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International Responses to the Risk of Genocide: A Comparative Analysis of Rwanda and South Sudan

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Executive Summary

South Sudan's ongoing crisis has been overshadowed by the expansion of the Islamic State over parts of Iraq and Syria, by the most recent outbreak of Ebola and by the ongoing crisis in Ukraine. Yet, the violence that broke out mid-December 2013 in the newest state of the world is alarming and presents serious security implications for its wider region, already torn apart by decades of war. Risk factors of genocide and other atrocity crimes were identified by United Nations (UN) representatives on their visit to the country at the beginning of May 2014, and were reasserted by the United States' (US) Secretary of State, John Kerry, on his subsequent visit to Juba.

Against this background, this document seeks to look into the risk assessment and into the means set in place by international actors, in particular by the United Nations and major powers, to prevent violence from escalating into genocide. Taking as reference case the international community's reaction at the onset of the Rwandan Genocide, this paper will attempt to draw parallels and trends with the unfolding situation in South Sudan.

With the past failures casting a shadow over current challenges and amid growing inter-ethnic violence in several African countries, is the West sufficiently pulling its weight in the means it applies to mitigate risks of genocide in Africa? Has the Responsibility to Protect reinforced Western ability to prevent the emergence of genocide?

Keywords: genocide, genocide prevention, Rwanda, South Sudan, United Nations.

Contents

About the Author	i
Executive Summary	ii
Contents.....	iii
List of Acronyms	iv
Introduction.....	1
Genocide then: the case of Rwanda (April 1994 – July 1994).....	2
1. Conceptual context: Prevent and Punish.....	2
2. Terminating the Rwandan civil war? The Arusha Accords and UNAMIR.....	4
3. Risk of genocide: the “Genocide Fax”	5
4. The outbreak of violence and international responses	6
a) <i>Watering down UNAMIR</i>	7
b) <i>Using the g-word: reluctance, fear and legal implications</i>	8
c) <i>Introducing Chapter VII in Rwanda: UNAMIR II</i>	10
5. A failed international response.....	11
Current risk of genocide: the case of South Sudan (December 2013–?).....	15
1. From the Genocide Convention to the Responsibility to Protect.....	15
2. Contextualising ongoing violence in South Sudan	16
a) <i>From independence to internal conflict</i>	16
b) <i>Ethnic slaughter and risk of genocide</i>	17
3. International response to the threat of genocide	19
a) <i>Reinforcing civilian protection</i>	19
b) <i>Assisting and supporting peace negotiations</i>	21
c) <i>Sanctions</i>	22
d) <i>The challenges and limits to the UN’s role in South Sudan</i>	24
International responses to the risk of genocide: Rwanda and South Sudan in perspective.....	26
Conclusions: moving towards a genocide-free era?	29
Annex 1: Convention on the Prevention and Punishment of the Crime of Genocide	31
Annex 2: List of signatories and parties to the Convention.....	34
Bibliography.....	38

List of Acronyms

IDP	Internally Displaced Person
IGAD	Intergovernmental Authority on Development
MVM	Monitoring and Verification Mechanism
NGO	Non-Governmental Organisation
OAU	Organisation of African Unity
OCHA	Office for the Coordination of Humanitarian Affairs
PoC	Protection of Civilians
RANU	Rwandese Alliance for National Unity
R2P	Responsibility to Protect
RPF	Rwandan Patriotic Front
SPLA	Sudan People's Liberation Army
SPLM	Sudan People's Liberation Movement
TGoNU	Transitional Government of National Unity
UN	United Nations
UNAMIR	United Nations Assistance Mission for Rwanda
UNAMIR II	United Nations Assistance Mission for Rwanda II
UNDP	United Nations Development Programme
UN DPKO	United Nations Department of Peacekeeping Operations
UNMISS	United Nations Mission in the Republic of South Sudan
US	United States

Introduction

South Sudan's ongoing crisis has been overshadowed by the expansion of the Islamic State over parts of Iraq and Syria, by the most recent outbreak of Ebola and by the ongoing crisis in Ukraine. Yet, the violence that broke out mid-December 2013 in the newest state of the world is alarming and presents serious security implications for the wider region, already torn apart by decades of war.

Risk factors of genocide and other atrocity crimes were identified by United Nations (UN) representatives on their visit to the country at the beginning of May 2014, and were reasserted by the United States' (US) Secretary of State, John Kerry, on his subsequent visit to Juba. In a few months, thousands of people were killed on the basis of their ethnic background, while more than 1,9 million people fled their homes towards safer regions of the country or to neighbouring Sudan, Ethiopia, Kenya, or Uganda. The fighting that has been opposing troops backing President Salva Kiir and soldiers loyal to his former deputy Riek Machar, has reached a degree of violence and displacement that has raised international concern. While the international community calls for face-to-face peace talks, the stick of international investigations of war crimes and crimes against humanity is brandished, and the mandate of the existing UN Mission in the Republic of South Sudan (UNMISS) has been revised accordingly in order to respond to the growing fear of escalation of ethnic violence.

Against this background, this document seeks to look into the risk assessment and into the means set in place by international actors, in particular by the United Nations and major powers, to prevent violence from escalating into genocide. Any consideration on the legitimacy and appropriateness of the use of the term of "genocide" in the case of South Sudan goes beyond the scope of the present paper. Similarly, this paper does not intend to analyse the causes of the conflict, and especially not to narrow down root causes of violence solely to ethnic or religious divides. On the contrary, this article accepts the international community's risk assessment of the situation in South Sudan as a starting point. Through the analysis of official statements, and of the mandates of international missions on the ground and the rules of engagement of the troops, it aims to draw a comparative analysis of international responses and engagement in early stages of genocidal situations.

In order to do so, it takes as reference case the international community's reaction at the onset of the Rwandan Genocide, so as to draw parallels and trends with the unfolding situation in South Sudan. The choice of Rwanda bears its own significance, for the failure to prevent the escalation of violence, or at least to contain it after it sparked, deeply sensitised actors across the globe and became, rightfully or not, a benchmark of studies on genocide.

Each commemoration in the memory of the horrors perpetrated in Rwanda provides a timely moment to reflect on an event that has deeply stigmatised the international community. Anniversaries also present an opportunity for governments to declassify and release a series of official documents, which serve to inform new articles, position papers, and perspectives on the psychology of genocide and the political dimension that underpins it. On the other hand, it provides the ideal context to reassert international commitment to the importance of vigilance and constant monitoring of risks, which were placed at the forefront of the Responsibility to Protect (R2P). This leads us to the following question: with the past failures casting a shadow over current challenges, and amid growing inter-ethnic violence in several African countries, is the international community sufficiently pulling its weight in the means it applies to mitigate risks of genocide in Africa? Has the Responsibility to Protect reinforced our ability to prevent the emergence of genocide?

Genocide then: the case of Rwanda (April 1994 – July 1994)

1. Conceptual context: Prevent and Punish

The West has been heatedly criticised for failing to adequately prevent and respond to the campaign of killing which unfolded in Rwanda between April and July 1994, and which according to the UN, took the lives of about 800,000 Tutsi Rwandans and moderate Hutus according to the UN. Newly declassified records of closed-door debates between key members of the United Nations Security Council give a day-by-day narrative of international discussions, hesitations, and wanderings in the face of the Rwandan crisis and helped to inform the present paper.

As previously explained, this paper does not intend to enter into terminological considerations as regards the concept and definition of “genocide”. Yet, as its scope is to analyse international responses to such a risk, it cannot do otherwise than to begin by providing a brief reminder of how genocide was defined by the 1948 Convention so as to frame, as clearly as possible, the topic at hand. At the time when the Rwandan Genocide broke out, the Convention constituted, indeed, the benchmark of international law of genocide (see the text of the Genocide Convention and the list of signatories and parties in Annexes 1 and 2 respectively). Although “genocide” afterwards became a buzzword of twenty-first century political activism, the said Convention unanimously adopted by the UN General Assembly on 9 December 1948 and which entered into force on 12 January 1951 engages a precise, although limited in its remit, juridical definition.¹ As stipulated in Article II, genocide defines ‘any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious groups, as such:

- Killing members of the group;
- 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;
- Imposing measures intended to prevent births within the group;
- Forcibly transferring children of the group to another group’.²

The following article of the Convention draws attention to four additional categories of the crime of genocide which relate to incomplete or inchoate offences, or preliminary acts committed where genocide itself does not (yet?) take place.³ One must, thus, acknowledge that acts considered as preparatory or potentially leading up to genocide occupy an important place in the Convention, which thereby entails a strong preventive dimension. This is an

¹ The Convention, as a product of the post-World War II and post-Holocaust period, focuses solely on national, ethnical, racial or religious crimes. It excludes, for example, political groups, social classes or cultural minorities from its scope.

² Article II, Convention on the Prevention and Punishment of the Crime of Genocide, 78 UNTS 277, *approved* 9 December 1948 [hereinafter Genocide Convention]. Available at: <http://www.hrweb.org/legal/genocide.html>

³ William A. Schabas, ‘Convention for the Prevention and Punishment of the Crime of the Genocide’, *United Nations Audiovisual Library of International Law*, United Nations 2008, 3. Available at : http://legal.un.org/avl/pdf/ha/cppcg/cppcg_e.pdf

aspect which is stressed in the first article, stipulating that genocide is recognised to qualify a crime under international law, 'whether committed in time of peace or in time of war', which contracting parties (signatories) can 'prevent and punish'.⁴ In this sense, this first article underlines two fundamental distinctions; firstly, that genocide can be committed both 'in time of peace or in time of war', and secondly, that all signatories of the Convention have a responsibility to prevent genocides from occurring, based on the said punishable acts of 'conspiracy to commit genocide', 'direct and public incitement to commit genocide' and 'attempt to commit genocide'.⁵

When considering the systematic occurrence of genocide in the Cold War and the Post-Cold War eras in spite of the existence of international legal provisions, one can legitimately question the potential for actual enforcement of the Convention. Indeed, over the decades following its entry into force, genocides were merely invoked, while the Convention and its clause to 'prevent and punish' were in abeyance.⁶ How can this be? Can we consider that the Convention failed in its stated aim to prevent genocides from happening? To begin with, the Genocide Convention, unlike most of the human rights treaties, does not establish a specific institutional entity responsible for the monitoring of crisis situations, nor does it create specific procedures and benchmarks for the Convention's effective enforcement. In other terms, although the Convention defines "genocide", it does not provide the necessary means and procedures that would allow states to take action upon it through the UN. Indeed, Article VIII explicitly indicates that 'any contracting party may call upon the competent organs of the United Nations to take such action under the UN Charter'. In practice, this means that any referral to the Genocide Convention would need to be initiated by one signatory or a group of signatories, and not by a competent independent UN body itself. In such a context, national interests, reluctances and concerns naturally come into play. For instance, the difficulty to recognise a party's 'intent to destroy, in whole or in part' a group, a key element of the Convention's definition of genocide, has often proved to be a useful legalistic discourse that has refrained signatory states from actually referring to the Genocide Convention and, therefore, from taking appropriate action. Ultimately, this means that the Convention's compliance, enforcement and invocation largely depend on the goodwill of individual states within the UN General Assembly or the Security Council.

As was argued in an International Court of Justice advisory opinion, the primary intention was for the Convention to be universal in its scope, therefore serving a purely humanitarian and civilising purpose, rather than envisaging a strict compliance to its provisions, in practice.⁷ As was argued by David Chuter, the label of genocide created by the Convention is more powerful as a political rhetoric than in terms of the legal obligation and accountability it entails.⁸ Ultimately, the document is binding without, however, including any conventional obligation. Besides, a significant number of signatories introduced reservations to the Convention, thereby creating caveats to their acceptance of its content and provisions. The daunting absence of accountability for inaction is a case in point. Thus, of a largely declaratory significance, history reveals that the Convention, as such, did not open the way towards a post-genocidal world.

⁴ Article I, Genocide Convention

⁵ Article III, Genocide Convention

⁶ Martin Shaw, *Genocide and International Relations* (Cambridge: Cambridge University Press, 2013), 86-90 and 124

⁷ 'Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide', International Court of Justice, Advisory Opinion, 28 May 1951. Available at: <http://www.icj-cij.org/docket/index.php?sum=276&code=ppcg&p1=3&p2=4&case=12&k=90&p3=5>

⁸ David Chuter, *War Crimes* (Lynne Rienner Publishers, 2003), 88

In consequence, what the next sections seek to do is to provide a brief overview of the lead-up to the Rwandan Genocide with a focus on early signs of the impending bloodbath, so as to analyse the evolution of international concern with Rwanda during that period. It will later focus on the international responses to the genocide and to trends and critical issues that may serve the prevention of future cases.

2. Terminating the Rwandan civil war? The Arusha Accords and UNAMIR

The massacres that took place in 1994 naturally need to be placed in the context of the war that pitted the Hutu-dominated Rwandan regime against the Tutsi-led insurgents who invaded the country from neighbouring Uganda in the fall of 1990. Only when acknowledging this context can one objectively approach and apprehend the precursory signs of genocide.

