International criminal defense

The influence of attorney background on judicial decision making at the International Criminal Tribunal for Rwanda

by JAMES MEERNIK and CHRISTOPHER FARISS

Nations of the world are increasingly resorting to international law to adjudicate and resolve violent disputes and wars in places as diverse as the former Yugoslavia, Rwanda, Sierra Leone, East Timor, and Cambodia. The end of the Cold War, a heightened resolve to hold accountable brutal dictators who had acted with impunity because of an international reluctance to violate national sovereignty norms, and the success of the Rwandan and Yugoslav tribunals have led to greater demands for international justice and the enforcement of international humanitarian laws.

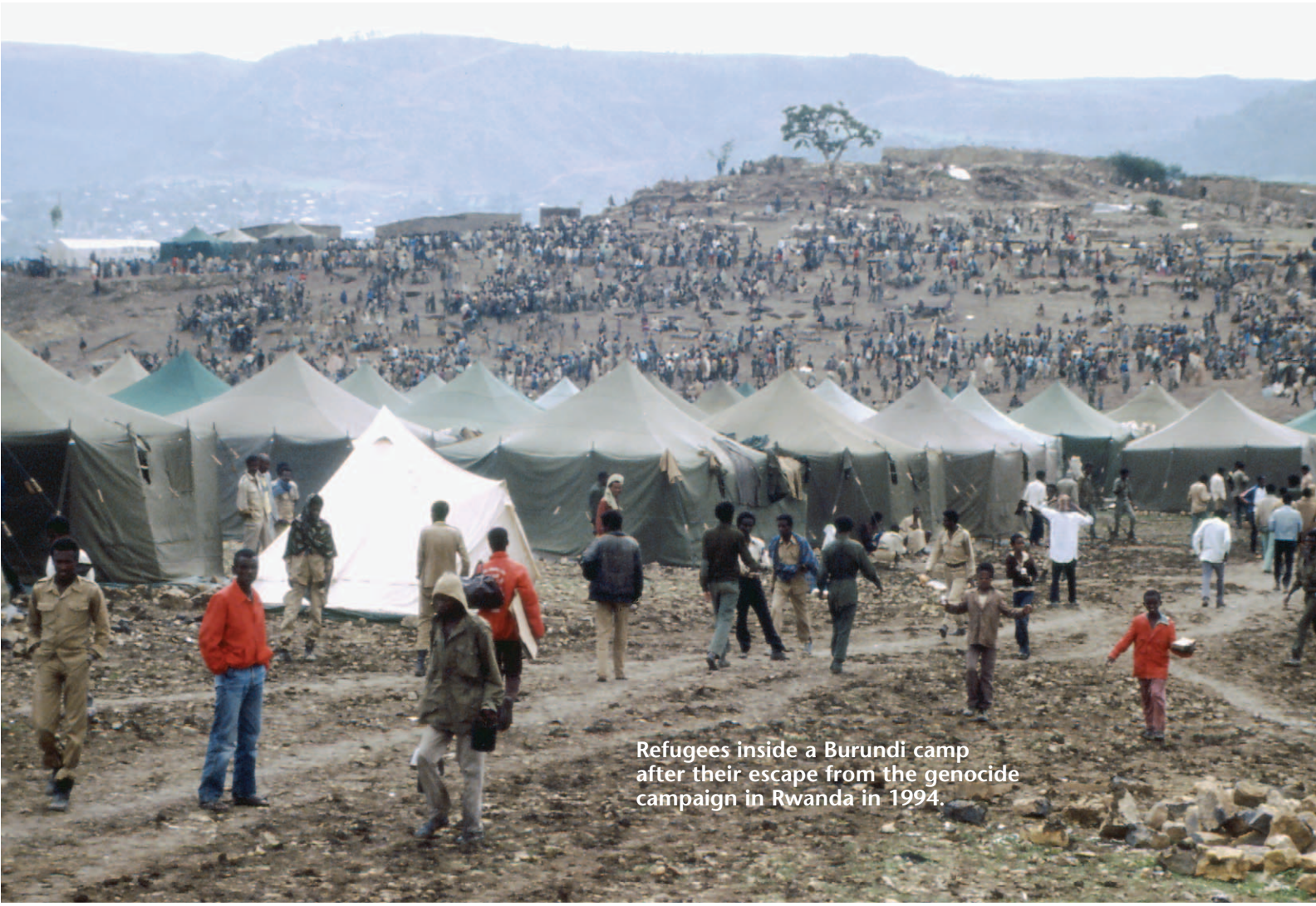
This movement to provide international justice culminated in the establishment of the permanent International Criminal Court (ICC) to prosecute those suspected of violating international humanitarian laws. Whether one supports or opposes this increasing legalization in international relations, it is an inescapable fact that international criminal and humanitarian law are becoming more codified and supplemented by a plethora of important judicial decisions coming from these international tribunals, and that the international machinery of justice is becoming increasingly institutionalized.

