Law, Literature and Genocide:
Rupert Bazambanza's *Smile Through the Tears*

Clotilde Pégorier
(University of Essex)

Abstract

Proceeding from the view that international criminal law remains a neglected area of study within law-and-literature scholarship, this article undertakes a critical reading of Rupert Bazambanza's 2004 graphic novel *Smile Through the Tears*, set during the Rwandan genocide. It argues that Bazambanza's text not only provides a powerful rendering of the subjective experience of the victims of genocide, but also reveals to the reader a number of the conditioning factors that catalysed the violence. Reading the novel alongside case law and academic literature, the article ventures an analysis of how, by exposing such factors, the text might also aid in furthering awareness and understanding of core issues relating to the legal framework of genocide.

Keywords

Genocide – International Criminal Law – Law-and-Literature – Incitement to Genocide – Dehumanisation - Classification

Short CV

Clotilde Pégorier is a lecturer in the School of Law at the University of Essex. She previously held teaching and research positions at the universities of Zurich, Lucerne and Exeter, and completed her PhD at the latter institution in 2011. Her primary research interests lie in the fields of international criminal law and international humanitarian law, as well as in interdisciplinary work at the intersection of law and the humanities.

She has published a full-length monograph study on the legal qualification of ethnic cleansing, and a number of book chapters and journal articles on various topics, including genocide denial, hate speech and freedom of expression. Her current research is on media

representations of mass violence and crime across select aesthetic genres (including graphic fiction and theatre).

First published in 2004, *Smile Through the Tears* (original: *Sourire malgré tout*) is a graphic novel that recounts a harrowing tale of the near annihilation of a family, the Rwangas, during the Rwandan genocide. In his introductory notes, author and illustrator Rupert Bazambanza, himself a survivor of the genocide, states his mission to be akin to that of a "town crier"; his purpose is to "tell the whole world right to its face how racism [is] an abomination", and "to say this loud and clear, in the hopes of preventing another genocide or similarly terrible crime from claiming more innocent victims or creating survivors who, [like him] had little reason left to live".[1] Told from the point of view of the Rwangas as they live through events, the narrative supplies a subjective account rather than any kind of comprehensive or detached historical overview. Nonetheless, it succeeds in not only providing a powerful rendering of the experience of the victims, but also in revealing to the reader a number of the conditioning factors that catalysed the genocidal violence. The aim of the present contribution is to outline and critically assess how, by exposing such factors, the text might also aid in furthering awareness and understanding of core issues relating to the *legal* framework of genocide.

I. On Law, Literature and Genocide

The article proceeds from three principal observations relating to current law and literature scholarship. A first is that, in the extensive field of work on literary and cultural representations of genocide, there is a dearth of close and sustained engagement with legal concerns. Predominant tendencies have instead been, and still are, to either address the moral issues that attach to the aesthetic (re-)presentation of 'unspeakable' acts, or to explore the potential value of fiction, narrative and the imagination in working through the trauma of violence, with a focus on the ethics and experience of witnessing, testimony and remembrance.[2] To suggest that this body of work does not at all bear on questions of law would, of course, be wrongheaded – explorations of the lived ordeal of genocide and the impact of mass violence on individuals and communities carry clear relevance to furthering

[1] Rupert Bazambanza, *Smile Through the Tears*, trans. by Lesley McCubbin (Jackson's Point: Soul Asylum, 2007) [original: 2004], p. i.

[2] The critical literature in this context is far too vast to cite here. A significant intervention that shapes my own views on the role of fiction and narration in articulating the experience of mass violence is that by Hayden White, who suggests that "[f]ar from being a problem […] narrative might well be considered a solution to a problem of general human concern, namely, the problem of how to translate knowing into telling, the problem of fashioning human experience into a form assailable to structures of meaning that are generally human, rather than culture-specific". See Hayden White, *The Content of the Form: Narrative Discourse and Historical Representation* (Baltimore: Johns Hopkins University Press, 1987), p. 1.

understanding of the human experience to which international criminal law ought to attend. To date, however, this connection has not been made in any prominent or explicit way, and rather than being placed front and centre, legal-ethical concerns have generally remained at most a marginal consideration.

The second observation is the apparent neglect of international criminal law in law-and-literature scholarship. To a degree, this might be seen as part of a broader trend in relation to international law more generally, which has very much been a late arrival onto the law-and-literature scene – beyond the occasional earlier study,[3] it is only fairly recently that scholars such as Ed Morgan,[4] Susan Tiefenbrun,[5] Christopher Warren[6] and Chenxi Tang[7] have begun to herald a new emphasis on exploring international law in conjunction with literary and cultural sources. Despite such recent advances, the field remains, as Ekaterina Yahyaoui Krivenko remarks, "fragmented and rudimentary".[8] While the body of work on human rights and literature – much of which touches on international criminal and humanitarian law issues – continues to grow apace,[9] the dedicated study of literary texts in relation to the laws of genocide, war crimes and crimes against humanity persists as a desideratum. Why this should be so is neither easy to pin down with any certainty, nor the burden of the present essay. Two significant outcomes might be highlighted, however. One is that the field of international criminal law has reaped scant benefit from the perspectives, insights and impulses brought to bear by law-and-literature scholarship. The other is that literary and cultural texts remain a remarkably undervalued resource for exploring – and better understanding – core issues of violence, identity and justice that so centrally inform the content of international criminal law.

---

[3] A classic example here is Theodor Meron, *Henry's Wars and Shakespeare's Laws: Perspectives on the Law of War in the Later Middle Ages* (Oxford: Oxford University Press, 1993).
[4] Ed Morgan, *The Aesthetics of International Law* (Toronto: University of Toronto Press, 2007).
[5] Susan Tiefenbrun, *Decoding International Law: Semiotics and the Humanities* (Oxford: Oxford University Press, 2010).
[6] Christopher N. Warren, *Literature and the Law of Nations, 1580-1680* (Oxford: Oxford University Press, 2015).
[7] Chenxi Tang, *Imagining World Order: International Law and Literature in Early Modern Europe, 1500-1800* (Ithaca: Cornell University Press, 2018).
[8] Ekaterina Yahyaoui Krivenko, "International Law, Literature and Interdisciplinarity", *Law and Humanities* 9 (1) (2015): 103-122.
[9] For a representative sample of recent work, see: Elizabeth Swanson Goldberg and Alexandra Schultheis Moore (eds), *Theoretical Perspectives on Human Rights and Literature* (New York: Routledge, 2012) and Ian Ward (ed.), *Literature and Human Rights: The Law, the Language and the Limitations of Human Rights Discourse* (Berlin: De Gruyter, 2015). Especially noteworthy is, in addition, Joseph R. Slaughter, *Human Rights, Inc.: The World Novel, Narrative Form and International Law* (New York: Fordham University Press, 2007).

