PhD Dissertation on

The Responsibility to Protect and Genocide Prevention: Institutionalizing the U.N. Early Warning Mechanisms

Tutor   PhD candidate
Prof. Andrea de Guttry   Marialaura Marinozzi

Academic Year 2012/2013

Acknowledgements

First of all I would like to thank the Scuola Superiore Sant'Anna, all the Professors I met during these years, all the administrative staff and all the students, without an Institution such as the Scuola this thesis would have remained a dream.

I am indebted with my Tutor, Pro.f Andrea de Guttry, for his patience, competence and severity, I would never reach this important goal without his teachings; I learnt from him how we can go deeper and deeper trying to understand the concrete application of the theories in the reality and I am trying to apply this every day in my life.

I would also thank Prof. Marcello Flores for his suggestions and inspirations on the human rights issue and in particular on the Genocide Prevention topic from my MA in Siena till today; meanwhile I would like to thank Prof. Andrea Bartoli and his programme on preventive diplomacy and engaging Governments on genocide Prevention that has been a very important experience for me and gave to this thesis many insights in particular on the part related to preventive diplomacy.

I must also thanks the Foundation for the International Prevention of Genocide and Mass Atrocities in particular Mr. Gyorgy Tatar, Ambassador Istvan Lakatos and Mr. Enzo Maria le Fevre Cervini for their work on the issue that gave me inspiration during this research; thank you also to Mr. Aryeh Neier, President of the Open Society Institute for his words during the classes he gave within my MA course years ago, that words are inspiring me till today.

Lastly I would like to thank my family, my parents and my brothers but in particular my grandparents, Elisio and Luisa, the love for study and research that they communicated to me since I was a child make me capable to work hard on this thesis trying always to do my best.

A special thank goes to Elena Castello, Ilaria Raffaele and Agnese Acerbi first of all for their help in dealing with a little son, a house and a difficult task such as a PhD Thesis but also for their smile in every moments, especially during the difficult one.

Finally and above all I deeply thank my husband Fabio and my little son Pietro, to whom this thesis is dedicated because without them I would never be able to make this dream come true.

To Pietro and Fabio

"Il futuro del pianeta dipende dalla possibilità di dare a tutte le donne l'accesso all'istruzione e alla leadership. È alle donne, infatti, che spetta il compito più arduo, ma più costruttivo, di inventare e gestire la pace."

Rita Levi Montalcini

Index

Chapter IV: Case Study, the Darfur Genocide

4.1 Historical Background

4.2 The Role of the International Community

4.3 Applicable Early Warning Mechanisms and the Minority Rights Signals

4.4 Factors of Prevention

Chapter V: The Limits and the Potentiality of a Preventive Strategy

5.1 The limits of legal obligations on prevention

5.2 Early Warning : the « Indicia » of Genocide

5.3 The Potentiality of Prevention looking at concrete examples : Cote d'Ivoire and Burundi

Conclusions

INTRODUCTION

Confronting genocide and similar mass atrocities has long been a central concern of the contemporary international order. Upon adoption of the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention)[1] on 9 December 1948, the President of the United Nations (UN) General Assembly had triumphantly declared that "the supremacy of international law has been proclaimed once and forever"[2]. In the shadow of the Holocaust, this seminal UN human rights treaty enshrined the post-Nuremberg promise of a new world freed from this odious scourge.

In the years that followed however, the vow of "never again" became an empty refrain as millions were exterminated with impunity from Bangladesh to Cambodia, Ethiopia to Uganda. Jurists understandably lamented that despite the asserted promise of international law, it appeared to have little deterrent effect against genocidaires.

In 1991, the year of the Soviet Union's sudden collapse, UN Secretary-General Javier Perez de Cuellar proclaimed the emerging view that "the principle of non-interference with the essential domestic jurisdiction of States cannot be regarded as a protective barrier behind which human rights could be massively or systemically violated with impunity"[3]. With the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Court (ICC), the international community took unprecedented steps to eradicate a hitherto entrenched culture of impunity. In 1998, exactly fifty years after the adoption of the Genocide Convention, the ICTR issued the first conviction for the crime of genocide in the Akayesu Case.

Once again, observers proclaimed the triumph of international law and alluded to the resumption of the Nuremberg project after a half-century hiatus. Unlike the Nuremberg tribunal however, the new tribunals were not victor's justice, and this was more a source of despair than a cause for celebration. In contrast to the war against Nazi fascism, the prosecutions regarding the Balkans, Rwanda and Darfur took place in the shadow of the international community's gross failure to intervene against mass-atrocities, in fact the world was largely a bystander as these horrors unfolded. Thus, the euphoria of global justice was accompanied by chagrin, the failure of the

---

[1] (1951) 78 UNTS 277

[2] Cited in N. Ruhashyankiko, UN Special Rapporteur, Study of the Question of the Prevention and Punishment of the Crime of Genocide, UN Doc E/CN.4/Sub.2/416 (4 July 1978) at 118.

[3] United Nations, Yearbook of the United Nations 1992 (Boston: Martinus Nijhoff Publishers, 1992) 45 at 7.

world's nation-states to intervene is best explained by a simple lack of political will in fact, as Simon Chesterman suggests, "States choose not to intervene because they do not want to, and not because it may be unlawful"[4]. It seems then that the ongoing debate about humanitarian intervention, Responsibility to Protect and the use of force misses the point. If in a hypothetical world, altruistic States failed to secure UN Security Council authorization under Chapter VII of the UN Charter, but were still willing to intervene to protect civilians against genocide, any resulting violations of international law would likely be excused, at least in the court of public opinion. But such instances of intervention have been so rare that they are not a reliable tool to confront mass-victimization.

The reality is that in the foreseeable future, States will be unwilling to expend blood and treasure where their vital national interests are not directly implicated. All the while, the most cost-effective and viable option may lie in a less sensational policy of early warning and prevention through more modest, less coercive, but timely interventions. Despite its relative disregard in scholarship, the concept of prevention is not wholly foreign to international law. The jurisprudence of the International Court of Justice (ICJ) now recognizes that "under the Genocide Convention, a State with the capacity to influence effectively the action of persons likely to commit, or already committing genocide, is under an obligation to employ all means reasonably available to it (···) which might have contributed to preventing the genocide"[5].

A broader concept, though more hortatory than legal in content, is the collective "responsibility to protect" (R2P) vulnerable populations against genocide and similar crimes, proclaimed in the UN 2005 World Summit Outcome Document[6]. Nonetheless, beyond laudable judicial opinions and solemn declarations, the content of prevention, whether in law or policy, remains vague and peripheral to both legal scholarship and policy-making.

Among competing priorities and humanitarian fatigue, the tendency is to speak of prevention but to focus on atrocities only after they have become notorious not only within the U.N. system but, more generally speaking, in the international arena. By the time a dormant conflict has escalated beyond a certain scale and gravity however, it is usually too late: thousands have already been victimized, options for the protection of civilians are increasingly limited to the use of force, and, absent

---

[4] S. Chesterman, Hard Cases Make Bad Law: Law, Ethics, and Politics in Humanitarian Intervention, in A.F. Lang Jr. (ed), Just Intervention (Washington, D.C.: Georgetown University Press, 2003) at 46.

[5] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) (Judgment) (26 February 2007) paras. 428–438 (Bosnia v. Serbia).

[6] GAOR UN Doc. A/RES/60/1, 60th sess., (2005) at paras. 138–140.

courageous moral leadership, there is little inclination to pursue such costly measures.

It is evident that the time to act is before a spark becomes a conflagration. Effective prevention must thus look to the timely prediction of genocide and similar crimes and early engagement through modest and feasible measures, in order to restrain the escalation of violence. In other words, success must be measured by what does not happen. Despite its obvious desirability, there has been little focus on prevention, likely because of the uncertainty inherent in predictions.

A better understanding of the norms, institutions, and tools within reasonable reach of decision-makers is essential to translating genocide prevention into reality. It is in this light that this work evaluates and elucidates the law and practice of early warning and genocide prevention. First, beyond the abstract conception of Responsibility to Protect and the erosion of the concept of Sovereignty, than the far-reaching potential of a preventive approach is illustrated based on the failed example of Darfur and on Rwanda where, for example, measures as modest as jamming radio broadcasts inciting hatred could have substantially constrained genocidal violence as happened years after in Cote d'Ivoire. Second, an analysis on early warning mechanisms and the indicia of mass atrocities will be explored with a view to understanding the timeliness of action and the models proposed in the recent years. Third, the legal and institutional dimensions of an obligation to prevent genocide and other mass-crimes will be addressed with a focus on recent developments within the UN system with particular attention for the work done by the Office of the Special Adviser on Genocide Prevention. And fourth, success stories from Cote d'Ivoire and Burundi will be examined in order to show the practical impact of early warning and prevention.

Chapter 1

THE RESPONSIBILITY TO PROTECT DOCTRINE

1.1 The Principle of Sovereignty and its evolution along the line of the R2P doctrine

The traditional notion of sovereignty was introduced between the XVI and the XVII century by the political philosophers J. Bodin and T. Hobbes[7]. Since their writings were aimed at providing a legitimation of the absolute monarchy, the definition of sovereignty that they provided is very close to the notion of absolutism.

The writings of Jean Bodin provide us with an early theorization of the idea of sovereignty even though the examples he uses are quite electic. Essential to Bodin's notion of sovereignty is that the power the sovereign holds must be absolute and permanent. If a ruler holds absolute power for the duration of his life he can be said to be sovereign. In contrast, an elected official or some other person that holds limited powers cannot be described to be sovereign.

Although at times Bodin suggests that the people are sovereign, his definition of sovereignty as absolute, unlimited and enduring power points purposively towards a positive association of sovereignty and a singular monarchical, or even tyrannical, power(See Bodin, *On Sovereignty* Cambridge Texts in Social and Political Thought; 1992)[8].

Another qualification that Bodin introduces into the definition of sovereignty as absolute and perpetual is one that will become increasingly important in subsequent theorizations, culminating in the work of Carl Schmitt. For Bodin, a sovereign prince is one who is exempt from obedience to the laws of his predecessors and more importantly, those issued by himself. Sovereignty rests in being above, beyond or excepted from the law (ibid. p. 2, 12).

---

[7] T. Hobbes, "The Leviathan",chapter XVIII, 1660 and J.Bodin, "On sovereignty", see Cambridge texts in social and political thought, 1992)

[8] J.Bodin, "On sovereignty", see Cambridge texts in social an political thought, 1992)

Analyzing the Hobbes's philosophical thought on sovereignty it must be noted that the basic insight is that equality of men lies in the ability of the weakest to kill the strongest; in Hobbes's well know words their lives are "solitary, poor, nasty, brutish and short" (Leviathan, chapter 13) The overlapping between the notion of sovereignty and the notion of absolutism is what led the French philosopher J. Maritain to propose to banish the traditional notion of sovereignty from the dictionary of political philosophy[9].

In 1648 the definition of sovereignty provided by J. Bodin and T. Hobbes was endorsed in the Treaty of Westphalia. The traditional notion of sovereignty as it was incorporated in the text of Westphalia Treaty can be summarized in the Latin sentence: *"Rex est imperator in regno suo"*, meaning that the sovereign – who in the XVII century was identified with the absolute monarch – has "the right to rule his own territory".

In the XX century the perceived tension between the traditional notion of sovereignty and the system of international law is what led the German theorist of international relations H. J. Morgenthau to feel the need for a continuous re-thinking of the notion of sovereignty from the recognition of the existence of a tension between the traditional notion of sovereignty and ~~the~~ international law.

H. Morgenthau in an article titled "*Sovereignty Reconsidered*", suggests that: *"…in the last decades the concept of sovereignty has been subject to reinterpretations, revisions and attacks in view of its importance for the development of international law. The source of these doubts and difficulties, apart from the general depreciation of sovereignty in contemporary legal and political theory, lies in the fact that the assumption of international law imposing legal restraints upon the individual states seems to be logically incompatible with the assumption of these states being sovereign, that is, being the supreme law creating and law enforcing authorities, independent of legal restraint".* (H. Morgenthau, 1948, p.343)[10]. The conclusion that H. Morgenthau draws from this premise is that "*sovereignty is incompatible with the system of international law*" (ibid. H. J. Morgenthau, 1948)[11].

In his article, H. Morgenthau is referring to the traditional notion of sovereignty. According to this notion, the sovereignty of the state implies that the state has the primary responsibility to protect the person and the property of its subjects and to discharge its governmental functions effectively within its borders. The proponents of

---

[9] J. Maritain, "The concept of sovereignty", see the American political science review, Vol.44, No.2 June 1950 pp.343-357

[10] H.J.Morgenthau, "The problem of sovereignty", Columbia Law Review, Vol.48, No.3, pp.343-365

[11] ibid

the concept of sovereignty as responsibility underline that thanks to this new concept, the protection of the civilian population becomes an essential requirement of sovereignty's legitimacy.

However, also the Westphalian notion of sovereignty was already based on the assumption that the legitimacy is a function of its internal recognition by the citizens of the State and external recognition by the international community. In fact almost for three centuries, the traditional notion of sovereignty has remained almost unchanged. It was indeed after the Holocaust that meaningful legal and institutional circumscriptions of sovereignty in fact arose, many of which have come to abridge the rights of sovereign states quite significantly.

The two most prominent curtailments are conventions on human rights and European integration. It was in 1948 that the vast majority of states signed the Universal Declaration of Human Rights, committing themselves to respect over 30 separate rights for individuals. As it was not a legally binding declaration and contained no enforcement provisions, the declaration left states' sovereignty intact, but it was a first step towards tethering them to international, universal obligations regarding their internal affairs.

Over decades, these human rights would come to enjoy ever stronger legal status. One of the most robust human rights conventions, one that indeed curtails sovereignty, even if mildly, through its arbitration mechanisms, is the European Convention for the Protection of Human Rights and Fundamental Freedoms, formed in 1950. Roughly contemporaneous, signed on December 9, 1948, was the Genocide Convention, committing signing states to refrain from and punish genocide.

Then, in the mid-1960's, two covenants — the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights — legally bound most of the world's states to respecting the human rights of the people .

The main components of the traditional notion of sovereignty enclosed in the United Nations Charter are *"domestic jurisdiction"* in the first place; secondly, the *"independence"* of the State in international relations, and finally, the *"legal equality"* of states.

Precisely, the principle of the legal equality among states is enclosed in the art 2(1) of the United Nations Charter. The principle of sovereign competence of the State is enclosed in the art 2 (7) of the United Nations Charter along with the

prohibition "to intervene in those matters that are essentially within the domestic jurisdiction of any state" (art 2 (7) of the United Nations' Charter)[12].

Domestic jurisdiction means that "each state is permitted by international law to decide and act without intrusions from other sovereign states and is allowed to choose the political, economic, social and cultural systems along with the formulation of its own foreign policy" (C.C Joyner, 2007). Domestic jurisdiction is the consequence of the *"title to sovereignty"[13]*.

Within the concept of domestic jurisdiction of the state it is possible to distinguish two fundamental components. The first component is the *prescriptive jurisdiction*, which can be defined as: "The power of a state to make or prescribe law within or outside its territory" (Winston P. Nagan, Craig Hammer, 2003)[14]. The second component is the *enforcement jurisdiction*, which can be defined as: "The power of the state to implement the law within its territory" (Winston, P. Nagan, Craig Hammer, 2003)[15].

The historical evolution from a state-centered international policy to a globalized arena modified also the subject of sovereignty that moved from the idea of domestic to an international jurisdiction. Indeed, *"what were once circumstances and problems solely within the bound of domestic jurisdiction have been elevated to the level of global community concerns"* (C.C Joyner, 2007)[16].

The solution of economic, social, cultural and humanitarian problems, as well as human rights are no more exclusively domestic matters and solution cannot be located exclusively within the sovereignty of states.

In this regard, the United Nations can be considered as a center for harmonizing the actions of states (and their international cooperation, art 1 (2)) in solving problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for

---

[12] Charter of the United Nations signed in San Francisco on 26th June 1945,, Chapter 1, "Purposes and Principles", see

[13] C.C. Joyner, "The Responsibility to Protect" humanitarian concern and the lawfulness of armed intervention, Virginia Journal of International law, Vol.47, iss.3 (2007)

[14] Winston P. Nagan, FRSA Craig Hammer, "The changing character of sovereignty in international law and international relations" Laving College of Law, University of Florida, see

[15] Ibid.

[16] C.C. Joyner, "The Responsibility to Protect" humanitarian concern and the lawfulness of armed intervention, Virginia Journal of International law, Vol.47, iss.3 (2007)

all, state sovereignty without distinction as to race, sex, language or religion". (C.C Joyner, 2007)[17].

The second component of the principle of sovereignty is the independence of the state: *"Possession of sovereignty imbues the government of a state with supremacy over its territory and independence in international relations. In principle, however, such independence is neither absolute nor unlimited".* (C.C Joyner, 2007)[18].

The third component of the principle of sovereignty is the legal equality of states; the legal meaning of the principle of the equality among states is that: *"according to traditional international law, the world consists of a number of sovereign states, in principle equal: none of them subject to any authority above themselves, the government of each state having complete jurisdiction inside their respective territory. Whatever legal order there is to be among these states has to be achieved through reciprocal self-regulation and coordination, by bilateral agreements and multilateral negotiations."* (A. Eide, 1974,)[19].

The change in the way of understanding sovereignty can be described as a broadening of the concept of sovereignty up to encompass not only the rights, privileges and immunities of sovereign states (such as jurisdictional immunity) but also their responsibilities to protect the basic rights of the civilian population and to regulate political and economic affairs. Along this change within the international law system the Responsibility to Protect doctrine assumed a relevant role both in term of prevention and of intervention.

An explicit call to revise the concept of sovereignty arose with "The Responsibility to Protect", a document written and produced in 2001 by the International Commission on Intervention and State Sovereignty (ICISS). The document proposes a strong revision of the classical conception by which sovereignty involves a "responsibility to protect" on the part of a state towards its own citizens, a responsibility that outsiders may assume when a state perpetrates massive injustice or cannot protect its own citizens. Responsibility to Protect has garnered wide international attention and serves as a manifesto for a concept of sovereignty that is non-absolute and conditional upon outside obligations.

In the light of the crisis of the main components of the concept of sovereignty and in the aftermath of the introduction of the principle of the R2P, it has emerged

---

[17] Ibid.

[18] Ibid.

[19] A. Eide, "Sovereign Equality versus Global Military Structure: two competing approaches to world order", 1974

internationally the need to shift the debate from the concept of sovereignty as "control" (over a territory and a population) to the concept of sovereignty as "responsibility". In fact the title to sovereignty "Concerns both the factual and legal terms under which territory is deemed to belong to one particular state only, and embodies the essence of territorial sovereignty in the sense that as a sovereign over territory, the state enjoys a certain type of competence –sovereign competence, which is a consequence of the title" (Noemi Gal-Or, ILR, 2008, p.321)[20].

As I said the notion of sovereignty should be broadened to include the protection of the human rights of individuals as a consequence of the evolution of the contemporary international human rights system. According to this new doctrine officially proposed starting from the ICISS document the concept of sovereignty as responsibility stems from the belief that all human beings have the right to be treated with humanity and dignity and therefore states have the primary responsibility to guarantee the promotion and protection of the human rights of their own people. At the same time, in theory, the community of states has the responsibility and the duty to prevent or react to serious human rights' and humanitarian law's violations like genocide or related crimes.

Despite this doctrine tried to find supporters within the international community and even if the United Nations Charter provides for *"a restriction of the sovereignty of United Nations member states to the extent of the obligations assumed by states by virtue of their membership in the United Nations"* (C.C Joyner, 2007)[21], nonetheless the difficulty to find a conciliation between the claim to sovereign status and the accomplishment of the United Nations' mandate remains.

---

[20] Noemi Gal-Or, "Suspending sovereignty, reassessing the interlocking occupation, failed and fragile state, responsibility to protect, and international trusteeship (lessons from Lebanon)

[21] C.C. Joyner, "The Responsibility to Protect" humanitarian concern and the lawfulness of armed intervention, Virginia Journal of International law, Vol.47, iss.3 (2007)

1.2 From sovereignty as responsibility to the Responsibility to Protect

The doctrine of sovereignty as "responsibility" has been explicitly proposed for the first time during the nineties by F. Deng, Special Adviser on the Prevention of Genocide, in a book titled *Sovereignty as Responsibility, Conflict Management in Africa* (1996)[22]. In the same book, F. Deng proposed an important distinction between internal and international accountability:

- The sovereign state is internally accountable in the sense that it is responsible towards its own population.
- At the same time, the sovereign state is internationally accountable in the sense that it is responsible of the way in which it treats its own population towards the international
community of states and it should treat them in compliance with the existing human rights' and humanitarian agreements. (F. Deng, 1996)[23].

F. Deng introduced also the new notion of *'suspended sovereignty'*; he believes that: *"When a government massively abuses the fundamental rights of its citizens, its sovereignty is temporarily suspended"* and the international community has the duty to intervene (F. Deng 1996)[24].

In order to understand how F. Deng came to coin the phrase :*"sovereignty as responsibility"*, it is important to underline his personal background. The first formative experience was Deng's participation in a Brookings Institution initiative in the late 1980s on conflict management in Africa. The central concern driving the project was the effect of the end of the cold war on the African continent, particularly as the two superpowers moved away from their dual roles as the financers of proxy wars and the guardians of regional stability[25].

The fear of Deng and others was that Africa would be further marginalized within the international system, and that its internal conflicts would create increasingly perilous conditions for civilians. In his view, the solution to this danger

---

[22] F. Deng, S. Kamaro, T. Lyons, D. Rothchild, I.W. Zartman, "Sovereignty as responsibility, conflict management in Africa", The Brookings Institutions, Washington D.C.,1996

[23] Ibid.

[24] Ibid.

[25] Ibid.

lay in a new generation of African leaders, who could take on collective responsibility, for maintaining stability and responding to humanitarian crises within a new normative framework that involved partnership with the international community.

This perspective was reflected in the Africa Leadership Forum, created by the former Nigerian leader Olusegun Obasanjo, which in the early 1990s spearheaded the development of a "Helsinki Process" for Africa, known as the Kampala Process. At the Core of the Kampala Process and subsequent Kampala Document, was a strong statement of interdependence: "*the security of one African country's population had become relevant for all others, thereby breaking the protective wall of sovereignty*"[26].

Although the Kampala Process eventually derailed, Deng took its central message into his other formative experience: his tenure as Secretary General's Special Representative on Internally Displaced Persons from 1994 to 2004. In his role, he confronted firsthand the individuals who were placed in the "moral vacuum left by the state's failure, deliberate or imposed, to fulfill its normal responsibilities" (Deng, et al. "sovereignty as responsibility" 1996)[27].

For Deng, the way out of this apparent tug-of-war was the articulation of a new framework for responsibility and accountability in international society. It began by acknowledging that the primary locus of responsibility for protecting and assisting civilians remained with the host government, and ideas that as Bellamy argues, would later come to sit at the heart of R2P (A. J. Bellamy, 2008)[28].

From this relatively uncontroversial claim (which most states accepted), Deng moved on to argue that the best way for vulnerable or weak states to fulfill these responsibilities was to invite and welcome international assistance to complement national efforts and enhance their sovereignty. "Troubled states faced a choice: "work with international organizations and other interested outsiders to realize their sovereign responsibilities or obstruct international efforts and forfeit their sovereignty" (Deng, et al. "sovereignty as responsibility" 1996)[29].

---

[26] The Kampala Document, Towards a Conference on Security, Stability, Development and Cooperation in Africa, Kampala, 19-22 May 1991

[27] F. Deng, S. Kamaro, T. Lyons, D. Rothchild, I.W. Zartman, "Sovereignty as responsibility, conflict management in Africa", The Brookings Institutions, Washington D.C.,1996

[28] A.J. Bellamy, "The Responsibility to Protect and the problem of Military Intervention", Royal Institute of International Affairs, 2008

[29] F. Deng, S. Kamaro, T. Lyons, D. Rothchild, I.W. Zartman, "Sovereignty as responsibility, conflict management in Africa", The Brookings Institutions, Washington D.C.,1996

This path by which Deng came to the principle of "sovereignty as responsibility" reveals two important insights : First of all, his original concern was not with legitimizing intervention by Western actors, as so much of the subsequent liberal writing on humanitarian intervention and R2P has sought to do, but rather with encouraging leaders in regions of instability to collaborate in alleviating human suffering. In short, the problem was one on non-action rather than excessive interventionism as considered wrongly after the subsequent development of the concept.

Second of all, Deng's understanding of sovereignty as responsibility always involved heavy emphasis on a second dimension, namely, encouraging weaker states to work in partnership with international actors building up their capacity to fulfill their responsibilities to their populations. His experience in negotiating with states over internally displaced peoples (IDPs) led him to believe that sovereignty as responsibility would fail if it was pitched solely in negative terms, that is, as states being punished by the international community for failing to be responsible.

According to Deng's ideas, the more lasting and positive solution was to help states act responsibly, thereby avoiding more coercive measures. These insight, as we will see later, did not feature prominently in the ICISS Report on R2P, instead the commissioners were more concerned with leveraging Deng's notion of *"sovereignty as responsibility"* to legitimize intervention for humanitarian purposes.

Having said that it is clear that the idea of sovereignty as responsibility is the fruit of a gradual change in the understanding of the concept of sovereignty by the international community as a whole, in this regard, the contribution given to the evolution of the concept of sovereignty provided by the two former Secretary Generals of the United Nations, B.B. Ghali and K. Annan has been crucial. The definition of the notion of sovereignty that they provided while exercising their mandate, reflects a gradual change in the way of conceiving the principle of sovereignty.

According to the former Secretary General B. B. Ghali, sovereignty is a contingent rather than an absolute concept. Similarly, the former Secretary General K. Annan pointed out that the frontiers of the states cannot be considered as shields to defend the criminal behaviors of State's authorities. Since frontiers are not absolute barriers, State's leaders can no longer rely on the privilege of jurisdictional immunity ("In Larger Freedom…" Report, 2005)[30].

---

[30] K. Annan, "In Larger Freedom" Report to the General Assembly, 21st March 2005, www.un.org

The thought of K. Annan reflects an evolution in the way of understanding sovereignty. Certain circumstances, like the perpetration of genocide under the jurisdiction of a sovereign state or, generally, the lack of an actual control over the territory by failed states, pose conceptual problems for the traditional way of understanding sovereignty. In the light of anomaly examples of sovereignty, like fragile, failed and quasi-states, the literature on the subject became very critical towards the traditional way of conceiving sovereignty("In Larger Freedom" Report, 2005)[31].

K. Annan claimed that the concept of sovereignty implies the responsibility of the states to protect their own populations. When the state is unable or unwilling or is itself the perpetrator of massive human rights' violations, the international community should assume the Responsibility to Protect the citizens of the failed state ("In Larger Freedom…" Report, 2005)[32].

As pointed out by the scholar C.C. Joyner, conceiving sovereignty as governmental responsibility implies that *"government officials are responsible for policies that ensure the protection of their own citizens and the promotion of their welfare; governments are obligated to their own nations and to the international community"* (C. C. Joyner, 2007)[33].

Looking at the first official documents that clearly mentioned the concept of Responsibility to Protect (R2P, as it is commonly abbreviated) in a general term and without any correlation with a specific subject or situation (such as the IDPs in the first Deng definition of the term) and moving forward the concept of sovereignty as responsibility proposed by Deng and others during the 90ties we must mention, chronologically, the Report of the independent International commission on "Intervention and State Sovereignty" issued in December 2001 as the first moment in which the idea of R2P was widely proposed to the international arena; the 2004 High Level Panel Report produced by a group of expert appointed by the former Secretary General K. Annan and finally the 2005 Outcome Document produced during the United Nations World Summit.

None of these documents can be considered as a source of binding international law in terms of Article 38 of the Statue of the International Court of Justice which lists the classic sources of international law in fact, according to the words expressed during the negotiations

---

[31] Ibid.

[32] Ibid.

[33] C.C. Joyner, "The Responsibility to Protect" humanitarian concern and the lawfulness of armed intervention, Virginia Journal of International law, Vol.47, iss.3 (2007)

of the World Summit Outcome Document by the U.S. permanent representative John Bolton, "the commitment made in the Document is not of a legal character"[34].

The 2004 Report, "In Larger Freedom: Towards Development, Security and Human Rights for All," further identified the need for the international community to assume the slightly different principle of *"collective security"*[35]. The idea gained widespread international legitimacy when it was adopted at the UN World Summit in September 2005. The Outcome Document argued that the UN must "affirm that every sovereign government has a 'responsibility to protect' its citizens and those within its jurisdiction from genocide, mass killing, and massive and sustained human rights violations"[36].

Nonetheless, as we will see, the definition of the notion of Responsibility to Protect embedded within this last Document in paragraph 139 and 140 represents "a weakening of the original notion" (see J.Welh, 2006)[37] of the R2P concept as proposed both by the ICISS Report in 2001 and by the High Level Panel experts' Report in 2004.

Generally speaking the principle stipulates, first, that states have an obligation to protect their citizens from mass atrocities; second, that the international community should assist them in doing so; and, third, that, if the state in question fails to act appropriately, the responsibility to do so falls to that larger community of states.

At the very heart of this new norm is the principle that states, with the aid of the international community, must act to prevent mass atrocities. Equally central is the idea that concerned outsiders should help states to prevent these gross abuses through what the UN document characterizes as *"diplomatic, humanitarian and other peaceful means."*

This could include strengthening state capacity through economic assistance, rule-of-law reform, the building of political institutions, and the like; or, when violence has begun or seems imminent, through direct acts of mediation. The intense

---

[34] Negotiations during the preparation of the U.N. World Summit Outcome Document, 2005

[35] K. Annan, Report to the General Assembly "In Larger Freedom: Towards Development, Security and Human Rights for All", 2005

[36] United Nations World Summit, Outcome Document, 2005

[37] J. Welsh, 2006

diplomatic engagement following the disputed election in Kenya, or the work of neighbors and of the UN to support the government of Burundi, both demonstrate the imperative of cooperative efforts to prevent atrocities.

Only when such means have been unsuccessful should the international community, acting through the Security Council, turn to more coercive measures. These could include such non-consensual measures as economic sanctions or the threat of sanctions, arms embargoes, or the threat to refer perpetrators to international criminal prosecution. Should peaceful means be inadequate and the state is manifestly failing to protect its population, then—and only then—would the Security Council consider the use of military force.

The debate over R2P "*is not some abstract, academic exercise of hypothetical simulations,*" Lloyd Axworthy (Canada's former Foreign Minister) observed to an university audience, "*this is real, because the issue of intervention—of how, when and who goes in to influence the affairs of another state—is probably the most critical and difficult conundrum…in this new century of ours*[38]."

States have long accepted limits on their conduct, whether towards their own citizens or others. The UN Universal Declaration of Human Rights requires that states protect individual and social rights; the Geneva Conventions and various treaties and covenants prohibiting torture, trafficking in persons, or nuclear proliferation similarly restrict the right of states to behave as they wish.

Since the Second World War ended in 1945, international politics has been largely governed by Article 2 (7) of the UN Charter which argues that there is no right to "*intervene in matters which are essentially within the domestic jurisdiction of any state*"[39].

Even the existence of the 1948 Genocide Convention, under which the principle of non-intervention can be overridden, could not prevent the 1994 Rwandan genocide. While the avoidance of the use of force was standard practice for UN operations throughout the Cold War – with the exception of abortive interventions such as the United Nations Operation in the Congo (ONUC) in 1964 – the concept of non-intervention came under serious scrutiny in the 1990s. The end of the Cold War and

---

[38] L. Axworthy speech delivered on July 15th 2000 at the Winnipeg University available at http://ebschost.com, Vol.66, issue 19, p.579

[39] United Nations Charter, Chapter I, www.un.org

the outbreak of a series of intra and inter-state conflicts resulted in a number of massive humanitarian crises across the globe.

The Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS) was created as a result of the failures to prevent Genocide in Rwanda and in the Former Yugoslavia, and to prevent crimes against humanity in Kosovo and East Timor. The idea of the Canadian government was to shift the debate from the right to military humanitarian intervention to the idea of R2P as international protection of the civilian population when states are unwilling or unable to accomplish their duties on this issue.

The Commission produced a report that it is still one of the most important and useful analysis on R2P. The Commission's Report is considered to be one of the most progressive, though not uncontroversial, positions on the protection of civilians since "the right to intervene" debate erupted. The ICISS Report is about the so called "right of humanitarian intervention": the question of when, if ever, it is appropriate for states to take coercive (in particular military) action against other state for the purpose of protecting people at risk in that other state moving from the status quo of sovereign impunity to a culture of national and international accountability.

The ICISS Report was a landmark in the evolution of the doctrine of R2P, designed to address the key political debates, legal issues, and operative obstacles. First, ICISS tried to de-politicize the North-South argument and shift the focus from a "right to intervene" to a "responsibility to protect." Second, from the legal standpoint, ICISS concluded on the basis of international customary law, human rights treaties, as well as growing state practice and the Council's precedent-setting resolutions that R2P was an "emerging principle" of law.