The civil war which started with the October 1990 Rwandan Patriotic Front's (RPF) invasion of Rwanda from the north-eastern part of the country, was succeeded by a two-year long guerrilla-type warfare in the north. Mainly composed of both members of the Tutsi diaspora who had fled the post-colonial Hutu government of presidents Grégoire Kayibanda (1962-1973) and Juvénal Habyarimana (1973-1993), and Hutus from Rwanda's opposition parties, the RPF organised itself in 1987 as the descendant of the Rwandese Alliance for National Unity (RANU). Its armed struggle was originally motivated by political grievances ranging from basic political rights, democratic reforms and access to land, to political demands of ethnic Tutsis exiled in Uganda and Burundi such as the right of return and the end of ethnic segregation. As a result, one cannot ignore the ethnic dimension underpinning some of these political grievances, which led, over the course of the Rwandan Civil War, to growing ethno-political radicalisation and to ethnically-motivated massacres of civilian populations in several parts of the country.

As the war dragged on for almost two and a half years, a ceasefire was finally signed in July 1992 in Arusha, paving the way for an eleven month-long political process which instated a power-sharing government and admittedly marked the end of the Rwandan Civil War. It is in this very framework that the United Nations Assistance Mission for Rwanda (UNAMIR) was instituted so as to assist the 4 August 1993 Accords' implementation, including ensuring the security of Kigali, monitoring the ceasefire and the establishment of the demilitarised zone, and assisting the coordination of humanitarian activities.⁹ Established by the 5 October 1993 United Nations Security Council Resolution 872 (1993), UNAMIR had an initial presence of 2,548 military personnel, Belgium providing the military backbone of the mission, and was commanded by Canadian Lieutenant-General Roméo Dallaire and headed by Jacques-Roger Booh-Booh, former Minister of External Relations of Cameroon. It initially deployed for a six-month period, although its constitution act made its extension conditional to the achievement of 'substantive progress towards the implementation of the Arusha Peace Agreement'.¹⁰

⁹ United Nations Security Council Resolution 872, S/RES/872 (1993). Available at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/872\(1993\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/872(1993))

¹⁰ United Nations Security Council Resolution 872, S/RES/872 (1993). Available at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/872\(1993\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/872(1993))

3. Risk of genocide: the “Genocide Fax”

Although the Rwandan Civil War was admittedly terminated by the Arusha Accords of August 1993, whose first phase seemed to be implemented in good will and with the cooperation of both parties, progress rapidly stalled as fundamental disagreements impeded the establishment of a transitional government and transitional national assembly. Against the delays of the political process, the security situation deteriorated on a background of growing ethno-political radicalisation. Clashes between RPF, the Rwandan military, extremist elements and paramilitary militias recurrently occurred in the first months of 1994.¹¹ In parallel, hate speech underpinned by the Hamitic hypothesis and fuelling public hatred against Tutsis,¹² systematically assimilating them to RPF, was divulged through pro-government channels such as the Radio-Télévision Libre des Mille Collines.¹³ The anti-Tutsi feeling was further reinforced by the Tutsi-led *coup d'état* committed in Burundi in October 1993 and the ethno-political crisis that ensued. Unfortunately, these early warnings, which clearly constituted direct and public incitement to commit genocide, an act punishable under the Genocide Convention, did little to alert UN Headquarters about the potentially explosive situation. Finally, impunity surrounding ethnically-motivated crimes, political assassinations of members of the transitional government and moderate Hutus, and massacres taking place across the country, tacitly enabled the preparation and perpetration of the genocide.

At first, the UN Secretariat in New York seemed to remain confident in the parties' commitment to the Arusha political roadmap. It is only with Lieutenant general Roméo Dallaire's 10 January 1994 “Genocide Fax” warning of an ‘anti-Tutsi extermination’ plot that the Western powers became aware of the plausibility of such a development.¹⁴ Yet, the reliability of the revelations of armed caches existence and of a Tutsi extermination plan provided by Dallaire's informant was put into question, in particular due to both parties' training and rearming in view of renewed hostilities which made specific intent difficult to determine. Although sudden spike in political violence and massacres corroborated UNAMIR's commander's warnings, uncertainty and prudence were significant in orienting UN officials' decision to treat the piece of information received with suspicion and to turn down Dallaire's request for authority to raid suspected arms caches, thereby turning a blind eye to the possible existence of a conspiracy to commit genocide. Notwithstanding, newly declassified State Department records provide proof that leading Security Council countries' administrations, and in first position the United States, were in any case more than reluctant

¹¹ The International Criminal Tribunal for Rwanda found out that the Rwandan army had been channelling weapons to the *Interahamwe*, as well as providing military training to *Interahamwe* members from late 1993 onwards.

¹² The Hamitic hypothesis is derived from the Bible, the Hamites being descendants of Ham, the son of Noah. When implementing indirect rule in Africa, European colonialists assimilated Tutsis in Rwanda to the “Hamitic race”, considered as a sub-group of black Caucasians from Europe and assumed to be superior to Sub-Saharan African “Negroid” population. After the independence of Rwanda which brought the Hutu majority in power, the Hamitic argument was reversed, and accused the Tutsis to be “foreign Hamite invaders” who had imposed decades of Hutu marginalisation.

¹³ The Radio-Télévision Libre des Milles Collines was a pro-government Rwandan radio station. Although not an official governmental channel like Radio Rwanda, it received the government's support in terms of transmission and equipment.

¹⁴ The “Genocide Fax” informed UN Peacekeeping officials of the existence of arms caches, a plot to assassinate Belgian UN peacekeepers and Rwandan members of parliament, and the existence of lists of Tutsis to be killed.

to get more deeply involved in the Rwandan debacle and, therefore, had an interest in underestimating the risk at stake.¹⁵

The “Genocide Fax” was followed by a series of warnings and requests for authority to the UN Headquarters in early 1994, all of them being systematically rebuffed or disregarded by the UN Department of Peacekeeping Operations (UN DPKO) which remained determined to stick to a narrow interpretation of the Arusha Accords and, therefore, of UNAMIR’s role. In the face of major Western government’s caution, a cable from Koffi Annan on 3 February 1994 made clear that UNAMIR should restrict itself to ‘a monitoring function’ and that it clearly ‘cannot take an active role’ in the execution of illegal arms recovery operations potentially carried out by the parties.¹⁶ Finally, Dallaire’s warnings were accompanied, in parallel, by what was qualified as a ‘dramatic diplomatic demarche’ undertaken by the Belgian foreign ministry on 25 February 1994, calling for the UN Peacekeeping mission to be strengthened in order to prevent the possibility of a new bloodbath.¹⁷ Although rejected by the United States, the United Kingdom and the UN Secretariat, the cables indicated the fateful deterioration of the security situation and its potential descent into slaughter. The Belgian administration considered the option of Belgian Blue Berets becoming ‘passive witnesses to genocide in Rwanda and for the United Nations to do nothing’ as unacceptable.¹⁸

4. The outbreak of violence and international responses

The breaking crash of President Habyarimana’s airplane, which killed all people on board on 6 April 1994, is commonly considered as the catalyst of the genocide. Although the exact circumstances of the crash remain largely unknown, suspicions of either an RPF death plot or an assassination conducted by Hutu military hardliners against the Rwandan president sparked the beginning of the massacres.¹⁹ Amongst the first people to fall victim to the horror can one find leading Tutsi and Hutu opposition politicians of the transitional government, and in first place, Prime Minister Agathe Uwilingiyimana. Targeting primarily Tutsi Rwandans as well as Hutu opponents to the Habyarimana regime suspected of sympathising with the Tutsis, the Presidential Guard, the Rwandan Armed Forces, the *Interahamwe* militias, and the gendarmerie became the leading perpetrators of a campaign of extermination that only came to an end 100 days later with the military victory of the RPF.

¹⁵ The “Somalia syndrome” refers to the caution displayed by UN officials in New York to commit troops and personnel following the death of about 20 US soldiers in Somalia in the fall of 1993.

¹⁶ Annan to Booh-Booh, Dallaire, ‘Recovery of illegal weapons’, Code Cable: CNR-25 P1/2, 3 February 1994. Available at: <https://s3.amazonaws.com/s3.documentcloud.org/documents/894526/19940203d1-un-rwdp-cable-from-annan-to-dallaire.pdf>

¹⁷ Michael Dobbs (ed.), *Warnings of Catastrophe*, Electronic Briefing Book No.458, National Security Archive, 6 March 2014. Available at: <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB458/>

¹⁸ MINAFET to DELBELONU, ‘Telex #64’, sent by Foreign Ministry Chief of Staff, M. Willems, 25 February 1994. Quoted in: Dobbs, *Warning of Catastrophe*. Available at: <https://www.documentcloud.org/documents/1015806-19940225-gob-bsrr-translation.html#document/p1/a144308>

¹⁹ US analysts at the Defense Intelligence Agency of the Department of Defense underlined the difficulties within the Rwandan Armed Forces since the beginning of the implementation of the Arusha Accords. According to their report, with the inclusion of high number of Tutsis in the new military, Hutu hardline elements within fuelled a strong antipathy to President Habyarimana. See: ‘Rwanda: The Rwandan Patriotic Front’s Offensive’, Defense Intelligence Report, (J2-210-94), Secret/NOFORN, 9 May 1994. Accessed via: [N]ational [S]ecurity [A]rchive

From the onset, the targeting of specific political actors and specific ranges of the population indicated that violence was not spontaneous, but rather directed by high-level officials of the interim government willing to destroy the leadership of the Tutsi community and the political opposition. A commission of experts established by the UN Security Council reported, a few months after the end of the genocide, that ‘overwhelming evidence’ proved that Hutu elements had perpetrated acts of genocide against the Tutsi group in a ‘concerted, planned, systematic and methodical way’.²⁰ However, the command structure rapidly broke down and the massacres spread out of control.²¹ Extremist radio broadcasts in Rwanda, and in particular, Radio Mille Collines, acted as key means of pressure used to spread fear within the populace. Mobilising and urging participation in the killings by providing the whereabouts of those to be killed, they also shamed those who sought to refrain from participating. The media were therefore an integral component of the wider extermination programme.

The analysis of recently declassified diplomatic cables reveals, at first, the striking incoherency amongst international actors in determining the appropriate position to adopt in the wake of the crisis. Ultimately, and in consistence with the United Nations’ handling of the evolving situation in Rwanda, prudence appeared to be the driving force of the debates and motivated UN Headquarters’ prohibition for UNAMIR to use arms, following the explosion of violence during the night of 6 to 7 April 1994.²² It was assumed that the killings were in fact excesses of the Rwandan Civil War, and any sense of duty exhibited by Western states ‘was for their citizens and not for the Rwandans’.²³ Indeed, as days passed by, most members of the Security Council stepped up their pressure to prioritise the evacuation of civilian Western populations, relegating considerations over the role of UNAMIR in the country to the backstage, whereas the future of the Rwandans seemed to stand beyond the scope of ongoing discussions. It is only on 14 April, after Belgium announced it would pull its troops from the UN peacekeeping force following the assassination of ten of its paratroopers that the question of the future of UNAMIR came under serious scrutiny. The US and Great Britain favoured a massive scaling back to a rump force of a largely symbolic value.

a) *Watering down UNAMIR...*

After lengthy discussions and negotiations at the UN on whether, when and how the UN should respond to the outbreak of genocide, UNAMIR’s mandate was ultimately adjusted with the adoption of Resolution 912 on 21 April 1994. In a report issued the day before, UN Secretary-General indeed admitted that circumstances had made impossible UNAMIR’s implementation of the tasks emanating from its original mandate. Indeed, the peace that was to be kept no longer existed, and the plausibility of reaching a ceasefire bringing the Arusha Accords back to the agenda in the near future appeared highly unlikely. As formulated by the

²⁰ ‘Rwanda – UNAMIR’, United Nations Website. Accessed on 2 July 2014:

<http://www.un.org/en/peacekeeping/missions/past/unamirS.htm>

²¹ ‘Rwanda: The Rwandan Patriotic Front’s Offensive’, Defense Intelligence Report, J2-210-94, Secret/NOFORN, 9 May 1994. Accessed via NSA. It has to be noted that the Gendarmerie, which launched the killings immediately after the death of President Habyarimana, had tripled its size to about 6,000 since the last war. According to Lieutenant general Roméo Dallaire, the Gendarmerie lost cohesiveness, discipline, training, experience, and credibility in this enlargement process. See: Lieutenant general Roméo Dallaire, *Shake Hands with the Devil* (London: Arrow Books, 2004), 70

²² US Mission UN New York to Secretary of State, ‘Rwanda: Two UN Peacekeepers executed’, Confidential Cable, 7 April 1994. Accessed via US Department of State (DoS):

<http://www.state.gov/documents/organization/167997.pdf>

²³ Michael Barnett, *Eye-Witness to a Genocide* (NY: Cornell University Press, 2002), 173

office of the Deputy Assistant Secretary of Defense for Middle East/Africa, ‘in the current environment [...], there is no role for a United Nations peacekeeping force’.²⁴

The US mission to the UN was particularly assertive in arguing that ‘the international community must give highest priority to full, orderly withdrawal of all UNAMIR personnel as soon as possible [...]’,²⁵ despite clear awareness of the potentially disastrous implications of the situation. ‘Unless both sides can be convinced to return to the peace process, a massive bloodbath (hundreds of thousands of deaths) will ensue’,²⁶ stated a memorandum for the Under Secretary of Defence thereby advising the United States to ‘not get involved as long as peace is not restored’.²⁷ Similarly, French Ambassador Jean-Bernard Mérimée asserted his country’s determination to remain outside any type of intervention in Rwanda, recalling that ‘the first responsibility of a government is to protect its nationals. If France were obliged to send in a battalion, it would be exclusively for the purposes of evacuating their nationals’.²⁸

