

THE ROLE OF THE UNITED NATIONS IN PREVENTING VIOLENT CONFLICTS:
LESSONS FROM RWANDA AND SUDAN

by

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Abstract

The occurrence of internal armed conflict in Africa has increased over the last two decades. As such, Africa continues to be viewed by many as a troubled continent. In an attempt to avoid further conflict in Africa, organisations such as the United Nations have implemented comprehensive tools and strategies to prevent further conflicts from occurring. However, the genocide in Rwanda and the on-going unrest in Sudan have shown that there is still a lot of work to be done. In both these cases, the conflicts took place or escalated even with UN presence on ground. This paper will thus examine the UN's legal role in the prevention of internal armed conflict and establish the type of lessons that could be learnt from Rwanda and Sudan.

Declaration

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I declare that THE ROLE OF THE UNITED NATIONS IN PREVENTING VIOLENT CONFLICTS: LESSONS FROM RWANDA AND SUDAN is my own work and that all the sources that I have used or quoted have been indicated and acknowledged by means of complete references.

SIGNATURE
(MISS E CHIKUNI)

DATE

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To my loving husband, for being my biggest fan and always believing in me. To my family, whose support and love are my everlasting guides. I am also grateful for the consistent and professional help I received from my Supervisor, Ms. Mirelle Ehrenbeck. Above all, my gratitude to God from whom all blessings flow.

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CHAPTER I INTRODUCTION AND PROBLEM STATEMENT

1.1 The UN and Africa

Article 1.1 of Protocol II to the Geneva Conventions¹ defines internal armed conflicts as conflicts that cannot be characterised as either international armed conflicts or wars of liberation.² The end of the cold war saw an increase of such conflicts, particularly in Africa. Somalia, Liberia, Mozambique, Angola, The Democratic Republic of Congo, Ivory Coast, Sudan and Rwanda have been affected by such conflicts.

Since its inception in 1945, the primary goal of the UN has been to maintain international peace and security as envisioned in Chapter I Article 1.1 of the Charter. To ensure that the goal is achieved in a “prompt and effective manner”, Article 24 of the Charter confers this primary responsibility on the Security Council.³

As part of fulfilling its cardinal mission, the UN has deployed sixty-five peace-keeping operations worldwide since 1948 and dispatched teams to investigate and offer suggestions on the way forward for states facing peace and security challenges. Today, fifteen operations are active worldwide, with Africa alone having a total of seven active peacekeeping operations.⁴ As a result of these

¹ The *Geneva Conventions* are made up of four treaties and three additional protocols. These establish the standards of international law and the accepted norm for the treatment of the victims of war. In general, the term *Geneva Convention* encompasses the agreements of 1949, signed after World War II (1939–45), which revised the terms of the first three treaties (1864, 1906, 1929), and added a fourth treaty. Available at <http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/index.jsp> (Date of Use: 20 April 2012).

² Protocol II further provides that internal armed conflict, must take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organised armed groups, which under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement (Protocol II).

³ Article 24 further provides that the specific powers granted to the Security Council for the discharge of its duties are laid down in Chapters VI, VII, VIII, and XII.

⁴ See United Nations “Peacekeeping Factsheet” <http://www.un.org/en/peacekeeping/resources/statistics/factsheet.shtml> (Date of use: 25 May 2011) See also United Nations “UN at a Glance” <http://www.un.org/en/aboutun/index.shtml> (Date of use: 25 May 2011).

peacekeeping efforts, the UN has assisted in ending conflicts by overseeing the negotiation of one hundred and seventy peace agreements since 1945.

In spite of its peacekeeping efforts, the following are two examples of internal armed conflicts that escalated even with UN presence on ground:

1.1.1 The case of Rwanda in brief

In 1994, an estimated 800 000 people were killed within 100 days, after an escalation of a four year conflict between the Hutus and Tutsis of Rwanda.⁵

It took place at a time when the United Nations Assistance Mission in Rwanda (UNAMIR)⁶ was present. The Security Council had been informed that Rwanda was on the verge of a catastrophe and yet it ordered a bulk of the UN peacekeepers out of Rwanda.⁷ This decision emanated from the fact that none of the five permanent members (P5) of the Security Council showed any willingness to handle the crisis in a more assertive manner.⁸ Consequently, the case of Rwanda has been considered as a UN failure. Cousens explains the failure as follows:

The council's failure in 1994 was not precisely to prevent conflict – which had been underway, if on the modest scale, for four years but to prevent it exponential escalation into genocide, especially in a context where there was already a UN mission (UNAMIR) on the ground.⁹

Furthermore, in 1999, Kofi Annan¹⁰ set up an independent inquiry to investigate the actions of the UN at the time of the genocide in Rwanda. The findings of the Carlsson report¹¹ indicated that the genocide in Rwanda could have

⁵ See Harsch "The world reflects on Rwanda genocide" Available at <http://www.un.org/en/africarenewal/newrels/rwanda.htm> (Date of Use: 19 April 2012).

⁶ See S/Res 872.

⁷ See Vogt *United Nations and Security in Africa* 308. See also: S/Res 912 of 1994 which reduced UN-AMIR's strength from 2,548 to 270.

⁸ See Fenton *Understanding the UN Security Council* 132.

⁹ See Cousens *Conflict Prevention* 104.

¹⁰ Kofi Annan served as Director of UN Peacekeeping operations at the time of the Rwandan genocide and later as the seventh Secretary-General of the UN from 1997 to 2006.

¹¹ See United Nations, Report of the Independent Inquiry Into the Actions of the United Nations during the 1994 Genocide in Rwanda, December 15 1999, Ingvar Carlsson, Han Sung-Joo, Rufus Kupilati. UN

been prevented and /or subsequently stopped had the UN taken appropriate action.¹² Essentially, the report outlines the following as failures of the UN:

- a) Member states lacked the political will to act or acted with no assertiveness. This in turn affected the ability to obtain sufficient troops for the UNAMIR¹³
- b) Available resources were not utilised constructively¹⁴

1.1.2 The case of Sudan in brief

The civil conflict between the north and south of Sudan led to the death of over two million people and an estimated four million displaced civilians. The north-south conflict was mainly caused by issues over land ownership, the role of religion and the sharing of power and the country's oil revenues.¹⁵ The twenty-two year civil war came to an end in 2005 with the signing of the Comprehensive Peace Agreement (CPA) by the Sudan People's Liberation Movement/Army (SPLMA) and the government of Sudan.

UN Resolution 1590¹⁶ established the deployment of a United Nations Mission in Sudan (UNMIS) to facilitate the signing of the CPA. In spite of this agreement, tensions in Darfur, a region in the western of Sudan continued to intensify. Violent clashes between the government's allied Arab militia (the Janjaweed) and the SPLMA and the Justice and Equality Movement (JEM) escalated to new heights.

The African Union (AU) had long been engaged in facilitating peace and security in Sudan, particularly in Darfur. The signing of the Darfur Peace

Doc S/1999/1257 (hereinafter referred to as the "Carlsson Report"). Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/395/47/IMG/N9939547.pdf?OpenElement> (Date of Use: 29 April 2011).

¹² Ibid., 3.

¹³ Carlsson Report, S/1999/1257 3.

¹⁴ Ibid.

¹⁵ See Sriram, Martin-Ortega and Herman *War, Conflict and Human Rights* 126. See also Global Policy Forum, "Sudan/Darfur" <http://www.globalpolicy.org/security-council/index-of-countries-on-the-security-council-agenda/sudan.html> and Insight on Conflict, "Sudan (North &South)" <http://www.insightonconflict.org/conflicts/sudan/> (Date of use: 20 April 2011).

¹⁶ See S/Res 1590.

Agreement (DPA) in May 2006 was one of the results of such efforts. However, this agreement did not stop the violence in Darfur. Therefore, the Security Council expanded the mandate of UNMIS to also include Darfur. This mandate would primarily support the implementation of the DPA and the deployment of a peacekeeping force in Darfur with the consent of the Sudanese government. The government of Sudan strongly opposed the deployment of a peacekeeping force in Darfur.¹⁷ They insisted that they would only accept the same provided that the peacekeeping force had an “African character”. Accordingly, resolution 1769 saw the establishment of a hybrid mission known as the United Nations-African Union Hybrid Operation in Darfur (UNAMID) whose mandate is to protect civilians and help humanitarians help those in need.¹⁸

However, at the Fifteenth session of the Human Rights Council¹⁹ the Secretary-General received a written statement, “The UN in Darfur – and the silencing of Information” in which the continued violence in Darfur was highlighted. The report stated that at least sixty-five civilians had been killed and more than eighty-six wounded in attacks in the North and West of Darfur on 2 and 3 September 2010.²⁰ A month prior to this, it is believed that “inter-factional killings” also took place in South Darfur. The statement criticized UNAMID for not fully protecting the civilian population of Darfur, which is the very core of its mandate. The statement further criticized UN officials for “allowing those responsible for the vast human catastrophe in Darfur to decide what the UN says to the world about the present nature of the catastrophe”.²¹ The statement called upon the Human Rights Council to act decisively by adopting a firmer resolution that would help end the violence.

It is believed that the violence has carried on due to the government’s failure to commit to the CPA and the CPA’s failure to recognize any other rebel groups apart from the SLPMA and also its failure to tackle the root causes of the con-

¹⁷ See Hoge 2006-09-20 The New York Times.

¹⁸ See S/Res 1769.

¹⁹ See A/HRC/15/NGO/76.

²⁰ Ibid., paras 3 and 4.

²¹ Ibid., para 8.

flict. Moreover, the mandate itself does not seem to outline any action to be taken against the Sudanese government in the event of non-compliance.²²

The challenges that UNAMID faces seem to be predominantly a matter of lack of resources and also what appears to be the ineffective drafting of the mandate. The Sudanese government has been known to hinder progress by deliberately delaying or denying visas to certain UN staff because their nationalities did not meet the "African character" clause.²³

Consequently, as at July 2011, UNAMID only had 17 759 troops available as opposed to the 19 555 troops envisioned in its mandate of 2007.²⁴

In addition, the political will of member states of the UN has also been brought to question in the crisis in Sudan as was the case in Rwanda. In the case of Sudan, Russia and China have been known to curtail strong action or use of force against the Sudanese government due to their own national interests.²⁵ This contributed to the continued bloodshed and defiance of the CPA.

Today, despite the independence of South Sudan and the presence of UN-AMISS (United Mission in the Republic of South Sudan)²⁶, UNISFA (United Nations Interim Security Force for Abyei)²⁷ and UNAMID, the country continues to be plagued by numerous violent conflicts.

1.2 The UN and conflict prevention

In efforts to keep the world peaceful, the UN has in recent times moved from a culture of "reaction" to one of "prevention". In doing so, the UN aims to address the underlying root causes of conflict before conflict manifests in any

²² See Kreps "UNAMID" 2007 (16) ASR 67.

²³ See Weschler *UN Response to the Darfur* 9.

²⁴ See S/Res 1769. See also United Nations, "Peacekeeping Factsheet".
<http://www.un.org/en/peacekeeping/resources/statistics/factsheet.shtml>

²⁵ See Weschler *UN Response to the Darfur* 7.

²⁶ UNAMIS mandate ended on 9 July 2011. UNAMISS was established under S/Res 1996 on 8 July 2011 to consolidate peace and security in South Sudan and to help establish conditions for development.

²⁷ S/Res 1990 established UNISFA on 27 June 2011 to demilitarise and monitor the disputed area of Abyei.

form. Generally, four forms of conflict prevention are recognised by the UN and the four categories could be summarised as follows ²⁸:

- 1) Any action taken by the UN to curb armed conflict before it occurs in any “serious way”.
- 2) Action taken by the UN to prevent the escalation of conflict may take one of two forms:
 - a. Any action taken by the UN at the first sign of conflict
 - b. Any action taken by the UN in a conflict area where they already have presence
- 3) Any action taken by the UN to prevent crisis of a humanitarian nature
- 4) Any action taken by the UN to prevent the repetition of conflict particularly after peace agreements have been signed

As seen above, the UN's role in conflict prevention poses an extensive area of study. In an attempt to limit the same, this study focuses only on three considerations:

- i. Internal armed conflict: armed violence between governmental authorities and organised armed groups. This study will not examine the other forms of conflict recognised by International law.
- ii. In examining the UN's role in preventing conflict, this study will primarily focus on the Security Council, the Department of Political Affairs (DPA) and the Department of Peacekeeping Operations (DPO).
- iii. The prevention of armed conflict only as illustrated in categories 2(b) and 4 above. These categories will be examined because mass killings took place in Rwanda even with UN presence on ground. Also, the UN has apparently continued to face major security challenges in spite of numerous peace agreements being signed as is the case in Sudan.

The UN has strong tools to prevent the escalation of armed conflict (category 2(b)). With the use of Chapter VI of the Charter, the Security Council is able to call upon parties to a dispute to settle their dispute by means of negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to re-

²⁸ See Cousens *Conflict Prevention* 106.

gional agencies or arrangements, or other peaceful means of their own choice. Under Chapter VII, the Security Council may call for the severance of diplomatic ties, impose sanctions or enforcement actions against governments who threaten or breach the peace. For example, the UN was able to impose an arm embargo on Sudan; a travel ban, and an assets freeze on individuals designated in the committee list.²⁹

With regards to the UN's role in preventing armed conflicts from recurring (category 4), the UN has greatly expanded its capabilities in this area. UN missions are now able to provide assistance towards the transition of government after conflict in the form of electoral assistance, validation of peace accords, ensuring that human rights are respected, police training, arm disarmament, land demining etc.³⁰ In spite of these effective tools, internal wars reoccur and/or societies remain fragile (as is the case in Sudan).

As a whole, it would appear that the limitations the UN faces in conflict prevention are more to do with the speed at which it responds to conflict and the various political hurdles it has and not necessarily its intention and/or execution of its duties. In most cases, the Security Council has shown the will to act but the knowledge that armed conflict exists has not necessarily led the member states to want to act.³¹ Also, the veto power appears to present challenges of its own. For instance, two of the P5 (Russia and China) have been known to use this power to block tougher action against the Sudanese government.

Moreover, the African continent tends to show reluctance in times of conflict to fully involve the United Nations as they feel that African problems should be handled by Africans. Guehenno makes clear that the success of Peacekeep-

²⁹ See S/Res 1590. See also United Nations, 'Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan' <http://www.un.org/sc/committees/1591/> (Date of use: 6 September 2011).

³⁰ See Shaw *International Law* 1234.

³¹ See Wemester *Conflict Prevention at the UN* 380. See also United Nations, "Peacemaking and Conflict Prevention" <http://www.un.org/wcm/content/site/undpa/main/issues/peacemaking> (Date of use: 6 September 2011).

ing Operations heavily depends on ten factors, much of which relies on greater member state co-operation.³²

In view thereof, one could ask: Are the limitations of the UN merely limitations caused by member states (particularly the P5) themselves? How can the UN ensure greater member state co-operation and involvement?

Since the actions of peacekeeping missions such as UNAMID, UNAMISS and UNISFA play and will continue to play a significant role in conflict prevention, this study will make a great contribution to gaining a better understanding of the UN's role in conflict.

³² Guehenno emphasises the importance of member state cooperation by stating that members of the UN Security Council, particularly the P5, have to agree on the desired outcome of the operation, and ensure it is a clear mandate. Also, Guehenno points out the importance of drafting an achievable mandate. In this regard, the Council should only authorise missions where it is confident that member states will provide sufficiently trained and equipped troops. In addition, the international community has to be prepared to stay the course and commit to the peacekeeping operation for the long run. See Guehenno "UNPK" 2002 CT (3) 10.

2 CHAPTER II THE 'LAWS' OF INTERNAL ARMED CONFLICT AND EVOLUTION OF CONFLICT PREVENTION

2.1 Parties to an internal armed conflict

As seen above (chapter 1, 1.2), internal armed conflict involves armed violence between governmental authorities and organised armed groups. These organised armed groups or 'rebels' are often believed to seek control over territory in a sovereign state. Natural resources in the disputed territories have often proved to be the reason why the rebels engage in combat to wield control over the said territories. These rebels in legal literature are frequently referred to as insurgents and are considered international legal subjects.³³ However, not every rebel group or organised armed group is regarded as an international subject. In order to be considered as an international law subject, Cassese succinctly summarises the requirements as follows:

- a) The rebel group should prove that they have effective control over part of the territory.³⁴
- b) Civil commotion should reach a certain degree of intensity.³⁵

It is important to note that the actual recognition of such groups as insurgents is determined by the state involved in the civil war and any other state involved in it.³⁶ The states have the power to grant such recognition if the above requirements have been met or refuse to grant such recognition if it is of the opinion that the aforementioned requirements have not been fully met. In the event recognition of insurgency is granted, in essence, rebels are "entitled to all the rights, and subject to all the obligations, deriving from *jus in bello*".³⁷ However, it is worthy to note that if the international community as a whole did not feel such recognition was warranted, then the rebel group would not be able to "exercise any of the rights and fulfil the obligations inherent in its inter-

³³ See Cassese *International Law* 125.

³⁴ *Ibid.*

³⁵ *Ibid.* Civil commotions consisting of riots or sporadic short lived acts of violence are not considered to fall under this category.

³⁶ See Cassese *International Law* 125.

³⁷ *Ibid.*, 126.

national status, however strong, effective, and protracted its authority over a portion of the territory belonging to a sovereign state".³⁸

Experience has shown that even though the parties to an internal armed conflict include the "lawful" government on the one hand and a person or group rebelling against the "lawful" government on the other, third states are often involved. Third states tend to support either side by providing military assistance depending on *their own political or ideological leaning*.³⁹ For example, the conflict in the Democratic Republic of Congo (DRC) which began in 1996 exhibited such characteristics. Countries such as Uganda and Rwanda intervened in the war directly and also provided assistance to the domestic Congolese rebel forces.⁴⁰ Rwanda justified its involvement in the conflict by claiming that their action was required to get rid of Hutu extremists in the DRC. Uganda by the same token claimed that their involvement was to fight Hutu extremists.⁴¹ In addition, Burundi, Zimbabwe, Angola, Namibia, Chad and Sudan have all taken part in the Congolese conflict in one form or another.⁴²

Experience has also shown that at times conflicts may show characters of an internal character at the outset and later change to an international character.⁴³

2.2 Laws governing internal armed conflict

By way of background, it must be noted that International humanitarian law (IHL) governs the rights and obligations of the parties to a conflict in the conduct of hostilities. These rights and obligations were conceived to limit the effects of armed conflict.

Prior to the cold war, not much importance was attached to internal armed conflicts.⁴⁴ Accordingly, the international community invested a huge amount of

³⁸ See Cassese *International Law* 127.

³⁹ *Ibid.*, 429.

⁴⁰ Sriram, Martin-Ortega, Herman *War, Conflict and Human Rights* 103.

⁴¹ *Ibid.*

⁴² Sriram, Martin-Ortega, Herman *War, Conflict and Human Rights* 103.

⁴³ A good example of a conflict which demonstrates such behavior is the conflict in the former Yugoslavia in the early nineties. The conflict initially began as an internal war but after Croatia and Bosnia Herzegovina gained independence, the conflict later became an international one.

⁴⁴ See Smith "Trends and Causes of Armed Conflict" 5. Available at <http://www.berghof-handbook.net/all/> (Date of Use: 22 May 2012).

time, effort and resources to prevent future conflict between states and protection of civilians caught in such hostilities. Organisations such as the United Nations spearheaded the signing of treaties, conventions and protocols to limit the effects of wars between states. These treaties, conventions and protocols were, however, predominantly formulated for conflicts between states in mind.⁴⁵ The main reason for this was that the international community did not foresee that internal armed conflicts would later pose a greater threat to international peace and security.

After the cold war, it was evident that conflicts between small groups or tribes were now capable of causing human suffering of great magnitude while also spilling over to neighbouring countries.⁴⁶ It also became clear that International humanitarian law appeared to be inadequate in its application since its provisions were created with interstate wars in mind.⁴⁷ However, this is not to say that no laws governed or regulated internal armed conflicts prior to the cold war. Apart from principles of international law derived from custom, Article 3 common to the four Geneva conventions and protocol II of 1977 (to a limited extent) could be applied.⁴⁸

Article 3 is applicable to *any armed conflict* and thus establishes humanitarian protection also for victims of hostilities in internal armed conflict. Protocol II of 1977 is applicable only if the armed conflict is of high intensity, duration and magnitude. Therefore, internal armed conflicts meeting this criterion could find application in this provision.

⁴⁵ For example the 1948 Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic for the settlement of intercustodial conflicts relating to German enemy assets; 1950 Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Federal Government of the Swiss Confederation for the settlement of conflicting claims to German assets in their respective territories; 1954 Memorandum of Understanding between the United States of America and Norway on conflicting claims to enemy property; 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict; 1965 Convention on the conflicts of laws relating to the form of testamentary dispositions ; 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I)

⁴⁶ See Bosker, De Ree "The Spread of Civil War" Available at <http://www.voxeu.org/index.php?q=node/7532> (Date of Use: 22 May 2012).

⁴⁷ See Schindler and Toman *The Laws of Armed Conflicts* ix.

⁴⁸ See Article 3 common to the four Geneva Conventions which sets out the rules and obligations of parties to a conflict not of an international character. See also Protocol II of 1977.

As the international community grew more concerned with addressing internal armed conflict, the Security Council saw fit to respond by using measures under Chapter VII of the Charter.⁴⁹ It also became evident that these types of conflicts were more widespread and motivated by ethnic, religious and racial reasons. Internal armed conflicts could no longer be seen as national problems but rather as conflicts that had the capability to violate human rights and humanitarian law at such a large scale that they also affected the interests of the international community as a whole.⁵⁰

In a further attempt to address these growing concerns, the Security Council established tribunals such as the International Criminal Tribunal of former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR), Special Court for Sierra Leone (SCSL) and most recently, The Special Tribunal for Lebanon (STL) to try persons who are allegedly responsible for heinous crimes committed against humanity.⁵¹

It is through the work of the aforementioned tribunals that additional headway has been made in humanitarian law. For instance, the decision in the *Tadic* case (Interlocutory appeal) ICTY set forth the view that the distinction between inter-state wars and internal armed conflicts was no longer significant.⁵² It followed that International rules could now be applied to internal armed conflicts. The revolutionary reasoning behind this decision was to further promote the respect for human dignity and punish those who violated such dignity and effectively address the new nature of internal armed conflict.⁵³

⁴⁹ The first time the Security Council used Chapter VII for an internal armed conflict was in 1992. See S/Res 794 (Somalia) S/Res 929 (Rwanda); S/Res 770 (Bosnia and Herzegovina) and S/Res 1244 (Kosovo).

⁵⁰ The Security Council in establishing the International Criminal Tribunal for Rwanda (ICTR) and the International Tribunal for former Yugoslavia (ICTY) determined in their resolutions that 'widespread violations of international humanitarian law constitute a threat to international peace and security.' See S/Res 808, 827 and 955. See also Schindler, Toman *The Laws of Armed Conflicts* ix.

⁵¹ See ICTR "About ICTR"

<http://www.unictr.org/AboutICTR/GeneralInformation/tabid/101/Default.aspx> ICTY, "About ICTY" <http://www.icty.org/sections/AbouttheICTY>, SCSL "About SCSL" <http://www.sc-sl.org/> and see also STL "About STL" <http://www.stl-tsl.org/en/about-the-stl> (Date of Use: 12 March 2012).

⁵² See *The Prosecutor v. Dusko Tadic*, Case No. IT-94-1-A, ICTY Appeals Chamber, 15 July 1999 (hereinafter referred to as the *Tadic* case).

⁵³ The *Tadic* case provided the following rationale with regard to extending the rules governing international armed conflict to civil strife "Indeed, elementary considerations of humanity and common sense make it preposterous that the use by States of weapons prohibited in armed conflicts between

It follows amongst other things that with the 'blurring' of the distinction between interstate conflicts and internal armed conflict, victims of hostilities are protected to a wider extent.⁵⁴ Furthermore, individuals who are believed to have committed crimes against humanity, war crimes and genocide during or after an internal armed conflict can now be held accountable by rules governing international criminal justice.

2.3 Causes of Conflicts in Africa

Africa has experienced the greatest number of internal armed conflict in the world (Refer to Annexure A).⁵⁵ Essentially, conflicts in other parts of the world still occur but what makes Africa's conflicts more brutal and widespread? What makes this continent susceptible to more human rights violations than other continents? Why do conflicts that seem to have been stopped, reoccur at later stages? Why do Africans in conflict tend to favour organisations such as the African Union (AU) instead of the UN to handle their problems? How can the UN address conflicts in Africa in a more effective manner? These are some of the questions and discussions that underpin the deciphering of conflicts in Africa.

Understanding the conflicts in Africa is complex. Complex, because it not only requires the understanding of the current conflict at hand but also an understanding of the colonial history of Africa, as well as the understanding of relations between the different tribal groups. Each African country consists of ethnic groups, each varying in culture from tribe to tribe. For example, at least fifty ethnic groups and six hundred tribes have been identified in Sudan.⁵⁶

themselves be allowed when States try to put down rebellion by their own nationals on their territory. What is inhumane, and consequently proscribed, in international wars, cannot be inhumane and inadmissible in civil strife" (para 119 of the Tadic case).

⁵⁴ See Schindler and Toman *The Laws of Armed Conflicts* ix.

⁵⁵ The Uppsala Conflict Data Program (UCDP) has recorded ongoing violent conflicts since the 1970s. The data provided is one of the most accurate and well-used data-sources on global armed conflicts and its definition of armed conflict is becoming a standard in how conflicts are systematically defined and studied. See also Uppsala Universitet, Department of peace and conflict Research, "Charts and Graphs" http://www.pcr.uu.se/research/ucdp/charts_and_graphs/ (Date of Use: 22 March 2012).

⁵⁶ See UNIC Khartoum, "Sudanese tribes" <http://unic.un.org/imucms/khartoum/36/499/sudanese-tribes.aspx> (Date of Use: 22 March 2012).

Generally, the history of Africa could be, in the context of its conflicts, divided into two eras. The first era, being the era in which violence was necessary to gain freedom from colonial powers and the second era, the period after the cold war.

2.3.1 Conflicts in Africa: First Era

During the 50's and 60's, widespread violence occurred in Africa, all in the name of overthrowing colonial powers and gaining independence. Countries like Kenya, Angola, Mozambique, and Zambia gained independence through their liberation movements in the 60's and were later joined by Namibia, Zimbabwe, and South Africa in the struggle for freedom.

