

**CONFLICTS AND HUMANITARIAN INTERVENTION IN AFRICA: IS
TOMORROW TOO LATE?**

BY

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ABSTRACT

A disturbing trend of contemporary conflict in Africa has been the increased vulnerability of civilians, often involving their deliberate targeting. The current debate about intervention for human rights purposes, as a result of proliferation of armed conflict within and between states, takes place in the context not just of new actors, but also of new sets of issues. At the heart of the debate is the issue of whether foreign intervention, by other states or inter-governmental organizations, can be used for good in Africa in cases of mass killings and other crimes against humanity. Focusing on the experience of the Rwandan genocide, this study seeks to explore the failures of the international community, in particular the United Nations and its implications on the unfolding tragedy in Sudan's Darfur region. It addresses the question as to whether inconsistencies and a lack of timely effect by the UN and the international community have created conditions that have contributed to some of the worst human rights violations, in some cases resulting in genocide.

DEDICATION

I dedicate this thesis to my family and friends who have made it possible for me to complete my program on time. To my parents, I am most grateful for your selfless support throughout my academic journey, and for instilling in me a passion for learning and providing the love and support needed to embrace life's challenges. To Boaz, thank you for your constant support and encouragement.

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LIST OF ACRONYMS

AMIS	African Mission in Sudan
AU	African Union
CDR	<i>Coalition Pour la Defense de la Republique</i>
COMESA	Common Market for Eastern and Southern Africa
DLF	Darfur Liberation Front
EAC	East African Community
ECOWAS	Economic Community of the West African States
FAR	<i>Forces Armees Rwandaises</i>
IGADD	Inter- Governmental Authority on Drought and Development
JEM	Justice and Equality Movement
MRG	Minority Rights Group
MRND	<i>Mouvement Revolutionaire National Pour le Developpment</i>
NATO	North Atlantic Treaty Organization
NEPAD	New Partnership for Africa's Development
NGO	Non- Governmental Organization
NMOG	Neutral Military Observer Group
OAU	Organization of African Unity
UNGA	United Nations General Assembly
PCIJ	Permanent Court of International Justice
PDD	Presidential Decision Directive
PSD	<i>Partie Socialiste Democrat</i>
RPF	Rwanda Patriotic Front

SADC	South African Development Commission
SLA	Sudan Liberation Movement
SLM	Sudan Liberation Movement
SPLA	Sudan People's Liberation Army
UN	United Nations
UNAMID	United Nations African Union Mission in Darfur
UNAMIR	United Nations Assistance Mission in Rwanda
UNAMIS	United Nations Advance Mission in Sudan
UNOMUR	United Nations Observer Mission to Uganda- Rwanda
US	United States

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CHAPTER 1

1.1 INTRODUCTION

A disturbing trend of contemporary conflict in Africa has been the increased vulnerability of civilians, often involving their deliberate targeting. The current debate about intervention for humanitarian purposes, as a result of proliferation of armed conflict within and between states, takes place in the context not just of new actors, but also of new sets of issues. At the heart of the debate is the issue of whether foreign intervention, by other states or inter-governmental organizations, can be used for good in Africa in cases of mass killings and other crimes against humanity.

The doctrine of humanitarian intervention is controversial because it violates the most fundamental principle of international law, namely the principle of sovereignty. This principle is the very founding matter of international law, in that states are in principle only bound by what they consent to. A right to humanitarian intervention therefore needs a strong justification and a clear legal basis, since the *sovereignty* of the state intervened upon is being violated. Sovereignty is usually defined as legal independence of all other states or international organs. As Rostow writes:

‘The formal structure of the international state system is built on the principle that each state is autonomous and independent, and has the right in its internal affairs to be free from acts of coercion committed or assisted by other states. This rule is basic to *the possibility of international law*.’¹

¹ E. Rostow *In Search of a Major Premise: “What is Foreign Policy For?”* (April 1971) 239 at 242

It may be argued that the fundamental problem surrounding humanitarian intervention lies in its inherent breach of the principle of sovereignty, and the question is ultimately which of the two principles must prevail: protection of human rights or respect for a state's sovereignty. The rationale behind humanitarian intervention lies in the belief of responsibility on the part of the United Nations and the international community, under certain circumstances, to disregard a state's sovereignty, so as to preserve common humanity in terms of the right to a better and dignified life. Therefore, the debate underlying humanitarian intervention is the perceived tension between the values of ensuring respect for fundamental human rights and the primacy of the norms of sovereignty, non-intervention, and self determination of a state, which are considered essential factors in the maintenance of peace and international security.

For practical reasons, the more critical issues in humanitarian intervention emerge when the government of a given state is not only unable or unwilling to protect its citizens, but when the forces of order, including the military, become themselves the source of threat to human security and act with the connivance or even under the orders of the government against their own citizens. Given the existing dilemma and uncertainty regarding humanitarian intervention, this study seeks to establish whether there are clear procedures and criteria relating to when and how intervention should take place, and how effectively any existing mechanisms have been used to alleviate human suffering in conflict situations. This is reflected in the international response to humanitarian crisis, and in this regard, this study will be relying on the experience of the Rwandan genocide and relating this to the ongoing crisis in Sudan's Darfur region.

1.2 BACKGROUND

In 1994, an estimated 800,000 people were killed in Rwanda in one of the worst cases of genocide in world history since the Holocaust. During the genocide, gross violations of human rights were committed against civilians, but despite the publicity given to the genocidal activities by the media world over, the international community largely failed to protect the Rwandan people from the atrocities.² The Rwandan genocide, its devastating effects and the inability of the international community to prevent, limit or halt the atrocities came at a time when many African countries were, and still are, engulfed in deadly armed conflicts, most of which are intra-state in origin.

In the aftermath of the Rwandan genocide and its devastating effects, and the international community's inability to prevent, limit or halt the atrocities committed, the debate has persisted regarding whether there are emerging norms on when and how the international community can justifiably intervene to prevent or ameliorate internal conflicts and widespread human rights abuses. This is a contentious issue that has once more arisen with the conflict in the Sudan's Darfur region. Since this conflict began in February 2003, thousands of people have been killed and an estimated two million people displaced from their homes by the *Janjaweed* militias with connivance of the Sudanese government. Yet again, just as in the case of Rwanda, there is unfolding evidence that the international community has not sufficiently responded to this crisis.

² (The failure of the international community to forestall the genocide was described in the *Report of Eminent Personalities to Investigate the Genocide in Rwanda and the Surrounding Events*, CM 12048 (LXV11) 29 May 2000. See also International Panel of Eminent Personalities (2000) *Rwanda: The Preventable Genocide* U/IPEP/PANEL, reproduced in (2001) 40 ILM, 141, also available online at <http://www.oau-oua.org/Document/ipep/rwanda-e/EN.htm>

Traditionally, the proposed criteria for humanitarian action has been; universality, independence, impartiality and humanity. With increased conflicts in recent years, the traditional doctrine of non-interference in sovereign states appears harder to sustain. This is as a result of changing strategic global balance, ever-greater interdependence across borders, including the impact of global media and a shift in the balance between the primacy of the state and the citizens. These factors complicate responses to crises across the globe in the affected countries. In this context, humanitarian intervention that occurs without the consent of the relevant government can be justified only in the face of imminent, ongoing genocide or any other wanton loss of human life.

Analyzing humanitarian intervention involves a complex set of political, legal, and ethical issues. In situations where the government of a given state is unable or unwilling to protect its citizens as was the case for example in Kosovo, Rwanda and currently in Darfur, the international community has an obligation to act. This is so even in extreme situations where the public order has broken down completely and there is no legitimate authority anymore to defend the basic rights of the people (failed states), as is the current situation in Somalia. Normally, it is the function of the rule of law (national or international) to mediate between moral and political judgments in the sense that legal norms protect a community against moral deviations as well as against political arbitrariness. Further, the simple fact that certain uses of power are covered by law is not a sufficient basis to establish their legitimacy. Nevertheless, the legal order constitutes an indispensable yardstick of critical control. In particular, this applies to the decision as to whether to use international force in intervening in a sovereign state to protect innocent civilians.

The transfer of the responsibility to protect citizens from a sovereign state (or a failed state) to the international community cannot, therefore, be based solely on moral arguments or on grounds of political expediency. It should also pass through the critical judgment of the trustees of the rule of law. In this context, any infringement of the individual autonomy and integrity of citizens in a given state must therefore be authorized according to the international law governing such interventions. Chapter VI of the UN Charter invokes the authority of the International Court of Justice for the peaceful settlement of disputes and conflicts. Additionally, a new instrument has been created within the International Criminal Court to act as a trustee of the international humanitarian law. The political, moral and ethical principle that sovereignty implies the responsibility to protect the life and security of all citizens must be translated into a framework of norms and legal judgments. This will allow, and even oblige, the UN Security Council to appeal to an international court of law to assess the evidence that is believed to indicate that a given state is failing in its fundamental responsibility to protect its citizens and is thus no longer entitled to the respect of its sovereignty according to Article 2(7) of the UN Charter.

1.3 AIMS OF THE STUDY

This study seeks to illuminate the limitations of the United Nations and the international community in humanitarian intervention in Africa. It explores this contention by examining the Rwandan genocide and how its experience is relevant to the unfolding genocide in Darfur with the apparent inaction on the part of the United Nations and the international community. In addition, the study examines ways in which the

institutions and legal framework that governs humanitarian intervention can be enhanced and strengthened so that the concept of humanitarian intervention can be used to achieve the good for which it was intended in times of humanitarian crisis, especially in Africa. Finally, the study also seeks to highlight the dilemma of the competing interests of humanity versus the need to adhere to the traditional paradigms that constitute basic international law.

1.4 HYPOTHESIS

While the likelihood of humanitarian intervention to prevent or solve conflicts has increased over the years, the tension between international law, ethics and national interests have made for considerable complexity and confusion regarding where, when and how to intervene. Thus, inconsistencies and a lack of timely and effective humanitarian intervention by the UN and the international community has created conditions that have contributed to some of the worst human rights violations, in some cases resulting in genocide.

1.5 CONCEPTUAL CLARIFICATION

1.5.1 Definition of Humanitarian Intervention and Who May Intervene

The term *humanitarian intervention* obviously consists of two elements that need explication, namely *humanitarian* and *intervention*. *Humanitarian* is an adjective modifying the aim or motive of an action, or a situation that can prompt a response to contain a deteriorating situation. Such action is taken in the interest of humanity, for example, so as to stop massive human rights violations. On the other hand, *intervention*

focuses on the form of interference and the means used to achieve a desired effect. In a broader sense, the term humanitarian intervention has been both classically (narrowly) as well as liberally (widely) defined. From the classical perspective, Teson defines humanitarian intervention as follows: ³

‘the proportionate trans-boundary help, including forcible help, provided by governments to individuals in another state who are being denied their basic human rights and who themselves would be rationally willing to revolt against their oppressive government’.

Similarly, Franck and Rodley⁴ define humanitarian intervention as the use of force in order to protect the inhabitants of another state against ‘treatment that is so arbitrary and persistently abusive as to exceed’ the limits of reason and justice. As a corollary, Baxter⁵ is of the view that for an intervention to be deemed humanitarian there ought to be ‘egregious violation of human rights’ taking place in the target state.

The liberal definitions encompass humanitarian activities by entities other than states. A good example of an activity viewed by some as constituting humanitarian intervention is the administration of relief supplies by international organizations. Understood in this sense, humanitarian intervention becomes any action by any international agency or authority, so long as a humanitarian impulse is the sole authoritative basis for the action in question.⁶

³ Teson (1988) p.5

⁴ Franck & Rodley (1973) pp. 273, 305

⁵ Baxter (1973) p. 53

⁶ For various ‘liberal definitions see, Kwakwa (1994) pp. 9, 15 ; Harris (1995) generally; and Reisman (1997) p.432

Classical and liberal definitions also differ with regard to what type of action constitutes humanitarian intervention. Scholars in the classical school of thought view intervention as necessarily involving the use of force.⁷ Others, while agreeing that humanitarian intervention involves coercive and forcible measures, argue that the intervention may be effectuated not only through military action, but also through non-forcible means such as political or economic pressure.⁸

In contrast, liberal scholars view any form of intervention as humanitarian as long as its purpose is to protect human rights in the target state.⁹ Kwakwa, for instance, takes this viewpoint and argues that humanitarian intervention may take various forms, ranging from ‘very mild and non-violent means’ such as ‘public criticism and persuasion, direct satellite broadcasting, the financing of political parties, to forcible means [involving] the use of military instruments.’¹⁰ With respect to the entities that can intervene in a target state, classical definitions ascribe the right or duty to intervene to states only.¹¹

⁷ See Verwey (1986) pp.57, 59

⁸ *Ibid*, Page 75; see also Farer (1991) p.185 (Humanitarian intervention is ‘the threat or use of force by one state against another for the purpose of terminating the latter’s abuse of its own nationals’). The report by the Commission in Intervention and State Sovereignty notes that (‘...[p]art of the controversy over [humanitarian] intervention derives from the potential width of activities this term can cover, up to and including military intervention’.), see ICISS (2001).

⁹ See Kwakwa (1994) pp. 9, 15; Harriss (1995), generally; Reisman (1997) p. 432

¹⁰ Kwakwa (1994) pp.11-12; see also Damrosch (1989) p. 1, where she discusses intervention by governments in the internal affairs of others by granting financial assistance to influence the outcome of elections; (ICISS (2001a) 16 (‘some would regard any application of pressure to a state as being [humanitarian] intervention, and would include this conditional support programmes by major international financial institutions whose recipients often feel that they have no choice but to accept. Some others would regard almost any non-consensual interference in the internal affairs of another state as being [humanitarian] intervention- including the delivery of emergency relief assistance to a section of the country’s population in need’).

¹¹ Teson (1988) p.5

This study will adopt the classical definition of humanitarian intervention to imply the use of force in a target state by deemed entities, in this case the UN and the international community, to alleviate human suffering or loss of life. Subsequently, non-military measures such as economic sanctions, tightening of conditions on donor funding or relief supplies in disaster areas fall outside the scope of this study.

1.5.2 The Aim of Intervention

The aim of humanitarian intervention is to forestall, limit or halt widespread human rights violations leading or likely to lead to massive loss of lives in the target state. The rights violated should be ‘core’ or ‘fundamental’ rights, that is, those rights that are ‘non-derogable’. Non-derogable rights include the right to life, prohibition of torture, slavery, servitude, detention for debt and retroactive criminal laws, as well as recognition. Derogation clauses in international human rights instruments permit the suspension of rights, except a few ‘core’ civil and ‘political rights’. These rights cannot be suspended even in situations of public emergencies which threaten the life of the nation. Non-derogable rights are to be distinguished from derogable rights, which can be suspended in times of emergencies.

These include socio-economic rights, whose suspension is not prohibited by the various international instruments.¹² The non-prohibition of suspension of socio-economic

¹² In time of public emergency which threatens the life of the nation, (for instance, international armed conflict, civil war, other serious of violent internal unrest, natural or man-made disasters), states may take measures suspending the derogable rights. In order to prevent the misuse of derogation clauses, human rights instruments often subject the derogation to a number of restrictions and limitations. For instance, Article 4(1) of the International Covenant on Civil and Political Rights (the ‘ICCPR’), provides that a state party can only derogate from its obligations under the Covenant if it officially declares a state of emergency. The state must inform the UN Secretary General the reasons for the derogation and the particular rights derogated. The Article also provides that derogation measures are only permitted to the

rights through derogation clauses may be the reason why many writers take the position that humanitarian intervention is a response to widespread and gross violations of ‘core’ or ‘fundamental’ civil and political rights on a scale at which genocide, war crimes or crimes against humanity can be inferred.¹³

The role of the government of the target state in ‘entertaining’ the violations may be in the form of perpetuating or condoning human rights violations. Also, it may be that the government itself is perpetrating these violations, is unable to stop them, or is unwilling to allow local or international action to end these violations. Thus, humanitarian intervention should fall within these theoretical parameters, and is not just any action by external actors to relieve a humanitarian crisis for which the territorial authorities are responsible or which they are unable to cope.

1.5.3 Humanitarian Intervention Distinguished from Related Concepts

Humanitarian intervention differs from related concepts, such as ‘humanitarian operations’ and ‘humanitarian assistance’. Humanitarian operations reflect a whole spectrum of humanitarian responses to conflict and crisis situations, and many of these responses may not necessarily involve the use of force. On the other hand, humanitarian assistance is the act of providing aid to the government or population of a state, in order to alleviate human suffering.

extent strictly required by the exigencies of the situation, and shall be consistent with their obligations under international law.

