



**A CRITICAL EVALUATION OF THE ROLE OF THE UNITED  
NATIONS IN RWANDA (1994) AND THE CURRENT CRISIS IN  
DARFUR, SUDAN**

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## Introduction

The norm of ‘Responsibility to Protect’ implied “a collective international responsibility to protect, exercisable by the United Nations Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killings, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.”<sup>1</sup> This paper will be examining the emergence of the norm of ‘responsibility to protect’ in international law and international relations; how the norm was developed and what it implies. The paper will consider the concept of responsibility to protect under the UN Charter and as it currently stands under the emergent norms, it will also look at the concept of state sovereignty and intervention. The Rwandan genocide of 1994 and the role played by the United Nations will also be considered; as well as the on going conflict in Darfur and the role being played by the United Nations. Finally it will make recommendations on how the UN can help prevent cases of genocide and other grave humanitarian crimes in Africa.

In May 1999, the United Nations Secretary-General inaugurated an Independent Inquiry on the role of the world body in the 1994 Rwandan genocide and one of the purposes of setting up the independent inquiry was to draw lessons that will help the international community to avoid the mistake it made in not intervening in Rwanda and to prevent the reoccurrence of genocide or serious violations of human rights and international humanitarian law any where in the world.<sup>2</sup> This paper will examine what lessons if any were learnt by the United Nations in the aftermath of the

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<sup>1</sup> Report of the Secretary-General’s High-Level Panel on Threat, Challenges and Change, “A More Secure World: Our Shared Responsibility” Dec. 2004, A/59/565, United Nations. Paragraph 203, P. 66

<sup>2</sup> Report of the Independent Inquiry into the Actions of the United Nations, (15 December 1999) S/1999, United Nations. P. 3 (available online) <http://www.un.org/News/ocssg/rwandareport.htm>

Rwandan genocide and how these lessons are being applied in the ongoing conflict in Darfur, particularly in view of the new norm of ‘responsibility to protect’. This will lead to answering the general research question in this thesis, which is: ***“Considering the inaction of the United Nations in the Rwandan Genocide of 1994 and its consequences, could it be said that Darfur is a repetition of UN practice in spite of the new norm of ‘responsibility to protect’?”***

After the Rwandan genocide and its devastating effect on the people of Rwanda and its neighbors, the international community spear-headed by the former Secretary-General of the UN, Mr. Kofi Annan, realized the need to develop a principle or norm that will enable the world respond assertively in situations where any part of the world population is under threat of genocide, ethnic cleansing and/or any other gross human rights abuse, and the national government is unable or unwilling to protect the people. According to Annan, “our global security environment has been transformed, and our global collective security system, including the United Nations, must be transformed too.”<sup>3</sup> This therefore informed the need to develop the emergent norms of responsibility to protect.

This new norm of responsibility to protect is also meant to remind national governments that lay claim to states rights to sovereignty, that there is a responsibility and duty attached to this right to state sovereignty. As Kofi Annan, puts it; “We must remember that state sovereignty carries responsibilities as well as rights – including the responsibility to protect citizens from genocide or other mass atrocities. When states fail to meet their responsibilities, the Security Council must be prepared to

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<sup>3</sup> Annan, Kofi A, A More Secure World: The Future Role of the United Nations; (Munich Conference on Security Policy) February 2005, P. 2 (available online)  
[http://www.securityconference.de/konferenzen/rede.php?menu\\_2005](http://www.securityconference.de/konferenzen/rede.php?menu_2005)

assume them – including, if necessary, by authorizing the use of force to save innocent life.”<sup>4</sup>

This norm of responsibility to protect, has finally been approved and ratified by the United Nations Security Council in its resolution 1674, adopted by the Council on April 28, 2006. The question however is how effective is this norm in fulfilling the purposes that warranted its development? Is it merely a norm on paper or is it being put into practice by the United Nations particularly as it affects the on going Conflict in Darfur? Are we not experiencing a reoccurrence of the events of 1994 in Rwanda, now in Darfur, Sudan? These are some of the questions this paper hope to consider albeit within the scope of an LLM thesis.

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<sup>4</sup> Ibid, P. 3

## **Chapter one:**

### **Responsibility to protect under the UN Charter and as presently defined**

In this chapter I shall be looking at the concept of responsibility to protect under the United Nations Charter. I will first consider the norm under the UN Charter and as it is now being defined. This chapter will be divided into five sections, the first two sections will largely dwell on the concept as provided for under the Charter, and I will refer these as the old norm while the last three sections will consider the concept as it is now being redefined. Specifically, the first section will consider responsibility to protect or humanitarian intervention under the UN Charter; the second section will consider the concept of sovereignty vis-à-vis responsibility to protect. The third section will look at the concept of responsibility to protect under the new definition, its meaning; how the new concept was developed and what it entails. The fourth section will look at the primary responsibility of national governments to protect her citizens under this new concept of responsibility to protect. What will be the consequences of a national government's failure to carry out its primary responsibility to protect its citizens from gross violations of human rights and fundamental freedoms? If a state fails in its primary responsibility to protect its citizens from gross violations of their rights, or is responsible for the violation, can the state still claim the right to sovereignty and non-intervention as provided for by the UN Charter?

Finally the fifth section will consider the secondary responsibility of the UN to protect citizens of a state when national government fails to do so.

#### **1.1 Responsibility to Protect under the UN Charter**

Under this section I shall be apply the term humanitarian intervention mostly as that has been a more familiar term before now.. Having said that, I will want to start by posing the question; what is humanitarian intervention? And to answer the question, it is my view that there is no clear and universal definition of what constitute humanitarian intervention. Some have argued that the term has a wide variety of meanings and contexts, which include forceful military intervention and humanitarian assistance.<sup>5</sup> For the purposes of this thesis, I will want to focus on humanitarian military intervention and therefore restrict the definition to that of forceful or military intervention.

According to Sean Murphy, humanitarian military intervention, include the “threat or use of force by a state, group of states, or international organization primarily for the purpose of protecting the nationals of target state from wide spread deprivations of internationally recognized human rights.”<sup>6</sup> In Murphy’s definition, internationally recognized human rights include series of conditions that might arise where human rights on a large scale are put in jeopardy. These include both acts committed by state actors as well as those committed by non state actors.<sup>7</sup>

From the above analysis of internationally recognized human rights, one may conclude that gross violations of human rights whether perpetrated directly by state actors or non state actors with the active connivance of state actors or even without the connivance of state actors but where the state lacks the ability to prevent such violations; is enough to trigger or warrant humanitarian military intervention.

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<sup>5</sup> Ramsbothan, Oliver and Woodhouse, Tom 1999, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization*; Polity Press, London PP.XII-XIII

<sup>6</sup> Murphy, Sean D 1996, *Humanitarian Intervention: The United Nations in an Evolving World Order*, University of Pennsylvania Press, Philadelphia. PP. 11-12

<sup>7</sup> *Ibid*, P. 18

Generally under the UN Charter, it is prohibited for the United Nations to intervene in the domestic affairs of an independent state. According to the UN Charter, “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”<sup>8</sup>

Notwithstanding the above provisions, the Security Council has since the end of the cold war assumed the right to humanitarian military intervention within its general powers under article 39 to ensure the maintenance of international peace and security. This is particularly so when there is grave humanitarian crises which are essentially domestic. According to the Danish Institute, this has happened mostly when such internal conflicts have had international repercussion.<sup>9</sup> Further more it has been argued that the Security Council has the legal right within the Charter provisions to intervene directly or authorize group of states or regional organizations to intervene militarily where there are cases of gross human rights violations, notwithstanding the provisions of article 2(7).<sup>10</sup>

The above claimed legal right of the Security Council to intervene militarily in the domestic affairs of member states has been contested by some who were of the opinion that there is no international consensus, either in scholarly opinion or state practice on the legal right to humanitarian military intervention. This argument goes further to contend that although the UN has shown itself willing to take enforcement

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<sup>8</sup> UN Charter article 2(7), signed 26 June 1945, 59 stat. 1031, T.S. No.933, 3 Bevans 1153 (entered into force 24 Oct. 1945. (available online) <http://www.un.org/aboutun/charter/chapter1.htm>

<sup>9</sup> Danish Institute of International Affairs, 1999, Humanitarian Intervention: Legal and Political Aspects, Submitted to the Minister of Foreign Affairs, Denmark, December 7 (called the “Danish Institute Report” Report 1999, P.63



action as a last resort to assist victims of a humanitarian emergency, particularly where there was a state failure as was the case with Somalia. This situation still does not create any general right of humanitarian military intervention under the Charter.<sup>11</sup>

Although there may not be consensus on the issue of whether or not there is a legal right to humanitarian military intervention, the provisions of article 42 of the UN Charter indicates that the Security Council has the power to authorize military intervention in a target state for the purposes of maintaining international peace and security. What is not clear from article 42 is whether gross violations of human rights could be interpreted to fall within the definition of international peace and security under that article.

Another issue to be considered is whether another member state of the UN or group of members has any right of humanitarian military intervention in another state's affairs. Going by the provisions of article 2(4) of the Charter, it seems there is no such right. In the words of the article: "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations." Also in support of the assertion that there is no such right of humanitarian military intervention in the affairs of other states contrary to the provisions of article 2(4), the International Court of Justice in the Corfu Channel case<sup>12</sup> and the case concerning Military and paramilitary Activities in and Against Nicaragua<sup>13</sup>, held that the provisions of article 2(4) of the UN Charter is considered as

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<sup>10</sup> Murphy, Sean D 1996, *Humanitarian Intervention: the United Nations in an Evolving World Order*, University of Pennsylvania Press PP. 287-288.

<sup>11</sup> Ero, Comfort and Long, Suzanne, 1995, "Humanitarian Intervention: A New Role for the United Nations?" *International Peace Keeping* 2, P. 153

<sup>12</sup> International Court of Justice 1949, *Corfu Channel (U.K. v. Alb.)*, I.C.J. 4(Merits)

<sup>13</sup> International Court of Justice 1986, *Military and Paramilitary Activities (Nicaragua v. United States)* 1986 I.C.J. 14, (Merits)

jus cogens i.e. codification of customary international law from which no subject of international law may derogate.

Article 51 of the UN charter however provides for exceptions to the prohibitions of forceful interventions in the internal affairs of other member states of the UN. These exceptions are in cases of individual state self-defence or collective self-defence. Article 53 of the Charter also permits the use of military force against a member state by a group of states or by regional arrangements for the purposes of preventing gross and widespread violations of fundamental rights, or maintenance of international peace and security. This is however on the condition that the authorization of the Security Council has to be sought and obtained first before any such intervention.

The UN Charter generally forbids any form of unilateral intervention involving threat or use of force without express authorization of the Security Council. Legally speaking therefore it is prohibited under article 2(4) of the Charter for any form of humanitarian military intervention for whatever reason without the authorization of the Security Council. However, it has been argued that “humanitarian interventions involving threat or use of armed force and undertaken without the mandate of the Security Council, as a matter of principle, remain in breach of international law. But such a general statement cannot be the last word. Rather, in any instance of humanitarian intervention, a careful assessment will have to be made of how heavily such illegality weighs against all the circumstances of a particular concrete case, and efforts, if any, undertaken by the parties involved to get ‘as close to the law’ as

possible. Such analysis will influence not only the moral but also the legal judgment in such cases.”<sup>14</sup>

Whichever way one look at the issue of humanitarian military intervention, one thing seems very clear; that is under the UN Charter, there is no duty or responsibility to intervene either by the UN as a body, regional organizations, group of states or a state for the purposes of preventing gross violations of human rights of citizens of another member state of the United Nations.<sup>15</sup> And since there is no clear established duty or responsibility to intervene, any form of intervention carried out, with or without the authorization of the Security Council has largely remained discretionary according to the judgment and perceived interest of the intervening body or state.

This situation as stated above has given some states or regional groupings opportunity to embark on unauthorized military interventions in another state and later justify such interventions as acts of self defence. States or group of states have also embarked on military interventions in other states merely for the protection of their national or group interests without necessarily for the purpose of maintaining international peace and security or prevention of gross violation of human rights. This lack of clearly defined duty and/or responsibility under the Charter for any form of humanitarian military intervention has limited the ability of the UN to respond promptly to cases of gross violations of human rights which has the potential of breaching international peace and security.

## **1.2 The Concept of State Sovereignty vis-à-vis Humanitarian**

### **Intervention/Responsibility to Protect.**

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<sup>14</sup> Simma, Bruno 1999, “NATO, the UN and the use of Force: Legal Aspects,” *The European Journal of International Law* 10, P. 6.

The UN Charter recognizes the principles of states sovereignty and equality, as this was clearly provided for in article 2(1). Also in article 2(4), the Charter forbids member states from the use of force or threat of force in their international relations against the territorial integrity or political independence of any state. The Charter also forbids the United Nations as a body from intervening in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the charter.<sup>16</sup>

This principle of states sovereignty and non interference was stretched too far in the 1960s and 70s particularly in the era of the Cold War. Member states claimed that they have absolute right to decide on what happens within their territories at the exclusion of all others. This much was reflected in the United Nations General Assembly resolution of December 1965, which provided as follows: “No state has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state. Consequently, armed interventions and all other forms of interference or attempted threats against the personality of the state or against its political, economic and cultural elements are condemned.”<sup>17</sup>

Also in 1970, the General Assembly adopted the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the UN. Part of the declarations provides: “No state or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state. Consequently, armed

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<sup>15</sup> Murphy, Sean D 1996, *Humanitarian Intervention: The United Nations in an Evolving World Order*, University of Pennsylvania Press P. 295

<sup>16</sup> UN Charter article 2(7) signed 26 June 1945, 59 stat. 1031, T.S. No.933,3 Bevas 1153 (entered into force 24 Oct.1945)

<sup>17</sup> UN General Assembly Resolution 2131 (XX) December 1965, A/RES/20/2131: Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the protection of their Independence and Sovereignty. (online) <http://www.un-documents.net/a20r2131.htm>

intervention and all other forms of interference or attempted threats against the personality of the state or against its political, economic or cultural elements are in violation of international law.”<sup>18</sup>

From the above the states seem to be claiming that sovereignty is the fundamental rights of the states which should not be broken or undermined unless legally done. Sovereignty to the states is an inherent right of states to govern themselves without any form of foreign intervention or dictation. However it is important to note that this sovereignty issue is not without conditions. It should be linked to internal legitimacy and requires governments to respect at least minimally the well-being and human rights of their people or citizens. An oppressive government that tramples on the human rights of its citizens has no moral rights to claim full sovereignty. Sovereignty should be linked to respect to human rights, as the principle of individual rights and autonomy are enshrined in the Universal Declaration of Human Rights and this should be recognized by states as the highest principles of world order.<sup>19</sup>

It could be suggested that the reason why the UN General Assembly which was at that time dominated by members of the non-aligned movement and countries that have just gotten independence, adopted the above resolutions, was the fear of the super powers interfering with their newly gotten independence.

