

CHALLENGES IN APPLICATION OF THE “RESPONSIBILITY TO PROTECT” AS A NORM IN THE INTERNATIONAL COMMUNITY’S RESPONSE TO THE HUMANITARIAN IMPASSE: RWANDA AND DARFUR

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ABSTRACT

History, so the saying goes, repeats itself. Were this statement to be applied to only positive events then life would be an adventure. The reality is that history does repeat itself almost exclusively regarding negative things. It seems that humanity does not learn even when many horrific lessons abound to show us a better way. Unfortunately this is all too true as will be shown in the following study of the world's shamelessly inadequate responses to human suffering in two African regions, the Republic of Rwanda in 1994 and the Darfur region in Sudan in 2003.

Even after the world solemnly declared "Never again" in 1945 we still witness the most egregious cases of carnage, gross violations of human rights, undisguised murders of entire ethnic groups, rape and racially motivated violence taking place as the world looks on.

In both cases the United Nations, the only world body mandated with the specific responsibility to detect, deter and diffuse problems before they become unmanageable, has proved to be nothing but a talking shop where little, if anything, was done to help the suffering people of these two regions.

In both cases a whole raft of resolutions were passed and eloquent speeches were made but millions died notwithstanding.

As such, this study will concentrate its attention on the actions and inactions of the UN. It attempts to unravel the reasons why there appears to be widespread indifference, multiple standards and general apathy when African conflicts erupt. Is it because the continent has hitherto been seen to be resource-poor? Are African lives less valuable than Western nation's lives? Are UN principles applied uniformly or is the UN a purely utopian idea that should be disregarded henceforth? The study also exposes the ineptitude of the world body in light of the evidently much more powerful, but much less representative, UN Security Council.

Is there reason for hope? May be so. A new plan of action dubbed R2P- the Responsibility to Protect - is taking root in the international community. It is not an entirely new way of thinking but it has certainly made a lot of policy makers wake up and take note because of its configuration. This study explores its background, its intent, its challenges and whether or not it can be a practical tool in future conflicts.

The world has hitherto used the excuse of state sovereignty as the main reason for non-intervention in the affairs of another country even when it was clear that, for various reasons, it was not able or willing to protect its own citizens. This morally bankrupt notion has persisted even in this more enlightened age to the detriment of whole populations.

The basic tenet of R2P is that humanitarian law must supersede all other conventional thinking. The world should not be a mere spectator when vulnerable, defenseless men, women and children are being massacred simply because of ill-conceived laws that prohibit concerned nations from taking action. In this age of 24-hour live television where the images are beamed all over the world, it is even less excusable. But that is exactly what happened in Rwanda and is still happening, albeit on a smaller scale, in Darfur.

If indeed history repeats itself, then we can be fairly certain that in the near future there will be another horrific conflagration somewhere in the world. It is at that time that the international community will once again be put to the test. R2P as a principle has received universal acceptance. But up to this point, it is as much a good intention as “Never again” was.

Whether or not this good intention will be translated into veritable action is yet to be seen. Unfortunately, despite our incredible advances in technology that have made the world faster, more accessible and safer in many instances, history just might have the last laugh and repeat itself yet again.

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CHAPTER 1

INTRODUCTION

Since at least the end of World War Two, humanitarian intervention has been a subject of debate within the discipline of International Law, but there is no universally accepted definition of the concept. Some scholars postulate “the theory of intervention on the grounds of humanity recognises the right of one state to exercise international control over the acts of another in regard to its internal sovereignty when contrary to the laws of humanity”¹. Holzgrefe concurs, saying that humanitarian intervention involves the threat or use of force across borders by a state or group of states and as such is aimed at ending widespread and grave violations of the fundamental human rights of nationals of, and people residing in the territory of another state².

From an international humanitarian law perspective, it is a contradiction in terms to speak of humanitarian “intervention” or “interference”, as the term “humanitarian” should be reserved to describe actions intended to alleviate the suffering of the victims³. The argument advanced by this thinking is that the impartial provision of humanitarian aid or assistance cannot be condemned as interference with, or infringement of, a state’s national sovereignty. Of significance to the new humanitarian intervention paradigm is that it describes as ‘human’, the populations to be protected and as ‘humanitarian’, the crisis they suffer from. Also implied is the intervention that promises to rescue them and the agencies that seek to carry out that intervention⁴.

This thesis is premised on the broader framework of the new humanitarian intervention regime known as the ‘Responsibility to Protect’ (R2P). R2P is a recently crafted international concept and came into being as a result of the 2001 report of the Canadian government-sponsored International Commission on Intervention and State Sovereignty (ICISS). It was largely motivated by the failure of the international community to intervene to stop the Rwandan genocide in 1994. The normative emphasis of the report is mainly in deconstructing the contentious issue of humanitarian intervention, especially the question of when it is appropriate and necessary for states to take coercive action against another state for the purpose of protecting people at risk. The principles of R2P were unanimously adopted by the United Nations (UN) General Assembly at its 2005 World Summit. Unfortunately disagreement persists about its scope and limits. This is compounded by its rhetorical use in debates about international reaction to crisis

¹ F Abiew “The Evolution of the Doctrine of Humanitarian Intervention” (1999) *Kluwer Law International* at 31.

² J L Holzgrefe *The Humanitarian Intervention Debate*, in OR Keohane & J L Holzgrefe (eds) *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (2003) Cambridge University Press at 18.

³ A Ryninker *The ICRC’s Position on Humanitarian Intervention* (2001) Vol. 83 at 842.

⁴ M Mamdani *Darfur and the New Humanitarian Order* (2008) The Zeleza Post [Online] Available from: (<http://www.Zeleza.com>). [Accessed: 05 March 2010].

situations as occurred in Rwanda in 1994 and currently in Sudan's Darfur region. The theme of this study will thus be the actual application of R2P as evidenced by the international community's response to the humanitarian crisis in Rwanda 1993-1994 and Sudan's Darfur region since 2003.

R2P represents a landmark consensus and the most recent codification of humanitarian intervention at the global level. It entails the reconceptualisation of state sovereignty as a 'responsibility' rather than a 'right', as presupposed by the Westphalian concept of state sovereignty. Scholars contend that no legal principle or state sovereignty should ever be allowed to shield crimes against humanity⁵. For this reason it is emphasized that sovereign states have a primary obligation to protect their own citizens from avoidable catastrophes such as internal wars, repression, insurgency, mass murder, systematic rape and mass starvation. In situations where the state in question is unable or unwilling to protect its own people, the principle of non-intervention yields to that of responsibility borne by the wider international community⁶.

The responsibility to protect civilians as a normative principle has various legal and customary sources. The most important among these is the obligation inherent in the responsibility of the United Nations Security Council (UNSC), as enshrined in Article 24 of the UN Charter, which states that the Council is charged with the maintenance of international peace and security. The international community's adherence to legal obligations under human rights covenants, treaties, international humanitarian laws, national laws and also the developing practices of states, regional organizations and the UNSC itself are also cited by the ICISS.

The ICISS report created a framework for interventionary measures and for this purpose defined criteria of legitimacy to be applied by the international community in its approach to intervention for human protection purposes. These criteria include the following concepts:

- (i) **Right authority** (entity mandated to authorise military intervention)
- (ii) **Just cause** (seriousness of the harm threatened)
- (iii) **Right intention** (motivation/primary purpose of military intervention)
- (iv) **Last resort** (reasonable availability of peaceful alternatives)
- (v) **Proportional means** (proportionality of the response must be the minimum required)
- (vi) **Reasonable prospects to remedy the crisis** (the balance of consequences)

⁵ G Puley 'Responsibility to Protect: East, West and Southern Africa Perspectives on Preventing and Responding to Humanitarian Crisis' (2005) Canada Ploughshares.

⁶ International Commission on Intervention and State Sovereignty ICISS (2001) *The Responsibility to Protect*: International Development Research Centre. Ottawa: Canada at 11-18.

Concerning *right authority*, the Commission pointedly expressed its determination not to undermine the authority of the UNSC, which it regards as the most appropriate and legitimate body to sanction coercive international measures, but rather to assist the UNSC in improving its responses to crisis situations.

In respect of *just cause*, the report maintains that for any military intervention, there must be evidence of serious and irreparable harm to humanity or that such harm must be imminent, for example, the possibility of large scale loss of life by genocidal intent (ethnic cleansing) or state neglect and inability to act.

In addition to the so-called “threshold” criteria, the report also articulates a number of precautionary criteria. Concerning *right intention*, the report contends that the primary motive of any intervention must be to halt or avert human suffering and such proposed intervention should take place on a collective or multilateral rather than single-country (unilateral) basis, and with the consent of the victims involved.

Regarding military intervention, the report places emphasis on exhausting all peaceful options and asserts that resorting to military means should be the *last resort*. The R2P concept does not, therefore, necessarily dictate military intervention. It notes a range of non-military measures - including targeted sanctions and the forced sheltering of people who are at grave risk - that could be implemented at the discretion of the international community.

Where intervention is, however, of a military nature as a last resort, the report advocates the use of *proportional means*. It is argued that the scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective.

Of importance also is the emphasis on *reasonable prospects* or chances of success in halting or averting the suffering which would initially justify intervention. In brief, any form of military intervention must have a realistic chance of success and not worsen the scale of the humanitarian crisis (ICISS 2001: XII).

Importantly, R2P embraces three key responsibilities bestowed on the society of states. Firstly, the ‘**responsibility to prevent**’, which entails the duty to address the root causes as well as direct causes of internal conflicts and other man-made catastrophes. Secondly, the ‘**responsibility to react**’, which is to respond to situations of serious humanitarian crisis with appropriate measures including coercive measures such as sanctions and international protection of civilians and, in extreme cases, military intervention. Finally, there is the **responsibility to rebuild**, which is meant to provide, after humanitarian intervention, assistance with recovery, reconstruction, reconciliation and addressing the causes of the humanitarian crisis the intervention was designed to halt or avert and so as to prevent a recurrence (ICISS 2001: a; x). These three

components of R2P are essential for a holistic, legitimate and accountable approach to human security.

In the context of Africa, Article 4 of the 2000 African Union (AU) Constitutive Act (the supreme law of the continent) embraces the R2P concept, representing a major departure from the AU's predecessor (the OAU)'s strict non-intervention principle. Some writers call this "a shift from non-interference to non-indifference"⁷. The Act endows the organisation with the right to intervene while simultaneously articulating the commitment to conflict prevention and the organisation's responsibility to override the non-interference principle in 'grave circumstances' defined as war crimes, crimes against humanity and genocide⁸. The AU has distinguished itself as the first inter-governmental organisation (IGO) to adopt R2P as part of its constitutive charter and should therefore be expected to pay particular attention to the operationalisation of its principles in crises that concern member states.

The case studies of Rwanda and Darfur have been selected because the former is a good example of gross failure by the international community to intervene in humanitarian crises and Darfur is a current humanitarian crisis facing the world. Both countries, therefore, provide an opportunity for R2P principles to be applied explicitly. Both cases involve eye-witness evidence of large-scale government-orchestrated crimes against humanity and have attracted significant international attention, albeit with different levels of intervention.

In the case of Darfur, the region has been ravaged by civil animosity since June 2003. There is no scholarly unanimity as far as accounting for the causes of the conflict. Uneven distribution of wealth and development have been cited as the major trigger to the conflict coupled with environmental degradation. These phenomena cause pressure for resources, primarily land and water. The current government in Khartoum is accused of perpetuating colonial policies of exclusion, thereby marginalising the Darfurians socially, politically and economically. For over 30 years, the Darfur region is said to have been systematically denied essential services and to have received only minimal support from the government in Khartoum. These acts of inequalities triggered revolt by indigenous groups such as the Sudan Liberation Army Movement (SLAM), Justice for Equality Movement (JEM) and the National Redemption Front (NLF).

In response, the government launched a brutal counter-insurgency campaign by arming the Janjaweed militia. Reports on this campaign seem to corroborate allegations of

⁷ M Mwanasali 'From Non-interference to Non-indifference: The Emerging Doctrine of Conflict Prevention in Africa' in J Akopkari, AN Muvumba & T Murithi (eds) *The African Union and its Institutions* (2008) Cape Town Centre for Conflict Resolution at 9.

⁸ S Koko Whose Responsibility to Protect? Reflection on the Dynamics of an Abandoned Disorder in Somalia, in *Africa*, (2007) Vol. 16 *African Security Review* at 3.

crimes against humanity because these acts are committed as part of a widespread, systematic attack directed against a civilian population as defined by the Rome Statute of the International Criminal Court (ICC)⁹ and UNICEF¹⁰.

The crisis has also caused displacement of people with some retreating into squatter camps and others into neighbouring Chad. This has led to a spill-over impact and subsequent souring of relations between Chad and Sudan. During December 2005, according to UNICEF, Chadian President Idris Deby accused Sudanese President Omar Ahmad al-Bashir of trying to destabilise his country by exporting the war from Darfur into Chad. The situation has attracted worldwide attention and condemnation from the international community with some, especially the US, dubbing the conflict 'genocide'¹¹. Since 2003, the Darfur crisis has been the African Union's Stand-by Force Brigade's (ASFB) major preoccupation. The realisation that the ASFB lacked capacity to address the Darfur crisis efficiently resulted in the hybridisation of the AU's intervention mechanism as exemplified by its joint venture with the United Nations Force to form the United Nations African Union Mission in Darfur (UNAMID). Though ineffective so far, it is still an unprecedented and commendable step in the UN's approach to conflict resolution.

It is clear that humanitarian intervention has never been without controversy both when it happened, as in the case of Somalia (1992), and when it failed to happen, as in the case of Rwanda. The 1994 Rwanda genocide, in particular, exposed the devastating results of inaction and prompted widespread international introspection on this crucial norm hence the ICISS investigation and related studies in the late 1990s.

This study will aim to contribute to the debate and specifically to the R2P concept by assessing the challenges which international involvement had in adequately responding to the humanitarian crisis in Rwanda from 1993-1994, and whether intervention in Sudan's Darfur region has been guided by R2P principles. Conclusions will then be made as to the relevance of and impediments to the future of R2P as a potential doctrine of international intervention for human protection purposes.

A preliminary review will be done of available literature in key areas of investigation relevant to this study, that is, humanitarian intervention generally, the R2P norm specifically, and international responses to the humanitarian crises in Rwanda genocide from 1993 to 1994 and Sudan's Darfur region respectively.

