

The Security Council Response to Mass Atrocities: A Case Study of Rwanda and Darfur

*Asst. Zeynep Elibol**

I. Introduction

The mass atrocities taking place in internal conflicts and the obstacles in responding to massive human rights violations in the context of such conflicts have long been in the agenda of the international community, as Koffi Annan stated in the Millenium Report of the Secretary-General, “Wars since 1990s have been mainly internal. They have been brutal, claiming more than 5 million lives. They have violated, not so much borders, as people. Humanitarian conventions have been routinely flouted, civilians and aid workers have become strategic targets, and children have been forced to become killers. Often driven by political ambition or greed, these wars have preyed on ethnic and religious differences, they are often sustained by external economic interests, and they are fed by a hyperactive and in large part illicit global arms market.”¹

It is beyond dispute that the massacres that took place in Rwanda and Darfur have taken their places in history as black dots of humanity and examples of a drastic failure of the international community holding aloof of the approach of a slaughter that was even hesitated to be called as “genocide” before it all ended. There are indeed several parameters that caused this failure, from various state to non-state actors, including

* LL.M. Research Assistant Koç University Law School

¹ Annan, Kofi A., *‘We the peoples’: the role of the United Nations in the 21st century*, New York: United Nations Dept. of Public Information, 2000, p. 43.

the inner political atmosphere that was influenced by the foreign states, especially the colonial powers of the cold war era, and the dynamics in the world organization, the United Nations, which depends highly on the interests of its Member States. More glaring than the role of such factors is the failure of the international community to even mitigate the atrocities and prevent the upcoming ones. The United Nations (UN), as the most prominent international body which holds the capacity to intervene where it sees a threat to peace and security via the decisions of its primary organ with such authority, the Security Council², has thus been the target of human rights activists, NGOs, regional organizations, as well as member states of its own, for failure to act and a lack of deriving lessons from the former failures.

As Kofi Annan indicates the high level of expectations of the international community from the UN Security Council, which is assigned responsibility for maintaining international peace and security, he asserts that only the Security Council has the authority to determine whether the internal situation in any State is so grave as to justify forceful intervention and further states, "The Council's authority depends not only on the representative character of its membership but also on the quality and speed of its decisions. Humanity is ill served when the Council is unable to react quickly and decisively in a crisis"³.

With this view, this essay focuses on the causes of the actions, inactions, failures and weaknesses of the Security Council with connection to the situations in Rwanda and Darfur, with a critical view reflecting different perspectives; starting with a general information regarding the mandate of the Security Council, proceeding with the briefing of the Security Council response regarding both situations and concluding

² According to Article 24 of the UN Charter, "in order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf". UN Charter Art. 24.

³ Annan, Kofi A., *The question of intervention : statements by the Secretary-General*, New York: United Nations Dept. of Public Information, 1999, p. 11.

with the analysis of these responses embracing the factors causing such attitude.

II. Mandate of the Security Council

Before marking and discussing the role of the Security Council in the particular cases, the mandate of the Security Council relevant to this study should be mentioned briefly. First of all, it should be stated that The Security Council is given the primary responsibility for the maintenance of international peace and security under Article 24 of the UN Charter, and the only express limits to the power of the Security Council while fulfilling its role are the purposes and principles of the UN, which are stated under Article 1 of the Charter. Pursuant to the same article, the Member States agree that the Security Council acts on their behalf, meaning that the Council is competent to take binding decisions on behalf of its member states⁴. As to the particular aspects of the mandate of the Security Council built upon this general responsibility, Chapter VI on the peaceful settlement of disputes and Chapter VII regarding action based on threats to peace, breaches of peace, and acts of aggression have great significance in terms of situations where belligerencies and human rights violations occur or about to take place⁵. Once the Council decides that the situation constitutes threat to peace under Article 39⁶, it may decide either to impose non-military enforcement measures under Article 41, or military measures under Article 42. The Security Council may also authorize a Member State to take military action under this provision if it deems necessary⁷.

⁴ Österdahl, Inger, *Threat to the peace : the interpretation by the Security Council of Article 39 of the UN Charter*, Studies in international law (Stockholm, Sweden), v. 13. Uppsala: Iustus Forlag, 1998, p. 28.

⁵ Other sources of mandate include Chapter VIII regarding the regional arrangements and XII on the international trusteeship system.

⁶ As to the determination of the existence of a threat to peace under Art. 39, see generally, Schott, Jared, "Chapter VII as Exception: Security Council Action and Regulative Ideal of Emergency." Vol. 6, Issue 1, 2007 25-80, Web.22 Jun 2009.

⁷ This competence is however contested and it is argued that the responsibility stipulated in Article 24 of the Charter is conferred solely upon the Security Council, precluding the Council to authorize a single state to act on behalf of all other Member States, which did not give such authorization to any state but the Security Council. See Österdahl,

It is of particular importance for the Security Council to determine the cases where there is a threat to peace in order to take effective action, especially considering that Chapter VII was initially construed to apply in breaches of international peace in the classical sense by state-to-state violence, whereas what the Security Council confronts with today is also intra-state violence⁸. In this sense, the goal of the Security Council to promote and encourage respect for human rights under Article 1 paragraph 3 of the UN Charter, as well as respecting the principle of equal rights and self-determination of peoples under paragraph 2 of this article while providing universal legitimacy by bearing in mind that the Charter allows the use of armed force only if there is common interest, requires a delicate balancing in situations where the need of humanitarian intervention is contended⁹.

After highlighting the general aspects of the legal framework the Security Council is competent to act upon, the response of the Council in terms of the particular situations is now to be articulated and analyzed.

III. What happened in Rwanda?

As Gambari, the Nigerian representative in the Security Council in 1994 and 1995, states, the ideological conflicts and the power struggle between the two superpowers, blocking the way of the UN action in many cases during the Cold War era, left its place to the rivalries stemming from subnationalism and ethnicity, which had been “suppressed by

p. 29, 30. For detailed information and discussions about enforcement action in civil war situations and humanitarian intervention, see generally, Walter, Christian, “Security Council Control over Regional Action”, *Max Planck Y.B. U.N. L.* Vol. 1, 1997, 129-192, Web.20 Jun 2009, pp. 143-171.

⁸ Fröhlich, Manuel, “Keeping Track of UN Peace-keeping - Suez, Srebrenica, Rwanda and the Brahimi Report”, *Max Planck Y.B. U.N. L.* Vol. 5, 2001, 185-248, Web.22 Jun 2009, p. 214.

⁹ For the views about peace-keeping in internal conflicts and humanitarian intervention see generally Khan, Rahmetullah, “United Nations Peace-keeping in Internal Conflicts, Problems and Perspectives.” *Max Planck Y.B. U.N. L.* 4(2000) 543-580, Web.22 June 2009. The author gives the Kofi Annan perspective and its criticism regarding humanitarian intervention. See Khan, pp. 565-569. For the advantages and drawbacks of a wide interpretation of threat to peace under Article 39 see Österdahl, pp. 21, 22.

local leaders, with the help of external powers” for decades¹⁰. The Rwanda crisis leading to genocide constitutes one that derived from such rivalry.

The ethnically motivated civil war between the Hutu dominated government and the Rwandese Patriotic Front (RPF), which involved the children of the Tutsis who had been sent to exile and fled the country during the 1959 revolution, broke out in 1990¹¹. After a three-year warfare between the forces, a peace agreement was signed between the parties, namely, Arusha Accords, in 1993, which could only mitigate the tensions for a limited amount of time. When the aircraft carrying the presidents of Rwanda and Burundi was shut down over the Rwandan capital of Kigali on 6 April 1994, the rivalries turned into a massacre, which amounted to an estimated 500,000-1,000,000 lives, and continued until the RPF obtained the effective control of the country after June 1994¹².