Whatever may be the reason for this move to overstretch the principles of state sovereignty, what these states fail to understand was that sovereignty and independence of states comes with responsibilities and duties. It is acknowledged that

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<sup>18</sup> UN General Assembly Resolution 2625 (XXV) of 24 October 1970 A/RES/25/2625: Declaration on Principles of International Law concerning Friendly Relations and co-operation among states in accordance with the Charter of the United Nations. <http://www.un-documents.net/a25r2625.htm>

sovereignty implies a dual responsibility: externally – to respect the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state. In international human rights covenants, in UN practice, and in state practice itself, sovereignty is now understood as embracing this dual responsibility.<sup>20</sup> Human rights should not be considered a purely domestic concern, and states should not hide under the cover of sovereignty to shield themselves from responsibility for gross violations of internationally recognized human rights. Even in intra-state conflicts, states should endeavor to respect and protect the rights of its citizens particularly civilians.

According to the former UN Secretary General Mr. Kofi Annan, sovereignty should not be a guarantee for states to engage in the violations of the human rights of their people with impunity; he observed thus: “Sovereignty does not give the state an unlimited freedom of action; the concept of sovereignty cannot be seen in isolation from other provisions of the Charter, namely those that relate to promoting and encouraging respect for human rights and for fundamental freedom for all.”<sup>21</sup>

Many countries particularly in the western world and some academics are of the view that the traditional concept of sovereignty has been greatly modified due to recent developments in international human rights norms and international humanitarian law.<sup>22</sup> The above assertion may be true, but it is important to add that

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<sup>19</sup> Smith, Michael J, 1999, “Humanitarian Intervention: An Overview of the Ethical Issues,” P. 289 in *Ethic and International Affairs: A Reader*, ed. Joel H. Rosenthal, Georgetown University Press, Washington, DC.

<sup>20</sup> International Commission on Intervention and State Sovereignty 2001, “The Responsibility to Protect: Research, Bibliography and Background, Ottawa: International Development Research Council P. 8.

<sup>21</sup> Anna, Kofi 1999, “Two Concepts of Sovereignty” *The Economist*, 18 September.

<http://www.un.org/overview/SG/kaecon.htm>

<sup>22</sup> O’Halloran, Patrick 1995, “Humanitarian Intervention and the Genocide in Rwanda,” *Conflict Studies* 277, p.12

there is no international consensus on that, particularly to what extent the concept of sovereignty has been modified.

Finally I will want to conclude this section by stating that the UN Charter clearly provides for states rights and its importance, the same charter equally promoted and stressed the importance of individual rights. The charter did not place states' rights over and above those of individuals; there is no form of hierarchy between these rights. This situation therefore supports the argument of Mr. Annan that the concept of sovereignty should not be seen in isolation but should be counter balanced with other provisions in the charter like human rights and fundamental freedom. Sovereignty should be used to promote human rights and fundamental freedom of citizens, where this is not the case, state sovereignty should give way for the international protection of human rights.

I will also want to note that two main factors may have helped states in their elevation of sovereignty over and above what it should be. The first is that the Charter clearly provided for protection mechanisms for states' right to sovereignty<sup>23</sup>; without corresponding provisions on the protection of human rights. Also the proponents of states' right to sovereignty are the people in control of power and resources of states and they have deployed these power and resources to promote and elevate sovereignty over individual rights and freedoms. On the other hand, the individuals who claim human rights and fundamental freedoms are out of power and lack the necessary resources to actually promote and protect their rights against the states. These facts have therefore tactically placed the states rights to sovereignty over and above individual human rights and fundamental freedom.

In concluding this section, it is my view that there is no definition of what constitutes humanitarian military intervention under the Charter, and the provisions of articles 2(4) and 2(7) seems to have prohibited humanitarian military intervention and this encouraged states to grossly violate the rights of their citizens with impunity. The issue of sovereignty has been excessively promoted by states for their selfish interests and this has encouraged gross violations of human rights with impunity under the guise of sovereignty. The fact that articles 2(4) and 2(7) seems to be protecting the states rights to sovereignty without corresponding provisions for the protection of human rights has only helped to elevate the concept of sovereignty at the detriment of human rights and fundamental freedom.

### **1.3 The concept of Responsibility to Protect under the Emergent Norms**

As stated above, the UN Charter did not clearly provide the criteria and modalities for any military intervention and what exactly constitutes threat to the peace, breach of the peace or act of aggression that will warrant the Security Council to intervene to maintain international peace and security. The lack of clarity on the issue of humanitarian military intervention has resulted in controversy on the legality or otherwise of humanitarian military intervention. Consequent upon this controversy, the former Secretary-General of the UN, Mr. Annan, in 1999 at the United Nations General Assembly threw a challenge to the world leaders to come up with acceptable modalities and criteria for any future humanitarian military intervention. Annan noted thus: “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,

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<sup>23</sup> UN Charter article 2(4) signed 26 June 1945, 59 stat. 1031, T.S. No. 933, 3 Bevans 1153 (entered into force 24 Oct. 1945)



wherever they take place, but also on ways of deciding what action is necessary, and when, and by whom.”<sup>24</sup>

Annan also in his report to the UN General Assembly at the 2000 Millennium Summit repeated the challenge to the international community to forge unity and reach a common ground on the principles to be applied in any future humanitarian military intervention in the new millennium.<sup>25</sup> In response to this challenge of the then Secretary General of the UN, the Canadian government took the initiative in September of 2000 to establish the International Commission on Intervention and State Sovereignty (ICISS). The commission’s mandate was among others to attempt to develop consistent, credible and enforceable standards to guide states and intergovernmental practice on humanitarian military intervention.<sup>26</sup>

This initiative of the Canadian government in setting up the International Commission on Intervention and State Sovereignty could be said to have charted the way towards the evolution of sovereignty as responsibility and the birth of the concept of responsibility to protect. In the ICISS report, four basic objectives were recommended for any future intervention under the new concept of responsibility to protect. These are (a) the establishment of clearer rules, procedures and criteria for determining whether, when and how to intervene; (b) establishment of the legitimacy of military intervention when necessary and after all other approaches have failed; (c) to ensure that military intervention, when it occurs is carried out only for the purposes proposed, is effective and is undertaken with proper concern to minimize the

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<sup>24</sup> Annan, Kofi 1999, “Two Concepts of Sovereignty,” *The Economist* 18 September; <http://www.un.org/overview/SG/kaecon.htm>

<sup>25</sup> Anna, Kofi; 2000, “We the People: The Role of the United Nations in the 21<sup>st</sup> Century,” Millennium Report of the Secretary General of the United Nation. <http://www.un.org/millennium/sg/report>

human cost and institutional damage that will result; and (d) to help eliminate, where possible, the causes of conflicts and while enhancing the prospects for durable and sustainable peace.<sup>27</sup>

The question one may ask here is, why the change of terminology from humanitarian military intervention to responsibility to protect? Does the controversy surrounding the principle of humanitarian military intervention also affect the name? The ICISS in response to the change of terminology believes that the proposed change in terminology also means a change in perspective, which was meant to change the perception associated with the old terminology and also to add some new perceptions to the new concept.

According to the ICISS, the new concept of responsibility to protect should be assessed from the requirements of those who needs or seek assistance, rather than the requirements of those considering the intervention. Also the new concept of responsibility to protect recognizes the primary duty incumbent on target states to protect its citizens and that it is only where the target state is the perpetrator or the state is conniving with the perpetrators or that the state is unable to fulfill its responsibility to protect, that the responsibility will then fall on the international community. The commission was also of the view that the old terminology was more confrontational than the new concept which is meant to be like a bridge between intervention and sovereignty. Furthermore, the commission believes that the new concept of responsibility to protect does not stop just at reaction but also covers prevention, as well as rebuilding. The concept of responsibility to protect will

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<sup>26</sup> International Commission on Intervention and State Sovereignty 2001, *The Responsibility to Protect: Research, Bibliography and Background*, Ottawa: International Development Research Council, P.11; also available (online) <http://www.iciss.gc.ca>

<sup>27</sup> Ibid, P. 11

therefore assess the costs and results of taking action vis-à-vis the costs and results of inaction.<sup>28</sup>

From the above, the new concept of responsibility to protect apart from being less controversial is also broader and more encompassing than the old concept of humanitarian military intervention. Under this new concept we are talking of duties and responsibilities that goes with rights, we are also talking about the needs and requirements of those whose rights were being violated rather than the interests of those planning to intervene. Under responsibility to protect, you do not just talk about intervention rather you talk about building lasting peace and reconstructing people's lives.

It may be true that the ICISS may have started the move towards making the new norm of responsibility to protect enforceable, it is however my view that the norm could not be said to be entirely new. Looking closely at the provisions of article 1 together with article 5 of the Vienna Declaration and Program of Action, it would be seen that the primary responsibility of protecting the human rights and fundamental freedom of its nationals has been on the national governments and where they fail, the international community steps in, since human rights have been stated to be universal and indivisible by the Vienna Declaration. Although it could be argued that the Vienna Declaration was a mere declaration without any binding force.

Nevertheless, the process initiated by the Canadian government in the establishment of the ICISS was followed up in 2004 by the former UN Secretary General who set up the High-Level Panel on Threats, Challenges and Change. This High-Level Panel was basically set up to attempt to address the deep division among

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<sup>28</sup> Ibid, P.17

United Nations member states on the nature of security threats faced today, and the appropriateness of the use of force to address those threats.<sup>29</sup> The Panel submitted its report on the 2<sup>nd</sup> of December 2004; and in the report, the Panel endorsed the emerging norm of collective responsibility to protect as recommended by the ICISS.

More particularly the High-Level Panel report provides in paragraph 203: “We endorse the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large scale killings, ethnic cleansing or serious violation of international humanitarian law which sovereign governments have proved powerless or unwilling to prevent.”<sup>30</sup>

In its endorsement of this emerging norm of collective international responsibility to protect, the panel acknowledges the fact that there is a raging controversy and tension between the ‘competing claims of sovereignty inviolability and the right to intervene. It also noted the fact that the said controversies and tension surrounding the issues are largely unresolved.’<sup>31</sup>

In his report on UN reform, titled ‘In Larger Freedom’ the immediate past UN Secretary-General, Mr. Annan on March 21, 2005 strongly endorsed the ‘emerging norm that there is a collective responsibility to protect.’ According to him, he was aware of the sensitivities involved in the issue, yet he believed the international community must embrace the responsibility to protect, and, when necessary must act on it. He also recognized the fact that the first responsibility lies with each individual state to protect its population. But where national authorities fails or were unable to

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<sup>29</sup> Report of the Secretary-General’s High-Level Panel on Threat, Challenges and Change, “A More Secure World: Our Shared Responsibility” Para. 203 Dec. 2004, A/59/565, United Nations P. Vii

<sup>30</sup> Ibid, P. 66

fulfill this obligation, then it shifts to the international community to use ‘diplomacy, humanitarian and other methods to protect civilian populations. It is only where diplomacy and humanitarian methods fails that the Security Council ‘May out of necessity’ decides to take action under the United Nations Charter including enforcement action.<sup>32</sup>

The concept of responsibility to protect finally got the endorsement of the entire international community following the Outcome Document of September, 2005 Millennium+5 World Summit. At the summit, the world leaders unanimously agreed to embrace the responsibility to protect populations from genocide, ethnic cleansing, war crimes and crimes against humanity. Under this new concept, the world leaders agreed to a commitment by governments to prevent and react to grave crises, wherever and whenever they may occur.<sup>33</sup>

The UN Security Council in April 2006 reaffirmed the provisions of paragraph 138 and 139 of the 2005 World Summit Outcome Document on responsibility to protect populations from genocide, war crime, ethnic cleansing and crimes against humanity.<sup>34</sup> Accordingly the Council stated in paragraph 4 of resolution 1674 of April 28, 2006 that it “reaffirms the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”

From all of the above, it could be said that the new norm of responsibility to protect is an evolving concept about the duties of governments to prevent and end

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<sup>31</sup> Ibid, Paragraph 199, P. 65

<sup>32</sup> In Larger Freedom: Towards Development Security and Human Rights for all, March, 2005, A/59/2005, United Nations, Paragraph 135, P. 35

<sup>33</sup> High-Level Plenary Meeting of The UN General Assembly, Outcome Document, September 2005, United Nations, Paragraphs 138 and 139, P. 23 (online) <http://www.un.org/ga/president/59/draft-outcome.htm>

<sup>34</sup> UN Security Council Resolution 1674; S/RES/1674, April 28 2006, United Nations.

unconscionable acts of violence against the people of the world, wherever they occur. This means the international community now has an obligation and responsibility to protect the world's population from genocide, massive and gross human rights violations and abuses as well as other humanitarian crises. Responsibility to protect as unanimously agreed by the world leaders in 2005, implies that states can no longer hide behind the concept of sovereignty to carry out or permit widespread violation of internationally recognized human rights and fundamental freedoms.

#### **1.4 Primary Responsibility to Protect by National Governments**

In the Synopsis of the International Commission on Intervention and State Sovereignty (ICISS) report, under basic principles (a), the report unequivocally stated thus: "State sovereignty implies responsibility, and the primary responsibility for protection of its people lies with the state itself."<sup>35</sup> Apparently in justification of the above assertion, the ICISS noted that the concept of sovereignty has greatly changed from what it was in 1945 when the UN Charter was adopted. Under the Charter; article 2(1), the UN is said to be based on the principles of sovereign equality of all member states of the organization.

The ICISS believes that there is growing recognition worldwide that the protection of human rights and human dignity must be among the fundamental objectives of modern international institutions. This fact and other recent developments in the new world order and international relations have greatly impacted on the concept of state sovereignty.<sup>36</sup> The conditions under which sovereignty is exercised and intervention is practiced have changed since 1945.