These wars, which are referred to as wars of liberation, were legitimised by the need to overthrow the colonialists. Therefore, the political objectives of liberation movements such as SWAPO in Namibia, ZANU in Zimbabwe and Frelimo in Mozambique and the means they used to achieve their objectives were recognised as lawful.⁵⁷

2.3.2 Conflicts in Africa: Second Era

After the liberation of most African countries, the cold war took place and this in turn brought in a new wave of conflicts. These conflicts, often between super powers also drew in African countries like Angola and Mozambique.

In the years following the cold war, another wave of conflicts hit Africa. Even though these conflicts were between parties within a state, they exhibited greater brutality and magnitude. These wars exhibited characteristics such as abductions of children, massacres and mutilations, large scale looting and destruction of property.⁵⁸ Moreover, women and children appeared to be the greatest victims. Children were now forced to pick up arms and fight as soldiers as was the case in Uganda and Sierra Leone.⁵⁹ Women were often

⁵⁷ See Young, *Africa Beginners Guide* 88.

⁵⁸ *Ibid.*, 90.

⁵⁹ For example, in Uganda, an armed rebellion known as the Lord's Resistance Army (LRA) has been known to recruit children as soldiers who make up almost 90% of the LRA's soldiers. These children have been "brutalised and forced to commit atrocities on fellow abductees and even siblings." See

victims of mass rape and killings. It is believed that the main reason for this brutality is that the parties engaged in internal armed conflict very often have no knowledge or regard towards the treatment of civilians in hostilities as provided in International Humanitarian law.⁶⁰

The causes for this sudden surge in internal conflicts could be attributed to the following factors:

- a) Differences in morals and religion.⁶¹ For example, between the period 1999 and 2003, the northern states of Nigeria experienced widespread conflict between the Christians and Muslims.⁶²
- b) Political issues.⁶³ Often, these political issues were based on Africans who saw the need to liberate themselves from their leaders by organising themselves into rebel groups and building their armies. Some examples of such rebel leaders included Rwanda's Paul Kagame, Uganda's Yoweri Museveni and Eritrea's Isaias Afewerki.
- c) Matters pertaining to the different ethnicities.⁶⁴ Differences in ethnicities have often been thought to be the underlying root cause of many civil wars in Africa. A divergence of interests between the ethnic groups has sometimes led to conflict. For example, the civil war in Rwanda. It is believed that the occurrence of this war stemmed from the grievances between the Tutsi's and Hutus (see 1.1.1 above).
- d) Disputes in the distribution of land and natural resources.⁶⁵ An example of a conflict that was brought about because of this factor is the civil war in Sudan. Even though the causes of the civil war in Sudan could be considered as complex, it is believed that the source of conflict lies in

United Nations "Uganda: Child Soldiers at Centre of Mounting Humanitarian Crisis"
<http://www.un.org/events/tenstories/06/story.asp?storyID=100> (Date of Use: 29 January 2013).

⁶⁰ See Schindler, Toman *The Laws of Armed Conflict* viii.

⁶¹ See Sriram, Martin-Ortega, Herman *War, Conflict and Human Rights* 13.

⁶² See Internal Displacement Monitoring Centre "Displacement related to religious conflicts occurs mainly in the north, 1999-2003. Available at [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/529F74E9C1C0DC60802570B8005AAA26?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/529F74E9C1C0DC60802570B8005AAA26?OpenDocument) (Date of Use: 20 May 2012). See also Human Rights Watch "Nigeria: Inter-communal violence and arbitrary killings" <http://www.hrw.org/en/features/nigeria-arbitrary-killings-security-forces> (Date of Use: 24 May 2012).

⁶³ See Sriram, Martin-Ortega, Herman *War, Conflict and Human Rights* 13.

⁶⁴ *Ibid.*, 14.

the failure of the north and south of Sudan to reach an agreement on matters related to land distribution and natural resources (see 1.1.2 above).

- e) Inequality and the violation of human rights.⁶⁶ These factors normally manifest in the social, economic and political structures or actions of a state. Inequalities in the aforementioned structures have often led to the emergence of violence as was the case in the north-south conflict in Sudan and Rwanda.⁶⁷

Although the above factors have at one point or another, alluded to being the cause of conflicts in Africa, this does not necessarily mean that their existence will always result in a conflict. In most cases, even though the above factors had always existed, the mobilisation of conflict usually occurred when the perception of current conditions in a state was manipulated by its political leaders and the different social groups felt insecure.⁶⁸ For example the Tutsi's and Hutus in Rwanda had co-existed for many centuries. The fragile relation between the two is believed to date back to the days of Belgian colonialism. During Belgian's colonial rule, the Belgians are believed to have created a rift between the two tribes by favouring the Tutsi's over the Hutus. After the Belgians withdrew from Rwanda, the seed of inequality had taken root. In spite of this, the two groups did not automatically go to war. It was only when the politicians had succeeded in manipulating their perceptions of inequality that they went to war.⁶⁹

In some cases, pursuit of power and wealth by leaders and would-be leaders has led to conflict. The 2007-2008 electoral crisis in Kenya exemplifies the use of widespread violence to achieve individual political goals.⁷⁰

⁶⁵ See Sriram, Martin-Ortega, Herman *War, Conflict and Human Rights* 14.

⁶⁶ Ibid.

⁶⁷ See DFID Briefing paper D "Working effectively in Conflict-affected and Fragile situations" March 2010 4.

⁶⁸ See Sriram, Martin-Ortega, Herman *War, Conflict and Human Rights* 15.

⁶⁹ Ibid.

⁷⁰ See Human Rights Watch <http://www.hrw.org/news/2012/01/23/kenya-icc-judges-ok-election-violence-trials> and also <http://www.independent.co.uk/news/world/africa/kenyan-minister-resigns-after-charges-over-election-violence-6295359.html> (Date of Use: 19 April 2012).

2.4 Evolution of conflict prevention

Key armed conflicts of the nineties made it exceedingly imperative for the international community to establish the appropriate tools and measures to be applied in order to contain tensions from escalating to violent conflicts. Accordingly, the UN shifted from a culture of “reaction” to one of “prevention” (see 1.2 above).

As foreshadowed above, the mandate of the UN has always been to maintain international peace and security. As was also highlighted above (1.2), the various coercive and non-coercive measures that may be taken to prevent conflicts are evidenced in the UN Charter (Chapters VI and VII). It can thus be substantially inferred that only the nature of conflict prevention has changed.

To further its goals, the UN has divided its areas of activity into four categories: 1) Peacekeeping 2) Peacebuilding 3) Conflict Prevention and mediation and 4) Peace enforcement.⁷¹

Several important organs of the UN have been tasked with the role of undertaking these activities.⁷² As stated in 1.2 above, this paper will predominantly examine the UN’s peacemaking efforts as carried out by the DPO, DPA and the Security Council.

2.4.1 The role of the Department of Political Affairs (DPA)

Peacemaking activities and Conflict Prevention and mediation activities are mainly carried out by the DPA.⁷³ Before commenting on how the department carries out these efforts, it is worthwhile to define the said activities.

⁷¹ See United Nations Peacekeeping “Peace and Security” <http://www.un.org/en/peacekeeping/operations/peace.shtml> (Date of Use: 19 March 2012) and see also Luck, *United Nations Security Council* 33.

⁷² The UN bodies and agencies involved in conflict prevention are: Security Council; General Assembly; Sec-Gen and his special representatives and Envoys; Department of Political Affairs; Department of Peacekeeping Operations; United Nations Development Programme; World Food Programme; World Health Organisation; United Nations Children’s Fund; Department for Disarmament Affairs; United Nations High Commissioner for Refugees; Office for the Co-ordination Affairs; United Nations Development Fund for Women; United Nations Educational, Scientific and Cultural Organisation; Food and Agricultural Organisation; Department of Economic and Social Affairs.

⁷³ See United Nations, DPA “Role of the DPA” <http://www.un.org/wcm/content/site/undpa/main/about/overview> (Date of Use: 16 March 2012).

Conflict Prevention and mediation: Includes any diplomatic measures taken to prevent the escalation of internal tensions to violent conflicts by primarily monitoring and assessing global political developments, warning of crises before they break out and providing direct support for preventative diplomacy.⁷⁴

Peacemaking: Involves any form of diplomatic activities that are undertaken to bring parties to a conflict to a negotiated agreement.⁷⁵

It is apparent from the said activities that the DPA could be regarded as a “watchdog” for conflicts. Through its work, the department provides support to the numerous envoys of the Secretary-General in the prevention and management of crises.⁷⁶ In addition, the department provides mediation support to UN political missions in areas of tension.⁷⁷ The DPA assists by providing qualified staff and ensuring that on-going talks have the required resources.⁷⁸

The DPA has been able to carry out its tasks with the help of regional organisations and member states.⁷⁹ The DPA has also been able to bolster its efforts with the use of conflict prevention Early Warning Systems (EWS)⁸⁰ and the advanced use of today’s communication technology.

Even though there remains much room for development, the DPA and DPKO’s reliance on EWS and advanced communication technologies, has enabled them to acquire the means to foresee and react to crisis more rapidly.⁸¹ They are able to acquire a substantial amount of information and jointly analyse the early signals.

⁷⁴ See United Nations Peacekeeping “Peace and Security”

<http://www.un.org/en/peacekeeping/operations/peace.shtml> (Date of Use: 19 March 2012).

⁷⁵ Ibid.

⁷⁶ See United Nations, DPA “Role of the DPA”

<http://www.un.org/wcm/content/site/undpa/main/about/overview> (Date of Use: 16 March 2012).

⁷⁷ See United Nations, DPA “Role of the DPA”

<http://www.un.org/wcm/content/site/undpa/main/about/overview> (Date of Use: 16 March 2012).

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Activities undertaken under the umbrella of Early Warning Systems (EWS) may include fact-finding missions, consultations, inspections, report mechanisms, and monitoring. See Miller *Glossary of Terms and Concepts in Peace and Conflict Studies* 24.

⁸¹ See Dorn “Tools of the Trade? Monitoring and surveillance Technologies in the UN peacekeeping” 2007 7.

The work of the DPA has in recent times also extended to peacebuilding efforts. *Peacebuilding*⁸² involves any activities undertaken in the aftermath of internal armed conflict to prevent conflicts from re-occurring.⁸³ Examples of such activities include electoral assistance, validation of peace accords, ensuring that human rights are respected, police training, arm disarmament, land demining, investigation of past and existing abuses etc. The importance of peacebuilding activities are emphasised by the Carnegie Commission in which it was stated that the prevention of future conflict can be achieved “through the creation of a safe and secure environment in the aftermath of a conflict and the achievement of a peace settlement”.⁸⁴

The DPA also provides substantive and secretariat support to the UN Security Council.⁸⁵ For instance, the DPA in a broader sense is involved in the UN’s effort to implement the United Nations Counter-Terrorism Strategy. This work is carried out by the Counter-Terrorism Implementation Task Force (CTITF) which falls under the DPA.⁸⁶

2.4.2 The role of the Department of Peacekeeping Operations (DPKO)

According to the UN DPKO website, the DPKO is the main UN organ tasked with coordinating peacekeeping operations. However, it must be noted that the Security Council is the organ tasked with deciding when and if a peacekeeping operations should be deployed.⁸⁷ The scope and ambit of tasks to be undertaken by each operation are based on a Security Council mandate. The funding of peacekeeping operations is the responsibility of all UN member

⁸² See A/47/277 - S/24111 Chapter VI. Available at <http://www.un.org/Docs/SG/agpeace.html> (Date of Use: 15 May 2012).

⁸³ See United Nations Peacekeeping “Peace and Security” <http://www.un.org/en/peacekeeping/operations/peace.shtml> (Date of Use: 19 March 2012).

⁸⁴ See Carnegie Commission on Preventing Deadly Conflict 2. Accessed from http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=5&ved=0CEQQFjAE&url=http%3A%2F%2Fwww.janeliunas.lt%2Ffiles%2FPreventing%2520Deadly%2520Conflict.doc&ei=SmhzT8zcMaSv0QW7iaj5Dw&usg=AFQjCNGlo0mxyk97X_cdqdGoD7YGIQdlZw&sig2=vbR-7EJ6Kslovdj_HrSG3g (Date of Use: 3 March 2012).

⁸⁵ See United Nations, DPA “Role of the DPA” <http://www.un.org/wcm/content/site/undpa/main/about/overview> (Date of Use: 16 March 2012)

⁸⁶ See United Nations, DPA “Role of the DPA” <http://www.un.org/wcm/content/site/undpa/main/about/overview> (Date of Use: 16 March 2012).

⁸⁷ See United Nations Peacekeeping “Role of the Security Council” <http://www.un.org/en/peacekeeping/operations/pkmandates.shtml> (Date of Use: 20 May 2012).

states.⁸⁸ The larger portion of this funding is paid by the five permanent members of the Security Council as they have a special responsibility for the maintenance of international peace and security.⁸⁹

Peacekeeping was traditionally established to monitor ceasefires or peace agreements with the aim of containing or resolving conflict.

UN Peacekeeping began in 1948 when the Security Council authorized the deployment of UN military observers to the Middle East.⁹⁰ The mission's role was to monitor the Armistice Agreement between Israel and its Arab neighbours – an operation which became known as the United Nations Truce Supervision Organization (UNTSO). Even though the UNTSO remains active in the Middle East, the UN has deployed an additional 67 peacekeeping missions to date, with Africa having the largest number of deployments.⁹¹

These peacekeeping missions have been primarily set up to bring about peace in conflict areas through non-enforcement action and “to act as an influence of calm by physically separating warring factions.”⁹²

As seen in 1.2. above, the span and reach of activities of peacekeeping operations has greatly expanded. Their activities not only encompass stabilising tense situations in the traditional sense but may now include overseeing elections, disarming ex-combatants, training of police forces, implementation of human rights accords, support for restoration of state authority and support for

⁸⁸ Article 17 of the Charter provides that (1) The General Assembly shall consider and approve the budget of the Organization. (2) The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly. (3) The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

⁸⁹ See A/Res/55/235.

⁹⁰ See United Nations Peacekeeping “History of Peacekeeping” <http://www.un.org/en/peacekeeping/operations/history.shtml> (Date of Use: 19 March 2012).

⁹¹ As at 31 December 2012, the UN has deployed a total of 67 peacekeeping operations since 1948. See United Nations Peacekeeping “Peacekeeping Fact Sheet” <http://www.un.org/en/peacekeeping/resources/statistics/factsheet.shtml> (Date of Use: 29 January 2013).

⁹² See Shaw *International Law* 1226.

social and economic recovery, safe and unobstructed return of refugees and displaced persons to their homes.⁹³

2.5 What ensures a successful peacekeeping operation?

The inherent success of a peacekeeping operation rests on three principles: consent, impartiality and the non-use of force.⁹⁴

Consent of the parties: Before a peacekeeping operation can be deployed, consent is required from the main parties to the conflict. This consent is required for the peacekeepers to carry out their mandated tasks without having to pull towards enforcement action.⁹⁵

Impartiality: Peacekeeping Operations are required to remain impartial in their relations with parties to a conflict. However, they cannot turn a “blind-eye” when the principles of the peace process are being undermined or violated by parties to the conflict.⁹⁶

Non-use of force except in self-defence and defence of the mandate: Essentially, force can only be used as a last resort with authorisation of the Security Council and consent of the parties to the conflict.⁹⁷

Even in the event that force is used, this use of force cannot be equated to the concept of peace enforcement. *Peace enforcement* may involve the use of military force with authorisation of the Security Council but consent from the parties to the conflict is not required.

By relying on the aforementioned principles as a basis for all peacekeeping operations, peacekeepers are able to conduct their tasks without having to jeopardise their relations with the parties to the conflict and ultimately, the peace process. These principles ultimately distinguish UN peacekeeping operations as an instrument for peace and security.⁹⁸

⁹³ See United Nations Peacekeeping “Mandates and the legal basis of peacekeeping” <http://www.un.org/en/peacekeeping/operations/pkmandates.shtml> (Date of Use: 18 March 2012).

⁹⁴ See United Nations Peacekeeping “Principles of Peacekeeping” <http://www.un.org/en/peacekeeping/operations/history.shtml> (Date of Use: 19 March 2012).

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

Experience has shown however, that the above principles are not only the only factors that determine the success of a peacekeeping operation. Factors such as inadequate resources and lack of political will of member states may also come into play.⁹⁹ This could be manifested by member states reluctance to provide funding and troops. In addition, ineffective implementation of peace agreements and unachievable mandates may also pose problems for peacekeepers in effectively maintaining the peace.¹⁰⁰ Perceived legitimacy and credibility of the UN peacekeepers by the local population are also important factors for success.¹⁰¹

It is also apparent that the host country's reluctance to fully support UN activities and/or its lack of commitment to work towards the peace process is bound to hinder progress or ultimately cause tensions that could have easily been contained from spiraling into violent deadly conflicts.

2.6 Understanding Conflict prevention

In order to understand conflict prevention, it would seem that it is not sufficient to only look out *how* the various UN departments maintain and keep the peace (as seen above) but to also understand *what* exactly conflict prevention entails.

Conflict prevention could be defined as any activity taken to stop or reduce the risk of a conflict from occurring, "as well as those activities that seek to address deep-rooted causes that can lead to conflict in future"¹⁰²

Strategies for conflict prevention may fall under three of the following categories:

- 1) *Operational prevention*: This type of prevention aims to address imminent crisis by performing activities that will reduce or eliminate immediate violence. The aim is very specific and addresses short term objectives. Activities may include negotiation, fact-finding, meeting hu-

⁹⁹ See Shaw *International law* 1267. See also United Nations Peacekeeping "Success of Peacekeeping" <http://www.un.org/en/peacekeeping/operations/history.shtml> (Date of Use: 19 March 2012).

¹⁰⁰ See Cousens *Conflict Prevention* 107.

¹⁰¹ See *United Nations Peacekeeping Operations Principles and Guidelines* 20. Available at http://pbpu.unlb.org/pbps/library/Capstone_Doctrine_ENG.pdf (Date of Use 8 March 2012).

¹⁰² See Sriram, Martin-Ortega, Hermann *War, Conflict and Human Rights* 16.

manitarian needs and use of sanctions and military pressure. This form of prevention is undertaken by security actors such as the UN.

- 2) *Structural prevention*: This type of prevention has a wider perspective. It aims to prevent conflicts by also addressing the root causes of conflict like corruption, poverty, governance, use of natural resources and inequality. This form of prevention is generally undertaken by development-developmental and humanitarian actors.
- 3) *Systematic prevention*: This term was originally coined by then UN Secretary-General, Kofi Annan, and used to address issues that can be dealt with efficiently through global partnerships and frameworks on an international platform.¹⁰³ The type of issues include illicit arms trade, drug trafficking, HIV/AIDS, reduction of environmental degradation, regulation of industries that are known to exacerbate conflict.

For conflict prevention to be a success, implementation of EWS are of paramount importance. EWS involve three technical processes to monitor imminent conflicts: 1) the collection of conflict-relevant data 2) analysis of collected data and 3) transfer of analytical insights into practice.¹⁰⁴ Through the use and collation of this expert analysis of data, the UN is notified of imminent violent tensions or conflicts and is able to determine the best course of action to be taken by the international community. Should the Security Council determine that the best course of action is deployment of a peacekeeping operation, authorisation for this is attained by adopting a resolution.

2.7 The challenges of Conflict Prevention

The UN has had many successes in conflict prevention. However, many of them remain unknown. Some have argued that these accomplishments have remained unknown mainly because it is often problematic to define success and identify the various shapes success can manifest and also because the UN has failed to effectively publicise its own successes.¹⁰⁵ Nevertheless, some successes have been markedly apparent. For example, the UN has helped

¹⁰³ See A/60/ 891 5 para 8.

¹⁰⁴ See Wisler, Ateya "Conflict Early Warning System for Sudan" 8.

¹⁰⁵ See Sriram, Wermester *Strengthening UN capacities for the prevention of violent conflict* 383.

end conflict and restored stability through its peacekeeping missions in countries such as Cambodia, El Salvador, Guatemala, Mozambique and Tajikistan.¹⁰⁶ On a broad spectrum, as far as stopping further bloodshed is concerned, it is clear that the involvement of UN peacekeeping operations has been generally valuable as they have helped stopped conflicts between opposing parties and helped the parties participate in complex peace processes.¹⁰⁷

Furthermore, peacekeeping operations have undergone a dramatic change. They have moved from lightly armed peacekeepers that classically observed and kept the peace to peacekeepers whose tasks have been widened to include carrying out their tasks by robust means, if necessary, to defend the mandate and the civilian population.¹⁰⁸

In spite of these achievements, it would appear that the UN has been implicated in huge conflict prevention failures such as the genocide in Rwanda and Bosnia and the conflict in Angola.

Is this implication justified? To understand these failures and why the UN was implicated, it is preferable to first embark on understanding the full nature of the conflict and the context in which it occurred. To understand the full nature of a conflict and the context in which a conflict occurred, for example a conflict in Africa, one requires a thorough study of the tribal relations and the country's colonial history as a starting point. In short, one must first understand the root causes of a conflict.

It follows that to understand the failures of the UN in Rwanda and the current challenges in Sudan requires the identification of the causes of the conflicts in Sudan and Rwanda and an examination as to whether the UN effectively addressed them. Where the actions of the UN were considered as having come "too late" additional factors such as the decision making process of the UN have to be examined.

¹⁰⁶ See "Peace-keeping in a changing context" <http://www.un.org/docs/SG/SG-Rpt/ch4c.htm> (Date of Use 3 February 2012).

¹⁰⁷ See Cassese *International Law* 346.

¹⁰⁸ See Jolly, Emerij, Weis *UN Ideas That Changed The World* 173.

It is apparent from the text and context of the UN Charter that clear decision making procedures are in place.¹⁰⁹ In spite of this, experience has shown, as in the cases of Rwanda and Sudan, that the actions of the UN are not all performed in a timely and effective manner. The effectiveness of DPKO's still remains limited. Some have argued that their core features of consent and impartiality sometimes cause these limitations. Even though these features are considered the 'backbone' of a DPKO, the UN has on occasion set up one with partial consent i.e. consent has not been granted from all the parties involved and thereby affected the principle of impartiality.¹¹⁰

Also, as pointed out in 1.2 above, steps towards conflicts are sometimes halted when UN member states, particularly the P5 fail to reach an agreement as to when and if a peacekeeping operation should be deployed. Lack of support and commitment from member states to deploy a peacekeeping operation often results in lack of resources and funding which in turn, paralyses the peacekeeping process.

As Luis Druke put it:

If the money and management problem did not exist and the political will of the permanent members of the Security Council and concerned parties were always consistent, the UN could be more effective in preventing or suppressing violent conflicts on the basis of the Charter and subsequent arrangements.¹¹¹

The same sentiments were echoed in the Report of the Secretary-General in June 2001:

It is axiomatic that effective preventive action will require sustained political will and long-term commitment of resources by Member States and the United Nations system as a whole if a genuine culture of prevention is to take root in the international community.¹¹²

¹⁰⁹ Article 34 of the UN Charter provides that the Security Council and any Member State (by virtue of Article 35) may bring to the attention of the Security Council any dispute threatening international peace and security. Article 11.3 provides that the General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security and Article 99 confers this responsibility on the Secretary-General.

¹¹⁰ See Cassese *International Law* 345.

¹¹¹ See Bauwens, Reychler *The Art of Conflict Prevention* 41. 1994.

¹¹² See A/55/985-S/2001/574.

It would thus be appropriate to substantially infer that the delay in response or failure to respond to imminent conflicts is often a reflection of the member states willingness or lack thereof to cooperate. It would also seem logical to infer that the international community cannot lay blame solely on the UN when progress in conflict prevention is often halted by the lack of resources and funding which are expected from member states. Also, experience has shown that member states have sometimes chosen to altogether withdraw their support in the deployment of an operation. This option was taken in Bosnia and Herzegovina, Somalia, Rwanda, Liberia and Angola.¹¹³

One could thus deduce that in order for the UN to progress in conflict prevention, it is pivotal for member states to be consistent in their material support and demonstrate the political will to prevent conflict even at the expense of sabotaging their own personal interests.

To understand how member states could sometimes be considered as 'saboteurs' of conflict prevention, a further study of their role in the undertakings of the Security Council are discussed in the next chapter.

¹¹³ See "Peace-keeping in a changing context" <http://www.un.org/docs/SG/SG-Rpt/ch4c.htm> (Date of use 3 February 2012).

3 CHAPTER III THE UN AS A KEY ACTOR IN CONFLICT PREVENTION IN AFRICA – THE SECURITY COUNCIL AND ITS MEMBER STATES

3.1 The Role of the Security Council in conflict prevention

It could be said that the UN is split up in two. The first UN comprises of the main bodies of the UN, which includes the Security Council, General Assembly, Economic and Social Council, Trusteeship Council, International Court of Justice and the Secretariat.¹¹⁴ The second UN comprises of several UN specialised agencies, committees, funds and programmes.¹¹⁵ These two parts play instrumental roles in dealing with the world's challenges such as peace and security, global warming, poverty, HIV/Aids, deforestation, terrorism, human trafficking, drugs and crime, just to name a few. As already pointed out above, this paper shall examine the work of the UN in conflict prevention vis-à-vis the first UN, in particular, the Security Council.

Also, as stated above, the Security Council has been bestowed with the primary responsibility of maintaining international peace and security. Its core mandate is thus conflict prevention. This power is derived from Article 24 of the Charter. In bestowing this power on the Council, it was envisioned that the Council would help advance human welfare through the prevention of conflict among sovereign states.

Should a threat to peace occur and the complaint is brought to the attention of the Council, the Council will first attempt to settle the dispute by peaceful means.¹¹⁶ As also pointed out in 1.2 above, this may involve the appointment of Special Representatives or call for the Secretary-General to conduct investigation or mediation in response to the threat.¹¹⁷ Should a violent conflict ensue, the Council has the authority to implement a variety of measures from

¹¹⁴ See United Nations "Structure and Organization"
<http://www.un.org/en/aboutun/structure/index.shtml> (Date of Use: 8 April 2012).

¹¹⁵ Ibid.

¹¹⁶ See United Nations "Security Council Background"
http://www.un.org/Docs/sc/unsc_background.html (Date of Use: 14 April 2012).