As to the steps taken by the Security Council in the course of these events, the resolutions enacted by it and the decisions taken which generally comprised the authorization of a military intervention, the establishment of an arms embargo and founding of the International Criminal Tribunal for Rwanda¹³ should first be indicated. Until the Security Council determined that the situation in Rwanda constituted a threat to peace and security with its Resolution 918 in 1994¹⁴, it enacted a number of resolutions¹⁵ which intimated the declaration of such a threat by stating that the Security Council was highly concerned by the warfare in Rwanda and its “adverse consequences” in terms of the maintenance of peace and security.

¹⁰ Gambari, Ibrahim A.. “An African Perspective”, *The UN Security Council, From The Cold War To The 21st Century*, Ed. David M. Malone, London: Lynne Rienner Publishers, 2004, p. 513.

¹¹ For detailed information regarding the historical background of the Rwanda conflict see “The Rwandan Genocide: How It Was Prepared”, *A Human Rights Watch Briefing Paper*, Apr. 2006, Human Rights Watch, <<http://www.hrw.org/legacy/backgrounder/africa/rwanda0406/>>.

¹² Schweigman, David, *The Authority of the Security Council under Chapter VII of the UN Charter*, Vol. 8, Hague: Kluwer Law International, 2001, pp. 125,126.

¹³ See *Ibid.* pp. 126-134.

¹⁴ S/RES/918 (1994), 17 May 1994, preamble.

¹⁵ See S/RES/812 (1993), 12 March 1993; S/RES/846 (1993), 22 June 1993.

The Security Council established the 'United Nations Observer Mission Uganda-Rwanda' (UNOMUR) in 1993 under its Resolution 846, with the aim of verifying that no military assistance reached to Rwanda¹⁶. UNOMUR, which was allocated at the Ugandan side of the Rwanda border, was incorporated to another peacekeeping operation in the same year¹⁷, namely 'The United Nations Assistance Mission for Rwanda' (UNAMIR), established to monitor compliance with the Arusha Accords and contribute to the security of the city of Kigali, *inter alia*, anticipating the establishment of a weapons secure area by the parties both in and around the city¹⁸. Adjustments to the mandate of UNAMIR was made with Resolution 912 in April 1994, which included assistance to humanitarian relief operations and position as an intermediary between the parties; and the significance of this adjustment lies particularly in the decrease of the size of UNAMIR troops to a number of 2,500 in accordance with the catastrophic situation caused by the rapid acceleration of killings in the region.

The resolutions stated above entailed merely a condemnation of the violence going on in the region, particularly the impunity enabling the armed persons to kill civilians, until the indication of the threat to peace and security in Resolution 918 pursuant to Article 39 of the UN Charter paved the way to the use of the Security Council's Chapter VII powers under the UN Charter, leading to the expansion of UNAMIR's mandate and the increase of number of its troops to 5,500, as well as the

¹⁶ See *Ibid.*, paras. 2 and 3. The establishment of a mission as the Security Council's first formally engagement in the situation took place after the Ugandan government asked the UN to send an observer mission to verify that Uganda was not involved and the permanent representative of Rwanda officially demanded that the Security Council initiated a monitoring force on the Uganda-Rwanda border. See Adelman, Howard and Astri Suhrke, "Rwanda", *The UN Security Council, From The Cold War To The 21st Century*, pp. 486, 487.

¹⁷ UNOMUR's mandate was not affected by the establishment of UNAMIR according to para. 3 of S/RES/891, 20 Dec. 1993, and it was terminated with S/RES/928 (1994), 20 June 1994.

¹⁸ S/RES/872 (1993), 5 Oct. 1993, paras. 2 and 3.

establishment of an arms embargo¹⁹ and a Sanctions Committee²⁰ under Article 41 of the UN Charter. The International Commission of Inquiry established by the Secretary General upon the instruction of the Security Council collected several evidence pertaining to violations of the arms embargo, particularly by Zaire²¹; however, no action was taken against these violations by the Security Council²².

The expanded mission established under Resolution 918, which was named UNAMIR II, acquired the mandate of self-defense action in order to stop and prevent the harm given to protected areas and populations, as well as to the United Nations and other humanitarian personnel to provide humanitarian relief in a better sense²³. Notwithstanding, the lack of sufficient logistical support and challenges in attaining troops required expeditious assistance to the UN forces, i.e. the authorization of intervention by the Security Council according to Article 42 of the UN Charter, welcoming member states to contribute to the United Nations mission with the means of a temporary operation²⁴, which led to the launch of 'Opération Turquoise' by France on 23 June 1994. Here, it is important to note that the Security Council emphasized the 'impartial and neutral' character of the operation in the resolution authorizing intervention, meaning that it cannot be regarded as an 'interposition force between the parties', before pointing out the severity of the situation in terms of the tragic humanitarian crisis in the region²⁵. Opération Turquoise, which

¹⁹ The embargo was not obeyed and The Security Council called upon the parties to comply with it in, S/RES/997 (1995), 9 June 1995, para. 4. The concern of the Council with regard to the violation of the embargo was reiterated in S/RES/1013 (1995), 7 Sept. 1995, preamble. It was decided in Resolution 1011 that the embargo would be terminated on 1 September 1996; see S/RES/1011(1995), 16 Aug. 1995, para. 8.

²⁰ The Sanctions Committee was established under rule 28 of the provisional rules of procedure of the Security Council. S/RES/918, para.14.

²¹ S/RES/195 (1996), 13 March 1996.

²² Schweigman, p. 127.

²³ See S/RES/ 918 paras 3-5.

²⁴ See S/RES/929 (1994), 22 June 1994, preamble.

²⁵ For more detailed information and discussion of the French intervention and the 'Opération Turquoise', see Hasenclever, Andreas, "Might For Rights: The French Intervention in Rwanda 1994", *Redefining Sovereignty, The Use of Force After the Cold War*. Ed. Michale Bothe, Mary Ellen O'Connell, Natalino Ronzitti, New York: Transnational

comprised about 2,500 French troops reinforced by approximately 600 African troops, mainly protected fleeing Hutus by setting up a ‘humanitarian protected zone’ on the southwest border with Zaire, and was terminated in late August because of the new government’s opposition, leaving UNAMIR II as the sole force undertaking the responsibility in the safety zone, until its mandate came to an end in March 1996²⁶.

After the massacres that broke out in April 1994 ended, it was decided by the Security Council to establish an International Criminal Tribunal for Rwanda under Resolution 955²⁷, pursuant to the evidence of crimes amounting to genocide by the Commission of Experts established by the Secretary-General²⁸, in order to prosecute persons responsible for genocide and other violations of international humanitarian law. Since this paper discusses the reasons led to the genocide and not the aftermath of it, it will suffice here to observe that the Security Council again acted under its Chapter VII powers, particularly pursuant to the measures provided under Article 41, while establishing the ICTR²⁹.

IV. Rwanda: Why a failure?

Before analyzing the chain of events in accordance with the above mentioned Security Council response from different perspectives, it should be pointed out that the use of the term “failure” refers neither to a full defeat nor a total neglect of the Security Council to atrocities with no effort of resolving the issues, as will be observed below. The use of this

Publishers, 2005, pp. 251-275. Here the author opposes to the arguments cynical to the French intervention and asserts that it was based on humanitarian reasons.

²⁶ Schweigman, p. 130.

²⁷ S/RES/955(1994), 8 Nov. 1994. The Tribunal is fully named: “International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring States, between 1 January 1994 and 31 December 1994.”

²⁸ The Commission of Experts was established pursuant to S/RES/935(1994), 1 July 1994.

²⁹ Schweigman, p. 140. See also Österdahl, pp. 27,83-84. The author points to the establishment of International Tribunals as enforcement measures different from the ones of a traditional sense with important consequences.

term is however appropriate if for nothing else, for the failure of the Security Council to use all its capacity to prevent the killings in the regions, resulting in genocide.

The Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda (The Rwanda Report), which was published in 1999³⁰, five years after the killing of approximately 800,000 Tutsis and moderate Hutus, clearly shows that the UN accepts to bear responsibility with regard to this slaughter that happened within days³¹. Accordingly, the genocide was “a failure, for which the United Nations as an organization, but also its Member States, should have apologized more clearly, more frankly, and much earlier.”³² The report cites various pieces of evidence such as the Report of the Special Rapporteur of the Commission on Human Rights³³, pointing to human rights violations taking place in Rwanda, six months before the April massacre took place. The Rwanda report indicates that the killings amounting to genocide were ignored by the Security Council for a long time, until it was too late to act.