As the creation and utilization of these international institutions continue, the demand for experienced international defense lawyers will also continue to grow. The international courts are developing a substantial base of expertise and personnel skilled in this fairly novel area of international law, and are supported by a significant commitment of resources from the international community. As reliance upon international law to adjudicate conflicts continues, this prosecutorial advantage in expertise and support can only grow as well.

> A preliminary analysis suggests that the national background of defense lawyers at the ICTR plays an important, though limited, role in their abilities to obtain not guilty verdicts and sentences less than life for their clients.

But what of those charged with the defense of alleged war criminals? Are they equally as skilled and also provided with sufficient resources to defend their clients to ensure an equality of arms in the courtroom? Are some of these defense lawyers better prepared than others to defend their clients? Many critics charge that there is an inequality of arms between the relative experience of the prosecution and that of the defense. This preliminary analysis seeks a better understanding of this issue by exploring how defense experience and background might affect the outcome of international criminal trials.

The international criminal tribunals are unique hybrids of international law, common law practices, civil law practices, and their own rules of procedure and evi-



Refugees inside a Burundi camp after their escape from the genocide campaign in Rwanda in 1994.

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dence that have often developed *sui generis* in response to the tribunals' own changing needs and circumstances. Therefore, we must wonder to what extent the background of defense attorneys influences their ability to argue successfully their clients' cases in these unique environments. Are lawyers skilled in the arts of courtroom argumentation better able to defend their clients in the adversarial proceedings of the international tribunals? Are defense attorneys coming from nations whose judicial systems provide for greater judicial independence and fairer trials better able to adapt to the Western model of justice the tribunals rely upon? Can increasing the number of a defendant's attorneys help alleviate the advantages enjoyed by the prosecution in expertise, resources, and institutional memory?

This article focuses on the International Criminal Tribunal for Rwanda (ICTR), which despite the lack of attention accorded to it in comparison to the International Criminal Tribunal for the Former Yugoslavia (ICTY), has issued a number of important rulings and precedents in international law. The ICTR is also unique in the wide variety of defense attorneys who practice before it and hail from around the world. While defendants at the ICTY generally choose lawyers from the former Yugoslavia, defense attorneys at the ICTR have come from a variety of common law, civil law, customary law, and developed, developing, democratic, and non-democratic nations.

The article investigates what role defense attorney backgrounds play in the likelihood of obtaining a verdict or sentence favorable to their clients. It first discusses the procedures in place at the ICTR by which defendants select their counsel. It then analyzes why the background of these lawyers and the number of lawyers a defendant retains might influence the verdicts and sentences handed down by the ICTR judges. Using data from the ICTR, the article then analyzes these decisions and offers some preliminary assessments regarding the impact of the quantity and quality of defense attorneys on judicial decision making.

This is a preliminary inquiry. The ICTR continues to reach decisions that will need to be incorporated into future analyses. As well, this initial analysis relies principally on fairly simple statistical techniques. More rigor-

ous conclusions must await the passage of time and more in-depth analyses through interviews with judges and attorneys on both sides.

Defense of the accused

The ICTR, headquartered in Arusha, Tanzania, is authorized to prosecute persons accused of genocide, crimes against humanity, and violations of Article 3 common to the Geneva Conventions (on war crimes) and of Additional Protocol II.[1] It can only hear cases relating to events that occurred in Rwanda during the calendar year 1994. Natural persons, including government officials, are liable for prosecution, even if they were acting under orders (Article 6.4 of the ICTR's charter). The ICTR has concurrent jurisdiction with national courts, but does have supremacy and so can request national courts to defer to its "competence" (Article 8.2).

The Tribunal is divided into three sections: the Registry, the Chambers, and the Prosecutor's Office. The Registry performs administrative duties for the Tribunals, such as language translation, witness protection, and public affairs. The Chambers comprise the judges who sit in three-judge panels and are elected by the UN General Assembly for four-year terms. The Prosecutor's Office manages the investigation of allegations of violations of international laws under the Tribunal's jurisdiction, develops indictments, and tries cases. Allegations of war crimes and other violations of international law are brought to the attention of the Office of the Prosecutor by staff, victims, the media, human rights organizations, and others.

