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COLLEGE OF HUMANITIES AND SOCIAL SCIENCES

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

**A CRITICAL ANALYSIS OF HUMANITARIAN INTERVENTION BY THE UNITED
NATIONS IN CONTEMPORARY INTERNATIONAL LAW: A CASE STUDY OF
THE 1994 RWANDA GENOCIDE**

BY

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DECLARATION

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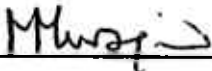


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This dissertation has been submitted for examination with my approval as University Supervisor



PROF. MAKUMI MWAGIRU

23 November 06

DATE

DEDICATION

To our children who are bound to take up leadership positions, that they may in all cases consider the principle of humanity as key to all decisions.

ACKNOWLEDGEMENTS

It is not by personal power or might that this work was undertaken and finalized but rather by the strength and grace of God. In this regard, a number of people were purposed and did give me immense academic and moral support. I wish to single out my supervisor Prof. Makumi Mwagiru who gave me very insightful comments, without which the work would not have taken this shape. To you all, am forever grateful and I say, "God bless you."

ABSTRACT

What kind of world ignores the systematic vilification, victimisation and murder of a group of people? What does it mean when genocide not only occurs, but is ignored? In 1994, over 800,000 Rwandan Tutsis and moderate Hutus were systematically murdered while the international community watched. This project explores the UN indifference to the Rwandan genocide as a failure in its obligation to maintain international peace and security. Through an analysis of the events at the international scene during the genocide, I argue that the UN could have intervened in good time to prevent the genocide from occurring or at least prevented the loss of so many lives.

LIST OF ACRONYMS

DPKO	United Nations Department of Peacekeeping
Genocide Convention	Convention on the Prevention and Punishment for the Crime of Genocide, 1948
NIF	Neutral International Force
RPF	Rwandese Patriotic Front
RTLM	Radio Télévision Libres des Milles Collines
UN	United Nations
UNAMIR	United Nations Assistance Mission for Rwanda
UNOMUR	United Nations Observer Mission Uganda - Rwanda

TABLE OF CONTENTS

DECLARATION	ii
DEDICATION	iii
ACKNOWLEDGEMENTS	iv
ABSTRACT	vi
LIST OF ACRONYMS	vii
<u>TABLE OF CONTENTS.....</u>	<u>1</u>
<u>CHAPTER ONE.....</u>	<u>3</u>
<u>INTRODUCTION.....</u>	<u>3</u>
INTRODUCTION	3
BACKGROUND TO THE STUDY.....	4
STATEMENT OF THE RESEARCH PROBLEM.....	7
OVERALL OBJECTIVE OF THE STUDY.....	8
SPECIFIC OBJECTIVES.....	8
HYPOTHESIS	9
LITERATURE REVIEW.....	9
LITERATURE REVIEW ON COLLECTIVE HUMANITARIAN INTERVENTION.....	10
LITERATURE REVIEW ON THE UN ORGANS IN RELATION TO HUMANITARIAN INTERVENTION	15
LITERATURE REVIEW ON RWANDA AND EVENTS DURING AND FOLLOWING THE 1994 GENOCIDE	19
JUSTIFICATION OF THE STUDY	22
THEORETICAL FRAMEWORK.....	23
RESEARCH METHODOLOGY	26
CHAPTER OUTLINE.....	26
<u>CHAPTER TWO.....</u>	<u>28</u>
<u>THE USE OF FORCE, HUMAN RIGHTS AND HUMANITARIAN INTERVENTION.....</u>	<u>28</u>
INTRODUCTION	28
OVERVIEW OF INTERNATIONAL LAW FRAMEWORK ON THE USE OF FORCE.....	28
HUMANITARIAN INTERVENTION AS A TOOL FOR ENFORCING HUMAN RIGHTS	35
GENOCIDE AS BASIS FOR HUMANITARIAN INTERVENTION.....	38
INTERNATIONAL DIMENSIONS OF GENOCIDE VIS-À-VIS INTERNATIONAL PEACE AND SECURITY	42
THE UN'S DUTY IN HUMANITARIAN INTERVENTION.....	43
PRECEDENT ON SECURITY COUNCIL ACTION UNDER CHAPTER VII	45
<u>CHAPTER THREE.....</u>	<u>48</u>

<u>THE 1994 RWANDA GENOCIDE VIS-À-VIS THE UNITED NATIONS RESPONSIBILITY</u>	48
INTRODUCTION	48
THE INTERNATIONAL SCENE PRIOR TO THE 1994 GENOCIDE	49
INTERNATIONALISATION OF ETHNIC CONFLICTS IN THE GREAT LAKES REGION	49
ARUSHA PEACE AGREEMENT VIS-A-VIS UN RESPONSIBILITY OVER RWANDA	50
SOMALIA’S INFLUENCE VIS-A-VIS SECURITY COUNCIL DECISION ON RWANDA	53
EARLY WARNINGS VIS-À-VIS UN’S RELUCTANCE TO INTERVENE	56
EARLY WARNING VIS-À-VIS MEDIA AND PROPAGANDA	58
EARLY WARNING VIS-À-VIS ILLICIT ARMS	60
THE “GENOCIDE FAX”	60
SECURITY COUNCIL INACTION IN THE FACE OF GENOCIDE	62
THE LATE TURN AROUND	65
<u>CHAPTER FOUR</u>	71
<u>CRITICAL ANALYSIS OF HUMANITARIAN INTERVENTION UNDER THE UNITED NATIONS</u>	71
INTRODUCTION	71
REFUSAL TO ADMIT THE EXISTENCE OF GENOCIDE	71
OVERALL FAILURE OF THE SECURITY COUNCIL	75
AMBIGUITY IN ESTABLISHING UNAMIR	76
LACK OF POLITICAL WILL VIS-À-VIS UNAMIR	83
MEMBER STATES REFUSAL TO SUPPORT THE UN	84
POOR COORDINATION, POOR FLOW OF INFORMATION AND POOR ANALYSIS	86
<u>CHAPTER FIVE</u>	91
<u>CONCLUSIONS</u>	91
<u>BIBLIOGRAPHY</u>	96

CHAPTER ONE INTRODUCTION

Introduction

More than ninety percent of the over hundred armed conflicts in the 1990s were internal and more than ninety percent of their five million victims were civilians.¹ Amidst this, the international system is based on the state-centric concepts of sovereignty, non-intervention and the use of force, and only binds the United Nations (UN) to intervene in these matters.

Hugo Grotius,² a seventeenth-century scholar and one of the earliest proponents of international law, held that a sovereign committing atrocities against his own subjects could provide justification for others taking up arms against that sovereign in defense of all humankind.³ While not widely accepted during his time, Grotius' viewpoint was reflected in state practice throughout the nineteenth and early twentieth centuries. Indeed, prior to the U.N. Charter a right of humanitarian intervention was accepted as a customary international law.⁴

With the advent of the League of Nations and ultimately the United Nations, a new standard of international order was introduced. The principles of state sovereignty and non-intervention were to be given utmost priority, as avoiding inter-state conflict was seen as the key element in maintaining the international order that had been so decimated

1 Nicholas J. Wheeler *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2000, 336 pp., pbk. ISBN 0-19-8296215-5) Internet Source: <http://www.fdv.uni-lj.si/JIRD/backissu/jird/vol4/sedivy.htm>
2 1583 - 1645

3 Hugo Grotius *De Jure Belli ac Pacis* in J.L. Holzgrefe "The Humanitarian Debate" in J.L. Holzgrefe & R.O. Keohane (eds) *Humanitarian Intervention – Ethical, Legal and Political Dilemmas* (Cambridge: Cambridge University Press, 2003) p.16

4 Jean-Pierre Fonteyne, *The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity under the U.N. Charter*, 4 Cal. W. Int'l L.J. 203, 235 (1974).

by World Wars I and II. A number of issues regarding intervention have arisen since the adoption of the Charter of the United Nations in 1945 in the same way the end of the Cold War has impacted on its practice. The Charter Framework forms the legitimate basis for use of force in the contemporary international system.

Background to the Study

On 6 April 1994, a very intense genocide was unleashed upon an unprepared world. Starting in Kigali, the Rwanda capital, the systematic slaughter of an ethnic group, the Tutsis, spread with ferocity to the rest of the country and in just 100 days over 800,000 Rwandan men, women and children were brutally murdered in an orgy of violence almost beyond the capacity of the human heart to contemplate.

The events of Rwanda bring to fore concern on international peace and security and human rights vis-à-vis international law safeguards, especially as articulated under the United Nations (UN) Charter. The most central role of international law is the prevention of war. After the untold suffering and misery brought to humankind by the first and second world war, the international community united to reconsider the international norms and enforcement machinery on the use of force and right to resort to war. Consequently, the UN Charter was signed in 1945 under which a system of collective security was established. Article 1 lays down the *raison d'être* for the UN:

“The purposes of the United Nations are : (1) to maintain international peace and security, and to that end to take effective collective measures for the prevention and removal of threats to the peace...”

The spirit of co-operation as laid down in the preamble is “to save succeeding generations from the scourge of war ...” and “ to reaffirm faith in fundamental human

rights, in the dignity and worth of the human person ...” The Charter’s article 2(4) contains the general prohibition on the use of force. Under this article state sovereignty is recognised. It provides:

“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 other manner inconsistent with the purposes of the United Nations.”

Further in the Charter is article 2(7) which provides that:

“Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”

Chapter VII proceeds to provide for action with respect to threats to the peace, breaches of the peace and, acts of aggression. Through this Chapter power is vested in the Security Council to decide what measures, including military measures that are required to maintain or restore peace. The Security Council can impose coercive measures and disregard the principle of non-intervention in the domestic affairs of states if it determines that a particular problem poses a threat to international peace and security.⁵ It is under this Chapter that the Security Council can authorize the use of force to protect people from gross violations of human rights. Humanitarian intervention encompasses “the justifiable use of force for the purpose of protecting the inhabitants of another state from treatment so arbitrarily and persistently abusive as to exceed the limits within which the sovereign is presumed to act with reason and justice.”⁶ The use of force employed to

⁵ Charter of the United Nations 39,42 and 2(7).

⁶ J.L. Holzgrefe “The Humanitarian Debate” in J.L. Holzgrefe & R.O. Keohane (eds) Humanitarian Intervention – Ethical, Legal and Political Dilemmas (Cambridge: Cambridge University Press, 2003) p.18; Ellery Stowell, “Intervention in International Law” in Ravi Mahalingam “The Compatibility of the Principle of Nonintervention with the Right of Humanitarian Intervention” UCLA Journal of International Law and Foreign Affairs vol.1 1996 pp221-283: 227

stop grave humanitarian situations such as genocide, war crimes, or crimes against humanity usually requires an armed humanitarian intervention. It is an intervention because it entails sending military forces across the sovereign borders of a country; it is humanitarian because it refers to situations that are morally wrong. The purpose for the invasion into another states' territory should be to restore stability, the absence of which threatens international security, and to save lives.

Central in humanitarian intervention is the aspect of human rights. Human rights are rights that accrue to us by virtue of being members of the human race. "... because being human cannot be renounced, lost or forfeited, human rights are inalienable."⁷ It is generally accepted that some rights are so fundamental that they must never be compromised, regardless of context. Provisions in the Convention on the Prevention and Punishment of the Crime of Genocide⁸ (Genocide Convention) oblige the UN to act to prevent genocide. Beyond this there is an *erga omnes* owed by the UN to the international community to prevent gross violations of human rights. It is an obligation that extends to the UN as a collection of states.

Amidst these treaty provisions, faced with incontrovertible evidence of the most clear-cut case of genocide possible, the UN failed to denounce the evil and to take action to stop the killings taking place in Rwanda in 1994. After the genocide the UN was quick in establishing the International Criminal Tribunal for Rwanda, ICTR, to try for great violations of human rights. What is incomprehensible and harder to bear is that the UN, the custodian of international peace and security failed to bring to the attention of the

7. J. Donnelly, *International Human Rights* (Oxford: Westview, 1993), p. 19.

8 December 1948 (entered into force 12 January 1951)

international community that the situation in Rwanda threatened international peace and security and was a gross violation of human rights.

Statement of the Research Problem

The UN and its members have proved unwilling to use armed force in circumstances where a deployment might be effective. In the face of the Rwanda genocide, the UN disregarded warnings early in 1994 that genocidal plans might be in preparation. Its inaction called into question the whole concept of international security and continues to do so today. It represents a staggering failure to protect fundamental human rights, namely, the Rwandan people's right to freedom from genocide. Considering that certain human rights are above compromise and should always be protected, this study will seek to establish the reasons for the UN's failure to protect the Rwandan people from genocide, investigate why the UN Security Council did not take the requisite measures as mandated under Chapter VII of the Charter and analyse the various organs of the UN to establish why they did not act and what they could have done to prevent the genocide or at least in mitigating its impact when it was taking place. The UN's will in this study be evaluated on premise that under international law, it is the UN's duty to prevent violations of absolute rights and that there were available legal mechanisms by which the UN could have acted to prevent the genocide. It will argue that under international law the duty to prevent mass violations of human rights fall primarily on the UN and that whenever such violations occur or when there are early warning signs that they will occur, the UN must move fast in sending armed forces to forestall and prevent the occurrence of the violations. The study will therefore analyse the scope of

UN humanitarian intervention and demonstrate that the UN in failing to intervene in the Rwanda genocide acted contrary to international law.

The study will investigate exclusively on collective humanitarian intervention, the question being why the UN failed to authorize armed forces to go to Rwanda to put an end to extreme, human rights violations.

Overall Objective of the Study

The overall objective of this study is to establish why and in what way the UN, its organs and system in general failed to prevent the 1994 Rwanda genocide because the lesson of Rwanda is vital if the UN is to try to predict and prevent future genocides and "save succeeding generations from the scourge of war . . . (and) reaffirm faith in fundamental human rights." By using the case of Rwanda which was a gross violation of human rights, this study will be a starting point in seeking to improve the capacity of the United Nations to address and respond to cases of violations of human rights because of all the recent cases for humanitarian intervention, Rwanda was the most striking and yet nothing was done.

Specific Objectives

1. to isolate the particular issues surrounding non-intervention by the UN in the Rwanda Genocide.
2. to explore why the international law provisions on humanitarian intervention were not utilized by the UN to prevent the Rwanda genocide.
3. to heighten understanding of humanitarian interventions and to clarify the applicability of past lessons learned for present and future actions.

Hypothesis

The study is premised on three hypothesis:

1. that there is an absence of any internationally recognized justification, either in theory or practise, for UN's failure to prevent and mitigate the Rwanda genocide;
2. that there is an inability within the UN to intervene in humanitarian crises in a timely manner; and
3. that there is an unwillingness on the part of permanent members of the Security Council to call for humanitarian intervention where they do not have strategic interests.

Literature Review

The literature of humanitarian intervention mainly consists of questions on whether it is compatible with international law, when it must take place, by whom and how. Central to the review is the issue of state sovereignty, non-intervention, human rights and the power of the United Nations. Literature review on collective humanitarian intervention aims at bringing to fore the existing debate in this area. Review on the UN organs relates to the perception of publicists on the UN as an organ for the maintenance of peace and security. While a lot of literature exists on the 1994 Rwanda genocide, review herein is limited to documentation on the historical background of the genocide and events at the international scene at the time of the genocide and the aftermath. Review on the historical background is essential in order to establish the rood cause of to the conflict whilst that on the events during and after the genocide sets the scene to this case study on why the UN did not intervene.

Literature Review on Collective Humanitarian Intervention

According to the traditional positivist theory of international law, states are the primary subjects of international law. International law is principally the practice of states and is concerned with their rights and obligations. Human beings do not have direct representation in international law; their interests are represented by the state. States are sovereign in that they are independent legal entities free to conduct their own affairs. As the legal philosopher Hall wrote, "The right of independence is a right possessed by a state to exercise its will without interference on the part of foreign states in all matters and upon all occasions with reference to which it acts as an independent community."⁹ For the positivist, a right of humanitarian intervention would have grave implications for sovereignty because it contemplates a legal justification for the strong to overrun the weak and violates the right of states to determine their own affairs without interference from foreign powers.

Historically, the development of the modern state system since the seventeenth century emphasized the right of a sovereign and the right of complete authority within its territory. This principle in international law clearly precluded the use of armed intervention as an acceptable practice in world politics. Generally, legal theorists, divided as either classic realists or liberal theorists, claimed that intervention invalidated the notion of national sovereignty. The realists found that it represented disruption of the international order and that it could only be justified in the most rare instances to restore order among states, not necessarily to end moral injustices. Realist thinking begins with

⁹ W.E. Hall, *International Law* (7th ed) in P.H. Winfield, "The History of Intervention in International Law," British Yearbook of International Law vol 3 1923. pp 125 – 143:130.

several observations of international relations. First, states are the principal actors. Second, the international system is anarchical in nature because there is no higher authority or a world government, which enforces a rule of law or code of conduct akin to that found in civil societies. To modern realists, sovereignty is a right possessed by a state in virtue of its presumed legitimacy from the people within its territorial realm. If sovereignty is a right, then intervention which infringes that right must be *prima facie* illegitimate.¹⁰ Realists posit both a philosophical and pragmatic argument against recognizing humanitarian intervention. First, states are the subjects of international society, not human beings. A right of humanitarian intervention necessarily infringes sovereignty and, hence, international legitimacy.

Liberals favor the principles of nonintervention and sovereignty, although their reasons differ from those of the realists. They emphasize that states, in a Lockean sense, must form an effective social contract with the myriad of social interests, then defend and protect it. Liberals offer a theory which provides that state legitimacy is the basis for adhering to nonintervention as a general principle and reserving humanitarian intervention as the exception. States have both internal and international legitimacy. Moreover, the international legitimacy, exemplified by the right of sovereignty, is based on a Lockean social contract it forms with the people. Liberals are particularly conscious of the right of self-determination as the only basis of legitimacy in a civil society.