¹³ See for instance, Verwey (1986) pp. 57, 58-59; Teson (1988) p.5; and Charney (1999) pp. 1231, 1245-1246. In these and other studies, there seems to be consensus that humanitarian intervention should respond to genocide, war crimes and crimes against humanity.

The assistance may be in the form of famine relief, disaster relief and sanctuary of refugees or providing for the population's needs for food, shelter and health care. Although in all the cases presented by these concepts the reason for intervening is that the lives of large groups of people are threatened, there are great differences in the manner of intervention and the legal grounds on which such intervention is, or could be based.

Humanitarian intervention also needs to be differentiated from related concepts of peacemaking, peacekeeping and peace enforcement. Conceptually, peacekeeping entails the prevention, containment, moderation and termination of hostilities between or within states through the medium of a peaceful third party intervention, organized and directed internationally, using multinational forces of soldiers, police and civilians to restore and maintain peace.¹⁴ Unlike humanitarian intervention, peacekeeping is not intended to defeat the aggressor. Instead, it is aimed at the prevention of fighting, the provision of a buffer, the keeping of order and the maintenance of a ceasefire.¹⁵ Although peacekeeping forces may use their weapons in self-defense, their mission is to keep the peace by using benign methods, short of armed force.¹⁶

A condition for an effective peacekeeping intervention is that the presence of the forces should obtain the consent of the protagonists, or at least one of them, and a toleration of the other.¹⁷ In humanitarian intervention, the consent of the parties is not necessary. Also, while peacekeeping forces should remain impartial in their contact with

¹⁴ Keith (2000) pp. 1, 5

¹⁵ Bennett (1991) p.140

¹⁶ Cox (1968) p.1; United Nations (1990) P. 8

¹⁷ Keith (2000) p.5

the combatants,¹⁸ military forces involved in humanitarian intervention primarily aim at fighting the forces of the party perpetrating human rights violations to alleviate the situation or put an end to the violations. Peacekeeping and enforcement, which along with other strategies constitute peace creation, are part of an overall peacemaking process.¹⁹ Peacemaking is a broader process than peacekeeping with the latter aimed at stopping or containing hostilities, thus helping to create conditions in which peacemaking can thrive.²⁰

1.5.4 Statutorily Authorized Humanitarian Intervention versus Humanitarian Intervention under Customary International Law

An important conceptual distinction relates to treaty-based intervention versus humanitarian intervention under customary international law. The UN Security Council may, pursuant to provisions of Chapter VII of the UN Charter authorize action (including military action) where it establishes that the situation in the target state constitutes ‘a threat to international peace and security’.²¹

In many of its resolutions authorizing the use of force, the UN Security Council goes beyond the mere determination that a situation is a threat to international peace and security. It also makes references to gross human rights violations, massive loss of lives, humanitarian emergency, or other similar determinations concerning the situation on the

¹⁸ Keith (2000) p.6

¹⁹ Olonisakin (2000) p.1

²⁰ United Nations (1990) p.8

²¹ See UN Charter, Articles 24 and 39

target state.²² This means that, in the view of the UN Security Council, force should be used because the situation is not only a threat to international peace and security, but because the force is also aimed at saving lives and protecting the masses from gross human rights violations. When force is used following such determinations, this amounts to humanitarian intervention under the auspices of the UN Security Council.

A UN Security Council authorized humanitarian intervention is comprised of two elements. First, there must be an authorization of the use of force against a state after establishing that an observed situation in the target state is a threat to international peace and security. Second, the specific UN Security Council resolution authorizing the use of force must make conspicuous references to the humanitarian crisis, humanitarian emergency, widespread human rights violations, loss of lives or similar situations in the target state. The source of authority for the UN Security Council when sanctioning the use of force in the circumstances earlier described, is the UN Charter. The force used in this situation is often referred to as treaty-based or institutionally authorized humanitarian intervention.

For the case of Africa, the powers that the UN Security Council has to authorize the use of force are shared with regional organizations such as the African Union (AU), and with sub-regional organizations like the Economic Community of the West African States (ECOWAS).²³ So long as such regional and sub-regional organizations authorize

²² For instance, UN Security Council Resolution 688 of 1991, relating to Iraqi's invasion of Kuwait was seen to be legally binding because it referred to the situation in Iraq as 'a threat to the peace'.

²³ See Articles 52 and 53 of the UN Charter

the use of force in compliance with Article 53 of the UN Charter, that is, with the approval of the UN Security Council, then their actions have a clear legal (treaty) basis.

Finally it is worth pointing out that treaty-based humanitarian intervention derived from the UN charter is distinguishable from humanitarian intervention based on customary international law. In the latter case, what ought to be established is that there exists a residual law to be found in custom, over and above the law deriving from treaty or other forms of statute, which allows intervention in the states where there is evidence of gross human rights violations, including the loss of life. In order to establish such custom, which must exist independent of treaty provisions, two elements must be satisfied. These are state practice (*usus*) and *opinio juris*, that is, the requirement that the state practice must have arisen from the belief by the intervening bodies that humanitarian intervention is a requirement of the law, and not of moral, political or ethical propriety.

1.5.5 Working Definition

In accordance with the classical view, a narrow conceptualization of humanitarian intervention is adopted in this study. The term as used here implies the threat or use of force (military) against a targeted state which has not consented to such threat or use of force, in order to prevent, limit or end widespread human rights violations, especially those leading to massive loss of lives.

In a nutshell, the term humanitarian intervention as used in this study will have the following definitional elements:

- It involves the threat or use of armed force by a state or group of states, usually (but not necessarily) acting through an intergovernmental organization. Such force entails the actual use of military personnel and military equipment. Non-forcible means such as the recalling of diplomats, economic sanctions, refusal to grant credit and transnational funding to influence the outcome of elections fall outside the purview of humanitarian intervention.
- It is targeted at a sovereign state.
- It may take place on the basis of treaty law or customary international law.
- It is aimed at preventing, limiting or stopping serious human rights violations on a large scale leading to massive loss of lives in the target state, where the government of that target state is perpetrating the violation or is unable or unwilling to stop the violations or to allow local or international action to end them.
- The intervention should be motivated by humanitarian considerations, although the humanitarian motive may coincide with other motives, such as the need to maintain international peace and security.

1.6 Importance of the study

Although humanitarian intervention as a concept has been a subject of scholarly debate for many years, its status in international law is still a matter of great contention. The main reason for this state of affairs is that the current ‘world order’ theory is still substantially sustained by the law of nations and its attendant emphasis on state sovereignty, non-intervention and the non-use of force. Being inherently in contradiction

of these normative values, humanitarian intervention is bound to raise (as it has) legal controversy. The legality of humanitarian intervention has received considerable attention and engendered even more intellectual debate but continues to defy conclusive determination. The controversy continues to take on greater proportion with the continuous shift of international affairs from the nation-state centered perspective to one in which the protection of human rights as a matter of international concern is increasingly emphasized. Notwithstanding the controversy, humanitarian intervention still has the potential to play an important and integral role in the alleviation of human suffering and the ending of human rights atrocities across the globe.

This study focuses on collective humanitarian intervention in Africa. In his 1998 report to the UN Security Council regarding causes and effects of conflicts in Africa, the then UN Secretary- General Kofi Annan decried that too many instances of ‘appalling violations of fundamental rights’ were the main obstacles to economic progress on the continent.²⁴ He went on to underscore that nowhere is a global commitment to prevent gross human rights violations needed more than in Africa, since ‘no other region of the world has endured greater human suffering’.²⁵

In 1999, Mr. Annan concluded that the ‘time is now ripe for the international community to reach a consensus, not only on the principle that massive and systematic violations of humanitarian intervention must be checked wherever they take place, but also on ways of deciding what action is necessary and when, and by whom’.²⁶

²⁴ United Nations (1998) p.13

²⁵ United Nations (1998) p. 9

²⁶ Secretary General’s speech to the 54th Session of the General Assembly, 20 September 1999, SG/SM/7136 GA/9596, Para. 147

Furthermore, this study is also inspired by the changes taking place in the world today. The end of the Cold War in the last decade has focused attention on international law, especially in areas that hitherto seemed to elude legal control. Momentous events of recent years, such as the war on terrorism, have shown the tremendous potential for developing and applying international law even in areas that have presented the greatest challenge, such as the use of force.

An imperative question that has emerged in the aftermath of the Rwandan genocide has been whether this genocide taught the UN and the international community any lessons that might help prevent the Sudanese region of Darfur from imploding and following a similar trajectory. It is important to evaluate whether the lack of timely and effective response to the initial crisis in Rwanda by the UN and the international community precipitated the genocide. Darfur has experienced a similar tepid response, with the UN and the international community still in denial, despite the fact that the crisis has been branded genocide. Sadly, the events in Darfur seem to eerily mirror the build-up to genocide in Rwanda, raising the issue as to whether any lessons were actually learned from the Rwandan debacle.

Following such analysis, this study will ultimately examine the means of improving the international community's reaction time and effectiveness to avoid a repetition of 'Rwanda' and 'Darfur' elsewhere, including the possible reforming of the UN Security Council and other actors, and examining alternative courses of action concerned states may take when the Council is deadlocked, specifically through the General Assembly and through regional organizations such as the African Union.

1.7 Research Methodology

While the likelihood of humanitarian intervention to prevent or solve conflicts has increased over the years, the tension between international law, ethics and national interests has led to considerable complexity and confusion regarding where, when and how to intervene. This study uses the case of Rwanda as a backdrop by investigating the prelude to the 1994 genocide, and how the international community responded. The predicament and failures on the part of the UN and the international community in preventing the genocide in Rwanda are explored and analyzed in the context of what is unfolding in Darfur in an effort to understand whether history is repeating itself and if there have been any lessons learnt. This study will be descriptive, with most of the information being obtained from secondary sources, such as books, journal articles, and conference papers. Information obtained from these sources will then be used to do my analysis.

1.8 Limitations of the Study

The topic of humanitarian intervention has been a subject of much scholarly writing in recent years. The abundance of reference materials, however, does not extend to the African context, which is the focus of the study. The absence of publications on humanitarian intervention in Africa has meant that the study had to rely on relatively limited secondary sources.

A further limitation of the study is that new institutional and normative developments continue to take place in the world. Norms and institutions are in a state of

flux, which means that some aspects of the study's assessment can only be speculative at this stage.

CHAPTER 2

THE LEGAL BASIS FOR HUMANITARIAN INTERVENTION

Although humanitarian intervention has no clear and generally accepted legal foundation, there are several possibilities of legal support in international law on the basis of both treaty and customary law. However, whereas these two have equal authority as primary sources of international law, when they exist simultaneously on an issue, then the provision of the treaty takes precedence, unless the customary rule in question constitutes *jus cogens*.²⁷

Despite this position, there exists a general presumption against the replacement of customary rules by treaty and *vice versa*²⁸ and a treaty seemingly in conflict with customary law will be construed so as to best conform rather than derogate the custom or accepted principles unless it was clearly intended to do so. It is for this reason that in this study, it is preferred to examine, as far as possible, the legality of humanitarian intervention under each of these two main sources of law separately.

2.1 Treaty law and Humanitarian Intervention

The UN Charter and the Genocide Convention provide the legal basis for humanitarian intervention in terms of treaty law.

²⁷ *jus cogens* is a term usually used to denote a body of overriding or 'peremptory' norms of such paramount importance that they cannot be set aside by acquiescence or agreement of parties to a treaty. That treaty law cannot overthrow customary norms constituting *jus cogens* is enshrined in Article 53, 1969 Vienna Convention on the Law of Treaties.

²⁸ Shaw (1991) p. 60

2.1.1 The United Nations (UN) Charter

The UN Charter is a law-making treaty that creates obligations on both the parties to it, as well as on non-parties. At Article 2 (6), it provides that:

‘The organization shall ensure that states which are not members of the UN act in accordance with these principles of the Charter so far as may be necessary for the maintenance of international peace and security’.

The Charter upholds the doctrine of state sovereignty and its corollary, the concept of non-intervention.²⁹ At Article 2(4), the Charter also prohibits the use of force. Thus to some writers, Articles 2(4) and 2(7) of the Charter preclude any intervention not expressly provided for under the Charter, and this exclusion applies to humanitarian intervention.³⁰ They rightly argue that the Charter also does not expressly provide for the right or duty of humanitarian intervention.

Nevertheless, other writers have argued that humanitarian intervention can be supported under the UN Charter if the Charter is progressively interpreted. According to the progressive interpretation argument, humanitarian intervention, apart from seeking to secure respect for human rights, which is a principal purpose of the UN, does not in principle threaten the independence or the territorial integrity of the country concerned.³¹

It is only the use of force that threatens the territorial integrity and political independence of a state that is outlawed under Article 2(4) of the Charter. Moore uses this argument to

²⁹ See, for instance, Articles 2(1) and 2(7) of the UN Charter

³⁰ For example, see Charney (1999) p.1234 (“The use of force by bombing the territory of another state violates its integrity regardless of the motivation and”...the phrases ‘territorial integrity’ and ‘inconsistent with the purposes of the Charter’ were added to Article 2(4) to close all potential loopholes rather than to open new ones.

³¹ Kufuor (1993) pp. 525, 540 (“...It is clearly open to argument that humanitarian intervention does not threaten ‘territorial integrity or political independence’ [of states]”).

suggest that a threat of widespread loss of human lives would seem to be the clearest justification of humanitarian intervention on the basis of the UN Charter.³²

Concerning the sovereignty and non-intervention principle in Article 2(7) of the UN Charter, an argument could be made that despite the importance attached to sovereignty in the international legal system, developments in the last sixty two years since the inception of the Charter have gradually, but inevitably changed the original conception of the doctrine.³³ The norm enshrined in Article 2(7) has been modified and interpreted in light of developments in international relations. In its 1923 *Advisory Opinion on the Nationality Decrees in Tunis and Morocco*, the Permanent Court of International Justice (PCIJ) made the following observation:³⁴

‘The question whether a certain matter is or is not solely with the domestic jurisdiction of a state is an essentially relative question; it depends upon the development of international relations’.

Although it may be argued that intervention is precluded in cases of grave human rights violations because under Article 2(7), these are matters essentially within the jurisdiction of the state concerned, state practice in relation to this article seems to have departed from the erstwhile opinion prevailing at the 1945 San Francisco Conference that created the UN favoring a broad interpretation of the principle of non-intervention and a corresponding de-emphasis on the right of the UN to intervene in the domestic affairs of states.³⁵ Both the Security Council and the General Assembly have consistently held that

³² See Moore (1969) p. 264

³³ Kwakwa (1994) p.17

³⁴ 1923 PCIJ (Series B) No. 424

³⁵ Kwakwa (1994) p.32

human rights violations within the borders of states are not ‘matters which are essentially within the domestic jurisdiction’ of such states.³⁶ In any case, the international legal concept of ‘matters essentially within the domestic jurisdiction’ of states is a legal concept whose substance changes as international law develops.

According to Paragraph 1 of the Preamble to the UN Charter, an important purpose of the UN is to ‘save succeeding generations from the scourge of war’ by maintaining international peace and security.³⁷ However, it is also the United Nation’s primary purpose to protect the fundamental rights and freedoms of the individual. Interpretation of the Charter should therefore aim at striking a balance between these two purposes, since nowhere does the Charter provide that the one objective supersedes the other.

Under Articles 55 and 56 of the Charter, member states pledge themselves to take joint or separate action in co-operation with the UN, for the promotion of equal rights and self-determination of peoples including ‘universal respect for and observance of human rights’. It follows that situations of egregious violations can warrant unilateral or collective humanitarian intervention, so long as such action is taken in co-operation with the UN. This co-operation can take any form, including necessary lobbying and leading to the invoking of the ‘Uniting for Peace Resolution’ by the UN General Assembly.³⁸ In this way, express authority of the Security Council for use of force may not be required.

³⁶ Kwakwa (1994) p.32

³⁷ Article 1(1) of the UN Charter

³⁸ Under the ‘*Uniting for Peace Resolution*’ UNGA Res 377 (V) of 3 November 1950, the UN General Assembly is empowered to authorize the use of force in the event of a deadlock within the Security Council as a result of the operation of the veto

The non-use of force contention may be countered in two ways. First, Article 56 of the Charter calls on member states of the UN to ‘take joint and separate action in co-operation with the organization for the achievement of the purposes set forth in Article 55, which include the universal respect for, and observance of, human rights and fundamental freedoms for all’. This action is not defined, and may therefore involve forcible means. In the second place, humanitarian intervention is usually a response to rare and extreme circumstances involving widespread violations of core human rights.