The Prosecutor conducts investigations and, "shall assess the information received or obtained and decide whether there is sufficient basis to proceed" (Article 17.1). If so, an indictment is delivered to the Chambers where a judge evaluates whether the Prosecutor has established a prima facie case. If the accused is not able to afford counsel, the Tribunal will pay for the expense. The judgment of the Chambers is by majority vote, guilt must be proved beyond a reasonable doubt, and verdicts can be appealed. Life in prison is the maximum penalty; capital punishment is not permitted. According to the ICTR's Charter, the judges shall consider in sentencing convicted war criminals, "the general practice regarding prison sentences in the courts of Rwanda . . . the gravity of the offence and the individual circumstances of the convicted person" (Article 23).

Part 4, Section 2 of the ICTR's Rules of Procedure and Evidence describes the process of appointment of defense counsel to those who have been brought into custody at the ICTR's detention facility in Arusha. While there are other provisions of the Rules of Procedure and Evidence that bear on issues related to defense, such as the required disclosure of evidence, this article is limited to examining those procedures pertaining to assignment of defense counsel.

The qualifications for practicing before the ICTR are actually quite few. An attorney only need demonstrate that she is allowed to practice law in her home country, or is a university professor of law (Rule 44) and can speak one of the two working languages of the Tribunal (English or French [Rule 44 bis]). For indigent defendants, the Registrar keeps a list of counsel who 1) qualify to practice before the ICTR as in Rule 44; 2) have indicated their willingness to accept assignment; and 3) who have at least 10 years relevant experience. Defendants must demonstrate their indigence to the Registrar's Office, which then selects attorneys for them from this list. In practice most defendants plead indigence. Defendants are entitled to one attorney, but in many cases they have also been allowed to hire additional counsel, as well as legal and investigative assistance. The Registrar also determines the payment schedule for these attorneys. Defense Counsel are subject to a code of ethics developed by the Registrar's Office.

Background and experience

We are interested in the extent to which the legal and national background of defense attorneys and their level of experience at the ICTR will affect the likelihood of obtaining successful judicial outcomes—either not guilty verdicts or lighter sentences for their clients. The hypotheses are tentative since very little theoretical work has been done on this subject.

First, we are interested in determining if defense lawyers from particular legal systems enjoy any advantages in obtaining favorable verdicts and sentences for their clients.[2] Perhaps the argumentative abilities of lawyers from common law backgrounds aid in their ability to influence the judges, or perhaps civil law lawyers are more adept at the compilation of large amounts of evidence that judges evaluate for its probative value.

As civil law judges are involved in significant amounts of investigating and weighing evidence to arrive at the truth—a trait shared by judges at the ICTR—civil law defense attorneys may enjoy greater success. On the other hand, the intermingling of these two systems within the ICTR places a distinct disadvantage on outsiders who have only trained within the confines of one of these two dominant legal systems. This effect tends to be negated within the institutional structure of the ICTR Office of the Prosecutor where actors can draw on a wealth of experience from colleagues from multiple legal traditions, and who tend to participate in multiple trials while at the ICTR. However, defense attorneys tend to work on one or two person teams where both attorneys may be from the same legal background, and where prior trial experience at the ICTR may be lacking. In theory the advantage of experience in multiple legal backgrounds enjoyed by the Prosecution ought to hinder those defense teams that are not

1. Legal definitions of these crimes may be found at the ICTR web site at www.ictr.org/ENGLISH/basicdocs/statute.html as of February 2005.

2. We do not yet have data on the background of prosecution lawyers. The ICTR does not make this information publicly available on its web site.

similarly intermixed.

We used the ICTR website to determine the names of the attorneys, and for most, their country of origin. In the few cases where country of origin could not be determined on the ICTR web site, we relied on web searches using the individual's name and title. Once we ascertained national background, we used information from the University of Ottawa's "World Legal Systems" web site to identify national legal system as 1) common law; 2) civil law; 3) customary law[3]; 4) Islamic law.[4] We created a series of dichotomous variables to measure each defense attorney's background. In cases where attorneys hailed from nations with multiple legal systems, we measured each type of system represented.