Finally, the Report tried to provide concrete guidelines on how to translate this principles into action by (1) defining the "trigger conditions" for intervention; (2) describing R2P as a threefold responsibility to prevent, react, and rebuild; and, (3) outlining criteria for the legitimate use of force. ICISS also tried to identify the "right authority" for intervention, but ultimately failed to resolve this issue.

The Report's central theme is the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe, but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.

According to the ICISS Report these are the R2P core principles:

1. BASIC PRINCIPLES

   a. State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.
   b. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.

2. FOUNDATIONS

   a. The foundations of the R2P as a guiding principle for the international community of states, lie in: obligations inherent in the concept of sovereignty; the responsibility of the Security Council, under article 24 of the U.N. Charter for the maintenance of international peace and security; specific legal obligations under human rights and humanitarian law and national law; the developing practice of states, regional organizations and Security Council itself.

3. ELEMENTS (The R2P embraces three specific responsibilities the so called "three pillars")

   a. The Responsibility to prevent: to address both root causes and direct causes of internal conflicts and other man made crises putting population at risk.
   b. The responsibility to react: to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution and in extreme cases military intervention.
   c. The responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.

4. PRIORITIES

a. Prevention is the single most important dimension of the responsibility to protect: prevention options should always be exhausted before intervention is contemplated, and more commitment and resources must be devoted to it.

b. The exercise of the responsibility to both prevent and react should always involve less intrusive and coercive measures being considered before more coercive and intrusive ones are applied.

Five criteria are laid out to legitimise such interventions:

First: the seriousness of the threat must justify the use of force;

Second: the purpose of the military action must be to avert the specific threat;

Third: all non-military options must previously have been exhausted;

Fourth: the use of military force must be proportionate to the security threat; and

Fifth: the chances of the military action to meet the threat must be high.

The ICISS also determined the so called three pillars of the Responsibility to Protect:

1. A state has a responsibility to protect its population from mass atrocities;
2. The international community has a responsibility to assist the state to fulfill its primary responsibility;
3. If the state fails to protect its citizens from mass atrocities and peaceful measures have failed, the international community has the responsibility to intervene through coercive measures such as economic sanctions. Military intervention is considered the last resort. The authority to employ the last resort and intervene militarily rests solely with United Nations Security Council and the General Assembly.

Regarding the military intervention the International Commission for Intervention and State Sovereignty (ICISS) Report stated that any form of a military intervention initiated under the premise of responsibility to protect must fulfill the following six criteria in order to be justified as an extraordinary measure of intervention:

1. Just Cause
2. Right Intention
3. Final Resort

4. Legitimate Authority
5. Proportional Means
6. Reasonable Prospect

Probably the major contribution provided by the Canadian-sponsored report to the international community as a whole was its re-conceptualisation of the "*right to intervene*" as the "*responsibility to protect*"[40].

Another important ICISS Report's contribution according to the L. Axworthy is regarding the relation with the quite new concept of "Human Security". This concept emerged from a post-Cold War, human security holds that a people-centered view of security is necessary for national, regional and global stability.

The United Nations Development Programme's 1994 Human Development Report is considered a milestone publication in the field of human security, with its argument that insuring "freedom from want" and "freedom from fear" for all persons is the best path to tackle the problem of global insecurity. Critics of the concept argue that its vagueness undermines its effectiveness [41]; that it has become little more than a vehicle for activists wishing to promote certain causes; and that it does not help the research community understand what security means or help decision makers to formulate good policies[42].

There are to main way of thinking the Human Security concept, the "narrow" and the "broad" ways. Proponents of the 'narrow' concept of human security focus on violent threats to individuals or, as UN Secretary-General Kofi Annan puts it, 'the protection of communities and individuals from internal violence'. Proponents of the 'broad' concept of human security argue that the threat agenda should include hunger, disease and natural disasters because these kill far more people than war, genocide and terrorism combined. Human security policy, they argue, should seek to protect people from these threats as well as from violence.

In its broadest formulations the human security agenda also encompasses economic insecurity and 'threats to human dignity'. The broader view of human

---

[40] ICISS Report

[41] UNDP, Human Development Report 1994, Oxford Univ. Press

[42] Ibid.

security has many adherents—and it is easy to see why. Few would dispute the desirability of protecting people from malnutrition, disease and natural disasters as well as from violence.

Moreover there is considerable evidence to suggest that all of these societal threats are interrelated in the mostly poor countries in which they are concentrated. While still subject to lively debate, the two approaches to human security are complementary rather than contradictory. For both pragmatic and methodological reasons, however, the *Human Security Report* uses the narrow concept.

The pragmatic rationale is simple. There are already several annual reports that describe and analyze trends in global poverty, disease, malnutrition and ecological devastation; the threats embraced by the broad concept of human security. There would be little point in duplicating the data and analysis that such reports provide. But no annual publication maps the trends in the incidence, severity, causes and consequences of global violence as comprehensively as the *Human Security Report*. The methodological rationale is also simple. A concept that lumps together threats as diverse as genocide and affronts to personal dignity may be useful for advocacy, but it has limited utility for policy analysis an early action considering the variety of the rights hypothetically violated.

Looking at the UNDP's 1994 Human Development Report's definition of human security (the narrow concept) we see that it argues that the scope of global security should be expanded to include *threats in seven areas*:

Economic security

Food security

Health security

Environmental security

Personal security

Community security

Political security

Human security emerged as a challenge to ideas of traditional security, traditional security is about a state's ability to defend itself against external threats. Traditional security (often referred to as national security or state security) describes the philosophy of international security predominance since the Peace of Westphalia in 1648 and the rise of the nation-states. Human security is people centered, its focus shifts to protecting individuals. The important dimensions are to entail the well-being of individuals and respond to ordinary people's needs in dealing with sources of threats[43].

Traditional security seeks to defend states from external aggression. The journalist Walter Lippmann in its book "The cold war" explained that *"state security is about a state's ability to deter or defeat an attack it makes uses of deterrence strategies to maintain the integrity of the state and protect the territory from external threats"*[44].

In addition to protecting the state from external aggression, human security would expand the scope of protection to include a broader range of threats, including environmental pollution, infectious diseases, and economic deprivation. The realization of human security involves not only governments, but a broader participation of different actors at national, regional and international levels.

After the ICISS Report and its important insights, in 2004, the UN High-Level Panel Report titled "Threats, challenges and change" commissioned by Annan, adopted the ideas of the ICISS that were also endorsed by Annan's 2004 speech to commemorate the tenth anniversary of the genocide in Rwanda, when he announced his intention to launch a "UN action plan to prevent future acts of genocide"[45].

The High Level Panel Experts, like the ICISS Commission, recognize the role of the Security Council as source of legitimacy for the authorization of military intervention as a last resort and in addition leave open the possibility for unilateral action in those cases in which the Council fails to act. However, as mentioned above, despite the possibility to identify many points in common, the two documents differ on an important issue, which are the so called "triggering events" (J. Brunnée, S. Toope, 2005) that can lead the Council to authorize the use of force.

---

[43] Ibid.

[44] W. Lippmann, "The Cold War", 1947 ed.

[45] U.N. High Level Panel Report, 2004

In fact the High Level Report anticipates an important limitation of the original idea of R2P which will become definitive in the 2005 Outcome Document: "...the duty of potential interveners to act is limited to cases of international crimes..." (J.Brunnée, S.Toope, 2005). R2P in its original formulation provided for a duty to intervene also for massive human rights violations even if they do not reach the threshold to be considered as international crimes. With the High Level Panel formulation, used also in the 2005 Outcome Document, and with the requirement content in the Outcome Document regarding the obligation that the international crimes mentioned are actually perpetrated and not simply apprehended/threaten the applicability of the R2P concept as described in the ICISS Report had a strong limitation.

The 2005 Outcome Document is carefully nuanced to convey the intentions of the member states, (paragraph 138) when it deals with the individual states' responsibility to its own people is clear in its commitment. When it comes to the international community helping states, the phrase used is a general appeal "should as appropriate" and (paragraph 139) continues this nuanced approach[46].

Paragraph138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

The language is clear and unconditional when it speaks of "the international community through the U.N." having the "responsibility to use appropriate diplomatic, humanitarian and other peaceful means in accordance with Chapters VI, and VIII of the Charter". The Document is very cautious when it comes to responsibility to take action through the U.N. Security Council under Chapter VII.

Paragraph 139 uses at least four qualifiers, firstly the Heads of State merely reaffirm that they "are prepared" to take action, implying a voluntary, rather than mandatory engagement. Secondly they are prepared to do this only "on a case by case basis", which precludes a systematic responsibility. Thirdly, even this has to be "in cooperation with regional organizations as appropriate". Fourthly, this should be

---

[46] U.N. World Summit, Outcome Document, 2005

"in accordance with the Charter" (which covers only immediate threats to international peace and security)[47].

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

Finally the Heads of State emphasize instead of the role of the Security Council the role of the General assembly: "the need for the General Assembly to continue consideration of the responsibility to protect population from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law". It is therefore, amply clear, that there is no legally binding commitment and the GA is charged, in terms of its responsibility under the Charter to develop and elaborate a legal basis.

There are also other U.N. documents that put an important step forward the implementation of the R2P concept such as the Security Council Resolution n. 1674/2006; the 2009 Secretary General's Report "Implementing the Responsibility to Protect" and the GA Resolution 63/308 and the two Security Council Resolutions on the Libya case 1970 and 1973 in 2011[48].

Since 2006, the powerful 15-member UN Security Council has made a number of references to the "*responsibility to protect*". These include Resolution 1674/2006

---

[47] Ibid.

[48] U.N. Security Council Resolutions 1970/2011 and 1973/2011, www.un.org

on the Protection of Civilians in Armed Conflict, and Resolution 1706 of the same year on Sudan's peacekeepers in Darfur[49]. The latter resolution called for the deployment of UN peacekeepers to the Darfur region in order to address human rights violations there. Thus, the "responsibility to protect" principle is currently one which has been widely recognised and accepted. More recently the U.N. Security Council issued two important Resolutions on R2P the UNSC Res. 1970 and the UNSC Res. 1973[50].

The Security Council Resolution 1970 of 26th February 2011 "Peace and Security in Africa" and the Security Council Resolution 1973 of 17th March 2011 on the Libya situation represent, according to Mr. Ed Luck, U.N. Special Adviser on R2P an "historic" implementation of the doctrine. In these Resolutions, particularly in Resolution 1973, for the first time, the Security Council has employed the enforcement provisions of Chapter VII of the U.N. Charter to implement the R2P.

Analyzing the text of U.N. Security Council Res.1970 it is important to mention paragraph 9 on "arms embargo" as R2P instrument and paragraph 26 recalled later on in Res. 1973 in which *"(⋯) the Security Council expressed its readiness to consider taking additional appropriate measures (⋯)"*[51].

Along the line followed by the Security Council in its Resolution 1970 the SC Res. 1973 represents the first official agreement on R2P within the U.N. members states. The text emphasize that all the measures proposed are about *"defending the civilian population in Libya from attacks by its own government"*. Many are the clauses emphasizing that this is not about invading or seeking to divide or dismember Libya (e.g. *"Reaffirming its strong commitment to the sovereignty, independence, territorial threat to international peace and security"*)[52].

The specific mention of the situation in Libya as *"a threat to international peace and security"* paves the way for action under chapter VII of the U.N. Charter which authorizes the use of force. The essential paragraph in the Resolution is paragraph 4 in which there is the authorization of the member states to take all necessary means

---

[49] U.N. Security Council Resolution 1674/2006, "Protection of the Civilians in Armed Conflicts", www.un.org

[50] U.N. Security Council Resolution 1970/2011 and 1973/2011, www.un.org

[51] U.N. Security Council Resolution 1970/2011, www.un.org

[52] U.N. Security Council Resolution 1973/2011, www.un.org

to protect civilians. This give wide latitude for operations, for example, against ground units attacking Libyan towns[53].

It specifically mentions the city of Benghazi, the pro-Kaddafi force objective, and the center of the gravity of rebel resistance. Crucially it excludes any foreign occupation force in sweeping arms; this is the message for the Arab world that Libya would not be another Iraq.

Along the line of the recognition of the role of the Arab world in paragraph 5 there is the *"recognition of the important role of the League of the Arab States in matters relating to the maintenance of international peace and security in the region, and bearing in mind Chapter VIII of the U.N. Charter, requests the member states of the League of Arab States to co-operate with other member states in the implementation of para.4"[54]*.

Although these Resolutions represent, for the Office of the Special Adviser on R2P, an important step to the legal recognition of the doctrine it is important to mention the fact that the Resolution 1973 passed with 5 abstention, in fact not only the permanent members China and Russia but also Germany, India and Brazil decided not to vote on the topic even if the two permanent members did not apply the veto power.

This decision has shown a bright and dark side to the implementation of R2P by military means, the bright side is that R2P has been applied against a government manifestly failing to protect their own population; the dark side is that the consequences of this military action were not carefully thought through considering the possibility of large scale loss of civilian lives, the danger of being drawn into protected military confrontation and the unintended effect of exacerbating tension on the ground.

To my opinion the events that followed these Resolutions shown that the provisions contained in particular within the Resolution 1973 have been "de facto" violated by the states that attacked Lybia and showed that the basic idea in acting internationally against the Lybian former regime was a "regime change" and not a reaction under the R2P pillars. This means that the international community did not

---

[53] Ibid.
[54] Ibid.

utilize the R2P instruments but decided unilaterally to interfere within the political system of a country. This point appears clear once more looking at the actual situation in Syria and at the role of the international community, in particular the U.N. and the regional actors.

The dark side is still on the scenario of the international community considering the evolution of the "Syria case" that has been treated by the U.N. since now in a different way; Ed. Luck in his interview about it to the New Centre on 1st August 2011 recalled many times the importance of two differences between the "Libya case" and the situation in Syria. First, the clear war started by the Libyan government against its population in particular with the use of air forces, secondly the position of the Arab states and of the neighboring countries that apparently, with regard with Syrian leadership only recently took a stronger position against the human rights violation perpetrated to the population.

The International Coalition for the Responsibility to Protect (ICRtoP) press release issued on May 2011 underlines some different elements such as the fact that: "(…) there are several other cases however, where the international community has worked to prevent atrocities from occurring and escalating through a range of peaceful measures, including the UN and AU's role in facilitating post-election mediation efforts in Kenya in 2007, strong voices from economic community of West African States (ECOWAS) and the UN Security Council following election violence in Guinea in 2010, and the world wide efforts by a range of actors to prevent bloodshed during the Sudan referendum 2011[55].

The UNOCI (the U.N. Mission in Cote D'Ivoire after the violent conflicts started during the presidential election) is another example, with the Secretary General statement helded on April 4th 2011 in which he recall to *"take the necessary measures to prevent the use of heavy weapons against the civilian population"*, of a soft landing approach to the R2P doctrine within an international crises[56].

According to the ICRtoP: *"(…) the Libya case presented itself a unique situation where Gaddafi arguably committed crimes against humanity and shockingly announced through the media his intentions to commit further atrocities against his own people. Governments, regional organizations and international bodies worldwide*

---

[55] ICRtoP Press Release, May 2011 available at www.icrtop.org

[56] U.N. Secretary General B.K. Moon statement on the situation in Cote D'Ivoire helded on april 2011, www.un.org

had to react promptly and this led to the passage of the SC Resolution 1973 and the agreement to install a no-fly zone (…)"[57].

According to the ICRtoP the Syria situation is different not with regard the crimes committed because many international organizations had issue reports in which it is quite clear that *"R2P crimes occurred and are occurring in Syria"* but with regard to the best international response for the population and with regard to the neighboring countries and the Arab countries reaction to the situation. Anyhow the tried "preventive diplomacy" approach to the "Syria case" did not make any positive step forward and the crisis solution appears far away.

In their last statement on the Syria case of 14th June 2012 the Special Advisers on prevention of genocide prevention and R2P (Ed. Lick and Francis Deng) recall the commitment by all Heads of State and Government at the 2005 World Summit to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity, including their incitement. In this document the way in which Ed. Luck look at the Syria case change dramatically in comparison with the above mentioned last year interview.

They call on the international community to take immediate, decisive action to meet its responsibility to protect populations at risk of further atrocity crimes in Syria, taking into consideration the full range of tools available under the United Nations Charter. Given the extreme gravity of the crimes committed, the Special Advisers urge the Security Council to consider the request of the High Commissioner for Human Rights to refer the situation in Syria to the International Criminal Court. There can be no lasting peace without full accountability. With the increasing violence and deepening sectarian tensions, the risk of further mass atrocity.

What remain very critical is to eliminate double-standards and political bias from the Security Council decision of this magnitude. This is why, as Ed. Luck has said: *"we are now dealing with the dilemma of R2P being too relevant in that the UN and regional bodies will be compelled to act in more cases"[58].*

---

[57] ICRtoP Press Release, May 2011

[58] www.un.org , (OSAPAG Office Statements)

1.3 The Responsibility to Protect for the Prevention of Genocide

Prevention of genocide and mass atrocities crimes requires always apportioning responsibility to and promoting collaboration between concerned States and the international community. In fact as pointed out previously the duty to prevent and halt genocide and mass atrocities lies first and foremost with the State, but the international community has a role that cannot be blocked by the invocation of sovereignty[59]. Sovereignty no longer exclusively protects States from foreign interference; it is a charge of responsibility where States are accountable for the welfare of their people. This principle is enshrined in article 1 of the Genocide Convention and embodied in the principle of "sovereignty as responsibility" and in the concept of the Responsibility to Protect.[60]

The former United Nations Secretary General, Mr. Kofi Annan, as I will explain in the next chapter, created in 2004 the Office of Special Adviser for the Prevention of Genocide that was improved, in 2007, with the cooperation with the Special Adviser for R2P, a special post created in order to make the R2P doctrine a concrete element within the prevention of genocide and the mass atrocities crimes. The work done by the former Special Adviser on the Prevention of Genocide, Mr. Francis Deng, should be viewed in conjunction with the closely related work of former Special Adviser on the Responsibility to Protect, Mr. Edward Luck, who focuses, as said, on developing the conceptual, political and operational aspects of the Responsibility to Protect.

In order to eliminate redundancy, maximize effective use of resources (but also, as I will explain in chapter II because of the resistance of many U.N. Member States regarding the R2P concept), the Secretary-General directed the two Special Advisers to form a joint office and merge their functions and activities. This decision was referred to in the Secretary-General's letter to the President of the Security Council of 31 August 2007 (S/2007/721)[61], as well in his statements and reports to the

---

[59] www.un.org

[60] www.preventgenocide.org

[61] www.un.org

General Assembly on the responsibility to protect in 2009 and 2010 (A/63/677, A/64/864)[62].

In July 2009, the Secretary-General presented his report on "Implementing the responsibility to protect" (A/63/677) to the General Assembly during an informal interactive dialogue, following the informal discussion, the General Assembly continued to debate how best to implement the Responsibility to Protect and the Secretary-General's strategy and on 2 October 2009, the General Assembly adopted a resolution (A/RES/63/308)[63] to continue consideration of the Responsibility to Protect.

On 9 August 2010, the Secretary-General addressed another informal interactive General Assembly dialogue on "Early warning, assessment and the responsibility to protect" as part of the General Assembly's continued consideration of the emerging concept. The Secretary-General's report (A/64/864)[64] on the issue highlights existing early warning and assessment mechanisms within the UN system, identifies gaps and proposes ways to improve the UN's ability to use available early warning information effectively, including information from field operations, and to improve early, flexible and balanced responses where there is a risk of the genocide, crimes against humanity, war crimes or ethnic cleansing.

On 12 July 2011, the General Assembly held the third informal interactive dialogue on R2P since the creation of the joint office titled "The role of regional and sub-regional arrangements in implementing the responsibility to protect". The Secretary-General's report (A/65/877-S2011/393)[65] emphasizes how effective global-regional collaboration is essential for realizing the promise embodied in the Responsibility to Protect. The report identifies gaps and proposes ways for the UN to strengthen its cooperation and draw on information and analysis from regional and sub-regional arrangements to identify signs of danger and undertake or support timely and effective preventive action at the sub-regional, regional, or global level.

The last and most recent event on R2P within the U.N. is the meeting hold on 5 September 2012 in which the Secretary-General presented his report on "The

---

[62] Ibid.

[63] Ibid.

[64] Ibid.

[65] www.un.org

responsibility to protect: timely and decisive response" (A/66/874-S/2012/578)[66] at the fourth annual informal, interactive, dialogue on the responsibility to protect in the General Assembly. The report examines the range of tools available under the third (response) pillar of the responsibility to protect, partners available for implementation and the close connection between prevention and response. This was the first occasion in which, Mr. Adama Dieng, the new Special Adviser on Prevention of Genocide and Mass Atrocities (also with the R2P mandate) spoke after his appointment last July.

In each occasion, Member States have reflected upon a different aspect and have explored opportunities and challenges in the implementation of the responsibility to protect. The three previous informal interactive dialogues discussed:

1. the three pillar structure (2009);

2. the importance of early engagement (2010);

3. the critical contribution of regional actors(2011).

In the last meeting (5th September 2012) the Secretary-General reflected on the notion of the third pillar and on the elements of response in the implementation of the first two pillars of the responsibility to protect. The range of tools available under the third pillar of the responsibility to protect is extensive. According with the final documents published it is a collective responsibility to study the implications of the use of each of them, and to understand the conditions under which the potential of each tool can be maximized. It is also a collective responsibility to establish and strengthen the structures that will make third pillar tools actionable and effective. All of the tools listed in this year's Secretary-General report (2012) require the creation of partnerships, platforms and structures for effective use[67].

Having said that, as I will explain in the other chapters, the role played by the R2P doctrine with regard to the prevention of genocide it is still insufficient; implementing R2P needs a developed early warning and early action system that could identify the danger signs in a timely and effective manner. Even if the desk to desk communication and cooperation within the U.N. on the genocide prevention issue

---

[66] Ibid.

[67] www.responsibilitytoprotect.org

had slightly improved in the last years the absolute lack of political will and the absence of a concrete preventive diplomacy as a strategy made all the efforts mentioned above a simple intellectual exercise.

Chapter II

THE CRIME OF GENOCIDE: PREVENTIVE STRATEGIES AND PEVENTIVE DIPLOMACY

2.1 The U.N. Convention on Prevention and Punishment of the Crime of Genocide

The Genocide Convention was the first human rights treaty adopted by the General Assembly of the United Nations on December 1948, it focuses attention on the protection of the national, racial, ethnic and religious minorities from threats to their existence. In that sense, it sits four-square within the priorities of both the United Nations and the modern human rights movement, aimed at the eradication of racism and xenophobia. Furthermore it stresses the role of criminal justice and accountability in the protection and promotion of human rights.

Unlike most of the other human rights treaties, the Genocide Convention does not establish monitoring mechanism, there have been periodic calls to set up a treaty body, possibly by an additional protocol to the Convention or perhaps simply by a General Assembly Resolution but only in 2004 with the creation, by the former Secretary General K. Annan, of the Special Adviser on the Prevention of Genocide something it is changed even if very slowly, in the way in which the international community looks at the genocide[68].

One of the major criticism to the Convention's provisions regards the restrictive approach to the interpretation of the term of genocide used by the Convention's drafters, in fact even recent cases law of the International Court of Justice and the Criminal Tribunal for the Former Yugoslavia has confirmed this restrictive approach especially with regard with the targeted groups. At the same time, in 2007, the Court founds robust concept of the prevention of genocide within the vague words of article I of the Convention. It spoke of a duty of "due diligence" imposed upon the states, one that extended even to acts committed outside of their own border by entities over which their influence may extend[69]. In this sense this obligation to prevent genocide

---

[68]Letter dated 12th July 2004 from the Secretary-General addressed to the President of the Security Council, S/2004/567

[69]Application of the Convention on the Prevention and Punishment of the crime of genocide (Bosnia and Herzegovina v. Serbia and Montenegro, International Court of Justice, Judgment of 26th February 2007

to my opinion dovetails nicely with the Responsibility to Protect doctrine as recognized by the U.N. Outcome Document 2005 as we saw in chapter I[70].

The text of the Convention for the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations General Assembly on December 9th 1948 and after obtaining the requisite twenty ratifications required by article XIII the Convention entered into force on January 12th 1951[71].

The term genocide was first used by Raphael Lemkin in his book "Axis Rule in Occupied Europe", published in 1944, although the word appears in the drafting history of the Charter of the International Military Tribunal[72], the final text of that international instrument uses the term "crimes against humanity" to deal with the persecution and physical extermination of national, ethnic, racial and religious minorities.

The failure of the International Military Tribunal to condemn what some called "genocide in time of peace" prompted immediate efforts within the United Nations General Assembly. In effect, the Tribunal had confined the scope of crimes against humanity to acts perpetrated after the outbreak of II world war, in September 1939.

At the first session of the GA in 1946, Cuba, Panama and India presented a draft resolution that had two objectives[73]: a declaration that genocide was a crime that could be committed in peacetime as well in time of war, and recognition that genocide was subject to universal jurisdiction. In particular, the GA Resolution n.96/1946 affirmed "that genocide is a crime under international law which the civilized world condemns"[74]. In the same Resolution there is the mandate for the preparation of a draft convention on the crime of genocide.

The drafting of the Convention proceeded in three main stages, first the U.N. secretariat composed the draft text with the assistance of three experts: R. Lemkin, V. Pella and H. Donnedieu de Vabres. The text was actually a compendium of concepts meant to assist the GA rather than any attempt to provide a workable instrument or to resolve major differences. Second the Secretariat draft was reworked by an Ad Hoc Committee set up under the authority of the Economic and Social Council. Finally the Ad hoc Committee draft was the basis of negotiations within the sixth committee of the GA in late 1948. The Sixth Committee agreed upon the final text of the Convention submitting it for formal adoption to the plenary General Assembly.

---

[70]U.N.World's Summit 2005, Outcome Document paragraphs 138,139,140

[71] The U.N. Convention on the Prevention and Punishment of the Crime of Genocide, 9th December 1948,

[72]London Charter of the International Military Tribunal, London 8[th]August 1945

[73]U.N. Resolution A/231 (1946)

[74]U.N. Resolution GA/96 (1946)

The Convention's preamble makes reference to the GA Resolution 96/1946 and re-affirms that "genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world"[75]. In particular its declares that genocide has inflicted great loss on humanity at all periods of history, and that international cooperation is required in order "to liberate mankind from such an odious scourge"[76].

Article I of the Convention provides important clarification that genocide can be committed *"in time of peace or in time of war"*, distinguishing it from crimes against humanity about which there was still, in 1948, doubts about its application absent an armed conflict. The provision, as mentioned above underline that prevention itself is compelling for the States and regarding this point the International Court of Justice, in the Bosnia and Herzegovina v. Serbia and Montenegro judgment of 26th February 2007 (application of the convention on the prevention and punishment of the crime of genocide) said that: *"(…) the duty to prevent genocide had its own autonomous scope which was both "normative and compelling"*[77].

The provision that sits at the heart of the Convention is enriched in article II and defines genocide as: *"any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group…"*, including:

- *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.*

This definitional provision has stood the test of time, resisting the calls for its expansion, and it is reproduced without change in such instruments as the statutes of the ad hoc tribunals for the former Yugoslavia and Rwanda and the Rome Statute of the International Criminal Court[78]. The obstinate refusal to modify the definition is not explained by some innate conservativism in the international lawmaking process. Rather, the gaps left by the somewhat narrow definition of genocide in 1948

---

[75]Ibid.

[76]Ibid.

[77]"Application of the Convention on the Prevention and Punishment of the Crime of Genocide", Bosnia and Herzegovina v. Serbia and Montenegro judgment of 26th February 2007

[78] The Rome Statue of the International Criminal Court, , entered into force on 1st July 2002, www.un.org

Convention have been filled more or less satisfactorily by the dramatic enlargement of the ambit of crimes against humanity during the 1990s.

Article III lists four additional categories of the crime of genocide in addition to perpetration as such, one of these, complicity, is virtually implied in the concept of perpetration and drivers from general principles of criminal law. The other three are incomplete or inchoate offences, in effect preliminary acts committed even where genocide itself does not take place. They apparently enhance the preventive dimension of the Convention.

Recalling a principle established in the Charter of the International Military Tribunal, article IV denies the defense of official capacity to Heads of State and other leading political figures. Article V requires States to enact legislation to give effect to the Convention's provisions, and to ensure that effective penalties are provided. Many States have accordingly enacted the relevant texts of the Convention within their own penal codes, whereas others have deemed that the underlying crimes of murder and assault were already adequately addressed so that perpetrators of genocide committed on their own territory would not escape accountability.

Having said that it is important to note that the title of the Convention and its first article give the same relevance to the obligations to prevent and to the punish such acts. This means that even if from 1948 to the most recent genocides (Rwanda, Ex-Yugoslavia, Sudan) the international community had focused its attention almost over "the punishment issue" the role of prevention was, from the very beginning, one of the most important ideas enriched within this U.N. Convention.[79]

The International Court of Justice, in its mentioned judgment on the application of the Convention on the Prevention and Punishment of the Crime of Genocide, delivered on 26 February 2007, provided authoritative guidance on these concepts and the duty of states parties to prevent genocide.[80]

According to the Court, the obligation to prevent genocide is an obligation of conduct and not one of result, in the sense that a state cannot be under an obligation to succeed, whatever the circumstances, in preventing the commission of genocide. The obligation of states parties is rather to employ all means reasonably available to them, so as to prevent genocide so far as possible. A state does not incur responsibility simply because the desired result is not achieved; responsibility is however incurred if the state manifestly failed to take all measures to prevent genocide which were within its power and which might have contributed to preventing genocide.

---

[79] Application of the Convention on the Prevention and Punishment of the Crime of Genocide", Bosnia and Herzegovina v. Serbia and Montenegro judgment of 26th February 2007

[80] Ibid.

Furthermore, a state can be held responsible for breaching the obligation to prevent genocide only if genocide was actually committed.

On the specific events before the Court, it found that Yugoslav Federal Authorities should have made the best efforts within their power to try and prevent the tragic events then taking shape in Srebrenica, whose scale, thought it could not have been foreseen with certainty, might at least have been surmised.

For a state to be held responsible for breaching its obligation of prevention, it does not need to be proven that the state concerned definitely had the power to prevent genocide; it is sufficient that it had the means to do so and manifestly refrained from using them.

In the case analyzed by the Court the FRY leadership did not show to the Court that they took any initiative to prevent what happened, or any action on their part to avert the atrocities which were committed. It must therefore be concluded that the organs of the FRY did nothing to prevent the Srebrenica massacres, claiming that they were powerless to do so, which hardly tallied with their known influence over the VRS.

Although it is also relevant the Court analysis on the definition of intent and the standard of proof needed to prove this intent. The Court pointed out that the acts listed in article II of the Convention themselves include mental elements but stresses that, in addition to those mental elements, article II requires a further mental element, namely the *"intent to destroy, in whole or in part (the protected) group as such"*.[81]

It is not enough that the members of the group are targeted because they belong to that group, something more is required; the acts listed in article II must be done with the intent to destroy the group as such in whole or in part, the part targeted must be significant enough to have an impact on the group as a whole.

The words *"as such"* emphasize that intent to destroy the protected group. The Court observes that the essence of the intent is to destroy the protected group, this group must have particular positive characteristics − national, ethnical, racial or religious − and not the lack of them; for the purposes of article II, the intent must be to destroy at least a substantial part of the particular group; it is also widely accepted that genocide maybe found to have been committed where the intent is to destroy the group within a geographically limited area[82].

---

[81] The U.N. Convention on the prevention and punishment of the crime of genocide, 9th December 1948,

[82] Ibid.

Ethnic cleansing can only be a form of genocide within the meaning of the Convention if it corresponds to or falls within one of the categories of cats prohibited by article II of the Convention.

Neither the intent, as a matter of policy, to render an area "ethnically homogeneous", nor the operations that may be carried out to implement such policy, can as such be designated as genocide.

However, ethnic cleansing might constitute genocide if the acts carries are such as to be characterized as deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, provided that such action is carried out with the necessary specific intent, that is to say with a view to the destruction of the group, as distinct from its removal from the region.

Another important element looking at the "intent" it is the standard of proof of this intent that the international community needs in order to declare that the acts committed within a specific area are genocide and that the state apparatus was aware of them. The specific intent to destroy the group in whole or in part has to be convincingly demonstrated to exist; and for a pattern of conduct to be accepted as evidence of its existence it would have to be such that it could only point to the existence of such an intent[83].

---

[83] Application of the Convention on the Prevention and Punishment of the Crime of Genocide", Bosnia and Herzegovina v. Serbia and Montenegro judgment of 26th February 2007

2.2 The prevention of Genocide

To prevent genocide and genocidal conflicts, it is critically important to understand their root causes; while conflict has many causes, genocide conflict is identity-based; in fact genocide and related atrocities tend to occur in societies with diverse national, racial, ethnic or religious groups that are locked in identity-related conflicts.