Adelman and Suhrke assert that the Rwanda case is “possibly the greatest failure of the UN in its history”. According to the authors’ analysis, the Rwanda case points to the failure of the Security Council “in its promotional role in relation to the UN Charter as a whole”, meaning, it failed in fulfilling its role in the field of preventive diplomacy³⁴ under Chapter VI, as well as its Chapter VII powers by “adopting a passive and contingent role in relation to security”³⁵. Additionally, the Security Coun-

³⁰ Report Of The Independent Inquiry Into The Actions Of The United Nations During The 1994 Genocide in Rwanda (Rwanda Report), Doc. S/1999/1257, 16 Dec. 1999. Web. <http://daccessdds.un.org/doc/UNDOC/GEN/N99/395/47/IMG/N9939547.pdf?OpenElement>.

³¹ Fröhlich, pp. 187-188.

³² Rwanda Report, p. 34.

³³ Ibid., p. 3.

³⁴ Keating gives information regarding the failure of the preventive diplomacy by also claiming that the Security Council should have been involved in the process before the conclusion of the Arusha Accords. Keating, Colin, “An Insider’s Account”, in *The UN Security Council, From The Cold War To The 21st Century*, p. 501.

³⁵ Adelman and Suhrke, p. 495.

cil misinterpreted the Genocide Convention and could not set forth the moral and legal responsibility of states with regard to genocide³⁶.

It should first be underlined that neither the Security Council decided on its own initiative to get involved in the crisis before March 1993, nor the Rwandan government officially demanded from the Security Council to act, although the president of Rwanda, Habyarimana claimed that the entrance of Rwandan Tutsi and the Ugandan army to Rwanda constituted a foreign invasion, considering that it is the Security Council's main responsibility to protect the inviolability of states from foreign invasions. Even after deciding upon involvement, the Council adopted a conditional, rather than a proactive form of diplomacy, requiring the commitment of local parties to maintain the peace for its involvement, which did not help in resolving the crisis before it exacerbated. Although other countries in the region and in Europe, took their parts in the conflict as the promoters of peace talks or supporters of one of the belligerents, the UN confined itself at first only to sending observers to the peace negotiations instead of taking an active part in the Arusha process³⁷. Following the RPF's request on March 4 1993 regarding an expanded force of the Organization of African Unity (OAU) to monitor the cease-fire between the parties, the Rwandan and French governments, being concerned with the affiliation OAU forces to RPF called on the Security Council to take the issue to its agenda, with the belief that a UN force would be a much better option to protect their self interests rather than the OAU forces. Although the OAU had also declared the necessity of the support of the United Nations in a joint communiqué after the Dar-es-Salaam summit meeting, it was the Rwandan-French initiative which enabled the issue to gain importance as to require a UN action for the Security Council, after the cease-fire had been concluded and a peace agreement was about to be signed.

As stated above, the passivity of the Security Council and its late involvement in the situation was evaluated as a failure of undertaking pre-

³⁶ Ibid.

³⁷ Ibid. pp. 485, 486.

ventive and mediation measures under Chapter VI of the UN Charter³⁸. This lack of engagement can partly be explained by the preoccupation of the Security Council with other issues of crisis such as the conflicts in Bosnia, Somalia, Iraq, North Korea and Haiti during that period. It also points to the lack of qualified information received by the Security Council Member States and the need for the Security Council to provide periodic background briefings with the use of independent facilitation instead of confining itself to formal reports of the Secretariat³⁹. With this respect, Fröhlich takes the attention to the importance of sharing information of the Member States via their respective intelligence services in order to maintain the success of peacekeeping operations⁴⁰. Another aspect precluding the Security Council from becoming aware of the severity of the situation is the indication of the delegation of the Rwandan government and the RPF in New York regarding the success of the peace negotiations followed by the Arusha Accords.

The optimism surrounding the Security Council also affected the force structure of UNAMIR, which eventually became a target of the fighting forces in the region. Contrary to the requested mandate in the Arusha Accords, the functions of UNAMIR was limited to securing the city of Kigali as opposed to the whole country, with no entailment of protecting civilians, collecting illegal arms or taking action against armed persons⁴¹. As UNAMIR's initiation was regarded as a peacekeeping operation under Chapter VI powers of the Security Council, the mandate of the mission was not to use force, except in self-defense⁴². The behavior of the Security Council in terms of the limited mandate of UNAMIR can be explained by its insight that it was to act solely as a neutral mediator in the context of a civil war⁴³. However, this insight was totally wrong since the

³⁸ Ibid., pp. 487, 488.

³⁹ Keating, pp. 500, 501.

⁴⁰ Fröhlich, p. 233.

⁴¹ S/RES/872(1993), 5 Oct. 1993.

⁴² This was formulated by the Secretary-General as a part of five essential principles in a peace-keeping operation. See Fröhlich, pp. 200-201. The author then discusses the element of consent in peace-keeping operations, including Rwanda. See Ibid, pp. 213, 214.

⁴³ For the discussions with regard to impartiality and neutrality during peace-keeping mis-

killing of thousands of civilians transcended the border of belligerencies in the context of a civil war, where third parties have to stay neutral⁴⁴. Furthermore, even with the assumption that the mandate comprised one of a classical peace-keeping operation, the fact that the peace-keeping troops themselves became targets would be sufficient to constitute a case of self-defense, yet the main problem here was not the theoretical definition of self-defence but the lack of efficiency in using force with the provided number of troops⁴⁵.

According to Khan, the insufficient number of troops on the ground showing the indifference of the Council to the situation nearly constituted “criminal negligence”⁴⁶. Indeed, the decrease in the number of troops contrary to the force commander General Romeo Dallaire’s expectations, especially after sending a cable to the Security Council indicating that genocide was serious possibility⁴⁷, signified the upcoming failure in terms of preventing the genocide⁴⁸. It was initially determined that UNAMIR’s mandate would come to an end in April 5 and after the Secretary-General’s report on March 30 referred to “ethnic crimes” in the region, voices raised from the Security Council stipulating that

sions see *Ibid*, pp. 216-219.

⁴⁴ Khan, p. 551. Here the author enumerates the conditions in a classical state of belligerency, which differed from the instant situation of a massacre. He claims that acting neutral as stipulated by customary international law is relevant only in the context of belligerencies with “well-defined and recognizable leadership, engaged in a civil war conducted in conformity with the laws of war, exercising control over a substantial part of the state’s territory and enjoying the allegiance of the people under occupation.”

⁴⁵ Fröhlich, p. 220.

⁴⁶ Khan p. 552. The author supports his view with the report of the Special Rapporteur of the Commission on Human Rights six months before the genocide took place, indicating that massacres and other serious violations in Rwanda were based on no objective reason but being the member of a certain ethnic group.

⁴⁷ Keating, p. 502.

⁴⁸ For the role of the Secretariat including the deficiencies of the reports sent by the Secretary-General to the Security Council and the “dysfunctional decision making process” caused by the lack of Secretary General’s “providing strategic options” to the Security Council see Adelman and Suhrke, p. 490-492. Here, the authors take attention to the enormous difference of the Secretariat’s reporting to the Security Council and the information being received from the field.

