Archiving (in)justice: building archives and imagining community

*This article explores the role that archives play in the constitution and governance of the international community. First, drawing on post-colonial scholarship, it develops a framework to explicate the link between archive and community, centring on questions of voice, identity and responsibility. It then examines how the archive can be analysed, pointing additionally to the importance of the archive’s materiality. Second, these ideas are explored through a reading of the International Criminal Tribunal for Rwanda’s (ICTR) archive, which helped rebuild the international community in the wake of its failure to prevent the Rwandan genocide. By providing a detailed reading of the ICTR’s records, and drawing on the framework established in the first section, the article shows that the archive constructed a liberal, patriarchal and colonial understanding of the international community.*

Key words: archive; international community; genocide; post-colonial; international criminal justice; Rwanda.

# Introduction

In the aftermath of the Second World War, the United Nations (UN) proposed the formation of a universal archive that would represent the unity of the international community, marking a moment of internationalist identity building.[[1]](#footnote-1) Whilst the Cold War put an end to this idea, dotted throughout the international domain – not least within the UN – are archives that resemble this project, marking an attempt to construct an account of what the ‘international community’ is and how it should exist. Archives have played important roles elsewhere in international politics, forming part of the response to human rights violations and in some cases acting as a substitutefor more conventional modes of justice, as with the opening of the Stasi archives after the collapse of the German Democratic Republic.[[2]](#footnote-2) At the International Criminal Tribunal for Rwanda (ICTR) – the focus of this article – the archive formed part of the tribunal’s attempts to introduce peace after the 1994 Rwandan genocide and, as will be argued, projected a particular understanding of the international community as it came to represent the ‘consciousness [of] mankind’.[[3]](#footnote-3) As yet another intervention of the international community in the global south, this archive also raises important questions about (post)colonial nature of the international community.[[4]](#footnote-4) Archives are, then, important yet often overlooked sites of international relations as they construct a particular image of, and regulate, community.

Building on the post-colonial scholarship on colonial archives, this article offers a reading of the significance of archives for IR by examining the role that these archives play in constituting the international community. It proceeds in two parts. First, by drawing on the rich literature on archives from history, philosophy, anthropology, post-colonial studies, IR and archival science, it develops a framework through which the politics of the archive can be understood. Three key themes are identified here: responsibility; identity; and voice. It then explores the question of how to analyse archives, drawing on the work of Anne Stoler and Michel Foucault, also highlighting the importance of the materiality of the archive. The second section provides a reading of the ICTR’s archive, which, drawing on the framework constructed in the first section, examines how knowledge is produced within the archive and what understanding of community is projected as a result.

# Archives as instruments of governance and method

## Archives as governance

Archives have always been linked to questions of governance.[[5]](#footnote-5) The word ‘archive’ first appeared in relation to the *archons* (the magistrates) of ancient Greece: the archon’s house (the archive, or *arkeion*) was the place where records were kept, separated from the rest of society. The magistrate was given the responsibility and authority to protect and interpret the records and therefore create law.[[6]](#footnote-6) Thus at the very birth of the archive a clear link is visible between archives, law and governance. The archive, as Derrida notes, functioned as a site of commencement; as an ontology and history were created as real; and commandment, as the law was created and then declared so.[[7]](#footnote-7)

This link between archives and governance continued into the eighteenth century, where archives helped render populations governable, and produced identities and norms of the individual, collective and nation.[[8]](#footnote-8) One of the questions troubling the modern European state at this moment was how to control an ever-growing population in an increasingly connected yet secular society – where a sovereign’s divinity no longer meant automatic loyalty to the state. Nationalism was an important technique in this respect, and archives played a central role in constructing a shared identity through the collection and consignation of objects that produced a sense of the nation’s past – its collective identity.[[9]](#footnote-9) The archival drive is very much predicated on this attempt at a totalising (and exclusionary), pure and truthful depiction of the past.[[10]](#footnote-10) This is also why, for Derrida, there is a sickness (*mal*)imbedded within the archive.

This pattern continued during colonialism, as archives helped produce the colonial state as a particular reality and rendered those that the colonisers ‘encountered’ as knowable and governable subjects*.*[[11]](#footnote-11)Benedict Anderson shows how colonisers invented sub-sections of colonial societies with specific ‘objectively’ identifiable identities through record keeping. Here the coloniser’s sentimentalities and lived-experiences shaped these categories, whilst the lived-experiences of the local populations were ignored. For example, whereas the Philippine’s census records were fixated around class-based labels (e.g. noblemen) which the Spanish conquistadors mobilised wherever they landed, in the Indonesian archipelago the Dutch coloniser’s greater trading networks throughout Asia led them to introduce more regionally specific, yet highly racialised, categories (e.g. Chinees).[[12]](#footnote-12) Through the attempts to qualify and quantify these categorisations, different subjects were funneled through different institutions and given different opportunities and standings. This created ‘traffic-habits which in time gave real social life to the state’s earlier fantasies’*.*[[13]](#footnote-13) Accordingly, as Stoler argues, a concern with colonial archives is with:

the force of writing and the feel of documents, about lettered governance and written traces of colonial lives. It is about the commitment to paper, and the political and personal work that such inscriptions perform. Not least about the colonial archive as sites of the expectant and conjured – about dreams of comforting futures and foreboding future failures.[[14]](#footnote-14)

The archive is a space of imagination and creation.[[15]](#footnote-15) As the quote suggests, moreover, the rules of the archive are not fixed, but represent the anxiety of the records’ producers as they try to bring order into existence, and archive (and produce) new objects.[[16]](#footnote-16) As this also suggests, there is an interesting and unstable relationship between community and archive. Discussed more below, neither community nor archive should be seen as ontologically stable entities. Instead, the archivists’ emergent views of community became reflected in the records of the archive, which in turn helped constitute the community in particular ways -at times with an excess or unpredictability that defied the archivists’ attempts to capture the world ‘as is’.[[17]](#footnote-17)

The potential effect of this archival power continues well beyond the archive’s original creation. Consider some of the scholarship that has uncritically drawn upon colonial archives in Australia. By replicating the archives’ exclusion of the indigenous perspective of the ‘frontier wars’ - and in the process silencing much of the violence and the colonial administration’s responsibility for that violence - these reproduced discourses (re)denied the indigenous population’s legitimacy.[[18]](#footnote-18) The most famous contemporary historian of this ilk is Keith Windshuttle, who has challenged the claimed number of victims in the frontier wars by pointing to the absence of ‘official’ records of that violence. He argues that the widely accepted (though likely conservative) figure of around 20,000 indigenous deaths has been inflated by scholars that rely on oral history and other ‘untrustworthy’ sources, whereas the colonial archives show that violence was considerably less frequent. As Michel-Rolph Trouillot argues, archives are filled with silences produced by the limits of the archivist’s epistemology,[[19]](#footnote-19) and as the above shows, the (im)materiality of archival records play an important role in defining *which* histories are told.[[20]](#footnote-20)

The above demonstrates the relationship between archives, governance and community, and highlights three themes that need to be considered in this respect. The first element that needs to be examined is responsibility. Windshuttle’s continued denial of colonial violence shows the importance of understanding how responsibility is (or isn’t) inscribed within the archive due to which types of violence are recorded within, or excluded from, it’s records. The second aspect is identity. As Anderson demonstrates, the archive is central to the constitution of different types of subjects, and the question is how these subjects are constituted within the archival records and with what effect. The final element is voice, and whose experiences and which epistemological perspectives underpin the archive. It is notable that in the examples discussed, it was the concerns and priorities of the colonial authorities, rather than local populations, that shaped the records in particular ways. When taken together, these elements build up a picture of the type of community constructed within the archive and the consequences of this imagining.

## Archives as method

Yet how to analyse the archive? Because of the colonial archives’ exclusionary logic, post-colonial anthropology turned to reading the archives *against the grain* throughout the 1980s and 90s to recover the subaltern’s voice.[[21]](#footnote-21) However, Spivak questioned the validity of this approach, arguing that the archival force was such that attempting to recover the agency of those lives recorded in the archive was futile.[[22]](#footnote-22) This is not, however, to deny the ability to access the subaltern’s voice *per se*. Shiera el-Malik and Isaac Kamola’s recent volume on African Anti-Colonial archives shows the existence of archives that capture the intellectual and cultural project of the subaltern’s anti-colonial struggles, and demonstrates how this can be used to imagine a new ‘limit’ of the possible.[[23]](#footnote-23)

These anti-colonial archives are important in the attempt to ‘undo’ the coloniality of power that continues to pervade the international domain.[[24]](#footnote-24) But it remains vital to understand how certain archives also help reproduce the current limit of the possible within international society underpinned by a continuation in the coloniality of power.[[25]](#footnote-25) Spivak and Stoler suggest that when analysing these ‘hegemonic archives’, the archive must be read *along the grain*; analysed from an ethnographic perspective that details the processes and politics through which ‘credible’ knowledge is produced and the effects that this has within particular societies.[[26]](#footnote-26) This approach also resonates with Foucault’s description of the archive as part of his archaeological methodology,[[27]](#footnote-27) which Colin Gordon describes as:

(…) the study of forms of knowledge and rationality at the level of their *material manifestation* as bodies of discourse composed of finite sets of oral or written utterances, is to render these discourses accessible to description and analysis as constituting a specific order of historical reality [...] (emphasis added).[[28]](#footnote-28)

The task of understanding the politics of the archive is to determine which rules (the rules of formation) underpin the production of knowledge.[[29]](#footnote-29) For Foucault, this is achieved by analysing the regularity with which statements and records are made for (and excluded from) the archive, and how they relate to each other; structuring, ordering, restricting and *enabling* discourse.[[30]](#footnote-30)

Stoler and Foucault’s conceptions of the archive also emphasise the entangled relationship between archival records, the archivist and community. In Stoler’s work, it is archivists’ epistemologies that are prioritised in building the archive, which work to turn their ‘fantasies’ into lived realities.[[31]](#footnote-31) Similarly, Foucault focuses on the interrelationship between different subject positions (what he terms enunciative modalities) in determining an archive’s rules. Foucault describes the importance of how these subject positions relate to objects (such as archival records), concepts (such as responsibility) and strategies (such as governance), in producing the rules that determine the contours of legitimate knowledge within the archive. [[32]](#footnote-32) Yet, as previously discussed, these relationships are unstable. As both Stoler and Foucault argue, the archivist’s attempts to bring order is only ever partially successful, and as such there is always already an excess of meaning within the archive that goes beyond the archivist’s vision and which, in turn, has a bearing on how community is imagined.[[33]](#footnote-33) The archive, archivist and community exist in an interdependent and co-constitutive, if not volatile, relationship.