The third and final point relates to an ongoing debate amongst law-and-literature scholars regarding the appropriate aims and aspirations of work in the field. From its origins in US law schools in the 1970s, the law-and-literature movement has developed into a rich, diverse and rapidly evolving interdisciplinary enterprise – one that fizzes with great intellectual energy and which has, to a large degree, cast off initial concerns with contributing to the reform of legal education and practice. For some, this is an entirely welcome advance – a necessary turn away from restrictive pragmatic or utilitarian considerations.[10] Others, however, suggest that law-and-literature work is now in danger of becoming too insular and argue for a revival of the movement's original "educative ambition".[11] The opposition is, of course, a false one: law-and-literature (and law-and-humanities) scholarship is a broad enough church to accommodate multiple approaches, and much 'research-led' work in the area, while perhaps not directly driven by educational concerns, has much to offer in fundamentally revising how lawyers and students think about the law – as is generally recognised on all sides of the discussion. Nonetheless, I share the view that the traditional educational premise of law-and-literature remains a significant aspect of its promise and should not be allowed to get lost: inasmuch as we must be wary of the "romantic fallacy"[12] that posits literature as an unerring moral supplement to the law, it still pays, I would argue, to read literary and cultural texts for how they speak to ethical issues often obscured in and by legal discourse – not in any redemptive fashion, but rather and more neutrally for how they might draw attention to such issues, ground new understandings of their provenance and complexities, and/or introduce alternative perspectives and fresh critical dimensions. Or, as Melanie Williams puts it, we might productively regard literary sources as a means to "identify an issue that is poorly addressed in life and current legal scholarship and practice" and to guide an "interdisciplinary or interstitial enquiry [that] opens and challenges the debate on that topic more effectively than convention allows".[13]

---

[10] See for instance Austin Sarat, "Traditions and Trajectories in Law and Literature Scholarship", *Yale Journal of Law and the Humanities* 10 (2) (1998): 401-407.

[11] Ian Ward, "The Educative Ambition of Law and Literature", *Legal Studies* 13 (1993): 323-331. See further: Ian Ward, *Law and Literature: Possibilities and Perspectives* (Cambridge: Cambridge University Press, 1995), pp. 22-27, and Jeanne Gaakeer, "The Future of Literary-Legal Jurisprudence: Mere Theory or Just Practice?", *Law and Humanities* 5 (1) (2011): 185-196.

[12] On the "romantic fallacy" in law-and-literature, see Desmond Manderson, *Kangaroo Courts and the Rule of Law: The Legacy of Modernism* (Abingdon: Routledge, 2011).

[13] Melanie L. Williams, "Socio-Legal Studies and the Humanities: Law, Interdisciplinarity and Integrity", *International Journal of Law in Context* 5.3 (2009), 243-261, 248. Williams makes this point while expounding on the view – which I share – that law-and-literature scholarship should not, and invariably does not, work with the expectation of being "cited as an authority by the courts".

II. *Smile Through the Tears*: Graphic Revelations

It is in this light that I propose here a reading of Bazambanza's *Smile Through the Tears*. First, a word on the choice of text. Opting for a graphic novel may raise eyebrows, and certainly opens up a further set of critical concerns. For a long time, graphic texts were considered too trivial an object for serious academic scrutiny. As cultural studies scholars have successively broken down the barriers between 'high' and 'low' culture, however, so graphic media have gradually come to be recognised and treated as a legitimate art form – to the extent that the study of graphic fiction and non-fiction is currently experiencing something of a boom. Especially significant for present purposes is the proliferation of graphic representations that relate to instances of mass violence, conflict and atrocity, from Art Spiegelmann's path-breaking *Maus*, to the graphic reporting of cartoonists such as Joe Sacco and Sarah Glidden. Recently, an as yet still smallish band of scholars has also begun to critically explore graphic media in their specific relation to legal and jurisprudential issues.[14] At this point, I do not wish to dwell any further on the question of genre.[15] For the purposes of the present enquiry, I am content to take as read that graphic texts represent a significant critical resource for both articulating the experience of violence and victimhood, and for illuminating and/or critiquing the law.

Two further specific qualities govern the selection of *Smile Through the Tears* as primary text here. One is that, in chronicling the slaughter of the Rwanga family, the narrative presents, to borrow a term from David Luban, a "civilian's eye-view"[16] of the lived horrors of mass violence. The other is the manner in which the text situates the events of the Rwandan genocide in a longer historical context stretching back to the colonial past. In so doing, the narrative is able both to capture the experience of the genocide as an abrupt irruption of brutality that intrudes upon the lives of individuals and communities, and to expose aspects of the political, ethical and legal landscapes within which it unfolded. It is in this capacity to

[14] See in particular Thomas Giddens (ed.), *Graphic Justice: Intersections of Comics and Law* (London: Routledge, 2015) and the special volume of the journal *Law – Text – Culture* on "Justice Framed: Law in Comics and Graphic Novels" (vol. 16, 2012), edited by Luis Gomez Romero and Ian Dahlman. Giddens puts the point succinctly when he writes that legal studies should "embrace the medium of comics as a real and significant critical resource and object" (Thomas Giddens, "Introduction", in *Graphic Justice*, ed. by Giddens, 1-7, 6).

[15] I am currently working on a parallel article that focuses more closely on the relations between graphic fiction and nonfiction – as specific genres – and questions of international criminal law.

[16] David Luban, "Human Rights Thinking and the Laws of War", in *Theoretical Boundaries of Armed Conflict and Human Rights*, ed. by Jens David Ohlin (Cambridge: Cambridge University Press, 2016), pp. 45-77, p. 46.

exhibit certain of the factors that drove the genocide and/or permitted its perpetration that I see the text's value to lie – at least with regards our leading concerns here. *Smile Through the Tears* does not offer a complex elaboration of themes and issues relevant to an understanding of the laws of genocide – indeed, the text is, in general, marked by both a clear ideological bias and an at times heavy-handed didacticism. Yet nor does it lay any claim to complexity – on the contrary, the lines from Bazambanza's introduction quoted at the head of the article give clear voice to the intention to encourage readers to identify with the victims, and to educate them on the circumstances leading up to the genocide. It is with this in mind, and in full awareness of the text's limitations, that I propose to explore how *Smile Through the Tears* reveals concerns that relate to the legal context of genocide, and to consider how, when read alongside case law and legal academic work, such representations might help further understanding of certain of the challenges involved in confronting genocide in and through law.

The use of the term 'reveal' is not incidental here, but derives from a specific categorization suggested by Nick Mansfield in a 2012 essay on literature and the politics of human rights. There, Mansfield identifies four principal "impulses" that stimulate creative engagement with human rights issues – namely, the impulses to "remember", to "reveal", to "remind" and to "resolve".[17] *Remembering* refers to the commemoration of historical atrocities and aims to "avert forgetfulness that might make such appalling events disappear seamlessly into an unstudied history" or render them "prey to usually racially motivated revisionism".[18] *Reminding* seeks to "shock us out of [our] complacencies" and to gnaw at our "impervious[ness] to the suffering of other people".[19] *Resolving* grows out of the impulse to remind and aims "to turn the moral straightening experienced [through reminding] either into some kind of activism or a general resolution that such things should not be allowed to happen again".[20] *Revealing* meanwhile strives to "communicate to the world hitherto unknown atrocities" with the ambition of "appeal[ing] to other people […] to change and to cause change".[21] *Smile Through the Tears* conceivably aspires to all four of these aims. Here, however, I wish to focus on how, through its combination of text and images, the text puts on

[17] Nick Mansfield, "Human Rights as Violence and Enigma: Can Literature Really Be of Any Help with the Politics of Human Rights?", in *Theoretical Perspectives on Human Rights and Literature*, ed. by Elizabeth Swanson Goldberg and Alexandra Schultheis Moore (New York: Routledge, 2012), pp. 201-214.
[18] Mansfield, "Human Rights as Violence and Enigma", 203.
[19] Mansfield, "Human Rights as Violence and Enigma", 204.
[20] Mansfield, "Human Rights as Violence and Enigma", 204.
[21] Mansfield, "Human Rights as Violence and Enigma", 203.

graphic display (*reveals*) the type of concern noted above – in a manner that, while perhaps not intended to "intervene spectacularly in contemporary politics",[22] does succeed in drawing key legal issues to the fore.