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<sup>35</sup> International Commission on Intervention and State Sovereignty 2001, *The Responsibility to Protect: Research, Bibliography and Background*, Ottawa: International Development Research Council, P. xi

<sup>36</sup> *Ibid*, p. 6

Evolving international law has placed many constraints on what states can do, and cannot in relation to the protection of human rights. The emerging concept of human security has created additional demands and expectations in relation to the way states treat their own people.<sup>37</sup>

From the above, it could be seen that the concept of sovereignty has been redefined to include responsibility and duty to protect citizens from gross violation of their rights and freedoms. The right to state sovereignty now has a duty and obligation attached to it. Sovereignty has now been re-characterized from sovereignty as control, as was the general perception before now to sovereignty as responsibility in both internal functions and external duties. Responsibility to protect according to ICISS should now include the following: (a) national authorities should be responsible for ensuring the protection and safety of lives and welfare of citizens; (b) national authorities should be responsible to the citizens internally and to the international community and (c) national authorities should be accountable for their actions and inactions.<sup>38</sup>

The primary responsibilities to protect citizens from gross human rights violations and abuse of fundamental freedoms rest first and foremost with the state whose populations are directly affected. This is so, as the particular state's authorities are in the best position to make the necessary positive difference. The national authorities have the best opportunity to take preventive measures to stop potential conflicts from erupting. They are also best placed to come out with the most workable solutions to the problems in the states as they would have better understanding of the situation and be able to deal with the problems effectively.<sup>39</sup>

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<sup>37</sup> Ibid, p.7

<sup>38</sup> Ibid, p.13

<sup>39</sup> Ibid, p.17

The High-Level Panel on threats, challenges and change, in their report in 2004, also endorsed the principle of assigning primary responsibility to protect citizens to national governments and authorities. Accordingly the panel provides thus: “...There is growing recognition that the issue is not the ‘right to intervene’ of any state, but the ‘responsibility to protect’ of every State when it comes to people suffering from avoidable catastrophe – mass murder and rape, ethnic cleansing by forcible expulsion and terror, and deliberate starvation and exposure to disease. And there is a growing acceptance that sovereign governments have primary responsibility to protect their own citizens from such catastrophe ...”<sup>40</sup>

Also in March 2005, Kofi Annan in his Report on Reforms in the UN, in endorsing the positions of the ICISS and High-level panel reports on the issue of national authorities’ primary responsibility to protect observed thus: “...This responsibility to protect lies first and foremost, with each individual state, whose primary *raison d’être* and duty is to protect its population.”<sup>41</sup>

The 2005 World summit outcome document also unanimously agreed that the national authorities have the primary responsibility to protect their nationals from avoidable gross rights violations. It provides as follows: “Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this

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<sup>40</sup> Report of the Secretary-General’s High-Level on Threats, Challenges and Change: A More Secure World: Our shared responsibility, 2004, A/59/565, United Nations, paragraph 201, PP. 65-66

<sup>41</sup> In Larger Freedom: Towards Development, Security and Human Rights for all, 2005, A/59/2005, United Nations, paragraph 135, P.35



responsibility and should support the United Nations to establish an early warning capability.”<sup>42</sup>

Basically it could be advanced that the basis of assigning the primary responsibility to protect citizens to the national authorities is on accountability principles. Where do we locate blame in case there are problems resulting from any plan or strategy to tackle a raging conflict or crisis? It would be better to allow the national authorities to deal with the problem first and be accountable to the citizens who have the greatest interest and largest stake in success of any solution being proffered to tackle the problem. The national authorities are generally better placed and equipped to handle the situations first, to ensure lasting solution and when they fail, it will be easy to locate blames. This to me could be the justification for assigning primary responsibility to protect citizens to national governments and authorities.

Also there is the fact that for every right there is attached a corresponding responsibility and/or duty. So for any successful claim to the right to sovereignty, states should be ready to assume the responsibilities and duties that go with the rights to sovereignty. States cannot talk of their rights to sovereignty and avoid the responsibilities that go with it. In 1945, the issue of states rights to sovereignty and state equality as provided for in article 2(1) was dictated by the events and situations at that time. The situation has now changed, so any rigid interpretation of the concept of sovereignty without the corresponding duties and obligations will be unacceptable in today’s new world order.

### **1.5 Secondary Responsibility to Protect by the United Nations**

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<sup>42</sup> High-Level Plenary Meeting of The UN General Assembly, Outcome Document, September 2005, A/60/L.1 United Nations, Paragraphs 138 P. 31 (online) <http://www.un.org/ga/president/59/draft-outcome.htm>

“Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.”<sup>43</sup> The above was how the Canadian government commission on intervention and State Sovereignty summarized the secondary responsibility to protect by the international community, where the national authorities have failed in their primary responsibility.

In the exercise of this secondary responsibility to protect, the ICISS outlined four basic principles to be considered. These include: “(a) To establish clearer rules, procedures and criteria for determining whether, when and how to intervene; (b) To establish the legitimacy of military intervention when necessary and after all other approaches have failed; (c) To ensure that military intervention, when it occurs is carried out only for the purposes proposed, is effective, and is undertaken with proper concern to minimize the human costs and institutional damage that will result; and (d) To help eliminate, where possible the causes of conflict while enhancing the prospects for durable and sustainable peace.”<sup>44</sup>

It should be noted that before this secondary responsibility to protect by the international community is activated, it must be ascertained that the national authorities are either unwilling or unable to fulfill their primary responsibility to protect or they are the actual perpetrators of the crimes or atrocities; or where people living outside a particular state are directly threatened by actions taking place in the territory of the target state.<sup>45</sup>

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<sup>43</sup> International Commission on Intervention and State Sovereignty 2001, *The Responsibility to Protect: Research, Bibliography and Background*, Ottawa: International Development Research Council. P. xi

<sup>44</sup> *Ibid*, P. 11

<sup>45</sup> *Ibid*, P17

As noted earlier in this chapter, the report of the UN Secretary-General's High-level panel on threat, challenges and change; the Secretary-General's Report on UN reform: In Larger Freedom: towards development, security and human rights as well as the 2005 High-Level Plenary Meeting of the United Nations General Assembly Outcome Document all endorsed and followed the recommendations of the ICISS on the concept of responsibility to protect. However the different reports differ slightly in their recommended principles and conditions to be applied in the exercise of the secondary responsibility to protect, particularly when it comes to the application of force.

According to the report of the UN Secretary-General's High-level panel on threat, challenges and change, in deciding on the use of force, the Security Council, should consider the following; (a) the seriousness of threat; the Council should consider the particular threat and see whether it is of such magnitude to warrant the use of force. It should also consider whether the threat involves genocide or other large scale humanitarian law violations. (b) Proper purpose , the main purpose of the intervention should be to halt or avert the particular threat warranting the intervention; (c) the use of military force should be a last resort measure after other non-military options must have failed, (d) the proposed military intervention should be proportionate to the threat warranting the intervention and (e) there has to be balance of consequences in that the proposed military action will be successful in meeting the demands of threats necessitating the action.<sup>46</sup>

According to Kofi Annan, whenever the secondary responsibility accrues, the international community should try as much as possible to use diplomacy, humanitarian as well as other non-military actions to protect the people under threat.

The use of military force should be resorted to only as a last resort out of necessity.<sup>47</sup> When it is necessary to use military force, the Security Council should try as much as possible to be transparent in its deliberations and should come to a common understanding on the seriousness of the threat, the intervention should be for the proper purpose for which it was intended, the military intervention should be proportional to the threat and there should be high probability of success of the military intervention in tackling the threat. By applying these principles, Mr. Annan believes that the Council's decision will be respected by both governments and world public opinions.<sup>48</sup>

In the view of the UN General Assembly in the Outcome Document of the High-level Plenary meeting of the Millennium +5 Summit, where non-military action fails, the international community should be prepared to take collective action, in a timely and decisive manner, through the Security Council. This action however should be in accordance with the UN Charter, including Chapter VII, and shall be on a case by case basis and in cooperation with relevant regional organizations as appropriate.<sup>49</sup>

Looking at the various situations that will activate the secondary responsibility to protect populations under threat by the international community as provided by the various documents under consideration here, it is my opinion that the various situations could be classified into four. These include where (a) the national authorities are directly responsible for the gross violations of human rights and

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<sup>46</sup> Report of the Secretary-General's High-Level on Threats, Challenges and Change: A More Secure World: Our shared responsibility, 2004, A/59/565, United Nations Paragraph 207, P. 67

<sup>47</sup> In Larger Freedom: Towards Development, Security and Human Rights for all, 2005, A/59/2005, United Nations, paragraph 135, P.35

<sup>48</sup> Ibid, paragraph 126, P.33

<sup>49</sup> High-Level Plenary Meeting of The UN General Assembly, Outcome Document, September 2005, A/60/L.1 United Nations, Paragraphs 139 P. 31 (online) <http://www.un.org/ga/president/59/draft-outcome.htm>

fundamental freedom; (b) where the national authorities are conniving or colluding with the perpetrators of the alleged gross violations of human rights;(c) where the national authorities are not in connivance with the perpetrator but refused to take action to stop or avert the gross violations of rights and (d) where the national authorities are not in connivance with the perpetrators of the rights violations, but are completely handicapped in stopping or averting the gross violations.

In my view the cases in the category of (a-c) above, the international community should immediately take up its secondary responsibility to protect the population under threat without the consent or approval of the national government. It will be taken in those cases, that the national government has clearly failed in its primary responsibility to protect its population from avoidable violations of their rights. However in the case of (d) above, I suggest that the international community should exercise its secondary responsibility to protect in conjunction and collaboration with the national government. This is so because assuming the national government is not handicapped, it could have carried out its primary responsibility to protect.

In the cases of (a-c) above, if the international community fails to intervene and assume its residuary responsibility to protect immediately without seeking the approval or authorization of the national authorities, it should be taken that the international community has failed in the exercise of its responsibility as provided for in this new norm of responsibility to protect. I intend to apply this argument later in Chapter 3 of this thesis to demonstrate how the international community has fared in this its new assigned role of responsibility to protect.

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A very good example of the case stated in (d) above, is the case of Sierra Leone. In this case, the elected president of the country was ousted in a coup by the rebels who were responsible for the massive human rights violations in the country. The ousted President, Tijan Kaaba while in exile demonstrated his desire to end the gross violations of the rights of his people, hence the international community worked with him to restore normalcy in the country.<sup>50</sup> In a case different from that of Sierra Leone, the international community has no business to seek the cooperation of the national authorities that have failed or demonstrated their unwillingness to end the crisis and sufferings of the civilian populations of their people.

To conclude this chapter, I will want to ask this question: is this norm of responsibility to protect an emerging or emergent norm? From developments today in the international community, it could be said that the norm has been generally accepted albeit on paper, as its effectiveness and workability is another thing.

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<sup>50</sup> This view on Sierra Leone was based on interactions with CEU colleagues from that country.

## **Chapter Two: The Rwandan Genocide of 1994 and the Role of the United Nations**

This chapter will look at the crisis that engulfed the Nation of Rwanda in 1994 and the genocidal consequences that followed it. The first section will consider the background to the crisis and it will look at the question; whether the crisis just erupted without any prior notice or was it by gradual process? The second section will look at the role played by the international community in the crisis. Could the genocide have been averted if the UN had intervened in good time and acted appropriately to prevent the crisis from degenerating? And the third section will look at the consequences of the late or non-intervention by the UN. Are there any lessons learnt from the Rwandan crisis that could be applied by the UN in preventing the reoccurrence of similar incident in other parts of the world?

The above issues will be considered in this Chapter, however they will be considered under the framework of the UN Charter provisions as the norms of responsibility to protect were only developed after the Rwandan crisis.

### **2.1 Background**

There are two major ethnic groups in Rwanda, the Hutus who are the majority and the minority Tutsis. These two groups have been living together albeit under tension, rivalry and lack of trust for each other. The origin and cause of the rivalry between these two similar ethnic groups have been traced to the divide and rule tactics of their former colonial masters Belgium, who adopted a policy of favoring the Tutsis and placing them ahead of their Hutu counterparts. When the country finally gained

independence, there was a reverse trend in policy as the majority Hutus moved to assert their supremacy and authority over the Tutsis.<sup>51</sup>

Corroborating the above assertion, a BBC news report on the history of violence in Rwanda noted that the arrival of the Belgians in 1916 in Rwanda created a division among the Hutus and Tutsis who are substantially the same. The colonial administration introduced a policy of issuing identity cards to Rwandans and classifying them according to their ethnic origins. This colonial authorities displayed preference to the Tutsis whom they placed over the Hutus, the Tutsis obviously enjoyed this new situation of things and lorded it over the majority Hutus. However as soon as the country gained independence, the Hutus, moved swiftly to reverse the trend and reasserted their supremacy in the country.<sup>52</sup> This continued tension and rivalry resulted in the first violence shortly after independence in 1963, in which an estimated 20,000 Tutsis were killed.<sup>53</sup>

It was this deep-rooted rivalry and tension that led to the 1994 genocide in the country. This was ignited by the death of the then Rwandan President, Juvenal Habyarimana, who was of the Hutu extraction, when the plane conveying him back from Tanzania was shot down while trying to land at the Kigali airport.<sup>54</sup> The death of the President was only an excuse to execute a preplanned strategy of genocide targeted against the Tutsis and moderate Hutus. This rampage was largely

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<sup>51</sup> Doyle, Mark 2006, "Rewriting Rwanda" Foreign Policy (154) (online);

[http://www.foreignpolicy.com/story/cms.php?story\\_id=3442](http://www.foreignpolicy.com/story/cms.php?story_id=3442)

<sup>52</sup> BBC News Report, 1<sup>st</sup> April 2004, "Rwanda: How the genocide happened, (online);

<http://news.bbc.co.uk/2/hi/Africa/128823/stm>

<sup>53</sup> International Commission on Intervention and State and Sovereignty, (Supplementary Volume) 2001, The Responsibility to Protect; Research, Bibliography and Background, Ottawa: International Development Research Council. P.97

<sup>54</sup> BBC News Report, 1<sup>st</sup> April 2004, "Rwanda: How the genocide happened, (online);

<http://news.bbc.co.uk/2/hi/Africa/128823/stm>



masterminded by two militia groups known as the ‘Interhamwe’ (those who stand together) and the ‘Impuzamugambi’ (the single-minded ones).<sup>55</sup>

Before the death of the President and the start of a full blown violence in the country, there has been tension all around the country, and this was well known to foreigners including diplomats and representatives of NGOs in Kigali. Militia members had earlier before the death of the president killed a moderate Hutu cabinet minister, Emmanuel Gatabazi in February 1994, whom they believed was likely to stand against Habyarimana in a proposed presidential election. The supporters of Gatabazi staged a counter attack that killed the president of the Coalition for the Defence of the Republic.<sup>56</sup>