Both Stoler and Foucault further encourage analysis to move beyond a focus on the discursive. As the quote from Gordon suggests, the archive is a site where the materiality of a discourse manifests; the archive renders material artefacts and records in a particular way due to the discursive rules that determine the contours of legitimate knowledge. As Stoler argues, archives should be seen ‘as monuments of states as well as sites of state ethnography’.[[34]](#footnote-34) As such, within the archive there is a sense of the co-constitutive nature of the material and the discursive. Two other points can be made here. First, as the example of the Australian colonial archives demonstrates, it is also important to consider what is *excluded* from the archive and rendered immaterial. The absence of particular records can have significant and ongoing consequences for the governance and legitimacy of different communities. Second, if the aforementioned ‘excess’ of the archive is taken into consideration, there is the potential that some material fragments within the archive exist in a state of relative tension with the archive’s rules of formation, as their form and content do not fully succumb to those rules. A disruptive potential exists within these fragments.

This analytical approach can be situated within critical IR’s concern with the interrelationship between the production of knowledge and modes of governance.[[35]](#footnote-35) To this end the article draws inspiration from Claudia Aradau and Jef Huysmans’call for scholars to explore the politics of methods, and how certain methods *produce* the object of analysis in particular ways, and ‘enact worlds’ with particular effects.[[36]](#footnote-36) Whilst Aradau and Huysman explore this in relation to the production of ideas of security within IR, this approach is equally valid when discussing how particular methods, and determinations about how legitimate knowledge is to be produced, underpins the construction the archive.[[37]](#footnote-37) Mirroring Stoler’s concern with the failures or ‘false starts’ of the archive,[[38]](#footnote-38) the approach adopted in this article is also concerned with showing the instability of these discourses and ways of knowing. The analysis further draws inspiration from Joanna Tidy’s notion of *making* security. Tidy focuses on the material practices of making security objects to reveal the tacit knowledges (and politics) that underpin the process.[[39]](#footnote-39) Here, then, the question is what assumptions underpin the *making* of the records for the archive. Finally, by explicitly treating these archives as sites of international politics, this builds on the burgeoning debates in IR that have turned to memorial and heritage sites to examine how power-relations within global politics are fixed and contested through the curation of particular narratives within these spaces.[[40]](#footnote-40) It does so here to understand how these archives help constitute and regulate imaginings of the international community.

As discussed, scholars have so far explored the connection between archives and community in relation to colonial archives.[[41]](#footnote-41) Zahir Kolia has similarly offered an analysis of how the South African Truth and Reconciliation Commission’s archive helped constitute the post-apartheid state.[[42]](#footnote-42) This article builds on these ideas as it explores how archives within the international domain help constitute the ‘international community’. Following Vivienne Jabri, the international community is understood as ‘a distinct juridical-political space’ where the constitution of, and relations between, different subjects are defined and regulated by an ever-changing, and unevenly applied, set of rules and norms. As discussed further below, the international community is not, then, ontologically stable, but is constantly reformulated as it encounters new problems and subjects.[[43]](#footnote-43) The rules of the community are directed at more than inter-state relations. Under the auspicious of defending the norms of the international community, the internal workings of states, and the relationship between a state and its citizens, have regularly become the concern of ‘external’ actors - whether large international organisations, such as the UN, other national states, (I)NGOs or private corporations.[[44]](#footnote-44)

In contrast to those important IR studies that look for how anti-colonial archives produce counter-hegemonic forms of knowledge with relation to the international order, this article examines a type of archive that arguably sits at the heart of the international community and plays an important role in generating the norms and conditions of possibility that govern it: international legal archives. These archives, such as those of the ICTR, are particularly important sites in this respect because they remain widely seen as sites of ‘truth’ and representative of the norms and conscience of the international community.[[45]](#footnote-45) Building on the framework set out above, the remainder of the article offers a reading of the ICTR’s archive and asks: what rules underpin the ICTR’s archive, whois responsible for what records are produced, and how does this lead to particular imaginings of the international community?

# The ICTR’s archive

International courts produce an overwhelming volume of information. The ICTR’s archive - located in Arusha, Tanzania - contains over 4km of records (including the testimony of 3,200 witnesses), pertaining to the 1994 Rwandan genocide, during which nearly 1 million Tutsis and ‘moderate’ Hutus were killed by the Hutu extremist led ‘interim government.’[[46]](#footnote-46) The archive’s importance – which exceeds its sheer scale - results from its purpose as a response to the genocide. Whilst the tribunal’s focus was very much on the production of legal verdicts - and whereas the archive’s primary function was supporting this - the tribunal and archive became associated with a number of parallel goals. The tribunal would, it was hoped, establish a verified account of the genocide and contribute to reconciliation in Rwanda by delivering justice and providing witnesses with a space to testify.[[47]](#footnote-47) Moreover, as stated in UNSC resolution 955 - which brought the ICTR into existence - the tribunal would help restore *international* peace and security.[[48]](#footnote-48) In the face of the international community’s failure to help stop the genocide – and indeed, as discussed below, the complicity of international actors in the genocide - the tribunal became a means to rebuild trust in the international community and re-establish the ‘consciousness [of] mankind’.[[49]](#footnote-49)

International institutions, such as these courts, perform an important role in giving the international community an appearance of ontological stability, as they determine the rules and norms that govern its members. The rules and norms upheld by courts like the ICTR are presented as non-derogable and so even govern those states and actors that do not recognise the legitimacy of these institutions or the rules of the community.[[50]](#footnote-50) The claims to universality, however, conceal what is the selective nature with which these rules are applied, and, as explored below, the dynamic and even changing nature of what it means to belong to the community.[[51]](#footnote-51) Indeed, international courts have almost entirely been focused on African subjects.[[52]](#footnote-52) When this is considered alongside Jessica Whyte’s argument regarding the coloniality of these international intervention’s more generally,[[53]](#footnote-53) institutions such as the ICTR become about both ‘the normative construction of the international’ and the disciplining of post-colonial states, such as Rwanda, to conform with the community’s rules.[[54]](#footnote-54) Analysing the ICTR’s archive, as such, offers a way of interrogating these (post)colonial dynamics, and sheds light on what type of international community was constituted by the court, and what rules and norms governed it.

This is not to draw an artificial line between these international actors and institutions, such as the ICTR, and local or post-colonial subjects; as Jabri argues, these should be seen as ‘hybrid’ sites and subjectivities.[[55]](#footnote-55) However, as will be explored throughout this article, the international community is frequently divided into the peaceful ‘international’ and the barbarous ‘local’, and the uneven distribution of power between these spheres was central in determining the way in which the archive and the international community were constituted and governed.[[56]](#footnote-56)

Though still small in number, several legal and archival studies scholars have started to explore the significance of these international legal archives. Tom Adami and Martha Hunt (both ICTR archivists) have looked at how the ICTR’s archive supported the legal and bureaucratic function of the tribunal and acted as a site of truth, memory and catharsis, due to the prominence of victim testimony within the archive.[[57]](#footnote-57) Eric Ketlaar, writing about the International Criminal Tribunal for the Former Yugoslavia’s (ICTY) archive, has argued that whilst the archive contains a more limited ‘forensictruth’ (as opposed to what he calls a ‘narrative truth’) the archive’s account of the violence in the Western Balkans could, nonetheless, help to rebuild the region.[[58]](#footnote-58)

Whilst these studies tend to gloss over the political nature of archives, Kirsten Campbell’s work on the ICTY’s archive begins to point to this. Campbell highlights several frameworks surrounding the tribunal that shaped the archive, including the tribunal’s mandate to determine a legal judgement; its role in representing the international community’s norms; and its contribution to the Western Balkans’ transition to peace. As such, Campbell shows how the archive’s records, and hence the memory of the violence, is *constructed* rather than found and can therefore be seen as politically charged.[[59]](#footnote-59)

The following reading of the ICTR’s archive builds on Campbell’s analysis. First, rather than seeing the structures that existed around the archive as inevitably producing particular records, the article presents a more detailed exploration of how records are produced, which, following Stoler, draws greater attention to whohas the right to construct the archive.[[60]](#footnote-60) In the context of the ICTR’s archive, which was primarily constructed through witness testimony, the analysis brings to light how witness testimonies were marshalled to conform with the archive’s rules.[[61]](#footnote-61) This also brings greater focus to how these processes are contested. Whilst, it examines how the archive contributes to what Huysmans and Joao Pontes Nogueira refer to as ‘boundary making’, it also looks at practices that might *fracture* or disrupt these boundaries, or limits.[[62]](#footnote-62) Second, whilst Campbell points to the archive as a site of norm projection, in ascertaining the archive’s rules, this analysis offers a more detailed reading of what these rules and norms are and how these relate to particular notions of community. Finally, the approach adopted leads to a deeper exploration of the very contents of the archive, and determines which material traces of the tribunal’s existence and the genocide have been deemed worthy of protection and preservation for future use, and what this tells us about the politics of the archive.