III. The Ten Stages of Genocide

Relevant issues that relate, more or less explicitly, to questions of law are manifold, and must of necessity be treated selectively. In light of the text's historical sweep, I will draw orientation from the frame of Gregory H. Stanton's "ten stages of genocide", which offers itself not least because of the accessible way in which it models the progression of genocidal perpetration.

The point of departure for Stanton's scheme is that instances of genocide follow a pattern that "develops in ten stages that are predictable but not inexorable".[23] These stages are: classification, symbolisation, discrimination, dehumanisation, organisation, polarisation, preparation, persecution, extermination and denial. Their progress is not, Stanton suggests, necessarily linear; stages "can occur simultaneously" and all "continue to operate throughout the process".[24] The utility of this framework for aiding prevention remains contested, with critics arguing that it merely flags symptoms without confronting causes.[25] Yet it is precisely the clarity with which it diagnoses conditioning factors – the majority of which have been, and remain, central considerations for international criminal courts and tribunals – that makes it a useful foil for reading *Smile Through the Tears* here. By the same token, a substantial part of the value of Bazambanza's text is, I contend, the manner in which it provides graphic access to the processes identified by Stanton as they play out and impact upon the lives of victims.

Of the ten stages, I wish to focus primarily on two: classification and dehumanisation. To attempt to isolate such practices is, it hardly needs stating, artificial: the heinous impact of genocide derives precisely from the dynamic overlapping and interweaving of all stages. For the sake of convenience, however, these two specific processes will be taken as a starting

[22] Mansfield, "Human Rights as Violence and Enigma", 203.
[23] Gregory Stanton, 'The Ten Stages of Genocide', Genocide Watch, available at: http://www.genocidewatch.org/genocide/tenstagesofgenocide.html.
[24] Gregory Stanton, 'The Ten Stages of Genocide', Genocide Watch, available at: http://www.genocidewatch.org/genocide/tenstagesofgenocide.html.
[25] See Mark Kielsgard, *Responding to Modern Genocide: At the Confluence of Law and Politics* (London and New York: Routledge, 2016), p. 112.

point and springboard for advancing a discussion of how *Smile Through the Tears* registers critical features that drove the violence in Rwanda, and how, in doing so, it casts light on substantive issues that arise in international criminal law.

IV. Classification and the Discursive Construction of Identity

Stanton writes of the term classification as follows:

> All cultures have categories to distinguish people into "us and them" by ethnicity, race, religion, or nationality: German and Jew, Hutu and Tutsi. Bipolar societies that lack mixed categories, such as Rwanda and Burundi, are the most likely to have genocide. The main preventive measure at this early stage is to develop universalistic institutions that transcend ethnic or racial divisions, that actively promote tolerance and understanding, and that promote classifications that transcend the divisions. The Catholic Church could have played this role in Rwanda, had it not been riven by the same ethnic cleavages as Rwandan society. Promotion of a common language in countries like Tanzania has also promoted transcendent national identity. This search for common ground is vital to early prevention of genocide.[26]

The division of societies into 'us' and 'them' is, Stanton suggests, the first step in any society's movement towards genocide. The polarisation – or, better, the dichotomisation – of opposing groups is what invariably sets all else in motion, establishing a stark ideological divide that rejects any possible alternative identity (if you are not one of 'us', then you are, by necessity, one of 'them').[27] In the case of Rwanda, the ethnic identities of Hutu and Tutsi (and Twa) had long-established roots reaching back almost 400 years.[28] The boundaries demarcating the groups were, however, fairly fluid, grounded on a range of factors encompassing birth and culture, but also wealth and social standing. There was, moreover, considerable interaction between them, including regular intermarriage. Following a first

[26] Gregory Stanton, 'The Ten Stages of Genocide', Genocide Watch, available at: http://www.genocidewatch.org/genocide/tenstagesofgenocide.html

[27] On the links between dichotomisation and violence, see Amin Maalouf, *In the Name of Identity: Violence and the Need to Belong* (New York: Arcade, 2001) and Amartya Sen, *Identity and Violence: The Illusion of Destiny* (New York: Norton, 2006).

[28] As René Lemarchand points out, Hutu and Tutsi as ethnic/social categories are not "pure invention" or mere "figments of the colonial imagination". René Lemarchand, *Burundi: Ethnic Conflict and Genocide* (Cambridge: Cambridge University Press, 1994), p. 34.

period of stratification under the Tutsi King Rwabugiri in the second part of the nineteenth century, during which the regime established an aristocratic Tutsi political class, Belgian colonialists in the early twentieth century then reified the Hutu-Tutsi distinction along ethnic lines by introducing a simplification that "equated 'Tutsi' with 'ruling class'",[29] together with mandatory identity cards specifying the identity of the holder as Hutu, Tutsi or Twa. As is known, the existence of these cards would later play a significant and chilling role in enabling the work of the *génocidaires* in 1994. More generally, Rwanda's history of ethnic identity politics, taking in the revolution of 1959 and the 1973 coup d'état staged by Juvénal Habyarimana, supplied a powerful instrument for mobilising grievances and unleashing mass violence.

The significance of classification as a prompt to genocide is, fittingly, introduced right at the outset of *Smile Through the Tears*. Just three pages in, we witness an episode during which the schoolteacher of Wilson, one of the three children of the Rwanga family, asks all pupils to openly identify their ethnic group.[30] Shortly after, a second sequence shows the teacher, on the express instruction of her superiors (and despite her own misgivings that such a practice is "monstrous"), literally separating Hutus and Tutsis in class, instructing the former to move to the front, and the latter to the back.[31] The effect in fostering division is shown to be immediate: during the first episode, Wilson is addressed by a fellow pupil with the words "You guys are evil",[32] while after the second, he is told by another: "Wilson! We can't play with you anymore. You're a Tutsi! My dad says that you're all vermin."[33] In between the two sequences, Wilson's father, Charles, in an attempt to assuage the fears of his children (Wilson, Degroot and Hyacinthe), offers a potted history of ethnic identity politics in Rwanda. Within this, he grants particular prominence to the role of the Belgian colonialists in entrenching ethnic division:

> King Musinga refused to accept Belgian colonialization. But he didn't have the last word. He had no guns. So the colonizers looked for something to divide the Rwandan people, who had lived together peacefully for over a thousand years. The Belgians split the Twas, Hutus and Tutsis into different ethnic groups. Those whose physical

[29] Bruce D. Jones, *Peacemaking in Rwanda: The Dynamics of Failure* (Boulder CO: Lynne Rienner, 2001), p. 19.
[30] See Bazambanza, *Smile Through the Tears*, p. 4.
[31] See Bazambanza, *Smile Through the Tears*, p. 9.
[32] Bazambanza, *Smile Through the Tears*, p. 4.
[33] Bazambanza, *Smile Through the Tears*, p. 9.