Thus, Resolution 912 adopted two weeks after the night of April 6th which admittedly marked the beginning of the genocide, revised the mandate of the mission along the following lines:

- ‘To act as an intermediary between the parties in an attempt to secure their agreement to a ceasefire;
- To assist in the resumption of humanitarian relief operations to the extent feasible;
- To monitor and report on development in Rwanda, including the safety and security of the civilians who sought refuge with UNAMIR’.²⁹

Ultimately, Resolution 912 reduced UNAMIR’s strength to some 270 men and privileged a largely political approach for the mission and its force commander. The decision to limit to such an extent the means, capabilities and objectives of UNAMIR marked the mandate’s clear confinement to a *peacekeeping* role instead of strengthening it and transforming it into a *peace enforcement* force at the height of the killings. Furthermore, not only did it reveal the UN’s inability and unwillingness to sufficiently take into consideration the difficult position of its mission, but it was equally fateful in cementing its impotence to do more than bearing witness to the genocide by removing the last impediment to slaughter, that is, the threat of the use force.

b) Using the g-word: reluctance, fear and legal implications

While Rwanda was spiralling out of control on a background of massive human rights violations and daily deadly attacks on tens of thousands of civilians, the international community seemed to have tacitly agreed to avoid recognising the situation for what it was:

²⁴ US Department of State to US Mission to the United Nations, New York, ‘Talking Points for UNAMIR Withdrawal’, Confidential Cable, 15 April 1994. Accessed via NSA

²⁵ US Department of State to US Mission to the United Nations, New York, ‘Talking Points for UNAMIR Withdrawal’, Confidential Cable, 15 April 1994. Accessed via NSA

²⁶ ‘Memorandum for Undersecretary of Defense for Policy’, Confidential Cable, I-94/16533, 11 April 1994. Accessed via NSA

²⁷ ‘Memorandum for Undersecretary of Defense for Policy’, Confidential Cable, I-94/16533, 11 April 1994. Accessed via NSA

²⁸ US Mission to the United Nations, New York to US Embassy in Kigali, Secretary of State, ‘UN SYG Letter to SC, RPF Threats’, Confidential Cable, 9 April 1994. Accessed via US DoS:

<http://www.state.gov/documents/organization/162175.pdf>

²⁹ United Nations Security Council Resolution 912, S/RES/912 (1994), Article 8. Available at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/912\(1994\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/912(1994))

genocide. Instead, periphrases such as “humanitarian crisis”, “humanitarian catastrophe” or, later, “acts of genocide” were common use.

The first to label the situation in Rwanda as “genocide” at the UN was Czech ambassador to the UN, Karel Kovanda, who famously stated at the 3377th UN Security Council meeting of 16 May 1994:

This situation is being described as a humanitarian crisis as though it were a famine or perhaps a natural disaster. In the view of my delegation, the proper description is genocide. [...] even a civil war, however awful by itself, is no excuse – never mind justification – for genocide. And, civil war or not, the hundreds of thousands of civilians who have fallen victim to the butchers were not at the front lines but far in the hinterland, with no visible connection to the RPF except for their ethnic background.³⁰

It is interesting to note at this stage that the first public qualification of “genocide” only came about a month and a half after the outbreak of atrocities. It is only following Karel Kovanda’s powerful statement that the term gradually made its breakthrough into officials’ vocabulary.

On the United States’ side, Secretary of State Christopher Warren had put a ban on his authorities’ labelling of slaughter in Rwanda as “genocide” as was later revealed. Although a 1 May 1994 cable of the US Department of Defense had put “genocide investigation” as an issue for discussion, there were warnings against the legal implications that the label might have entailed in terms of responsibility ‘to actually do something’.³¹ This point which was heatedly debated at the time, as well as later on, divided US government analysts between those who saw in the Convention against genocide a responsibility for signatory states to prevent and protect, while others considered that despite the fact that ‘a finding of genocide can act as a spur to the international community to take more forceful and immediate actions to respond to ongoing atrocities’,³² no clear legal implication is spelled out.³³ Yet, the legal analysis came to the conclusion that ‘the US has no criminal jurisdiction over acts of genocide occurring within Rwanda *unless* they are committed by US citizens or they fall under another criminal provision of US law’.³⁴ The decision to lift the ban over the use of the term, thus, did not only reflect Warren’s understanding that avoiding to talk about genocide may undermine the administration’s credibility with its general public, but was also underpinned by the legal and intelligence analyses received.³⁵

The 3377th Security Council meeting opened up the genocide discourse within the UN, and prioritised a more robust UN mission in Rwanda with looser rules of engagement.

³⁰ ‘Agenda: The situation concerning Rwanda / Report of the Secretary General’, 3377th Meeting of the UN Security Council S/PV3377, 16 May 1994. Accessed via Security Council Report: <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Chap%20VII%20SPV%203377.pdf>

³¹ ‘Discussion Paper Rwanda’, Office of the Deputy Assistant Secretary of Defense for Middle East/Africa Region, Department of Defense, Secret, 1 May 1994. Accessed via NSA

³² The debate in the US on the legal implications of the use of the term of genocide has arisen time and again in different circumstances later on. In the context of the crisis in Darfur in 2004, a 2004 memo advised then Secretary Powell that terming the events in Darfur genocide had no “legal consequences”. See: ‘Genocide and Darfur’, US Department of State Information Memorandum, Secret, 25 June 2004. Accessed via NSA

³³ Rebecca Hamilton, ‘Inside Colin Powell’s Decision to Declare Genocide in Darfur’, *The Atlantic*, 17 August 2011. Available at: <http://www.theatlantic.com/international/archive/2011/08/inside-colin-powells-decision-to-declare-genocide-in-darfur/243560/>

³⁴ Assistant Secretary of State for African Affairs to Secretary of State, ‘Has Genocide Occurred in Rwanda?’, Action Memorandum, Secret cable, 21 May 1994. Accessed via NSA

³⁵ Assistant Secretary of State for African Affairs to Secretary of State, ‘Has Genocide Occurred in Rwanda?’, Action Memorandum, Secret cable, 21 May 1994. Accessed via NSA

As analysts put it, the use of the “g-word”, although not bearing an immediate legal obligation to take action, did, however, generate moral, ethical and political consequences that were illustrated in the concomitant revision of UNAMIR’s mandate.

c) Introducing Chapter VII in Rwanda: UNAMIR II

Despite early ‘serious concerns’³⁶ on the part of the US (and others) over approving an expanded and more robust UNAMIR force under Chapter VII to protect Rwandans in Kigali, rescue those in danger and deliver assistance,³⁷ UNAMIR II was ultimately approved on 17 May. Under scrutiny since the beginning of May 1994 with the circulation of a UN non-paper on Rwanda, the use of the term of “genocide” by Ambassador Kovanda did generate ‘moral, political, or policy consequences’ ultimately resulting in the adoption of Resolution 918 expanding UNAMIR’s mandate.³⁸

It is interesting to note that, in spite of the first public mentioning of the word “genocide” within the UN Security Council on the day before, Resolution 918 reveals a clear linguistic containment. Indeed, it only refers to ‘the killing of an ethnic group with the intention of destroying such a group’, ‘incitement [...] to violence or ethnic hatred’, and ‘serious violations of international humanitarian law during the conflict’.³⁹ It also entails the recognition of an ‘urgent need for coordinated international action to alleviate the suffering of the Rwandan people and to help restore peace’, thereby placing the population of Rwanda as the prime beneficiary of the present mandate, in sharp opposition with Resolution 912. Thus, Resolution 918 (1994) amended UNAMIR’s mandate as follows:

- To contribute to the security and protection of displaced persons, refugees and civilians at risk in Rwanda, including through the establishment and maintenance, where feasible, of secure humanitarian areas;
- To provide security and support for the distribution of relief supplies and humanitarian relief operations.⁴⁰

Finally, the Resolution also recognised that ‘UNAMIR may be required to take action in self-defence against persons or groups’, and authorised the expansion of the force level up to 5,500 troops. In parallel, an arms embargo against Rwanda was imposed. However, force generation aimed at meeting the level envisaged by UNAMIR II took nearly six months to be completed. That is, the full complement of troops and material that was at the core of UNAMIR’s ability to mitigate in the heat of the crisis arrived in Rwanda only months after the genocide ended.

³⁶ Secretary of State to US Mission in UN New York, ‘Rwanda: Security Council Discussions’, Confidential cable, 13 May 1994. Accessed via NSA

³⁷ US Department of State to US Mission to the United Nations, New York, ‘Rwanda: Security Council Discussions’, Confidential Cable, 13 May 1994. Accessed via NSA

³⁸ Rebecca Hamilton, ‘Inside Colin Powell’s Decision to Declare Genocide in Darfur’ *The Atlantic*, 17 August 2011. Available at: <http://www.theatlantic.com/international/archive/2011/08/inside-colin-powells-decision-to-declare-genocide-in-darfur/243560/>

³⁹ United Nations Security Council Resolution 918, S/RES/918 (1994), Article 3. Available at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/918\(1994\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/918(1994))

⁴⁰ United Nations Security Council Resolution 918, S/RES/918 (1994), Article 3. Available at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/918\(1994\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/918(1994))

d) Implementing Chapter VII: Launching Operation Turquoise

As a result, the Security Council adopted Resolution 929 (1994) on 22 June 1994, which authorised, under Chapter VII, a multinational humanitarian operation. Meant to be a bridging operation while awaiting for UNAMIR to be reinforced as provided for by Resolution 918, *Operation Turquoise* was assigned the same mandate and objectives as its sister mission.⁴¹ It foresaw the use of armed force by air, sea or land to maintain or restore international peace and security.⁴² The multinational forces of the temporary operation established a humanitarian protection zone in south-western Rwanda, commanded by the French. The operation came to an end in August 1994, when UNAMIR II troops took over in the zone. Although praised by some as having successfully fulfilled its mandate's objectives and saved tens of thousands of Tutsi lives, *Operation Turquoise* was severely criticised by others, already at the time of its deployment, and later on by the RPF and Rwanda's President Paul Kagame. At the centre of criticisms lies the declared ambiguity of the operational mandate: framed in humanitarian terms, the operation – it is assumed – essentially aimed at stopping the RPF's advance towards Kigali. Deploying 2,500 French troops to put an end to the massacres and protect the populations threatened with extermination, as was claimed, France carved out a "safe zone" in the south-western parts of Rwanda still under Hutu control. Critics argue that these zones enabled *Interahamwe* militias to carry on with the massacres, while protecting government's extremists from being captured by the RPF. Twenty years later, as the Rwandan Genocide is being commemorated, the French involvement remains an extremely contentious and controversial point.

Although UNAMIR remained active in Rwanda until spring 1996, the genocide is generally considered to have come to an end with the military victory of the RPF forces which took full control of Kigali on 4 July. On 18 July, the RPF unilaterally declared a ceasefire, effectively ending the Civil War and the countrywide massacres, and established a broad-based government, which promptly declared its commitment to the 1993 peace agreement.⁴³ With about 800,000 people killed, some 2 million internally displaced and 2 million refugees, the United Nations launched a humanitarian appeal in July to raise \$762 million so as to respond to the massive humanitarian challenge.

5. A failed international response

The previous parts of this paper went through a chronological presentation and analysis of the evolution of the international community's debates and actions, as the situation in Rwanda gradually descended into genocide. As this analysis attempted to demonstrate, 1994 Rwanda presented, in the weeks and months leading up to the bloodbath, an explosive combination of elements indicating the likely outbreak of genocide. As exemplified by Gregory H. Stanton's eight stages of genocide, **classification**, **symbolisation**, **dehumanisation** of the "other" group, **organisation** of hate groups and of institutionalised

⁴¹ 'Letter dated 20 June 1994 from the Permanent Representative of France [Jean-Bernard Mérimée] to the United Nations addressed to the Secretary-General [Boutros Boutros Ghali]', S/1994/734, 21 June 1994. Available at:

<http://www.rwandadocumentsproject.net/gsd/collect/usdocs/index/assoc/HASH013f/3f293c64.dir/2041.pdf>

⁴² 'Chapter VII: Action with respect to threat of the peace, and acts of aggression', Charter of the United Nations, 26 June 1945, Article 42. Available at: <http://www.un.org/en/documents/charter/chapter7.shtml>

⁴³ Ceasefire talks at the military level were held since early June under the auspices of UNAMIR. However, they remained stalled until the fall of Gisenyi on 17 July and the subsequent RPF unilateral ceasefire.

propaganda, generating **polarisation** and **preparation** of the killings have all been integral components of everyday life in Rwanda before giving way to actual **extermination** and, finally, **denial**.⁴⁴ Although these indicators are not necessarily identifiable in each genocidal occurrence and cannot, therefore, be considered as necessary factors of genocide, their presence constitutes an alarming sign of an existing risk.

