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- The operation of an Army Staff
- The different levels of operational responsibility
- The requirements and constraints imposed by the Law of Armed Conflict in the context of the events of 1994 in Rwanda

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SECTION 1

ORGANIZATION AND OPERATION OF AN ARMY STAFF

1. General organization of the Staff of the Rwandan Army

The staff of the Rwandan Army (AR) comprised at the time of the events (1994):

Chief of staff who was also Commander of the troops of the Rwandan army and four Sections whose spheres of activity were:

- G1 Section: PERSONNEL
- G2 Section: INTELLIGENCE
- G3 Section: OPERATIONS
- G4 Section: LOGISTICS

This basic organization was supplemented where necessary by advisers. With regard to support units like engineering, light aviation, artillery and signals, the role of adviser was filled by the unit commanders. Medical support was centralized in the health department of the Rwandan Army; the chief of the health department of the Rwandan Army was also commander of the medical company serving at the Kanombe military hospital.

2. Duties within the Staff

The Staff plans, organizes and coordinates. It translates into orders the decisions of the Chief of staff and monitors the execution thereof.

The Chief of Staff is to be regarded as the military authority who holds the power to command the troops. In the context of the Rwandan Army, the Chief of staff receives delegation from the Minister of Defence to exercise command over the entire army. His jurisdiction is nonetheless confined within the limits provided for by the military laws and regulations.

He must manage and deploy the military forces; but any matters dealing with the overall defence policy remain the prerogative of the Government through the intermediary of the Minister of Defence.

A good number of issues need to be treated by several bureaus simultaneously, which calls for a constant concern for coordination among these bureaus and may give rise to the undesirable effect of dilution of responsibilities.

For this reason, responsibility and decision remain the prerogative of the Commander of the troops.

(a) The Chief of Staff

- (1) The Army Chief of staff assumes the integral command of the Staff and of the troops committed to operations.

He is responsible for coordination of all the activities taking place within the Staff.

He deals with and resolves issues for which the Minister of Defence has given him delegation of his decision-making powers.

He must keep the Minister of Defence informed of the situation in all its aspects and must be in a position to make a recommendation to him on the development of the situation and its consequences.

He convenes, as he deems necessary, meetings in the Staff at which current problems are examined. Once his decision is taken, he supervises the drafting and distribution of orders, instructions and directives, and monitors their execution. He guarantees the continuity of command and liaison with subordinate units.

- (2) As regards to the Staff of the Rwandan Army, the Chief of staff is in fact the administrator who, in peacetime, ensures that everything is done to achieve the best operational level for the army entrusted to him with the means at his disposal. For this purpose, he has authority over the troops. In wartime, he is given, by delegation from the Minister of Defence, command of the troops committed to combat, and takes charge of and assumes responsibility for them.

(b) The G1 Section

The tasks assigned to this Section are essentially directed towards personnel management. This includes military personnel, civilian personnel employed by the Armed Forces, prisoners of war and civilian internees.

- (1) Postings and transfers, promotions and demotions, temporary and final withdrawal from service, mobilization and demobilization, as well as keeping individual files up to date are managed by individual members of the Bureau.
- (2) Collective management entails collecting information on the situation of the units (strength, losses, deserters, reinforcements), analysing it and reinforcing the strength of units as needed (in coordination with the G3 Section) and conveying the reinforcements to their destination (in coordination with the G4 Section).
- (3) Maintenance of discipline and compliance with military laws and regulations also form part of the tasks assigned to this Section, thereby bringing it into cooperation with the military justice system.
- (4) In operation, the management of prisoners of war is the responsibility of the G1 Bureau, which, in conformity with the international conventions in this area, is responsible for the assembly, guarding and protection of prisoners of

war. It also handles evacuating them to the rear and feeding them (in collaboration with the G4 Section).

It is not concerned with the interrogation of prisoners, which falls under the G2 Section.

- (5) The Chief of this Section also ensures liaison between the local civilian and military authorities. In fact, it deals with all the problems encountered by soldiers in operations and by civilians located in the zone of operations. Hence he is in close contact with the public services and legal bodies in the zones concerned.

In a full staff, this last function is in fact taken over by a G5 Section whose area of activity is everything relating to civil affairs.

If this section does not exist, as in the Staff of the Rwandan Army, its functions are performed by the G1 Section.

(c) The G2 Section

The Chief of this Section exercises responsibility in the following areas:

- (1) Collecting information and acquiring intelligence concerning the enemy's potential and vulnerability as well as the context in which the military operation is being carried out (weather, terrain, local population);
- (2) In the context of counter-intelligence, he takes measures to protect the secrecy of classified documents and of signals. He organizes the action to counter the enemy's intelligence services. He determines, coordinates and monitors measures to prevent and interdict sabotage and subversive activities. He determines the measures listening to and picking up enemy radio transmissions;
- (3) In the domain of psychological warfare, which is in fact a function of the G3 Section, he informs G3 about the enemy's psychology, methods and his morale. He is responsible for assessing the impact of friendly and enemy psychological warfare operations;
- (4) He directs and controls (in collaboration with the G3 Section) the instruction and training of officers and troops in matters of intelligence and counter-intelligence;
- (5) He constantly monitors the morale of friendly troops and proposes appropriate measures to the Chief of staff for maintaining or improving it.

(d) The G3 Section

The Chief of this Section exercises responsibility in the following areas:

- (1) General administration of instruction and training comprising the drafting of directives, programmes and orders relating to the instruction and training of troops and the planning of exercises and manoeuvres.

The organization and management of instruction and training centres also form part of his duties.

- (2) Coordinating and monitoring (in close collaboration with the other sections of the Staff) all activities relating to military operations, and in particular:
- Maintaining an update on the operational situation of subordinate units.
 - Tactical deployment in the field of those units in the context of the plan of operations adopted by the Chief of Staff.
 - Designating the units to be given priority in the provision of support, back-up or reinforcement.
 - Drawing up operation orders on the basis of decisions by the military or civil authority with power to command the troops. These orders are meant to be transmitted to the subordinate units for execution.