¹¹⁷ Ibid.

issuing cease-fire directives, enforcement measures, economic sanctions to collective military action (see 1.2).¹¹⁸

3.2 The Security Council and the Charter

Essentially, the following are the powers conferred on the Council by the Charter:

Articles 25 and 49 and to some extent Article 2.6, authorise the Council to take decisions that are binding on all members of the organization, including its non-members. The types of decisions that can be undertaken are wide as they include taking any “measures necessary” to maintain peace and security. However, it is notable that this authorisation is limited by the veto rule.

Article 30 authorises the Council to adopt its own rules of procedure which are subject to the Charter.

The Charter also grants the Council power to regulate armaments with the assistance of the Military Staff Committee. In this respect, Article 26 provides that:

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

Additionally, the Council may make recommendations on the admission of new members and appointment of the Secretary-General.¹¹⁹

¹¹⁸ See preventive or enforcement measures in Articles 5 and 50, enforcement measures in Article 2.7, enforcement action in Article 53.1, military measures in Articles 39, 41, 45, 49, 51, 53.1 and 94.2 and military action in Articles 11.2, 42 and 106. See also United Nations “Security Council Background” http://www.un.org/Docs/sc/unsc_background.html (Date of Use: 14 April 2012).

¹¹⁹ See United Nations “Security Council Function and Powers” http://www.un.org/Docs/sc/unsc_functions.html (Date of Use: 8 April 2012).

3.3 How relevant is the Charter in today's world?

The Charter was signed at the San Francisco Conference in 1945 at a time when the world had just experienced devastating effects of two world wars. The preamble of the Charter outlines its purpose as follows:

We the peoples of the United Nations determined

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, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom

By and large, the moral purpose echoed above has very much remained what drives the UN today. However, it would appear that this preamble contradicts some provisions in the Charter. For instance, the preamble affirms the equal rights of nations, large and small and yet it confers the right to veto in substantive proposals in the Council only on the P5. The right to amend the Charter is also requires the concurring vote of the P5 as provided in Articles 27.3 and 108 respectively.

Another issue worthy of note is the issue of intervention. Article 2.7 prohibits the intervention of matters which are within the domestic jurisdiction of a State. On the other hand, Articles 55 and 56 call upon members to take joint action to ensure human rights for all.

Needless to say, through the advancement of international law, the issue of intervention in matters relating to human rights is now an issue that the majority of the international community have come to advocate and continue to develop. This has been particularly evident in the "Responsibility to Protect" principle which fundamentally establishes that "Sovereignty no longer exclusively protects States from foreign interference; it is a charge of responsibility

that holds States accountable for the welfare of their people”.¹²⁰ It could thus be interpreted that Articles 55 and 56 of the Charter now enjoy priority over Article 2.7 when it involves the protection of populations from genocide, war crimes, crimes against humanity and ethnic cleansing, and/or incitement of the aforementioned crimes.

However, the exclusive powers of the P5 and their use remain subjects of great debate to this today. Those in contention have often felt that the idea that peace and security can only be effectively achieved through the cooperation of the five great powers is an idea that was plausible in the 40’s but not today.¹²¹ Moreover, the fact that the P5 are able to use their prerogative to derail any substantive resolution irrespective of the international support garnered has caused further controversy. On balance, it would seem that the main grievance of the non-permanent member states lies with the Charter’s failure to avail equal voting rights to sovereign states.

In spite of the above criticism, the Charter remains a valid and binding constitution on the international community.

3.3.1 Members of the Security Council and the Veto

The UN was created on the basis that the Great powers would lead the organisation.¹²² Today, the Council consists of fifteen members, five of which are permanent (P5). The ten non-permanent members are elected by the General Assembly every two years (see Article 23 of the Charter). The Council is headed by a President who holds office for a period of one month and each tenure of presidency is held by a different member of the Council.¹²³

Article 27 of the Charter outlines the voting procedure of its member as follows:

- a. Each member state of the Council has one vote.

¹²⁰ See Office of the Special Adviser on the Prevention of Genocide “Responsibility to Protect” (Date of Use: 18 May 2012). See also A/60/1 paras 138-140 and A/63/77.

¹²¹ See Bailey *The procedure of the UN Security Council* 107.

¹²² See Cassese *International Law* 319.

¹²³ See United Nations “Security Council Members” <http://www.un.org/sc/members.asp> (Date of Use 8 April 2012).

b. Decisions on substantive matters require the concurring votes of the P5 and four votes from the non-permanent members.

Furthermore, as conferred by the Charter, any decision taken by the council is binding on all member states of the United Nations.¹²⁴ If a state is party to a dispute and not represented on the Council, it may be invited to participate in Security Council deliberations. However, such parties (members and non-members) are required to abstain from voting (see paragraph 3 under Article 27).¹²⁵

Membership of the Council has often come under scrutiny. The idea that the maintenance of peace and security ultimately lies in the hands of five states is one that has received resistance from the time of the Charter's formulation to present day. Some authors have pointed out that had the UN been formed in more recent times, the likelihood that the P5 would be given permanent membership and veto rights would be very slim or next to impossible.¹²⁶ Given the number of contending views and the general feeling that the veto has been misused in order to further self-interested purposes, a number of proposals have been made over the years to balance the concept of permanent members having such elevated power. The following are examples of recommendations that have been brought before the General Assembly:

1. The structure of the council should mirror 'current realities'.¹²⁷ The supporters of this type of reform have proposed various ways of achieving this. The most dominant views suggest that the Council increase its members from 15 to as many as 27 members.¹²⁸ Other delegations have also been of the opinion that the council's representation in 1963

¹²⁴ See "UN Security Council Members" <http://www.un.org/sc/members.asp> (Date of Use: 1 May 2012). See also Article 25 of the Charter.

¹²⁵ Article 27 paragraph 3 provides that decisions of the Council on all other matters shall be made by an affirmative vote of nine members including the concurring vote of the permanent members; provided that in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

¹²⁶ See Bailey, Daws *The procedure of the UN Security Council* 107.

¹²⁷ See A/58/47 20.

¹²⁸ Ibid.

was well-balanced and accordingly efforts should be made to reflect membership representation of that year.¹²⁹

2. Introduction of new permanent members. Suggestions to extend permanent membership to industrialised and developing countries have also been brought forward. Countries that have been proposed over the years include India, Brazil, Germany, South Africa and Japan.¹³⁰ In this respect, it has been envisioned that permanent membership would increase from five to ten or eleven permanent members. Then again, some countries have objected to the addition of these members. For instance, Pakistan has objected to the permanent membership of India; Italy and Spain's objection has been directed towards Germany; Argentina and Mexico to Brazil; and South Korea has opposed the admittance of Japan as a permanent member.¹³¹ It follows that since no agreement can easily be reached among regional groups as to which countries should be the new permanent members, it has been suggested that an increase in non-permanent members would equally encourage wider representativity and cause less controversy.¹³² In looking at whether these proposed reforms would be viable, many delegations stressed the importance of establishing whether such expansions would result in greater 'efficiency' and 'effectiveness' of the Council.¹³³
3. Limit the scope of veto use or abolish it. Some delegations have brought proposals forward to limit the use of the veto to matters related to resolutions under chapter VII of the Charter or entirely abolish it.¹³⁴ In the event that Council membership was expanded, some delegations

¹²⁹ See A/58/47 20. In 1963, there were 15 members and UN membership sat at 112. Therefore, there existed a ratio of 1 Council member to every 8 Member States. Today, the ratio is: 1 Council Member to every 12.5 Member States.

¹³⁰ See Global Policy Forum "Wikileaks Exposes US' Double-Game on UN Security Council Expansion" <http://www.globalpolicy.org/component/content/article/196-membership/50519-wikileaks-exposes-us-double-game-on-un-security-council-expansion.html> (Date of Use: 1 April 2012).

¹³¹ Ibid.

¹³² See A/58/47 21.

¹³³ Ibid.

¹³⁴ Ibid.

have suggested that this prerogative is not extended to the new permanent members.¹³⁵

The above recommendations are entirely or in some respect sound. However, it would seem that the objections of states and their ensuing recommendations have not led to the obliteration of the veto or changes in the composition of the Council as yet. The reason for this lies in the Charter itself. Any changes or amendments to the Charter would require the two thirds of the UN member votes including the P5 (see Article 108 of the Charter). It is thus hardly surprising that no amendments relating to the veto have been made to date. Any amendment would require that the P5 themselves become open to relinquishing their veto right or share it with other states.

3.3.2 Africa and the veto

As has been pointed out in 3.3.1, various recommendations have been brought forward to limit or abolish the veto. Arguably, the member state inaction that emanates from the use of the veto has often led to the loss of hundreds of thousands of lives. In many respects, the adverse effects of the veto affect Africa the most mainly because Africa experiences the greatest number of internal armed conflict in the world (see 2.3). Consequently, the continent's problems have appeared on the Council's agenda more than any other region.

The two cases that exemplify the adverse effects of the veto in Africa are the Rwandan genocide and the crisis in Darfur. With respect to the Rwandan genocide, no actual veto was used. However, the threat of the veto and influence of some of the P5 (France, US and the UK) resulted in the Council's failure to deploy a reinforced peacekeeping force after the genocide began.¹³⁶ As for the crisis in Darfur, Russia and China's threat to veto are considered to be the reason why the Council has taken less than robust action against the

¹³⁵ See A/58/47 21.

¹³⁶ See Citizens for Global Solutions "The Responsibility Not To Veto: A Way Forward" 2010. Available at http://globalsolutions.org/files/public/documents/RN2V_White_Paper_CGS.pdf (Date of Use: 15 October 2012).

government of Sudan.¹³⁷ Again, with the case of Darfur, no actual veto was cast. However, this chapter, in particular, paragraphs 3.3.4 and 3.3.5 will demonstrate the various ways action can be derailed by use of the veto as well as outline the instances where the P5 have threatened to use a veto. That said, it should be noted that even though Africa's issues appear in the Council's agenda more than any other region, it is striking that Africa is not represented in the permanent category. Would the inclusion of an African state as a permanent member enable the Council to address Africa's conflict in a much more efficient manner? This question will be addressed in the last Chapter of this paper. For purposes of limiting the scope of this paper, the discussions that follow vis-à-vis the veto will be analysed within the context of Africa.

3.3.3 The Rationale of the Veto

The history of the veto dates back to the San Francisco Conference of 1945. As mentioned in 3.3 above, the time at which the conference took place was a period in which the world was fragile. It thus became extremely important to nations around the world that every effort was made to recover from the devastating effects of war. However, during this recovery process, it became abundantly clear that recovery could only be achieved through the work of a few powerful states. The United States, United Kingdom, the Soviet Union, China and France were the only states that had the power and resources to assist in the rehabilitation process.¹³⁸ It was also recognised that only these states could make the idea of a political body such as the UN effectively work.¹³⁹ In recognising the powers and influence these five states had, it was essential that the Charter conferred on them special rights and responsibilities which would ensure that they acted as one in spite of their "historical differences".¹⁴⁰ The establishment of the veto rule or "great power unanimity" as it is sometimes referred to, appeared to be a mechanism that would ensure con-

¹³⁷ See Citizens for Global Solutions "The Responsibility Not To Veto: A Way Forward" 2010. Available at http://globalsolutions.org/files/public/documents/RN2V_White_Paper_CGS.pdf (Date of Use: 15 October 2012).

¹³⁸ See Patil *The UN Veto in World Affairs 1946-1990* 11.

¹³⁹ Ibid.

tinuous cooperation among the Five in issues of world peace and security. Each of the powers believed that the use of this rule ensured that they could act together as a formidable force against any plans or recommendations that would be against their interests.¹⁴¹

Fundamentally, the speeches made by the various representatives of the Five outline the rationale of the veto:

For example the representative of China said:

Starting from the premise that everyone desired to make the Security Council a strong and effective organ, there was no choice but to support the rule of unanimity as essential for its strength and its effectiveness. The alternative was a voting system which, though it might be more perfect, could in any given moment, weaken the Council in efforts to act promptly and effectively. It was a clear choice between a more or less ideal system of voting and one requiring unanimity for effective decisions.¹⁴²

The United Kingdom representative pointed out:

The present voting provisions were in the interests of, broadly judged, of all states and not merely the permanent members of the Security Council. Peace must rest on the unanimity of the great powers for without it whatever was built would be built upon shifting sands, of no more value than the paper upon which it was written. The unanimity of the great powers was a hard fact but an inescapable one. The veto power was a means of preserving that unanimity, and far from being a menace to the small powers, it was their essential safeguard.¹⁴³

¹⁴⁰ See Patil *The UN Veto in World Affairs 1946-1990* 11.

¹⁴¹ Ibid.

¹⁴² See UNCIO Document 922, III/1/44 June 11 1945 at page 5. Also available at http://archive.org/stream/documentsoftheun008818mbp/documentsoftheun008818mbp_djvu.txt (Date of Use: 29 March 2012).

¹⁴³ See UNCIO Document 936, III/1/45, June 12 1945 at page 5. Also available at http://archive.org/stream/documentsoftheun008818mbp/documentsoftheun008818mbp_djvu.txt (Date of Use: 29 March 2012).

The representative from the United States was of the opinion that “the great powers could preserve the peace of the world if united but they could not do so if dissension were sowed among them”.¹⁴⁴

After much deliberation and in spite of resistance from the smaller powers, it was decided that the concurring vote of the Five was mandatory in respect of the Security Council’s substantive decisions relating to peace and security. This decision was consequently enshrined in Article 27 of the Charter and remains a subject of debate to this day. Moreover, as already pointed out above, the veto right can only be taken away or amended through the concurrent agreement of the Five as provided by Article 108 of the Charter. Article 108 provides that:

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.

In effect, the “veto guarded the veto”.¹⁴⁵

In the years that followed, various views, debates and proposals have been made to challenge this exclusive power of the Five. The P5 themselves have held different views in respect of the veto rule. For the Russians, they have shown continuous support the rule of unanimity as a means of ensuring that the western powers did not use “new international machinery” against them.¹⁴⁶ The Americans also viewed the veto rule favourably and continued to support the rule. The British on the other hand, began to lean away from this rule mainly because the small states in the commonwealth did not agree with the idea of having the “great powers essentially run the world through the Council and yet immunize themselves by using the veto”.¹⁴⁷ However, the P5 have yet to explicitly express an inclination to amend the Charter in the areas related to

¹⁴⁴ See UNCIO Document 956, III/1/47, June 13 1945 at page 8. Also available at http://archive.org/stream/documentsoftheun008818mbp/documentsoftheun008818mbp_djvu.txt (Date of Use: 29 March 2012).

¹⁴⁵ See Patil *The UN Veto in World Affairs 1946-1990* 16.

¹⁴⁶ See Bosco *Five To Rule Them All* 23.

the veto rule. So, it could be safe to deduce that this rule will remain in effect for some time to come.

Historically, the veto rule has been used by the P5 for various reasons. More often than not, the reasons have been seen to be self-serving or used as a means of expressing indifference or outrage with the Council. For example, in the first few months that the Council was operative, the Soviets had felt isolated and used the veto seventeen times by the summer of 1948 as a means of expressing their outrage.¹⁴⁸ The following section further examines the use of the veto power by the P5.

3.3.4 Use of the veto power

At the time of writing this Chapter, a total of 269 vetoes have been used since the UN Charter was signed in 1946.¹⁴⁹ Considering the vast issues that have been brought before the Council, this number may not seem entirely out of the norm.

Typically, when peace and security are threatened, the Council is involved in a number of informal consultations to ascertain the type of response required. During such consultations, there have been instances where the P5 have threatened to use the veto which consequently led to the Council's inability to bring certain issues forward for deliberation.¹⁵⁰ Regrettably, statistics surrounding such practices are difficult to collate since the threat to use a veto would only come about in closed informal consultations and not open meetings of the Council.

The following are the areas in which an actual negative vote has been used:

- a) Vetoes on political questions and situations¹⁵¹
- b) Vetoes on membership¹⁵²

¹⁴⁷ See Bosco *Five To Rule Them All* 24.

¹⁴⁸ *Ibid.*, 45.

¹⁴⁹ See Global Policy Forum "Tables and Charts on the Security Council – Use of Veto from 1946 to 2012" <http://www.globalpolicy.org/security-council/security-council-as-an-institution/the-power-of-the-veto-0-40/tables-and-charts-on-the-power-of-the-veto.html> (Date of Use: 1 May 2012).

¹⁵⁰ See A/58/47 30.

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*

c) Vetoes on UN matters and operations¹⁵³

To better understand the use of the veto, it is important to bear in mind that this negative vote can only be used against entire draft resolutions or paragraphs of draft resolutions or amendments.

Having said that, the uses of the veto by the P5 will now be individually looked at:

Russia

Russia has used the veto more times than any other permanent member.¹⁵⁴ Since 1946, the USSR/Russia has used the veto 127 times.¹⁵⁵ Most of these vetoes were taken prior to the end of the cold war. The Russians exercised the veto predominantly in matters related to political questions and admission of members.¹⁵⁶ It is interesting to note that between 1946 and 2004, Russia had said “no” to the membership of 16 states which included Japan, Italy, Ireland, Portugal, Finland, Austria, just to name a few.¹⁵⁷ Their objections to political questions included but were not limited to the situations in Cyprus, Bosnia and Herzegovina, Middle East, India-Pakistan, Congo, Czechoslovakia, Hungary and also questions related to Greece, Spain, Palestine, US-Iran hostage, South Africa.¹⁵⁸ They also put in their negative vote with respect to various paragraphs of draft resolutions or amendments.

Based on the above, it is not an easy feat to deduce the type of issues that Russia is likely to veto. It could, however, be said that their use of the veto depended on what interests were at stake at that particular moment in history.

¹⁵³ See A/58/47 30.

¹⁵⁴ See Global Policy Forum “Tables and Charts on the Security Council – Use of Veto from 1946 to 2012” <http://www.globalpolicy.org/security-council/security-council-as-an-institution/the-power-of-the-veto-0-40/tables-and-charts-on-the-power-of-the-veto.html> (Date of Use: 1 May 2012).

¹⁵⁵ Ibid.

¹⁵⁶ See A/58/47 13.

¹⁵⁷ Ibid.

¹⁵⁸ See A/58/47 13.

United States of America

The United States has used the veto a total of 83 times.¹⁵⁹ It would appear that a vast majority of these vetoes have been used in regard to issues in the Middle East.¹⁶⁰ It follows that these vetoes could be seen as a means of affirming the United States position as Israel's ally and/or as a means of protecting their interests in the Middle East.

In addition to issues related to the Middle East, the United States has used the veto to curtail action related to situations in countries like Grenada, Namibia, South Africa, and Southern Rhodesia (Zimbabwe).¹⁶¹ With respect to membership, the United States used the veto to object to the admissions of Vietnam and Angola as new members.¹⁶²

Given the above, it would be safe to deduce that the US predominantly uses the veto in cases related to its interests in the Middle East.

United Kingdom

The United Kingdom has used the veto 32 times.¹⁶³ A vast majority of these vetoes were in response to draft resolutions related to the situations in Namibia, Panama, South Africa, Falklands Islands and Southern Rhodesia and problems related to the Palestinian question. The veto statistics reveal that on most occasions, the United Kingdom has used the veto in unison with other countries.

¹⁵⁹ See Global Policy Forum "Tables and Charts on the Security Council – Use of Veto from 1946 to 2012" <http://www.globalpolicy.org/security-council/security-council-as-an-institution/the-power-of-the-veto-0-40/tables-and-charts-on-the-power-of-the-veto.html> (Date of Use: 1 May 2012).

¹⁶⁰ See A/58/47 13.

¹⁶¹ See A/58/47 13.

¹⁶² Ibid.

¹⁶³ See Global Policy Forum "Tables and Charts on the Security Council – Use of Veto from 1946 to 2012" <http://www.globalpolicy.org/security-council/security-council-as-an-institution/the-power-of-the-veto-0-40/tables-and-charts-on-the-power-of-the-veto.html> (Date of Use: 1 May 2012).

France

France has used its prerogative 18 times.¹⁶⁴ These matters have included the situations in Panama, Namibia, Comoros and South Africa.¹⁶⁵ It has also used the veto in questions relating to Palestine and the relationship between the UN and South Africa.¹⁶⁶

China

By contrast, China has only used the veto 8 times.¹⁶⁷ However, it should be noted that between 1946 and 1971, China's seat at the Security Council was occupied by the Republic of China (Taiwan).¹⁶⁸ In this period, the veto was only used once to object to the admission of Mongolia into the UN.

China has used its prerogative sparingly in matters such as the situations in Macedonia, the Middle East and expressed its objection towards the admission of Bangladesh as a member.¹⁶⁹

Strikingly, China has used its veto in conjunction with Russia on a majority of occasions. The most recent veto cast with Russia is the one relating to the situation in Syria.¹⁷⁰

In spite of the negativity that has surrounded the veto, it is worth looking at the number of times the Council has passed successful resolutions.

First, it must be pointed out that the views echoed in this paper point to the fact that internal armed conflicts increased after the end of the cold war which would consequently lead to the expansion of the Council's role and ultimately

¹⁶⁴ See Global Policy Forum "Tables and Charts on the Security Council – Use of Veto from 1946 to 2012" <http://www.globalpolicy.org/security-council/security-council-as-an-institution/the-power-of-the-veto-0-40/tables-and-charts-on-the-power-of-the-veto.html> (Date of Use: 1 May 2012).

¹⁶⁵ See A/58/47 13.

¹⁶⁶ Ibid.

¹⁶⁷ See Global Policy Forum "Tables and Charts on the Security Council – Use of Veto from 1946 to 2012" <http://www.globalpolicy.org/security-council/security-council-as-an-institution/the-power-of-the-veto-0-40/tables-and-charts-on-the-power-of-the-veto.html> (Date of Use: 1 May 2012).

¹⁶⁸ See Global Policy Forum "Tables and Charts on the Security Council – Use of Veto from 1946 to 2012" <http://www.globalpolicy.org/security-council/security-council-as-an-institution/the-power-of-the-veto-0-40/tables-and-charts-on-the-power-of-the-veto.html> (Date of Use: 1 May 2012).

¹⁶⁹ See A/58/47 13.

¹⁷⁰ See Human Rights Watch "UN: Russia, China Vetoes Betray Syrian People" <http://www.hrw.org/news/2012/02/04/un-russia-china-vetoes-betray-syrian-people> (Date of Use: 4 May 2012).

the number of resolutions passed. Therefore, one should bear this in mind when looking at the Council's successful resolutions versus the derailed resolutions. Joel Wuthnow's¹⁷¹ summary findings indicate that in between the periods 1990 and 2008, the Council had held meetings at least 166.1 times in a year and had succeeded in implementing the measures under Chapter VII on countries such as Iraq, the former Yugoslavia, Liberia, Rwanda, Somalia, Congo, Sierra Leone, North Korea, Iran and Afghanistan.¹⁷² In addition, the council had managed to dispatch 45 peacekeeping operations in countries like Rwanda, Haiti, Kosovo, East Timor, and Sudan.¹⁷³

The statistics that have been given thus far have not included the "hidden veto" or the number of times the P5 have abstained from voting. With abstention from voting, a resolution can be passed if a permanent member abstains from a vote. However, a proposal is susceptible to defeat if enough abstentions are secured.¹⁷⁴ It follows that this kind of mechanism or practice is known as the "hidden veto" or the "indirect veto".¹⁷⁵ Having said that, the fact that a state like China has only cast the veto 8 times, does not necessarily mean that it has supported a majority of proposals brought before the Council. Experience has shown that although China has not cast a plethora of negative votes, it has withheld its vote on pertinent peace and security issues that have prevented a number of resolutions from being adopted.

As already pointed out, the aim of this chapter is to gain a better understanding of the Council's work in the context of Africa. Accordingly, the examples below illustrate the cases where the P5 abstained from voting in order to prevent the Council from adopting a resolution that was related to peace and security on the continent:

¹⁷¹ See Wuthnow "Beyond the Veto: Chinese Diplomacy in the United Nations Security Council" 5.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ See Patil *The UN Veto in World Affairs 1946-1990* 17. This practice allows a proposal to be rejected without a negative vote being cast by one of the P5. It only requires the persuasion of enough Council members i.e. 7 in a council of 15 to abstain or vote against.

¹⁷⁵ Ibid.

- a) **Security Council resolution 929 (1994)** on establishment of a temporary multinational operation for humanitarian purposes in Rwanda until the deployment of the expanded UN Assistance Mission for Rwanda. In this resolution, China was the only P5 to abstain from voting.¹⁷⁶ The reasoning behind their abstention is that that consent of all parties to the conflict was not secured.¹⁷⁷
- b) **Security Council resolution 955 (1994)** on establishment of an International Tribunal for Rwanda and adoption of the Statute of the Tribunal. China was the only member of the Council to abstain from voting.¹⁷⁸
- c) **Security Council resolution 1054(1996)** on sanctions against the Sudan in connection with non-compliance with Security Council resolution 1044 (1996) demanding extradition to Ethiopia of the three suspects wanted in connection with assassination attempt on President Mubarak of Egypt. No negative vote was cast but China and Russia were the only members that abstained from voting.¹⁷⁹
- d) **Security Council resolution 1070 (1996)** imposing air sanctions against the Sudan to reinforce implementation of Security Council resolutions 1044 (1996) and 1054 (1996). No negative vote cast but China and Russia were the only members that abstained from voting.¹⁸⁰

¹⁷⁶ Detailed voting of the S/929 available at: http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=1336K4T131T97.59039&menu=search&aspect=power&npp=50&ipp=20&spp=20&profile=voting&ri=&index=.VM&term=929&matchopt=0%7C0&oper=AND&aspect=power&index=.AD&term=&matchopt=0%7C0&oper=AND&index=.AD&term=&matchopt=0%7C0&oper=AND&index=BIB&term=&matchopt=0%7C0&limitbox_1=VI01+%3D+vi_s&ultype=&uloper=%3D&ullimit=&ultype=&uloper=%3D&ullimit=&sort=&x=12&y=14#focus (Date of Use: 9 May 2012).

¹⁷⁷ See Wuthnow Beyond the Veto: Chinese Diplomacy in the United Nations Security Council 373.

¹⁷⁸ Detailed voting of the S/955 available at: http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=1336K4T131T97.59039&limitbox_1=VI01+%3D+vi_s&menu=search&aspect=power&npp=50&ipp=20&spp=20&profile=voting&ri=2&source=%7E%21horizon&index=.VM&term=955&aspect=power#focus (Date of Use: 9 May 2012).

