrest in the US at the request of the Tribunal. Ntakirutimana pursued four arguments against his transfer to the ICTR: (1) that his transfer was unconstitutional because it was an extradition that can only be made under a treaty approved by the US Senate; (2) that the Tribunal's request for his surrender did not establish probable cause; (3) that the UN Charter does not authorize the Security Council to establish the ICTR; and (4) that the ICTR was not capable of protecting his fundamental rights. The US Fifth Circuit Court of Appeals rejected all four arguments and affirmed the lower court's certification of Ntakirutimana's surrender to the ICTR.²⁶

While Ntakirutimana was ultimately surrendered, the US judicial review of the transfer order reflects a deficient awareness of the scope of states' obligations to comply with requests for cooperation. As noted by commentators, the proceedings "occasionally display[ed] a distinct insensitivity to the international and cultural setting of the Rwanda Tribunal."²⁷ For example, in the initial hearing, the magistrate judge discounted the reliability of the witness testimony supporting the indictment because the transfer request did not state that the witnesses had provided reliable information in the past, awkwardly and inappropriately imposing in the context

²⁵ Rules 40, 40 *bis*, 55, 55 *bis*, 56, 57 of the ICTR Rules for Procedure and Evidence, amended 14 Mar. 2008, pp. 31, 33, 51, 53.

²⁶ *Ntakirutimana v. Reno*, 184 F.3d 419 (5th Cir. 1999).

²⁷ Mary Coombs, *In re Surrender of Ntakirutimana*, 184 F.3d 419. *U.S. Court of Appeals, Fifth Circuit, Aug. 5, 1999*, 94 Am. J. of Int'l L. 171, 176 (2000).

of an international genocide prosecution an American formulaic requirement for establishing probable cause for a search a seizure warrant based on information from a police informant.²⁸

Moreover, on appeal, the concurring judge proclaimed, based on his experience serving for fifteen years as a trial judge and five years as an appellate judge, he was “persuaded that it is more likely than not that Ntakirutimana is actually innocent.”²⁹ He based this conclusion on what he considered the “highly suspect” nature of the evidence from “unnamed Tutsi witnesses acquired during interviews utilizing questionable interpreters in a political environment that has all the earmarks of a campaign of tribal retribution.”³⁰ From the perspective of this experienced American jurist, it “defie[d] logic, and thereby place[d] into question the credibility of the underlying evidence, that [Ntakirutimana, a Seventh Day Adventist pastor,] who ha[d] served his church faithfully” among other admirable qualities could “commit the atrocities” of which he was accused.³¹

The trial judge with the discretion to make the probable cause determination in Ntakirutimana’s case, obviously took a different view of the evidence supporting the arrest warrant and transfer request, however, the views expressed by the magistrate and concurring appellate judge show that when a probable cause determination is left to the discretion of a judge in a national system, judges with no understanding of the particularities of international criminal law and the prosecution of genocide may come to misguided conclusions.

The obligation states have to comply with arrest and transfer requests under UN authority does not allow for the type of in-depth analysis and independent determination of probable cause that the concurring appellate judge in *Ntakirutimana* suggests the US district court was authorized to carry out.³² As observed by one commentator, our experience with *Ntakirutimana* shows that

²⁸ *Id.* at 176.

²⁹ 184 F.3d at 431.

³⁰ 184 F.3d at 430-31.

³¹ 184 F.3d at 430-31. Ntakirutimana, now deceased, was convicted in 2003 and completed a ten year sentence for genocide and crimes against humanity before his death.

³² It should be noted, however, that the US negotiated and signed surrender agreements with the ICTY and ICTR under which the US agreed to surrender person under the condition that “information sufficient to establish there is a reasonable basis to believe that the person sought has committed the violation or violations for which surrender is requested.” See Jorge A.F. Godinho, *The Surrender Agreements Between the US and the ICTY and ICTR: A Critical View*, 1 J. Int’l Crim. Just. 502, 504 (2003) (discussing the contents of the surrender agreements).