Judicial systems are characterized not just by the label we can apply to the legal structure, but also by the extent to which they provide for the rule of law in practice as well as in theory. Nations that value the rule of law provide for a transparent, efficient, and fair set of judicial institutions and procedures. Criminal and civil disputes are resolved within the system instead of extra-legally, while judges and courts are granted independence from politics. International criminal tribunals, like the ICTR, have largely copied these sorts of protections and rights from domestic systems. Thus, defense lawyers who have practiced in judicial systems where judges are independent decision makers and defendants are accorded fair trials may be better placed to defend their clients at the ICTR. Conversely, those defense attorneys hailing from nations without such protections—where judges are subject to political pressure and where plaintiffs' rights are infringed upon to safeguard governmental interests—may be disadvantaged in the alien environment of the ICTR.

The level of democracy and protection of civil liberties in a society is also likely to have a profound impact on the professionalization of defense attorneys.

We use two indicators to measure judicial independence and fair trial protections from Linda Keith.[5] Ranging from 0-16, the Keith measure of judicial independence considers judicial review, tenure in office, and ability to adjust compensation, among a variety of factors that tend to increase the independence of judges. Keith analyzed constitutions from nations around the world to make these determinations. Each indicator of judicial independence ranges from "0" where there are no such guarantees; "1" where there are qualified guarantees; and "2" where a nation has fully guaranteed a specific element of judicial independence in the constitution. The scores are summed to create a 16-point scale indicating a regime's degree of judicial independence. Her variable measuring fair trial protections is a similarly constructed scale that ranges from "0" where there are no fair trial protections; "1" where there are qualified protections; and "2" where a nation has full, fair trial protections.[6]

The level of democracy and protection of civil liberties in a society is also likely to have a profound impact on the professionalization of defense attorneys. Attorneys who practice in a political culture where the people freely choose governments and their freedoms are protected may be at an advantage in international criminal tribunals. If the freedoms their nations afford them provide for broader and deeper experiences in the judicial system, they ought to be more skilled than attorneys who come from nations where such opportunities are limited. To measure these variables we use the Freedom House indicators of nations' political rights and civil liberties. Quoting from the Freedom House web site: "Political rights enable people to participate freely in the political process. This includes the right to vote and compete for public office and to elect representatives who have a decisive vote on public policies. Civil liberties include the freedom to develop opinions, institutions, and personal autonomy without interference from the state."[7] Each measure ranges from "1" to "7" where "1" represents the most favorable conditions for political rights and civil liberties, and "7" the least favorable.

Yet, we must allow that it is quite possible these national background characteristics will have no impact on decision making by the judges at the ICTR. If defense lawyers are more nearly a product of an international legal culture rather than a domestic one, national differences may lose their influence as lawyers gain expo-

3. The World Legal Systems project at the University of Ottawa in Canada describes customary law systems this way: "Hardly any countries or political entities in the world today operate under a legal system which could be said to be typically and wholly customary. Custom can take on many guises, depending on whether it is rooted in wisdom born of concrete daily experience or more intellectually based on great spiritual or philosophical traditions. Be that as it may, customary law (as a system, not merely as an accessory to positive law) still plays a sometimes significant role, namely in matters of personal conduct, in a relatively high number of countries or political entities with mixed legal systems. This obviously applies to a number of African countries but is also the case, albeit under very different circumstances, as regards the law of China or India, for example." Found at www.droitcivil.uottawa.ca/world-legal-systems/eng-presentation.html as of February 2005.

4. Information can be found at uottawa.ca/world-legal-systems/eng-monde.html as of February 2005.

5. Linda Keith, "The Law and Human Rights: Is the Law a Mere Parchment Barrier to Human Rights Abuse?" Doctoral dissertation, University of North Texas (1999). The latest year for which these data are available is 1996.

6. *Id* at 27-28.

7. Found at www.freedomhouse.org/research/freeworld/2003/methodology.htm on 21 October 2004. We use data from 2001 for these measures.

sure to this culture. If what matters most is the professionalization that occurs within this community, the differences that might have existed between attorneys because of their previous background may have already diminished considerably by the time they practice before the ICTR. Rather, their individual skill and the pool of resources available to them may be more consequential.