Cosmopolitanism tradition which began with Immanuel Kant, argues that people, not states, should be the subjects of international society.¹¹ They emphasize that human

¹⁰ Hedley Bull, *Intervention in World Politics* (Hedley Bull ed., 1984) 195

¹¹ David Vesel "The Lonely Pragmatist: Humanitarian Intervention in an Imperfect World" *op cit* p. 5

rights should take precedence over states' rights. States must be based on moral integrity. Tesón focuses on Kant's theme that individuals, not States, should be the principal subjects of international law.¹² To Tesón, the ultimate justification for a state's legitimacy is the protection and enforcement of the natural rights of the citizens. This is the basis of both a state's domestic and international legitimacy. The state is not an end in itself but a means to the end of protecting the natural rights of human beings. If states exist for any reason, according to cosmopolitans, it is to preserve, protect and advance the natural rights of human beings. Humanitarian intervention allows international law to better achieve these ends.

Literature on collective humanitarian intervention reveals an on going debate between restrictionists and counter-restrictionists; the former arguing against humanitarian intervention on the grounds of Article 2(4) and Article 2(7) of the Charter and the latter reinterpreting international legal provisions to legitimize intervention.¹³ Bull for instance, insists on the reciprocal recognition of sovereignty and the norm of non-intervention in evolving a consensus on what principles should govern collective humanitarian intervention.¹⁴ Mertus holds the view that territorial integrity and human rights need not conflict but that they compliment one another.¹⁵ The U.N. Charter is replete with references to peaceful cooperation in solving problems. For example, Article

12 Fernando R. Tesón "The Liberal Case for Humanitarian Intervention" (Social Science Research Network Electronic Paper Collection <http://papers.ssrn.com/abstract=291661> p.6

13 Anthony Clark Arend & Robert J. Beck, "International Law and the Use of Force: Beyond the U.N. Charter Paradigm" in Anthony Clark Arend *International Law and Rogue States: The Failure of the Charter Frameworks*, New England Law Review vol. 36 pp 735 – 754:748

14 H. Bull, "Intervention in World Politics" in Nico Krisch "Review Essay: Legality, Morality and the Dilemma of Humanitarian Intervention after Kosovo" European Journal of International Law 2002 pp 323 – 334: 326

15 Julie Mertus, "Reconsidering the Legality of Humanitarian Intervention: Lessons From Kosovo" William and Mary Law Review vol. 42, 2000. pp 1743 – 1759:1746

2(3) flatly declares that all members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered. The traditional methods of pacific settlement in international law contained in Article 33 of the Charter are negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement and resort to regional arrangements. International law encourages the use of any or all of these peaceful methods and to avoid the use of force.

Counter-restrictionists argue that the legal right to humanitarian intervention is in both the UN Charter and customary international law. They point to the language of the preamble of the Charter and articles 1(3), 55 and 56 which creates an obligation to cooperate in the promotion of human rights. Amongst the counter-restrictionists Arend and Beck have argued that states have both a legal right and a moral obligation to intervene in exceptional cases that offend against the minimum standard of humanity.¹⁶ Others argue that the Security Council has a legal right to intervene irrespective of whether it has found a threat to international peace and security. Reisman and McDougal claim that were this not the case, it would be destructive of the explicit purposes for which the UN was established.¹⁷ They interpret the thrust of articles 55 and 56 of the Charter as transforming the general commitment of the U.N. members to human rights into an active obligation for action, and conclude that “humanitarian intervention represents a vindication of international law.”¹⁸ Scholars such as Upadhyaya hold that the

¹⁶ Arend and Beck “International Law and the Use of Force : Beyond the U.N. Charter Paradigm” in Ved P. Nanda, Thomas F. Muther & Amy E. Eckert “Tragedies in Somalia, Yugoslavia, Haiti, Rwanda and Liberia- Revisiting The Validity of Humanitarian Intervention under International Law- Part II Denver Journal of International Law and Policy VOL. 26 1998 PP. 827 – 872: 833

¹⁷ Michael Reisman and Myers McDougal “Humanitarian Intervention to Protect the Ibos” American Journal of International Law Vol 84 1990:

¹⁸ Ibid

scope of enforcing the U.N. collective security was ostensibly constrained by article 2(4), which explicitly states that the Council is to act in accordance with the principles and purposes of the organization. Article 2(7), which provides that nothing in the Charter authorizes the UN to intervene in matters that are essentially within the domestic jurisdiction of any state, requires members to submit such matters to settlement under the Charter.¹⁹

Most of the literature has focused principally on the ethical and normative dimensions of humanitarian intervention. In these discussions are pluralists and solidarists. To pluralist theorists, states adopt certain obligations and responsibilities to become members of this international society.²⁰ Pluralism maintains that states may intervene on humanitarian grounds only as an exception to the accepted principles of state sovereignty and non-intervention. As such, these interventions must provide acceptable international justification. These explanations appeal to the notion that human rights and humanitarian considerations can, at least in some cases, supersede the existing principles that would prohibit such interventions. Pluralists defend the rules of the society of states on the ground that they uphold plural conceptions of “good.” Nonetheless, under pluralism state sovereignty and non-intervention remain building blocks of international society. Yet, the complications that arise from questions over humanitarian justifications for intervention make them stumbling blocks as well.

Solidarists have recognized that states should satisfy the basic requirements of decency before they qualify for the protection which the principle of non-intervention

¹⁹ Priyanka Upadhyaya “Human Security, Humanitarian Intervention, and Third World Concerns” *Denver Journal of International Law and Policy* 2004. pp 71- 92: p.78

²⁰ Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (2nd ed., 1995) p.12

provides,²¹ that it is not necessarily lawful or unlawful, but it does break a conventional pattern of international relations."²² Proponents of this more humanitarian-based, solidarist approach to international society are still trying to answer the questions of when and where interventions should occur.²³ The argument is not that rules of sovereignty should be abandoned but rather that since they remain the constitutive rules of international society, it is states that should be denied protection of these in those extraordinary cases where they are guilty of crimes against humanity. Franck and Rodley argue that humanitarian intervention belongs to the realm not of law but of moral choice.²⁴

Literature Review on the UN Organs in Relation to Humanitarian Intervention

Literature on the UN vis-à-vis humanitarian intervention largely centres around the Security Council and veto power and capacity of the UN. The UN Security Council is the first and foremost organ of the UN to deal with threats to international peace and security. The Charter imposes general duties upon both the Security Council and UN Member States. Under Article 24(1) of the Charter, Members "confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf." In carrying out these duties, the Security Council "shall act in

21 R.J. Vincent & P.Watson "Beyond Non-Intervention" in I. Forbes & M.J. Hoffman (eds) *Political Theory, International Relations and the Ethics of Intervention* (London: Macmillan 1993) p.126

22 R.J. Vincent, "Nonintervention and International Order" in David Vesel "The Lonely Pragmatist: Humanitarian Intervention In An Imperfect World" Brigham Young University vol. 18 2003 pp.1-43: 4

23 Nicholas J. Wheeler, "Saving Strangers: Humanitarian Intervention in International Society" in Nico Krisch "Review Essay: Legality, Morality and the Dilemma of Humanitarian Intervention after Kosovo" *op.cit*

24 Thomas M. Franck & Nigel S. Rodley, "After Bangladesh: The Law of Humanitarian Intervention by Military Force" *American Journal of International Law* vol. 67 1973. 275- 323:275

accordance with the purposes and principles of the United Nations." Under Article 25, Members in turn "agree to accept and carry out the decisions of the Security Council." The specific powers granted to the Security Council which enable it to discharge its duties are found, in part, in Chapter VII of the UN Charter, Article 39 of which provides that the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security. The Council consists of fifteen members five of them being permanent members – USA, UK, Russia, China and France. These five members have the veto. A negative vote by any of the permanent members is sufficient to veto any resolution of the Council, save with regard to procedural questions where nine affirmative votes are all that is required.²⁵

There is increasing disquiet that the Council has become more effective and powerful, and more secretive. Like a parliamentary doll, it now contains ever-smaller "mini-Councils," each meeting behind closed doors without keeping records, and each taking decisions secretly.²⁶ Before the plenary Council meets in "consultation," in a special room assigned to it near the Security Council, the P-5 have met in "consultation" in a special room now assigned to them outside the Security Council; and before they meet, the P-3, composed of the United States, the United Kingdom and France, have met in "consultation" in one of their missions in New York.²⁷ Looking into existing literature

²⁵ UN Charter, Article 27

²⁶ Michael Reisman "The Constitutional Crisis in the United Nations" American Journal of International Law vol. 87 1993 pp.83-103:106

²⁷ W. Michael Reisman "The Constitutional Crisis in the United Nations" *op cit*

on the UN generally, scholars like Tyagi have observed that while preference should go to intervention by the UN instead of individual states, a number of conceptual, geopolitical and structural constraints hamper the active involvement of the UN in many cases of humanitarian crisis.²⁸ Tyagi contends that within the UN, there is a problem of multiple moral standards which complicates the assessment of objective morality. He maintains that the veto power of the five permanent members hangs as a “Sword of Damocles” over the head of collective decision making, but that even if there was no veto, many countries would probably be averse to the involvement in costly humanitarian interventions.²⁹

Shaw contends that the Security Council is constrained by the provisions of the Charter itself – it must follow the procedures in the Charter.³⁰ He notes that the issue has arisen as to whether there is a body capable of ensuring that the Council acts in conformity with the Charter and international law.³¹ Dallaire gives an inside account of the UN. He presents an inflexible Security Council mandate and UN red tape.³²

Farer notes that the Security Council “enjoys a kind of legislative supremacy as long as it commands the support of, if not the great majority of states, then the great majority of states that count in international relations.” But he is not fearful of this “supremacy” because he believes, as attested by “the slaughter in the Balkans,” that “the threat to a humane international order consists not of Council hyperaction, but rather of

28 Yogesh K. Tyagi “The Concept of Humanitarian Intervention Revisited” Michigan Journal of International Law vol. 16 1995 pp 883 – 914: 890

29 Ibid

30 Malcolm Shaw *International Law*. (Cambridge University Press 1997.4th ed) pp. 876 - 877

31 Ibid

32 Romeo Dallaire *Shake Hands With The Devil, The Failure of Humanity in Rwanda* (London: Arrow Books (2003) p. 6

no action at all.” In these circumstances, he is fearful that some states “may experience an almost uncontrollable impulse to intervene.” Therefore, he would require that these impulses be channeled through sub global institutions. But he would require that interventions by these institutions be submitted to the Security Council for review. “...while prior authorization should not be necessary, any intervention should be reported to the Council and justified at the time it occurs.”³³ The UN General Assembly can nevertheless take the role of maintenance of peace and security by discussing any question or matter within the scope of the Charter and may make recommendations to the Security Council provided that the Council is not itself dealing with the matter. It is the parliamentary body of the UN organization and consists of representatives of all the member states. The General Assembly's role in matters of peace and security is subordinate to the Security Council's. Article 11 provides that the General Assembly may consider and make recommendations about matters relating to the maintenance of international peace and security. However it is constrained from making such recommendations - though not specifically from considering the matter - “while the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter ... unless the Security Council so requests.”³⁴ The “Uniting for Peace” Resolution of 1950 specifically authorizes the Assembly to make recommendations on enforcement action when the Security Council is unable to take a decision. As a result, the General Assembly is a potential source of authorization when the Security Council is incapable of acting.

33 Tom Farer “UN action in a Disorderly World” *Institute of International Studies* (Lectures and Forums: Institute of International Studies, UC Berkeley: Spring 2004 Available at <http://globetrotter.berkeley.edu/pubs/unfarer.html> 13.04.2006)

34 Article 12 UN Charter

Over the years, the Security Council has not exercised its powers extensively against states that have engaged in gross and persistent violations of their citizens' human rights, partly owing to use or threatened use of the veto by one or more of the Council's permanent five.³⁵ Schachter wrote that "the United Nations political organs provide an institutional mechanism for authoritative judgments on the use of force, but it is only under some circumstances that they can obtain the requisite authority and consequential behaviour to endow their decisions with effective power."³⁶ Some scholars such as Farer maintain that the UN ill-equipped to perform its functions because of its personnel and structure with excessive centralization.³⁷

The Secretary General is under article 99 of the Charter empowered to bring potential threats to the peace directly before the Security Council. In this way the Secretary-General as head of the Secretariat – one of the principal organs of the UN – can use his discretion to bring to light any matter that he feels is a threat to international peace and security and at the same time speak out on issues of global concern such as genocide.

Literature Review on Rwanda and Events during and Following the 1994 Genocide

There exists two conflicting versions of the Rwandan history with the fundamental debate revolving around whether differences between Rwanda's Hutu and Tutsi existed before the colonial era. While it is certain that there were Hutu and Tutsi for many centuries with the former being agriculturalists and the latter cattle herders, the two

35 Richard B. Lillich "The Role of the Un Security Council in Protecting Human Rights in Crisis Situations: Un Humanitarian Intervention in The Post Cold War World" Tulane Journal of International and Comparative Law vol. 3 pp. 1-12:5

36 Oscar Schachter, "International Law in Theory and Practice" in Thomas Franck, "Essays in Honor of Oscar Schachter Humanitarian and Other Interventions" Columbia Journal of Transnational Law vol 43 2005 . pp 321-363 :321

37 Tom Farer "UN action in a Disorderly World" *Op Cit*

groups did not have usual differentiating characteristics – they spoke the same language, shared the same religious beliefs, lived side by side and intermarried and it is estimated that over 50 per cent of Rwandans have both Hutu and Tutsi among their eight great-grandparents.³⁸ The Tutsi and Hutu lived in harmony until European colonialism created artificial divisions that led ultimately to the catastrophe.

The debate on whether the international community and the UN could have acted to prevent the genocide have remained inconclusive. Some analysts have documented that anyone living in Kigali, both diplomats and aid officials, was aware of the increasing potential for genocide in Rwanda, there is dispute as to the degree to which this information was widely known and, especially, conclusively interpretable.³⁹ At what point exactly the division became problematic has been a point for debate. Kuperman,⁴⁰ has advanced the view that it is quite likely that few people in the international community could have seen the genocide coming, for a variety of reasons. He reasons that the West could not have prevented the genocide as most authors have argued because,

“looking into the issue more rigorously than my predecessors, I discoursed that virtually all of the earlier claims were inaccurate. The genocide happened much faster, the West learned of it much later and the requisite intervention would have been much slower than previously claimed.”⁴¹

The most fundamental explanation is that it is very hard to imagine or expect the occurrence of genocide and even if one was aware of the human rights violations, there

38 David Newbury and Catherine Newbury, “An Inquiry into the Historical Preconditions of the Rwandan Genocide,” The International Panel of Eminent Personalities – Commissioned Paper, 1999 p.10

39 Human Rights Watch Report

40 Alan J. Kuperman, *The Limits of Humanitarian Intervention-Genocide in Rwanda* (Washington D.C. Brookings Institution Press, 2001) p.vii

41 Ibid

lies the potential for confusion with ordinary political violence. This is especially so because the last years to the genocide were characterized by broad and widespread political violence: the assassination of opposition leaders, the creation of militia by all political parties and random acts of terrorism.

Records show that early U.N. efforts were focused primarily on promoting cease-fire agreements between the Rwandan government and Tutsi guerrillas.⁴² These efforts, while not addressing human rights violations in Rwanda, played a decisive role in promoting the Arusha Peace Agreement. The Arusha Peace Agreement sought the U.N.'s oversight of the installation of a broad-based transitional government terminating upon national elections. The U.N. had been previously involved in the region through the United Nations Observer Mission Uganda-Rwanda ("UNOMUR"), deployed in June 1993. UNOMUR's primary purpose was to ensure that no military assistance from surrounding countries flowed into Rwanda. The Arusha Agreement served as an invitation for a U.N. peacekeeping operation and led to the establishment of the United Nations Assistance Mission for Rwanda ("UNAMIR"). UNAMIR's mission was to provide short-term peacekeeping operations involving monitoring of the Arusha cease-fire provisions, erecting safe zones, overseeing the transitional government, and providing a security presence in Kigali. The UNAMIR plan consisted of four phases. First, the U.N. would establish a broad-based transitional government in Kigali. Second, the armed forces would be demobilized and integrated. Third, the U.N. would expand and

⁴² Kimberly D. Barnes, "International Law, the United Nations, and Intervention in Civil Conflicts," Suffolk Transnational Law Review vol. 19 1995 pp 136-163: 142.

monitor the demilitarized zones throughout Rwanda and along the Rwanda-Uganda border. Fourth, the mission would terminate with nationwide elections in Rwanda.

After witnessing the genocide in Rwanda, most authors have come up and indicated that this should never be allowed to happen again. General Dallaire, who at the time of the genocide was the commander of the UN Assistance Mission in Rwanda gives an account of the happenings in Rwanda, who was involved and what they did or did not do, and recounts his lack of intelligence data and manpower but also institutional support.⁴³ The Head of the Mission, has indicated that the UN repeatedly refused to send him reinforcements, and his force shrunk from 2,600 soldiers to 800 as nations withdrew their troops in the first days of the slaughter.

Among the most prominent measures following the Rwanda genocide was the establishment of the International Criminal Tribunal for Rwanda, ICTR.

Justification of the Study

At an academic level, this research project will raise arguments that center on the subject of humanitarian intervention by the UN. The argument is significant because it will bear on the approach of the UN to human rights violations. It will invoke serious human rights violations as a justification for intervening in the affairs of sovereign states. The literature is piece meal with focus being on the relation between sovereignty and humanitarian intervention or sovereignty and human rights or the UN and Rwanda. There isn't much however in tying these issues of international law of sovereignty, human rights, humanitarian intervention to the UN and its reaction to the 1994 Rwanda genocide hence this study. From the literature review the need to need to establish whether or not

⁴³ R. Dallaire *Shake Hands With the Devil op.cit.*

the UN could have prevented the genocide is evident as it is an area where scholars have differed. There is need to summarise scholarly consensus on the events that linked the UN Security Council to the Rwanda Genocide. The Rwanda case is a further reflection on the material, intellectual and political boundaries that support but also limit, the operations of the UN Security Council in these type of situations.