It is not simply differences in identity, whether real or perceived, that generate conflict, but the implication of those differences in terms of access to power and wealth, services and resources, employment, development opportunities, citizenship and the enjoyment of fundamental rights and freedoms. These conflicts are fomented by discrimination, hate speech inciting violence and other violations of human rights.

Genocide often takes place during situations of armed conflict, although this need not be the case. In the past, genocide has often been planned meticulously and deliberately; prior to undertaking genocidal action, its instigators have propagated messages of intolerance and hatred that served to set the grounds for violence; parts of the population have been identified as terrorists, secessionists or criminals that endanger national security and the well-being of a nation.

These campaigns have tended to classify, identify, symbolize and dehumanize a particular national, ethnic, racial or religious group prior to organizing a campaign of aggression against it. The groups targeted for genocidal action are most often described as unpatriotic or on the margins of the social body.

In the literature on conflict prevention that is also the base for the genocide prevention a consensus has been reached on the fact that *"preventive action plans should be based on existing case studies"* and should derive on *"the generalization of the lessons learned"* (see A. Ackermann, 2003).[84]

Several conflict prevention's experts have drawn the conclusion that, in order to be effective, conflict prevention, should not only be country-context specific, but also it requires *"the adoption of timely, multilateral, and coordinated preventive measures, supported by a lead actor, by major international donors and by a domestic capacity for conflict regulation. These preventive measures should support indigenous capacities for long-term prevention and should be sensitive to those structural factors that make a country more conflict prone"* (see A. Ackermann, 2003). [85]

---

[84] A. Ackermann, "The idea and practice of conflict prevention", Journal of peace research, pp.339-347, (2003)

[85] Ibid.

According to Ackermann the main problems addressed by the literature on the subject of conflict prevention are:
- the feasibility, legality, effectiveness and institutionalization of conflict prevention practice,
- how to integrate measures aimed at the prevention of armed conflicts in the long-term development assistance post-conflict programs,
- how international, regional, sub-regional, non-governmental organizations and development agencies may facilitate the implementation of conflict prevention practice,
- what is the scope of conflict prevention,
- what is the role played by conflict analysis and early warning in conflict prevention,
- how it is possible to enhance the institutionalization of conflict prevention.

On a large scale, in the case of nations and states, how can ethnic, economic, territorial or political rivalry between sectors of the society or groups be managed so that no side resorts to violence and all agree to channel and resolve their differences more constructively? No matter how poor or oppressed a society is, or how provocative and manipulative political leaders may be, communal violence does nor erupt suddenly. Inevitably, it is the manifestation of accumulated aggression and hostility.

In order to prevent violence, it is necessary to address the hostile mistrust and belligerence before it reaches a point where each side believes that violence is their only recourse. The goal of prevention is to create a situation in which differences and conflicts can be addressed in a non-violent and constructive manner.

Preventing conflict between states has been a central aim of the United Nations (U.N.) since the end of the World War II. The U.N. Charter, however, does not extend deeply into situations of civil war. With the end of the Cold War, and in the light of the war in the Balkans, the genocide in Rwanda and other interstate conflicts, the international community has become increasingly involved in addressing internal conflicts.

While no one suggest that preventing war or promoting peace is easy, there is nonetheless a growing consensus that violent conflict is not and should not be considered inevitable. The challenge, however, is not a lack of information or knowledge about a brewing conflict or at least this does not seem to be the major problem. The challenge is the lack of political will on the part of the national leaders and the international community to proactively seek to diffuse and resolve a situation before it escalates into violence.

We can typing the prevention in many ways for example we can divide it in:

- Operational prevention or direct prevention: the prevention that measures to address immediate crises (e.g. sending high-level diplomatic missions to mediate between parties, using economic tools such as sanctions, inducements, or collecting weapons and demobilizing fighting units), and employing forceful measures such as deploying peacekeepers to a region(see A. Ackermann, 2003; A. Bellamy, 2008)[86].
- Structural prevention or root causes prevention: that address root causes such as poverty, political repressions and uneven distribution of resources, which can, if left unattended, escalate into violence(see A. Bellamy, 2008)[87].

Long term prevention includes efforts to reduce poverty and achieve broad-based economic growth that are socio-economic indicators that may be also taken into consideration in combination with the access to education and health care to the all population and general respect for minority rights when we talk about genocide prevention early warning signs.

Although the goals are the same, operational versus structural prevention are radically different, with one focusing on short-term and targeted approaches, while the other requires a long term and more comprehensive approach.

The civil society in general have been more active in structural prevention, typically through promoting development, the rule of law, human rights and poverty alleviation.

However, at the local level such groups can and are increasingly becoming more involved in taking non-violent action in response to crises, and are themselves engaging in mediation efforts. In practice the international community has focused its work on conflict prevention at two points in a typical conflict's life cycle:

1. Where violence has already erupted, but there is a possibility of preventing its escalation. For example, in 2004, following strong condemnation from the media, NGOs and human rights groups, the U.S. and the U.N. have taken steps warning the Sudanese government to stop genocide in the Darfur region;

2. Where conflict has recently ended, but peace is still fragile and thus the emergence of violence is a distinct possibility. In such cases the international often sends peacekeepers to bring some security and enable the political structures to gain strength, such as deployments of U.N. peacekeepers to Haiti and to Liberia in 2004.

---

[86] A. Ackermann, "The idea and practice of conflict prevention", Journal of peace research, pp.339-347, (2003), A. Bellamy, "conflict prevention and the responsibility to protect", Global Governance n.2 (April-June, 2008) pp.135-156

[87] A. Bellamy, "conflict prevention and the responsibility to protect", Global Governance n.2 (April-June, 2008) pp.135-156

There have been fewer "observable" instances of conflicts prevention before the outbreak of a conflict, as it is difficult to trace why war or violence did not occur. Moreover, often the measures taken are diplomatic and confidential in nature.

A noted example of preventive action was taken in 1992 when the Organization of Security and Cooperation in Europe (OSCE) sent a "spill-over mission" to Macedonia with the goal of preventing the spreading of conflict from Serbia.[88]

In the same year the U.N. undertook its first preventive deployment mission with a dual military and civilian mandate. U.N. peacekeepers patrolled the Macedonia-Serbia borders and the civilian unit monitoring early signs of conflict, used its "good offices" in the form of preventive diplomacy to address tensions rising among ethnic groups within the country.

A number of civil society efforts were also initiated including intercommunity dialogues, promoting tolerance through radio and television programmes and democratizing the media. In general, however, preventing armed hostility and promoting the non-violent resolution of internal conflicts remain a key challenge for the international community.

In order to talk about "*Genocide per se*" we do not need the presence of a "conflict by means a conflict" but, according to the Helen Fein's words, it is sufficient the presence of "a series of purposeful actions by a perpetrator(s) (according to Barbara Harff 's work even merely political actions) to destroy a collectivity through mass or selective murders of group members and suppressing the biological and social reproduction of the collectivity". Jews had no conflict with Nazis, Armenians posed no threat to Turks, Ukrainian farmers did not fight Stalin's communist cadres, Bengalis did not try to massacre Pakistanis, Hutu intellectuals did not rise up against Tutsi army in Burundi in 1972, nor did Tutsis advocate mass murder of Hutus in Rwanda in 1994. Yet all of these groups were victims of genocide[89].

Along this line we can say that Genocide Prevention *"per se"* is a concept much narrower than the prevention of armed conflicts and there is only a partial overlapping with conflict prevention since genocide is a crime that can be "*committed either in time of peace or war*" (1948, Genocide Convention, art. 1)[90].

---

[88] OSCE Mission to Macedonia, 1992, www.osce.org, see also the "OSCE mission and other field activity structures and functions", edited by the U.S. institute of peace

[89] Nhema, Alfred G., "The quest for peace in Africa: transformations, democracy and public policy." Utrecht, Netherlands, international books, 2004

[90] U.N. Convention on the prevention and punishment of the crime of genocide, 9th December 1948,

Many reports during the last 30ty years (Whitaker, 1985; Carlsson, 1999; Brahimi, 2000)[91] have recommended creating U.N. early warning and response institutions to prevent genocide; none have been implemented since the 2004 creation of the Special Adviser on Genocide Prevention and of the Special Adviser on R2P[92].

An underlying premise of the genocide prevention is that any regime that commits genocide forfeits its legitimacy, and should be subject to the authority of international law and international intervention.

Rwanda and Bosnia should teach the world that genocide is never simply an "internal matter". Genocidal Regimes never stop their predatory murders at their own borders and always hemorrhage refugees, IDPs, asylum seekers. As R. Lemkin emphasized in his work, genocide is a crime against humanity because it permanently reduces the cultural diversity that is humanity's heritage.

One of the key question talking about genocide and prevention is: "when prevention is most effective?" These are examples of situations in which international preventive actions should come to play at the earliest possible stage.

Some political mass murders occur after a new minority-based or ideologically-driven elite consolidates power (for example Burundi, 1965 and Chile, 1973-74). Diplomacy cannot prevent such elites from taking power, but once in office diplomatic and political pressures need very quickly to be brought to ear to discourage new elites from targeting their rivals for elimination.

The instruments are both positive and negative. On the positive side, international assistance and security guarantees should be extended to new elites that seek to reach accommodation with their rivals. On the negative side, major powers and international organizations can make credible threats of loss of recognition, international loans, assistance, trade and investments if they commit serious human rights violations.

The second point of intervention is in the early stages of internal (revolutionary or ethnic) warfare. We know that the longer civil wars last, the greater the risks that the parties to conflict – especially but not only the government – will resort to genocidal violence to eliminate their opponents' supporters.

The same kinds of diplomatic, political and economic instruments need to be brought to bear near the onset of armed conflict, but in this circumstances focused on rebels as well as governments. Both sides are likely to need inducements and the

---

[91] B. Whitaker, "revised and updated report on the question of the prevention and punishment of the crime of genocide, 2nd July 1985, U.N. Economic and Social Council Commission on Human rights E/CN4/Sub.2/1985/6, www.preventivegenocide.org.I. Carlsson,H. Sung-Too, M. Kupolati, Report presented on 15th December 1999 to the GA, www.un.org; L. Brahimi Report of the panel on U.N. peacekeeping operations, published on 17th august 2000,

[92] Office of the Special Adviser on the Prevention of Genocide, www.un.org

threat of loss international support to reach ceasefires and negotiate their differences. Both sides are also likely to need security guarantee and promises of long-term economic assistance to reach and implement settlements.

There are many case and comparative studies of international stratagems that can help de-escalate civil wars and get participants to negotiate binding agreements.

The third point of intervention is in response to the onset mass killings. Late stage intervention uses the diplomatic and political techniques of early prevention but, to be effective, usually requires robust peace-keeping and sometimes peace-making operations.

This is both the most common and least desirable option because it is costly and reflects failures for early action.

The tragedy of late-stage "preventive action" is that its techniques are mostly familiar to international policy makers – in the U.N. Security Council, the European Union, the major powers – who have failed to engage in a concerned way until after months or years of deadly conflicts. Late-stage intervention in Sudan's genocidal North-South war of 1983/2002 and the Angolan civil war of 1975/2002 both come to mind – international efforts contributed to the peace processes nut only after hundreds of thousands of civilians – in Sudan millions – died unnecessary[93].

On 9 August 2010, the Secretary General addressed an informal interactive General Assembly Dialogue on "Early Warning, assessment and responsibility to protect" as part of the General Assembly continued consideration of the emerging concept.

The Secretary General's Report (A/64/864)[94] on the issue highlights existing early warning and assessment mechanisms within the U.N.'s ability to use available early warning information effectively, including information from field operations, and to improve early, flexible and balanced responses where there is a risk of the genocide, crimes against humanity, war crimes or ethnic cleansing.

In this analysis it appears clear the role of prevention as a process, and so are the conflicts that may lead to genocidal violence. We cannot say that a genocide or mass political killing has been prevented, because we can never know certain whether targeted violence aimed at eliminating an ethnic, religious or political group would have occurred in the absence of preventive actions. But we can say that some

[93] Nhema, Alfred G., "The quest for peace in Africa: transformations, democracy and public policy." Utrecht, Netherlands, international books, 2004

[94] K. Annan Report during the interactive GA Dialogue on Early Warning, assessment and responsibility to protect, (2010), www.un.org

combination of international actions mitigated the conditions that elsewhere have led to genocide.

Multilateral engagement in potentially genocidal situations is more credible than unilateral action, effective engagement requires an integrated strategy covering political, economic, and military modalities; interveners need to be ready to employ economic as well as diplomatic incentives and sanctions. NGOs' should play a substantial role within this process in fact, political engagement is needed with all parties to conflict, not just regimes, however unpalatable some of them may be.

Long-term international engagement is needed, first to get contenders to reach negotiated settlements, second to carry through with the security guarantee, political support, and economic assistance that keep them from reneging on agreements as in Macedonia.

Neither scholars nor practitioners have a solid knowledge base about which strategies, employed by whom, are most likely to be effective in any given situations. We should begin with established knowledge about pre-conditions of genocidal violence; violent political conflict or forceful overthrow of an existing government or both almost invariably have preceded past episodes of genocidal violence.

These pre-conditions are mentioned within the U.N. framework prepared by the Office of the U.N. Special Adviser on Genocide Prevention and, in different ways, by many scholars. One of the most prominent scholar on early warning signs for conflicts and genocides prevention is Barbara Harff that identifies five other pre-existing conditions which, in varying combinations, have led to most cases of genocide and politicide since 1955, these are[95]:

1. Elite commitment to an exclusionary ideology

2. Ethnically polarized elites

3. State-led discrimination against one or more minorities

4. Autocratic political systems

5. Low levels of interconnectedness with the world system

I believe that the greater the number of these conditions in combination with the ones of the Special Adviser framework present in a country undergoing severe instability, the more likely a threatened regime (or, in a civil war situation, its

---

[95] B. Harff, "No Lessons Learned from the Holocaust? Assessing Risks of Genocide and Political Mass Murder since 1955." *American Political Science Review* 97.1 (Feb 2003) pp.57-73. See also B. Harff, "Systematic Early Warning of Humanitarian Emergencies." *Journal of Peace Research* 35.5 (Sept. 1998)pp.551-579.

opponents) will target real or perceived enemies for elimination as we will see in the next chapter on early warning mechanisms.

2.3 Preventive Diplomacy

Effective genocide prevention measures (same for effective conflict prevention measures) require coordination and collaboration between various entities, including international and regional organization both, NGOS and Governmental Organizations. In fact, in many cases sub-regional, national and local actors gave a significant contribution for the prevention issue as such. Lessons drawn from conflict prevention efforts indicate that building the capacities of a society to manage and address conflict peacefully requires at least:

- A high degree of inclusiveness and participation of all sectors of society in dialogue as well as peace-building;

- A high degree of local ownership of conflict prevention strategies and initiatives; and

- The strengthening of democratic institutions and empowerment of local actors through continuous consultation, assistance and training.

To attain these goals, first and foremost it is important to have a thorough understanding of the factors, actors and conditions exacerbating conflict. NGOs, academics, policy-makers and practitioners have developed a series of approaches to improve understanding of conflict, including analyses, development of indicators and possible scenarios to help identify the actions hat need to be taken.

Moreover, by using the tools developed internationally, local actors are often best placed to improve them and develop responses suited to their region and cultural context.

Before going deeper on the indicators issue that is a topic strictly related to early warning assessment it is important to analyze the role that the "preventive diplomacy" could play within the responsibility to protect doctrine and on the genocide prevention issue. These approaches may reduce the spread of violence, but they are usually applied once the threat is clear and present.

In plain language, preventive diplomacy refers to diplomatic action taken to prevent disputes from escalating into conflicts and to limit the spread of conflicts when they occur. While it is conducted in different forms and situations, both public and private, the most common expression of preventive diplomacy is found in the work of diplomatic envoys dispatched to crisis areas to encourage dialogue, compromise and the peaceful resolution of tensions. Preventive diplomacy within the U.N. system can also encompass the involvement of the Security Council, the Secretary-General and other actors to discourage the use of violence at critical moments.

The key to preventive diplomacy is to respond to the warning signs before they ignite. The challenge is to prevent rather than manage an unstable situation, if that fails, one moves on to crisis management; in fact preventive diplomacy is a conceptual and analytical framework, which flourished in the search for an alternative security paradigm with the end of the Cold War and then evolved to deal with current international issues and intra-state crises.

In this evolution a relevant step forward the implementation of the preventive diplomacy approach has been given by the birth and development of the R2P concept and, practically, by the failures of the international community reaction facing with genocide (i.e. Rwanda and Former Yugoslavia) and gross violations of human rights.[96]

Preventive Diplomacy is a proactive rather than reactive policy designed to realize international peace and security and resembles traditional diplomatic practice and uses a similar repertoire of conflict management and policy tools.

Its toolbox, according with the 2011 U.N. Secretary General's Report on "Preventive Diplomacy: delivering results"[97] includes official and informal negotiations, conflict mediation, humanitarian assistance for sustainable development, and early warning, confidence building, and preventive deployment measures.

Dag Hammarskjöld, the fifth United Nations Secretary-General was the first that articulated the concept of preventive diplomacy within the U.N. system half a century ago. It has since evolved in response to new challenges and is increasingly applied by the United Nations, its Member States and partner organizations around the globe.

In developing this concept Hammarskjöld regarded the UN as a mechanism that empowered nation states and governments to implement anticipatory action, or preventive diplomacy, before crises could escalate into full-blown conflicts (Settel, 1966)[98].

The concept of preventive diplomacy began to take shape after Hammarskjöld's death, but was buried by the Cold War until Boutros-Ghali and Annan brought it out into the open forty years later (B. Urquhart, 1972).[99]

---

[96] Steiner, B. H. (2004). "Collective preventive diplomacy, a study in international conflict management". Albany, New York: University of New York Press

[97] U.N. Secretary General Report: "Preventive diplomacy: delivering results", S/2011/552, 26th August 2011

[98] T.S. Settel, "the light nadh the rock, the vision of D. Hammarskjold. New York, Dutton & co. (1966)

[99] B. Urquhart, "Hammarskjold", ed. Knopf; NY 1972

In fact, at the end of the Cold War, Boutros-Ghali, the sixth United Nations Secretary- General (1992-1996) and the first candidate elected from Africa, further developed Hammarskjöld's concept of preventive diplomacy. In his 1992 *Agenda for Peace*, Boutros-Ghali gave particular attention to preventive diplomacy as a peaceful means of conflict prevention by foresight.[100]

I think that the most exhaustive definition of preventive diplomacy used today comes from his works: *Preventive diplomacy is action to prevent disputes from arising between parties, to preventing existing disputes from escalating into conflicts and to limit the spread of the latter when they occur* ("Agenda for Peace", Chapter III, para. 20,1992)[101].

B. Boutros-Ghali (1992 & 1995) furthered Hammarskjöld's model of preventive diplomacy by outlining three elements central to managing armed conflict:

1) early warning,
2) confidence building measures,
3) preventive deployment.

Early warning involves the observation and collection of factual evidence and intelligence on emerging and developing crises. It is, to quote Ben Franklin words: "*an ounce of prevention is worth a pound of cure*"
Confidence-building measures are actions taken to show good faith in order to reduce the likelihood of conflict between peoples.
Preventive deployment involves the use of military force in areas of crisis or emerging conflict at the request of the parties involved[102].

Kofi Annan, the seventh United Nations Secretary-General who served from 1997-2006 and the second candidate elected from Africa, built upon his predecessor's definition of preventive diplomacy along the line of a new international architecture of "inter-ethnic trust – social harmony – silent diplomacy"[103].

In his 1999 *Annual Report on the Work of the Organization*, Annan emphasized the rising global challenges of preventing conflict and natural disaster. Annan

---

[100] B. Butros Ghali, "An Agenda for Peace, 17th august 2000,

[101] Ibid.

[102] Ibid.

[103] Ibid.

stressed the importance of shifting from a culture of reaction to a culture of prevention was essential for reducing the burden of wars and disasters [104].

The particularly devastating conflicts in Rwanda, Kosovo, and Darfur challenged the use of preventive diplomacy and prompted the phrase *preventive action* to be added to future peace discourse, which illustrated the multiple components involved, i.e., preventive disarmament, preventive deployment, humanitarian assistance, preventive development, etc. (Annan 2002)[105].

As I said genocide prevention like conflict prevention is a broad field, involving a wide range of entities focusing on political, development and human rights concerns, among others. Preventive diplomacy, however, represents a narrower set of activities specifically involving the timely use of diplomatic action to prevent the outbreak and spread of hostilities.

In trying to make the concept of *preventive diplomacy* concrete within the U.N. policy the Department of Political Affairs (DPA) is the principal support structure for the secretary General efforts according to article 99 of the Charter into bring to the attention of the Security Council any matter which, in his opinion, may threaten the maintenance of international peace and security.

The DPA is in charge of providing conflict analysis, planning and supporting the work of peace envoys and overseeing more than a dozen field-based political missions that serve as key platforms for preventive diplomacy. Of these missions, regional offices covering Central Africa, West Africa and Central Asia have explicit mandates for preventive diplomacy and strengthening the capacity of states and regional actors to manage sources of tension peacefully.

There are a number of cases noted according with the 2011 Report on Preventive Diplomacy[106] in which concerted preventive action by the United Nations and its partners helped to avert or contain conflict. For example:

In Sudan, preventive diplomacy was a major focus of international efforts to ensure the successful holding of the January 2011 independence referendum for Southern Sudan[107]. The Security Council was actively engaged, including through its statements and visits to the country. The Secretary-General appointed a high-level

---

[104] K.Annan, Annual Report on the work of the United Nations, 1999, www.un.org

[105] K.Annan, 2002

[106] Ibid.

panel that also encouraged actions and agreements to permit the smooth holding of the referendum.

In Guinea, from 2009-2010 the United Nations Office for West Africa (UNOWA) worked energetically to keep on track a political transition from a military coup to the country's first democratic elections since independence.

In Sierra Leone, the United Nations Integrated Peace-building Office (UNIPSIL) helped prevent the potential escalation of violence following tensions between the governing and opposition parties in 2009.

In Iraq, the United Nations political mission (UNAMI) has facilitated peaceful dialogue over Kirkuk and other disputed internal territories, and assisted in smoothing the path to elections in 2009 and 2010.

In Kenya, following the outbreak of post-electoral violence in 2008, the United Nations quietly provided strong support to the African Union-led mediation efforts that succeeded in stopping the violence and resolving the political-electoral conflict through negotiations.

In Kyrgyzstan, the United Nations Centre for Preventive Diplomacy for Central Asia (UNRCCA) worked closely with key governments and regional organizations such as the OSCE to encourage an end to the 2010 inter-ethnic violence and a return to constitutional order. The office is also encouraging agreements on the peaceful sharing of water resources in the region.

In the Democratic Republic of the Congo (DRC), the timely dispatch of an envoy of the Secretary-General in autumn 2008 helped to quell unrest and ease tensions between Rwanda and the DRC that might have deteriorated into renewed regional war.

Having said that it is clear that preventive diplomacy is possible, complicated, and necessary, the realistic question is not whether or not to get involved, but when and how. As challenging as the implementation of preventive diplomacy can be, the onset of mass death and destruction transforms the nature of violent conflict in ways that make organizational cooperation and swift resolution essential at any cost. It is highly unlikely that violent conflict will ever be eliminated from society, but preventive diplomacy decreases the chances that it will continue to grow.

Effective diplomacy requires trust; if that trust is eroded, people may harden their positions and may be reluctant to pursue dialogue. That is why third party involvement can be crucial. Reducing tensions requires patience and persistence, one most constantly follow-up in a constructive step-by-step way in order to keep the

momentum heading in the right direction. Even when other crises erupt and dominate the agenda of the day one cannot abandon important projects and processes which require long-term engagement. Otherwise we would merely step from one crisis to the next trying to put out fires.

In this way, one can reduce immediate tensions and build inter-ethnic trust and social harmony, it is a major asset for the international organizations to be able to draw upon outstanding in-house expertise with regard to constitutional and human rights law. It is not unusual that Governments frequently and gratefully accept offers to receive assistance in drafting language for legislative with a bearing on the majority situation in their country.

The job of the international community should be to facilitate this process if necessary, to intervene if it goes off the rails, and to provide support and expertise to ensure that short term good intensions develop into long term results. This requires co-operation and co-ordination; different organizations- inter-governmental and non-governmental) have different strengths and capacities. It is essential to bring the right expertise and resources to bear in the most effective way.

Sometimes a situation requires legal advice, or the expertise of education or language specialists; other times it may require trainers to help with capacity-building or providing public servants with new approaches and skills; at times, preventing a conflict or genocide may require the creation of new mechanisms or bodies or reforming the media in order to give minorities voice; it may require monitoring of a volatile situation, or providing funding to tension-reducing projects.

Recalling the Hammarskjold's principles of preventive diplomacy:

- Individuals, communities and countries should have a disaster preparedness plan and cooperate toward the common goal of international peace and stability;

- Missed opportunities are learning opportunities for studying factors that contributed to past failures of preventive diplomacy

- Following the word of the former Secretary General Annan in his Memorial Conference for Rwanda: *"The silence that has greeted genocide in the past must be replaced by a global clamour…"* (2004)[108].

I think that the keys to increasingly successful the use of preventive diplomacy over the coming five years are first of all early warning on emerging crises has improved, we need to better anticipate "threshold" moments when latent conflicts may erupt and reduce the time lapsed between warning and action. Even seemingly small actions and signals sent by the international community such as statements and

---

[108] K. Annan, Geneva speech during the 10th Anniversary Ceremony for the 1994 genocide in Rwanda, www.un.org

the dispatch of a fact-finding mission to the field can have an important effect on the calculations of key actors in conflict.

Second, by strengthening partnerships particularly with international organizations, regional organizations, civil society and independent groups active in preventive diplomacy; deepening these relationships will allow for greater coordination and rapid reaction as crisis breaks.

Third, by ensuring sustainability, in fact timely diplomatic interventions may succeed in forestalling crises for the moment, but ensuring that political agreements last requires follow-through and the building of national mechanisms to sustain them.

More progress is required in expanding and training in particular the U.N. pool of skilled envoys and support staff, and in proving them with top-notch expertise such as that made available through the DPA-managed

Along this line and taking into account that many times the issue of genocide prevention is embedded within this informal negotiations, it is interesting to mention that the U.N. Secretary General appointed in the fall of 2008 a Special envoy for the Great Lakes (the former Nigerian President, General Olusegun Obasanjo) with regards to the growing tension and the widespread fear that the Democratic Republic of Congo would again become the theatre of regional war.

With backstopping from Headquarters and in close consultation with the United Nations peacekeeping operation on the ground, the Special Envoy engaged in intense shuttle diplomacy in search of a negotiated peace in the eastern Democratic Republic of the Congo. Collaborating with the International Conference on the Great Lakes Region that is a non-governmental entity specialized on genocide prevention within the region.

By March 2009, the talks had led to a set of agreements foreseeing the demobilization and disarmament of rebel groups and measures to address their underlying grievances. With ongoing engagement by the Special Envoy to monitor progress, the bulk of the commitments were implemented within less than a year.

In late 2009, Presidents Kagame and Kabila met for the first time in many years, and shortly thereafter Rwanda and the Democratic Republic of the Congo resumed formal diplomatic relations. While the situation in the eastern Democratic Republic of the Congo remains serious in terms of generalized insecurity and humanitarian suffering, renewed regional war was averted and a concrete cooperation with the regional actors has been settled up.

2.4 The role of the U.N. Special Advisers on Genocide Prevention and Responsibility to Protect (the OSAPG Office)

As mentioned previously the idea of creating a special Office for the prevention of genocide it is part of the U.N. reform process started during the 60th session of the General Assembly. In April 2004, the U.N. Secretary General outlined a five-point action plan to prevent genocide[109]. This plan foresees:

1. Preventing armed conflict, which usually provides the context for genocide;

2. Protecting civilians in armed conflicts including through specific mandates for U.N. peacekeeping missions;

3. Ending impunity through judicial action in both national and international courts;

4. Gathering information for early warning and making recommendations to the Security Council on actions to prevent or halt genocide;

5. "Swift and decisive action" along a continuum of steps, including military action.

As a key element of this plan, on 12 July 2004, the Secretary General appointed Mr. Juan E. Méndez his Special Adviser for the Prevention of Genocide and, in a letter to the Security Council, attached, outlined the functions of the Special Adviser as follows:

a. Collecting existing information, in particular from within the U.N. system, on massive and serious violations of human rights and international humanitarian law of ethnic and racial origin that, if not prevented or halted might lead to genocide;

b. Act as an early-warning mechanism to the Secretary General and, through him, to the Security Council, by bringing to the latter's attention potential situations that could result in genocide;

c. Make recommendations to the Security Council, through the Secretary General, on actions to prevent or halt genocide;

d. Liaise with the U.N. system on activities for the prevention of genocide and work to enhance the U.N. capacity to analyze and manage information relating to genocide and related grimes.

In addition to the information that the Special Adviser receives from within the U.N. system, it is crucial for his Office to obtain warning signs from farther a filed.

---

[109] K.Annan, The Action plan to prevent genocide, Geneva, April 2004, www.un.org

Therefore, it would be useful if civil society organizations transmitted to the Office of the Special Adviser warning signs of growing ethnic unrest, displays of group hatred, discrimination r the ethnic, racial, national or religious dimension of human rights violations.

Though it is difficult to provide an exhaustive list of warning signs indicating the development of a situation where genocide is a risk these are some of the general signals utilize by the office for monitoring situations that may escalate in genocide or mass atrocities crimes[110]:

- The existence of a national, ethnic, racial or religious group(s) at risk: warning signs could be (a) pattern of discrimination with the purpose or effect of impairing the enjoyment of certain human rights; (b) exclusionary ideologies that purport to justify discrimination; (c) specific identification of groups and their association with a specific political identity or opinion (including possible compulsory identification or registering of group membership in a way that could potentially lead to the group being targeted in the future); and (d) demonization of groups in political or social discourse.

Violations of human rights and humanitarian law, which may become massive or serious: (a) armed conflict in which violations of international humanitarian law disproportionately affect a specific group (e.g. intentional massacre of unarmed civilians, civilian targeting during military campaigns, one-sided physical brutality). (b) Violations of civil and political rights affecting a specific group (e.g. murder particularly directed against community leaders, torture, mutilation, rape and sexual violence, abduction, population movement, ethnic cleansing, expropriation, destruction f property, looting, lack of freedom of speech, press, assembly, religion). (c) Violations of economic, social and cultural rights (e.g. destruction of subsistence food supply, denial of water or medical attention, man-made famine, redirection of aid supplies). (d) Instances of discrimination (e.g. access to work and resources, political marginalization, restricted movement, education). (e) A climate of impunity in which these events unfold.

- Additional warning signs: (a) lack of institutional framework for citizens to seek justice, redress and demand accountability; (b) concentration of power (economic-political) in one or few groups to the detriment of others; (c) existence of and support to militias that could carry out attacks against groups by proxy; (d) perceived or real external support to groups that could become targets due to being seen as "collaborators" with external enemies; (e) withdrawal of rights associated with citizenship from specific groups; (f) hate

---

[110] The Office of the Special Adviser on the Prevention of Genocide (OSAPAG),www.un.org

speech, incitement to violence, or humiliation of a group in the media; (g) forced relocations, segregation, isolation, or concentration of a group.

- A history of genocide or discrimination: A history of violence against a group may presage renewed episodes of repression or counter-movements against prior oppressors. Important elements that may indicate the weight of past experience are (a) a history of vilification or dehumanization of a group; (b) the use of symbols, flags or markings to conjure previous abuse; (c) denial of past atrocities and genocides; and (d) celebration of instances of perceived or actual abuse of a group.

This list of warning signs is by no means exhaustive; taken independently, each of the warning signs noted above may be of concern, but not necessarily in and of itself indicative of a genocidal situation[111].

The recent analysis framework prepared by the Office of the Special Adviser on the Prevention of Genocide(OSAPG) comprises eight categories of factors that the Office uses to determine whether there may be a risk of genocide in a given situation[112]. The eight categories of factors are not ranked, and the absence of information relating to one or more categories does not necessarily indicate the absence of a risk of genocide; what is significant is the cumulative effect of the factors. Where these factors are effectively addressed, no longer exist or are no longer relevant, the risk of genocide is assumed to decrease[113].

These eight categories are:

1. Inter group relations, including record of discrimination and/or other human rights violations committed against a group

2. Circumstances that affect the capacity to prevent genocide

3. Presence of illegal arms and armed elements

4. Motivation of leading actors in the state/region; acts which serve to encourage divisions between national, racial, ethnic and religious group

5. Circumstances that facilitate perpetration of genocide (dynamic factors)

6. Genocidal acts according to the U.N. Convention's definitions

---

[111] The Office of the Special Adviser on the Prevention of Genocide (OSAPAG),

[112] Ibid.

[113] Ibid.

7. Evidence of intent "to destroy in whole or in part…" such as for example hate speeches

8. Triggering factors, for instance upcoming elections ex.

This list of warning signs is presented as guidance and civil society organizations should feel free to transmit information on situations that may not neatly fit these categories.