In wartime, G3, the Staff officer in charge of operations is thus in a key position for proper deployment of operational resources. He must be able to devote his time exclusively to planning military operations and to the conduct of battle. For this reason, he will thus be relieved of all issues related to operations proper, such as desertions, breaches of discipline, logistic requirements, etc. These issues are taken up by the other sections of the Staff.

(e) The G4 Section

The Chief of this section exercises responsibility in all areas of logistics, including, in the most comprehensive case, medical support.

In Rwanda, medical support is the prerogative of the "KANOMBE" medical command. It will thus not be included here in the functions of the G4, although in reality, close cooperation between the two is necessary in order to coordinate evacuation of the wounded and the delivery of medical supplies.

The functions of the G4 thus comprise:

- (1) Structuring and distributing logistic means by ensuring the transport, storage and distribution of supplies. If need be, it may call on local facilities and on requisitioning.
- (2) Maintenance and repair of vehicles, weapons and munitions, including their distribution, transport and evacuation.
- (3) Providing the appropriate sections of the Staff with technical information on captured enemy equipment.
- (4) Specific supplementary services such as the employment of civilian and military labour, evacuation of prisoners of war, evacuation and burial of the dead.

3. Functioning of an Army Staff

It should be recalled at this point that the Army Staff is essentially a tool which is available to the Chief; it provides him with all the elements necessary for decision-making, communicating his decision to other commanders heading the units under his orders as well as ensuring the proper implementation of the decisions by these very units in the spirit of the Chief's decision. The bureaus of the Army Staff thus have no direct authority over the subordinates. They are merely the mouthpiece of the Army Chief of staff.

The work of a Staff may thus be broken down into three phases between the assignment of a mission and its conduct. These activities are carried out in a logical order comprising successively:

- Preparation of the decision;
- Taking of the decision;
- Communication of the decision;

(a) Preparation of the decision

- (1) This begins with the assignment of a mission by the Chief of Staff. It is important, at this stage, that for the mission is perfectly understood by its and that all doubt is immediately dispelled.

This is followed by the compiling of information that may affect the conduct of the mission. Each section of the Staff participates in this exercise within its own area of competence.

Still with regard to determining the basic elements, the directives given by the Chief of Staff to his staff play a part. These may be based on his knowledge of the situation, his experience as well as his vision of things and the objective he has in mind. These directives may thus comprise for example outlines of possible solutions to be taken into consideration by the Staff in assessing the situation and the solutions to be proposed.

- (2) At this stage the Chief of Staff determines, coordinates and monitors the activities of the different sections of the Staff, which analyse all these contributing factors and synthesize the information updated during the analysis in order to arrive at different possible solutions.
- (3) The third stage is the critical examination to which the different solutions are subjected in order to highlight their advantages and disadvantages, correct their imperfections and evaluate their risks.
- (4) To conclude the three preceding stages, the different solutions chosen are classified in order of preference and presented to the Chief of staff.

(b) Taking of the decision

The G3 is responsible for proposing, in its briefing to the Chief of Staff, all the solutions chosen by the staff as a whole, justifying the order of preference and presenting the advantages and disadvantages of each solution.

On the basis of these proposals and of his personal criteria, the Chief of Staff selects a solution which he adapts if need be and which constitutes his decision.

(c) Communication of the decision

The decision of the Chief of Staff is communicated in the form of an operations order.

- (1) The preparation and drafting of an operations order is a responsibility of the Chief of the G3 Section. The other sections of the Staff propose to him texts and annexes that they bear the responsibility for inserting in his order. The Chief of the G3 Section ensures that the operations order is put on paper.

The draft thus prepared is submitted to the Chief of Staff, who signs it, thus marking his approval of its content. This draft now becomes an operation order transmitted to sector commanders, who copy it to subordinate unit commanders (battalions, squads, companies) under their command for execution.

- (2) The operations order enables the Chief of Staff to let his subordinates know the missions assigned to them as well as the procedures for executing a given military operation that is limited in time and space. Its purpose is to ensure the coordinated action of all the subordinates.

The operation order in its most complete form defines the existing situation, the overall mission to be accomplished, the specific missions of each subordinate, the necessary measures for coordinating the entire operation and logistic and administrative support measures.

- (3) The operation order may be written or verbal, partial or complete.

A complete written order is the preferred solution, but it will not always be the case. A written order may also be partial where, following the rapid development of the situation, time does not allow for the drafting of complete order.

In such a case, the procedure is limited to transmitting to subordinate units orders that relate specifically to them (specific order), or to forwarding the order in successive instalments (this is known as a fragmentary order). These partial orders are generally transmitted by message or in the form of a sketch or illustration of the situation together with a concise text in addition.

The use of partial written orders may give rise to imprecision and doubt. Hence, it is imperative to confirm as soon as possible by a complete order everything that was communicated before.

An order may also be verbal. In this case, the persons concerned are summoned to headquarters or to another agreed location, depending on the circumstances.

A verbal order is normally given by the Chief of Staff in the presence of his Staff officers. It offers the advantage of direct contact with the commanders of the subordinate units and of eliminating doubts by giving an immediate response to any questions asked.

This order must be confirmed in writing.

Generally speaking, an officer who transmits an order is representing his chief, and can act only according to the instructions received. It is for the commander of the subordinate unit to take the initiative or assume the duty of not executing the order as it stands, depending on the circumstances.

4. Recording of documents and information in the Staff

During operations, each section of the Staff has to keep a staff journal.

The staff journal records in chronological order the events and documents relating to the operations. All the activities of the section of the Staff keeping the journal must be recorded therein *in extenso* and in concise form.

The staff journal contains:

- Orders received or given, whether written or verbal.
- In coming and out going messages.
- Periodic and other reports, the reports and information received from various sources.
- The text or summary of telephone, radio or other conversations.
- The text of the verbal reports of visitors.
- Reports on missions carried out externally by liaison officers or staff officers.
- In general, all correspondence relating to operations; very long documents are incorporated in a file annexed to the journal.
- On a daily basis, a summary of major events and of the plans envisaged for the continuation of operations.

