

February 6, 2015

Could the Rwandan and Darfur (Sudan) Genocides have been Prevented by the International Community? A Postmortem

Ifem E Orji

**COULD THE RWANDAN AND DARFUR (Sudan) GENOCIDES HAVE
BEEN PREVENTED BY THE INTERNATIONAL COMMUNITY?
A POST MORTEM**

By

Ifem Emmanuel Orji*
Senior Fellow, NLDI; Former Global Law Scholar,
New York University School of Law

Abstract

The international law principles of sovereignty and territorial jurisdiction of states preclude external interference in a state's domestic affairs. Shaped by the old agreements among European states in the Treaties of Westphalia in 1648, and copied and modernized in the Charters of the United Nations and many regional organizations, non-interference, in practice, has not worked in many instances. The great powers have always chosen when to, or not to, interfere. As case studies, this article chronicles the events in the Rwandan and Darfur genocides, and concludes that the international community, particularly the super powers of the UN Security Council, seized the occasions to advance their respective national, geopolitical, and economic agendas, and failed to timely implement the Genocide Convention of 1948. In light of the many on-going wars, insurgents' and terrorists' activities (see Table) in Africa and elsewhere, this writer argues for more pro-activity from the international community even if it be in the framework of responsibility to protect (R2P).

Key words: International law/community, Sovereignty, Territorial jurisdiction, Non-interference, Genocide, Rwanda, Darfur, Prevention

INTRODUCTION

“Believe it or not, there is something of a far more evil than ignorance: indifference” (Anonymous)

“We come here today partly in recognition of the fact that we in the United States and the world community did not do as much as we could have and should have done to try to limit what occurred”
(the “Clinton Apology” in *Bystanders to Genocide*, by Samantha Power, 2001)

“Powell calls Sudan killings genocide” (CNN September 9, 2001)

“We should always bear in mind that genocide, wherever it happens, represents the international community’s failure, which I would in fact characterize as deliberate, as convenient failure” (Mr. Paul Kagame, President of Rwanda, 2004)

“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”¹

Two decades have passed since normalcy returned to Rwanda following the genocide that shocked the sensibility of the world community. The world community or international community, as it is also known, is a body of sovereign nations or states, represented by high level officials or actors (elected, appointed, or self-imposed on the people as in military regimes). The United Nations Organization (U.N) symbolizes the body and collective authority of the world’s nations. In the aftermath of the Rwandan genocide, the world community had taken stock of their roles, active or passive, and had

*Litigation Consultant and Senior Fellow of the Non-profit Leadership Development Institute (NLDI). He is a former visiting Professor in the Joseph Crowley Program in International Human Rights at Fordham University School of Law, New York, NY; a Global Law Scholar-in-residence in the School of Law, New York University (NYU); and a Researcher (International Relations) at the *Institut für Politische Wissenschaften* in the University of Technology (RWTH), Aachen, Germany. Orji holds graduate and post graduate degrees in Law and in Political Science from the University of Paris, France; an LL.M degree from Benjamin Cardozo School of Law in New York City; and a Certificate in International Humanitarian Law and Laws of Armed Conflicts from the United Nations Institute for Training and Research, New York. The author wishes to dedicate this article to the loving memory of his father, Michael Orji, Sr., who passed on in the heat of the Nigeria-Biafran unspoken genocidal war.

¹ Art 1, Convention on the Prevention and Punishment of the Crime of Genocide 1948, (Hereinafter “CPPCG”). The term “genocide” was coined by Raphael Lemkin (1900-1959), a Polish Jewish scholar, in 1943, from the roots *genos* [Greek for family, tribe or race] and *cide* Latin – *occidere or cideo* – [to massacre]. According to Lemkin, “generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accompanied by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the group themselves. See generally, Raphael Lemkin, “*Axis Rule in Occupied Europe*” (1944) Washington DC: Carnegie Endowment for International Peace. Also available at <<http://www.preventgenocide.org/lemkin/AxisRule1944-htm>> (accessed December 1, 2007).

voiced out their sentiments. To put it more succinctly, some state actors had directly or indirectly presented their governments' *mea culpa*, an acknowledgment of one's error or guilt, in the failure to prevent the genocide. The international community watched as man's inhumanity to man was unleashed against a section of a member nation's citizenry.

Arguments often advanced to justify the world's indifference to crises within the territorial jurisdiction of a given independent nation or entity, include the principles of sovereignty, territorial integrity, and non-interference in the domestic affairs of a sovereign state. These standards are well documented in the Charter of the United Nations as well as in several regional and sub-regional organizations' treaties and conventions. There are established international law norms, but the question remains: who determines when a crisis has attained genocidal propensity thus requiring international intervention as provided in the CPPCG as per note one above?

The frameworks of international law and relations identify states as the principal actors in the international system. The existence of a state presupposes sovereignty, control, and jurisdiction over territory. As a supranational system, international law regulates the relationship between sovereign states and public international entities, and competing demands, as well as establishes the parameter for predictable and agreed behavior among parties.² International law is horizontal, with all nations being sovereign and theoretically equal. This concept of sovereign equality of nations means that states

²The three primary sources of obligation under international law: (i) treaties, (ii) custom, and (iii) general principles of law commonly recognized by the major legal systems of the world. See Orji, Ifem E "International Law and the Weapon named Treaty" Nigerian Chronicle, April 21, 1985, 4-8.

may choose to voluntarily enter into commitments under international law, and at the same time follow their own counsel in the interpretation of their commitments.

For example, Mr. John R. Bolton³, a former US Ambassador to the United Nations, in an article, “Risks and Weaknesses of the International Criminal Court from America’s Perspective”, succinctly articulated one aspect of what “sovereignty” enables states to do even when international law stipulates otherwise:

The U.S. Senate, for example, cannot accept the statute’s definition of genocide unless it is prepared to reverse the position it took in February 1986 approving the Genocide Convention of 1948, when it attached two reservations, five understandings, and one declaration... Thus confronted with the statute’s definition of “genocide” that ignores existing American reservation to the underlying Genocide Convention, the Senate would not have the option of attaching these reservations (or others) to any possible ratification of the statute.⁴

In spite of the topicality of the U.S position, probably generated by its caliber and stature in the international arena, it is justified. According to Article 34 of the Vienna Convention on the Law of Treaties, a treaty does not create either obligation or rights for a third state without its consent. Hence, the Rome Statute is harmful to the national interests of the United States, is unsound foreign policy, and a threat to the independence and flexibility that America’s military forces need to defend U.S national interests around the world.⁵ The U.S signed the treaty in 2000, but did not participate for the reason it could be subject of politicized prosecution.⁶ Two years later, the Bush administration, on May 6, 2002 informed the U.N. Secretary General that “the United States does not intend

³ Bolton, John R, “The Risks and Weaknesses of the International Criminal Court from America’s Perspective.” available at <<http://www.law.duke.edu/journal/lcp/articles/lcp64dWinter2001p167.htm>>

⁴Id.. See the Vienna Convention on the Law of Treaties, 1969, art. 34, 1155 UNTS 331).

⁵ See *supra* note 3.

⁶ “United States Defends Position on International Criminal Court” available at: <<http://usinfo.state.gov/dhr/Archive/2004/Oct/13-40327.html>> (accessed December 18, 2006)

to become a party to the treaty. Accordingly, the United States has no legal obligations arising from its signature on December 31, 2000”⁷

Abstracts of two articles that appeared in the Harvard International Law Journal at different times are very pertinent in this context for elucidation of how nations sometimes disregard international law provisions. Curtis A. Bradley⁸ has stated that:

Under contemporary treaty practice, a nation’s signature of a treaty typically does not make the nation a party to the treaty. Rather, nations become parties to treaties through an act of ratification or accession, which sometimes occurs long after signature. Nevertheless, Article 18 of the Vienna Convention on the Law of Treaties, which many commentators regard as reflecting customary international law, provides that when a nation signs a treaty it is obligated to refrain from actions that would defeat the “object and purpose” of the treaty until such a time as it makes clear its intent not to become a party to the treaty. ...Attaching legal obligations to the signing of a treaty, however, poses a constitutional issue for the United States because the U.S Constitution divides the treaty power between the President and Senate, whereas only the President and his agents are involved in the signing of treaties. This constitutional issue has broad significance because, for a variety of political and other reasons, the United States often signs but fails to ratify treaties.