> characteristics didn't fit into any particular division were ranked according to the number of cattle they owned: people owning less were considered Hutu. Children born of the same parents suddenly found they belonged to different 'races'.[34]

This statement is followed by two images, placed side-by-side, of a coloniser measuring nose sizes and assertively declaring the one "Tutsi", the other "Hutu". Identity cards are distributed accordingly, with the Rwandans instructed that their children must "keep to this classification".[35] This then segues into a brief recapitulation of the persecution and violence that attended the regime changes of 1959 and 1973.

This historical overview, as simplified and partial as it is, succeeds in speaking to a number of relevant issues. For one, it economically draws out how the colonialists graft an ideology of racism onto pre-colonial identities, investing the categories of Hutu and Tutsi with what Lemarchand refers to as a new "normative load" they did not previously possess.[36] By linking the initial process of ethnic classification to subsequent patterns of violence, stretching, by extension, through into the 'present' of the narrative, it also establishes the 'us and them' dichotomy as a significant motivation and driver for the genocide. In all this, the text raises, however obliquely, one of the core issues surrounding the definition and recognition of genocide in legal terms – namely, that of the identification of a particular target 'group'. Article 2 of the Genocide Convention defines genocide as acts committed "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such".[37] Given the very nature of genocide as an identity-based crime directed against particular populations, establishing the existence of a targeted victim group ought, perhaps, to appear straightforward. The case law of international courts and tribunals indicates otherwise, however.

In the Rwandan context, the key point of contestation is whether Tutsi victims constitute a distinct 'ethnical' group from the Hutus (a distinction on the grounds of nation, race or religion evidently does not exist). The question is challenging for at least two reasons. Firstly, the category of ethnicity is notoriously awkward to define, tending, as R. G. Grillo puts it, to

[34] Bazambanza, *Smile Through the Tears*, p. 7.
[35] Bazambanza, *Smile Through the Tears*, p. 7.
[36] Lemarchand, *Burundi: Ethnic Conflict and Genocide*, p. 34.
[37] Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted on 9 December 1948 by the General Assembly Resolution 260 (III).

"arise in the interaction of groups" and to "exist in the boundaries constructed between them".[38] Secondly, and closely related, the manner in which identities were assigned under colonial rule in Rwanda, largely based on individual wealth,[39] renders difficult any attempt to establish objective criteria upon which to base a judgement concerning ethnic belonging. This question reared up in the prosecution before the International Criminal Tribunal for Rwanda (ICTR) of Jean-Paul Akayesu, the first individual convicted of genocide by an international tribunal in September 1998.[40] The defendant argued against prosecution on the express grounds that the Tutsi did not comprise a distinct "national, ethnical, racial or religious group" separate from the Hutus. In response, the ICTR conceded that:

> The term ethnic group is, in general, used to refer to a group whose members speak the same language and/or have the same culture. Therefore one can hardly talk of ethnic groups as regards Hutu and Tutsi, given that they share the same language and culture.[41]

Nonetheless, in its final judgement, the tribunal considered that Hutu and Tutsi *should* be identified as two distinct ethnic groups, stating:

> [T]he chamber finds that there are a number of objective indicators of the group as a group with a distinct identity. Every Rwandan citizen was required before 1994 to carry an identity card which included an entry for ethnic group […]. The Rwandan Constitution and laws in force in 1994 also identified Rwandans by reference to their ethnic group […]. The Rwandan witnesses who testified before the Chamber identified themselves by ethnic group, and generally knew the ethnic group to which their friends and neighbours belonged. Moreover, the Tutsi were conceived of as an ethnic group by those who targeted them for killing.[42]

---

[38] R.G. Grillo cited in: Norman M. Naimark, *Fires of Hatred: Ethnic Cleansing in Twentieth-Century Europe* (Cambridge, MA: Harvard University Press, 2001), p. 5.
[39] As Beth van Schaak puts it, "those with ten or more cows were classified as Tutsi, those with less as Hutu". Beth van Schaak, "Darfur and the Rhetoric of Genocide", *Whittier Law Review* 26 (2005), 1101-1134, p. 1120.
[40] *Prosecutor* v. *Jean-Paul Akayesu*, Case N° ICTR-96-4-T, Judgment, Trial Chamber I, 2 September 1998, paras. 673–75.
[41] *Prosecutor* v. *Jean-Paul Akayesu*, Case N° ICTR-96-4-T, Judgment, Trial Chamber I, 2 September 1998, para. 122, footnote 56.
[42] *Prosecutor* v. *Jean-Paul Akayesu*, Case N° ICTR-96-4-T, Judgment, Trial Chamber I, 2 September 1998, paras. 170-171.

The final point is crucial. While the Tribunal did attempt an objective definition of the four groups stated in Article 2 of the Genocide Convention, the task proved too burdensome, producing categories that were too narrow to permit effective application. Thus it concluded that genocide can be committed against any stable and permanent group similar to those enumerated in Article 2, and recognised as such by the perpetrators[43] – a view that has been subsequently upheld by a number of genocide scholars.[44] Still more pertinent here is the standpoint of Alison Des Forges, the prosecution's expert in *Akayesu*, who summarised that it is sufficient, in order to meet the conditions of the Convention, that the concept of distinct ethnicity exists in the eyes of *both perpetrators and victims*.[45] It is this subjective experience of targeted ethnic violence that *Smile Through the Tears* forcefully conveys. From the initial act of classification in the classroom, through all subsequent scenes of outrageous violence, the narrative captures the personal ordeal of living in the crosshairs of genocide. While the effect of this may, at points, be blunted by the cartoonish villainy of the perpetrators, it endures through the graphic images of mutilated corpses and blood-spattered machetes, and through the ever-present threat of sudden violence, such as that which sees Degroot, Wilson and Charles murdered in the space of just three brief frames in the final quarter of the text – a sequence that effectively transmits the abrupt extinguishing of individual lives that characterises the experience of genocide for target groups.[46] What the narrative perhaps imparts above all is the enveloping fear, distress and uncertainty produced under the shadow of imminent annihilation. In so doing, it offers an exemplary story of personal, 'lived' experience that encourages us to reconnect human realities with the study of general norms and principles of international criminal law. In the case of the specific issue currently at hand, it reinforces claims to the necessity of understanding categories of targeted groups for genocide in terms not of objective criteria, but rather of the subjective experience of living as classified targets for violence.

---

[43] *Prosecutor* v. *Jean-Paul Akayesu*, Case N° ICTR-96-4-T, Judgment, Trial Chamber I, 2 September 1998, paras. 516, 701-702.

[44] See for instance Matthew Lippman's suggestion that the Genocide Convention should be applicable to "any coherent collectivity which is subject to persecution" and should protect "political groups and possibly women, homosexuals, and economic and professional classes". Lippman further contends that "[t]o attempt to differentiate each of the named groups on the basis of scientifically objective criteria would […] be inconsistent with the object and purpose of the Convention". Matthew Lippman, "The Convention on the Prevention and Punishment of the Crime of Genocide: Fifty Years Later", *Arizona Journal of International and Comparative Law* 15 (1998), 415-514. For a discussion of the relevance of such issues to judgements at the International Criminal Tribunal for Yugoslavia, see Clotilde Pégorier, *Ethnic Cleansing: A Legal Qualification* (Abingdon: Routledge, 2013), pp. 87-89.