In the Rwandan Army, during the war, an Operations Secretariat was set up. It was responsible for centralizing and recording all the documents received and issued by the Staff.

SECTION 2

SUPERIOR RESPONSIBILITY AND SUPERIOR-SUBORDINATE RELATIONSHIP

1. The Military hierarchy(a) The hierarchical superior

Military hierarchy is based on rank and seniority. A soldier is the superior of another soldier if he is of a higher rank than the other or if he has been longer at the same rank than the other.

Officer ranks are subdivided into three categories:

- (1) Junior officers: Second Lieutenant; Lieutenant; Captain
The junior officer ranks are conferred in relation to seniority¹ after a three years' service² in each rank.
- (2) Field officers: Major, Lieutenant-Colonel; Colonel
Access to the field officer category is subject to passing a maturity and competence test. The successive field officer ranks are conferred after a four years service² each rank following selection after the recommendation of a promotion board.³
- (3) General officers: Brigadier General, Major General, Lieutenant General
Access to the general officer category is subject to selection following the recommendation of a promotion board and to the approval of the Government meeting in council of ministers.³

The hierarchical superior normally exercises authority in the context of general discipline.

(b) The functional superior

The functional hierarchy is based on the duty performed in a particular context (operational, technical, administrative), permanently or temporarily, for the accomplishment of a given mission or service.

A soldier who is empowered to exercise authority over another soldier by virtue of legal or statutory provisions or of orders from the authority has the status of a superior within the limits of the duties assigned to him.

Where there is a conflict of competence between the hierarchical and operational superiors, the authority of the functional superior prevails.

¹ Status of Officers – Presidential Order No. 01/02 of 3 January 1977 – Article 28.

² Status of Officers – Presidential Order No. 01/02 of 3 January 1977 – Article 30.

³ Status of Officers – Presidential Order No. 01/02 of 3 January 1977 – Article 29.

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In the operational sphere, the functional superior is known as the **commander**.

(c) The order

The order is the expression of the will of the superior who wishes to be obeyed.

(1) Validity of the order

The object of the order must be service, that is, the execution of the missions incumbent on the soldier receiving them by reason of his status or his duties.

It must be legal; an order may not entail the commission of a crime or an offence.

It must emanate from a superior identified with certainty.

It must be specific and compulsory, so that the one to whom it is addressed may not claim that it was a piece of advice or an invitation which he could choose to follow or not.

It may be given collectively to soldiers assigned the same service or the same mission.

(2) Execution of the order

Soldiers must execute the orders given them by their superiors faithfully and within the specified time limits, save where such execution manifestly entails the commission of a crime or an offence.

(3) Subordination and insubordination

Subordination is the principle which states that a soldier, whatever his level or rank, is bound to obey the orders of his superiors.

Insubordination is punishable as a criminal offence; it is thus a fault that goes beyond the context of military discipline. Any soldier who refuses to obey an order or who deliberately fails to execute it is guilty of insubordination.

2. Superior-subordinate relationships within a staff

a) The commander

In the Rwandan Army, the Chief of Staff holds the power to command. This power consists in deciding on the deployment of personnel and of resources. The Chief (**commander**) alone bears the entire responsibility for the mission which has been assigned to him or which he has assigned himself.

The Chief may, in certain cases, relinquish part of his power to make decisions. He then delegates this power to the commander of a subordinate unit, or more rarely to an officer on his Staff.

His entire responsibility is in no way modified or diminished thereby; but this delegation, for the one receiving it, creates new responsibilities towards his Chief.

b) The Staff

(1) The Chief of Staff and his Staff are one. However, their respective activities, powers and responsibilities are exercised at different levels; they complement, but are never confused with one another. The relations between the Chief of Staff and his Staff must be based on reciprocal confidence and intellectual discipline. After the Chief of Staff expresses his intentions or his decisions, he leaves the necessary initiative to his staff within the limits of the framework established for giving effect to his will in the form of orders.

(2) The staff provide the Chief with all the necessary information on which to base his decision, and then translate concisely, rapidly and in clear and precise terms for the subordinates, the directives of the Chief, without changing their nature, and scrupulously respecting his thinking.

A Staff officer must show unshakeable intellectual discipline. He has no power of command. Any orders he may give are given in the name of the commander and on latter's responsibility of the commander.

3. Superior and functional responsibility

(a) Within the military hierarchy, there are officers who are appointed to command posts; there are seconds in command, special advisers and Staff officers.

(1) In the chain of command, the **section commander** (10 men) is answerable to the **platoon commander** (40 men), who is answerable to the **company commander** (160 men), who is in turn answerable to the **battalion commander** (700 men). The last named is answerable to the **sector commander** (Kigali, Mutara, Ruhengeri, Byumba, Gisenyi, Kibongo, Rulindo), who is in turn answerable to the **commander** of the Rwandan Army. These officers are thus part of the same chain of command and may be held responsible for the acts of their subordinates, insofar as the perpetrator of the offence is in the same chain." Command is exercised by virtue of orders from an authority empowered to execute a mission. Unit command shall be assigned by name by decision of the competent authority. The command of a unit shall also include the right and the obligation to exercise authority over all the personnel in the unit."⁴

"Authority shall be linked to duty. A soldier with authority shall be personally responsible for the acts necessary to exercise such authority."⁵

(2) Staff officers, as advisers of the **commander**, are not "commanders"; they have no subordinates and they are not responsible for the conduct of the subordinates placed under the orders of the **commander**. The doctrine of **command responsibility** is thus not applicable to them.

⁴ Rules of Discipline of the Rwandan Armed Forces – Presidential Act No. 413/02 of 13 December 1978 – Article 12.

⁵ Rules of Discipline of the Rwandan Armed Forces – Presidential Act No. 413/02 of 13 December 1978 – Article 11.