In the second abstract, Thomas H. Lee’s⁹ remarks that the U.S attempted intervention in Syria and Russia’s intervention in Crimea demonstrate how the super powers employ their resources and privileged statuses, including in the UN Security Council forum, to override important provisions of international law:

Two seemingly unrelated crises implicating the law of war and the responsibility to protect civilians have arisen in recent years. In 2013, the United States considered military intervention without United Nations (“U.N”) Security Council preapproval in Syria after discovering that the government had exterminated its own people with chemical agents. In 2014, Russia sent troops into Crimea, a part of Ukraine, to protect ethnic Russians that Russia claimed

⁷ This was widely described as “Unsigning” the treaty or “withdrawing” the United States’ signature.

⁸ Curtis A. Bradley “UNRATIFIED TREATIES, DOMESTIC POLITICS, AND THE U.S CONSTITUTION, Harv. Int’l L.J, Vol. 48, No. 2, pp. 307-336 (2007). See also, LETTER from John R. Bolton to Kofi Annan, U.N Secretary-General (May 6, 2002) available at www.state.gov/r/pa/prs/ps/2002/9968.htm; and Curtis A. Bradley: “US Announces intent not to ratify International Criminal Court Treaty” ASIL Insights May 2002 at <http://www.asil.org/insight/insight87.htm> The US is widely regarded as the grave yard of treaties, and one may wonder if it can be blamed on legal basis, for inaction in a situation it lacks *locus standi*, except of course, on moral grounds.

⁹ Thomas H. Lee “The Law of War and the Responsibility to Protect Civilians: A Reinterpretation. 55 Harv. Int’l L.J. Vol, 2, pp. 251-321 (2014)

were in danger after a political coup in the country. In both cases, the military acts contemplated or undertaken were of dubious legality, albeit under different rubrics.

Obviously, the encapsulation of the U.S thinking and practice of international law past and present by Mark W. Janis¹⁰ in his book: “International Law”¹⁰ is very instructive:

In the past few decades the United States has mostly enunciated a parochial rhetoric regarding international law, treating it either as a sort of extension on United States law or as a flexible framework that somehow always promoted U.S. legal and political values. In the present, however, the United States is promoting a vision of international law as a set of legal norms and as a form of legal process that exists apart from a nationalistic interpretation by the United States and is ultimately universal in nature.

Whereas the super powers can arbitrarily use their hurting power and/or over-killing capacity to breach international law and intervene on foreign territories, developing nations have often relied on their sovereign status to disregard international law norms. The refusals by the governments of Rwanda, Sudan, the DRC, Somalia and elsewhere in Africa to allow the UN, the African Union (AU) or international humanitarian agencies access to implement peacekeeping or humanitarian duties founded on international law during their respective crisis constituted violations of same law. But the domestic or national interests of those states override international law. Likewise, the inaction by the international community or making participation in a multinational force contingent upon extraneous conditionality equally violated the spirit and letter of the law of nations, to the extent otherwise provided by the applicable instrument. Either way,

¹⁰ Available at <http://ssrn.com/abstract=1103174>. See also, Mark W. Janis “The Quest for a Higher Law” 115 Yale L.J Pocker Part 317 (2007), <http://yalelawjournal.org/forum/the-quest-for-a-higher-law>. (accessed January 29, 2015); Mark W. Janis “The United States and International Law: The United Nations finds a Home” Villanova Law Review available at: <http://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=1016&context=vir> (accessed January 28, 2015).

non-intervention¹¹ rubs the civilian populations of three important principles of humanitarian action, namely, the right to life with dignity; the distinction between combatant and non-combatant, as well as *non-refoulement* (a concept which prohibits states from returning a refugee or asylum seeker to territories where his or her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion). Despite the grave consequences of their refusals, these countries are justified in their actions or lack thereof under contemporary international law.¹²

The above examples are typical of how states behave in the comity of nations. Sovereign states work so hard to protect their sovereignty and independence and territorial integrity based on their respective domestic law, national, economic, strategic, and geopolitical interests. This article presents a thematic post-mortem analysis of what happened that genocidal wars were not prevented in both Rwanda and Darfur (Sudan) in spite of all the warnings at different stages. The failure of the international community to act in unison when situations require immediate intervention is directly related to, and often blamable on the intricate network of which the international community interacts and operates. To understand the intricacies of the international system and the reasons why consensus is hard to achieve, this article is structured in sections with each devoted

¹¹ Orji, Ifem E., Issues on ethnicity and governance in Nigeria: A universal human rights perspective. *Fordham Int'l L. J.* Vol. 25 No. 2, 431-482. In most cases with Africa, the opposition to intervention is instigated by at least one powerful Western nation. In Rwanda, for instance, the opposition to intervention spearheaded by the governments of France, China and Russia on the grounds that the crisis was an internal affair. The roles of China and Russia, as major beneficiaries of the Sudanese resources also could have encouraged the rejection of international presence even for humanitarian purposes. With specific reference to the Nigeria-Biafran war personally experienced by this writer as a teenager, often using the UN Security Council veto prerogatives

¹²The government of the DRC insisted on approving the nations which were to participate in a Canadian-led multinational force, invoking its sovereignty to refuse certain countries entry to its territory.

to specific topics, and how each works either to promote or to inhibit international consensus and intervention in a time of peace or crises.

SOVEREIGNTY VS EQUALITY OF STATES

Sovereignty implies that a state cannot be ruled from outside, and that the main decisions about its actions must come from within it. This power to make decisions of the last resort cannot be overridden or reversed by any other decision-maker or agency.¹³ International law, as an effective restraint on the behavior of governments, requires not merely the existence of legal principles, but also the willingness of governments to comply with them.¹⁴ Compliance or otherwise with international law provisions is a function of several factors.¹⁵ The practice of sovereign equality of states and domestic jurisdiction, coupled with the principle of non-interference in the domestic affairs of a sovereign state empower states to disregard international law norms. Undoubtedly, the primary objective of interference, whether or not it leads to a cessation of hostilities, shall be to protect non-combatants caught in the cross-fire of armed conflict or in the process of genocidal activities.¹⁶

¹³ Boot, K., A “Security Regime in Southern Africa: Theoretical Consideration”. (1994) 30 *Southern African Perspectives*, at p. 3

¹⁴ Malan, Mark “The Principle of Non-Interference and the Future of Multinational Intervention in Africa”. (1997). *African Security Review* Vol. 6 no. 3.

¹⁵ Jones, W, and S. Rosen, *The Logic of International Relations*. (1982) Brown and Company, Boston, at 455. But, US concerns over the ICC, particularly its Article 16, has drawn sharp criticism from many quarters, especially the academia, but also within the diplomatic circle. For instance, Professor Thomas M. Franck, of New York University School of Law, and Stephen H. Yuhon, in a co-authored article: (“The United States and the International Criminal Court: Unilateralism Rampant.” (Spring 2003) *N.Y.U J. Int’l L. & Pol.* Vol. 35, pp 519-558), have argued that: “The US objections are, at best, exaggerated far out of proportion to any actual risk to be faced by US personnel, and at worst, grounded in untenable extrapolation of International law”..

¹⁶ Bouvier, Antoine A., and Harvey J. Langholtz (Series ed.) “International Humanitarian Law and the Law of Armed Conflict” (2000), UN Institute of Training and Research (UNITAR-POCI) pp. 104 – 106.