⁹ International Criminal Court, Rome Statute of (1998).

¹⁰ United Nations Children Education Fund (UNICEF). *Report of the Special Rapporteur on the situation of human rights in Darfur* (2005).

¹¹ M Mamdani "The Politics of Naming: Genocide, Civil War, Insurgence" (2007) Vol. 29 *London Review of Books* at 5.

Firstly, we have to examine whether R2P principles were applicable in the case of Rwanda's genocide. And if so, was there any legal obligation on the international community to prevent or stop it? What was the response of the international community in this case? Were the lessons learned from the failure of the international community in Rwanda reflected on in response to the crisis in Darfur?

The pioneering study that resulted in codification of the R2P norm was done by the ICISS and the 2001 report that followed. I will, therefore, extensively refer to it in this study.

The reluctance of the international community to intervene in the 1994 Rwandan genocide will be investigated. In an attempt to transcend the debate about non-intervention versus a right of intervention in the affairs of sovereign states, the Commission replaced the idea of states' or the international community's "right" with that of "responsibility". The Commission responded to the vexing question of when it is appropriate and necessary for the international community to take coercive action against a state for the purpose of protecting people at risk in that state. It concluded that in situations where the state in question is unable or unwilling to protect its own people, in other words, where it is not living up to its own responsibility to protect, the principle of non-intervention yields to responsibility borne by the wider international community. This argument has been expanded by proponents of R2P such as Evans¹², Powell¹³, and Matlary¹⁴. These scholars unanimously concur that R2P entails the reconceptualisation of state sovereignty as a 'responsibility' rather than a 'right'.

Scholars such as Buchanan¹⁵, make incisive contributions to the concept of humanitarian intervention, and addresses what he calls 'the illegal reform justification' where he tackles the controversy surrounding the notion of humanitarian intervention. He presents the argument that humanitarian intervention actions are justified if intended for the common good, that is, saving humanity at risk. He explores the ethics of humanitarian intervention and distinguishes various theories according to the source, object, breadth and weight of moral concern. He utilises ethical theories such as utilitarianism, natural law, social contractarianism, legal positivism and communitarianism as a gateway to discussing the practice of humanitarian intervention. He argues that for a proper understanding of the notion of humanitarian intervention one cannot separate issues of legality from questions of morality.

¹² G Evans *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (2008) Brussels Brookings Institute Press at 40.

¹³ K Powell *The African Union's Emerging Peace and Security Regime-Opportunities and Challenges for Delivering on the Responsibility to Protect* (2005) Monograph Series no. 119.

¹⁴ JH Matlary *Values and Weapons: From Humanitarian Intervention to Regime Change?* (2006) at 5.

¹⁵ A Buchanan *Reforming the Law of Humanitarian Intervention* (2003) Cambridge University Press at 131-136.

Augmenting this global perspective is the contention that recent developments and some practices of 'nation-building' or democratic intervention for so called 'regime change' have complicated the debate and may represent a strengthening of the non-intervention concept. It is argued that in an era of globalisation, the state is no longer the referral point and the notion of insider versus outsider, where the border is the key 'gate keeper', has been deconstructed¹⁶. The new international human security paradigm suggesting a borderless world envisages that the conditions of the citizens inside a troubled state become the concern of the international community.

In his study about the legitimacy of humanitarian intervention in international society, Wheeler investigates the concept from the perspective of pluralist, solidarity and realist theories¹⁷. He argues that the issue of intervention for human protection purposes arises in cases where a government has turned the state machinery against its own people or in situations where the state has collapsed into lawlessness. Pluralist international society theorists posit that states are capable of agreeing on certain minimum conditions for statehood, the most critical one being the reciprocal recognition of sovereignty and the norm of non-intervention.

The contention here is that in the absence of consensus on what constitutes severe human rights violations, the principle of humanitarian intervention becomes obsolete. Solidarity proponents argue that there is a legal and moral duty for humanitarian intervention especially in exceptional cases of human suffering and this is provided for by the UN Charter on Human Rights and also in customary international law. The Realist theory, on the other hand, upholds that states will not intervene for the primacy of humanitarian motives and that states have no interest in risking their soldiers' lives or those of non-military personnel to save strangers. For realists, unless vital interests are at stake, states will not intervene for human protection purposes as was the case in Rwanda in the 1994 genocide.

The failure of the international community to respond to the genocide that unfolded in Rwanda in 1994 gave the lie to increased activism of the Security Council. The root cause of the genocide lay in Rwanda's colonial past and the civil war that first flared in October 1990. The crisis was ignited by a surface-to-air missile that shot down a plane carrying then Rwandan president Juvenal Habyarimana and his Burundian counterpart, Cyprien Ntaryamira. The exact story of the crash remains unclear.

¹⁶ Matlary (n14 above) at 9.

¹⁷ NJ Wheeler *Saving Strangers: Humanitarian Intervention in International Society* (2002) Oxford University Press at 287.

Nonetheless, the civil war that resulted was portrayed in the Western media as a “tribal conflict” between the majority Hutu and the minority Tutsi. Simon Chesterman states that the violence is more properly understood as a brutal attempt by the Hutu-dominated Rwandan military to eradicate its opposition¹⁸. Rwanda in 1994 experienced a premeditated, systematic and state sponsored genocide based upon the dehumanization and extermination of those ethnically identifiable as Tutsi. Rummel used the term “Democide” in order to incorporate government-sanctioned killings of Tutsi persons and selected Hutu. This term is used where innocent people are killed by their own government¹⁹.

An early warning of genocide was made as far back as March 1993 in a report of the international Commission of Inquiry and in the August 1993 report of UNHCR Special Rapporteur Bacre Wally Ndiaye. State sponsorship was evident from as early as 1991 when the *interahamwe* militia of the ruling MRND party was created in June of that year. The Ministry of Defence also devised a plan to monitor Tutsi people that September. *Interahamwe*’s first armed action took place in March 1992. Its members started receiving formal training from the army in November 1993²⁰.

But one has to look to an even earlier period to properly understand the Rwanda case.

Genocide against the Tutsi actually started in 1959 when the Hutu revolted against a Tutsi-led administration of the then Rwanda-Urundi, with the explicit approval of colonial Belgium. Thousands of Tutsi were killed and others fled to neighbouring countries to escape the killing. In 1962, Rwanda and Burundi became independent of Belgium. The latter handed power to a Hutu dominated Republic of Rwanda. However, democracy vanished quickly when President Gregoire Kayibanda, a Hutu, imposed single party rule and concentrated power within a clique of supporters from his home region of central Rwanda. In 1973 Major General Juvenal Habyarimana, also a Hutu from northern Rwanda, seized power in a coup and governed until he was killed in 1994. During the Hutu revolt and the period of Hutu rule, the Tutsi were blamed for almost all problems the country faced. Such scapegoating flared into ethnic massacres from time to time. Notable killings of Tutsi occurred in 1963, 1966, 1973 and 1990 through 1993.

From October 1990 until August 1993, the government of Rwanda and a rebel group, the Rwandan Patriotic Front (RPF), engaged in a fitful civil war and sporadic peace negotiations. The eventual peace accord called for a neutral peacekeeping force to help implement a transitional period of power-sharing and subsequent free elections. The United Nations Assistance Mission for Rwanda (UNAMIR) was established for this

¹⁸ S Chesterman *Just War or Just Peace? Humanitarian intervention and International Law* (2001) Oxford University Press at 144.

¹⁹ RJ Rummel *Death by Government* (1994) Transaction Publishers at 45.

²⁰ G Prunier *The Rwandan Crisis 1959-1994: History of Genocide* (1995) Columbia University Press at 53.

purpose on 25 October 1993 and a 2500-strong UN Peace Keeping force was sent to Rwanda. However, the peace process broke down in April 1994 as extremists from within the government and its army reignited the civil war and instigated a three month period of genocide in which their militias killed over 1,000,000 people.

Unfortunately for Rwanda, when its crisis occurred there was little outside enthusiasm for ambitious peace operations. In Security Council Resolution 912 (1994) Para 7(C)) of 21 April 1994, in the middle of the crisis, the Security Council voted to reduce the number of peacekeepers from 2500 to 270. When, at the end of the genocide, the SC decided to send more troops to Rwanda on 5 May 1994, no country was willing either to make its troops available or to contribute to UNAMIR's cost.

The US administration's growing scepticism over the announced peace operations were made official on 5 October 1994 when the national security advisor, Anthony Lake, announced a new policy on peace operations. Referring to conflicts that occur within states, he said: "These kinds of conflicts are particularly hard to come to grips with and to have an effect on from outside because, basically of course, their origins are in political turmoil within these nations. And that political turmoil may not be susceptible to the efforts of the international community. So, neither we, nor the international community, have the mandate, the resources, or the possibility of resolving every conflict of this kind"²¹.

Can or should the international community's response to Darfur and future crises be made more effective? There were three major shortcomings that hindered that response in Rwanda: firstly, the strategy adopted for UNAMIR was too passive and Security Council decision-making was ill informed and slow. Additionally, the recent experience of dealing with civil war elsewhere made states with the capability to react speedily to the trauma in Rwanda reluctant to do so. All these points will be explained. UNAMIR was not authorised to protect Rwandese civilians, and assistant Secretary-General Iqbal Riza on 13 April 1994 underlined this point by declaring that it was too lacking in resources to do so effectively²².

The failure of the Security Council can be traced back to 29 April 1994 when a New Zealand drafted resolution referred to the killings taking place in an area under control of the Rwandan military and called for enhancement of UNAMIR, and for the international community to move strongly and quickly. However, at that time no state was ready to contribute soldiers. It was evident that European states were focusing on Bosnia and were not prepared to commit troops to Rwanda.

²¹ WJ Durch *UN Peacekeeping, American Politics, and the Uncivil Wars of the 1990's* (1997) at 375.

²² A Surhke & H Adelman *Early Warning and Conflict Management: Genocide in Rwanda* (1995) Bergen Norway at 295.

This moved Kofi Annan, who was UN vice Secretary-General, to state that “nobody should feel he has a clear conscience in this business. If the pictures of tens of thousands of human bodies rotting and gnawed by dogs do not wake us out of our apathy, I do not know what will”. Secretary-General Boutros-Ghali pronounced himself in a similar vein: “We are all to be accountable for this failure... all of us, the great powers, African countries, the NGOs, the international community. It is genocide...I have failed.....it is a scandal”²³. Kofi Annan in his address to the 54th session of the General Assembly repeated this call saying “the genocide in Rwanda showed us how terrible the consequences of inaction can be in the face of mass murder. To avoid repeating such tragedies in the next century, I believe it is essential that the international community reach consensus not only on the principle that massive and systematic violations of human rights must be checked, wherever they take place, but also by deciding what action is necessary when, and by whom”²⁴

The current structure of R2P does not address critical issues that will influence effective UN action to protect vulnerable populations like those in Rwanda. Firstly, the structure of the United Nations does not foster quick and decisive responses. Vetoes by the permanent members of the Security Council or even threats of vetoes can undermine effective international action. Secondly, bureaucratic hurdles and diplomatic negotiations can be time-consuming, making it difficult to respond to rapidly unfolding events. More generally, any form of international coercion is usually diplomatically and politically costly, creating a strong incentive for international actors to avoid difficult measures.

The international response to the crisis in Darfur is illustrative. China, which has ties to the Sudanese government and enjoys a permanent seat on the Security Council, was reported to have opposed coercive measures such as sanctions. In the World Summit on 25 September 2005 the final Summit agreement removed proposed language that called on permanent Security Council members to refrain from using the veto in cases of genocide, war crimes, ethnic cleansing and crimes against humanity²⁵. This was done due to US pressure. This gap leaves permanent members with a powerful negotiating tool that permits bad faith vetoes in the face of clear atrocities. Incidents of genocide and other atrocities are no longer merely morally reprehensible or a violation of an individual nation’s responsibilities but, conversely, a failure by the international community to respond is no longer simply morally blameworthy.

²³ Prunier (n 20 above) at 14.

²⁴ M Keren & DA Slyvan “International Intervention: Sovereignty versus Responsibility” (2002) *The International History Review*.

²⁵ AL Banon “The Responsibility to Protect. The United Nations World Summit and the Question of Unilateralism” (2006) *The Yale Law Journal* 1162 at 115.

Some writers analyse the Darfur crisis within the broader framework of social inequalities and marginalisation of the Darfurians by the Khartoum government. They claim that since the attainment of independence in 1956, the Darfur region suffered from marginalisation by the Khartoum government both at the level of economic and political processes and that this generated popular discontent in the region²⁶.

Other writers like Lippman voice concern about the international community's lack of concern about, and attention to, the gross and systematic violation of human rights in Darfur. This was the same kind of indifference that exacerbated the 1994 Rwandan genocide. Just like Rwanda, Darfur is, according to him, "a slow motion genocide" that is methodically unfolding before the eyes of the international community²⁷. On a comparative note, he proclaims that the only difference between the 1994 Rwanda genocide and Darfur is that of numbers involved and that the situation in Rwanda was "not just a conflict but an organised attempt to do away with a group of people". This then prompts the major question of when it is appropriate to intervene in a crisis and whether the international community's will to protect exists or not.

An analysis of the role of a military response to the mass killings in Darfur is also proffered by Williams in his 2006 article, *Military Response to Mass Killing: The United Nations (UN) Mission in Sudan*. He castigates the use of violence to quell violence by arguing that in the case of Darfur, the international society supported a weak military response by the AU's unprepared and underfunded force. The author also decries the fact that despite huge expenditure on military interventions by the world's governments every year, very few of these interventions have been successful in protecting civilians against genocide, ethnic cleansing and other crimes against humanity.

The work of the ICISS report is credited with providing the framework for action in situations where states fail to live up to their responsibility to protect their own citizens. However, such a contribution remains stipulative and descriptive in nature. A need exists for a study that critically attempts to assess the operationalisation of the principles of R2P.

The comparative case-based approach adopted in this study endeavors to bridge this rift. In this regard, this study will respond directly to the most recent call by UN Secretary General Ban Ki Moon for the "development of the conceptual, institutional and political dimensions of operationalising the R2P"²⁸.

²⁶ T Murithi "The African Union's Evolving Role in Peace Operations: The African Union Mission in Burundi, The African Union in Sudan and the African Union Mission in Somalia" (2008) *African Security Review* 171.