[45] *Prosecutor* v. *Jean-Paul Akayesu*, Case N° ICTR-96-4-T, Judgment, Trial Chamber I, 2 September 1998, para. 172. Emphasis added.

[46] See Bazambanza, *Smile Through the Tears*, p. 52.

V. Dehumanisation and the Enabling of Violence

Turning now to our second 'stage' or 'process', that of dehumanisation. Stanton defines the practice in the following terms:

> One group denies the humanity of the other group. Members of it are equated with animals, vermin, insects or diseases. Dehumanization overcomes the normal human revulsion against murder. At this stage, hate propaganda in print and on hate radios is used to vilify the victim group. In combating this dehumanization, incitement to genocide should not be confused with protected speech. Genocidal societies lack constitutional protection for countervailing speech, and should be treated differently than democracies. Local and international leaders should condemn the use of hate speech and make it culturally unacceptable. Leaders who incite genocide should be banned from international travel and have their foreign finances frozen. Hate radio stations should be shut down, and hate propaganda banned. Hate crimes and atrocities should be promptly punished.[47]

That the dehumanisation of targeted victims is not only a companion to, but a condition for, genocide is widely acknowledged. As Caroline Fournet forthrightly phrases it, the "willingness to deprive victims of 'positive human qualities' is at the heart of every genocidal plan and of every genocide because it totally corresponds to the perpetrators' genocidal intent"; dehumanisation is, indeed, "the very essence of the crime of genocide".[48] As a rhetorical device, dehumanisation attempts to deny members of the enemy group the status of persons and to place them outside the sphere of moral and legal obligation. More than this, it entails the use of verbal and visual metaphors that link the enemy to vermin, animals, beasts and other sub- or non-human entities that require cleansing or eradication, thus establishing their violent elimination not just as legitimate, but also as a necessary moral imperative. Commenting on how this hostile imagination is created in the minds of actors, Sam Keen remarks:

---

[47] Gregory Stanton, 'The Ten Stages of Genocide', Genocide Watch, available at: http://www.genocidewatch.org/genocide/tenstagesofgenocide.html.

[48] Caroline Fournet, *The Crime of Destruction and the Law of Genocide: Their Impact on Collective Memory* (London: Ashgate, 2007), p. 13.

> In the scale of dehumanization, we drop from the mid-point of the subhuman barbarian to the nonhuman, from the savage to the animal […] The lower down in the animal phyla the images descend, the greater sanction is given to the soldier to become an exterminator of pests.[49]

The use of strategies of dehumanisation, and their devastating effects, in various historical contexts of genocide is well documented and does not need rehearsing here. In Rwanda, the Tutsi were, in the period leading up to the genocide, subject to a concerted policy of dehumanisation that saw them repeatedly identified as *inyenzi*, or 'cockroaches'. This was a label that had already been a feature of propaganda campaigns during earlier periods of conflict; in the early 1990s, it was again co-opted and put to use to encourage violence against the Tutsi. Essential to the success of this policy were the media, both radio and print.[50] The extremist Hutu newspaper *Kangura*, for instance, regularly published articles and images intended to stoke the flames of ethnic hatred by presenting the Tutsi as a pest to be exterminated. One notorious example, printed a year prior to the outbreak of violence, carried the title "A Cockroach Cannot Give Birth to a Butterfly" and ran:

> We began by saying that a cockroach cannot give birth to a butterfly; it is true. A cockroach gives birth to another cockroach … The history of Rwanda shows us clearly that a Tutsi stays always exactly the same, that he has never changed. The malice, the evil are just as we knew them in the history of our country. We are not wrong in saying that a cockroach gives birth to another cockroach. Who could tell the difference between the *inyenzi* (cockroaches) who attacked in October 1990 and those of the 1960s? They are all linked, some are the grandchildren of the other. Their wickedness is the same. […] The unspeakable crimes of the *inyenzi* of today recall those of their elders: killing, pillaging, raping girls and women etc.[51]

---

[49] Sam Keen, *Faces of the Enemy: Reflections on the Hostile Imagination* (San Francisco: Harper & Row, 1986), p. 11.

[50] For an extended range of perspectives on the role of the media in the context of the Rwandan genocide, see Jean-Pierre Chrétien (ed.), *Rwanda: Les médias du génocide* (Paris: Karthala, 1995).

[51] "A Cockroach Cannot Give Birth to a Butterfly", Kangura 40 (February 1993), cited in Alison Des Forges, *Leave None To Tell The Story: Genocide in Rwanda* (New York: Human Rights Watch, 1999), pp. 73-74. See also Manus I. Midlarsky, *The Killing Trap: Genocide in the Twentieth Century* (Cambridge: Cambridge University Press, 2005), p. 177.

In this way, *Kangura* emerged as one of the "most virulent voices of hate", and so became a powerful instrument in preparing the ground for and expediting genocide. The same is true, to perhaps an even greater degree, of the radio station 'Radio Télévision Libre des Mille Collines' (RTLM), set up in 1993. Aimed at a young audience, and combining pop music, phone-in shows, interviews and humour, RTLM broadcast hostile messages demonising the Tutsi in the months leading up to the eruption of violence, with the effect, in the words of one witness, of "spread[ing] petrol throughout the country little by little, so that one day it would be able to set fire to the whole country".[52] When President Habyarimana died in a plane crash on 6 April 1994, it was RTLM that announced the news, attributing the crash to the Rwandan Patriotic Front and exhorting the Hutu to eliminate the Tutsi "cockroaches", touching off a frenzy of killing. Once the genocide was underway, RTLM not only provided the soundtrack to the violence,[53] but also effectively became the government's voice in demanding the liquidation of particular individuals, and the Tutsi at large. To cite just one striking example: on 4 June 1994, RTLM host Kantano Habimana broadcast the following message:

> One hundred thousand young men must be recruited rapidly. They should all stand up so that we kill the inkotanyi and exterminate them. […] The reason we will exterminate them is that they belong to one ethnic group. Look at the person's height and physical appearance. Just look at his small nose and then break it.[54]

The dehumanisation of the Tutsi through extremist rhetoric is evidenced throughout *Smile Through the Tears*. An initial indicator has already been noted: the moment at which Wilson is told by a fellow pupil that his father considers all Tutsi "vermin".[55] This incident provides an early signal of the traction enjoyed by such dehumanising rhetoric among Hutus prior to the genocide. Further instances are generously distributed across the text: the Tutsi are referred to as "cockroaches" on at least five occasions,[56] and as "vermin" and "snakes"

---

[52] *Prosecutor* v. *Ferdinand Nahimana et al.*, Case N° ICTR-99-52-T, Judgment and Sentence, Trial Chamber I, 3 December 2003, para. 1078. This represents a variation on the "hypodermic needle" metaphor used in the 1946 judgement against Julius Streicher at the Nuremberg Tribunal.

[53] As Samantha Power remarks, "[k]illers often carried a machete in one hand and a transistor radio in the other". Samantha Power, "Bystanders to Genocide: Why the United States let the Rwandan Tragedy Happen", *Atlantic Monthly* (September 2001), p. 8.

[54] Cited in *Prosecutor* v. *Ferdinand Nahimana et al.*, Case N° ICTR-99-52-T, Judgment and Sentence, Trial Chamber I, 3 December 2003, para. 396.