My analysis of the ICTR’s archive considered it as a whole, but particularly focused on the records produced by three trials to develop an in-depth understanding of the processes and conditions through which records were produced. This allowed for a close analysis of the way that the records were constructed, and in particular how the rules of the archive shaped the witnesses’ testimony during the trials–which was the primary means through which the archive’s account of violence was constructed. The three trials were Jean-Paul Akayesu, ‘Cyangugu’ (the trial of: Andre Ntagerura; Emmanuel Bagambiki; and Samuel Imanishimwe) and Jean-Baptiste Gatete. These were selected because they dealt with: prosecutions spread over the tribunal’s history; relatively similar subject matter (making it possible to identify the (dis)similarities with which these subjects were treated); and instances of prosecutorial success (*Akayesu* and *Gatete*) and failure (*Cyangugu*). Whilst not representative of allICTR trials, these offered a way to systematically analyse how records were constructed for the archive, and how differing contexts (e.g. when the trial took place) effected this process. In addition, I drew on UN documents that related to the tribunal’s governance–such as the tribunal’s annual reports to the UNSC–and 22 semi-structured interviews with tribunal staff, which further helped explicate the archive’s rules.

The analysis is divided into three parts and follows the themes of responsibility, identity and voice discussed above. First, it examines how the archive limited whocould be considered responsible for the violence in Rwanda. Second, it explores the question of identity through a gendered lens, and particularly how the archive (re)produced a patriarchal notion of community. The final section considers who had the right to shape the archive, drawing attention to the coloniality of the archive.

## Liberalism, responsibility and the archive

The ICTR’s archive, like international criminal justice more generally, is rooted in an enlightenment world view.[[63]](#footnote-63) The court’s records were built on a faith in a scientific rationalism, which stressed the possibility of determining thetruth through a process of controlled contestation of the evidence between two parties (the defence and prosecution), and decided on by a neutral third party (the judges). It was because of its ability to establish a verified account of past violence that advocates believed the ICTR could help ‘draw a line’ under the genocide.[[64]](#footnote-64) Underpinning this system of thought was, moreover, a liberal understanding of community based on principles of universality, equality, progress and individualism.[[65]](#footnote-65) Universality and equality were explicitly embedded in the ICTR’s mandate through the application of universal jurisdiction and in the tribunal’s deliberate targeting of senior figures in the Rwandan government and military, showing that no one was above the law. The idea of progress was also of central importance to the ICTR’s legitimacy, as the UN believed that the development and application of international law would help reduce violence within the international community.[[66]](#footnote-66)

Of particular importance for thinking about the link between the archive, community and governance was the archive’s focus on the individual.[[67]](#footnote-67) One of the supposed strengths of the tribunal was its ability to determine individualresponsibility and sort the guilty from the innocent. [[68]](#footnote-68) Again, influenced by enlightenment logic, this focused the archive around the actions of the conscious and rational perpetrator. During *Akayesu* the prosecution stressed that:

Akayesu *consciously chose* to participate in the systematic killings that followed in Taba. He publicly incited people to kill in Taba. He also ordered the killing of a number of persons some of whom were killed in his presence and he participated in the killings. He also cautioned and supported through his presence and acts, the rape of many women at the bureau communal. (Emphasis added.).[[69]](#footnote-69)

This produced accounts of violence within the archive that were ordered, neat and linear, where an individual’s discrete contribution to the crime was determined. [[70]](#footnote-70)

Examining the ICTR’s records, however, shows that this understanding of responsibility was in a state of flux. During the early years of the ICTR there were changes in the archive’s rules that were directed at betteraccounting for the collective nature of crimes such as genocide, and seemed to at least partially deflect focus away from the individual. Important in this respect was the development of joint criminal enterprise (JCE) - a group that was alleged to possess a shared common criminal plan or purpose - and command responsibility – where superiors were held accountable for the crimes of their subordinates - as modes of liability, which allowed the archive to capture the more amorphous forms of responsibility that occur during genocide.[[71]](#footnote-71)

With time, however, the archive refocused on the individual.[[72]](#footnote-72) Whilst the legal reasoning behind this is complex and multifaceted, in essence what changed was that the tribunal began to impose far higher standards of proof for these more amorphous and collective forms of liability, making it substantially harder to find defendants guilty.[[73]](#footnote-73) The effects of this shift were seen in the appeals judgement for *Military 1*, against Colonel Bagosora, Major Ntabakuze and Colonel Nsengiyumva, often seen as amongst the genocide’s chief-architects. In applying a more conservative reading of the law, the appeals judgement overturned the trial chamber’s ruling regarding the defendants’ responsibility for crimes committed by their subordinates, resulting in a significant reduction in the accused’s sentences.[[74]](#footnote-74)

One explanation for this shift was that it was the result of pressure exerted on the tribunal by powerful-state actors.[[75]](#footnote-75) Judge Harhoff, a former appeals judge at the tribunal, was dismissed after a private letter he wrote was leaked revealing his concern that the appeals chamber was imposing more stringent interpretations of JCE and command responsibility.[[76]](#footnote-76) According to Harhoff, judges were being influenced by leading military powers (pointing specifically to the US and Israel) who were concerned that the jurisprudence as it then stood had the potential to make it too easy to hold military commanders and heads of state to account for their subordinates’ crimes. This, they feared, would overly restrict military operations as greater (and potentially unnecessary) caution would be used by commanders to ensure that they did not fall foul of the law if their subordinates used excessive levels of violence.[[77]](#footnote-77)

The tribunal has strongly denied Harhoff’s account. What is interesting, however, is that while denying external meddling, senior figures at the tribunal have publicly supported the underpinning logic that international criminal law (ICL) should not *overly* restrict military operations. The tribunal’s President, Theodor Meron (and presiding judge in *Military 1*) has, for example, stressed that the purpose of ICL is to ‘diminish the evils of war, *as far as military requirements permit*’ (emphasis added).[[78]](#footnote-78)

Ultimately, the cause of this shift is less significant than what it means for the politics of the archive. First, this repositioned the knowing individual at the heart of the trial process and with this a liberal notion of community was re-centred in the archive where each person takes responsibility for their own actions. But this also says something about how the relationship between violence, responsibility and community were imagined within the archive. Indeed, this account resonates with Elizabeth Dauphinee’s argument that rather than seeking to *eradicate* violence from the international community, ICL works to delegitimise *certain* acts of violence and in the process legitimise others. Dauphinee argues that war and ICL are dependent on each other: war needs ICL to separate off a domain of violence that is illegal – therefore legitimising other forms of violence; ICL needs some violence to be legitimate for it would have no function without drawing a line between illegitimate and legitimate acts.[[79]](#footnote-79)

This is, then, about how ideas of violence and responsibility are structured and restricted within the archive. In this respect, another omission from the archive is important: the responsibility of international actors for the genocide, whether in the form of the international arms trade (which by flooding Rwanda with cheap weapons significantly contributed to the violence) or the role of states in supporting conflict, such as France’s role in training, arming, and providing financial support to the genocidaires. [[80]](#footnote-80) Again, this omission is partially due to the tribunal’s focus on individual responsibility. But importantly, the addition of records related to the international nature of the violence was also explicitly prohibited. During both *Cyangugu* and *Gatete* the judges took judicial notice of the *non*-international nature of the conflict, which, by declaring that this was a ‘fact of common knowledge’, meant unequivocally that there was no room for any records relating to international actors’ responsibility in the archive. This was, they argued, because the UNSC had only provided the court with jurisdiction over ‘non-international’ conflicts, which as such prohibited any discussion of the conflict’s international nature.[[81]](#footnote-81) The result was that international structures and actors sank from view within the archive.

This also meant that the archive’s account of violence and responsibility for that violence was concentred within Rwanda. This treated the genocide as a discrete and localised event, leading to the portrayal of Rwanda as an isolated site of barbarity. In contrast - and despite the prevalence of international actors assisting the genocide - the lack of records related to these aspects of the violence worked to separate the international - a site of (liberal) peace, order and civilisation - from the violence committed in the local - a site of barbarity - and *absolved* other actors within the international community of their responsibility for the violence.[[82]](#footnote-82) Not only this, the archive portrays the international, by enacting law and ‘bringing justice’ to Rwanda, as saviour.[[83]](#footnote-83)

This nomenclature of violence, and the division between the local and the international, also affects how violence is responded to within the international community. The archive, then, produces particular understandings of both responsibility *for* violence and responsibility *to* the victims of violence.[[84]](#footnote-84) During the first months of the Rwandan genocide, UNSC debates about Rwanda were dominated by this idea of localised barbarity, which led, particularly amongst the Permanent 5, to the conclusion that nothing could be done to stop the irrational outpouring of violence.[[85]](#footnote-85) This positioned Rwanda as a problem that fell outside of the international community’s domain of responsibility. Paradoxically, however, this division between the local and international can also produce a perceived obligation to act. This portrayal of the barbaric and irrational local was central to colonialism’s ‘civilising mission’ and continues to underpin ideas about humanitarian intervention.[[86]](#footnote-86) This logic also legitimised the UNSC’s decision to create the ICTR, ultimately against Rwanda’s will, as the UNSC argued that only an international court could impartially administer justice and so reform Rwanda into a legitimate member of the international community.[[87]](#footnote-87) Cutting across these examples is the constitution of the local as an irrational and barbaric space, and that it is consistently those that claim to speak for the international community – often actors fromthe Global North with long colonial histories - rather than the those experience the violence – often actors from the Global South - that decide the terms upon which, and indeed when, intervention takes place.[[88]](#footnote-88)

As such, the liberal undercurrents of the archive, especially its focus on individuals, when combined with other discursive imaginings about the *liberal* international order, carried with it a number of consequences for how the international community was imagined and governed. This included creating a space within which ‘military necessity’ trumped protecting potential victims, and where an understanding of the causes of violence, as centred around the individual, obscured the wider structures and processes that underpin violence within the international domain. This also introduced a colonial rationality within the records of the archive, as the archive separated the international community into the international (as a site of peace) and the local (a site of barbarity). The archive’s dynamism was also emphasised with its changing understanding of responsibility. This began with a more collective understanding of responsibility - a response to the collective nature of crimes such as genocide and perhaps also reflective of the strength of international cosmopolitanism in the 1990s - but was replaced with a more individualistic understanding of responsibility and community - in part because of a concern with the impact this might have of the efficiency of militaries. This is demonstrative both of the contested nature of the archive, its uneven development and the complex relationship between archive and community, as each constitutes the other in an iterative and fragmented process.