The predictive value of these elements is most often a function of their interplay and aggregate in a given situation. Nonetheless, when a number of these warning signs are present, it would be reasonable for the Special Adviser to monitor the situation and give consideration to specific preventive measures.

The idea of creating a list of warning signs it is the base for a concrete approach to the prevention issue in fact, in terms of prevention, the critical step is to identify the factors (discriminatory practices) in a given situation that lead to /account for acute disparities in the administration of a diverse population, and to seek ways to diminish and eventually eradicate these possible causes of genocidal violence. Given that no country is perfectly homogenous, genocide is a truly global challenge[114].

Early prevention therefore becomes a challenge of good governance and equitable management of diversity. That means eliminating gross political and economic inequalities, and promoting a common sense of belonging on equal footing.

The U.N. Special Adviser on Genocide Prevention's mandate therefore complement the core mission and work of the U.N. system as a whole. Prevention requires apportioning responsibility to and promoting collaboration between concerned states and the international community.

Within the OSAPG Office assume relevance the role of the U.N. Special Adviser on R2P; in fact, at the end of 2007, Secretary General Ban Ki Moon sent a letter to the U.N. Security Council President proposing the creation of this position that has been acknowledged the same year. Although the Security Council accepted the proposal this new position met some oppositions (like the R2P doctrine as a whole) within the members states and the idea was revised first regarding the budget of the Office (the 5th committee of the G.A. that deals with budget issue a no decision on the funding to the R2P post) secondly in merging the office within the Office of the Special Adviser on Genocide Prevention[115].

---

[114] The Office of the Special Adviser on the prevention of Genocide,

[115] Ibid.

The mandate the Special Adviser on R2P must develop this doctrine described as normative rather than operational. His duties, inter alia, are developing clarity and building consensus for the concept of the Responsibility to Protect:*"to assist the GA to continue consideration of this crucial issue"*[116].

The two Special Advisers have distinct but closely related responsibilities in terms of prevention, for this reason and because of the above mentioned G.A. 5th Committee decision, in order to save resources and maximize effectiveness, the Secretary-General institutionalized the collaboration between the Special Advisers. As far as possible, the two Advisors share a common methodology for early warning, assessment, convening, learning, and advocacy, as well as a common office and staff.

Although the recent event in north Africa, have changed somehow the international community's perception on R2P and even if the U.N. Security Council adopted in 2011 three resolutions recalling clearly to the R2P concept (S/res/1973; S/res/1970; S/res/2009) the role of this SA appears still in a secondary stage in comparison with the role of the Special Adviser on Genocide Prevention[117].

The vagueness of the R2P concept and the difficulties in implemented the doctrine at international level it is probably one of the reason why the Secretary General issued the above mentioned Report on preventive diplomacy on 2011 trying to implement the prevention issue looking at the problems from another point of view.

The duty to prevent and halt genocide and mass atrocities lies first foremost with the state, but the international community has a role that cannot be blocked by the invocation of sovereignty. Sovereignty as we saw in chapter I no longer exclusively protects states from foreign interference; it is a charge of responsibility where states are accountable for the welfare of their people. This principle is enshrined in article 1 of the Genocide Convention and embodied in the principle "sovereignty as responsibility" and in the concept of R2P.

The international community has a responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes. If a state is manifestly failing to protect its populations, the international community must be prepared to take collective action to protect populations, in accordance with the U.N. Charter.

All these theoretical concepts fails in front of the recent U.N. draft Resolution on the Syria situation S/2012/538/Rev.2[118] and the U.N. press release that followed

---

[116]Ibid.

[117]Ibid.

[118] Security Council/10714, Meeting 6810th 2012,19th July 2012, Department of Public Information, news and media division,

the failure of its adoption[119] which show that even if the U.N. and the international Community seems to have all the necessary instruments for facing such type of political and humanitarian crisis the unwillingness of few super-power States make impossible to intervene concretely even if the early warning signals are strong, clear and incontrovertible.

---

[119] Security Council/10714, Meeting 6810th 2012,19th July 2012, Department of Public Information, news and media division, www.un.org

Chapter III

The Early Warning for Genocide Prevention

3.1 Historic Background

Early warning is universally accepted to be one of the pillars of effective prevention of genocide. The obligation to prevent genocide, therefore, implies the need for an effective early warning capacity. Most analysts have judged current risk assessment and early warning practices to be adequate, if imperfect, pointing to other factors in explaining failures to prevent mass atrocities. Several departments within the UN Secretariat currently had responsibilities for early warning; inter alia, the U.N. Department of Political Affairs (DPA), has "primary responsibility" within the UN Secretariat for preventive action and peacemaking. This includes a mandate "to identify potential or actual conflicts in whose resolution the United Nations could play a useful role"[120].

One of the earlier and most ambitious early warning systems established within the U.N. was the Humanitarian Early Warning System (HEWS) of the Officer for the Coordination of Humanitarian Affairs (OCHA, formerly called the Department for Humanitarian Affairs or DHA)[121]. It still involves a few (three or four) professional staff and a significant computerized capacity, the system incorporates a multitude of indicators and information sources (statistical and textual) to allow monitoring of deterioration in over 100 nations.

However, over its first few years, the system has yet to produce a single "early warning" of armed conflict, though it has been operational since July 1995. The initial efforts were deficient in that too much reliance was placed on statistics, computer databases and automated computations for pattern recognition and neural networks, without linking this to more practical human analysis. In colloquial terms, HEWS relied too much on a "black box" approach but a more "hands on" proactive approach, guided

---

[120] "The Humanitarian Early Warning System: from concept to practice" Ahmed A., Kassinis E.V. (1998)in J. L. Davies and T.R. Gurr (eds.)

[121] "Defining Humanitarian Early Warning", Adelman H. and Schmeidl S., in Early Warning and Early Response, Columbian International Affairs Online (1998)

by human experience, intuition and curiosity is currently being taking, involving field trips and detailed reporting.

An indication of the growing interest and commitment to earl warning during the 90's is the long term project to create an enduring institutional capacity for early warning and prevention that begun in 1998 under DPA, called "Early Warning and Preventive Measures: Building UN Capacity"[122]. It features a training program at the UN Staff College in Turin, Italy, where some two hundred staff members from two dozen UN agencies, departments, offices, funds and programs have taken courses to develop their skills in identifying the causes and stages of conflict, structuring early warning analysis, and considering and coordinating a range of preventive measures.

The six regional divisions within DPA are each charged with identifying "potential crisis areas and providing *early warning* to the Secretary-General on developments and situations affecting peace and security." In 1998 a Prevention Team was established within DPA to review each month selected cases that might necessitate preventive measures. For this purpose each of the division produces prevention papers, with cases to consider. From the genocide prevention point of view the mentioned 2004 establishment of the Office of the Special Adviser on the Prevention of Genocide (OSAPG) made an important step forward the unification of the early warning fuel of information coming into the U.N. with regard this specific topic.

The former United Nations Secretary-General Kofi Annan made strengthening the UN's ability to provide early warning (EW) a major part of his proposals and initiatives regarding the prevention of genocide. In January 2004, he observed in his keynote speech at the Stockholm International Forum on Preventing Genocide: Threats and Responsibilities, "At the United Nations there are still conspicuous gaps in our capacity to give early warning of genocide or comparable crimes, and to analyse or manage the information that we do receive".

He later identified "early and clear warning" as one of the five headings of his Action Plan to Prevent Genocide, which he described in a speech to the Commission on Human Rights in April 2004[123]. The former Secretary-General Annan made EW a central part of the mandate of the Special Adviser on the Prevention of Genocide; in

---

[122] Ibid.

[123] Ibid.

fact he described the Special Adviser mandate in a letter to the president of the UN Security Council, as: "(...) a mechanism of early warning to the Secretary-General, and through him to the Security Council, by bringing to their attention potential situations that could result in genocide"[124].

Thus, unlike EW for armed conflict and other calamities with the creation of this Office whit in the U.N. a single focal point exists with explicit responsibility to provide EW of potential genocide. The current UN Secretary-General, Ban Ki-Moon, appointed recently a new Special Adviser, Mr. Adama Dieng, a Senegalese legal expert that was working at the International Criminal Tribunal for Rwanda, after the end of the mandate of Mr. Francis Deng and of the Special Adviser on R2P Mr. Ed. Luck. The new Special Adviser appointed will be forced to grapple with his EW mandate and with the need to combine the prevention with the R2P issue.

---

[124] Ibid.

3.2   EW definition for Genocide Prevention

Given this context, it is important to consider how EW should be conceived, how current methods of assessing genocide risk perform, and what challenges remain starting from the definition of EW and moving on to its implementation. Defining EW and its principal elements is a crucial step in trying to make it useful for preventive measures, in fact there is no universally accepted definition of EW for genocide; generally speaking an EW function is defined as: the collection, analysis and communication of information about escalatory developments in situations that could potentially lead to genocide, crimes against humanity or massive and serious war crimes, far enough in advance for relevant organs to take timely and effective preventive measures[125].

This definition identifies not only information collection and analysis, but also communication of information as a core EW activity. It also suggests that the EW communications should concern situations that show signs of escalation toward genocide or other massive and similarly grave crimes. Lastly, it indicates that EW communications must be early enough to facilitate effective prevention, not just mitigation. Each of these aspects is discussed further below.

This demanding set of tasks entails three distinct but interrelated activities: the Periodic global risk assessment (to generate a watch list); any EW function with a global mandate must use some procedure, formal or informal, to identify a manageable number of situations of concern to track closely. Sometimes referred to as long-term or structural risk assessment, these methods aim to estimate the relative risk of states (or other polities) based on slowly changing attributes. It serves two main purposes: (1) identifying high-risk situations for intensive monitoring, and (2) providing context for subsequent analysis of ongoing events[126].

Given that the capacity of most warning offices is quite limited and it is extremely important to adopt a strategy to narrow the range of situations to be closely monitored. Whether or not an explicit strategy based on risk factors is used, this kind of narrowing or adopting of a "watch list" amounts to risk assessment like

---

[125] "The Humanitarian Early Warning System: from concept to practice", Davies J.L. and T.R. Gurr (eds)

[126] "Preventing Genocide: A Blueprint for U.S. Policymakers", Albright M.,& Cohen W. (co-chairs), U.S. Genocide Prevention Task Force (2008).

has be done by the Office of the Special Adviser on the Prevention of Genocide. In fact risk assessment screens some situations into more detailed monitoring and many more situations out, it is the key stage in directing the bulk of a warning office's analytic resources. It is thus extremely important to strive for the most accurate ways of estimating risk of genocide. Long-term risk assessments hold value, as well, by helping warning analysts interpret ongoing events in a particular situation[127].

Research to date in stills more confidence in estimates of long-term risk based on structural risk factors than short-term risk based on hypothesized "accelerators" and "triggers." Thus, even if resources for intensive monitoring were unlimited, the results of structural risk assessments should inform final judgments about early warning e.g. when there are significant uncertainties about events developing in a state that bears many long-term risk factors, a warning analyst should err on the side of caution, whereas the same pattern of events in a country with few or no known structural risk factors should cause less concern.

In considering what type of risk assessment strategy to employ, a warning function should seek a balance of three attributes: (1) accuracy in estimating the risk of genocide and related crimes, (2) efficiency/feasibility of using the methods in question, and (3) perceived legitimacy of the process by key stakeholders. Accuracy is certainly the most important attribute, but the process must not be overly burdensome. Plus, because the resulting watch list is to be used to guide subsequent monitoring, the extent to which it is perceived to result from a fair and accurate process, free of bias and political manipulation, the easier it will be to pursue an investigation of each situation[128].

The second activity entails the ongoing situation monitoring (to generate warnings): Early warning for effective preventive action requires far more detailed and fine-grained information and analysis than is produced by structural/long-term risk assessments. Judging when a situation is escalating toward genocide or related crimes "requires the systematic, close to real-time monitoring of potential crisis situations identified in risk assessments"[129].

---

[127] Ibid.

[128] "The Effect of Cognitive Biases on Early Warning", Woocher L. (2008), paper presented at the International Studies Association Annual Convention, 29th March 2008, Washington D.C., Center for Conflict Analysis and Prevention, United States Institute of Peace,

[129] Ibid.

This task is more challenging than is frequently acknowledged, scholars generally agree that our ability to anticipate impending genocide in a defined, policy-relevant timeframe is more limited than our ability to identify states at elevated risk over a period of years. According to Alex P.Schmid, "Proximate causal factors are more unique to a particular situation [and] they are more random in nature than the pre-disposing conditions"[130]. While in retrospect, instances of genocide appear to be "over-determined" and warning appears to have been plentiful and precise, one respondent warned that this reflects a natural tendency to incorporate "hindsight bias."

Though significant, these challenges are manageable because EW does not require "point prediction" but rather "reducing the very large set of possible future events to a much smaller set of plausible events"[131]. More often than not, the major contribution from an EW function will be in its framing, constructing scenarios, and identifying "possible entry points for action," rather than introducing new information or predicting a specific series of events. History indicates that one major failure in preventing genocide and related crimes has been mischaracterizing genocidal situations as civil wars or other "normal" phenomena and refusing to contemplate worst-case scenarios—a "failure of imagination," according to Samantha Power words[132].

EW communications should, therefore, describe the catastrophic but hard-to-imagine scenarios that are judged to be plausible or even likely. This does not require precise prediction of future events. According to my research's results the two core challenges of ongoing situation monitoring are: (1) obtaining, filtering and interpreting information on evolving situations, and (2) deciding when to communicate EW information to decision makers.

Writing about EW in the UN, Ted Robert Gurr summarized that "International officials are already flooded with more information than they can handle…what they

---

[130] "Thesaurus and glossary of early warning and conflict prevention terms", Shmid A. P., (1998) ed. Sanam B. Anderlini for FEWER.

[131] Ibid.

[132] "A problem from hell, America in the age of genocide" Samantha Power, ed. Harper Collins (2002)

need most are filters to guide them in screening and interpreting this information"[133]. The volume of information available to an EW analyst continues to grow rapidly. Yet, specific information that is needed for full and accurate analysis is sometimes lacking. The challenge, thus, is both to find ways to extract relevant information from extant sources efficiently and to supplement it with additional information to fill critical gaps for example concerning the character of targeted groups, motivations of leaders, extent of community mobilization for potential violence. The difficulty of deciding in what circumstances to issue any kind of EW is characterized by the twin risks of neglecting an escalating situation and of being perceived as "crying wolf" by calling attention to a situation that does not escalate toward genocide (without additional preventive actions)[134].

This demands astute political judgment, built on intimate knowledge of the specific situation on the ground as well as the positions, interests and capabilities of a host of regional and international actors. Nonetheless, a framework for guiding this complex analysis could help create a true "mechanism" for EW, rather than just another adviser. Similar to the risk assessment stage, in choosing a strategy for ongoing situation monitoring one should consider: (1) accuracy in anticipating evolving events, (2) efficiency/feasibility of using the methods, and (3) perceived legitimacy by key stakeholders. In addition, timeliness is a critical factor for this component.

The Communication of EW information (to promote preventive action) is the third relevant activity in fact the final element of an EW function is the communication of information and analyses to decision makers in political and/or operational organs. Because communicating concerns is the essence of EW, weaknesses at this end can largely negate excellent data collection and analysis. Scholarly literature on EW has consistently stressed the importance of strengthening the linkage between EW and policy actors as a means to narrow the "warning-response problem." One approach recommended by scholars is to conceive of an EW mechanism as a "client-centered decision-support system."

This would entail close communication between warning officials and decision makers, in both directions. The significant challenge of developing reliable

---

[133] "Systematic Early Warning of Humanitarian Emergency" ,Ted Robert Gurr and B. Harff, Journal of Peace and Research Vol. 35 N. 5 (1998),(551-579)

[134] Ibid.

communications of EW to promote preventive action is apparent in the first years of operations of the Office of the Special Adviser to the UN Secretary-General on the Prevention of Genocide. The Special Adviser's mandate in fact instructs him to "help the Secretary-General define the steps necessary to prevent the deterioration of existing situations into genocide." But there are numerous UN organs that seek to advise the Secretary-General on any given situation, many of which may have competing views, and most of which have greater internal bureaucratic leverage. Decision making in the UN Secretariat is typically marked by competition and compromise more than deliberation and consensus as I said in the previous chapters.

Despite the Security Council's express willingness to consider EW communications from the Secretary-General, it is highly unlikely that the Council will use information and analyses from the Secretary-General and/or his Special Adviser in a way akin to a decision- support role. When policy actors fail to see vital interests in acting on EWs, as will often be the case for the Security Council, "much more importance must be placed on developing the analysis of the information and communicating that analysis to key decision makers." One-time communications will almost never be adequate.

3.3   EW models and their application for Genocide Prevention

Defining the EW for genocide it is critically important to said something regarding the differences between the EW of genocide vs. EW of violent conflict. The basic conceptual framework that I described above applies equally to EW of violent conflict as it does to genocide or other forms of mass violence. There are, however, a number of special aspects of EW for the prevention of genocide that must be analyzed.

First of all, EW of genocide requires greater precision than EW of violent conflict, an EW system for violent conflict would almost certainly include situations likely to lead to genocide since genocide almost always occurs in the context of large-scale violent conflict. EW for the prevention of genocide would ideally foresee not just that widespread violence is likely, or likely to escalate, but that it is likely to take a particular path. Second, genocide is infamously difficult to define. After intense negotiations, the Convention on the Prevention and Punishment of the Crime of Genocide defined genocide as any of an enumerated set of acts "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such." Numerous scholars have offered their own definitions, seeking to improve on the Convention's definition for analytic purposes. Yet none has found a way to resolve completely fundamental ambiguities—e.g., related to protected groups, number of victims, kinds of harm required, and most prominently, genocidal intent.

As a result, some analysts have moved away from the concept of genocide altogether, preferring an objectively measurable category of mass killing. Increasingly, policy actors seem acknowledge that debates about whether a situation amounts to genocide or not distracts from the mobilization of effective action to prevent or halt atrocities. These difficulties with the concept of genocide as such point to unique difficulties using a strict definition of genocide to guide an EW function. In their evaluation of EW before the 1994 genocide in Rwanda, Howard Adelman and Astri Surhke wrote: The problem with the term "genocide" as a signal comes in the different implications and illustrations of the two uses of the term. The

use of the legal definition of the term in an accusatory sense arguably diminished the impact of the term in its function as a warning signal[135].

If the killing of 300 Tutsis constitutes genocide (in the legal sense), then warnings about a potential genocide signal cannot be the potential death of a few hundred more. The linking of the deaths of 300-1N people to the terms "Apocalypse" and "genocide" diminished the impact of these terms as warnings. While significant in and of itself, early warning about a legal genocide leads to very different thinking about consequences and reaction than would a clear signal of an impending genocide in the popular sense. Governments' acceptance of the principles of "responsibility to protect," and its accompanying call for an EW capacity, reinforces the notion that an EW function for genocide prevention should not be limited strictly to genocide.

As articulated in the 2005 World Summit Outcome Document mentioned above, responsibility to protect refers more broadly to "genocide, war crimes, ethnic cleansing and crimes against humanity"[136]. This suggests expanding a genocide EW mandate to include warning of situations of mass abuses that might never meet the legal definition of genocide. Politically, the responsibility to protect formulation would probably garner the most support. One adjustment to the responsibility to protect formulation is necessary for the purposes of EW: because the category of "war crimes" can include individual acts that bear little resemblance to genocide (e.g., improper use of the flag of the enemy), it is important to limit one's focus to where war crimes threaten to become "massive and serious," as referred to in the terms of reference of the UN Special Adviser.

One key implication of expanding the scope for genocide EW as suggested above would be to clearly include cases threatening to develop into mass killing of persons identified by characteristics outside of the classes granted protection in the Genocide Convention—most importantly, political groups. Mass killings of civilians based on their political identity— sometimes called "politicide"—would clearly represent crimes against humanity, though not genocide. It would also ease the analytic challenge for a genocide EW function since understanding the nature of violence (e.g. whether it is along political or ethnic lines) is frequently difficult to discern. Illustrative application of a genocide risk assessment model numerous

---

[135] "Early Warning and Prevention: The case of Rwanda", Adelman H, (1999), in Refugee Rights and Realities: Evolving International, Nicholson F. ed.
[136] www.preventgenocide.org

competing risk assessment and EW models exist for violent conflict. For genocide, the risk assessment model developed by Barbara Harff is widely recognized as the leading systematic effort[137].

Developed as an outgrowth of the US-sponsored State Failure Task Force (renamed Political Instability Task Force [PITF]), Barbara Harff created a statistical risk assessment model to explain which situations of state failure (defined as internal wars and/or regime collapse) led to genocide or politicide since 1955. Harff found six risk factors that explained with 74 percent accuracy which situations of internal war and regime collapse led to genocide or politicide between 1955 and 1997 and which did not[138].

The six risk factors are: prior genocide, magnitude of political upheaval (not including prior genocide), exclusionary ideology of ruling elite, autocracy, ethnic minority ruling elite, and low trade openness. Furthermore, Harff wrote, "When the model is applied to current information, it provides the basis for a global 'watch list' that identifies countries in which the conditions for a future episode are present"[139]. She has suggested, moreover, that without additional statistical analysis, one could conduct useful risk assessments simply by counting how many of these risk factors are exhibited by each state experiencing a major armed conflict.

Given that Harff's is still the most prominent model designed to assess risk of genocide, it is worth exploring in some detail how outputs from the model might have performed as an early warning tool over the last few years. Harff published or presented updated analyses using her risk assessment model at periods of roughly 12-18 months between late 2002 and early 2005 in the American Political Science Review, at the 2004 Stockholm International Forum, and in Peace and Conflict 2005[140].

Harff's model originated as part of a larger study of state failure and using armed conflict/state failure as a screening criterion; it "assesses the risk that a country will experience a genocide or politicide, given that it is already experiencing

---

[137] "No lessons learned from the Holocaust: Assessing the Risks of Genocide and Political Mass Murders since 1955", Harff B., (2003) American Political Science Review , 97(1)- 57-73

[138] Ibid.

[139] Ibid.

[140] Ibid.

another form of political instability." In recent analyses, Harff seems to use existence of a major armed conflict as the screening criterion and recommended to the UN Special Adviser's office to collect data on risk factors "for all states in the world that have ongoing armed conflict." Although, as I said, all models need a list of indicators and I think that limiting genocide risk assessment to states already in crisis seems sensible since virtually all episodes of genocide occur during armed conflict.

Yet, according to the Political Instability Task Force Report (PITF) Phase IV report, 18 of 39 (46%) geno- /politicides that occurred between 1955-2002 began less than one year after the onset of a state failure event, thus, the historical record suggests that an annual watch list produced using this model would miss a significant percentage of future geno-/politicides because of the short span between state failure and genocide onset[141].

For example, if Harff's risk assessment procedures were been used to produce a watch list in January 1988, it would not have included Burundi because civil conflict had not yet begun. But according to the PITF, the civil violence and the genocide began in the same month—August 1988. As one government official wrote, after analyzing Harff's risk assessment model and the case of Uzbekistan in 2005, "Although political conflict may be a required condition for a genocide or politicide to actually occur, it is inappropriate to use political conflict as a screening criterion when attempting to forewarn policymakers"[142].

In Harff's historical analysis, "all model variables are measured one year prior to the onset of geno-/politicide"; data on these risk factors, however, are rarely available without a considerable time lag. For example, Harff's published analysis conducted in February 2005, presented the data for the watch list that were drawn from 2002 for trade openness and 2003 for other variables. The period for which these data were intended to be used to estimate risk had already passed by the time needed data were available.

Harff herself suggests that "the lag structure in the data used to estimate the model may help explain why politicides in Chile in 1973 and the Philippines in 1972

---

[141] "Political Instability Task Force (PITF) phase IV Report" , www.globalpolicy.gmu.edu

[142] Forum on Early Warning and Early Response: FEWER:

were misclassified by the model"[143]. Re-estimating Harff's model using data 2-3 years prior to the beginning of historical genocidal episodes, thereby more accurately reflecting the timeframe in which data are available, could resolve this issue. Members of the PITF reported that they tested their state failure model with data available at different times before onset of an instability event.

They found "the same causal pattern emerges" whether they chose one, two or three years prior to onset. The closer to the onset, the greater accuracy the model demonstrated, but the magnitude of improvement was relatively modest (3% more cases identified accurately going from two years prior to one year prior). A similar analysis was not reported for Harff's geno-/politicide model.

Like most analysis of international political behavior, Harff's model uses the state as the primary level of analysis, this is a limitation, in particular, when considering large, diverse states that could have quite different levels of risk in different parts of the country. In addition, once a state has been identified as being at elevated risk of genocide, in some cases it will not be obvious which group is at risk. For example, according to the Minorities at Risk project, there were eight distinct politically significant minority groups in India and seven in Kenya[144].

The watch lists Harff produced in the last few years offers a striking illustration of this challenge; the atrocities committed in Darfur, Sudan, since 2003 and that I will analyze in chapter IV, did not receive any mention in Harff's lists published in 2003 or 2004; the list published in May 2005 did cite "Darfur peoples" as potential victims. The watch list presented at the Stockholm International Forum in January 2004 included Sudan, but it listed Southerners and Nuba as "possible target groups"—there was no reference to Darfur, despite the fact that violent clashes began in that region in early 2003. Highly fluid/transitional states: The cases of Iraq and Afghanistan suggest that structural models are challenged when states undergo significant and rapid transitions. In the 2003 analysis, Harff listed Iraq atop the list of genocide risk with all six risk factors.

Updated analyses conducted in November 2003 and February 2005 each counted Iraq as having 3 of 6 risk factors, falling lower on the list of risk than 9 and 13 states respectively. Meanwhile, events in Iraq have borne signs of genocidal-type

---

[143] "No lessons learned from the Holocaust: Assessing the Risks of Genocide and Political Mass Murders since 1955", Harff B., (2003) American Political Science Review , 97(1)- 57-73

[144] "Conflict assessment and early warning tools", Heidi Burgess, www.beyondintractability.org

violence. Genocide Watch, for example, judged Iraq to be in the stage of genocidal massacres in 2005. With respect to Afghanistan, Harff noted two separate scores in her early 2003 analysis, finding Afghanistan under the Taliban regime exhibited all six risk factors, while the transitional governing structure in 2002 showed only four risk factors. Together with Harff's discussion about Chile and the Philippines, cited above, these examples suggest that structural models do not perform well when states are in the midst of major political transitions.

Harff's model was developed to explain past events, seeking the best fit model to historical data and not as needed to prevent possibly incoming genocidal conflicts. This explanatory model is then used to assess future risk of geno-/politicide in various states but as the UK Prime Minister's Strategy Unit observed, "Crucially, the forecasting performance of a risk assessment method is distinct from its ability to explain past variations"[145]. Gerd Gigerenzer has illustrated, for example, that a "best fit" model in explaining past weather patterns performs worse at forecasting weather than a "good fit" model from historical data[146].

Therefore, a risk assessment model should be built on a body of historical data and tested "prospectively" on separate historical data, in other words, developers should test a model's out-of-sample as well as in-sample goodness-of-fit. Harff has not reported out-of-sample tests in any of her major publications, moreover, the purpose of any genocide risk assessment system should be to support appropriately targeted preventive measures. Harff notes, "Some factors are historically inescapable, including the occurrence of prior genocides, but most are susceptible to external influence." This may be true theoretically, but how "susceptible to external influence" are the risk factors in Harff's model in reality? Two of the six are historical (prior genocide, magnitude of political upheaval in last fifteen years) and thus fixed.

Three risk factors describe characteristics of the ruling structure or regime: exclusionary ideology of ruling elite, autocracy, and ethnic minority ruling elite. Short of coercive regime change—which, in any case, frequently fails to leave liberal democratic regimes in its wake—policymakers lack tools to influence these factors, particularly in a reasonably short time frame. This leaves the Harff's final risk factor: low trade openness. Policymakers will sometimes be able to reduce or eliminate trade

[145] "Early Warning for the prevention of genocide and mass atrocities", L.Woocher (2007), paper presented during the 48th ISA Convention, Chicago.

[146] "Simple tools for understanding risks: from innumeracy to insight", G. Gigerenzer and Edwards, (2003) Max Planck Institute for Human Development

barriers against repressive regimes. But if, as Harff suggests, "Trade openness serves as a highly sensitive indicator of state and elite willingness to maintain the rules of law and fair practices in the economic sphere external actors will be hard pressed to affect the underlying genocide risk in any policy relevant time frame"[147].

Thus, Harff's model provides few clues for practical policy measures to reduce genocide risk; even if the difficulties discussed above could be resolved, a risk assessment tool of less than 100 percent accuracy will predict some "false positives" and some "false negatives." Harff notes that her model misclassified 9 cases that led to geno-/politicide, and misclassified 25 non- genocidal cases as more likely to become genocidal—over a period of nearly five decades. In this same period, Harff's model correctly classified 26 instances of genocide. Assuming even distribution, this translates to one genocide every five years or so that occurred but was incorrectly classified (i.e., false negative), and one falsely classified genocide every other year (i.e., false positive)—almost exactly the same number of genocides that would be correctly classified[148].

Furthermore, Gigerenzer and Edwards in their book recommend presenting data about uncertainty using absolute rather than relative risks based on analysis of human beings' capacities to understand information about risk, rather than reporting the percentage of geno-/politicides that the model correctly explained, for example, they argue for simple presentations of data within a single reference class[149].

It is clear that no risk assessment tool will be perfectly reliable for such complex phenomena as genocide and crimes against humanity, but the review above presents compelling evidence that exclusive reliance on Harff's model (or any other single model) would be unwise at this stage and that revised and/or new models should be tested for their utility to key policy actors as well as their statistical validity and reliability in explaining historical cases. Likewise, other models and approaches (including relying on expert judgment alone and in combination with systematic data) should be tested against one another.

---

[147] "Toward an empirical theory of genocide and politicides: identification and measurement of cases since 1945", Harff B. & Gurr T.R., (1998) in International Studies Quarterly 32(3), 359-371

[148] "No lessons learned from the Holocaust: Assessing the Risks of Genocide and Political Mass Murders since 1955", Harff B., (2003) American Political Science Review , 97(1)- 57-73

[149] "Simple tools for understanding risks: from innumeracy to insight", G. Gigerenzer and Edwards, (2003) Max Planck Institute for Human Development

As I said early warning for effective preventive action requires far more detailed and fine-grained information and analysis than is produced by structural/long-term risk assessments. Some analysts have tried to develop statistical models for near-term anticipation of genocide or related crimes, but they remain less well developed. It is likely that this reflects inherent complexity, uniqueness and randomness in accelerating and triggering events.

Therefore, scholars and EW analysts should seek to strengthen methods for providing EW in complex environments, where traditional approaches that rely on stable cause-effect patterns are ill suited. Systematization of warning function: Beyond limitations in methods for assessing risk of genocide or mass atrocities, there are large political and institutional barriers to effective genocide EW. Some governments undoubtedly analyze potential for genocide and mass atrocities in the context of broader intelligence analysis and warning functions, but indications that genocide EW has become systematic, regular and politically valued are hard to find.

The most visible institution globally with an explicit mandate for genocide EW is since 2004, as mentioned, the Office of the Special Adviser to the UN Secretary-General on the Prevention of Genocide analyzed in chapter II, but it is very small office still run against political resistance to active monitoring of government actions in situations that bear warning signs of potential atrocities. Thus, while creation of this office represents a step forward, it has also highlighted the difficulty in making warning of mass atrocities a regular and valued part of global policymaking.

As a tool designed to influence the decision making of policymakers and political leaders, EW must take account of the realities of cognitive processing and decision making, which are often at odds with implicit assumptions; Gerd Gigerenzer et al. have argued that "(...) non-rational decision making theories provide us with a more realistic picture of decision making when knowledge is scarce, deadlines are rapidly approaching, and the future is hard to predict (...)"[150].

These characteristics certainly hold for policy actors seized with situations at risk of escalating toward genocide or mass atrocities. Cognitive capacities and limitations affect the way in which information is used for EW of all kinds of violence, conflict and other disasters. Yet, it is possible that they pose a greater challenge to EW of genocide than other types of violent conflict because of the effects of priming and framing. These concepts refer to the ways in which previous psychological

---

[150] Ibid.

associations and the packaging and transmission of information, respectively, affect one's understanding and interpretation. Most non-experts have extremely strong associations between "genocide" and the Holocaust and Rwanda.

The extreme, massive and unambiguous nature of the violence in these two cases leaves strong psychological impressions, if these are one's principal associations with the concept of genocide, it may lead to a tendency to neglect the possibility that a situation that does not look like Rwanda in 1994 or Nazi Germany could become genocidal. On the other hand, the priming effect increases the chances that a new situation that bears signs of Rwanda or the Holocaust will be recognized and confronted. The problem for genocide EW is that genocide can manifest itself in many different ways as is illustrated by major cases in the 20th Century: Armenia, the Holocaust, Cambodia, Rwanda and Srebrenica.