At a policy level, the study inputs to the ongoing debate on humanitarian intervention while at the same time presenting the full picture as is necessary to provide a lesson from past mistakes. The review shows a clear plan of action in the early stages by the UN through UNAMIR. This study will seek to establish why in spite of this plan the UN failed to prevent the genocide. The literature reviews blame going round the Secretary-General, the U.N. and its member states, especially the Permanent Five members of the Security Council. If there is a clear-cut case to be made for humanitarian intervention under the UN Rwanda was it. The study will make a powerful case shows that generally the UN is ill prepared to mobilize political will to act in the face of gross violations of human rights and hence the need for improvement of its capacity to maintain international peace and security.

Theoretical Framework

This study is largely based on the solidarism approach. A solidarist conception of international society does not deny the necessity or legitimacy of the state's role in ordering the relations and pursuing the interests of its citizens. Rather, solidarists question whether a state has any moral legitimacy independent of the people within its borders: ". . . states qua states do not think or will or act in pursuit of ends; only people . . . alone or in groups, do these things. Unless some independent sense can be given to the idea of the

state as a moral agent, this view cannot be very persuasive."⁴⁴ The primary responsibility of the state is to organize society and provide for the welfare of its citizens and this is recognized in the concept of sovereignty. The sovereign authority of states implies that each enjoys autonomy and freedom from external interference in pursuing its interests. Solidarists argue, though, that this autonomy must not be seen as absolute, but rather within the context of human rights. They believe it is in order to protect the rights of its citizens, promote their welfare and pursue their common ends that a state requires freedom from external interference. If a state government is failing to meet its obligations in fulfilling the basic human rights of its citizens, solidarists suggest there is no reason to recognize its claim to sovereign authority as legitimate.

Fernando Téson makes this point in asserting that "a government that engages in substantial violations of human rights betrays the very purpose for which it exists and so forfeits not only its domestic legitimacy, but its international legitimacy as well."⁴⁵ If such a government loses its claim to legitimacy there are two important implications. First, it loses its claim to autonomy and freedom from external interference. Second, the obligation to protect the human rights of its citizens ultimately defaults to all of humanity. Given that the community of humans is for practical purposes organized into states, the policing of human rights abuses is best dealt with by the society of states. States have bequeathed the UN this role.

Solidarists point to Chapter VII of the UN Charter as providing the legal basis for intervention in the event of gross human rights abuses. Article 42 of this chapter

⁴⁴ Charles Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press, 1979), p. 76.

⁴⁵ Fernando Téson, *Humanitarian Intervention: An Inquiry Into Law and Morality* (New York: Transnational, 1988), p. 15.

authorizes the Security Council to "take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security." Under Article 43, "all members undertake to make available to the Security Council . . . armed forces" for the purposes of enforcement, although this task may be delegated to specific states to carry out on behalf of the UN.

Solidarists assert that human rights violations and widespread suffering cause instability and thereby threaten international peace. The authors of the Universal Declaration of Human Rights seem to acknowledge this in stating that "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected."⁴⁶ Since violent human rights abuses and large-scale human suffering threaten international peace and stability, the UN must intervene forcefully to preserve them.

A solidarist conception of international society, then, argues that all humans are ends in themselves and thus possess basic inalienable human rights. While human rights are best realized within the context of sovereign states, a state may lose its claim to non-interference if it fails to protect these basic rights for its citizens. The international community is justified, and the UN Security Council is authorized under international law, to intervene in a sovereign state to safeguard basic human rights. The maintenance of order does not preclude the pursuit of justice in international society; the former does not and must not always "trump" the latter. This is the solidarist argument in favor of humanitarian intervention.

⁴⁶ Universal Declaration of Human Rights, 1948

Research Methodology

The research will benefit from both primary and secondary data. Primary data will especially be useful in order to form an informed analysis and critique as to why the UN failed to intervene to stop the genocide in Rwanda. Specifically, the genocide debate quoted from personalities in the UN and other sources and interviews at the ICTR shall be of relevance. The experience of General Dallaire, then a major general in the Canadian army who at the time of the genocide was the commander of the UN Assistance Mission in Rwanda and other key persons will also form primary data in this study. Verbatim reports of symposiums on the Rwanda genocide will form primary data. They will demonstrate the thinking of scholars on the subject under study.

Central in secondary data will be the reports and findings of various bodies that were constituted under the UN and the OAU to investigate the genocide. Analyses by scholars and other publicists will also go into this study. Secondary data will establish too that the UN political headquarters knew preparations were underway for a full-scale genocide in Rwanda, when this was known or whether it should have known through its agencies on the ground.

Chapter Outline

Chapter 1: Introduction

This chapter establishes the mandate of the UN in international law to use the tool of humanitarian intervention. It brings out the existing literature on humanitarian intervention under the UN and makes a justification for the study.

Chapter 2: Use of Force, Human Rights and Humanitarian Intervention

This chapter shall delve into the debate on the use of force particularly vis-à-vis issues of sovereignty and non-intervention. Under this chapter, the UN purpose of protecting and promoting human rights shall be discussed. The Genocide Convention shall be discussed with the aim of demonstrating that the happenings in Rwanda were a gross violation of human rights for which the UN should have intervened.

Chapter 3: The 1994 Rwanda Genocide Vis-à-vis UN Responsibility

This chapter will be limited to discussing the happenings during the Rwanda genocide at the international plane. It shall bring out the deliberations at the UN level and the international scene at the time of the genocide.

Chapter 4: Critical Analysis of Humanitarian Intervention under the United Nations

This chapter shall synthesis of the research with all issues beings critically analysed.

Chapter 5: Conclusions

Chapter six shall be conclusions on humanitarian interventions by the UN under international law.

CHAPTER TWO THE USE OF FORCE, HUMAN RIGHTS AND HUMANITARIAN INTERVENTION

Introduction

Chapter one contained main issues that will be discussed in the study. This chapter will examine the law on the use of force which has its basis in the concepts of state sovereignty and noninterference in internal affairs as set in Articles 2(4) and 2(7) of the UN Charter. Article 2(4) requires that all Members refrain from the threat or use of force against the territorial integrity or political independence of any state and is the most explicit Charter rule against intervention through armed force, while Article 2(7) prohibits UN involvement in matters which are essentially within the domestic jurisdiction of any state. While these restrictions hold, the rise of human rights has significantly challenged state sovereignty in the sense that states can in some instances be called to task for activities that are purely internal. The chapter will also examine how the enforcement of human rights through humanitarian intervention has re-defined state sovereignty. The chapter will examine cases in which the Security Council has invoked provisions on the use of force against a state for threats to the peace, and acts of aggression under Chapter VII of the Charter and set stage for analyzing the case study of Rwanda in the subsequent chapter 3.

Overview of International Law Framework on the Use of Force

The ban on the use of force as an instrument available at a states' disposal began with the Hague Convention of 1907. Since then laws relating to the use of force and the doctrine of humanitarian intervention have undergone profound changes particularly in

the period after the First World War and the collapse of the old European order of the 19th century under which humanitarian intervention was dictated by the geopolitical interests of the European powers. The catastrophe of the war made the world realize the devastating consequences of an absolute construction of the concept of state sovereignty and hence the need to limit it. The Covenant of the League of Nations only established a partial prohibition of war. Article 10 prohibited wars of aggression and threats of aggression against members of the League. It provided:

“Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League.”

The Covenant sought to limit recourse to war. Articles 12 and 15 of the Covenant made the right to conduct war conditional upon the preceding effort of pacific settlement. In any case no war could be conducted against an unanimous decision of the Council of the League of Nations.

The codification of a norm banning the use of force by states through the Kellogg-Briand Pact, 1928¹ was seen as a major achievement on the way to creating peaceful co-existence among states. In article 1 parties solemnly declared “that they condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.” The use of force has been restricted along basic norms of international law of sovereignty and non-interference in the internal affairs of states, but collective and individual self defence are recognized.

¹ 1928 General Treaty for the Renunciation of War also known as Pact of Paris

The prohibition of the use of force is a treaty-based rule inscribed in the Charter of the UN. However, it is at the same time a rule of customary law, the evolution of which has been at the centre of lively debates, particularly in recent years. On one side of these debates, there is the approach which consists in interpreting the rule in the most flexible manner possible; in this way, doctrines such as 'preventive self-defence', the 'implicit authorisation' of the Security Council, or the right of 'humanitarian intervention', for example, can be accepted as conforming to the rules.² On the other side is the restrictive approach that favours a much stricter interpretation of the prohibition, making it much less likely that new exceptions will be viewed as acceptable.³

UN Charter as a Legal Framework for Humanitarian Intervention

Prohibition of Use of force Under Article 2(4)

The UN Charter incorporates the principle formulated in the Kellogg-Briand Pact. Article 2(4) of the Charter sets a principle that has been described as "the heart" of the Charter, requiring member states to 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 other manner inconsistent with the purposes of the United Nations. Article 2(4) is a provision whose interpretation has established an extremely restrictive approach to the use of force, one that is even more restrictive than the Kellogg-Briand Pact which only prohibited "war," not all uses and threats of force.⁴ The prohibition of the use of force by

² John Yoo "Force Rule: UN Reform and Intervention" University of California at Berkeley Public Law and Legal Theory Research Paper, 2005 p.2

³ Ibid

⁴ Anthony C. Arend "International Law and Rogue States: The Failure of the Charter Framework" New England Law Review vol. 36 [2002] pp 735 – 754: 737 Also Available at : <http://www.nesl.edu/lawrev/vol36/36/4/Arend.pdf>

states is a *jus cogens*, or a peremptory norm, that cannot be modified by subsequent or inconsistent norms, treaties, or actions.

Debates around article 2(4) recognize two exceptions to the use of force: self-defense; and force authorized by the United Nations Security Council. The first exception is contained in Article 51, which provides in part:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

The self-defence exception has been the most often invoked justification for the use of force without Security Council authorisation, for example, the US led allied attacks on Afghanistan.⁵ The second exception to article 2(4) is contained in Chapter VII of the Charter. Under Article 39, the Security Council is empowered to determine the existence of threat to the peace, breach of the peace, or an act of aggression and shall make recommendations, or decide what measures shall be taken to maintain or restore international peace and security. The Council is further authorized to impose diplomatic and economic sanctions⁶ and to impose military sanctions.⁷ This is what happened in the Gulf War. After the invasion of Kuwait on August 2, 1990, the United Nations Security Council met and immediately condemned the Iraqi invasion and soon after, a resolution which imposed sweeping economic and diplomatic sanctions on Iraq. Ultimately, it decided to adopt a

5 Olivier Corten, «The Controversies over the Customary Prohibition on the Use of Force: A Methodological Debate», European Journal of International Law vol. 16 (2005) pp 803 – 826: 808

6 Article 41 UN Charter

7 Article 42 UN Charter

resolution authorizing states with troops deployed in the region to use force to remove Iraq from Kuwait.⁸

According to the provisions of Chapter VII of the Charter, the UN represented by the Security Council reserves the right to authorize the use of armed force necessary to maintain or restore international order and security.⁹ During the Cold War, respect for this provision prevented an outbreak of a major confrontation between the two rival powers. One superpower held the other in check and the rivalry necessitated respect for the principles of non-interference and non-use of force. Indeed, before 1990, the Security Council adopted only 22 resolutions under Chapter VII, most of which authorized sanctions rather than uses of force.¹⁰ This demonstrates that the international political system does influence the decision of the Security Council and is a big influence on the option the Council will take under Chapter VII.

The restrictive approach argues that the Charter's ban on use of force in international relations largely relates to clear overt acts of aggression against other states. One of the acute weaknesses of the Charter is that rogue states frequently engage in actions against their domestic populations that do not constitute international aggression but may nonetheless be horrible violations of international human rights law.¹¹ However there is the widely accepted argument that human rights are no longer matters solely within domestic jurisdiction of states and their violation is a threat to international peace and security.

⁸ U.N. S.C. Res. 660, 661 and 668 U.N. SCOR, U.N. Doc. S/RES/660, 661 and 668 (1990) cited in Anthony Arend, «International Law and Rogue States», *op. cit.* p. 738

⁹ Article 42 UN Charter

¹⁰ Erik Voeren "The Political Origins of the UN Security Council's Ability to Legitimise the Use of Force" International Organisation Journal vol. 59, No.3, 2005 p. 5

¹¹ Anthony Arend "International Law and Rogue States" *op.cit.* p.739

Charter's Article 2(7) as Exception to Prohibition of Use of Force

The scope, of the prohibition against intervention in the internal affairs of states is still controversial. Opponents of humanitarian intervention point to article 2(4) as the general prohibition on use of force and highlight the fact that apart from placing the prohibition on states, article 2(7) goes a step further to extend this prohibition to the UN.¹² However a growing number of scholars disagree and have advanced arguments aimed at reconciling humanitarian intervention with the UN's *jus ad bellum* (law on use of force) regime. In support of the lawfulness of humanitarian intervention it is first argued that using force solely for humanitarian purposes falls below the article 2(4) threshold. This argument is based on a close reading of the language of article 2(4) – the text of that provision does not literally prohibit all threats or uses of force *simpliciter*, but only those directed against the territorial integrity or political independence of states.¹³ Though publicists like Tésou have contended that since humanitarian intervention seeks neither territorial conquest nor political subjugation of the state involved, and that therefore it is a distortion to argue that it is precluded by article 2(4),¹⁴ an analysis of the very nature and purpose of humanitarian intervention shows that political subjugation does indeed take place because intervention involves challenging the government of the day.

The Security Council has gone around article 2(7) and allowed justifiable basis for intervention in situations of gross violation of human rights within the domestic jurisdiction of states. Through a comprehensive explanation of what may constitute a

12 J.L. Holzgrefe "The Humanitarian Debate" in J.L. Holzgrefe & R.O. Keohane (eds) *Humanitarian Intervention – Ethical, Legal and Political Dilemmas* (Cambridge: Cambridge University Press, 2003) p.16.

13 J.L. Holzgrefe "The Humanitarian Debate" op cit p.37

14 Ferdinand Tésou *Humanitarian Intervention: An Inquiry Into Law and Morality* (New York: Transnational, 1988), p. 15.

“threat to peace” the UN Security Council with the support of the international community has included gross human rights violations, obstruction of the delivery of humanitarian aid, mass displacement of civilians among the circumstances that may authorize humanitarian intervention under Chapter VII of the Charter.¹⁵ By using Article 39, “threat” to the peace, it is argued thus that the Security Council has stretched the concept, and developed a new political and legal justification for quick enforcement against “rogue” states or to meet humanitarian needs.¹⁶ With humanitarian intervention being accepted as a tool towards attainment of international order and security, the limits of article 2(7) have been considerably narrowed in practice, such that the prevailing trend today is to take seriously the claim that the international community ought to intercede to prevent bloodshed with whatever means are available.¹⁷ Vayrynen clearly discerns humanitarian intervention as a new peace tool. He concludes that “despite the practical intermingling of collective enforcement and humanitarian intervention, they should be considered separate legal and political categories. The international community should agree on a set of rules defining the goals, means and limits of admissible humanitarian interventions. They should also be given realistic mandates in which objectives, resources, and rules of engagement match each other.”¹⁸

15 For example in the cases of Somalia, Iraq-Kurds discussed.

16 Ibid

17 Lori Damrosch, “Enforcing Restraint: Collective Intervention in Internal Conflicts” The International Journal of Peace Studies Internet Source: http://www.gmu.edu/academic/ijps/vol4_1/alger.htm Accessed May 12, 2006

18 Raimo Vayrynen, “Enforcement and Humanitarian Intervention: Two Faces of Collective Action by the United Nations,” in Chadwick F. Alger “The Quest For Peace: What Are We Learning?” The International Journal of Peace Studies vol. 4 No. 1 (1999) pp 23-67:52

Humanitarian Intervention as a Tool for Enforcing Human Rights

While the Charter bans the use of force in international relations, the prevention of war is not its sole purpose. It in addition aims to encourage respect for human rights. The concept of human rights has been debated since ancient times. Maritain early on pointed out that

“human person possess rights because of the very fact that it is a person, a whole, a master itself and of its acts...by virtue of natural law, the human person has the right to be respected, is the subject of rights, possesses rights. These are these which are owed to a man because of the very fact that he is man.”¹⁹

The UN's concept of human rights surrounds this natural concept of rights. The natural law view is that certain rights exist as a result of a higher law than positive man-made law.²⁰ Such a higher law constitutes a universal and absolute set of principles governing all human beings. The natural rights approach associated primarily with John Locke, founded the existence of such inalienable rights. This theory enabled recourse to be had to a superior type of law and thus was able to provide a powerful method for restraining arbitrary power.²¹ The content of the principle of respect for human rights in international law may be expressed in three proposition

- 1) “all states have a duty to respect the fundamental rights and freedoms of all persons within their territories;
- 2) states have a duty not to permit discrimination by reason of sex, race, religion or language; and
- 3) states have a duty to promote the universal respect for human rights and to co-operate with each other to achieve this objective.”²²

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19 Jacques Maritain Declaration of the Rights of Man and of the Citizens art.2(1789), reprinted in I.Brownlie, *Basic Documents on Human Rights* (Clarendon Press-Oxford 1971) pp 8-10

20 Herch Lauterpacht, *International Law* vol. 2 (London, Cambridge University Press 1975) pp 23 - 41

21 J.Finnis *Natural Law and Natural Rights in Malcolm Shaw, International Law*. (Cambridge University Press 1997.4th ed) p.197

22 Tunkin *Theory of International Law in Shaw International Law op cit* p.199

The gross human rights violations during the Second World War, notably the Nazi atrocities against the Jews led to international concern for human rights. Since 1945, the growth of a language and practice of universalism of human rights has more and more become a matter of concern in international relations. There has been an increased desire to prevent the recurrence of crimes against humanity. The concept of protecting human rights through global legislation was unprecedented until the Nuremberg and Tokyo Trials.²³ The Nuremberg Tribunal established two principles with regard to human rights. First, that a government's treatment of its citizens within its borders is a proper matter of international concern and action. This principle questioned the traditional concept of state sovereignty and became a cornerstone for the development of human rights law which affirms the responsibility of states to promote human rights. Second, it established the principle of individual criminal responsibility for the violation of certain human rights. The war crime tribunal made it clear that those who committed atrocities against civilian populations were not entitled to invoke as a defense either that they acted for the state or that they merely followed the orders of their superiors.