Hence, if all these elements were, early on, pointing to the risk of genocide, how can one apprehend the international community's appalling failure to respond to it, if not in a consistent or efficient, at least in a timely manner? This paper underlined a series of elements that ranged from inattention to precursory signs and early warnings, diverging interpretations of the challenges at stake, to shocking indifference and reluctance to commit resources and manpower, considering the remarkable lack of actual interest in Rwanda. Notwithstanding, the context of severe discredit of UN Peacekeeping emerging from the Black Hawk Down disaster in Somalia on 3-4 October 1993 and its subsequent impact on the level of commitment to Rwanda was also taken into consideration. It led to key supporters of peacekeeping operations to call for wiser, more prudent, and conditional use of the UN's favourite instrument for conflict resolution.⁴⁵

As a consequence, the initial mandate of UNAMIR, although predating the actual announcement of the risk of genocide, reveals both the UN's willingness to simply put in an appearance and its superficial understanding and general disinterest in Rwanda. As explained by Lieutenant general Roméo Dallaire in his memoirs, it was clear from the outset that the UN mission would have to be small and inexpensive in order to be approved by the Security Council.⁴⁶ The initial mission was therefore, designed to fit available resources and UN Security Council's requirements, 'rather than to respond to the actual demands of the situation'.⁴⁷ But beyond this wilful indifference and institutional self-regard, the subsequent efforts engaged to implement the founding Resolution of UNAMIR were further challenged by the UN bureaucratic culture, totemic importance of rules, and limited resources.⁴⁸ As a result, UNAMIR, which was under-resourced, under-equipped, and insufficiently prepared throughout its mandate, was clearly ill-adapted to the requirements of the situation on the ground: it was never meant to take action to prevent genocide, nor to protect civilians from genocidal violence, but rather to implement the Arusha Accords; however, the existence of spoilers was simply disregarded.

Secondly, the treatment of and reaction to the "Genocide Fax" manifested, beyond the differences in interpretation of the different UN actors involved in Rwanda, the lack of historical and contextual comprehension of the mounting crisis. The consequences were tremendous, as they not only revealed opposing interpretations about the reliability of Dallaire's informant, but also contributed to the misbalanced prioritisation and hopeful fixation on the roadmap established by the Arusha Accords. As a consequence, the UN's ability to take stock of the realities on the ground and to adapt to the requirements of an evolving crisis was severely damaged. The lack of professional intelligence evaluation and the daunting indifference of UN officials was also fatal in fomenting a misperception as

⁴⁴ George H. Stanton, 'Could the Rwandan genocide have been prevented?', *Journal of Genocide Research*, Vol. 6: 2 (2004)

⁴⁵ Michael Barnett, 'The United Nations Security Council and Rwanda', Expert opinion paper for the project 'International Decision-Making in the Age of Genocide: Rwanda 1990-1994', George Washington University, 1 June 2014. Available at: <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB472/Barnett.%20Michael%20-%20The%20United%20Nations%20Security%20Council%20and%20Rwanda.pdf>

⁴⁶ Lieutenant general Roméo Dallaire, *Shake Hands with the Devil*, 56

⁴⁷ *Ibidem*.

⁴⁸ Michael Barnett, *Eye-Witness to a Genocide*, 166-7

regards the level of risk engaged for the small UNAMIR team, which only went increasing in the weeks leading up to the genocide. Recently declassified situation reports have revealed that three months after its deployment on the ground, UNAMIR remained ill-equipped and unprepared to respond to the rising violence and threats of planned exterminations of Tutsis. It ultimately resulted in the massacre of ten Belgian paratroopers on the very first day of violence. If proper intelligence capabilities may have not enabled the prevention of the genocide itself, they might at least have helped to provide a better understanding of the pre-genocidal phase and could have given adequate means to UN Headquarters to adapt UNAMIR's role accordingly.

Thirdly, the onset of the actual genocide dramatically proved that the risks considered 'were always defined in terms of what threatened the UN and not the Rwandans',⁴⁹ in the first phase of UNAMIR's massive downsizing at least. Notwithstanding, barriers to the mission's capacity to contain the violence that fuelled were ineluctably linked to the weaknesses of UNAMIR's limited resources, mandate and rules of engagement. The mission was, thus, overwhelmed to respond to the spiralling crisis that broke out.⁵⁰ In addition, the denial of genocide perpetration in Rwanda motivated the decision to pull out most of the peacekeepers at a moment where, provided with an adapted executive mandate, they might have been able to curb the killings. The critical character of the information gap was continuously highlighted by the former Czech ambassador and permanent representative to the UN, Karel Kovanda, who pointed to the insufficient and biased information provided by the UN Secretariat, as opposed to the detailed accurate and timely information that his delegation received from non-governmental organisations (NGOs).

It was only weeks after the spark of violence that the Security Council started to come to grips with the ongoing genocide that it had, for so long, refused to recognise as such. Ultimately, giving way to public outcry and human rights organisations' activism, a more assertive, coercive and determined response was provided in the form of UNAMIR II and *Operation Turquoise*, both equipped with an executive peace enforcement mandate. Although both naturally presented their own drawbacks, they undoubtedly constituted an improvement in terms of institutional response to the unfolding genocide. UNAMIR II, however, once again showcased the difficulties and challenges of UN peacekeeping, or in this case, peace enforcement: the majority of the additional troops and materials only arrived in Rwanda after the genocide was over. *Operation Turquoise*, for its part, has been assimilated to the protection of militias and extremist elements of the government.

Could things have been done differently? As this paper attempted to demonstrate from the outset, the Genocide Convention, although a powerful political rhetoric, can only do little in the face of a risk of genocide unless leading United Nations members are willing to act upon it. Lieutenant general Dallaire, indeed, asserted about UNAMIR's first mandate, 'no nation would be prepared to contribute to a chapter-seven mission to a country where there were no strategic national or international interests and no major threat to international peace and security'.⁵¹ Yet, once engaged on the terrain, 'the failure to prevent harm can be tantamount to causing that harm', as Michael Barnett famously claimed.⁵² These partial conclusions, however, distance themselves from Barnett's statement: beyond all the criticisms that can be addressed to Western policymakers, as well as to UN Headquarters and

⁴⁹ Michael Barnett, *Eye-Witness to a Genocide*, 168

⁵⁰ UNAMIR was authorised only \$38 million, whereas the advance team had originally proposed a six-month operating budget of \$51 million. See: Michael Barnett, 'The United Nations Security Council and Rwanda', 1 June 2014

⁵¹ Lieutenant general Roméo Dallaire, *Shake Hands with the Devil*, 71

⁵² Michael Barnett, *Eye-Witness to a Genocide*, 166-7

Secretariat, one cannot overlook the role played by the parties to the conflict themselves if not in shaping, at least in cementing the international community's reluctant and cautious engagement in Rwanda. Indeed, it was not long before the UN mission and its force commander got cut between warring parties.

Although the Arusha Accords explicitly required the deployment of a peacekeeping mission as part of the transitional phase towards sustainable peace, it quickly became obvious that the whole of UNAMIR and most specifically its Belgian and French contingents were being targeted. On its part, the RPF threatened to treat the UN force as a combatant if its mandate was broadened to allow its engagement in combat operations of any kind, quickly after the outbreak of the genocide. Consultations with the RPF, indeed, revealed that it was totally opposed to any change in the mandate of UNAMIR and that any intervention by UNAMIR in RPF's movements would be considered as hostile.⁵³ The explicit hostility and suspicion directed towards UN forces in Rwanda revealed by the RPF's statement is an indicator of its perceived partiality of the mission, in particular due to the significant amount of Belgian and French troops that composed it.⁵⁴ For their part, supporters of the Habyarimana regime were equally wary of the UN's and of the Organisation of African Unity's (OAU) forces, which they thought were favouring the RPF and were even complicit in downing the President's airplane.⁵⁵

In this sense, the use of force, which was only permitted in some very particular circumstances, was banned in the fulfilment of the protection of civilians task, so as to avoid unnecessary confrontation and targeting of UN staff members who were already limited in their ability to defend themselves. It unavoidably resulted in further neglect of the protection of local civilians and peace enforcement, in sharp opposition with a prioritisation of the safety of foreign nationals and UN personnel which created a moral hierarchy, clearly visible in the cable traffic between main states of the UN Security Council.⁵⁶ As the case of South Sudan will also demonstrate, a central challenge of UN peacekeeping missions has been to position themselves as honest brokers in the midst of an intense climate of mutual hatred.

⁵³ *Ibidem*.

⁵⁴ There were two contradictory readings of Belgian engagement in Rwanda. On the one hand, the UN was reluctant to the former coloniser's engagement within UNAMIR because of its history of racial favouring of Tutsis over Hutus. On the other hand, Belgium had progressively built strong ties with the Hutu-led post-colonial government, and had been supporting the regime, amongst others, by training Rwandan officers. France, for its part, as a historical supporter and arm supplier of the Habyarimana regime, had gained the suspicion of the Tutsis and the RPF.

⁵⁵ US Embassy in Paris to Secretary of State, 'Initial French Views on the Situation in Rwanda', Confidential Cable, 7 April 1994. Accessed via US DoS: <http://www.state.gov/documents/organization/168001.pdf>

⁵⁶ Despite the UN Headquarters' apparent disregard for civilian population of Rwandan nationality, UNAMIR did provide shelter and protection to all unarmed civilians who sought a safe haven in the mission's headquarters and compounds.

Current risk of genocide: the case of South Sudan (December 2013–?)

1. From the Genocide Convention to the Responsibility to Protect

Since the end of the Cold War, the United Nations and Western powers entered a phase of humanitarian awareness, which embarked them on a series of “humanitarian interventions” to halt violence against civilian populations in different parts of the world. The daunting failures of the international community in Rwanda, Yugoslavia and later Darfur played a key role in this process, and ultimately led to the formulation and formalisation of the Responsibility to Protect (R2P). Endorsed at the 2005 World Summit of the 60th session of the United Nations’ General Assembly, R2P was formally adopted in 2006. It constitutes a paradigm shift with respect to the inviolability of sovereignty, partly underpinned by the take-off of genocide studies in the 1990s and articulated around three fundamental pillars. It firstly recognises that primary responsibility for the protection of populations from genocide, war crimes, crimes against humanity, ethnic cleansing and their incitement, lies within each individual state. Secondly, R2P provides for encouragement and assistance to states in fulfilling this responsibility. Finally, it asserts the international community’s responsibility to take appropriate collective action should a state manifestly fail to protect its populations, and after all peaceful efforts have been exhausted. This action can consist in the use of appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII but including also Chapter VII of the Charter, to help to protect populations. Therefore, it attempts to bridge the gap between state sovereignty and the protection of human rights.

The Report of the Secretary-General on the implementation of R2P stipulates that action shall be taken through the Security Council, with the priority to focus on saving lives “through timely and decisive action”.⁵⁷ In this framework, the first Special Adviser on the Responsibility to Protect was appointed in 2007, and joined efforts with the Special Adviser on the Prevention of Genocide with the merger of their respective functions and activities within the Office of the Special Adviser on the Prevention of Genocide and the Responsibility to Protect (hereafter, “UN Joint Office”).⁵⁸ Their primary responsibility lies in ensuring early warning mechanisms as regards risks of genocide and populations under threat, in guaranteeing a more effective flow of reporting and communication on ongoing crises, and in actively mobilising political will among the United Nations Security Council and the General Assembly. In the Implementation Report, the Secretary-General’s role is also carved out with an ‘obligation to tell the Security Council – and in this case the General Assembly as well – what it needs to know, not what it wants to hear’.⁵⁹

In the years following the formalisation of R2P, the doctrine was invoked at several occasions by the UN Security Council, in concert with the Special Advisers on the Prevention of Genocide and on the Responsibility to Protect, so as to frame actions most recently and

⁵⁷ ‘Implementing the Responsibility to protect / Report of the Secretary-General’, 63rd Session A/63/677, 12 January 20, 22

⁵⁸ The position of Special Adviser on the Prevention of Genocide was created in 2004. The first Special Adviser was Juan E. Méndez, appointed on 12 July 2004.

⁵⁹ *Ibid.*, 26

famously in South Sudan (2011), Libya (2011) and the Central African Republic (2013). Formally accepted at the United Nations World Summit, the concept is contested by major Security Council members such as China and Russia, as well as emerging powers like Brazil, for it enables the violation of state sovereignty by enabling the international community's interference in internal conflicts in case of serious offences to civilian populations.

Yet, R2P has not been consolidated as a legal norm. Although it has been presented as an emerging norm firmly grounded in international law for addressing the challenges of genocide, war crimes, ethnic cleansing or crimes against humanity, and has in practice been officially referred to in different occurrences to protect civilians in armed conflicts, it remains a political concept with little power for implementation.⁶⁰ In this perspective, two questions shall be asked: what has R2P done for South Sudan? And to what extent has the Rwandan trauma weighed on the international community's handling of subsequent occurrences of genocidal risks?

The following parts of this paper will firstly put the ongoing crisis in South Sudan into its context, before moving to the analysis of the progressive recognition of the risk of genocide. Relying on official UN documents and statements, it will focus on the way the manifestations of genocide were identified and assessed, and look into the reactions and levels of commitment the risk analysis generated. Finally, parallels will be drawn between the previous case study of Rwanda and the case of South Sudan, in order to point to the trends and evolutions of international approaches and norms on genocide.

2. Contextualising ongoing violence in South Sudan

a) From independence to internal conflict

Although overshadowed by the expansion of the Islamic State and, the proximity of the ongoing crisis in Ukraine, South Sudan was qualified by Louise Arbour, former President and CEO of the International Crisis Group (ICG), as the direst ongoing crisis.⁶¹ The violence that broke out in mid-December killed, in a few months, tens of thousands of people and displaced around 1,9 million.⁶² To make matters worse, one of the worst famines ever known is looming over East Africa and the UN has warned that 7 million people could be on the brink of starvation by the end of the year.