[55] Bazambanza, *Smile Through the Tears*, p. 9.

[56] See Bazambanza, *Smile Through the Tears*, pages 14, 18, 29, 33, 40, 44, 51, 52 and 60.

elsewhere, too.[57] Such examples suffice to convey the level of dehumanisation and animalisation that preceded and accompanied the genocide.

Notably, the text also records the role of the media, and the radio in particular: we see this in the episode during which Wilson is overheard in a bar mocking a propaganda publication of the CDR, a Hutu extremist political party. The incident is reported by an eavesdropper and swiftly relayed on RTLM with the words: "This is RTLM, the voice of the Hutu majority! Right now at the Umuco bar, Wilson Rwanga and his Tutsi friends are saying that only idiots join the MRND and the CDR …".[58] Concerned, a friend warns Wilson he had "better split", as this was the signal for the Interahamwe, the state-sponsored militia, "to come and kill those who were just named".[59] The narrative voice then supplies additional context by commenting: "This tactic used by RTLM and the Interahamwe had already caused the death of many Tutsis. RTLM had also strongly reinforced the ideology of ethnic division throughout Rwanda by broadcasting Interahamwe messages".[60] Tellingly, this all plays out immediately after a sequence in which Hyacinthe and a friend pass in front of the RTLM building. Again, the narrative voiceover provides context, directly stating: "As if the terrible Interahamwe weren't enough, Habyarimina and his followers founded a radio station to spread hatred among the different ethnic groups. This was RTLM, 'Radio Télévision des Mille Collines'".[61] The connection between the government and the station is reinforced by the action in the subsequent frames, which show government soldiers stationed outside the RTLM office, one of whom brands the two women "sneaking cockroaches" and proceeds to physically assault Hyacinthe. In the space of just two pages, the text thus supplies a compressed narrative on the workings and impact of Hutu hate radio – one that both reveals the collusion between the Hutu leadership and RTLM in attempting to stoke enmity and violence, and spotlights the agency of individual listeners, including the members of the Interahamwe, who respond to the station's (and, by extension, the government's) inflammatory message.

---

[57] See Bazambanza, *Smile Through the Tears*, pages 9, 11, 50 and 54.
[58] Bazambanza, *Smile Through the Tears*, p. 30.
[59] Bazambanza, *Smile Through the Tears*, p. 30. Justin La Mort has commented on the actual use of this tactic, stating how RTLM "broadcast names and directions of Tutsi and Hutu political opponents who were subsequently killed". Justin La Mort, "The Soundtrack to Genocide: Using Incitement to Genocide in the Bikindi Trial to Protect Free Speech and Uphold the Promise of Never Again", *Interdisciplinary Journal of Human Rights Law* 4 (1) (2009), 43-60, p. 50.
[60] Bazambanza, *Smile Through the Tears*, p. 30.
[61] Bazambanza, *Smile Through the Tears*, p. 29.

VI. Excursus: Incitement to Genocide

Such questions regarding the interactions between speech acts and (genocidal) violence have occupied a prominent position in a number of 'incitement' cases tried before the ICTR. Examples include those against Akayesu, Jean Kambanda,[62] Georges Ruggiu[63] and Simon Bikindi,[64] and, perhaps most significantly, RTLM founders Ferdinand Nahimana and Jean-Bosco Barayagwiza, together with the editor of *Kangura*, Hassan Ngeze, in the so-called 'Media Case'.[65] As noted by the Akayesu Trial Chamber, understandings of incitement differ across civil- and common-law systems: under the former, it "tends to be viewed as a particular form of criminal participation", while under the latter, it is "most often treated as a form of complicity".[66] International legal mechanisms for interdicting inciting speech[67] first appeared at the International Military Tribunal at Nuremberg in the case against Julius Streicher. In its judgement, the IMT described how, in leading articles and letters in *Der Stürmer*, many of them written by Streicher himself, Jewish people were depicted as "a parasite, an enemy, and an evil-doer, a disseminator of diseases" or likened to "swarms of locusts which must be exterminated completely".[68] The Tribunal found that, through such speech, Streicher "incited the German people to active persecution".[69] In the aftermath of Nuremberg, the Genocide Convention ratified "direct and public incitement to commit genocide" as a "specific crime, punishable as such" – a definition mirrored in Article 2(3)(c) of the ICTR Statute. Only with the establishment of the ICTY and ICTR in the early 1990s (and subsequently the ICC in 2002), however, did a more robust framework emerge for targeting public speech that incites violence.

---

[62] *Prosecutor* v. *Jean Kambanda*, Case No. ICTR-97-23-S, Judgment and Sentence, 4 September 1998, paras. 39(v)–(vii),(x), 40(3).
[63] *Prosecutor* v. *Georges Ruggiu*, Case No. ICTR-97-32-I, Judgment and Sentence, 1 June 2000, paras. 44–45 and 50.
[64] *Prosecutor* v. *Simon Bikindi*, Case No. ICTR-01-72-T, Judgment, Trial Chamber III, 2 December 2008, paras. 422–426. An original analysis of the Bikindi case, focusing on what the author terms the "auditory dimensions of legal experience and practice", is provided in James E. K. Parker, *Acoustic Jurisprudence: Listening to the Trial of Simon Bikindi* (Oxford: Oxford University Press, 2015).
[65] *Prosecutor* v. *Ferdinand Nahimana et al.*, Case N° ICTR-99-52-T, Judgment and Sentence, Trial Chamber I, 3 December 2003, paras. 966–969, 1033–39.
[66] *Prosecutor* v. *Jean-Paul Akayesu*, Case N° ICTR-96-4-T, Judgment, Trial Chamber I, 2 September 1998, para. 552.
[67] I use the term "inciting speech" here in the sense proposed by Richard Ashby Wilson, referring to a mode of hate speech "combined with an appeal to attack members of a protected group; in short, hate speech plus a call to violence". Richard Ashby Wilson, *Incitement on Trial: Prosecuting International Speech Crimes* (Cambridge: Cambridge University Press, 2017), p. 20.
[68] Streicher Judgment, Trials of the Major War Criminals before the International Military Tribunal (TMWC), 42 volumes, Nuremberg, 1947-1949, p. 501.
[69] Streicher Judgment, p. 501.