²⁷ M Lippman "Darfur: The Politics of Genocide Denial Syndrome" (2007) 9(2) *Journal of Genocide Research*: at 193-213.

²⁸ United Nations General Assembly: UN Headquarters in New York, January 2009.

CHAPTER 2

THE EVOLUTION OF HUMAN INTERVENTION

2.1 Definition of Intervention

The term *intervention* was known and practiced widely in the ancient states system. Intervention was prevalent in the 16th and 17th centuries and in the Napoleonic era²⁹. The twentieth century saw intervention practiced on a regular basis- so much so that in the late 1960s it was coming to be seen as a central problem of world politics³⁰. Because the term has been used in so many varied contexts, from interference to meddling to forcible intervention, there is confusion as to its meaning or definition.

Intervention can take the form of, for example, the recalling of diplomats, trade sanctions, or refusal to grant credit. But it has also often taken the form of interference by a state (or group of states) with the use of force in an attempt to impose its will on another state or to restore law and order on request. As such, the definition depends on its user. The term greatly differs when used by a political scientist, an international relations analyst or an international lawyer. Geldenhuys³¹, after a study of the various definitions of intervention drafted by international relations specialists and international lawyers, defines intervention "as the calculated action of a state, a group of states, an international organization or some other international actor(s) to influence the political system of another state (including its structure of authority, its domestic policies and its political leaders) against its will, by using various means of coercion (forcible or non-forcible) in pursuit of particular objectives³².

2.2 DEFINITION OF HUMANITARIAN INTERVENTION

As shown above, it is difficult to determine a working definition of "humanitarian intervention". It has been defined as a threat or use of force by a state, group of states, or international organization primarily for the purpose of protecting the nationals of the target state from wide-spread deprivations of internationally recognized human rights³³. According to Murphy, the latter phrase is a broad formulation used to capture the numerous conditions that might arise where human rights on a large scale are in jeopardy and includes acts committed by both state and non-state actors.

²⁹ OR Young "International Intervention Systems" (1986) 22 *Journal of International Affairs* at 179.

³⁰ JN Roseneau "Intervention as a Scientific Concept" (1969) 13 *Journal of Conflict Resolution* at 160.

³¹ For an extensive exposition of intervention through history, see Deon Geldenhuys *Foreign Political Engagement* London: Macmillan Press 1998.

³² GN Barrie "Forcible Intervention and International Law: Legal Theory and Realities" (1999) *South African Law Journal* 116 at 791.

³³ SD Murphy *Humanitarian intervention: The United Nations in an Evolving World Order* (1996) University of Pennsylvania Press at 11-12.

What underlies the humanitarian intervention debate is a perceived tension between the universal values of sovereignty, non-intervention, and self-determination which are considered essential factors in the maintenance of peace and international security. These values are set out in the United Nations Charter as fundamental principles of the United Nations. However, while there are mechanisms within the Charter for the protection and enforcement of peace and international security (e.g. Article 2 (4) and Chapter VII of the UN Charter of 1945, there are no equivalent provisions or mechanisms in the Charter for the protection of human rights³⁴. Complicating matters even further is the fact that many developing states and their academics do not agree with the Western emphasis on the individual in current human rights doctrine³⁵.

According to Simon Duke, several Asian and Islamic countries challenged the universality of human rights in the preparatory conference to the 1993 Vienna Conference on Human Rights, charging that human rights more often than not reflect Western ethical and moral standards". It has been contended by many Western states and academics that the development of international human rights norms and international humanitarian law has modified the traditional concept of sovereignty. The lack of co-operative action necessary to effectively respond in cases of genocide such as that in Rwanda is due in large part to the existence of divergent definitions and contested concepts including international law, human rights, sovereignty and democracy³⁶. Thus, it has been suggested that human rights can no longer be considered a purely domestic concern and the concept of sovereignty cannot be used by governments to shield themselves from responsibility for gross violations of these rights or from shirking their obligations with respect to the protection and treatment of civilians in situations of intra-state conflict.

2.3 THE UNITED NATION SYSTEM AND HUMANITARIAN INTERVENTION

The suggestion that respect for sovereignty is a condition for respect for human rights has been reflected in the practice of the Security Council. Article 2(7) of the United Nations Charter prohibits the world body from intervening in the domestic jurisdiction of any state. Nevertheless, since the end of the Cold War, the Security Council has availed itself of a right to humanitarian intervention by adopting a series of resolutions which have progressively expanded the definition of a "threat to international peace and security" under Article 39 of the Charter, allowing for Security Council-mandated military interventions to respond to grave humanitarian crises, even where such crises have

³⁴ P Fedrick "The Facade of Humanitarian Intervention for Human Rights in the Community of Sovereign Nations" (1998) 15 *Arizona Journal of International and Comparative Law* at 871-904.

³⁵ D Simon "The state and Human Rights: Sovereignty versus Humanitarian Intervention" (1994) 11(2) *International Relations* at 25-28.

³⁶ P O'halloran "Humanitarian Intervention and the Genocide in Rwanda" (1995) *Conflict Studies* 277 at 1.

been purely domestic in nature³⁷. Ellen states that development in international law from the Universal Declaration of Human Rights (1948) to the Convention on the Rights of the Child of 1989 have reduced the relevance of Article 2(7) with regard to the protection of fundamental human rights. Murphy above, argues that the Security Council has a legal right to intervention (or to authorize intervention by a group of states or a regional organization) in a target state to protect the latter's citizens from widespread deprivations of internationally recognized human rights and that such a right is now generally recognized in international law³⁸.

It is arguable that UN-authorized military humanitarian interventions over the past decade reflect an emerging consensus in the international community that respect for fundamental human rights is now a matter of international concern. At the same time, the instances of Security Council inaction or lack of timely action in the face of humanitarian crises over the same period show that this "international concern" is often outweighed by political and structural considerations. The Security Council is hampered by a lack of political will among its members.

The issue of political will was tragically evident in the crisis in Rwanda and now in Darfur. An independent investigation of the genocide in Rwanda commissioned by the Organization of Africa Unity condemned the Security Council and its members for having an opportunity to prevent the genocide but failing to do so and, among other things, pointed to the role of the United States in blocking the deployment of a more effective intervention force during the genocide³⁹.

Effective and consistent humanitarian intervention is made unlikely by the geopolitical realities of relations between the permanent five members of the Security Council, leading to the use of the veto and inconsistent action in the face of humanitarian crises. Such difficulties were revealed when Russia launched its attack on Chechnya to crush a rebellion in 1994. Despite the killing and displacement of thousands of Chechen civilians, the Security Council took no action. According to journalist Gee Marcus⁴⁰, the Russian attack on Chechnya was every bit as brutal as the Serbian offensive in Kosovo. Further, as the ethnic conflict in Kosovo intensified in 1998 and early 1999, it became clear that, while the Security Council had classified the situation as a "threat to peace and security in the region", Russia and the People's Republic of China (PRC), would

³⁷ ME O'connell *The UN, NATO and International Law after Kosovo* (2000) 22 *Human Rights Quarterly*, The Johns Hopkins University Press at 68-69.

³⁸ Murphy (n 33 above) at 287-288.

³⁹ Organization of African Union: *Rwanda: The Prevention of Genocide* (2000) at 10 [Online] Available from: <http://www.oau-oua.org/Document/ipep/report/Rwanda-e/EN-111-T.htm> [Accessed: 20 February 2010].

⁴⁰ G Marcus *No Excuses for Silence on Chechnya* (1999) *The Globe and Mail* at 15.

exercise their power of veto on any resolution authorizing the use of force in Kosovo⁴¹. The PRC, which has ties to the Sudanese government and enjoys a permanent seat on the Security Council, was reported to have opposed coercive measures such as sanctions⁴². The first resolution that took any direct action against the perpetrators of human rights abuses was not passed until March 29, 2005, two years after the violence began.

Civilian populations have become the principal targets and victims of intra-state wars and most African states have lost their status as the sole custodians of the legitimate use of physical force in the territory they claim to control. Armed personnel in these states utilize starvation, slaughter, and various civilian and military means to expel or kill civilians.

2.4 THE PRACTICE OF HUMANITARIAN INTERVENTION

The practice is said to have started with European states interventions in the Ottoman Empire to protect their nationals in particular, and minority Christian populations in general⁴³. In the early days of the United Nations and in the aftermath of the Second World War there were no arguments, legal or otherwise, in favor of intervention. The accepted practice was that there was no place in contemporary international law for a right of intervention⁴⁴.

Indeed, international law had developed a body of rules restricting the right of states to use force (Article 2(4) and 2(7) of the UN Charter 1945). Chapter VII of the UN Charter authorizes the Security Council to impose coercive measures and to disregard the general 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. However, this chapter of the Charter relates to the inherent right of self-defense and the preservation of interests of the powerful states within the international construct rather than on the perceived values of human rights. The Security Council could not act because of the veto power of its powerful permanent five members. When their interests were in jeopardy, authorization of intervention was out of the question. The exception was the response to the Korean war of June 1950. This was possible because of the temporary absence of the Soviet Union from the United Nations Security Council. It had boycotted

⁴¹ B Simma *NATO, "The UN and the Use of Force, Legal Aspects" (1999) 10 The European Journal of International Law* at 1-22.

⁴² Sudan warns against intervention (2004) BBC News [Online] Available from: <http://www.newsbbc.co.uk/2/hi/Africa/3931411.stm> [Accessed: 26 November 2009].

⁴³ IA Badmus "Humanitarian Intervention and the Protection of Civilian Populations" (2009) at 8.

⁴⁴ SN MacFarlane *Politics and Humanitarian Action: Watson Institute for International Studies* (2000) at 13.

the body from January of the same year over the issue of seating the PRC's representative in the United Nations⁴⁵.

As a result, because of the veto, the USA put forward a resolution called "Uniting for Peace", stating that the General Assembly could take over if the Security Council vetoed any initiative that was considered important for maintaining peace"⁴⁶. This resolution is still in force but was never used to stop or prevent genocide in Rwanda or Darfur. During this period the emergence of the two superpowers constrained interventions to matters of national interests. In 1971 India militarily intervened in Bangladesh (then East-Pakistan), and Vietnam invaded and dislodged Pol Pot's dictatorial regime in Cambodia.

In Africa, the Tanzanian military intervention and ouster of dictator Idi Amin in Uganda in 1979 lingers in our memories while in 1991, the Allied forces launched a military invasion, code-named "Operation Provide Comfort", in Northern Iraq. Its stated purpose was to guarantee the fundamental rights of the Kurd minority ethnic group in the face of Saddam Hussein's persecutions.

In 1992 Somalia was in ruins with no functioning government at all. With 1-2 million Somalis displaced, and 4-5 million people threatened with severe malnutrition and 300,000 deaths, it became impossible to distribute relief assistance in the country. The UN Security Council adopted resolution 733 of 1992 directing the Secretary-General to undertake necessary action to increase humanitarian assistance to the people of Somalia. The situation continued to deteriorate and this led to Security Council resolution 794 of 1992, which determined that the magnitude of the human tragedy in Somalia constituted a threat to international peace and security under Chapter VII of the UN Charter.

The UN Security Council's resolution 814/1993 established a peace keeping force that was mandated to complete thorough disarmament and reconciliation, a task initially undertaken by UNITAF(a United States-led Unified Task Force) established by resolution 794 of 1992. United Nations Operating in Somalia (UNOSOMII) was mandated to use force as envisaged in Chapter VII of the UN charter.

It can thus be argued that resolution 794 mandated collective interventions for humanitarian purposes. Despite the international culture of non-intervention in the internal affairs of sovereign states, external interventions are by no means a new phenomenon in international politics. Whenever states have intervened in the affairs of

⁴⁵ OMM Denis & CD Brazeau "The Evolution of Humanitarian Intervention and its Impact on Canada" (2005) at 9 Canadian forces college [Online] Available from: <http://www.cfc.forces.gc.ca/papers/nsssc/nssc7/brazeau.pdf>. [Accessed: 23 February 2010].

⁴⁶ *The United Nations and the Korean War* [Online] Available from: <http://www.historylearningsite.co.uk/united-nations-korean-war.htm> [Accessed: 17 February 2010].

other states it is to defend either strategic or private interests but humanitarian concerns have increasingly become a rationale for involvement (e.g. Kosovo, Bosnia, East Timor, Sierra Leone and Liberia).

Interventions in the domestic affairs of failed states are often regarded as acceptable under international law if they are designed to address human rights violations and human suffering⁴⁷. In this respect, the speech of former Secretary General Kofi Annan which challenged the international community at the General Assembly⁴⁸, becomes relevant. He wondered if the words “*we the people*,” in the preamble of the UN Charter, have meaning if the threat or use of a veto in the Security Council can be allowed to stand in the way of humanitarian intervention. When talking about the Rwandan genocide, he challenged the General Assembly to ask themselves if they really could not have done something to prevent the massacre of thousands had they simply agreed to live up to the spirit of the United Nations⁴⁹.

The debate then centers on the obligations of the rest of the international community if the five permanent members cannot, for their own reasons, act in unanimity to intervene in a country that clearly needs help. After all, NATO felt obliged to intervene in the Kosovo conflict and helped in bringing that conflagration to a halt without the approval of the UN Security Council. What, then, should the world do if a permanent member vetoes intervention despite all indications that a catastrophe is about to, or is actually taking place? This is a very difficult question for which there is no straight forward answer. On this issue, two schools of thought prevail.

Simon argues for the Third Perspective and contends that there are three broad approaches to the issue of the legality of humanitarian intervention. One approach is that of the **restrictionists** who argue that humanitarian intervention is a violation of territorial integrity and political independence of the state; there are those closer to **natural law tradition** who argue that such intervention is permissible under the UN Charter since the UN has made an explicit commitment to the protection of human rights and that such use of force falls below any threat to the territorial integrity of the state. Finally, there are those who accept humanitarian intervention provided it is conducted in a **collective manner** that expresses the will of the international community. Those supporting multilateral intervention argue that the development in international human rights law and the UN Charter had a fundamental and a radical impact on international law. This school of thought argues from the moral point of view that it is the human being, people, individuals, as opposed to the state as the basic unit

⁴⁷ TI Gizelis & KE Kosek *Cooperation and Conflict* (2005) 40; 363 [Online] Available from: <http://cac.sagepub.com/cgi/content/abstract/40/4/363>. [Accessed: 21 January 2010].