South Sudan gained its independence from Sudan on 9 July 2011, terminating the twenty-two year-long civil war which had opposed the Sudan People's Liberation Movement (SPLM) and its armed wing, the Sudan People's Liberation Army (SPLA), to the Sudanese government in Khartoum. However, instead of paving the way towards a peaceful existence, political tensions, internal conflict, and tribal factionalism which often predated independence rapidly became recurrent themes within the new state. On the eve of South Sudan's independence, considering that the situation remained fragile and constituted a threat to the stability of the region, the UN Security Council invoked R2P to adopt Resolution 1996 (2011) which established the UN Mission in the Republic of South Sudan (UNMISS) under Chapter VII of the UN Charter. Aiming at consolidating peace and security and helping

⁶⁰ The first official reference to R2P was in April 2006, in Resolution 1674. It was referred to again in August 2006, in Resolution 1706 authorising the deployment of troops to Darfur, in Libya (2011), Ivory Coast (2011), South Sudan (2011), Yemen (2011), Syria (2012), Central African Republic (2013).

⁶¹ Louise Arbour, "Presentation of the 2014-2 ICG Watch List", Hotel Silken Berlaymont, Brussels, 10 June 2014

⁶² Latest figures give an estimate of some 1.3 million displaced people.

create conditions for development, UNMISS' responsibilities also comprised conflict prevention, mitigation and resolution, and the protection of civilians, with a focus on early warning mechanisms and monitoring of human rights and potential threats against civilian populations.

Yet, the war that broke out in South Sudan in December 2013, instead of consisting in a reprise of the North-South conflict, rather erupted as a continuation of unresolved South-South tensions. It emerged following years of disputes within the ruling SPLM over the party's leadership and future direction, and debates over the census and constitution in view of the upcoming elections of summer 2015. The potentially destabilising effect of these divisions and of incessant political instrumentalisation of intercommunal fighting had been repeatedly invoked by the UN Secretary-General in his quarterly reports. Ultimately, following months of crackdown on political actors, factions of the army, of the national police and of the Presidential Guard, political tensions crystallised with President Salva Kiir's sacking of his former deputy and long-time rival Riek Machar along the rest of his government over the summer of 2013.⁶³ Ostensibly aiming at reducing the size of the government, this move sent Machar to the ranks of the opposition where he became vociferous in denouncing an alleged authoritarian step towards dictatorship.

The disintegration of the leadership of the party quickly had repercussions on the security apparatus, and in particular on the Presidential Guard and the SPLA. Violence sparked on 15 December 2013, with President Kiir's order to disarm all but the Dinka members of the Presidential Guard, accusing Machar of plotting a coup against him. A gunfight erupted within the Guard, opposing Dinka elements loyal to the President to Machar's Nuer supporters. It shortly spread to the general headquarters of the SPLA and other military installations, and by 16 December, it spilled out of the barracks, taking an increasingly ethnic dimension. Government forces and militias reportedly targeted civilians of Nuer origin in Juba, carrying out house-to-house searches, and within a few days, large-scale killings and human rights abuses spread beyond the capital city. Major cities such as Bor, Bentiu, and Malakal successively shifted between the hands of government and anti-government forces, while the bulk of the fighting and of the retaliatory attacks took place in the Upper Nile region and oil-producing states.

b) Ethnic slaughter and risk of genocide

The ethnic character of the massacres was rapidly identified and underlined by UN officials. In his letter of 23 December 2013, the Secretary-General of the UN already made reference to 'killings fuelled by ethnic tensions',⁶⁴ which he later qualified as alarming. As a result, UNMISS was given responsibility to monitor, investigate, verify and report the most serious allegations of human rights violations, while it undertook substantial protection interventions. In a press release issued on the following day, Adama Dieng, UN Special Adviser for the Prevention of Genocide, and Jennifer Welsh, United Nations Special Adviser on the Responsibility to Protect, declared that 'targeted attacks against civilians and against United Nations personnel [...] could constitute war crimes or crimes against humanity'. They

⁶³ Machar's sacking comes after a series of dismissals within the national police service and the army since the beginning of 2013. In January only, 29 major generals and 6 deputy chiefs of staff were dismissed, while, a month later, President Kiir retired an additional 117 army generals, arguing that his rivals were threatening to revive the rifts that had caused infighting in the 1990s. Finally, all top-level organs of the SPLM were disbanded in November 2013.

⁶⁴ 'Letter dated 23 December 2013 from the Secretary-General [Ban Ki-moon] addressed to the President of the Security Council [Gérard Araud]', United Nations Security Council, S/2013/758 (2013). Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/758

further warned that ‘attacks of this kind can be the precursors to more widespread crimes’.⁶⁵ Although the “g-word” was not formulated in this statement, the advisers identified the targeting of civilians based on their ethnic and tribal affiliations as a potentially precursory sign of other crimes, thereby implicitly acknowledging the existence of a risk of genocide in South Sudan.

Yet, it is not before 2 May 2014 following his trip to South Sudan with UN High Commissioner for Human Rights, Navy Pillay, that Adama Dieng warned the UN Security Council that there were elements of the conflict that could be ‘categorised as risk factors of genocide and other atrocity crimes’.⁶⁶ Both actors further denounced the disastrous implications of the ongoing recrimination, hate speech, and revenge killings that developed and increased over the last four months.⁶⁷ In this context, the attack on Bentiu that caused hundreds of civilian deaths in mid-April raised awareness on media incitement to violence and revenge attacks, in what constituted an awful reminiscing of the Rwandan genocide on its 20th anniversary. Toby Lanzer, Deputy Special Representative of the Secretary-General and Humanitarian Coordinator and Resident Representative of UN Development Programme (UNDP) in South Sudan indeed declared ‘it’s the first time we’re aware of that a local radio station was broadcasting hate messages encouraging people to engage in atrocities’.⁶⁸ Adama Dieng added:

Another cause for serious concern has been the reported use of radio in some areas to spread messages constituting incitement to violence against all those perceived to support the government. It was reported that in Bentiu, fighters allied to Riek Machar incited the civilian population to attack the Dinka, even encouraging their supports to commit acts of sexual violence against women. This is totally unacceptable.⁶⁹

However, although the subsequent UN Human Rights report released on 8 May 2014 mentioned that ‘there are reasonable grounds to believe that violations of international human rights and humanitarian law have been committed by both parties’,⁷⁰ it did not once specify

⁶⁵ ‘Statement by Adama Dieng, United Nations Special Adviser on the Prevention of Genocide and Jennifer Welsh, United Nations Special Adviser on the Responsibility to Protect, on the situation in South Sudan’, United Nations Press Release, New York, 24 December 2013. Available at: <http://www.un.org/en/preventgenocide/adviser/pdf/Statement%20on%20South%20Sudan%20-%2024%20December%202013.pdf>

⁶⁶ ‘Statement of Under Secretary-General/Special Adviser on the Prevention of Genocide Mr Adama Dieng’, Meeting of the Security Council on the situation in South Sudan, 2 May 2014. Available at: <http://www.un.org/en/preventgenocide/adviser/pdf/2014-05-14%20Statement%20of%20USG%20Adama%20Dieng%20to%20the%20Security%20%20Council%20on%20South%20Sudan.pdf>

⁶⁷ ‘South Sudan leaders must bring the conflict to an end’, United Nations Office of the High Commissioner for Human Rights, 2 May 2014. Available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/SouthSudanleadersmustbringtheconflicttoanend.aspx>

⁶⁸ ‘“Piles” of bodies left after attack on civilians by gunmen in South Sudan’, Washington Post, 22 April 2014.

Available at: http://www.washingtonpost.com/world/africa/piles-of-bodies-left-after-attack-on-civilians-by-gunmen-in-south-sudan/2014/04/22/1ded6176-ca4a-11e3-a75e-463587891b57_story.html

⁶⁹ ‘Statement of Under-Secretary-General/Special Adviser on the Prevention of Genocide Mr Adama Dieng’, Meeting of the Security Council on the situation in South Sudan, 2 May 2014. Available at: <http://www.un.org/en/preventgenocide/adviser/pdf/2014-05-14%20Statement%20of%20USG%20Adama%20Dieng%20to%20the%20Security%20%20Council%20on%20South%20Sudan.pdf>

⁷⁰ ‘Conflict in South Sudan: A Human Rights Report’, United Nations Mission in the Republic of South Sudan, United Nations, 8 May 2014, 4 §8. Available at: <http://www.unmiss.unmissions.org/Portals/unmiss/Human%20Rights%20Reports/UNMISS%20Conflict%20in%20South%20Sudan%20-%20A%20Human%20Rights%20Report.pdf>

genocide was underway. The case of South Sudan, similarly to Rwanda, illustrates Western power and UN caution in using the “genocide” label. It is only once the breach was made that John Kerry told journalists that if the violence continued along ethnic lines, it ‘could really present a very serious challenge to the international community with respect to the question of genocide’.⁷¹ Although Kerry’s remark does not address the question of the actual implications of ethnically-motivated violence, it nonetheless links ethnic slaughters committed in South Sudan to the crime of genocide.

As a result, the following part of this paper will show that the UN’s response to the official recognition of the risk of genocide by its Special Representative and the US Secretary of State was swift and determined. Within three weeks of the formulation of the risk, the UN Security Council adopted Resolution 2155 prioritising civilian protection, enhancing the defence capabilities of UNMISS, and explicitly reasserting the authorisation of the use of lethal force pursuant to Chapter VII’s provision of ‘tak[ing] [...] action by air, sea, or land forces [...] to maintain or restore international peace and security’.⁷² However, Resolution 2187 of 25 November 2014 reflects the “status quo” in which the conflict seems to have settled ever since. Indeed, although the Resolution extends the duration of UNMISS until 30 May 2015, it does not consistently modify the mandate of the mission, nor its strength. This reveals the international community’s limitations in effectively responding to such crisis situations.

3. International response to the threat of genocide

The international community’s response is articulated around three instruments: the protection of civilians, the mediation of peace negotiations, and sanctions. It aims at offering shelter to civilian populations displaced by the rising insecurity, while coercing parties to the conflict to come to the negotiating table through the application of targeted sanctions. Yet, as the history of southern Sudan has proved, ‘genocide recurs in the same locales at different historical moments. This is usually because no lasting political solution has been found to the local contradictions that helped produce genocide in the first place’.⁷³ Therefore, the parties’ commitment to a negotiated exit of the crisis can be put into question.

a) Reinforcing civilian protection

The UN was caught off off-guard by the rapidly unravelling situation in South Sudan. As massacres spread into seven out of the country’s ten states, UNMISS was unprepared and unable to provide sufficient civilian protection to the thousands of civilians and deserting members of the national security forces streaming to UN bases in the first days of the fighting. Two days after the outbreak of violence, the UN reported that some 13,000 people had already sought refuge in its two compounds in Juba.⁷⁴ While UNMISS facilities, capabilities and resources were quickly saturated by the severe humanitarian crisis, the mission came under armed attack in Akobo on 19 December resulting in the slaughter of

⁷¹ ‘John Kerry warns of South Sudan genocide’, *BBC*, 1 May 2014. Available at: <http://www.bbc.com/news/world-africa-27245641>

⁷² ‘Chapter VII: Action with respect to threat of the peace, and acts of aggression’, Charter of the United Nations, 26 June 1945, Article 42. Available at: <http://www.un.org/en/documents/charter/chapter7.shtml>

⁷³ Martin Shaw, *Genocide and International Relations*, 200

⁷⁴ ‘South Sudan clashes: “Dozens of soldiers killed” in Juba’, *BBC*, 17 December 2013. Available at: <http://www.bbc.com/news/world-africa-25417630>

twenty civilians and two UN personnel, attackers targeting primarily Dinka ethnics. This heinous attack on the UN camp constituted a largely symbolic trigger, urging Secretary-General Ban Ki-moon to call for a strengthening of the protection capabilities of UNMISS and for the revision of UNMISS' mandate, force capability, and protection.

On 24 December 2013, that is, less than ten days after the onset of fighting and 5 days after the attack in Akobo, the UN Security Council adopted Resolution 2132 which formally endorsed the Secretary-General's request to increase the force levels of UNMISS. Although UNMISS had had, from the onset, a robust human rights and protection of civilians mandate, it was further reinforced amid the unravelling crisis pursuant to Chapter VII of the UN Charter, so as to strengthen its ability to protect civilians and provide humanitarian assistance. Its military component was raised up to 12,500 authorised troops of all ranks, and its police component to some 1,323 men. In addition, the Resolution emphasised the necessity to hold those responsible for violations of international and human rights law in South Sudan accountable. Finally, Resolution 2132 urged UNMISS to refocus its military presence in regions and states where the fighting had been the most intense, and, following recurrent attacks on its bases and materials, to strengthen the defence of its bases. Its military capacity was also reinforced by the transfer of aviation assets from other UN African missions.⁷⁵

Three weeks after Adama Dieng's speech at the Security Council over the growing risk of genocide in South Sudan, Resolution 2155 was voted (27 May) extending the mandate of UNMISS until 30 November 2014. It refocused the mission's tasks as follows:

- protection of civilians;
- monitoring and investigation of human rights violations;
- creation of security conditions for the delivery of food and other supplies;
- support to the implementation of the Cessation of Hostilities Agreement.