Because of the gravity of the circumstances to which humanitarian intervention responds, the use of force is inevitable. This is so because widespread human rights violations that lead to massive loss of lives are most often than not committed in the context of armed conflict. In such situations where the belligerents are armed, the practical way of ending the violations is by application of proportionate armed force. What this means is that if humanitarian intervention is understood to be a war in defense of human rights, then such a war may be deemed just.

Whereas humanitarian intervention may be viewed as interference with state sovereignty, the entitlement of a state to sovereignty within its territory is derived from the presumption that the state will protect basic human rights. Therefore, any government that fails to provide the most fundamental rights for major segments of its population can be said to have forfeited its sovereignty and the international community can be said to have a duty in those instances to re-establish it.³⁹ In this case, sovereignty will have collapsed by virtue of that government’s incapacity to prevent gross human rights violations.

³⁹ Newman & Weissbrodt (1996) p. 223

After considering the relevant provisions of the UN Charter, a preliminary conclusion is arrived at here that on a progressive interpretation of the Charter, humanitarian intervention may be defended in extreme and rare circumstances of gross human rights atrocities. A case can be made that the Charter does not preclude humanitarian intervention. If the Charter does not expressly provide for humanitarian intervention, then it is also arguable that the same Charter does not specifically outlaw humanitarian intervention. With this in mind, the argument will turn on the understanding of the interpretation of Articles 2(7) and 2(4) of the Charter in the context of the rest of the provisions of the Charter, especially the provisions relating to human rights and those of human rights treaties adopted under the auspices of the UN since 1945.

Apart from the Security Council, humanitarian intervention under the UN Charter may be achieved through the General Assembly.⁴⁰ By virtue of Articles 10, 11 and 12 of the Charter, the Assembly is empowered by the UN Charter to play a secondary role in the maintenance of international peace and security. The procedures to guide the Assembly in this role are contained in the '*Uniting for Peace Resolution*', which provides that where the Security Council, because of its lack of unanimity of the permanent members, fails to exercise its primary responsibility in any case where there appears to be a threat to, or breach of the peace, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to UN member states, including the use of armed force where necessary.⁴¹ Under the provisions of this resolution, the General Assembly is not procedurally required to establish that the situation in question is 'a threat to international peace and security'.

⁴⁰ Article 7 of the UN Charter

⁴¹ See the *Uniting for Peace Resolution* Res 377 (V) of 3 November 1950

2.1.2 The Genocide Convention

Besides the UN Charter, a treaty law basis for humanitarian intervention can be found in the Convention on the Punishment and Prevention of the Crime of Genocide ('Genocide Convention'). Article 1 of the Convention provides that states parties are obligated to 'prevent and punish' genocide, which the Convention describes as an offence against international law, even when directed by a state against its own citizens. In Article 2, the Convention defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group.

- Killing members of the group.
- Causing serious bodily harm or mental harm to members of the group.
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.
- Imposing measures intended to prevent births within the group.
- Forcibly transferring children of the group to another group.

It therefore follows that in cases where internal armed conflicts involve the commission of genocidal acts of intent, unilateral or collective humanitarian intervention may be legally justified on the basis of the Genocide Convention. The provisions of this Convention offer a legal basis for humanitarian intervention. For instance, in situations of ethnic conflicts, a strong *prima facie* case could be made against the state concerned under several headings within Article 2 of the Genocide Convention. If, for instance, it can be shown that a particular ethnic group has been targeted for extermination in a conflict, then such a group is entitled to protection under the Genocide Convention.

2.2 A Customary International Law Basis for Humanitarian Intervention

The customary practice of nations is the oldest source of international law. In the absence of an international executive and legislature, custom has exercised an influential role in the formation of international law. Custom ought to be distinguished from mere usage, such as behavior that may be done out of courtesy, friendship or convenience rather than out of a sense of legal obligation. Thus a rule of customary international law must meet two broad criteria. First, there must be state practice supporting the existence of the rules (*usus*), and second, a belief among states that the rule is legally binding (*opinio juris*)⁴²

An assessment of the validity of humanitarian intervention must be predicated on these two criteria. As a requirement for state practice in respect of a rule of customary international law, consistency and generality of a practice must be proved.⁴³ Although no particular duration is stipulated in respect of the existence of a custom, the passage of time will usually be part of the evidence of generality and consistency.⁴⁴ State practice in humanitarian intervention on the basis of customary international law may be seen, for example, in the interventions in Macedonia, Cuba, Pakistan, Cambodia, Uganda, Central African Republic, and Kosovo.⁴⁵ This is because whereas these interventions were not authorized by the UN Security Council, they were accepted by the international

⁴² Shaw (1991) pp. 59-60; Wallace (1992) pp.3-4

⁴³ Brownlie (1998) p. 4

⁴⁴ The Continental Shelf Cases, ICJ Report 3 (1969) In Para. 22, the Court (ICJ) stressed that although the length of time during which a custom has been in existence may not be relevant, generality of practice is 'an indispensable' requirement

⁴⁵ See Wheeler (2000) generally

community, thus leading to the conclusion that there is sufficient state practice on humanitarian intervention.

The second criterion for the validity of a rule of custom, *opinio juris*, can be best explained in terms of the express or tacit approval or acquiescence that states accord acts of humanitarian intervention. *Opinio juris* is the psychological element that is required for formation of a rule of customary international law. The requirement of *opinio juris*, according to Brownlie, obligates that states must recognize that the practice in question is obligatory, and that it is required by, or is consistent with current international law.⁴⁶

In determining whether or not there exists the necessary *opinio juris* in respect of humanitarian intervention, one must critically consider that states continue to apply armed force for humanitarian intervention purposes without the formal authorization of the UN Charter or other treaty. Moreover, the express tacit approval that follows acts of humanitarian intervention may be the basis for an argument that states are increasingly manifesting the necessary *opinio juris*. It is true that states continue to intervene in other states by military force without any condemnation or censure.

India's invasion of Pakistan in 1971, for example, was approved by the international community, as evidenced in the admission into the UN of a new member state, Bangladesh, whose establishment was a direct result of the intervention.⁴⁷ In the case of Tanzania's invasion of Uganda, the international community accepted Idi Amin's overthrow without protest, indeed, for the most part, with relief.⁴⁸ In the case of

⁴⁶ Brownlie (1998) p.6

⁴⁷ Mortimer (1998) p. 120

⁴⁸ See Wheeler (2000) Chapter 4, generally

Vietnam's invasion of Cambodia, the UN refused to recognize the new regime installed by the intervening power, but even then, a substantial number of states supported the intervention.⁴⁹

Even the pre-UN Charter intervention in Cuba received acquiescence, because, as Franck and Rodley argue, no person can take exception to a rule in the absence of an effective international system to secure human rights, and further, that this permits even disinterested states to intervene to protect lives wherever the need may arise.⁵⁰ Similarly, the intervention in Bohemia received acquiescence 'because the humanitarian motive' as well as other motives were advanced.⁵¹ The conduct of intervening states (in terms of continued interventions even after the coming into force of the UN Charter) and that of the rest of the world (relating to express or tacit approval or acquiescence) supports the view that there exists the necessary *opinio juris* for humanitarian intervention.

2.3 Legal and Policy Objections to Humanitarian Intervention

The objections to a legal endorsement of humanitarian intervention are embedded in two categories of issues: legal and policy. The legal objections are that humanitarian intervention violates the cardinal principle of state sovereignty, and that it contravenes the ancillary norms of non-intervention, and non-use of force, which themselves stem from the doctrine of state sovereignty. The policy objections may be summarized as follows:

- Humanitarian intervention is prone to abuse, and it is selectively applied.

⁴⁹ See Wheeler (2000) Chapter 3, generally

⁵⁰ Franck & Rodley (1973) p. 278

⁵¹ *Ibid*, pp.278-279

- Humanitarian intervention has short-term complications and lacks long-term benefits.
- Humanitarian intervention contradicts itself conceptually by providing that human rights can be protected through military force.

The most vigorous adherents of a policy of non-intervention have been the weaker states, mostly Third World states, apprehensive of severe limitation on their sovereign rights by the more powerful states in the international system.⁵² These concerns are buttressed by the fact that most military interventions in the last century have been by the richer countries of the North in the poorer states of the South.⁵³

2.3.1 Legal Objections to Humanitarian Intervention

The legal objections to humanitarian intervention revolve around the question of state sovereignty. Henkin argues that sovereignty is concomitant to state autonomy of each state, and further, that state autonomy suggests that a state is not subject to any external authority unless it has voluntarily consented to such authority.⁵⁴ The doctrine of state sovereignty and the concomitant principle of non-intervention have found expression in numerous international documents, aptly illustrated in the 1993 Montevideo Convention on the Rights and Duties of States, which declared that ‘no state has a right to intervene in the internal and external affairs of another’.⁵⁵

⁵² According to Helman & Ratner (1992-1993) p.10, states that attained independence after 1945 greatly value the concept of sovereignty, and they view an unqualified doctrine of sovereignty as a shield ‘against the predatory designs of the stronger states’.

⁵³ Kwakwa (1994) p.30

⁵⁴ Henkin (1995) p.11

⁵⁵ 165 LNTS 19, Article 8

At Article 2(1), the UN Charter states that the organization (UN) is founded on, *inter alia*, the principle of sovereign equality of its members. At Article 1(2), the Charter also affirms the principle of equal rights and self-determination of peoples. Both these principles are a corollary of every state's right to sovereignty, territorial integrity and independence that the sovereignty and non-intervention rules seek to advance. Article 2(7) of the Charter specifically provides that nothing in the Charter authorizes intervention in matters that are 'essentially within the jurisdiction of any state'.

The principles of non-intervention are reflected firmly in post-Charter declarations. In 1965, the UN General Assembly adopted the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty (commonly referred to as the Declaration on Intervention).⁵⁶ At Article 3, the Declaration specifically spells out that states should refrain from acts that are by their very nature capable of violating the sovereignty and independence of other states.

In 1970, the same principle was embodied in the UN General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States (the 'Friendly Relations Declaration'), which provides explicitly that:⁵⁷

'No state or group of states has a right to intervene directly or indirectly...in the internal or external affairs of any state. Consequently, armed intervention and all other forms of interference, or attempted threats against the personality of a state

⁵⁶ United Nations General Assembly Res. 2131 (XX) of 21 Dec. 1965

⁵⁷ The Declaration on the Principles of International Law Concerning Friendly Relations and Co-operation in Accordance with the Charter of the United Nations UNGA Res 2625 (XXV) of 24 Oct 1970

against its political, economic and cultural elements are a violation of international law.’

From the foregoing discussion, it can be concluded that the principle of state sovereignty and non-intervention are cardinal in international law. On this basis, those who view humanitarian intervention to be illegal argue that military intervention is a deviation from the internationally acknowledged norm of non-intervention. They maintain that the deviation is an affront to the Westphalian order⁵⁸, whose cornerstone is state sovereignty.

Starke, for instance, argues against humanitarian intervention, saying that the modern system of international law remains dominated with concepts such as national and territorial sovereignty, and the perfect equality and independence of states.⁵⁹ On their part, Dorman and Otte maintain that despite increasingly liberal attitudes towards intervention, state sovereignty remains a crucial underpinning of international law, as exemplified by the worldwide reaction to Iraq’s forcible annexation of Kuwait.⁶⁰ These writers also find that humanitarian intervention is an assault on state sovereignty.

Humanitarian intervention has also been challenged on the ground that it violates Article 2(4) of the UN Charter, which is seen as an extension of the norm on the protection of states against any assault on their sovereignty. Article 2 (4) provides that:

⁵⁸ The Westphalian order is based on the 1648 Peace of Westphalia, which refers to a pair of treaties signed in 1648 ending both the thirty years’ war and the eighty years’ war in Europe. This is seen as marking the beginning of the modern era in international relations in which states are the principal players in the international system. It embodies the key principles of state sovereignty, equality of states and non-intervention of one state in the internal affairs of another state.

⁵⁹ Starke (1984) p.7, cited in Symes (1988) p.581

⁶⁰ Dorman & Otte (1995) p.197

‘All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purpose of the United Nations’.

Support by states for adherence to a broadly formulated principle of non-use of force non-intervention can be found in their reading of the UN Charter and other international legal documents. In other words, the legal objections to humanitarian intervention are more often invoked than policy objections. For example, Franck and Rodley use the legal criteria to conclude that ‘humanitarian intervention belongs to the realm not of law but of moral choice which nations, like individuals, must make.’⁶¹

In his speech to mark the opening of the 54th UN General Assembly in 1999, the then UN-Secretary General Kofi Annan presented the representatives of the UN community of nations with the following dilemma:⁶²

‘To those for whom the greatest threat to the future of the international order is the use of force in the absence of a Security Council mandate, one might ask, not in the context of Kosovo, but in the context of Rwanda: if in those dark days and hours leading up to the genocide, a coalition of states had been prepared to act in defense of the Tutsi population, but did not receive prompt [Security] Council authorization, should such a coalition have stood aside and allowed the horror to unfold? To those for whom the Kosovo action heralded a new era when states and groups of states can take military action outside the established mechanisms for enforcing international law, one may ask, is there not a danger of

⁶¹ Franck & Rodley (1973) p. 285

⁶² For full text see Kofi Annan ‘Secretary- General’s Speech to the 54th Session of the General Assembly, 20 September 1999, SG/SM/7136 GA/9596

such intervention undermining the imperfect yet resilient security system created after the Second World War, and of setting dangerous precedents for future interventions without a clear criterion to decide who might invoke these precedents and in what circumstances?’

After analyzing the competing interests exposed in the part of speech quoted above, Annan went on to suggest that the classical legal concept of state sovereignty might however have to yield in some circumstances to the ‘sovereignty of the individual’. He further argued that:⁶³

‘If humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to Rwanda, to a Srebrenica- to gross and systematic violations of human rights that offend every precept of our common humanity?... [S]urely, no legal principle- not even sovereignty- can ever shield crimes against humanity...Armed intervention must always remain the option of last resort, but in the face of mass murder, it is an option that cannot be relinquished.’

He added that it is essential for the international community to reach a consensus, not only on the principle that massive and systematic violations of human rights must be checked, wherever they take place, but also on ways of deciding what action is necessary, and when and by whom.

The dilemma outlined by the Secretary-General in his speech leads to the basic question as to what deserves priority, the emphasis on preventing the use of force between states and maintaining the stable relations between them or ‘humanity’- the protection of citizens’ fundamental rights. This dilemma has been addressed by placing a premium on the principles that protect human rights and general welfare or development

⁶³ SG/SM/7136 GA/9596

of the international society in the broadest sense. Ultimately, this approach has had the effect of eroding the principle of state sovereignty in a fundamental way. The broader process of internationalization (that is, the growing importance of international agreements, membership of international organizations and economic interdependence as well as the increasing prominent role of international NGOs and the media) has greatly reduced state sovereignty in practical terms.⁶⁴

These factors, coupled with the changing nature of armed conflicts especially after the end of the Cold War and the changing attitudes of states towards intervention, have had the cumulative effect of making the need to strike a proper balance between the ban on the use of force between states and human rights more pressing than ever.