⁴⁸ United Nation Press sg/sm/6613 (1998) [Online] Available from: <http://www.un.org/news/press/docs/1998/0626.sg/sm.6613.html>. [Accessed: 28 February 2010].

⁴⁹ Wheeler (n 17 above) at 294.

of analysis and concerns of the international legal system. The implication is that nation-states get their legitimacy and even authority from people's will. In this context, sovereignty (in all its connotations) is not an inherent right of the states, but rather derives from individual rights.

Teson Fernando⁵⁰ asserts, in supporting the above, that the human rights imperative underlies the concept of state and government and the precepts that are designed to protect them, most prominently Article 2(4). The right of states recognized by international law is meaningful only on the assumption that those states minimally observe human rights. The UN mission of promoting and protecting human rights found that Article 1(3) and by reference to Art 2(4) as a qualifying clause pointing to the prohibition of war, has a necessary primacy over the respect for state sovereignty. Force used in defense of fundamental human rights is, therefore, not a use of force inconsistent with the purposes of the UN, he argues.

A possible solution to this seemingly intractable dilemma between legal and moral considerations has been proposed by Rutter⁵¹. He argues that interventions such as the Kosovo one should not be justified in legal terms only, but that an **emergency exit** from international law, justified solely on moral grounds, should be recognized in *ad hoc* extreme cases only. This leaves open the door for intervention in extreme cases of human suffering but at same time avoids jeopardizing the existing, hard-earned international legal order and the central role of the Security Council. The question then goes to the right definition of *extreme* and when and how such a determination can be made.

2.5 AFRICAN PERSPECTIVES ON HUMANITARIAN INTERVENTION

Africa is the world's poorest continent and in distress in many respects. This is due to its long period of colonial exploitations and subjugations both in human and material terms. European states came with the impression that colonialism is benevolent because, according to them, it was to transform the traditional African society into a modern one and lay a solid foundation for the continent's socio-economic and political developments. Their other stated purpose was to bring the benefits of Christianity to the colonized people. Colonialism was portrayed to the local populations as part of European humanitarian missions in Africa. Unfortunately, the negative consequences of such activities have made Africans and many other colonized people in different parts of the world cautious as to the external assertions of such benevolence or humanitarian protection. The brutal and degrading historic account of colonialism has a bigger effect

⁵⁰ T Fernando 'Humanitarian Intervention; an Inquiry into Law and Morality' 2nd edition (1997) Transnational Publishers Inc, Irvington-on-Hudson, New York at 174.

⁵¹ JE Rutter "Humanitarian Intervention without the Security Council: From San Francisco to Kosovo and Beyond" (2001) 60 *Nordic Journal of International Law* at 158.

on the African psyche regarding the twin concepts of intervention (whether for humanitarian objectives or other goals) and state sovereignty.

In addition to Africa's bitter experience with colonialism, the negative impact of the twin forces of neo-colonialism and the Cold War have continued to shape Africa's perspectives on intervention. For example, aside from maintaining military bases in Africa, France has continued to dominate and intervene politically and militarily in the internal affairs of its former colonies as its activities in the Central African Republic, Zaire, the Comoros and Rwanda illustrate. This has resulted in suspicion of intervention by France and dents its credibility as an impartial arbiter in African crises. This explains Africa's suspicion towards France's Operation Turquoise as being political rather than a humanitarian intervention during the Rwanda genocide in 1994.

Secondly, Africa is economically, politically and militarily a weak continent integrated into the international system with exploitative and unequal exchange terms. Since African states are financially and economically not buoyant, it is not hard to fathom the compelling reality that it would be difficult, if not impossible, to defend and guarantee their territorial integrity and political independence through military means. International Law and the well established rules/norms of international relations become potent instruments in the hands of these powerful countries to guarantee this much needed protection and ward off external aggression.

Another negative dimension of the Cold War in Africa is the disregard by outside powers of the territorial integrity of African states when ideological issues were at stake. In this context, Rwanda became the battle ground for ideological supremacy between France and Belgium, a situation that would later result in the genocide in Rwanda. As such, protracted armed conflicts both (inter and intra-state) with the negative consequences of state failure, military rule, militarism, arms races and the emergence of war economies have become synonymous with African states.⁵² These pervasive security situations have often resulted in a complete breakdown of law and order and the collapse of state institutions which have resulted in the humanitarian catastrophes of Rwanda, Somalia and Darfur.

The UN's feeble attempts at peace enforcement became counterproductive when it failed to secure peace in Somalia and also made it difficult to have international consensus on how to address other African crises including the genocide in Rwanda in 1994. This confirms the suspicions of Africans and the assertion that a badly planned and executed intervention can do more harm than good.

⁵² NC Madlala-Routledge *Developmental Peacekeeping: What are the Advantages for Africa?* (2004) being the text of paper presented at the African Defense Summit July 2004, Midrand: South Africa.

The failure of the international community to stop the Rwandan genocide became a big lesson for Africa. It revealed the dangers inherent in relying on external powers for protection because the UN's lackadaisical attitude to the planned genocide showed that the world's interest in Africa is unpredictable and unreliable. Rwanda, in the words of Stan Lake⁵³, demonstrated both the "most compelling need for intervention on humanitarian grounds and the most compelling failure to meet that need". It is on this note that he asserts further that Africa's agenda must address the issue of how to ensure that action is, and can, be taken when needed.

⁵³ S Lake & JTM Samkange "African Perspectives on Intervention and State Sovereignty" (2002) Vol. 11 *African Security Review* at 1.

CHAPTER 3

THE FAILURE OF APPLICATION OF R2P PRINCIPLES IN RWANDA

Ever since Rwanda's independence in 1962 serious tensions existed between the minority Tutsi, constituting 15% of the population, and the majority Hutus. The former were a pastoral monarchy that the ruling class favored during the colonial period. The tensions resulted in intermittent conflicts soon after the colonizers left. In the view of some commentators, the term "genocide" can be used to describe the violence that took place against Tutsi's in 1963, 1966, and 1973. In terms of Article 6 of the Rome Statute of 1998, genocide is defined as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. It is the same definition found in the four Geneva Conventions adopted in 1949. As many as 20,000 Tutsis were killed in 1963 and tens of thousands more were exterminated in the violence of 1966 and 1973.

The horrors of 1994 were, therefore, a continuation of the genocide started in 1963. Because of its scale, the latter period completely overshadowed these previous events. Some writers think that the genocide started on April 6, after a surface-to-air missile shot down a plane carrying the then Rwanda President. In actuality, the renewed killing of Tutsis started much earlier in 1990 in Kigali suburbs. They continued through 1992 when the Bagongwe Tutsis in Ruhengeri were massacred and then in 1993 with the massacre of Bugesera. The systematic killing of Tutsis in 1994 was, therefore, a continuation of a pre-planned genocide against the minority ethnic group. This killing of Tutsis and moderate Hutus was perpetrated by security forces and armed gangs loyal to the government. Hutu militias were trained by the national army and organized as the youth wing of the major Hutu parties.

At the time of President Habyarimana's death in 1994, there were 2,500 UN peace keepers stationed in Rwanda as part of the UN Assistance mission, (UNAMIR). It was a lightly armed force designed to monitor the Arusha Accords, which had been agreed the previous August of 1993. After ten Belgian soldiers assigned to guard the Prime Minister were killed and mutilated on April 7, Belgium decided to withdraw its 440 troops from UNAMIR⁵⁴. The Secretary-General reported to the Security Council that UNAMIR's position had become untenable.

Resolution 912 (1994) stated that the Security Council decided to "adjust the mandate of UNAMIR. On 21 April 1994, right in the middle of the genocide, the Security Council voted to reduce the entire force to only 270. The reasoning behind this resolution remains shrouded in mystery. By withdrawing the force as the blood-bath was gathering speed, the UN sent an unmistakable message to the genocide forces that there was

⁵⁴ UN Security Council Resolution 446, UN Documents/1994/446.

little or no international resolve to stand in their way. Worse still, two weeks after the onset of the killings, Security Council members and UN officials were unwilling to use the term “genocide”⁵⁵.

One of the dissenting voices in the military wilderness was Major-General Romeo Dallaire who as UNAMIR’s force commander pleaded for 5000 well trained soldiers. In his view, they could have slowed the pace of the killings and perhaps turned the tide. He also requested an expansion of the rules of engagement to incorporate the protection of civilians. Both requests were denied. Although some dispute whether 50 00 soldiers could have really stopped the genocide⁵⁶, the appalling number of deaths would have been reduced substantially. Illustrative examples were the protection of some 10,000 civilians in Kigali’s Amahoro stadium and at the King Faisal Hospital. Although the remaining 270 troops deterred some abuse, they were clearly inadequate to the task. Consequently, from April to July 1994, Hutu extremists systematically murdered more than 800,000 Tutsis as well as Hutu moderates⁵⁷.

Despite a token offer from some 50 countries contributing potential troops, there was little genuine willingness to intervene. By the third week of April, the Secretary-General put three options before the Security Council: strengthen UNAMIR by several thousand troops, reduce its strength, or withdraw completely. Of the three, he advocated the plan calling for 5,500 troops to be deployed in Kigali under an expanded UNAMIR mandate to provide security to humanitarian organizations for the distribution of relief supplies and to establish access to sites where displaced persons and refugees were concentrated.⁵⁸

This plan was opposed by the USA which questioned the UN proposal and argued for more restructuring of the plan before implementation. Part of the constraint was a US Presidential Directive by President Clinton which made US funding and participation less likely. The US opposition was condemned by the Organization of African Unity (OAU) and aid agencies which accused the Security Council of applying different standards in Africa. Meanwhile the genocide continued and finally on April 29, the Secretary-General pleaded with the Security Council to reconsider its position and take “forceful action to restore law and order”⁵⁹.

By early May 1994, Secretary-General Boutros-Ghali estimated that 250,000 to 500,000 Rwandans, mostly Tutsis, had been killed. He concluded that “the magnitude of the human calamity that has engulfed Rwanda might be unimaginable but for its having

⁵⁵ ICISS (n 6 above) at 98.

⁵⁶ AJ Kuperman “Rwanda in Retrospect” (2000) *Foreign Affairs* 79. no. 1. at 94.

⁵⁷ *All African Press Services* (1996) April 24.

⁵⁸ United Nation Security Council Resolution 728 (19 June 1994), UN Documents/S/728.

⁵⁹ United Nations Security Council Resolution 728 (29 April 1994), UN Documents/S/518.

transpired. On the basis of the evidence that has emerged, there can be little doubt that it constitutes genocide⁶⁰. On 17 May 1994, the Security Council adopted Resolution 918 (1994), which imposed an arms embargo on Rwanda and authorized an expansion of UNAMIR. Once again the US argued that this should take place in two phases with the first comprising only 150 UN armed observers and an 1800-strong Ghanaian battalion to secure the Kigali airport. Despite the Secretary-General's report, governments even then resisted using the term "genocide" as it would have made their policies of inaction untenable in light of their obligations to the 1948 Genocide Convention⁶¹.

Resolution 918 avoided the term and instead referred to "the killing of members of an ethnic group with the intention of destroying such a group in whole or in part". This is of course, only a partial definition of genocide. It was not until 8 June 1994 that the Security Council, in Resolution 925(1994), noted "with the gravest concern the reports indicating that acts of genocide have occurred in Rwanda." Although this resolution was intended to accelerate the deployment of the expanded UNAMIR, ten days later, the force still consisted of only 500 troops under the command of Dallaire. The Secretary-General warned that UNAMIR would be unable to undertake its full mandate for another three months.

A request by France to the Secretary-General for authorization under Chapter VII to send a force without delay on 20 June met with widespread suspicion owing to France's close ties to the ousted Hutu regime and particularly its role in arming, training and fighting alongside the Hutu government forces. Despite the serious misgivings expressed by a number of the Security Council members, it adopted Resolution 929(1994) on 22 June 1994. The five abstentions to the Resolution (Brazil, PRC, New Zealand, Nigeria and Pakistan) revealed the deep divisions within the Council about authorizing a French intervention. The French action seemed to have achieved one possible goal, though. It slowed the advance of the Rwanda Patriotic Front (RPF) soldiers who were fighting the murderers and thereby permitted the former government forces and militias to escape. The widely held view that the French action was designed primarily to secure French interests in the area, including preserving the remnants of the Hutu leadership,⁶² can be supported.

⁶⁰ United Nations Security Council Resolution 640 (31 May 1994), UN Documents S/RES/640.

⁶¹ Fernando (n 50 above) at 260.

⁶² J Moore *'Hard Choices after Genocide: Moral Dilemmas in Humanitarian Intervention'* (1998) *Foreign Affairs*, Rowman & Littlefield at 171.

The inability of the UN forces to protect civilians (including national UN staff) was subsequently described in the understated but scathing conclusions of an independent inquiry as “one of the most painful and debated issues of this period”⁶³.

3.1 REACTION OF THE INTERNATIONAL COMMUNITY

The failure by the UN to prevent and subsequently stop genocide in Rwanda was a failure by UN system as a whole. The international community did not prevent genocide, nor did it stop the killing once the genocide had begun. The fundamental failure was the lack of resources and political commitment devoted to developments in Rwanda.

There was a persistent lack of political will by member states to act and to do so with enough assertiveness. There were signs of genocide in 1993, as was reported by Waly Bacre Ndiaye, Special Rapporteur of the Commission on Human Rights, on extra-judicial and arbitrary executions. He confirmed that the massacres and a plethora of other serious human rights violations were taking place in Rwanda. The targeting of the Tutsi population led Ndiaye to propose that the term genocide was applicable. He stated that he could not pass judgment at that stage but, citing the Genocide Convention, went on to say that the cases of inter-communal violence indicated very clearly that the victims of the attacks, Tutsis, in the overwhelming majority of cases, were being targeted solely because of their membership of an ethnic group and for no other objective reason. In addition to pointing out the serious risk of genocide in Rwanda, he recommended a series of steps to prevent further massacres and other abuse but his report seems to have largely been ignored by the key actors within the United Nations system.

As far back as 23 November 1993, Major-General Romeo Dallaire had sent a draft set of Rules of Engagement for UNAMIR to UN headquarters in New York requesting for the approval of the Secretariat. The draft included a rule specifically allowing the mission to act, and even to use force in response to crimes against humanity and other abuses which were taking place around the country. Headquarters never responded to the force commander’s request.