In any event, a superior-subordinate relationship cannot be limited to a simple relationship in which, for example, an officer of higher rank may be held responsible for offences committed by any soldier of lower rank. In this connection, military history shows that a soldier may very well be given a larger command than another soldier of higher rank than his. Furthermore, how can one hold a soldier responsible for offences committed by all soldiers of lower rank than his, when in many cases, there may well be no link between them?

The concept of linkage is important because, before anybody is found guilty of an offence committed by a third party, it must be established in what way this person was responsible for the actions of the third party.

(b) *“The holder of high rank has the right and the duty to enforce compliance with the general rules of discipline by all soldiers below him in order of hierarchy, even if they are not under his functional authority.”*⁶

This article clearly limits the right and duty of an immediate superior to intervene in the strictly **disciplinary** domain, which will be examined in Section 3 of this document.

The issue is thus one of infringements having no connection with criminal offences which must be reported by the functional superiors (**commanders**) of the perpetrators, and are punishable by the criminal courts, as we will see in Section 5 of this report. Moreover, he will have no power to impose any punishment on an immediate subordinate who has infringed the prescriptions of the rules of discipline, as provided in the following article:⁷

Officers not performing the duties of unit commander may not impose any disciplinary punishment on his subordinates, even on a provisional basis.

Thus the most he can do is to address to the unit commander of the soldier at fault a reasoned request for punishment.⁸

⁶ Rules of Discipline of the Rwandan Armed Forces – Presidential Act No. 413/02 of 13 December 1978 – Article 10.

⁷ Rules of Discipline of the Rwandan Armed Forces – Presidential Act No. 413/02 of 13 December 1978 – Article 61 [draft translation].

⁸ Rules of Discipline of the Rwandan Armed Forces – Presidential Act No. 413/02 of 13 December 1978 – Article 64/2.

SECTION 3

OFFENCES AND DISCIPLINARY OR CRIMINAL PENALTIES

1. Basic principles

Article 32 of the Rules of Discipline of the Rwandan Armed Forces (Presidential Act No. 423/02 of 13 December 1978) stipulates that:

- *Disciplinary action (which punishes breaches of discipline) and criminal action (which punishes offences) are independent.*
- *"The same act may give rise to a penal sentence and a disciplinary punishment. A penal sentence does not necessarily entail a disciplinary punishment". This principle departs from the principle applied in the Belgian army, which stipulates that no disciplinary punishment may be imposed on a soldier for acts identical to those for which he has been convicted by a military or civil criminal court.*
- *"The absence of criminal prosecution shall not impede the exercise of disciplinary authority. The same applies with respect to discharge or acquittal. In such cases, the disciplinary classification of the punishable acts remains, and may give rise to disciplinary punishment. Since the substantive nature of the facts established by the criminal judge may however be challenged, the punishment may not be based on the facts adduced under the criminal classification." Implicitly, where an act constitutes a criminal offence, the military authority must in any event await the rendering of the verdict in criminal proceedings before taking any disciplinary action at its level.*

2. Types of offence

A misdemeanour may be:

- A simple breach of discipline;
- A simple criminal offence; or
- An act of dual nature (constituting both a breach of discipline and a criminal offence).

(a) Simple breaches of discipline

A simple breach of discipline is a violation of the provisions of the military rules of discipline which is not at the same time a violation of criminal law (Military Criminal Code, ordinary criminal code or other criminal law).

Below are a few examples of breaches of discipline, compared with the criminal offences with which they could be confused.

- (1) Unlawful absence in peacetime *which becomes desertion in wartime and is then a military criminal offence.*
- (2) Lack of respect towards a superior.

In contrast, gross insubordination towards a superior is a military criminal offence.

- (3) Negligence in executing an order or non-execution of an order as a result of thoughtlessness or oversight.
but refusal to carry out an order or deliberate abstinence from carrying it out are military criminal offences.
- (4) Lack of vigilance in taking up arms in the event of an alert.
but in wartime, failure to report for duty in a situation of alert is a military criminal offence.
- (5) Being under the influence of alcohol while on guard or on duty.
but being found drunk while on guard duty in wartime is a military criminal offence.
- (6) Excessive drinking disruptive of good order in barracks.
but public drunkenness is an ordinary criminal offence.
- (7) Quarrelling, abuse of power or insolence towards other soldiers.
but violence towards a superior or a sentry constitute a military criminal offence, and intentional blows inflicted on anyone constitute an ordinary criminal offence.
- (8) Selling, giving away, exchanging, pawning, damaging or destroying personal military equipment.
but the sale or diversion of arms, ammunition, fuel or major matériel belonging to the State is a military criminal offence.

(b) Simple criminal offences

A simple criminal offence is a breach of the provisions of criminal law which is not at the same a violation of the provisions of the military rules of discipline.

Examples are: murder, voluntary and involuntary blows and injuries; to indecent assault; false entry; unlawful bearing of arms; revolt; desertion, deliberate mutilation.

A distinction is made between military offences (set out in the Military Criminal Code) and offences under ordinary law (set out in the ordinary Criminal Code), which civilians and soldiers alike may commit. Examples are:

(1) Offences under ordinary law

Murder, theft, fraud, rape, extortion, abuse of trust, indecent assault ...

(2) Military offences⁴

- Treason and espionage
- Breach of military duties
- Insubordination and revolt

⁴ Legislative Act No. 21/77 of 18 August 1978 – Military Criminal Code – Article 452.

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- Violence and gross-insubordination towards a superior or a sentry
- Desertion
- Self-inflicted injuries
- Use of arms without order from a superior
- Diversion, sale and theft of military effects, arms and ammunition belonging to the State.

(c) Dual misdemeanour

A single act may have both criminal and disciplinary components.

Viewed from a certain standpoint, the act is a breach of discipline, but it may also include the ingredients of a criminal offence.