Some ICTR critics have asserted that the, "tribunals are resource biased in favor of [the] prosecution."[8] As noted in the *Harvard Law Review*:

> In the absence of uniformly effective representation, even a robustly pro-defendant statutory and regulatory framework would tend to result in an uneven prosecutorial record, prejudicing defendants whose attorneys do not effectively litigate their claims and simultaneously privileging other defendants of equal culpability who can afford, or are fortunate enough to be provided with more effective attorneys.[9]

Typically at the ICTR the defense team consists of two lawyers who rarely have served on a previous defense team, while the prosecution typically is made up of three or more "repeat players" who have served on multiple prosecution teams. The potency of the Office of the Prosecutors' mandate, coupled with these perceived differences in prosecution and defense team experience, may create an "inequality of arms." Analogously, research on U.S. courts has shown that repeat players enjoy a number of advantages that enhances their ability to win favorable outcomes.[10] Such actors (e.g., "upperdogs") are often more likely to win in court because they possess greater resources, expertise in the legal process, and familiarity with the judicial system. This description might well apply to prosecution attorneys at the ICTR.

In order to determine if the number of prosecution lawyers and their assumed greater levels of experience at the ICTR have any bearing on judges' verdicts and sentences, we gathered data on the number and experience of lawyers from each side. First, we determine how many lawyers for each team participated in a completed case at the ICTR from the final indictment located at the ICTR website. Each case is then assigned a numeric total for the number of prosecutors and the number of defense lawyers. Second, we track the total amount of experience that individual lawyers bring to each team. Each lawyer's name, from all completed cases, is catalogued and tracked in order to observe in how many previous cases she or he has participated. Based on the date located on the final indictment, we count the number of cases argued by these attorneys previously (and including the current case).

Analysis

To better understand how the background of defense attorneys affects verdicts and sentences, we make a preliminary assessment of these relationships on the various counts on which defendants have been charged. Although the ICTR judges have issued a number of verdicts, their work still continues. Thus, results are preliminary and conclusions tentative at this point. Verdicts are either decisions of "guilty" or "not guilty" (we code verdicts the judges dismissed as not guilty) issued on each individual count on which an individual is charged and judged. We measure sentences as either life (coded "1"), or not life (coded ("0").

Since January, 2005, 20 defendants have been tried before the ICTR while three individuals have entered guilty pleas prior to a trial. Only three individuals who have stood trial have been found innocent of all charges. Individuals have been cumulatively charged with 197 counts of violations of international law and have pled or been found guilty on a total of 82 (42 percent). They have been found guilty of 38 out of 77 counts of genocide (49 percent) and 43 out of 85 charges of crimes against humanity (51 percent).[11] Thus, although most defendants have been found guilty of at least one charge, they are also often found innocent of other charges. If we leave out cases where individuals pled guilty, we see that there have been 185 counts on which defendants were tried. They were found guilty on 70 out of 185 charges (38 percent). They have been found guilty of 32 out of 71 counts of genocide (45 percent) and 37 out of 79 charges of crimes against humanity (47 percent).

Of those 20 individuals who have been found guilty of at least one count of genocide or crimes against humanity, 11 have received a life sentence on at least one or more counts. Sometimes judges impose one global sentence on a defendant; in other cases they provide separate punishments for each guilty count. Those individuals who did not receive a life sentence have been sentenced on average to 244 months in prison for the various counts on which they were found guilty. The minimum sentence on a guilty count has been 84 months in prison, while the longest non-life sentence has been 420 months.

Of the 38 convictions on charges of genocide, defendants have been

8. Robert Christensen, *Getting to Peace By Reconciling Notions of Justice, The Importance of Considering Discrepancies Between Civil and Common Legal Systems in the Formation of the International Criminal Court*. 6 UCLA J. Int'l L. & Foreign Aff. 391, 408 (2001-2002)

9. *Fair Trials and the Role of International Criminal Defense*. 114 Harv. L. Rev. 1982, 2001-02 (2001)

10. A brief sampling of this literature would include: Gregory Caldeira & John R. Wright, *Organized Interests and Agenda Setting in the Supreme Court*, 82 Am. Pol. Sci. Rev. 1109-27 (1988); Marc Galanter, *Why the 'Haves' Come out Ahead: Speculations on the Limits of Legal Change*, 9 Law & Soc'y. Rev. 95-160 (1974); Kevin McGuire, *Explaining Executive Success in the U.S. Supreme Court*,. 51 Pol. Res. Q. 505-26 (1998); Rebecca Salokar, The Solicitor General: The Politics of Law (Philadelphia, PA: Temple University Press, 1992); Reggie Sheehan & William Mishler, *Ideology, Status, and the Differential Success of Direct Parties before the Supreme Court*, 86 Am. Pol. Sci. Rev. 464-71 (1992); Donald Songer & Reggie Sheehan, *Who Wins on Appeal? Upperdogs and Underdogs in the United States Courts of Appeals*, 36 Am. Pol. Sci. Rev. 235-58 (1992); S. Sidney Ulmer, *Selecting Cases for Supreme Court Review: An Underdog Model*, 72 Am. Pol. Sci. Rev. 902-10 (1978); Stanton Wheeler et al., *Do the 'Haves' Come out Ahead? Winning and Losing in State Supreme Courts, 1870-1970*, 21 Law & Soc'y. Rev. 403-45 (1987).