UNAMIR would be fully withdrawn unless the parties abided by the requirements of their agreement, instead of expanding its mandate and number in the face of the increasing violence⁴⁹. On April 5 1994, right before the genocide broke out, the Security Council adopted a resolution stating that UNAMIR's mandate would come to an end in about a month, unless the situation was not mitigated by the parties⁵⁰. According to Keating, the logic lying behind this threat was the wrong assumption that both parties actually wanted peace, and it was learned the hard way that the Security Council must always deter from "using the practice of imposing artificial reductions in mandate terms as supposed levers to secure negotiating outcomes in peace processes"⁵¹. The author reveals the oppositions against the continuance of UNAMIR's mandate by the majority of the Security Council members especially after the news regarding the murder of ten Belgian peacekeepers by Hutu militias and the challenges leading to the resolution declaring the downsize of UNAMIR forces, claiming that although not being sufficient to mitigate the situation, it was better than leaving the region completely⁵². In fact, Belgium announced that it would withdraw its peacekeepers after the killing of its soldiers, accompanied by other countries contributing to the peacekeeping troops; and the transfer of forces by Italy, Belgium and France to the field was in fact merely to save their states' own nationals. Hence, the draft resolution initiated by some members of the Council stipulating the reinforcement of UNAMIR could not even come to the process of voting⁵³.

The decision of decreasing the size of UNAMIR was confronted with huge criticism by the defenders of a reinforcement of UNAMIR, and the reluctance of some members calling the massacres "genocide" despite the efforts of other members to take its attention to the genocide trying to gain international support for the strengthening of UNAMIR, was the sign of a major problem in terms of Security Council's response

⁴⁹ Ibid., p. 494

⁵⁰ S/RES/909 (1994), 5 April 1994.

⁵¹ Keating, p. 505.

⁵² Ibid, p. 508.

⁵³ Adelman and Suhrke, p. 494.

to catastrophes, namely the absence of political will⁵⁴. The Rwanda Report also pointed to this problem by articulating that the Security Council and the troop contributing countries “must be prepared to act to prevent acts of genocide or gross violations of human rights wherever they may take place. The political will to act should not be subject to different standards”⁵⁵. As to the UNAMIR forces, the point Keating makes contrasting many commentators’ arguments referring to the lack of resources is striking⁵⁶. He stresses that logistics, aircraft and money was available both while evacuating foreign nationals from the region and during the France mission, Opération Turquoise. Also refuting that there were not enough troops to deploy, he mainly argues that there was no political will to combine all these resources for stopping the genocide⁵⁷. The lack of political will to act is of grave importance in terms of giving the name to the massacres “genocide”, as much as it is regarding the delay of expansion of UNAMIR forces.

At this point, it is important to mention that the UN General Assembly adopted the Convention on Prevention and Punishment of the Crime of Genocide⁵⁸ (Genocide Convention) where it qualified genocide as a crime under international law and undertook to prevent and punish it. More importantly, it was affirmed by the International Court of Justice that the Genocide Convention gave rise to a pre-existing legal obligation to prevent genocide as a *jus cogens* norm, thus provided that no nation can neglect it⁵⁹. Therefore, the qualification of a human catas-

⁵⁴ Keating, pp. 509, 510; Gambari, pp. 516, 517. The Rwanda Report also reveals this absence: “The lack of political will to react firmly against the genocide when it began was compounded by a lack of commitment by the broader membership of the United Nations to provide the necessary troops in order to permit the United Nations to try to stop the killing.” Rwanda Report p. 25.

⁵⁵ Ibid., p. 37.

⁵⁶ See Gambari, p. 518 for the assertion that equipment for troops, airlifting and communication were lacked. Österdahl also points to the lack of troops and equipment as a constraint for humanitarian intervention. Österdahl, p. 134.

⁵⁷ Keating, p. 510.

⁵⁸ Convention on the Prevention and Punishment of the Crime of Genocide, UN Doc. A/Res/260 A (III), 9 Dec. 1948.

⁵⁹ Reservations to the Convention on the Prevention and Punishment of the Crime of

trophe as genocide has important implications requiring the parties to act immediately in the face of such atrocities. The Rwanda Report also underlines that the Security Council was under the duty to act pursuant to the Genocide Convention and found it guilty of not identifying what was going on in Rwanda as genocide before it was too late to act⁶⁰.

In order to capture the reasons for the delay of naming the acts as “genocide” it is important to acknowledge that “the Council is first and foremost a political institution that functions in concentric circles of interest and influence”, whose most powerful inner part includes the five permanent members, particularly the United States in the context of the Rwanda case⁶¹. As Ibrahim Gambari, the former representative of Nigeria in the Security Council in 1994-1995 puts it: “The United Nations is nothing more than an aggregation and tool of its members that can only be as effective and responsive to world crises as member states, especially the most powerful ones want it to be”⁶².

The United States, as a member state which refrained from ratifying the Geneva Convention for four decades and did so with reservations in 1988⁶³, blocked the use of the term “genocide” in the public comments and deliberations of the Security Council, with a fear of domestic, international and legal pressure for intervention⁶⁴. Moreover, the draft

Genocide, Advisory Opinion, ICJ Reports, 1951, <http://www.icj-cij.org/docket/files/12/4283.pdf>. See, Mendez, Juan E., “The United Nations and the Prevention of Genocide”, *The Criminal Law of Genocide, International, Comparative and Contextual Aspects*, Ed. Ralph Henham, Paul Behrens, Hampshire: Ashgate Publishing, 2007, pp. 228, 229. Mendez also points out that as a preventive element, Article 8 of the Genocide Convention gives the contracting parties the right to call upon the competent organs of the UN to take action on the prevention of repression of acts of genocide, which has not yet been invoked.

⁶⁰ See Rwanda Report pp. 30, 38.

⁶¹ Gambari, p. 519.

⁶² *Ibid.*, p. 512.

⁶³ Keating, p. 508.

⁶⁴ Gambari, p. 519. The author states that the first time that the term “genocide” was used by the United States as to the events in Rwanda was when Bill Clinton used it in a statement during his visit Kigali in March 1998, which can be regarded as a late apology. See also Ronayne, Peter, *Never Again? The United States and the Prevention and Punishment of Genocide since the Holocaust*, New York: Rowman & Littlefield Publishers, 2001, p. 151.

resolution presented to the Security Council on May 6 comprising the reinforcement of UNAMIR forces entered into force on May 17 and there was a serious hindrance in the way of reinforcement because United States did not agree with the commander's plan about the structure of the operation⁶⁵. The United States was also the only nation which did not investigate its response to genocide, near other powers such as French and Belgium, as well as the OAU, which assumed this "*examen de conscience*"⁶⁶.

Supplementary to the attitude of United States, the United Kingdom was also not in favor of an enforcement action under Chapter VII of the UN Charter. Additionally, China as well as other developing countries hesitated to regard the events as "genocide", considering the possible implications it may have on their domestic situations in the future⁶⁷. Keating asserts that China's opposition was very forceful not in public but private communications, claiming that it was generally against the use of human rights language in the Security Council⁶⁸.

The fact that the Rwandan government was a Security Council member during the discussions pertaining to UNAMIR's mandate and when the genocide broke out is noteworthy in this context. The membership of Rwanda in the Council meant that only one of the parties to the conflict could participate in the discussions and considerations of the Council throughout the whole process⁶⁹. As alleged by Keating, the presence of the Rwandan government in the Council impeded that the Secretariat sincerely transferred the gravity of the situation to the Council in the first place⁷⁰. Furthermore, the Rwandan government was

⁶⁵ Keating, pp. 509, 510. The author points to the almost "surreal" character of such a debate on a technical issue at a time lives of thousands of civilians were at stake and calls for an update of the consultation mechanism regarding technical military issues as a reform of the Security Council.

⁶⁶ Khan, p. 555.

⁶⁷ Ibid., p. 553.

⁶⁸ Keating, p. 508.

⁶⁹ Fröhlich, p. 239.

⁷⁰ Keating, p. 502. Here, the author emphasizes the role of the General Assembly and argues that it should be more conscientious while electing a state to the Council which has

acquainted with the information regarding the discussions about the mandate of UNAMIR during the killings⁷¹ and tried to take the attention to RPF actions, undermining the acts of ethnic cleansing pursued by the Hutus. It also managed to block a consensus in the nonaligned part of the Council for several weeks and hindered that an efficient discussion took place regarding the Council's stance in informal consultations⁷².