It is important also to note that before the start of the violence leading to the genocide; both the government and the Rwandan Patriotic Front (RPF) had signed a peace agreement in Arusha, Tanzania in August 1993.<sup>57</sup> The UN deployed 2,500 peacekeepers under the name “United Nations Assistance Mission for Rwanda” (UNAMIR) to monitor the implementation of the peace agreement. According to the United Nations Security Council Resolution 872 setting up UNAMIR, the mandate of UNAMIR, were among other things to monitor the implementation of the Arusha Peace Agreement, between the Hutu led government and the RPF rebel group led by Paul Kagame, a Tutsi; contribute to the security of the city of Kigali; assist with mines clearance, mainly through training programmes as well as monitor the security

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<sup>55</sup> International Commission on Intervention and State and Sovereignty, (Supplementary Volume) 2001, The Responsibility to Protect; Research, Bibliography and Background, Ottawa: International Development Research Council. P.97

<sup>56</sup> Human Rights Watch Report on Rwanda 1995, The Genocide (online)  
<http://www.hrw.org/reports/1995/WR95/AFRICA-08.htm>

<sup>57</sup> BBC News Report, 1<sup>st</sup> April 2004, “Rwanda How the genocide happened, (online)  
<http://news.bbc.co.uk/2/hi/Africa/128823/stm>

situation in the country during the transitional government's mandate until elections are held.<sup>58</sup>

Although the government signed the Arusha Peace Agreement, a group of Hutu extremists were determined to frustrate the implementation of the peace agreement. This they did by embarking on campaign to eliminate the Tutsis months before the death of the President. Part of the plan was the establishment of the Radio Television Libre des Mille Collines. The radio station was said to belong to a prominent member of the Habyarimana's government and its major task was to continuously broadcast hate propaganda against the Tutsis and incite the Hutus against the Tutsis and moderate Hutus.<sup>59</sup>

It was right in the full glare of the 2,500 UNAMIR soldiers that the massacres took place, prominent members of the government who were considered sympathetic to the peace agreement were killed and 10 Belgian soldiers of the UNAMIR who were guarding the Prime minister were killed and mutilated together with the Prime Minister on the 7<sup>th</sup> of April. Consequent upon the death and humiliating treatment meted against the Belgian soldiers, Belgium pulled out its 440 troops, which were part of the UNAMIR.<sup>60</sup> Meanwhile hardcore Hutus had continued to mount campaign of hate against the Tutsis and moderate Hutus. The members of the presidential guard recruited and distributed weapons to Hutus in the execution of the task of wiping out

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<sup>58</sup> Security Council Resolution 872 (1993) S/RES/872, United Nations; adopted by the Security Council at its 3288<sup>th</sup> meeting on October 1993.

<sup>59</sup> Human Rights Watch Report on Rwanda 1995, The Genocide (available online), <http://www.hrw.org/reports/1995/WR95/AFRICA-08.htm>

<sup>60</sup> ICISS (Supplementary Vol.) P. 98

the entire population of Tutsis and moderate Hutus.<sup>61</sup> And on the 18<sup>th</sup> of April, RPF resumed the civil war, thereby complicating the whole situation in the country.<sup>62</sup>

Within a period of 100 days i.e. June 6, 1994 and mid July when RPF gained full control of the capital, Kigali, an estimate number of between 500,000 and 1,000,000 people had been massacred in the genocide, the members of the militia and the presidential guard moved from one location of the country to the other ensuring the full implementation of the master plan of wiping away the entire population of the Tutsis. No place was spared; churches, hospitals, schools and hotels were all invaded in search of Tutsis, both women and children as well as adult men. Also as the RPF fighters were advancing to the capital, they equally embarked on reprisal killings of Hutus. There were therefore killings from both sides.<sup>63</sup>

In concluding this section, it is my view that the Rwandan genocide did not actually start on the 6<sup>th</sup> of April when the president was killed and it was not the death of the president that caused the genocide. Rather the actual start of the genocide was in August 1993 when the peace accord was signed in Arusha, Tanzania. Those extreme Hutus, who never wanted to accommodate and share power with the Tutsis, started planning the genocide. At that stage of planning to me was when the real thing started. It is also my view that, it is either the president was part of the whole plan and would have supported it if he had not died, or that he was opposed to the whole plan, hence the extremists deemed it necessary to eliminate him to make way for the execution of their plan. So with or without the death of Habyarimana, the genocide would still have happened as it had already been planned waiting for execution. The

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<sup>61</sup> BBC News Report, April 2004, "Rwanda, How the genocide happened, (online) <http://news.bbc.co.uk/2/hi/Africa/128823/stm>

<sup>62</sup> Human Rights Watch Report on Rwanda 1995, The Genocide (available online) <http://www.hrw.org/reports/1995/WR95/AFRICA-O8.htm>

<sup>63</sup> Ibid

next question to ask is what happened to the UN and what role did it play as the genocide unfolded?

## **2.2 The Role of the United Nations in the Rwandan Crisis of 1994**

In analyzing the role of the UN in the Rwandan crisis, leading to the genocide of 1994, I will dwell mostly on the 1999 report of the three man committee set up by the UN to examine the role of the world body in the Rwandan crisis. In other words, I will want to base my judgment in the case against the UN, mainly on its own statement. This is so, in order to avoid the accusation of not being objective in the assessment.

In May 1999, the immediate past Secretary General of the United Nations, Mr. Kofi Annan, set up a three man Independent Inquiry with the consent and support of the Security Council, to determine the role played by the UN in the 1994 Rwandan genocide. The committee was composed of Mr. Ingvar Carlson (former Prime Minister of Sweden), Professor Han Sung-Joo (former Korean Foreign Minister) and Lt. General Rufus Kupolati (rtd) from Nigeria.<sup>64</sup>

According to the Committee's Report, dated December 15, 1999, the international community did not prevent the genocide, and when it finally started, it also failed to stop it. This failure strained the relationship between the international community and the people of Rwanda. Part of the purposes of setting the Independent Inquiry was to help establish the truth regarding the role(s) of the UN and help heal the wounds inflicted on the Rwandan Society occasioned by the inaction of the international community and also draw lessons that will help prevent a reoccurrence of such

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<sup>64</sup> Report of the Independent Inquiry into the Actions of the United Nations, (15 December 1999) S/1999, United Nations. (available online) <http://www.un.org/News/ossrg/rwandareport.htm> P. 4

atrocities any where in the world.<sup>65</sup> The Independent Inquiry emphasized that “acknowledgement of responsibility must also be accompanied by a will for change: a commitment to ensure that the catastrophe such as the genocide in Rwanda never occur any where in the future.”

The member states of the UN were indicted for exhibiting lack of political will to act or to act with enough assertiveness. This lack of political will by member states to act timely, affected the UN Secretariat and the Security Council in their handling of the Rwandan crisis.<sup>66</sup> In effect, the independent Inquiry unequivocally established gross failure on the part of the United Nations and its member states to act in the Rwandan genocide and what followed was a guilty verdict.

Commenting on the failure of the international community to act in the prevention of the Rwandan genocide, the Human Rights Watch noted that the genocide should not have come as a surprise to the world as there have been repeated warnings by both human rights activists and members of the government on the impending genocide. Also the continued broadcast of hate propaganda by the Radio Mille Collines, were clear signals of the doom that lies ahead, yet the world failed to act.<sup>67</sup>

Echoing the above observation of the Human Rights Watch, the Independent Inquiry noted that the United Nations could have prevented the genocide if it had acted on the report of the Special Rapporteur of the Commission on Human Rights on extrajudicial and summary execution which the United Nations published in August 1993. According to the report, Mr. Waly Bacre Ndiaye the Rapporteur on his visit to Rwanda between 8<sup>th</sup> and 17<sup>th</sup> of April 1993, noted that there were series of massacres

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<sup>65</sup> Ibid, P. 3

<sup>66</sup> Ibid, P. 4

<sup>67</sup> Human Rights Watch Report on Rwanda, 1995, The Genocide (available online) <http://www.hrw.org/reports/1995/WR95/AFRICA.08.htm>

and serious human rights violations targeted against the Tutsi ethnic group of Rwanda. In spite of this report, the world body still failed to act.<sup>68</sup>

The failure of the Security Council to include in the mandate of UNAMIR, the power to assist in the recovery of arms, even against the advice of the Secretary General contributed to the failure of the United Nations to save Rwanda. There was also the case of refusal by the UN Secretariat to allow UNAMIR provide protection to a top government official who acted as an informant to UNAMIR. The informant hinted of an ongoing training of militia men and a large cache of arms and ammunition waiting to be distributed to the trained militia for the mass execution of the Tutsis. In spite of these damning revelations, the UN Secretariat insisted that UNAMIR and its commander, General Dallair should comply strictly with the rules of engagement.<sup>69</sup> These were clear cases of failure to act on the part of the UN.

It is pertinent to comment on the provisions of Security Council Resolution 918 and the deliberate and tactical avoidance by the world body on the use the term ‘genocide’ to qualify the crisis in Rwanda. According to part of the resolution; “Recalling in this context that the killing of members of an ethnic group with the intention of destroying such a group, in whole or in part, constitutes a crime punishable under international law.”<sup>70</sup>

This tactics of avoiding the use of the term ‘genocide’ was applied mainly by both the UN and the United States. The question is why were they avoiding the use of the term genocide in this case? The reason may not be far fetched as the provisions of Article 1 of the United Nations convention on the prevention and punishment of the

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<sup>68</sup> Report of the Independent Inquiry into the Actions of the United Nations, (15 December 1999) United Nations; p.6 (online) <http://www.unr.org/news/ossgrwandareport.htm>

<sup>69</sup> Ibid, P.7

<sup>70</sup> Security Council Resolution 918, 1994, S/RES/918, United Nations; adopted by the Security Council at its 3377<sup>th</sup> meeting on May 1994

crime of Genocide are very clear on the responsibilities of state parties regarding the act of genocide. It provides that; “The contracting parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”

What the provisions of the genocide convention implies is that the crime of genocide whenever and wherever committed is punishable and all state parties to the Convention has a responsibility to prevent it from taking place and when it occurs, there is also a responsibility to punish whoever may be responsible. If the international community accepts that what was happening in Rwanda in 1994 was genocide, then there would be pressure on them to stop it with all available effort and resources. However since the international community was not ready for such a commitment and responsibility, the best option will be to avoid the use of the term.

In the United States it was noted that a senior member of the President Clinton’s administration ordered officials not to speak of “genocide”, as doing so would increase the moral pressure on the government to act.<sup>71</sup> This shows the level and extent the international community went, all in an effort to avoid responsibility to protect the people of Rwanda. According to the Independent Inquiry, “The fact that what was occurring in Rwanda was genocide brought with it a key international obligation to act in order to stop the killing. The parties to the 1948 Convention took upon themselves a responsibility to prevent and punish the crime of genocide. This is not a responsibility to be taken lightly.”<sup>72</sup>

On April 21, 1994 when the massive killings were intensifying, the Security Council voted under resolution 912, to reduce the number of troops under UNAMIR

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<sup>71</sup> Human Rights Watch Report on Rwanda 1995, The Genocide, (available online) <http://www.hrw.org/reports/1995/WR95/AFRICA-08.htm>

to 270 in spite of the opposition raised by the force commander against such move. Even when eventually the Security Council finally voted to increase UNAMIR troops under resolution 918, member states still were unable to fulfill their pledge of troop's contributions. As at July 25, when RPF have almost taken control of the whole of Rwanda UNAMIR was only having 500 troops in its command. This according to the Independent Inquiry demonstrated clear case of lack of political will on the part of the entire world community to act.<sup>73</sup>

Finally the Independent Inquiry concluded thus: "The response of the United Nations before and during the 1994 genocide in Rwanda failed in a number of fundamental respects. The responsibility for the failings of the United Nations to prevent and stop the genocide in Rwanda lays on a number of different actors, in particular the Secretary-General, the Secretariat, the Security Council, UNAMIR and the broader membership of the United Nations. This international responsibility is one which warrants a clear apology by the organization and member states concerned to the Rwandese people."<sup>74</sup>

AS for the case of the United States' failure to act, it has been suggested that this could be attributed to two main reasons. The first one was that the United States focused its concern on the implementation of the Arusha Peace Accord between the various warring parties in Rwanda. However when the Accord failed, the whole plans and strategies of the United States in Rwanda became shattered, the government became confused as there was no alternative plan on the table to fall back to.<sup>75</sup> Probably this confusion on the part of the United States on what to do may have

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<sup>72</sup> Report of Independent Inquiry on the Actions of United Nations 1999 , United Nations; P.35 (online) <http://www.unr.org/news/ossgrwandareport.htm>

<sup>73</sup> Ibid, P. 21 & 24

<sup>74</sup> Ibid, p.28



caused her inability to jam the broadcasts of Radio Mille Collines which was broadcasting hate propaganda against the Tutsi even against popular advice to do. Or could this be for another reason?

The second reason for the United States failure to act has also been attributed to the signing of the Presidential Decision Directive 25 (PDD-25) by President Clinton in 1993. According to the Human Rights Watch report, “Rwanda was the first case to be treated under the PDD-25 which dictated that the United States would provide military or financial support only to peacekeeping operations that met certain criteria: well defined objectives and a plan to attain them, a detailed budget, a ceasefire between belligerents and their agreement to the presence of UN forces, a relatively fixed date for termination of operation and an indication of countries that would make soldiers available.”<sup>76</sup>

To briefly summarize the PDD-25; on May 3, 1993 President Bill Clinton signed the Presidential Decision Directives 25 (PDD-25) which was created to prevent the United States from using peacekeeping operations as the centerpiece of the country’s foreign policy. The PDD–25 created what the administration termed “vital national interest test,” limiting US involvement in UN peacekeeping operations. The US will only involve itself into operations under PDD-25 in which United States officers are in control of United States troops. The mission will also be in the overall interest of the United States and will require popular domestic support. Under PDD-25, United States financial contributions to international peacekeeping operations will also be drastically reduced from 31% in 1994 to 25 % in 1996.<sup>77</sup>

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<sup>75</sup> Human Rights Watch Report on Rwanda 1995, The Genocide; (online)  
<http://www.hrw.org/reports/1995/WR95/AFRICA-08.htm>

<sup>76</sup> Ibid.

<sup>77</sup> Presidential Decision Directives, May 6, 1993; the White House Washington (available online)  
<http://www.fas.org/irp/offdocs/pdd25.htm>

The PDD-25 could be said to be fallout of the not too successful operations of the United States in the Operation Restore Hope in Somalia 1993. The policy affected the US serious involvement in the Rwandan operations and made it difficult to secure the necessary fund needed for the operations.