11. No individual has been found guilty of violations of Article 3 common to the Geneva Conventions (regarding war crimes committed within states). Judges have yet to find a nexus between the genocidal crimes committed in Rwanda in 1994 and the civil war that occurred simulataneously with the genocide.

Table 1. Defendant information

Name	Guilty/Counts	Sentence	CAH	GEN	1st Att.	2nd Att.
Akayesu, Jean Paul	9/15	Life	Yes	Yes	CAR	Cameroon
Bagambiki, Emmanuel	0/7	0	No	No	Belgium	Mali
Bagilishema, Ignace	0/7	0	No	No	France	Mauritania
Barayagwiza, Jean Bosco	5/9	420	Yes	Yes	Italy	
Gacumbitsi, Sylvestre	3/5	360	Yes	Yes	Cameroon	Cameroon
Imanishwimwe, Samuel	6/7	324	Yes	Yes	Cameroon	Rep. Congo
Kajelijelli, Juvenal	3/9	Life	Yes	Yes	U.S.	Rep. Congo
Kambanda, Jean	6/6	Life	Yes	Yes	Cameroon	
Kanuhamda, Jean De Dieu	2/8	Life	Yes	Yes	Guinea	Congo-BR
Kayishema, Clement	4/24	Life	No	Yes	France	France
Musema, Alfred	3/9	Life	Yes	Yes	UK	Netherlands
Nahimana, Ferdinand	5/7	Life	Yes	Yes	France	UK
Ndindabahizi, Emmanuel	3/3	Life	Yes	Yes	France	France
Ngeze, Hassan	5/7	Life	Yes	Yes	US	Canada
Niyitegeka, Eliezer	6/10	Life	Yes	Yes	UK	Ireland
Ntagerura, Andre	0/6	0	No	No	Canada	France
Ntakirutimana, Elizaphan	2/13	120	No	Yes	US	
Ntakirutimana, Gerard	4/13	300	Yes	Yes	Canada	
Ruggiu, Georges	2/2	144	Yes	No	Tunisia	Belgium
Rutuganda, George	3/8	Life	Yes	Yes	Canada	
Ruzindana, Obed	1/4	300	Yes	Yes	France	Netherlands
Semanza, Laurent	6/14	180	Yes	Yes	Cameroon	US
Serushago, Omar	4/4	180	Yes	Yes	Tanzania	

CAH = convicted of Crime against Humanity / GEN = convicted of Genocide

given a life sentence on 24 of those counts (63 percent). Those who did not receive a life sentence for a particular count were punished with sentences ranging from 120-420 months. Of the 43 convictions on charges of crimes against humanity, defendants have been given a life sentence on 18 of those counts (42 percent). Those who did not receive a life sentence for a particular count were punished with sentences ranging from 84-420 months. Table 1 provides data on all ICTR defendants and the country of origin of their defense attorneys.

Excluded from the analysis of verdicts are those cases where the defendant pled guilty and there was no trial (those results are in the first two columns), and thus we analyze the verdicts in the cases of 20 individuals. In the second set of columns where we examine the relationships between our variables of interest and sentences, we look at the punishments handed down to all individuals who have pled or been found guilty (20 individuals). We exclude from this set of correlations those cases where the defendants were found innocent of all charges and add those cases where the defendants pled guilty. We calculated correlation coefficients between our two dependent variables and all of our measures of defense attorney background and the number and experience of lawyers from both the prosecution and defense. We distinguish between the first and second listed attorneys of record for those instances where an individual is represented by more than one attorney. We note, however, that the order in which attorneys are listed in ICTR cases does not necessarily always have any substantive implications.