2.3.2 Policy Objections to Humanitarian Intervention

Although policy objections in and of themselves should not be regarded as a substitute means for determining the status of humanitarian intervention in international law, the role that such policy considerations have cannot be denied. Those scholars who view humanitarian intervention as illegal in international law often argue that its practice enhances ‘opportunities for abusive use of force, the long-term effect of which is to bring the international normative system into disrepute’.⁶⁵

According to Franck and Rodley, humanitarian intervention is unacceptable, since its advocates would not be able to ‘devise a means which is both conceptually and instrumentally credible to separate the few sheep of legitimate humanitarian intervention

⁶⁴ Advisory Council on International Affairs & Advisory Committee on Issues of Public International Law (2000) 10

⁶⁵ Kritsiotis (1998) p.1020

from the herds of goats which can too easily slip through'.⁶⁶ If humanitarian intervention was accepted, states would then, to use Falk's words, embark on 'heroic missions' to save and protect what they deem persecuted populations, but would, in actual fact, only use the cover of altruism to use force to realize alternative and suspect ambitions.⁶⁷

Further, it has been argued that if humanitarian intervention is accorded recognition in law, it 'would introduce endless opportunities for the selective use of force in cases of humanitarian need and this in turn would endanger the crucial kinship between international law and the rule of law'.⁶⁸ Also linked to the abuse of humanitarian intervention is the proposition that states are unlikely, if ever to engage their forces in authentic altruistic interventions. This view sees the preparedness of states to act as being more often than not based on self-interest, making the so-called right or duty of humanitarian intervention nothing more than a lingering, even self contradictory, legal convenience.⁶⁹

Opponents of humanitarian intervention also argue that humanitarian intervention has short-term complications and lacks long-term benefits. They argue that it is easier said than done, and further, that it is invariably much easier to get in than it is to get out.⁷⁰ The Somalia intervention lends credence to this argument. Another related reason why

⁶⁶ Franck & Rodley (1973) p.284

⁶⁷ Falk (1959) pp.163, 167

⁶⁸ Kritsiotis (1998) p.1026; See also Brownlie (1989) pp.25-26

⁶⁹ See Kritsiotis (1998) p.1034, quoting Walzer (2000) p.102 ("the lives of foreigners don't weigh heavily in the scales of domestic decision-making")

⁷⁰ Kwakwa (1994) p.31

some are opposed to humanitarian intervention is that it only raises the levels of violence in the short-run, and makes reconciliation of the parties more difficult in the long-term.⁷¹

According to Weiss, the use of outside military forces for humanitarian intervention also makes the task of the affected country's own civilian authorities more difficult to manage.⁷² The continuation of the conflict in Somalia, notwithstanding the US-led intervention with over 300,000 troops, adds strength to the argument that international intervention is a short-term measure fraught with difficulties and which has no long-term beneficial effects.

The problem with this objection to humanitarian intervention is that it suggests that humanitarian intervention should not be endorsed simply because it may complicate the situation in the target state. However, the objection fails to recognize that the use of force, whether for the purposes of protecting nationals abroad or for self-determination would result in complications. Despite these complications, international law still recognizes these grounds for the use of force because of the utilitarian purpose that they serve.

The third policy objection to humanitarian intervention is that a 'humanitarian war' is a contradiction in terms. To some, an armed conflict and its consequences- bombing and maiming people- cannot be instruments of protecting human rights.⁷³ Douzinas, for instance argues that a destructive war is by definition a devastating negation of human rights, and is regarded as 'humanitarian' because 'human rights have

⁷¹ *Ibid*

⁷² Weiss (1994) pp.59, 62

⁷³ See, for instance, Douzinas (2000) pp.129-141; Roberts (2000) pp.3, 32

been hijacked by governments, politicians and diplomats and entrusted in the hands of those against whom they were invented'.⁷⁴ He cites the example of NATO'S use of force in Kosovo in 1999 which, although regarded as successful in so far as there were no NATO casualties, was nevertheless seen by others as a huge failure because of many civilians that were killed in the course of the bombing.

The claim that 'humanitarian intervention' is a contradiction in terms views humanitarian intervention in terms of the collateral damage it may cause. While it is true that humanitarian intervention may lead to accidental casualties, the intervention is still humanitarian if one considers that it ends up saving lives, often more lives than those lost as a result of the intervention.

2.3.3 Criteria for Humanitarian Intervention

There are minimum criteria, of substantive nature, that ought to be met before any claim of humanitarian intervention can be deemed as legally justified. Once this threshold is met, a number of other procedural criteria should be satisfied in order to complete the legality of a claim of humanitarian intervention.⁷⁵ Given the fact that instances of gross violations of human rights continue to occur, especially, in the context of internal armed conflict, guidelines need to be sought to justify humanitarian intervention, and limit its potential abuse. Underscoring the need for clear guiding principles on humanitarian

⁷⁴ Douzinas (2000) pp.130-131

⁷⁵ See Wheeler (2000) p. 33

intervention, the then UN Secretary- General Kofi Annan stated thus in his 1999 address to the UN General Assembly:⁷⁶

‘Just as we have learned that the world cannot stand aside when gross and systematic violations of human rights are taking place, so we have also learned that intervention must be based on legitimate and universal principles if it is to enjoy the sustained support of the world’s peoples.’

Rules and criteria for humanitarian intervention can clarify the minimum conditions to be satisfied by the intervening states. They can also help to structure the deliberations within the UN Security Council and General Assembly on specific instances of intervention. At the same time, they can provide the UN community of nations with a basis for assessing instances of unauthorized humanitarian intervention that have already taken place and for tolerating them in appropriate cases, provided that there is sufficient account of ‘legitimacy considerations’.⁷⁷

Rules and criteria for humanitarian intervention can also be of importance for the further development of the law relating to humanitarian intervention, as it offers a starting point for gaining international acceptance for a separate legal ground justifying humanitarian intervention not based on statute (in which humanitarian necessity prevails over the law banning the use of force).

It is also important that the primary role of the UN Security Council should be recognized. Under Articles 2(4), 24 and 25 of the UN Charter, the Security Council has

⁷⁶ See Report of the Secretary- General on the Work of the Organization UN GAOR, 54th Session, 4th Plenary Meeting 1; UN Doc A/54/PV4 (1999)

⁷⁷ Advisory Council on International Affairs & Advisory Committee on Issues of Public International Law (2000) p.28

the primary authority to sanction the use of force. Therefore, in order to uphold the international rule of law, the use of force should be primarily reserved for the UN Security Council. The supremacy of the obligations of states under the UN Charter over obligations under any other treaty is spelt out in the Charter as follows:⁷⁸

‘In the event of any conflict between the obligations of the [m]embers of the [UN] under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.’

Therefore, the inability of the Security Council to fulfill this primary function because of disagreement among members, or because one or more of the permanent members exercise its veto, must be clearly established before humanitarian intervention is carried out outside UN framework.⁷⁹

On the question as to which states should be allowed to intervene, the protection of a broadly defined right to life belongs to the category of obligations in whose fulfillment all states are deemed to have a legal interest.⁸⁰ The obligations are not upon an individual state acting alone, since the checks and balances contained in these guidelines for humanitarian intervention are more likely to be effective in an institutional context than when the humanitarian is undertaken by an individual state.

For intervention to be allowed the situation must be grave, one in which fundamental human rights are being (or are likely to be) seriously violated on a large scale and there is an urgent need for intervention. This means that there should be a just

⁷⁸ Article 103 of the UN Charter

⁷⁹ Zacklin (2001) p. 939

⁸⁰ See Charney (1999) p.1232

cause, namely a ‘supreme humanitarian emergency’⁸¹ or ‘severe violations of international human rights and humanitarian law’.⁸²

The terms ‘supreme humanitarian emergency’ and ‘severe violations of international human rights and humanitarian law’ may be prone to subjective definitions. This leads to the question as to how many people must die before humanitarian intervention can be justified. It is submitted here that it is not the numbers that get killed or tortured that matter.⁸³ Instead, the intervening states should be required to make a convincing case to the effect that the violations of human rights within the target state have reached such a magnitude that they ‘shock the conscience of humanity’.⁸⁴ On this understanding, Wheeler has stated that generally, ‘a supreme humanitarian emergency exists when the only hope of saving lives depends on the outsiders coming to the rescue’.⁸⁵

There must be proof of clear and publicly available evidence that international crimes of grave proportions, preferably amounting to the crimes of genocide, war crimes or crimes against humanity, are being committed or are about to be committed in the target state.⁸⁶ However, the lack of ‘official’ evidence should not be used as an excuse for not intervening on humanitarian grounds. Prior to the 1994 Rwanda genocide, for example, several warnings were issued to the UN of the eminent crisis, and NGOs and

⁸¹ Wheeler (2000) p.34

⁸² International Independent Commission on Kosovo (2000) p.193

⁸³ See also Wheeler (2000) p.34

⁸⁴ Walzer (2000) p.152

⁸⁵ Wheeler (2000) p.34

⁸⁶ Charney (1999) p.1245

media reports could have attested to the escalating violence.⁸⁷ Nevertheless, these signals were initially dismissed, with the assertion that there was insufficient evidence to predict or forestall the genocide.

It is desirable that early rescue be permitted, to allow intervening states to preempt a humanitarian emergency. Thus humanitarian intervention should be permitted where, say, a few hundred people have been killed but intelligence points to this being a precursor to a major campaign of mass killings or ethnic cleansing.⁸⁸ This happens to have been the case in Kosovo where the intervention was anticipatory.⁸⁹ Unfortunately in most other instances of humanitarian intervention, military intervention came too late to protect civilians.

The legitimate government of the country may be perpetrating the violations (Iraq, Kosovo), may acquiesce in them (East Timor), or may be unable to control them (Somalia). This means that grave and systematic violations of fundamental human rights committed by non-state actors can also constitute grounds for humanitarian intervention. What must be proved is the 'failure' or 'collapse' of the target state, which entails the complete breakdown of governance of law and order.⁹⁰ It should also be established that the internationally recognized government is unable or unwilling to provide the victims with the appropriate protection from the violations. The fact that authorities are willing

⁸⁷ Prunier (1995)

⁸⁸ Wheeler (2000) p.34; Bazylar (1987) p.600 ('The intervening nation or nations need not wait for the killings to start if there is clear evidence of an impending massacre'.)

⁸⁹ Charney (1999) p.1231

⁹⁰ See Deng & Zartman (1991) p.207 ('In most cases, the collapse of the state is associated with humanitarian tragedies, resulting from armed conflict, communal violence, and gross violations of human rights that culminate in the massive outflow of refugees and internal displacement of the civilian populations')

but unable to uphold the rule of law and also prevent large-scale violations of human rights has been identified by the UN Secretary- General as one of the factors that the Security Council should consider when reaching a decision on the subject.⁹¹

A number of other conditions must also be satisfied. It must be established that the violations can only be reversed, contained or pre-empted by deployment of military personnel and equipment. In that case, however, the primary objective of the intervention must be humanitarian. This means that the operation must be aimed at preventing or ending the humanitarian emergency involving the gross violations of human rights referred to.⁹² The intervening states must make the humanitarian objectives of the intervention clearly known in advance to the international community, in order to minimize the risk of Article 51 of the UN Charter being used to counter the intervention.⁹³ Such prior and clear information would also help in the international monitoring of the intervention. Even if national, strategic or other interests may influence the decision to intervene, these must be clearly subordinate to the humanitarian objective of the intervention. Ideally, the promotion of the international rule of law (including the promotion of human rights) and national interests should, at least, coincide.

The intervening state should also show that it has exhausted all the non-military means of action against the state that is violating the human rights, without success.⁹⁴ The

⁹¹ See Report of the SG to the SC on the Protection of Civilians in Armed Conflict S/1999/957, Para. 40

⁹² Zacklin, (2001) p. 939 ('The use of force must be limited to the purpose of halting the violations and restoring respect for human rights')

⁹³ (Article 51 of the UN Charter provides ('Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs...'))

⁹⁴ Independent Commission on Kosovo (2000) 194 '([t]here must be a serious attempt to find a peaceful solution to the conflict. This solution must ensure that the pattern of abuse is terminated in a reliable and sustainable fashion or the process of restoring adequate governance is undertaken'

target state should also be called upon to prevent or end the gross and systematic violations of human rights either by itself or with the assistance of other states or intergovernmental organizations.⁹⁵ The initial warning should be issued to the state, either through a forum of the UN, perhaps in a Security Council or General Assembly resolution.

It is desirable that potential humanitarian interventions should be decided on a case-by-case basis. It should be emphasized that although the above criteria makes reference to ‘intervening states’, it is presumed that the intervention is to take place in the context of an intergovernmental organization.

⁹⁵ Charney (1999) p. 1247

CHAPTER 3

THE RWANDAN GENOCIDE

In the aftermath of World War II, and with the horror of the Holocaust known to the world, the United Nations in 1948 passed the Convention on the Prevention and Punishment of the Crime of Genocide. At Article 1, the Convention states that:

‘The contracting parties confirm that genocide, whether committed in time of peace or time of war, is a crime under international law, which they undertake to prevent and to punish’.

Yet, less than fifty years later, the world allowed nearly a million innocent men, women and children to be slaughtered brutally during the 1994 Rwandan genocide. Within a period of three months, about 800,000 people were sought out and killed simply because they were Tutsis or Tutsi sympathizers.⁹⁶

The genocide in Rwanda will be remembered as one of the greatest atrocities of the twentieth century. It should also be recalled as an instance of indifference by the international community in general and by the United Nations in particular. As the tragedy unfolded, the world watched, seemingly unable or unwilling to establish an intervention force capable of ending the bloodshed. The tragedy of the Rwandan genocide has since caused many to question the relevance and effectiveness of the UN and international community forces in humanitarian intervention.

⁹⁶ See generally, Power (2003) ; Gourevitch (1998) ; Dallaire (2003)

3.1 BACKGROUND

Historically, the involvement of the Tutsi in pastoral activities and the Hutu in farming was the distinct differentiation between the Tutsi and the Hutu and was seen as the most important determinant of ethnicity.⁹⁷ Slowly, over the period of colonial occupation, Tutsi and Hutu became important political categories, as those involved in the colonization established their political dominance around suddenly-created rigid ethnic boundaries. Increasingly, the disadvantages of being Hutu and the advantages of being Tutsi were sharpened, first, under German and then Belgian colonial rule.⁹⁸

The ethnic animosity between the Tutsis and Hutus can be traced to the period under Belgian rule, whereby the minority ethnic Tutsi group exercised social and economic power. The Belgians constructed the Tutsi as a non-indigenous people, called Hamites, who were superior to Hutus.⁹⁹ The Belgians favored the Tutsi, who received greater employment and educational opportunities than Hutu. The Belgians also formalized the ethnic divisions in the territory by adding these ethnic affiliations into the Rwandan identity card with the result that Rwandan politics became driven by the perception that there was an ethnic struggle between the Hutu and the Tutsi.¹⁰⁰

During the 1950s, Hutus organized a political struggle against the domination of Tutsi and Belgian powers.¹⁰¹ This struggle briefly turned violent in a 1959 uprising that ‘demonstrated the depth of rural discontent with Tutsi domination, and the ability of Hutu

⁹⁷ Mamdani (2001) pp. 3-36

⁹⁸ Newbury (1998) pp. 7-25

⁹⁹ Mamdani (2001) pp. 79-87

¹⁰⁰ Rennie (1972) pp. 11-53

¹⁰¹ Newbury (1998) generally

to destabilize the state'.¹⁰² During this uprising, the Tutsis suffered the heaviest casualties, with the result that several hundred thousand Tutsis fled to neighboring countries, primarily Burundi, Zaire, Uganda and Tanzania. In 1960, Hutus won a majority in the elections and at independence in 1962, they were in charge. Newbury notes that there was a change in the 'locus of power and the social categories that had access to high office'.¹⁰³

Following independence, the leadership ethos under both Presidents Gregoire Kayibanda and Major General Juvenal Habyarimana, was founded on ethnic fear and maintenance of the structures that insured Hutu domination.¹⁰⁴ Tutsis were therefore excluded from the country's political life while the Hutus exercised a monopoly on the economic prosperity of the state. For the Tutsi refugees who were living in neighboring countries, their difficult life experience in the host countries as well as the persecution and discrimination of those who remained in Rwanda reinforced their resolve to return to Rwanda. This explains their earlier failed attempts of the 1960s and ultimately their successful takeover of the country in July 1994.¹⁰⁵ Many refugees were denied citizenship rights and social economic services in their host countries, especially so in Uganda.¹⁰⁶ Their main aim of return was to regain their lost land and other material goods, as well as a need to return to their natal communities. Such attempts at return were often raids or military ventures, which led to ferocious and indiscriminate reprisals

¹⁰² Newbury (1998) p. 195

¹⁰³ *Ibid*, p. xiii

¹⁰⁴ Africa Rights Watch (1996) generally

¹⁰⁵ Prunier (1998) generally

¹⁰⁶ Mamdani (2001) p.164

against Tutsis within Rwanda.¹⁰⁷ The Rwanda Hutu government responded by killing those Tutsis who had remained in Rwanda after 1962.