Inasmuch as the ICTR thus had only a thin body of jurisprudence upon which to draw, the judgements in those cases cited above tended to uphold the view, similar to that held against Streicher, that public statements uttered by political leaders and through the media played a significant role in instigating the violence, and thus constituted "direct and public incitement to genocide". In *Ruggiu*, for instance, the ICTR explicitly made the connection to Streicher, commenting that "the accused, like Streicher, infected peoples' minds with ethnic hatred and persecution".[70] The Tribunal thus found Ruggiu guilty of direct and public incitement to commit genocide:

> Those acts were direct and public broadcasts all aimed at singling out and attacking the Tutsi ethnic group and Belgians on discriminatory grounds, by depriving them of the fundamental rights to life, liberty and basic humanity enjoyed by members of wider society. The deprivation of these rights can be said to have as its aim the death and removal of those persons from the society in which they live alongside the perpetrators, or eventually even from humanity itself.[71]

In the Media Case, meanwhile, the Trial Chamber declared that RTLM broadcasting was a "drumbeat, calling on listeners to take action against the enemy" and that the "nature of radio transmission made RTML particularly dangerous and harmful, as did the breadth of its reach".[72] It further explained:

> The Defence contends that the downing of the President's plane and the death of Habyarimana precipitated the killing of innocent Tutsi civilians. The Chamber accepts that this moment in time served as a trigger for the events that followed. That is evident. But if the downing of the plane was the trigger, then RTLM, Kangura and CDR were the bullets in the gun. The trigger had such a deadly impact because the gun was loaded. The Chamber therefore considers the killing of Tutsi civilians and Hutu political opponents can be said to have resulted, at least in part, from the message of

[70] Prosecutor v. Georges Ruggiu, Case N° ICTR-97-32-I, Judgment, Trial Chamber, 1 June 2000, para. 19.
[71] Prosecutor v. Georges Ruggiu, Case N° ICTR-97-32-I, Judgment, Trial Chamber, 1 June 2000, para. 22.
[72] *Prosecutor* v. *Ferdinand Nahimana et al.*, Case N° ICTR-99-52-T, Judgment and Sentence, Trial Chamber I, 3 December 2003, para. 1031.

ethnic targeting for death that was clearly and effectively disseminated through RTLM, Kangura and CDR, before and after 6 April 1994.[73]

Thus, the three defendants were all found guilty of inciting genocide, together with other crimes. Expanding our gaze momentarily, we might note a similar trend towards targeting public speech and broadcasts for inciting violence between population groups in the case law of both the International Criminal Tribunal for the Former Yugoslavia (ICTY)[74] and the International Criminal Court (ICC).[75]

Despite this clear trend, proving "direct and public incitement to genocide" nonetheless involves several challenging and interlinked elements. Perhaps first among these is establishing the mental element: as Richard Ashby Wilson puts it, the cardinal issue faced by judges in several of the incitement cases before the ICTR was the "yawning gap between the high threshold of specific intent to commit genocide and the paucity of prosecution evidence for *mens rea*".[76] A second key concern is that of causation and the question of whether, for a finding of incitement, a causal nexus to genocidal acts must be demonstrated. As an inchoate crime – a point iterated in the *Akayesu* case[77] – no such demand should be required. Yet a number of judges have insisted upon the presence of a necessary nexus between speech acts and material instances of genocide, thus blurring the specific contours of the crime of incitement.[78] Perhaps especially relevant for our concerns, meanwhile, is the manner in which

[73] *Prosecutor* v. *Ferdinand Nahimana et al.*, Case N° ICTR-99-52-T, Judgment and Sentence, Trial Chamber I, 3 December 2003, para. 953.

[74] See for example, *Prosecuto*r v. *Dario Kordić and Mario Čerkez*, Case N° IT-95-14/2-T, Judgment, 26 February 2001 and *Prosecutor* v. *Radoslav Brđanin*, Case N° IT-99-36-T, Judgment, 1 September 2004. Dario Kordić and Radoslav Brđanin were both charged with complicity to commit genocide, due to evidence based on their speeches. See further Richard Ashby Wilson, "Inciting Genocide with Words", *Michigan Journal of International Law* 36 (2) (2014-2015), 278-320.

[75] *Prosecutor* v. *Callixte Mbarushimana*, Case N° ICC-01/04-01/10 Decision on the Confirmation of Charges, 16 December 2011, paras. 304-315, *Prosecutor* v. *William Samoei Ruto*, Henry Kiprono Kosgey and *Joshua Arap Sang*, Case No ICC-01/09-01/11, Decision on the Confirmation of Charges Pursuant to Article 61(a) and (b) of the Rome Statute, 23 January 2012, paras. 363-367.

[76] Wilson, "Inciting Genocide with Words", p. 296. In the *Akayesu* case, the ICTR identified the *mens rea* elements of the offence in "the intent to directly prompt or provoke another to commit genocide", as well as the specific intent to destroy, in whole or in part, a protected group. *Prosecutor* v. *Jean-Paul Akayesu*, Case N° ICTR-96-4-T, Judgment, Trial Chamber I, 2 September 1998, para. 560.

[77] "Genocide clearly falls within the category of crimes so serious that direct and public incitement to commit such a crime must be punished as such, even where such incitement failed to produce the result expected by the perpetrator". *Prosecutor* v. *Jean-Paul Akayesu*, Case N° ICTR-96-4-T, Judgment, Trial Chamber I, 2 September 1998, para. 562.

[78] Wilson comments upon such shortcomings at length in the second chapter of *Incitement on Trial*. In response, he proposes an approach that draws on performative theories of language, precisely to "highlight the inchoate character of the crime of incitement to genocide by emphasising the content, meaning and illocutionary force of utterances". Wilson, *Incitement on Trial*, p. 10.

the Tribunal, in wrestling with such issues, has drawn into consideration the wider context within which the utterance occurs and takes meaning. To again take the example of the Media Case: the Trial Chamber there held that, "[a] statement of ethnic generalization provoking resentment against members of that ethnicity would have a heightened impact in the context of a genocidal environment", and that such an act "would be more likely to lead to violence".[79] The Appeals Chamber, meanwhile, ruled similarly that "[t]he principal consideration is thus the meaning of the words used in the specific context: it does not matter that the message may appear ambiguous to another audience or in another context".[80]

The rootedness of the force and meaning of incitement speech in specific contexts is an aspect made salient in and through *Smile Through the Tears*. By embedding references to the role of the media within a wider narrative of targeted ethnic violence, the text casts light on how such speech exerts its full, baleful power within a broader setting, by both drawing on, and reinforcing, pre-existing attitudes of division and hatred. The presence of the media is spotted rather than dominant throughout, the effect of which is that incitement speech becomes one aspect, albeit it a significant one, of the wider context of violence. Thus the text is able to communicate a sense of the atmosphere within which the messages broadcast by RTLM were received – by both victims and perpetrators – and subsequently translated into action. In this way, the narrative affords supplementary insight into how such speech derives its exercitive force, and how it could, or should, be considered tantamount to incitement to genocide. For inasmuch as the raw texts of inciting speech may rarely be dispositive in themselves, they cannot, should we wish to gauge their capacity to incite violence, be interpreted solely 'within the frame'; the performative potential of such utterances accrues rather through the interaction of text and context, and approaches to adjudication must be sensitive to this. Through its situated representation of media pronouncements, *Smile Through the Tears* might thus be seen to lend support to an understanding of incitement that commands consideration of both content and context, and to approaches that appeal for evaluation on a specific, case-by-case basis – precisely as proposed in Akayesu.[81]

[79] *Prosecutor* v. *Ferdinand Nahimana et al.*, Case N° ICTR-99-52-T, Judgment and Sentence, Trial Chamber I, 3 December 2003, para. 102.
[80] *Prosecutor* v. *Ferdinand Nahimana et al.*, Case N° ICTR-99-52-A, Appeal Judgment, Appeals Chamber, 28 November 2007, para. 701.
[81] *Prosecutor* v. *Jean-Paul Akayesu,* Case N° ICTR-96-4-T, Trial Chamber Judgment, 2 September 1998, para. 558.