In a parallel development, individuals gained rights under international law and, to some extent, the means for vindication of those rights on the international plane. The development has entailed an assertion of international concern about human rights in treaties and declarations adopted by the UN and its specialized agencies. Most human rights principles and rules developed are devoted to developing universal human rights and promoting human rights worldwide. Such principles and rules can be found in the

²³ The International Military Tribunal at Nuremberg, November 14, 1946, and The International Military Tribunal for the Far East Tokyo, February 15, 1946 to November 12, 1948

International Bill of Human Rights²⁴ and many other declarations and conventions on human rights. Indeed, many rules protecting human rights have consolidated into customary rules of international law, binding states whether they have ratified the Conventions or not. The protection of human rights in these declarations and treaties centre largely on the rights of the individual as a person. The individual is protected as a single rather than within groups. Human rights apply to both the collective rights of groups and individuals. The Genocide Convention for example recognizes collective rights of groups by prohibiting the destruction of whole or parts of a group..

The physical protection of the group as a distinct identity is a paramount factor. The Genocide Convention reaffirms that genocide whether committed in time of war or peace, is a crime under international law.

Principles on state sovereignty and involvement in the domestic affairs of states should therefore not hinder responsibility to respect human rights. The body of human rights law and Charter provisions all point to the responsibility of the UN in humanitarian intervention. It is now generally accepted that no government can hide human rights violations behind the veil of state sovereignty. Although sovereignty remains a cornerstone of international law, developments since World War II have shown that the traditional balance between sovereignty and human rights is shifting in favour of human rights so that human rights no longer fall essentially within the domestic jurisdiction of states.²⁵ The international community must therefore take effective action in case a state

24 Made up of the Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural rights

25 Christopher J. Le Mon & Rachel S. Taylor "Security Council Action in the Name of Human Rights" African Yearbook of International Law vol 11(2003) pp 263 – 298: 270 According to former Secretary-General Boutros Boutros-Ghali, "The time of

violates human rights on a massive scale. Human rights provide the foundational underpinning on which the principle of humanitarian intervention is based.

Genocide as Basis for Humanitarian Intervention

Within the international system certain principles have evolved which are non-derogable – *jus cogens*. As succinctly clarified by Henkin, the international system, having identified contemporary human values, has adopted and declared them to be fundamental law, but in a radical derogation from the axiom of “sovereignty,” that law is not based on consent and binds particular states regardless of their objection.²⁶ The rights and obligations under the Genocide Convention are obligations *erga omnes* and thus create an obligation on the international community to prevent and punish the crime of genocide.²⁷ These human rights provisions provide a legal basis for the claim that the right to humanitarian intervention exists especially under the UN auspices. International law is therefore not only concerned with the actions of sovereign states, but imposes duties and liabilities on individuals and states.

Genocide is distinguishable from all other crimes by the motivation behind it. Towards the end of the Second World War, when the full horror of the extermination and concentration camps became public knowledge, the world was being brought face to face with a crime that had no name. Lemkin saw that the world was being confronted with a totally unprecedented phenomena and in his book, Axis Rule in Occupied Europe, (1944), he coined the word 'genocide', from the Greek 'genos' (race or tribe) and the Latin

absolute sovereignty ... has passed; its theory was never matched by reality *An Agenda for Peace* (New York: United Nations, 1992), 2nd ed. para. 17.

26 Louis Henkin *How Nations Behave* (New York, Columbia University Press, 1979 2nd ed)

27 The Advisory Opinion on Reservations to the Genocide Convention ICJ Reports, 1993 p.3 para 31

suffix 'cide' (to kill).²⁸ According to Lemkin, genocide signifies 'the destruction of a nation or of an ethnic group' and implies the existence of a coordinated plan, aimed at total extermination, to be put into effect against individuals chosen as victims purely, simply and exclusively because they are members of the target group.²⁹

The definition of what constitutes a crime against humanity was established at the Nuremberg trials. Killing someone simply because he or she exists is a crime against humanity; it is a crime against the very essence of what it is to be human. This is not an elimination of individuals because they are political adversaries, or because they hold to what are regarded as false beliefs or dangerous theories, but a crime directed against the person as a person, against the very humanity of the individual victim. Genocide is a crime on a different scale from all other crimes against humanity and implies an intention to completely exterminate the chosen group. Genocide is therefore both the gravest and the greatest of the crimes against humanity - in the same way as in a case of homicide the natural right of the individual to exist is implied, so in the case of genocide as a crime, the principle that any national, racial or religious group has a natural right to exist is clearly evident.³⁰ Attempts to eliminate such groups violate this right to exist and to develop within the international community. A genocide is a conspiracy aimed at the total destruction of a group and thus requires a concerted plan of action. The specificity of genocide does not arise from the extent of the killings, nor their savagery or resulting infamy, but solely from the intention: the destruction of a group. The definition of

28 Raphael Lemkin, "Genocide as a Crime under International Law" American Journal of International Law (1947) Vol. 41(1) pp.145-151: 146

29 Ibid

30 The 1948 Convention on the Prevention and Punishment of the Crime of Genocide

genocide in the Convention invites an analysis of the two elements of criminal law of material element - the *actus reus*, and the mental element - the *mens rea*.

After stating in article 1 that genocide is a crime under international law, the Convention lays down the following definition:

any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a. killing members of the group;
- b. causing serious bodily or mental harm to members of the group;
- c. deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d. imposing measures intended to prevent births within the group;
- e. forcibly transferring children of the group to another group.³¹

The definition is based on four constituent factors: a criminal act; with the intention of destroying; an ethnic, national or religious group; targeted as such. One author Stanton³² has gone further to indicate that there are eight stages of genocide. In his thesis, genocide starts with classification during which social groups are classified into "us versus them." The second stage is that of Symbolization. At this stage groups are given names and other symbols and are required to wear them either by cultural tradition or laws. The next stage is that of dehumanization where the death spiral of genocide begins. The victim group is dehumanized and called the names of animals or likened to a disease. The fourth stage is organization, at which hate groups are organized, militias are trained and armed, and the armed forces are purged of members of the intended victim group as well as officers and others who might oppose genocide. Propaganda institutions, such as the hate newspapers and radio station, are also strengthened and funded. Polarisation follows, during which moderates are targeted and assassinated. Hate propaganda emphasizes the

31 Article 2 of the Genocide Convention

32 Gregory Stanton, "The Eight Stages of Genocide," Available at www.genocidewatch.org. Accessed 22.07.2006

“us versus them” nature of the situation. “If you are not with us, you are against us.” There is no middle ground and moderates who attempt to negotiate peace are denounced as traitors.

After polarization, comes preparation. During the preparation stage, plans are made for the genocide. Death lists are compiled. Trial massacres are conducted, both as training for the genocidists, and to test whether there will be any response, such as arrests, international denunciations, or sanctions. If the murderers get away with their crimes, if there is impunity, it is a green light to finish the genocide. The seventh stage is extermination, whereby the killing legally defined as genocide begins. Those who do it often think they are “purifying” their society, by “exterminating” those who are less than human and are a threat to them. The last stage under this classification is denial. During and after every genocide, the perpetrators deny they committed the crime. They portray their murders as justified killing during war or repression of terrorism. They blame the victims, often claiming that the victims’ own behavior brought on the killing and portray the murders as spontaneous outbreaks in response to the victims’ depredations, or as the actions of rogue army commanders, rather than as intentional government policy. The perpetrators claim to have been powerless to prevent the killings by others, and even have the audacity to claim they assisted their victims.

Using these definitions and placing them within the context of the larger category of crime against humanity in general, acts on Armenians by the Young Turks in 1915, on the Jews and Gypsies by the Nazis and, on Tutsis by the Hutu racists in 1994 clearly constitute acts of genocide.

International Dimensions of Genocide vis-à-vis International Peace and Security

No event on the scale of genocide occurs in a domestic vacuum. Not only do the repercussions of such a deadly brand of violence inevitably affect immediate neighbors, but the assumptions and institutions on which the international system rests are shaken. As with all important and complex issues, there is a cost attached to action or inaction by international institutions.

Refugees are the most obvious practical problem arising from genocide to plague those outside the conflict. While any sort of war, repression, or natural disaster can generate floods of people seeking to escape, genocide, because of its total and unceasing nature, might be expected to force even the least able or willing targets to flee for their lives. Refugee flows often stress host states' economies by swelling the ranks of the unemployed and needy.

The political radicalism surrounding genocide is not usually confined within borders either. Whatever social, political, and economic instabilities allow the implementation of genocide as policy in one area are likely to link, possibly even directly, factions and groups beyond the zone of current perpetration to populations within it. Within the context of the conflict system, every conflict is interconnected with other conflicts in the region. The relationship between Hutu and Tutsi in Rwanda, for example, has major effect on the situation in Burundi, and vice-versa. And as in the case of any prolonged violence, even simmering conflicts unrelated to the issues being fought over can be brought to boil in neighboring areas. Arms flows, refugee floods, regional disruption of trade and the polarization of politics can combine to push any existing local problems into crisis; a genocidal conflict often pushes these stresses to extremes.

The Convention on Genocide indicates the belief by at least the vast majority of member states that 'genocide' is not acceptable within the present international system. The fact that the UN has a mandate to intervene in cases that fall under its definition of 'genocide' implies a loss of credibility for the entire organization if these cases are left to run their bloody courses without interference. In practice, the UN has suffered derision and denigration for its often bumbling or absent attempts to halt or mitigate genocide as was the case in Rwanda.

The UN's Duty in Humanitarian Intervention

The UN Charter vests in the Security Council the authority to make a finding there is a threat to the peace, a breach to the peace or an act of aggression. It is therefore assumed that the 'international community' is capable of for example changing the course of genocide – that the structure of the international system can prevent its escalation. Structuralist authors blame the state system and the nationalism on which it is based for the prevalence of genocide. The structure of a particular regime is certainly relevant: a 'repressive and dictatorial' government increases the chances of genocide, since interpretation of reality is filtered through a single coercive medium the events can be more easily fabricated in the absence of government accountability.

Once genocide is occurring and those outside are able to recognize rather than have to predict it, physical action becomes a more politically viable option. Presuming that the perpetrators are, by this point at least, fairly immune to public outcry alone, the most viable step for the UN is humanitarian intervention. The UN can halt the culmination of fear and violence into genocide.

As noted earlier, when states sign the UN Charter, they pledge not to use or threaten force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purposes of the UN. The Charter delegates significant authority to the Security Council to decide whether particular uses of force meet these purposes. Chapter VII provides for a UN Military Staff Committee to advise and assist the Council in questions relating to the Council's military requirements. States, pursuant to Article 43 should make armed forces available to the Security Council to counteract threats to the peace. The Security Council authorized member states to use force in Korea in 1950 and against Iraq in 1990³³.

The General Assembly though not perpetually "on call," like the Security Council, may hold an Emergency Special Session.³⁴ Convened within 24 hours of a request being made, an Emergency Special Session must also "convene in plenary session only and proceed directly to consider the item proposed for consideration in the request for the holding of the session, without previous reference to the General Committee or to any other Committee." Such sessions, however, are comparatively rare, having been convened only 10 times in the UN's history - this procedure was, for example, used to authorize a military operation over the crisis in the Congo.³⁵

The main hurdle, once the matter has been brought before the Assembly, is the requirement of article 18 (2) that any resolution relating to the maintenance of

33 William O'Brien and Anthony Arend "Just War Doctrine and the international Law of War" Military Medical Ethics Journal vol 1 pp: 221 – 250: 227

34 "Uniting for Peace" Resolution (UN Resolution 377), which empowers the General Assembly to act to keep or restore the peace when the Security Council, due to lack of agreement among the permanent members, is not able to do so.

35 The Uniting for Peace Resolution has been invoked in three major crises: the Korean War, the Suez crisis, and the Congo crisis. In all three instances, the Security Council found itself deadlocked, and General Assembly action was deemed essential by the majority of members. Source *Encyclopedia of the United Nations*, available at <http://www.nationsencyclopedia.com/United-Nations/International-Peace-and-Security-BASIC-CHARTER-PROVISIONS.html> Accessed May 16 2006

international peace and security have a two-thirds majority of UN members present and voting (that is, not abstaining). If all 189 are present and none abstains, then 126 affirmative votes are required. Given the significant opposition to a variety of past military interventions, the politics that produce deadlock among the Security Council are likely to affect the deliberations at the General Assembly. An intervention that took place with the necessary two-thirds backing or more in the General Assembly would almost certainly have a moral and political force sufficient to categorize it as "legal," even without Security Council endorsement. It would certainly be regarded as legitimate. Indeed, a vote in the Assembly that came close to the required majority would probably be sufficient to confer additional legitimacy on an ensuing humanitarian intervention.

Precedent on Security Council Action under Chapter VII

The Security Council has in a number of instances invoked Chapter VII. In these instances, the referenced threat to peace has come as a result of humanitarian suffering and violations of human Rights. While during the Cold War the Council had occasionally been willing to mandate sanctions to combat human rights violations, for example sanctions against Southern Rhodesia in 1965, the sanctions against South Africa in 1977, the post Cold War era has seen the Security Council become increasingly willing to view a state's treatment of its citizens, and the international effect of that treatment as justifying intrusive Chapter VII action.

In 1991 the Council considered the case of the Kurds in Iraq. While a U.N.-authorized coalition was forcefully expelling Iraq from Kuwait in "Operation Desert Storm," U.S. President George H.W. Bush vocalized his hope that the people of Iraq

would take action to remove Iraqi President Saddam Hussein from power.³⁶ When Kurds in northern Iraq tried to follow through on Bush's suggestion, the Iraqi government responded with violence. The situation was so volatile that the Security Council met to talk about how to avoid the carnage. The discussions centered on first the cause of the problem, that of human rights violations occurring within Iraq and second the situation's consequences, notably the flow of Iraqi refugees, mostly Kurds across international borders. The Council in its resolution regarded the repression of the Iraq civilian population as a threat to international peace and security.

Even without attendant trans-border effects, human rights violations can trigger Chapter VII enforcement measures. In Somalia in 1992, the Council authorized the use of force against Somalia in order to combat a situation where citizens were being denied human rights. After Somali President Siad Barre was ousted in January 1991, a clan-based civil war erupted throughout the country. In the fighting that ensued, hundreds of thousands of Somali citizens were forced to flee the capital Mogadishu. After a number of resolutions identifying the human suffering in Somalia as a threat to international peace and security, in December 1992, the Security Council invoked Chapter VII and authorized humanitarian intervention in order to prevent human rights violations³⁷ and restore peace, stability, law and order.

In the Gulf War of 1990, the Security Council passed a number of resolutions condemning the Iraq invasion of Kuwait and its attempted annexation. Under Chapter VII provisions, it authorized all necessary means to accomplish the required withdrawal of Iraq from Kuwait. The UN military alliance attacked and Iraq withdrew.

³⁶ Tésou *op cit* para 343

³⁷ S.C. Res. 794, U.N. SCOR, 47th Sess., 3145th mtg., U.N. Doc. S/RES/794 (1992)

The 1995 Bosnia-Herzegovina (Bosnia) ‘ethnic cleansing,’ was a strong indication that genocide will soon follow. Once genocide was underway the international community acted slowly and in piecemeal fashion. In the end, only when the non-existent UN enforcement ability was replaced by the North Atlantic Treaty Organisation, NATO military intervention did the war in Bosnia begin to grind to a pause.

Arguably the most important, although perhaps the least noticed, consequence of Council decisions in the 1990s, taken as a whole, has been to erode and shift at the international level the understanding of national sovereignty. By 1999, it was widely although not universally accepted that tyrants could no longer seek refuge behind the walls of sovereignty to shield themselves from international concern and even action over massive human rights violations and humanitarian catastrophes. The Council has repeatedly intervened to address humanitarian consequences of mostly civil With this development, the Council did not override article 2(7) of the U.N. Charter, rather, it has sharply redefined in practice the conception of what can constitute a threat to international peace and security and a proper topic for international intervention.

CHAPTER THREE

THE 1994 RWANDA GENOCIDE VIS-À-VIS THE UNITED NATIONS RESPONSIBILITY

Introduction

Chapter two dealt with international law issues that appertain to the use of force, and human rights aspects calling upon the world community and the UN to intervene particularly in cases of genocide. Cases of humanitarian intervention were cited. This chapter narrows down the debate to a case study of the 1994 Rwanda genocide. The genocide saw the brutal decimation of the Tutsi population and moderate Hutus by militia and the armed forces, and by civilians against civilians. The chapter will in particular investigate why the international community particularly the UN did not prevent the genocide, nor stop the killing in time once the genocide had begun. In so doing, the Chapter brings to fore the international atmosphere before, during and after the genocide. This is because while the genocide became pronounced in the 100 days after April 6, 1994, physical and rhetorical violence against the Tutsi as a people began as far back as 1990 and continued to escalate. When systematic planning and organizing began cannot be established with precision, but as the chapter shows violence was rampant for years before the genocide and was escalating. The chapter thereby establishes that the UN was aware that genocide was taking place long before April 1994.