The concept of sovereignty lies at the heart of both customary international law and the United Nations Charter and remains both an essential component of the notion of international peace and security and a defense of weak states against the strong.¹⁷ A tendency towards a broader concept of sovereignty, encompassing both the rights and the responsibilities of states, is being advocated. Accordingly, this initiative will see the basis for sovereignty shift from the absolute rights of state leaders to respect for the popular will and internal forms of governance based on international standards of democracy and human rights. Its proponents posit that on a scale of values the sovereignty of a state does not stand higher than the human rights of its inhabitants.¹⁸

THE BASIS OF SOVEREIGN EQUALITY OF NATIONS IN CONTEMPORARY INTERNATIONAL PRACTICE

“The time of absolute sovereignty has passed; its theory was never matched by reality” (Boutros Boutros-Ghali, former UN Secretary General)¹⁹

By Article 2(1) of the UN Charter, the world organization is based on the principle of the sovereign equality of all member states. While they are equal in relation to one another, their status of legal equality as a mark of sovereignty is also the basis on which intergovernmental organizations are established and endowed with capacity to act between and within states to the extent permitted by the framework of an organization.

¹⁷ Schrijver, Nico, “The changing nature of state sovereignty” (2000). *The British Year Book of International Law*. Oxford. Clarendon Press at pp. 69-70.

¹⁸ See e.g., Annan, Kofi “Two Concepts of Sovereignty” *The Economist* 352 (September 8, 1999) pp. 49-50; also Akin Oyeboade, *International Law and Politics in Africa* (2003) Lagos, Nigeria. Bolabay Publications at 51.

¹⁹ Dr. Boutros Boutros-Ghali, “An Agenda for Peace” (1992) New York: United Nations, para. 17

The International Court of Justice (ICJ) had observed in 1949, that “between states, respect for territorial sovereignty is an essential foundation of international relations.”²⁰

Major accomplishments in contemporary diplomacy and international politics include the birth of a community of nations enabled by the establishment of the United Nations Organization²¹.

The UN has maintained world peace so far²² and continues to serve as a platform for collective global actions on very critical issues. Nevertheless, regional wars and genocides around the world from the 1960s to date have claimed more human lives and caused unprecedented humanitarian and material disasters than the two World Wars combined. In effect, neither the UN system nor the CPPCG has stopped the reoccurrence of disastrous domestic, regional or interstate conflicts around the world. Africa has suffered the most sustained neglect and humanitarian disaster in war or genocide as one readily recall, *inter alia*, Biafra (the Nigerian civil war), Liberia; Sierra-Leone, Democratic Republic of Congo (DRC), Rwanda; Sudan (Darfur) Somalia, Chad, Uganda, Angola, Ethiopia and Eritrea.

UNDERSTANDING THE TERM *GENOCIDE*

The UN adopted the CPPCG, defining genocide.²³ Genocide, conspiracy to commit genocide, direct and public incitement to commit genocide is an act punishable

²⁰ ICJ Reports, 1949, at.4.

²¹ The United Nations Charter was signed in San Francisco, USA on June 26, 1945, and entered into force on October 24, 1945 (hereinafter “the UN” or “UN Charter).

²² The League of Nations established in the aftermath of World War I, in 1919, the brain child of US. President Woodrow Wilson..

²³ Art 2

under the CPPCG.²⁴ Genocide has been a regular and widespread feature of the history of civilization.²⁵ The CPPCG definition of genocide has been criticized by many genocide scholars²⁶ who consider it to be too restricted. R. J. Rummel²⁷ claims that genocide has many connotations which the CPPCG's definition failed to recognize.²⁸ Hassan Kakar²⁹ argues that given a broader definition of genocide, the Afghans are among the victims of genocide by the superpower Soviet Union during the 1979-1982 invasion, contending that the mass killings of Afghans by the Soviet military in order to vindicate its client regime and realize its goals in Afghanistan was not political.³⁰ Genocide is a process that develops over time, and is predictable, but often not inexorable. At each stage, preventive measure can stop it³¹.

NON-IMPLEMENTATION OF THE CPPCG

The CPPCG was not implemented, never enforced for fifty years, 1948 through 1998. By 1951, only two of the five permanent member states of the UN Security Council were parties to the CPPCG³² It was only in the 1990s that the international law

²⁴ Art 3

²⁵ For detailed of major wars and genocides, see Piero Scaruffi "Wars and Genocides of the 20th Century" available at: <<http://www.scaruffi.com/politics/massacre.htm>>; See also "Wars and Disasters by Death Toll" available at: <<File://C:\DOCUME~1\student\LOCALS~1\Temp\F4EGCB8.htm>>; and "Wars In The 20th. Century" available at <http://www..war-memorial.net/wars_all.asp>

²⁶ See for example, Chalk , Frank and Kurt Jonasohn, "The History and Sociology of Genocide: Analysis and Case-studies" (1990) . Yale University Press.

²⁷ Rummel, R. J., *Democide* versus Genocide: Which is Which? Available at <<http://www.answers.com/topic/genocides-in-history>> (accessed September 29/2006)

²⁸ *Id.* See Art VII CPPCG.

²⁹ Kakar, Hassan, *The Soviet Invasion and the Afghan Response, 1979-1982.* (1995) University of California Press.

³⁰ *Id.*

²⁸ For details, see G. H.Stanton, "The Eight States of Genocide" (1998) available at <<http://www.genocidewatch.org/HOWWECANPREVENTGENOCIDE.htm>> (accessed October 7, 2006)

³² About 140 nations have ratified the CPPCG

on the crime of genocide began to be enforced.³³ CPPCG was enforced for the first time in 1998 regarding Rwanda. In the fifty years interval from 1948 to 1998, instances comparable to Rwanda had occurred severally on African soil. The international community's intervention in Bosnia genocide was only the second. The Bosnia genocide has been proven at the International Criminal Tribunal for the former Yugoslavia (ICTY). The Srebrenica massacre of some 8,000 Bosniaks was considered genocide³⁴

The Rome Statute of the International Criminal Court (ICC) restates the CPPCG definition of genocide³⁵, and provides definitions for “crime against humanity” and “war crime.” For “crime against humanity” the Rome Statute of the ICC provides an elaborate enumeration of the prohibited acts, some of which are as well listed as outlawed in the definition of genocide.³⁶ War crimes³⁷ are mainly crimes based on the breaches of the rules contained in the relevant Geneva Conventions.³⁸ The Geneva Conventions and the Additional Protocols regulate international humanitarian rules applicable in armed conflict. These rules are established by treaty or custom, which are specifically intended to solve humanitarian problems that arise directly from international or non-international armed conflicts. For humanitarian reasons, these rules protect persons and property that are, or may be, affected by conflict by limiting conflicting parties' rights to choose their methods and means of warfare.³⁹

³³ In the case of Rwanda in 1994

³⁴ Evidently, casualty figures are irrelevant in the definition of genocide.

³⁵ Art 6

³⁶ Art 7 of the Rome Statute of the International Criminal Court, UN. Doc. A/CONF.183/9 (1998).

³⁷ Art 8

³⁸ 1949 and the Additional Protocols, 1977 and 2005

³⁹ For a scholarly discussion of the Geneva Conventions, see Antoine A. Bouvier “International Humanitarian Law and the Law of Armed Conflict” in Harvey J. Langholtz (series editor): Courses produced by the UNITAR Programme of correspondence Instruction in Peacekeeping Operations (2000)

Professor Herbert Ekwe-Ekwe has described the Nigerian civil war as “the most gruesomely genocidal of the continent’s wars to date”⁴⁰ The war became notorious for the starvation and overwhelming military force unleashed on the ethnic Igbo war-ravaged region, including air and sea blockading which prevented escape from the theatre of war by the few who could have afforded to do so. The blockade of the surrounded Biafra led to a humanitarian disaster when it emerged that there was widespread civilian hunger and starvation in the besieged territory.⁴¹ The Biafra government claimed that Nigeria was using hunger and genocide to win the war. The world watched while the war, which the secessionist Biafrans justified on collective self-determination raged on.⁴² In the wake of decolonization, territorial integrity based on existing arbitrarily drawn colonial borders were sacrosanct, and collective self-determination or secession was unthinkable even with the consent of the original state. The Charter of the Organization of African Unity (OAU) was clear that colonial borders still had to be respected hence, *uti possidetis, ita possideatis* [as you possess, so may you possess] has become the necessary trade-off for a modicum of international order.