Examples: public drunkenness in military uniform, brawling in military uniform, a soldier who has illegally removed money from a fund in his charge and concealed his action by wrong posting in the accounting books.

(3) Authority to punish offences

(a) Simple acts of indiscipline

- (1) A functional superior at the different command levels (the President of the Republic, the Minister responsible for the Armed Forces, the Chief of Staff, the commander of operations and unit commander) has sole authority to punish acts of indiscipline in conformity with the rules of discipline in force in the army.⁵ "Such power stems from function from rank"

This power to punish acts of indiscipline was extended to the level of sector commanders.

- (2) The rules of discipline do not specify the type of punishment for every act of indiscipline. They merely state the various punishments and designate the authorities vested with power to mete out such punishments. Accordingly, in order to determine the nature and degree of punishment a superior must:

- First, scrupulously assess all the circumstances surrounding the act committed;
- Maintain justice and fairness;
- Take into account possible mitigating or aggravating circumstances;
- Take into account the personality of the soldier in question and his level of education.

- (3) Apart from mild punishments like reprimand (for officers only), the most frequent punishments for acts of indiscipline are house arrest and detention in military prison for officers; arrest in quarters, house arrest and confinement in

⁵ Rules of Discipline of the Rwandan Armed Forces – Presidential Act No. 413/02 of 13 December 1978 – Article 60.

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military prison for non-commissioned officers: arrest in the guardroom, arrest in police cell and solitary confinement for the rank and file.⁶

- House arrest (maximum 21 days) entails the presence of the officer subject to punishment in his unit, where he performs his normal duties and is confined to his quarters at the end of the day's duty.⁷
- Arrest in quarters (maximum 21 days) involves the same restrictions as house arrest with further restriction on leaving the quarters except to perform duties.⁸
- Arrest in the guardroom (maximum 21 days) is the same as arrest in quarters but includes military incarceration in the guardroom in the evening after duty and at weekends.⁹
- Detention in military prison and solitary confinement (maximum 15 days) entail the soldier subject to punishment being confined to a cell for the duration of his punishment.¹⁰

(4) Serious breaches of discipline are punished by dismissal, demotion or deprivation of rank.¹¹ Only the Minister of Defence is empowered to dismiss a soldier, and only the Chief of General Staff has the power to demote or to deprive an officer of rank.¹² These limitations of power complicate and significantly lengthen the disciplinary procedure in such cases. A unit commander who ascertains the commission of punishable acts must open a case file on the acts. It is on the basis of the facts established in the case file that the soldier concerned is heard by a disciplinary board (in Kigali), whose members are designated by the Staff. The competent authority (delegation may be made by the Minister to the Chief of Staff) takes its decision relying on the basis of the proposals of the disciplinary board. During the conflict, following the increase in case files dealing with serious cases of indiscipline, the Chief of Staff had to delegate his disciplinary powers to sector commanders. Their decisions were however imposed on them by the recommendations of the disciplinary board locally set up for the purpose.

(5) As a precautionary measure in criminal matters, when a soldier is taken *flagrante delicto* committing an offence or crime in or outside the unit, the

⁶ Rules of Discipline of the Rwandan Armed Forces – Presidential Act No. 413/02 of 13 December 1978 – Article 33.

⁷ Rules of Discipline of the Rwandan Armed Forces – Presidential Act No. 413/02 of 13 December 1978 – Article 37.

⁸ Rules of Discipline of the Rwandan Armed Forces – Presidential Act No. 413/02 of 13 December 1978 – Article 39.

⁹ Rules of Discipline of the Rwandan Armed Forces – Presidential Act No. 413/02 of 13 December 1978 – Article 41.

¹⁰ Rules of Discipline of the Rwandan Armed Forces – Presidential Act No. 413/02 of 13 December 1978 – Article 42.

¹¹ Rules of Discipline of the Rwandan Armed Forces – Presidential Act No. 413/02 of 13 December 1978 – Articles 53 to 55.

¹² Rules of Discipline of the Rwandan Armed Forces – Presidential Act No. 413/02 of 13 December 1978 – Article 60 (Table).

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military authority which takes note thereof must take all necessary measures at its level to prevent his escape and must immediately hand him over to a *gendarmierie* or police officer. It then draws up a summary report of the facts for transmission to the judicial authority.

(b) Simple criminal offences and offences of a dual nature

- (1) Jurisdiction in military matters is the prerogative of the court martial. The court martial is composed of a permanent president, a senior officer who is assisted by military judges, military magistrates with law training.

Anyone with the status of a soldier is automatically tried by court martial, whatever the nature of the offence committed. Any civil case involving one or more soldiers and first dealt with by the Office of the Prosecutor is transferred to the court martial for the offending soldier(s).

- (2) For offences under ordinary law, military courts impose the penalties specified in the ordinary Criminal Code.
For military offences (see paragraph 2(b) above), they impose the penalties provided for in the Military Criminal Code:

- In criminal matters: death by firing squad, more than five years' imprisonment.
- In correctional matters: from one month to five years' imprisonment.
- In criminal and correctional matters: deprivation of rank.

Details of these penalties are set forth in Chapter IV, Articles 454 to 499 of the Military Criminal Code.

- (3) The judicial authority may, for a less serious offence, hand over an accused soldier to his unit commander for disciplinary punishment. Since the offence charged then ceases to be criminal, prosecution is barred.
- (4) The military authority must inform the judicial authority as promptly as possible when the commission of a criminal law offence (under military or ordinary law) is ascertained.

SECTION 4

**SCOPE OF APPLICATION OF THE LAW OF ARMED CONFLICTS IN THE
CONTEXT OF THE CONFLICT BETWEEN THE RWANDAN
ARMY AND THE RWANDAN PATRIOTIC FRONT**

It is important, first, to give a clear definition of the general framework in which the two forces in conflict, the Rwandan regular army (RA) and the dissident forces (RPF), faced one another.