This chapter while relying heavily on secondary data, and especially the reports of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda¹ and The International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda (IPEP) constituted under the OAU, and presentations to this panel,

¹ Report dated 15 December 1999.

it has in addition relied on accounts by General Dellaire in his book *Shake Hands With the Devil- The Failure of Humanity in Rwanda*² and verbatim reports of interviews on Dellaire. Other verbatim accounts that have been relied on in this chapter are interviews of Colonel Luc Marshal who was second-in-command for U.N. Assistance Mission in Rwanda (UNAMIR) under General Dellaire; John Woods, the Deputy Assistant Secretary for African Affairs at the Department of Defense from 1986-1994; Iqbal Riza, the Chief of Staff to the U.N. Secretary-General, Kofi Annan and who during the events in Rwanda, was deputy to Annan, who was then head of U.N. peacekeeping. Primary data was also sourced from the Video series *Chronicle of a Genocide Foretold*.³

The International Scene Prior to the 1994 Genocide

Internationalisation of Ethnic Conflicts in the Great Lakes Region

The fact that Rwanda continued to slip into a state of chaos throughout the 1990s can be attributed to what was happening in the neighbouring countries and especially Burundi. The “parallel massacre syndrome” – involving carefully targeted murders – that Burundi suffered in 1992 was being relived following the assassination of the Hutu president, Melchior Ndadaye in October 1993. While largely the Tutsi-dominated army was key in slaughtering Hutu civilians, both sides were engaged in massacres that led to the deaths of an estimated 50,000 people.⁴ Almost one million Hutu refugees fled into Rwanda.

The internationalization of the Burundi conflict contributed to the 1994 Rwanda genocide as the Hutu kith and kin in Rwanda felt justified in defending themselves.

² General Dellaire *Shake Hands With the Devil- The Failure of Humanity in Rwanda* (Toronto; Random House 1995)

³ *Chronicle of a Genocide Foretold* (video series produced by Sam Grana and Yvan Patry, National Film Board Canada, Ottawa).

⁴ Rene Lemarchand *Burundi Ethnic Conflict and Genocide* 2nd ed, (Cambridge, UK: Cambridge University Press, 1996) p. xiv

Indeed the movement known as Hutu power, the coalition that would make genocide possible was a reaction to the assassination of Ndadaye. Hutu power as an explicit organizing concept had been announced earlier at a provincial meeting, but it really took off at a mass rally in Kigali on October 23, 1993, two days after the assassination.⁵ Politics in Burundi were heavily ethnicised and Ndadaye, who had been elected in the first free and fair elections held in 1993 when an overwhelmingly Hutu electorate defeated the Tutsi incumbent President Pierre Buyoya, was defeated only four months after assuming office. This led to Hutu local authorities led attacks on Tutsi. This assassination of Burundi's democratically elected Hutu President, openly celebrated by some Rwandan Tutsi, and the appalling massacres that followed offered final proof to the Hutu that power sharing between the Hutu and the Tutsi was not possible and that the Tutsi could not be trusted. Hutu extremists saw that the only sure way to guarantee that Rwanda's Tutsi could not carry out their historic aspiration to rule the country unilaterally was to wipe out as many Hutu as was necessary.

Arusha Peace Agreement Vis-à-vis UN Responsibility Over Rwanda

After almost three years of civil war between the government of the Rwandese Republic and the rebel forces of the Rwandese Patriotic Front (RPF), on 4 August 1993, the Government of Rwanda and the RPF signed the Arusha Peace Agreement.⁶ The Agreement provided for a broad role for the UN, through what it termed the Neutral International Force (NIF), in the supervision of implementation of the Accords during a transitional period which was to last 22 months. The force was assigned wide security

⁵ Allison Des Forges, *Leave none to tell the Story: genocide in Rwanda* (New York: Human Rights Watch 1999) pp 137-138

⁶ The Arusha Peace Agreement is reproduced in the United Nations "Blue Book" Series, Volume X, The United Nations and Rwanda, 1993-1996

tasks: to guarantee the overall security of the country and verify the maintenance of law and order, ensure the security of the delivery of humanitarian assistance and to assist in catering to the security of civilians. The force was also asked to assist in tracking arms caches and in the neutralization of armed gangs throughout the country, undertake mine clearance operations, assist in the recovery of all weapons distributed to or illegally acquired by civilians, and monitor the observance of the cessation of hostilities.⁷

As a follow-up on the Arusha Agreement, the Secretary-General dispatched a reconnaissance mission to the region from 19 to 31 August 1993 to study the possible functions of the NIF and the resources needed for such a peacekeeping operation. The mission was led by Brigadier-General Romeo A. Dallaire, at the time Chief Military Observer of the United Nations Observer Mission Uganda-Rwanda (UNOMUR). This body watered down somewhat the provisions of the Accords. General Dallaire had originally envisaged 8,000 peacekeepers, hoped for 5,000 but finally agreed to request only 2,500 as a feasible number that might be approved.⁸

While the Arusha peace process was an African initiative in which both the Organisation of African Unity, OAU, and several African states played a central role, the identification of the UN as the main implementing agency for the Agreement was critical. It meant that the full responsibility in managing the conflict rested primarily on the UN and not other international players. It recognized the broad mandate of the UN in

⁷ Article 54 of the Arusha Peace Agreement

⁸ Samantha Powers, "Bystanders to Genocide" *The Atlantic Monthly* September 20012: Available at www.theatlantic.com pp.340-341

maintaining international peace. The UN was also the preferred implementing agency because the OAU was widely considered as partial to the RPF.⁹

On 24 September 1993, two weeks after the end of the original transitional period, the Secretary-General presented a report to the Security Council on the establishment of a peacekeeping operation in Rwanda¹⁰ based on the report from the reconnaissance mission. The report set out a deployment plan for a peacekeeping force of 2,548 military personnel. On 5 October, the Council unanimously adopted resolution 872 of 1993, which established UNAMIR.¹¹ It is notable that Council did not approve all the elements of the mandate recommended by the Secretary-General, but instead decided on a more limited mandate. In addition, the resolution decided that UNAMIR should contribute to the security of the city of Kigali, instead of the entire Rwanda territory as had been envisaged under the Arusha Accords.

UNAMIR was constituted as a Chapter VI peacekeeping mission instead of a Chapter VII peace enforcement operation. This meant that soldiers could only use force to protect themselves. The operation was substantially weaker than the one the Arusha negotiators deemed necessary to implement the Accords.¹² Its mandate was inadequate for the task and for quite some time no effort was made by the UN to make it effective. The formation of a mission that was not up to the job at hand mirrors the fact that the Security Council was less interested in the situation in Rwanda. As noted by General Dallaire, Rwanda was simply a tiny country somewhere in Africa about which little was

⁹ Astri Suhrke and Howard Adelman "The Security Council and the Rwanda Genocide" in David Malone, Boulder, Colo eds *The UN Security Council: From the Cold War to the 21st Century* (____ 2004)

¹⁰ UN documents ; S/26488.

¹¹ UN Documents DPI/1484/Rev.1 April 1995

¹² The International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda paragraph 13.9 ; Also Riza in "The Triumph of Evil" Frontline Interview 1995

known.¹³ For General Dallaire, it was understood that the mission was not taken seriously and,

“it was made obvious to us, in fact right from the beginning and verbally before we left that that the contributing nations had their fill of peacekeeping missions. This was because at the time there were 16 other UN missions and ours was nothing but a little mission that was supposed to be classic Chapter VI mission – an easy programme that was not to cost money in any significant terms. Really, nobody was interested in that.”¹⁴

With the UN having received and published the report of the Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions that informed on the precarious situation at the ground, anyone would expect that the Security Council should have respected the demands under the Arusha agreement.

Somalia’s influence Vis-a-vis Security Council Decision on Rwanda

The success of UNAMIR depended on collective security decisions of the Security Council. Largely because of the setup of the Security Council, decisions are political and judgemental in character and lack the neutrality, impartiality and independence that are very essential to decisions on humanitarian intervention.

At the time the Rwanda genocide was building up, a lot was happening in the international scene and particularly in the Greater Horn of Africa in Somalia. On October 3, 1993 elite units of the U.S. Army's Rangers and Delta Force were ambushed by Somali men armed with automatic weapons and rocket-propelled grenades. What had started out as an operation to capture warlord Mohammed Farah Aideed turned into a tragic firefight that lasted 17 hours and left 18 Americans dead. At the precise moment,¹⁵ Rwanda

¹³ Dallaire *Shake Hands With the Devil* op cit chapters 2 & 3

¹⁴ Dallaire in a letter to Samantha Powers, reproduced in *Bystanders to Genocide* (The Atlantic Online: www.theatlantic.com)

¹⁵ The Resolution on UNAMIR came on October 5, 1993.

appeared on the agenda of the Security Council. The US became hostile to any UN initiative and being a permanent member influenced the decision of the Security Council.

On receiving word of the events in Somalia, President Clinton cut short a trip to California and convened an urgent crisis-management meeting at the White House which resolved to call off the manhunt for Aideed and recall all U.S. forces.¹⁶ The Pentagon leadership concluded that peacekeeping in Africa meant trouble and that neither the White House nor Congress would stand by it when the chips were down. Even before the deadly blowup in Somalia the US had resisted deploying a UN mission to Rwanda.¹⁷ Having lost much of its early enthusiasm for peacekeeping and for the United Nations itself, Washington was nervous that the Rwanda mission would sour like so many others. But President Habyarimana had traveled to Washington in 1993 to offer assurances that his government was committed to carrying out the terms of the Arusha Accords. In the end, U.S. officials accepted the proposition that UNAMIR could be the rare "UN winner." On October 5, 1993, two days after the Somalia firefight, the United States reluctantly voted in the Security Council to authorize the mission. Even so, U.S. officials made it clear that Washington would give no consideration to sending U.S. troops to Rwanda.¹⁸ Because of Somalia, the US could approve only the cheapest, easiest and safest operations.¹⁹ The role of the US was decisive and destructive. Responding to the effect of Somalia and pictures on CNN on the U.S.'s attitude towards peacekeeping, James Woods, the then Deputy Assistant Secretary for African Affairs at the US Department of Defense indicates,

¹⁶ Samantha Power, *Bystanders to Genocide* op cit p.6

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Boutros Boutros-Ghali, *Unvanquished: A US-UN Saga* (New York: Random House, 1999)

"I think the actual effect was to precipitate a basic review of the circumstances under which we would get engaged in this type of operation. The outcome of which was laid down on day one, which was to establish criteria which would narrow the possibility that we would get engaged. This resulted in a formal presidential determination or directive (PDD 25) in May of '94 ... which set out a bunch of criteria--strong identifiable national interest; clear exit strategy; and on and on. A set of guidelines under which the U.S. would be prepared to get her own forces engaged and/or to authorize the U.N. to get engaged and this crystallized a growing body of resistance to these type of potentially dangerous humanitarian interventions..."²⁰

The tragic killing of the Belgian peacekeepers in Rwanda in 1994 took place against this backdrop and impacted on the reaction of the international community.²¹ Belgium lobbied for the withdrawal of UNAMIR, a proposal that was picked up by the US with the suggestion that a small, skeletal operation be left in Kigali. The Security Council responded by recommending a reduction of UNAMIR to 270 people.²²

Philip Gourevitch²³ remarks,

"What we call the Somalia Syndrome. What we call the Mogadishu Line. Casualties were not acceptable. Casualties appeared on television screens ... you will recall when the American soldiers were killed and that was simply not acceptable, and so those risks were not to be taken again.

One senior U.S. official remembers,

"When the reports of the deaths of the ten Belgians came in, it was clear that it was Somalia redux, and the sense was that there would be an expectation everywhere that the U.S. would get involved. We thought leaving the peacekeepers in Rwanda and having them confront the violence would take us where we'd been before. It was a foregone conclusion that the United States wouldn't intervene and that the concept of UN peacekeeping could not be sacrificed again."²⁴

²⁰ James Woods, Deputy Assistant Secretary for African Affairs at the Department of Defense from 1986-1994. In the spring of 1993, Woods identified Rwanda as a potential crisis, but was told to remove it from the list because it wasn't an important area. During the genocide, he was involved in congressional hearings on Rwanda. In an interview with Frontline Interviews, *The Triumph of Evil* 1995 he discusses how and why the West avoided getting involved in trying to halt the genocide.

²¹ Belgium lobbied for the withdrawal of UNAMIR.

²² Resolution 912 of 1994

²³ Frontline Interviews, *The Triumph of Evil* 1995 Author of *We wish to inform you that tomorrow we will be killed by our families*

²⁴ Quoted in Samantha Powers exclusive interviews with scores of participants in decision making Available at www.bard.edu/hrp/resource_pdfs/powers.bystanders.pdf

Early Warnings Vis-à-vis UN's Reluctance to Intervene

The genocide was not a killing machine that rolled inexorably forward. Many events took place prior to 1994 that were early warnings of the Rwandan genocide. There was continuous flow of information from especially the diplomatic missions in Rwanda to their home governments and international agencies. For example, in the spring of 1992, the Belgian ambassador in Kigali, Johan Swinner warned his government that the *Akazu*, a secret group of Hutu Power advocates organized around the President's wife, "is planning the extermination of the Tutsi of Rwanda to resolve once and for all, in their own way, the ethnic problem..."²⁵ In October 1992, Professor Filip Reyntjens organized a press conference in the Belgian Senate in which he described how Hutu Power death squads were operating and named their leaders, including Colonel Théoneste Bagasora, who later coordinated the genocide.²⁶ In March 1993, four human rights groups issued a report on mass killings in Rwanda which while not using the word "genocide" to describe the mass killings of Tutsis, showed genocide was a possibility,²⁷ the report was largely ignored. Key warnings of the genocide within the UN and to the UN came from the U.N. Special Rapporteur on Summary, Arbitrary, and Extrajudicial Executions, reported to the U.N. Human Rights Commission in August and the warnings from General Romeo Dallaire, commander of UNAMIR.²⁸ Shortly after the signing of the Arusha Agreement,

25 Belgian Senate, Commission d'enquête parlementaire concernant les événements du Rwanda, Rapport, 6 December 1997, p. 493. Quoted in Linda Melvern, *A People Betrayed. The Role of the West in Rwanda's Genocide*, (Zed Books, London) 2000, p.49.

26 Gérard Prunier, *The Rwanda Crisis 1959 – 1994, History of a Genocide*, (London, Hurst and Company, 1995), p. 168

27 International Federation of Human Rights, Africa Watch (Human Rights Watch), Inter-African Union of Human Rights, and International Centre of Rights of the Person and of Democratic Development. *Report of the International Commission of Investigation of Human Rights Violations in Rwanda since October 1, 1990 (January 7 – 21, 1993)*, New York: Human Rights Watch, 1993.

28 B.W. Ndiaye Report of the UN Special Rapporteur on Summary, Arbitrary and Extrajudicial Executions, August 1993. UN Documents E/CN.4/1994/Add.1

the United Nations published a report which gave an ominously serious picture of the human rights situation in Rwanda.²⁹ The report indicated that massacres and a plethora of other serious human rights violations were taking place in Rwanda. The targeting of the Tutsi population led to the citing of the Genocide Convention and the observation that the cases of intercommunal violence indicated that the Tutsis in the overwhelming majority of cases, had been targeted solely because of their membership of a certain ethnic group and for no other objective reason. While avoiding being conclusive on the existence of genocide, Special Rapporteur concluded that the massacres that had already taken place seemed to conform to the Genocide Convention's definition of genocide.³⁰ The report in addition to pointing out the serious risk of genocide in Rwanda - recommended a series of steps to prevent further massacres and other abuses. From this report thus the situation on the ground was very clear to the UN.

The early organizers included military and administrative officials as well as politicians, businessmen, and others with no official posts.³¹ In order to carry through the genocide the organizers of the genocide had to capture the state, which meant not just installing persons of their choice at the head of the government, but securing the collaboration of other officials throughout the system. Upon the shooting down of the President's plane, Colonel Bagosora the chef de cabinet in the Ministry of Defence installed a regime of extremists masquerading as a legitimate government, an act that the soldiers, the U.N. representative, and the international community acquiesced to. As the new leaders were consolidating control over military commanders, they profited

29 Ibid

30 Report of the UN Special Rapporteur on Summary, Arbitrary and Extrajudicial Executions, August 1993. paragraph 10

31 Human Rights Watch Report p. 9 Available at <http://www.hrv.org/reports/1999/rwanda/Geno1-3-05.htm>

enormously from the first demonstration of international timidity.³² U.N. troops, in Rwanda under the terms of the peace accords, tried for a few hours to keep the peace, then withdrew to their posts leaving the local population at the mercy of assailants.³³ International indifference to the fate of Rwandans was confirmed when the experienced well-equipped force of French, Belgian, and Italian troops rushed in to evacuate the foreigners and left the Rwandese for death and when the Belgians began arranging for the withdrawal of their troops from the U.N. peacekeeping force.

Early Warning vis-à-vis Media and Propaganda

The 1994 genocide in Rwanda provides a telling case study of two quite separate roles for media in a conflict situation. Prior to the genocide, radio stations and newspapers were carefully used by the conspirators to dehumanise the potential victims, Rwanda's Tutsi minority. During the genocide, radio was used by the Hutu extremist conspirators to mobilise the Hutu majority, to coordinate the killings and to ensure that the plans for extermination were faithfully executed.