“substantial review of ‘probable cause’ which can block and clearly delay surrender, “run[s] against the Security Council Resolution[] that established the Tribunal[], which simply state[s] that UN Member States shall cooperate with the Tribunal[], without any substantive conditions (other than those arising from the Statute[] of the Tribunal[]) and without undue delay.”³³

b. Other Surrender Requests and the Remaining Fugitives

Obstacles have emerged in securing the transfer of the accused in other cases as well. The request for the arrest and transfer of Father Athanse Seromba from Italy, where he had been hiding on Church premises in Tuscany, was never executed by Italian authorities.³⁴ Persistent international pressure did not persuade the Italian authorities to execute the arrest warrant that was transmitted to the Italian minister of Justice in July 2001. However, in February 2002, Seromba himself voluntarily surrendered to the ICTR in Arusha.³⁵ Following his conviction in December 2006, he is now serving a life sentence for genocide and crimes against humanity.

In recent months other national jurisdictions have completed judicial proceedings related to transfer requests resulting in final compliance with arrest and transfer requests. In June of this year, France transferred Dominique Ntawukuriryayo to the Tribunal after several months in detention in France. He is the third accused France has transferred to the Tribunal. The French Final Court of Appeal rejected Ntawukuriryayo’s argument that the risk he would ultimately be transferred to Rwanda for prosecution when the Tribunal closes should prevent his transfer.³⁶ Ntawukuriryayo now awaits trial in Arusha on counts of genocide, complicity in genocide, and direct public incitement.

The German Constitutional Court also cleared the way for the transfer of Augustin Ngirabatware after finding without merit his arguments that the inability of the Tribunal to complete his trial before the projected date for completion of trials and the threat that his case would subsequently

³³ *Id.* at 514.

³⁴ Mikaela Whitman, *The International Criminal Tribunal and the Rwandan Courts*, 3 *Dartmouth C. Undergraduate J.L.* 40, 44 (2005).

³⁵ *Frankfurter Allegemein Zeitung*, 12 March 2008

³⁶ Decision of French Cour de Cassation 7 May 2008

be transferred to Rwanda for prosecution made his transfer to the ICTR illegal.³⁷ Ngirabatware is also currently detained in Arusha awaiting trial.

Time is quickly running out for the apprehension and transfer of the remaining fugitives. As illustrated in the above discussion, proceedings in national systems and diplomatic initiatives to persuade recalcitrant states can be exceedingly time consuming. Time will soon expire for the states where fugitives still reside to affirm their commitment to their international obligations and comply with outstanding arrest and transfer requests. Where necessary, it is time for these states to mobilize their relevant political, administrative, and judicial bodies to take whatever steps are needed under their domestic laws to comply with their international commitments.

3. Referral of Cases to States for Trial

As the Tribunal winds down to completing its mandate a strategy was developed that anticipated the transfer of low level perpetrators to national jurisdictions for trial, while retaining senior level perpetrators for trial in Arusha.³⁸ Pursuant to this strategy the OTP engaged various states to secure their cooperation in taking on some of the Tribunal's case load. This initiative has not been free of challenge; most states were either unwilling to take on such cases from the Tribunal or were unable to do so on account of lack of jurisdiction, legislative or institutional capacity. As a result only two cases have been successfully transferred to France in November 2007 by the Tribunal pursuant to Rule 11 bis.³⁹ A referral to the Netherlands was aborted last year after the Hague District Court found that it lacked jurisdiction to try the accused, as a result of which he was returned to the Tribunal for trial in Arusha.⁴⁰ An earlier attempt to refer the same case to Norway was denied by the Tribunal on account of jurisdictional deficiencies in Norwegian law. Four recent applications in respect of referrals to Rwanda have been denied by the Tribunal on account of fair trial concerns.⁴¹ Joint efforts are however underway to address any deficiencies in

³⁷ BVerfGE, 2 BvR 460/08 Decision of 11 August 2008

³⁸ See Letter dated 12 May 2008 from the President of the ICTR to the President of the Security Council, S/2008/322, ¶ 44 (leaders to be tried at the Tribunal once apprehended and transferred are Augustin Bizimana, Félicien Kabuga, Protais Mpiranya, and Idelphonse Nizeyimana and <http://www.ictor.org/ENGLISH/completionstrat/index.htm>)