⁴⁰ Ekwe-Ekwe, Herbert “Ban All Arms Export To Africa, available at <<http://www.usafricaonline.com/ekweekwe.africaarms.html>> (accessed July 20, 2007)

⁴¹ See “Wars and Genocides of the 20th Century”. <http://www.scaruffi.com/politics/massacre.html>> (accessed October 22, 2006; <[Http://en.wikipedia.org/wiki/Nigeria_civil_war](http://en.wikipedia.org/wiki/Nigeria_civil_war)> (last visited September 22, 2006). For a comparative discussion of the Biafra and Congo crises, see Orji, Ifem E. “LA PLACE ET LE ROLE DU NIGERIA AU SEIN DE L’ORGANIZATION DE L’UNITE AFRICAINE” Unpublished Doctorat de l’ Universite/DSR Dissertation, University of Paris at Saint-Denis, France, (1987) pp. 142-157.

⁴² See articles 22 and 23 of the Declaration of St. Petersburg, respecting the laws and customs of war on land.

The distinction often made between war crime and complicity in genocide is sometimes not so clear. Based on this distinction, a Dutch court ruled in a case brought against Frans van Anraat for supplying chemicals to Iraq that “It thinks and considers legally and convincingly proven that the Kurdish population meets the threshold of ethnic group under the genocide convention. The court has no other conclusion that these attacks were committed with the intent to destroy the Kurdish population of Iraq, and because he supplied the chemicals before 16 March 1988, the date of the Halabja poison gas attack he is guilty of a war crime but not guilty of complicity in genocide.⁴³ Instances abound in which genocide was ruled out for want of proof of its commission.⁴⁴

THE NATURE AND SCOPE OF INTERNATIONAL LAW IN THE IMPLEMENTATION OF THE CPPCG

Global efforts to maintain world peace and promote human rights existed before the advent of the UN.⁴⁵ Prior to that, issues of human rights were treated as matters of exclusive domestic jurisdiction as observance or violations never attracted any international concern. The UN enables the establishment of instruments and agencies, namely: the Universal Declaration of Human Rights⁴⁶; the CPPCG⁴⁷; the International Convention on the Elimination of all forms of Racial Discrimination⁴⁸; the Declaration on

⁴³ Penketh, Anne and Robert Verkack, “Dutch Court Says Gassing of Iraq Kurds Was ‘Genocide’”. *The Independent* of December 24, 2005. See also “Dutchman Sentenced for Role in Gassing Death of Kurds” *CBS News*, Dec. 23, 2005.

⁴⁴ Any such proof is hard to make since what constitutes a genocide often depends on what the great powers say it is at their convenience and when it serves their national economic and strategic interests.

⁴⁵ Notable pre-UN efforts at world peace include the Berlin treaty (1884-85) being the first multilateral treaty to ban the slave trade; and the Treaty of Versailles (1919) which ended World War I

⁴⁶ 1948

⁴⁷ 1948

⁴⁸ 1955

the Granting of Independence to Colonial Countries and Peoples⁴⁹; the International Convention on Civil and Political Rights, and on Economic, Social and Cultural Rights,⁵⁰ among several others. The purposes and Principles of the UN are clearly outlined in its Charter⁵¹

The principles of sovereign equality⁵² and non-interference in the domestic matters of member states, when considered in the light of Article 2(7) render the U.N totally irrelevant in the prevention of armed conflict situations or genocide arising within a member state's territorial jurisdiction. The self-imposed weakness of UN enforcement capability is further aggravated by the CPPCG, which, in Article VIII provides "any contracting party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III". But, the principle of non-interference in the domestic affairs of member nations precludes any such action, and where a sovereign nation is the perpetrator of genocide or any of the acts enumerated in Article III, such a government may never submit itself to the UN for punishment. Similarly, all other member states whose interests are not impacted by the internal crisis of another member state may consider it "interference" in the domestic affairs of such a nation and desist from calling upon the UN to intervene as most countries are bound by bilateral agreements.

⁴⁹ 1960

⁵⁰ 1966

⁵¹ Art 1(c) Purposes and Principles

⁵² Art 2(1)

It is left to the UN Charter, under Chapter VII to enforce measures needed to implement the CPPCG. Chapter VII is not about prevention or punishment of genocide. Articles 39 through 51 are devoted to ways and means of maintaining international peace and security through military force as may be determined by the UN Security Council. Article 39 arguably refers to threat to international peace, and not necessarily about how a national government treats its own subjects. International peace is threatened when there is a combat between the military forces of two or more governments, or of one government and at least one organized armed group.⁵³ Whereas Article 39 of Chapter VII refers to the use of force, Article 24 under Chapter VI gives the UN Security Council the mandate on the peaceful settlement of disputes.

Whether or not acts amounting to genocide belong here is yet uncertain. Genocide is an act committed within the borders of a given sovereign state. In most cases, no external involvement with a neighboring state hence, does not lead to breach of “international” peace in its plain English or any other modern language meaning. It is the breach of “national” peace, and domestic jurisdiction clauses in most international and regional treaties bar external intervention. Therefore, considering that the principles of sovereign equality and inviolability of territorial integrity of states are the norms, it is not easy for the international community to be any effective in the prevention or punishment of an internal breach of a domestic act.

⁵³ See, e.g., Osterdahl, Inger “Threat to The Peace: The Interpretation by the Security Council of Art 39 of the UN”. (1998) Uppsala University, Swedish Institute of International Law. Studies in International Law Vol. 13 pp 18-19, for a discussion of the inter/intra-national dichotomy in international relations theory.

The legal definition of genocide calls for an approach distinct from the traditional international relations, but emphasizing the use of force. The slow and often reluctant international response to violent upheavals in Africa urgently demands a guidelines for determining how and when nations can act to prevent armed conflicts and humanitarian disasters in the future.⁵⁴ Rwandan president, Mr. Paul Kagame succinctly had put it in context when he said that “We should always bear in mind that genocide, wherever it happens, represents the international community’s failure, which I would in fact characterize as deliberate, as convenient failure”⁵⁵

HOW THE GLOBAL COMMUNITY FAILED TO PREVENT GENOCIDE IN RWANDA.

The failure of the international community in Rwanda has long been acknowledged at the highest echelon by the former UN Secretary-General, Mr. Kofi Annan, who ironically was the head of the organization’s peacekeeping operations during the 1994 Rwandan genocide. He has openly expressed “deep regret” and accepted institutional as well as personal blame for not doing more to prevent the human slaughter. An Independent Inquiry commissioned by the UN in 1999 found that the UN Assistance Mission in Rwanda (UNAMIR) was neither mandated nor equipped to prevent the genocide, and “the overriding failure in the international community’s response was the lack of resources and political will, as well as errors of judgment as to the nature of

⁵⁴ Pan, Esther, “Humanitarian: A Decade After Rwanda”. Council on Foreign Relations, available at <<http://www.cfr.org/publications/7715/humanitarian.html>> (accessed October 7, 2007)

⁵⁵ Rwandan Genocide “Failure” Berated, available at <http://www.globalpolicy.org/security/issues/rwanda/2004/0405berated.htm> (accessed December 20, 2010)

events in Rwanda. The report noted that “This international responsibility is one which warrants a clear apology by the United Nations and by the member states concerned to the Rwandese people⁵⁶

One major impediment to an early action that could have prevented the Rwandan genocide was balancing the sovereignty of nations against the duty to intervene and protect civilians.⁵⁷ The world has taken a hard look at the concept of sovereignty since Rwanda. The International Commission on Intervention and State Sovereignty, in a report commissioned by the UN in 2001 proposes a new norm of “Sovereignty as Responsibility”. By this new concept, when states are unable or unwilling to protect their populations from mass atrocities, or when a state is itself the perpetrator, the international community has a responsibility to act.⁵⁸