No one questions that war takes many forms, even while it has a simple marker: large numbers of violent deaths committed for political ends. Conclusion Effective early warning of potential atrocities cannot guarantee successful prevention. Yet the more accurate risk assessments and warnings are, the greater is the likelihood that limited policy attention and resources will be devoted to positive effect. Most analysts have judged current risk assessment and early warning practices to be adequate, if imperfect, pointing to other factors in explaining failures to prevent mass atrocities.

Preventing and minimizing mass atrocities such as genocide and "politicide" (political mass murder) is of self-evident importance. It is hoped that, with sufficient forewarning, prevention of atrocities could be achievable through targeted diplomacy, mediation, peace-building or reconciliation programs, development assistance, threats of punitive measures, or denial of capabilities to commit atrocities. For such an approach to be effective, however, it is critical to determine when and where to deploy finite resources by identifying high-risk situations.

A part from the Harff work a small but growing set of cross-national, quantitative analyses has begun to examine the onset or intensity of genocide and politicide (Krain 1997; Colaresi & Carey 2008; Ayden &Gates 2007), "democide" (Rummel 1995), or "mass killing" (Valentino et al. 2004; Wayman & Tago 2009; Esteban et al. 2010, Easterly et al. 2006). These studies have examined how the use of mass violence by the state relates to regime type and characteristics (e.g. Rummel 1995; Easterly et al. 2006; Aydin & Gates 2007; Colaresi & Carey 2008; Eck & Hultman 2007; Waymen & Togo 2010), military strength (Colaresi & Carey 2008),

openings in political opportunity (Krain 1997), income level (Easterly et al. 2006), natural resources rents and state capacity (Esteban, 2010), or the type of insurgency faced by a state and its degree of public support (Valentino et al., 2004). Limited work (Waymen & Togo 2010) has seriously examined the differences between different definitions and datasets, comparing two commonly used datasets: the Harff (e.g. 2003) data on genocide and the more expansive Rummel (e.g. 1995) dataset on democide[151].

However to my knowledge, with the exception of a brief examination of forecasting power in Colaresi & Carey (2008)[152], Harff 2003 remains the only published attempt specifically to provide an early warning model on genocide or to focus on predictive performance of the model as the principle outcome of interest. Given its focus, its publication in the *American Political Science Review*, and the continued work by Harff and others to provide risk assessments to policymakers based on this model that has also been uniquely understood as a forecasting paper in the policy and advocacy communities.

The six "warning signs" identified in the model have thus been widely cited and employed by those interested in genocide forecasting and risk assessment. For example, the Genocide Prevention Task Force (Albright & Cohen, 2008) cites the Harff's risk factors identified in its description of genocide forecasting, and NGOs such as Minority Rights Group International and the Genocide Prevention Project have formulated watch-lists based at least partly on the warning signs in Harff 2003 or directly on the risk assessments subsequently provided (which have been provided by Harff in most years since the 2003 publication). Given the dominating role it has played in the genocide forecasting community, it is particularly important to understand what that model is estimating, and how well it performs (insample and out-of-sample).

As I said previously definitions of genocide, politicide, or other forms of mass killing are often a point of disagreement and may lead to differing conclusions in empirical studies (see Waymen & Togo, 2010)[153]. Harff defines genocide (including

---

[151] Forum on Early Warning and Early Response: FEWER:

[152] "To kill or to protect: security forces, domestic institutions and genocide", Colariesi M. & Carey S.C., (2008) Journal of Conflict Resolution, 52(1), 39-67

[153] "Explaining the onset of mass killing, 1949-87" Journal of Peace Research. *47*(1): 3-13.Weyman & Togo (2010)

politicide) as "the promotion, execution, and/or implied consent of sustained policies by governing elites or their agents – or, in the case of civil war, either of the contending authorities – that are intended to destroy, in whole or part, a communal, political, or politicized ethnic group"[154]. This definition is more inclusive than the UN Convention on the Prevention and Punishment of Genocide in that it includes political groups as potential targets, but it is similar regarding the focus on "groups" *as such* and the deliberate effort to destroy them in whole or in part.

A central feature of the Harff 2003 model is that it examines the probability of genocide only when a political instability event other than genocide is already taking place. This decision is justified by Harff's finding that virtually all genocides occur during ongoing instability events. It is also consistent with earlier work by Krain (1997) regarding the importance of instability in providing "political openings" for genocide[155]. The political instability events referred to here are those identified by the Political Instability Task Force (PITF), which include revolutionary wars, ethnic wars, and adverse regime changes (i.e. coups d'Etat).

Harff's model-building approach, as I described above, calls upon prior comparative and sociological work, particularly by Harff and Gurr (1988, 1998) and Fein (1984, 1993), together with previous empirical work by the PITF (e.g. Goldstone et al. 2002)[156]. The first risk-factor proposed is "political upheaval," which is measured as a weighted sum of different types of instability events in the preceding 15 years. Two rationales are offered for this: first, that the more intense and persistent a conflict has been, the more authorities are likely to feel threatened and willing to adopt extreme measures. Second, greater upheaval is argued to greater "opportunity" to employ a genocidal, another risk-factor is the presence of prior genocides in the state in question, argued to be important because it leads to "habituation" to the use of mass violence.

Harff also argues for the role of regime type and several related characteristics, consistent with other studies, more democratic regimes are expected

[154] "The Etiology of Genocide", Harff B., in "In the Age of Genocide", Greenwood Press, 41-59 (1987)

[155] "State sponsored mass murder: a study of the onset and severity of genocides and politicides", Krain M., (1997) Conflict Resolution Review 41(3), 331-6

[156] "State failure task force report: phase III findings", Goldstone J.A., Gurr T.R., Harff B., Levy M., Marshall G.M., Bates R., Epstein D., Kahl C., Woodward M., Surko P.T., Unger A.N., (2002) in Science Applications International Corporation

to have stronger institutional checks on executive power, thereby constraining elites from taking extreme actions such as genocide. In this regard, Harff proxies "executive constraints" (later used more directly by Aydin & Gates 2007 and Colaresi & Carey 2008) with regime type in terms of autocracy versus democracy[157]. Harff also argues for two other regime-related characteristics less commonly seen in the literature. When there is an "exclusionary ideology of the ruling elite," Harff argues, such regimes may call upon an "overriding purpose or principle that justified efforts to restrict, persecute, or eliminate groups, including those that pose no obvious threat to the elite." Additionally, "ethnic character of the ruling elite" is argued to increase the likelihood of genocide because (a) under-represented groups may wish to challenge this unrepresentative elite, and (b) elites may fear this challenge and seek to further weaken or exclude groups that pose potential threats[158].

The Harff (2003) model was run on data consisting of one observation per instability event, this includes all the cases that did experience genocide (35) and all the cases that did not (91). That is, there are 126 rows of data, each corresponding to an instability event, of which 35 have a "1" on the dependent variable, indicating genocide occurred at some point during those events. A logistic regression of this genocide indicator on a set of covariates was then run using this entire set of observations.

The difficulty, however, lies in uncertainty over what exactly the model predicts. The abstract of Harff 2003 says the model examines "which factors distinguish the 35 episodes (of political instability) that led to geno-/politicides from those that did not." This suggests that the model will estimate the probability that a given *instability event* will experience genocide at some point during the episode. By contrast, elsewhere the paper claims to estimate "the conditional probability that a genocide or politicide will begin *one year later* in a country already experiencing failure" (Harff B. 2003,p.65)[159].

---

[157] "Rulers as mass murders: political institutions and human security", Aydin A., Gates S., (2007) paper presented at the annual Convention of the International Studies Association, Chicago, February 28th to March 3rd; and "To kill or to protect: security forces, domestic institutions and genocide", Colariesi M. & Carey S.C., (2008) Journal of Conflict Resolution, 52(1), 39-67

[158] "No lessons learned from the Holocaust: Assessing the Risks of Genocide and Political Mass Murders since 1955", Harff B., (2003) American Political Science Review , 97(1)- 57-73

[159] Ibid.

The approach taken in Harff 2003 does not fit either of these descriptions, or any other evident approach, due to the timing of the covariate data, for state failure episodes that do experience genocide, the covariate data were drawn from the year prior to the genocide, suggesting a next year probability of onset model, by contrast the choice of control observations is closer to what would be used for an instability-wise probability model: one "control" observation was taken from each instability event that did not lead to genocide, rather than being randomly drawn from the pool of all remaining instability years.

Drawing data for genocide "cases" from the year before genocide (rather than the year before instability onset) is not consistent with an "instability-wise probability of genocide" interpretation. However, the model is also inconsistent with the "next-year probability of genocide onset" approach, for two important reasons. First, drawing one "control" observation from each political instability event not leading to genocide, rather than drawing them randomly from the pool of instability years not followed by genocide, causes a significant problem. This is because no control observations are ever drawn from the instability events that do *eventually* lead to genocide, but not the next year. This model never had to distinguish between two years within a given instability event, one of which is followed by non-genocide and the other that is followed by a genocide onset.

More generally, the model never faces a situation in which genocide ultimately occurs in a given state but not in the year following the one being analyzed. This selection bias makes the model appear far more effective than it would actually be if exposed to yearly data from instability events, including some of which are followed by genocide after a delay.

Second, under the "next-year probability of onset" interpretation, the model would vastly over predict genocides. Across the more than 1000 country-years of political instability, 35 genocide onsets occurred. Thus, less than 3.5% of instability-years are followed by genocide onsets. By contrast, since the data are coded at the instability-event level, 35/126 (28%) of the observations seen by the model involve genocide onsets. As the model is fit to data with eight times the rate of genocide onsets that would be expected per instability year, the resulting model will predict approximately eight times too many genocides if interpreted as predicting the

probability of a given year leading to an onset.[160] Thus, it is vitally important that analysts avoid interpreting the Harff 2003 model as producing estimates of the next-year probability of onset.

The main adjustment needed is that the control observations must come from the year prior to instability onset for all instability events, whether genocide later occurs or not. Not coincidentally, this mirrors the data that would be available to analysts at the onset of instability, and this adjustment would allow analysts to actually run the model predictively without foreknowledge of when genocide will occur. A second, minor adjustment must also be made: two instability events (Burundi beginning in 1998 and Indonesia beginning 1949) are listed as having two genocide events. If the quantity of interest is the probability that genocide occurs during a political instability event conditional on the values of the covariates, then each instability event should be taken as one observation.

For many, the term "genocide" immediately – and very appropriately – evokes images of the Holocaust, it was this event that spawned the coining of the term by Raphael Lemkin and its subsequent enshrinement in international law. In that context, it is certainly reasonable to think of genocide as a phenomenon closely related to ethnic hatreds and dehumanization processes that lead some members of one group to attempt to destroy the other group in whole or in part.

Accordingly with this idea, the vast majority of sociological literature on genocide focuses on ideas of ethnicity, race, or other identities, and/or on the "dehumanization" that becomes possible as a result of out-group formation processes between these identity groups (e.g. Alvarez 1997, Moller & Deci 2010, Harris & Fiske 2006, Hagan & Rymond-Richmond 2008)[161]. Whether sufficient or not, this view of genocide as the ultimate "hate crime" may be more accurate if we restricted our attention to genocides that qualify as such under the UN Convention on the Prevention and Punishment of Genocide (henceforth the "Genocide Convention").

---

[160] Ibid.

[161] "Adjusting to genocide: the techniques of naturalization and the holocaust" Alvarex A., (1997) in Social Science History 21(2), 139-178; "Interpersonal control, dehumanization and violence: a self-determination theory perspective. Group processes and intergroup relations", Moller A.C. & Deci E.L., (2010); "Dehumanization the lowest of the low: neuroimaging responses to extreme outgroups", (2006) Psychological Science Review 17(10) 847-853; "The collective dynamics of racial dehumanization and genocidal victimization in Darfur", Hagan J., Rymond-Richmond W., (2008) American Sociological Review 73 (6) 875-902.

However the Harff dataset includes a much wider range of events, most notably "politicides", that would not likely satisfy the Genocide Convention.

In particular, to enter this dataset, the target group need not be explicitly ethnically, racially, or nationally defined. Many of the observations in the Harff dataset do not "look like" the Holocaust, Rwanda in 1994, or the Balkans in the 1990s. Indeed, of the 35 geno/politicides listed in Harff 2003, 25 are coded as "politicides" alone and not as genocides. Of the remaining 10, seven are listed as "politicide and genocide" together. Only three events – Rwanda 1994, Bosnia 1992, and Burma 1978 – are listed as "genocide" alone. Thus, political groups or "politicized ethnic groups" are often the target of the events captured in this dataset.

This begins to suggest that taken as a whole, the phenomena analyzing here may not fit the conceptions came from events such as the Holocaust or Rwanda. As suggested by Fein (1993)[162] and Harff (1987)[163], regimes are more likely to use tools of mass repression, such as genocide, when challengers to a state pose a greater threat. This is also close to the view proposed by Valentino et al. (2004), who find that "mass killing" is more likely to occur when states face threats from guerilla insurgencies – a situation in which attacking whole communities becomes an appealing counter-insurgency strategy. Similarly, Downes (2008)[164] also argues that civilians are targeted during war by regimes under threat, and that attacks on civilians are particularly likely when a regime is at the greatest risk of losing militarily.

Taking a similar view, we can look a "strategic" model of genocide as a tool sometimes employed by certain types of regimes to fend of significant challengers; according to this theory it is possible to identify additional possible "warning signs" that, if this theory were true, would be expected to be useful in predicting genocide.

Having said that, what role might ethnicity play in this model? Under the strategic view, the presence of ethnic divisions and polarization within a state may matter through several channels. For example, ethnically organized politics could

---

[162] "Accounting for Genocide after 1945: theories and some findings", Fein H., (1993) International Journal on Group Rights 1, 79-106

[163] "The etiology of genocide", Harff B., (1987) in "in the age of genocide" Greenwood Press, 41-59

[164] "Targeting civilians in war", Downes A., (2008) in Cornell University Press N.Y.C.

generate potential challenges to ethnically exclusive or unrepresentative governments, as proposed by Harff (2003).

Strong ethnic polarization may make easier for the state to mobilize groups against each other to employ a genocidal strategy against an insurgency or other threat. More simply, any strong identity such as ethnicity or race can become the basis for strong in-group versus out-group distinctions to take root, at which point grievances and animosity between these groups can easily grow. It is difficult if not impossible to imagine cases such as Rwanda, the Holocaust, or Bosnia without reference to ethnicity. However, it would be un-surprising if measures such as ethnic fractionalization, ethnic character of the ruling elite, and so on turn out to be un-predictive of genocide (conditional on instability).

Identity-based distinctions such as ethnicity may be neither necessary nor sufficient for genocide/politicide to occur, there are many cases of salient ethnic polarization that do not necessarily lead to genocide: the conditions under which a given ethnic group is mobilized to commit mass violence are surely constrained by factors other than the mere presence of ethnic diversity or ethnic minority rule; but even a small group, whether ethnically organized or not, can challenge a weak state, driving a wedge between any country-level measure of ethnic polarization and the "amount" of polarization necessary to achieve mass ethnic violence.

Similarly, if a state is threatened, it can use its military to crush the communities associated with these groups, or find *any* group which can be incentivized to help with the task (see for that Chapter IV on Darfur). Since such a group may again be very small relative to the national population, it may not be hard to find such a group even in a country that scores low on ethnic fractionalization or other similar measures.

For these reasons, detecting a powerful effect of ethnic fractionalization, polarization, or related variables on the likelihood of genocide is likely to be difficult, even if ethnic fractionalization or ethnic minority rule are mechanistically important. This may be why in Harff 2003, which did find an effect of "ethnic character of the ruling elite" initially, the effect disappears when the data are adjusted to account for timing problems. Moreover, a large number of variables in the PITF dataset related to ethnicity (such as various measures of ethnic fractionalization) fail to ever be predictive.

Looking at the event from the political instability point of view when and where then would genocides of this sort to be more likely to occur? First, much as Harff proposed, states in which the governments need not count on the consent of a broad portion of the population to maintain power may be more able to use genocide or mass killing as a tool to maintain power. As with the Harff model, this view also predicts that autocracies should be more likely to used genocide, but I also expect anocracies to be at greater risk: while anocracies have less consolidated power than autocracies, they can be nondemocratic enough that rulers are unaccountable to a large portions of the population.

Moreover, anocracies may face even greater fears than autocracies of being ousted than consolidated autocracies. This contrasts with the view of R.J. Rummel (1995)[165], who has argued that increased consolidation of unchecked power – i.e. strong autocracy – leads to increased likelihood of "democide." Under the Rummel thesis, autocracies alone should be more likely to commit such crimes, whereas under the view proposed here, both autocracies and anocracies should be more likely to commit these atrocities.

An "ideologically" characterized regime may use its ideological claims to justify and mobilize support against the enemy they seek to defeat by atrocity, prior upheaval is a potentially useful lagged measure of a state's tendency towards violence or expectations of future challenges to its power. Both past violence and the expectation that more state challengers may soon come along may make the strategy of genocide more palatable and appealing. Less theoretically, prior upheaval may simply capture otherwise unmeasured causes of violence. Finally, trade openness is a useful proxy for the interdependence economic and political interdependence of the state in question. Under a liberal view of international relations, this may be viewed as a proxy for how well the state has been "socialized" into an international community, which generally prohibits the use of genocide.

Alternatively, in recent decades the use of genocide and other massive human rights violations is often met with financial and trade sanctions. Trade openness may thus be a proxy for the opportunity cost of using violence that may lead to costly economic damages. Weaker states are more likely to respond to insurgencies with

---

[165] "Democracy, power, genocide and mass murder", Rummel R. J., (1995) Journal of Conflict Resolution 39 (1) 3-26

genocidal strategies because they are less likely to have the means of winning such a war otherwise. Genocide can be an inexpensive counter-insurgency tactic, especially (but not only) when there are proxy groups that can readily be mobilized – through ethnic animus, economic incentives, or both – to attack the communities supporting the opposition movement against the state.

Violence in Darfur, Sudan in 2003 and 2004 resembles this logic: the so-called "Janjaweed" militias were readily mobilizeable by the government of Sudan, partly by stoking ethnic animus and economic tensions, but also by offering these militias weapons, salaries, land, and even life insurance for their families, while offering government posts to the leadership of these groups. Alex de Waal (2004) has aptly termed the Darfur genocide "counter-insurgency on the cheap."

That said, the role of a state's military strength in particular may be conditional on the nature of the regime, or more specifically, on the degree of constraint on the executive (Collariesi & Carey 2008)[166]. Unconstrained executives with larger militaries may be more likely to use these militaries to commit genocide, whereas more constrained executives with larger militaries will refrain from doing so, and may be able to use these militaries instead to protect civilians. To capture this potential effect, the interaction of state military power with executive constraint must also be included.

Finally, the above influences are much more likely to trigger genocide when the political instability event in question is an ethnic or revolutionary war, rather than an "adverse regime change." Many of the events coded as adverse regime changes in the PITF dataset are discrete and short coups. Certainly coups can trigger genocide, if the new regime attempts to eliminate political threats or the ousted regime attempts to respond by mobilizing a community with genocidal intent. However the majority of these cases involves relatively few players and remains in the realm of elites.

Given the goal of producing practical tools for real-time genocide forecasting, a useful model must be based only on information immediately available at the outset of a political instability event. Thus the only information of this sort that can enter the model is whether a political instability event *began* with regime change or with ethnic or revolutionary war. Having said that ideological orientation of the ruling elite

---

[166] "To kill or to protect: security forces, domestic institutions and genocide", Colariesi M. e Carey S.C., (2008) Journal of Conflict Resolution 52 (1) 39-67

remains positively associated with the likelihood of genocide, as are autocracy and anocracy.

The presence of war (ethnic or revolutionary) at the onset of instability also strongly predicts increased likelihood of genocide and again is consistent with the strategic theory, in which weaker states are more likely to resort to genocide, though the conditional effects of military strength qualifies this finding. Finally, as shown by the Harff model, trade openness is again associated with a decreased likelihood of genocide.

Although predicting the instability-wise probability of genocide imposes several limitations: first of all knowing whether genocide is more or less likely during an instability event is not always informative, if that instability event goes on for decades (Indonesia, Burma, and Uganda, for example have experienced instability events lasting over 40 years). Secondly, the instability-wise approach cannot employ time-varying information that may change the likelihood of genocide during an instability event. Thirdly, this model only tell us the probability of there being *at least one* genocide during a given instability event, and are powerless to predict a "second" or "third" genocide during a single instability. This problem is compounded by the ambiguity over what constitutes a new instability and what is a continuation. Finally, the model can only be meaningfully applied once instability begins, by which time it may be too late.

One alternative approach that would avoid these problems would be to use a model based on country-year data, without conditioning on instability at all. This would allow analysts to determine the probability of genocide in the next year (or an alternative choice of time window), and can be employed whether instability is ongoing or not. While this is very reasonable and should perhaps be a goal, one shortcoming is that since genocide virtually always occurs during instability events (and only about 10% of country-years involve instability) it may not be possible to find a model that is very effective without first conditioning on instability.

3.4 The EW and the U.N. Office of the Special Adviser on Genocide Prevention

Secretary-General Kofi Annan, as already mentioned, has made strengthening the UN's ability to provide early warning (EW) a major part of his proposals and initiatives regarding the prevention of genocide. In January 2004, he observed in his keynote speech at the Stockholm International Forum on Preventing Genocide: Threats and Responsibilities, "At the United Nations there are still conspicuous gaps in our capacity to give early warning of genocide or comparable crimes, and to analyze or manage the information that we do receive"[167]. He later identified "early and clear warning" as one of the five headings of his Action Plan to Prevent Genocide, which he described in a speech to the Commission on Human Rights in April 2004[168]. The Special Adviser on the Prevention of Genocide's mandate, as described, calls on him to "act as a mechanism of early warning to the Secretary-General, and through him to the Security Council, by bringing to their attention potential situations that could result in genocide"[169].

The origin of the Special Adviser's mandate is the Security Council Resolution N.1366 (2001), in which the Council "expresses its willingness to give prompt consideration to early warning or prevention cases brought to its attention by the Secretary-General and in this regard, encourages the Secretary-General to convey to the Security Council his assessment of potential threats to international peace and security"[170].

The outline of the mandate of the Special Adviser provides only general guidance for how he should carry out his EW function in fact the collection of "existing information, in particular from within the United Nations system" implies that in acting as a mechanism of EW, the Special Adviser should not engage in a major new data collection exercise. The Special Adviser is not prohibited from using information from sources beyond the UN, but the Secretary-General clearly instructs him to be firmly rooted in the UN system's existing information. This sense is further reinforced by the Special Adviser's concurrent charge to work "to enhance the UN capacity to analyze and manage information relating to genocide and related crimes."

---

[167] www.un.org

[168] Ibid.

[169] Ibid.

[170] Ibid.

According to the mandate the principal audiences of the Special Adviser's EW are the Secretary-General and "through him," the UN Security Council[171]; the Special Adviser is instructed to provide EW of "potential situations that could result in genocide". Based on this description alone, the focus of the Special Adviser's EW function could be interpreted very broadly. However, the scope of the Special Adviser's information collection "massive and serious violations of human rights and international humanitarian law of ethnic and racial origin that, if not prevented or halted, might lead to genocide" implies that his EW function should also be limited to these extreme cases[172].

One of the major limit of the Special Adviser's Office is that it is not designed as a universal early warning and early action mechanism for the prevention of genocide worldwide; rather, he acts as a focal point for early warning information coming from sources inside and outside the UN System. The Special Adviser Office tried during these years to develop a systematic early warning capability including in particular the establishment of an analytical data-base for global monitoring of situations that may lead to genocide or similar crimes as described in Chapter II but the current resources allocated to the Special Adviser's office, as I already said, limit the options for implementing its EW function and make difficult to accomplish with the demanding set of tasks embedded within the his mandate.

There are unique difficulties using a strict definition of genocide to guide the Special Adviser's EW function, in their evaluation of EW before the 1994 genocide in Rwanda, Howard Adelman and Astrid Surhke wrote: "The problem with the term "genocide" as a signal comes in the different implications and illustrations of the two uses of the term. The use of the legal definition of the term in an accusatory sense arguably diminished the impact of the term in its function as a warning signal"[173].

All warning mechanisms must also ask: How early should the warning be? A framework of warning used by at least one Security Council member state distinguishes warning that is early enough to help policymakers shape strategic outcomes from warning that permits policymakers only to prepare for events that can

---

[171] www.un.org

[172] Ibid.

[173] "Early warning and prevention: the case of Rwanda", Adelman H. & Shurke A., (1999) in Refugee rights and realities: evolving international, Nicholson F. ed.

no longer be prevented, to mitigate consequences, or even later, only to take internal actions (i.e., to minimize political damage).

The Special Adviser's preventive mandate makes clear that his EW must aim for the first type warning early enough to enable policymakers to shape strategic outcomes even while it may sometimes include warning for mitigation (i.e. see the case of Darfur in Chapter IV). Within this first category, an EW system could, theoretically, span the entire range of opportunities for preventive action, from early structural prevention to late preventive diplomacy in crisis situations. Walter Dorn, for example, suggests "long-range or 'strategic' early warning can be done years in advance"[174].

Looking at this side of the problem it must be said that the UN Security Council, which represents both the origin and a key audience of the Special Adviser's EW function, is not a body designed for long term root cause preventive action, even while it has accepted the need to address root causes rhetorically so if the Special Adviser were intended to provide EW for long-term prevention, one would expect institutional connections to the main development bodies of the UN such as the Economic and Social Council, the General Assembly and/or the UN Development Programme.

A focus on long-term structural prevention would appear to duplicate efforts by other parts of the UN system (e.g., the Committee on the Elimination of Racial Discrimination, the Peace building Commission and Peace building Support Office, the Democracy Fund, etc.) and would burden an already stretched office. These factors all point toward a focus on EW for operational, rather than structural prevention as in the reality the documents issued by the Office on EW seems to aim.

The Periodic global risk assessment (to generate a watch list) for a small office with a global mandate like the Special Adviser's, isn't an easy task for this reason it is extremely important to adopt a strategy to narrow the range of situations to be closely monitored. In considering what type of risk assessment strategy to employ, the Special Adviser should seek a balance of three attributes: (1) accuracy in estimating risk of genocide and related crimes, (2) efficiency/feasibility of using the methods in question, and (3) perceived legitimacy of the process by key stakeholders.

---

[174] "Keeping watch. Monitoring, technology & innovation in UN peace operations", Dorn A.W., (2011) in UN University Press

The office reported that it does not have a regular mechanism for identifying high-risk situations a part from the risk factors published in the web-site that anyhow are generic factors that need to be combined with more specific elements.

There have been a number of efforts as reported in the previous paragraph to construct formal risk models for major political and humanitarian crises (e.g.,civil war, state failure, famine), but relatively few focused on genocide and/or closely related crimes. Systematic risk assessment for the Special Adviser's office would marry current data on structural characteristics of states with pre-existing models to identify high-risk situations. The data management and statistical analytic demands would depend on the specific model or method used.

The Harff's risk assessment model analyze above might work in practice by the Special Adviser's office and it is the model that the Office used in order to set up its personal risk assessment list. The analysis indicates, as shown previously, that a significant gap remains between the model's power in explaining past events and its utility in a policy setting like the Special Adviser's office because of issues such as time lag of available data, difficulty identifying high-risk situations at a sub-state or regional level, and challenges posed by states in transition.

The two core challenges of ongoing situation monitoring related to the prevention of genocide are: (1) obtaining, filtering and interpreting information on evolving situations, and (2) deciding when to communicate EW information to the Secretary-General, the Security Council and/or other actors. The difficulty of deciding in what circumstances to issue any kind of EW is characterized by the twin risks of the Special Adviser neglecting an escalating situation and of being perceived as "crying wolf" by calling attention to a situation that does not escalate toward genocide (without additional preventive actions).

This demands astute political judgment, built on intimate knowledge of the specific situation on the ground as well as the positions, interests and capabilities of a host of actors in and outside of the UN system. Similar to the risk assessment stage, in choosing a strategy for ongoing situation monitoring the Special Adviser should consider: (1) accuracy in anticipating evolving events, (2) efficiency/feasibility of using the methods, and (3) perceived legitimacy by key stakeholders.

3.5 Conclusions

The ability to understand the risk of genocide in a particular place and time is potentially useful for deploying preventive efforts; Harff 2003 is the only published paper quantitatively endeavoring to forecast genocide, and by far the best-known and most widely-cited forecasting model. That said, it is unclear what quantity is being estimated by that model. Once adjusted to produce an interpretable quantity – the probability that genocide occurs at some point during a political instability event – its performance remains relatively good, but neither *prior genocide* nor *ethnic character of the ruling elite* remain statistically or predictively significant.

The view of genocide as a strategic choice made by regimes to fight off potential challengers is by no means new, and is to some degree considered in the Harff 2003 model itself and in the work by Fein (1983) cited therein. Moreover, it is a major theme in much of the more recent empirical work on genocide and mass killing (e.g. Valentino et al. 2004, Esteban 2010)[175]. Taking into consideration these elements the presence of war at the onset of instability, low state capacity, ideological character of the ruling elite, and trade-openness are all strong predictors of genocide.

In addition, the presence of a large military is associated with greater likelihood of genocide under weakly constrained executives, but a lower likelihood under highly constrained executives, consistent with other recent findings (Colaresi & Carey, 2008)[176]. The probability of genocide is found to decrease rapidly in time – both in terms of calendar time and the age of an instability event since its last genocide. State capacity is no longer a significant predictor, and counter-intuitively, the presence of war predicts decreased likelihood of genocide, perhaps because it is strongly associated with longer instability events which have a much lower per-year probability of genocide.

---

[175] "Strategic mass killings", Esteban J., Morelli M., Rohner D., (2010), Institute for Empirical Research in Economics, University of Zurich working paper No.486

[176] "To kill or to protect: security forces, domestic institutions and genocide", Colariesi M. e Carey S.C., (2008) Journal of Conflict Resolution 52 (1) 39-67

The ideological character of the ruling elite remains significantly associated with the probability of genocide, the interaction of military personnel and executive constraints is found again here, and adds considerable power to the model. As expected, attempting to predict the next-year probability of genocide onset produces far lower probabilities and weaker performance. What does this mean for analysts and policymakers? At minimum, analysts responsible for examining the probability of genocide for their own agencies should be aware that the Harff 2003 model must be adjusted to produce the "instability-wise" probability of genocide, and more importantly, cannot be used to produce the "next-year" probability of genocide.

Chapter IV

CASE STUDY: THE DARFUR GENOCIDE

4.1 Historical Background

Sudan became independent in 1956, the northern part of the country was under Egypt whilst the Southern area was controlled by the United Kingdom. Until the South Sudan proclaimed its independence on 9th July 2011, following the referendum result of January 2011, Sudan was Africa's largest country, measuring about one-fourth the size of the United States with a population about 45 million people in total. The Country is located in a conflict-torn region of the world, with many of its adjacent countries being involved in armed conflicts: Chad and the Central African Republic in the west, Egypt and Libya in the north, Ethiopia and Eritrea in the east, and Kenya, Uganda, and the Democratic Republic of the Congo in the south, all have seen interstate or intrastate conflict in the last 50 years.

Sudan is a very heterogeneous country when it comes to ethnicity, language and religion, the north is mainly "Arab" and Muslim whilst the south is primarily "African" and Christian/Animist. However, this dichotomy is very simplistic and the reality is much more complex, with a large variety of ethnic groups both in the north and in the south. A part form this "religious dichotomy" that, as I said, it is simplistic and reflect mostly the way in which the United Kingdom organized the Country during the colonial period (with religious catholic missions sent in south Sudan and the Muslim inhabitants of the north left free to maintain their religion) Sudan is characterized by a persistent domination of the centre over the marginalized peripheries; the centre is located in the capital Khartoum and consists of different elites coming from the Nile Valley area located in the Northern Region (not to be confused with northern Sudan) of Sudan[177].

Even though the Northern Region comprises less than two percent of the Sudanese population this region utterly dominates the politics of Sudan. However, this is not a solidly united elite but it is composed by different elites that compete for

---

[177] Kamal el-Din (2007) "Islam and Islamism in Darfur" in *War in Darfur and the search for peace, A.* de Waal (ed), Harvard University Press

power among themselves; this competition has meant that Sudan has been ruled by a series of unstable parliamentary governments and military regimes during the years.

Regardless of the type of government, the elites from the Northern Region have been at the country's helm; this dominance is also evident when it comes to the economy, with the elites based in the centre possessing immense private wealth and the people in the marginalized areas being exceedingly poor. Since the end of colonial rule Sudan has been characterized by war, the first Sudanese civil war beginning soon after independence; the first north-south conflict was initiated by a southern-based rebel group called Anya Nya, which fought for the independence of the south and ended in 1972 through the Addis Ababa agreement[178].

During two years in the 1970s a small scale conflict over governmental power took place, involving a communist group in 1971 and an Islamic group in 1976. In 1983 the second north-south war broke out when the Sudan People's Liberation Movement/Army (SPLM/A) initiated a rebellion. The group was based in the south and some factions of the SPLM/A had a secessionist agenda whilst their leader John Garang stated that *"The SPLM/A is fighting to establish a united Socialist Sudan"*[179].