We begin by analyzing the relationship between the legal background from which defense attorneys hail and its impact on their ability to obtain not guilty verdicts and lighter sentences. We see in Table 2 that the national legal background of the first listed attorney of record—civil law, common law, Islamic law, or customary law—does not appear to make a difference in the likelihood of obtaining a not guilty verdict. However, when we analyze the relationship between the backgrounds of the second attorney of record (assuming there is one), we find that common law lawyers tend to fare poorly. The correlation between this background type and the likelihood of the lawyer's client receiving a guilty verdict is positive—common law lawyers do not fare as well. In contrast, when the second attorney comes from an Islamic law background, there is a negative relationship, which indicates they are more likely to obtain not guilty verdicts. We would point out, however, that the perfect record attorneys from Islamic law societies have in obtaining not guilty verdicts is due to the outcomes in only one case of seven counts.

The results are more interesting when we look at the impact of national legal background on the

ability of the attorney to obtain a sentence of less than life imprisonment. We find that given the data available, first attorneys of record coming from customary law backgrounds are best able to obtain lighter penalties for their clients. The correlation coefficient for this variable is negative and statistically significant. None of the other measures for common law, civil law, or Islamic law attorneys exercised any meaningful and statistically significant impact. The same results are obtained when we look at the legal background of second attorneys. Lawyers whose origins are in customary law countries seem to do a better job at helping their clients escape life imprisonment.

Thus, despite our expectation that attorneys from the dominant legal cultures in the world might perform better, it appears that it is customary law background that better predicts success. While we cannot offer any more than speculation regarding this finding, it may be that since many of these customary law lawyers are from African nations, which is where many of the ICTR judges hail from as well, that they are better versed in developing arguments that appeal to the trial chambers. Future research will need to pay much closer attention to these findings.

It should be reassuring, however, that experience in one of the two predominant legal cultures of the world does not guarantee an especially advantageous advocacy at the ICTR. For if some experts are concerned this tribunal, and perhaps others, are biased in favor of common or civil law experience, the limited evidence here suggests that such concerns may not be warranted. Still, it is possible that the international tribunals are developing their own hybrid systems that utilize best practices or best-suited practices from all the world's legal cultures. If this is the case then it may be that professional background in just one legal system is not sufficient. Perhaps the best defense combines talent from both civil, common law, and other systems.

Table 2. Correlations among defense attorney background characteristics and ICTR decisions

	Verdict Guilty / Not guilty		Sentence Life / Not life	
	Attorney #1	**Attorney #2**	**Attorney #1**	**Attorney #2**
Civil law	0.0540 0.4654	-0.1202 0.1031	-0.1841 0.0978	-0.0707 0.5277
Common law	0.0623 0.3994	0.2896 0.0001	-0.0565 0.6144	0.0785 0.4832
Islamic law	NA	-0.1547 0.0355	-0.1620 0.1459	NA
Customary law	0.1190 0.1067	0.0924 0.2112	-0.3026 0.0057	-0.2596 0.0185
Political rights	0.1792 0.0173	0.0835 0.3230	-0.4392 0.0001	-0.4491 0.0004
Civil liberties	0.1962 0.0090	0.0635 0.4526	-0.4147 0.0002	-0.4223 0.0010
Fair trials	0.0822 0.2659	0.2172 0.0094	-0.1205 0.2808	-0.3620 0.0052
Judicial independence	0.0282 0.7034	-0.0309 0.7152	-0.1241 0.2790	-0.0608 0.6504
Number pros. attorneys	0.0413 0.5763		0.3419 0.0017	
Number def. attorneys	-0.0953 0.1971		0.1474 0.1864	
Prosecution experience	0.0027 0.9709		0.1276 0.2532	
Defense experience	-0.0438 0.5541		0.2187 0.0484	
	N=185	**N=185**	**n=82**	**n=82**

Nb. correlation coefficient is on top and significance level is below.

Mixed teams

To investigate this possibility we created several new measures of mixed teams of defense lawyers. The first "mixed team" variable we created measures the presence of a common law lawyer and a civil law lawyer on the defense team. Again, our results are somewhat counterintuitive We find that such teams were statistically more likely to obtain guilty verdicts, but that such combinations improved the likelihood of the client receiving less than a life sentence. The correlation coefficient for the first relationship is .17 ($p. < .01$); while for the second it is -.24 ($p. < .05$). We also created two other mixed team variables where we combined common and civil law attorneys with customary law defense lawyers. When the team consists of a civil law attorney and a customary law attorney, the correlation with verdicts is .10 ($p. > .10$) and statistically insignificant, while the correlation

between such teams and the likelihood of obtaining a life sentence is -.29 (p. <.01). When the team consists of a common law lawyer and a customary law lawyer the respective correlations with verdicts and sentences are .13 (p > .05) and -.42 (p. < .001). These tentative findings seem to suggest that while mixed teams fare no better than homogenous teams when it comes to verdicts, mixed teams appear to perform decidedly better than others in obtaining lighter sentences for their clients.