¹⁷⁹ See detailed voting of S/1054 available at: http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=1336K4T131T97.59039&limitbox_1=VI01+%3D+vi_s&menu=search&aspect=power&npp=50&ipp=20&spp=20&profile=voting&ri=10&source=%7E%21horizon&index=.VM&term=1054&aspect=power#focus (Date of Use: 9 May 2012).

¹⁸⁰ See detailed voting of S/1070 available at: http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=1336K4T131T97.59039&limitbox_1=VI01+%3D+vi_s&menu=search&aspect=power&npp=50&ipp=20&spp=20&profile=voting&ri=11&source=%7E%21horizon&index=.VM&term=1070&aspect=power#focus (Date of Use: 9 May 2012).

- e) **Security Council resolution 1556 (2004)** on endorsing the deployment of international monitors and imposing an arms embargo against the Sudan. China was the only permanent member to abstain from voting.¹⁸¹
- f) **Security Council resolution 1564 (2004)** on expanding the monitoring mission in Darfur and on the establishment of an international commission of inquiry to investigate human rights abuses in the Sudan. China and Russia were the only permanent members to abstain from voting.¹⁸²
- g) **Security Council resolution 1591 (2005)** on establishment of a Security Council Committee to monitor implementation of the measures in Darfur. China and Russia were the only permanent members to abstain from voting.¹⁸³
- h) **Security Council resolution 1593 (2005)** referring the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court. China and the United States were the only permanent members to abstain from voting and no negative votes were cast.¹⁸⁴
- i) **Security Council resolution 1672 (2006)** on implementation of measures specified in paragraph 3 of resolution 1591(2005) with respect to Sudanese individuals. Here no negative votes were cast except that China and Russia abstained from voting.¹⁸⁵
- j) **Security Council resolution 1706 (2006)** on expansion of the mandate of the UN Mission in Sudan (UNMIS) to support the implementation of the

¹⁸¹ See detailed voting of S/1556 available at:

http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=1336K4T131T97.59039&limitbox_1=VI01+%3D+vi_s&menu=search&aspect=power&npp=50&ipp=20&spp=20&profile=voting&ri=12&source=%7E%21horizon&index=.VM&term=1556&aspect=power#focus (Date of Use: 9 May 2012).

¹⁸² See detailed voting of S/1564 available at:

http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=1336K4T131T97.59039&limitbox_1=VI01+%3D+vi_s&menu=search&aspect=power&npp=50&ipp=20&spp=20&profile=voting&ri=13&source=%7E%21horizon&index=.VM&term=1564&aspect=power&x=7&y=14#focus (Date of Use: 9 May 2012).

¹⁸³ See detailed voting of S/1591 available at:

http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=1336K4T131T97.59039&limitbox_1=VI01+%3D+vi_s&menu=search&aspect=power&npp=50&ipp=20&spp=20&profile=voting&ri=14&source=%7E%21horizon&index=.VM&term=1591&aspect=power&x=14&y=10#focus (Date of Use: 9 May 2012).

¹⁸⁴ See detailed voting of S/1593 available at:

http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=1336K4T131T97.59039&limitbox_1=VI01+%3D+vi_s&menu=search&aspect=power&npp=50&ipp=20&spp=20&profile=voting&ri=15&source=%7E%21horizon&index=.VM&term=1593&aspect=power&x=12&y=6#focus (Date of Use: 9 May 2012).

¹⁸⁵ See detailed voting of S/1672 available at:

http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=1336K4T131T97.59039&limitbox_1=VI01+%3D+vi_s&menu=search&aspect=power&npp=50&ipp=20&spp=20&profile=voting&ri=17&source=%7E%21horizon&index=.VM&term=1672&aspect=power#focus (Date of Use: 9 May 2012).

Darfur Peace Agreement. No negative votes were cast but China and Russia were the only permanent members to abstain from voting.¹⁸⁶

- k) **Security Council resolution 1828 (2008)** on extension of the mandate of the African Union-United Nations Hybrid Operation in Darfur (UNAMID). The United States was the only member to abstain from voting and there was no record of a negative vote.¹⁸⁷

The reasoning behind the abstentions in the above instances has ranged from the P5 or non-permanent members respect for sovereignty; reluctance to adopt a resolution without the consent of all parties concerned; concerns related to the use of UN of forces or the Council's application of Chapter VII to concerns that any measures taken under the resolution would be to the detriment of the peacemaking process.¹⁸⁸

3.3.5 Other forms of derailing a resolution

On close scrutiny, it appears that the veto has many facets. First, as already pointed out, there have been instances where the P5 have threatened to use the veto during informal consultations of the Council which consequently led to the Council's inability to bring certain issues forward for deliberation. Second, the P5 have on several occasion chosen to abstain from voting which principally has the potential to prevent the adoption of a resolution provided that a sufficient number of abstentions has been secured (see discussion in 3.3.3 above).

With regard to the threats to use a veto, such threats have often led to the removal of pertinent issues from the Council's agenda. Experience has shown that topics that were susceptible to a veto from any of the Five would either be

¹⁸⁶ See detailed voting of S/1706 available at: http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=1336K4T131T97.59039&limitbox_1=VI01+%3D+vi_s&menu=search&aspect=power&npp=50&ipp=20&spp=20&profile=voting&ri=19&source=%7E%21horizon&index=.VM&term=1706&aspect=power&x=7&y=13#focus (Date of Use: 9 May 2012).

¹⁸⁷ See detailed voting of S/1828 available at: <http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=1336K4T131T97.59039&profile=voting&uri=full=3100023~!869436~!17&ri=21&aspect=power&menu=search&source=~!horizon#focus> (Date of Use: 9 May 2012).

¹⁸⁸ See Wuthnow "Beyond the Veto: Chinese Diplomacy in the United Nations Security Council" 368.

removed or amended from the agenda to appease the interests of the P5.¹⁸⁹ The resolutions that would be amended for this reason would often lack the strong and concise language required to condemn the actions of parties involved in a conflict.¹⁹⁰ In some cases, the Council failed to impose Chapter VII measures even when the situation so warranted.

In addition to this, such practises have sometimes led to the delay and/or obstruction of the Council's ability to respond to a crisis in an effective and timely manner.¹⁹¹ The threat of veto by France and the US in the case of Rwanda helps illustrate this.

Paris and Washington not only blocked UN action, but also used their hidden veto to weaken the definition of the crisis under international law. The Security Council could not even pass a resolution containing the word "genocide," which would have required intervention by parties to the 1951 Genocide Convention. Only after the worst months of the killing did the Security Council endorse Opération Turquoise, a deployment of French troops as a "humanitarian" mission under the UN flag.¹⁹²

The above situation succinctly demonstrates how such threats ultimately jeopardise the Council's work without the actual use of a negative vote. On the whole, one could say that the Council's ability to tackle conflict and respond to it in a timeous and effective manner would be greatly increased if they did not have to also deal with the 'threat of the veto' looming over every proposed resolution.

Regretfully, the Council has often reacted or prioritised threats to peace based on the individual interests of member states. It is apparent from the aforemen-

¹⁸⁹ See Nahory "The Hidden Veto" May 2004. Available at <http://www.globalpolicy.org/component/content/article/185/42656.html> (Date of Use: 19 May 2012).

¹⁹⁰ See Nahory "The Hidden Veto" May 2004. Available at <http://www.globalpolicy.org/component/content/article/185/42656.html> (Date of Use: 19 May 2012).

¹⁹¹ Ibid.

tioned discussions that the veto and its various forms need to be continually challenged. Its existence and use continue to pose tremendous challenges to the Council, particularly relating to conflicts in Africa. As evidenced in the cases of Rwanda and Sudan, the use of the veto or its various forms could sometimes also lead to the loss of many lives.

3.4 Change the conduct of voting and admit new members?

In sum, it would seem that the Council, although it has greatly advanced within the domain of conflict prevention, continues to face challenges with respect to its composition and conduct of voting.

Apart from the power they derive from the veto, the P5 enjoy other privileges. For instance, they have guaranteed representation in any UN committee and have access to a wealth of information.¹⁹³ Most markedly, they have the ability to exert influence on world events and ordinarily have the upper hand in multi-lateral and bilateral negotiations.¹⁹⁴ So, it is hardly surprising that the P5 have not shown any willingness to amend the Charter in this respect.

One should not, however, assume that there exists no possibility of reform with respect to the Council's membership and the veto. Essentially, there is a pressing need – in the area of international law – to keep a balance between the Charter and equitable representation in the Council and translate that into current realities.

It is for this reason that an open-ended working group was established in 1993 to consider the "Question of equitable representation on and increase in the membership of the Security Council".¹⁹⁵ The possibilities of Council reform, if any, will be evaluated from the standpoint of this working group.

This paper will attempt to analyse these possibilities by drawing from the working groups findings and recommendations, whilst also attempting to provide a better glimpse into the P5's attitude towards this type of reform. The scope and

¹⁹² See Nahory "The Hidden Veto" May 2004. Available at <http://www.globalpolicy.org/component/content/article/185/42656.html> (Date of Use: 19 May 2012).

¹⁹³ See Franek, Morrison "Restructuring the Security Council". Available at <http://www.munfw.org/archive/45th/cr2.htm> (Date of Use: 18 May 2012).

¹⁹⁴ Ibid.

work of the working group will also be indicative of the convictions of other member states intention to make changes in this area. Before discussing the likelihood of Council reform, it is fitting to first discuss the cases of Rwanda and Sudan in-depth.

Accordingly, the findings and recommendations of the working group will be discussed in great detail under Chapter VI of this paper.

¹⁹⁵ See GA/Res 48/26.

4 CHAPTER IV THE UN IN RWANDA: LESSONS LEARNT ON THE PREVENTION OF ARMED CONFLICT

4.1 Revisiting the Genocide in Rwanda

The genocide in Rwanda should never have happened. But it did. The international community failed in Rwanda, and that must leave us always with a sense of bitter regret and abiding sorrow. If the international community had acted promptly and with determination, it could have stopped most of the killing. But the political will was not there, nor were troops. If the United Nations, government officials, the international media and other observers had paid more attention to the gathering signs of disaster, and taken timely actions, it might have been averted. Warnings were missed.¹⁹⁶

The above paragraph echoes the general feeling shared by many among the international community that more should have and could have been done to prevent the genocide in Rwanda. Many scholars and experts have written extensively on the subject and given their opinion as to what went wrong and why Rwanda could justifiably be considered the biggest failure of the UN. In order to give an accurate account of what happened, this chapter heavily relies on the report of the independent inquiry into the actions of the UN during the 1994 genocide in Rwanda (Carlsson report) as the basis of its analysis (see 1.1.1 above on where to access Carlsson report).

The report provides an in-depth analysis of the events leading up to the genocide, the genocide itself and how the UN responded to this. In doing so, the report extensively discusses the various factors that played a role in what could be termed as one of the biggest failures of the UN. Even though all the factors extensively discussed in the report could be considered to have equally attributed to the UN's failure, this chapter will attempt to draw on the reports analysis primarily within the context of the member states reaction to the conflict in Rwanda.

¹⁹⁶ Kofi Annan's remarks at the Memorial Conference on the Rwanda Genocide, organized by the Government of Canada and Rwanda in New York, 26 March 2004. See SG/SM/9223 for the full speech.

4.2 Brief history of the Tutsi-Hutu relations

As already pointed out in 1.2 and 2.3.2, the dynamics between the Tutsi and Hutu was one that had on-going tensions that could be dated back to Rwanda's colonial era. During Belgian rule, it is believed that the Belgians favoured the Tutsi's over the Hutu's. For instance, even though the Tutsi were the minority, they had better access to jobs and education.¹⁹⁷ This favouritism was based on "racial ideology".¹⁹⁸ The Belgians were of the opinion that the Tutsi's were more refined and thus more superior to the Hutu's.¹⁹⁹ The differences between the two tribes were subsequently "reinforced through the introduction of identity cards in 1931, which indicated ethnicity".²⁰⁰ However, in the years leading up to Rwanda's independence, the liberation struggle was pioneered by the Tutsi which consequently led the Belgians to turn their favour on the Hutu's instead.²⁰¹ The Hutus used this 'change in wind' to embark on massacres that killed about 10 000 Tutsi's between 1959 and 1962 and resulted in more than 100 000 Tutsi's fleeing into Uganda and Burundi.²⁰²

After Rwanda gained independence in 1962, the relations between the two tribes continued to be highly volatile as evidenced by sporadic outbreaks of violence.²⁰³ Most of these sporadic outbreaks of violence were attempts made by the Tutsi's to restrain the domination of the Hutu and secure their right to return to Rwanda.²⁰⁴ It is against this backdrop that the already existing tension intensified between the two tribes and eventually led to the civil war in 1990.

¹⁹⁷ See Hilker "The Role of Education in driving conflict and building peace: The case of Rwanda" 5.

¹⁹⁸ See Bigagaza, Abong, Mukarubuga *Land Scarcity, Distribution and Conflict in Rwanda* 53.

¹⁹⁹ See Mayersen "Race Relations in Rwanda: An Historical perspective"3. Available at

http://www.polsis.uq.edu.au/docs/Challenging-Politics-Papers/Deborah_Mayersen_Race_Relations_in_Rwanda.pdf (Date of Use: 22 July 2012).

²⁰⁰ See Bigagaza, Abong, Mukarubuga *Land Scarcity, Distribution and Conflict in Rwanda* 53.

²⁰¹ See Shalom "The Rwanda Genocide: The Nightmare That Happened"1. Available at http://www.wpunj.edu/cohss/departments/pol_sci/faculty/shalom/the-rwandan-genocide-.dot (Date of Use: 3 August 2012). See also Wage, Haigh "A Case Study on the Arusha Peace Agreement" 4.

²⁰² Ibid. See also Wage, Haigh "A Case Study on the Arusha Peace Agreement" 4.

²⁰³ See Shalom "The Rwanda Genocide: The Nightmare That Happened" 2. Available at http://www.wpunj.edu/cohss/departments/pol_sci/faculty/shalom/the-rwandan-genocide-.dot (Date of Use: 3 August 2012).

²⁰⁴ Ibid.

The civil war in Rwanda took place from 1990 to 1994 and the parties to the civil war were the government of Rwanda, led by Mr Juvenal Habyarimana and the rebel group, the Rwandese Patriotic Front (RPF).²⁰⁵ Peace talks between the two parties took place over a number of years and culminated in the signing of the Arusha Peace Agreement which on 4 August 1993.²⁰⁶ This agreement, also referred to as the Arusha Peace Accords, consisted of five protocols that set out the terms of the cease fire agreement between the government of Rwanda and the RPF.²⁰⁷

Fundamentally, the agreement was based on five pillars:

1. The establishment of the rule of law²⁰⁸
2. Power-sharing²⁰⁹
3. Repatriation and resettlement of refugees and internally displaced people²¹⁰
4. The integration of armed forces²¹¹
5. and other miscellaneous provisions²¹²

²⁰⁵ The RPF was formed “against a backdrop of entrenched divisive and genocide ideology, repeated massacres, the persistent problems of refugees in the Diaspora, and the lack of avenues for peaceful political change” in 1979 under the name, the Rwandese Alliance for National Unity (RANU) and later became the Rwandese Patriotic Front (RPF) in 1987. RPF was formed by Rwandans or descendants of Rwandans who had fled Rwanda in the late 50’s and early 60’s and who were never allowed to return to Rwanda. Consequently, they led difficult lives as refugees and formed the RPF in order to rally Rwandans to address its existing issues and secure their right to return to their homeland. See Republic of Rwanda “Rwandese Patriotic Front (RPF)” <http://www.gov.rw/THE-RWANDESE-PATRIOTIC-FRONT-RPF?lang=en> (Date of Use: 29 August 2012).

²⁰⁶ See Republic of Rwanda “Arusha Peace Agreement” <http://www.gov.rw/THE-ARUSHA-PEACE-AGREEMENT?lang=en> (Date of Use: 23 August 2012).

²⁰⁷ Ibid.

²⁰⁸ See Protocol of Agreement between the Government of the Republic of Rwanda and the RPF on the Rule of Law signed at Arusha on 18 August 1992. See also Republic of Rwanda “Arusha Peace Agreement” <http://www.gov.rw/THE-ARUSHA-PEACE-AGREEMENT?lang=en> (Date of Use: 23 August 2012).

²⁰⁹ See Protocol of Agreement on Power-Sharing within the Framework of a Broad-Based Transitional Government between the Government of the Republic of Rwanda and the RPF signed at Arusha on 30 October 1992. See also Republic of Rwanda “Arusha Peace Agreement” <http://www.gov.rw/THE-ARUSHA-PEACE-AGREEMENT?lang=en> (Date of Use: 23 August 2012).

²¹⁰ See Protocol of Agreement between the Government of the Republic of Rwanda and the RPF on the Repatriation of Rwandese Refugees and the Resettlement of Displaced Persons signed at Arusha on 9 June 1993. See also Republic of Rwanda “Arusha Peace Agreement” <http://www.gov.rw/THE-ARUSHA-PEACE-AGREEMENT?lang=en> (Date of Use: 23 August 2012).

²¹¹ See Protocol of Agreement between the Government of the Republic of Rwanda and the RPF on the Integration of the Armed Forces of the Two Parties signed at Arusha on 3 August 1993. See also Republic of Rwanda “Arusha Peace Agreement” <http://www.gov.rw/THE-ARUSHA-PEACE-AGREEMENT?lang=en> (Date of Use: 23 August 2012).

In essence, the agreement "provided the two parties with the appropriate framework for setting up transitional institutions designed to consolidate political pluralism and the on-going democratic process in Rwanda."²¹³ The agreement and its protocols not only contained various provisions that were drawn up to assist in brokering long lasting peace between the two parties but also laid down the UN's role in the implementation of the same.²¹⁴ The Security Council in response to its newly appointed role adopted resolution 872 in October 1993 and consequently set up UNAMIR which consisted of about 2500 military personnel.²¹⁵ UNAMIR's core mandate was to act as an observer of the cease-fire.²¹⁶ In addition to this, the UNAMIR was to:

- a) Ensure the security of the capital, Kigali.²¹⁷
- b) The security situation generally up to the installation of the new government.²¹⁸

4.3 UN activities in Rwanda before the genocide

In the months that followed the deployment of UNAMIR, a series of events took place that were a cause for concern to the peacekeeping operation itself and the people of Rwanda. In spite of the optimism created by the Arusha Agreement, the security situation in Rwanda continued to deteriorate. For instance, only a week after signing the agreement, the special Rapporteur of the Commission on Human Rights had already reported to the UN the existence of "massacres and a plethora of other serious human rights violations in Rwanda" during his visit there.²¹⁹

²¹² See Protocol of Agreement between the Government of Rwanda and the RPF on Miscellaneous Issues and Final Provisions signed at Arusha on 3 August 1993.

²¹³ See S/PV 3288, speech of Mr Anastase Gasana, Minister of Foreign Affairs and Cooperation of Rwanda. Available at <http://www.rwandadocumentsproject.net/gsdl/collect/usdocs/index/assoc/HASH2284/6ea6eec8.dir/1140.pdf> (Date of Use: 29 July 2012).

²¹⁴ See S/Res 872.

²¹⁵ Ibid. See also Dallaire, Poulin 1995 JFQ 66.

²¹⁶ Ibid.

²¹⁷ See S/Res 872. See also S/Res 893 and S/Res 909.

²¹⁸ See S/Res 872.

²¹⁹ See Carlsson Report, S/1999/1257 6.

The deterioration of the security situation in Rwanda could be attributed to the parties' failure to implement the accords. However, various flaws were also found in the implementation of UNAMIR's mandate which could be summarised as follows:

First, Article 7 of the Agreement stipulated that the transitional institutions were to be set up within a period of thirty seven (37) days following the signing of the agreement.²²⁰ The fact that the Agreement stipulated such a short period could be interpreted that speed was a priority and ultimately the level of in-depth analysis that underpins the success of such situations was compromised from the start.²²¹ Because of the haste required in deploying UNAMIR, an essential report compiled by the Special Rapporteur of the Commission on Human Rights which highlighted a possible genocide was never taken into consideration when the Council drafted UNAMIR's mandate.²²²

Second, the number of troops provided did not mirror the realities on ground. The Reconnaissance mission, headed by Brigadier-General Romeo A Dallaire²²³ recommended that a force of up to 4 260 should be deployed but the actual mandate expressed plans to deploy only half that number.²²⁴ The reason for this was that the Secretary-General believed that the deployment of 4 260 troops would not be realistic and even if they attempted to gather such a number, they would be a considerable delay in rounding up such a large number of troops from the member states as the UN was already facing massive demands from Somalia and Bosnia.²²⁵

²²⁰ See Article 7 of the Peace Agreement between the Governments of the Republic of Rwanda and the Democratic Republic of the Congo (DRC) and the Withdrawal of the Rwandan Troops from the Territory of the DRC and the Dismantling of the EX-FAR and Interahamwe Forces in the DRC signed at Arusha on 4 August 1993.

²²¹ See Carlsson Report, S/1999/1257 31.

²²² Ibid.

²²³ See Carlsson Report, S/1999/1257 7. Dallaire at this stage was Chief Military Observer of the United Nations Observer Mission Uganda-Rwanda (UNOMUR). The objective of the Reconnaissance mission which Dallaire led was to assess the requirements of a peacekeeping mission if it were to be deployed to Rwanda.

²²⁴ Ibid.

²²⁵ See Carlsson Report, S/1999/1257 7.

Third, strikingly absent in the mandate was UNAMIR's role in the recovery of arms.²²⁶ Even though the Secretary-General had made such a recommendation in S/26488, this element was never incorporated into the mandate.²²⁷

Fourth, the UN's rigidity demonstrated by UNAMIR's failure to adapt to the realities on ground. The insistence of headquarters to maintain the peacekeeping operation as a traditional one showed a lack of flexibility on the part of the UN. It is apparent from the text and context of UNAMIR's mandate that its primary objective was to act as an observer to the cease-fire agreement. It follows that when imminent and necessary action was required outside the scope of its mandate, UNAMIR was considerably paralysed. A telling illustration of this flaw could be seen in the handling of the 11 January cable from Dallaire to Major-General Maurice Baril, Military Adviser to the Secretary-General. This cable outlined information obtained from an informant of a "plan to exterminate the Tutsi's" and yet very little importance and urgency was attached to it.²²⁸

The Carlsson report highlights the following errors in the handling of the cable:

- a) The 11 January cable should have also been sent to other parties higher up in the hierarchy and not only to the Military Adviser to the Secretary-General.²²⁹ As a result, the Secretary-General and the Security Council continued to deliberate on the situation in Rwanda in the absence of such vital information.²³⁰ Also, the report stresses the fact that more pressure should have been applied on President Habyarimana to act once they informed him of the cable.²³¹
- b) The 11 January cable detailed existence of a major weapons cache.²³² Since UNAMIR's role in the recovery of arms caches was not explicit in its mandate the secretariat saw fit to instruct UNAMIR to refrain from raiding armed caches as it believed that such action

²²⁶ See Carlsson Report, S/1999/1257 8.

²²⁷ See S/26488 which includes the Secretary-General's recommendation for UNAMIR to assist in the recovery of arms. See also Carlsson Report, S/1999/1257 7.

²²⁸ See Carlsson Report, S/1999/1257 7.

²²⁹ Ibid., 9 and 33.

²³⁰ See Carlsson Report, S/1999/1257 33.

²³¹ Ibid.

would be outside the scope of its mandate and would exacerbate the already volatile situation.²³³ Upon realising this significant limitation in the mandate, the Council should have taken measures to correct this.²³⁴

- c) The 11 January cable also highlighted threats against the Belgian contingent and a strategy that would force their withdrawal. This information should have received greater attention particularly when the security of the contingent was being considered and also during consultations within the secretariat and with the council.²³⁵ Regrettably, the lack of follow up to such vital information resulted in the death of the Belgian soldiers and Belgium's withdrawal from the peacekeeping operation.²³⁶ In this connection, the Carlsson report points out that had the initial threat received the importance it so warranted, the UN would have been able to consider the possibility that any withdrawal would ultimately serve the extremists purpose in their propaganda.²³⁷

Outside the issues surrounding the flaws of the mandate, several UN activities served as 'red flags' leading up to the genocide:

First, the Rules of Engagement for UNAMIR were never transparent. Even though Dallaire had submitted a draft to headquarters for approval on 23 November 1993, a formal reply was never received.²³⁸ There were apparently no clear procedures put in place at headquarters for formal replies.²³⁹ Once the genocide had began, Dallaire resent this draft which also included the rules of engagement relating to crimes against humanity and yet these rules were never adhered to even though "the situation on ground fit the description in para 17".²⁴⁰

²³² See Carlsson Report, S/1999/1257 10.

²³³ Ibid., 34.

²³⁴ Ibid.

²³⁵ Ibid.

²³⁶ Ibid., 17.

²³⁷ Ibid., 34.

²³⁸ Ibid., 35.

²³⁹ Ibid.

²⁴⁰ Ibid.

Second, weak communication lines existed between UNAMIR and headquarters. Many factors leading up to the genocide point to weak communication between headquarters and UNAMIR. This is evident in the following scenarios:

a) The handling of the 11 January cable illustrates the existence of weak communication between the peacekeeping operation and headquarters. The cable contained the following vital and pertinent information:

- the existence of a plan to kill the Belgian soldiers that would lead to their ultimate withdrawal.²⁴¹
- the existence of training camps that had trained 1700 men who had apparently been ordered to kill Tutsi's.²⁴²
- the existence of a major weapons cache.²⁴³

In spite of this - as has already been mentioned above, the Secretary-General and the Security Council continued to deliberate on the situation in Rwanda in the absence of such vital information. Undoubtedly, clear and timely communication on such matters would have entailed advanced strategic planning and better results.

b) In addition, many cables were exchanged between headquarters and UNAMIR in the early months of 1994 from the ground in relation to "distribution of arms, the activities of the militia, killings and increased ethnic tensions".²⁴⁴ UNAMIR continued to appeal to headquarters for approval to begin deterrent operations and expressed the urgent necessity of such action.²⁴⁵ However, Annan continued to reiterate that such action was beyond the scope of UNAMIR and thus approval was never granted in this respect.²⁴⁶

²⁴¹ See Carlsson Report, S/1999/1257 10.

²⁴² Ibid.

²⁴³ Ibid.

²⁴⁴ Ibid., 13.

²⁴⁵ Ibid.