Interestingly, the chapter dedicated to the protection of civilians explicitly referred to active deterrence of violence against civilians through proactive deployments and patrolling, but also through identification of threats and potential attacks within an overarching early-warning strategy. This provision seems to impose itself, on the one hand, as a necessity arising from the challenges of the situation on the ground, and, on the other hand, as a response to the vociferous criticisms over UNMISS personnel's absence from the streets of main conflict-ridden cities. Furthermore, the express widening of UNMISS' activities to proactive actions is underpinned by the introductory authorisation 'to use all necessary means to perform the [abovementioned] tasks'.⁷⁶ In addition, the revised mandate requests the deployment of three battalions responsible for the protection of Intergovernmental Authority on Development's (IGAD) Monitoring and Verification Mechanism (MVM) and for the implementation of the mission's overall mandate.⁷⁷ Despite considerations over tasking UNMISS with state-building and peacebuilding activities in non-conflict areas of South Sudan, Council members opted for a narrower mandate. The approach is, therefore, one of immediate alleviation of human suffering and loss, rather than a longer-term one, which

⁷⁵ 'Report of the Secretary-General on South Sudan', United Nations Security Council, S/2014/158, 6 March 2014, 11-13. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/158

⁷⁶ United Nations Security Council Resolution 2155, S/RES/2155 (2014), 4 §4. Available at: http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2155.pdf

⁷⁷ The MVM was agreed to at the first cessation of hostilities agreement of January 2014, but the deployment of monitoring teams and regional troops to protect them was halted after fighting picked up again in the following months.

controversially, would consist in supporting a state whose armed forces are committing human rights violations.⁷⁸

The evolution of the UN response to the unfolding crisis in South Sudan showcases a consistent level of adequacy between the reported situation on the ground and the means and measures put into place to address the existing and future challenges. Bearing in mind Karel Kovanda's strong criticisms of UN reports at the time of the Rwandan Genocide, the reliability and sufficiency of information provided by the UN Secretariat and contained in the various reports and statements should naturally be put under scrutiny. Yet, its cross-cutting with information provided by NGOs and civil society organisations does not present major gaps or contradictions in our opinion. If the measures taken to protect civilian populations from the rising threat of genocidal violence are neither sufficient, nor very effective, they at least demonstrate some understanding of the difficulties on the ground and some willingness to act. However, the mere alleviation of human suffering does not constitute an effective political strategy to address the crisis from which these risks arise. As a consequence, the UN has been supporting the mediation efforts undertaken by the IGAD so as to bring a long-term solution to the conflict-ridden state.

b) Assisting and supporting peace negotiations

The UN has, early on, called for a negotiated exit of the crisis based on the first Cessation of Hostilities Agreement of January 2014. However, the signature of a series of ceasefires under the auspices of the IGAD and backed by the UN and the African Union, was largely ignored.⁷⁹ These documents were indeed systematically violated, as sporadic fighting continues in different parts of the country. The unlikelihood of seeing a comprehensive peace agreement covering the governance, security and reconciliation aspects of the conflict emerging in the coming months was well acknowledged by the UN Secretary-General in his report of 6 March 2014. In his latest report of 18 November 2014, the Secretary General acknowledged that some agreements were reached on several issues, including the duration of the transition period, decision-making mechanisms and a bicameral structure for the legislature, but deplored that no progress was achieved on a power-sharing formula between the President and a future Prime Minister of a TGoNU.⁸⁰ Although IGAD leaders sustained that 'any further violation of the cessation of hostilities agreement by any party would "invite" collective punitive action by the IGAD region against those responsible' at the sixth IGAD Summit, no action was undertaken despite relentless violence.⁸¹ In October, the rebels launched an offensive to take control of the oil hub of Bentiu, which was severely condemned by east African mediators. International frustration with the advancement of the IGAD-led multi-stakeholder peace talks is widespread. Progress in the talks aimed at determining necessary arrangements to implement a Transitional Government of National Unity (TGoNU), is extremely slow, and hampered by the resumption of hostilities. Despite some recent breakthroughs, the ongoing session of talks still needs to demonstrate its worth as fighting continues around oil facilities in Upper Nile's Renk County and tension keeps increasing with the 2015 general elections looming.

⁷⁸ 'May 2014 Monthly Forecast for South Sudan', *Security Council Report*, 1 May 2014. Available at: http://www.securitycouncilreport.org/monthly-forecast/2014-05/south_sudan_7.php

⁷⁹ A Cessation of Hostilities Agreement was reached on 23 January, followed by a Recommitment on Humanitarian Matters in the Cessation of Hostilities Agreement on 5 May, and an Agreement to Resolve the Crisis in South Sudan on 9 May.

⁸⁰ 'Report of the Secretary General on South Sudan', United Nations Security Council, S/2014/821, 18 November 2014. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/158

⁸¹ *Ibidem*.

As the conflict is settling into a *status quo* of successive failed rounds of negotiations on a background of incessant fighting, analysts expect violence to worsen, civilians still facing an ongoing risk of mass atrocity crimes. Indeed, the way out of the current crisis is bleak; the political process is being delayed, and one can legitimately question the parties' willingness to negotiate the end of the conflict. Indeed, what room for negotiations and a political settlement can there be in a country where opponents have already unsuccessfully trialled power sharing, which has had disastrous consequences? The deals stroke were all signed under great pressure, IGAD pushing for negotiations on the formation of a transitional government and threatening 'to act to implement peace in South Sudan' should the process fail. 'We have different options including sanctions and other punitive actions as well' claimed Ethiopian prime minister, Hailemariam Desalegn, indicating growing frustration and concern that the unrest may escalate into a broader regional conflict, mercenaries from neighbouring states such as Sudan or Uganda having joined the fighting alongside the army.⁸² Yet, would an externally imposed peace be viable in South Sudan? The fighting over Nasir suggests that military victory remains, despite leaders' statements and ceasefire agreements, the privileged means towards the resolution of the conflict. All parties continue to fight to capture or retake strategic territories, and in particular, oil fields and key towns. In this process, the massacre of civilians on the basis of their ethnic affiliation has been an all-too-common practice committed by both parties. Can Kirr and Machar reconcile their respective interests by reaching a deal under the auspices of the IGAD? And if so, will a political solution put an end to atrocity crimes committed against Dinka and Nuer civilians? The widespread attacks and massacres committed across the country, for their part, raise fundamental questions about the command and control structures within each warring party and, consequently, about the hopes invested in any upcoming peace agreement. Analysts consider that it is difficult to envisage a resolution of the conflict with either Kiir or Machar at or close the heart of power.⁸³ Short of a political solution effectively addressing the grievances and contradictions that gave rise to genocide in the first place, new genocidal movements are likely to recur at different historical moments.

c) *Sanctions*

The threat of sanctions has been waved as a means to coerce President Kiir and his former deputy Riek Machar to find a negotiated solution to the conflict after the failure of the first Cessation of Hostilities Agreement. On 7 April 2014, Barack Obama adopted the Executive Order 13664 which imposed sanctions blocking property of rebel chief Peter Gadet, and Major general Marial Chanuong, head of Kiir's Presidential Guard, both determined 'to be responsible for or complicit in, or to have engaged in, directly or indirectly, any [actions threatening peace, security, or stability] in relation to South Sudan'.⁸⁴ These were followed by sanctions on Major general Deng Wol, and former SPLA Fourth Division commander Major general James Koang Chuol. Similarly, on 10 July 2014, the European Union adopted Council Regulation No 748/2014 imposing sanctions on Peter Gadet and army commander Santino Deng, both linked to atrocities committed over the past 6 months, while

⁸² Aaron Maasho, 'East Africa bloc threatens S. Sudan's feuding sides with sanctions', *Reuters*, 10 June 2014. Available at: <http://uk.reuters.com/article/2014/06/10/southsudan-unrest-idUKL5N0OR5NA20140610>

⁸³ Peter Martell, 'Another Deal, but South Sudan still far from Peace', *The Daily Star*, 13 June 2014. Available at: <http://www.dailystar.com.lb/News/Middle-East/2014/Jun-13/259953-another-deal-but-south-sudan-still-far-from-peace.ashx#axzz3A0I7ck7J>

⁸⁴ 'Blocking Property of Certain Persons With Respect to South Sudan', Executive Order 13664 of 3 April 2014, *US Treasury Federal Register*, Vol. 79, No. 66, 7 April 2014. Available at: http://www.treasury.gov/resource-center/sanctions/Programs/Documents/south_sudan_eo.pdf

pursuing its arms embargo on South Sudan. The United Kingdom adopted similar provisions the day after, and prompted the UN Security Council to formulate sanction threats within a week. More recently, the Government of Canada followed the US, the EU and the UK by imposing sanction on Peter Gadet and Marial Chanuong. After the failure of the parties to meet the 10 August deadline, the United Nations Security Council members expressed their readiness to consider ‘all appropriate measures’ against those who undermine the peace, stability and security of the country.⁸⁵ However, although the IGAD MvM reported on a recent ceasefire violation by both parties on 9 November, no concrete action was taken. In parallel, the possibility to refer the situation to the International Criminal Court is under consideration.

Oil has become an integral component of the ongoing conflict. Although fighting broke out as a result of a political struggle, it quickly concentrated in the oil-producing regions of the country, each party trying to secure control over these areas. As a result, output was cut by a third to about 160,000 barrels a day since fighting began, with consequences for South Sudan’s economy based by around 80% on oil revenues. At stake is, thus, one of the continent’s most lucrative deposits of oil, which generates billions of dollars for the state and its partners, who have a vested interest in pacifying the state to ensure oil transfers and income. This is well known by Machar, who repeatedly suggested that member countries of the IGAD should restrict South Sudan’s access to ports and pipelines. He said, ‘if Sudan, as a member of IGAD was to say “we are going to stop the (crude oil) flow”, then Juba would listen [...] These are the only true sanctions that can contribute to pushing the peace process forward’.⁸⁶ Yet, if the prospect of blocking the government’s access to ports and pipelines is considered a central means of coercion in this perspective, the prospect of access and exploitation of oil resources is equally an incentive for the continuation of war. In particular, Jonglei state counts a number of untapped oil reserves that are of strategic interest, but fears are that ongoing violence will severely harm investors’ trust in South Sudan’s oil industry. Hence, oil is a double-edge sword for peace in South Sudan; it can be an instrument of peace, or, on the contrary, exacerbate conflict and violence. As a last recourse, IGAD has also threatened to impose sanctions on the warring parties unless they stopped all military operation, in parallel to its threat of actively implement peace in South Sudan that was previously referred to.

Analysts of sanctions have widely written about the effectiveness of their application and their limits. In the case of South Sudan, threats of sanctions have been discussed over months, and their official introduction has been slow and hesitant. Analysts argue that they have, so far, had little if any impact on the unfolding crisis. In addition, a major risk related to the threat of sanctions is the further exclusion of the country from the international community, and the instrumentalisation of this exclusion by political actors on the ground. Indeed, President Kiir, after having put the impartiality of UNMISS into doubt, also recently adopted an increasingly anti-Western discourse which repeatedly called into question the engagement of “strangers” admittedly supporting the rebellion. A position which was reinforced on 12 September 2014 by the country’s Ministry of Labour’s order to all NGOs and private businesses in the country ‘to notify all the Aliens working with them’ to cease working as from 15 October 2014.⁸⁷ In general terms, this viewpoint has had significant

⁸⁵ ‘In South Sudan, Security Council warns sanctions possible against “spoilers”’, *UN News Centre*, 12 August 2014. Available at: <http://www.un.org/apps/news/story.asp?NewsID=48471>

⁸⁶ Carl Odera, ‘EU imposes sanctions on South Sudanese military leaders’, *Reuters*, 10 July 2014. Available at: <http://www.reuters.com/article/2014/07/10/us-southsudan-unrest-idUSKBN0FF19520140710>

⁸⁷ Justine Drennan, ‘South Sudan wants (some) foreign aid workers replaced’, *Foreign Policy Blog*, 17 September 2014. Available at: http://blog.foreignpolicy.com/posts/2014/09/17/south_sudan_considers_firing_foreign_aid_workers

impacts on UNMISS and on its ability to carry out its mandate, in an environment where the host government has been obstructing its activities.

d) The challenges and limits to the UN's role in South Sudan

Tensions with the government of South Sudan arose shortly after the breakout of violence. Indeed, in the days following the beginning of the crisis, President Salva Kiir and his government publicly accused UNMISS of being partial, in part because of the sheltering of defectors and anti-government forces in UNMISS compounds meant to protect civilians. This shortly became a significant source of insecurity both for UN staff and for the populations it is supposed to protect, as progressively, both warring parties made UNMISS a party to the conflict. As a consequence, UN personnel's freedom of movement and civilians' access to UN bases and compounds were obstructed, thereby severely affecting the mission's ability to implement its mandate. SPLA soldiers forcibly sought, and in some cases succeeded, to enter UNMISS compounds in Juba, Akobo and Bor on several occasions and safety assurances to UN personnel and assets were shortly revoked. Tensions were such that non-critical UN staff in conflict-affected areas was relocated outside the country or placed on administrative leave in the first months of the fighting. UNMISS helicopters also came under fire by anti-government forces, which ultimately succeeded in shooting one down in August. In his latest report, the Secretary-General condemned the continued violations of the status-of-forces agreement, the prolonged detention of two national staff members and the abduction of three UNMISS contractors and one UN staff member.⁸⁸

In such a hostile environment, UN and Western officials have been raising their voices about the numerous attacks against UN peacekeeping bases in the country, which came as a shock to Western countries and international groupings. Up to May 2014, although the UN had already listed Sudan as a must-watch of the Security Council, it had not linked it to a great prize for which it was worth making additional efforts. However, after the UN compound in Bor came under premeditated attack by a large group of individuals on 17 April, things changed. The Protection of Civilians site (PoC), which was sheltering an estimated 5,000 internally displaced persons (IDPs) at the time, counted 51 casualties as a result of the attack. A vast majority of the victims were Nuer ethnics. Arguing that the attack in Bor and the ethnic slaughter in Bentiu had changed the course of the conflict,⁸⁹ 'horror and anger' were expressed, considering those events represented an escalation of targeted inter-ethnic killings and retaliatory attacks.⁹⁰ Following this disastrous incident, international engagement was stepped up with the formal recognition of the risk of genocide by Adama Dieng and John Kerry, subsequently leading to the reinforcement of UNMISS' mandate.