President Bill Clinton who was in charge of the White House during the Rwandan genocide seemed to have shown remorse for his country's inaction in Rwanda and has tried to make up for this by providing major funding for the Rwandan genocide memorial in Kigali. He also visited Rwanda in 1998 and 2005 and in both visits, he repeated his strong apologies and expressed regret for his failure to prevent and/or stop the genocide.<sup>78</sup>

As part of its effort to make up for its failure to act in Rwanda, the international community through the Security Council adopted resolution 955 on November 1994, providing for the establishment of the International Criminal Tribunal for Rwanda (ICTR), similar to the tribunal for the former Yugoslavia. The tribunal for Rwanda has the mandate to prosecute all persons responsible for genocide and other serious violations of international humanitarian law, committed in the territory of Rwanda and in neighboring states between January 1, 1994 and December 31 1994.<sup>79</sup>

From all the above it is not in dispute that the United Nations failed to perform the role expected of it in the Rwandan genocide. This fact has been confirmed by the Independent Inquiry set up by the Secretary General to determine the role played by the world body in the crisis. The issue now is whether the international community has really learned any lesson from the Rwandan crisis. It would be recalled that part

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<sup>78</sup> Clinton Global Initiative; Voice of America August 1, 2005.

<http://www.clintonglobalinitiative.org/NETCOMMUNITY/page.aspx>

<sup>79</sup> International Commission on Intervention and State Sovereignty, (Supplementary Volume) 2001, The Responsibility to Protect: Research, Bibliography and Background, Ottawa: International Development Research Council. P. 101

of the mandate of the Independent Inquiry was to establish the truth regarding the role of the UN that will help prevent any future occurrence any where in the world. From the events that are happening all around the world today, particularly in Darfur, Sudan; it is to me a big question whether the international community has ever learned any thing from the Rwanda inaction?

### **2.3 The consequences of non-intervention by the United Nations**

There were so many ugly consequences following the non-intervention of the United Nations. The first obvious consequence was that there were numerous deaths running into hundreds of thousands, although different figures have been suggested as the death toll. According to the report of the Independent Inquiry; “approximately 800,000 people were killed during the 1994 genocide in Rwanda. The systematic slaughter of men, women and children which took place over the course of about 100 days between April and July of 1994 will forever be remembered as one of the most abhorrent events of the twentieth century.”<sup>80</sup> The Human rights Watch put the number of death at between five hundred and one million people.<sup>81</sup>

In 2004, during the 10<sup>th</sup> anniversary of the Rwandan genocide, the minister of culture noted that in the year 2000, the government of Rwanda launched an investigation to determine the number of deaths in the genocide. According to him, the result of the investigation revealed that 1,071,000 people died in the genocide and 90% of the dead were Tutsis.<sup>82</sup> In his own assessment of the death toll in the Rwandan genocide, James Smith of Aegis Trust, a British NGO working for the prevention of

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<sup>80</sup> Report of Independent Inquiry into the Actions of the United Nations; 1999, United Nations, P.1 (online) <http://www.unr.org/news/ossg/rwandareport.htm>

<sup>81</sup> Human Rights Watch Report on Rwanda 1995, The Genocide (online) <http://www.hrw.org/reports/1995/WR95/AFRICA-08.htm>

genocide believes that finding the exact number of death is not the point: “what is important to remember is that there was genocide. There was an attempt to eliminate Tutsis – men, women and children – and to erase any memory of their existence.”<sup>83</sup>

One cannot really say with certainty the number of death in the Rwanda’s genocide as that might not really be relevant. According to one analysis of the death toll, it was noted that, “the Rwandan genocide may hold the said record for the 20<sup>th</sup> century genocide with the most killers, but calculating exactly how many people were killed has proven to be a much more difficult task.”<sup>84</sup> Whatever may be the situation, I think the opinion of James Smith of Aegis Trust is very instructive. There were numerous deaths involving children, women and men mostly of Tutsi extraction, the exact number of death may not really be relevant.

Another ugly consequence of the non intervention of the UN was the mass exodus of Rwandans to neighboring countries of Democratic Republic of Congo, Tanzania, Burundi and Uganda. This mass exodus created massive humanitarian problems in these neighboring countries. According to Human Rights Watch, “the resulting catastrophic exodus to Goma and Bukavu cost thousands of lives as Rwandans died of disease, starvation and lack of water.”<sup>85</sup> The mass exodus of Rwandans particularly to the Democratic Republic of Congo led to the destabilization of eastern Democratic Republic of Congo in both the first war and the current crisis in that country.<sup>86</sup>

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<sup>82</sup> Rwanda: “No consensus on the death toll” (Tuesday April 6, 2004) AFP. iAfrica.com. <http://iafrica.com/news/worldnews/314365.htm>

<sup>83</sup> Ibid

<sup>84</sup> Ibid

<sup>85</sup> Human Rights Watch Report on Rwanda, 1995, The genocide (online) <http://www.hrw.org/reports/1995/WR95/AFRIA-08.htm>

<sup>86</sup> International Commission on Intervention and State Sovereignty (supplementary Vol.) 2001; P.101

The non-intervention also resulted in the total state collapse of the Rwandan government. There were no law enforcement mechanism as there was no police force; the army took over maintenance of law and order. Returnee Tutsis took over properties belonging to the Hutus, who fled as a result of the victory of the RPF. Rule of law gave way to fear and tension in the country.<sup>87</sup>

There was also the case of massive rights violations of those suspected of involvement in the genocide. People were detained in toilets, containers, warehouses and the regular prisons were grossly over crowded. Thousands of the detainees have died while waiting to be prosecuted by the International Tribunal in Arusha Tanzania.<sup>88</sup> Generally it may not be possible to outline all the evil consequences of the inaction of the international community in the Rwandan genocide, particularly in a work like this. What is important is to note however, that the country Rwanda was devastated and almost destroyed. The economy crumbled, rule of law gave way to rule of might, traditional, cultural and social lives of the people were destroyed and 13 years after the tragedy, the people of Rwanda still have not recovered from the scares of the genocide.

In concluding this chapter, it is my view that although the concept of responsibility to protect had not yet developed at the time of the Rwandan genocide (in fact it was this Rwandan genocide that provoked the emergence of the new norm of responsibility to protect), the Security Council would have conveniently handled the situation under chapter VII of the United Nations Charter. The Charter provisions were clear enough to prevent the crisis; the failure of the United Nations to prevent and/or stop the Rwandan genocide was never as a result of any lapse or uncertainty in

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<sup>87</sup> Human rights Watch Report on Rwanda 1995, The Genocide; (online)  
<http://www.hrw.org/reports/1995/WR95/AFRICA-08.htm>

<sup>88</sup> Ibid

the law. The situation in Rwanda in 1994 qualifies as ‘threat to peace’ at the stage it was being planned and when it finally started, it qualifies as ‘breach of the peace,’ which would have prompted the Security Council to act decisively in ending the crisis.

It is also my view, that all those in charge of the UN Secretariat and members of the Security Council between January 1, 1994 and December 31 1994, who contributed to the failure of the UN to act decisively in preventing and ending the genocide should be tried by the International Criminal Tribunal for Rwanda, for aiding and abating the crime of genocide. This is so because Resolution 955 provided that the tribunal has the mandate to prosecute all persons responsible for genocide and other serious violations of international humanitarian law. Responsibility for action could come in two ways, that is, by commission or omission. Those of them in charge of the UN Secretariat and the Security Council who failed to act in preventing or stopping the genocide are equally responsible for it. This idea may look extreme, but it is my opinion that it will help bring sanity in the UN and make people at whatever level of authority to be responsible for their actions and inactions. If this measure had been taken, the situation in Darfur today may have been different.

## Chapter Three:

### The Darfur conflict and the Role of the United Nations

#### 3.1 Background

This chapter traces the genesis of the Darfur conflict and its main actors; the role of the Sudanese government in the conflict; the failure or the delay of the international community in taking action to stop the conflict and the consequences of the delay. I will start with a brief history of the land and people of Darfur, Sudan. According to history the word Darfur is interpreted to mean land of the Fur. Darfur is situated in the south western part of the Republic of Sudan. It is the largest region in Sudan, comprising an area of approximately 250,000 square kilometers with a population of about 6 million people. The major tribes in Darfur are the Furs, Massalits and Zaghawas. The region of Darfur lies along the Sudanese border with Libya, Chad and Central African Republic. The people's major occupations include farming and livestock grazing. Both the Black Africans and the Nomadic Arabs within the region have been cohabiting peacefully for a long time, inter-marrying among themselves.<sup>89</sup>

The Darfur region has been experiencing a long history of tension mainly over land and grazing rights between the mostly nomadic Arabs and farmers from various tribes that inhabit the region. This could be classified as normal conflicts among opposing groups and interest which could always be managed and contained.<sup>90</sup> The major conflict could however be said to have started on 26<sup>th</sup> February 2003, when a group calling itself the Darfur Liberation Front (DLF) publicly claimed responsibility

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<sup>89</sup> Udombana N.; When Neutrality is a sin: the Darfur crisis and the crisis of humanitarian intervention in Sudan; 27 Human Rights Quarterly, p. 1152 -1153 (2005)

<sup>90</sup> Ibid. P. 1153

for attacks on Golo, the headquarters of Jaba Marra District of Sudan, claiming neglect by the central government in Khartoum as their reason for the attack.<sup>91</sup>

Before the Golo attack, conflict has already started in the Darfur region where the rebels have been attacking police stations, army posts and military convoys. The government of Sudan responded by launching air raids and land assaults on the rebel's stronghold in the Marra mountains. The rebels continued to make progress in their attack on government and military targets and installations and, on the 25<sup>th</sup> of February 2002, carried out one of their most successful attacks on army installations within their stronghold around the Marra Mountain.<sup>92</sup> According to one analysis and chronicle of the events leading to the conflict in Darfur, the genesis could be traced to 21<sup>st</sup> July, 2001, when a group of people from Zaghawa and Fur met in Abu Gamra and swore oaths with Qur'an to work together to defend against government sponsored attacks on the villages within the Darfur region.<sup>93</sup>

The rebels seemed initially to be making some gains in the conflict as they seized the garrison town of Tine along the Chadian border on the 25<sup>th</sup> of March, 2003 carting away large quantities of supplies and arms. The central government was initially constrained in responding to the DLF rebel attacks in the Darfur region as the government has concentrated their troops in the concluding session of the civil war in Southern Sudan with the SPLA and in the east with the Eritrean sponsored attacks along the oil pipeline to the port of Sudan. The central government in Sudan finally responded decisively against the series of DLF attacks by launching a massive and devastating aerial bombardment of rebel positions within the Marra Mountains.<sup>94</sup> This

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<sup>91</sup> Julie Flint and Alex de Waal; Darfur: A short History of a long war, Zeb Books, London, March 2006, p. 76.

<sup>92</sup> Ibid, p.77

<sup>93</sup> Ibid, p.77

<sup>94</sup> Ibid, p. 99



massive aerial bombardment by the government troops against the DLF in the Darfur region signaled the commencement of a full blown conflict and the beginning of what many have described as one of the world genocidal conflicts.

Unlike in the second Sudanese civil war, which was fought between the primarily Muslim North and the Christian and Animist south, the conflict in Darfur is not religious based, as most of the residents in the region are Muslim, including the Janjaweed. According to the Report of the International Commission of Inquiry on Darfur, to the United Nations Secretary-General; “The various tribes that have been the object of attacks and killings (chiefly the Fur, Massalit and Zaghawa tribes) do not appear to make up ethnic groups distinct from the ethnic group to which persons or militias that attack them belong. They speak the same language (Arabic) and embrace the same religion (Islam).”<sup>95</sup>

The Darfur conflict could be said to have a multiple interwoven causes, for example structural inequality between the center of the country around the river Nile and the peripheral areas such as Darfur. However the situation worsened in recent times mainly as a result of the combination of environmental calamity, political opportunism and regional politics. Many are confused whether the conflict could be classified as a conflict between Arab and African populations. This dichotomy of course could be both true and false.<sup>96</sup>

Even though many have argued that the Darfur conflict could not be strictly classified as ethnic or religious, it would be recalled that for years, the central government in Khartoum has favored the Arabs in Darfur. This led to distrust by the leaders of Fur people and this distrust worsened between 1986 and 1989 during the

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<sup>95</sup> The Report of the International Commission of Inquiry on Darfur, to the United Nations Secretary-General; United Nations, 25 January 2005, P.129

<sup>96</sup> Gerard Prunter; Darfur: The ambiguous genocide, Cornell University press, 2005, p.4

regime of Sadiq El Mahdi which adopted a policy of arming the Arab Baggara militias from the Darfur and Kordofan regions and using them as a counterinsurgency force against the rebels in Southern Sudan. This Arab militia groups were later incorporated into the Popular Defence Forces and Para-militaries by both the regimes of El Mahdi and its successor, the National Islamic Front (NIF), later called National Congress. It is this Popular Defence Forces and Paramilitaries made up of the Arab Baggara militias that are now involved in the attacks against the Fur communities in Darfur.<sup>97</sup>

So if one look critically at the conflict in Darfur, it could be seen that the conflict is more or less an ethnic conflict between the Arabs and the Black Africans. Although there are still some elements of both political and economic factors as well as social factors associated with the conflict.

In its own account of the genesis of the Darfur conflict, the government of Sudan has continued to insist that there is nothing unusual in the ongoing conflict in the region. According to the head of mission, Embassy of the Republic of Sudan in the United States, Ambassador Khidir Haroun Ahmed, it was the rebels in Darfur who started the conflict by attacking police stations, army garrisons and nomadic leaders and communities. These attacks by the Darfur rebels led to the murdering of hundreds of policemen and resulted in the total break down of law and order in the region. The government only responded to restore normalcy in the area.<sup>98</sup>

The Sudanese government is of the opinion that the situation regarding the origin and causes of the Darfur conflict is being exaggerated and sensationalized by western media. The government therefore strongly denied the allegation that the Arab

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<sup>97</sup> Udombana N; When Neutrality is a sin: the Darfur crisis and the crisis of humanitarian intervention in Sudan; 27 Human Rights Quarterly (2005) p. 1153

dominated government in Khartoum was supporting the Arab militia to wipe out the black population of Darfur.<sup>99</sup> The government argued that there have been other conflicts in the Darfur region starting from the 19<sup>th</sup> century during the British Colonial administration of Rudolf Slatin and until the 2003 conflict between the Arabs and Massalit, in Western Darfur. There is therefore nothing unusual, according to the Sudanese government in the ongoing conflict in Darfur.<sup>100</sup>

The Sudanese government concluded that the region has seen it all; conflicts, insurgency, drought, displacement and deaths. The Darfur conflict, in the government's view, is not different from other conflicts in other parts of the world. According to the government, there are more serious conflicts like the on going one in the Democratic Republic of Congo where over 4 million people have died, the insurgency in the Northern Uganda which has caused the death of over 1.6 million people. Yet the international press has focused on the Darfur conflict.<sup>101</sup>

It may not be too important to continue to dwell on how the Darfur conflict started or whether the situation in the region is being exaggerated as the Sudanese government has been claiming. I believe what is important now and what the government of Sudan should be saying is how to contain the crisis and stop the human carnage going on in the area. The conflict may have started as a mere ethnic crisis common in a multi ethnic community as Sudan, but the question now is, where has that conflict taken us to and what has the government done or is doing to stop the conflict and stop further massive violation of the rights of the people particularly the civilian population?