As stated above, the use of the word "genocide" was not used in the Security Council resolutions, starting with the presidential statement pointing to the real situation in Rwanda⁷³; though, the wording of the Genocide Convention was used to highlight the gravity of the situation, after some members in favor of referring to "genocide" pressured others with a draft resolution publicly revealing who the spoilers were. Again, while authorizing states to intervene in the situation with Resolution 929, the Security Council abstained from calling the massacres "genocide" and rather stated that some grave human rights violations that could be regarded as a threat to international peace and security may constitute for the Council a basis to act, even if the situation was not qualified as genocide⁷⁴. Despite this statement, the Security Council was too slow and late to act.

To summarize, if the ideal model of the Security Council is one that is not only "representative of the 'international system' as the aggregate interests of the state but also an 'international society' which is more than the sum of its composite state parts by forming a community bound by certain norms" as Adelman and Suhrke asserts, then it can easily be derived that the Council has failed to realize this model. In this sense, if responding effectively to human rights violations is one of the objective's of the Security Council, the members of the Council should refrain from using their veto powers where their national interests are not at stake and not prevent the enactment of resolutions in the way of intervening for

an affiliation with an item on the Council agenda.

⁷¹ Ibid., p. 504.

⁷² Keating, p. 506.

⁷³ S/PRST/1994, 21 Apr. 1994.

⁷⁴ S/RES/929 (1994), 22 June 1994.

humanitarian purposes, as the International Commission on Intervention and State Sovereignty proposes⁷⁵. Actually, taking one step forward, it should be claimed that the national interests of member states must become irrelevant when grave human rights violations are taking place in any part of the world.

The statement of the Nigeria delegation while adopting Resolution 912 to reduce the number of UNAMIR forces is also relevant in this sense: “The issue of the unfolding tragedy in Rwanda transcended politics; rather it was a moral question and went to the heart of the credibility of the United Nations, with implications that would echo well beyond Rwanda”⁷⁶. Indeed, the failure of the Security Council in preventing genocide had significant implications including heated debates about the credibility of the United Nations and various proposals of reform⁷⁷ with the effort of preventing a similar catastrophe in the future. Nonetheless, all these efforts could not prevent the mass killings in Darfur after a decade, leading the international community to question the whole existence, purpose and function of the United Nations once more.

V. Darfur – Another warfare based on ethnicity

The most important common denominator of Rwanda and Darfur is perhaps the existence of a multiethnic state where one ethnicity is tried to be marginalized. Sudan’s population is composed mostly of Arab peoples on the north of the country, whereas African nations constitute the majority of the population in the central and southern part of Sudan. The fact that Sudan was ruled by the members of the Arab tribes in the northern section has caused many rivalries between the government and

⁷⁵ Report Of The International Commission on Intervention and State Sovereignty, *The Responsibility To Protect*. Ottawa, Canada: The International Development Research Centre, 2001, p. XIII. The Report criticizes the Security Council regarding, its “unrepresentative membership; and its inherent institutional double standards with the Permanent Five veto power.” See Ibid. p. 49-55.

⁷⁶ Ibid., p. 516.

⁷⁷ Changes in improving capacities, resources and commitment at the level of the United Nations organization and member states proposed by Fröhlich constitutes a well construed example of such recommendations. Fröhlich, pp. 228-241.

the African people, aggravated by a civil war between the government of Sudan and the Sudan People's Liberation Movement/Army (SPLM), which started in 1983, taking millions of lives and more than half a million refugees fleeing to borders, and was theoretically resolved with a peace agreement in 2005⁷⁸, bringing an end to the civil war, yet far from being sufficient to halt the rivalries and slaughters in Sudan.

Two years before the signing of this peace agreement, another crisis occurred in the western part of Sudan, namely the Darfur region, with an attack of two African rebel groups, the Sudan Liberation Movement/Army (SLA) and the Justice and Equality Movement (JEM), on the government military outposts. These groups were struggling against the social and political marginalization in Darfur and were encouraged by the peace negotiation process between the north and the south, seeking for equivalent power and wealth sharing arrangements with the ones that were obtained by the tribes in the southern and central part of Sudan. The attack of the rebellions was confronted with a quite hasty and violent reaction from the government of Sudan and the Janjaweed militias, effectively controlled and armed by the Sudanese government⁷⁹. Nearly 70,000 men were killed and more than 2 million people were forced to refuge. Not only the people, but also the lands of the tribes and animals were harshly destroyed by the Janjaweed militias⁸⁰. During the course of torture, killings and sexual violence taking place in the region, the government was trying to eliminate responsibility by calling the human rights violations of Janjaweed 'private acts'⁸¹. The ri-

⁷⁸ Levitt, Jeremy I., "The Peace and Security Council of The African Union and the United Nations Security Council: The Case of Darfur, Sudan", *The Security Council and The Use of Force, Theory and Reality – A Need For Change?*, Ed. Niels Blokker and Nico Schrijver, Leiden, The Netherlands: Martinus Nijhoff Publishers, 2005, p. 236.

⁷⁹ Regarding the support of the Sudanese government to the Jenjaweed militias see "Sudan: Now Or Never Again", *ICG Africa Report N80* 23 May 2004, International Crisis Group, p. i.

⁸⁰ See The UN Refugee Agency, "The challenge of protecting internally displaced." *The State of the World's Refugees 2006* 19 Apr 2006. UNHCR. Web.<<http://www.unhcr.org/print/4444d3ce2/html>>.

⁸¹ Bothe, Michael, "International Legal Aspects of the Darfur Conflict", *The Law Of International Relations – Liber Amicorum Hanspeter Neuhold*, Ed. August Reinisch and Ursula Kriebaum, Utrecht: Eleven International Publications, 2007. pp. 1-2.

valries seemed to diminish after the adoption of the political common declaration of Abuja in July 2005 with the mediation of the African Union (AU), and agreeing of the major parties on a peace accord in May 2006. However, these signs of resolutions only served as attempts to mitigate the situation temporarily⁸².

VI. Security Council's response relying on its Chapter VII powers

Before discussing the UN Security Council steps taken in the face of the Darfur crisis, the legal framework of the decisions it may take under the UN Charter pertinent to such situations should be reiterated, putting the emphasis on the Chapter VII powers of the Council. Although international law does not require the non-use of force in terms of internal conflict, it can be observed from experiences such as Rwanda that the Security Council can decide to refer to its Chapter VII powers with regard to an internal conflict, in case of a humanitarian crisis where grave human rights violations take place⁸³. In fact, the Security Council is surrounded with an almost unlimited power in terms of determining that a situation constitutes threat to peace under Article 39⁸⁴, notwithstanding the questions that may arise regarding the legality and legitimacy of its decisions.

It should further be indicated that the international action taken in the Darfur crises took place also at the regional level by the AU near the universal level by the UN, and the acts of the Security Council should be evaluated in this context. The AU on the one hand seem to accept that the UN Security Council has the primary responsibility in maintaining international peace and security⁸⁵, while conferring the duty of 'promoting peace, security and stability in Africa' upon the African Union Secu-

⁸² Ibid., p. 2.

⁸³ Regarding the two kinds of situations where the Security Council resort to Article 39 see Ibid., p. 3.

⁸⁴ Österdahl, p. 26.

⁸⁵ Protocol Relating To The Establishment of The Peace And Security Council Of The African Union (The AUPSC Protocol), Art. 17(1).

riety Council (AUPSC)⁸⁶ on the other, and commits itself to work closely with the UN Security Council⁸⁷. With this regard, the AU maintains the authority to intervene in conflict situations in Africa, reserving to call upon the UN for assistance where necessary⁸⁸, which led to the operation of the UN in 2006, as will be mentioned below.