## Identity, violence and the archive

There are numerous paths into thinking about how the archive constituted different identities and subjectivities. One route, for instance, could be to examine the highly ethno-centric understanding of violence produced within the archive’s records.[[89]](#footnote-89) Another would be to consider how the categories of perpetrator and victim were formed, and also how these were framed by questions of race, ethnicity and gender. [[90]](#footnote-90) However, the following section explores the question of identity through the prism of gender, specifically examining the production of records relating to gender-based violence. This demonstrates how the archive resulted in a patriarchal understanding of the international community.[[91]](#footnote-91)

Despite the tribunal’s claims to have been at the forefront of developing gender-sensitive jurisprudence, an analysis of the archival records tells a story of neglect. Lisa Pruitt, who was sent to Rwanda to investigate the possibility of developing sexual violence charges during *Akayesu*,noted that the ICTR’s investigators gave the sense of, ‘Well, we can’t be concerned about some women who got raped. We can’t divert resources to investigate those crimes. We had a genocide down here […].’[[92]](#footnote-92) A hierarchy of victimhood was imbedded within the archive from the off, which entrenched the notion that crimes committed against women on the basis of their gender were less (or perhaps in-)significant. Whilst this did partially improve with the creation of a sexual violence investigation unit in 1998,[[93]](#footnote-93) throughout the trials gender-based violence remained insufficiently investigated and poorly incorporated into the archive.

This was seen in during *Cyangugu*. The prosecution’s failure to incorporate charges relating to sexual violence in the indictment, despite having ample evidence that incidents had taken place,[[94]](#footnote-94) meant that the judges actively prevented witnesses from testifying about this crime. [[95]](#footnote-95) In one instance a portion of testimony was ex-post-facto *erased* from the archive after a witness had nonetheless presented evidence relating to sexual violence, signified in *Figure 1* by ‘[DELETED TEXT]’.



Figure 1

The significance of the erasure cannot be overstated. I am not aware of any other instance where a phrase was ex-post-facto *erased* from the archive. Sometimes when sensitive information was accidently included (that might, for instance, have led to the identification of a protected witness) parts of the records might be put under seal and concealed from the public. But in every other instance where evidence that exceeded an indictment was uttered and successfully objected to, the judges held that they were able to simply ignore this evidence during deliberations.[[96]](#footnote-96) Here, however, it seemed necessary to erase all material tracesof this utterance so as not to taint the judges’ future deliberations, and, ultimately, the archive.

The erasure is indicative of a more general silence concerning gender-based violence within the archive. This was the result of what can be described as an overall degree of hostility towards evidence of these crimes and the application of higher standards of proof.[[97]](#footnote-97) From the numerous examples that could evidence this,[[98]](#footnote-98) I turn to the treatment of Witness BAT during *Gatete*.

During *Gatete,* Witness BAT testified to her first sighting of Gatete during the genocide at a local commercial centre:

Prosecution: Madam Witness, you said a few moments ago that you heard a vehicle and that you saw Jean–Baptiste Gatete. You said you realised they had not come to protect you. What made you say that?

Witness: I said that Gatete had not come to protect us, because after coming out of his vehicle, we heard whistles and Gatete asked the people who were there to kill Tutsis and rape young Tutsi girls and women before killing them. It is for this reason that I thought he had not come to protect us, but, rather, to ask the killers to kill us.[[99]](#footnote-99)

The defence objected to this evidence on the grounds that the witness had not mentioned Gatete’s order in their indictment or pre-trial statement and the objection was sustained by the judges.[[100]](#footnote-100) As such, whilst the witness was ‘allowed’ to continue and testify to the successive rapes that she suffered (because of this order) no legal link was provided between these acts and Gatete.

This decision is unfathomable in light of the indictment which, with an unusual amount of specificity by the ICTR’s standards, made it *very* clear that Gatete was being accused of ordering Interahamwe to commit acts of sexual violence *and* that BAT was a victim of this order. Paragraph 18 of the indictment read:

[…] Jean-Baptise GATETE, with Murambi *bourgmestre* Jean de Dieu Mwanga, transported a convoy of armed *Interahamwe* to Akarambo cellule where GATETE ordered the *Interahamwe* to burn, loot and pillage Tutsi homes *and to rape and kill civilian Tutsi*.) […]. *Then on or about 8 April* *1994, BAT was raped by two* Interahamwe, *the son of NYAMUGARA and KAREMER*. *The Interahamwe raped and killed Tutsis as a result of the actions of Jean-Baptiste GATETE*. (Emphasis added.)[[101]](#footnote-101)

The decision to bar this testimony and erase it from the archive was not, then, based on the prosecution’s failure to adequately charge this crime (as was suggested in the judge’s decision), but because a higher threshold of proof was in operation for gender-based crimes.

This absence is instructive when considering what type of community the archive was part of constructing. [[102]](#footnote-102) For if the archive’s function was to determine what violence was (il)legitimate, and which subjects were worthy of protection, then the absence of records relating to gender-based violence suggests that once more women became the accepted ‘spoils of war’. This, as such, (re)produced a patriarchal understanding of community. Moreover, the absence of records relating to gender-based violence is demonstrative of the importance the materiality of the archive. The record of BAT’s testimony is not only different from what was discursively uttered in the courtroom, but the wider immateriality of the archive in this respect undermines the tribunal’s claims to have been at the forefront of developing gender-sensitive jurisprudence.

## Voice, colonialism and the archive

When analysing the archive, it became clear that the tribunal saw that its reliance on Rwandan witnesses had led to a number of difficulties. Particularly problematic from the court’s perspective - as it raised questions regarding the witnesses’ credibility – was what was interpreted as the witnesses’ evasiveness during questioning and their difficulties in distinguishing between what they had seen and heard (i.e. hearsay evidence, which was seen as less substantial evidence).[[103]](#footnote-103) In response, during *Akayesu* the prosecution introduced a Rwandese cultural and linguistic expert, Professor Mathias Ruzindana, to explain these ‘idiosyncrasies’.[[104]](#footnote-104) His testimony suggested that Rwandan’s often changed how they answered questions depending on who they were speaking to, and that the witnesses’ inexperience with the tribunal’s procedure, and a tendency to suspect unfamiliar persons in positions of authority, was likely to lead to what could be interpreted as a lack of cooperation.[[105]](#footnote-105) He also explained that as an oral culture, Rwandans did not always distinguish between what they saw and heard.[[106]](#footnote-106)

There is reason to believe that this type of evidence affected tribunal practice, influencing, as such, what was permitted to enter the archive and in what form. In the *Akayesu* judgement, drawing on Ruzindana’s evidence, the judges argued that,

it is a particular feature of the Rwandan culture that people are not always direct in answering questions, especially if the question is delicate. In such cases, the answers given will very often have to be ‘decoded’ […] to be understood correctly […].[[107]](#footnote-107)

The judges went on to note that due to the witnesses’ inexperience with the courtroom procedures ‘the Chamber [would not] draw any adverse conclusions regarding the credibility of witnesses based only on [witnesses] reticence and their sometimes circuitous responses to questions’.[[108]](#footnote-108)

Another issue was how to account for the frequent changes between witnesses’ pre–trial and trial statements, which the defence regularly argued undermined the witnesses’ credibility.[[109]](#footnote-109) Here the *Akayesu* judgement stated that the witnesses’ often traumatic experience during the genocide was likely to ‘affect [the witnesses] ability [to] fully or adequately […] recount the sequence of events in a judicial context. The Chamber has considered the testimony of those witnesses in this light’*.*[[110]](#footnote-110)As such, there is evidence that suggests that the archive’s rules adapted to the lived experiences of the Rwandan witnesses.