Long before the 1994 genocide, the dehumanization of Tutsis had already been a feature of genocidal massacres in 1959, 1962 and 1972. In December 1990, the Hutu Power hate newspaper, *Kangura*, published the “Ten Commandments of the Hutu”; and called for continuation of the Habyarimana government’s policy that the army be exclusively Hutu, and officers be prohibited from marrying Tutsi women. Several extremist newspapers also published regular hate propaganda against Tutsis.⁵⁹ The hate propaganda was amplified by the Radio Television Libres des Mille Collines (RTLNC)

⁵⁶ *Id*

⁵⁷ *Id*

⁵⁸ *Id*

⁵⁹ See Dr. G. H. Stanton “The eight stages of genocide (1995) available at <<http://www.genocidewatch.org/HOWWECANPREVENTGENOCIDE.htm> (accessed October 7, 2006)

from 1993 onward, and brought it to every corner of Rwanda using repeater antennae provided by Radio Rwanda, the government network.⁶⁰

It was open and notorious to the whole world that mass murder began within hours of the crash of President Habyaramana's French plane on April 6, 1994, while returning home after a meeting with regional leaders about the implementation of the Arusha Accords.⁶¹ Despite all the early warnings, the UN remained dis-united, paralyzed, and inactive in the case of Rwanda. The weeks of inactivity by the UN in the face of the organized massacre of Tutsi civilians by militia forces, the police and the army, are an incomprehensible scandal.⁶² As Gerald Caplan observed⁶³ "The horror of the Rwandan genocide extends beyond its intrinsic bestiality. What's also notable is, first, how swiftly it became evident that this was a perfect storm of a genocide, and second, how easily it could have been prevented."

The Report of the Independent Inquiry⁶⁴ into United Nations actions during the 1994 Rwanda genocide was presented to the UN Secretary General on December 15, 1999. The report found that the UN ignored evidence that genocide was planned and had refused to act once it began. In particular the Report was critical of the Security Council's April 21 1994 decision to reduce the strength of the UNAMIR after a genocide began and highlighted the role of Kofi Annan as the then head of UN peacekeeping operations,

⁶⁰ *Id*

⁶¹ The Hutu Power elite saw the Accords as a direct threat to their power, because they called for sharing power with the Rwandan Patriotic Front. It is unclear who shot down the President's plane

⁶² Dr. Scherrer, Christian P., "Preventing Genocide: The Role of the International Community". Available at <http://www.preventgenocide.org/prevent/scherrer.htm> (accessed November 10, 2011).

⁶³ Caplan, Gerald "From Rwanda to Darfur: Lessons Learned"? Pambazuka (January 12, 2006) p. 2

⁶⁴ The Panel was appointed by M. Kofi Annan, in May 1999.

sharply critical of his failure to act on a January 11, 1994 warning of the risk of genocide sent by General Dallaire, head of the UN peacekeeping in Rwanda.

GREAT POWERS FAILURE TO INTERVENE: INDIFFERENCE, IGNORANCE,
STRATEGIC OR NATIONAL INTEREST CONSIDERATIONS?

In what seemed like an international conspiracy of silence, the most powerful nations on earth kept their cool and watched genocide unfold in Rwanda, doing nothing to stop it, but doing everything possible to advance their respective national interests. Most claimed ignorance of events on the ground in Rwanda, but given the overwhelming evidence suggesting clear early warnings of genocide, were simply demonstrating the highest levels of *indifference* to the plight of Rwandans. Mr. Paul Kagame, whose Tutsi-dominated rebel RPF took power in July 1994, ending the genocide, raised concern that international indifference could be drawn to racism and wondered how a million lives of the Rwandan people could be regarded as so insignificant by anyone in terms of strategic or national interest.⁶⁵

While on a visit to Rwanda in March 1998, President Bill Clinton of the United States of America issued what later became known as the “Clinton apology.” Addressing a crowd at Kigali airport, President Clinton said “We come here today partly in recognition of the fact that we in the United States and the world community did not do as much as we could have and should have done to try to limit what occurred”⁶⁶ Speaking further, President Clinton said: “It may seem strange to you here, especially the many of you who lost members of your family, but all over the world there were people

⁶⁵ See note 54 above

⁶⁶ Power, Samantha, “Bystanders to Genocide”. Available at <http://www.theatlantic.com/doc/200109/power-genocide> (accessed September 22, 2006)

like me sitting in offices, day after day after day, who did not fully appreciate... the depth ... and the speed... with which you were being engulfed by this unimaginable terror.”⁶⁷

The US policy during the genocide in Rwanda may not have been a willful and deliberate complicity with evil. The Clinton administration avoided any mention of the word “genocide” in reference to Rwanda. It was a tactical *ignorance* to maintain that there was no genocide in Rwanda in order to avoid any obligation of intervention. President Clinton did not devote a single meeting of his senior foreign policy advisors to devising US options for action on the crisis.⁶⁸ However, some low and mid-level officials, recognizing the lack of top-level support for larger engagement, sought more moderate tactics to lessen the administration’s *faux pas*. A suggestion to jam the hateful radio transmissions, which were inciting the general population to take up arms, was rejected as a “costly endeavor that would have too little effect”.⁶⁹

The Clinton White House reneged on its promises to support an arms embargo, and to work towards the renewal of the peace process. There was no back-up action as the rhetoric produced no change on the ground. Instead, US officials acknowledged that an arms embargo would essentially be useless in the face of genocide carried out mainly with machetes and other farm implements, and that there was very slim chance of a return to the negotiating table in the midst of such bloodshed in Rwanda. As the crisis dragged on, U.S. officials consciously and consistently evaded the use of the term “genocide” for

⁶⁷ *Id*

⁶⁸ *Id*

⁶⁹ See generally, “A Tale of Two Genocides: The Failed U.S. Response to Rwanda and Darfur” available at <http://www.africaaction.org/resources/page.php?op=read&op=documentid=2087&type=6&iss> (accessed October 8, 2007)

fear of invoking a responsibility to act.⁷⁰ Christine Shelly, a US State Department spokesperson, while speaking to reporters, claimed that Rwanda was the scene of “acts of genocide” but not of genocide. The fact is that the Clinton administration’s approach to Africa focused on securing short-term US interests in the region, maintaining a safe distance from the ongoing problems, and encouraging near-sighted, armed responses to the complex problems of democratic transition and international peace-building. The “New Partnership” with Africa philosophy of the Clinton administration aimed principally at military training operations rather than on civil society building. Consequently, the US provided military training and sold arms and ammunitions to Rwanda and DRC, as well as to most of the countries involved in the crisis in the DRC⁷¹.

The United Kingdom’s political approach to Africa is an extension of the method of “indirect rule”, some form of observer strategy which it applied to the colonies. U.K’s African policy is dictated by pragmatic and economic interests. Beyond this, London shows very little interest in the continent.⁷² But British arms exporters are the leading beneficiaries of the billions of dollar that Nigeria spent on arms and other ‘state security-related’ imports during the 16 years of the military dictatorship of Generals Buhari, Babangida, Abacha and Abubakar. Britain’s pervasive entrenchment in the very lucrative business of African militarization and wars is equally evident in central and southern Africa.

⁷⁰*Id*

⁷¹ See “CONFRONTING THE PHENOMENA OF ARMED CONFLICT AND GENOCIDE: THE IMPLICATION OF ARMS SUPPLY TO FRAGILE REGIMES IN AFRICA” for further discussion on super powers arms deals with belligerent African nations..