After the Security Council enacted a resolution in 1994 condemning ‘the acts of violence and violations of human rights and international humanitarian law by all parties’ and called for a political solution of the conflict⁸⁹, it revealed that the situation in Darfur constituted a threat to international peace and security in its next resolution and referred explicitly to its Chapter VII powers⁹⁰. While urging both parties to act without infringing human rights and humanitarian law, the Council asked particularly of the government of Sudan to ‘facilitate humanitarian relief, *i.a.* by granting relief organizations access and by protecting them, effectively and impartially investigate violations of human rights and international humanitarian law, establish credible security conditions for the civilian population, disarm the Jenjaweed militias and resume talks with the dissident groups’⁹¹. Moreover, the Council threatened the government to resort to its enforcement powers under Article 41 of the UN Charter, unless the obligation of the disarmament of militias was not fulfilled⁹². However, the arms embargo referred to in the resolution was limited to

⁸⁶ The AUPSC Protocol, Art. 16.

⁸⁷ The AUPSC Protocol, Art. 17.

⁸⁸ For the discussion of the authority of AU considering the contradiction of its competences with Articles 2(4), 53(1) and 103 of the UN Charter, see Levitt, pp. 228-235.

⁸⁹ S/RES/1547 (2004), 11 June 2004, para 6.

⁹⁰ S/RES/1556 (2004), 30 July 2004, preamble. This resolution followed a joint communiqué of the UN and the government of Sudan, where the UN assured to provide assistance including aid to the affected populations in Darfur and the ones that fled to Chad, and the government of Sudan made various undertakings in the way of providing humanitarian relief. Joint Communiqué between the Government of Sudan and the United Nations, 3 July 2004, web. http://www.un.org/news/dh/sudan/sudan_communique.pdf.

⁹¹ S/RES/1556, paras 1,4,6,14.

⁹² *Ibid.*, para. 6.

the non-governmental entities and individuals in the region⁹³. Although being quite strong and strict in its language referring to the situation and defining the obligations to be followed by the government of Sudan, this resolution was criticized to be too weak in effect in the face of the violence in the region⁹⁴. It was displeasing that reference was made only to the acts of Jenjaweed in the Resolution, excluding violations by the government of Sudan. The resolution neither authorized the use of military force or sanctions against the government of Sudan, nor condemned the government of Sudan for engaging in acts of violence⁹⁵.

In September 2004, the Security Council called upon the Secretary-General to establish an international commission of inquiry to ‘investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties’ also asking whether those violations can be regarded as ‘genocide’⁹⁶. This report, embracing the relevant facts of the case as well as a legal analysis, concluded that ‘crimes against humanity’ were committed in Darfur, but no genocide, since these acts of crime lacked the willful intent to destroy all or part of a racial, ethnic, national or religious group, as indicated in Article 2 of the Genocide Convention⁹⁷. The report also recommended that the case of Darfur would be brought to the International Criminal Court (ICC) according to Article 13 (b) of the ICC Statute⁹⁸.

After the initiation of the report of the International Commission of Inquiry, the deliberations in the Security Council regarding the Darfur conflict was based on three main issues, namely, the security situation in

⁹³ Bothe, pp. 9, 10.

⁹⁴ Ibid., p. 10.

⁹⁵ Levitt, p. 248.

⁹⁶ S/RES/1564(2004), 18 Sept. 2004, para. 12.

⁹⁷ Report of the International Commission of Inquiry on violations of international humanitarian law and human rights law in Darfur (Commission’s report), UN Doc. S/2005/60, 1 Feb. 2005, para. 232. According to the report, the conflict resulted in 1.65 million internally displaced persons, 630,000 otherwise conflict-affected persons in Sudan, and 200,000 refugees from Darfur in neighboring Chad. For discussions regarding genocide, see also Hagan, John, and Wenona Rymond-Richmond, *Darfur and the Crime of Genocide*, 1st ed. New York: Cambridge University Press, 2009. p. 31.

⁹⁸ Commission’s report, paras. 647-649.

Darfur, measures against persons who hinder peace efforts and measures to end impunity, as well as judicial investigations against perpetrators⁹⁹. The preceding resolution pertained to the security situation in the region and led to the establishment the United Nations Mission in Sudan (UNMIS), comprising 10,000 UN peacekeepers, whose mandate was to monitor the ceasefire agreement and the movement of armed groups¹⁰⁰. Still, this resolution did not entail any sanctions until the adoption of a resolution on 29 March 2005, which comprehended travel restrictions and the freezing of assets¹⁰¹. It also established a committee of the Council to monitor measures against individuals who impede the peace process¹⁰². This resolution was also found insufficient since it embraced sanctions classical to the Security Council practice far from being harsh enough to mitigate the situation and the addressees of the sanctions were not necessarily the ones “particularly vulnerable in relation to these restrictions”¹⁰³.

Finally, two days after the enactment of this resolution, the recommendation of the report of the UN Commission of Inquiry on Darfur was accepted by a majority of the Security Council and the Council adopted a resolution referring the Darfur situation to the ICC¹⁰⁴. It is important to express that with this resolution the Security Council showed again that it deemed criminal prosecution a measure under Chapter VII, as a means of restoring international peace and security. Also, as the first Council referral to the ICC, the resolution constitutes an implied recognition of the court¹⁰⁵.

⁹⁹ Neuer, Matthias, “The Darfur Referral Of The Security Council and The Scope Of The Jurisdiction of the International Criminal Court”, *the Yearbook Of International and Humanitarian Law*. Ed. Timothy L.H. McCormack, Avril McDonald, Vol. 8, Hague: T.M.C. Asser Press, 2005, p. 322.

¹⁰⁰ See S/RES/1590 (2005), 24 March 2005, paras. 1 and 4.

¹⁰¹ S/RES/1591(2005), 29 March 2005, paras. 2(d) and 2 (e).

¹⁰² *Ibid.*, para. 2 (a).

¹⁰³ Bothe, p. 13.

¹⁰⁴ S/RES/1593(2005), 31 March 2005. Regarding the abstention of the U.S. and China see Bothe, p. 14, 16, and for the negotiations leading to resolution 1593 see Neuer, p. 322, 323.

¹⁰⁵ Neuer, p. 330.

In 2006, the AUPSC initiated a communiqué endorsing that the peacekeeping operation undertaken by AMIS, the mission of the AU with a mandate to use force for the protection of the civilian population¹⁰⁶, had to be taken over by the UN. In its resolution, the Security Council stated that “concrete steps should be taken to effect the transition from AMIS to a United Nations operation”¹⁰⁷. However, China opposed to this peacekeeping operation as a permanent member with veto power and required the government of Sudan’s consent for the mission. Not surprisingly, the Sudanese government did not even agree upon the enhanced continuation of AMIS as an interim measure¹⁰⁸. It has been more than a year when finally the Security Council approved the creation of a hybrid UN-AU peacekeeping force composed of 20,000 military personnel and approximately 6,000 police officers¹⁰⁹. To sum up, the Security Council action against the crimes in Darfur went no further than the initiation of an arms embargo and a peacekeeping operation, which proved to be enormously weak, taking the contemporary condition of the crisis into account.

VII. Darfur – Still an open wound

In October 2006, Michael Moran had stated in sorrow that not much had changed despite the Security Council decision to send peacekeepers to Darfur and the U.S. government’s condemnation of the slaughters naming them as ‘genocide’¹¹⁰. Still today, the killings of African civilians in Darfur as well as others such as the UN peacekeepers and members of humanitarian relief groups have not come to an end¹¹¹.

¹⁰⁶ Communiqué of the 51th Meeting of the African Union Security Council, 15 May 2006, para. 15, <http://www.amis-sudan.org/psccommunique.html>. Also see Bothe, 6-8 for the action pursued by the AU.

¹⁰⁷ S/RES/1679(2006), 16 May 2006, para. 3.

¹⁰⁸ Bothe, pp. 7, 8.

¹⁰⁹ S/Res/1769(2007)/31 July 2007, para. 2.

¹¹⁰ Moran, Michael, “Inaction Breeds Death in Darfur.” *Council on Foreign Relations*, 31 Oct 2006, web.30 Jun 2009. http://www.cfr.org/publication/11857/inaction_breeds_death_in_darfur.html.