An example of this was the judges’ interpretation of Witness D’s testimony in *Akayesu*. Whilst Witness D’s pre–trial statement claimed that he had buried his brothers after Akayesu had killed them, during the trial Witness D claimed that he *hadn’t* buried them.[[111]](#footnote-111) The judges, however, ruled that this relatively major shift could be explained by Witness D’s traumatic experience, and his testimony that Akayesu had killed his brothers was accepted as true. This, then, offers evidence of what Jabri refers to as the ‘hybridity’ of the international, as the post-colonial subject disrupts the rules and norms that govern the limits of the international.[[112]](#footnote-112)

However, there was a limit to which witnesses reclaimed authority to determine the archive’s rules. Dr Ruzindana, for instance, indicated that despite attempts to ‘accommodate’ the specifics of Rwandan culture, a gap between the tribunal’s approach to knowledge production and the witnesses remained;[[113]](#footnote-113) a sentiment echoed by other Rwandese staff at the tribunal.[[114]](#footnote-114) A Rwandese prosecutor noted, with some anger, what he saw as the inappropriate questioning of witnesses’ knowledge without due sensitivity to what they had experienced.[[115]](#footnote-115) During Witness N’s testimony in *Akayesu*, for instance, the witness was frustrated by questions about the veracity of her knowledge regarding the death of her family. However, rather than responding to this by changing the approach of questioning, the judges requested that the witness alter her practice to ‘speak without hatred, without any emotion’.[[116]](#footnote-116) Moreover, despite the tribunal acknowledging the value of hearsay evidence to Rwandans, rather than give hearsay more probative weight, courtroom practices were adapted to ask more specific questions to determine the source of witnesses’ testimony. This allowed the court to distinguish between the ‘more substantive’ sight witnessing, and the ‘less credible’ hearsay.[[117]](#footnote-117) Whilst not denying the hybrid state of archive, it is clear that the power to determine the ‘hierarchy of credibility’ remained with the legal actors rather than the witnesses.[[118]](#footnote-118)

A manual circulated to witnesses prior to participating in the trials further evidences this imbalance of power.[[119]](#footnote-119) Within the manual, there was no sense of the tribunal making allowances for the witnesses’ experiences. Instead, it focused on: the importance of telling the truth (including stressing the penalty for those that lied to the tribunal); how witnesses should deliver their testimony (to speak slowly, and to only speak of what they really *knew*–including distinguishing between what they saw and heard); and their need to respect the status and duties of tribunal staff when questioned.[[120]](#footnote-120) This made clear the power-relations at play between the different actors in the tribunal and in the production of the archive, and the witnesses’ subservience to those rules.[[121]](#footnote-121)

This power-dynamic was solidified further as the UN decided where the archive should be located after the tribunal had closed down. Two claims were made about who owned the archive, where it should be located and what it was for. The Rwandan government argued that the archives had been produced by Rwandan witnesses, and supposedly for Rwanda. As such, it contained *their* history, *their* memories and so belonged in Rwanda.[[122]](#footnote-122) Whilst the UN acknowledged that the archive had a secondary value as a source of history and memory, they argued its primary value was that it contained the institutional memory of the tribunal, and so was valuable from a legal and bureaucratic perspective.[[123]](#footnote-123) Consequently, the UN argued that the archive needed to stay in Arusha where it could assist the Mechanism for the International Criminal Tribunals (MICT), which was to take over any of the tribunal’s residual functions once it had closed down.[[124]](#footnote-124) The UN won this battle, and this outcome also cemented the decision to build a new archive facility for the MICT in Arusha to house the records in perpetuity.

This decision brought to the fore a number of contradictions about the tribunal’s purpose, and again is revealing of the importance of the materiality of the archive. At the ICTR’s outset, rhetorically at least, the tribunal’s creators presented it as something that could be all things to all people. Not only a site of law and justice, it would also produce a verified account of the genocide, and assist with reconciliation in Rwanda. The attempt to find a home for the physical archive, however, fractured the tribunal’s claim about what it could achieve as it prioritised its legal and bureaucratic function and the UN’s needs over and above Rwanda’s.[[125]](#footnote-125)

There appeared, then, to be a strain between the way in which the archive required testimony to be produced, and the witnesses’ way of testifying. Criminal law’s approach to knowledge production, underpinned as it is by western enlightenment thought, overruled other subaltern approaches to knowledge production.[[126]](#footnote-126) This is not to draw a neat line between ‘Western’ and subaltern epistemologies, which has been rightly critique for ignoring the intertwined nature of these modes of knowledge production. However, this demonstrates that despite giving lip-service to other ways of knowing, ultimately these were subsumed within a western-centric approach to knowledge production, reproducing a colonial rationality.[[127]](#footnote-127) The hierarchical nature of this relationship was cemented as the tribunal rejected Rwanda’s claim to the archive. Along with the local/international binary discussed above, this resulted in a colonial imagining of community within the archive.

# Conclusion: the archive and the international community

This article has shown that a distinctive set of rules underpinned the construction of the ICTR’s archive, which produced a particular account of the violence in Rwanda and of the international community. This drew on the themes of responsibility, identity, and voice identified in the first section to understand the politics of the archive and how the archive links to notions of community. In applying this framework to the ICTR’s archive, part two demonstrated that embedded within this archive was a liberal, patriarchal and colonial understanding of community.

First, the emphasis on the liberal nature of community emanated from the ICTR’s archive’s enlightenment rooted epistemology, which, in addition to adhering to the themes of universality, equality and progress, focused its account on the actions of conscious and rational individuals. This, when combined with other imaginings of the liberal international order, also led to the erasure of international actors within the archive. This resulted in the first signs of the colonial nature of the archive as this produced a binary of the local - a site of barbarity - and the international -a site of (liberal) peace.[[128]](#footnote-128) Second, the archive projected a patriarchal vision of community, as it excluded accounts that focused on the occurrence of gender-based violence during the genocide. This was both because these crimes were treated as a less serious than others, and because they were subjected to higher standards of proof. Pointing to the erasure and absence of records relating to gender-based violence also highlighted the importance of the (im)materiality of the archive. Finally, this article highlighted the coloniality of the archive and community by demonstrating how certain ways of knowing - which existed beyond the archive’s western enlightenment logics - were delegitimised. Whilst the archive’s rules attempted to shift to reflect the Rwandan witnesses’ experiences, ultimately it was the witnesses that were expected to adapt to the peculiarities of the courtroom processes. These power-dynamics were replicated in the final decision of where the archive was to be located, as the needs of Rwanda were overridden by those of the UN. Once more, this demonstrated the importance of the materiality of the archive, as the decision of where to house the physical records came to fracture the tribunal’s initial claims about the purpose and function of the court.

In addition to demonstrating how the international community is imagined through the ICTR’s archive, the article has more generally affirmed the value of archives as sites of empirical analysis for IR scholars and, drawing on Stoler and Foucault, suggested how archives can be analysed. As Derrida argued, the archival drive operates through an exclusionary and selective logic, which makes the archive such an indispensable tool for state and community building. Archives represent an important material trace of, and monument to, these projects. As such, there is a need to understand how these archives are constructed, by whom and what effect this has for the constitution and governance of community.

1. Emma Rothschild, ‘The Archives of Universal History’, *Journal of World History* 19, no. 3 (2007): 375-6. [↑](#footnote-ref-1)
2. Gary Bruce, ‘East Germany’, in *Transitional Justice in Eastern Europe and the Former Soviet Union: Reckoning with the Communist Past*, ed. Lavinia Stan (London: Routledge, 2009), 15-37; John Dirks, ‘Accountability, History, and Archives: Conflicting Priorities or Synthesized Strands?’, *Archivia* 57 (2004), 45-6; Zahir Kolia, ‘Archiving Trauma and Amnesia: The Racialized Political Theologies of Reconciliation in South Africa,’ in *Recentering Africa in International Relations Beyond Lack, Peripherality, and Failure*, eds. Marta de Heredia and Zubairu Wai (Basingstoke: Palgrave Macmillan, 2018), 148. [↑](#footnote-ref-2)
3. United Nations Security Council (hereafter UNSC), S/RES/955, 08/11/1994; and ‘United Nations