⁷² Lingsma, Tjitske “Britain’s Relations with Africa Primarily via South Africa” (1995) *Vice Versa*, Vol. 29, No. 5 at 5

Despite its rhetoric of an ‘ethical foreign policy’, the British Labor party government that took office in 1997 was heavily involved in the Congo/Great Lakes war. Similar to the US intervention in this conflict, Britain has sold arms to both sides of the principal protagonists: DRC, Rwanda, Namibia, Zimbabwe, Burundi and Uganda.⁷³ France is keeping up its long standing policy of exploiting the natural and geopolitical resources of the continent. France relies on the development of inter-trade relations with most of the countries of central and western Africa and aims to increase the volume of French investment in Africa and maintain the Franc zone.⁷⁴

The French government has often claimed that its military presence in the region aims to protect French and other foreign citizens. This assertion is doubtful as it contradicts its presence and ill-fated intervention in Rwanda during the genocide. A comprehensive review of French military policy in Africa was carried out following its consecutive failures in Rwanda and Burundi, and changes in international conditions urge France to focus on supporting regional security institutions by means of training African soldiers for peacekeeping operations. Recently, French military intervention in the Ivorian civil war was decisive, as its troops also provided military equipment badly needed by the poorly equipped government army. Other military mechanisms include agreements relating to military defense and technological cooperation.⁷⁵

⁷³ Herbert Ekwe-Ekwe, see *supra* note 40

⁷⁴ French economic interests are represented in the opening of new markets for its products. See, e.g. document available at <http://ipsnews.net/africa/Focus/conflict_prevention/note_6.shtml>

⁷⁵ Raafat, Ial “French Policy in Sub-Saharan Africa”. *International Policy Journal*, (July, 2001) available at: <<http://www.siyassa.org.eg/esiyassa/ahram/2001/7/1STUDI.HTM>>

French post-Cold War strategy in Africa is meant to confront the hegemony of the U.S and its growing authority in Africa. U.S. cultural and economic hegemony in Africa, enhanced by the globalization phenomenon, has negatively impacted on the French position. The clash of interests between these two great powers manifests in a number of areas, particularly in the petroleum sector.⁷⁶

INTERNATIONAL RESPONSE TO THE CONFLICT IN DARFUR, SUDAN

International awareness of the conflict in Darfur was first publicized by reports from Amnesty International in July 2003, followed by the International Crisis Group in December of the same year. By then abundant evidence existed to establish that genocide has occurred in Darfur, Although the use of the term “genocide” has been avoided in many quarters, the genocidal process began some time in early 2003, when the government of Sudan and its proxy militias, the *Janjaweed*, launched a campaign of ethnic cleansing against three African communities – the Fur, the Zaghawa and the Massaleit, within the Darfur region because rebel groups from that region had risen up to challenge Khartoum’s authoritarian rule and their own marginalization.

According to a Human Rights Watch account,⁷⁷ the U.N.’s emergency chief Jean Egeland had, in late 2003, warned that Darfurians were living the “worst humanitarian crisis in the world.” By April 2004, the damage had worsened, and over one million people had been evicted from their farms and rendered destitute on account of their

⁷⁶ *Id*

⁷⁷ International Response to the Crisis in Darfur, available at <http://hrw.org/backgrounder/africa/darfur_1104/8.htm> (accessed September 22, 2006)

ethnicity. They missed the 2004 planting season, guaranteeing that the international community would be called on to provide continued emergency relief for another year.

Unlike in the case of Rwanda, the U.S. reacted promptly to reports about the situation in the Darfur region of western Sudan. The U.S. government's Sudan Peace Act of October 21, 2002, accused Sudan of genocide in a civil war that began since 1983 and had by then cost more than 2,000,000 displaced over 4,000,000 people.⁷⁸ Appearing before the Senate Foreign Relations Committee on September 9, 2004, Colin Powell, a retired U.S. army and Secretary of State, declared that the actions of the armed Muslim Arab *Janjaweed* organization in Darfur, conducted with the tacit approval, if not active support, of the Government of Sudan, constituted genocide, and that the government of Sudan and the *Janjaweed* bear responsibility.⁷⁹ .

⁷⁸ US Department of State: Sudan Peace Act October 21, 2002

⁷⁹ "Powell calls Sudan killings genocide". CNN September 9, 2004. For a chronology of the Sudanese crisis, see: Coalition for International Justice "Chronology of Reporting on Events Concerning the Conflict in Darfur, Sudan" February, 2006) (www.cij.org); Mikael Nabati, "The UN Responds to the Crisis in Darfur: Security Council Resolution 1556" August 2004, available at: <http://www.asil.org/insights/insigh142.htm> (accessed November 4, 2007) Q & A: Crisis in Darfur, available at <http://www.hrw.org/english/docs/2004/05/05/darfur8536.htm> (accessed November 4, 2007) Responses to the Darfur Conflict, at: <http://www.hrw.org/report/2004/sudan0404/8.htm>; 61st. Session of the Commission on Human Rights, available at <http://www.hrw.org/english/docs/2005/03/23/global10451.htm> (accessed November 5, 2007). Darfur: Donors Must Address Atrocities Fueling Crisis, available at <http://www.hrw.org/english/docs/2004/09/27/darfur9390.htm> (accessed December 10, 2007). Darfur: Aid Workers Under Threat, available at <http://www.hrw.org/english/docs/2005/04/05/darfur10417.htm> (accessed December 10, 2007). Recommendations To the United Nations and other humanitarian agencies in Chad and Darfur, available at <http://www.hrw.org/background/africa/darfur0505/7.htm> (accessed January 13, 2008). Darfur: New Atrocities as Security Council Dithers, available at <http://www.hrw.org/english/docs/2005/02/25/darfur10212.htm>. (accessed December 13, 2007). Video Transcript: Exclusive Video Interview with Alleged Janjaweed Leader, available at <http://www.hrw.org/english/docs/2005/03/02/darfur10225.htm>. (accessed January 13, 2008). Sudan: Government and Militia Conspire in Darfur Killings, available at <http://www.hrw.org/english/docs/2004/04/23/sudan8487.htm>. (accessed January 13, 2008). Expand African Union Mission in Darfur, available at <http://www.hrw.org/english/docs/2005/05/09/darfur10581.htm>. (accessed January 13, 2008). Don't Trust Khartoum, available at <http://www.hrw.org/english/docs/2004/08/11/darfur9222.htm> (accessed January 5, 2008). UN: Darfur Resolution a Historic Failure, available at: <http://www.hrw.org/english/docs/2004/09/18/18/darfur9355.htm> (accessed December 30, 2007). U.N.

The Sudanese government reneged several times on its commitment to disarm and neutralize the *Janjaweed*, based on the agreements it entered into:⁸⁰ (i) Agreement on Humanitarian Ceasefire on the Conflict in Darfur of April 8, 2004. Article 6 provides “The parties shall ensure that all armed groups under their control comply with this agreement. The Sudanese government shall commit itself to neutralize the armed militias.” (ii) Agreement between the Government of Sudan, The Sudan Liberation Movement, and the Justice and Equality Movement, dated April 25, 2004. Article 4(d) required that “The Government of Sudan shall ensure that armed militia are neutralized and disarmed in the framework of a programme to be determined.” (iii) Joint Communique between the Government of Sudan and the UN of July 3, 2004, article 3 on Security, demanding the government of Sudan to “immediately start to disarm the Janjaweed and other armed outlaw groups.” And, (iv) the Darfur Plan of Action signed by the Government of Sudan and the UN Special Representative of the Secretary-General Jan Pronk, of August 6, 2004. Article 4, on Control of activities by armed militias, requiring that “the Government of Sudan identify and declare those militias over whom it has influence and instruct them to cease their activities forthwith and lay down their weapons.” The government of Sudan has continuously repudiated all international

Darfur Deadline Expires, at: <http://www.hrw.org/english/docs/2004/09/03/darfur9300.htm>; (accessed December 30, 2007). Sudan: UN Must Impose Extended Arms Embargo, available at: <http://www.hrw.org/english/docs/2004/09/10/darfur9340.htm> (accessed December 30, 2007). Another Africa Calamity – Will Media Slumber On? available at <http://www.hrw.org/english/docs/2004/04/28/sudan8540.htm> (accessed December 30, 2007). Empty Promises? Continuing Abuse in Darfur, Sudan, A Human Rights Watch Briefing Paper, August 11, 2004; Nick Grono, Darfur: The International Community’s Failure to Protect, African Affairs (September 30, 2006)

⁸⁰ Human Rights Watch :Sudan: Janjaweed Camps Still Active – Sanctions urged for August 30, deadline” (New York, August 27, 2004).

agreements it entered into, as well as UN Security Council resolutions demanding cooperation to allow in intervention forces.