³⁹ *Prosecutor v Bucyibaruta and Prosecutor v Munyeshyaka*

⁴⁰ *Prosecutor v Bagaragaza*

⁴¹ *Prosecutor v Munyakazi, Prosecutor v Kanyarukiga, Prosecutor v Hategekimana and Prosecutor v Gatete*

Rwanda's legislative or institutional framework with a view to making the necessary interventions.

Cooperation from states in accepting referrals and diligently prosecuting such cases was a cornerstone of the Tribunal's completion strategy in which national prosecuting authorities were expected to play a central role.⁴² That it has not been as successful as anticipated is a challenge that requires a renewed commitment from member states to cooperate and take on some cases, if the Tribunal is to efficiently conclude its mandate.

4. Provision of Evidence and Information to National Prosecuting Authorities

The OTP recognizes that cooperation in international criminal justice is a two-way street. As a result of the Tribunal's completion strategy several active files of suspects who had been investigated but not yet indicted by the Tribunal were transferred to countries willing to complete the investigation and prosecution of those suspects. To date ICPO-INTERPOL has about 70 fugitives subject to Red Notices issued on account of arrest warrants issued by Rwanda. Some have successfully challenged extradition to Rwanda from France⁴³ and Germany⁴⁴ while four fugitives are appealing extradition in the UK⁴⁵. Others remain at large. In relation to these and other suspects the OTP has received and continues to receive requests for mutual legal assistance from member states which are investigating, prosecuting or handling extradition requests. The Tribunal recognized in a recent decision that "*assistance to national prosecutions of crimes committed in Rwanda in 1994 is consistent with the objectives of state cooperation contained in the Statute and Security Council Resolutions 1503 and 1534.*"⁴⁶

The OTP maintains the largest electronic data base of evidence on the Rwandan genocide, which will remain an essential tool to national investigating and prosecuting authorities of member

⁴² See generally Larry D. Johnson, *Closing an International Criminal Tribunal While Maintaining International Human Rights Standards and Excluding Impunity*, 99 Am. J. of Int'l L. 158, 168-72 (2005);

⁴³ Claver Kamana and Marcel Bivugabagabo

⁴⁴ Callixte Mbarushimana and Onesphore Rwabukombe

⁴⁵ Vincent Bajinya, Charles Munyaneza, Emmanuel Ntezilyayo and Celestin Ugirashebuja

⁴⁶ See *Prosecutor v. Muhimana*, ICTR-95-1B, Decision on Prosecution's Urgent Ex Parte Motion to Unseal and Disclose Personal Information Sheets and Rescind Protective Measures for Certain Witnesses (13 Aug. 2008), ¶ 7.

states until the prosecution of the remaining fugitives is complete. In order to streamline and regulate access to OTP evidentiary resources the Prosecutor promulgated Regulation No 1 of 2008 setting out a procedure for requests for assistance from states in connection with an investigation or other judicial proceeding. No doubt this data base will most certainly be needed even after the closure of the ICTR and discussions are underway for the establishment of a mechanism by which access to such material will be provided to member states after the Tribunal concludes its mandate.

Conclusion

The success of the nascent international criminal justice system has been based on and will have to rely on an effective cooperation regime. This assumes critical importance as the mandate of the ICTR draws to a close. While the ad hoc Tribunals have relied in large measure on their status as organs of the Security Council to secure cooperation, the absence of a mutual assistance and extradition regime for international crimes may well emerge as an impediment to the effective prosecution of international fugitives by member states, thereby creating or widening the impunity gap. With over 80 Rwandan fugitives on INTERPOL's wanted list at the close of the Tribunal's mandate inaction by member states in assuming the mantle sends the wrong signal. It is hoped that this forum bring together international and national prosecuting authorities will be able to contrive modalities for effective cooperation so as to close this impunity gap.