International Residual Mechanism for Criminal Tribunals: Archives’, available at: <http://www.irmct.org/en/archives>, last accessed December 21, 2018. [↑](#footnote-ref-3)
4. Vivienne Jabri, ‘Disarming Norms: Postcolonial Agency and the Constitution of the International’, *International Theory* 6, no. 2 (2014): 372-90; Kamari Clarke, ‘Affective Justice: The Racialized Imaginaries of International Justice’, *PoLAR* 42, no. 2 (2019): 244–267. [↑](#footnote-ref-4)
5. Joan Schwartz and Terry Cook, ‘Archives, Records, and Power: The Making of Modern Memory’, *Archival Science* 2, no. 1 (2002): 9-11. [↑](#footnote-ref-5)
6. Jacques Derrida, ‘Archive Fever: A Freudian Impression’, *Diacritics* 25, no. 2 (1995): 9-10. [↑](#footnote-ref-6)
7. Irving Velody, ‘The Archive and the Human Sciences: Notes Towards a Theory of the Archive’, *History of the Human Sciences* 11, no. 4 (1998): 1-2. [↑](#footnote-ref-7)
8. Carolyn Steedman, ‘Something She Called a Fever: Michelet, Derrida, and Dust’, *The American History Review* 106, no. 4 (2001), 1159-63. [↑](#footnote-ref-8)
9. Richard Brown and Beth Davis-Brown, ‘The Making of Memory: The Politics of the Archive, Libraries and Museums in the Construction of National Consciousness’, *History of Human Sciences* 11, no. 4 (1998): 18-20; Derrida, ‘Archive Fever’, 10; Steedman, ‘Fever’, 1171-2; Carolyn Steedman, ‘After the Archive’, *Comparative Critical Studies* 8, no. 2-3 (2011), 333-7. [↑](#footnote-ref-9)
10. Steedman, ‘Fever’, 1162-3. This archival logic is inextricably tied to the ‘Western European Modern’ intellectual project, and colonialism. Míde Ní Shúilleabháin, ‘Inviting Marianne to Dance: Congolese Rumba Lingala as an Archive Against Monument’, in *Politics of African Colonial Archive*, eds Shiera el-Malik and Isaac Kamola (London: Rowman & Littlefield, 2017), 104; Walter Mignolo, ‘Introduction’, *Cultural Studies* 21, no. 2-3 (2007): 155-67. [↑](#footnote-ref-10)
11. Ann Stoler, *Along the Archival Grain: Epistemic Anxiety and Colonial Common Sense* (Princeton: Princeton University Press, 2010), 28-9 and 97-8; Thomas Osborne, ‘The Ordinariness of the Archives’, *History of Human Sciences* 12, no. 2 (1999): 51-64; Jeanette Bastian, ‘Reading Colonial Records Through an Archival Lens: The Provenance of Place, Space and Creation’, *Archival Science* 6 (2007): 267–84. [↑](#footnote-ref-11)
12. Bennedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 2006), 168-70. [↑](#footnote-ref-12)
13. *Ibid*., 169. [↑](#footnote-ref-13)
14. Stoler, *Archival Grain*, 1 and 97. [↑](#footnote-ref-14)
15. See also Michel-Rolph Trouillot, *Power and the Production of History* (Boston: Beacon Press, 1995), 72-3. [↑](#footnote-ref-15)
16. Stoler, *Archival Grain*., 2-3, 32-3, and 41-3. [↑](#footnote-ref-16)
17. Aníbal Quijano critiques the distinction of subject/object. Aníbal Quijano, ‘Coloniality and Modernity/Rationality’, *Cultural Studies* 21, no. 2-3 (2007): 168-78. [↑](#footnote-ref-17)
18. Robert Foster *et al*, ‘Introduction’, in *Fatal Collisions: The South Australian Frontier and the Violence of Memory*,ed. Foster *et al* (Kent Town: Wakefield Press, 2001), 1-13; Henry Reynold, *Why Weren’t We Told? A Personal Search for the Truth About Our History* (Victoria: Ringwood, 2000), 81-98. [↑](#footnote-ref-18)
19. Trouillot, *Power*, 72-82; Derrida, ‘Archive Fever’, 51-3; Anjali Arondekar, ‘Without a Trace: Sexuality and the Colonial Archive’, *Journal of the History of Sexuality* 14, no. 1/2 (2005): 27. [↑](#footnote-ref-19)
20. Trouillot, *Power*, 28-9 and 95-107. [↑](#footnote-ref-20)
21. See also Bastian, ‘Colonial Records’, 273. For a similar account of the ability, and need, to reclaim ‘lost voices’ within archives, see Arlette Farge, *The Allure of the Archive*, trans. Thomas Scott-Railton (London: Yale University Press, 2013). [↑](#footnote-ref-21)
22. Gayatri Spivak, ‘The Rani of Sirmur: An Essay in Reading the Archives’, *History and Theory* 24, no. 3 (1985), 271; Gayatri Spivak, ‘Can the Subaltern Speak?’, in *Colonial Discourse and Post-Colonial Theory: A Reader*, eds. Patrick Williams and Laura Chrisman (New York: Colombia University Press, 1994), 66-111. [↑](#footnote-ref-22)
23. Shiera el-Malik and Isaac Kamola, ‘Introduction: Politics of African Anticolonial Archive’, in *Politics of African Anticolonial Archive*, in eds. Shiera el-Malik and Isaac Kamola (London: Rowman & Littlefield International, 2017), 3-4. [↑](#footnote-ref-23)
24. As Walter Mignolo shows, drawing on Quijano, the coloniality of power is dependent on four sites of control: economy, gender and sexuality, authority, and subjectivity and knowledge. This article is concerned with the latter two. Mignolo, ‘Introduction’, 156. [↑](#footnote-ref-24)
25. Quijano, ‘Coloniality and Modernity/Rationality’; Jabri, ‘Disarming Norms,’ 378-90. These projects are, however, connected. As el-Malik and Kamola argue, one of the purposes of the anti-colonial archive is to ‘diagnoses the logics of colonialism in Africa, ….the political purpose of fighting colonial rule within a particular historical conjuncture,’ which is very much in line with the purpose of this article. See also Timothy Vasko, ‘“But for God’s Sake, Let’s Decolonize!”: Self-Determination and Sovereignty and/ as the Limits of Anticolonial Archives’, in eds. Shiera el-Malik and Isaac Kamola (London: Rowman & Littlefield International, 2017),178-183. [↑](#footnote-ref-25)
26. Ann Stoler, ‘Colonial Archives and the Arts of Governance’, *Archival Science* 2, no. 1 (2002), 87-109. [↑](#footnote-ref-26)
27. Michel Foucault, *The Archaeology of Knowledge and the Discourse on Language*, trans. Alan Sheridan (New York: Pantheon Books, 1972). I acknowledge the tension in reading Spivak alongside Foucault, given Spivak’s criticism of Foucault’s constitution of the subaltern. However, Spivak nonetheless sees a value in Foucault’s approach for examining the mechanisms of power that constitute the Other, something that is akin to the research pursued here. Spivak, ‘Can the Subaltern Speak?’, 90. [↑](#footnote-ref-27)
28. Colin Gordon, ‘Afterword’, in *Power/ Knowledge: Selected Interviews and Other Writings 1972–1977*, ed. Colin Gordon (New York: Pantheon Books, 1980), 243-4. [↑](#footnote-ref-28)
29. Foucault, *Archaeology of Knowledge*, 127; Gilles Deleuze, *Foucault*, trans. Seán Hand (London: University of Minnesota Press, 1988), 3-8. [↑](#footnote-ref-29)
30. Foucault, *Archaeology of Knowledge*, 45. [↑](#footnote-ref-30)
31. Stoler, *Along the Archival Grain*. [↑](#footnote-ref-31)
32. *Supra note 30*. [↑](#footnote-ref-32)
33. *Supra note 14*; Michel, Foucault, *I, Pierre Rivière, Having Slaughtered My Mother, My Sister and My Brother...: A Case of Parricide in the 19th Century* (London: University of Nebraska Press, 1982). [↑](#footnote-ref-33)
34. *Supra note 14*, 90. [↑](#footnote-ref-34)
35. Alister Wedderburn, ‘Cartooning the Camp: Aesthetic Interruption and the Limits of Political Possibility’, *Millenium* 47, no. 2 (2019): 169-89; Lene Hansen, *Security as Practice: Discourse Analysis and the Bosnian War* (London: Routledge, 2006); Jef Huysmans and Joala Pontes Nogueira, 'Ten Years of IPS: Fracturing IR', *International Political Sociology* 10, njo. 4 (2016): 303-4; Andrew Neal, ‘Foucault in Guantánamo: Towards an Archaeology of the Exception’, *Security Dialogue* 37, no. 1 (2006): 31–46. [↑](#footnote-ref-35)
36. Claudia Aradau and Jef Huysmans, ‘Critical methods in International Relations: The Politics of Techniques, Devices and Acts’, *EJIR* 20, no. 3 (2014): 603. [↑](#footnote-ref-36)
37. *Ibid.,* 596-608. [↑](#footnote-ref-37)
38. *Ibid*. [↑](#footnote-ref-38)
39. Joanna Tidy, ‘War Craft: The Embodied Politics of Making War’, *Security Dialogue* 50, no. 3 (2019): 220-38. [↑](#footnote-ref-39)
40. Joanna Tidy and Joe Turner, ‘The Intimate International Relations of Museums: A Method’, *Millennium* *online first* (December 2019): 1-26; Julia Welland, ‘Violence and the Contemporary Soldiering Body’, *Security Dialogue* 48, no. 6 (2017): 524-40; Christine Sylvester, *Art/Museums: International Relations Where we Least Expect it* (London: Paradigm, 2009). [↑](#footnote-ref-40)
41. *Supra note 14*; Thomas Richards, *The Imperial Archive: Knowledge and the Fantasy of Empire* (London: Verso, 1993); Trouillot, *Power*; Arondekar, ‘Without a Trace’. [↑](#footnote-ref-41)
42. Zahir Kolia, ‘Archiving Trauma’*.* [↑](#footnote-ref-42)
43. Vivienne Jabri, ‘Peacebuilding, the Local and the International: a Colonial or a Postcolonial Rationality?’, *Peacebuilding* 1, no. 1 (2013): 3-4. [↑](#footnote-ref-43)
44. *Ibid*., 6-8 and 13. This logic was not new to the post-Cold War world, but underpinned colonial expansion too. Jessica Whyte, ‘Always on Top’? The ‘Responsibility to Protect’ and the Persistence of Colonialism’, in *The Postcolonial World*, Jyotsna Singh and David Kim (eds) (London: Routledge, 2016): 308-24. [↑](#footnote-ref-44)
45. Vasko, ‘“Let’s Decolonize!”’, 191-2. [↑](#footnote-ref-45)