Following the collapse of the Soviet Union and the end of the cold war, nations in the developed world redefined their foreign policy and relations with third world and other developing countries with intent to suit the changing international system. In order to benefit from the international development privileges, developing states had to adopt better democratic, human rights and security standards in order to benefit from the international development privileges. This resulted in a wave of democratization in third world states, especially in Africa.¹⁰⁸ Among other things, most African countries were thereafter forced to move from a single party system to a multiparty system, and demands for better human rights, good governance, and transparency on economic matters became central themes in international politics.¹⁰⁹

These changes had a great impact on Rwanda and on Habyarimana's regime, as it adopted a multi-party system in 1990. However, the government was still steeped in single-party state practices, and the more the opposition pushed for political changes, the more the government intensified its intimidation and suppression policies. Slowly, Rwanda's bilateral and multilateral partners' constant demand for democracy softened the Rwandan regime's stand on political reform.¹¹⁰ This created an intra-Hutu power struggle as internal differences within the ruling party *Mouvement Revolutionaire*

¹⁰⁷ Melvern (1997) pp. 333-334

¹⁰⁸ For a detailed analysis of post cold War democratization in the world see, Huntington (1991) generally

¹⁰⁹ Olsen (1998) pp. 343-346

¹¹⁰ *Ibid*, Pg. 344

National pour le Developpement [MRND] leadership and discontented members became more virulent.¹¹¹

Following the pressure exerted by the Tutsi refugees in Uganda for their unconditional return, the Rwandan government proposed two main conditions for their return; first, their ability to support themselves once back, and second, they were not to claim any ancestral properties from present owners.¹¹² The imposition of these pre-conditions made the Rwanda Patriotic Front [RPF] more determined to return to Rwanda, which determination was also reinforced by the weakening of the Habyarimana regime due to the internal political crisis. These factors combined to create a political crisis in Rwanda that was also exploited by the genocide planners.¹¹³

In October 1990, the RPF invaded Rwanda, and this invasion helped to build support for a virulent anti-Tutsi movement, which had fallen into disfavor in the 1970s. This organization re-emerged, calling itself Hutu power, and had broad support in the government and among Hutu in both rural and urban areas. Leon Mugerese, a powerful Hutu politician, advanced propaganda about ‘evil and subversive Tutsis’ and called for a ‘final solution’ for the Tutsi.¹¹⁴ In 1992, *Interahamwe*, the youth militia of the ruling political party, was created. By 1994, between thirty and fifty thousand youths were organized into similar armed militias.¹¹⁵

¹¹¹ Prunier (1995) pp. 89-90

¹¹² Van der Meeren (1996) p. 258

¹¹³ For a detailed analysis of the historical perspective and events leading to the Rwandan genocide see Mugaboniweza (2005); Mara (2005)

¹¹⁴ Power (2003) p. 339

¹¹⁵ Mamdani (2001) p.206

3.2 A PRELUDE TO THE GENOCIDE

On 1 October 1990, the RPF launched an invasion from Uganda leading to a civil war with the French-backed Rwandan government forces. The Hutu used the notion of ethnic identity to galvanize their base, especially emphasizing the fact that the Tutsi were attacking the country in order to bring back the Tutsi monarchy and take absolute power over the Hutu majority. As the new conflict unfolded, the fundamental differences between Hutu and Tutsi were accentuated, and any previous mixing between the two groups culturally, socially or politically started to disintegrate.

As a result of this protracted guerilla conflict, as well as pressure from the OAU, neighboring states and the international community, the Rwandan government agreed to begin negotiations with the RPF. Attempts to find a solution to the crisis were carried out against the backdrop of increasing international concern about peace and security in the Great Lakes region. The initial deployment of an international peacekeeping force to Rwanda occurred in July 1992. Fifty soldiers from Senegal, Congo, and Tunisia, sponsored by the OAU, were tasked with overseeing a cease-fire prior to the beginning of negotiations. Although the first efforts of the OAU's Neutral Military Observer Group (NMOG) failed to prevent a resumption of hostilities, a second OAU contingent of 130 soldiers was credited with establishing a demilitarized zone between the Rwandan army and the RPF long enough for the discussions to get underway.¹¹⁶ This intervention is significant, as it marked a serious attempt by African states to resolve the problem before the UN involvement.

¹¹⁶ Stearns (1994) pp. 32-35

3.2.1 PHASE 1: THE ARUSHA ACCORDS/ UNAMIR I

This phase encompasses the initiatives leading to the Arusha Accords in August 1993, and the subsequent establishment of the first United Nations Assistance Mission for Rwanda (UNAMIR I). This is an important phase because it was the first major attempt by the UN to end the Rwanda civil war. Peace talks were held in Arusha, Tanzania, with the intention of ending the civil war. Under the auspices of the government of Tanzania, the OAU, and the UN, an agreement was successfully concluded in August 1993. The Arusha Accords stipulated that both sides were required to demobilize and disarm their troops. In addition, the terms of the settlement called for the Rwandan army to be reconstituted into a unified Hutu- Tutsi force, for the Rwandan Tutsi refugees scattered throughout the region to be repatriated, and for a transitional government, led by President Habyarimana to assume power by mid- September 1993. Finally, the provisional government was mandated to hold multi-party elections within 22 months.¹¹⁷

To oversee the agreement, the UN Security Council established UNAMIR I in October 1993, under the command of Canadian Major-General Romeo Dallaire. Among its numerous duties, UNAMIR I was mandated to undertake the following tasks: (1) to mitigate the military conflict between Rwandan government forces and the RPF, (2) to maintain subsequent cease-fire agreements, (3) to provide humanitarian assistance to refugees and (4) to support the process of political reconciliation.¹¹⁸

¹¹⁷ UN Doc. A/48/824-S/26915; See also, Barnett (2002) p. 56.

¹¹⁸ UN Doc.S/RES/872 [1993]

UNAMIR I evolved from the United Nations Observer Mission to Uganda-Rwanda (UNOMUR), created in June 1993 to ensure that no military assistance reached Rwanda through Uganda.¹¹⁹ The force was established under Chapter VI of the UN Charter¹²⁰ and after full deployment in March 1994, reached the strength of about 2,500 personnel. UNAMIR I was unable to implement its mandate, however, due, in part to a deadlock in the political process in Rwanda. The success of the mission was predicated on the assumption that there would be continued co-operation between the parties and with the UN in carrying out their respective commitments under the Arusha Accords. Deep rooted mistrust, delaying tactics, and constantly shifting political alignments in Rwanda, however, undermined the implementation of the transitional arrangements. This was mainly because, whereas the Arusha Accords sought to end hostilities between Rwanda and the RPF rebels by creating a transitional unity government that would address demands from both sides, the Hutu power movement saw the Accords as a win for the RPF and whipped up more anti-Tutsi sentiment. According to the Hutu, if the Accords were implemented, the Tutsi would return to power and would exact revenge on Hutus, just as they had during the colonial period.

In the meantime, while the international community applauded the Rwandan government and the RPF for reaching a peace agreement, militant Hutus plotted to derail the reforms forged at Arusha. An early indication that hard-line cabinet members would not accept a negotiated settlement was the formation of a Hutu extremist group, the

¹¹⁹ UN Doc. S/RES/ 846 [1993]

¹²⁰ Chapter VI of the UN Charter enjoins the parties to an international dispute to “first of all seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means”. The UN Security Council can recommend or implement supportive actions, such as the establishment of UNOMUR or UNAMIR when one or more of the parties report failure in their peaceful efforts to resolve a dispute

Coalition pour la Defense de la Republique (CDR). Both MRND and the CDR founded militias known respectively as the *Interahamwe* (Those who attack together) and the *Impuzamugambi* (Those who have a single aim)¹²¹ Moreover, when it came to executing the timetable stipulated in the Accords, the Habyarimana government engineered and exploited the factionalism which characterized the major opposition parties. This postponed the process of forming the broad-based transitional government and national assembly.¹²²

In January 1994, the commander of the UN peacekeeping forces in Rwanda, General Romeo Dallaire, sent a fax to the UN headquarters warning of an impending genocide in Rwanda and calling attention to the fact that the Hutu government was compiling lists of Tutsis and training militia men to kill them.¹²³ It further cautioned that the Hutu government planned to force the UN to withdraw by killing Belgian peacekeepers, who were the backbone of the 2,500- member mission. The withdrawal of these troops would no doubt permit the unrestricted killing of the Tutsis.¹²⁴ Dallaire also warned of extremist Hutu arms caches, but his superiors in New York dismissed his concerns, as he was seen to be overstating the situation.¹²⁵ Essentially, the response at the UN headquarters was to treat the fax bureaucratically. It set off no special alarm bells, nor was it disseminated. The results were catastrophic.

¹²¹ By April 1994, 100,000 Hutu militia members had been armed by the Presidential Guard and the Rwandan Army- See Leitenberg (1994) pp. 6-10

¹²² Gasarasi (1998)

¹²³ Power (2003) p. 343

¹²⁴ Human Rights Watch 1999 *Leave None to Tell the Story*
[http://www.hrw.org/reports/1999/rwanda/\[March\]](http://www.hrw.org/reports/1999/rwanda/[March])

¹²⁵ Power(2003) pp. 92-93

Political frustration erupted in February 1994. With no legitimate government in place, and the President accused of interfering with the transitional process, political violence culminated in the assassination of two prominent politicians, Felicien Gatabazi of the *Partie Socialiste Democrat* (PSD) and Martin Buchyana of the CDR who were killed by rival Hutus.¹²⁶ Despite international pressure, efforts at mediation by the Special Representative of the Secretary-General in Rwanda, Jacques Roger Booh-Booh of Cameroon, produced no tangible results. The parties were therefore warned of a potential UN withdrawal due to the impasse. This threat was repeated by the Security Council in early April when it conditionally prolonged the mandate of UNAMIR I for a four month period.¹²⁷

In an effort to break the stalemate, the then President of Tanzania, Ali Hassan Mwinyi, the facilitator of the Rwanda peace process, convened a one-day summit in Dar-es-Salaam to identify a regional approach to preventing what he called a 'Bosnia on our doorstep'.¹²⁸ However, all promise of progress was abruptly halted on April 6, 1994, when a plane carrying President Habyarimana was shot down in an assassination bid. This event was the spark that ignited the genocide. Within one hour of the plane being shot down, roadblocks were set up in the Rwandan capital of Kigali.¹²⁹ People manning these roadblocks stopped everyone who passed and checked their identity papers. If they

¹²⁶ UN Doc. S/1994/360

¹²⁷ UN Doc. S/RES/909 [1994]

¹²⁸ *The Times* 1994 "Presidents' deaths raise UN fears of tribal violence" 7 April. In a communiqué issued at the summit, the leaders resolved: a) to support the transitional government and call on all political and security forces to fully comply; b) to reaffirm the role of the OAU, including the deployment of a military contingent from the organization to assist in the peace process; c) to call for the reform of the military; and d) to demand full support from the political and security forces for unimpeded functioning of stable institutions (UN Doc. S/1994/406)

¹²⁹ Gourevitch (1998) p. 113

were Tutsi, which Rwandan identity cards explicitly noted, or their names were on lists like those collected by the *Interahamwe*, they were executed on the spot or taken to another area where they were killed.

Names, addresses, and license plate numbers of Tutsis and moderate Hutus to be killed, that had been prepared in advance, were announced over official state radio. “Killers often carried a weapon in one hand and a transistor radio piping murder commands in the other”.¹³⁰ Such weapons included knives, machetes, spears, screw drivers, hammers and bicycle handle bars, as well as automatic weapons.¹³¹ The violence was initiated from the top level of government, but ordinary citizens, acting without direction, engaged broadly in the killing frenzy. On July 19, the RPF took control of Kigali, installed itself as the new government of Rwanda. Over one million Hutus fled Rwanda. Their numbers included those who actively participated in the genocide and others fearful of Tutsi reprisals. The genocide was over.

3.2.2 PHASE 2: UNAMIR I

This phase considers the intervention of UNAMIR I after the onset of the genocide in April 1994. This initiative was significant as it marked the initial attempt by the international community to stop the massive violence that engulfed Rwanda. Efforts by the UN to respond to the crisis were halting, confused and ineffective. Due to its mandate under Chapter VI of the UN Charter, UNAMIR I could not use force to protect civilians from the campaign of violence. Without Chapter VII authorization to use force, Dallaire had little choice but to order the UN soldiers to withdraw to their barracks. The

¹³⁰ Power (2003) p. 334

¹³¹ *Ibid*

inability of UNAMIR I to stem out the slaughter was further compromised by the unilateral withdrawal of Belgium's 440 troops from the peacekeeping force in mid- April 1994, precipitated by the murder of 10 Belgian soldiers earlier in the month.¹³² This was exactly what Dallaire had warned would happen, when he argued that withdrawal threats would only strengthen the militants, who would then push harder so as to get rid of the UN peacekeepers.¹³³ The departure of the Belgians from UNAMIR I prompted signals from other contingents that they wished to do likewise.

The assessment of the deteriorating situation by UN officials differed sharply, notably between Dallaire and Special Representative Jacques Roger Booh Booh. Dallaire interpreted his mandate as broadly as circumstances would allow, negotiating between the combatants in an attempt to protect civilians. While his actions were able to save lives, a strong case can be made that if UNAMIR I had possessed a broader mandate with more robust rules of engagement, the international force could have protected many more people. Booh Booh, in contrast, focused on a narrow range of peripheral issues. In particular, almost all his attention was directed at obtaining a cease-fire, even though it was clear that efforts toward a political settlement at this point were futile. Moreover, Booh Booh and his superiors refrained from criticizing the interim Hutu government.¹³⁴

On 20 April 1994, UN Secretary- General Boutros Boutros Ghali presented the Security Council with three policy options for peacekeeping operations in Rwanda (1) change the mandate of UNAMIR so that adequate troops and equipment could be

¹³² UN Doc. S/1994/430

¹³³ Power (2003) p. 348

¹³⁴ Human Rights Watch, 1999 *Leave None to Tell the Story*
[http://www.hrw.org/reports/1999/rwanda/\[March\]](http://www.hrw.org/reports/1999/rwanda/[March]); African Rights (1995) pp.1116-1120

provided to coerce the opposing forces into a cease-fire, and to attempt to restore law and order and put an end to the killings...[such a] scenario would [have] require[d] several thousand additional troops and UNAMIR...to be given enforcement powers under Chapter VII of the UN Charter.(2) to reduce UNAMIR from 2,500 troops to 270, leaving a small force to act as an intermediary between Rwandan government forces and the RPF to brokers a case-fire agreement, or (3) a complete withdrawal of all UNAMIR troops.¹³⁵

Previous research has suggested that a force of at least 5,000 personnel with a broader mandate and sufficient equipment could have made a significant difference.¹³⁶ This would have required much greater participation by Western nations, particularly the U.S. In the end, Security Council members determined that the complete withdrawal of UNAMIR forces would be too great an admission of the UN's limitations, thus the second option proposed by Boutros- Ghali was eventually adopted.¹³⁷ Simply put, the Security Council was unable to reach adequate consensus in the terms of a UN peace enforcement mission to Rwanda because no UN member states was willing to shoulder the burden of such an effort.