VI. Concluding Remarks

Drawing together the main threads of the preceding analysis, we can stake the claim that, by offering the reader a 'civilian's eye-view' of genocidal violence in context, *Smile Through the Tears* opens new perspectives on processes of both 'classification' and 'dehumanisation', and on related issues as they inform, and play out in, the work of international courts and tribunals. In its broader dimensions, meanwhile, the text also invites fresh consideration of the overlapping and interweaving of such practices. Classification, for instance, or the formation of an 'us and them' dichotomy, need not necessarily involve claims to superiority, nor must it foment animosity and violence. What it does do, however, is provide a seedbed for processes of dehumanisation, which re-entrench divisions in such a way as to legitimise the elimination of a particular (sub- or non-human) threat, or even to command this as a moral duty. Yet nor does dehumanisation alone suffice to instigate genocide – as Maureen Hiebert remarks, dehumanisation "is not the motivation for genocide", but rather "provides an understanding of the victim group that is necessary in order for the actual extermination to take place"; in isolation, dehumanisation is "not enough to lead to genocide, because to see members of a particular group as subhuman is not to impute to them the capacity or the power to constitute an overwhelming moral threat".[82] To proceed to destruction, dehumanisation must itself be part of a wider programme or strategy, and be supported by the agency of individuals willing to enact violence. By combining a wide-angle narrative frame, covering the entire period of the genocide in Rwanda, with vivid close-ups of the personal experience of violence, *Smile Through the Tears* is able to give meaningful expression to the aggregate impact of these processes on the lives of individual and collective victims, and thus to reinforce reader sensitivities for their ethical and legal implications.

Should one wish to do so, it would be possible to expand this analysis to certain other of the stages identified by Stanton. In particular, the text touches upon, more or less explicitly, issues of organisation, preparation, and extermination, raising questions regarding overall systematicity and the presence of a (state-led) plan – which have likewise been a subject of consideration and debate for international courts and tribunals. Alternatively, and thinking now beyond Stanton's categories, one could mine the narrative for what it has to say on the

[82] Maureen Hiebert, "The 'Three Switches' of Identity Construction in Genocide: The Nazi Final Solution and the Cambodian Killing Fields", *Genocide Studies and Prevention: An International Journal* 3 (1) (2008), 5-29, p. 13.

role of military intervention in averting genocide: the text is bookended by references to the failure of the international community's response to events as they unfolded, and accurately cites stated reasons why the UNAMIR troops did not, or were not able to, intercede to protect the Tutsi – including, notably, that UN accords did not grant them the requisite "muscle".[83] Here as elsewhere, the force of the novel's critique derives from the representation of personal experience – in this case, that of the putative victims who cannot be evacuated and have to remain at the refuge centre overnight, in full expectation of the Interahamwe returning to slaughter them.[84] In its criticism of the UN's reaction to the killings, the novel can thus be seen to offer a rejoinder to those who would uphold the principle of neutrality at all costs, and to support the perspective of others who claim that, in order to offer effective protection in situations of targeted violence, the UN must be bold enough to identify victims and perpetrators, and take position accordingly.[85]

This issue of taking position returns us to a point alluded to earlier, and upon which we might now draw towards a close – namely, that of the explicit moral bias of Bazambanza's text. That the novel offers a partial account is, as we have seen, manifest from the outset – it is, to all intents and purposes, a pedagogical vehicle, intended to impart a clear lesson. As such, it has little interest in possible 'grey zones' and deals instead in starkly drawn moral absolutes. To speak in the terms proposed by Shohini Chaudhuri, *Smile Through the Tears* is predominantly moral rather than ethical – that is, it supplies a clear moral judgement on the evil of particular actors, more than it meditates on the root causes of violence.[86] It thus behoves us as readers to approach the text with a measure of critical distance, and to subject its own judgements to reflection. Yet by the same token, we might be equally compelled to

[83] Bazambanza, *Smile Through the Tears*, p. 57. As William Schabas summarises: "It is often stated that, with a proper mandate, the United Nations peacekeeping forces could have prevented the genocide in Rwanda. General Dallaire claimed that with an appropriately equipped force of 5'000 soldiers he could have stopped the killings. A study by United States military experts confirms his assessment. But, because of instructions from the Secretariat in New York, Dallaire's forces did not take aggressive steps to intervene". William Schabas, *Genocide in International Law* (Cambridge: Cambridge University Press, 2000), p. 572.
[84] Bazambanza, *Smile Through the Tears*, p. 57.
[85] See, for instance, Geoffrey Robertson's view: "Like the Dutch battalion in Srebrenica, the Belgians watched the massacre, and then withdrew as soon as they began to suffer casualties. […] [The problem] stemmed from the diplomatic mindset that assumed peace could be secured without justice. If the UN is to protect a city or a people, it must have a clear idea of who it is protecting them from, and treat these aggressors as the enemy. Soldiers must be sent to fight, and politicians at home must be prepared for soldiers to die, in the cause of protecting the innocent (or at least the people promised protection from attack)". Geoffrey Robertson, 'The Srebrenica Question', in *Crimes Against Humanity: The Struggle for Global Justice* (London: Penguin, 1999), pp. 56-57.
[86] Shohini Chaudhuri, *Cinema of the Dark Side: Atrocity and the Ethics of Film Scholarship* (Edinburgh: Edinburg University Press, 2014).

ask whether it not be right and proper to 'pick sides' in situations in which there are clear victims and perpetrators – is it not captious to take issue with a text or author for seeking to mobilise sympathies for those subjected to such horrendous violence? This is not to suggest that the novel is without its problematic elements – one especially valid criticism, to my mind at least, is that levelled by Steven High regarding how, in his illustrations, Bazambanza effectively reproduces the same markers of ethnic difference that the narrative sets out to condemn.[87] A further item of criticism might, moreover, be the manner in which the text, at various points, places words unconvincingly into the mouths of characters, whether it be the agents of the genocide, such as the president and his henchmen, or Rose Rwanga, the surviving mother, with her repeated messages of forgiveness and reconciliation. Such limitations deserve to be read critically, and ought to urge consideration of the extent to which they weaken the text's effectiveness and/or hinder genuine ethical reflection on the conditions and contexts of genocide.

All this notwithstanding, we nonetheless find in *Smile Through the Tears* much of value and relevance to an understanding of issues relating to the legal framework of genocide. As a literary-visual articulation of the history of the Rwandan genocide, recounted from the viewpoint of the Rwangas as they live through it, the text follows a particular logic of display that reveals to the reader, in graphic form, a number of matters that relate significantly to the concerns of international criminal law. By foregrounding the personal experience of the victims, the text affords, in particular, a meaningful appreciation of the subjective dimension of human life, in a manner that invites consideration of how this might be properly accounted for in law. In addition, it encourages us to keep in mind that, in order to understand and respond to genocide, there is a need to attempt to grasp the violence from the perspective of victims and perpetrators. In its particular representational construction, the text offers a unique contribution and set of insights. At the same time, however, it is also provides an exemplar of how aesthetic texts carry the potential to open new and productive vistas for the legal processing of genocide. In this sense, the ideas set down here constitute a first cut at framing a larger enquiry into how literary and other cultural representations might be used as a useful supplement to enhance understanding of critical legal-ethical issues and contextual elements that inform international crimes and their adjudication.

[87] See Steven High, "Smile Through the Tears: Life, Art and the Rwandan Genocide", in *Listening on the Edge: Oral History in the Aftermath of Crisis*, ed. by Mark Cave and Stephen M. Sloan (Oxford: Oxford University Press, 2014), pp. 207-225.