²⁴⁶ Ibid., 14.

Also, on "14 February 1994, the Belgian Minister wrote to the Secretary-General advocating for a stronger UNAMIR and yet no serious attention was attached to his proposal within the Secretariat or among countries".²⁴⁷

Another telling illustration of the UN's weak communication structure can also be seen in the 30 March (S/1994/360) progress report from UNAMIR to the Council. This report detailed "political stalemate, the deterioration of the security situation and the humanitarian situation in Rwanda". In this, the Secretary-General recommended an extension of UNAMIR's mandate by six months and yet resolution 909 (1994) on 5 April only extended it by less than four months due to the member states unwillingness to extend it for the proposed period.²⁴⁸

Third, there was also the issue of genocide warnings that could have been deduced from the incitement of hatred that was spread by means of radio and press. One such radio station was Radio-Television Libre des Mille Collines (RTLM), which served as an effective tool to deepen the rift between the Hutus and Tutsi's.²⁴⁹ It is also believed that the reason that the Hutu's were able to annihilate such a large number of Tutsi's was because the radio stations were able to penetrate even the most remote areas with their hateful message – Hutu farmers were able to pick up arms and kill their Tutsi neighbours in spite of having peacefully co-existed in their areas.²⁵⁰ In effect, "Radio propaganda served the function of legitimizing the killing neighbour by neighbour".²⁵¹ The UN could have set up their own broadcasts to "counter" these panic and hate-inducing messages but they did not do so.²⁵²

4.4 UN activities during the genocide

Arguably, the evidence of the genocide began to manifest in the early months of 1994. However, it could be safe to say that the beginning of the genocide was triggered by the deaths of President Juvenal Habyarimana and the Presi-

²⁴⁷ See Carlsson Report, S/1999/1257 13.

²⁴⁸ Ibid., 15.

²⁴⁹ See Chalk, "Radio Propaganda and Genocide". Available at http://migs.concordia.ca/occpapers/radio_pr.html (Date of Use: 24 August 2012).

²⁵⁰ Ibid.

²⁵¹ Ibid.

²⁵² See Dallaire, Poulin 1995 JFQ 66.

dent of Burundi, Mr Cyprian Ntayamira in a plane crash on 6 April 1994.²⁵³ The period following the crash, inaugurated genocidal actions against the Tutsi and moderate Hutu's. The Presidential Guard, elements of the Rwandan armed forces (FAR) and extremist militia (Interahamwe) immediately began the mass killings, starting in the capital Kigali.²⁵⁴ UNAMIR was inundated with calls from politicians and staff members requesting protection and refuge as news of "roadblocks being up, massacres of Tutsi and opposition and moderate politicians began".²⁵⁵

4.4.1 The massacre of prominent politicians and civilians

According to the findings of the Carlsson report, substantial information had reached UNAMIR regarding threats to the safety and security of politicians and several prominent civil servants during the entirety of its mandate.²⁵⁶ In response, added security measures were taken to ensure the safety of each threatened politician. Some of the measures included assigning personal armed bodyguards and UNAMIR vehicle escorts and the said efforts were further intensified after the plane crash.²⁵⁷ In spite of this, several flaws were found by the Inquiry in assessing UNAMIR's role in protecting the lives of threatened politicians. The following examples will illustrate this:

Politician 1: Mrs Agathe Uwilingiyimana, Prime Minister. Following the plane crash and the ensuing threats against ministers and other politicians, UNAMIR provided the Prime Minister with 10 Belgian soldiers at her residence to act as added security.²⁵⁸ Within hours of the crash, the Prime Minister's house was surrounded by 20 armed Rwandan soldiers who requested the Belgian soldiers to handover their weapons.²⁵⁹ Whilst this exchange went on, the Prime Minister managed to escape to the United Nations Volunteer (UNV) compound where she requested UN protection. However, it was at this compound that

²⁵³ See Carlsson Report, S/1999/1257 15.

²⁵⁴ See Minorities at Risk Project, *Chronology for Hutus in Rwanda*, 2004. Available at <http://www.unhcr.org/refworld/docid/469f38d51e.html> (Date of Use: 2 September 2012).

²⁵⁵ See Carlsson Report, S/1999/1257 35.

²⁵⁶ Ibid., 18.

²⁵⁷ Ibid.

²⁵⁸ See Carlsson Report, S/1999/1257 16.

²⁵⁹ Ibid., 15.

the Rwandan soldiers found and murdered the Prime Minister on 7 April 1994.²⁶⁰

Back at the Prime Minister's residence, the Belgian soldiers remained in confrontation with the Rwandan soldiers who asked them to "lay down their weapons".²⁶¹ They eventually did so and were subsequently badly beaten and murdered.²⁶²

Politician 2: Mr Landaold Ndasingwa, Vice President of the Liberal Party (PL) and Minister for Labour and Social Affairs. The Inquiry found that Mr Ndasingwa had "been the subject of propaganda and threats on the Radio-Television Libre des Mille Collines (RTLM)" and UNAMIR had accordingly provided protection during this period.²⁶³ In the few hours following the plane crash, word had reached Mr Ndasingwa that the Presidential Guards were on their way to kill him and the Ghanaian troops who had been charged with protecting the minister fled his residence.²⁶⁴ Consequently, Mr Ndasingwa, his wife, mother and two children were shot to death.²⁶⁵

Politician 3: Constitutional Court Judge Kavaruganda. Judge Kavaruganda was abducted from his home and his family beaten in spite of many urgent appeals to the Belgian, Bangladeshi and Ghanaian contingents of UNAMIR.²⁶⁶ His abduction is believed to have happened under the watchful eye of UN-AMIR guards.²⁶⁷ Moreover, the Inquiry also recounted a witness's version of events in which the witness stated that "UN troops stood talking to the Rwandese soldiers with their weapons lying on the table beside them".²⁶⁸

Politician 4: Mr Boniface Ngulinzira, Foreign Minister during the Arusha Negotiations. After having received news that Mr Ngulizira's life was in imminent danger, the UN soldiers transferred him and his family to the Ecole Technique Officielle (ETO) at Kicukiro, the site where as many as 2000 Rwandans had

²⁶⁰ See Carlsson Report, S/1999/1257 16.

²⁶¹ Ibid., 19.

²⁶² Ibid., 17.

²⁶³ Ibid., 18.

²⁶⁴ Ibid.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ Ibid.

²⁶⁸ Ibid.

taken refuge under the protection of the Belgian UNAMIR contingent.²⁶⁹ Regrettably, on 11 April, the Inquiry reports that once the French troops had evacuated the expatriates and the Belgian troops had withdrawn from the site, a massacre ensued that killed men, women, children and Mr Ngulinzira.²⁷⁰

The events that unfolded at the ETO school could be said to have epitomised the UN's failure in handling the Rwandan genocide.²⁷¹ As mentioned above, the ETO school was a site that civilians had gone to as one of the places of refuge when the security situation had worsened in Rwanda. The Belgian contingent was also based at this site and therefore appeared to be a credible place to seek refuge for thousands of civilians that required protection. After the plane crash and when it had become clear that the security situation in Rwanda had worsened, measures were taken by Belgium, France, Italy and the United States to evacuate expatriates from the Rwanda including those expatriates who sought refuge at the ETO school.²⁷² As has already been pointed out above, the result of this evacuation and the withdrawal of the Belgian contingent led to the loss of thousands of lives that were left behind.

The United Human Rights Council reported the killings in Rwanda as follows:

Tutsi and people suspected of being Tutsi were killed in their homes and as they tried to flee at roadblocks set up across the country during the genocide. Entire families were killed at a time. Women were systematically and brutally raped. It is estimated that some 200,000 people participated in the perpetration of the Rwandan genocide. In the weeks after April 6, 1994, 800,000 men, women, and children perished in the Rwandan genocide, perhaps as many as three quarters of the Tutsi population. At the same time, thousands of Hutu were murdered because they opposed the killing campaign and the forces directing it.²⁷³

²⁶⁹ See Carlsson Report, S/1999/1257 19.

²⁷⁰ Ibid.

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ See United Human Rights Council "Genocide in Rwanda"

http://www.unitedhumanrights.org/genocide/genocide_in_rwanda.htm (Date of Use: 2 September 2012).

4.4.2 The genocide - UN failure or member states failure?

The issues discussed above principally address some of UNAMIR's challenges on the ground. On the whole, one can say that a majority of the aforementioned challenges stemmed from the Council's inability to handle the situation promptly and effectively at headquarters. Communication between the UN Secretariat and UNAMIR was also affected. Since the UN Secretariat was under constant pressure to ensure another Somalia did not take place, the Secretariat was reluctant for UNAMIR to steer away from their mandate even though the realities on ground called for it.²⁷⁴

As the key events of the genocide unfolded, the Council was faced with the following issues that ultimately defined the failure of the UN:

I. Reduction of UNAMIR force level when there existed a pressing need for the opposite

As echoed above, UNAMIR was set up as a traditional peacekeeping operation which primarily meant that UNAMIR would act as an observer to the ceasefire agreement. When it became apparent that the cease fire agreement had collapsed and the security situation in Rwanda had severely deteriorated, member states began to discuss the possibilities of a withdrawal. According to the findings of the Inquiry, possibilities of withdrawal were discussed within a few days after the plane crash.²⁷⁵ For example, a cable sent on 9 April from the DPKO informed Dallaire and Booh Booh that since the situation in Rwanda had continued to deteriorate, the possibilities of a withdrawal may have to be considered.²⁷⁶ It also could be said that the possibility of withdrawal of UNAMIR became an even more probable option when the Belgium government lost 10 of their peacekeepers on ground.²⁷⁷

As per practice, the issue of UNAMIR's withdrawal vs. its continued presence in Rwanda was brought before the Council. The following member states were seen to have strongly played a role in the campaign for UNAMIR's withdrawal:

²⁷⁴ See Maritz "Rwandan Genocide: Failure of the International Community?".

²⁷⁵ See Carlsson Report, S/1999/1257 36.

²⁷⁶ Ibid.

Belgium

The Inquiry found communication exchanged between Mr Willy Claes, Belgium's Foreign Minister and the Secretary-General in which Mr Claes made clear the position of Belgium after the brutal murder of their peacekeepers.²⁷⁸ Belgium was of the view that nothing further could be done in Rwanda and that the very presence of UNAMIR worsened the situation.²⁷⁹ Belgium had also stated that "it preferred the withdrawal to be a collective effort of UNAMIR and would not like to withdraw alone and was prepared to leave its weapons and equipment behind if UNAMIR were to stay".²⁸⁰ Furthermore, after withdrawing its contingent on 11 April, the Inquiry found minutes of a meeting held on 12 April in Bonn, in which Belgium was of the view that UNAMIR must suspend its operations since as many as 20 000 people had been killed under its watchful eye.²⁸¹ Moreover, the Inquiry found that the Belgian government had on several occasions after the 12 April meeting attempted to influence Council members of a complete withdrawal of UNAMIR.²⁸² In turn, the Secretary-General informed Belgium that he was of the opinion that a proposal to withdraw UNAMIR would most likely be rejected.²⁸³ The Secretary-General updated the Council of this meeting and expressed the adverse effects that the withdrawal of the Belgian contingent would have on UNAMIR.²⁸⁴

One could argue that after the murder of the 10 Belgium peacekeepers, the withdrawal of the rest of their contingent and the Belgian's subsequent "campaign" to withdraw UNAMIR in its totality was somewhat warranted. However, from a humanitarian standpoint, there can be no justifiable excuse to have left the plight of the Rwandans to the Rwandans. The Inquiry's conclusion with regard to this issue shared this sentiment by stating that "the campaign to secure the complete withdrawal of UNAMIR is difficult to understand."²⁸⁵ Moreover, the Inquiry believed that "the analysis of the situation in Rwanda,

²⁷⁷ See Carlsson Report, S/1999/1257 19.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ Ibid.

²⁸¹ Ibid.

²⁸² Ibid., 20.

²⁸³ Ibid., 19.

²⁸⁴ Ibid., 20.

which was presented as an underlying argument for withdrawal, painted a picture of on-going massacres, in addition to the fighting between the parties. However, the focus seems to have been solely on withdrawal rather on the possibilities for the United Nations to act, with or without Belgium."²⁸⁶

United States

In many respects, the Council was largely divided on the issue of withdrawal. Apart from the Belgians, countries like the United States favoured UNAMIR's withdrawal more so because of the loss of American peacekeepers in Somalia.²⁸⁷ The war in Somalia saw the loss of American and Pakistani peacekeepers.²⁸⁸ Within weeks of the genocide, President Clinton passed the Presidential Decision Directive 25 (PDD25).²⁸⁹ This directive principally set out the criteria to be met when deciding US involvement in international peacekeeping missions. The objective of PDD25 sought to ensure that US troops would only be deployed only if stringent requirements had been met.²⁹⁰

The criteria set forth by the PDD25 for US troop deployment was as follows:

- UN involvement advances US interests, and there is an international community of interest for dealing with the problem on a multilateral basis.²⁹¹
- There are clear objectives and an understanding of where the mission fits on the spectrum between traditional peacekeeping and peace enforcement.²⁹²

²⁸⁵ See Carlsson Report, S/1999/1257 37.

²⁸⁶ Ibid.

²⁸⁷ Ibid., 41.

²⁸⁸ Ibid.

²⁸⁹ Ibid 41 and see executive summary of PDD25 available at

<http://www.uhuh.com/laws/pdd25sd.htm> (Date of Use: 1 September 2012).

²⁹⁰ See PDD25 "US Department of State Publication Number 10161"

<http://www.uhuh.com/laws/pdd25sd.htm> (Date of Use: 1 September 2012). See also Albright, Lake, Clark "The Clinton Administration's Policy on Reforming Multilateral Peace Operations" (20) Dispatch 315-322. Available at <http://www.ibiblio.org/jwsnyder/wisdom/DISV5N20.PDF> (Date of Use: 23 August 2012).

²⁹¹ Ibid.

²⁹² Ibid.

- For traditional (Chapter VI) peacekeeping operations, a ceasefire should be in place and the consent of the parties obtained before the force is deployed.²⁹³
- For peace enforcement (Chapter VII) operations, the threat to international peace and security is considered significant.²⁹⁴
- The means to accomplish the mission are available, including the forces, financing and mandate appropriate to the mission.²⁹⁵
- The political, economic and humanitarian consequences of inaction by the international community have been weighed and are considered unacceptable.²⁹⁶
- The operation's anticipated duration is tied to clear objectives and realistic criteria for ending the operation.²⁹⁷

If one undertakes a perusal of the above conditions, it becomes apparent that such criteria would be difficult to meet in any given conflict, particularly conflicts in Africa. The reason for this criticism mainly stems from the high complexity of civil wars in Africa. To set up additional criteria such as the ones in the PDD25 could be seen to undermine the very essence of peacekeeping. If all states were to each set up their own criteria for involvement instead of acting when called upon by the UN, states would find more cause for inaction than not. For instance, the first criteria of the PDD25 stipulates that deployment of US troops to peacekeeping operations would be justified if "UN involvement advances US interests.." Adhering to such criteria would entail that states only provide troops for peacekeeping missions when it is of benefit to them. Consequently, a state like Rwanda which supposedly failed to meet the criteria set above did not receive any American troops before or during the genocide.

²⁹³ See PDD25 "US Department of State Publication Number 10161" <http://www.uhuh.com/laws/pdd25sd.htm> (Date of Use: 1 September 2012). See also Albright, Lake, Clark "The Clinton Administration's Policy on Reforming Multilateral Peace Operations" (20) Dispatch 315-322. Available at <http://www.ibiblio.org/jwsnyder/wisdom/DISV5N20.PDF> (Date of Use: 5 August 2012).

²⁹⁴ Ibid.

²⁹⁵ Ibid.

²⁹⁶ Ibid.

²⁹⁷ Ibid.

On the whole, it would seem that directives such as PDD25 pose to undermine the advancement of principles such as "Responsibility to Protect".²⁹⁸ The US had the necessary information to act when the genocide happened but it chose not to.²⁹⁹ In addition to its disinclination to act, the US joined Belgium in its campaign to withdraw UNAMIR entirely from Rwanda.³⁰⁰ Even though the "shadow of Somalia" has been viewed as a reason why the US did not want to do more, many have argued that it was simply because the US had no national interests in Rwanda.³⁰¹ It was after all, "... A country with no industry and few natural resources and has long been dependent on foreign development aid".³⁰²

France

France, on the other hand, was blamed for its supposed contribution to the genocide. Here, the issue with France was not related to the withdrawal of UNAMIR but rather its contribution to the genocide - it is believed that France played a role in supplying arms to the government of Rwanda. A Human Rights Watch Arms project (January 1994) highlights that the French not only provided troops but also trained them in "tactical combat situations".³⁰³ France has however, maintained that its only role was to protect civilians during the genocide and that the allegations against it were a form of retaliation after a French judge found Paul Kigame responsible for president Habyarimana's plane crash - which was seen as the trigger of the genocide.³⁰⁴

²⁹⁸ See All Academic Research "The African Humanitarian Discourse: American Interventionism and the Origins of R2P"
http://citation.allacademic.com/meta/p_mla_apa_research_citation/3/1/1/0/6/pages311068/p311068-10.php (Date of Use: 3 September 2012).

²⁹⁹ See Carroll 2004-03-31 The Guardian. Available at
<http://www.guardian.co.uk/world/2004/mar/31/usa.rwanda> (Date of Use: 6 August 2012).

³⁰⁰ See Carlsson Report, S/1999/1257 21.

³⁰¹ Ibid.

³⁰² See Anon 1994 HRWP 1. Available at
<http://www.hrw.org/sites/default/files/reports/RWANDA941.PDF> (Date of Use: 2 August 2012).

³⁰³ See Anon 1994 HRWP 1. Available at
<http://www.hrw.org/sites/default/files/reports/RWANDA941.PDF> (Date of Use: 2 August 2012). See also Solomon H "Beyond Rwanda vs France: The Politics of Genocide" November 2008 Eurasia Critic. Available at <http://www.eurasiacritic.com/articles/beyond-rwanda-vs-france-politics-genocide> (Date of Use: 3 August 2012).

³⁰⁴ Ibid.

Options available to UNAMIR during the genocide

With the withdrawal of the biggest contingent in UNAMIR coupled with US and Belgium calling for the withdrawal of UNAMIR when the genocide happened, UNAMIR's tasks on ground became increasingly difficult to undertake.³⁰⁵ By 20 April, UNAMIR only had 1 515 troops left as opposed to the 2 165 troops available before the Belgian contingent withdrawal.³⁰⁶ Meanwhile, reports of widespread massacres and human rights violations continued to escalate throughout the country.

In response, the Secretary-General appeared before the Council and presented the various options available to UNAMIR as follows:

- 1) A deployment of several thousand troops under Chapter VII of the United Nations Charter. This was an option to be looked at in the event that the massacres continued and "there was no realistic prospect of the two sides agreeing on an effective cease-fire in the immediate future".³⁰⁷
- 2) Reduce the military force level to 270 which would act as "intermediary between the two parties in an attempt to bring them to an agreement on a cease-fire" - this redefined mandate was to be in Rwanda for "two weeks or longer, should the Council prefer".³⁰⁸
- 3) Complete withdrawal of UNAMIR, an option which was not supported by the Secretary-General.³⁰⁹

The Council, under resolution 912 decided to proceed with the second option presented above.³¹⁰ The elements of the revised mandate were as follows:

- (a) To act as an intermediary between the parties in an attempt to secure their agreement to a cease-fire³¹¹
- (b) To assist in the resumption of humanitarian relief operations to the extent feasible; and³¹²

³⁰⁵ See Carlsson Report, S/1999/1257 36.

³⁰⁶ See Department of Public Information, United Nations "Rwanda-UNAMIR"
http://www.un.org/Depts/DPKO/Missions/unamir_b.htm (Date of Use: 29 August 2012).

³⁰⁷ See S/1994/470.

³⁰⁸ Ibid.

³⁰⁹ See S/1994/470.

³¹⁰ See S/Res/912.

(c) To monitor and report on developments in Rwanda, including the safety and security of the civilians who sought refuge with UNAMIR³¹³

Regrettably, with the presence of only 270 UNAMIR troops left in Rwanda, the decision taken under this resolution attributed to the loss of additional hundreds of thousands of lives in the genocide.

The continued role of the Council

As has already been pointed out, the Council has been bestowed with the responsibility of maintaining international peace and security. Also, the Council's decisions on substantive matters require concurring votes of the P5 and four votes from the non-permanent members (see 3.3.1). Furthermore, as conferred by the Charter, any decision taken by the council is binding on all member states of the United Nations (see 3.3.1). In essence, it could be said that the decisions that were brought before the Council with regard to UNAMIR's continued role in Rwanda were taken by member states. It is thus apparent that the decision taken under resolution 912 to reduce the troops to 270 at a time when the Rwandans needed urgent assistance with restoring law and order and humanitarian relief could be attributed to member states. The decision taken under this resolution to reduce UNAMIR's force level went ahead even though some member states strongly opposed it.³¹⁴ For instance, the representative of Rwanda, a member of the Council at the time, made the following statement:

The option chosen by the council, reducing the number of troops in UNAMIR to approximately 200, is not a proper response to this crisis, as no measures are envisaged to help those exposed to all kinds of peril as a result of the hostilities.³¹⁵

France, a permanent member of the Council provided the following rationale with regard to reducing UNAMIR's force level to 270:

³¹¹ See S/Res/912.

³¹² Ibid.

³¹³ Ibid.

³¹⁴ See S/1994/470.

³¹⁵ Ibid.

The United Nations gave the Rwandese parties several days to conclude a cease-fire, which would have allowed UNAMIR to carry out the mandate given to it by resolution 872 (1993). Unfortunately, there is still no cease-fire, and the Security Council was therefore compelled to reconsider the conditions for UNAMIR's presence, reducing it to a minimal level. We hope that the Rwandese parties will come to their senses and realize that the United Nations can neither take their place nor impose peace on them.³¹⁶

With regard to the option of withdrawal, the Inquiry also found that on balance, the Council was unable to make an appropriate response to the genocide because the Council could not come to an agreement.³¹⁷ For instance, even though the Secretary General on 29 April had called on the reversal of the decision taken under resolution 912, it "took two weeks for the Council to agree on the matter".³¹⁸ Also, the Council continued to be divided on the way forward for UNAMIR. Non-permanent members of the Council continued to rally for greater action which involved an increased strength of troops authorized to act under Chapter VII.³¹⁹ However, the objections presented by permanent members such as the United States and the United Kingdom made it impossible to move forward as they required more details before they would concede to such an operation.³²⁰ From the viewpoint of countries such as the UK, since the US did not support an increased level force, they did not believe that such force would ever be deployed and thereby called for a withdrawal.³²¹ In this regard, the Inquiry thus opined that "the delay in the decision making by the Security Council was a distressing show of lack of unity in a situation where rapid action was necessary".³²²

The deployment of UNAMIR II and Operation Turquoise

Eventually, on 17 May 1994, the Council, by adopting resolution 918 (1994), imposed an arms embargo against Rwanda, called for urgent international ac-

³¹⁶ See S/1994/470.

³¹⁷ See Carlsson Report, S/1999/1257 37.

³¹⁸ Ibid.

³¹⁹ Ibid. For example, on 13 April 1994, Nigeria on behalf of the Non-Aligned Caucus advocated for a strengthened UNAMIR.

³²⁰ See Carlsson Report, S/1999/1257 37.

³²¹ See Hanton 2009 *ACPS* 6.

³²² See Carlsson Report, S/1999/1257 37.

tion and increased UNAMIR's strength to up to 5,500 troops.³²³ However, it took nearly six months for member states to provide the troops.³²⁴

In an attempt to increase the safety and security of civilians, the Council, by resolution 929 authorized, under Chapter VII of the United Nations Charter, a multi-national humanitarian operation in June 1994.³²⁵ This humanitarian protection zone was set up in the south-west of Rwanda by French-led multinational forces (Operation Turquoise) that remained in the zone up until August 1994 when UNAMIR was better equipped to take over the zone.³²⁶ Even though Operation Turquoise helped save thousands of lives, the Inquiry found it “unfortunate that the resources committed by France and other countries to Operation Turquoise could not instead have been put at the disposal of UNAMIR II”.³²⁷

The end of the genocide fell in July when the RPF forces took control of Rwanda, and established a broad-based Government for a transitional period of five years.³²⁸

II. The failure to intervene and the inability to call the mass killings in Rwanda 'genocide'

As echoed above, the warning signs of the genocide were clearly evident but little was done to respond to the genocide. On balance, it would seem that the Council and DPKO had all the information necessary to act but they did not. The 11 January cable sent by Dallaire for example, gave such warnings. Also, the analysis of human rights experts in 1993 had pointed to genocide along with statements made in early April by the RPF.³²⁹ Also, as was pointed above – the radio broadcasts from RTLM could have been seen as warnings of an impending genocide and yet nothing was done by the UN to counter such messages.

³²³ See S/Res/918.

³²⁴ See Department of Public Information, United Nations “Rwanda-UNAMIR” http://www.un.org/Depts/DPKO/Missions/unamir_b.htm (Date of Use: 29 August 2012).

³²⁵ See S/Res/929.

³²⁶ See Department of Public Information, United Nations “Rwanda-UNAMIR” http://www.un.org/Depts/DPKO/Missions/unamir_b.htm (Date of Use: 29 August 2012).

³²⁷ See Carlsson Report, S/1999/1257 49.

³²⁸ Ibid., 29.

³²⁹ See Carlsson Report, S/1999/1257 38.

In addition to ignoring the warnings, it appears that the UN was reluctant to acknowledge that the massacres in Rwanda constituted genocide. Why was there a reluctance to call the massacres genocide when all the signs pointed to its occurrence? Dr Hanton, a widely published author and specialist on genocide studies, answers this question by stating that had the member states admitted to the occurrence of genocide, such admittance would have placed a "moral duty to intervene".³³⁰ Dr Hanton further explains that instead of using the word genocide, US state department lawyers and policy makers preferred to use the term, "civil war" as it did not call for intervention.³³¹ In this respect, Dr Hanton summarizes the failure of the UN as follows:

- a. The denial of the facts which pointed to an impending genocide.³³²
- b. The denial that the heinous acts committed in Rwanda constituted genocide.³³³

Similarly, the Inquiry found the reluctance to use the term "genocide" was unjustifiable, pointing out that member states had an obligation to act under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.³³⁴

Article 2 of the Genocide convention defines genocide as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

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

³³⁰ See Hanton 2009 ACPS 6.