On 11 June 1993 Dallaire sent a telegram requesting for protection for an informant, who figured prominently in the discussions about what knowledge was available to the United Nations about the risk of genocide. The cable contained information including a plan by Belgian troops to train 1700 militia (Interahamwe) in the camps of the Rwanda government forces, the registration of all Tutsis in Kigali which he suspected was for their extermination. The informant told Dallaire that he had personally killed up to 1000

⁶³ *UN Report of Independent Enquiry into the action of UN during the 1994 Genocide in Rwanda* (1999) Resolution/1257/1999, 16 December 1999.

Tutsis in 20 minutes and gave information about a weapons cache which included G3's and AK-47 rifles.

The informant was prepared to show UNAMIR the location of these weapons if his family was given protection. Dallaire went on to inform the Secretariat that it was UNAMIR's intention to take action within the next 36 hours. Under Secretary-General Kofi Annan responded on 10 July 1993 by instructing UNAMIR not to take any action⁶⁴ and that it was beyond the mandate entrusted to UNAMIR under Resolution 872(1993).

The concerns with regard to the distribution of arms, activities of the militia, killings and increased ethnic tension continued throughout the early months of 1994. In a cable to Annan and Jonah on 2 February 1994, Booh Booh, the Special Representative of the Secretary-General in Rwanda, wrote that the security situation was deteriorating on a daily basis. Booh Booh reported "increasingly violent demonstrations, nightly grenade attacks, assassinations, political and ethnic killings, and, he reported, "We are receiving more and more reliable and confirmed information that the armed militias of the parties are stockpiling and may possibly be preparing to distribute arms to their supporters". He continued, "If this distribution takes place it will worsen the security situation even further and create a significant danger to the safety and security of UN military and civilian personnel and the population at large".

Furthermore, Booh Booh cited indications that the Rwandan Government forces were preparing for a conflict, stockingpiling ammunition and attempting to reinforce positions in Kigali. His conclusion was that determined and selective deterrent operations were necessary in order to target confirmed arms caches and individuals known to have illegal weapons in their possession. Booh Booh further wrote that these operations would not be conducted only to fulfill the requirements of their mandate in recovering illegal arms but that they would also ultimately ensure the safety and continued operation of UN personnel and facilities in Rwanda. UNAMIR sought the guidance and approval of UN headquarters to commence deterrent operations but the request was ignored. He decided to have a meeting with the Ambassadors of Belgium, France, Germany and the United States on 15 February 1994 and expressed his concerns with respect to the security situation. On 14 February 1994, the Belgian Foreign minister, Willy Claes, wrote a letter to the Secretary-General, arguing in favor of a stronger mandate for UNAMIR.

Unfortunately, this proposal does not appear to have been given serious attention within the Secretariat or among other interested countries. After the death of three prominent people, Minister of Public Works, Felicien Gatabazi, Secretary-General of *Party Social Democrate* (PSD), Martin Buchyana, and the President of the *Coalition pour la Defense*

⁶⁴ UN Documents (n 63 above) at 11.

de la Republique (CDR) on 21st and 22nd February 1994, tensions rose in Kigali and the rest of Rwanda. In a report of 23rd February 1994, Dallaire wrote that information regarding weapons distribution, death squad target lists, planning of civil unrest and demonstrations abounded. "Time does seem to be running out for political discussions, as any spark on the security side could have catastrophic consequences."

At 09:20 on 7 April 1994, Dallaire called Mr. Iqbal Riza, then assistant Secretary-General for Peacekeeping Operations to inform him that UNAMIR might have to use force to save the Prime Minister, Agathe Uwilingiyimana, whose house was surrounded by Rwandan government forces. The Prime Minister was indeed later killed after ten Belgians soldiers who were guarding her were killed. In a further sign of bureaucratic indifference, Riza reiterated the rules of engagement which were that UNAMIR was not to fire until fired upon.

About 2000 people had sought refuge at the Ecole Technique School (ETO) in Kigali where UNAMIR were stationed believing that the troops would be able to protect them. Right outside the complex were members of the Interahamwe and Rwandan soldiers. On 11 April 1994, after the expatriates at ETO school had been evacuated by French troops, the Belgian contingent at ETO also left leaving behind men, women and children all of whom were massacred by the waiting soldiers and militia. A former Foreign Minister, Boniface Ngulinzira, was among the 2000 people at ETO school. He had desperately asked French troops to evacuate him along with their countrymen but his request was denied⁶⁵.

On 8 April 1994, national evacuation operations were mounted by Belgium, France, Italy and the USA. The operations were undertaken with the aim of evacuating expatriates. The UN force commander, Dallaire, informed Headquarters of the arrival of the first three French aircraft during that operation. In a cable dated 9 April 1994 from Annan, Dallaire was instructed to "cooperate with both the French and Belgian commanders to facilitate the evacuation of their nationals and other foreign nationals requesting evacuation. You should make every effort not to compromise your impartiality, or to act beyond your mandate. This should not, repeat not, extend to participating in possible combat except in self-defense"⁶⁶.

The Belgian government through its Foreign Minister, Willy Claes, and its Permanent Representative to the UN conducted a campaign of high level meetings with Security Council members in order to get the Council to withdraw UNAMIR, a move which was supported by other Western powers. On 20 April 1994, Booh Booh expressed full support for reinforcement of the mandate and strength of UNAMIR, but on the same day, as the Council was preparing to move ahead to a decision to withdraw UNAMIR,

⁶⁵ UN report (n 63 above) at 45.

⁶⁶ UN report (n 63 above) at 19.

the Ambassador of Nigeria, Ebrahim Gembari, met with Secretary-General asking Boutros-Ghali to counter the resolution in the Security Council. The Secretary-General said he felt as though he was “fighting alone,” and pressed the Ambassador to encourage African heads of state to rally behind his position and write a letter against a withdrawal.

However, this was all in vain as the Council voted unanimously to reduce UNAMIR to about 270 troops⁶⁷.

Paradoxically, a month later, the Council adopted resolution 918 (1994) on 17 May 1994, calling for an increase in the number of UNAMIR troops to 5500. Predictably, no country was willing to contribute troops for UNAMIRII. By 25 July 1994, over two months after resolution 918 (1994) was adopted, UNAMIR still only had 550 troops. Evidently, 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 United Nations to provide the necessary troops in order to permit the United Nations to try to stop the killing.

On 31 May 1994 the Secretary-General presented a report on the situation in Rwanda and 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 decisive action to humanitarian crises entrained with 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 paralyzed 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”⁶⁸.

The report includes a vivid description of the horrors of the weeks since the beginning of the genocide referring to a “frenzy of massacres.” Significantly, the report stated that the massacres and killings had been systematic, and that there was little doubt that what had happened constituted genocide.

On 8 June 1994, the Security Council adopted resolution 925(1994), which endorsed the Secretary-General’s proposal on the deployment of UNAMIR under its expanded mandate and extended the mission’s mandate until 9 December 1994. However, China objected to the use of the term “genocide” and a compromise was reached by using the term “acts of genocide” instead. Clearly, semantics were more important to this veto-wielding nation than the saving of lives.

⁶⁷ UNSC RES 912, UN Documents/S/912 (1994).

⁶⁸ UN Report (n 63 above) at 26-27.

3.2 FAILURE OF THE INTERNATIONAL COMMUNITY TO RESPOND IN RWANDA

The overriding failure of international community to prevent or stop genocide in Rwanda was seen by Western states and the United Nations as a lack of resources and a lack of will to take on the commitment which would have been necessary to prevent or stop the genocide. They stated that UNAMIR was not planned, dimensioned, deployed or instructed in a way which provided for a proactive and assertive role in dealing with a peace process in serious trouble. The Mission was smaller than the original recommendations for the field had suggested. It was slow in being established and was beset by debilitating administrative difficulties.

The Mission's mandate was not clear and 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. The member states were discussing a number of issues including whether an enlarged mission should be given a Chapter VII mandate on which the Security Council was split and resources required. Both the USA and UK requested more detailed information from the Secretariat on the concept of operations. While attempts were made by non-permanent members of the Security Council to push for stronger action, the opposition to these efforts proved too strong. The delay in decision-making by the Security Council was a distressing show of lack of unity in a situation where rapid action was necessary.

Furthermore, once UNAMIR was set up, there was a lack of capacity for intelligence analysis. At United Nations Headquarters there was insufficient focus or institutional resources for early warning and risk analysis. Much could have been gained by a more pro-active preventive policy aimed at identifying the risks for conflicts and tension. This could have been achieved through institutionalized co-operation with academics and NGOs and better co-ordination within different parts of the United Nations system dealing with Rwanda. Additionally, there was a lack of political will by Member States to provide troops to UNAMIR II and to support those African countries which promised to contribute soldiers and to provide financial support and equipment. It seems evident that Rwanda, because it was not of strategic interest to the Western powers, double standards were utilized when faced with the risk of a catastrophe in such a country compared to actions taken elsewhere⁶⁹.

There was no coordination between the Secretary-General's office and Security Council. Mr. Boutros-Ghali was absent from New York during a key period of the genocide. For sure he was kept informed of the key developments in Rwanda. However, the role of the Secretary-General in relation to the Council is one which

⁶⁹ Keren & Sylvan (n 24 above) at 15.

cannot work by proxy, especially not in a true crisis situation. His direct and personal appeals would have gone a long way in turning the Rwanda genocide tide.

The rapid manner in which powerful countries, including members of Security Council, France and the United State of America, evacuated their expatriates shows that they understood the gravity of the situation but still chose to ignore appeals to save the Rwandan people in their hour of need. The Secretary-General personally intervened in support of an authorization for Operation Turquoise led by France in terms of Chapter VII, while that of UNAMIR remained a Chapter VI mandate. For this new operation large numbers of troops were suddenly found despite the fact that earlier efforts to mobilize a new force for UNAMIRII had been fruitless. This is yet another indication that the big powers work only when it suits them. Not even reports of thousands of Rwandans dying like flies moved them to decisive action until it was too late.

3.3 WERE R2P PRINCIPLES APPLICABLE TO RWANDA CRISIS?

This new paradigm is outlined in the final report of the International Commission on Intervention and State Sovereignty (ICISS) and addresses the policy dilemma of how the international community should protect the lives of civilians from genocide, war crimes, or gross and systematic violations of humanitarian law. Under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide parties are collectively obligated to prevent and punish the systematic murder of national, ethnic, racial or religious groups⁷⁰. But as has been shown above, the international community refused for a long time to even acknowledge the fact that genocide was taking place in Rwanda. The ICISS report was the outcome of Kofi Annan's challenges to the international community to forge consensus around basic principles of intervention⁷¹ and drew out some of the core principles and thresholds for future humanitarian interventions. Most importantly states have the primary responsibility for protecting their own people. If states are either unwilling or unable to fulfill this obligation, the international community must protect civilians from atrocities. While it is true that R2P is based on state sovereignty it also emphasizes that sovereignty implies responsibility and not just a privilege.

The ICISS report maintains that the United Nation's structural and institutional abilities are critical to the legitimate use of R2P. In modern times, where intervention involving the use of armed force has almost become the norm, there is a need to re-evaluate, Article 2(4) of the United Nations Charter of 1945 which prohibits the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purpose of the United Nations. Article 2(7) of the United Nations Charter prohibits intervention in essentially domestic matters. According

⁷⁰ United Nations Convention on the Prevention and Punishment of the Crime of Genocide (1948) Articles I-III.

⁷¹ ICISS (n 6 above) at 11.

to the United Nations Charter and international law, only the United Nations, the world's leading multilateral organization, has the authority to override state sovereignty. I would agree with Dr Ramesh Thakur, Vice-Rector of United Nations University in Tokyo and a member of the panel that commissioned the ICISS report, who believe that regional organizations could effectively supplement the United Nations to override a state's sovereignty when the atrocities are being committed by that state. But, ultimately, if an institutionally weak United Nations cannot control when and how to intervene, then such authority is undermined and presents a challenge to the practicality of R2P.

The ICISS panel has put forward a number of additional core principles of the R2P. Firstly, its implementation should involve less intrusive and coercive measures. Only in the face of exceptional harm to human beings should military intervention be exercised. Secondly, intervention should be based on basic principles, the most important of which is that the cause must be just.

Under the United Nations frame work, three principal goals are proclaimed: **the preservation of peace, the protection of human rights and the promotion of self-determination**. In terms of Article 39, the Security Council is empowered to determine if there is a "threat to the peace, breach of the peace or an act of aggression". If the Council so determines, it is permitted under Article 42 to authorize the use of force against the offending state. It states that should the Council consider that measures provided for in Article 41 (diplomatic, and economic sanctions) were inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Under Chapter VII of the United Nations Charter, regional organizations are allowed to deal with matters relating to maintenance of international peace and security (Art 52 of United Nations Charter) but those organizations cannot undertake an enforcement action without authorization by the Security Council (Art 53). In order for the United Nations to permit armed intervention for a humanitarian crisis, the Security Council must first determine under Chapter VII provisions that massive violations of human rights are occurring or are about to occur. Additionally, it must then conclude that such an event actually constitutes a threat to international peace. It must, finally, authorize an enforcement action to prevent or halt those violations.

The Charter in fact makes the promotion of human rights a fundamental purpose of the United Nations and asserts so in the Charter's Preamble. Article 55 provides that "the United Nations shall promote... universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". Article 56 provides that "all member states pledge themselves to take joint and separate action in co-operation with the organization for the achievement of the purposes set forth in Article 55". The Charter obligates each member state to take joint

and separate action to ensure the universal respect for and observance of human rights and fundamental freedoms for all.

Thus a conflict arises in the United Nations Charter between the core objectives of ensuring human rights and preserving state sovereignty in terms of Article 2(4) which provides that “all members of the United Nations shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state”. When a regime deprives its citizens of fundamental human rights as in the cases of Rwanda and Darfur, there are key questions raised for diplomats and policy makers: Do certain acts, even if they are the most heinous crimes imaginable, remain within the sovereign prerogatives and jurisdiction of that state? Do they pose any actual military threat to world peace? If so, is the United Nations still empowered to act? But what if the Security Council should opt, for whatever reason, not to act? Must millions of people die from violence, starvation, extermination, and disease for the sake of sovereignty? International legal commentators are divided on such key issues underlying the concept of humanitarian intervention⁷².