The conflict between SPLM/A and the government of Sudan (GoS) ended in 2005 when the parties signed the Comprehensive Peace Agreement (CPA)[180]. Some of the fighting in the conflict between the SPLM/A and GoS took place not only in the south but also in the eastern part of Sudan; the fighting in this conflict was comparatively limited with respect to the south one, and ended through the Eastern Sudan Peace Agreement (ESPA) signed in 2006[181]. In addition to these intrastate conflicts, Sudan has suffered from many non-state conflicts, as well as large scale one-sided violence conducted primarily by the government side. In all these conflicts the government of Sudan (GoS) has had a practice of arming militias as a response to rebellions; these militias are infamous for their gross violations of human rights and these types of attacks have taken place both in the south, in the east and in Darfur[182].

---

[178] Bechtold, P. K. (2009). A History of Modern Sudan. Middle East Journal, 63(1)

[179] Ibid.

[180] Mohammed, Adam Azzain (2007) "The Comprehensive Peace Agreement and Darfur" in *War in Darfur and the Search for Peace, A.* de Waal (ed.) Harvard University Press

[181] Ibid.

[182] Mohammed, Adam Azzain (2007) "Three types of conflict in the Darfur crisis" in the *Horn of Africa Bulletin* http://www.life-peace.org/sajt/filer/pdf/Horn of Africa Bulletin/

Multiple civil wars in southern Sudan and the conflict in Darfur are both symptoms of the historic marginalization of Sudan's peripheries, as I said previously; in fact, since it achieved independence from the British, the small group of predominantly Arab elites that ruled Sudan over years rather than working to develop Sudan's economy, empower people in the peripheries of the country, and pull its citizens out of poverty, have hoarded wealth and power for themselves.

Another important element that must be taken into account looking at the civil wars in Sudan is the economic-natural resources one; in fact the strong socio-economic marginalization mentioned above and imposed by the Capital led to the outbreak of the civil conflicts[183].

Southern Sudan and Darfur each belong to this historically marginalized periphery; successive governments in Khartoum have either ignored these regions or sought to suppress them militarily. As a result, southern Sudan and Darfur are two of the poorest, most war-torn, and most underdeveloped places on Earth.

In both situations, rebel groups arose to fight for greater political control and increased access to the resources controlled by ruling elites in Khartoum and in both situations the government in Khartoum responded by arming and training ethnically-based militias and granting them impunity to murder, rape, forcibly displace, and loot property from civilians[184].

Geographically Darfur is the most western region of Sudan and has an estimated population of six million people, from nearly 100 tribes, some nomads and some farmers, the majority of them are Muslims. When General Omar Bashir, in 1989, took control of Sudan by military coup, allowed the National Islamic Front government to inflame regional tensions, in a struggle for political control of the area, weapons poured into Darfur and conflicts increased between African farmers (Muslims) and many nomadic Arab tribes.

The conflict in Darfur as internationally known started in 2003 when the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM) took up arms against the GoS. However, communal conflicts had been ongoing in Darfur for a long time prior to these rebellions[185].

---

[183] George B.N. Ayittey (1999), "How the Multilateral Institutions Compounded Africa's Economic Crisis"; Law and Policy in International Business, Vol. 30.

[184] Ibid.

[185] Bechtold, P. K. (2009), "A History of Modern Sudan", Middle East Journal, 63(1).

In fact Darfurian discontent with the regime in Khartoum had also existed for a long time, and the 2003 events represent simply the moment in which the conflicts between different ethnic groups and the combined dissatisfaction moved into a rebellion as internationally defined. The cliché picture of the conflict in Darfur is that of African rebels taking up weapons against the government in Khartoum due to marginalization. The subsequent government response to this was the arming of Arab militias, which conducted genocide on the Africans in Darfur.

The Public understanding of Darfur has been muddied by the understandable tendency of those who do not know Sudan to view this territory in the west of the country through the lens of the much more publicized civil war in the south. But unlike the decades-long struggle between successive Arab regimes in Khartoum and rebels drawn from predominately non-Muslim African communities in the south, the fighting in Darfur is of more recent origin and, otherwise looking at the conflict from a religious perspective in the Darfur conflict almost all of the combatants and their victims are followers of Islam.

The demographics of the victims represent one significant difference between the two conflicts (the north-south and the Darfur) , In fact as mentioned above the Southern Sudanese are overwhelmingly non-Muslim; they are either Christians or adhere to traditional belief systems; Darfurians are overwhelmingly Sunni Muslim.

One similarity between the two conflicts and a characterization of the Khartoum policy in the internal conflict matters is that during the civil war in southern Sudan, the government armed Arab militias called the murahaleen to attack the SPLA and the Dinka people. In Darfur, government-backed Arab militias called the janjaweed are attacking the Fur, Zaghawa, Massaleit, and other ethnic groups accused of supporting Darfurian rebels. Another similarity is that Khartoum government's always cynical used the Sudan's ethnic diversity as a weapon. The government used the "divide and destroy" tactics to engineer ethnic splits within rebel groups and foment increased chaos on the ground.

The ideological dimension of the conflicts also bears similarities. The ruling National Congress Party in Khartoum took power in a military coup in 1989 with General Bashir, when it was called the National Islamic Front, key decision makers within the ruling party espouse an extremist, racist ideology that justifies violence to reengineer Sudanese society and try to build up and Islamic-Sudan ruled by the elites from the Capital. The result is massive death, displacement, and destruction of

livelihoods. From 1983 until 2005, the war in southern and central Sudan left more than two million people dead and drove some 4.5 million civilians from their homes[186].

As I said at first glance, the fighting in Greater Darfur, which includes the three states of North, South, and West Darfur, might appears to be an ethnic clash and not a religious one. It pits an Arab-dominated government in Khartoum, aligned with ethnic militias drawn from some Arab nomadic groups that have long roamed freely across Darfur's forbidding desert and fertile farmland, against rebel groups drawn largely from three main African groups, two of which are traditionally settled agriculturalists or semi-pastoralists. But the reality is more complex. Until the mid-1980s, Arab herders and African farmers occasionally clashed, but mostly co-existed peacefully. In fact, despite the ethnic polarization that now exists, there has been considerable ethnic fluidity and intermarriage in all the region[187].

Most probably the main reason of the conflict in Darfur goes back to land disputes between semi-nomadic livestock herders and those who practice sedentary agriculture. From the beginning of 1991 Arab of the Zaghawa people of Sudan complained that they were victims of an intensifying Arab apartheid campaign. Sudanese Arabs, who control the government, are widely referred to as practicing apartheid against Sudan's non-Arab citizens. The government is accused of "deftly manipulating Arab solidarity" to carry out policies of apartheid and ethnic cleansing against non-Arabs in Darfur.

American University economist George B.N. Ayittey accuses the Arab government of Sudan of practicing apartheid against black citizens. According to Ayittey, "In Sudan... the Arabs monopolized power and excluded blacks···Arab apartheid." Many African commentators join Ayittey in accusing Sudan of practicing Arab apartheid[188].

Boston Globe columnist Fred Jacoby has accused Sudan of practicing apartheid against Christians in what is now South Sudan "where tens of thousands of black Africans in the country's southern region, most of them Christians or animists, have

---

[186] Scott Strauss, (Jan. - Feb. 2005), "Darfur and the Genocide Debate", Foreign Affairs, Vol. 84, No. 1, pp. 123-133

[187] Haggar Ali, (2007) "The Origins and Organisation of the Janjaweed in Darfur" in *War in Darfur and the Search for Peace* p. 113-114, A. de Waal (ed) Harvard University Press

[188] Ayittey George, interview on "Africa through African eyes", Five books interview by Daisy Banks, www.thebrowser.com

been abducted and sold into slavery by Arab militias backed by the Islamist regime in Khartoum"[189].

Alan Dershowitz has pointed to Sudan as an example of a government that "actually deserve(s)" the appellation "apartheid". Other distinguished people who have accused the regime in Sudan of practicing "apartheid" against non-Arabs include former Canadian Minister of Justice Irwin Cotler[190].

The usage of the terms "Arab" and "Black" has been opposed, because all parties involved in the Darfur conflict whether they are referred to as 'Arab' (particularly Baggara/Janjaweed) or as 'African,' are equally indigenous. The Janjaweed group recruited mostly from the Arabized indigenous Africans/Baggara and few Arab Bedouin of the northern Rizeigat; while the majority of Arab groups in Darfur remain uninvolved in the conflict.

As I said previously, in the context of this difference, analysis of the dynamics driving the sudanese conflicts have often been oversimplified. The civil war in southern Sudan has been painted as a war between the Muslim North and the Christian South. In reality, Christians are a minority in southern Sudan, and many northern Muslims – especially in the Nuba Mountains and Southern Blue Nile – fought with the SPLA against the government. In Darfur, the war is portrayed as Arabs versus non-Arabs, but in reality, centuries of coexistence have blurred the line between Arab and non-Arab groups, and a person's sense of identity in Darfur is more political and cultural than physical.

As mentioned the beginning point of the conflict in the Darfur region is typically said to be 26 February 2003, when a group calling itself the Darfur Liberation Front (DLF) publicly claimed credit for an attack on Golo, the headquarters of Jebel Marra District[191]. Even prior to this attack, however, the conflict as we all know had erupted in Darfur, as rebels had already attacked police stations, army outposts and military convoys, and the government had engaged in a massive air and land assault on the rebel stronghold in the Marrah Mountains.

According to many Human Rights activists, inter alia the Amnesty International and the International Crisis Group that issued Reports on that since 2003, the rebels' first military action was a successful attack on an army garrison on the mountain on

---

[189] Fred Jacoby, 30 Nov. 2008, "The UN's obsession with demonizing Israel", Boston globe

[190] Dershowitz Alan, (2009), "The case against Israel's enemies: exposing Jimmy Carter and others who stand in the way of peace", in John Wiley and sons p.24

[191] Bechtold P. K., (2009), "A History of Modern Sudan", in the Middle East Journal, 63(1)

25 February 2002. Chroniclers Julie Flint and Alex de Waal state that the beginning of the rebellion is better dated to 21 July 2001, when a group of Zaghawa and Fur met in Abu Gamra and swore oaths on the Qur'an to work together to defend against government-sponsored attacks on their villages[192].

Coming back to the 2003 events the Darfur rebels of the Sudan Liberation Army shocked Khartoum by successfully assaulting government military forces in Fashir, the capital of North Darfur, and achieving a string of military successes. In response, the Bashir government launched a vicious counter-insurgency campaign in Darfur, patterned after earlier campaigns it had conducted in southern Sudan and the Nuba Mountains, using a proxy militia force, the so-called Janjaweed, made up of members of nomadic Arab tribes. The success of the raid was unprecedented in Sudan; in the 20 years of the war in the south, the rebel Sudan People's Liberation Army (SPLA) had never carried out such an operation.

The first international loud warnings of an impending human rights catastrophe came in October-November 2003, when U.N. agencies reported that villages had been burned and Amnesty International reported that Sudanese refugees in camps in Chad were describing "how militias armed with Kalashnikovs and other weapons (···) often dressed in green army uniforms, raided villages, burnt houses and crops and killed people and cattle[193]." Shortly thereafter, Jan Egeland, United Nations under-secretary for humanitarian affairs and emergency relief, warned that the humanitarian situation in Darfur had become "one of the worst in the world[194]." In December 2003, as Khartoum imposed tight restrictions on access to the region and launched a new offensive, U.N. Secretary- General Kofi Annan echoed Egeland's concern.

In April 2004, reporting by U.N. agencies, humanitarian nongovernmental organizations (NGOs), human rights groups, and the media started to reveal the enormity and nature of what was happening—and, on April 7, Kofi Annan, addressing the Commission on Human Rights on the 10th anniversary of the Rwanda genocide, called attention to the human rights abuses and growing humanitarian crisis in Darfur and called on the international community to be prepared to take swift and appropriate action[195].

---

[192] Ibid.

[193] Amnesty International Report , 14th March 2003, "Sudan", available at http://web.amnesty.org/library

[194] Egeland Jan, 5th December 2003, UN News Centre article on "Humanitarian and Security situations in western Sudan reach new lows",

[195] Annan K., press release 7th April 2004, "Action plan to prevent Genocide", SG/SM/9197 AFR/893 available at

Based on its investigations in Darfur and refugee camps in Chad at that time, Human Rights Watch found "credible evidence that the government of Sudan has purposefully sought to remove by violent means the Masalit and Fur population from large parts of Darfur in operations that amount to ethnic cleansing." As a result of the mounting evidence that massive human rights abuses and crimes against humanity were being committed, the Security Council began—slowly and hesitantly—to pay attention to Darfur.

The al-Fashir raid was a turning point both militarily and psychologically, the armed forces had been humiliated by the al-Fashir raid and the government was faced with a difficult strategic situation and the Government had to change its strategy. Given that the army was being consistently defeated, the war effort depended on three elements: military intelligence, the air force, and the Janjaweed. The Janjaweed were put at the center of the new counter-insurgency strategy. Though the government continously denied supporting the Janjaweed, military resources were poured into Darfur and the Janjaweed were outfitted as a paramilitary force, complete with communication equipment and some artillery.

The military planners were doubtlessly aware of the probable consequences of such a strategy: similar methods undertaken in the Nuba Mountains and around the southern oil fields during the 1990s had resulted in massive human rights violations and forced displacements.

At the U.N. level, on 18th September 2004, with the Resolution No. 1564[196], the Security Council pressured the Sudanese government to act urgently to improve the situation by threatening the possibility of oil sanctions in the event of continued non compliance with the S.C. Resolution No.1556/04[197] or refusal to accept the expansion of African Union peacekeepers mission The S.C. Resolution No.1564 also established an International Commission of Inquiry to look into human rights violations, and to determine whether genocide was occurring.

The International Commission of Inquiry on Darfur handed its report to the Secretary General on 25th January 2005 founding that the Government of the Sudan and the Janjaweed are responsible for serious violations of international human rights and humanitarian law amounting to crimes under international law and identified 51 individuals responsible individually for the violation of human rights and recommended immediate trial at the ICC.

---

[196] Security Council Resolution No.1564/04 available at www.un.org

[197] Security Council Resolution No.1566/04 available at www.un.org

On 7th March 2005, UN Secretary General Kofi Annan spoke to the UN Security Council requesting that the peacekeeping force in Darfur be increased to support the African Union troops already deployed. A resolution for the deployment of an additional number of peacekeepers has been delayed by the failure of the Security Council to agree on the mechanism to be used to try war criminals and the application and extent of sanctions. In fact a number of Security Council members want war criminals to be tried by the International Criminal Court however the Security Council did not find a common solution. On 24th March 2005 a peacekeeping force was approved to monitor peace in the south of Sudan, however the Security Council still remains deadlocked over Darfur.

On 29th March 2005 United Nations Security Council Res. No. 1591/05 strengthened the arms embargo and imposed an asset freeze and travel ban on those deemed responsible for the atrocities in Darfur, it was agreed that war criminals will be tried by the International Criminal Court[198].

As mentioned above, in March 2005, the Security Council formally referred the situation in Darfur to the Prosecutor of the ICC, taking into account the report of the International Commission of Inquiry on Darfur, authorized by UN Security Council Res. No. 1564/2004, but without mentioning any specific crimes. As of his fourth report to the Security Council, the Prosecutor has found "reasonable grounds to believe that the individuals identified (in the UN Security Council Res. No. 1593/05 [199]) have committed crimes against humanity and war crimes," but did not find sufficient evidence to prosecute for genocide.

As Sudan has not ratified the Rome Statute the International Criminal Court cannot investigate crimes that may have taken place in Darfur unless the United Nations Security council asks them to under Article 13.b of the Rome Statute ("A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations")[200].

On 19th June 2006 the President Al-Bashir insisted that he would prevent a peacekeeping force from entering Sudan. He stated:

---

[198] Security Council Resolution No.1591/05 available at

[199] Security Council Resolution No.1593/05 available at www.un.org

[200] The Rome Statute of the International Criminal Court available at www.un.org

"I swear that there will not be any international military intervention in Darfur as long as I am in power. Sudan, which was the first country south of the Sahara to gain independence, cannot now be the first country to be re-colonized."

At the 2006 African Union summit held in Banjul, Gambia, it was decided that AU peacekeepers would remain in Darfur until the end of 2006 at the request of the United Nations; however, a request to allow UN peacekeepers into the area was refused by Omar Hassan al-Bashir.

On 5th May 2006, the government of Sudan signed an accord with the faction of the SLA; However, the agreement was rejected by two other, smaller groups, the Justice and Equality Movement and a rival faction of the SLA. The accord was orchestrated by the U.S. Deputy Secretary of State Robert B. Zoellick, Salim Ahmed Salim (working on behalf of the African Union), AU representatives, and other foreign officials operating in Abuja, Nigeria[201]. It called for the disarmament of the Janjaweed militia, and for the rebel forces to disband and be incorporated into the army.

On 31st August 2006, the UNSC approved Resolution No.1706[202] to send a new peacekeeping force to the region and Sudan expressed strong opposition to the resolution.

On 1st September, African Union officials reported that Sudan had launched a major offensive in Darfur and on 5th September, Sudan asked the AU force in Darfur to leave the region by the end of the month, adding that "they have no right to transfer this assignment to the United Nations or any other party, this right rests with the government of Sudan." The AU, whose peacekeeping force mandate expired on 30ty September 2006, confirmed that its troops would leave the region.

On 6th October, the UNSC voted to extend the mandate of the United Nations Mission in Sudan until 30 April 2007 and two hundred UN troops were sent to reinforce the AU force. The hybrid UN/AU force was finally approved on 31st July 2007 with the United Nations Security Council Resolution 1769[203]. UNAMID will take over from AMIS by 31st December 2007 at the latest, and had an initial mandate up to 31st July 2008.

From the diplomatic point of view from 3rd August 2007 until 5th August 2007, a conference was held in Arusha, Tanzania, to unite the different existing rebel groups and to make the subsequent peace negotiations with the government of Sudan.

---

[201] Kesler Glenn and Emily Marx, 5th May 2006, "Sudan, main rebel group sign peace deal", Washington Post.

[202] The Security Council Resolution No. 1706/06,

[203] Security Council Resolution No.1769/07, www.un.org

Most senior rebel leaders attended, with the notable exception of Abdul Wahid al Nur, who (while not in command of large forces, but a rather small splinter group of the SLA/M) is considered to be the representatives of a large part of the displaced Fur people, and there have been concerns that his absence would be damaging to the peace talks in fact many international officials have stated that the difficulty in the negotiations on Darfur lied also in the fact that there was no leader of the negotiating team of Darfur like was John Garang in South Sudan.

The next round of peace talks was set to begin on 27th October 2007 in Sirte, Libya but few rebels groups attended the talks; for this reason, faced with a boycott from the most important rebel factions, the talks were rebranded as an "advanced consultation phase" [204].

On 14th July 2008, prosecutors at the International Criminal Court (ICC), filed ten charges of war crimes against Sudan's President Omar al-Bashir, three counts of genocide, five of crimes against humanity and two of murder. The ICC's prosecutors have claimed that al-Bashir "masterminded and implemented a plan to destroy in substantial part" three tribal groups in Darfur because of their ethnicity[205].

Before this date, on April 2007, the Judges of the ICC issued arrest warrants against the former Minister of State for the Interior, Ahmad Harun, and a Militia Janjaweed leader, Ali Kushayb, for crimes against humanity and war crimes[206]. The Sudan Government replies that the ICC had no jurisdiction to try Sudanese citizens and that it will not hand the two men over to its custody.

On March 4th, 2009 Sudanese President Omar al Bashir, became the first sitting president to be indicted by ICC for directing a campaign of mass killing, rape, and pillage against civilians in Darfur. In December 2010, representatives of the Liberation and Justice Movement, an umbrella organization of ten rebel groups formed in February 2010, started a fresh round of talks with the Sudanese Government in Doha, Qatar (Doha Peace Forum). A new rebel group, the Sudanese Alliance Resistance Forces in Darfur, was also formed, and the Justice and Equality Movement planned further talks. The talks ended on 19th December without a new peace agreement but basic principles were agreed upon; these included a regional authority and a referendum on autonomy for Darfur.

---

[204] "Fact box: Who is attending Darfur talks, who is not," Reuters, October 27, 2007,

[205] ICC-02/05-01/09, The Prosecutor V. Omar Hassan Ahmad Al Bashir, www.icc-cpi.int

[206] ICC-02/05-01/07, the Prosecutor V. Ahmad Muhammad Harun and Ali Muhammad Ali Abd Al-Rahman (Ali Kushayb)

In January 2011, the leader of the Liberation and Justice Movement, stated that the movement had accepted the core proposals of the Darfur peace document proposed by the joint-mediators in Doha. The proposals included a compensation package for victims of atrocities in Darfur and special courts to conduct trials of persons accused of human rights violations. Proposals for a new Darfur Regional Authority were also included. The current three Darfur states and state governments would also continue to exist during this period.

In June 2011, a new Darfur Peace Agreement was proposed by the Joint Mediators at the Doha Peace Forum[207]. This agreement was to supersede the Abuja Agreement of 2005 and when signed, would halt preparations for a Darfur status referendum. The proposed document included provisions for a Darfuri Vice-President and an administrative structure that includes both three states and a strategic regional authority, the Darfur Regional Authority, to oversee Darfur as a whole. The agreement was signed by the Government of Sudan and the Liberation and Justice Movement on 14th July 2011[208].

Even after the reform process of the Darfur Regional Authority (an interim governing body for the Darfur region established as the Transitional Darfur Regional Authority in April 2007 under the terms of the 2006 Darfur Peace Agreement) that began on 20 September 2011 when Tijani Sese was named as chairman of the new authority and was completed on 8 February 2012 when the authority assumed its full functions Darfur's population continue to suffer and the innumerable problems facing Sudan cannot be resolved until peace is secured in Darfur. According to UN estimates, 2.7 million Darfuris remain in internally displaced persons camps and over 4.7 million Darfuris rely on humanitarian aid.

While the fighting in Darfur is not nearly as widespread as it was only a few years ago, it does still persist and although wealthy nations are still engaged in diplomatic talks, they have yet to offer any substantial contributions that might aid in stopping the violence. In particular, UNAMID remains grossly underfunded and ill equipped to deal with the scale of the conflict in Darfur.

The latest report on the violation of the arms embargo over Darfur by Amnesty International came in early 2012, and demonstrated that Russia and China continue to contravene the embargo even now, despite full knowledge that arms sold to the

---

[207] Digne Ted, 1st June 2011, "Sudan: the crisis in Darfur and status of the north-south peace agreement", Congressional Research Service, www.au.af.mil

[208] Hilde F. Johnson, (2011), "Waging Peace in Sudan: The Inside Story of the Negotiations That Ended", Trans Pacific Press.

Sudanese government eventually find their way into Darfur and are used in the conflict.

Amnesty International's expert on military and policing, Brian Wood, has called for an extension of the arms embargo to include all of Sudan. "The Darfur conflict is sustained by the constant flow of weapons from abroad. To help prevent further serious violations of human rights, all international arms transfers to Sudan should be immediately suspended and the UN arms embargo extended to the whole country". Wood also went on to say that, "Until governments agree a strong Arms Treaty with specific rules to respect human rights, UN arms embargoes will continue to be flouted and millions of people continue to suffer the consequences of irresponsible arms transfers, as they do in Darfur."

Despite these current difficulties and the continued fighting between the government and several rebel groups, the Darfur Peace Agreement can be seen as a force for positive change and recognition of some of the demands being made by the people in Darfur. Though it was only signed by one rebel movement, it remains as a beacon of hope for positive change to come within the region as negotiations continue between relevant parties.

4.2 The role of the international community

The International attention to the Darfur conflict largely began, as I said, with the reports by the advocacy organizations such as Amnesty International published in February 2004 and the International Crisis Group in March 2004[209]. However, widespread media coverage did not start until the outgoing United Nations Resident and Humanitarian Coordinator for Sudan, Mukesh Kapila, called Darfur the "world's greatest humanitarian crisis" in March 2004[210].

For more than a year, from early 2003 until mid-2004, while the conflict in Darfur was escalating and the U.N. Security Council's priority in Sudan was the negotiations in Naivasha, Kenya, to end the north-south civil war(the result of this talk was the Comprehensive Peace Agreement CPA). Initially, false optimism that those negotiations would lead to a quick settlement that would change the overall political situation in Sudan may have caused some member states to discount the warning signs of a growing crisis in Darfur.

Later, as it became increasingly impossible to ignore the evidence of serious violence and human rights abuse, the Security Council may have tried to keep Darfur off of its agenda out of fear that a discussion of Darfur would cause the government in Khartoum to pull out of the Naivasha talks. As a result, even in June 2004, when the Security Council passed Resolution 1547/04[211], which established a U.N. Mission in Sudan to prepare and to monitor implementation of a final agreement between the government of Sudan and the SPLM/A, Darfur was barely mentioned.

Before late July 2004, the Security Council's only action on Darfur was a 25th May 2004 statement by the Council president calling on the government of Sudan to disarm the Janjaweed militias. This statement came after the council was briefed on the findings of two U.N. missions of massive human rights violations and grave humanitarian need, and after months of insisting that Darfur was not "on its agenda."

Two months later, after repeated appeals by a growing number of humanitarian and human rights groups, and visits to Darfur by Secretary-General Annan and many foreign ministers from Europe and the United States, the U.N. Security Council

---

[209] Amnesty International Report, "Too many people killed for no reason", Published on 3rd February 2004, www.amnesty.org, see also the International Crisis Group Report, "Darfur rising: Sudan new crisis", Published on 25th March 2004, www.crisisgroup.org

[210] Kapila Mukesh, 29th March 2004, "Mass rape atrocity in west Sudan", interview by the BBC available at news.bbc.co.uk.

[211] Security Council Resolution No.1547/04 available at: www.un.org

passed Resolution No.1556/04 with 13-0 vote with China and Pakistan abstaining.

This Resolution demanded that the Sudanese government disarm the Janjaweed and bring to justice those leaders who had incited and carried out human rights abuses[212]. Despite its obvious weaknesses this Resolution was a significant step forward for the Security Council.

The Security Council threatened to consider further sanctions if the government failed to comply; it also endorsed the deployment of an African Union force to monitor the April 2004 ceasefire agreement between the government and the rebels, which was already underway; and imposed a ban on the sale of arms to all "non-governmental entities and individuals" in Darfur.

In the eyes of most observers, however, it was still another example of the council's abrogation of its responsibilities. By the time the resolution was passed, the gravity of the human rights abuses then still occurring in Darfur was already widely acknowledged. In late June, for example, Secretary-General Annan told reporters, "We all agree that serious crimes are being committed." Moreover, there were already numerous, well documented reports of direct Sudanese government involvement in the perpetration of massive human rights violations in Darfur, including eyewitness accounts of joint ground attacks on civilians by government troops and the Janjaweed, and official documents containing orders for additional recruitment and military supply of ethnic militia groups[213]. By July 2004, stronger measures directed at the government were justified and necessary, but they weren't adopted because at least one permanent member (China) and possibly another (Russia) presumably would have vetoed any resolution that included sanctions against the government or authorized direct U.N. intervention.

On 18th September 2004, after nearly two more months in which security and humanitarian conditions worsened and the government failed to protect civilians or fulfill its commitment to disarm the Janjaweed and prosecute perpetrators, the Security Council passed Resolution No.1564/04 declaring its "grave concern" that the government of Sudan had not fully met its obligations, the Security Council reiterated its call for the government "to end the climate of impunity in Darfur" by identifying and bringing to justice those responsible for the widespread human rights abuses. In addition, it called, as mentioned above, for an expansion of the African Union monitoring mission in Darfur and established a commission of inquiry to investigate

---

[212] Security Council Resolution No.1556/04 available at: www.un.org

[213] Haggar Ali, (2007) "The Origins and Organisation of the Janjaweed in Darfur" in War in Darfur and the Search for Peace, A. de Waal (ed) Harvard University Press

reports of violations of international humanitarian law and human rights law and to determine also whether or not acts of genocide had occurred[214].

Finally, if the government failed to comply with this resolution and with Resolution 1556/04, additional measures were threatened, "such as actions to affect Sudan's petroleum sector and the Government of Sudan or individual members of the Government of Sudan." Resolution 1564/04 passed by an 11-0 vote, with Algeria, China, Pakistan, and Russia abstaining, thus, five months after receiving substantial evidence of government commission of massive human rights abuses, Security Council action was still largely limited to investigations, veiled threats, and support for an A.U. force.

In the process of trying to promote a north-south settlement, the Security Council watered down its earlier commitment to end the suffering of civilians in Darfur, SC Resolution No.1574, which passed unanimously, failed to include any specific criticism of the government of Sudan for failing to meet the demands to disarm and bring to justice the Janjaweed, which were in the Resolution No.1556 and No.1564, and it replaced the mild threats of sanctions in those resolutions with a vague warning that, in the future, it might consider taking "appropriate action against any party failing to fulfill its commitments." In addition, it called on the U.N. and the World Bank to provide development aid, including debt relief to a government which, just months earlier, had been labeled genocidal by the United States and others.

Only years after the first warning, on July 31st 2007, acting under Chapter VII of the Charter of the United Nations, the United Nations Security Council adopted the above mentioned Resolution 1769. The resolution called for the deployment of a hybrid United Nations-African Union force in Darfur (UNAMID).

All these events shown that despite developments in the institutions, standards, and policies that set out to protect civilians in conflict, the United Nations still acted as an association of sovereign states committed to traditional principles of international order and constrained by the ability of the five permanent members of the Security Council to veto collective action.

As I said in Chapter I the norm of non-intervention in the "internal affairs" of a sovereign state flows directly from the principle of state sovereignty, as mentioned in chapter I, and few norms are more fiercely defended by most U.N. member states than this norm. Many governments, especially those in Africa, Asia, and Latin America, understandably regard it as one of their few defenses against threats and pressures from wealthier and more powerful international actors seeking to promote

---

[214] The Security Council Resolution No.1564/04 available at www.un.org

their own economic and political interests. But the non-interference norm has also been used by barely legitimate governments to block international efforts to end gross abuses of their citizenry. That is what happened in the case of Darfur: Khartoum used sovereignty, first, as a veil to hide its brutal campaign against African villagers; and, later, as a shield to fend off calls for international action to protect its victims.

Furthermore, the veto power of the permanent members of the Security Council gives those five countries(the United States, Russia, the United Kingdom, France, and China) a unique power to protect and promote their national interests at the expense of global interests. In the case of Darfur, the main impediment to stronger action by the Security Council has been China, that has strong political and economic interests within the region.

Thus, even in the shadow of Rwanda, the Security Council again failed to muster the collective will necessary to act quickly and decisively to end the humanitarian catastrophe in Darfur and hold accountable those who are responsible for creating it. This is not likely to change unless and until the United Nations accepts the principle, as recommended by the International Commission on Intervention and State Sovereignty and the High Level Panel on Threats, that all states have a "responsibility to protect" civilians faced with avoidable catastrophes, including mass murder and rape, ethnic cleansing by forcible expulsion and terror, and deliberate starvation and exposure to disease. Recognizing the responsibility to protect would provide the Security Council with the basis it needs to act in the face of a determined refusal by a sovereign state to protect its own citizens.

The Darfur case gives also a new glance to the idea of African solutions for African conflicts that is an old one, and unfortunately also in this case the international policymakers have used it as an excuse for their own inaction. In Darfur, the U.N. has seen the right place to give to the nascent African Union (AU) the responsibility for carrying out the goals contained in Security Council Resolutions No.1556/04 and No.1564/04. Initially, the A.U. role was limited to providing a small force of military observers to monitor the April 2004 ceasefire agreement between the Sudanese government and two Darfurian rebel groups[215].

Anyhow the African Union (AU) was slow in responding to the crisis in Darfur. The active role during the cease-fire negotiation in Chad in 2004 and subsequently the central role that the AU assumed in monitoring the cease-fire agreement and facilitating political dialogue between the government of Sudan and SLA/JEM were

[215] Marchal Roland, (2009),*"The unseen regional implication of the crisis in Darfur",* in War in Darfur and the Search for Peace, A. de Waal (ed) Harvard University Press

dealt with many difficulties both related to the few economic and political capabilities of the Organization. In March 2004, the AU sent a team led by Ambassador Sam Ibok, Director of the AU's Peace and Security Department, to participate in talks in Chad and in the April Cease-Fire Agreement the AU was tasked to take the lead in the creation of a Cease-Fire Commission responsible to define the routes for the movement of the respective forces, assist with demining operations, and collect information about cease-fire violations.

From one hand officials in the United States and Europe saw this AU role as a way to avoid the risk that their military forces would become embroiled in another Mogadishu-like disaster, where forces acting under a U.N. mandate were drawn into a deadly conflict with local warlords. From another hand the African leaders viewed it as an opportunity to establish the A.U.'s bona fides as the dominant political-military institution in Africa. In this scenario the Sudanese government apparently decided that the A.U. force was the best alternative to avoid the possibility of sanctions or U.S. or European intervention.