In Rwanda, the dehumanization of Tutsis was effected through media and propaganda. In December 1990, the Hutu Power hate newspaper, *Kangura*, published the "Ten Commandments of the Hutu."³⁴ They included the injunction, "The Bahutu should stop having mercy on the Batutsi." The Ten Commandments called for continuation of the Habyarimana government's policy that the army be exclusively Hutu, and that officers be prohibited from marrying Tutsi women. Cartoons and articles in *Kangura*

32 Ibid

33 Ibid

34 Kakwenzile, Joan and Kamukama, Dixon, "The Development and Consolidation of Extreme Forces in Rwanda 1990-1994," in Adelman, Howard and Suhrke (eds) *The Path of a Genocide: The Rwanda Crisis from Uganda to Zaire* (Nws Brunswick, N.J.: Transaction Press, 1999) p.76

referred to Tutsis as cockroaches and snakes, and regularly expounded the myth that they had invaded from Ethiopia. Tutsis were “devils” who ate the vital organs of Hutus.³⁵ Radio Télévision Libres des Milles Collines (RTL) amplified the hate propaganda from 1993 onwards.

The reporting grew steadily into brainwashing the Hutu. Propaganda was spread that the Tutsi was preparing a genocidal war against the Hutu. People were increasingly incited into divisiveness and resentment. The propaganda included explicit calls for massacres and direct attacks on the Tutsi -“where are those Tutsis who used to phone me? Ah, they must have all been exterminated. Let us sing: The Tutsi have been killed. God is always just! The criminals will be exterminated!”³⁶ On April 16, there was a call over the RTL from the interim government for all ordinary citizens to take up arms nationwide and mount barricades or roadblocks to protect themselves against what the RTL billed as a rebel army bent on infiltrating and killing Hutus.³⁷ It was a sort of mass mobilization of the population. Amidst all this, the UN and the international community did not react effectively. While a series of terrible massacres of Tutsi were carried out and as the signs of ever-increasing violence grew, Rwanda was totally ignored by the international media.

During the first weeks of genocide, Western reporting mistook genocide for civil war and largely conveyed the false notion of two ‘tribes’ of African ‘savages’ mindlessly

35 Ibid

36 RTL broadcast replayed in *Chronicle of a Genocide Foretold*

37 Romeo Dallaire, *Shake Hands with the Devil*, op cit. p.305

slaughtering each other as they had done from time immemorial.³⁸ As a result, there was little public pressure in the West for governments to intervene.

Early Warning Vis-à-vis Illicit Arms

UNAMIR had a strong mandate to monitor illegal arms. Arms had become plentiful in Rwanda, “grenades were sold alongside mangos and avocados on fruit stands at markets around Kigali”³⁹ and this was well within the UN’s knowledge. UNAMIR communications prior to April 6 show that UNAMIR officers were aware that big amounts of arms and ammunition were flowing into Rwanda and were concerned but were denied permission by the UN headquarters in New York to take offensive action to confiscate the weapons.

Although many genocidal killings were done with machetes, clubs, or other such weapons, military and militia used firearms to begin major massacres, to execute some persons, and to threaten opponents of the genocide into compliance. Rwandan soldiers also needed ammunition for the war against the RPF. With reports that arms were being accumulated and being distributed to the civilians and militia the increasing potential for genocide was evident yet the UN would not impose an embargo on arms to Rwanda or allow UNAMIR to confiscate illegal arms.

The “Genocide Fax”

The preparations for violence took place in full view of a U.N. peacekeeping force. The commander General Dallaire reported evidence of the worsening situation to

38 Alan Kuperman, “How the Media Missed Rwandan Genocide” *International Press Institute Report* No. 1, 2000, Available at <http://www.hawaii.edu/powerkills/COMM.7.8.03.HTM>

39 Gérard Prunier *The Rwanda Crisis: History of genocide* p.184 Prunier who served as an adviser to the French Ministry of Defence during the 1994 genocide, maintains that the French government continued to secretly deliver ammunition to the Rwandan army as the genocide progressed.

his superiors who directed him to observe the narrowest possible interpretation of his mandate.⁴⁰ He was in effect to do nothing but keep on talking with the authorities while they kept on preparing for slaughter.

On January 11, 1994, General Dallaire sent the Military Adviser to the Secretary-General of the UN a telegram which stated that General Dallaire had been put into contact with an informant who was a top level trainer in the *Interahamwe* militia. The cable contained a number of key pieces of information. It highlighted a strategy to provoke the killing of Belgian soldiers in order to have Belgian battalion's withdrawal from Rwanda. Secondly, it carried the information that the *Interahamwe* had trained 1,700 men in the camps and that the personnel was able to kill up to 1,000 Tutsi in 20 minutes. The informant, it stated had been ordered to register all Tutsi in Kigali, and suspected it was for their extermination.

When General Dallaire sent his January 11 cable, he understood his mandate to permit seizing illegal arms. He stated that he was undertaking the operation rather than requested authorisation for it. From an interview with the Assistant Secretary General, Iqbal Riza,⁴¹ it is evident that the cable was shared with a number of senior officials within U.N. Department of Peacekeeping (DPKO) and that the cable was in the archives, although the Secretary-General was shown the copy later. General Dallaire's initiative drew an immediate and supposedly unanimous negative response from the secretariat staff. The first response from DPKO to UNAMIR was a cable from the Undersecretary General for Peacekeeping Kofi Annan (signed off by Riza) indicating that no reconnaissance or other action, including response to request for protection, should be

⁴⁰ Romeo Dallaire, *Shake Hands With the Devil*, op cit pp 135-167

⁴¹ Frontline Interview

taken by UNAMIR. It denied General Dallaire authority to search for and seize the caches of machetes and other weapons that had been shipped into Rwanda for the Hutu militias, the *Interahamwe* as this would be exceeding UNAMIR's mandate. It instead instructed him to take the information to the Rwandan government, many of whose members were planning the genocide. DPKO's refusal to authorize action was confirmed on January 14 by Secretary General Boutros-Ghali himself.⁴²

In the interview of Riza, he indicates that he regrets that they did not interpret the information in the cable to be the truth. He attributes the failure to interpret the cable as the truth to the fact that since the 1960s, there have been cycles of violence –Tutsis against Hutus, Hutus against Tutsis, which had continued from the 1960s through the 1970s into the 1980s and the 1990s and as such was nothing new. Riza then goes ahead to lay blame on the Security Council for reducing the size of UNAMIR instead of increasing its size. He further indicates that the mission was never designed to resort to the use of force.

UNAMIR continued to send reports of deteriorating insecurity notably on January 22, February 3, February 15, February 27 and March 13 1994 but even then, the UN Secretariat held to the rigid interpretation of the mandate to UNAMIR and would not allow it to take a more active role in the operations and in specific to confiscate some of the arms caches.

Security Council Inaction in the Face of Genocide

Towards the end of March 1994, the Secretary-General to the UN presented a progress report on UNAMIR to the Security Council which described the political

42 UN Independent Inquiry Report

stalemate, the deterioration of the security situation and the humanitarian situation in Rwanda.⁴³ The Secretary-General recommended extending UNAMIR's mandate by six months. Key members of the Security Council were reluctant to accept such a long mandate extension. The decision taken which was adopted unanimously, extended the mandate by almost four months, with the possibility of a review if progress continued to be lacking.⁴⁴

General Dallaire briefed Riza by phone about of the shooting down of President Habyarimana plane on 6 April 1994, an event that triggered the violence.⁴⁵ Within a couple of days of the crash of the Presidential plane, national evacuation operations were mounted by Belgium, France, Italy and the United States. The operations were undertaken with the aim of evacuating expatriates. In a cable dated April 9, 1994 from Annan (Riza), the Head of Mission was requested to cooperate with both the French and Belgian commanders to facilitate the evacuation of their nationals, and other foreign nationals requesting evacuation. In this cable he was specifically asked not to engage in combat, except in self-defence.⁴⁶ As it were, most of the directives of the DPKO were reactive and thus bound to change. On April 15, 1994, Riza sent a cable that contradicted these earlier instructions. He indicated, "in the abnormal circumstances prevailing, those orders may be overridden at the discretion of the FC (Force Commander), for humanitarian reasons" meaning that General Dallaire had the discretion to interpret the mandate as would be necessary in the circumstances.⁴⁷

⁴³ 30 March UN documents S/1994/360

⁴⁴ in resolution 909 (1994) of 5 April,

⁴⁵ UN Independent Inquiry Report

⁴⁶ Romeo Dallaire, *Shake Hands With the Devil*, op cit pp 284

⁴⁷ Ibid p. 299

Following a meeting between the Secretary-General and the Foreign Minister of Belgium, Willy Claes, in Bonn on April 12, 1994 in which the Foreign Minister called for the suspension of UNAMIR, he advised the Security Council about the Belgian position and indicated that it would be extremely difficult for UNAMIR to carry out its tasks effectively. He therefore called for a replacement of the Belgian contingent. On the same day the Belgian Permanent Representative to the United Nations wrote directly to the Council. He argued that since the implementation of the Arusha Peace Agreement was seriously jeopardized, the entire UNAMIR operation should be suspended. Maintaining UNAMIR's presence continued to be linked to the efforts to achieve a cease-fire. On April 18, 1994 Annan (Riza) sent a cable under which it was argued that since there did not seem to be any real prospects of a cease-fire in the coming days, it was their intention to report to the Security Council that a total withdrawal of UNAMIR needed to be envisaged.

The Human Rights Watch has indicated that by April 15, it was clear to the players at the ground that the U.N. Security Council would not order the peacekeepers to try to stop the violence and might even withdraw them completely.⁴⁸ The organizers of the genocide had also expanded their ranks considerably and were strong enough to remove opponents and impose compliance with the killing campaign. The UN Independent Inquiry report shows that by 19 April, the Secretariat's line had changed significantly: the draft of a report by the Secretary-General to the Security Council which had been prepared now included three options: to strengthen UNAMIR, to reduce its strength or to withdraw completely. Option 1, the reinforcement of the mandate and

⁴⁸ Human Rights Watch Report on Rwanda Op cit

strength of UNAMIR was preferred. On 21 April, the Council voted unanimously to reduce UNAMIR to about 270 and to change the mission's mandate. The resolution stated that the Council was "appalled at the ensuing large-scale violence in Rwanda, which has resulted in the deaths of thousands of innocent civilians, including women and children."⁴⁹

The Late Turn Around

By the end of April, the disastrous situation in Rwanda made the Secretary-General recommend a reversal of the decision to reduce the force level. Boutros-Ghali's letter to the Security Council of April 29, 1994⁵⁰ provided an important shift in emphasis – from viewing the role of the UN as that of neutral mediator in a civil war to recognising the need to bring to an end the massacres against civilians, which had by then been going on for three weeks and were estimated to have killed some 200,000 people. The Secretary-General stated that the mandate contained in resolution 912 of 1994 did not give UNAMIR the power to take effective action to halt the massacres. The Council was asked to reconsider its previous decisions and to consider "what action, including forceful action, it could take, or could authorize member states to take in order to restore law and order."⁵¹ Even though, the Security Council issued a Presidential Statement⁵² under which it pointed out that the killings of civilians had "especially" taken place in areas under the control of members or supporters of the interim Government of Rwanda – whose representative was still participating in the deliberations of the Council – the Council could still not agree on using the term genocide. Its decision though points to the

49 Resolution 912 (1994),

50 UN documents: S/1994/518

51 Special Report of the Secretary-General on the United Nations Assistance Mission for Rwanda UN Documents S/1995/470

52 UN documents: S/PRST/1994/21

fact that it was no longer possible to pretend that genocide was not taking place in Rwanda.

The recommendations of the Secretary-General to the Security Council outlined the phased deployment of UNAMIR II up to a strength of 5,500, emphasizing the need for haste in getting the troops into the field. Though the US delayed the Security Council vote by four days,⁵³ the Council finally resolved to increase the number of troops in UNAMIR, and imposed an arms embargo on Rwanda.⁵⁴ The lack of political will to react firmly against the genocide when it began was compounded by a lack of commitment by the broader membership of the UN to provide the necessary troops in order to permit the UN to try to stop the killing. If the troops mandated in the Council's resolution had been speedily and effectively deployed, many Rwandan lives could have been saved.

The offer by France to conduct a unilateral military operation under Chapter VII to assure the security and protection of displaced persons and civilians at risk in Rwanda saved the day as two months after the resolution to expand UNAMIR, there were no troops in place. With a force of 2,500 soldiers complete with armored carriers, helicopters and fighter planes, *Operation Turquoise* was a model of what General Dallaire had envisioned. However, the objectives assigned to that force were the same as those assigned to UNAMIR by the Security Council, so contributing to the security and protection of displaced persons, refugees and civilians in danger in Rwanda, by means, including the establishment and maintenance, where possible, of safe humanitarian areas.

⁵³ Romeo Dallaire *Shake Hands With the Devil* op cit p. 372

⁵⁴ Resolution 918 of 1994 passed on 17 May 1994. It is interesting that Rwanda voted against the decision, a clear example of the problematic issue of principle raised by the Rwandan membership of the Council.

France sought a Security Council Resolution under Chapter VII as a legal framework for their intervention. On July 1, 1994 the Permanent Representative of France informed the Secretary-General in a letter, which was forwarded to the Security Council in document S/1994/798, that fighting had intensified, and that the situation in the South West "could quickly become completely uncontrollable". According to the French Ambassador, the situation required an immediate cease-fire. Halting the fighting was the only truly effective way to stabilize the humanitarian situation, and bring about a political settlement on the basis of the Arusha Agreement "from which those responsible for the massacres and, in particular, acts of genocide, must, of course, be excluded." Without a cease-fire, France saw two alternative ways to act: to withdraw or to organize a safe humanitarian zone. On 14 July the Security Council issued a Presidential Statement⁵⁵ which expressed alarm at the continued fighting, demanded an immediate cease-fire, urged the resumption of the political process within the framework of the Arusha Agreement, reaffirmed the humanitarian nature of the secure area in the south-west of Rwanda and demanded that "all concerned" respect this. Member States were called upon to contribute to ensure the deployment of the expanded UNAMIR II in the immediate future. This call, just like *Operation Turquoise* itself did too little, too late and too selectively.

These happenings in the international scene and particularly within the UN shows the difficulty that the UN Secretariat had in making and advancing a case before the Security Council. The Secretary-General noted that:

"The delay in reaction by the international community to the genocide in Rwanda has demonstrated graphically its extreme inadequacy to respond urgently with prompt and

55 UN documents S/PRST/1994/34

decisive action to humanitarian crises entwined with armed conflict. Having quickly reduced UNAMIR to a minimum presence on the ground, since its original mandate did not allow it to take action when the carnage started, the international community appears paralysed in reacting almost two months later even to the revised mandate established by the Security Council. We must all realize that, in this respect, we have failed in our response to the agony of Rwanda, and thus have acquiesced in the continued loss of human lives."⁵⁶

Most of the Security Council's decision relating to Rwanda were largely made under the influence of the world powers. Within the Security Council there was division on a number of issues: on whether an intervention should take place, and if so, how to describe the strength of the action. Countries such as Brazil, China and the United Kingdom are reported to have argued against too strong an "interventionist" wording regarding the role of the UN. The US was the major player.

"For their self interest, they had decided at the very outset of the mission that Rwanda was unimportant. Really, there is a UN Secretariat, there is a Secretary-General and there is the Security Council, but my belief is that there is something above all these. There is something above the Security Council. There is a meeting of like-minded powers, who do decide before anything gets to the Security Council. Those same countries had more intelligence information..."⁵⁷

Iqbal Riza noted the influence of major powers when he declared that Western states lacked the political will to become involved in Rwanda. Riza has commented:

"It comes back to political will. If the political will is there, yes, anything can be done. If the political will is there, troops, APCs [armored personnel carriers], and tanks can be airlifted in a matter of two days. This is not to criticize the Security Council."⁵⁸

James Woods, Deputy Assistant Secretary for African Affairs at the Department of Defense (1986-94) supported this view when he commented:

⁵⁶ United Nations Secretary-General, "Report of the Secretary-General of the Situation In Rwanda, reporting on the political mission he sent to Rwanda to move the warring parties towards a cease-fire and recommending that the expanded mandate for UNAMIR be authorized for an initial period of six months, S/1994/640 (31 May 1994)

⁵⁷ An Observer at International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda

⁵⁸ Iqbal Riza, interview for PBS program Frontline, www.pbs.org/wgbh/pages/frontline/shows/evil/interviews/riza.html, p.14

“I put Rwanda-Burundi on the list [a compilation of areas that could develop into serious crises for the Clinton Administration]. I won’t go into personalities, but I received guidance from higher authorities, ‘Look, if something happens in Rwanda-Burundi, we don’t care. Take it off the list. US national interest is not involved and we can’t put all these silly humanitarian issues on lists...Just make it go away’.”⁵⁹

Given the large number and types of signals described above, the UN could have deployed troops to stop the spread of the genocidal fire. The key international leaders have admitted that they should have acted. UN Secretaries- General Boutros Boutros-Ghali and Kofi Annan (who was the under-secretary for peacekeeping at the time), former US President Bill Clinton and Madeleine Albright who was the US ambassador to the UN at the time of the genocide, have all said that early intervention could have saved many thousands of lives.⁶⁰

The Secretariat nevertheless did not attempt to persuade members Security Council of the urgent need to take more positive action. As the current Secretary-General Kofi Annan acknowledged in his response to the UN Independent Inquiry Report;

“I fully accept their conclusions, including those which reflect on the officials of the UN Secretariat, of whom I myself was one.”⁶¹

The Security Council of the UN is central in the application of the Genocide Convention and in the circumstances of Rwanda in 1994. The decision in 1993 by the UN Security Council to send a small mission of peacekeepers was a tragic error. Under the

⁵⁹ James Woods, interview for PBS program Frontline, www.pbs.org/wgbh/pages/frontline/shows/evil/interviews/woods.html, p.8

⁶⁰ In a news conference on May 4, 1998, Secretary General Kofi Annan said: “I agree with General Dallaire when he says, ‘if I had had one reinforced brigade – 5,000 men –well trained and well equipped, I could have saved thousands of lives.’ ” A transcript of the press conference is printed *International Documents Review* 9, no. 15-16, pp.1-5; On a visit to Africa in March 1998, Clinton admitted that the world did not act quickly enough – Reported in “West Played Hidden Role in Genocide,” *Irish Times* (6 April 1998) p.13: Albright stated that “we and the international community should have been more active in the early stages of the atrocities in Rwanda” –Reported in Philip Gourevitch, “The Genocide Fax: The United Nations was Warned about Rwanda. Did anyone care?” *New Yorker*, 11 May 1998, p.46.