By hindering humanitarian agencies reaching hundreds of civilians dependent on international aid in many areas of Darfur, as well as refusal to let in UN peacekeeping forces into its territory, the government of Sudan is in a flagrant breach of both the Geneva conventions and the UN Charter. Under international humanitarian law, civilians suffering undue hardship have the right to humanitarian relief. Parties to a conflict must allow rapid and unimpeded access of aid from humanitarian agencies to such populations. Attacks on humanitarian workers, infrastructure and objects used in relief operations, including food and medicine, as well as deliberate impediments to relief efforts, are serious violations of international humanitarian law and constitute war crimes.⁸¹ All the intransigence and flagrant violation on the part of Khartoum do not demonstrate the power of Sudan rather they expose the weakness of international law.

NON-INTERFERENCE AND DOMESTIC JURISDICTION AS IMPEDIMENTS TO ENFORCEMENT OF INTERNATIONAL LAW.

The meaning of threat to international peace and security has evolved over the years. The UN Security Council has, since the 1990s, systematically condemned attacks on civilians on the basis that they constitute a grave violation of international law. Invoking Article 2(7) of the Charter, the UN Security Council in Resolution 688 (1991) condemned the repression of Iraqi civilian populations around the country including the

⁸¹ Details available at <http://hrw.org/backgrounder/africa/sudan0506/1.htm> (accessed January 20, 2008)

Kurdish populated regions. The Resolution was adopted in the framework of “consequences which threaten international peace and security in the region.” China, a permanent member of the Security Council along with some states voted against on consideration of domestic issue.

The Security Council repeatedly condemned attacks on civilians in Kosovo, Sierra Leone as well as in Bosnia and Herzegovina on the ground of grave violation of international law. Given the possibilities available to the UN Security Council, the reason why the international community failed to intervene in Rwanda, has not done much in Darfur and elsewhere in Africa, is incomprehensible. It would seem that the international law applicable to intrastate crisis is fraught with contradictions hence the often talked about impotency of the system with respect to enforcement. This conflict of norms is examined from two dimensions, namely, the global and regional.

THE LEGALITY AND RATIONALE FOR GLOBAL INTERVENTION AND USE OF FORCE.

Can anything be done to overcome the constraints in the UN Charter and OAU/now AU’s Constitutive Act respecting non-interference? A four-part group of hypotheses can be addressed. First, concerning *legitimacy of intervention*: under what conditions is the use of force across borders legitimate and how much do policy makers care about perceived legitimacy? What is the appropriate flexibility for war powers authority that should rest in the hands of national authorities, in regional organizations, and in the UN?. Second, respecting *capacities for collective intervention*: what are the

weaknesses in current international capabilities – UN, regional, and national – for deploying military units in crisis situations to prevent or contain conflicts?. Third, on *the implications for change*: how might Chapters VI and VII of the UN Charter be harmonized or merged to develop innovative ways of protecting security? Do recent trends toward Security Council mandates under Chapter VII requiring member states to adopt specific national legislation hold promise of strengthening peace and security? And fourth, regarding the *instruments of justice and political realities*: what is the current effectiveness of institutions of justice in dealing with security issues? What are the implications of the growing roles of the International Court of Justice (ICJ), the ICC and related tribunals creeping universal jurisdiction of national courts, and other national and international judicial processes?

The international community is impeded on two fronts: Article 2(7) of the UN Charter: non-interference in the domestic affairs of member nations, and Article 27: relating to the use of veto power by the five permanent members of the Security Council. On the African platform, Article 3(2) of the OAU Charter, widely recognized as “Domestic Jurisdiction Clause”, barred member states from intervening in the internal affairs of other member states. The AU, which recently succeeded the OAU recognizes and retains the notions that the sovereignty of respective member states is total and each member state’s territorial jurisdiction is inviolable under Article 4 of its Constitutive Act.

THE UN SECURITY COUNCIL AND THE USE OF VETO

Veto power has frequently been used by member states of the UN Security Council to extend or protect their respective national or geo-political interest and influence abroad.⁸² This misuse of the veto privilege has often brought the UN General Assembly into friction with the Security Council. Article 27 of the UN Charter provides that: (1) Each member of the Security Council shall have one vote. (2) Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members, and (3) Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

The veto power is wielded solely by the five permanent members of the UN Security Council, enabling them to void any Security Council substantive resolution regardless of the level of general support. This power is exercised when any permanent member enters a “nay” vote.⁸³ An abstention vote or absence is taken as allowing the

⁸² The word “veto” is not contained anywhere in the UN Charter. It is an invention of the Security Council. Veto power is undemocratic for it disregards majoritarianism by imposing the will of one or more of the five permanent members. Veto is inconsistent with the principle of sovereign equality. But since the principle of democracy is not enshrined in the UN Charter, veto is not in violation of the Charter. (For a general discussion see, Athena D. Effraim “*Sovereign (In)equality in International Organizations*” (2002) Martinus Nijhoff Publishers. The Hague Vol. 34, p.133

⁸³ In the early days of the UN, the Soviet Union minister for foreign affairs, Vyacheslav Molotov, said “no” so many times that he became known as “Mr. Veto” The US first used its veto power in 1970 on Rhodesia, and followed up in 1972 to prevent a resolution censuring Israel. Ever since, it has become the most frequent user of the veto, especially against resolutions criticizing Israel, as can be found in what has become widely known as the “Negroponte doctrine”. China first used its veto power in 1949 under the

measure to pass. The veto does not apply to procedural matters, which is significant in that it allows the Security Council to debate a resolution even it is likely to be vetoed by a permanent member. The veto system was established to protect the interests of the founding members of the UN, which were the countries that won World War II. Thus, Britain, China, France, Russia (former Soviet Union) and the United States, have each used its veto powers to protect its interest.

Permanent members of the UN Security Council have, at various times and for reasons relating more to their national interest rather the implementation of international law, used veto power or abstention to obstruct the Council's resolutions. In the on-going genocide in Darfur, Russia's political cover has enabled the Sudanese government to pursue its abusive military and political agenda in western Sudan with impunity. Russia, as a major supplier of weapons to Sudan, and China, a major consumer of Sudanese oil, have both either vetoed or abstained in major votes on the resolution of Darfur's conflict.⁸⁴ Using the platform of UN Security Council, permanent member states often *misused* their privilege by thwarting every effort by other members to the detriment of intervention or implementation of meaningful humanitarian action. Despite global outcry

Republic of China, on the issue of Taiwan. The People's Republic of China exercised its first veto power on August 25 1972 in respect of Bangladesh's admission to the UN, and has consistently used it since then. France uses its veto power sparingly from 1956. The United Kingdom first used its veto power in 1956 along with France, to veto a resolution to resolve the Suez Canal crisis. But they eventually withdrew after the U.S. called an emergency session under UN General Assembly Resolution 377. The UK. also used the veto unilaterally seven times because of Rhodesia. See, generally, "United Nations Security Council veto power" available at <http://en.wikipedia.org/wiki/United_Nations_Security_Council_veto_power> accessed December 18, 2006

⁸⁴ Resolution 1706 (August 2006) authorizing the deployment of UN peacekeeping troops in Darfur. See UN Darfur Resolution Only a First Step – Members Must Push Sudan to Accept UN Force. Available at <<http://hrw.org/english/docs/2006/08/31/sudan14104.htm>> (accessed December 18, 2006).

for an urgent action in Darfur, the United States, in 2005 blocked a number of UN Security Council actions on the human rights crisis in Darfur.