³³¹ Ibid.

³³² Ibid.

³³³ Ibid.

³³⁴ Hereinafter referred to as "Genocide Convention". Available at <http://www.icrc.org/ihl.nsf/full/357?OpenDocument>.

It is important to note that once it has been proven that any of the acts stipulated in article 2 have been committed, any contracting party to the Genocide Convention may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article 3.³³⁵ On close scrutiny of article 2, it would appear that no legal obligation is placed on member states of the Council to act. However, it would suffice to say that there exists a moral duty to act under their role as upholders of international peace and security to prevent and stop the genocide as called upon by the Genocide Convention. This concept is further explained by the Office of the Special Adviser on the Prevention of Genocide as follows:

The duty to prevent and halt genocide and mass atrocities lies first and foremost with the State, but the international community has a role that cannot be blocked by the invocation of sovereignty. Sovereignty no longer exclusively protects States from foreign interference; it is a charge of responsibility where States are accountable for the welfare of their people.³³⁶

With respect to the genocide in Rwanda, the Inquiry found that signs existed that confirmed the occurrence of genocide in Rwanda, including the "broadcasting pictures of bloating corpses floating down the river from Rwanda" and yet member states still felt it unnecessary to use the term, "genocide".³³⁷

Furthermore, the Inquiry also believed that even if the member states were under the impression that the acts committed did not constitute genocide, "the UN and member states must also be prepared to mobilise political will to act in the face of gross violations of human rights which have not reached the ultimate level of genocide".³³⁸

Regretfully, the egregious denial of the genocide resulted in the UN's failure to take appropriate action and consequently led to the death of 800 000 Rwan-

³³⁵ See Article 8 of the Genocide Convention.

³³⁶ See Office of the Special Adviser on the Prevention of Genocide http://www.un.org/en/preventgenocide/adviser/pdf/osapg_booklet_eng.pdf (Date of Use: 12 August 2012).

³³⁷ See Carlsson Report, S/1999/1257 38.

³³⁸ Ibid.

dans. Suffice to say, the UN did not end the genocide in Rwanda. The genocide came to an end shortly after the RPF took over Kigali in July 1994 (see above).

III. Inability and lack of political will to respond to the needs (logistical support, resources and troops) with the necessary speed and urgency required

As has been apparent throughout this chapter, lack of logistical support, resources and troops were huge challenges for the UN. Clearly, such factors played a fundamental role in the failure of the UN to prevent and stop the genocide in Rwanda. As the events of the genocide unfolded it also became very clear that many of UNAMIR's weaknesses stemmed from these issues. In this regard, the Inquiry highlighted the various flaws as follows:

- a. Available troops did not have the necessary training.³³⁹
- b. Available troops such as the Bangladeshi contingent did not have the most basic supplies.³⁴⁰
- c. Strong contingents such as the Belgian contingent had issues with recycled material and lack of arms.³⁴¹
- d. Contingents did not bring with them necessary reserves such as water, fuel, food rations from their respective countries.³⁴²
- e. Low standards available at the medical unit.³⁴³
- f. Inadequate number of military observers.³⁴⁴
- g. Inadequate arms and ammunition.³⁴⁵

The Inquiry's findings attributed the above issues to the DPKO, troop contributing countries and the Security Council.³⁴⁶ From its inception, UNAMIR was weak as it was deployed during a period when many other peacekeeping

³³⁹ See Carlsson Report, S/1999/1257 39.

³⁴⁰ Ibid.

³⁴¹ Ibid.

³⁴² Ibid., 40.

³⁴³ Ibid.

³⁴⁴ Ibid.

³⁴⁵ Ibid.

³⁴⁶ Ibid., 41.

troops were needed or deployed in other parts of the world.³⁴⁷ By March of 1994, it is believed that the UN had "over USD1 billion in outstanding assessments to peacekeeping operations".³⁴⁸ As a result, UNAMIR received "constant pressure to save money and cut resources".³⁴⁹ Also, as has already been pointed out, the shadow of Somalia also caused countries like the US to be hesitant about spending on UNAMIR, let alone contribute any of their troops. Moreover, as was also pointed out, even after it became clear it was a genocide and it was decided that 5 500 troops would be deployed under UNAMIR II, it took 6 months before member states made this contribution - a time when the genocide had already come to an end.

The factors discussed in this chapter have principally outlined what went wrong and why it went wrong. The inaction of the member states, in particular the P5, was not necessarily caused by vetoes but rather the failure in making decisions that all five could agree on. In effect, for every week that the Council failed to come to a decision, roughly 56 000 lives were lost. Whether the UN and/or international community have learnt from this experience is an issue that will be explored in the last chapter of this paper.

In moving forward, the events surrounding the civil war in Sudan will be discussed in the following chapter. The chapter will attempt to draw on any similarities and differences of UN action in Sudan and the Rwandan genocide.

³⁴⁷ See Carlsson Report, S/1999/1257 39 and 41.

³⁴⁸ Ibid., 39.

³⁴⁹ Ibid., 41.

5 CHAPTER V THE UN IN SUDAN: LESSONS LEARNT ON THE PREVENTION OF ARMED CONFLICT

5.1 Revisiting the north-south conflict and the crisis in Darfur

A brief sketch of the civil war in Sudan was discussed in 1.1.2 above. It would however be fallacious to hold the view that the civil war in Sudan is anything but complex. It must be stressed from the outset that in order to understand the civil war in Sudan, it would prove useful to divide the north-south conflict into the different periods it occurred and treat the crisis in Darfur as a separate issue.

5.1.1 North-South Conflict

As stated in 1.1.2 above, Sudan has not only experienced the longest civil war in history but arguably one of the most brutal civil wars in history. The war between the north and south of Sudan took place over two periods; the first one lasted from 1955 to 1972 and the second one from 1983 to 2005.³⁵⁰ Since the second war was simply a continuation of the first war, the latest war will be discussed in greater depth.

As was the case with Rwanda, the root causes of the civil war in Sudan could be dated back to the colonial era. Sudan gained its independence in 1956 after being colonised by Egypt and the United Kingdom.³⁵¹ Under Egyptian/British rule, these colonialists helped deepen the cultural and religious differences between the ethnic tribes of the north and south.³⁵² The north was primarily made up of Arabic descendants who practised Islam and the south was made of tribes that were considered African and practised Christianity and Animism.³⁵³ The tribes in the north were favoured by the colonialists and thus enjoyed better access to economic and social progression.³⁵⁴

³⁵⁰ See Insight on Conflict "Sudan: Conflict Timeline" <http://www.insightonconflict.org/conflicts/sudan/conflict-profile/timeline/> (Date of Use: 14 September 2012).

³⁵¹ Ibid.

³⁵² See Sriram, Martin-Ortega, Herman *War, Conflict and Human Rights* 121.

³⁵³ Ibid.

³⁵⁴ Ibid.

After independence, the north continued to discriminate and dominate the tribes in the south which “fostered insecurity and resentment in the south” and eventually led to the 1955-1972 civil war between the government and the Southern Sudanese Liberation Movement (SSLM).³⁵⁵ After years of negotiation, the Addis Ababa Agreement was signed in 1972. The Agreement’s objective was to address the frustrations of the south through the provision of limited autonomy in the south and ascertaining the conditions necessary for “resource and power-sharing between the regions”.³⁵⁶ Even though this agreement managed to appease some of the frustrations of the south for about 10 years, the second war broke out in 1983 due to the abrogation of the agreement by the government of Sudan. The parties to the second war were the government of Sudan and the Sudan People’s Liberation Movement/Army (SPLM/A). The government of Sudan undermined the signing of the agreement by retracting autonomy of the south; enforcing Sharia law and Arabic as the official language in the whole of Sudan; and “changed the administrative borders so that the north could control oil resources”.³⁵⁷ It had now become evident that the two parties did not only dispute over the role of religion and autonomy of the south but also the country’s resources, in particular, petroleum.

The second war resulted in the death of over two million people; four million displaced civilians and about 600,000 refugees.³⁵⁸ Several initiatives were undertaken to facilitate the peace process. These initiatives were initially undertaken by the Inter-Governmental Authority on Development (IGAD) and later included the United Nations. Their efforts, coupled with neighbouring states assistance and international pressure facilitated the signing of the Machakos Protocol in 2002. The Machakos Protocol set up a “broad framework, setting forth the principles of governance, the transitional process and the structures of government, as well as on the right to self-determination for

³⁵⁵ See Sriram, Martin-Ortega, Herman *War, Conflict and Human Rights* 121.

³⁵⁶ Ibid.

³⁵⁷ Ibid.

³⁵⁸ See United Nations Missions in the Sudan “UNMIS Background” <http://www.un.org/en/peacekeeping/missions/unmis/background.shtml> (Date of Use: 9 August 2012).

the people of South Sudan, and on state and religion.”³⁵⁹ In effect, the Protocol provided the people of the south with the right to self-determination inter alia, through a referendum to determine whether the south would vote for secession or adopt the system of the government under the Peace Agreement.³⁶⁰ This referendum was to be held after an interim period of six years.³⁶¹ Another significant aspect of the Protocol was the freedom of religion provision which guaranteed that the people of Sudan had the right to practice any religion or custom and that Sharia law would not be imposed in the south.³⁶²

However, since the two parties were unable to come to full agreement on certain issues³⁶³ pertinent to a cease-fire, the government and the SPLM continued to be engaged in negotiations and signed additional agreements to come to a consensus on all issues.³⁶⁴

The Council in full recognisance of the fragile situation that existed in Sudan acted under Chapter VII of the Charter and dispatched a special political mission to Sudan, the United Nations Advance Mission in Sudan (UNAMIS).³⁶⁵

³⁵⁹ See United Nations Missions in the Sudan “UNMIS Background” <http://www.un.org/en/peacekeeping/missions/unmis/background.shtml> (Date of Use: 9 August 2012).

³⁶⁰ See Article 1.3 and 2.5 of the Machakos Protocol Available at http://www.iss.co.za/Af/RegOrg/unity_to_union/pdfs/igad/MachakosProt.pdf (Date of Use: 7 August 2012).

³⁶¹ See Article 2.5 of the Machakos Protocol Available at http://www.iss.co.za/Af/RegOrg/unity_to_union/pdfs/igad/MachakosProt.pdf (Date of Use: 7 August 2012).

³⁶² See Article 6.2 and 6.4 of the Machakos Protocol Available at http://www.iss.co.za/Af/RegOrg/unity_to_union/pdfs/igad/MachakosProt.pdf (Date of Use: 7 August 2012).

³⁶³ Issues such as power sharing, human rights and a cease-fire had to be deliberated further. See United Nations Missions in the Sudan “UNMIS Background” <http://www.un.org/en/peacekeeping/missions/unmis/background.shtml> (Date of Use: 9 August 2012).

³⁶⁴ See Sriram, Martin-Ortega, Herman *War, Conflict and Human Rights* 122.

³⁶⁵ United Nations Assistance Mission in the Sudan (UNAMIS) was deployed through the adoption of S/Res/1547 and assigned additional tasks through S/Res/1556 in June and July 2004 respectively. In the same year, S/Res 1564 was adopted which authorized a human rights presence. S/Res/1564 also requested, inter alia, that the Secretary General rapidly establish an International Commission of Inquiry in order to immediately investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred and to identify the perpetrators of such violations with a view of ensuring that those responsible are held accountable.

By 2005, the Comprehensive Peace Agreement (CPA) was signed (see 1.1.2 above) which officially marked the end of the war. Through this agreement, UN resolution 1590 was passed and the subsequent deployment of United Nations Mission in Sudan (UNMIS) was established (see 1.1.2). As has also already been pointed out in 1.1.2, UNMIS primary objective was to facilitate the signing of the CPA. Also, UNMIS was to take over from UNAMIS. Even though the CPA managed to address the outstanding issues from the Machakos Protocol, the cease-fire broke down when the Mr John Garang³⁶⁶ was killed in a helicopter accident six months after signing the CPA.³⁶⁷ Therefore, even though the CPA had officially marked the end of the civil war, the death of Mr Garang is believed to have exacerbated the already highly volatile relations between the two parties and resulted in continued instability in Sudan. Furthermore, several provisions of the CPA remained unaddressed and have also helped fuel the distrust between the government and the various rebel groups.

5.1.2 The Crisis in Darfur

Like other areas of Sudan, Darfur, a region in the west of Sudan, had experienced severe conflict due to “ethnic, economic and political tensions and competition over scarce resources”.³⁶⁸ Violent clashes between the government’s allied Arab militia (the Janjaweed), the SLM/A and the Justice and Equality Movement (JEM) continued to increase in their intensity and consistency by February 2003.

As has already been mentioned above, the UN responded to this by adopting resolution 1564 in which an International Commission of Inquiry was appointed in order to immediately investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide had occurred and to identify the perpetrators of such violations with a view of ensuring that those responsible are held accountable. In February of 2005, the said commission reported that even

³⁶⁶ Mr John Garang was the president of the government of the south of Sudan from 9 January 2005 to 30 July 2005.

³⁶⁷ See Sriram, Martin-Ortega, Herman *War, Conflict and Human Rights* 123.

³⁶⁸ See United Nations Mission in the Sudan “UNMIS Background” <http://www.un.org/en/peacekeeping/missions/unmis/background.shtml> (Date of Use: 10 August 2012).

though the crisis in Darfur did not constitute genocide, the government of Sudan and allied Janjaweed militias had carried out “indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement.”³⁶⁹ The commission also “strongly recommended that the Security Council immediately refer to the International Criminal Court the situation of Darfur and the crimes perpetrated there since the beginning of the internal armed conflict.”³⁷⁰

5.1.2.1 The African Union In Darfur

The African Union (AU) had long been engaged in facilitating peace and security in Sudan, particularly in Darfur (see 1.1.2). The decision to do so was taken under Article 4 of the Constitutive Act in which the AU has 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.³⁷¹ Consequently, the AU exercised their efforts to facilitate peace talks between the parties to the conflict. In April 2004, a Humanitarian Ceasefire Agreement was signed between the SLM/A, JEM and the government of Sudan. In turn, by October 2004, the AU Peace and Security Council authorised the deployment of African Union Mission in Sudan (AMIS) to Darfur with the objective of calming the area.³⁷²

Fundamentally, AMIS mandate was:

- a) to monitor and observe compliance with the ceasefire agreement³⁷³
- b) to assist in confidence building measures³⁷⁴

³⁶⁹ See S/2005/60. See also Shaw *International Law* 1265.

³⁷⁰ See S/2005/60 para 584.

³⁷¹ See Article 4 (h) of the Constitutive Act of the African Union.

³⁷² See United Nations Missions in the Sudan “UNMIS Background” <http://www.un.org/en/peacekeeping/missions/unmis/background.shtml> (Date of Use: 9 August 2012).

³⁷³ See Human Rights Watch Report “Imperatives for Immediate Change: The African Union Mission in Sudan”. Available at <http://reliefweb.int/sites/reliefweb.int/files/resources/1BD218359906E9A5492570FF000BA616-hrw-sud-20jan.pdf> (Date of Use: 15 August 2012).

³⁷⁴ Ibid.

- c) to contribute to a secure environment by facilitating humanitarian assistance and returns of internally displaced persons³⁷⁵
- d) and to contribute to overall security³⁷⁶

The AU's efforts resulted in the signing of the Darfur Peace Agreement (DPA) between the government of Sudan and the SLM/A in May 2005 (see 1.1.2).³⁷⁷ Regrettably, the signing of this agreement did not end the violence in Darfur. It has been suggested that one of the reasons for this was the agreement's failure to include all parties to the conflict in specific, the JEM and another faction of the SLA.³⁷⁸ The Janjaweed militias were also not party to the agreement.³⁷⁹ Dr Sarjoh Bah, a widely published author and specialist in regional security cooperation in Africa further outlines the weaknesses of the DPA as follows:

The DPA was further undermined by divisions among the armed groups along ethnic lines, pitting the Zaghawa against other most notably, the Fur, the largest ethnic group in Darfur. This rift led to increased friction among the armed groups and their civilians sympathisers in the internally displaced persons camps and it indeed continues to hinder efforts to reach a political settlement.³⁸⁰

Also, the DPA did not address pertinent issues such as "land tenure and the powers and structure of the local government".³⁸¹

Initially, AMIS consisted of 150 troops but later increased its force to 7,000 by 2005 in order to fulfil its mandate.³⁸² In spite of such an increase and the 're-

³⁷⁵ See Human Rights Watch Report "Imperatives for Immediate Change: The African Union Mission in Sudan". Available at <http://reliefweb.int/sites/reliefweb.int/files/resources/1BD218359906E9A5492570FF000BA616-hrw-sud-20jan.pdf> (Date of Use: 15 August 2012).

³⁷⁶ Ibid.

³⁷⁷ See Darfur Peace Agreement Available at http://www.sudantribune.com/IMG/pdf/Darfur_Peac_Agreement-2.pdf (Date of Use: 8 August 2012).

³⁷⁸ See Bah "The African Union in Darfur: Understanding The Afro-Arab Response To The Crisis" 5.

³⁷⁹ See Sriram, Martin-Ortega, Herman War, Conflict and Human Rights 124.

³⁸⁰ See Bah "The African Union in Darfur: Understanding The Afro-Arab Response To The Crisis" 8.

³⁸¹ See Sriram, Martin-Ortega, Herman War, Conflict and Human Rights 124.

³⁸² See International Coalition For The Responsibility To Protect "The Crisis in Darfur" <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-darfur> (Date of Use: 18 September 2012).

peated extension of AMIS' mandate throughout 2006, the violence in Darfur continued to escalate.³⁸³

The Weaknesses of AMIS

While the DPA could be said to have contained many inherent weaknesses, it also became apparent that AMIS was not able to calm the security situation in Darfur. If anything, the security situation appeared to have continued to worsen.

The following could be considered the reasons why AMIS failed to effectively contain the violence in Darfur:

1. In view of the countless reports of violations of international humanitarian law and human rights law, AMIS mandate should have made the protection of civilian lives its number one priority; instead its mandate appeared to prioritise "monitoring the terms of the ceasefire agreement between Khartoum and the rebel factions and protecting themselves and those monitoring the ceasefire agreement".³⁸⁴ Some have argued that a less restricted mandate and a larger force level would have helped deter attacks against civilians and also enabled AMIS troops to protect themselves against rebels and militia.³⁸⁵
2. The government of Sudan has often acted in bad faith and undermined the peace process.³⁸⁶ A telling illustration of this could be seen when the government "gave false information on crucial matters; continued using the Janjaweed to unleash mayhem on innocent civilians; delayed, clocked or rationed visas and permits for NGOs and private individual's access into Darfur".³⁸⁷
3. Discord among the many rebel groups also undermined the peace process. AMIS not only had to deal with the government of Sudan's role in intensifying the conflict but also with the rebel group's contribution. The issue in

³⁸³ See International Coalition For The Responsibility To Protect "The Crisis in Darfur" <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-darfur> (Date of Use:18 September 2012).

³⁸⁴ See Mansaray 2009 ASR 35.

³⁸⁵ Ibid. By April 2007, a total of 15 AMIS troops had been killed. See Rice 2007-04-02 *The Guardian*.

³⁸⁶ See Mansaray 2009 ASR 38.

Sudan was that main rebel groups such as SLM/A and the JEM gave birth to smaller rebel groups due to “internal squabbles”.³⁸⁸ In turn, it became increasingly difficult for AMIS to perform its functions as “the lack of a cohesive leadership created an opportunity for lawlessness and opportunistic ventures.”³⁸⁹

4. AMIS was initially deployed with as little as “35 people on ground, three vehicles, USD5000 and twelve troops” even though the realities on ground called for a larger and greater force.³⁹⁰ This deficiency coupled with AMIS inadequate funds and resources placed insurmountable obstacles for the proper discharge of AMIS’ duties on ground.³⁹¹

5.1.2.2 The UN in Darfur

Once it became clear that the AU on its own could not contain the violence in Darfur, the proposal to merge AMIS efforts with a UN peacekeeping force became increasingly necessary. In response, the Council adopted resolution 1706 in August of 2006 in which it expanded UNMIS’ mandate to also include Darfur (see 1.1.2).³⁹² It was envisioned that this joint peacekeeping operation would primarily support the implementation of the DPA and its deployment would be subject to the consent of the Sudanese government (see 1.1.2). The government of Sudan strongly opposed the hybrid mission based on the notion that such a deployment was part of a “neo-colonial agenda.”³⁹³ Furthermore, the government stated that they would withhold their consent unless the peacekeeping force had an “African character”.³⁹⁴

In adopting 1706, it is significant to note that even though 12 members of the Council favoured the resolution, two of the P5 (China and Russia) abstained from voting. It is believed that had these two states joined other members of the Council in the condemnation of the government of Sudan, such action

³⁸⁷ See Mansaray 2009 ASR 38 and 40.

³⁸⁸ Ibid., 41.

³⁸⁹ Ibid.

³⁹⁰ Ibid.

³⁹¹ Ibid., 42.

³⁹² See S/Res/1706.

³⁹³ See Bah “The African Union in Darfur: Understanding The Afro-Arab Response To The Crisis” 11.

³⁹⁴ See Hoge 2006-09-20 The New York Times.

would have put their respective trade deals (oil and armaments) with Sudan in jeopardy.³⁹⁵

Since consent from the government of Sudan was not forthcoming, the Council began to deliberate on invoking the concept of “Responsibility to Protect (R2P). This concept embodies the following principles:

1. The State carries the primary responsibility for the protection of populations from genocide, war crimes, crimes against humanity and ethnic cleansing.³⁹⁶
2. The international community has a responsibility to assist States in fulfilling this responsibility.³⁹⁷
3. The international community should use appropriate diplomatic, humanitarian and other peaceful means to protect populations from these crimes. If a State fails to protect its populations or is in fact the perpetrator of crimes, the international community must be prepared to take stronger measures, including the collective use of force through the UN Security Council.³⁹⁸

Even though the crisis in Darfur called for the application of this concept, some argued that the core peacekeeping principle of consent could not be ignored. In this respect, Dr Bah pointed out that “debates about the appropriateness of invoking the concept meant that R2P was subject to varied interpretation, exposing the tensions surrounding intervention even where its pre-conditions are met”.³⁹⁹

The Council in April of 2007 adopted resolution 1755 in which it reaffirmed paragraphs 138-139 of the 2005 World Summit Outcome Document (R2P);

³⁹⁵ See Bah “The African Union in Darfur: Understanding The Afro-Arab Response To The Crisis” 10.

³⁹⁶ See International Coalition For The Responsibility To Protect “An Introduction to the Responsibility to Protect” <http://www.responsibilitytoprotect.org/index.php/about-rtop> (Date of Use: 20 September 2012). See also paragraphs 138-139 of the World Summit Outcome Document. Full text of World Summit Document available at [http://responsibilitytoprotect.org/world%20summit%20outcome%20doc%202005\(1\).pdf](http://responsibilitytoprotect.org/world%20summit%20outcome%20doc%202005(1).pdf) (Date of Use: 20 September 2012).

³⁹⁷ Ibid.

³⁹⁸ See International Coalition For The Responsibility To Protect “An Introduction to the Responsibility to Protect” <http://www.responsibilitytoprotect.org/index.php/about-rtop> (Date of Use: 20 September 2012).

resolution 1674 on the protection of civilians; and resolution 1325 on women, peace and conflict.⁴⁰⁰

After a diplomatic inertia, the Sudanese government consented to the deployment of a predominantly African hybrid force in June 2007.⁴⁰¹ Accordingly, the Council acting under Chapter VII of the Charter, adopted resolution 1769 in which the United Nations-African Union Hybrid Operation in Darfur (UNAMID) was deployed with an authorised force of 19 555 troops.⁴⁰²

UNAMID's core mandate as outlined on its official website (<http://unamid.unmissions.org/Default.aspx?tabid=10998&language=en-US>

Date of Use 20 September 2012) as follows:

- Protection of civilians
- Contributing to security for humanitarian assistance
- Monitoring and verifying implementation of agreements
- Assisting an inclusive political process
- Contributing to the promotion of human rights and the rule of law

Despite the efforts made by the Council with such a deployment, UNAMID experienced problems with shortage of staff and lost seven (7) peacekeepers in July 2008.⁴⁰³

Furthermore, even with its presence on ground the violence against civilians did not appear to subside. As was already pointed out in 1.1.2, by 2010, at least sixty five (65) civilians had been killed and more than eighty six (86) wounded in attacks in the north and west of Darfur on 2 and 3 September 2010. UNAMID was accused of not fully protecting the civilian population of Darfur, which is the very core of its mandate (see 1.1.2). In addition, UN officials were criticised for “allowing those responsible for the vast human

³⁹⁹ See Bah “The African Union in Darfur: Understanding The Afro-Arab Response To The Crisis” 11.

⁴⁰⁰ See S/Res/1755.

⁴⁰¹ See Sudan Tribune 2012-06-17 <http://www.sudantribune.com/spip.php?article22430> (Date of Use: 19 September 2012).

⁴⁰² UNAMID officially took over from AMIS in December 2007. AMIS fullest strength stood at roughly 7 000 troops on ground.

⁴⁰³ See CBC News 2008-07-09 <http://www.cbc.ca/news/world/story/2008/07/09/sudan-peacekeepers.html> (25 September 2012).

catastrophe in Darfur to decide what the UN says to the world about the present nature of the catastrophe” (see 1.12).

As at September 2012, UNAMID consisted of a force level of 16 326 troops.⁴⁰⁴ In spite of being the largest peacekeeping mission in the world, UNAMID has never been able to reach the envisioned strength of 19 555 troops since its deployment.⁴⁰⁵

Also, UNAMID has suffered tremendous losses with respect to staff fatalities. As at September 2012, a total of 125 UNAMID personnel have been killed.⁴⁰⁶

In spite of the significant losses the UN had suffered in Sudan, it could be said that the most progressive action it has taken was the referral of the Darfur Crisis to the International Criminal Court through the adoption of resolution 1593.⁴⁰⁷ Under resolution 1593, the ICC has jurisdiction over international crimes committed in Darfur, even though Sudan is not a party to the court.⁴⁰⁸ Consequently, by March 2009, the ICC issued an arrest warrant for Sudan’s President, Omar Hassan Ahmad Al Bashir in which he has been charged for crimes against humanity, war crimes and later in July 2010 for the crime of genocide.⁴⁰⁹ Even though President Al Bashir has yet to be arrested and states like China and other African countries continue to foster good relations with him, it could be said that this indictment helps underscore the existence of an accountability mechanism – a legal guarantee that those who violate international law will be brought to justice when their own national authorities are unable or unwilling to do so.