¹¹¹ Some titles for the recent news in Darfur are: “Darfur Peacekeeper killed during carjacking”, 8 May 2009; “Local worker for aid group killed in Darfur”, 24 March 2009; “Peace-

By the end of July 2004, evidence regarding the Sudanese government's acts pursuing a policy of ethnic cleansing against the black population of Darfur and that these might amount to the crime of crimes, "genocide", had already been articulated by various human rights organizations and humanitarian relief agencies¹¹². However, the Security Council's reaction has been conspicuously slow and far from being strong enough to mitigate the situation. Neither the name "genocide" has been given to this mass atrocity, nor has the authorization of a military intervention been considered by the Security Council¹¹³.

It has already been mentioned that the International Commission of Inquiry did not label the situation in Darfur as "genocide". Furthermore, it was found striking that even Kofi Annan did not want to give this name to it¹¹⁴ after his remorseful statement: "...there is none to which I feel more deeply committed than that of enabling the United Nations never again to fail in protecting a civilian population from genocide or mass slaughter"¹¹⁵. When the Bush administration called the slaughters in Darfur "genocide", neither the European Union nor the Human Rights Watch accompanied it¹¹⁶. Although the report of the Commission of Inquiry on

keeper dies in Darfur shootout", 18 March 2009; "Killing will go on' despite Darfur charges", 7 March 2009; "Sudan soldier: 'They told me to kill, to rape children'", 5 March 2009. Web. <http://topics.cnn.com/topics/darfur>.

¹¹² Levitt, p. 248.

¹¹³ With the change of the US administration, the Sudanese government has been alarmed by a possible US military intervention to Darfur. See Tisdall. Simon, "Sudan fears US military intervention over Darfur", *The Guardian*, 15 Jan 2009, web. 25 Jan 2009. <<http://www.guardian.co.uk/world/2009/jan/15/sudan-unamid-obama>>.

¹¹⁴ Office of The Spokesperson for the Secretary General, *Secretary-General's press encounter upon arrival at UNHQ (unofficial transcript)*, New York, 17 June 2004, <http://www.un.org/apps/sg/offthecuff.asp?nid=596>.

¹¹⁵ SG/SM/7263 AFR/196, 16 Dec. 1999, <http://www.un.org/News/Press/docs/1999/19991216.sgsm7263.doc.html>.

¹¹⁶ Hagan and Richmond, p. 31. It has been five years since the US named the crimes as "genocide". Also see, Brocato, Rebecca, "Commemorates 5-Year Anniversary of U.S. Declaration Of "Genocide" in Darfur" [Weblog Congress, Enough, the project to end genocide and crimes against humanity] 26 Jun 2009, Web.27 Jun 2009. <<http://www.enoughproject.org/blogs/congress-commemorates-5-year-anniversary-us-declaration-genocide-darfur>>.

Darfur built up a legal framework relying on the conditions enumerated in the Genocide Convention¹¹⁷, the evidence from the ground including the press releases show that not regarding the crimes as “genocide” is derived from a reluctance of naming as in the Rwanda situation, since the necessity of action would be much more flashy. In other words, not mentioning of a crime with the name of “genocide” can be regarded as a lack of political will to act on the situation. The expectations from the international community regarding a forceful action in the face of genocide can be exemplified with the statement of Princeton Lyman, a Council of Foreign Relations chief Africa expert: “We always thought that if something was finally designated as genocide it would trigger the Genocide Convention and the international community would have to act... What we’re finding is that in itself doesn’t define what has to be done or what can be done”¹¹⁸.

However, even in the absence of genocide, the member states are under an obligation to protect their populations from war crimes, ethnic cleansing and crimes against humanity, pursuant to the text on the Responsibility to Protect articulated in the World Summit, hosted by the UN¹¹⁹. According to paragraph 139 of the World Summit Outcome document, the international community, through the UN, indicates that it is “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

¹¹⁷ The Commission’s Inquiry stating that ‘the government of Sudan has not pursued a policy of genocide’ has been discussed by Schabas, emphasizing that the question of the Security Council did not include whether such a policy was pursued, but whether ‘acts of genocide have occurred’ and emphasizing the implied state involvement in the crime of genocide in the Geneva Convention. See Schabas, William A., “Has Genocide Been Committed in Darfur? The State Plan or Policy Element in the Crime of Genocide”, *The Criminal Law of Genocide, International, Comparative and Contextual Aspects*, pp. 42-47.

¹¹⁸ See Moran, http://www.cfr.org/publication/11857/inaction_breeds_death_in_darfur.html.

¹¹⁹ United Nations General Assembly, 60/1, 2005 World Summit Outcome, A/RES/60/1, 24 Oct. 2005, paras. 138-139.

genocide, war crimes, ethnic cleansing and crimes against humanity.” Furthermore, Kofi Annan referred to the member states at the summit and stated that they were to clarify their willingness “to take timely and decisive collective action through the Security Council, when peaceful means prove inadequate and national authorities are manifestly failing to protect their own populations.” He continued, “Excellencies, you will be pledged to act if another Rwanda looms”¹²⁰.

Despite all the efforts by individual states and several human rights entities as well as ongoing media pressure, the effectiveness of the steps taken by the Security Council have only been as much as the its individual members, especially the most powerful wanted, just as in the Rwandan genocide. One of the main reasons for the absence of an effective ultimatum to the government of Sudan to stop the killings was the opposition of China, one of the veto holders in the Security Council as a permanent member. China disagreed to effective enforcement action since it had economic ties with the government of Sudan, including constructions contracts in Sudan, proliferation of weapons to Sudan and oil purchase from it¹²¹. Russia also took its place as another member with a veto power blocking effective action with similar economic interests¹²².

VIII. Conclusions

In the face of mass atrocities, it is not possible to point to only one factor upon which the harm given to a certain group is rooted. Nonetheless, once rivalries are about to turn into a slaughter of a population by the powerful in any part of the world, it becomes the obligation of the international community to do whatever it takes to prevent and stop it using all necessary means within the limits of international law, putting the

¹²⁰ The Secretary General, Address To The 2005 World Summit, New York, Sept. 2005, para. 14, 15, <http://www.un.org/webcast/summit2005/statements/senglish3.pdf>.

¹²¹ See generally Travis, Hannibal, “Genocide In Sudan: The Role Of Oil Exploration And The Entitlement Of The Victims To Reperations”, *Arizona Journal of International and Comparative Law* Vol. 25, No. 12008 1-73, web.27 Jun 2009, <<http://www.law.arizona.edu/Journals/AJICL/AJICL2008/Travis.pdf>>

¹²² Lewitt, p. 240, Travis, esp. p. 2 dn.3.

self-interest factor aside. The Security Council's role is vital in this sense, considering its unique character proper to a universal collective action, particularly its enormous field of motion given its Chapter VII powers. Yet, failures such as Rwanda and Darfur unveil the structural weaknesses of this organ, and create the doubt that it will never be able to escape from being regarded as a straightjacket surrounded by the motives it was built upon in the context of the circumstances of the cold war era. Notwithstanding the caveats the Security Council has been faced with such as its lack of resources, communication, and cooperation by the third parties; the lack of political will of the Council's individual members seem to be a major constraint in the way of realizing the proposals of reform.

To conclude, it is meaningful to put the emphasis on a core challenge of the Security Council, still remaining as one ten years after Annan's articulation in his book: to unite behind the principle that massive and systematic violations of human rights conducted against an entire people cannot be allowed to stand¹²³.

¹²³ Annan, Kofi A., *The question of intervention : statements by the Secretary-General* , p. 11.

Sources

Books

Annan, Kofi A., *The question of intervention : statements by the Secretary-General*, New York: United Nations Dept. of Public Information, 1999.

Annan, Kofi A., *'We the peoples': the role of the United Nations in the 21st century*, New York: United Nations Dept. of Public Information, 2000.

Hagan, John, and Wenona Rymond-Richmond. *Darfur and the Crime of Genocide*. 1st ed. New York: Cambridge University Press, 2009.

Österdahl, Inger, *Threat to the peace : the interpretation by the Security Council of Article 39 of the UN Charter*, Studies in international law (Stockholm, Sweden), v. 13. Uppsala: Iustus Forlag, 1998.