The U.S was largely disinterested in becoming engaged in an international intervention effort in Rwanda following its disastrous experience in Somalia. As one of the most influential nations on the Security Council, America's lack of resolve to stop the

¹³⁵ UN Doc. S/1994/470

¹³⁶ Feil (1998)

¹³⁷ UN Doc.S/RES/912 [1994]

genocide was arguably a critical factor in the UN's slow and ultimately ineffective response to the crisis.¹³⁸

There was heated debate among the members of the Security Council over the use of the word "genocide".¹³⁹ Employing this term would have invoked the Convention on the Prevention and Punishment of the Crime of Genocide and legally obligated the signatories to take action against the mass murderers in Rwanda. Although the Security Council did issue a Presidential Statement with words from this law, the word "genocide" was conspicuously absent. As a result, intervention by the international community was not required according to international law.¹⁴⁰

The initial scaling down of UNAMIR I constituted a crucial turning point in the crisis, as time was of the essence in any effort to protect the civilian population. In the face of the mounting death toll, the Secretary-General urged the Security Council to reverse its decision. In a letter to the president of the Security Council on 29 April he noted that "it has become clear that [the] mandate does not give UNAMIR the power to take effective action to halt the continuing massacres". He reported that UNAMIR I had lost credibility, with both government forces and the RPF, and called for strong action to restore law and order. He recognized, however, that "such action would require a commitment of human and material resources on a scale which member states have so far proved reluctant to contemplate".¹⁴¹

¹³⁸ See Power (2003) Chapter 10, generally on the role that the U.S played in the Rwandan genocide

¹³⁹ Melvern (1997) pp.341-342

¹⁴⁰ The statement read, in part: "The Security Council recalls that the killing of members of an ethnic group with the intention of destroying such a group in whole or in part constitute a crime punishable under international law". (UN Doc. S/PRST/1994/21)

¹⁴¹ UN Doc. S/1994/518

3.2.3 PHASE 3: UNAMIR II

This phase involves the intervention of UNAMIR II (the second UN mission) and it is important as it represents the response by the UN to the drawbacks of UNAMIR I. From the outset, Western countries indicated that they would be unwilling to commit troops to stop the killing in Rwanda. The Secretary-General, therefore, consulted with the OAU “on ways to restore law and order”.¹⁴² Planning proceeded toward implementing a strengthened force composed of African contingents with Western financial and logistical support. On May 13, the Secretary-General submitted a plan that called for sending 5,500 soldiers to Kigali under an expanded UNAMIR mandate that would protect refugees and assist relief workers in the capital and in the countryside.¹⁴³

The U.S, in particular, took a firm position within the Security Council against the immediate deployment of additional UN peacekeeping troops. The timing of the crisis was a significant factor in the American reaction to the tragedy. In May 1994, the Clinton administration issued Presidential Decision Directive 25 (PDD-25), a guideline drafted in response to the American experience in Somalia. The document stipulated sixteen specific considerations used to determine whether the U.S would engage in international peacekeeping missions. Rwanda was the first test of PDD-25. Consequently, the U.S would only agree to participate in an expanded UN peacekeeping mission after the conditions set forth in the document had been satisfied. The rationale behind PDD-25 is as follows:

¹⁴² UN Doc. S/PRST/1994/21

¹⁴³ UN Doc. S/1994/565

‘When deciding whether to support a particular UN peace operation, the U.S will insist that fundamental questions be asked before new obligations are undertaken. These include an assessment of the threat to international peace and security, a determination that the peace operation serves U.S interests for dealing with that threat on a multi lateral basis, identification of clear objectives, availability of the necessary resources and identification of an operation’s endpoint or criteria for completion.’¹⁴⁴

On May 17, after lengthy debate, the Security Council established UNAMIR II consisting of 5,500 troops with an expanded mandate, although not under Chapter VII of the UN Charter. According to its new rules of engagement, UNAMIR II was authorized “[t]o contribute to the security and protection of displaced persons, refugees and civilians at risk in Rwanda, including through the establishment and maintenance, where feasible, of secure humanitarian areas; [and]...[t]o provide security and support for the distribution of relief supplies and humanitarian relief operations”. In addition, an arms embargo was imposed on Rwanda under Chapter VII.¹⁴⁵

At US instance, however, it was agreed to initially send only 150 unarmed observers to assess the military situation and to supplement the peacekeeping force with 500 additional Ghanaian soldiers to bring the unit up to battalion strength.¹⁴⁶ Authorization for the deployment of the bulk of UNAMIR II was contingent on a further

¹⁴⁴ White House (1994) 13; See also; Power (2003) p. 378

¹⁴⁵ UN Doc. S/RES/918 [1994]; Ironically, Rwanda held a seat at the Security Council at this time, which was occupied by a representative of the besieged government. Moreover, Rwanda was due to take over the Presidency of the Council in September 1994. This resulted in a highly unusual situation, as the Rwandan government was privy to the strategies being considered by the international community to respond to the crisis.

¹⁴⁶ *New York Times* 1994a

report regarding the co-operation of the parties, the duration of the mandate, and the availability of troops. The prudence demanded by the U.S was not shared by the Secretary- General or force commander Dallaire, who promptly criticized the phased arrival of troops, arguing it would allow the RPF time to consolidate its military advantage.

The Security Council later passed Resolution 925 on June 8, authorizing the full deployment of 5,500 soldiers to Rwanda.¹⁴⁷ However, difficulties in obtaining logistical support (particularly from the US) severely impeded the operation and made it impossible for the bulk of additional forces to be deployed until October.¹⁴⁸

3.2.4 PHASE 4: OPERATION TURQUOISE

Operation Turquoise was the final attempt to halt the killings before world attention shifted to the humanitarian emergency that was unfolding beyond Rwanda's borders. On June 15, France announced that it was prepared, "along with its main European and African partners", to intervene in Rwanda to protect groups threatened with "extinction".¹⁴⁹ Arguably, this action was taken to enhance France's image both domestically and abroad, given the fact that it had earlier played a role in arming the Hutu extremists. The willingness of France to take the lead in such an intervention was met by other states with some misgivings as France has played a major role in arming and training the Hutu-dominated Rwandan government forces, which were responsible for

¹⁴⁷ UN Doc. S/RES/ 925 [1994]

¹⁴⁸ *New York Times* 1994b

¹⁴⁹ *New York Times* 1994c

many of the killings.¹⁵⁰ Consequently, there were suggestions that the French might seek to bolster the Rwandan army in their fight against the Tutsi rebels. While most of the atrocities had been inflicted on the Tutsis, France was concerned that RPF would retaliate against defenseless Hutu civilians. The RPF immediately declared its opposition to any French intervention.

France initially insisted that it would not act alone, but it soon became clear that none of its Western allies intended to join the intervention. The Western European Union met, and while some of its members offered to provide equipment, no state offered to provide troops.¹⁵¹ The US supported the idea as a means of bridging the gap before the planned arrival of the 5,500 UN peacekeepers, but also declined to contribute its own forces.¹⁵² The OAU criticized the initiative, stating that the unilateral action might be a hindrance to arriving at a solution.¹⁵³ Three of Rwanda's neighbors- Burundi, Tanzania and Uganda- denied France permission to stage operations from their territory.¹⁵⁴

French President Francois Mitterand declared that, regardless of whether other states responded positively, France would act. France Defense Minister Francois Leotard, however, asserted that "France won't go alone", stating that it was necessary to "get a mandate from the international community and the help of African countries".¹⁵⁵ By June 21, 1,000 French troops were positioned in Zaire and the Central African Republic, but

¹⁵⁰ *Foreign Affairs* 1994a

¹⁵¹ *Washington Post* 1994a

¹⁵² *Washington Post* 1994b

¹⁵³ *African Rights* (1995) p. 1141

¹⁵⁴ *New York Times* 1994d

¹⁵⁵ *Washington Post* 1994c

France wanted explicit Security Council authorization before intervening.¹⁵⁶ As the Security Council considered the draft French resolution, the rebel Tutsi force vowed to “do all we can to resist this French invasion” and urged the Council not to authorize it.¹⁵⁷

On June 22, the Security Council passed Resolution 929, under Chapter VII of the UN Charter, authorizing the French to use “all necessary means” to protect Rwandan civilians, but called for a “strictly humanitarian...impartial and neutral” operation that would not interfere in the fighting between the rebel and government forces. Further, the Resolution kept the troops under “national command and control” and stated that the duration of the intervention would last only two months.¹⁵⁸

The operational mandate was reportedly less than the three months sought by the Secretary- General, apparently due to a need to ease French domestic concerns about being involved in a prolonged conflict.¹⁵⁹ Operation Turquoise was launched the same day that authorization was given by the Security Council, but its operations were however limited to the western part of Rwanda and were not adequate for ensuring the protection of civilians or relief operations throughout the country. On July 4, the Tutsi RPF rebels gained control of Kigali, and brought the genocide to a halt, and on July 19, a government of national unity was sworn. Interestingly, nearly two months after the Security Council’s resolution to provide UNAMIR reinforcement, not a single additional

¹⁵⁶ UN Doc. S/1994/734

¹⁵⁷ *Washington Post* 1994d

¹⁵⁸ UN Doc. S/RES/929[1994]- The Security Council vote was ten in favor, none opposed , and five abstentions (Brazil, China, New Zealand, Nigeria, and Pakistan), an unusually tepid outcome to intensive French diplomatic lobbying. Despite falling under French national command, Operation Turquoise is nonetheless considered intervention by the international community, in much the same way as Operation Desert Storm was considered an action by the UN. In each case, rather than being placed under UN command, the responsibility for upholding the UN Charter was essentially “contracted out” to member states.

¹⁵⁹ *New York Times* 1994e; *Washington Post* 1994e

soldier had been deployed and Dallaire still commanded the same 503 soldiers he had since late April.¹⁶⁰

3.3 THE ROLE OF THE UN AND THE INTERNATIONAL COMMUNITY

Following the Rwandan genocide, there has been a lot of debate around the world about who is to blame for the international community's failure to intervene during the period leading to the genocide. On the part of the United Nations, the lack of a clear mandate for the UN forces in Rwanda did not do anything to help stop the massacres. Later on, the UN Security Council refused to send any substantive peacekeeping mission during the slaughter itself.

3.3.1 THE INTERNATIONAL COMMUNITY

Among the members of the European Union, France and Belgium are the two states that were most involved in the Rwandan conflict. During the Arusha peace mediation, France played an important role in breaking the stalemate at various stages during the process. When the RPF rebels first attacked Rwanda from Uganda, France sent 150 soldiers to Rwanda right after the first RPF attacks with the official purpose of protecting French expatriates. Reportedly, the French soldiers were in fact sent to the battlefield to help the Rwandan army control the north.¹⁶¹ More troops were later sent to reinforce the original contingent at the request of the Rwanda government.¹⁶²

¹⁶⁰ Power(2003) p. 377

¹⁶¹ Prunier (1995) pp. 100-107

¹⁶² *Ibid*

This intervention was considered by the French government and political leaders as supporting a French-speaking and pro-French country against a rebellion that was coming from, and helped by an Anglophone state (Uganda). However, it was done in the belief that the conflict would not be long, and that is why France quickly moved towards the option of a peaceful resolution. Its objective was to repatriate the considerable number of French nationals and assist civilians where possible. Operation Turquoise was widely criticized, as it was considered to be a way to support the *Forces Armees Rwandaises* [FAR] and Hutu militia, and to actually allow them to flee the country. France was seen as perhaps the least appropriate country to intervene because of its warm relationship with the genocidal Hutu regime.¹⁶³ However, Operation Turquoise is also considered by some to have been a very important humanitarian operation, as it is often mentioned as having resulted in the very survival of hundred of thousands of Rwandan civilians. Indeed, these civilians benefited from the “Free Military Zone” status given to the buffer zone, for the sake of the non-military internal displaced civilians.¹⁶⁴

Belgium on its part was involved in the conflict due to its colonial ties with Rwanda. Even though its influence on the country had declined in the post-colonial era, Belgium kept very good relations with Rwanda and was its main foreign aid provider. It was amongst the countries that had troops in the UNAMIR mission that was sent to Rwanda to help implement the Arusha Accords.¹⁶⁵ Belgian troops, however, withdrew following the brutal killing of 10 of its members in the days following the death of

¹⁶³ Power (2003) p. 380

¹⁶⁴ *Ibid*

¹⁶⁵ Tekle (1999) p. 118

President Habyarimana. In the meantime, Belgium vigorously supported all the mediation initiatives and contributed to the establishment of the first multipartite government in Rwanda.¹⁶⁶

When it comes to the response of the United States, it can be said that the US mostly remained unconcerned and indifferent to what was happening. On April 10th 1994, Bob Dole, the Republican Senate minority leader stated that: “I don’t think we have any national interest there”.¹⁶⁷ Further, following the evacuation of US nationals from Rwanda when the killings begun, he went on to add that: “The Americans are out, and as far as I’m concerned, in Rwanda, that ought to be the end of it”.¹⁶⁸ Subsequently, the United States did almost nothing to stop the genocide.

Before April 6th 1994, the United States ignored extensive early warnings about imminent mass violence. After the beginning of the massacres, not only it did not send troops to reinforce UNAMIR’s paltry peacekeeping contingent in order to stop the killings, but it refused to adhere to any other options. Indeed, the then U.S. President Bill Clinton, did not convene a single meeting of his senior foreign policy advisers to discuss what should be the U.S intervention in the new conflict.¹⁶⁹ Clinton’s government rarely condemned the killings, and the actions taken by his government had negative repercussions.

The US was one of the instigators of the UNAMIR withdrawal, and then it refused for a while to authorize the deployment of a new peace enforcement mission to

¹⁶⁶ *Ibid*

¹⁶⁷ Power (2003) p. 334

¹⁶⁸ *Ibid*

¹⁶⁹ *Ibid*

Rwanda. Just like the United Nations, the United States' political leaders' unwillingness to intervene was largely linked to the Somalia experience and the political risks of involving the country in a bloody conflict, especially since there were nothing to lose by avoiding Rwanda altogether.¹⁷⁰

Other African nations on their part did not do much to try to stop the genocide. The OAU, which was the intergovernmental organization in the continent can be said to have had the obligation to try to solve the Rwandan conflict.¹⁷¹ After the initial invasion, Rwanda and Uganda agreed, under the OAU auspices, to organize a regional conference on the refugee problem and hold consultations with all parties involved in the conflict in order to find a durable solution to all the problems.¹⁷² Subsequently, the OAU-sponsored Zaire agreement stated that it should send 55 peacekeepers as part of a NMOG that would oversee the implementation of a ceasefire reached in late 1990.¹⁷³ Beyond this, OAU involvement proved minimal.

3.3.2 THE UNITED NATIONS

Given that the renewed Rwanda conflict was originally considered a civil war, UN decision-makers used the fact that there was no peace to keep in establishing that there was no basis for a UN peacekeeping mission.¹⁷⁴ Additionally, the proximity of the failed Somalia mission, and especially the slaughter of 18 American servicemen in

¹⁷⁰ *Ibid*, p. 334.

¹⁷¹ Prunier,(1995) pp. 100-107

¹⁷² *Ibid*, pp. 100-107

¹⁷³ United Nations (1996) pp. 149-153

¹⁷⁴ Barnett (2002)

Mogadishu on October 13, 1993, played a role in the hesitation by the UN to get involved in another hazardous enterprise in Africa. The first post-Arusha Accords report to the Secretary General on the United Nations Assistance Mission to Rwanda highlighted the signs of deterioration of the security situation and the absence of a broad based transitional government as obstacles to peaceful resolution of the conflict. By the time of the first mandate renewal, there was a threat of UNAMIR withdrawal due to the fact that the Rwandan government was not honoring its responsibilities to the Arusha Accords.¹⁷⁵

After the disintegration of the original UNAMIR operation on April 6th 1994, the first two weeks of the genocide concluded with the decision on April 21st 1994 to reduce the peacekeeping mission from 2,500 to 270 soldiers.¹⁷⁶ This raises the question as to whether the UN Headquarters misinterpreted the information coming from the field, or whether they heard the military commander's concerns but could not authorize a very risky mission that might eventually fail with very damaging consequences to the organization.¹⁷⁷

As the genocide progressed, the mounting pressure to act was often rejected. The UN only delivered some small official statements, such as: "we remain actively seized by the matter".¹⁷⁸ It also did not want to work with the RPF, as it would appear as a departure from the self-imposed neutrality rule.¹⁷⁹ The resolution authorizing the intervention was finally passed on May 17th 1994, but diplomatic and logistical details

¹⁷⁵ Barnett (2002) p.13

¹⁷⁶ *Ibid*

¹⁷⁷ *Ibid* pp. 13-15

¹⁷⁸ *Ibid*, p.15

¹⁷⁹ *Ibid*

took longer than expected and no concrete action was taken before July 19th 1994, the day of the RPF's complete victory and the end of the genocide.

3.4 DOES THE UN BEAR RESPONSIBILITY FOR THE GENOCIDE?

It must be asked, why did the UN and the international community refuse to act? There have not yet been any adequate explanations offered, although it has been determined by an independent commission that choosing not to intervene was in fact a failure on the part of the UN to act in accordance with its Charter and the Declaration of Human Rights.¹⁸⁰ Given the dismal performance by the UN in Rwanda, one may be forced to ask the question as to whether there is any point having an organization such as the UN. This is an organization that was formed in the wake of World War II, when there was great moral indignation and stunned sensibilities about the evil that human beings were capable of perpetrating against each other.

It was not only shock of the Holocaust itself, or even of the Fascist idealism that took hold of some European nations; it was also the wretched knowledge that these things had been permitted to occur. In the aftermath, there was a moment when strong moral commitments could be made. Phrases such as “never again”, and terms such as “genocide” were developed, for there had been no words to adequately capture what had been done, nor were there adequate words for condemning the actions of the perpetrators, or by implication, those who had passively witnessed the events.

Events at the end of the twentieth century, as well as the killings that have been ongoing in Darfur since 2003, reveal that “never again” was a cry of outrage, but not

¹⁸⁰ Carlson, I; Sung- Joo, H; Kupolati, R (1999)

necessarily a call to action. People are once again being persecuted and dying at the hands of their own leaders. The tragedy is that, once again, the hands raised in defense of the persecuted have only rarely been strong and fast; more often they have been unsure, or all together absent. The United Nations has exhibited a tendency to waver between apparent indifference and intervention bordering on invasion or occupation under the mantle of human rights defense.