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<sup>98</sup> Darfur Conflict: its history, nature and development, SudaNews, June 2005, p. 1 (available online) [www.embassyofsudan.com](http://www.embassyofsudan.com)

<sup>99</sup> Ibid, p.2

<sup>100</sup> Ibid, p2

<sup>101</sup> Ibid, p.2

It is also my view that the Sudanese government's impression that the Darfur conflict is being exaggerated and sensationalized by the international media; and also the government stand in trying to compare the conflict with other conflicts in Africa, rather than coming out with meaningful plans on how to end the conflict is only portraying the government as being an irresponsible one. Is the government of Sudan waiting until the number of deaths in the Darfur conflict exceeds the 4 million mark it claimed has been recorded in the case of DRC before it will take action to stop the conflict? Is it proper for a responsible government having the interest of its people at heart to be counting the number of deaths in conflicts in its territory and comparing same with the number of deaths in other conflict zones? Could it be taken that by this position of the Sudanese government, it has conceded to the fact that it cannot protect the rights of its citizens, thereby necessitating action from the international community? These and other questions to my mind are very vital for the UN in determining the action it should take in ending the crisis.

### **3.2 The Role of the Sudanese Government in ending the Conflict in Darfur**

There have been allegations and counter allegations regarding the role being played by the Sudanese government in the ongoing conflict in Darfur region. Many are of the view that the Sudanese government has been supporting and arming the Arab Janjaweed militia to perpetuate the atrocities against the black Africans in the region; all aimed at ethnic cleansing of the black African population. However the Sudanese government has countered this argument by saying that it has no hands in the activities of the Janjawees and that moreover the reported atrocities and humanitarian situation in the Darfur region is being exaggerated by the international media all aimed at encouraging the rebels in the region and destabilizing the Sudanese government.

According to Sudanese government version of the argument, following the initial attacks by the Darfur rebels against rural police posts, the government decided to withdraw most police forces to urban centers. This means the government did not have de facto control over the rural areas. These rural areas according to the government are where the rebels are based. The rebels destroyed almost all police stations in the region, killed most of the police officers and thereby created a security vacuum which was unfortunately filled by different tribal militia groups including the notorious Janjaweed.<sup>102</sup>

Added to the chaos occasioned by the security vacuum, is the policy of the rebels in targeting tribal leaders and theft of thousands of heads of live stock from these tribes, which resulted in an explosion of inter-communal violence with revenge attacks and livestock raid by equally well armed nomadic tribes. That was how thousands of people fled their villages and sought refuge around the major urban centers according to the government. These simple facts of the case in the government opinion refute all the allegations of genocide in the Darfur region.<sup>103</sup>

The Sudanese government also claimed that the Darfur conflict is a preplanned strategy by the rebel groups in the area, particularly the Sudanese Liberation Army (SLA) to attract the international community's attention by creating an impression of humanitarian tragedy in the region. According to the government, the rebels in Darfur region felt they were left out while the government was negotiating peace accord with the SPLM/A and the Darfur rebels wanted to be included in a comprehensive peace agreement for all Sudanese including the Darfur region. They argued that the rebels reasoned that it was as a result of international

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<sup>102</sup> Darfur Conflict: its history, nature and development, SudaNews, June 2005, p. 3  
[www.embassyofsudan.com](http://www.embassyofsudan.com)

<sup>103</sup> Ibid; p.3

community's and military pressure that made the Sudanese government enter into negotiation with the Southern rebels (SPLAM/A). So taking up arms by the Darfur rebels and creating an impression of humanitarian tragedy will also force the government to negotiate with Darfur rebels.<sup>104</sup>

The government of Sudan acknowledged that "Darfur is underdeveloped, but no more so than much of the rest of Sudan, including Kordofan, the Nuba mountains, the east of Sudan, the South and even the North of Sudan."<sup>105</sup> Insurgency and armed struggle according to the government is not the proper means to redress marginalization and attract international sympathy rather it will work against the fledging nations of Africa and other developing countries around the world.

On the issue of the Janjaweed and the role they are playing in the conflict, the Sudanese government posited that the Janjaweed have no political organization or agenda. They include many who have exploited the conflict for their criminal goals. The term Janjaweed means "jinn" or devil on a horseback. It is not a new term, but has been in use for the past 20years to describe highway robbers, ridding a horse or camel and carrying a gun or rifle. The term Janjaweed has no ethnic or racial significance as anyone whether African, Arab or whatever culture could become a Janjaweed, so long as the person is on horseback or camelback carrying gun or rifle and attacking people on the highway.<sup>106</sup>

Confining the term Janjaweed to Arab nomads was part of the rebels' propaganda to attract international sympathy. The rebels in Darfur according to the government will deliberately provoke the Arab nomads by stealing their livestock and the Janjaweed will retaliate by focusing their wrath against the tribes the rebels are

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<sup>104</sup> Ibid; p.4

<sup>105</sup> Ibid; p 4

drawn from. This in turn will lead to burning, looting of properties and other criminal acts. Although the government claimed that tracking down the Janjaweed has not been easy mainly as a result of their mode of operations, it has been able to apprehend some and have convicted them.<sup>107</sup>

Finally the Sudanese government claimed that the number of deaths has been greatly exaggerated by the international media who have gone ahead to publish number of deaths in the region without verifying the facts. Also the government countered the argument of mass rape and abduction as mere fabrications aimed at encouraging the rebels and exacting undue pressure on the Khartoum government to give in to the rebels' demands.<sup>108</sup>

The above government position on the situation of things in Darfur and its role has been disputed and contradicted by other reports. According to one report, when the Sudanese Liberation Army (SLA) attacked government forces at El Fasher, in the North of Darfur, the central government because of constraint due to the ongoing war in the Southern Sudan, decided to arm and sponsor a militia, composed of a loose collection of fighters mostly of Arab background, the Janjaweed to respond to the rebellion. The Janjaweed therefore carried their acts of looting, killing, raping and abduction with the active support of the Khartoum government.<sup>109</sup>

Also in support of the above assertion, Julie and Waal, argued that the initial consistent defeat suffered by the Sudanese government forces in the hands of the rebels, warranted them to come up with a success proposal. According to the proposal, success in the campaign against the rebels will depend on three elements, namely:

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<sup>106</sup> Darfur Conflict: its history, nature and development, SudaNews, June 2005, p.5

[www.embassyofsudan.com](http://www.embassyofsudan.com)

<sup>107</sup> Ibid; p 5

<sup>108</sup> Ibid; p 12

military intelligence; the air force and the Janjaweed. The government opted to put the Janjaweed at the center of the new counter-insurgency strategy. Military resources were deployed into Darfur and the Janjaweed were equipped as a paramilitary force, complete with communication equipment and artillery. The government must have been aware of the consequences of this new strategy as similar arrangement by the government in Nuba Mountains and around the Southern oil fields during the previous decade had resulted in massive human rights violations and forced displacements.<sup>110</sup>

Another factor that is giving credence to the alleged support of the Khartoum government to the Janjaweed militia and their atrocities in Darfur is the general attitude of the government towards humanitarian agencies in Darfur. In 2004, it was reported by the US Agency for international Development, that “Humanitarian access to conflict affected populations outside of the state capitals of Geneina, El Fasher and Nyala was extremely limited until late May, due to government of Sudan’s impediments that blocked humanitarian access and operations.”<sup>111</sup>

Also it has been argued that the mode of operation of the Janjaweed and their targets show an element of ethnic cleansing with the tacit support of the government at the center. The Janjaweed’s attack has been focused on the black African population in the region, while the Arab population has been spared. In a United Nations observer team’s report in April 2004, it was noted that non-Arab villages were singled out while Arab villages were left untouched: “The 23 Fur villages in the Shattaya Administrative Unit have been completely depopulated, looted and burnt to the ground (the team observed several such sites driving through the area for two

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<sup>109</sup> Udombana N; When Neutrality is a sin: the Darfur crisis and the crisis of humanitarian intervention in Sudan; 27 Human Rights Quarterly (2005) p. 1154

<sup>110</sup> Julie Flint and Alex de Waal, Darfur: A short history of a long war, Zeb books, London, March 2006 p. 101-103



days.) Meanwhile, dotted alongside these charred locations are unharmed, populated and functioning Arab settlements. In some location the distance between a destroyed Fur village and an Arab village is less than 500 meters.”<sup>112</sup>

Commenting on the role of the government vis-à-vis the ongoing conflict in Darfur, a Sudanese national, Mr. Ahmed Suleiman, observed that the government actually armed and used the Janjaweed during the civil war with the southern rebels and after the war; the government could not employ and keep the Janjaweed. However the government failed to disarm them, but encouraged them to go ahead and use their arms to fight for themselves. The consequence of this government act was that the Janjaweed became a sort of terror organization which the government can no longer control.<sup>113</sup>

It is also noteworthy to observe that the general attitude of the Sudanese government towards the international community in the Darfur conflict gives the impression that the government is in tacit support of what is happening in the region. It would be recalled that on the 31<sup>st</sup> of August 2006, the UNSC approved a resolution<sup>114</sup> to send peacekeeping force of 17,300 to the Darfur region; the Sudanese government resisted the move.<sup>115</sup> Also on the 1<sup>st</sup> of September 2006, African Union officials reported that Sudan has launched a major offensive in Darfur. According to the report, over 20 people were killed and 1000 people displaced.<sup>116</sup> The onslaught by the Sudanese government came when the whole world was crying on the humanitarian situation in Darfur. Also on the 5<sup>th</sup> September 2006, the Sudanese

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<sup>111</sup> Udombana N; When Neutrality is a Sin: the Darfur crisis and the Crisis of Humanitarian Intervention in Sudan, 27 Human Rights Quarterly (2005) p. 1155

<sup>112</sup> United Nations Inter-Agency fact finding and Rapid Assessment mission: Kailek Town, South Darfur, United Nations Resident Coordinator, 25 April 2004

<sup>113</sup> Ahmed Suleiman, LLM Student Central European University, Budapest, Hungary; June 2007

<sup>114</sup> Security Council Resolution 1706, 2006, S/RES/1706, United Nations

<sup>115</sup> Voice of America August 31, 2006; (available on line) <http://voanews.com/english/2006-09-01>

government asked the AU Peacekeeping force in Darfur to quit the country before the end of that month. According to the government the AU Peacekeepers has no right to transfer their peacekeeping assignment to the United Nations or any other party. The right according to the government belongs to the Sudanese government alone.<sup>117</sup>

It is quite interesting to note that the government of Sudan has not been able to come out with forceful argument to counter these allegations of supporting the Janjaweed militia as well as actively participating in these unwarranted attacks on innocent and defenseless civilians in Darfur region. Looking at the argument of the government above, it would be seen that the government was even contradicting itself when it stated that the term Janjaweed has no ethnic or racial significance as anybody could become a Janjaweed whether Arab or black African. At the same time, the government noted that the rebels will deliberately provoke Arab nomads by stealing their livestock and the Janjaweed will retaliate by focusing their wrath against the tribes the rebels are drawn from. Here the government has finally conceded to the fact that the Janjaweed are Arabs and their target has always been the black African population.

Finally the government's argument of non complicity to the Janjaweed atrocities in the Darfur region could be said to have crumbled with the testimonies of an ex Janjaweed militia now living in London. According to him; "The people who train us came from the north, from the government. They gave us orders, and they say that after we are trained they will give us guns and ammunition... they were wearing uniforms of the military... I will tell you one fact. The Janjaweed don't make

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<sup>116</sup> Associated Press, September 1, 2006; (available online)  
<http://www.canada.com/topic/news/world/story>

<sup>117</sup> Associated Press, September 4 2006; <http://www.taipeitimes.com/news/front/archives/2006/09/05>

decisions. The orders come from government... One very well known regular visitor was the Interior Minister Abdul Rahim Muhammad Hussein.”<sup>118</sup>

The government has not been able to refute this reported testimony of an ex Janjaweed militia, the government’s only response has been that the western media are exaggerating the happenings in Darfur. The government’s actions and utterance has not been able to absolve it of complicity in the genocidal attacks going on in Darfur. The international community should no longer afford to wait as the government of Sudan has clearly shown its inability to contain the crisis or that it is even directly responsible for the deteriorating humanitarian situation in Darfur region. The international community should assume their secondary responsibility to protect the population of Darfur from death and massive human rights abuse in accordance with the principles of the norm of responsibility to protect.

### **3.3 The Role of the UN in the Darfur Crisis: A critical Appraisal**

Under the UN Charter, the United Nations assigned itself a clear role in the area of international peace and security. In this regard the charter provides that the purposes of setting up the UN include among other things; “to maintain international peace and security, and to that end to take effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of peace”.<sup>119</sup>

<sup>118</sup> BBC News Report, October 17, 2006; <http://news.bbc.co.uk/go/fr/-/2/hi/africa>

<sup>119</sup> UN Charter article 1(1), signed 26 June 1945, 59 stat. 1031, T.S. No.933, 3 Bevans 1153 (entered into force 24 October 1945 (available online) <http://www.un.org/aboutun/charter/chapter1.htm>

Moreover the preamble of the UN Charter provides thus as relating to the aims of the United Nations particularly in the area of maintaining international peace: “to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind and to reaffirm faith in fundamental human rights of men and women and nations large and small”. And more particularly the charter assigns the responsibility of ensuring international peace and security to the UNSC. The Charter provides thus: “in order to enforce prompt and effective actions by the United Nations, its members confer on the SC primary responsibility for the maintenance of international peace and security”.<sup>120</sup>

Also under the emergent norm of responsibility to protect, it is provided that the international community through the UN has the responsibility to use appropriate means including diplomatic options and the use of force to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>121</sup> How effective has the UN discharged this responsibility in the case Darfur will be the focus of this section.