Additional results

Some of the more unusual results concern the relationship between the extent of political rights and civil liberties in the defense attorneys' home nations and the decisions of the judges. We should note that the political rights and civil liberties variables are scaled from 1 – 7, where "1" represents the most political rights and civil liberties and "7" represents the least such rights.

First, we see that attorneys from states with the most political rights and civil liberties appear to be better able to obtain not guilty verdicts for their clients. But, second, we see that those lawyers coming from the least democratic states with the fewest civil liberties are better able to protect their clients from life sentences. Could it be that lawyers from democratic states perform better in the somewhat more objective determination of their client's liability because of their greater skill at advocacy in a transparent and fact-based judicial system (as opposed to the more politicized judicial systems one is apt to find in undemocratic nations)? Defense attorneys from undemocratic states may be advantaged in the more subjective determination of punishment because their advocacy skills are more oriented toward appeals to political judgment rather than objective fact. At this point, we only have such speculation to offer. We also find no evidence to suggest that attorneys from states with more judicial independence or fair trial protections are better able to secure not guilty verdicts or lighter sentences for their clients.

Next, we see that neither the number of prosecution or defense attorneys, nor their previous ICTR experience, exercises a statistically significant impact on guilty verdicts. After a guilty verdict is obtained, however, the number of prosecution lawyers does have a statistically significant and positive effect on the probability that the Tribunal issues a life sentence. The total experience of the prosecution team demonstrates no statistically significant relationship when measured against the probability of a life sentence. The total experience of the defense team is positively related to the probability of a life sentence. Perhaps individuals with the most difficult cases to defend seek more defense counsel, albeit to no avail as ultimately the ICTR punishes them severely regardless. Generally, the advantages the ICTR prosecution teams are perceived to enjoy in their depth of experience and resources do not apparently translate into greater success in the courtroom. Still, these findings are only tentative and obviously do not even begin to get at such issues as the quality of the counsel, the level of effort put forth, and other intangible factors.

Conclusions

Our findings provide some preliminary, yet unique insights into the relative success of defense attorneys at the International Criminal Tribunal for Rwanda. In the data collected to date, the type of national background these lawyers come from plays an important, though limited, role in their abilities to obtain not guilty verdicts and sentences less than life for their clients. Those teams of defense attorneys that appear to enjoy the greatest success at the ICTR consist of at least one lawyer from a customary law nation. Further investigation is needed to better understand what kind of skill set customary law lawyers are bringing to the Tribunal and whether such skills can be gained by lawyers from other national, legal backgrounds.

We also note that the extent of protections for political rights and civil liberties in defense lawyers' home states appears to play an important, if not always expected, role in judicial decision making. Those from the most politically free nations appear to do a better job of obtaining not guilty verdicts, while those from more authoritarian governments with fewer freedoms seem to do better in obtaining lighter sentences for their clients. This finding too requires further examination, principally through a more multivariate analysis where we can also examine the impact of other factors on sentencing decisions, such as the severity of the crimes committed and the guilty party's level of power in the genocidal regime in Rwanda at the time.

As the world increasingly moves toward the prosecution of those who violate international humanitarian law, it also becomes increasingly important that steps be taken to ensure the adjudicatory process is as fair and impartial as possible. Noticeable in this regard is the creation of a unit within the International Criminal Court for issues pertaining to defense counsel. As well, an International Criminal Bar now represents the interests of defense lawyers that practice before the ICC. As the work of the ICC begins in earnest, the efforts of this association and the ICC's personnel involved in defense issues will be critical in maintaining a substantial body of defense lawyers trained and experienced in international humanitarian law. This, in turn, is critical for the legitimacy of the ICC and ultimately the success of international criminal law in holding accountable those who violate its tenets.

JAMES MEERNIK
is chair of the Department of Political Science at the University of North Texas (meernik@po6.cas.unt.edu)

CHRISTOPHER FARISS
is a graduate student in the Department of Political Science at the University of North Texas.