46. Tom Adami, ‘Judicial Record Management/Archiving’, *ICTR Legacy Symposium – 20 Years of Challenging Impunity*, 06/11/2014. [↑](#footnote-ref-46)
47. Tom Adami and Martha Hunt, ‘Genocidal Archives: The African Context’, *Journal of the Society of Archivists* 26, no. 1 (2005): 177. For similar logic at the ICTY see Eric Ketlaar, ‘Truths, Memories and Histories in the Archives of the International Criminal Tribunal for the Former Yugoslavia’, *Genocide Convention: The Legacy of 60 Years*, eds. Hugo Van der Wilt *et al* (Leiden: Brill, 2012), 201-2. [↑](#footnote-ref-47)
48. S/RES/955. [↑](#footnote-ref-48)
49. UNSC, S/PV.3453, *3453rd Meeting*, 08/11/1994, 7–8; Richard Goldstone, ‘Justice as a Tool for Peace–Making: Truth Commissions and International Criminal Tribunals’, *Journal of International Law and Politics* 28 (1995): 485-504. The archive mirrors the drive of other post-conflict archives, such as the South African Truth and Reconciliation Commission (SATRC), where individual memories were mobilised in pursuit of the reconstitution of the state. Kolia, ‘Archiving Trauma’, 148. [↑](#footnote-ref-49)
50. At the ICC, then, non-signatories to the Rome Statute are nonetheless able to be referred to the court for investigation and punishment. [↑](#footnote-ref-50)
51. Mahmood Mamdani, ‘Responsibility to Protect or Right to Punish?’, *Journal of Intervention and Statebuilding* *4*, no.1 (2010): 62-3 [↑](#footnote-ref-51)
52. The exceptions here would be the International Criminal Tribunal for the Former Yugoslavia, the Extraordinary Chambers in the Courts of Cambodia, Special Panels of the Dili District Court, and the Special Tribunal for Lebanon. [↑](#footnote-ref-52)
53. Whyte, ‘Always on Top’, 316-17. [↑](#footnote-ref-53)
54. Jabri, ‘Peacebuilding’, 6-7 and 14; Clarke, ‘Affective Justice’, 244-57. The article also responds to Jabri’s observation that ‘the relationship between peacebuilding as a distinct response to conflict and the structure of the international is overwhelmingly under-theorised, so that the literature is largely descriptive and even normative in relation to preferences for particular practices.’ [↑](#footnote-ref-54)
55. Jabri, ‘Peacebuilding’, 11-15. Indeed, in relation to the ICTR, it is important to note that those working at the court came from across the globe, and, especially over time, there was a strong presence of African legal practitioners. As Spivak demonstrates, however, the subaltern also played an important role in reproducing colonial logics, perhaps especially when they took up positions of authority within the colonial apparatus. Spivak, ‘Can the Subaltern Speak?’, 90-110. [↑](#footnote-ref-55)
56. Even explicitly ‘hybrid courts’, such as the Special Court for Sierra Leone, saw this imbalance of power as these courts continued to ignore the norms, customs and epistemologies of the community affected by the violence. Tim Kelsall, *Culture under Cross-Examination: International Justice and the Special Court for Sierra Leone* (Cambridge: Cambridge University Press, 2010). [↑](#footnote-ref-56)
57. Adami and Hunt, ‘Genocidal Archives’, 105-221; Tom Adami, ‘“Who Will Be Left to Tell the Tale?” Recordkeeping and International Criminal Jurisprudence’, *Archival Science* 7 (2007): 213-21. [↑](#footnote-ref-57)
58. Ketlaar, ‘Truths, Memories and Histories’, 220-1. [↑](#footnote-ref-58)
59. Kirsten Campbell, ‘The Laws of Memory: The ICTY, Archive, and Transitional Justice’, *Social and Legal Studies* 22, no. 2 (2013): 251-3. [↑](#footnote-ref-59)
60. *Supra note 14*, 1. [↑](#footnote-ref-60)
61. See also Kolia, ‘Archiving Trauma’, 148-57. [↑](#footnote-ref-61)
62. Huysmans and Nogueira, ‘Fracturing IR’, 303-4. [↑](#footnote-ref-62)
63. Kelsall, *Culture under Cross-Examination,* 9. [↑](#footnote-ref-63)
64. Goldstone, 'Justice as a Tool for Peace–Making', 485-504. Madeleine Albright, US Permanent Representative to the UN in 1994, declared that the tribunal would ‘establish the historical record before the guilty can reinvent the truth.’ ‘Judgement Day’, *Washington Post*, 11/10/1998. [↑](#footnote-ref-64)
65. As Quijano argues, this mode of knowledge production is central to what she describes as the coloniality of power. Quijano, ‘Coloniality and Modernity/Rationality’, 172-176. [↑](#footnote-ref-65)
66. S/PV.3453, 7–8. [↑](#footnote-ref-66)
67. Kolia also critiques the focus on the individual in the context of the SATRC. *Supra Note 42.,* 65. [↑](#footnote-ref-67)
68. UNSC, S/PV.3400, *3400th Meeting*, 01/07/1994, 4. [↑](#footnote-ref-68)
69. ICTR–96–4, CONTRA001233, *Akayesu – Transcript of 28/09/1998* – *Sentencing Hearing*,28/09/1998, 15. ‘The other side of Akayesu is the side of him as an individual. ‘We see him and we saw him in court as an articulate man, an intelligent man, a good public speaker. He is also a politician. He knows how to view and weigh the political scene. He's able to make the right political decision, at least that's what he believes, until the decision he made on the 18th of April 1994.’ ICTR–96–4, CONTRA001235, *Akayesu – Transcript of 19/03/1998*, 19/03/1998, 20 59 and 63; ICTR–99–46, TRA002053/1, *[Cyangugu] – Ntagerura et al – Redacted Transcript of* 11/08/2003, 11/08/2003, 2; and ICTR–96–4–0003, 2–3. [↑](#footnote-ref-69)
70. See *Prosecutor v. Jean-Baptiste Gatete,* Case no. ICTR–00–61 (hereafter ICTR–00–61), TRA001643/1, *Gatete – Redacted Transcript of 20/10/2009*, 20/10/2009, 2. The legal archive is perhaps an example *par excellence* of what Ní Shúilleabháin describes as a ‘Western European Modern’ mode of thinking. Ní Shúilleabháin, 'Inviting Marianne to Dance’, 101-9. [↑](#footnote-ref-70)
71. Allison Danner and Jenny Martinez, ‘Guilty Associations: Joint Criminal Enterprise, Command Responsibility, and the Development of International Criminal Law’, *California Law Review* 93, no. 1 (2005): 124-30. [↑](#footnote-ref-71)
72. *Ibid*, 127; Beatrice Bonafé, ‘Finding a Proper Role for Command Responsibility’, *Journal of International Criminal Justice* 5, no. 3 (2007): 606-7; Judge Harhoff, ‘Leaked Letter’, available at: [http://www.bt.dk/sites/default/files–dk/node–files/511/6/6511917–letter–english.pdf](http://www.bt.dk/sites/default/files%E2%80%93dk/node%E2%80%93files/511/6/6511917%E2%80%93letter%E2%80%93english.pdf), last accessed: August 18, 2019. [↑](#footnote-ref-72)
73. Harhoff, ‘Leaked Letter.’ [↑](#footnote-ref-73)
74. *Prosecutor v. Théoneste Bagosora, Gratien Kabiligi, Anatole Nsengiyumva and Aloys Ntabakuze*, Case no. ICTR-98-41, *Appeal Judgement*, 14/12/2011. [↑](#footnote-ref-74)
75. For a more legally focused explanation of this change see Danner, and Martinez, ‘Guilty Associations’. [↑](#footnote-ref-75)
76. Harhoff, ‘Leaked Letter.’ [↑](#footnote-ref-76)
77. Interview with Senior ICTR Appeals Attorney 2 (Arusha, Tanzania: 2015); Danner, and Martinez, ‘Guilty Associations’, 96–102 and 189. [↑](#footnote-ref-77)
78. Theodor Meron, ‘The Humanization of Humanitarian Law’, *American Journal of International Law* 94, no. 2 (2000): 243. [↑](#footnote-ref-78)
79. Elizabeth Dauphinee, ‘War Crimes and the Ruin of Law’, *Millennium* 37, no. 1 (2008): 52; Mamdani, ‘Responsibility to Protect’, 60-64. [↑](#footnote-ref-79)
80. See also Mel McNulty, ‘French Arms, War and Genocide in Rwanda’, *Crime, Law and Social Change* 33, no. 1-2 (2000): 104, 112-8; Nelson Alusala, ‘The Arming of Rwanda, and the Genocide’, *African Security Studies* 13, no. 2 (2004):137-8; UNSC, S/PV.3566, *3566th Meeting*,16/08/1995; Economic and Social Council (Hereafter ESC), E/CN.4/1997/61, *Question of The Violation of Human Rights and Fundamental Freedoms in Any Part of the World*, 20/01/1997; UNSC, S/PV.3968, *3968th Meeting*, 21/01/1999. [↑](#footnote-ref-80)
81. *Prosecutor v. André Ntagerura, Emmanuel Bagambiki and Samuel Imanishimwe*, Case No. ICTR–99–46 (hereafter ICTR–99–46), TRA001278/2, *[Cyangugu] – Ntagerura et al – Redacted Transcript of* *29/05/2002*, 29/05/2002, 129. [↑](#footnote-ref-81)
82. For the link between archives and responsibility see Dirks, ‘Accountability’, 29-49. [↑](#footnote-ref-82)
83. Tim Kelsall, ‘Politics, Anti–Politics, International Justice: Language and Power in the Special Court for Sierra Leone’, *Review of International Studies* 32, no. 4 (2006): 587–602. See also Edkins, *Trauma,* 1-19; Dauphinee, 'War Crimes'. For a similar critique of the links between notions of responsibility and colonialism, see Clarke, ‘Affective Justice’. [↑](#footnote-ref-83)
84. I would like to thank the editors for drawing attention to the two different forms of responsibility. [↑](#footnote-ref-84)
85. UNSC, S/PV.3368, *3368th Meeting*, 21/04/1994, 3; and UNSC, S/PV.3377, *3377th Meeting*,16/05/1994, 6 and 8; and UNSC, S/PV.3326, *3326th Meeting*,06/01/1994, 7. United Nations General Assembly (hereafter UNGA), A/C.5/48/SR.57, *Fifth Committee: Summary Record of the 57th Meeting: Financing of the United Nations Observer Mission Rwanda*, 29/03/1994, 2–3. Over the course of the genocide the UNSC’s understanding of its responsibility to Rwanda shifted as the legal idiom of ‘genocide’ was introduced, which reframed the violence as an infringement against the international community’s norms and as such an attack against the community as a whole. [↑](#footnote-ref-85)