The crisis in Darfur, did not start overnight, rather it had a gradual but steady start. When it all started in 2003, the international community ignored early warnings by notable international NGOs like Amnesty international and International Crisis Group of the emerging crisis in Darfur, however these warnings were not taken seriously by the world.<sup>122</sup> Also in April 2004, the UN carried out series of fact-finding

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<sup>120</sup> Ibid, article 24(1)

<sup>121</sup> High-Level Plenary Meeting of the UN General Assembly, Outcome Document, Sept. 2005, A/60/L.1 United Nations, para.139, P.31

<sup>122</sup> Amnesty International, Urgent call for commission of inquiry in Darfur as Situation deteriorates, press release No. 38, 21 February 2003; (available online) <http://www.amnesty.org/library/engindex>; International Crisis Group, Sudan's other wars, 25 June 2003 (available online) [http://www.icg.org/library/documents/report\\_archive/A401020\\_25062003.pdf](http://www.icg.org/library/documents/report_archive/A401020_25062003.pdf)

missions to Chad and to Darfur. Reports of these fact finding missions were endorsed by the UNSC, yet no real action was taken by the Security Council.<sup>123</sup>

Just like the case of Rwanda, the international community ignored early warnings on the emerging crisis and its consequences on the civilian populations. Acting promptly based on these warnings would have prevented the crisis from getting to where it is today, this is so particularly in view of the Rwandan experience. It is also my view that responsibility to protect by the international community also entails responsibility to prevent and/or manage crisis from erupting or escalating. The consequences and penalty for failure to act decisively to prevent a crisis when there were opportunities to do so is even worse than failure to protect when the crisis had already escalated.

Even when the UN decided to act on the Darfur crisis, it failed to act decisively. In 2004, the UNSC adopted resolution 1556, which imposed arms embargo on the various militia groups. The resolution also demanded the government of Sudan to disarm the Janjaweed militia, however the arms embargo and the entire wordings of the resolution were not directed against the government of Sudan and so it was not able to achieve its intended purpose.<sup>124</sup> It is true that the primary responsibility for disarming the Janjaweed lies with the Government of Sudan. However when it is obvious that the Sudanese government is not ready for this responsibility, the UNSC needed to clearly spell out the consequences of non compliance and act decisively against the government.

The international community has also failed to exert the necessary political pressure on the government of Sudan to make it respond positively to the demands of

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<sup>123</sup> “Security Council expresses ‘grave concern’ over deteriorating situation in Darfur region of Sudan”, UN Press Release SC/8104, 25 May 2004. (available online) <http://www.un.org/News/press/docs/2004/sc8104.doc.htm>

UNSC to disarm the Janjaweed militia. According to the International Development Committee of the British House of Commons report on Darfur, Sudan; “stronger political pressure is needed on all sides in the conflict to protect civilians, and to encourage progress towards a political solution. More concerted political pressure on the Government of Sudan would enable a more effective humanitarian response.”<sup>125</sup> The failure of the international community to apply both political and economic pressure on the Government of Sudan has contributed in no small measure in putting us where we are today in the Darfur conflict.

Commenting on the lack of effective international political and economic pressure on the Government of Sudan to make it respond positively to the demands of the international community in ending the Darfur crisis; a Sudanese national observed thus: “There are four main factors working against international unanimity in putting pressure on the government of Sudan to take decisive action in ending the crisis in Darfur. These are (a) the Chinese economic interest in Sudan, which made China to continually oppose every move to impose sanction on the Government of Sudan; (b) the American war on terrorism in which America has grouped Sudan as an ally in the fight and so America would not want to do anything that will hurt the interest of its allies and in turn affect their war on terror; (c) the Arab League factor, the members of the league have continued to use their wealth and influence to block every move that will affect the interest of the Sudanese government, Sudan being a member of the League and the (d) the AU and its leaders solidarity to the Sudanese government, which they considered as their own and deserving their support.”<sup>126</sup>

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<sup>124</sup> S.C. Resolution 1556, (2004) UN.Doc.S/RES/1556)

<sup>125</sup> Darfur, Sudan: The Responsibility to protect, 5<sup>th</sup> Report of Session 2004-2005 Vol. 1, International Development Committee, House of Commons London, March 2005.

<sup>126</sup> This opinion was expressed by Ahmed Suleiman, LLM Student of CEU 2007 at a workshop on Darfur in Budapest organized by the Human Rights Students Initiative, July 2007.

The above opinion on the reasons for lack of unanimity of action on Darfur by the international community may be true, as the British House of Commons also in its report cited division and protection of national interests among members of the UNSC as a major contributor to the failure of the Council to act decisively to end the Darfur crisis. According to the Report; “the UN Security Council has failed to fulfill its responsibility to protect the people of Darfur and to maintain international peace and security. Driven by national interests, the Security Council has been divided, weak and ineffective. There should be targeted sanctions and an extension of arms embargo to cover the Government of Sudan.”<sup>127</sup>

Another point worthy of mention in the role of the UN in the Darfur crisis is the over emphasis on the North- South crisis between the late John Garang led SPLM/A, and the Government of Sudan. The international community focused much on signing peace accord between the government and the southern rebels and thereby forgetting the events in Darfur. Commenting on this the International Development Committee of the British House of Commons report on Darfur observed thus: “the international community prioritized progress on the North-South peace process over the crisis in Darfur. This was misguided and unnecessary and had predictable, deadly, consequences for Darfur. A more holistic approach to the problems of Sudan was possible, preferable and would have provided a more secure basis for building a sustainable country-wide peace.”<sup>128</sup>

The events that took place in recent times in some countries like Somalia, Liberia, Haiti, former Yugoslavia, Rwanda and presently in Sudan are clear examples of countries suffering from social and political disturbances and one may be justified

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<sup>127</sup> Darfur, Sudan: the responsibility to protect, 5<sup>th</sup> report of session 2004-05 vol. 1, House of Commons London, March 2005, p. 4.

<sup>128</sup> Ibid p. 4

to conclude that these developments has cast some doubts on the capacity of the UN to maintain international peace and security in line with the mandate of its charter.

In all the above cases, the UN was unable to prevent the conflicts and also failed to provide remedial measures to prevent the conflicts from aggravating. More particularly in the case of Rwanda the UN accepted the fact that it failed in fulfilling its mandate of ensuring the maintenance of international peace and security. This acceptance of failure on the part of the UN led to the setting up of an independent inquiry in 1999 on the role of the UN in the Rwandan crisis. The objective of the independent inquiry include among other things to contribute to preventing similar tragedies from occurring ever again.

According to the independent inquiry report, “each part of the UN system, in particular the Secretary-General, the secretariat, the Security Council and member states of the organization, must assume and acknowledge their respective parts of responsibility for the failure of the international community in Rwanda. Acknowledgement of responsibility must also be accompanied by a will for change: a commitment to ensure that catastrophes such as the genocide in Rwanda never occur anywhere in the future.”<sup>129</sup> The question now is more than 10 years after the Rwandan disaster and acknowledgement of guilt by the international community and a commitment for change, has the international community learned any lesson from the Rwandan experience? To me judging from what is currently happening in Darfur, I am of the view that there was no lesson learned from the Rwandan experience by the international community.

One may however state that the report of the Independent Inquiry and its recommendations contributed to the eventual adoption in September 2005 by the UN

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<sup>129</sup> Report of Independent Inquiry into the actions of the United Nations in the Rwandan genocide, P. 3



General Assembly of the Outcome Document at the Millennium +5 Summit. According paragraph 139 of 2005 Millennium +5 Summit Outcome Document; “ The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapter VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity...”<sup>130</sup>

The Rwandan genocide of 1994 has come and gone, the international community accepted its failure in the prevention and management of the Rwandan catastrophe and the Independent Inquiry made some useful recommendations aimed at preventing a reoccurrence of the Rwandan disaster; also the UN had developed the norm of responsibility to protect populations against genocide, war crime, ethnic cleansing and crimes against humanity where national government fails to do so. However in spite of all these developments, we are still witnessing another disaster similar to that of Rwanda now in Darfur, Sudan. Is it now the practice of the international community to close its eyes and allow the damage to be done only to come back and accept blame? What lessons have we learnt from the Rwandan case and what is the impact of the emergent norm of responsibility to protect?

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<sup>130</sup> High-Level Plenary Meeting of the UN General Assembly, Outcome Document, Sept. 2005, A/60/L.1 United Nations, para.139, P.31

On August 31, 2006, the UNSC passed Resolution 1706 by a vote of 12 in favor with 3 abstentions (China, Qatar and Russian Federation). The resolution authorizes a peace support operation for Darfur consisting of 22,500 UN troops, civilian police, and Formed Police Unit. The force was to be deployed “rapidly” under Chapter VII of the UN Charter. The resolution provides for an explicit mandate to protect civilians as well as humanitarian operations.<sup>131</sup> The force was also to establish a multidimensional presence to improve the security situation in the neighboring regions along the borders between the Sudan and Chad and between the Sudan and the Central African Republic. This number of armed force, if deployed urgently and robustly, will definitely do much to avert the massive human displacement and destruction in Darfur.

However more than 12 months after resolution 1706 was passed, the force is yet to be fully deployed as a result of various conditions being given by the Sudanese government with the active support of its ally China. It was only in May 2007 that the Sudanese government and the United Nations reached an agreement that will pave the way for the deployment of the AU-UN Peacekeepers. The operation is to be headed by a joint AU-UN Special Representative for Darfur, a post awarded earlier in May to the Congolese Foreign Minister Rodolphe Adada, who will be assisted by a newly appointed force commander General Martin Luther Agwai of Nigeria.<sup>132</sup>

In April 2007, the UNSC adopted resolution 1755 in which it referred to resolution 1674 of 2006 which gave effect to the norm of responsibility to protect. However, the resolution failed to take decisive action on the alleged attack on humanitarian workers by the militias operating in the region and also the continued

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<sup>131</sup> Security Council Resolution 1706 UN Doc. S/RES/1706, 31, August 2006; (available online) <http://www.un.org/news/press/docs/2006>

frustration of the full operations of UNMIS by the Government of Sudan. The resolution only extended the mandate of UNMIS until October 2007.<sup>133</sup> This is so even though that it is a well known fact that the combatants in the Darfur conflict have continued to kill aid workers and obstruct relief efforts, yet the International community has refused to apply force to stop them. The killing of humanitarian workers in situations of armed conflict is a war crime, and perpetrators of such crimes should be brought to justice.<sup>134</sup>

Even though the Sudanese government has agreed in principle to allow the deployment of the hybrid AU-UN troops to Darfur, it is not certain whether the authorities in Khartoum will allow the peacekeeping force carry out its assignment as stipulated in their mandate. Hence there is the need for sustained pressure on the Sudanese government to cooperate with the AU-UN hybrid force. I am of the opinion that the required international pressure is not yet forthcoming.

Even apart from the fact that the Government of Sudan is frustrating the deployment of the AU-UN troops, another factor which is reminiscent of the Rwandan experience is the inability of troops contributing countries to fulfill their pledge of troops to the AU-UN hybrid force in Sudan. Recently the commander of the AU-UN force, Gen. Martin Agwai, attributed the persistent of hostilities in Darfur to the inability of the UN to raise the required 20,000 troops to keep the peace in the region.<sup>135</sup> This is another reminder of the Rwandan experience where when the international community reluctantly agreed to contribute troops to the peace keeping operations in Rwanda, countries that pledged troops were unable to deploy the troops

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<sup>132</sup> Reuters News Report, 22 May 2006; <http://www.reuters.com/english/docs/sudan>

<sup>133</sup> UNSC Resolution 1755, UN. Doc. S/RES/1755, 2007

<sup>134</sup> Darfur, Sudan: the responsibility to protect, 5<sup>th</sup> report of session 2004-5, vol.1, House of Commons London, March 2005. p. 22

until the Paul Kagame led RPF captured Kigali and brought the massacre to an end. In its report, the Independent Inquiry on the role of the UN also mentioned the inability of the UN member states to fulfill their pledge for troops as part of the failure of the international community.

From the unfolding events in Darfur and the role being played by the international community, what could the UN say it has learned from the Rwandan experience? What was the essence of setting up the Independent Inquiry into the role of the UN in Rwanda and also what is the significance of the new norm of responsibility to protect as agreed by the international community at the 2005 millennium + 5 summit?

According to the principles of responsibility to protect as enunciated by the High-Level Plenary meeting of the UN General Assembly in 2005, “where non-military action fails, the international community should be prepared to take collective action, in a timely and decisive manner, through the UNSC, this action however should be in accordance with the UN Charter including chapter VII, and should be on case by case basis and in cooperation with relevant regional organizations as appropriate.” The UN agreed unanimously on the above principles, why then is the same UN is not acting ‘timely and decisively’ in Dafur?

The Sudanese government may claim that it is not directly responsible for the Darfur crisis and the gross violation of rights going on in the region; it may also claim that it is not supporting the Janjaweed militia that is directly responsible for the atrocities in Darfur. However it cannot claim that it has made effort or is making any effort to stop the gross human rights abuse in the area. This inability to stop further

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<sup>135</sup> ‘Why Darfur crisis persists’ The Punch News paper, September 24, 2007, P. 7

gross violation of the rights of the civilian populations of Darfur on the part of the government of Sudan shows that it has failed in its primary responsibility to protect its nationals in Darfur region from avoidable rights violations and abuse. The International Community through the UN should in accordance with the principles of the norm of responsibility to protect ought to stepped in immediately and assume its secondary responsibility to protect the civilian populations of Darfur and the humanitarian workers in the region.