Why is it that the UN has all too frequently failed to do that which it was intended to do? Given that there has been legal framework in place to allow some kinds of interventions, why is it that the UN has too often not felt compelled to act? One may indeed be forced to ask if the organization really exists for the protection of human rights, or simply as nothing more than a tool for effecting the will of its most powerful members. Whereas during the early years of its formation, there was a great deal of optimism about what such an organization could accomplish, this cannot be said to be the case any more. By its very nature, the UN was meant to be open to all states. It would be a forum for the peaceful settlement of disputes, as well as a place where all nations could come together in peace and as equals to discuss issues of interest and importance on an international scale.

At Article 1, the UN Charter charges the UN with two particular responsibilities: First, it is mandated to maintain international peace and security and to uphold the rights of states as they have been traditionally conceived since the Treaty of Westphalia. What this means in practical terms is that the sovereignty of states holds a pre-eminent role in the active responsibilities of the UN. Peace has often been interpreted as peace between states. Security is a matter of being free from intervention and from the meddling of other

states. Each sovereign state was to be treated as an autonomous agent capable of determining the good of its people and of seeing to the maintenance of that good. But as the Cold War receded, a trend emerged, making it clear that there was another responsibility of the UN. The responsibility was not new, but had suffered neglect over the years. In the dawning of a new era, the UN leaders began to speak in new, more robust terms about the responsibility to protect the rights of peoples. The then Secretary-General Kofi Annan repeatedly stated that the United Nations is “an association of sovereign states, but the rights it exists to uphold belong to peoples, not to governments.”¹⁸¹

The second responsibility of the UN is the responsibility to uphold the rights of persons and peoples. It is not simply the case that the UN has an obligation to promote these rights; it conceives itself as having a duty to protect these rights and to intervene on behalf of those whose rights are being violated. Although it can be said that there is not only a moral obligation on the UN, but even a legal presumption against entering into the affairs of states, when the affairs of a state include violating internationally agreed upon human rights doctrine, the presumption against interference is mitigated.

In the later years of the twentieth century, it appeared that the United Nations community supported this doctrinal shift in favor human rights, at least on some occasions. However, whereas some attempts at intervention were successful in attaining their ends, others were less successful, while some, such as Rwanda, were complete failures.

¹⁸¹ Annan, K (1998)

It is important to note that the doctrine of human rights grants certain entitlements which are due to every human being. These entitlements are intended to apply, regardless of the circumstances of birth, geographic location, or any other variable associated with human life. Whereas it is generally expected that national governments of sovereign states have the responsibility of upholding and defending human rights, if nations fail in this respect, then such protection becomes the responsibility of the UN.

3.5 COULD THE GENOCIDE IN RWANDA HAVE BEEN AVERTED?

All too frequently, it has been suggested that had various things been done differently, the Rwandan genocide could have been averted. With specific reference to the role of the U.S. in its failure to prevent the genocide in Rwanda, Samantha Power claimed that either the U.S. conveniently did not know what was happening, that it knew but did not care, or that, from its perspective, regardless of what it knew there was nothing useful to be done.¹⁸² She further observed that the U.S. led a successful effort to remove most of the UN peacekeepers that were already in Rwanda, as well as aggressively worked to block the subsequent authorization of UN reinforcements.¹⁸³ It refused to use its technology to jam radio broadcasts that were a crucial instrument in the coordination and perpetuation of the genocide, and even as, on average, 8,000 Rwandans were being butchered each day, U.S. officials shunned the term "genocide," for fear of being obliged to act. She concludes by arguing that the U.S. in fact did virtually nothing to try to limit what occurred. Indeed, staying out of Rwanda was an explicit U.S. policy objective.

¹⁸² See Power (2003) generally

¹⁸³ *Ibid*

It can be argued that had General Dallaire received permission to forcefully raid the arms supply of the *Interahamwe* and to declare the government in violation of the peace process in the weeks leading up to the genocide, it is likely that the rump Rwandese government would have been less cavalier in starting the genocide. An important message would have been sent. Admittedly, we will never know for sure what would have happened if a more forceful UN presence was permitted, but a strong argument can be advanced that UNAMIR might have curbed the entire campaign had it been granted the power to use even minimal force. Many believe that even a small show of serious resistance to the genocide would have made a difference in the outcome. The leaders of the genocide did not want to be seen as such by the Western media or by the UN forces. Furthermore, it was evident that ordinary people, and even members of the youth militias, could be stopped with very modest resistance presented by the residual UNAMIR troops. There is abundant anecdotal evidence to support these claims.¹⁸⁴

Despite the apparent consensus that the genocide would have been averted had the international community and the UN taken positive measures towards achieving this result, an argument has been presented that intervention would not have achieved much. Alan Kuperman, the main proponent of this argument, contends that although some lives could have been saved by intervention, even a large force deployed immediately upon the reports of the genocide would not have saved even a half of the victims.¹⁸⁵ He argues that whereas a large force would have been required to stop the genocide, it would not have been practically possible to airlift such a force to Rwanda

¹⁸⁴ See generally, Barnnet (2002); Gouveritch (1998) ; Prunier (1995); Power (2003) ; Dallaire(2003)

¹⁸⁵ Kuperman (2000) p.94

within reasonable time.¹⁸⁶ However, I find this unconvincing, since just a few years earlier, the US was able to send a 30,000-strong force to Somalia, indicating that indeed the question was merely one of willingness to commit its troops.

Kuperman additionally disagrees with the argument put forth by many observers that 5,000 well-armed troops could have prevented the genocide had they been deployed promptly after the killing began, and that the West's failure to stop the slaughter resulted exclusively from a lack of will.¹⁸⁷ He further argues that 5,000 troops would have been insufficient to stop the genocide without running risks of failure or high casualties.¹⁸⁸ I however find this argument problematic since if indeed a stronger force was needed, why is it that the existing force, which was already insufficient was trimmed down to a ridiculous 270 troops?

Regarding the famous fax by Dallaire to the UN headquarters about an arms cache and the training of troops, Kuperman argues that even though Dallaire had been granted the authorization he was seeking to raid the arms cache, it is unlikely that doing so would have prevented the genocide.¹⁸⁹ His argument is based on the rules of peacekeeping which required co-operating with Rwandan police. He argues that if indeed the UN had permitted Dallaire to act without consulting local authorities, Rwanda could have responded under Chapter VI of the UN Charter, which governs the consensual peacekeeping operations by simply expelling the force. However, my response to this contention is that this goes to the mandate and indeed illustrates why there was need to

¹⁸⁶ *Ibid*, p. 106

¹⁸⁷ *Ibid*, p.111

¹⁸⁸ *Ibid*, p.113

¹⁸⁹ *Ibid*

expand the mandate that UNAMIR had been given. Had Dallaire's force been granted an extended mandate under Chapter VII of the Charter, they definitely would have been able to do more than they were able to do under the circumstances.

Kuperman also disputes the argument that quickly jamming or destroying Hutu transmitters when the violence broke out could have prevented the genocide.¹⁹⁰ I however argue that the role of the media during this genocide cannot be ignored. This is because radio broadcasts were used to perpetrate hate as well as give names of those who were being targeted by the killers.¹⁹¹ If the necessary action had been taken to bring the genocide to a halt, there is no doubt that this would in fact have sent a message to the planners of the genocide that the world was watching, and further than action would be taken to derail their plans. The failure of the international community to intervene forcefully definitely provided the genocide organizers with a sense of impunity, as well as of being allowed to proceed.

The international community's unwillingness to act gave the interim government the clearest possible signals and leeway to continue the genocide without being bothered. As Alison Des Forges, writes, "Seeing the international indifference, Rwandans became convinced that the genocidal government would succeed. Those who hesitated at first now yielded to fear or opportunism and carried the slaughter throughout Rwanda."¹⁹²

It is also worthy of note that the bureaucracy of the UN contributed to the inability of timely UN intervention in Rwanda. This is primarily due to the lack of

¹⁹⁰ Kuperman (2000) p.114

¹⁹¹ See, Melvern (2000) pp. 70-71

¹⁹² Des Forges (2000) p. 141.

financial and military resources of the UN and the decision-making process of the Security Council as well as the reality that most states are unwilling to support the long-term commitment to such interventions (which commitment may be necessary to their success). For instance, when the genocide began, policy makers in Washington and at the U.N believed that UNAMIR forces lacked the strength to arrest the spread of the conflagration, and they refused to consider sending in their own troops. This means that, in some cases, the UN is incapable of arranging and effecting a ceasefire or separating the warring factions. Indeed, similar dithering at the UN still continues while civilians are being killed in Darfur.

What is clear from the Rwandan experience is that although there may be legal basis for humanitarian intervention, as the case has been, the Security Council has not been functionally effective. It has not been carrying out its executive power in matters of international peace and security, because it is constantly being blocked by veto. The international organization that was going to replace the individual states' right to enforce international security is not functioning, as it ought to be. In the case of Rwanda, even though Rwanda no doubt met the conditions under which there is a moral obligation of humanitarian intervention, the international community chose not to intervene, yet such intervention would have more likely than not saved hundreds of thousands of lives that were lost. There was a persistent lack of political will by member states to act, or to act assertively enough, which affected the Security Council's decision-making and response. However, given that states will continue to act in their perceived national interest, evidence has shown that they will only intervene where intervention serves that interest.

3.6 HAVE ANY LESSONS BEEN LEARNED?

Many questions have been raised as to whether any lessons have been learned from the humanitarian interventions of the last decade? When massive killings and genocide have occurred, they have been followed by a rush to declare ‘lessons learned’, although actions pursuant to such declarations have not indicated that there were any actual lessons learned. There seems to be a gap between lessons claimed to have been learned, and lessons actually learned.

It has been argued that the governments and agencies that are supposed to learn are not monoliths, and that competing interests dominate in political and bureaucratic decision-making. Moreover, even when lessons appear to have been agreed in headquarters, it can prove extremely difficult to translate them into practice on the ground.¹⁹³ Additionally, an argument has been presented pointing to a puzzling paradox; the international system appears to have an extra-ordinary capacity to absorb criticism, not reform itself, and yet emerge strengthened.¹⁹⁴

In the aftermath of the Rwandan genocide and with the unfolding crisis in Darfur, the urgent question that has emerged has been whether the Rwanda genocide taught the world and specifically the UN any lessons that might help prevent Darfur from following in its place. UN Secretary General Kofi Annan, who was head of peacekeeping at the world body in 1994, has accepted institutional and personal blame for not doing more to prevent the Rwandan slaughter.¹⁹⁵

¹⁹³ Weiss (2001) p. 421

¹⁹⁴ De Waal (1997) p. vi

¹⁹⁵ See, <http://www.un.org/millennium/sg/report/>.

Sadly, Darfur has experienced a similarly tepid response, with the UN and the international community doing very little to avert the ongoing crisis. It is like a sequel to Rwanda part one, raising doubt as to whether any lessons were actually learned from the Rwandan experience. More than ten years after the Rwandan genocide and despite years of soul-searching, the response of the international community to the events in Darfur has been nothing short of shameful. United Nations officials, as well as western governments, such as the US have played a key role in raising awareness to the gravity and scale of the abuses in Darfur, but to date, there has been no adequate or substantive response to the crisis.

CHAPTER 4

IS THE UNFOLDING GENOCIDE IN DARFUR A CASE OF DEJA VU?

4.1 HISTORY OF THE DARFUR CRISIS

The conflict in Darfur is seen as having begun in early 2003, when two rebel groups, the Justice and Equality Movement (JEM) and the Sudan Liberation Movement (SLM) accused the government of neglecting the Darfur region, as well as favoring the Arabs, while oppressing the black Africans.¹⁹⁶ The SLM, which is much larger than the JEM, is generally associated with the Fur and Masalit, as well as the Wagi clan of the Zaghawa, while the JEM is associated with the Kobe clan of the Zaghawa. In 2004, the JEM joined the Eastern Front, a group set up in 2004 as an alliance between two Eastern tribal rebel groups, the Rashaida tribe's Free Lions and the Beja Congress.

On February 26, 2003, a group calling itself the Darfur Liberation Front (DLF) publicly claimed credit for an attack on Golo, the headquarters of Jebel Marra District. However, even prior to this attack, a conflict had erupted in Darfur when rebels attacked police stations, army outposts and military convoys, resulting in the government's engagement in a massive air and land assault on the rebel stronghold in the Marrah Mountains.¹⁹⁷

The conflict has been characterized as one between Arab and African populations, and although it has many inter-woven causes, it is mainly rooted in structural inequality between the center of the country around the Nile River and the 'peripheral' areas such as

¹⁹⁶ The Sudan Liberation Movement and Sudan Liberation Army (SLM/SLA) Political Declaration, Sudan Liberation Movement (March, 14, 2003)

¹⁹⁷ Flint and De Waal (2006) pp.76-77

Darfur. Tensions have been exacerbated in the last two decades by a combination of environmental calamity, high population growth, desertification, political opportunism and regional politics. In April 2003, a joint Sudan Liberation Army (SLA) and JEM force raided entered al- Fashir and attacked the sleeping garrison. This raid was regarded as highly successful and was seen as unprecedented in Sudan since in the 20 years of the war in the South, the rebel Sudan People's Liberation Army (SPLA) had never carried out such an operation.¹⁹⁸ The rebels later seized the town of Tine along the Chadian border, seizing large quantities of supplies and arms. It is at this point that President Omar-al- Bashir threatened to unleash the army. However, the Sudanese army was unable to counter such raids because the rebels used the tactic of hit and run using Toyota Land Cruisers to speed across the semi-desert. Being untrained in desert operations, the army decided to use aerial bombardment of rebel positions on the mountain, and the results were devastating.¹⁹⁹

The continuous defeat of the army by the rebels led the government to decide to make use of the *Janjaweed*, which is a group composed of armed herders outfitted as a paramilitary force, complete with communication equipment and some artillery.²⁰⁰ The better-armed *Janjaweed* quickly gained the upper hand, and by spring of 2004, several thousand people, mostly from the non-Arab population had been killed and as many as a million more had been driven from their homes, causing a major humanitarian crisis in the region. The crisis took on an international dimension when refugees begun pouring

¹⁹⁸ Flint and de Waal (2006) pp.99-100

¹⁹⁹ *Ibid*, p.99

²⁰⁰ *Ibid*, pp. 60, 101-103

into neighboring Chad. A United Nations observer team reported that non-Arab villages were singled out while Arab villages were left untouched.²⁰¹

In 2004, Chad brokered negotiations leading to an April 8 humanitarian ceasefire agreement between the Sudanese government, JEM and SLM. A group splintered from the JEM in April- the National Movement for Reform and Development- which did not participate in the April cease-fire talks or agreement. Despite the ceasefire, *Janjaweed* and rebel attacks continued, and, as part of its operations against the rebels, government forces have since waged a systematic campaign of “ethnic cleansing” against the civilian population who are members of the same ethnic groups as the rebels.