86. Whyte, ‘Always on Top?’, 308-14; Chinua Achebe, ‘An Image of Africa’, *Massachusetts Review* 18, no. 4 (1977), 784; Mamdani, ‘Responsibility to Protect’, 53-67. As with the ICTR’s archive, these examples are similarly influenced by the erasure of the role that international actors play in the violence.Whyte, ‘Always on Top?’,311 and 317. [↑](#footnote-ref-86)
87. Michael Barnett, *Eyewitness to Genocide: The United Nations and Rwanda* (London: Cornell University Press, 2002). [↑](#footnote-ref-87)
88. Whyte, ‘Always on Top’, 310-1. [↑](#footnote-ref-88)
89. E.g. ICTR–99–46, TRA000251/2, *[Cyangugu] – Ntagerura et al – Redacted Transcript of* *18/01/2001*, 18/01/2001, 81. See also Clarke, ‘Affective Justice’, 255-7. [↑](#footnote-ref-89)
90. For instance, when describing victims, the records in the archive frequently emphasise the ‘feminine’ identities of those attacked, which was short-hand for ‘innocent’ and ‘passive’ non-combatants. *Prosecutor v. Jean-Paul Akayesu,* Case No. ICTR–96–4 (hereafter, ICTR–96–4), CONTRA001197, *Akayesu – Transcript of* 5/2/1997, 05/02/1997, 143–4; and S/PV.3371, *3371st Meeting,* 30/04/1994, 2. [↑](#footnote-ref-90)
91. See also Martha Walsh, ‘Gendering International Justice: Progress and Pitfalls at International Criminal Tribunals,’ in *Gender Peace: Women’s Struggle for Post–War Justice and Reconciliation*, ed. Donna Pankhurst (Abingdon: Routledge, 2009), 33-4; Kirsten Campbell, ‘Testimonial Modes: Witnessing, Evidence and Testimony before the International Criminal Tribunal for the Former Yugoslavia’, in *The Future of Testimony*, ed. Antony Rowland *et al.* (London: Routledge, 2014), 92-5; and Catherine MacKinnon, ‘The ICTR's Legacy on Sexual Violence’, *New England Journal of International and Comparative Law* 14, no. 1 (2007): 211-21. [↑](#footnote-ref-91)
92. Jina Moore, ‘This Is the Story a UN Court Didn’t Want Three Rape Survivors to Tell,’ *Buzzfeed*, available at: <https://www.buzzfeed.com/jinamoore/this-is-the-story-a-un-court-didnt-want-three-rape-survivors?utm_term=.efwZxxYY8#.jawdwwrrm>, last accessed December 16, 2019. [↑](#footnote-ref-92)
93. UNGA, A/53/429, *Report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994*, 23/09/1998, 9–10. [↑](#footnote-ref-93)
94. *Prosecutor vs. Andrea Ntagerura*,ICTR–96–10, ICTR–96–10A–0224, *Ntagerura –* *Amended Indictment*, 29/01/1998; and *Prosecutor v. Emmanuel Bagambiki et al.*, Case No. ICTR–97–36 (hereafter ICTR–97–36),ICTR–97–36–0071, *Bagambiki – Imanishimwe – Indictment – Redacted*, 09/10/1997, 7. [↑](#footnote-ref-94)
95. TRA000434/2, 13–6 and 103–5; and ICTR–99–46, TRA000437/2, *[Cyangugu] – Ntagerura et al – Redacted Transcript of* *20/02/2001*, 20/02/2001, 1–2. There was no mention of sexual violence in the initial indictment. However, the prosecution amended this in 1998 to include specific charges relating to sexual violence, only to later withdraw the amended indictment due a fear that it would slow down the trial. ICTR–96–10A–0224, 4–5. ICTR–99–46, ICTR–99–46–0046, *[Cyangugu] – Bagambiki – Ntagerura et al – Notice of the Prosecutor to Withdraw All Pending Motion*, 14/02/2000. Interview with Appeals Attorney (Arusha, Tanzania: 2015). [↑](#footnote-ref-95)
96. ICTR–00–61, ICTR–00–61–0133, *Gatete – Decision on Defence Motion on Admissibility of Allegations Outside the Temporal Jurisdiction of the Tribunal*, 03/11/2009; and ICTR–00–61, *Gatete*, *Decision on Defence Motion for Exclusion of Evidence and Delineation of the Defence Case*, 26/03/2010. [↑](#footnote-ref-96)
97. Katherine Franke, ‘Gendered Subjects of Transitional Justice’, *Journal of Gender and Law* 15, no. 3 (2006): 813-28. [↑](#footnote-ref-97)
98. MacKinnon, ‘Sexual Violence’, 214–5. Interview with Senior ICTR Appeals Attorney 2 (Arusha, Tanzania: 2015); *Prosecutor v. Juvénal Kajelijeli*, Case No. ICTR–98–44, ICTR–98–44A–0320/1, *Judgment and Sentence*, 01/12/2003, 14. Interview with Senior Member of ICTR Office of the Prosecutor (Arusha, Tanzania: 2015). *Prosecutor v. Emmanuel Rukundo*, Case No. ICTR–01–70, ICTR–01–70–0400/1, *Appeals Judgement*, 20/10/2010, 76. [↑](#footnote-ref-98)
99. ICTR–00–61,TRA005537/2, *Gatete – Redacted Transcript of 12/11/2009,* 12/11/2009, 6. [↑](#footnote-ref-99)
100. *Ibid.,* 10. [↑](#footnote-ref-100)
101. ICTR–00–61, ICTR–00–61–0036/1, *Gatete – Amended indictment, ICTR–00–61*, 10/05/2005, 5–6. [↑](#footnote-ref-101)
102. Moreover, as Catherine Franke notes, gender–based violence was (and remains) problematically and narrowly limited to sexual violence. Franke, ‘Gendered Subjects’, 818–20. [↑](#footnote-ref-102)
103. Interview with Professor Ruzindana, (Arusha, Tanzania: 2015). [↑](#footnote-ref-103)
104. ICTR–96–4, CONTRA001189, *Akayesu – Transcript of 30/1/1997*, 30/01/1997, 105–165. See also ICTR–96–4, CONTRA001190, *Akayesu – Transcript of 4/2/1997*, 04/02/1997; Carla Del Ponte, ‘Investigation and Prosecution of Large–Scale Crimes at the International Level’, *Journal of International Criminal Justice* 4 (2006): 553. [↑](#footnote-ref-104)
105. CONTRA001189, 164–71. [↑](#footnote-ref-105)
106. *Ibid.,* 172–6. [↑](#footnote-ref-106)
107. ICTR–96–4, ICTR–96–4–0459/1, *Akayesu* – *Judgement*, 02/09/1998, 76–7. [↑](#footnote-ref-107)
108. *Ibid*., 77. [↑](#footnote-ref-108)
109. For an example see: *Ibid*.,79. [↑](#footnote-ref-109)
110. ICTR–96–4–0459/1, 42. [↑](#footnote-ref-110)
111. *Ibid.,* 106. See also ICTR–96–4, CONTRA001198, *Akayesu – Transcript of 6/2/1997*, 06/02/1997, 171. [↑](#footnote-ref-111)
112. Jabri, ‘Disarming Norms’, 378-85. [↑](#footnote-ref-112)
113. Ruzindana (2015); Interview with former ICTR Appeals Judge (Copenhagen, Denmark: 2016). [↑](#footnote-ref-113)
114. Interview with ICTR Appeals Attorney (Arusha, Tanzania: 2015). [↑](#footnote-ref-114)
115. *Ibid*. [↑](#footnote-ref-115)
116. ICTR–96–4, CONTRA001183, *Akayesu – Transcript of 15/1/1997*, 15/01/1997, 131. [↑](#footnote-ref-116)
117. Interview with Senior Reviser (Arusha, Tanzania: 2015); CONTRA001189, 172-6. [↑](#footnote-ref-117)
118. *Supra note 14*, 96. [↑](#footnote-ref-118)
119. ICTR, ‘Testifying Before the International Criminal Tribunal for Rwanda’, *06FB002* (Arusha: 2005). [↑](#footnote-ref-119)
120. *Ibid* 8-21. [↑](#footnote-ref-120)
121. The manual was also directed at convincing witnesses to testify, noting that ‘Refusing to testify amounts to showing disregard for the law and for your country. Examine your conscience… to find the answer. Ask yourself this: What good would it really do to have the events of Rwanda happen again? No one but you has the answer to the restoration of trust among the Rwandan people’. *Supra note 105*, 10*.* [↑](#footnote-ref-121)
122. UNSC, S/PV.5453, *5453rd Meeting*,07/06/2006, 32; UNSC, S/PV.5697, *5697th Meeting*, 18/06/2007, 33; UNSC, S/PV.6228, *6228th Meeting*, 03/12/2009, 33. [↑](#footnote-ref-122)
123. See also Ketlaar, ‘Truths’, 203. [↑](#footnote-ref-123)
124. UNSC, S/2009/258, *Report of the Secretary–General on the Administrative and Budgetary Aspects of the Options for Possible Locations for the Archives of the ICTY and ICTR and the Seat of the Residual Mechanism(s) for the Tribunals*, 21/05/2009, 14. [↑](#footnote-ref-124)
125. This isn’t, however, to claim that the Rwandan government, headed by Paul Kagame and the Rwandan Patriotic Front (RPF), was a passive subject in relation to the tribunal. Indeed, on numerous occasions, the RPF successfully intervened and reshaped the tribunal’s approach to the trials, including preventing the prosecution from opening up indictments that related to crimes committed by the RPF. See Victor Peskin, *International justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation* (Cambridge: Cambridge University Press, 2008)*.* [↑](#footnote-ref-125)
126. The archive, then, prevents what Mignolo calls a ‘pluriversal epistemology’ from emerging, which would be central to a post-colonial approach to knowledge production as it would recognise the diversity of the subaltern as an integral part of community. Mignolo, ‘Introduction’, 159-. See also Spivak, ‘Can the Subaltern Speak?’; [↑](#footnote-ref-126)
127. *Supra note 25.* See also Clarke, ‘Affective Justice’, 249. This is also not to reproduce the post-colonial subject as a passive subject. As Jabri argues, the post-colonial subject is always already disruptive of the international, simply through the interpellation of such as subject. Jabri, ‘Disarming Norms’*.*  [↑](#footnote-ref-127)
128. See also Frederic Mégret, ‘From “Savages” to “Unlawful Combatants”: A Postcolonial Look at International Humanitarian Law's “Other”’, in *International Law and its Others*, eds. Ann Orford (Cambridge: Cambridge University Press, 2006), 265-317; Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2005); Clarke, ‘Affective Justice’. [↑](#footnote-ref-128)