However, only about half of the 5,500 reinforcements provided for by Resolution 2132 (2013) have arrived to the country so far. Additional Nepalese, Ghanaian and Kenyan units expected to be deployed during phase 2 in June 2014 for the reinforcement of the UNMISS have not reached the country yet. The Secretary-General recently reminded

Note that other South Sudanese officials have backpedalled after this news spread. They clarified that only foreigners occupying jobs South Sudanese have the necessary skills to fill would need to move out of the country. Policies favouring locals are relatively widespread in the region.

⁸⁸ 'Report of the Secretary-General on South Sudan', United Nations Security Council, S/2014/821, 18 November 2014, 17. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/158

⁸⁹ Michelle Nichols, 'South Sudan Facing Genocide Risk Amid Personal Power Struggle, U.N. Officials Warn', *The World Post*, 2 May 2014. Available at: http://www.huffingtonpost.com/2014/05/03/genocide-risk-in-south-su_n_5256366.html

⁹⁰ 'Press Statement', United Nations Security Council, SC/11363, AFR/2870, 24 April 2014. Available at: <http://www.un.org/News/Press/docs/2014/sc11363.doc.htm>

that there is still a shortfall of over 2,000 troops, as the latest figures of 5 November indicate that only 10,335 troops have been deployed. In addition, the relocation of five helicopters expected to come from Ethiopia and Rwanda has failed to materialise at the time of writing.⁹¹ The severity of the humanitarian crisis, leading about 100,000 people to seek refuge in designated sites within UNMISS bases across the country, in particular in Bentiu (49,000), Juba (28,000) and Malakal (more than 18,000),⁹² has raised concerns over the difficulty to maintain law and order in some of these overpopulated UN compounds. Ethnic violence between IDPs is frequently being reported to the UN Office for the Coordination of Humanitarian Affairs (OCHA), while problems of sanitation have become alarming. Some of these compounds are clearly overcrowded, with only one litre of water per person per day and only one latrine per 350 people. Raphael Gorgeu, head of Doctors Without Borders in South Sudan, warned that people would die inside the UN base in coming weeks because of the water and sanitation situation.⁹³

⁹¹ 'Report of the Secretary-General on South Sudan', United Nations Security Council, S/2014/821, 18 November 2014, 17. Available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/821

⁹² 'Resolution and Briefing on UN Mission in South Sudan', What's in Blue, 24 November 2014. Available at: <http://www.whatsinblue.org/2014/11/resolution-and-briefing-on-un-mission-in-south-sudan.php>

⁹³ "'Piles" of bodies left after attack on civilians by gunmen in South Sudan', *The Washington Post*, 22 April 2014. Available at: http://www.washingtonpost.com/world/africa/piles-of-bodies-left-after-attack-on-civilians-by-gunmen-in-south-sudan/2014/04/22/1ded6176-ca4a-11e3-a75e-463587891b57_story.html

The UN Office for the Coordination of Humanitarian Affairs has now ranked South Sudan as a "Level-3" humanitarian emergency.

International responses to the risk of genocide: Rwanda and South Sudan in perspective

As demonstrated in the previous section, the international response to the risk of genocide in South Sudan has considerably differed from the one that prevailed in Rwanda twenty years ago. Although, naturally, the crisis is still ongoing and information about discussions held behind closed doors within governments and UN Headquarters is not available, the striking difference between the two cases analysed in this paper lies in the international community's genuine commitment to South Sudan as opposed to its obvious disinterest in Rwanda. Indeed, the international community, and in particular the United States, which had strongly supported the independence of South Sudan in 2011, has, since then, been relatively engaged and committed to the development and maturation of the three-year old country.

When deconstructing the international engagement in South Sudan in its various phases as was done in the case of Rwanda, one can easily notice that early on, during the pre-genocidal risk identification, the level of troops authorised for UNMISS was already significantly superior to that ever authorised in Rwanda, even at the peak of the crisis. An estimate of the peacekeeper versus population ratio indicates that whereas South Sudan has one peacekeeper (both military and police) for every 1,400 people, Rwanda at the time only had one peacekeeper for every 2,600,⁹⁴ a trend which was later confirmed and reinforced after the missions' mandate revisions. It goes without saying that a sole focus on numbers of peacekeepers would be misleading if not linked to the deployment of the capabilities required to realise mission objectives and to the content of the mandate itself. Yet, if these figures need to be treated with great caution considering the difference between authorised force and actual mission strength, they are quite revealing with respect to the manifest commitment to these two countries. Additionally, one must also acknowledge that although the populations are somehow comparable, South Sudan is about thirty times larger than Rwanda and, consequently, requires larger contingents so as to implement UNMISS' mandate across the territory. Another case in point relates to the capabilities and supplies provided to both missions in order to fulfil their mandates.

The situation reports in the months leading up to the genocide have consistently repeated the urgent dire lack of funding, support, adequate personnel and capabilities. 'The operational situation remains difficult due to the lack of vehicles and radios', Lieutenant general Roméo Dallaire wrote.⁹⁵ By contrast, although UN missions' funding remains an ongoing challenge, UNMISS resources have been somehow adapted and revised to the necessities arising from the situation on the ground. Finally, whereas UNAMIR was limited to the implementation of the Arusha Peace Accords and assistance of the humanitarian activities, UNMISS was established under Chapter VII with a broader mandate of peace and security consolidation, early warning and human rights monitoring.

In the second stage, the announcement of the risk of genocide was met with totally opposing responses. In the case of Rwanda the information was widely disregarded on the

⁹⁴ The population of Rwanda at the beginning of the 1990s is estimated to be about 8 million people.

⁹⁵ Leah Dunn, 'Daily Situation Reports Show Peacekeepers in Rwanda Ill-Equipped and Unprepared to Carry Out Mission in January 1994', *Unredacted – The National Security Archive, unedited and uncensored*, 10 February 2014. Available at: <http://nsarchive.wordpress.com/2014/02/10/daily-situation-reports-show-peacekeepers-in-rwanda-ill-equipped-and-unprepared-to-carry-out-mission-in-january-1994/>

basis of the lack of reliability of Lieutenant general Dallaire's informant, despite the multitude of other signs pointing to the preparation of mass massacres well-acknowledged by Western officials. However, in the case of South Sudan, the early warning and human rights monitoring mechanisms were key in quickly identifying and reporting massive human rights violations and terror tactics committed by both sides to the conflict. These constituted essential evidence underpinning the alleged risk of genocide. The pronunciation of the "g-word" rapidly led to the revision of UNMISS' mandate, refocusing the priorities of the mission to civilian protection and reinforcement of the mission's strength and resilience. Bringing the peacekeeper/population ratio to one peacekeeper for every 820 South Sudanese,⁹⁶ and providing additional protection materials and aviation assets, the adapted mandate has reflected the UN's will to prevent the risk of letting the conflict spiral into genocide.

The third phase identified in Rwanda took the onset of the genocide with its subsequent scaling down of UNAMIR as a starting point, through the establishment of UNAMIR II and the deployment of *Operation Turquoise*. In the case of South Sudan, things differ. Indeed, although the risk of genocide was recognised by several UN officials and Secretary of State John Kerry, the actual perpetration of genocide has not (yet?) been announced.

In this respect, the issue of the timing can be raised. As this paper has shown, the United Nations, the United States, and the United Kingdom banned the word "genocide" from their representatives' and officials' vocabulary amidst the violence and the speed of the massacres that took place in Rwanda. Genocide was officially recognised only following weeks of persistent denunciations and constant calls from human rights organisations and other African states (and in particular of Nigeria's ambassador Ibrahim Gambari), expressing their frustration with the reluctance to act. The scale and intensity of the killing taking place in South Sudan is, though, incomparable to the one experienced in Rwanda. In addition, atrocities are clearly being committed by both sides, which strongly differs from Rwanda where the imbalance between Tutsi and Hutu casualties was striking. Although atrocities were naturally committed by both sides in Rwanda at the time, the vast majority of the victims have been recognised to have fallen from the violence of pro-government and Hutu-power extremists, despite the perpetration of series of "revenge massacres" by the RPF. In this sense, the genocide in Rwanda being more imbalanced, violent, and organised, one could think it would have created a sufficient sense of urgency and necessity to react forcefully. This was not the case though. However, what the legacy of Rwanda has created is an increased alertness and awareness of the plausibility, suddenness and speed of genocide. It has led to a change of the international political significance of genocide, which has brought international organisations such as the UN to act upon R2P with the objective of preventing genocide from breaking out.

Following his secondment to the UN during the Rwanda crisis, Michael Barnett in his *Eye-witness to a Genocide* wrote about his belated understanding and realisation of what had been unfolding over the 120 days of killing, despite the intensity and cruelty of the genocide. Conversely, what this paper has attempted to demonstrate is that the international community has, since then, established a number of instruments and procedures which have enabled the UN to closely monitor crisis situations. Although the roles of the Special Advisers for the Prevention of Genocide or for the R2P are of largely symbolic and declaratory significance, they are also of an informative one and demonstrate the institution's will to go past its

⁹⁶ These figures confirm the trend: in the phase of respective reinforcement of UNMISS and UNAMIR, the gap between both ratios grows to one peacekeeper for every 820 South Sudanese against one peacekeeper for every 1,450 Rwandans, a ratio almost equal to the initial one for South Sudan.

discrediting experiences in Rwanda or Bosnia and ‘to recommit to prevent and fight against genocide, and other serious crimes under international law’.⁹⁷ On the anniversary of the Rwandan Genocide, the Security Council unanimously adopted Resolution 2150, explicitly underscoring ‘the importance of taking into account lessons learned from the 1994 [Rwandan] genocide’.⁹⁸

The difficulty to determine the “specific intent” of massacres, that is, to demonstrate that the atrocities are carried out with the intent to destroy all or part of a group, has been used by Western states time and again, to refrain from taking appropriate measures in order to prevent genocide. If it is easy to determine the intention behind the killings *ex post facto*, it is much more complicated to gather reliable information while the killing is ongoing. Specific intent is usually inferred from the monitoring and analysis of events on the ground, which is why professional intelligence capabilities are a centrepiece of any proper genocide prevention mechanism. In their absence, hard evidence is most difficult to gather until after the genocide is over.⁹⁹ Yet, if there is a legalistic dimension to the reluctance of using the genocide label in the midst of a crisis which consists in the difficulty to infer the existence of “specific intent”, pre-genocidal Rwanda presented overwhelming evidence of a real risk of genocide. On the contrary, experiences of contemporary genocide put in perspective the state of alertness of the United Nations, Western states and human rights organisations to track and denounce human rights violations and the perpetration of acts of genocide.

Whether the actual application of the genocide label to South Sudan has been politically motivated or based on inconclusive evidence of “specific intent”, only time will tell. Yet, one cannot but recognise, the international community’s efforts to respond to the ‘fatal flaws behind the current structures for responding to mass atrocities and crimes against humanity’,¹⁰⁰ but also, its limited capacity to actually infer on the dynamics of internal conflicts.

⁹⁷ ‘Security Council calls for Recommitment to the fight against genocide’, United Nations Security Council Resolution 2150, SC/11356 (2014). Available at: <http://www.un.org/News/Press/docs/2014/sc11356.doc.htm>

⁹⁸ ‘Security Council calls for Recommitment to the fight against genocide’, United Nations Security Council Resolution 2150, SC/11356 (2014). Available at: <http://www.un.org/News/Press/docs/2014/sc11356.doc.htm>

⁹⁹ Rebecca Hamilton, ‘Inside Colin Powell’s Decision to Declare Genocide in Darfur’, *The Atlantic*, 17 August 2011. Available at: <http://www.theatlantic.com/international/archive/2011/08/inside-colin-powells-decision-to-declare-genocide-in-darfur/243560/>

¹⁰⁰ Leah Dunn, ‘Daily Situation Reports Show Peacekeepers in Rwanda Ill-Equipped and Unprepared to Carry Out Mission in January 1994’, *Unredacted – The National Security Archive, unedited and uncensored*, 10 February 2014. Available at: <http://nsarchive.wordpress.com/2014/02/10/daily-situation-reports-show-peacekeepers-in-rwanda-ill-equipped-and-unprepared-to-carry-out-mission-in-january-1994/>

Conclusions: moving towards a genocide-free era?

Critiques have been voiced as regards the scope of the Genocide Convention in its presumed narrow definition and, therefore, inability to effectively prevent genocide to take place. Yet, this can be considered much more as a manifestation of a sense of frustration with the limited reach and implementation capacity of international law in dealing with mass atrocities. The extension of the notion of prevention contained in the Convention in the age of the Responsibility to Protect,¹⁰¹ has come to impose a duty of “due diligence” upon signatory states to enlarge the scope of preventive measures to acts committed outside of their own borders. At the same time, the concept of R2P has taken the sting out of the “qualifying genocide” debates, and has, thereby, lowered the political threshold to intervene in the early stages of a potential genocide, as the case of UNMISS has shown.