⁶¹ United Nations Secretary-General, “Statement on Receiving the Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda,” 16 December 1999.

terms of the Accords, a neutral force was to ensure security throughout Rwanda but the parsimonious Council decided that the peacekeepers should assist in ensuring the security of the city of Kigali only. It is against this backdrop that Chapter 4 provides a critical analysis of humanitarian intervention under the UN.

CHAPTER FOUR

CRITICAL ANALYSIS OF HUMANITARIAN INTERVENTION UNDER THE UNITED NATIONS

Introduction

In Chapter 3, focus was on the international scene before, during and after the 1994 Rwanda genocide. The Rwandan genocide could have been prevented. The early warning signs were clear to the UN before the genocide and there was still an opportunity for intervention early enough after the genocide had begun. This leads to an in depth analysis of why the UN failed in its responsibility to prevent and stop the genocide in Rwanda. The analysis looks at key issues that were acting at the time and contributed to the failure to intervene. The critical issues are the failure of the international community and the UN to recognize the genocide early; whether or not UNAMIR had the requisite mandate to stop the genocide and if not the failure to give the mandate, the politics of humanitarian intervention in Rwanda and the complexity of information, coordination and communication within the UN. Also important in this critical analysis is the role of the Secretariat of the UN, particularly the Secretary-General's office and the units most concerned the DPA and the DPKO are involve in initiating policy by defining the situation and policy options of the Council. This chapter argues that these were responsible for the formulation of an ambiguous mandate for UNAMIR and its operationalisation.

Refusal to Admit the Existence of Genocide

The obligation of states towards genocide prevention as outlined in the 1948 Genocide Convention stands shows that whatever evil may befall any group, nation or people is a matter of concern not just for the group but for the entire human family.

Genocide from Lemkin's postulation implies the existence of a coordinated plan of action. Considering the eight stages of genocide highlighted in Chapter two it should have been obvious that the happenings in Rwanda amounted to genocide – especially to a body like the UN that has at its disposal expertise to analyse such situations. The first stage of classification of the society was already in place classified into three groups, Tutsi, Hutu, and Twa. Although many African historians have pointed out that the groups did not fit the normal definition of ethnic groups, since they shared the same language, culture, and religion, there was nevertheless preferential endogamy, marriage within the group, a key characteristic of ethnic groups.¹ The colonial era attributed superiority to Tutsis. Tutsis were given preference in education, the church, the economy, and the government service. Ironically, the Hutu power movement adopted these same theories, in order to portray Tutsis as foreign invaders who had dispossessed Hutus of rightful control over Rwanda.²

Symbolization in Rwanda began with the issue of identity cards that included each individual's group identity, Tutsi, Hutu, or Twa. This reified group identity for each person, and made changes from one group to another much more difficult. The abolition of the ethnic identity cards was a proposed reform under the Arusha peace agreement but new cards were never issued. Hutu Power advocates wanted the ethnic designation retained³ and this should have rang warning bells to UN.

1 Allison Des Forges, *Leave none to tell the Story: genocide in Rwanda* (New York: Human Rights Watch 1999) pp 49-50

2 Léon Mugesera on November 22, 1992 said that Tutsis "belong in Ethiopia and we are going to find them a shortcut to get them there by throwing them into the Nyabarongo River [a source of the Nile.]" Quoted in Linda Mervin, *A People Betrayed: The Role of the West in Rwanda's Genocide* (New York: Zed Books, 2000) p 83

3 Gregory Stanton "The Eight Stages of Genocide" www.genocidewatch.org

Media and propaganda was a tool for dehumanization with the Tutsis being referred to as "*inyenzi*" – cockroaches and hence the need to purify the society. As is the case with all genocides, the Rwanda genocide was organized. Hate groups were organized, militias were trained and armed. Propaganda newspapers and a radio station, RTLM were strengthened. Rwanda witnessed the organization of extremist militias including the *Interahamwe*, the militia of the ruling MRND party and the *Impuzamugambi*, the militia of the CRD, an extreme Hutu Power party organized by the *Akazu* elite.

Rwandan moderates had formed several opposition parties and had won seats in the National Assembly. However they were constantly under threats and were sought out and killed once the genocide was underway. It is for this reason, that the "Genocide cable" sent by General Dallaire's request for protection of informant. The UN refused to offer the protection, although it was clearly within UNAMIR's mandate. Physical protection of moderates is among the most important steps that can be taken to prevent genocide at this stage.

In preparation for the genocide, it was noted in the previous chapters that between 1990 and 1993, many Tutsis were massacred by Hutus. However, no one was ever arrested for these crimes, and there were no demands from the UN and the international community for such arrests. When extermination began in earnest following the shooting down of the President's plane, the UN and the international community remained in denial that genocide was taking place. The presence of the Rwandan government representative at the very U.N. Security Council meetings that considered the situation provided an ideal forum for denial that genocide was taking place.

The argument by Kuperman⁴ that the West could not have prevented the genocide because the genocide happened too fast cannot hold therefore because the genocide did not just roll out but built up over time. That the UN was caught unaware is no justification of the failure to intervene to stop the genocide. The language used at the resolutions talk of genocide in all but name and yet it was not until May, 31 1994 that the Secretary General, in an update to the Security Council concluded that “there can be little doubt that the killings constitutes genocide.”⁵ Had the UN admitted this earlier it could have put in place mechanisms to stop the genocide from happening at least many months earlier or at least prevented its escalation when it had began.

The spirit of the Genocide Convention borrows from the cosmopolitanism tradition, earlier alluded to, that people, not states should be the subjects of international society. Under the Genocide Convention contracting parties have undertaken to punish for the crime of genocide.⁶ This undertaking lays emphasis on the promotion of human rights over states' rights and thereby weakens the restrictionist argument against humanitarian intervention on the basis of article 2(4) of the UN Charter. In the case of genocide the UN Security Council has the right and duty acting on behalf of all states and of humanity, to prevent genocide. This is the epitome of *erga omnes* obligations –that if a state is failing to meet its obligations in fulfilling the basic human rights of its citizens there is no reason to recognize its claim to sovereign authority as legitimate and a government that engages in substantial violations of human rights betrays the very

⁴ Alan J. Kuperman, *The Limits of Humanitarian Intervention – Genocide in Rwanda* (Washington DC: Brookings Institution Press, 2001) p vii

⁵ UN Documents S/1994/490

⁶ Article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide

purpose for which it exists and so forfeits not only its domestic legitimacy, but its international legitimacy as well.⁷

Overall Failure of the Security Council

As noted earlier, the UN and not the OAU was the preferred implementing agency to implement the Arusha Peace Agreement because the OAU was considered as partial to the RPF. Placing the Implementation of the Agreement with the UN also meant that the Rwanda conflict would be brought to the Security Council as at the time the conflict in Rwanda was of less urgency than others happening in the rest of the world, notably the war and ethnic cleansing in Bosnia and the civil war and famine in Somalia.⁸ Moreover, in a low-priority case like Rwanda, the Council was evidently reluctant to engage itself until there were clear signs that the parties themselves were willing to settle and so with this cease-fire and changes at the ground that were likely to accelerate the peace talks, the Council accepted the responsibility.⁹ The timing suggests a limited vision of the Council's role in supporting international peace and security efforts in cases that at the outset was of low priority. The Council's mode of engagement was reactive rather than preventive soothing that was dominant throughout the genocide.

The Security Council opted for an international force that would interpose itself to monitor the cease-fire, safeguard humanitarian assistance, allow the return of the internally displaced and possibly protect civilians.¹⁰ The resolution failed to take into account the terms and conditions articulated under the discussions towards the signing of

⁷ Fernando Teson, *Humanitarian Intervention: An Inquiry Into Law and Morality* (New York: Transnational, 1988), p. 15.

⁸ Astri Suhrke and Howard Adelman "The Security Council and the Rwanda Genocide" in David Malone, Boulder, Colo eds *The UN Security Council: From the Cold War to the 21st Century* (___2004)

⁹ Ibid

¹⁰ Resolution 812 of 1993 para. 2 discussed herein in Chapter 3

the Peace Agreement¹¹ concerning inciteful propaganda and importation of weapons by the Rwandese government. This was a big failure on the part of the Security Council. Even when renewing UNAMIR's mandate in January and again in April 5, 1994, the Security Council endorsed the policy outlined by the Secretary General and did not respond to the genocide by engaging the force with a more effective mandate – it instead threatened to withdraw UNAMIR if the Rwandan parties failed to implement the Arusha Agreement. This was another failure on the part of the Security Council – making the UN force presence contingent upon an already successful peace process, rather than an instrument to maintain peace and security and prevent human rights abuses.

The fact that Rwanda, represented by the Habyarimana government, was a member of the Security Council from January 1994 was a problem in the Security Council's handling of the Rwanda issue. In effect, one of the parties to the Arusha Peace Agreement had full access to the discussions of the Council and had the opportunity to try to influence decision-making in the Council on its own behalf. The damage was evident in the actions of the Rwandan representatives on the Security Council during this period. The Rwandan presence hampered the quality of the information that the Secretariat felt it possible to provide to the Council and the nature of the discussion in that body.

Ambiguity in Establishing UNAMIR

The nature of the intervention force put in place by the UN contributed to the inability of the UN to intervene. In planning for UNAMIR, UNOMUR recommended a much smaller force than envisaged in the Arusha Peace Agreement. As is the case with

¹¹ Reports of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda para 13 .6 - 7

most peace agreements, the Arusha Agreement was political.¹² Serious difficulties arose with respect to the implementation of UNAMIR's mandate. The mandate was cautious in its conception with the deployment of the mission being contingent on discernable movement towards peace and the establishment of traditional institutions and this meant that the application on the ground in the height of violence and genocide was virtually impossible. UN headquarters consistently decided to apply the mandate in a manner which would preserve a neutral role of UNAMIR under a traditional peacekeeping mandate. This was the scope of action that was perceived to have support in the Security Council. Despite facing a deteriorating security situation which would have motivated a more assertive and preventive role for the UN no steps were taken to adjust the mandate to the reality of the needs in Rwanda. Instead, discussions began on the possibility of a withdrawal of UNAMIR.

UNAMIR's poor quality and lack of capacity had a negative effect on how the mission dealt with the unfolding crisis after April 6, as did the existing friction between the military and civilian components of the mission. It is significant that even the resolution establishing UNAMIR¹³ already included an invitation to the Secretary-General to consider ways of reducing the total maximum strength of UNAMIR. The Secretary-General was asked to seek economies in planning and executing the phased deployment, and to report regularly on what had been achieved in this regard. Even the Belgian contingent, which was the strongest in UNAMIR, faced problems with materiel

¹² See for instance, Howard Adelman and Astri Suhrke, *Early Warning and Conflict Management*, Volume 2 of the *International Response to Conflict and Genocide: Lessons from the Rwanda Experience* (Copenhagen: DANIDA, 1996)

¹³ Security Council Resolution Establishing UNAMIR for a Sixth-Month Period and Approving the Integration of UNOMUR into UNAMIR," *The United Nations and Rwanda, 1993-1996* (New York: The United Nations Blue Book Series, Volume 10, 1996)

and lack of arms.¹⁴ The Bangladeshi contingent arrived without even the most basic supplies. Troops lacked necessary training in a number of respects.¹⁵ The limited mandate and absence of resources made UNAMIR impotent in the face of the internationalization of the Burundi conflict and stockpiling by the militia way through to the genocide.

The Secretariat should have put enough effort to make the mission more efficient. Instead, the impossibility to implement its mandate in the prevailing circumstances was communicated to the Head of Mission over and over and there was indication that if events moved in a negative direction, it might be necessary to conclude that UNAMIR must withdraw. The Secretariat continued to question the feasibility of an effective UN response, rather than actively investigating the possibility of strengthening the operation to deal with the new challenges on the ground. The unilateral decision by Belgium to withdraw its troops in the wake of the tragic killing of the ten Belgian peacekeepers brought the UN mission near the brink of disintegration.¹⁶

The decision by the Security Council on April 21, 1994 to reduce UNAMIR to a minimal force following the Belgium killings, rather than to make every effort to muster the political will to try and stop the killing led to widespread bitterness in Rwanda including amongst the UNAMIR team.¹⁷ The Secretary-General's letter of April 29, 1994 asking the Security Council to reconsider its decision to reduce the mandate and strength of the mission, was a welcome shift in focus towards the need for the UN to act to stop

¹⁴ Romeo Dallaire, *Shake Hands With the Devil*, op cit p. 106

¹⁵ Ibid

¹⁶ Ibid p. 289-290

¹⁷ Reports of the *Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda* para. 13.10

the killing.¹⁸ The need to do so was clearly emphasized. However, the response of the Security Council took weeks a costly delay in the middle of the genocide. The Council's consultations may reflect a reluctance to contemplate a Chapter VII-style operation. The report of the Secretary-General's Special Representative to the Security Council on consultations on May 3, 1994 was that,

"There is no support from any delegation for a forceful or enforcement action. They all emphasized that whatever action is contemplated could be implemented only if both the Rwandese parties agree to it and promise their cooperation."¹⁹

Members of the Council were split on whether an enlarged mission should be given a Chapter VII mandate and on what resources were required, with both the US and the UK requesting more detailed information from the Secretariat on the concept of operations. Attempts were made by non-permanent members of the Council to push for stronger action. The opposition to these efforts proved too strong, however. This lack of unity delayed decision-making by the Security Council, in a situation where rapid action was necessary. After almost three long weeks after the Secretary-General's letter, the Council finally authorized UNAMIR II on May 17, 1994.

A timely introduction of a large combat force could have stemmed the violence and prevented its escalation. The intramural debates on reducing UNAMIR's meager forces on the ground considerably undercut the legitimacy of the intervention. In addition, UNAMIR's Chapter VI rules of engagement meant that with the resumption of civil war there was no peace to keep and as such the Security Council should have been swift in changing these rules to allow for Chapter VII intervention.

¹⁸ United Nation Secretary General, *Report of the Secretary General on the Situation in Rwanda* S/1994/640 para 5

¹⁹ United Nations "Blue Book" Series, Volume X, *The United Nations and Rwanda*, 1993-1996

Often a decision by the UN to make recourse to humanitarian intervention cannot preclude the most powerful states. A collective response is then morally and legally mandated without which action becomes difficult.

Humanitarian intervention in cases of human rights abuses is likely to face many objections. Often the UN Security Council will find a threat to international peace and security legalizing humanitarian intervention only where it is the "Permanent Five" members' interest to do so. As has been observed,

"the UN is a deeply political place. Members consider national self interest. To a realist, Security Council action can be explained as the resolution of political vectors. Each country calculates its national self-interest, and the interests of allied cooperative states while speaking universalistic vocabulary."²⁰

Once the genocide began, the UN Security Council rather than sending reinforcements to stop the genocide ordered UNAMIR to withdraw. Policy makers resisted and misconstrued the facts. The refusal to name the Rwandan genocide as such meant that policy makers were in denial and could continue to obstruct action because they could argue there was no imperative to intervene.

Unwillingness by members of the international community to respond to an international crisis is caused by either a lack of clearly defined national interests in the area or a lack of public pressure on governments to act. Realists have shown that international cooperation becomes very difficult when actors do not see the gain in such cooperation. Countries are far more likely to intervene in humanitarian crisis if there was a perception of national interest involved and if media coverage generated public sympathy, resulting in what is often referred to as the "CNN effect." Rwanda lacked adequate media coverage and this may explain, in part, why state governments were less

²⁰ Ruth Wedgewood, "The Evolution of United Nations Peacekeeping" *Cornell International Law Journal* 1995, vol 28 p.63

inclined to become involved. The number of deaths in the early weeks was grossly underestimated. Closure of embassies and withdrawal of personnel and press prevented adequate reporting on the genocide, yet policy makers required confirmed fact-finding before taking action. The inadequate and inaccurate reporting by international media on the genocide itself contributed to international indifference and inaction. Conversely, increased media coverage of the human suffering in Rwanda helped create public support and pressure on the members of the Security Council to make Resolutions to bring the genocide to an end. For example, French public support for *Operation Turquoise*, particularly once it became clear that the perpetrators of the genocide had earlier received military support from France. When Rwanda was invaded by the RPF, France had hurried to help, sending soldiers and then training a new and rapidly expanded Rwandan army. France provided quantities of weaponry and placed military advisors at the highest levels of the Rwandan army.²¹

There was little international interest in Rwanda both before and during the genocide crisis. Other than Belgium and France, few countries, besides Rwanda's neighbours, appeared to have any interest in the country or the outcome of the crisis. The composition of the Security Council at the time is revealing in this regard. Besides the five permanent members, Brazil, Argentina, New Zealand, Nigeria, Pakistan, Spain, the Czech Republic, Oman, Djibouti and, ironically, Rwanda, were sitting on the Council during the crisis. Certainly there was no desire among the permanent members to become involved. Even though the US for example reluctantly voted to allow the force, US officials made it clear that Washington would give no consideration to sending troops to

²¹ Linda Melvern, "A Conspiracy to Murder - The Rwanda Genocide" op cit p. 8

Rwanda.²² Considered against other international trouble spots where the UN was actively engaged in 1994, Rwanda was merely a small Central African country that was marginal to the economic or political concerns of major powers to the Security Council and therefore peripheral to international strategic rivalries. This could not be said for Yugoslavia and Haiti both of which had wider implications for the stability of Europe and America and were in areas of interest to one or more of the permanent members of the Security Council. As has been noted:

"It is hardly surprising, then, that the international community suffered from a degree of "strategic distraction" as events were unfolding in Rwanda. The lack of interests meant that those countries best able to provide troops and resources to intervene were not forthcoming, even after UNAMIR II was authorized. In fact, past experiences and ongoing commitments with other more high profile operations meant that many states were decidedly cool to supporting action in Rwanda: "After Somalia, there was no enthusiasm among the US or other Western members of the Security Council to risk their soldiers in another messy and open-ended civil war . . ." ²³

Thus, in spite of an obvious humanitarian crisis, gross violations of international law requirements and an international consensus on the need to act, a lack of national interests proved a major factor in the decision of individual governments not to take decisive action. States only began to take action once public outcry, caused by extensive media coverage, made it impossible for them to remain inactive.