1. International conflict

- (a) A conflict is termed international when it opposes States to one another in a direct confrontation between the regular military forces of the two States.
- (b) Additional Protocol I to the Geneva Conventions extends this principle of internationality¹³ to wars of liberation against an oppressive colonial foreign occupation or racist regimes (at the time, this was aimed at the institutionalized practice of apartheid by the Government of South Africa).
- (c) Since the Government of Rwanda acceded to the four Geneva conventions in 1964 then to Protocols I and II in 1984, the military and civilian authorities were, in the context of an international conflict, required to apply all the rules they contain. They may therefore be called to answer before an international tribunal for any act violating these provisions, insofar as there is reciprocity in with the aggressor, who must accept and apply the same conventions.

2. Internal conflict

A conflict is referred to as internal when the armed group in conflict with the central State authority:

- Is organized;
- Has a military presence in the territory;
- Respects humanitarian law.

(a) Organization of the insurgent group

The group must be structured and must be under the authority of a responsible commander capable of conducting continuous and concerted military actions in conformity with humanitarian law.

(b) Military presence

¹³ **Protocol I, Article 1(4):** "The situations of international conflicts include armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations."

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The insurgents must have military presence in the territory to the point where their actions are concerted and continuous. Engagements with the regular forces must be based on an overall strategy as a result of which the insurgents control a significant part of the national territory.

(c) Respect for humanitarian law

The command also finds its *raison d'être* in the need to ensure respect by the insurgents for the principles of humanity in combat.

In the humanitarian context, the belligerents are thus placed on an equal footing and are required to meet the same conditions.

Protocol II clearly prohibits recourse to terror as method of combat.¹⁴

This would also apply to insurgent movements which finish off wounded opponents or execute captured enemy combatants on the spot.¹⁵

3. The case of the Rwandan conflict

Within the meaning of Article 1 of Additional Protocol II to the Geneva Conventions, all the conditions were met to characterize this conflict as internal, in that the dissident army (RPF) was organized and was led by a responsible authority capable of enforcing discipline and ensuring respect for humanitarian law among its troops.¹⁶

From 1992, RPF exercised over the part of Rwanda lying north of Byumba a control enabled it to carry out continuous and concerted military operations.

The fact that each party received limited support in the form of military experts and resources is not sufficiently significant to internationalize this conflict, because in that case, all high-intensity conflicts all over the world would be international, which is far from being the case.

President Mobutu did indeed send his Special Presidential Division into Mutara in 1990 to assist the Rwandan armed forces, but he did so on a personal basis and for a very limited period of time. It was never his intention to involve the then State of Zaire in the conflict officially and on a long-term basis.

Likewise, it is a common knowledge that Uganda provided RPF with military assistance and rear bases in its territory throughout the conflict (1990-1994). To my knowledge, however, that country was never involved in the conflict officially, or *de facto* through the participation

¹⁴ Protocol II, Articles 4(2)(d) and 13(2) "...are and shall remain prohibited at any time and in any place whatsoever: ... acts of terrorism". "The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited."

¹⁵ Protocol II, Article 4(1) "All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors."

¹⁶ This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol."

of troops belonging to the Ugandan regular army, i.e. wearing Ugandan uniform and fighting under the Ugandan flag.

Consequently, although there were interventions by third parties in the conflict, they were of neither the nature nor the permanence required to internationalize the conflict, though that is not to deny their reality.

1. Rules of humanitarian law applicable to internal conflicts

(a) Guiding principles

The rules applicable in the case of an internal conflict have a much narrower scope of application than in the case of international conflicts. They are in fact confined to the application of Article 3 common to the four Geneva Conventions and to Protocol II.

In the name of the principle of State sovereignty, the autonomy of States with regard to the maintenance of law and order is protected.¹⁷ In other words, within the limits set by the 20 articles of Protocol II, national authorities have the sovereign power to organize the suppression of armed rebel movements in their territory.

In this perspective, when taken prisoner, rebel combatants are not entitled to prisoner of war status, under the Third Geneva Convention and in an internal conflict, they can be prosecuted for simply having taken up arms against the official authority.

(b) Internationalization of the conflict

No third State or outside organization may invoke Protocol II as justification for intervening in the internal affairs of a State faced with an internal conflict.¹⁸

Thus, a country could assist a rebel movement in neighbouring territory (by supplying war matériel, shelter in frontier zones, etc...) on the pretext that the insurgents are being treated in their country contrary to the provisions the humanitarian laws set forth under the Protocol II. Likewise, for reasons of non-intervention in the internal affairs of States, the International Committee of the Red Cross (ICRC) is authorized only to offer its services in an internal conflict pursuant to the Conventions.¹⁹

¹⁷ **Protocol II, Article 3(1):** "Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State."

¹⁸ **Protocol II, Article 3(2):** "Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs."

¹⁹ **Article 3 common to the Geneva Conventions. ARTICLE 3**

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 (b) Taking of hostages;
 (c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;

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Moreover, Protocol II does not give it the right to visit detention camps, organize rescue operations and in general monitor respect for human rights in the conflict.

The principle of sovereignty of States prevails, and any foreign intervention is rejected, even where it is with the praiseworthy aim of better ensuring respect for humanitarian law.

(c) Protection of victims of the conflict

Pursuant to the texts set forth in Article 3 common to the four Geneva Conventions and Additional Protocol II, an armed force that is engaged in an internal conflict may never fall short of the minimum humane treatment that every person is entitled to by custom and law.

Protocol II does not prohibit the death penalty as a punishment for hostile acts launched from within a country against the authorities in place, but it may be imposed only by independent and impartial courts which respect the principal rights of the defence.

(d) Methods of combat

The limits set with respect to the conduct of operations by Protocol II are much fewer than in the case of an international conflict. Recourse to only four methods is prohibited for any armed force engaged in an internal conflict:

(1) Instructions to give no quarter.²⁰

This is a practical application of the basic principle of the right to life. No one, even if he took up arms irregularly, may be subjected to summary execution when captured or when he clearly manifests his intention to surrender. This provision is thus particularly addressed to military commanders, since under it incur direct responsibility for ordering before any operation that there shall be no survivors;

(2) Direct and intentional attacks against civilian populations²¹ (terrorist attacks, reprisals);

(3) Starvation as a "weapon of war".²²

(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2. The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict."

