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TAB 2

Legal Analysis

The Definition of Genocide

As defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, to which the U.S. is a party, "genocide" has been committed when three criteria are met:

1. specified acts are committed:

- a) killing
- b) causing serious bodily or mental harm
- c) deliberately inflicting conditions of life calculated to bring about physical destruction in whole or in part
- d) imposing measures intended to prevent births, or
- e) forcibly transferring children to another group

2. these acts are committed against members of a national, ethnic, racial or religious group, and

3. they are committed with the intent to destroy, in whole or in part, the group as such.

In addition to "genocide," conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, and complicity in genocide are also offenses under the Convention.

The Existence of Genocide in Rwanda

There can be little question that the specific listed acts have taken place in Rwanda. There have been numerous acts of killing and causing serious bodily or mental harm to persons. (As INR notes, international humanitarian organizations estimate that killings since April 6 have claimed from 200,000 to 500,000 lives. (INR also notes that this upper figure may be exaggerated, but that is not critical to this analysis)).

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The second requirement is also clearly satisfied. As INR notes, most of those killed in Rwanda have been Tutsi civilians, including women and children. The Tutsis are an ethnic group. (Moderate members of the Hutu ethnic group have also been killed. In addition, both Hutus and Tutsis have been killed in battles between Government forces and the Rwandan Patriotic Front (RPF). The RPF has also executed extremist Hutus).

It also appears that the third element has been satisfied. At least some of the prohibited acts have apparently been committed with the requisite intent to destroy, in whole or in part, the Tutsi group as such, as required by the Convention. INR notes that --

"international organizations, foreign diplomats and indigenous eye witnesses have reported systematic executions of Tutsis in villages, schools, hospitals, and churches Many have been killed or gravely injured by machete-wielding militia members because they are ethnic Tutsis, have Tutsi physical characteristics, or support Tutsis."

INR further concludes that "[t]here is substantial circumstantial evidence implicating senior Rwandan government and military officials in the widespread, systematic killing of ethnic Tutsis, and to a lesser extent, ethnic Hutus who supported power-sharing between the two groups."

The question of intent is necessarily somewhat difficult to prove without clear documentation (e.g., written policies or orders) or express statements and is ultimately a question of the intent of particular individuals. Intention may, however, to some degree be inferred from the circumstances. Here, given the context of the overall factual situation described by INR, it seems evident that killings and other listed acts have been undertaken with the intent of destroying the Tutsi group in whole or in part. In particular, INR states that "[n]umerous credible reports claim that government officials, including national and local, officials, have also exhorted civilians to participate in the massacres, often utilizing the militant Hutu radio station, Milles Collines." INR also notes that the Interim Government, which took control after the April 6 crash of the Presidential plane, "has taken little, if any action to halt the killings, most of which have occurred behind government lines." (These acts would also constitute separate offenses under the Convention, which prohibits incitement of genocide and complicity in genocide).

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In the absence of express statements of intent, the question of intent ultimately turns on inferences based on an overall assessment of the facts. The key concept of "intent to destroy a group . . . in part" is subject to some debate. The drafters clearly excluded mere "cultural genocide" -- i.e., destroying the identity of the group without destroying the members of the group -- from the scope of the Convention. They did not more clearly define, however, the precise nature of the intent required, or the quantum of harm required. It is obviously not necessary to destroy an entire group to merit a charge of genocide. In ratifying the Convention, the United States expressed its understanding that the Convention requires a specific intent to destroy a group in whole or substantial part, at least within a given country. (The Senate has expressed the view that "substantial" means a sufficient number to "cause the destruction of the group as a viable entity.") The U.S. position probably represents a maximum requirement; the position has also been taken that the murder of a single member of a protected group, carried out with the idea that the group should be eliminated, constitutes genocide. The numbers of Tutsis subjected to killings and other listed acts involved in Rwanda can readily be considered substantial. International humanitarian agencies estimate that from eight to forty percent of the Tutsi population may have perished. (The figure depends on the estimate of total Tutsi population and the estimate of the number of victims).

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