The R2P encompasses three broad elements as shown above, namely the responsibility to prevent, the responsibility to react, and the responsibility to rebuild. Indeed, the unspeakable unwillingness or failure by the international community to prevent the genocide, halt the genocide and rebuilding after the genocide fall within this framework of R2P.

3.3.1 THE RESPONSIBILITY TO PREVENT

The thinking behind this guideline was to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk. The Rwanda tragedy continue to highlight the need for the United Nations, government officials and the international media to pay more attention to early indicators of humanitarian crises. There had been several early warnings of genocide in Rwanda. If attention had been paid to the alarm raised by a number of human rights groups as well as the work of the United Nations Commission on Human Rights Special Rapporteur for Rwanda, Bacre Waly Ndiaye in 1993, hundreds of thousands of lives would have been saved. Unfortunately, the conspiracy of silence surrounding the genocide in 1994 allowed the international community to ignore the many signs.

A more important area of prevention involves the root causes of internal conflict. Prevention of deadly conflict and other forms of man-made catastrophe is, as with all other aspects of R2P, first and foremost the responsibility of sovereign states and the commitment to ensuring fair treatment and opportunities for all citizens. Ideally, this

⁷² CC Joyner “The Responsibility to Protect, Humanitarian Concern and the Lawfulness of Armed Intervention” (2007) 47 *Virginia Journal of International Law* at 703.

provides a solid basis for conflict prevention. Efforts to ensure accountability and good governance, protect human rights, promote social and economic development and ensure a fair distribution of resources point toward the necessary means of prevention and protection of the population.

But conflict prevention is not merely a national or local affair. The failure of prevention can have wide international consequences and costs such as those in Rwanda. Moreover, for prevention to succeed, strong support from the international community is often needed and in many cases may be indispensable. In some cases international support for prevention efforts may take the form of sanctions. But in other cases it may involve a willingness to apply tough and perhaps even punitive measures.

For effective prevention of conflict and the related sources of human misery three essential conditions have to be met. First, there has to be knowledge of the fragility of the situation and the risks associated, the so called "early warning". Second, there has to be an understanding of the policy measures available and capable of making a difference, the so called "preventive tool box". And third, there has to be, as always, the willingness to apply tough "measures" the issue of 'political will'. Ultimately, it is hoped that that this basic tenet will move the international community to change its basic mind-set from a culture of reaction to that of prevention.

The United Nations headquarters is the logical place to centralize early warning. One of its principal strengths is the special mandate provided to the Secretary-General under Article 39 of the United Nations Charter to "bring to the attention of the Security Council any matter that in his opinion may threaten the maintenance of international peace and security". The Secretariat possesses a formidable capacity to alert the world of impending conflicts either openly or discreetly. But efforts to improve the organization's early warning capacity have so far fallen short. An example is the failure in the case of the Rwanda genocide which revealed half-heartedness and non-commitment to conflict prevention at all levels. The world will continue to witness resource conflicts over social and economic development. Therefore, the time has come for the international community to take practical responsibility to prevent the needless loss of human life, and to be ready to act in the case of prevention and not just in the aftermath of disaster.

3.3.2 RESPONSIBILITY TO REACT

It implies, above all else, a responsibility to react to situations of compelling need for human protection. If and when preventive measures fail to resolve or contain the situation and when a state is unable or unwilling to redress it, intervention measures by other members of the broader community of states may be required. These coercive measures should not be limited only to political, economic or judicial measures. They should also include, in extreme cases, military action. While conditions for economic

and judicial barriers can be set low, the military intervention barrier must be high. This means that for military action even to be defensible the circumstances must be grave.

There can never be much graver circumstances warranting military intervention than those of Rwanda and Darfur. The withdrawal of a robust United Nations presence and the positions of the governments of Belgium, France, the United States and the United Kingdom did not help to deter the actions of Rwanda's genocide. The withdrawal of Belgium and then Bangladeshi troops from UNAMIR as well as its eventual withdrawal in April 1994 gave implicit approval to the perpetrators of genocide. In the face of such a morally shocking scenario, the Security Council could have chosen to scale up the operational capacity of UNAMIR to end the killings in Rwanda. Ironically, while genocide occurred in Rwanda, the United Nations enhanced its peace operations in the former Republic of Yugoslavia.

Responding to massive humanitarian and human rights abuses is the most challenging aspect of the R2P. The lack of consensus within the Security Council in 1994 resulted partly from the difficulty in articulating a common viewpoint on the Council members' interests. Without new mechanisms to nurture more collective responsibility, "a coalition of the willing", so to speak, Council members are unlikely to act in future⁷³.

3.3.3 RESPONSIBILITY TO REBUILD

The International community is to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.

After months and even years of genocide denialism by some powerful states the United Nations did embark on a number of important initiatives to help Rwanda rebuild and reconcile its society. After considerable debate, the United Nations International Criminal Tribunal for Rwanda (ICTR) was established by the United Nations Security Council's resolution 955(1994) "for the sole purpose of prosecuting persons responsible for genocide and serious violations of international humanitarian law committed in the territory of Rwanda, and Rwandan citizens responsible for genocide and other violations committed in the territory of neighboring states between 1 January 1994 and 31 December 1994".

Situated in Arusha, Tanzania, it has potentially contributed to ending Rwanda's long history of impunity for crimes against humanity and prosecuting the engineers of genocide. Politically, the first post-war presidential and legislative elections were held in August and September 2003 respectively. The current government prohibits

⁷³ International Peace Academy Report: *10 years After Genocide in Rwanda: Building Consensus for the Responsibility to Protect* (2004) at 7 [Online] Available from: www.ipacademy.org. [Accessed: 15 December 2009].

discrimination on the basis of ethnicity, race or religion. The government has also passed laws prohibiting emphasis on Hutu or Tutsi identity in most types of political activity. As an additional step, grassroots unofficial courts, known locally as *gacaca*, were established by the new government to try cases at the village level. They are presided over by officers known as *inyangamugayo*. This was to reduce the backlog of cases totaling more than 100,000 by increasing the speed with which justice was delivered. This innovative measure has been hailed as one of the ways through which partial healing and restoration have been achieved in the country. They take the form of the Truth and Reconciliation Commission used to great success in South Africa. Nonetheless, prison populations will continue to be a big problem for Rwanda for the foreseeable future. Trying this many suspects of genocide will tax Rwanda's resources sorely further emphasizing the need for economic and social development. The biggest problem now facing the government is ending the insurgency by ex-soldiers and *Interahamwe* militia fighters believed to be hiding in the neighboring Democratic Republic of Congo. It is also faced with the transition from crisis to medium and long term development planning.

CHAPTER 4

THE APPLICATION OF R2P IN DARFUR

4.1 BACKGROUND

Since February 2003, more than 3.5million civilians in Sudan's Darfur region have been displaced from their homes and more than 400,000 have died from violence. Some call it "Rwanda in slow-motion"⁷⁴. The violence began seven years ago when militias armed and trained by the government of Sudan started attacking black African farmers killing, burning, and raping women in a systematic effort to drive them from their tribal lands and eradicate their culture. The genocide is far from over. Sudanese government forces and their proxy militias continue to attack the survivors and prevent them from returning to rebuild their villages.

Once again we see a situation where the international community has reacted in less than appropriate ways. As illustrated above, genocide is a unique crime against humanity that requires international intervention to stop it. The United Nations is the appropriate international body to take action as it is an institution with the central purpose of protecting nations and defending humanity itself. In Sudan, a small minority of ethnic groups who consider themselves Arab hold the most power. The government of Sudan is attempting to destroy, in whole or in part, three African ethnic groups namely the Fur, Zaghawa and Massaleit. All the ethnic groups on both sides of the conflict are Muslim but those in power identify themselves as Arab Muslims while those targeted are African Muslims. As such, a racial identity crisis exists in this conflict.

While there are slightly more variables than in Rwanda, it is clear that the killing and raping is based on ethnicity and race. Bodily and mental harm have been inflicted upon thousands of women and young girls raped by government soldiers and militia. Many are being held in "rape camps". The destruction of homes, crops and water resources have contributed to the two and a half million people now internally displaced. 200,000 refugees have been forced into neighboring Chad and thousands have died as a result of the humanitarian crisis. The killing of pregnant women, starvation, execution-style killings of tribal leaders and other crimes against humanity persist in this region. Testimonies by rape victims indicate that their attackers' intent was to forcefully change the ethnic identity of the children who would be conceived.⁷⁵ Among many other problems the people who endure or witness these kinds of atrocities suffer post

⁷⁴ D Morse 'Darfur Genocide is Rwanda in slow motion' (2005) at 2 Yes Magazine 07 November.

⁷⁵ Africa Action 'Remembering Rwanda and Defending Darfur' (2006) [Online] Available from: WWW.africaaction.org. [Accessed: 10 February 2010].

traumatic stress disorder⁷⁶. Echoes of ethnic cleansing, much talked about in the Kosovo conflict, abound.

4.2 THE INTERNATIONAL RESPONSE

On 30 July 2004 the United Nations Security Council passed a “wait and see” resolution giving the Khartoum regime an additional month in which to control its soldiers and its Janjaweed militia allies in the Darfur region. The resolution was sponsored by the US but was trimmed and weakened seriously under pressure from two other Security Council members, China and Russia. The weakened resolution which finally passed made clear that there would be no authorization under Chapter VII of the UN Charter for humanitarian intervention.

Despite the inconsistent performance of the Bush administration, the fate of Darfur almost certainly rested with the Administration’s decision. Whether or not to support humanitarian intervention was largely up to them. Though it was extremely unlikely that American troops would be part of such an operation, they would have been unnecessary as a substantial African Union force was deployed in August 2003 and troops from Great Britain, Australia, and New Zealand had been promised if necessary. But the US’ logistical and transport capabilities in addition to its political and diplomatic support were critical in order for humanitarian intervention to be effective.

One of Khartoum’s most successful early instruments of genocidal destruction was the impeding of humanitarian access and operations within Darfur. In December 2003 the UN special envoy for Humanitarian Affairs in Sudan, Tom Eric Vraalsen, declared in a memo to Mukesh Kapila, then UN humanitarian coordinator for Sudan, that “Khartoum was systematically impeding humanitarian access to areas in Darfur in which African populations were concentrated and that operations running relatively effectively in September had come virtually to a halt in December ”⁷⁷. But despite Vraalsen’s ominous finding, and though Jan Egeland, UN Under-Secretary General for Humanitarian Affairs, spoke of Darfur as probably the world’s worst humanitarian crisis in the world in December 2003, no appropriate actions were taken. Indeed UN organizations moved diffidently and belatedly and in general failed or refused to see that an enormous humanitarian crisis was being engineered with considerable deliberation and exquisite destructive calculation.

⁷⁶ Opinion & Interviews: *Comparison Between Rwanda and Darfur “Hard Talk”* (2003) Romeo Dallaire Former Commander of UNAMIR, BBC Programme 19 February 2003 [Online] Available from: <http://www.bbc.co.uk/hardtalk>. [Accessed: 15 February 2010].

⁷⁷ E Reeves “Darfur-Rwanda in slow motion” (2004) *Harvard International Review* at 9-12.

International failure in yet again failing to respond to genocide in Darfur should be reason for the deepest shame. Inaction has already cost hundreds of thousands of lives and caused untold human suffering but the catastrophe is far from over. The Darfur example must prompt considerable reflection on whether the world community feels any responsibility to protect civilians endangered because of inaction, or indeed deliberate action, on the part of their own governments and regimes. For almost seven years, Khartoum has committed all the crimes enumerated in the ICSS report in an attempt to destroy the perceived non-Arab or African civilian base of support for Darfur's rebel groups. As this brutal counter-insurgency effort is set to enter its eighth year, hope for protection resides entirely in the success of an unwieldy and unprecedented UN/AU "hybrid" peace-keeping operation authorized by UN Security Council Resolution 1769 of July 2007.

In October 2007, the force had begun deploying without adequate resources or even land for housing its personnel and was burdened by a crippling dependence upon African Union personnel- this at the insistence of the Khartoum regime which is determined to control the mission as much as possible. The National Islamic Front (NIF), which dominates the merely notional government of national unity in Sudan came to power by a military coup in 1989 by overthrowing the elected government of Sadiqel-Mahdi. Yet there have never been coordinated economic sanctions targeting the NIF leadership. There have never even been effective diplomatic sanctions although the UN nominally imposed them in 1995 following the NIF's role in the conspiracy to assassinate Egyptian president Hosni Mubarak in Addis Ababa. On the contrary, commercial and capital investment coming from Europe, Canada, Asian countries and primarily China has been massive.

Moreover, Khartoum has never faced a serious threat of non-consensual military action to halt genocide even in Darfur where the realities of large-scale, ethnically targeted human destruction have been consistently and unambiguously reported since 2003. This lack of resolve is clear from a series of feckless UN Security Council resolutions stretching back to July 2004, when the council importantly "demanded" Khartoum disarm the savage Janjaweed militias that are responsible for so much of the killings and village destructions. Since the AU does not have the requisite number of trained troops and civilian police available, there are critical shortfalls in men, training equipment, logistics and administrative capacity. The failure of the Security Council to implement Resolution 1706 in August 2006 which authorized robust UN military and civilian police forces marked a turning point. Had the proposed force been effectively and expeditiously deployed, it might have saved tens of thousands of lives. They would have prevented the ongoing slide into increasingly chaotic violence which is the primary

legacy of the ill-conceived and disastrously consummated Darfur Peace Agreement (DPA) of May 2006 in Abuja, Nigeria.

On the political front, China must be convinced to stop protecting its client state from real diplomatic pressure. One reason the international community finds the Darfur problem difficult to address is that state reliance on excessive force against ethnic or racial groups is not unique to Sudan. Other governments bent on maintaining the dominance of a particular ethnic group have also waged brutal wars against their own populations. The Russian Federation, for example, has conducted a scorched earth campaign against the Chechens. A veto-wielding permanent member of the Security Council, Russia has opposed diplomatic pressure or sanctions against the Sudanese government for fear of setting a precedent. The second probable reason for a lack of strong international response is the absence of tools and structures to address internal crises. Other than the International Committee of the Red Cross (ICRC) which is often denied entry into internal strife situations, there exists no international machinery readily available to protect civilians caught up in violence within their own countries.