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

²⁰ Protocol II, Article 4(1) (see *supra*).

²¹ Protocol II, Article 13(2) (see *supra*).

²² Protocol II, Article 14: "Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works."

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Combatants may not organise total lack of supplies within a population for the purpose of attaining a tactical objective (demoralizing populations, evacuating a region,...);

- (4) Forced displacement of populations, within or to outside the country in which there is an internal conflict.

(e) Attacks on property

Protocol II makes no provision for the protection of civilian property in an internal conflict, even if it does not constitute a military target.

Only pillage is prohibited. Otherwise, an armed force may, for reasons of military necessity, destroy buildings and requisition property; provided this does not threaten the population's means of survival.²³

²³ Protocol II, Article 4(2)(g): "... shall remain prohibited at any time and in any place whatsoever: ... g) Pillage."

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SECTION 5

COMMAND RESPONSIBILITY AND RESPONSIBILITY OF THE PERPETRATOR IN THE EVENT OF A WAR CRIME

1. Command responsibility

The law of armed conflict relies largely on military **commanders** to implement its provisions both before and during conflicts.

The concept of "**commander**" is deeply rooted in both military practice and international humanitarian law. The role and duties of a **commander** are recognized in both international treaty law and international customary law. They are thus the cornerstone of international humanitarian law. If anyone is in a position to prevent breaches of international humanitarian law and to punish those who commit them, it is the **commander**. In reality, he is thus responsible for the conduct of his subordinates. Staff officers with no subordinates do not form part of this group.

(a) Basis of the responsibility

The first obvious reason for this is a practical one. In many combat situations, the **commander** is the only person in possession of information. Moreover, he is the only one vested with the authority to correct or punish conduct.

(b) Scope of the responsibility

It is borne by any member of the armed forces with command control over other soldiers.¹

In other words, any hierarchical or functional superior who exercises authority or control, even *de facto*, over a level that is officially subordinate to him is thus bound by this responsibility.

This will therefore apply both to the **commander** of a large unit and to the leader of a patrol, even where the latter is not, at the time of his action, of higher rank than the members of his patrol.

(c) Nature of the responsibility

Besides his individual responsibility for committing breaches of the law of armed conflict, a military **commander** incurs two forms of responsibility for acts committed by his subordinates:

- (1) On the one hand, if he refrains – without otherwise participating in the perpetration of the offence – from reacting to an offence which is about to be, is being or has been committed (**responsibility by omission**).

¹ Protocol I, Article 87(1): "The High Contracting Parties and the Parties to the conflict shall require military commanders, with respect to members of the armed forces under their command and other persons under their control, to prevent and, where necessary, to suppress and to report to competent authorities breaches of the Conventions and of this Protocol."

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In this case, the obligations of the commander are clearly laid down under Articles 86 and 87 of Protocol I (these articles are universal in character and apply in all circumstances, including a conflict, as the chief must be able to apply the law of armed conflict in it). He is required:

- To prevent the offence which he knows or has reason to know is about to be committed;
 - To punish the offence if it is not a criminal offence;
 - If it is, to report the crime to the judicial authorities;
- (2) On the other hand, if he orders his subordinates to commit the offence, even if he does not personally participate in it (**responsibility by action**).

(d) Responsibility by omission

(1) Obligation to prevent the offence

If a **commander** learns that one of his subordinates is committing or is going to commit an offence, he must take all feasible measures to halt or prevent the offence.

The wording of articles 86(2) and 87(1) of Protocol I takes broad account of the realities of a conflict in determining the level of superior responsibility in this regard.

He must be aware of the facts; in other words, the texts require that if he knew, or had information which should have enabled him to conclude in the circumstances at the time, that the subordinate was committing or was going to commit such an offence.²

Awareness of the offence obviously depends on various specific factors: functions performed by the superior, combat conditions, distance from the operations, subordinates' level of education, the existence of written instructions, etc.).

However, no one is expected to do the impossible. In combat, in particular, each **commander** cannot be expected to know at all times every event that is taking place or is about to take place in the zone under his command.

(2) Obligation to punish

This obligation adds nothing to the missions and general duties of any authority in the armed forces.

² Protocol I, Article 86(2): "The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach."

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Where an offence that is not a criminal offence is reported to him, every military **commander** must punish it if the act is a breach of discipline regulations.

A number of minor breaches of the laws of war may perfectly well be treated as breaches of discipline.

(3) **Obligation to report**

This command responsibility is erroneously perceived by some as a duty to act as an informer. Nothing could be further from the truth; this is an obligation which, of itself, adds nothing to the ordinary duties of military officers.

In most armed forces, officers are required to report to the competent judicial authority when they become aware of them offences committed by a subordinate in the course of service.

This duty most often entails an obligation to take interim measures on the spot (preliminary investigation, access to exhibits, availability of witnesses, etc.), or even gather the initial evidence.

A fortiori, then, there should be no exception to these procedures in the event of a breach of the law of armed conflict.

Article 86 of Protocol I is thus here simply confirming a general obligation.

(e) Responsibility by action

It is now clearly established in international law that a **commander** incurs direct criminal responsibility when he has given his subordinates an order leading to perpetration of a war crime, even if he did not physically commit that crime.

This provision is not expressly echoed in Protocol I. However, it emerges from the wording of Article 86, which provides that the superior incurs criminal responsibility for failure to prevent his subordinates from committing a war crime. A fortiori, this will also be the case if the superior himself encourages, by an order, the commission of that crime.

In reality, this superior responsibility (as co-perpetrator or accomplice, as the case may be) is often incurred more than that of the subordinate perpetrator.

With regard to the planning of military operations, the difficulty consists in drawing a distinction between the planning of a violation and the planning of an operation which turns into a violation once executed.