⁴⁰⁴ See United Nations “UNAMID Facts and Figures” <http://www.un.org/en/peacekeeping/missions/unamid/facts.shtml> (Date of Use: 21 September 2012).

⁴⁰⁵ Ibid.

⁴⁰⁶ Ibid.

⁴⁰⁷ See S/Res/1593.

⁴⁰⁸ Pursuant to Article 13(b) of the Rome Statute, the Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if...a situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations.

⁴⁰⁹ See *The Prosecutor v. Omar Hassan Ahmad Al Bashir*. Available at: <http://www.icc-cpi.int/iccdocs/doc/doc907140.pdf> (Date of Use: 18 September 2012).

5.2 The complex internal dynamics of Sudan

It seems unquestionable that the peacekeeping operations in Sudan and Darfur operate in one of the most hostile and complex security environments on the continent. The success of these missions does not only depend on the number of troops and resources available to them but also the environment in which they operate in and the willingness of parties to a cease-fire agreement to fulfil the terms of the agreement.

Accordingly, the following challenges can be identified:

5.2.1 Addressing the grievances of splintered rebel groups

In spite of signing numerous peace accords and deploying three UN peacekeeping operations to Sudan, the case of Sudan remains a highly complex one. Most of the peace agreements signed have either failed to address all grievances or failed to include all rebel groups during the negotiation process.

As was echoed above, in recent times, the main rebel groups have splintered and borne new factions. Examples of some of these factions include: Sudan Liberation Army-Abdul Walid Faction (SLA-AW), Sudan Liberation Army-Minni Minnawi (SLA-MM), Sudan Liberation Movement-North (SPLM-N), Sudan Revolutionary Front (SRF).⁴¹⁰ The new factions with their individual grievances and wants have instigated new cycles of violence which have further complicated the environments in which humanitarian organizations and UN peacekeepers operate in Sudan.⁴¹¹

Also, these additional grievances and wants have made it increasingly difficult to near a political settlement with the government. In this respect, it is likely that the region will continue to face instability until a larger part of the population and its rebel groups' grievances have been addressed.

⁴¹⁰ See Civil-Military Fusion Centre "Special Report: Sudan's Southern Rebellion: The Two Areas". Available at http://reliefweb.int/sites/reliefweb.int/files/resources/CFC_MB_Sudan%20Crisis_TWO%20AREAS_Final.pdf (Date of Use: 22 September 2012).

⁴¹¹ See Dagne "Sudan: The Crisis in Darfur and the Status of the North-South Peace Agreement" 24.

5.2.2 The issue of South Kordofan state and Blue Nile state

As has been already pointed out above, the north-south conflict came to an end in 2005 and subsequently followed by the south opting for secession in 2011 which enabled them to become an independent state.⁴¹² However, it would be fallacious to hold the view that this secession contained the violence in both Sudan and South Sudan. The two continue to have disputes with regard to the unresolved issues in the CPA. One of the biggest sources of contention includes the issue surrounding the two states, South Kordofan and Blue Nile. South Kordofan's main grievances stem from the North-South war in which it mainly suffered from "unfair representation in government and the loss of land rights to Arab tribes".⁴¹³ The Blue Nile state also felt marginalised due to Khartoum's lack of investment in the region. For instance, when the Roseires Dam was built, the people of the Blue Nile state not only suffered because of the massive displacement that followed but also because most of the benefits derived from the dam project were seldom shared with them.⁴¹⁴ Primarily, both states felt that they were victims of marginalisation and injustice.

Chapter V of the CPA thus provided that the South Kordofan and Blue Nile states had the right to conduct popular consultations to address any shortcomings of the CPA with regard to their states and use these consultations to decide what their relationship would be with Khartoum.⁴¹⁵ The CPA in this respect created some optimism in bringing about an end to the grievances of the two states. However, the popular consultations were never held. By September 2011, the International Crisis published a Conflict Risk Alert in which it stated that "the promised popular consultations were repeatedly delayed, and even when they started in Blue Nile state on September 2010, SPLM supporters and leadership lost confidence that their demand, namely the right to self-

⁴¹² See BBC News Africa "South Sudan profile" <http://www.bbc.co.uk/news/world-south-asia-13964352> (Date of Use: 17 September 2012).

⁴¹³ Ibid.

⁴¹⁴ See Civil-Military Fusion Centre "Special Report: Sudan's Southern Rebellion: The Two Areas".

Available at

http://reliefweb.int/sites/reliefweb.int/files/resources/CFC_MB_Sudan%20Crisis_TWO%20AREAS_Final.pdf (Date of Use: 22 September 2012).

⁴¹⁵ See Chapter V of the CPA. Available at

<http://unmis.unmissions.org/Portals/UNMIS/Documents/General/cpa-en.pdf> (Date of Use: 20 September 2012).

rule, would be met by Khartoum”.⁴¹⁶ This growing distrust between the rebels and the government intensified and led to attacks on each other; each side attempting to take control of the disputed states.⁴¹⁷ As soon as this new wave of conflict began in September of 2011, the main rebel group in the southern region of Sudan, SPLM-N has since been banned by the government.⁴¹⁸ The banning of the SPLM-N has done little, or nothing to contain the violence in the two states. For instance, reports in June 2012 stated that “there had been more than 1 000 confirmed aerial bombings by MiG fighter jets and Antonoy war planes which had displaced half a million of civilians.”⁴¹⁹ Also reports of “severe human rights violations such as mass arrests of Nuba civilians, arbitrary executions and several cases of rape and sexual violence against women and girls by Khartoum-backed militias” are believed to have occurred in South Kordofan.⁴²⁰ The Blue Nile state is also believed to have experienced similar attacks and human rights violations.

The fighting between the two states has resulted in a humanitarian crisis in which 240 000 people have fled the two states and taken refuge in the South and neighbouring, Ethiopia; a total of 665 000 civilians remain internally displaced in the South Kordofon and Blue Nile states.⁴²¹ Also, hundreds of thousands have fled the hostilities in the North and taken refuge in camps in the South. The on-going conflict in the two states and violence in the north have thus continued to overburden the South with refugees.

In addition to the above complex internal dynamics, the following issues remain unresolved: “the referendum on the status of the Abyei area required by

⁴¹⁶ See International Crisis Group “Conflict Risk Alert: Stopping the Spread of Sudan’s New Civil War” <http://www.crisisgroup.org/en/publication-type/alerts/2011/sudan-26sept11.aspx> (Date of Use: 23 September 2012).

⁴¹⁷ Ibid.

⁴¹⁸ See Kushkush 2011-09-06 *CNN*. Available at http://articles.cnn.com/2011-09-06/world/sudan.opposition_1_opposition-party-south-sudan-blue-nile?_s=PM:WORLD (Date of Use: 24 September 2012).

⁴¹⁹ See Civil-Military Fusion Centre “Special Report: Sudan’s Southern Rebellion: The Two Areas”. Available at http://reliefweb.int/sites/reliefweb.int/files/resources/CFC_MB_Sudan%20Crisis_TWO%20AREAS_Final.pdf (Date of Use: 22 September 2012).

⁴²⁰ Ibid.

⁴²¹ See OCHA Humanitarian Bulletin Sudan Issue 6 and 42.

the CPA, border demarcation, agreements on wealth-sharing arrangements and citizenship issues.”⁴²²

5.3 UN Peacekeeping Challenges in Sudan

The above factors demonstrate how complex dimensions of a conflict can undermine a peacekeeping operation. However, some weaknesses are also evident in the UN’s handling of the crisis in Sudan:

a) The issue of inadequate troops and resources

Experience has shown that getting UN peacekeeping operations to reach their envisioned capacities is not an easy feat. UNAMID, however, came with the hope that troops would be deployed at a much faster rate since troops would be sourced from both the AU and the UN. This was not the case. As was mentioned above, UNAMID in spite of being the largest peacekeeping operation in the world has never reached its fullest capacity. This inadequacy of troops was further complicated by the Sudanese government insistence that all the troops must come from African nations. Also, once deployed, peacekeepers in Sudan have often been victims to abductions, carjacking’s, detentions and in some cases, death have been reported.⁴²³ These attacks have made it difficult for the peacekeepers to fulfil their obligations and duties.

In addition to this, logistical constraints also play a role in obstructing the peace process. For instance, by 2008, “the U.N. and AU negotiation teams made a worldwide appeal for 24 helicopters, including six attack helicopters but “not one helicopter capable of operating in Darfur has been found”.⁴²⁴ Such resource inadequacies made the peacekeepers less effective in protecting civilians.

⁴²² See UN Office for the Coordination of Humanitarian Affairs “About OCHA Sudan” <http://unocha.org/sudan/about-us/about-ocha-sudan> (Date of Use: 25 September 2012).

⁴²³ See S/2012/231.

⁴²⁴ See Evans-Pritchard <http://www.ipsnews.net/2008/01/sudan-weaknesses-exposed-in-darfur-peacekeeping-force/> (Date of Use: 25 September 2012).

b) Two of the P5 (China and Russia) have demonstrated reluctance to take a stronger stand against Sudan

3.3.3 above, illustrates the cases where China and Russia have abstained from voting in order to prevent the Council from adopting a resolution that was aimed at taking tougher measures against Sudan. It is believed that the reason for the abstention lies with the strong economic ties that the aforementioned countries have with Sudan. The following economic ties have been found between Sudan and the two super powers:

- a) China owns 40% interest in Greater Nile Petroleum Operating Company (GNPOC) that operates the pipeline⁴²⁵
- b) Oil extracted in South Sudan accounts for 5% of China's demand⁴²⁶
- c) Both Russia and China have exported to Sudan ammunition, helicopter gunships, attack aircrafts, air-to-ground rockets and armoured vehicles.⁴²⁷ Amnesty International (AI) confirms the aforementioned arms deals through the following accounts:
 - o AI's discovery of 2010-manufactured ammunition with Chinese manufacturing codes observed in South Kordofan during 2011.⁴²⁸
 - o The aerial attacks in eastern Darfur on both military and civilians during 2011 used Mi-24 helicopter gunships and Antonov aircraft provided by Russia; AI has confirmed that Sudan received 36 new Mi-24 helicopter gunships between 2007 and 2009.⁴²⁹
 - o AI also confirms the use of both BTR-80A armoured vehicles and multiple rocket launchers in eastern Darfur in 2011; this confirms importation from Russia and Belarus of the aforementioned armament.⁴³⁰

⁴²⁵ See Wuoi 2012-01-07 *Sudan Tribune*. Available at <http://www.sudantribune.com/China-s-role-in-North-South,41210> (Date of Use: 25 September 2012).

⁴²⁶ Ibid.

⁴²⁷ See Amnesty International "Sudan: No end to Violence in Darfur" Available at <http://www.amnesty.org/en/library/asset/AFR54/007/2012/en/c1037da2-0f54-4343-8325-461d80e751c2/afr540072012en.pdf> (Date of Use: 26 September 2012).

⁴²⁸ Ibid.

⁴²⁹ Ibid.

⁴³⁰ Ibid.

It is apparent that the aforementioned arms deals between Russia, China and Sudan have taken place even after placing arms embargoes on Sudan by the UN Security Council. For instance, the Council, through the adoption of resolution 1556 on 30 July 2004, imposed sanctions in relation to the Sudan in response to the on-going humanitarian crisis and widespread human rights violations, including continued attacks on civilians.⁴³¹ Additionally, the Council adopted resolution 1591, which expanded the scope of the arms embargo and imposed additional measures including a travel ban and an assets freeze on individuals designated by the UNSC Committee established pursuant to resolution 1591.⁴³² By 2010, the enforcement of the arms embargo was reinforced by resolution 1945.⁴³³

Clearly, Russia and China are fully cognisant of their actions and how their actions fuel the hostilities in Sudan. In addition to supplying arms, China continues to foster good relations with Sudan's President, Al Bashir.

The conspicuous role that these two states have taken on the issue of Sudan is one that cannot be ignored. Brian Wood, an expert on Military and Policing for AI succinctly stated:

China and Russia are selling arms to the Government of Sudan in the full knowledge that many of them are likely to end up being used to commit human rights violations in Darfur. The Darfur conflict is sustained by the constant flow of weapons abroad. To help prevent further serious violations of human rights, all international arms transfers to Sudan should be immediately suspended and the UN arms embargo extended to the whole country.⁴³⁴

On balance, it would appear that as long as both Russia and China continue to benefit from the crises in Sudan, very little will be achieved in implementing peacekeeping efforts. In effect, the Council again faces the challenge of having permanent members put their own national interests before the principle of maintaining international peace and security.

⁴³¹ See S/Res/1556.

⁴³² See S/Res/1591.

⁴³³ See S/Res/1945.

⁴³⁴ See Amnesty International "Sudan: No end to Violence in Darfur" Available at <http://www.amnesty.org/en/library/asset/AFR54/007/2012/en/c1037da2-0f54-4343-8325-461d80e751c2/af540072012en.pdf> (Date of Use: 26 September 2012).

Because of this, “the Khartoum government thus finds itself in a position to dictate terms of AU and UN engagement in the country without fear of major sanctions, as it could count on the support of veto-wielding allies in the UN Security Council.”⁴³⁵

5.4 The additional complication of Al Bashir’s ICC Indictment

The issued warrant of arrest for President Al Bashir was briefly mentioned in 5.1.2.2 above. As was also mentioned above, this warrant of arrest was issued following the referral of the Darfur crisis to the ICC and the subsequent investigation undertaken by the Prosecutor’s office of the ICC. Notably, President Al Bashir is the first sitting head of state to be indicted by the ICC and the first person to be indicted by the court for genocide by the court.⁴³⁶ Al Bashir’s warrant of arrest includes the following charges: 5 counts on crimes against humanity; 2 counts on war crimes and 3 counts on genocide.⁴³⁷

In spite of the apparent headway such an arrest warrant represented to the field of international law, this decision of the ICC has been met with significant controversy. The critics - the AU, Arab League, human rights groups, several African states as well as China have presented two main arguments.⁴³⁸

First, the issuance of Al Bashir’s arrest warrant has been seen as exacerbating the already fragile conditions in Sudan. Al Bashir’s indictment has been seen as “slowing peace negotiations, hampering the work of aid agencies, and endangering lives.”⁴³⁹

⁴³⁵ See Birikorang “Towards Attaining Peace in Darfur: Challenges to a Successful AU/UN Hybrid Mission in Darfur”⁹.

⁴³⁶ See Human Rights Watch “Sudan: ICC Warrant for Al Bashir on Genocide” <http://www.hrw.org/news/2010/07/13/sudan-icc-warrant-al-bashir-genocide> (Date of Use: 27 September 2012).

⁴³⁷ Case No. ICC-02/05-01/09 The Prosecutor v. Omar Hassan Ahmad Al Bashir <http://www.icc-cpi.int/menus/icc/situations%20and%20cases/situations/situation%20icc%200205/related%20cases/icc02050109/icc02050109> (Date of Use: 14 October 2012).

⁴³⁸ See Maweni “Sudan’s President Omar Hassan Al Bashir Indicted by the ICC; what’s next? Available at http://archive2.globalsolutions.org/issues/sudans_president_omar_hassan_al_bashir_indicted_icc_w hat_s_next (Date of Use: 12 October 2012).

⁴³⁹ See Cooper 2009 WPI 91.

Second, the indictment has been viewed as an encroachment on the sovereignty of Sudan.⁴⁴⁰ Moreover, organisations such as the AU opposed the indictment because they felt that the ICC's sole purpose was to investigate only situations pertaining to Africa.⁴⁴¹ In this regard, AU Chairman stated that "It seems that Africa has become a laboratory to test the new international law."⁴⁴²

Third, the AU opined that Al Bashir should be immune pursuant to Article 98 (1) of the Rome Statute which provides:

The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.

However, it should be noted that Article 27(2) of the Rome Statute by contrast provides: Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

Fuelled by its opposition to the indictment, the AU Peace and Security Council attempted to reverse the ICC decision by calling on the UN Security Council to delay President's Al Bashir indictment for a year.⁴⁴³ The delay was never granted and as a response, the AU called on its member states in 2009, 2010,

⁴⁴⁰ See Maweni "Sudan's President Omar Hassan Al Bashir Indicted by the ICC; what's next? Available at http://archive2.globalsolutions.org/issues/sudans_president_omar_hassan_al_bashir_indicted_icc_w_hat_s_next (Date of Use: 12 October 2012).

⁴⁴¹ See BBC News 27 September 2008 "Vow to Pursue Sudan over 'crimes'" <http://news.bbc.co.uk/2/hi/africa/7639046.stm> (Date of Use: 13 October 2012).

⁴⁴² Ibid.

⁴⁴³ Pursuant to Article 16 of the Rome Statute which provides: "No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions". In this regard, the UN Security Council has the power to defer an ICC investigation or prosecution for 12 months.

2011 and 2012 to not arrest and surrender President Al Bashir.⁴⁴⁴ Accordingly, some African states such as Kenya, Malawi, Egypt, Libya, Eritrea, Ethiopia, Djibouti and Chad have welcomed Al Bashir even with his ICC indictment.⁴⁴⁵

Despite the criticism and pressure from the AU, ICC prosecutor, Luis Moreno-Ocampo contended that “the conflict between justice and peace is a false dichotomy and that there is can be no political compromise on legality and accountability”.⁴⁴⁶ Consequently, the indictment of President Al Bashir still stands even though it has ostensibly has had little effect on his movements within Africa and the Middle East.

Based on the discussion in this chapter, it would appear that the UN’s handling of Sudan is similar to Rwanda primarily in the sense that troop and resource contribution continues to be an inherent weakness. Experience has shown that the mere fact that member states agree to deploy a peacekeeping force has not necessarily translated into the immediate deployment of troops. It has also become increasingly clear that troop contributing countries take too long to respond, often at the expense of civilian’s lives.

Another similarity with Rwanda is the P5’s ability to act as saboteurs of the peace process. With Rwanda, the issue was that the P5 had no national interests in Rwanda and thus opted not to take action when called to do so. With Sudan, strong economic ties exist with China and Russia. As echoed above, these ties have been viewed as the reason why more robust action has not been taken against Sudan.

That said, in order to increase the overall effectiveness of peacekeeping efforts, it would seem imperative that the UN find ways of dealing with the lack of political will of member states, particularly the P5 . Increased political will of member states would help curb the financial and logistical constraints of peacekeeping and enable peacekeeping operations to be deployed in a more

⁴⁴⁴ See Maunganidze “Malawi’s Stance on al-Bashir is in Line with its International Obligations”. Available at http://www.issafrica.org/iss_today.php?ID=1499%2617#Otilia (Date of Use: 15 October 2012).

⁴⁴⁵ See Murungu “International Criminal Justice and Africa” 6 November 2012. Available at <http://thinkafricapress.com/international-law-africa/icc> (Date of Use: 8 November 2012).

⁴⁴⁶ See Cooper 2009 WPI 91.

rapid and effective manner. Also, increased political will would ideally entail that member states, particularly the P5 would place the needs of the peacekeeping missions above their own national interests.

6 CHAPTER VI CONCLUSION, SUMMARY AND RECOMMENDATIONS

6.1 Have lessons been learnt?

As chapter 5 demonstrated, many mistakes were made in the handling of the Rwandan genocide. The numerous reports and extensive studies conducted in Rwanda's aftermath, all point to the need to not let another Rwanda happen again. Prominent figures such as Former US President Bill Clinton and Kofi Anan have admitted to mistakes made and vowed to exercise their efforts to prevent another Rwanda from happening again.

Fundamentally, it could be said that the biggest "sins" committed in the handling of the Rwandan genocide were as follows:

- a) The unwillingness of member states, particularly the P5, to act
- b) The unilateral decision of some governments to withdraw their contingents from UNAMIR and subsequent reduction of UNAMIR's strength
- c) The inability to call the massacres in Rwanda a genocide
- d) Slow deployment of troops. Even once deployed, troops were poorly equipped and not properly trained
- e) Poor communication between the different chains of command within the mission and the Council
- f) Weak mandate and unclear rules of engagement

Some of these "sins" have occurred yet again in the case of Sudan while others do not appear to be significant factors. In addition to the above, new issues have also arisen which predominantly stem from the complex internal dynamics of Sudan.

Based on discussions in chapter 6, it would seem that some of the issues above have been repeated in Sudan in some shape or form. Below is a discussion that will attempt to determine the extent that the said issues pose obstacles to the peace process in Sudan.

With regard to (a), the Council has been accused of not taking more robust action against the Sudanese government. As has already been pointed out in chapter 5, the inability to do so was mainly caused by two of the P5, Russia and China.

With regard to (b), no evidence has shown that troop contributing governments have unilaterally withdrawn their troops from Sudan. However, a recent resolution adopted on 31 July 2012 (S/Res/2063) has determined that the envisioned force level of 19 555 troops will now be reduced to 16 200 over the next 12 to 18 months.⁴⁴⁷ This reduction was decided after conducting a conflict assessment in Darfur.⁴⁴⁸ The review recommended that “UNAMID uniformed personnel need to be reconfigured to focus on the areas in Darfur with the highest security threats, with military focusing on areas of armed conflict and the provision of area security, while the police would concentrate on threats of criminality in high IDP concentration areas and capacity building to support returns.”⁴⁴⁹ The review also found an overlap in the use of military escorts and formed police units and that a more precise tasking of police and military personnel could achieve greater efficiencies in their use.⁴⁵⁰ It could thus be said that, the reduction in the case of Darfur, is more of a streamlining measure of UNAMID military forces to “create greater capacity to be more proactive to deter and meet threats on the ground”.⁴⁵¹ This is in stark contrast to the case of Rwanda where the decision to reduce UNAMIR was taken by the Council without fully evaluating the conditions on ground and needs of the population (see 4.4.2).

With regard to (c), the issue of whether to call the crisis in Darfur genocide is one that has now been legally settled. Initially, the findings of the UN International Commission of Inquiry Into Violations of Human Rights and Humanitarian Law in Darfur determined that:

...the Commission concludes that the Government of Sudan has not pursued a policy of genocide. Arguably, two elements of genocide might be deduced

⁴⁴⁷ See S/Res/2063.

⁴⁴⁸ Ibid.

⁴⁴⁹ See S/2012/231 paras 69 to 80.

⁴⁵⁰ Ibid.

⁴⁵¹ Ibid.

from the gross violations of human rights perpetrated by Government forces and militias under their control. These two elements are: first, the *actus reus* consisting of killing, or causing serious bodily or mental harm, or deliberately inflicting conditions of life likely to bring about physical destruction; and, second, on the basis of a subjective standard, the existence of a protected group being target by the authors of criminal conduct. Recent developments have led to the perception and self-perception of African tribes and members of Arab tribes as making up two distinct ethnic groups. However, once crucial element appears to be missing, at least as far as the central Government authorities are concerned: genocidal intent. Generally speaking, the policy of attacking, killing and forcibly displacing members of some tribes does not evince a specific intent to annihilate, in whole or in part, a group distinguished on racial, ethnic, national or religious grounds. Rather, it would seem that those who planned and organised attacks on villages pursued the intent to drive the victims from their homes, primarily for purposes of counter-insurgency warfare.⁴⁵²

As has already been pointed out, the Commission of Inquiry reported that they had reason to believe that crimes against humanity and war crimes had been committed in Darfur and also recommended that the Council refer the Darfur situation to the ICC.

With this referral, the ICC was better positioned to determine further whether the crisis in Darfur constitutes genocide. In carrying out its duties, the ICC has issued arrest warrants for Sudanese individuals who are believed to bear the greatest criminal responsibility for crimes committed in Darfur.⁴⁵³ Of greatest significance has been the warrant of arrest for President Al Bashir, whose second warrant now also includes the charges of genocide. The pre-trial chamber reassessed genocide charges on the grounds that “genocide could be one reasonable conclusion to be drawn from the material submitted, while not necessarily the only reasonable conclusion.”⁴⁵⁴ In this respect, President Al

⁴⁵² See S/2005/60 para 518.

⁴⁵³ See International Criminal Court “Darfur, Sudan” <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0205/> (Date of Use: 7 October 2012).

⁴⁵⁴ See Human Rights Watch “Sudan: ICC Warrant for Al Bashir on Genocide” <http://www.hrw.org/news/2010/07/13/sudan-icc-warrant-al-bashir-genocide> (Date of Use: 7 October 2012).

Bashir's charges included the crime of genocide because the court found that Al Bashir acted with specific intent to destroy in part the Fur, Masalit and Zaghawa ethnic groups.⁴⁵⁵ The evidence collected also uncovered the functioning of the state apparatus used to commit genocide, crimes against humanity and war crimes.⁴⁵⁶ In effect, the prosecutor has established reasonable grounds to believe that Al Bashir committed the crime of genocide under the Rome Statute.

With respect to whether the Darfur crisis constitutes genocide, ICC prosecutor, Luis Moreno-Ocampo stated that his findings indicated that the Darfur crisis constitutes "genocide by attrition."⁴⁵⁷ The Institute for the Study of Genocide have defined genocide by attrition as follows:

Genocide by attrition occurs after a group is singled out for political and civil discrimination. It is separated from the larger society, and its right to life is threatened through concentration and forced displacement, together with systematic deprivation of food, water, and sanitary and medical facilities. These measures, along with the frequent imposition of overcrowded living quarters, lead to death through disease and starvation.⁴⁵⁸ These actions violate Article II of the UN Genocide Convention, specifically:

- causing serious bodily or mental harm to members of the group;
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

Also, in the latest report of the ICC prosecutor to the Council, the prosecutor further confirmed that the Darfur crisis constitutes genocide and concluded that "the judges have established that genocide, crimes against humanity and

2012). See also *The Prosecutor v. Omar Hassan Ahmad Al Bashir*. Available at <http://www.icc-cpi.int/iccdocs/doc/doc907140.pdf> (Date of Use: 18 September 2012).

⁴⁵⁵ See ICC-02/05-01/09 *The Prosecutor v. Omar Hassan Ahmad Al Bashir* <http://www.icc-cpi.int/iccdocs/doc/doc907140.pdf> (Date of Use: 18 September 2012)

⁴⁵⁶ Ibid.