Although there is a Convention on the Prevention and Punishment of the Crime of Genocide 1948, there are no international mechanisms for enforcing it. In cases of genocide, large-scale massacres or “ethnic cleansing” as in Darfur, international action is dependent on whether states consider it in their interest to take the risks required. In 1999 the UN Secretary General spoke of a developing international norm in favour of intervention to protect civilians from wholesale slaughter and more recently high level UN panel has talked of an international responsibility to protect⁷⁸. But in fact only in a small number of cases has the Security Council authorized the use of force to protect civilians at risk and Internally Displaced People (IDPs). There is also no international enforcement machinery be it a stand-by police force or a rapid reaction military force to protect IDPs in camps or on their return home. Worse still, there is even no assurance that perpetrators of crimes against humanity in Darfur will be prosecuted before the International Criminal Court (ICC) despite a Security Council resolution referring such cases to the court.

4.3 WIDER INTERESTS OUT-WEIGH HUMANITARIAN INTERVENTION

The geopolitical concerns of Security Council members constitute a further impediment to strong action. Algeria and Pakistan which have close political ties to Arab and Islamic governments have worked to delay and weaken international action on Darfur. As the

⁷⁸ United Nations Report: *A more secure world: Our shared responsibility* (2004) Report of the Secretary-General's High-Level Panel on Threat, Challenges and Change United Nations [Online] Available from: www.un.org/securedworld. [Accessed: 10 February 2010].

main foreign investors in Sudan's oil industry, China holds a 40% share in the international consortium extracting oil in Sudan⁷⁹. Consequently it has abstained on resolutions threatening sanctions against Sudan and in particular against its petroleum sector. Additionally, it has threatened to use its veto against resolutions if they were too strong. Compounding the situation, the US and EU have also had their own reasons for avoiding confrontation with Sudan. Even though the US did initiate action in the Security Council it feared, like the EU, that pressing the Sudanese government too far on Darfur could jeopardize the peace agreement which was about to be finalized between the northern and southern regions of the country. The US has invested heavily in the peace process and did not want to give any excuse to Sudan to walk away from it.

A further impediment to robust action is the secondary status of Africa itself. By and large, western governments do not consider it to be in their national or strategic interest to take the political, financial or military risks needed to stop killings on the African continent. While they loudly denounce the atrocities and provide generous humanitarian help, the costs of becoming involved in trying to stop the killings are considered too high.

The US invasion of Iraq is another roadblock to action. Although Iraq was not occupied for humanitarian reasons, the Bush Administration fell back to this rationale when no weapons of mass destruction could be found. American expressions of concern about Darfur have, therefore, been met with much skepticism in the Arab and Muslim worlds and prompted speculation that the US was preparing to invade another Islamic state. The whole idea of humanitarian intervention to protect civilians in Darfur was undermined by its action in Iraq even though the situation in Darfur had deteriorated to the point where humanitarian intervention should have been an option to consider.

All these factors have worked to enfeeble international response to the crisis. It took more than a year for the Security Council to adopt a resolution on Darfur which it finally did in July 2004. No sanctions were introduced until March 2005 and even then, only symbolic ones (travel bans and asset freezes). However, the abstentions by China, Algeria, Pakistan and Russia weakened the authority of the resolutions.

⁷⁹ PS Goodman 'China invests heavily in Sudan's oil industry' (2004) Washington Post December 23 [Online] Available from: <http://www.washingtonpost.com/wp-dyn/articles/A21143-2004Dec22.htm/>. [Accessed: 17 February 2010].

4.4 THE AU ROLE AND PROTECTION OF CIVILIANS

With the international community unwilling to act, the African Union (AU) came forward to try to stop the violence in its own region. After helping to negotiate the April 2004 ceasefire between Darfur rebels and the government, the AU deployed several hundred unarmed observers to monitor it. When the fighting continued, the AU deployed armed peacekeepers to protect the monitors and then increased the number. The force was mandated to increase security for IDP camps and IDP returnees and to protect civilians under imminent threat. Rwanda's president, Paul Kagame, even announced publicly that Rwandese troops would not stand by if civilians were attacked⁸⁰.

The AU forces have done little in fact to protect IDPs because the Sudanese government has opposed an AU protection role and the AU mandate is insufficiently strong. Moreover the AU does not have adequate resources or staff to do the job. The organization has few aircraft, tents, boots and other basic equipment. Western and other countries have tended to exaggerate the capability of the AU because they do not want to become involved in a more robust way. Nonetheless, they have pledged funds and logistical support and also airlifted AU troops into Darfur. This combination of regional involvement backed by international support has the potential to become a more viable and permanent arrangement for responding to conflict and displacement in Africa.

The ability of the AU to achieve its mission in Darfur will depend on its capacity to mobilize the political will of its member states. It is possible to say that AU is committed to R2P since it has taken an active, interventionist stance with regard to conflict situations in Darfur, Burundi and Somalia. Given the youthfulness of its institutions, the AU is far from being able to operationalise an effective R2P regime because it is under resourced. While the United States government has described the conflict as genocide⁸¹, the UN has not recognized the conflict as such⁸². On 31 January 2005, the UN released a report saying that while there were mass murders and rapes of Darfurian civilians, they could not label the atrocities as "genocide" because "genocidal intent appears to be missing"⁸³. On 31 August 2006, the United Nations Security Council approved resolution 1706 which called for a new 26,000 strong UN peacekeeping force called UNAMID to supplement a poorly funded and ill-equipped 7000-strong African

⁸⁰ 'Rwanda soldiers arrive in Sudan' (2004) BBC News, August 15 [Online] Available from: <http://news.bbc.co.uk/2/hi/africa/4978668.stm>. [Accessed: 20 January 2010].

⁸¹ Darfur: A "plan B" to stop Genocide? (2007) US State Department [Online] Available from: <http://www.state.gov/plaf/r/s/rm/82941.htm>. [Accessed: 20 January 2010].

⁸² *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary General* (2005) United Nations [Online] Available from: <http://www.un.org/news/dh/sudan/com-inq-darfur.pdf>. [Accessed: 18 December 2009].

⁸³ 'Sudan's mass killing is not Genocide' (2005) UN report, CBC News, February 1.

Union Mission in Sudan. The latter strongly objected to the resolution and said that it would see the UN forces in the region as foreign invaders. The following day, the Sudanese military launched a major offensive in the region. On 31 July 2007, the UN Security Council resolution 1769 (2007) established the AU/UN hybrid operation in Darfur, also referred to as UNAMID.

In another show of strength and resolve, the Prosecutor of the International Criminal Court (ICC) filed ten charges of war crimes against Sudan's President Omar-al-Bashir, on the 14th of July 2008. The charges included three counts of genocide, five of crimes against humanity, and two of murder. But on 4 March 2009, the ICC issued an arrest warrant for President al-Bashir, without the genocide charges, claiming they lacked sufficient evidence⁸⁴. And after an appeal by the Prosecutor, the Court issued a warrant of arrest for genocide in July 2010.

The report of the UN Human Rights Council said the situation in Darfur is characterized by gross and systematic violations of human rights and grave breaches of international law⁸⁵. It called for the UN Security Council to take urgent action to protect Darfur's civilians. The head of the UN investigating team, the Nobel peace laureate Jody Williams, described the international response to the crisis as "pathetic". The United States, Britain and the European Union have repeatedly condemned the atrocities but have failed to carry out effective actions to stop the war. The US referred to the killings as genocide in 2004 while in 2006 Tony Blair said the situation was unacceptable and called for urgent action but no concrete actions were taken to stop the killing of innocent civilians.

In March 2005, the Security Council formally referred the situation in Darfur to the prosecutor of the ICC, taking into account the report of the International Commission of Inquiry on Darfur authorized by UN Security Council Resolution 1564 of 2004, but without mentioning any specific crimes⁸⁶. However, two permanent members of the Security Council, the United States and China, abstained from the vote on the referral resolution⁸⁷. The world's most powerful countries have largely limited themselves to expressing concern and demanding that the United Nations take action in solving the genocide in Darfur.

⁸⁴ P Walker 'Darfur genocide charges for Sudanese President Omar al-Bashir' (2008) London: Mail and Guardian.

⁸⁵ *United Nations Report of the High-level Mission on the situation of human rights in Darfur pursuant to Human Rights Council Decision 5-4/101* (2007) New York: United Nations.

⁸⁶ United Nations Security Council Resolution 1593/2005.

⁸⁷ *Security Council refers situation in Darfur, Sudan, to Prosecutor of International Criminal Court* (2005) UN press release SC/8351, 31 March.

The UN, lacking both the funding and military support of the wealthy countries, has left the African Union to deploy a token force (AMIS) without a mandate to protect civilians. Once again, it is evident that there is a lack of political will to address the political and economic structures that underlie the conflict. In fact the international community has defined the Darfur conflict in humanitarian assistance terms and debated the label of genocide. On 16 October 2006, Minority Rights Group (MRG) published a critical report challenging the UN and the great powers. They asserted that these powers could have prevented the deepening crisis in Darfur and that few lessons appear to have been drawn from their ineptitude during the Rwandan genocide. Its executive Director, Mark Lattimer, stated that, “this level of crisis, the killings, rape and displacement could have been foreseen and avoided....Darfur would just not be in this situation had the UN systems got its act together after Rwanda: their action was too little too late⁸⁸ .

Human Rights Watch also claimed that over 90% of the light weapons currently being imported by Sudan and used in the conflict are from China⁸⁹ . However, according to the Stockholm International Peace Research Institute (SIPRI)’s Arms Transfers Data for 2007 (2003-2007), Sudan actually received 87% of its conventional weapons from Russia. Human rights advocates and opponents of the Sudanese government portray China’s role in providing weapons and aircraft as a cynical attempt to obtain oil just as colonial powers once supplied African chieftains with the military means to maintain control as they extracted natural resources at the expense of human lives⁹⁰ . According to China’s critics, it has offered Sudan support and consistently used its veto on the UN Security Council to protect Khartoum from sanctions. It has also managed to water down every resolution on Darfur in order to protect its interests in Sudan.

Compounding the stalemate, there have been many statements from Arab media claiming that publicity given to the Darfur conflict was exaggerated by the Israeli lobby. In one statement, they said that the “the lobby to save Darfur.....is just the Israeli lobby trying to divert attention from Israel’s crimes or the catastrophe of the war in Iraq”⁹¹ . They further claim that Western attention to the Darfur crisis is “a cover for what is really being planned and carried out by the western forces of hegemony and control in our Arab world.”

As acknowledged by Oliver Ulich of the UN Office for the Coordination of Humanitarian Affairs (OCHA), the Security Council’s response combined with the gradual deployment

⁸⁸ “UN could have averted Darfur crisis-Minority Rights Group (MRG)” (2006) Independent online October 16.

⁸⁹ China-Sudan 90% of the weapons for Darfur comes from China, Asian News. Asianews.
<http://www.asianews.it/index.php?1=en&art=11773>. [Accessed: 19 February 2010].

⁹⁰ ‘China’s involvement in Sudan, Arms & Oil’ (2007) Human Rights Watch 23 December [Online] Available from:
http://www.hrw.org/reports/2003/sudan_1103/26.htm. [Accessed: 19 February 2010].

⁹¹ “Since the victims are Arabs and Muslims” (2007) Jihad Al-Khazen al-Hayat English Edition, April 13.

of an African Union (AU) mission to Darfur has not stopped the atrocities nor has it provided adequate protection against other human rights violations⁹². It is not surprising that when the Security Council was adopting resolution 1564 on 18 September 2004, which contained a threat of measures under Article 41 of the Charter, with specific reference to Sudan's petroleum sector, two permanent members, China and Russia, abstained. The author wonders whether Arab countries found on the continent regard themselves as part of Africa or belong to the Arab world that identifies itself more with the Arab league. Are these countries committed to the issues facing the African Union or the Arab league? For example on 14 July 2008 when Luis Moreno-Ocampo, the Prosecutor of the International Criminal Court (ICC) requested the Pre-Trial Chamber to issue an arrest warrant against Omar Al-Bashir, Arab states under AU rallied behind the president and castigated the Prosecutor's decision as an attack on the principle of sovereignty and, more bluntly, as an act of western neo-imperialism.

The issuing of arrest warrants by the ICC against the former Sudanese Minister of the Interior, Ahmed Harun, and the militia leader Ali Kushayb in May 2007 followed by the prosecutor's recent charges against the president Al-Bashir, have been welcomed by humanitarian and human rights advocates. It remains to be seen whether the international community will do anything about implementing these high-profile arrests.

⁹² O Ulich *The UN Security Council's response to Darfur: a humanitarian perspective* (2005) New York: United Nations at 1.

CHAPTER 5

RWANDA AND DARFUR: A COMPARATIVE ANALYSIS

After the horrors of the Holocaust, the international community drafted the UN Convention on the Prevention and Punishment of the Crime of Genocide and unanimously said “Never again” should such evil strike humanity. The pledge proved empty since numerous genocides followed. The cases of Bosnia (1992-1995) and Rwanda in (1994) are particularly relevant. These are all very recent in history. The genocide in Rwanda occurred after many international warnings had been issued and with UN peacekeepers present. This time the world could not justify their inactivity for lack of knowledge or experience.

Since the Darfur crisis began in 2003, the Rwanda genocide of 1994 has been a frequent comparative point of reference. Some commentators have called the violence in Darfur “another Rwanda” others a “slow-motion” Rwanda. This chapter intends to highlight similarities and differences between the two cases. I agree that violence in Rwanda was more intense and more exterminatory than it has been in Darfur but from a survivor’s perspective, violence is violence and loss of a family member is painful however big or small the conflict. The analogy of Rwanda and Darfur is very dominant from the outset and many advocates saw Darfur as a test of whether or not the international community had learned its lesson as far as bearing silent witness to another ongoing genocide.

Darfur is equally considered a test case for the “R2P” a concept which liberal internationalists, such as the writer, promote in order to use force in situations when the humanitarian benefits of intervention clearly outweigh its costs. While the international community failed Rwanda in 1994, Darfur is a test case for a new global order based on the international rule of law. As it was in Rwanda, at no point was sufficient time, resources or political leadership devoted to the task of a properly structured analysis of the security challenges on the ground in Darfur. In order to obtain a common understanding of the basic tasks by all players (government, movements, other armed groups and militia, AU and UN) should have been examined critically and decisions made thereafter⁹³. For example, the joint UN-AU quick review mission was in the field only from 8 to 19 February 2007 in Darfur four years *after* genocide started.