Ronayne, Peter, *Never Again? The United States and the Prevention and Punishment of Genocide since the Holocaust*, New York: Rowman & Littlefield Publishers, 2001.

Schweigman, David, *The Authority of the Security Council under Chapter VII of the UN Charter*, Vol. 8, Hague: Kluwer Law International, 2001.

Articles from Compilations

Adelman, Howard and Astri Suhrke, "Rwanda", *The UN Security Council, From The Cold War To The 21st Century*, Ed. David M. Malone, London: Lynne Rienner Publishers, 2004.

Bothe, Michael, "International Legal Aspects of the Darfur Conflict", *The Law Of International Relations – Liber Amicorum Hanspeter Neuhold*, Ed. August Reinisch and Ursula Kriebaum, Utrecht: Eleven International Publications, 2007.

Gambari, Ibrahim A.. "An African Perspective", *The UN Security Council, From The Cold War To The 21st Century*, Ed. David M. Malone, London: Lynne Rienner Publishers, 2004.

Hasenclever, Andreas, "Might For Rights: The French Intervention in Rwanda 1994", *Redefining Sovereignty, The Use of Force After the Cold War*. Ed. Michale Bothe, Mary Ellen O'Connell, Natalino Ronzitti, New York: Transnational Publishers, 2005

Keating, Colin, "An Insider's Account", *The UN Security Council, From The Cold War To The 21st Century*, Ed. David M. Malone, London: Lynne Rienner Publishers, 2004.

Levitt, Jeremy I., "The Peace and Security Council of The African Union and the United Nations Security Council: The Case of Darfur, Sudan", *The Security Council and The Use of Force, Theory and Reality – A Need For Change?.*, Ed. Niels Blokker and Nico Schrijver, Leiden, The Netherlands: Martinus Nijhoff Publishers, 2005.

Mendez, Juan E., "The United Nations and the Prevention of Genocide", *The Criminal Law of Genocide, International, Comparative and Contextual Aspects*, Ed. Ralph Henham, Paul Behrens, Hampshire: Ashgate Publishing, 2007.

Neuer, Matthias, "The Darfur Referral Of The Security Council and The Scope Of The Jurisdiction of the International Criminal Court", *the Yearbook Of International and Humanitarian Law*. Ed. Timothy L.H. McCormack, Avril McDonald, Vol. 8, Hague: T.M.C. Asser Press, 2005.

Schabas, William A., "Has Genocide Been Committed in Darfur? The State Plan or Policy Element in the Crime of Genocide", *The Criminal Law of Genocide, International, Comparative and Contextual Aspects*, Ed. Ralph Henham, Paul Behrens, Hampshire: Ashgate Publishing, 2007.

Articles from Journals

Fröhlich, Manuel, “Keeping Track of UN Peace-keeping - Suez, Srebrenica, Rwanda and the Brahimi Report”, *Max Planck Y.B. U.N. L.* Vol. 5, 2001, 185-248, Web.22 Jun 2009.

Khan, Rahmetullah. “United Nations Peace-keeping in Internal Conflicts, Problems and Perspectives.” *Max Planck Y.B. U.N. L.* 4(2000) 543-580. Web.22 June 2009.

Schott, Jared, “Chapter VII as Exception: Security Council Action and Regulative Ideal of Emergency.” Vol. 6, Issue 1, 2007 25-80, Web.22 Jun 2009.

Travis, Hannibal, “Genocide In Sudan: The Role Of Oil Exploration And The Entitlement Of The Victims To Reperations”, *Arizona Journal of International and Comparative Law* Vol. 25, No. 12008 1-73, web.27 Jun 2009.

Walter, Christian, “Security Council Control over Regional Action”, *Max Planck Y.B. U.N. L.* Vol. 1, 1997, 129-192, Web.20 Jun 2009.

United Nations Documents

S/RES/812 (1993), 12 March 1993.

S/RES/846 (1993), 22 June 1993.

S/RES/872 (1993), 5 Oct. 1993.

S/RES/891 (1993), 20 Dec. 1993.

S/RES/909 (1994), 5 April 1994

S/RES/918 (1994), 17 May 1994.

S/RES/928 (1994), 20 June 1994.

S/RES/929 (1994), 22 June 1994.

S/RES/935(1994), 1 July 1994.

S/RES/955(1994), 8 Nov. 1994.

S/RES/997 (1995), 9 June 1995.

S/RES/1011(1995), 16 Aug. 1995.

S/RES/1013 (1995), 7 Sept. 1995.

S/RES/195 (1996), 13 March 1996.

S/RES/1547 (2004), 11 June 2004.

S/RES/1556 (2004), 30 July 2004.

S/RES/1564(2004), 18 Sept. 2004.

S/RES/1590 (2005), 24 March 2005.

S/RES/1591(2005), 29 March 2005.

S/RES/1593(2005), 31 March 2005.

S/RES/1679(2006), 16 May 2006.

S/Res/1769(2007)/31 July 2007.

S/PRST/1994, 21 Apr. 1994.

Report Of The Independent Inquiry Into The Actions Of The United Nations During The 1994 Genocide in Rwanda (Rwanda Report), Doc. S/1999/1257, 16 Dec. 1999.

Report of the International Commission of Inquiry on violations of international humanitarian law and human rights law in Darfur (Commission's report), UN Doc. S/2005/60, 1 Feb. 2005.

The Secretary General, Address To The 2005 World Summit, New York, Sept. 2005, <http://www.un.org/webcast/summit2005/statements/sgenglish3.pdf>.

United Nations General Assembly, 60/1, 2005 World Summit Outcome, A/RES/60/1, 24 Oct. 2005.

The Secretary General, Address To The 2005 World Summit, New York, Sept. 2005, para. 15, 14, <http://www.un.org/webcast/summit2005/statements/senglish3.pdf>.

The UN Refugee Agency, “The challenge of protecting internally displaced.” *The State of the World’s Refugees 2006* 19 Apr 2006. UNHCR. <http://www.unhcr.org/print/4444d3ce2/html>.

Newspaper articles and blogs

Tisdall. Simon, “Sudan fears US military intervention over Darfur”, *The Guardian*, 15 Jan 2009, web. 25 Jan 2009. <<http://www.guardian.co.uk/world/2009/jan/15/sudan-unamid-obama>>

Brocato, Rebecca, “Commemorates 5-Year Anniversary of U.S. Declaration Of “Genocide” in Darfur” [Weblog Congress, Enough, the project to end genocide and crimes against humanity] 26 Jun 2009, Web.27 Jun 2009. <http://www.enoughproject.org/blogs/congress-commemorates-5-year-anniversary-us-declaration-genocide-darfur>.

Moran, Michael, “Inaction Breeds Death in Darfur.” *Council on Foreign Relations*, 31 Oct 2006, web.30 Jun 2009. http://www.cfr.org/publication/11857/inaction_breeds_death_in_darfur.html.

Other sources

Communique of the 51th Meeting of the African Union Security Council, 15 May 2006, para. 15, <http://www.amis-sudan.org/psccommunique.html>.

Report Of The International Commission on Intervention and State Sovereignty, *The Responsibility To Protect*. Ottawa, Canada: The International Development Research Centre, 2001.

Office of The Spokesperson for the Secretary General, *Secretary-General’s press encounter upon arrival at UNHQ (unofficial transcript)*, New York, 17 June 2004, <http://www.un.org/apps/sg/offthecuff.asp?nid=596>.

Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, ICJ Reports, 1951, <http://www.icj-cij.org/docket/files/12/4283.pdf>.

“The Rwandan Genocide: How It Was Prepared”, *A Human Rights Watch Briefing Paper*, Apr. 2006, Human Rights Watch, <<http://www.hrw.org/legacy/backgrounder/africa/rwanda0406/>>.

“Sudan: Now Or Never Again”, *ICG Africa Report N80* 23 May 2004, International Crisis Group.

<http://topics.cnn.com/topics/darfur>.