The scale of the crisis led to warnings of an imminent disaster, with the United Nations Secretary- General Kofi Annan warning that the risk of genocide was frighteningly real in Darfur. Independent observers noted that the tactics, which include dismemberment and killing of non-combatants and even young children and babies, are more akin to the ethnic cleansing used in the Yugoslav wars.²⁰² On May 5 2006, the government of Sudan signed an accord with the faction of the SLA led by Minni Minnawi. However, the agreement was rejected by two other smaller groups, the Justice and Equality Movement and a rival faction of the SLA.²⁰³ The accord was orchestrated by the US Deputy Secretary of State Robert B. Zoellick, Salim Ahmed Salim (working on behalf of the African Union), AU representatives, and other foreign officials operating

²⁰¹ United Nations Inter- Agency Fact Finding and Rapid Assessment Mission: Kailek Town, South Darfur, United Nations Resident Coordinator, April 25, 2004

²⁰² *BBC News* 2004a

²⁰³ *Washington Post* 2006a

in Abuja, Nigeria, and it called for the disarmament of the *Janjaweed* militia and for the rebel forces to disband and be incorporated in the army.²⁰⁴

Following renewed fighting in July and August of 2006, United Nations Secretary- General Koffi Annan called for 18,000 international peacekeepers to be sent to Darfur to replace the AU force of 7,000.²⁰⁵ This proposition was opposed by the Sudan government, however, which warned that it was undertaking preparations for a major military offensive, if such force was deployed.²⁰⁶ On August 19, 2006, Sudan reiterated its opposition to replacing the 7,000 AU force with a 17,000 UN one.²⁰⁷ This resulted in the US issuing a “threat” to Sudan over the “potential consequences” of this position.²⁰⁸ On August 24, Sudan failed to attend a United Nations Security Council meeting to explain its plan of sending 10,000 Sudanese soldiers to Darfur instead of the proposed 20,000 UN peacekeeping force.²⁰⁹

4.2 INTERNATIONAL RESPONSE

International attention to the Darfur conflict largely began with reports by the advocacy organizations Amnesty International (in July 2003) and the International Crisis Group (in December 2003). However, widespread media coverage did not start until the United Nations Resident and Humanitarian Coordinator for Sudan, Mukesh Kapila,

²⁰⁴ *BBC News* 2006a; “Main Points of the Deal”, *Aljazeera Net* 2006a

²⁰⁵ *BBC News* 2006b; *Voice of America* 2006a

²⁰⁶ *Washington Post* 2006f

²⁰⁷ *People’s Daily* 2006a

²⁰⁸ *Independent Online* 2006a

²⁰⁹ *Deutsche Presse- Agentur* 2006a

called Darfur the “world’s greatest humanitarian crisis” in March 2004.²¹⁰ It is indeed worthy of note that Kapila’s pleas for action to end the killings in Darfur were ignored, and eventually due to frustration with the non-action of the UN he quit. Gerard Prunier argues that the world’s most powerful countries have largely limited their response to expressions of concern and demands that the United Nations take action. The UN, lacking both the funding and military support of the wealthy countries, has left the African Union to deploy a token force (AMIS) without a mandate to protect civilians. In the lack of foreign political will to address the political and economic structures that underlie the conflict, the international community has defined the Darfur conflict in humanitarian assistance terms and debated the “genocide” label.²¹¹

It is sad, that over ten years following the Rwandan genocide and despite years of soul-searching, the response of the international community to the events in the Darfur region of Western Sudan starting in 2003 at best point at history repeating itself. The world has watched, and continues to watch with both shock and apathy as Sudan’s Arab-dominated government ethnically cleanses the vast Darfur region by giving air support to mainly Arab militias who kill, maim, rape and rob black Africans.

4.3 GENOCIDE CLAIMS

On September 18, 2004, the UN Security Council passed Resolution 1564, which called for a commission of inquiry on Darfur to assess the conflict. The UN report released on January 3, 2005 stated that while there were mass murders and rapes, they

²¹⁰ Prunier (1995) pp. 124-148

²¹¹ *Ibid*

could not label it as genocide because “genocidal intent appears to be missing”.²¹² Despite this initial finding, and the uncertainty at that time as to whether this was genocide or not, the US took the lead in condemning the genocide, thus departing from the reasoning that informed the American diplomatic rhetoric response to Rwanda ten years prior. Thus whereas the Clinton administration was reluctant to name the killings in Rwanda genocide, the Bush administration was quick to use the term in the case of Darfur.²¹³ This raises the question as to why no action has been taken despite naming these events as genocide whereas in the Rwandan case this term was avoided as it was seen as imposing an obligation to act. What had become of the argument that the US avoided the term, since admitting that genocide was taking place in Rwanda would have imposed an obligation to act? By the summer of 2004, amidst utterances of an impending genocide in Darfur by American evangelicals, African- American leaders, and human rights advocates, high-level US officials began to openly refer to the situation as genocide despite the fact that there was still uncertainty as to whether what was happening was really genocide.²¹⁴ Of interest is the fact despite being so quick to name the crime genocide, the U.S was not willing to do anything to stop it.

²¹² Report of the International Commission of Inquiry on Darfur to the United Nations Secretary- General, September 18, 2004; Sudan’s Mass Killings Not Genocide: UN Report, CBC News, February 1, 2005

²¹³ Heinze (2007) p.359

²¹⁴ *Ibid*, p.361

4.4 CRITICISM OF INTERNATIONAL RESPONSE

On October 16, 2006, the Minority Rights Group (MRG) published a critical report, arguing that the UN and the international community could have prevented the deepening crisis in Darfur, and that few lessons appear to have been drawn from their ineptitude during the Rwandan Genocide. Mark Lattimer, the executive director of MRG stated that “this level of crisis, the killings, rape and displacement could have been foreseen and avoided...Darfur would just not be in this situation had the UN systems got its act together after Rwanda: their action was too little too late.”²¹⁵ On October 20, 2006, 120 genocide survivors of the Holocaust, the Cambodian and Rwandan genocides, backed by six aid agencies, submitted an open letter to the European Union, calling on them to do more to end the atrocities in Darfur, with a UN peace keeping force as “the only viable option”.²¹⁶

Human rights advocates and opponents of the Sudanese government portray China's role in providing weapons and aircraft as a cynical attempt to obtain oil and gas just as colonial powers once supplied African chieftains with the military means to maintain control as they extracted natural resources.²¹⁷ Politically, China has offered Sudan support, threatening to use its veto on the U.N. Security Council to protect Khartoum from sanctions and has been able to water down every resolution on Darfur in order to protect its interests in Sudan.²¹⁸ There has been further evidence of the Sudanese

²¹⁵ *Independent Online* 2006b

²¹⁶ *BBC News* 2006b

²¹⁷ *Human Rights Watch* 2007a; *Washington Post* 2007a

²¹⁸ *The Power and Interest News Report* 2007a

government's murder of civilians to actually facilitate the extraction of oil. The U.S.-funded Civilian Protection Monitoring Team, which investigates attacks in southern Sudan concluded that "as the Government of Sudan sought to clear the way for oil exploration and to create a cordon sanitaire around the oil fields, vast tracts of the Western Upper Nile Region in southern Sudan became the focus of extensive military operations".²¹⁹ Sarah Wykes, a senior campaigner at Global Witness, an NGO that campaigns for better natural resource governance, says: "Sudan has purchased about \$100 million in arms from China and has used these weapons against civilians in Darfur".²²⁰

On the opposite side of the issue, publicity given to the Darfur conflict has been criticized in some segments of the Arab media as exaggerated. Statements to this effect take the view that "the (Israeli) lobby prevents any in-depth discussion and diverts the attention from the crimes committed every day in Palestine and Iraq",²²¹ and that Western attention to the Darfur crisis is "a cover for what is really being planned and carried out by the Western forces of hegemony and control in our Arab world". While "in New York, there are thousands of posters screaming 'genocide' and '400,000' people dead", in reality only "200,000 have been killed".²²² Furthermore, "what has been done in Darfur is not genocide, but simply war crimes".²²³

²¹⁹ 'Final Report: Report of Investigation: Violence Against Civilians Along the Bentiu- Leer- Adok Road', Civilian Protection Monitoring Team, March, 19, 2007

²²⁰ *Washington Post* 2007a

²²¹ *Al-Hayat* (English edition) 2007a

²²² Sudanese Journalist Babker Issa, editor of the daily newspaper Al- Raya, Al-Raya (Qatar), April 20, 2007

²²³ *Ibid*

4.4.1 THE PROPOSED UN PEACEKEEPING FORCE

On August 31, 2006, the UN Security Council approved a resolution to send a new peacekeeping force of 17,300 to Darfur.²²⁴ The Khartoum government, however, expressed strong opposition to the resolution.²²⁵ On September 1, 2006, African Union officials reported that Sudan had launched a major offensive in Darfur.²²⁶ On September 5, 2006, the Sudan government asked the AU force in Darfur to leave the region by the end of the month, adding that the AU had no right to transfer this assignment to the UN or any other party, and further, that this was a right that rested with the government of Sudan.²²⁷

4.4.2 IMPLEMENTATION FAILURE

On September 12, 2006, Sudan's European Union representative Pekka Haavisto claimed that the Sudanese army was bombing civilians in Darfur.²²⁸ The UN Secretary General Kofi Annan told the UN Security Council that the tragedy in Darfur had reached a critical moment and that it warranted the Council's closest attention and urgent action.²²⁹ Despite the view that the AU force could not do anything because the AU mandate was very limited, Khartoum remained sternly against the UN peacekeeping

²²⁴ United Nations Security Council *Verbatim* Report Meeting 5519 on August 21, 2006

²²⁵ *Voice of America* 2006b

²²⁶ *Associated Press* 2006a

²²⁷ *AFP* 2006a

²²⁸ *Reuters* 2006a

²²⁹ *People's Daily* 2006b

force, with President Al- Bashir depicting it as a colonial plan and stating that Sudan did not want to be turned into another Iraq.²³⁰

On October 2, 2006, with the UN force plan indefinitely suspended on account of the Sudan government's opposition, the AU announced that it would extend its presence in Darfur until December 31, 2006.²³¹ Two hundred UN troops were sent to reinforce the AU force, and on October 6, the UN Security Council voted to extend the UNAMIS mandate until April 30, 2007.²³² The hybrid UN/AU force was finally approved on July 31, 2007 with the unanimously approved UN Security Council Resolution 1769. UNAMID will take over from AMIS by December 31, 2007, at the latest, and has an initial mandate up to July 31, 2008.²³³

4.4.3 RUSSIAN AND CHINESE UNDERMINING OF SANCTIONS

Russia and China have been accused of supplying arms, ammunition and related equipment to Sudan.²³⁴ These have been transferred to Darfur for use by the government and the *Janjaweed* militia in violation of a UN arms embargo against Sudan. Both China and Russia have denied breaking UN sanctions. Yet China has a close relationship with Sudan, and, in early 2007, it indeed increased its military cooperation with the government. Because of Sudan's plentiful supply of oil, China considers good relations

²³⁰ *Kuwait News Agency* 2006a

²³¹ *Reuters* 2006b; *Reuters* 2006c

²³² *United Press International* 2006a

²³³ UN Resolution for Darfur: An Important But Sufficient First Step Towards Protecting Civilians

²³⁴ *Amnesty International* 2007a ; *New York Times* 2007a

with Sudan to be a strategic necessity that is needed to fuel its booming economy.²³⁵ China also has direct commercial interests in Sudan's total oil production. Additionally, it owns the largest single share (40 percent) of Sudan's national oil company, Greater Nile Petroleum Operating Company.²³⁶ It has consistently opposed economic and non-military sanctions on Sudan.²³⁷

4.4.4 CONCLUSION

Looking at the response by the UN and the international community to the atrocities going on in Darfur, it is no doubt clear that despite the experience during the Rwandan genocide over a decade ago, the world seems to be following the same path as it did then. Despite the awareness raised by UN officials, international governments, as well as the by the media, the crisis in Darfur is yet to receive adequate attention and action. Strong condemnation, backed by inaction has not yielded any positive results for the people of Darfur, whose innocent lives continue to be senselessly lost.

Although the crisis in Darfur presents a supreme humanitarian emergency, it has not been treated as such and since the genocide begun, the world has left the responsibility of protecting the citizens of Darfur to the African Union Peacekeeping Mission, whose effectiveness has been marred by limited training, limited resources, limited numbers, as well as a limited mandate. The UN Security Council on its part has

²³⁵ *Reuters* 2007a; *BBC News* 2007a; *LA Times* 2007a

²³⁶ *The Wall Street Journal* 2007a; *Chicago Tribune* 2007a

²³⁷ *Inter Press Service* 2006a; *Reuters* 2007b; *BBC News* 2006d

been divided on Sudan because different member states have divergent interests. Other players, such as the US were quick to call it genocide, but then let it happen.

What is clear is that despite loud proclamations of lessons learned following the Rwandan genocide, the situation in Darfur is a clear indication that indeed, no such lessons were learned.

CHAPTER 5

CONCLUSION AND POLICY RECOMMENDATIONS

5.1 CONCLUSION

In recent years, nothing seems to have divided international studies scholars and policy analysts as much as the question of humanitarian intervention and what the role of the UN and the international community should be. Discussions on the subject seem to produce an explosive mixture of ethics, politics, and law; and it is not always clear where scholars are drawing the dividing lines among the three, if at all. Nevertheless, there is increasing consensus that international law is not set in concrete and must adapt to meet new situations. This is because the UN Charter cannot cover every eventuality that occurs, and individual states must have the legal power to intervene to prevent genocide or widespread crimes against humanity until such time as the UN Security Council takes control.

This study sought to explore the concept of humanitarian intervention in the face of massive human rights violations, including the issue of whether there is a legal foundation for humanitarian intervention in contemporary international law. Specifically, it examined the question of what is to be done in a crisis like the genocide that occurred in Rwanda, when the international community seeks to stop the killing. Can nations, acting through the UN Security Council, fulfill a “responsibility to protect” innocent civilians? Or is such a doctrine just a by- word for inaction on the part of the UN and the international community?

More than a decade after the genocide in Rwanda, the UN and the international community cannot afford to repeat the same mistakes. If they do not act now in Darfur,

when will they ever act? If they do not have special and clear-cut obligations in the case of genocide, when will they? The experience of Rwanda no doubt demonstrated the importance of timely response in the face of humanitarian crisis. In Darfur, there is one immediate priority: stopping the killing and securing life-saving relief for nearly two million people from Darfur. To do this, the international community must make a fundamental choice. It can either allow the government of Sudan, the author of this genocide, to determine how and when to end it and what humanitarian aid to allow through, or it can authorize an international intervention to provide protection for and security to the people of Darfur. The UN Security Council continues to hesitate on Darfur, largely because of the economic and diplomatic interests of its permanent members, who do not wish to antagonize Khartoum. But unless a member of the Security Council insists that this is genocide and demands that the council address the matter, the African Union and Sudan's African neighbors will be left to bear the brunt of this growing humanitarian catastrophe without adequate resources to stop it. And they will likely be blamed for failing to act sufficiently and in time to save hundreds of thousands of lives – another genocide on African soil.

Finally, if the UN and the international community as a whole are to finally cease re-interpreting the "never again" pledges, made following the WW II Holocaust, Cambodia, Bosnia, Kosovo and Rwanda, as "again and again" in new catastrophes such as Darfur, more timely and effective response to humanitarian crisis is required if the world is to avoid recurrences of human catastrophe that results in loss of life.

5.2 POLICY RECOMMENDATIONS

With no end to global conflicts, humanitarian interventions are likely to continue in the foreseeable future. How such future humanitarian crises will be handled is important in ensuring that catastrophic human rights violations will be a thing of the past. This is why reforming the UN humanitarian intervention framework and response of international community to crises is very critical to averting occurrences of genocides. Specifically, some of the policy recommendations which may play a critical role in preventing future human rights violations in Africa are as follows:

- The role of intergovernmental organizations in Africa, such as NEPAD, ECOWAS, SADCC, EAC, IGADD and COMESA should be encouraged to promote not only economic interests but also political harmony, with emphasis on protection of human rights. Rather than waiting for the UN and the international community, in cases where conflicts flare up in Africa, such regional organizations should be given a mandate and flexibility to intervene in order to end the conflicts before they degenerate into suffering and loss of human life. It should be noted that Africa cannot achieve such a feat on its own. Because of financial and logistical constraints, the UN and the international community can enhance the intergovernmental organizations' effort by supplementing their resources.
- New legal and institutional reforms are necessary within the UN Charter to ensure member states comply with the treaties on human rights. This will streamline the diverse human rights monitoring and supervision mechanisms that currently exist. One way of doing this is for the UN personnel to make prompt visits whenever

there are complaints of human rights violations. This will help contain and curtail any incidents of human rights violations at earlier stages.

- There is also a need to redefine the criteria for humanitarian intervention. Whereas the primacy of the use of force by the UN Security Council should be maintained, effective preventive measures such as economic and political sanctions before the actual use of force should be given impetus to pre-empt human rights violations. This can only be effective when all the UN Security Council member states are in agreement rather than pursuing different agendas depending on their interests and objectives.
- The current composition of UN Security Council has been a source of stalemate where, in the case of human rights violations that require intervention or sanctions, the Security Council members decide either to pass a resolution or not, depending on how it will affect their geopolitical and economic interests. To break this log jam, there is a need to reform the Security Council itself by enlarging it through increasing the number of members to provide equal geographical distribution with voting rights. The immediate outcome of such a reform will likely increase the legitimacy of the Security Council among the UN member states when intervening to halt human rights violations.
- Finally, there is a need to adopt a progressive interpretation of the UN Charter to conform to changing times. In this regard, legal objections to the doctrine of humanitarian intervention in the international law relate to the relationship between humanitarian intervention on one hand and the doctrine of state sovereignty and non-intervention on the other. Therefore, it is imperative to

balance the UN Charter obligations on states to promote and protect human rights, but at the same time, give the UN Security Council and the international community the flexibility needed to intervene whenever there is evidence of human rights violations.

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