⁹³ A De Waal ‘*Darfur and the failure of the Responsibility to Protect*’ (2007) *The royal Institute of International Affairs* at 1049.

5.1. DYNAMICS OF GENOCIDE IN DARFUR AND RWANDA

One nexus of comparison between the two cases concerns intensity of violence in particular the rate of killings (that is, the number of deaths over time). Judging from existing data, it appears that attacks in Darfur surged in late 2003 and early 2004, declining in 2007. The violence appeared concentrated in some parts of Darfur but not in others in 2005⁹⁴. Some estimate between 140,000 and 400,000 civilian deaths while others put the number at much more than that. The higher estimate comes from a 2005 report issued by the Coalition for International Justice (CIS)⁹⁵.

By contrast, the Rwandan genocide took place during a 100 day period (from 6 April to 17 July 1994). There was some slight disagreement as to when violence started in different regions but ultimately, genocidal violence occurred in almost every part of the country under government control. Most murders took place during the first five weeks of the genocide. Estimates of the number killed in Rwanda range from 500,000 to one million. The difference in the estimates depends principally on how many Tutsis are said to have lived in Rwanda before the genocide⁹⁶. Similar ratio estimates for Darfur do not yet exist. It is not clear exactly how many black African Darfuris have been killed as a percentage of the pre-existing black African population.

It is true that to date, the violence in Darfur has lasted ten times longer than it did in Rwanda. In short, the violence in Rwanda was more intense than that in Darfur because it was faster and more murderous. In Darfur, similar to Rwanda, forced displacement, destruction of villages, destruction of the means of survival, killing of men, and mass rape are the principal means of violence. Additionally, violence in Darfur has primarily been against black Africans. Perpetrators often characterized the targets of their violence against black “Nubas or Zurgas”. Various investigations are consistent on this point: the violence is deliberately waged against Darfur’s black African populations⁹⁷. As in Rwanda, perpetrators in Darfur are mainly government soldiers and militias. The air force of the Sudan government has participated in attacks by bombing villages before soldiers and militias launched ground attacks⁹⁸. In both cases of Darfur and Rwanda, violence was directed by the state and targeted a particular ethnic population. It was

⁹⁴ US State Department, Bureau of Intelligence and Research. ‘Sudan: Death toll in Darfur’ (2005) [Online] Available from: <http://www.state.gov/s/inr/r/s/fs/2005/45105.htm>. [Accessed: 25 February 2010].

⁹⁵ ML Davis ‘Why Darfur is a modern-Day Rwanda: Comparative Study Differentiating Types of Genocide’ (2006) 23.

⁹⁶ AD Forge ‘Leave none to tell the story: Genocide in Rwanda’ (1999) Human Rights Watch [Online] Available from: <http://www.hrw.org>1999>. [Accessed: 10 December 2009].

⁹⁷ Commission’s Report (n 82 above) at 48.

⁹⁸ US state Department, ‘Documenting Atrocities in Darfur’ (2004) [Online] Available from: <http://www.state.gov/g/dv1/v/s/36028.htm>. [Accessed: 24 March 2010].

intended to destroy that ethnic population in substantial part. This is pure genocide as defined in the Geneva Convention of 1948.

5.2. INTERNATIONAL RESPONSES

Darfur and Rwanda are instructive for what they demonstrate not only about causal dynamics but also about prevention strategies or the lack thereof. Darfur and Rwanda are “negative” cases in that a concrete policy to stop the killings did not take shape in either episode. After Rwanda, analysts and activists gleaned many lessons on how to generate an effective international response to genocide. Those lessons shaped the social and activist response to the crisis, yet the strategies that emerged around Darfur have not yet been successful in leading to a policy to halt the violence. Thus Darfur highlights dimensions that Rwanda did not and comparing the cases offers insight that would not be evident if only one of the cases were considered in isolation⁹⁹.

5.3 THE GENOCIDE DEBATE

Both Darfur and Rwanda showed that debates about terminology are central. In particular, whether to label either case “genocide” was and continues to be, in Darfur’s case, a major point of discussion. In the Rwanda case, powerful international actors chose not use the word “genocide”. US State Department spokespeople were told that they could only refer to “acts of genocide”¹⁰⁰. The issue within the Clinton administration was that intervention was not a viable policy option less than a year after American soldiers were killed and dragged through the streets of Mogadishu, Somalia. Also understandably, UN officials did not want to expose peacekeepers to increased risk after Somalia¹⁰¹. The label genocide mattered because American officials worried that under the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (UNCG), which the US Senate had ratified, the United States would be obligated to act if the government formally recognized that genocide was occurring. In 2003, as the crisis unfolded, Darfur received little international attention. Given the experience of Rwanda a decade before, one focal point for activists was to pressure US officials to label the violence “genocide”. During the summer of 2004, President George W. Bush came under pressure from an unusual coalition of actors to call Darfur “genocide”. Congress passed a unanimous and historic declaration labeling the violence in Darfur “genocide”. In response, Secretary of State, Colin Powell hired an NGO, the Coalition for International Justice (CIJ), to conduct a survey that would allow him to

⁹⁹ S Straus *Rwanda and Darfur: A Comparative Analysis, Genocide Studies and Prevention* (2006) Cornell University Press at 49.

¹⁰⁰ S Power *A Problem from hell, America and the Age of Genocide* (2002) New York: Basic Books at 363.

¹⁰¹ M Barnett *Eyewitness to genocide: The United Nations and Rwanda* (2002) New York: Cornell University press at 243.

make a determination. That NGO established the Darfur Atrocities documentation team which showed clearly that the violence was directed at black African Darfuris, that the government supported the violence and that the violence was widespread and organized. Evidently, the aim was to destroy the population in substantial part. According to the CIJ what was happening in Darfur was genocide and Powell subsequently appeared before a US Senate committee and declared that the term “genocide” applied to the violence in Darfur.

Several weeks later, President Bush made the same claim in an address to the United Nations¹⁰². However, the genocide declarations did not result in the kind of policy that many had hoped for. Powell was clear that a formal genocide declaration would not lead to concrete policy changes by the US government. Instead he brought the matter to the UN Security Council, which eventually created yet another commission to determine if, indeed, genocide was occurring.

The resulting report by the UN Commission of Inquiry on Darfur documented the patterns of violence described by the Darfur ADT, as well as by other human rights organizations. However, the Commission concluded that genocide was not the right label because there was inconclusive evidence that Sudan’s leadership intended to destroy the black Africa population in substantial part.

The UN Security Council in March 2005 referred the matter to the Prosecutor of International Criminal Court (ICC) for investigation, taking into account the report of the International Commission of Inquiry on Darfur of 2004. In his fourth report to the Security Council in December 2006, the Prosecutor found reasonable grounds to believe that the individuals had committed crimes against humanity and war crimes but did not find sufficient evidence to prosecute for genocide. A concrete policy has yet to be put in place to stop the violence despite the historic determinations of genocide. The UN Genocide Convention holds that signatories are obligated to prevent genocide but it lacks specific measures and mechanisms detailing how such prevention would work. Therefore, there is a premium either on strengthening the Convention, with a view toward making it more concrete, or on developing other protocols to trigger a forceful international response to massive violations of human rights.

5.4 DOMESTIC CONSTITUENCIES

Darfur and Rwanda also provide an instructive contrast between domestic constituencies of affected states. In Rwanda there was fairly little activism as the genocide unfolded. Human-rights organizations lobbied the US administration and

¹⁰² S Straus “*Darfur and the Genocide Debate*” (2005) 84 *Foreign Affairs* at 123.

United Nation representatives but there was no great public outcry to stop genocide in Rwanda in 1994¹⁰³. The violence was so quick and thus there was limited time to generate significant domestic pressure on the issue. Samantha Power, after reviewing various cases of genocide concludes that “the battle to stop genocide has been repeatedly lost in the realm of domestic politics”¹⁰⁴. Power argues that constituents, civil society, elite opinion makers, and bureaucrats within the government need to pressure representatives to create the necessary political will.

Darfur was different. It is true the violence received little international attention in 2003. But the situation changed in 2004 and 2005 when a UN official compared Darfur to Rwanda.¹⁰⁵ When the tenth anniversary of the events in Rwanda took place and generated much interest and concern for Darfur. Starting in 2004, a powerful and politically diverse informal coalition was formed to pressure the Bush administration. Many in the civil society, film stars, newspapers and high profile journalists especially from the New York Times wrote powerfully and doggedly about Darfur. The pressure has been fairly consistent and persistent, and it resulted, finally, in the historic declaration of genocide by the US administration.

5.5 OBSTACLES TO INTERVENTION

There are many reasons why no intervention policy materialized in both cases. In Rwanda, the USA did not want to send its troops after what had just happened in Somalia. American troop commitments in Iraq and Afghanistan made it politically difficult for US officials to deploy soldiers to Darfur where they would have had a strong moral purpose but would have lacked a clear exit strategy. That being said, why did other international actors not take a leadership role on Darfur or Rwanda? In Rwanda, France has been historically involved and played a big role both politically and economically.

This factor has to be considered particularly regarding the genocide and its powerful influence in the Security Council. The French were particularly involved because they wanted to preserve its Francophone tradition since it was a former Belgian colony. On the other hand, the United Kingdom supported the Anglophone Tutsis (RPF) whose more recent history included a long stay as refugees in its former colony, Uganda.

When the RPF attacked in 1990, France was quick to show its support of the government by sending 350 troops which were supplementary to other troops from

¹⁰³ Straus (n 102 above) at 50.

¹⁰⁴ S Power *‘Raising the cost of Genocide’* (2002) *Dissent* 49 no. 91 at 85.

¹⁰⁵ Straus (n 102) at 51.

Belgium and Zaire¹⁰⁶. Regarding these neo-colonial influences, Darfur was not different from Rwanda. American officials may be criticized for not doing more on Darfur, but it is clear that the American initiative faced a lot of opposition at the Security Council. In particular, China and Russia initially blocked any serious resolution to punish Sudan through sanctions. In April 2006, both China and Russia abstained on a US proposal to impose limited sanctions on both government forces and rebels. There was hostility to the idea of authorizing military force to intervene in Darfur with a forceful mandate. The reasons for this shameless reluctance to do anything in the face of documented proof are basically self-interest and politics.

China obtains a significant share of its oil from Sudan and has substantial investments there. Russia sells weapons to Sudan. Both countries are generally hostile to the idea that human rights issues trump sovereignty. As two of the five permanent members of the Security Council, Russia and China acted as effective veto players when it came to convincing the United Nations to take preventive action in Darfur.

It is worth noting that the Darfur crisis never gained much traction in Europe in comparison to the USA. Why? This matter calls for further research but it boils down to domestic politics and a lack of commercial interest in the region. Americans also encountered suspicion and opposition in the Arab world as they pressed for action on Darfur.

It is, therefore, clear that the issues underlying international paralysis in the face of genocide will not be easy to resolve. Despite universal ratification of the UN Genocide Convention, and despite repeated claims that halting massive abuses of human rights is a top priority of the United Nations, there remain deep divisions among states over the use of military force to stop genocide. The issue of sovereignty is particularly contentious when the intervening powers come from the West or the North when the subjects of intervention are from the South, historically the least powerful states in general.

¹⁰⁶ K Alan 'The Limits of Humanitarian Intervention: Genocide in Rwanda' (2001) Washington DC: Brooking Institute Press at 10.

CHAPTER 6

CONCLUSION AND RECOMMENDATION

In conclusion, there are many unanswered questions regarding the international responsibility to protect civilians from violence. On 7 April 2004, an international day dedicated to reflection on the Rwanda genocide, the former Secretary-General Kofi Annan noted that UN peace operations were now more consistently empowered to use force in defense of their mandates and to protect civilians from violence. But in the face of another Rwanda-Darfur the organization has been unable to respond effectively because the institutional constraints and lack of political commitment that allowed the international community in 1994 to remain silent in the midst of genocide are still at play. The narrow definitions of sovereignty in the twenty first century will prove paralyzing in the face of new humanitarian crises where vulnerable populations face genocide or other systematic violations of humanitarian and human rights law.

The challenge of Rwanda and Darfur remains that of translating their terrible lessons into diplomatic and political language for new multilateral policies and practices. Such policies should not only reaffirm the “never again” concept but they should also create and strengthen the UN’s capacity and help to mobilize coalitions of states around new norms which respond to human suffering. Such a paradigm is the responsibility to protect, (R2P), which places ultimate responsibility on the state to protect its people but also proposes that the broader community of nations intervene and where necessary, use military force when a government is unable or unwilling to do so. This intervention must be broader, more multilateral, more nuanced and more positive towards the responsibility to protect.

Unilateral armed intervention under the guise of humanitarian principles is and has been morally, politically, and constitutionally unacceptable. What transpires from the discussions above is that the doctrine of non-interference has become anachronistic in contemporary security discourse. This scenario has led to the invention and conceptualization of the responsibility to protect vulnerable populations in war situations and complex humanitarian catastrophes like Rwanda and Darfur. The two cases lend relevance to the new paradigm as they harmonize the longstanding discord between state sovereignty and intervention.

Military action is always regarded as an extreme measure of last resort but it becomes inevitable in the face of states’ abdication of their responsibility towards their citizens or even when states become the perpetrators of such atrocities as it was in the Rwanda and Darfur crises. At that point the threshold for intervention is reached.

The concept of R2P is now widely recognized and accepted because it concerns the security of individuals as opposed to that of the state. What this implies is that R2P presents a fundamental step to transcending the stark failures of the international community especially in Rwanda, Darfur and other volatile areas across the globe.¹⁰⁷. The one way forward is to clarify international protocols for confronting genocide and for using military force to stop it.

The R2P frame work is a key initiative but successful implementation will depend on three factors: states' willingness to take prevention seriously, the capacity of the UN and its agencies to absorb the requirements of R2P within an already crowded agenda, and the ability and authority of the Security Council to mandate specific actions to developing or acute humanitarian crises and, finally, ensuring that states comply with its instructions.

¹⁰⁷ G Evans "*Prevent deadly conflict and the problem of political will*" (2006) [Online] Available from: <http://www.crisisgroup.org/en/publication-type/speeches/2002>. [Accessed: 01 February 2010].

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