According to the International Development Committee of the British House of Commons report on Darfur, Sudan; for the international community to be able to fulfill its responsibility to protect the people of Darfur, it has to do three main things, and they include: a) “Political pressure on the Government of Sudan, its allied militias and rebels to: stop targeting civilians with violence and coercion; stop the conflict and move towards a peaceful resolution of its underlying causes; provide true security for Darfur and to allow unhindered access for humanitarian assistance; b) humanitarian relief and protection for people affected by the crisis, provided in an effective and timely manner; and c) support for people to rebuild and develop communities and a country devastated by decades of conflict and marginalization, in Darfur and across Sudan.”<sup>136</sup>

How effective has the international community through the UN, been able to fulfill this responsibility on the people of Darfur? It is my view that the UN has not been able to play the role expected of it and I support the view of the International Development Committee of the British House of Commons report that “The UNSC, has failed to fulfill its responsibility to protect the people of Darfur, and to maintain

international peace and security. Driven by national interests, the Security Council has been divided, weak and ineffective.”<sup>137</sup>

Maybe as an after thought, the US government on May 29, 2007 outlined a number of sanctions against the Khartoum government as a way of putting pressure on the government to cooperate and allow the AU-UN troops to perform it duties effectively. According to the US president; “For too long the people of Darfur have suffered at the hands of a government that is complicit in the bombing, murder and rape of innocent civilians, my administration has called these actions by their rightful name: genocide. We’re targeting sanctions against individuals responsible for violence.”<sup>138</sup>

Also the European Union foreign policy chief, Mr. Javier Solana following the Bush administration’s sanctions on the Sudanese government, stated that the European Union was open to considering new set of sanctions on the Sudanese government, including a ban on arms sale. He noted that the matter would be discussed at the G8 foreign ministers meeting in Berlin on the 30<sup>th</sup> of May, 2007.<sup>139</sup> However China in its usual position on Darfur because of its economic interest in Sudan has already condemned the US sanctions as unwarranted; instead it claimed that investing in Sudan will be a better option than sanctions. According to Jiang Yu, Foreign Ministry spokeswoman in her regular news briefing said: "New sanctions against Sudan would only complicate the issue. China appeals to all parties to maintain restraint and patience."<sup>140</sup>

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<sup>136</sup> Darfur, Sudan: The responsibility to protect, 5<sup>th</sup> report of session 2004-05, vol. 1, House of Commons London, March 2005, p. 15 (available online) <http://www.parliament.uk/indcom>

<sup>137</sup> Ibid. p.4

<sup>138</sup> BBC News Report, 30 May 2007; <http://news.bbc.co.uk/go/pr/-/2/hi/africa>

<sup>139</sup> Ibid

<sup>140</sup> Nigerian Guardian Newspaper, June 1, 2007; <http://www.guardiannewsngr.com/africa/article02>

Finally it is my concluding view that it is only a comprehensive United Nations sanctions that will be able to force the Sudanese government to cooperate with the international community in solving the Darfur crisis. The UN should take decisive action now and let the Sudanese government and its allies know that the world can no longer afford to standby and watch while the government is continuing with its act of genocide in Darfur. The UN should prove to Africa that what happened in Rwanda was not a deliberate World practice to abandon Africa to its fate when the people of the continent needed the world most. The UN should truly show that what happened in Rwanda was really a mistake and that it is determined to effect a change. If nothing different happens now in Darfur, it would be very difficult for the international community to convince the people of Africa that the continent has not been abandoned by the world.

## **Chapter Four**

### **The incessant cases of grave human rights breaches in Africa: what role can the UN play in preventing reoccurrence?**

This concluding chapter of the essay will take a general look at the incessant cases of wars and conflicts in Africa and the main reasons behind them. It will also consider the cost and consequences of these incessant crisis and conflicts in terms of the usual grave and massive human rights violations that follow these crisis and conflicts. It will also take a look at the provisions of the African Union Constitutive Act in the area of conflict prevention and the general role expected of the United Nations in conflict prevention and management in Africa especially in cases of conflicts which usually results in genocide and other grave human rights breaches.

#### **4.1 Background**

In this background situation of events in the African Continent vis-à-vis conflicts and its effects on the people of the continent, I intend to express my personal views and opinions; which were of course based on general knowledge. The continent of Africa has witnessed more wars and violent conflict than any other continent of the world in the last 50 years. These wars and conflicts had resulted in the deaths, torture, maiming and gross violation of the rights of a great number of the population of Africa. No region of the Continent has been left out of these incessant wars and conflicts that had bedeviled the continent over the years. In West Africa, there were the civil wars in Nigeria in the late 1960s; in Liberia, there have been two major civil wars; the first one took place in the late 1980s to the early 1990s, this led to the assassination of the



then head of state Gen. Samuel Doe and the second civil war leading to the overthrow of Mr. Charles Taylor took place between 2002/2003. There were also the civil wars in Sierra Leone between the RUF and the government; and the recent one in Cote d'ivoire between the Muslim dominated north and the Christian south.

In southern Africa there was the long war in Angola which only came to an end after the death of the rebel leader Jonas Savimbi. In the east and central Africa, almost all the countries in the region had experience one form of conflict or another which resulted in the death of many innocent civilians. First, there was the civil war in Democratic Republic of Congo in the 1960s, there was also the endless conflict in Burundi between the Hutus and Tutsis; there were also conflicts in Central African Republic; the civil war in Uganda between the LRA and the government of Uganda. The Rwandan conflict between the Hutus and Tutsis which resulted in the 1994 genocide was a common knowledge and of course the ongoing conflicts in the DRC and Sudan.

In the horn of Africa, there was the war between Ethiopia and Eritrea and of course the endless civil war in Somalia. In the north, there was a violent conflict in Algeria in the early 1990s as a result of the annulment of the general election of 1993 which the Islamic fundamentalists were poised to win and not forgetting the war of independence being waged by the Saharawi Peoples Republic against Morocco. The list goes on and on without any permanent solution in sight and I must add that all these conflicts and wars enumerated above are common knowledge to all discerning minds and hence one need not any authority to back them up.

What could be the reason(s) for these incessant wars and conflicts in Africa? One may say that the major reasons for these trends of events in Africa could be divided into three, namely: a) the colonization of Africa by the Europeans and the

attendant balkanization of the continent without regard to national boundaries and languages; b) poverty and struggle for the control of the natural resources and c) bad leadership.

The European colonizers cared less about the ethnic nationalities in Africa and their original boundaries. What matters to them was their economic interests and administrative convenience. At the 1885 Berlin conference, the colonizers sat together to share among them the continent of Africa without knowing who the peoples are and what will suit them. One of the consequences of these balkanizations was that the peoples and nations were brought together to form a country against their will, and today years after the exit of the colonizers, there has continued to be endless agitation by one ethnic group or the other and complain of marginalization.

There is also the problem of abject poverty among the people of Africa and the struggle to gain control of mineral and natural resources as a means of getting leverage over poverty and want. These struggles for the control of natural and mineral resources have ended up pitching the people against one another. A case in point was the civil war in Sierra Leone and the on the going war in DRC.

The third major factor encouraging the endless wars and conflict in my opinion is the issue of bad leadership in Africa. Africa has been very unfortunate in having many corrupt and selfish leaders who cared less about the welfare of their people. Leadership in Africa has become the most lucrative business hence the struggle and fight to gain control of power. These struggle to gain control of power always result in wars and violent conflicts, as each tribe or religious group will want to rally round their own person whom they believe will better their lots when he eventually ascend to power. Also the African leaders knowing how they came to power will always want to show solidarity to one another in the hope that when they

eventually lose power, their other colleagues will offer them refuge in their county. This act of showing solidarity to each other has made the African leaders to condone and sometimes connive with their other colleagues in perpetrating the evils and maladministration that have bedeviled most African countries today.

The above in my view remains the major courses of wars and conflicts in Africa. Although they may be other course, but in most of the wars and conflicts in Africa, the above three reasons remain the most prominent courses.

#### **4.2 Prevention of conflicts and its effects in African: the role of the United Nations**

As noted above, Africa more than any other continent has witnessed the greatest number of conflicts in the last 50 years. Conflicts and wars whenever they occur always come with grave human rights violations. This being so, the African Union in its Constitutive Act reiterated its attachment and interest to the protection and promotion of human rights in Africa. Consequently as part of the objective of the AU, it is provided thus in article 3(e) of the AU Constitutive Act: “Encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights.”<sup>141</sup> The AU Act further provides that the AU shall strive to “promote peace, security and stability on the continent and to promote and protect human and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant human rights instruments.”<sup>142</sup> Some of the principles of the Union include the promotion of gender equality, respect for

<sup>141</sup> Constitutive Act of the African Union, Article 3(e), July 11, 2000, CAB/LEG/23.15,479

<sup>142</sup> Constitutive Act of the African Union, Article 3(f) and 3(h), July 11, 2000, CAB/LEG/23.15,479 .

democratic principles, human rights and good governance;<sup>143</sup> it further provide for the respect and sanctity of human life.<sup>144</sup>

The AU Act also provided that the African Union shall function in accordance with certain principles which are aimed at promoting and protecting human rights in Africa as well as preventing genocide, war crimes and crimes against humanity. Accordingly the Act provides thus: “the right of the Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely, war crimes, genocide and crimes against humanity.”<sup>145</sup> This provision is very important in the prevention of grave human rights violations as it grants the AU the right to intervene in another member state’s territory pursuant to a decision of the Assembly of Heads of states in order to stop acts of genocide, war crimes and crimes against humanity.

On the 9<sup>th</sup> of July 2002, at the 1<sup>st</sup> ordinary session of the AU Heads of States and Government held in Durban South Africa, the African Union adopted the protocol relating to the establishment of the Peace and Security Council, hereinafter called the protocol. The protocol provides for an African Peace and Security Council to replace the OAU Mechanism for Conflict Prevention, Management and Resolution.<sup>146</sup> According to article 3(b) of the protocol, the objective of the Peace and Security Council shall include among others, to anticipate and pre-empt armed conflict within the African continent. The Peace and Security Council’s function shall also include interventions in accordance with article 4(h) of the AU Act.<sup>147</sup>

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<sup>143</sup> Ibid, article 4(m)

<sup>144</sup> Ibid, article 4(o)

<sup>145</sup> Ibid, article 4(h)

<sup>146</sup> African Union Protocol for peace and Security, article 22(1), July 9, 2002

<sup>147</sup> Ibid, article 6(d)

The protocol also provides for the establishment of an African standby force for rapid and prompt deployment at the appropriate notice.<sup>148</sup> This standby force shall however be on an ad hoc basis, to be constituted as the need arises. It was in pursuance of the provisions of article 6(d) of the protocol that the AU Mission in Darfur, Sudan was constituted. So far, most commentators and observers have endorsed the activities of the AU Mission in Sudan and were of the opinion that the Mission have done creditably well but needs support and more funding and equipments to enable it perform better.

In 2004, the UNSC endorsed the activities of the AU Mission in Darfur, Sudan and “welcomes and supports the intention to augment” the Mission activities.<sup>149</sup> Also the international development committee of the British House of Commons, in its report observed thus: “We unreservedly welcome the AU’s involvement in Darfur, for two reasons. First, the AU’s involvement signals a new commitment by African countries to take responsibility for dealing with the problems of their neighbours, a commitment which will in time do much to enhance the world’s ability to deal with crisis and conflicts. Second and more importantly the AU was and remains the only entity willing to involve itself so fully in trying to tackle the crisis and protect the people of Darfur.”<sup>150</sup>

From the above, we can say that the AU Constitutive Act and the Protocol on peace and security presents a very impressive normative and institutional structure for the prevention of conflicts which have the potential of causing grave violations of human rights in Africa. What are required for more effectiveness are support and

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<sup>148</sup> Ibid, article 13(1)

<sup>149</sup> See paragraph 2 of UN Security Council Resolution 1556 of 30 July 2004 and paragraph 2 of Resolution 1564 of 18 September 2004. (Available online) [http://www.un.org/Docs/SC/unsc\\_resolutions04.html](http://www.un.org/Docs/SC/unsc_resolutions04.html)

funding as well as an elaborate and very effective norm-enforcement mechanisms for effective result. This is therefore where the United Nations and the rich western nations need to come in to assist. There is no need for new and separate legal framework or mechanism from the international community to be able to tackle the problems of wars and conflicts in Africa.

It would be recalled that the Independent Inquiry on the role of the United Nations in the 1994 Rwandan genocide made 14 different recommendations in its report. Some of the recommendations include that: “Renewed efforts should be made to improve the capacity of the UN in the field of peacekeeping, including the availability of resources: political momentum for action should be mobilized at the Millennium Summit and Assembly. In each peacekeeping operation it should be clear which Rules of Engagement apply.”<sup>151</sup>

The Independent Inquiry also recommended that efforts should be improved in the protection of civilians in conflict situations. The UN, the Security Council and troop contributing countries must be prepared to act in the prevention of genocide or gross violations of human rights anywhere it occurs. Also the political will to act at all times and in all situations should be subjected to the same standard.<sup>152</sup>

In the area of improving the capacity of the United Nations in the field of peacekeeping through the availability of resources, as recommended by the Independent inquiry, the United Nations could make use of the AU mechanisms which is already on ground and working. Resources should be mobilized by the UN to support the African Union standby force to enhance its effectiveness and efficiency. By investing resources in the AU standby force, the UN could help make the force a

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<sup>150</sup> Darfur, Sudan: The Responsibility to protect, 5<sup>th</sup> report of session 2004-05, International Development Committee, House of Common UK, vol. 1, 30 March 2005 p. 39

<sup>151</sup> Ibid p.53

permanent peace keeping force dedicated to responding promptly to any threat of peace and security in the continent. Mobilizing resources for the AU standby force and making it more effective and efficient to respond to the security needs of the African continent, will also be another means of responding to the independent inquiry's recommendation for the UN to act to prevent genocide and other gross human rights abuse anywhere they occur in the world. It will also be the duty of a well equipped trained African standby force to protect civilian populations in times of conflicts; which of course was part of the recommendations of the Independent Inquiry on the role of the UN in Rwanda.

The above suggestion that the UN should mobilize resources to support the operations of the African Union mechanisms for peace and security, particularly the African standby force is of course not out of place. This is so because article 52 of the UN Charter encourages resort and support for regional arrangement for the maintenance of international peace and security. In this regard the UNSC is encouraged to work with regional bodies and institutions in carrying out its major task of maintaining international peace and security. Also paragraph 139 of the September 2005 Millennium +5 outcome document that endorsed the norm of responsibility to protect supported resort to regional arrangements by the UN in the exercise of its secondary responsibility to protect populations from grave human rights violations, where their national governments fails them.

Considering how the international community fared in its efforts to intervene in Somalia in 1993 and other failed attempts to intervene militarily in Africa, it is really imperative that the international community should take the case of Africa very seriously and fully back the AU mechanisms for conflict prevention and maintenance

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<sup>152</sup> Ibid p.53

of peace and security in Africa. This to my mind should be the most effective way of tackling the incessant cases of wars and conflicts in Africa and its consequences. The UN from what happened in Rwanda and now in Sudan should fully come out in support of the African Union and together they can find a more lasting solution to the prevalent crisis and conflicts in Africa. This in my view should be the way forward in tackling cases of grave violations of human rights in Africa.



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