Rwanda demonstrates that, in the absence of perceived national interests, many governments only reluctantly become involved in humanitarian intervention under pressure from citizens concerned at the suffering they see through the eyes of the international media. Public concern forces governments to expand national interests to include preventing mass deaths and human suffering. While this broadening of interests

²² Samantha Powers "The Bystanders to Genocide Exclusive Interviews" www.bard.edu/hrp/resource_pdfs/powers.bystanders.pdf

²³ J.L. Holzgrefe "The Humanitarian Debate" in J.L. Holzgrefe & R.O. Keohane (eds) *Humanitarian Intervention – Ethical, Legal and Political Dilemmas* (Cambridge: Cambridge University Press, 2003) p.23

violates traditional conceptions of foreign policy objectives, countries are made up of individuals, and in democracies their wishes are meant to be reflected.

The reluctance by some States to use the term genocide was motivated by a lack of will to act, which is deplorable. If there is ever to be effective international action against genocide, states must be prepared to identify situations as such, and to assume the responsibility to act that accompanies that definition. While it is true that the Charter sought to establish a restrictive regime relating to the recourse to force, it also endeavored to create a legal regime to protect human rights. I agree with the postulation of Tesón that "the promotion of human rights is as important a purpose in the Charter as is the control of international conflict." that in certain extreme cases, the protection of human rights should trump the Charter's prohibition on the use of force.²⁴

Lack of Political Will Vis-à-vis UNAMIR

The decisions taken with respect to the scope of the initial mandate of UNAMIR were an underlying factor in the failure of the mission to prevent or stop the genocide in Rwanda. The planning process failed to take into account remaining serious tensions which had not been solved in the agreements between the parties. The overriding failure to create a force with the capacity, resources and mandate to deal with the growing violence and eventual genocide in Rwanda had roots in the early planning of the mission.

Absence of interest by members of the Security Council meant that UNAMIR was ill-planned and not up to the task in Rwanda. The mission was smaller than the original recommendations. It was slow in being set up and was beset by weak administrative difficulties. It lacked well-trained troops and functioning material.

²⁴ Fernando Tesón, *Humanitarian Intervention: An Inquiry Into Law and Morality* (New York: Transnational, 1988), p. 16

The assumption by the parties to the Arusha Agreement that an international force could be deployed in about a month meant that the UN was fighting the clock from the first days of preparing for UNAMIR. The initial planning process suffered from insufficient political analysis. As noted above, the mission's mandate was based on an analysis of the peace process which proved erroneous, and which was never corrected despite the significant warning signs that the original mandate had become inadequate. This inadequacy can be largely attributed to lack of political will among members of the Security Council.

When policy makers finally recognized the facts, their perception was that they had no acceptable options to prevent the genocide. UNAMIR was perceived as too weak and undersupplied to stop the rapidly spreading killing. Policy makers had not considered options available when the genocide started. Of course the UN Secretary-General and Secretariat at large ought to have impressed upon the Council to ensure that the mission be to the level recommended under the Accords.

Member States Refusal to Support the UN

Article 43 of the UN Charter provides:

“All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with special agreement or agreements armed forces, assistance and facilities, including rights of passage, necessary for the purpose of maintaining peace and security.”

As noted earlier, the US had given its nod for the establishment of a neutral international force but only with remote expectations of its success. In 1994 the US published a statement indicating that it must have an interest in internal political or ethnic conflicts before it allows its forces to participate in a UN operation. This foreign policy

that contradicts the UN Charter meant that the US was unwilling to make the financial commitment to support an expanded operation in Rwanda.²⁵ Other military powers were unwilling to risk the lives of any of their own citizens. Because US approval in the Security Council would be necessary for such an intervention force, there was no possibility it would be approved and hence the need to withdraw the endangered, undersupplied UNAMIR force.

Even after the Security Council decided to act to try and stop the killing, and reversed its decision to reduce UNAMIR, the problems that the Secretariat had faced since UNAMIR's inception in getting contributions of troops from member states persisted. This was the case throughout May and June 1994 during the urgent attempts to set up UNAMIR II. The lack of will to send troops to Rwanda continued to be deplorably evident in the weeks following the decision by the Security Council to increase the strength of UNAMIR. For weeks, the Secretariat tried to solicit troop contributions, to little avail. Although a few African countries did express a willingness to send troops, they did so with the proviso that they be provided with equipment and financed. By the time *Operation Turquoise* left Rwanda, UNAMIR only had the bare minimum number of troops to permit it to take over the areas which had been controlled by the French-led operation. The full contingent was only deployed several months later, by which time the situation on the ground had changed markedly.

The political will of member states to send troops to peacekeeping operations is key to the UN capacity to react to conflict. Ultimately therefore, the failure to prevent the Rwandan genocide through humanitarian intervention was a political failure. Without the

²⁵ Tom Ashbrook, "Who Will Keep the Peace?", Boston Globe, May 3, 1995 at 1

support of the major powers, the Security Council could not make a decision calling upon members to avail their armed forces for the intervention in time. General Dallaire summed up the central problem of political will, “The United Nations wanted to send me more troops, but sovereign states made sovereign decisions not to do so.”²⁶ Indeed when in May African troops were available to go to Rwanda, neither the US nor the UK, both with the capacity to do so, was willing to provide either the airlift or equipment for them.²⁷ General Dallaire was, in his words, “left to hang and dry” by those countries who were in positions of power in the Council with the means to help and yet who refused to do so.²⁸ Both the US and the UK, permanent members of the Security Council possessed the military and logistical capabilities that could have made a significant difference to the spread of the genocide and the protection of thousands of people but instead no support to the UN was forthcoming.

Poor Coordination, Poor Flow of Information and Poor Analysis

Certainly if the Security Council was not aware of what was happening in Rwanda, members can be excused for their belated response to the genocide. Two authoritative studies of the UN system conducted by the Lessons Learned Unit of the DPKO and the Joint Evaluation of the Emergency Assistance to Rwanda have identified shortcomings in information collection and analysis both prior to and during the UNAMIR operation. The UN had a poor understanding of the conflict in Rwanda and within UNAMIR itself no capability was established to collect, analyse and disseminate

26 Romeo Dallaire, *Shake Hands With The Devil: The Failure of Humanity in Rwanda* (2003) London: Arrow Books.

27 Linda Melvern *A People Betrayed: The Role of the West in Rwanda's Genocide* in Adelman, H. & Suhrke, A. *Early Warning and Conflict Management, Vol 2 of the International Response to Conflict and Genocide: Lessons from the Rwanda Experience* (Copenhagen: DANIDA, 1996)

28 Ibid

information so that information was not reaching the headquarters in a systematic manner. However, this notwithstanding, this thesis holds that even though information may not have been available generally, individual members, some departments and members of the Security Council some of whom have excellent intelligence-gathering capabilities than the UN must have had the information and so the problem was largely in its flow but more so a matter of political choice

The Secretariat recommended deployment of UNAMIR without reiterating the concerns expressed by the Special Rapporteur of the Commission on Human Rights on Summary and Extrajudicial Executions about the situation in Rwanda.²⁹ That UNAMIR was apparently not even aware of the disturbing report, published only a couple of weeks before the mission was in place, in which the rapporteur pointed to an extremely serious human rights situation, and discussed at some length the possibility that genocide was being committed in Rwanda is a pointer to poor systems within the UN Secretariat. That a report of this nature was not taken into account in the midst of planning a large UN peacekeeping presence in Rwanda shows a serious lack of coordination on the part of the UN organs particularly the Secretariat. The Head of Mission has averred that prior to being posted in Rwanda there was hardly any information available to him on the situation at the ground.³⁰

A key issue in the analysis of the flow of information is whether it should have been possible to predict the genocide in Rwanda. As indicated above, genocide started rolling out as early as 1992 with several early concerns of the risk of genocide contained

²⁹ UN Documents E/CN.4/1994/Add.1

³⁰ Romeo Dallaire, *Shake Hands With the Devil* op cit pp 28-42

in human rights NGOs and UN human rights reports of 1993. That these reports were not sufficiently taken into account in the planning for UNAMIR, was a failure in the UN system. Despite warning signs during the Arusha process, in particular related to the lack of commitment by extremists within the President's party to the peace process and to power-sharing, very little if anything seems to have been done in terms of contingency planning for the eventuality that the peace agreement was threatened or challenged. UNAMIR was established without a fall-back position or a worst-case scenario. There were warning signs of the possibility of a genocide in Rwanda, and furthermore clear indications that mass killings were being planned and could take place in Rwanda in early 1994. That failure to formulate a determined response to these warnings is due in part to the lack of correct analysis, both in UNAMIR and within the Secretariat, but also by key member states.

The cable sent by General Dallaire on 11 January regarding contacts with an informant had information that should have been given the highest priority and attention and shared at the highest level. Information received by a UN mission that plans are being made to exterminate any group of people requires an immediate and determined response. The concern expressed by the leadership of UNAMIR throughout January and February of 1994 about the consequences of the arms distribution was very clear. Given that Headquarters had determined that raiding the arms caches and conducting deterrent operations was not within the scope of the mandate, this issue should have been raised with the Security Council.

The Secretary-General was being represented in the Security Council by a Special Representative at the time of the Rwanda crises. The Secretary-General himself rarely

attended the consultations of the Security Council. The Special Representative would brief the Council on the full range of topics on the Council's agenda, often based on speaking notes prepared by the substantive departments concerned. These departments were normally not represented at the consultations of the whole.³¹ The lack of direct contact between the substantive departments concerned and the Security Council created a disconnect which had a negative effect on the quality of the information provided to the Security Council, and must have made the understanding of substantive officers in the Secretariat of the deliberations of the Council much more difficult. Representatives of several members of the Security Council have since complained that the quality of information from the Secretariat was not good enough.³²

The argument has been that the Secretary-General and his subordinates ordered low-keyed interpretation of Rwanda peacekeeping in an effort to keep within the constraints set by the Security Council. They knew that council members did not regard Rwanda as a priority and were reluctant to invest any more troops or funds in keeping the peace there. Stopping the preparations for slaughter required firm action, which itself might lead to an escalation of violence and the need for more troops and funds. Staff feared that requests for more resources might provoke the council simply to end the mission, thus marking another in a series of failures for the U.N. and its peacekeeping office.³³

The media plays a major role in mobilizing political support for humanitarian interventions. Indeed most conflicts have been put on the international agenda after

³¹*Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda*

³² *Ibid*

³³ Statement of Kofi Annan, then Undersecretary-general for Peacekeeping. *Assemblée Nationale, Mission d'information commune, Enquête, Tome I, Rapport, p. 204.*)

sustained coverage. The lack of media coverage of the events in Rwanda explained in part why states and particularly those in the Security Council were less inclined to become involved or pass resolutions that would contain the situation in Rwanda. Conversely it has been noted that increased media coverage of the human suffering in Rwanda helped create the necessary French public support for *Operation Turquoise*.

CHAPTER FIVE CONCLUSIONS

“If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to Rwanda, to Srebrenica—to the gross systematic violations of human rights that offend every precept of our common humanity...Can we really afford to let each state be a judge of its own right, or duty, to intervene in another state’s internal conflict? If we do, will we not be forced to legitimize Hitler’s championship of the Sudeten Germans or Soviet intervention in Afghanistan?”¹

It is established in international law that a “threat to peace” determination gives the United Nations Security Council both a legal obligation and a duty to intervene in the internal affairs of a state. It is central to the application of the Convention on the Prevention and Punishment for the Crime of Genocide, 1948. Being an obligation and duty, then the Security Council would be expected to take action each and every time it establishes that human rights abuses constitute a threat to peace justifying Chapter VII intervention. It has the right to use force against a state in cases of gross violation of human rights. The intervention cannot only occur when it supports the interests of permanent members.

It is now widely acknowledged that every government’s sovereign rights arise from an equally solemn responsibility to protect the people it governs. This means that the government is obligated to protect its people, to prevent crises that put its population at risk and to refuse to inflict arbitrary death to citizens. It is the people’s rights rather than the sovereign’s sovereignty that rules. If a state violates its sovereign responsibility, then the international community led by the UN has a duty to stop massive death or other large-scale human suffering out of its respect for human rights. As has been observed,

¹ Kofi Annan addressing the United Nations General Assembly, 1999 Available at www.genocidewatch.org

“If by its actions and, indeed, crimes, a state destroys the lives and rights of its citizens, it forfeits temporarily its moral claim to be treated as legitimate. Its sovereignty, as well as its right to nonintervention is suspended.”²

This study into the circumstances of Rwanda in 1994 sought to analyse why the Council failed in its role in implementing the Convention and Charter provisions.

The study has looked at the central role of the Security Council since March 1993 when responsibility over Rwanda was given to the Council. Most of the decisions taken by the Council including the establishment of the UN Assistance Mission for Rwanda were way below expectation and contributed to the failure in preventing the genocide. The decision to send a small mission of peacekeepers to Rwanda without the necessary materiel and equipment was a tragic error. The mission had a weak mandate and minimal capacity. The Security Council erred in altering the peace agreement. The role of the mission in peace enforcement was not clear.

No attention at all seems to have been focused on Rwanda’s serious human rights abuses, the human rights reports and that of the UN Special Rapporteur published within days of the signing of the Arusha Agreement, revealing that genocide was already in present in Rwanda and that the intent to destroy the Tutsis was obvious. That all the ingredients for genocide were in place was of no consequence to the Security Council. That members of the Security Council merely saw the events in Rwanda as a small civil war is a disgrace.

The 1994 Rwanda genocide suggests some general conclusions about the relationship between the Council and the Secretariat. When a generally low-priority conflict eventually gets the attention of the Security Council, the Secretariat must play a

² International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa, Canada, International Development Research Centre, 2001) 136

big role in order that right decisions are made precisely because of the relatively low interest of the Council in the case. Unless well monitored the low-priority case is bound to attract low-cost and low-risk measures.

This study of the 1994 Rwanda genocide has shown the position of eminent power held by the Permanent 5 on the Security Council.

It was the objective of this study to isolate the particular issue surrounding the non-intervention by the UN in the Rwanda genocide. The Rwanda case also highlights numerous issues for the Security Council,

- i. the need to pay attention to potentially serious threats to international peace and security,
- ii. the need to avoid micro-managing while remaining engaged,
- iii. the need to obtain sufficient information and analysis of the conflicts of which it is seized, and
- iv. the need for members to take full responsibility in preventing genocide.
- v. the need for the Security Council's deliberations to be divorced from member state's interests.

It was also the objective of this study to explore why international law provisions on humanitarian intervention were not utilized by the UN to prevent the Rwanda genocide. The study has established and presented findings that show that the UN did not take Rwanda seriously and ignored the recommendation to set up a force that would prevent human rights abuses in Rwanda. In addition, the permanent five led by the US were not were against the setting up of a strong force in Rwanda and thus when the genocide was at its peak after April 1994, the force did not have the capacity to intervene

and stop the human rights abuses. The study shows that if humanitarian interventions are to be a result of political calculations by the permanent five members, they could be compromised. The most ideal reaction for these members becomes, “lets sent the babysitter home.”

The study has also established that the Secretariat repeatedly advised the Head of Mission in Rwanda in Rwanda to interpret the mandate of the mission narrowly and hence inability of the Mission to intervene. The inability of the UNAMIR peacekeeping force to control humanitarian intervention meant that it would have been negligence for the Head of Mission to order intervention on April 15, 1994 when the Secretariat communicated that he had the discretion to override earlier orders for humanitarian reasons. At this point thus the mission was simply unable to take any effective mission in a timely manner.

The study has indicated that genocide occurs in stages and its determination turns not on the numbers killed, which is always difficult to ascertain at a time of crisis, but on the perpetrators’ intent. With Rwanda, the case for the label of genocide was straightforward. “If there is any particular magic in calling it genocide, I have no hesitancy in saying that”³

Many have wondered how they could have done so little at the time of the genocide. How they could have stood by during one of the gravest crimes of the twentieth century.

“One scenario is that I knew what was going on and blocked it out in order to not deal with the human consequences... Here I am convinced that I didn’t do that, but maybe I did and it was so deep that I didn’t realize it. Another scenario is that I didn’t give it

³ Warren Christopher quoted in Samantha Powers exclusive interviews with scores of participants in decision making Available at www.bard.edu/hrp/resource_pdfs/powers.bystanders.pdf

enough time because I didn't give a damn about Africa, which I don't believe because I know I do. My sin must have been in a third scenario. I didn't own it because I was busy with Bosnia and Haiti, or because I thought we were doing all we could."⁴

For others this is a case of non-decisions and bureaucratic business as usual.

"I don't like genocide, but I would not commit our troops."⁵ "Genocide could happen again tomorrow, and we wouldn't respond any differently."⁶

Ultimately, the ball is in the court of the UN to ensure that never again will the world bury its head in the sand when such atrocities are being carried out against humankind.

4 Anthony Lake, National Security Advisor in the US administration at the time of the genocide. Quoted in Samantha Powers exclusive interviews with scores of participants in decision making Available at www.bard.edu/hrp/resource_pdfs/powers.bystanders.pdf

5 George H.W. Bush, January 2000. Quoted in Samantha Powers exclusive interviews *op cit*

6 An official in the Bush Administration Quoted in Samantha Powers exclusive interviews *op cit*

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