⁴⁵⁷ See Prosecutor's Statement on the Prosecutor's Application for a Warrant of Arrest under Article 58 against Omar Hassan Ahmad Al Bashir 14 July 2008. Available at <http://www.icc-cpi.int/NR/rdonlyres/A2BA9996-67C3-4A5F-9AD2-B20A7FD2D176/277757/ICCOTPST20080714ENG.pdf> (Date of Use: 21 October 2012).

⁴⁵⁸ See Fein "Genocide in Sudan and elsewhere" Spring 2002 <http://www.instituteforthestudyofgenocide.org/oldsite/newsletters/29/fein.html> (Date of Use: 21 October 2012).

war crimes have been committed and the President of the country and other high officials should face justice. It cannot be said that there is a lack of information.”⁴⁵⁹

Again, in stark contrast to the Rwandan genocide, it is clear that great efforts have been made to establish whether the Darfur crisis constitutes genocide or not. Even before it was legally termed genocide, it would appear that there was already consensus among the international community that the atrocities committed against the civilian population in Sudan need to be condemned and that robust intervention is required.

It has also been apparent that the crises in Sudan have received greater media attention when compared to the genocide in Rwanda. With that, comes the advantage of having several NGO’s and humanitarian organizations continue to lobby for greater action in Sudan.

With regard to (d), it has already been mentioned that UNAMID has never reached its envisioned force level of 19 555 troops. It did however reach 92.4 per cent of the authorised strength as at March 2012. UNMISS on the other hand, has been successful in reaching the authorised level of 7 000 troops.⁴⁶⁰ With UNISFA, the troop numbers look hopeful as they appear to be nearing its authorised strength of 4 200 military personnel; as at August 2012, UNISFA consisted of 3 830 troops.⁴⁶¹ In spite of this troop contributing improvement, it would seem that large numbers do not necessarily mean a more effective peacekeeping operation. Reports show that even though the numbers of troops are increasing, this has not resulted in “significant improvement in over-

⁴⁵⁹ See Fifteenth Report of the Prosecutor of the International Criminal Court to the UN Security Council Pursuant to S/Res/1593 (2005). Available at <http://www.icc-cpi.int/NR/rdonlyres/D1794227-4B8B-4316-AF04-23DAEB110743/0/FifteenthReportToTheUNSConDarfurEng.pdf> (Date of Use: 21 October 2012).

⁴⁶⁰ See United Nations Mission in the Republic of South Sudan (UNMISS) “UNMISS Facts and Figures” <http://www.un.org/en/peacekeeping/missions/unmiss/facts.shtml> (Date of Use: 6 October 2012).

⁴⁶¹ See United Nations Interim Security Force for Abyei (UNISFA) “UNISFA Facts and Figures” <http://www.un.org/en/peacekeeping/missions/unisfa/facts.shtml> (Date of Use: 6 October 2012).

all operational and self-sustainment capabilities of military and police contingents.”⁴⁶²

With regard to (f), it should be noted that great lengths have been taken to address the issues of weak mandates and effective rules of engagement. For instance, the Brahimi report,⁴⁶³ which is now considered somewhat of a ‘peacekeeping operation bible’, has helped transform the peacekeeping platform. Its recommendations have encouraged the more frequent use of fact-finding missions to areas of tension as a means of short term crisis prevention.⁴⁶⁴ The findings of these missions have accordingly assisted mandate drafters with drafting mandates that are more reflective of the needs of the civilians in the tension areas. In addition to this, the panel also encourages robust rules of engagement. The report states that “UN military must be capable of defending themselves, other mission components and the mission’s mandate...Mandates should specify an operation’s authority to use force”.⁴⁶⁵

Based on the discussion of lessons learnt above, it would appear that the most significant challenges the UN faces with regard to the handling of conflicts are (a) and (d) above – member state inaction and slow deployment of troops and equipment.

6.2 Recommendations

Even though no two conflicts are the same, the Rwandan genocide and the crises in Sudan share a common denominator - the credibility of the UN has been greatly undermined. As has already been echoed throughout this paper, this is not to say that the UN has achieved nothing. It simply means that the UN could do more. Through their shortcomings, the UN’s handling of the

⁴⁶² See S/2012/231 para 59.

⁴⁶³ After the UN failures in Rwanda, Somalia in the 90’s, the Secretary-General mandated the Panel on United Nations Peace Operations, composed of individuals experienced in various aspects of conflict prevention, peacekeeping and peace-building, to assess the shortcomings of the existing system and to make frank, specific and realistic recommendations for change. The report is also called the Brahimi report after its chair, Lakhdar Brahimi.

⁴⁶⁴ See, A/55/305-S/2000/809. Available at http://www.un.org/peace/reports/peace_operations/docs/a_55_305.pdf (Date of Use: 10 October 2012).

⁴⁶⁵ See A/55/305-S/2000/809 paras 48-64. Available at http://www.un.org/peace/reports/peace_operations/docs/a_55_305.pdf (Date of Use: 10 October 2012).

Rwandan genocide also imparted lessons – lessons of which have fundamentally changed the peacekeeping platform. A concept which exemplifies such lessons learnt is the R2P concept. This concept was created as an answer to member state inaction and “articulates the collective international responsibility to protect human beings whose governments refuse to do so or are actually the cause of murder and ethnic cleansing”.⁴⁶⁶ However, as has been demonstrated in the case of Darfur, the emergence of this concept has not necessarily amounted to humanitarian intervention as the “political will to support the new idea remains problematic unless there are geopolitical as well humanitarian reasons to do so.”⁴⁶⁷

The general sentiment echoed throughout this paper has been that success of peacekeeping heavily depends on the Council’s ability to respond to crisis in a rapid and effective manner. Experience has shown that the Council’s actions or inactions have sometimes acted as saboteurs of the peace process. In this, we have also established that five countries ultimately hold the power on what action the Council takes. The said power has been bestowed upon them by the UN Charter. It is for this reason that “since UN missions can only be authorised by the Security Council, and since any of the P5 can veto any resolution, the leverage of the US, Britain, France, Russia and China can hardly be exaggerated.”⁴⁶⁸ It thus follows that there is a need – in the area of international law – to keep a balance between the Charter and equitable representation in the Council.

In this regard, the recommendations that follow attempt to increase member state involvement and ultimately address the challenges with troop numbers and efficiency.

6.2.1 Recommendation 1: Dilute P5 powers and/or amend Council composition

Chapter III briefly discussed the various ways member states have attempted to make changes to the Council to reflect current realities (see 3.3.1). As was

⁴⁶⁶ See Jolly, Emmerij, Weiss *UN Ideas That Changed The World* 176.

⁴⁶⁷ Ibid.

also mentioned, these attempts led to the subsequent establishment of an open-ended working group which has been tasked with “Question of equitable representation on and increase in the membership of the Security Council”. This open group, along with other NGO’s, high-level panels, civil society organisations and other interest groups have fundamentally sought to enlarge the composition of the Council, make it more reflective of current realities; add new permanent members; and/or abolish or limit the use of the veto (see 3.3.1).

The general consensus has been that most of the Council’s problems would be solved if the powers of the P5 were diluted and/or Council composition was amended. However, as has already been pointed out, such changes would only come into effect if the Charter were to be amended. In this respect, it has also been pointed out that amendments to the Charter are next to impossible since the P5 themselves would have to agree to it (see Article 108 and 109 of the Charter). Furthermore, it would seem that

The Charter has been amended only three times in over half a century. The Security Council has been enlarged once and the Economic and Social Council twice. The last of these moves took place almost three decades ago. So, while much of the public debate on reform continues to focus on possible Charter amendments, such as further expanding and diversifying the composition of the Security Council, in practice this has proved to be difficult to accomplish.⁴⁶⁹

It is thus apparent that UN reform with respect to the question of equitable representation and increase in the membership of the Security Council present difficult challenges that may prove insurmountable for some time to come. That said, it should be pointed out that the issue not only lies with the P5’s reluctance to agree to such changes but also the inability of the 187 member states that are not permanent members to have one voice. By and large, these 187 states have demonstrated the intention to make changes in this area. However, due to their differences in rankings and regions, it has proven prob-

⁴⁶⁸ See Caplan “From Rwanda to Darfur: Lessons Learned?” Available at <http://pambazuka.org/en/category/features/31248> (Date of Use: 8 October 2012).

⁴⁶⁹ See Luck “Reforming the United Nations: Lessons from a History in Progress”3.

lematic for them to establish a “united front”.⁴⁷⁰ For instance, with regard to membership inclusion of African states as permanent members, it is not exactly clear which African states would occupy the seats, though Nigeria, South Africa and Egypt appear to be the forerunners.⁴⁷¹ Also, it should be noted that Kofi Annan presented a report in which two models were recommended for reform.⁴⁷² Model A recommends six new permanent seats, none with veto powers, and three new two-year term non-permanent seats, divided among Africa, Asia and Pacific, Europe and the Americas, whereas Model B, proposes no new permanent seats but creates a new category of eight four-year renewable-term seats and one new two-year non-permanent (and non-renewable) seat, divided among Africa, Asia and Pacific, Europe and the Americas.⁴⁷³ The AU has strongly opposed both models as it is advocating for two permanent seats with veto power.⁴⁷⁴ Countries like Japan, Germany, Brazil and India have expressed support for Model A “with hopes of finding permanent seats on the Council table”.⁴⁷⁵ As such, it would appear that the first step to any progress would require that the majority of the 187 member states establish consensus on the size and composition of the Council. Another recommendation that is significant to the discussion of this paper is the limitation of the veto. This type of limitation would ensure that permanent members of the Security Council consider refraining from using a veto to block Council action aimed at preventing or ending genocide, war crimes and crimes against humanity.⁴⁷⁶ If such a limitation existed, it would help increase the speed at which peacekeeping operations would be deployed. In essence, once the Council has determined that a population has fallen victim to war

⁴⁷⁰ See Luck “Reforming the United Nations: Lessons from a History in Progress” 50.

⁴⁷¹ See Fassbender *All Illusions Shattered? Looking Back on a Decade of Failed Attempts to Reform the UN Security Council* 202.

⁴⁷² The “In larger freedom: towards development, Security and human rights for all” report presented to the General Assembly on 21 March 2005 (A/59/2005) can be accessed at http://www2.ohchr.org/english/bodies/hrcouncil/docs/gaA.59.2005_En.pdf (Date of 23 October 2012).

⁴⁷³ See A/59/2005.

⁴⁷⁴ See Deen “Politics: Africa Reasserts Veto Demand in New Security Council”. Available at <http://www.ipsnews.net/2006/07/politics-africa-reasserts-veto-demand-in-new-security-council/> (Date of Use: 24 October 2012).

⁴⁷⁵ Ibid.

crimes, crimes against humanity or genocide, the Council would be in a position to authorise the necessary action without the looming fear of the veto. In this way, the P5's national interests or lack of would not be a determining factor of whether civilian's lives are saved or not.

Therefore, if applied to the Darfur Crisis, it would seem that the Council would be in a better position to take more robust action against Sudan in spite of China and Russia's relationship with the Sudanese government.

The proposal to limit the veto appears to attach more importance on improvements required for overall Council effectiveness in peacekeeping operations and less importance on the issue of composition of permanent and non-members of the council. Even though this option seems less intrusive than the other recommendations discussed above, it would also require the amendment of the Charter to reflect such a limitation. However, in order to 'override' this requirement, the P5 could sign an agreement have the UN General Assembly pass a resolution to that effect. It is worthwhile to note that the advocates of this recommendation similarly advocate the R2P concept.⁴⁷⁷ This recommendation to limit the use of the veto has received some form of acceptance by the US, France and the UN Secretariat.⁴⁷⁸ However, no actual measures have been taken by the Council to implement such a limitation since the idea conceptualised 10 years ago.⁴⁷⁹

6.2.2 Recommendation 2: Sever China and Russia's armament links to areas of tension in Africa

Here, the aim is to attempt to find means of curbing P5 power, particularly when they are providing arms to tension areas. As was mentioned in the previous Chapter, China and Russia continue to trade with Sudan. Arguably, from a humanitarian standpoint, these relations cannot be encouraged. The ques-

⁴⁷⁶ See United Nations "Press Conference on Proposal to Improve Security Council Working Methods" 15 May 2012. Available at http://www.un.org/News/briefings/docs/2012/120515_Pace.doc.htm (Date of Use: 10 October 2012).

⁴⁷⁷ See Citizens for Global Solutions "The Responsibility Not to Veto: A Way Forward" 2010. Available at http://globalsolutions.org/files/public/documents/RN2V_White_Paper_CGS.pdf (Date of Use: 10 October 2012).

⁴⁷⁸ Ibid.

⁴⁷⁹ Ibid.

tion is, are there any ways of deterring such relations? The only legal means appears to be the signing of an Arms Trade Treaty. Such a treaty would ensure greater transparency and accountability in states dealings with the transfer of arms. The United Nations Office for Disarmament Affairs (UNODA) is in the midst of supporting negotiations for a robust legally binding instrument to establish high common standards for international trade in conventional arms.⁴⁸⁰ However, it remains to be seen how effective such a treaty would be in deterring countries like China and Russia from supplying arms to wars in Africa.

6.2.3 Recommendation 3: Creation of a stand-by permanent army

The idea of a stand-by permanent army is one that attempts to address the issue of not having ill-equipped and poorly trained troops. The Brahimi report stressed the gravity of deploying troops within the first thirty to ninety days of a crisis.⁴⁸¹ The various crises have demonstrated that more often than not, this has not been possible for the UN. In attempt to overcome this obstacle, the Brahimi report recommends the creation of a standby and rapid reaction army.⁴⁸² Such an army would ideally be a permanent military volunteer force, which would entail that recruitment is done directly from the public and not through agreements with the government. The exclusion of government involvement stems from the rationale that “the motivation for taking the necessary risks for defence of human rights is more likely to reside in particular individuals than in governments.”⁴⁸³

Essentially, such a volunteer force would handle their recruitment similarly to that of the United Nations Volunteers (UNV). Such a force would also be trained and equipped by the UN which would entail that the training is equal and according to UN standards. However, critics of this proposal have pointed out that such an army would tarnish the image of the UN as ‘peacekeeper’ and

⁴⁸⁰ See United Nations Office for Disarmament Affairs “Arms Trade Treaty” <http://www.un.org/disarmament/convarms/ArmsTradeTreaty/> (Date of Use: 11 October 2012).

⁴⁸¹ See A/55/305-S/2000/809.

⁴⁸² Ibid.

⁴⁸³ See Kinloch *Utopian or Pragmatic? A UN Permanent Military Volunteer Force* 169.

replace it with a purely military image.⁴⁸⁴ In addition to this, critics contend that the establishment of such a force would place undue financial burden on member states – the force “would have to be financed outside the regular UN budget, so as to avoid it becoming hostage to the generosity of individual states”.⁴⁸⁵ It would prove difficult to make the force financially independent from member state contributions and if not independent, the force would have the same problems that current ad hoc military deployments have – contributions are only made if involvement in a tension area would further the troop contributing countries purpose.⁴⁸⁶ Also, it would seem that establishing such a force would bring the Council back in its original position since “the arbitrary character and relative legitimacy of decisions regarding intervention would remain, because these are fundamentally inherent in the UN’s existence, and decisions related to the use of force will always be decided by states.”⁴⁸⁷

On balance, it would seem that the objections to such an army are valid. Unless, solutions are found to counter the financial dependency that such an army would have on member states, particularly the P5, it is highly unlikely that such a force will be established in the near future.

6.2.4 Recommendation 4: Creation of a European Union-like body

Under this scenario, the objective would be to form a European Union (EU)-like body that would be empowered to implement and advance the concept of the Responsibility to Protect (R2P). The EU would be used as a model due to its unique nature and ability to bind states to comply with its laws and policies. In this regard, this new body would mirror the following characteristics of the EU:

- a. The EU is a body based on the rule of law created through a treaty, voluntarily and democratically agreed by all of its member countries.⁴⁸⁸ In this

⁴⁸⁴ See Kinloch *Utopian or Pragmatic? A UN Permanent Military Volunteer Force* 174.

⁴⁸⁵ *Ibid.*, 177.

⁴⁸⁶ *Ibid.*, 182.

⁴⁸⁷ *Ibid.*

⁴⁸⁸ See European Union “Decision Making in the European Union” http://europa.eu/about-eu/basic-information/decision-making/index_en.htm (Date of Use: 19 October 2012).

respect, the new EU-like body would be founded through a negotiated treaty with the purpose of furthering the interests of the R2P concept.

- b. With the EU, member states group their sovereignty; surrendering the right to make independent decisions in certain areas.⁴⁸⁹ In this regard, the new EU-like body would require member states to surrender their sovereignty only with respect to making decisions related to civilians affected by crimes against humanity, war crimes and genocide.
- c. The EU has the power to force members to comply. Like the EU, this EU-like body would derive this power from the treaty that member states would sign upon joining this body.
- d. The EU is founded on the principle of speaking with one voice.⁴⁹⁰ The EU-like body would thus aim to speak with one voice only with regards to implementing and advancing the R2P concept. Member states would thus be bound on the issue of the R2P. Member states of this new body would be called upon to implement this body's laws and policies based on the concept of R2P.
- e. The EU governs a union of European states.⁴⁹¹ The EU-like body would fundamentally govern all UN member states in relation to the R2P concept.

The above characteristics are unlike the UN and the establishment of such a body could serve as an alternative to the long debated issues surrounding UN Council reform. The voting system of this new body would aim to be fair and equitable and represent current realities; no member state would have the power of the veto. Each member state would appoint an international humanitarian law/human rights expert to represent them. The issues on the agenda of this body would be by referral only. The UN Security Council would refer matters vis-à-vis civilians affected by crimes against humanity, war crimes and genocide.

⁴⁸⁹ See European Union "Decision Making in the European Union" http://europa.eu/about-eu/basic-information/decision-making/index_en.htm (Date of Use: 19 October 2012).

⁴⁹⁰ Ibid.

⁴⁹¹ See European Union "Decision Making in the European Union" http://europa.eu/about-eu/basic-information/decision-making/index_en.htm (Date of Use: 19 October 2012).

In this regard, should there be a crisis such as the one in Darfur and a greater part of the Council's non-member states believe that more could be done and inaction is due to a veto or threat of veto, the member states (permanent or non-permanent) of the Council could refer a matter to this body for further deliberation. Once a situation has been referred to this body, the member states representatives would deliberate on the issue and prepare draft directives/resolutions corresponding to the needs of civilians most concerned and vote on the way forward. Once a majority of member states (at least two thirds) approve a decision, the matter will be sent back to the Council and its member states would be forced to comply with its decision. Therefore, if the new body has decided that military intervention is the best course of action by the Council, then the Council would be required to implement this.

The operation of this treaty-based body would be governed by treaties signed by the states. Alternatively, the body could draft a constitution that would govern the issues surrounding each member states commitment and duty to the R2P concept. Such a constitution would encourage cooperation across the spectrum of the R2P concept thereby enhancing international peace and security.

Establishment of such a scenario would also help improve the legal framework for R2P issues in local legislation. Once states have signed the treaty and joined the body, they would also be required to adopt all common rules, standards and policies relating to R2P. Therefore, the body's common rules, standards and policies would have priority over national directives such as the US PDD25.

A crucial factor to the success of such a body is the heavy participation of states. Great participation of states - ideally from each region - would enhance the understanding of complex issues specific to a region. In the context of African conflicts, African states would probably be more eager to join this body as it would provide them with a platform to directly influence the outcome of conflicts in their region, which is currently not the case with the UN Security Council. Another crucial factor to the success of this new body would be the establishment of effective enforcement mechanisms. These mechanisms con-

tained in signed treaties or directives would have to be strong enough to force member states to comply, particularly the P5.

By and large, the recommendation to establish such a body appears to be more feasible since it would not require that the P5 relinquish their veto right nor make any changes to the composition of the Council. Also, as already mentioned, many states particularly African states, have always felt marginalised for not having a permanent seat on the Council. This body would help address that problem and help Africans have a stronger voice on the international stage.

However, issues surrounding the financing of such a body may prove cumbersome. This begs the question: If all UN member states were called on to become members of this body, how would the contributions be divided? If the member state contributions are to reflect the current UN model, then richer states would have more control of the body, thus mimicking the issue of having super powers control decisions related to peacekeeping. To avoid this, the body could be made up of the richest and most populated (three to four states) of each region. Therefore, the composition of this Council would roughly reflect the following:

Americas – US, Canada, Brazil, Argentina, Mexico

Asia – China, Japan, Singapore, India

Africa – South Africa, Nigeria, Egypt, Algeria

Europe – France, Germany, UK, Russia

Middle East – Qatar, UAE, Saudi Arabia, Kuwait

Australia and Pacific Islands – Australia and New Zealand

The above composition would ensure that each region is represented fairly and the states involved would have the financial means to ensure the continuous and effective operation of the body.

That said, in spite of the advancement that such a body would potentially bring in the area of R2P, it is likely that most states, particularly the P5, would be reluctant to surrender their right to make independent decisions related to the R2P concept. Furthermore, even though it is envisioned that this body would

have the power to change and direct the course of action to be taken on matters related to war crimes, crimes against humanity and genocide, such power may not automatically entail an increase in financial contributions towards peacekeeping missions nor would it imply an increase in troop contribution from member states of the UN.

However, with proper planning coupled with carefully crafted 'marketing' of the body's potential, the possibility of establishment is seemingly plausible.

6.3 Conclusion

In many respects, the UN has taken great strides to greatly expand and improve itself in the general domain of peacekeeping. However, for the UN to be completely effective there is a pressing need for changes to be made with respect to the use of the veto in peacekeeping. If the P5 are allowed to continue to have 'sole discretion' to dictate if and when lives are saved - depending on what interests are at play - the Council will continue to flounder in the area of peacekeeping.

That said, it is imperative to point out that conflict will always occur. The ideal world is not one where the Council has no conflicts on its agenda but one where the worst is prevented. It must also be stressed that the ultimate responsibility for maintaining peace and security lie with the states themselves. As Sir David Hannay, representative of the United Kingdom succinctly put it: "the UN cannot impose peace where there is no willingness to sustain compromise".⁴⁹²

With Africa, experience has also shown that the conflicts in this region are complex and require immense understanding of the dynamics at play. Taking the stance of "Africans for African problems" will not further the purpose of peace and security in the region, as the work of AMIS demonstrated. Yes, Africans sometimes do understand African problems better but it is clear that UN involvement is critical to peacekeeping. Moreover, we live in a world where our ties with the rest of world are intricately intertwined and the idea of finding solutions by creating divides that separate 'us' from 'them' is one that has never

⁴⁹² See S/PV 3288.

proved useful. Rather, collaborations with regional organisations such as the AU should be further encouraged. Since the AU is a fairly new organisation, the increase in experience that the AU will acquire in the next decade will be crucial to support the UN with a strong local partner.

There is no organisation that has been able to address the world's problems like the UN has. Brian Urquhart described this notion by stating that "there is always a challenge ahead, an historic opportunity to be grasped.. The UN has taken the lead in many of the great historic issues of our time, and its record is far more impressive than is generally appreciated."⁴⁹³

With all its flaws, we have seen the UN advance the interests of humankind, particularly in the areas of human rights law and international law even when the rest of the world experienced 'peacekeeping fatigue'. However, this body will never reach its fullest potential unless great strides are made to increase the political will of member states be it through limitation of the veto and/or amendment of the composition of the Council.

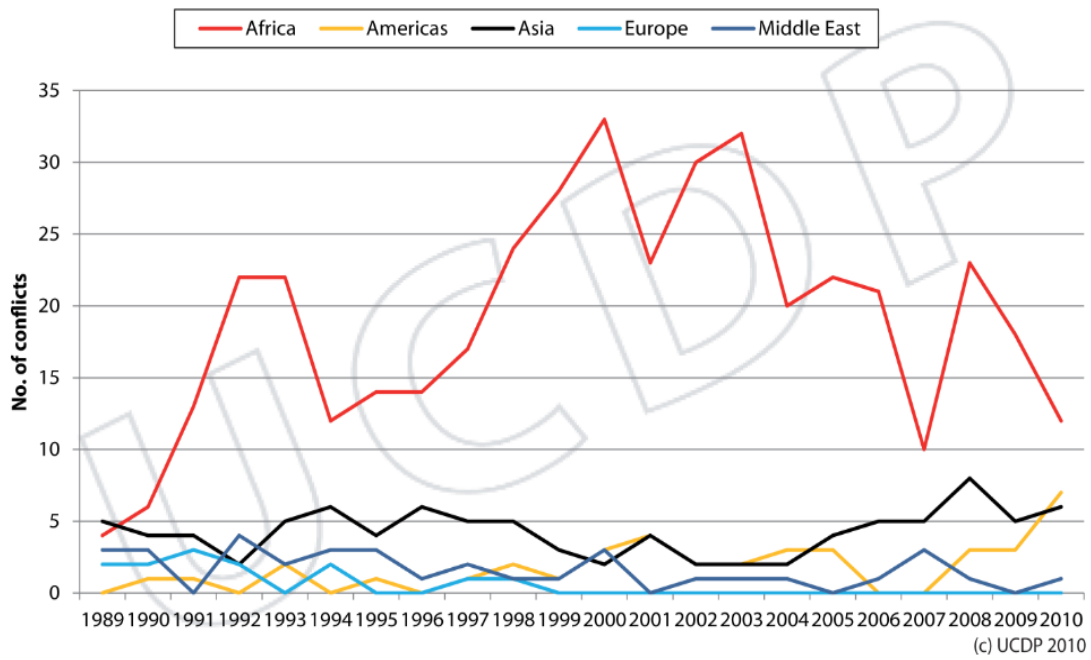
The issues and challenges are thus clear. The means of overcoming them are plentiful albeit complex. The international community, particularly the P5, need to reach some form of compromise to advance the needs and wants of the greater good.

It thus seems unquestionable that when the UN fails as a body, we all fail as humankind.

⁴⁹³ See Urquhart "Between Sovereignty and Globalisation- Where Does the United Nations Fit In?" Development Dialogue (2000) 4. Available at <http://www.dhf.uu.se/pdf/Urquhart.pdf> (Date of Use: 3 October 2012).

ANNEXURE A

Non-state Conflicts by Region, 1989-2010



7 KEY TERMS

Civil War; Conflict Prevention; Darfur; Genocide; Internal Armed Conflict; Peacebuilding; Peacekeeping; Peacemaking; Rwanda; Security Council; Sudan; United Nations; Veto

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