In January 2006, the African Union and the United Nations created an ad hoc peacekeeping mission for Darfur transforming the former "African Union Mission in Sudan" (AMIS) in the "African Union/United Nations hybrid operation in Darfur" (UNAMID). Meanwhile, the Security Council requested that authorities in the U.N. provide options for a U.N. peacekeeping operation. In addition to its peacekeeping responsibilities, AMIS was a key player in the implementation of key provisions of the DPA. The Ceasefire Commission and the Joint Commission were chaired by AMIS, while it was also tasked to establish and play a key role in the Joint Humanitarian Facilitation and Monitoring Unit. Security in IDP camps, creation of Demilitarized Zones, verification of disengagement and demobilization were also the responsibility of AMIS. In late December 2007, UNAMID officially assumed command and control from the African Union peacekeeping force.

The ability of the A.U. force to help bring security and justice to Darfur depended largely on the commitment of the United States and Europe to ensure that the A.U. force would have the equipment, training, and logistical support necessary to carry out its mission. But it was also depended on the commitment of the A.U. Peace and Security Council. The A.U. mission in Darfur shows that in order to enhance the international community's ability to halt future human rights catastrophes there is a strong need of involving the regional actors both governmental and non-governmental in all stages of prevention and reaction.

a. **The China and Russia's roles in the conflict**

Internationally speaking and within the U.N. Security Council two States had a particular relevant role in the Darfur Conflict and in the Sudan situation. Since the very beginning of its focus on the Darfur conflict Amnesty International denounced the role played by both States; Amnesty International issued reports accusing Russia and the People's Republic of China of supplying arms, ammunition and related equipment to Sudan since early 2004[216].

The reports provided evidence that the Sudan Air Force has been conducting a pattern of indiscriminate aerial bombings of villages in Darfur and eastern Chad using ground attack jet fighters and Antonov planes for operations during Janjaweed attacks on villages in Darfur but China and Russia always denied they had broken UN sanctions.

Historically the relations between China and Sudan are warm, in the 1990s, political, economic, and military relations between Sudan and China expanded, and China became a key trading partner, investing billions of dollars in Sudan's oil sector. China reportedly imports an estimated 64% of Sudan's oil and China's National Petroleum Corporation is the largest shareholder (47%) in the two biggest oil consortiums in Sudan, Petrodar and the Greater Nile Petroleum Operating Company (GNPOC). In addition to the oil sector, China is an important player in other sectors of the Sudanese economy as a whole. In February 2007, China signed a $1.2 billion agreement to upgrade the railway between Khartoum and Port Sudan. China is also an active participant in power generation, the arms industry, and other major infrastructure projects[217].

Sudan produces significant quantities of weapons itself and is the third-largest arms manufacturer in Africa, after South Africa and Egypt but Human rights groups and other observers as I mentioned above accuse the Chinese government of being the principal supplier of weapons in violation of a U.N. weapons embargo on Sudan. Only for the year 2005, China reportedly sold Sudan $24 million in arms and ammunition and $57 million worth of spare parts for aircraft and helicopters.

In July 2008, a BBC Television report presented evidence of Chinese army trucks and several A5 Fantan fighter planes in Darfur[218]. In February 2008, Fantan

---

[216] "China and Russia breach Darfur arms embargo", 5th August 2007, Reuters. See also: Amnesty International, Sudan: Arms Continuing to Fuel Serious Human Rights Violations in Darfur, May 2007.

[217] George Ayittey, "Africa and China", Feb 19th 2010, The Economist. See also Human Rights Watch, 23rd December 2003, China involvmenet in Sudan: Arms and Oil., available at: http://www.hrw.org/reports/2003/sudan

[218] BBC News. *China is Fueling War in Darfur*, July 13, 2008. Ted Dagne spoke with the reporter on a number of occasions, in preparation for the BBC Television report, which was aired on July 14, 2008.

fighter planes were used to bomb the town of Beybey in Darfur in which a number of civilians were reportedly killed.

China considers good relations with Sudan to be a strategic necessity that is needed to fuel its booming economy and consistently opposed its veto power to the economic and non-military sanctions proposed by the Security Council on Sudan. In fact, as a Permanent Member of the Security Council, China has threatened several times to veto U.N. Security Council resolutions or has influenced the Council either to withdraw or amend statements[219].

Omar Al Bashir has sought the assistance of numerous non western countries after the West, led by America, imposed sanctions against him, he said: "From the first day, our policy was clear: To look eastward, toward China, Malaysia, India, Pakistan, Indonesia, and even Korea and Japan, even if the Western influence upon some [of these] countries is strong. We believe that the Chinese expansion was natural because it filled the space left by Western governments, the United States, and international funding agencies. The success of the Sudanese experiment in dealing with China without political conditions or pressures encouraged other African countries to look toward China".

Gérard Prunier, a scholar specializing in African conflicts, argued that the world's most powerful countries have largely limited themselves in expressing concerns and demand for the United Nations to take action in solving the genocide in Darfur. The UN, lacking both the funding and military support of the wealthy countries, has left the African Union to deploy a token force (AMIS) without a mandate to protect civilians[220]. In the lack of foreign political will to address the political and economic structures that underlie the conflict, the international community has defined the Darfur conflict in humanitarian assistance terms and debated the label of "genocide".

On 16th October 2006, Minority Rights Group (MRG) published a critical report[221], challenging that the UN and the great powers could have prevented the deepening crisis in Darfur and that few lessons appear to have been drawn from their ineptitude during the Rwandan Genocide. MRG's executive director, Mark Lattimer,

---

[219] George Ayittey, "Africa and China", Feb 19th 2010, The Economist. See also Human Rights Watch, 23rd December 2003, "China's Involvement in Sudan: Arms and Oil"., available at: http://www.hrw.org/reports/2003/sudan

[220] Gerard Prunier (2005), "Darfur the ambiguous genocide", Cornell University Press

[221] Minority Rights Group Report, 16th October 2006, "U.N. could have averted Darfur catastrophe", available at www.minorityrights.org

stated that: "this level of crisis, the killings, rape and displacement could have been foreseen and avoided (...) Darfur would just not be in this situation had the UN systems got its act together after Rwanda: their action was too little too late"[222].

On 20 October 2006, 120 genocide survivors of The Holocaust, and the Cambodian and Rwandan Genocides, backed by six aid agencies, submitted an open letter to the European Union, calling on them to do more to end the atrocities in Darfur, with a UN peacekeeping force as "the only viable option". Aegis Trust director, James Smith, stated that while "the African Union has worked very well in Darfur and done what it could, the rest of the world hasn't supported those efforts the way it should have done with sufficient funds and sufficient equipment"[223].

For decades, Russia and Sudan have maintained a strong economic and politically strategic partnership and it was not surprising that when Vladimir Putin was elected President, and then Prime Minister of Russia, and along with Chinese leader Hu Jintao opposed UN Peacekeepers in Darfur. Russia strongly supports Sudan's territorial integrity and opposes the creation of an independent Darfurian state.

b. The United States and European Union's roles in the conflict

In a different position also the United States played a key role in the Sudan issues in particular on the North-South peace process. The international focus as explained above was all for the resolution of the north-south conflict and also the U.S. did not act in a firm way both at political and diplomatic level in order to reach at least a unanimously SC Resolution with economic sanctions on Darfur until the genocide was clear.

In late October 2009, the U.S. President Obama announced a new policy toward Sudan taking into consideration the situation in Darfur that focuses on three priorities: an end to the conflict in Darfur; the implementation of the Comprehensive Peace Agreement (CPA); and ensuring Sudan does not become a safe haven for international terrorist groups[224]. Strategic Objective I calls for the protection of civilians, a negotiated settlement to the conflict in Darfur, improving humanitarian conditions, accountability and justice, and an end to violent conflicts inside Sudan and with its neighbors. Strategic Objective II focuses on implementation of the CPA; U.S.

---

[222] Ibid.

[223] BBC News, 20 October 2006, "Darfur Call by Genocide Survivors", available at

[224] Nicholas D. Kristof, The New York Times (21st April 2010), "Obama backs down on Sudan", www.nytimes.com, see also the White House Foreign Policy issue, www.whitehouse.gov

assistance to promote governance and transparency in South Sudan; strengthening international engagement; defusing tension and providing assistance to Abyei, Southern Blue Nile, and Nuba; and assisting the parties in developing plans to deal with the post-2011 political, economic, and other emerging issues. Strategic Objective III seeks to prevent terrorists from having a safe haven in Sudan and ensure cooperation on counter-terrorism.

The policy clarifies a number of issues and re-affirms the conflict in Darfur as genocide; in fact since June 2009, the position of the U.S. government remained was clearly in favor of a "genocide definition" for the Darfur conflict.

According to the 2011 U.S. new policy for Darfur presented before the referendum and the July Agreement the primary objective in the region was "a definitive end to conflict, gross human rights abuses, and genocide in Darfur." The policy also asserts that cooperation on counter-terrorism without verifiable progress on other issues will not lead to a normalization of relations. For the U.S. Sudan is a strategic partner in the counter-terrorism war and the policy document clearly states that "Sudanese support for counterterrorism objectives is valued, but cannot be used as a bargaining chip to evade responsibilities in Darfur or in implementing the CPA.

In the early 1990s, the EU did not engage much with Sudan, as development cooperation (the EU's main instrument in Sudan) had been suspended due to the military coup carried out by al-Bashir. This meant that financial engagement in the region was not strong when the 2003 crisis erupted. In addition, there were only some NGOs and international agencies scattered in small areas across the country at the time, meaning that early warning ability was lessened. Hence the EU radar showed few signs that disaster was impending.

It was only when the refugee influx into Chad became obvious that the EU began to react with financial aid through the UNHCR. This was not part of a large policy shift in the EU at the time as, given the gradual way the disaster gathered pace, there was no 'CNN-effect', or Darfur NGO pressure groups to make the EU react boldly.

A proper reaction took time and it wasn't until February 2004 that the European Commission began to mobilize funding. From March-April 2004, the EU had begun to mobilize politically, as well as through other EU instruments, including strong support for the AU mission and technical support of the AU. While the US described the situation in Darfur as genocide, the EU did not go as far in its assertion and merely issued statements, such as the advisor to the EU High Representative in August 2004, who after completing fact-finding mission stated that while there was no "situation of genocide", considerable doubts existed as to the willingness of the Sudanese government to assume its duty to protect its civilian population from attacks.

By the end of the year, the Washington Post was reporting that "⋯ [the] European Parliament declared that the actions of the Sudanese government in Darfur were "tantamount to genocide," and EU ministers threatened sanctions "if no tangible progress is achieved" in meeting U.N. demands to halt the killing". However, a stinging critique of EU structures came from Bock (a former legal adviser to the United Nations Economic Commission for Europe) and Miller, arguing that EU member states "voice their concerns and then excuse their inaction as bowing to the judgment of the whole (of the EU). In effect the European Union has fashioned a foreign policy mechanism by which inaction is virtually automatic, even in the face of genocide".

The 'voice and face' of the EU comes firstly in the form of the appointment by the Council (on recommendation of the EU High Representative) of an EU Special Representative for Sudan that has the duties to represent the EU during the formal and informal meeting within the region in order to find a peaceful solution.

However, the broad range of issues, and the sensitivities inevitable with the different views of the member states, has meant that a more strident EU public voice came from the European Parliament, or from individual member states, for example, even though the EU was involved in discussions of the Comprehensive Peace Agreement (CPA), the UK had a large part to play, along with the US and Norway, the three being key parties in brokering the CPA.

The EU's working methodology on Sudan is framed within the six yearly "Country Strategy Paper" (CSP) for Sudan looking at the situation in both terms with short and long strategy. The first "country strategy paper" was issued in 2005 and the latest revision covers 2008-2013; its legal framework encompasses not only development cooperation, but also economic and trade cooperation, and importantly, the political dimension.

Critics argue that the EU has not done enough, especially considering its history in sub Saharan Africa. Other reject this, pointing to significant financial support the EU has poured into the region, as well as staff and member state support through ESDP missions when legally possible. The Swedish EU presidency acknowledged that situations like Sudan make it obvious that the EU needs better coordination, in particular, the EU needs to question whether its short-term and long-term actions are actually what is required, and it needs to step up efforts to involve civil society in planning, implementation and assessment.

Some officials, on the other hand, have stated that they would like more pro-active NGOs, with stronger advocacy, which would allow them to argue for an increased involvement of civil society and greater coordination. The EU approach to

long-term actions remains very diplomacy orientated, but this can be ineffective if the EU wants to make real change rather than just provide band-aid solutions of humanitarian aid. Aid must be combined with a political solution for Sudan, otherwise the EU is simply a life-support system for a 'life with no end and purpose'. The EU pillars must incorporate accountability and justice for the Sudanese region, and this needs to be reflected in the EU's policy and politics.

The question remains as to whether the EU should have taken on a bigger a role, and also pressurized Arab states more. The EU's answer (also held by some NGOs and member states) is that the EU has been active working mostly on a preventive diplomacy strategy, but now the EU and the U.S. have to identify better their role and added value such as a driver of close coordination of the international community after the July Agreement and the setting-up of a "new Sudan definition" both political and geographical.

4.3 Applicable early warning mechanisms and the minority rights signals

As we saw in the previous Chapter on Early Warning, genocide prevention is made up of a broad set of strategies relating to long-term and short-term factors that lead to and sustain the root cause of the conflict that are identified through risk assessment and addressed through 'structural genocide prevention' measures including socioeconomic development, governance programmes, or targeted interventions such as resource-management and grassroots peace-building.

The preventive strategies, which may be 'early' (preventing serious conflict precipitating) or 'late' (preventing serious conflict escalating) should be effective and requires robust and timely conflict early warning that also pinpoints effective preventive responses To my point of view the Darfur case could illustrate that full incorporation of minorities' concerns is of vital importance to both structural and operational genocide prevention this is also shown by the recent development of the Barbara Harff's model on genocide prevention and by the OSAPG indicators for genocide both taken into account the important role played by the racial-ethnic conflict when we talk about genocide.

The conflict in Darfur has coincided with significant advances in international concern for prevention of conflict, including some acknowledgement of the links between rights and conflict prevention useful in term of genocide prevention, such as for example the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM)[225]. In fact it is universally recognized by many NGOs and U.N. Agencies Reports and highlighted by the Special Adviser on Genocide Prevention's work on the topic that the minority rights element is pretty much important when we look a situation that might escalate to genocide.

This has been also voiced in key reports of the UN Secretary- General, and in several statements such as the 2001 'Responsibility to Protect' (report of the International Commission on Intervention and State Sovereignty), the 2005 UN High-Level Panel on Threats, Challenges and Change report, A More Secure World: "Our Shared Responsibility and the Outcome Document of the UN World Summit in September 2005. 'We note that the promotion and protection of the rights of persons belonging to national or ethnic, religious, and linguistic minorities contributes to

---

[225] A/RES/47/135, 18th December 1992, "The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities" (UNDM) available at www.un.org

political and social stability and peace and enriches the cultural diversity and heritage of society[226]."

Looking at the African region the AU's Peace and Security Council (PSC), established in July 2002, is explicitly required to engage in 'early warning and preventive diplomacy', including through a Continental Early Warning System (CEWS)[227]. Progress since 2003 has, however, been slow, sub-regional institutions increasingly play an important role in conflict early warning and action; the Inter-Governmental Authority for Development (IGAD) Conflict Early Warning mechanism (CEWARN) for cross-border pastoral conflicts in IGAD countries (including Sudan) is indicative of this.

Darfur has featured in some of these developments, with the AU leading peace negotiations and ceasefire monitoring since mid-2004; the active work of the Office of the Special Adviser on Genocide Prevention (OSAPG) on Darfur since mid-2004; the UN International Commission of Inquiry on Darfur that reported in early 2005; and the ICC referral. However, as specifically regards to genocide prevention and early warning, many of the new institutions were not yet operational, and thus Darfur must be analyzed in terms of what failed in the past, and what can be learned by existing, new and future institutions.

What lessons can we learn from international engagement in the conflict in Darfur? Looking at the conflict from the minority rights warning signal it must be said that probably the catalogue of political and institutional failures before and during the civil war indicates a need to address minority rights issues at every stage of a genocide prevention process in order to make it effective.

Genocide prevention, as I said previously, is a set of strategies to address factors that lead to and sustain conflict; Structural prevention measures address pre-conflict conditions through economic development, governance programs and targeted interventions[228]. In conflict conditions, operational prevention measures seek to

---

[226] Report on the high level panel on Threat challenge and change, (2004) A More Secure World: Our Shared Responsibility", www.un.org see also "The Outcome Document of the UN World Summit" (2005), www.un.org and the report of the International Commission on Intervention and State Sovereignty (2001), www.responsibilitytoprotect.org

[227]The African Union "Meeting the challenge of Conflict Prevention in Africa, towards the operationalization of the continental early warning system"(17-19 December 2006, Kempton Park, South Africa), www.au.org

[228] Adelman, H. (1998). 'Defining Humanitarian Early Warning', in Schmeidl, S., Adelman, H. (eds.), *Early Warning and Early Response*. Columbian International Affairs Online.

prevent more conflict or de-escalate current conflict. The incorporation of minority rights' issues is vital in both stages of conflict prevention.

There have recently been institutional developments to improve genocide prevention within both the United Nations and African Union on the minority rights issue[229]. Since most of these developments occurred after the Darfur conflict began; since the late 1990s, early warning and conflict prevention have become high-priority areas for multilateral organizations and, at the highest levels, there is growing political will for more effective institutional approaches.

The link between oppressed and marginalized minorities, contemporary conflicts and genocide prevention is almost clear looking at every genocidal event and this is a particular concern in Africa, where discrimination against minorities is often present alongside other structural preconditions for conflict. Minority Rights Group International (MRG) emphasizes that while acceptance of the term 'minority/minorities' is contested in Africa, the prevalence of non-dominant distinct ethnic, linguistic or religious groups (such as described regarding Sudan) who are marginalized or discriminated against by the state presents a compelling reason for their recognition and protection[230]. In fact the minorities in Darfur include ethnic groups which, although they are not necessarily numerical minorities within the region, satisfy this definition on the basis of their non-dominance and experience of rights violations.

The plight of minorities in Darfur, and the conditions for large-scale conflict, were long known to Sudanese and international actors. In 1995, for example, MRG warned of the precarious situation in Darfur, concluding that: "[The] Sahel drought, coupled with interference by government and the struggle for local political power, appears to have polarized the various ethnic groups. The only way out of the crisis will be through the recognition of the conflict's environmental and developmental origins, and the negotiation of equitable access to resources in a fragile environment". with other non-governmental organizations (NGOs) to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, warning that conflict in Darfur was escalating "into a full blown ethnic war".

---

[229] Shabas W. A. "Preventing Genocide and Mass Killing: The Challenge for the United Nations", Minority Rights Group Report (2006)

[230] Koigi wa Wamwere, (2003), "Negative ethnicity: from bias to genocide", Seven Stories Press, p. 152. See also Slimane S., (2003), "Recognizing Minorities in Africa", www.minorityrightsgroup.org

The failures in genocide prevention and early warning in Darfur are challenges that both existing and new institutions must address. Early warning *per se* was not the problem. Rather, there was a failure to connect robust institutional conflict early warning with those in a position to deploy preventative measures and silent diplomacy. A stronger approach must have at its heart the full incorporation of minority concerns and clear political will to prioritize and address them.

The decision of international actors to prioritize the IGAD peace process compromised attention to the escalating human catastrophe in Darfur[231]. Darfur underlines the importance of institutions and processes mandated solely with, and accountable for, conflict prevention, to serve as a bulwark against political interests that do not prioritize minority concerns. Such institutions must be active on the field long before a conflict's intractability increases. Strong multilateral institutional mechanisms are critical, particularly with the UN and, regionally, the AU and sub-regional organizations such as IGAD.

A more integrated approach to genocide early warning and prevention must fully incorporate human rights analysis, which plays an especially critical role where minorities are concerned. The ending of the UN Special Rapporteur for Sudan's mandate in 2003 demonstrates the need for a stronger institutional approach, especially for early operational prevention[232]. In the absence of a specific genocide and conflict early warning analytical unit within the UN, The OSAPG and the UN Framework Team role could rise to these challenges, and should build in minority-focused concerns from the outset.

The fact that, before the establishment of the OSAPG in 2004, the Framework Team did not have Darfur on its agenda in 2002/03 years (at the stage in which the situation might be effectively monitored and prevented in its escalation) requires scrutiny[233]. The OSAPG, the UN Framework Team and UN Country Teams need to formally collaborate with regional, nongovernmental and field-level organizations, in particular in the phase of early warning and information sharing.

Unlike with the humanitarian system's IASC, there is still a little formalized collaboration between international, regional and non-governmental organizations for conflict early warning and prevention. Important independent conflict analysis

---

[231] International Crisis Group Report on Africa n.76, (25th March 2004), Darfur rising: Sudan new crisis", www.crisisgroup.org

[232] Ibid.

[233] Alex Bellamy and Paul D. Williams, (2006), "The U.N. Security Council and the question of humanitarian Intervention in Darfur", Journal of military Ethics 5/n.2

organizations, such as the Crisis Group, are not involved in a periodic dialogue for information-sharing with the OSAPG, the Framework Team or other UN Agencies. Clearly, conflict and genocide early warning are politically sensitive; however, information-sharing and policy formation can be kept separate from the diplomatic complex scenario.

In addition to dedicated genocide early warning analysis, there is still a need for a formal and accountable institutional mechanism across the UN system that links early warning with pro-active conflict-genocide prevention, probably the OSAPG was, in the Secretary General's idea, this institutional box but still now it has faced with enormous difficulties both internally and international[234]. If the DPA and the OSAPG are to be effective, they needs to be resourced and committed to a pro-active and accountable leadership role that includes an early 'downwards' focus on supporting UN Country Team leadership, Regional Organizations such as African Union, OSCE, EU and also NGO's[235].

The systematic violations of minority rights by the Government of Sudan, including marginalization and discrimination, inequitable land management, socio-economic under-development and an abdication of its responsibility for law, order and security were known to international actors throughout the 80s and 90s. But donor interest in the region had waned since the famine in the 80s and structural conflict prevention in Darfur was limited in the 90s. By 2002, violence had escalated and alarms were raised, but did not result in preventive action.

International attention to Darfur was, as mentioned, distracted by the peace process for the North-South Sudan War led by the Inter-governmental Authority on Development (IGAD); During 2003 and early 2004, the IGAD peace process became the regional priority for key Western governments, marginalizing the escalating conflict in Darfur, by excluding minority groups from negotiations, the IGAD peace process further motivated these groups to resort to conflict; the fear of jeopardizing advances in the North-South peace effort, little or no operational conflict prevention occurred in Darfur[236].

The IASC Humanitarian Early Warning System and the work of OCHA's Early Warning Unit are, nevertheless, important and instructive examples, though they should also fully incorporate minority rights indicators; the EU list of conflict

---

[234] See the documents session of the Office of the Special Adviser on the prevention of Genocide web-site, www.un.org

[235] Ibid.

[236] Kenny Gary, (2005), "Beyond a north-south settlement: addressing problems of marginalization in Sudan, www.africafiles.org

indicators is strong on minority rights; the new Convention on the Elimination of Racial Discrimination (CERD) indicators for genocide could also be considered in combination with the indicators developed by the Office of the Special Adviser on Genocide Prevention.

Having said that the Darfur case had shown, inter alia, the importance of the consideration of the minority rights situation when we work on genocide prevention; considering in particular these elements:

First of all for a structural genocide prevention the National governments and international and non-government organizations need to acknowledge the link between the prevention of ethnic racial conflict and the promotion and protection of minority rights. Secondly, international and regional early warning systems must have adequate resources, exhibit strong leadership and emphasize rights-focused analysis in order to guarantee after the warning a concrete reaction politically and internationally agreed.

Thirdly the development of the post of UN Special Adviser on the Prevention of Genocide played an important role in the last years especially in terms of cooperation with the Special Adviser on R2P. The new Special Adviser on the Prevention of Genocide, appointed on July 17th 2012, and the end of the Special Adviser on R2P mandate without a new person appointed underline that within the U.N. system there is still a lack of political will in improving and make R2P effective and that in terms of early warning data collection and analysis and in term of adequate political response to this data the new Special Adviser will have to redraw the Office's capabilities.

Lastly the peace-making efforts must be rights-based and inclusive of all communities and all members of the communities in fact history shows that conflicts must be approached in a holistic manner and include a country/regional approach and all peoples affected.

To my opinion taking into consideration the above mentioned points the failure of early prevention in Darfur is testament to the fact that lack of (1) accountable regional and international leadership on prevention, (2) strategies built upon strong conflict early warning analysis (rooted in both political and rights analysis) and (3) resourced mechanisms for action creates a shocking cycle of inaction of the international community that created a sort of long standing Rwanda.

4.4 Factors of Prevention

Over the past two decades as we saw, countless reports and studies have declared the need to develop more effective early warning and conflict prevention mechanisms[237]. The International Commission on Intervention and State Sovereignty, for example, declared that "prevention is the single most important dimension of the duty to protect[238]." Yet, while the last decade has seen many initiatives in this area, the atrocities in Darfur provide stark evidence that the international community has not yet found a way to translate theories of preventive action into effective practices.

The result has been a plethora of new principles, U.N. resolutions, recommendations, proposals, commitments, and the development of the "human security agenda." In December 2004, the U.N. Secretary- General's High Level Panel on Threats, Challenges and Change (High Level Panel on Threats) acknowledged the failure of the U.N. to prevent atrocities against civilians and recommended reforms to enhance the U.N.'s capacity to carry out its collective security mandate. So far, however, these initiatives have afforded no protection to the people of Darfur.

To learn from the unfolding tragedy of Darfur, the international community must go beyond the "never again" rhetoric and ask hard questions about why the U.N. has been unable to translate its post-Rwanda commitments into effective practice. International policymakers must confront the assumptions and interests that hobble the Security Council's ability to respond quickly and decisively to human rights crises in Africa and elsewhere.

In the case of Darfur, the Sudanese government's brutal counterinsurgency tactics (including promoting ethnic militias, scorched earth warfare, aerial bombardment, massive forced displacement, and the blocking of humanitarian aid to the victims) are the same tactics it used to combat rebels in other parts of the country. If the international community had held Sudanese government officials and the militia leaders it backed in its other counterinsurgency wars accountable for the

---

[237] Woocher L., (2006), "Developing a Strategy, Methods and Tools for Genocide Early Warning" prepared for the Office of the Special Adviser on the Prevention of Genocide, www.un.org

[238] Report of the International Commission on State Sovereignty on the Responsibility to Protect, (2001), available at www.responsibilitytoprotect.org

[239] U.N. Press Release SC/6843, 14th April 2000, "the chairman of independent enquiry into United Nations actions during the 1994 Rwanda presents Reports to the Security Council", www.un.org

abuses they committed in those earlier campaigns, Khartoum might have been deterred from unleashing the Janjaweed in Darfur. But the gross abuses in southern Sudan's twenty-one year war never made it onto the Security Council agenda, and these abuses are almost entirely ignored in the draft North-South peace accords. Similarly, if the international community had taken steps to ensure that previous exercises in ethnic cleansing were reversed, Khartoum would have had less reason to believe that it would succeed in using force to effect lasting changes in the map of Darfur.

As highlighted previously there were many early warning signs in Darfur, but mere warnings, even if combined with reports of scattered attacks on civilian populations, are rarely enough to prompt the international community to act. The problem of the lack of the political will is two-fold, global policymakers are reluctant to intervene in "internal matters" unless and until localized conflicts escalate beyond some indeterminable magic threshold that makes them obviously legitimate matters of international concern; and the global public seldom begins to demand action until it is presented with graphic evidence of large-scale suffering. Therefore, even if the ravaging of a few villages by government forces and ethnic militias is recognized as an early warning sign, it is almost never sufficient to set in motion early preventive actions.

The entry-points for engaging in early operational prevention were not visible and thus not taken. The available information was not incorporated into an integrated analysis that developed strategies for preventive action. And, critically, Darfur failed to reach the agenda of existing institutional early warning mechanisms, such as the Framework Team at UN headquarters.[240].

The internationalization of the conflict was evident at least since March 2003, and arguably provided a platform for UN engagement at the highest level. The SLA, as described in the historical background responded with the El Fasher attack on 24 April 2003, destroying military aircraft and capturing arms. By this time, the JEM had emerged as a second rebel group and the conflict rapidly escalated. The IGAD peace process is another important element to understand Darfur's conflict, and failures in conflict prevention, in fact the IGAD peace process was aimed at bringing to an end Sudan's North-South war and was the main political issue internationally speaking. Increasing conflict in Darfur coincided with renewed optimism for the IGAD peace process.

---

[240] Bechtold P. K., (2009), "A History of Modern Sudan", in the Middle East Journal, 63(1)

Peacemaking aimed at stopping a war and resolving grievances of minorities in south Sudan came at the expense of incorporating the interests of other marginalized groups across Sudan, including Darfur, in constitutional issues of direct and burning relevance to them. Arguably, the IGAD peace process, by refusing the right to participate for minorities or all communities, coupled with the government's exclusionary and discriminatory policies and their policy of only negotiating with groups that take up arms, reinforced a 'logic of the gun' in Sudan, and further motivated excluded groups to take up arms to have a political voice.

More worryingly, as conflict escalated, the IGAD peace process marginalized the plight of groups in Darfur from meaningful international support. International concern was overwhelmingly for pushing the IGAD process towards a full peace agreement and 'planning for peace'. Calls for greater focus on Darfur between February and April 2003 were met with suggestions that excessive advocacy on Darfur was a peace spoiler, yet conflict in Darfur and the IGAD peace process were interconnected.

It is clear that the international focus upon the North–South process (and the new war in Iraq) reinforced the invisibility and marginalization of Darfur at a precarious time; early warning alarms were muffled, not acted upon, and operational prevention was lacking[241]. In June 2003, the International Crisis Group (Crisis Group) recommended that the international community promote a negotiated solution and restructure the IGAD process to incorporate concerns raised by marginalized minorities in Darfur and elsewhere. In July, Amnesty International reported widespread atrocities and proposed that the IGAD process's human rights monitoring mechanisms be urgently extended to Darfur to protect minorities.

Looking at this scenario to my opinion at least two key failures in 'late' operational preventive action in Darfur from May 2003 onwards were: (1) the continued strategic prioritization by key Western governments of the North–South IGAD peace process above Darfur and an insistence that the two situations were best dealt with sequentially (despite their interconnectedness and Darfur's deterioration, 'a risk that was morally and ethically wrong, but in any case backfired'),compounded by (2) the lack of meaningful UN leadership on operational genocide and conflict prevention[242].

---

[241] Kenny Gary, (2005), "Beyond a north-south settlement: addressing problems of marginalization in Sudan, www.africafiles.org

[242] Meier P., (2007). 'New Strategies for Early Response: Insights from Complexity Science', http://www.conflict-reduction.org/meier/Early%20Response.pdf.

There is a glaring absence of any available communication or action by the DPA in 2003 explicitly addressing the increasingly catastrophic situation, engagement could have included support to country-level fact-finding and analysis, consensual deployment of peace and security advisers, support for mediation processes, even pro-active upward escalation to the Secretary-General and the Security Council.

Relief came in advance and in place of concerted political engagement, mediation and preventive diplomacy with the man-made drivers of crisis, although the humanitarian effort has been criticized as far too slow, it nevertheless had far more impetus and leadership than operational genocide prevention.

To my opinion the real key to preventing future "Darfurs", as noted above, is legitimizing the idea of early action to protect civilian populations, and then creating the tools necessary to provide protection; but it is clear that even legitimizing such type of preventive protection, we will be always like the three wise monkey that see no evil, hear no evil, speak no evil without a strong and unambiguous internationally agreed political will to intervene.

Looking at the events in Darfur from the early warning signals to take into account we can see at least five more categories of human rights violations by the government that the international community, a part from the ones presented in the Harff's model and the list of the OSAPG, could take into consideration working on a warning-preventive way:

1. Failure to ensure equitable access to resources, especially land evidenced in the repeated failure to fairly and transparently deal with the land usage and access issues affecting all Darfur's minority groups ('Arab' and 'non- Arab'); further, government inaction on and/or support for land-grabbing by some groups that followed violence. 'The Arabs in North Darfur see that the Arabs in the south have land, and ask, "So why not us? In free elections we will not get any seats because we are the minority so we must take by force." (Ibrahim Yahya, former Governor of West Darfur 1997–2000; interview by Julie Flint, May 2004[243])

2. Political marginalization of minority groups – evidenced in the manipulation of political territory arrangements and appointments, partisan support and rewarding of certain groups over others. 'In 1997 General al-Dabi was sent to Dar Masalit with presidential powers. He expelled most of the 27 Masalit tribal leaders and appointed Arab emirs. He attacked and burned Dar Masalit and Wadi Saleh. The IDPs moved to shantytowns in Nyala (···) This was the beginning of the Masalit war.' (Adam Ali

---

[243] Flint Julie, (2004), Interview during a Human Rights watch fact finding mission in Sudan, available at www.hrw.org

Shogar, former SLA coordinator and lecturer in Islamic law and legal studies; interview by Julie Flint, May 2004)[244].