2. Responsibility of the perpetrator

(a) Justification

By and large, the law of armed conflict does not impose any specific requirement on national legislations as far as individual criminal responsibility is concerned.

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Accordingly, breaches of the law of armed conflict are normally subject to the concepts of domestic law which constitute or govern all other criminal offences (*actus reus*, *mens rea*, absolute defence, accessory legal factors associated with of the offence, such as aggravating or extenuating circumstances).

The two most common justifications for breaches of the law of armed conflict are:

- (1) Order of a superior
In this instance the breach is justified by the fact that it was committed on the orders of the legitimate authority.
- (2) Necessity
This concept is based on the idea that, in certain extreme situations, the individual has no alternative but to commit a breach in order to safeguard a higher interest.

(b) Order of a superior as a justification for the perpetrator

- (1) In 1945, international law explicitly rejected the excuse based on the order of a superior with regard to war crimes.

Article 8 of the Charter of the Nürnberg International Military Tribunal for the punishment of war crimes, provides that "[T]he fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility."

- (2) The year after, a United Nations resolution affirmed this principle.³
- (3) Somewhat paradoxically, this provision was not reflected in the main Conventions on the law of armed conflicts, as neither the four Geneva Conventions nor the Additional Protocols thereto provide for this justification.
- (4) The reason is that it has not been possible to reach an agreement among States on this point. Some consider that the perpetrator's responsibility is absolute in respect of war crimes regardless of the order given; other States take the view that such responsibility may undermine discipline within the armed forces; lastly, others – clearly the most numerous – take the view that the perpetrator incurs responsibility only if, pursuant to the rules laid down by the Nürnberg Tribunal, the order given was manifestly criminal in the eyes of the actor.
- (5) Additionally, the perpetrator may be absolved of responsibility for executing a criminal order if he acted in a situation which prevented him from exercising free choice (the concept of "extreme duress").

³ Resolution 95(I) of 11 December 1946: Affirmation of the Principles of International Law Recognized by the Charter of the Nürnberg Tribunal.

In the cases brought after 1945, it was often pleaded that the penalties for refusal to execute an unlawful order were such that that no choice was possible.

(c) Military necessity as a justification

- (1) The law of armed conflict, and in particular the four Geneva Conventions and the two Protocols thereto, were designed and structured precisely in the light of this necessity associated with military imperatives and the armed defence of a community.

This necessity justifies forms of conduct which in normal times would be punishable, such as the act of killing an enemy combatant, seizing and using the assets of the enemy considered as booty of war, causing damage to the buildings of third parties, etc.

- (2) In such circumstances, the criminal charges of murder, theft or destruction of property which would be brought in peacetime do not apply. Accordingly, international law sets limits which may not be exceeded in the name of the state of necessity arising from the conflict. It thus provides that certain types of conduct cannot be justified even if the interest to be protected may appear to the individual to be greater than violation of the prohibition.
- (3) This is the case for the prohibitions which the law of war regard as absolute, for example, those which Article 3 common to the four Geneva Conventions unconditionally imposes on all participants in a conflict "at any time and in any place whatsoever".
- (4) In dealing with such breaches, a national or international court can thus not under any circumstances justify them in the name of a state of necessity arising from the defence of a country or even "an emergency ... threatening the life ... of the community", in the words of the European Convention on Human Rights.
- (5) Lastly, it must be recalled that the prohibition laid down by the law of armed conflict are stated in a form that allows the possibility of invoking the state of necessity arising from a conflict.
Such prohibitions, known as relative, expressly admit cases of military necessity, most often characterized as "compelling", "inevitable", etc.

In these instances, it is admitted *a priori* that the military authorities can legitimately, in particular or exceptional cases, violate the prohibition and subsequently justify themselves by higher interest.

SECTION 6

THE PROBLEM OF THE CHAOTIC CONDUCT OF THE APRIL 1994
WAR IN RWANDA1. Introduction

In wartime, a soldier's attention and energy must be fully geared towards the accomplishment of his mission. For instance, the task of a G3 within a Staff is to plan and organize the tactical deployment of military resources on the ground, on the basis of its commander's decisions. The constant fluctuations in the military situation as a result of enemy action compel it to keep readjusting its plan of manoeuvre on the basis of a continuous assessment cycle. A soldier's working environment will no doubt influence his conduct and choices. The environment in which the 1994 Rwandan conflict took place was, to say the least, hardly conducive to the smooth management of the situation.

2. General framework

It is important, first of all, to define the general context in which the 1994 Rwandan conflict took place and thus to briefly describe the forces and resources that were available to the two armies.

(a) The Rwandan army (RA)

- (1) This was a professional army of about 30,000 men recruited on a volunteer basis. Its organization was modelled on that of Western armies, particularly the Belgian. The command was centralized and located in the capital, Kigali, where the Rwandan Army Staff was also based.

The potential zones of intervention were subdivided into seven operational sectors (the Kigali sector, the Mutara sector, the Ruhengeri sector, the Byumba sector, the Gisenyi sector, the Kibungo sector and the Rulindo sector), in which there were mainly infantry units under the command of a sector **commander**.

This army, comprising basically of an infantry equipped with light armament, was made up of:

- Four to five battalion-type infantry units in each operational sector at the front line. At the rear, there were two instruction and training centres and three independent companies;
- Fire support and works units, namely one artillery battalion equipped with mortars, guns and multiple rocket launchers, one light aviation squadron and one engineer company;
- Logistic support units stationed at the Rwandan Army Base in Kigali and the Rwandan Army Health Service located in Kanombe;
- Six battalions in the distinctive Kigali sector; the Reconnaissance Battalion, the Para-commando Battalion, the Presidential Guard Battalion, the air defence battalion, the Military Police Battalion and the Huye battalion.

- (2) The 6,000-strong national *gendarmerie* could also participate in military operations if necessary. As a general rule, there was one group of *gendarmes* (600 men) per prefecture.