The creation of the UN Office on Genocide Prevention and the Responsibility to Protect as a specific institutional entity, within which the Special Adviser on the Prevention of Genocide (2004) and the Special Adviser on the Responsibility to Protect (2007) have joined efforts, has been a determining factor in this process. Contrary to Article I of the Convention on Genocide, R2P does, to some extent, elaborate on what the obligation to “prevent and punish” or to “protect” means in practical terms. Focusing on early warning, assessment, reporting, monitoring and advocacy, the adoption of R2P has taken the means of genocide prevention to another level. Invoked at several times since its inception, R2P has been successful in mobilising UN members to specific crisis areas and in testing a series of instruments in the form of peacekeeping missions, targeted sanctions, peace negotiations’ mediation, referral to the International Criminal Court, or support for civil society organisations to name but a few. However, remains yet to be seen why some crises have been answered and others not.

The efficiency of these instruments in dealing with genocide and mass atrocities is naturally debatable, as is the work of the UN’s Joint Office. For instance, the ICG or Human Rights Watch have argued with respect to South Sudan that UNMISS’ efforts have fallen short of what is required. Monitoring, prevention, intervention and punishment initiatives undertaken by the UN and Western states are not only rarely sufficiently prepared, equipped and resourced to be carried out consistently or effectively, but are also inefficiently used on the margin of a proper political strategy. Although the Responsibility to Protect has fomented the principle of genocide prevention alongside the adoption of adequate and necessary measures as a Western and UN interest,¹⁰² it has neither acted as a dissuasive instrument, nor has it ever addressed the key factors of genocide. On the contrary, international responses to the risk of genocide have usually focused on coming to grips with the phenomena created by genocide (massive displacement, protection of civilians, famines), rather than dealing with its root causes. The possibility of actually preventing a genocide, can therefore be questioned.

At the heart of the problem lie the lack of understanding, imagination, will, determination and resourcing of policymakers. More fundamentally, the existence of some type of interest, whether strategic, economic, diplomatic or even symbolic, constitutes a cornerstone of effective genocide prevention, as it is the only element that can enable the

¹⁰¹ The Responsibility to Protect, or R2P, was recognised by the United Nations General Assembly in 2005 and endorsed the following year by the UN Security Council.

¹⁰² Martin Shaw, *Genocide and International Relations*, 124

international community or a government to mobilise sufficient political will and resources. If interest is generally assumed to clash with the liberal approach underpinning R2P and humanitarian interventionism, it remains a commonly missing dimension of many, if not most, weak and failed responses to the risk of genocide.

As this paper has sought to demonstrate, there has been a change in the international political significance of genocide in which burden of the bloodshed in Rwanda has yielded its weight. The “never again” widespread mantra and the monitoring and early-warning mechanisms that it progressively created, paved the way for the recognition of “genocide” as it is happening, and not only thereafter. Despite this progress, the question of the actual possibility to prevent genocides from occurring must be raised. In line with Martin Shaw’s argumentation, this paper has put into perspective that ‘genocide remains an all-too-common accompaniment of civil war, counter-insurgency, political and electoral contests’.¹⁰³ If it is assumed that it can be brought to an end by a carefully designed armed intervention similar to the one that took place in Sierra Leone, this paper has underscored the difficulties and challenges in conceiving and implementing the assumed responsibility to respond to the risk of genocide emanating from the Convention and R2P, and has pointed to the all too often short-lived character of externally sponsored reconciliation processes.

¹⁰³ Martin Shaw, *Genocide and International Relations*, 204

Annex 1: Convention on the Prevention and Punishment of the Crime of Genocide

*Adopted by Resolution 260 (III) A of the U.N. General Assembly on 9 December 1948.
Entry into force: 12 January 1951.*

The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,

Recognizing that at all periods of history genocide has inflicted great losses on humanity, and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,

Hereby agree as hereinafter provided:

Article I: The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

Article II: In the present Convention, genocide means 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.

Article III: The following acts shall be punishable:

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide.

Article IV: Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article V: The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present

Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in article III.

Article VI: Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Article VII: Genocide and the other acts enumerated in article III shall not be considered as political crimes for the purpose of extradition. The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

Article VIII: Any Contracting Party 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 III.

Article IX: Disputes between the Contracting Parties relating to the interpretation, application or fulfilment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Article X: The present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

Article XI: The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any non-member State to which an invitation to sign has been addressed by the General Assembly. The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations. After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any non-member State which has received an invitation as aforesaid. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article XII: Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

Article XIII: On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a proces-verbal and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in article XI. The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected, subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

Article XIV: The present Convention shall remain in effect for a period of ten years as from the date of its coming into force. It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period. Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

Article XV: If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

Article XVI: A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General. The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

Article XVII: The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

- (a) Signatures, ratifications and accessions received in accordance with article XI;
- (b) Notifications received in accordance with article XII;
- (c) The date upon which the present Convention comes into force in accordance with article XIII;
- (d) Denunciations received in accordance with article XIV;
- (e) The abrogation of the Convention in accordance with article XV;
- (f) Notifications received in accordance with article XVI.

Article XVIII: The original of the present Convention shall be deposited in the archives of the United Nations. A certified copy of the Convention shall be transmitted to each Member of the United Nations and to each of the non-member States contemplated in article XI.

Article XIX: The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

Source: United Nations, *Treaty Series*, vol. 78, p. 277

Annex 2: List of signatories and parties to the Convention

STATUS AS AT : 26-09-2014 05:03:29 EDT		
Convention on the Prevention and Punishment of the Crime of Genocide Paris, 9 December 1948		
Entry into force : 12 January 1951, in accordance with article XIII.		
Registration : 12 January 1951, No. 1021		
Status : Signatories : 41. Parties : 146		
Text : United Nations, <i>Treaty Series</i> , vol. 78, p. 277.		
Participant	Signature	Accession(a), Succession(d), Ratification
Afghanistan		22 Mar 1956 a
<u>Albania</u>		12 May 1955 a
<u>Algeria</u>		31 Oct 1963 a
Andorra		22 Sep 2006 a
Antigua and Barbuda		25 Oct 1988 d
<u>Argentina</u>		5 Jun 1956 a
Armenia		23 Jun 1993 a
Australia	11 Dec 1948	8 Jul 1949
Austria		19 Mar 1958 a
Azerbaijan		16 Aug 1996 a
Bahamas		5 Aug 1975 d
<u>Bahrain</u>		27 Mar 1990 a
<u>Bangladesh</u>		5 Oct 1998 a
Barbados		14 Jan 1980 a
<u>Belarus</u>	16 Dec 1949	11 Aug 1954
Belgium	12 Dec 1949	5 Sep 1951
Belize		10 Mar 1998 a
Bolivia (Plurinational State of)	11 Dec 1948	14 Jun 2005
Bosnia and Herzegovina		29 Dec 1992 d
Brazil	11 Dec 1948	15 Apr 1952
<u>Bulgaria</u>		21 Jul 1950 a
Burkina Faso		14 Sep 1965 a
Burundi		6 Jan 1997 a
Cabo Verde		10 Oct 2011 a
Cambodia		14 Oct 1950 a
Canada	28 Nov 1949	3 Sep 1952
Chile	11 Dec 1948	3 Jun 1953
<u>China</u>	20 Jul 1949	18 Apr 1983
Colombia	12 Aug 1949	27 Oct 1959

Comoros		27 Sep 2004 a
Costa Rica		14 Oct 1950 a
Côte d'Ivoire		18 Dec 1995 a
Croatia		12 Oct 1992 d
Cuba	28 Dec 1949	4 Mar 1953
Cyprus		29 Mar 1982 a
<u>Czech Republic</u>		22 Feb 1993 d
Democratic People's Republic of Korea		31 Jan 1989 a
Democratic Republic of the Congo		31 May 1962 d
Denmark	28 Sep 1949	15 Jun 1951
Dominican Republic	11 Dec 1948	
Ecuador	11 Dec 1948	21 Dec 1949
Egypt	12 Dec 1948	8 Feb 1952
El Salvador	27 Apr 1949	28 Sep 1950
Estonia		21 Oct 1991 a
Ethiopia	11 Dec 1948	1 Jul 1949
Fiji		11 Jan 1973 d
<u>Finland</u>		18 Dec 1959 a
France	11 Dec 1948	14 Oct 1950
Gabon		21 Jan 1983 a
Gambia		29 Dec 1978 a
Georgia		11 Oct 1993 a
Germany		24 Nov 1954 a
Ghana		24 Dec 1958 a
Greece	29 Dec 1949	8 Dec 1954
Guatemala	22 Jun 1949	13 Jan 1950
Guinea		7 Sep 2000 a
Guinea-Bissau		24 Sep 2013 a
Haiti	11 Dec 1948	14 Oct 1950
Honduras	22 Apr 1949	5 Mar 1952
<u>Hungary</u>		7 Jan 1952 a
Iceland	14 May 1949	29 Aug 1949
<u>India</u>	29 Nov 1949	27 Aug 1959
Iran (Islamic Republic of)	8 Dec 1949	14 Aug 1956
Iraq		20 Jan 1959 a
Ireland		22 Jun 1976 a
Israel	17 Aug 1949	9 Mar 1950
Italy		4 Jun 1952 a
Jamaica		23 Sep 1968 a
Jordan		3 Apr 1950 a
Kazakhstan		26 Aug 1998 a
Kuwait		7 Mar 1995 a
Kyrgyzstan		5 Sep 1997 a
Lao People's Democratic Republic		8 Dec 1950 a
Latvia		14 Apr 1992 a
Lebanon	30 Dec 1949	17 Dec 1953

Lesotho		29 Nov 1974 a
Liberia	11 Dec 1948	9 Jun 1950
Libya		16 May 1989 a
Liechtenstein		24 Mar 1994 a
Lithuania		1 Feb 1996 a
Luxembourg		7 Oct 1981 a
<u>Malaysia</u>		20 Dec 1994 a
Maldives		24 Apr 1984 a
Mali		16 Jul 1974 a
Malta		6 Jun 2014 a
Mexico	14 Dec 1948	22 Jul 1952
Monaco		30 Mar 1950 a
<u>Mongolia</u>		5 Jan 1967 a
<u>Montenegro</u>		23 Oct 2006 d
<u>Morocco</u>		24 Jan 1958 a
Mozambique		18 Apr 1983 a
<u>Myanmar</u>	30 Dec 1949	14 Mar 1956
Namibia		28 Nov 1994 a
Nepal		17 Jan 1969 a
Netherlands		20 Jun 1966 a
New Zealand	25 Nov 1949	28 Dec 1978
Nicaragua		29 Jan 1952 a
Nigeria		27 Jul 2009 a
Norway	11 Dec 1948	22 Jul 1949
Pakistan	11 Dec 1948	12 Oct 1957
Panama	11 Dec 1948	11 Jan 1950
Papua New Guinea		27 Jan 1982 a
Paraguay	11 Dec 1948	3 Oct 2001
Peru	11 Dec 1948	24 Feb 1960
<u>Philippines</u>	11 Dec 1948	7 Jul 1950
<u>Poland</u>		14 Nov 1950 a
Portugal		9 Feb 1999 a
Republic of Korea		14 Oct 1950 a
Republic of Moldova		26 Jan 1993 a
<u>Romania</u>		2 Nov 1950 a
<u>Russian Federation</u>	16 Dec 1949	3 May 1954
<u>Rwanda</u>		16 Apr 1975 a
San Marino		8 Nov 2013 a
Saudi Arabia		13 Jul 1950 a
Senegal		4 Aug 1983 a
<u>Serbia</u>		12 Mar 2001 a
Seychelles		5 May 1992 a
<u>Singapore</u>		18 Aug 1995 a
<u>Slovakia</u>		28 May 1993 d
Slovenia		6 Jul 1992 d
South Africa		10 Dec 1998 a
<u>Spain</u>		13 Sep 1968 a
Sri Lanka		12 Oct 1950 a
St. Vincent and the		9 Nov 1981 a

Grenadines		
State of Palestine		2 Apr 2014 a
Sudan		13 Oct 2003 a
Sweden	30 Dec 1949	27 May 1952
Switzerland		7 Sep 2000 a
Syrian Arab Republic		25 Jun 1955 a
The former Yugoslav Republic of Macedonia		18 Jan 1994 d
Togo		24 May 1984 a
Tonga		16 Feb 1972 a
Trinidad and Tobago		13 Dec 2002 a
Tunisia		29 Nov 1956 a
Turkey		31 Jul 1950 a
Uganda		14 Nov 1995 a
<u>Ukraine</u>	16 Dec 1949	15 Nov 1954
<u>United Arab Emirates</u>		11 Nov 2005 a
United Kingdom of Great Britain and Northern Ireland		30 Jan 1970 a
United Republic of Tanzania		5 Apr 1984 a
<u>United States of America</u>	11 Dec 1948	25 Nov 1988
Uruguay	11 Dec 1948	11 Jul 1967
Uzbekistan		9 Sep 1999 a
<u>Venezuela (Bolivarian Republic of)</u>		12 Jul 1960 a
<u>Viet Nam</u>		9 Jun 1981 a
<u>Yemen</u>		6 Apr 1989 a
Zimbabwe		13 May 1991 a

Countries: underlined countries have introduced declarations or reservations to the Genocide Convention

Source: United Nations Treaty Collection

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