3. Socio-economic under-development – evidenced in the unequal access to, and generally low level of, social services, and general neglect of the region in Sudan's development, in spite of population expansion, cyclical droughts and deepening livelihoods crises. 'I am from the ruling party, but I am from Darfur (⋯) and I can say that the problem has been, including since the Colonial Government, that they were (⋯) only taking care of Khartoum, of Gezira, but not these other "marginalized areas".' (General Ibrahim Suleiman, former Governor of North Darfur; interview, Khartoum, August 2005)[245].

4. Racial and cultural discrimination – evidenced not only in the land issue and political arrangements outlined above, but also in the tolerance of and alleged support for a racially discriminatory group, the 'Arab Gathering', and hostile statements by senior government officials directed at non-Arab tribes. 'The NIF government in Sudan has actively pursued a policy of ethnic cleansing against the non-Arabs of Western Sudan.' (Open letter of the Massaleit Community in Exile, April 1999) 'The janjawid's roots are in the Arab Gathering, who referred to it in one pamphlet as their military wing ⋯ they began getting secret support from the government for their aims, especially land, grazing, etc. in Darfur. The government armed their "nomadic police" (zayin shurta).' (Mohammed Basher, former Member of Parliament, West Darfur; interview by Julie Flint, May 2004)[246].

5. Abdication of responsibilities for law, order and security – evidenced in the failure to impartially resolve conflicts, provide adequate security and follow-up to protect citizens from violence; the resort to self-defense by 'non- Arab' tribes and government collusion with militias of certain 'Arab' tribes. 'The government soldiers ⋯ turn a blind eye to the actions of the Arab militias ⋯ [they] conduct joint operations (⋯) emergency laws in force are selectively applied' (Massaleit Community in Exile, September 1999). 'The government is collaborating with the militia, supplying them with arms and ammunition as well providing them with protection after they commit their atrocities (⋯) this campaign ⋯ has been raging on for a long time simply because of the government's involvement in promoting and inciting hatred against these tribes, taking advantage of the remoteness of the region

---

[244] Ibid.

[245] Failing Darfur Report (2005), Entrenching Impunity Government Responsibility for International Crimes in Darfur, Chapter IV, available at

[246] Flint Julie, (2004), Interview during a Human Rights watch fact finding mission in Sudan, available at www.hrw.org

and the absence of any monitoring of human rights' (Former Governor of Darfur, El Tigani Sisi and Abdelatif Ismael, Darfur Monitoring Group, appeal following attack on Fur village of Shoba, April 2002)[247].

---

[247] International Crisis Group Report n. 89 on Africa (8 March 2005), "Darfur: the failure to protect", available at www.crisisgroup.org

Chapter V

The limits of a Preventive Strategy

5.1 The limits of legal obligations on prevention

As I said in the previous chapters international law imposes a general duty to prevent violations of human rights and international humanitarian law. Its scope however, is limited to the territory of the State concerned, as States have primary responsibility for protection of all the people that are in its territory; the Genocide Convention, recently interpreted by the ICJ, exceptionally imposes a broader duty to prevent where States merely have "influence" beyond their territory, though subject to the requirement of a "serious danger" of genocide. R2P, as we saw, broadens this concept yet further and calls for "collective international responsibility" in situations where a State has failed in its primary duty to protect its own population.

In contemporary international law however, R2P is still a vague norm, and even if it arguably is sufficiently precise to qualify as a legal obligation, it is at best *lex ferenda* (what the law could be) and not *lex lata* (the current law). As well, given the competing and overwhelming principle of state sovereignty and the plethora of potential preventive actions as I described previously, the exact scope of an obligation to prevent is not easily susceptible to legal definition. In the case of R2P and genocide prevention more important are the soft law instruments in the context of multilateral institutions, such as the mentioned Office of the Special Advisor to the UN Secretary-General on Prevention of Genocide.

The Genocide Convention, as I said in Chapter II, clearly focuses both on genocide prevention and punishment, although the majority of the provisions of the Convention deal with punishment and were therefore intended to deter rather than prevent. The obligation to prevent rests solely on Article 1 which provides that: "*The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish*". Article 8 also makes reference to prevention, but in a purely discretionary and toothless provision like: *"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"*[248].

---

[248] www.un.org

As Michael Reisman observes, Article 8 was a timid and contingent treatment of the issue of preventing genocide'. In the seminal case of Bosnia v. Serbia, the ICJ breathed life into the obligation to prevent under the Genocide Convention. Relying solely on Article 1,42 the Court characterized the duty to prevent as "normative and compelling", dismissed the view that it was simply a component of "the duty to punish", and clarified that it extended beyond the discretionary terms of Article 8. Most significant was the holding that unlike human rights and humanitarian law treaties, there are no strict territorial limits on the obligation to prevent genocide. Rather, a State has the duty to prevent genocide when it has the capacity to influence effectively the action of persons likely to commit, or already committing, genocide.

The duty is discharged by employing all means reasonably available to them, so as to prevent genocide so far as possible. The obligation is one of conduct, and not of result, according to a "due diligence" standard, although a violation of the duty to prevent cannot be found unless genocide is shown to have actually been committed. In this respect however, whether a State would not have succeeded in effectively preventing genocide is irrelevant: "The obligation to prevent genocide places a State under a duty to act which is not dependent on the certainty that the action to be taken will succeed in preventing the commission of acts of genocide, or even on the likelihood of that outcome".

This is all the more so, the Court says, because the possibility remains that the combined efforts of several States, each complying with its obligation to prevent, might have achieved the result – averting the commission of genocide – which the efforts of only one State were insufficient to produce'. This interpretation of the duty to prevent is "audacious and far reaching" in fact, as William Schabas asks: *"Do these powerful words not also apply to France and Belgium, and even the United States, with respect to Rwanda in 1994? And what of Darfur in 2007? As for Srebrenica itself (…) certainly the Serbs in Belgrade were not the only ones who might have done more to protect the Muslims of Srebrenica".*

Evidently, it is the particular heinousness of genocide that influenced such a unique obligation, extending far beyond those contained in human rights and humanitarian law treaties. While there is cause for celebration however, even this may fall short of an effective conception of genocide prevention. The duty to prevent is understandably circumscribed by the Court to situations where there is a "serious risk" or a "serious danger" that genocide will be committed. Furthermore, State obligations to prevent are circumscribed by "the limits permitted by international law", which may pose an obstacle to simple preventive measures such as jamming RTLM in Rwanda.

As we saw in Chapter I the R2P concept is perhaps the most significant normative development on prevention. Yet, it remains, as I said, essentially a hortatory tool to guide policy-makers rather than a legal obligation. Beyond its moral force however, there is little basis for the conclusion that R2P is now *lex lata*. The ICISS emerged in the context of debates on the use of force to protect vulnerable populations. Perhaps this explains why as Gareth Evans, one of the founding architects of R2P points out: "one of the major misunderstandings' is that R2P is just another name for humanitarian intervention".

Notwithstanding this perception, the R2P debate pointed out that prevention is the single most important dimension of the responsibility to protect; as the ICISS report stated: "prevention options should always be exhausted before intervention is contemplated, and more commitment and resources must be devoted to it". There are good reasons for thinking that a narrow but deep approach concept of R2P, focusing only on the prevention of genocide, war crimes, ethnic cleansing and crimes against humanity is preferable. Taking a broader approach would probably mire R2P in protracted debates about economic development and national sovereignty which would do little to provide protection in the immediate term.

The challenge is to transform this great potential by defining prevention's scope and substance, so that broad concepts can be made into concrete norms and institutions, this may, however, prove an elusive task given the inherent need for flexibility in dealing with the multiplicity of contexts within which such violence can take root. Furthermore, the 2005 World Summit Outcome Document applies R2P to "genocide, war crimes, ethnic cleansing and crimes against humanity", but makes no declaration on the scope of an obligation to prevent.

Among the various recommendations to the UN on entrenching this culture, the most significant was the creation of the Office of the Special Adviser to the Secretary- General on the Prevention of Genocide with its mandate created in direct response to the egregious failure of the UN to respond adequately to the genocides in Rwanda and Bosnia as set forth in two critical reports. The misconceptions surrounding the Special Adviser mandate within the UN system underscores the challenge of gradually transforming the institutional culture of policy-making so that beyond reacting to situations of imminent or on-going genocide, policy-makers can shift their focus to early warning and prevention. What is more important than formulating a distinct legal obligation for States is to shift institutional norms and habits. A final question remains to be answered: is genocide prevention yet another slogan or intellectual abstraction, or can it actually succeed in practice? The question within this question is how to measure success by what does not happen?

5.2 Early Warning: the "Indicia" of Genocide

Prevention assumes that it is possible to predict, with a reasonable measure of accuracy, which situations may lead to genocide or similar violence. As I said analysis of the broad concept of conflict prevention first began during the 1970s and 1980s. The end of the Cold War enhanced the UN Security Council's capacity in conflict prevention. But it was not until the aftermath of the Rwandan genocide that prevention of mass atrocities rather than conflicts in general first emerged in a multilateral context.

The Steering Committee of the Joint Evaluation of Emergency Assistance to Rwanda concluded that pieces of information were available that, if put together and analyzed, would have permitted policy makers to draw the conclusion that both political assassinations and genocide might occur[249]. The Committee's report led to numerous institutional initiatives within international organizations, and, more generally, the immensity of the genocide motivated NGO and academic communities to develop various early warning models[250].

As mentioned the current body of research on early warning can be divided into: qualitative analysis, relying mainly on area specialists; and, quantitative analysis, relying primarily on predictive capabilities[251]. In the influential quantitative work commissioned by US President Clinton in 1998 and based on data drawn from genocides and political mass murders between 1955 and 1997, Barbara Harff designed a structural model of the antecedents to such phenomena. She identified the six elements as common precursors of mass atrocities: political upheaval; an ideology of exclusion among elites; an autocratic regime; political elites dominated by an ethnic minority; a history of genocide or mass killings; and lack of international interdependence[252].

---

[249]

[250] Including the Forum on Early Warning and Early Response (FEWER), the West Africa Network for Peace-building (WANEP), the Network for Ethnological Monitoring and Early Warning (EAWARN), Early Recognition and Analysis of Tensions, (FAST).

[251]

[252] B. Harff, No Lessons Learned from the Holocaust? Assessing Risks of Genocide and Political Mass Murder since 1955, 97 American Political Science Review (2003) 57.

As analyzed in Chapter III, according to the Harff's model, all but one of 37 of the genocides and politicides (i.e. political rather than ethnic mass-killing) that occurred between 1955 and 1997 came about in environments of political upheaval, defined as an abrupt change in the political community caused by the formation of a State or regime through violent conflict, redrawing of State boundaries, or defeat in international war. Nonetheless, 90 State failures during this period did not lead to such mass killings. Thus, political upheaval appears to be a necessary but insufficient condition for geno-/politicide.

Two other mitigating or intervening factors include the elites' ideological commitments and democratic constraints on their actions. A State's economic and development conditions also had an impact on levels of stability and violence. Harff noted that social scientists have shown that low economic development, measured by a State's infant mortality rate, produced conditions conductive to armed conflict and regime change[253]. A State's international relations also significantly influenced its risk of geno-/politicide–Countries with low trade openness had two and a half times greater odds of having State failures culminate in geno-/politicide'. Lastly, elites and armed forces became accustomed to mass killings as a political strategy, explaining why ten of the States were settings for multiple genocides or politicides over the period of study[254].

Having said that and giving the right relevance to the Harff's work, as Gareth Evans pointed out: "(···) every conflict, or potential conflict or mass atrocity situation, does have its own dynamic, and there has to be a comprehensive understanding of all the factors at work (···) there is absolutely no substitute for case-by-case field-based analysis'. Nonetheless, the emerging scholarship on warning signs of genocide and other mass atrocities suggests that it is possible to identify certain indicia as a basis for early warning. The point is not to achieve mathematical exactitude, but rather to provide a rational basis for differentiating and prioritizing certain conflict situations over others. What is of ultimate importance, however, is how this body of knowledge is incorporated into norms and institutions that guide the policies and actions of decision-makers".

---

[253] Ibid. 62

[254] Ibid. 67

5.3 The potentiality of Prevention looking at concrete examples: Cote d'Ivoire and Burundi

To appreciate both the subtlety and far-reaching effects of a preventive approach, it is necessary to be conscious of the anatomy of genocidal violence. As I said previously conflicts in distant corners of the planet usually come to our attention only after they have escalated into mass atrocities. Oblivious to context, we perceive genocide as a humanitarian disaster, like an earthquake or tsunami, rather than a political calculation in which mass murder is an instrument of power. Even if we direct righteous indignation toward tyrants, the logic and dynamics of such premeditated ruthlessness may escape us. It is in going back to the dormant phase of genocidal violence that the most effective and the most feasible solutions can be identified. The examples of Rwanda and Darfur are both a powerful illustration of how early warning and timely engagement might have prevented one of the worst mass murders of recent history.

In particular looking at the "Rwanda case" and at the different "ways of prevention" of such crimes that could be used in that context in contrast to the simplistic discussions on military force, a more modest but highly effective preventive measure identified involved the jamming of the notorious Radio Television Libre des Mille-Collines (RTLM) in the Rwanda. In fact, in a predominantly rural country with 70% illiteracy and few alternate sources of information, RTLM played a crucial role in inciting hatred, mobilizing the masses, and directing the genocide. In the Bayaragwiza case, the ICTR held that "radio was the medium of mass communication with the broadest reach in Rwanda", and that RTLM broadcasts exploited the history of Tutsi privilege and Hutu disadvantage, and the fear of armed insurrection, to mobilize the population, whipping them into a frenzy of hatred and violence that was directed largely against the Tutsi ethnic group'.

Both before and after 6 April 1994, RTLM not only issued hate propaganda, but even broadcast the names of individuals to be killed and generally played an instrumental role in organizing and instigating the genocide. Thus, terminating its broadcasts would have significantly impaired the capacity of the génocidaires to implement their diabolical plan, which required the mobilization of the masses to carry out most of the killings. Even as the genocide unfolded, NGOs like Human Rights Watch argued that jamming RTLM's radio broadcasts could save many lives. It is astonishing to conceive that a measure as easy, cheap, and quick as jamming RTLM could have had a decisive preventive effect on the Rwandan genocide. Without the vital instrument of radio broadcasts at their disposal in the months leading to the

mass-murders of 1994, the genocidaires would have had great difficulty in creating the necessary context for extermination of the Tutsi minority. The failure to intervene militarily in Rwanda during the genocide is lamentable. The failure to mitigate or to prevent the genocide by jamming RTLM is inexcusable.

The Rwandan example on the radio an media roles powerfully demonstrates the enormous potential of prevention in different fields. The most obvious argument in favor of prevention is that more victims can be saved by ensuring that dormant or low-intensity conflicts do not spiral into genocidal violence. But it is equally significant that in contrast to humanitarian intervention, prevention is likely to be less costly (both politically and financially), less intrusive, more effective, and thus more politically feasible. By the time extreme solutions such as military action become the only solutions, it is usually too late to do anything for the victims.

All too often, the prospect of a heroic rescue is wishful thinking, thus, prevention even if difficult in its concrete applicability many times has shown the advantage of being both more effective and more politically realistic. The case of RTLM radio in Rwanda and the following successful example of the halting the hate speech in Cote d'Ivoire exemplifies how this combination gives rise to the great potential of early warning.

As shown in the previous chapters it is difficult to measure the effects of preventive actions empirically with any degree of precision. Yet, the following cases illustrate the successful results of particular forms of intervention as part of larger efforts to prevent the intensification of inter-ethnic violence into mass-atrocities. It is at least reasonable to conclude in these situations that had no preventive measures been taken, the likelihood of escalation would have been much higher. It is in that limited sense that these examples may qualify as success stories.

Once there is early warning that a situation may escalate into genocide, there is a broad range of measures in the toolbox of prevention. These include: (1) preventive diplomacy; (2) economic sanctions or incentives; (3) threats of prosecutions before international tribunals; (4) and preventive deployment of peacekeepers. Many reports have undertaken to analyze the effect of such measures[255]. Advocates of prevention may be criticized for offering simplistic solutions divorced from reality[256].However,

---

[255] See e.g. R2P Report (n 7 above) 23–27; Evans (n 31 above) 88–104; Bellamy (n 65 above) 113–130. Genocide Prevention Task Force, M.K. Albright and W.S. Cohen (co-chairs), Preventing Genocide: A Blueprint for U.S. Policymakers (United States Holocaust Memorial Museum, 2008) 35–109, available online at http://www.ushmm. org/genocide/taskforce/ (Albright and Cohen Report) D.A. Hamburg, Preventing Genocide: Practical Steps Toward Early Detection and Effective Action (Boulder: Paradigm, 2008), 98–203.

[256] See e.g. T. Cushman, Is Genocide Preventable? Some Theoretical Considerations, 5 Journal of Genocide Research (2003) 523, 530–531.

these two examples illustrate what prevention of genocide could look like in practice. These include (1) pressures to stop incitement to ethnic hatred and violence in Cote d'Ivoire in 2004; and (3) preventive diplomacy in Burundi from 2002 onwards. These relative success stories offer concrete examples of how timely and focused, albeit modest engagement, can prevent a limited conflict from spiraling into a situation of mass atrocity.

a) Stop incitement to ethnic hatred and violence in Cote d'Ivoire

The way in which the U.N. halted the hate speech in Cote d'Ivoire is an illustration of prevention in practice with particular regard to the role played by the UN Special Adviser on Genocide Prevention in pressuring the authorities of Cote d'Ivoire to end radio broadcasts inciting ethnic hatred in the midst of an escalating conflict. Ethnic nationalist divisions formed the basis of the Ivorian conflict of the last decade; when longtime autocratic President Félix Houphouet-Boigny died in 1993, three parties competed to fill the political vacuum in what political scientist Richard Banegas called a "poisonous morass of identity politics"[257].

According to Banegas, Boigny's death, the economic crisis that eroded the clientalist system he had built, the rise of a new generation of soldiers and politicians, and the political ambitions of leaders, resulted in an extended succession dispute. A military coup replaced Boigny's successor, President Henri Konan Bédié, with President Laurent Gbagbo in 1999. War broke out in September, 2002 led by the radicalization of political conflict around the theme of nationality'. This situation fulfilled many of Harff's indicia for genocide: the death of the autocrat and subsequent military coups satisfy the necessary condition of political upheaval. Furthermore, both Bédié and Gbagbo capitalized on the ethnic idea of "Ivorité"[258].

This was the continuation of a legacy insofar as Boigny had previously kept immigrants, comprising about 30 percent of the population, out of the public service, satisfying the condition of an ethnic cleavage among elites. However, Cote d'Ivoire diverged from Harff's conditions in two important respects: checks on executive power and international openness. Since 1990, excluding the five months following the 1999 coup, Cote d'Ivoire had offices of President and Prime Minister, the former office once held by Alassane Ouattara, a member of the Muslim minority from the North.

---

[257] See R. Banegas, Cote d'Ivoire: Patriotism, Ethnonationalism and Other African Modes of Self-Writing, 105 African Affairs (2006) 535–552.

[258] Ibid.

Furthermore, though leaders attempted to expel French influence through nationalist political discourse, the State's economy remained export-based, comprising a large portion of the world's cocoa production. Cote d'Ivoire also remained tied by diplomacy and military aid to many States and institutions including the UN General Assembly, France and ECOWAS, each of which had major impacts on the wielding of executive power.

In April, 2004, with the support of the Ivorian Government and ECOWAS, the UN replaced its small political mission with peacekeeping forces, the United Nations Operation in Cote d'Ivoire (UNOCI)[259]. In November of the same year, civil war in northern Cote d'Ivoire continued to escalate, including intense hostilities between government and rebel forces. Particularly unsettling was the campaign of ethnic hate propaganda on national radio and television which reminded many observers of Rwandan radio during the genocide of 1994, in which 800,000 people were massacred in 100 days[260]. As in Rwanda, these broadcasts shaped public perceptions of the conflict in Cote d'Ivoire, and thousands of people responded through widespread ethnically motivated murder, torture, sexual violence, and looting by pro-government and rebel militias[261].

In response to the escalating violence, the UN Security Council adopted Resolution 1572 on 15 November 2004, which, inter alia, imposed an arms embargo and condemned human rights violations[262]. The resolution took specific aim at the radio and television broadcasts that were fuelling the conflict. It stated in relevant part as follows: *"Deeply concerned by the humanitarian situation in Cote d'Ivoire, in particular in the northern part of the country, and by the use of the media, in particular radio and television broadcasts, to incite hatred and violence against foreigners in Cote d'Ivoire (…) Demands that the Ivoirian authorities stop all radio and television broadcasting inciting hatred, intolerance and violence, requests UNOCI to strengthen its monitoring role in this regard, and urges the Government of Cote d'Ivoire and the Forces Nouvelles to take all necessary measures to ensure the*

---

[259] Report of the Secretary-General S/2004/3/Add.2 (23 February 2004). Over the years, the mission had changed on a number of occasions and has grown from 6,240 military personnel in 2004 to 8,547 total uniformed personnel as of 30 August, 2010,   .

[260] B. Gregston, "Rwanda Syndrome on the Ivory Coast" (30 November 2004), Worldpress.org, available online at
.

[261] Committee to Protect Journalists, "Attacks on the Press 2004: Ivory Coast" (14 March 2005), available online at http://www.cpj.org/attacks04/africa04/ivory.html. See also News Release, HRW, "Cote d'Ivoire: Militias Commit Abuses with Impunity" (27 Nov. 2003), available online at http://www.hrw.org/en/news/2003/11/27/c-ted-ivoire-militias-commit-abuses impunity.

[262]

security and the safety of civilian persons, including foreign nationals and their property(…)"[263].

On the same day, 15 November 2004, the UN Special Adviser on the Prevention of Genocide, Juan Mendez, wrote a letter to the UN Secretary-General expressing his concern about the Ivorian broadcasts. In a public statement, he indicated his particular distress by reports of hate speech and the ensuing actions of armed, militant groups', and warned that the crisis has deepened sentiments of xenophobia and could exacerbate already worrisome and widespread violations of human rights, which in the recent past have included extra-judicial executions, torture, arbitrary detention, disappearances and sexual violence'.

The most remarkable part of the statement was a threat to involve the International Criminal Court: The Special Adviser recalls that *"the Ivoirian authorities have an obligation to end impunity and to curb public expressions of racial or religious hatred especially those aimed at inciting violence. It should be recalled that, in the absence of effective action by courts of national jurisdiction, incitement to violence directed against civilians or ethnic, religious or racial communities can be subject to international action, including under the Rome Statute of the International Criminal Court. For instance, the Security Council could refer the situation in Cote d'Ivoire to the International Criminal Court. It bears noting that Cote d'Ivoire lodged a declaration with the Registrar accepting the exercise of jurisdiction by the International Criminal Court with respect to _acts committed on Ivoirian territory following the events of 19 September 2002"[264].*

A further recommendation was to expand the UN troop presence in direct response to the hate broadcasts: *"If the xenophobic expressions persist and they cause the further evacuation of essential humanitarian relief workers, the Special Adviser recommends that the UN and Licorne troops already in the field should be expanded and instructed to deploy so as to afford direct protection to civilian population at risk of attack because of their ethnic, religious or citizenship status"[265].*

Combined with the Security Council resolution of the same day, the Special Adviser's threat seemed credible and achieved its intended effect. The Committee to Protect Journalists observed that the "*"hate"* broadcasts stopped only after Juan Mendez, the UN adviser on preventing genocide, warned that the situation could be referred to the International Criminal Court"[266]. It is difficult to predict with certainty

---

[263] Ibid.

[264] Statement by the Special Adviser on the Prevention of Genocide' (15 November 2004), available online at
.

[265] Ibid.

[266] Committee to Protect Journalists, "Attacks on the Press 2004: Ivory Coast" (14 March 2005), available online at http://www.cpj.org/attacks04/africa04/ivory.html.

what the outcome would have been had this modest intervention not taken place. But judging by the Rwandan precedent where hate radio was a central ingredient of the genocide, and considering that the broadcasts did, in fact, result in widespread ethnic violence, there can be no doubt that this was an effective preventive measure. Once again, success is measured by what did not happen.

b) Preventive Diplomacy in Burundi

The case of Burundi as a successful example of prevention illustrates the potential of early warning and concerted preventive diplomacy as I mentioned in Chapter II. Since achieving independence in 1962, this State of approximately 6 million people with roughly the same ethnic composition as Rwanda, had seen hundreds of thousands of civilians killed and a staggering 1.5 million displaced[267]. Like its neighbour, throughout its independence, Burundi's society had been deeply divided along Hutu and Tutsi lines. Furthermore, through numerous coups and reprisals, elections and periods of military rule, ethnic cleavages dominated politics. In 1993, shortly after his election, the Hutu president was assassinated, and the country descended into ethnic violence that lasted 13 years and killed an estimated 300,000 people[268].

According to the CIA World Fact book, Burundi is presently the second poorest State in the world, due in large part to ongoing instability[269]. Gareth Evans notes that the situation in Burundi has been _almost as perilous' as in Rwanda, but has benefited from sustained efforts and peace-brokering by regional leaders. Nelson Mandela and former Tanzanian president Julius Nyerere mediated negotiations that culminated in the installation of a transition government and the 2000 Arusha agreement, which lacked a ceasefire condition[270].

In 2002, Burundi continued to struggle through a delicate transition and, in the midst of ceasefire negotiations, had the potential for genocidal violence. At the time, Burundi faced ongoing political upheaval and ethnic cleavages, within society at large

---

[267] H. Wolpe et al., Rebuilding Peace and State Capacity in War-Torn Burundi, 93 The Commonwealth Journal of International Affairs (2004) 457–467, available online at http://www.wilsoncenter.org/topics/docs/ACF8CC.pdf.

[268]T.   Kidder,   A   Death   in   Burundi,   The   New   York   Times   (21   July   2009) .

[269] United States Central Intelligence Agency, CIA World Fact book, 2009, https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank. html.

[270] International Crisis Group, The Burundi Rebellion and the Ceasefire Negotiations', Africa Briefing N 9 (6 August 2002) .

and amongst elites. Nonetheless, it remained open to international efforts at preventive diplomacy. At that crucial time, Howard Wolpe of the Woodrow Wilson International Center for Scholars conceived of the Burundi Leadership Training Program (BLTP), first, to help build a socially cohesive, sustainable network of 100 key leaders capable of working across the lines of ethnic and political division in Burundi's highly polarized society; second, to advance the country's postwar economic reconstruction'[271].

The BLTP began with a remarkable gathering in Nairobi of military commanders from both the Burundian government and rebel groups: "Thirty-seven military commanders who, only a few days earlier, were confronting each other on the battlefield (…) agreed to participate in a leadership workshop designed to strengthen their ability to work together to fashion a newly unified national army"[272]. The session proved so successful at overcoming seemingly insurmountable tensions that the BLTP expanded to other sectors of the Burundian leadership, including nearly four hundred national leaders from the military, the police, the civilian government and civil society as well as over four thousand local leaders[273]. The end result was that the BLTP had remarkable success in breaking down ethnic and political barriers, in building social cohesion among training participants, in strengthening collaborative capacities, and in boosting institutional transformation.

The BLTP was of course part of a broader diplomatic effort, this included adoption of a new constitution, the holding of multiparty elections, achieving an equitable ethnic balance in the military, the demobilization and social integration of ex-combatants, a transitional justice process, the strengthening of civil society, and the establishment in 2007 of a UN peace-building mission. Although the impact of the BLTP is difficult to assess with accuracy, the results suggest that it had a substantial positive impact. Contrary to what many feared, Burundi did not disintegrate into genocidal violence. It may not be possible to predict with certainty what the outcome would have been without these preventive measures. It is reasonable to conclude however, that they played an important role in stabilizing a delicate transitional situation. Again, success can be measured in terms of what did not happen.

---

[271] Ibid., 458

[272] Ibid., 457–458.

[273] H. Wolpe and S. McDonald, Burundi's Transition: Training Leaders For Peace, Journal of Democracy (January 2006) 130, available online at http://www.wilson center.org/topics/docs/JODPaper.pdf.

CONCLUSIONS

Upon adoption of the Genocide Convention in 1948, the illustrious British Prosecutor at Nuremberg, Sir Hartley Shawcross, did not share the euphoria of those celebrating the imagined triumph of international law. "No one believed", he remarked, "that a State committing those crimes would be restrained by the existence of a convention, or would surrender itself for trial to an international tribunal"[274]. The "obvious truth" he concluded was that "genocide committed by States was punishable only by war"[275]. Since the conclusion of the Second World War, it has become clear to all but the most optimistic, that there is little political will for humanitarian intervention against genocide.

Instead, a realistic and effective solution lies in early warning and prevention through more modest measures, long before the use of force or prosecutions after the fact become the only options. Genocide and mass atrocities cannot be predicted with absolute certainty, but increasingly sophisticated models for prediction of such violence along with the early response institutions, new technologies[276], and the combined efforts of several States, each employing all means reasonably available to it to prevent genocide, could potentially trigger timely and effective action.

The latest trend in conflict early warning, the use of new technologies, promises even greater accuracy and precision. These technologies may also lead to better communication between those experiencing situations of potential mass atrocity and those in positions to demand that their governments, with capacity to influence, intervene to prevent escalation. Examples of recent projects using new technologies include Crisis In Darfur, a partnership between the United States Holocaust Memorial Museum and Google Earth, and Harvard Humanitarian Initiative's 2008 study on the Untapped Potential of Information Communication Technologies for Conflict Early Warning[277].

---

[274] Travaux Préparatoires of the Genocide Convention, UN Doc. A/C.6/ SR.64, GAOR, 3rd Sess., 6th Cmte. (1948) 17.

[275] Ibid., 18.

[276] www.oecd.org

[277] http://earth.google.com

John Prendergast of the International Crisis Group said of the former that internet users around the world could no longer say they don't know', about the crisis as each would have easy access to satellite imagery as evidence. Combined with Web 2.0 (user defined online content), according to Google Earth, it could help transform operational response and early warning by providing collaborative and dynamic ways for communities to come together, share critical information, and help citizens see the world in a new light[278]. Though the 1 Laptop Per Child (OLPC) movement remains in its infancy, having provided an impressive 1.85 million web connected laptops to the world's poorest children by August, 2010[279],extremely high rates of cell phone usage already pose a challenge to human rights abusers in the world's poorest nations[280].

Both web connected laptops and cell phones have the potential to transform early warning and their potential power has not gone unnoticed, in many parts of the world, cell-phone towers are owned by transnational corporations rather than local governments, and their use or the use of mobile towers, might not engage the same debate over sovereignty as did radio jamming in Rwanda[281]. In short, there is great potential for early warning capabilities to become extremely sophisticated. Moreover, the increase in effective means reasonably available to them, will make more effective States' international legal obligations.

At Nuremberg, the French Prosecutor Champetier de Ribes was moved to recognize that "the scientific and systematic extermination of millions of human beings (…) [was a crime] so monstrous, so undreamt of in history …that the term "genocide" [had] to be coined to define it"[282]. The Holocaust shattered modernity's promise of progress and rendered imaginable the hitherto unimaginable. In coping with its overwhelming dimensions, this cataclysm was mystified as a radical evil beyond human comprehension. The word Holocaust itself represents not only disaster and catastrophe, but functionalizes them as "a burnt offering, a sacrifice willingly

---

[278] www.oecd.org

[279] See also, http://laptop.org/en/children/countries/index.shtml and http://wiki.laptop.org/go/Deployments.

[280] D. Coyle and P. Meier, New Technologies in Emergencies and Conflicts: The Role of Information and Social Networks (Washington, D.C. and London: UN Foundation-Vodafone Foundation Partnership, 2009).

[281] M. Ibrahim, Shabab Execute 2 Teenage Girls in Somalia, The New York Times (28 October 2010) http://www.nytimes.com/2010/10/29/world/africa/29somalia. See also, A. Kumar, Bharti Airtel to sell African Towers to Arm, The Economic Times (16 September 2010) http://economictimes.indiatimes.com/news/newsby-industry/telecom/Bharti-Airtel-to-sell-African-towers-to-arm/articleshow/6562683.cms.

[282] Trial of the Major War Criminals Before the International Military Tribunal, Nuremberg, 14 November 1945–1 October 1946 (1947), Vol. XIX, at 531.

offered divinity, a divinity apparently hungry and thirsty for the blood of innocents"[283].

Genocide however, as I said many times in my work, is not an earthquake or tsunami. It is a political choice and an instrument of power. It can be predicted and therefore prevented. Just as we have come to imagine evil that was once unimaginable, it is equally possible to imagine a world without genocide. And it takes great imagination in the jurist's world, constructed as it is with elaborate institutions and norms, to realize that the greatest accomplishment, the greatest sign of progress, the epitome of peace and justice, is to be found where nothing happens.

---

[283] P. Haidu, The Dialectics of Unspeakability: Language, Silence, and the Narratives of Desubjectification, in S. Friedlander (ed), Probing the Limits of Representation (Boston: Harvard University Press, 1992) 279.