Is there any rationale in a permanent member of the UN Security Council using its veto or abstention to prevent an action that was aimed to save thousands of African lives, or prevent genocide from getting further perpetrated? I see no justification whatsoever in such a prohibitive action. Curiously, it beats one's imagination that the global powers that be are so capable of almost infinite indifference to human sufferings, the kinds internationally acknowledged in Rwanda in 1990s, and on-going in Darfur, DRC and elsewhere on African soil. I agree with Gerald Prunier, a scholar specializing in Africa conflicts, that the world's most powerful countries have largely limited their response to expressions of concern and demands that the UN take action. But the UN lacking both the funding and military support of the wealthy countries has left the African Union to deploy a token force without a mandate to protect civilians. In the lack of foreign political will to address the political and economic structures that underlie the conflict, the international community has defined armed conflicts in Africa in humanitarian assistance terms and debated the "genocide" label.⁸⁵

If the Clinton administration claimed ignorance of what was happening in Rwanda for so long even though he had some Africa friendly foreign policy, President George W. Bush made it crystal clear that Africa was never a priority on his agenda. When asked about Africa in the second presidential campaign debate, he responded

⁸⁵ *Darfur: "The Ambiguous Genocide"* (2005) Cornell University Press, pp. 124-148

“There’s got to be priorities.” According to one Dr. Salih Booker⁸⁶ “a Bush presidency portends a return to the blatantly anti-African policies of the Reagan-Bush years, characterized by a general disregard for black people and a perception of Africa as a social welfare case.” Another commentator, Jim Wallis wrote “Earlier this year presidential candidate George W. Bush told Sam Donaldson that Africa is not in the strategic interest of the United States: Europe is, so is Asia, as are our neighbors Canada and Mexico. But Africa isn’t.” When pressed what he, as president, would do in the face of another genocidal massacre such as happened in Rwanda, Bush said he would “let people in the region handle it. That’s what happened last time.”

THE CALL FOR REFORM

Writing in the Harvard Human Rights Journal, Dr. Surakiart Sathirathai has articulated the long overdue need for a NU reform:

For the UN to remain the repository of our hopes for a world of peace, prosperity, and freedom, it must be reformed. .But the call to reform the UN is not new. UN reform has been on the agenda of the international community almost since the day the Charter was signed⁸⁷

⁸⁶ Booker, Salih, “The Coming Apathy: Africa Policy Under A Bush Administration”. Available at <http://www.usafricaonline.com/sbooker_africabush.html> (accessed December 20, 2007)

⁸⁷ Dr. Surakiart Sathirathai, “Renewing Our Global Values: A Multilateralism for Peace, Prosperity, and Freedom” available at: <<http://www.law.harvard.edu/students/orgs/hrj/iss19/suraliart.shtml>> (accessed December 20, 2007). See also The Secretary-General, “Report of the Secretary-General: In larger freedom: Towards Development, Security and Human Rights for All”, UN GAOR, 59th Sess., UN Doc. A/59/2005 (March. 21 2005); The Secretary-General’s High Level Panel on Threats, Challenges, and Change, Report of the Secretary-General’s High-Level Panel on Threats, Challenges and Change: A more Secured World: Our shared Responsibility, UN GOAR, 29th Sess, UN Doc. A/59/565 (Dec. 2, 2005) also available at <<http://www.un.org/secureworld>> (accessed December 10, 2007). The Secretary-General, Millennium Declaration, UN GOAR, 56th Sess., UN Doc. A/56/326 (Sept. 6, 2001); Maurice Bertrand, “The Historical Development of Efforts to reform the UN, in United Nations, Divided World: The UN’s Roles in International Relations.” 420 (Adam Roberts & Benedict Kingsbury eds., 1993).

Calls for a reform of the UN system have centered mainly on the need to enlarge Council membership and new nation powers; as well as veto power reforms. Discussions have been apparent over whether the current permanent members of the UN Security Council are the best members to hold veto powers, although they are still regarded as great powers. Even the suitability of the veto power in the UN Security Council has been a subject of intense debate. The Rwandan and Darfur experiences have proved that veto power is detrimental to fast, balanced political decisions. So far, veto power has remained an instrument of political aid to great power allies. It has also proven detrimental to the ideals of a global relief effort that could have reduced the severity of the genocides in Africa, and other crisis around the world.

The veto power was originally intended as a preventive measure, to disallow rash resolutions that could have negative consequences. Former Secretary General Kofi Annan raised hopes of an imminent reform, but that may be realized by incumbent UN boss, Mr. Ban Ki-Moon. While the current power broker nations seem amenable to expansion, they vehemently resist extending the veto power on the ground that doing so would paralyze the Security Council and make it ineffectual. The nations that think otherwise, argue that the composition of the present Security Council “represents the world of the 20th Century rather than 21st.”⁸⁸ When the UN Charter was adopted in 1945, only a handful of current African nations and most Third World countries were sovereign independent nations. It was quite in order then that those dependent territories lacked the

⁸⁸ Zook, Darren C. “De-colonizing Law: Identity Politics, Human Rights, and the United Nations” putting the reform agenda in perspective: available at <<http://www.law.harvard.edu/students/orgs/hrj/iss19/zook.shtml>> (accessed January 10, 008).

capacity to enter into international obligations, hence were represented by their respective colonial masters, of mainly, the United Kingdom and France.

More than half a century later, with all the talks about sovereignty and equality of nations it is hypocritical to shy away from the fact that a reform of the Council is long over due. Democratizing the international system through a structured and balanced representation of the world's component geographical equation will not only guarantee equity and fair play, but also, will remove the bottleneck in decision making, as well as a check and balance on the hitherto cycle of *ignorance* and *indifference* often exhibited by the great powers which have resulted in the escalation of genocide and protracted ethnic conflicts in Africa.

AFRICAN NATIONS AND THE PRINCIPLE OF *NON-INTERVENTION*

I have earlier alluded to the well entrenched norm in African international law and relations that prohibits member nations from interfering in the domestic affairs of another member nation. The AU's Constitutive Act, succeeding the OAU Charter inherited this principle. The principles of the AU under Article 4 (1) states that "The Union shall function in accordance with the principles of sovereign equality and interdependence among member states of the Union."⁸⁹ It further prohibits the use of force or threat to use force among member states of the Union.⁹⁰ Noninterference by any member state in the

⁸⁹ Art 4(a)

⁹⁰ Art 4(f)

internal affairs of another⁹¹ is an important principle of the Act. However, the Act makes intervention in a member state pursuant to a decision of the Assembly (of heads of states)⁹² only necessary in respect of grave circumstances, such as war crimes, genocides and crimes against humanity.⁹³ In spite of its lack of sophisticated logistics, detection and enforcement mechanisms, the AU has made impressive impact in conflict prevention and control in Africa. The Union led efforts that brought peace to Burundi, and in 2003, undertook the first ever African-led peacekeeping operation there, demonstrating its unwavering support to Burundi's peace process.⁹⁴ The accomplishments of the African Mission in Burundi (AMIB) provided new grounds and a solid foundation for AU's Peace and Security Council which was inaugurated in May 2004.

The AU has exercised leadership across the spectrum of conflict resolution, dealing with the situations in Cote d'Ivoire, and making impressive ground-breaking efforts in Darfur, as well as with early quashing of the political crisis in Togo in February 2005, in Zimbabwe in 2008, among others. But the many accomplishments by the AU as already mentioned are overshadowed by the unfortunate meddling of some Africa states in the crisis in the DRC. The notion of non-interference in the domestic affairs prescribed by both the UN Charter and Constitutive Act of AU seem to meet their *exception* in the DRC conflicts. Five neighbors of the DRC: Rwanda, Uganda, Namibia, Angola, and Zimbabwe are all involved, each country with its purpose.

⁹¹ Art 4(g)

⁹² Art 6

⁹³ Art 4(h)

⁹⁴ See the Report, Canada's Contribution to the G8 African Action Plan: Consolidating Africa's Place at the Centre of Canada's International Cooperation Agenda (June 2005) available at: <http://www.dfait-macci.gc.ca/africa/aap-national-report-2005-en.asp>

Prior to the 1999 Lusaka Ceasefire Agreement for the cessation of hostilities between all the belligerent forces, the above five African countries have held stakes in the crisis in the DRC. Mindful of the international obligation to not meddle in the internal affairs of sovereign member states, what is the justification for these African nations' adventures in the DRC.? The conflict is fueled mainly by DRC's rich natural resources, including, gold, diamond, copper, timber, cobalt, uranium and coltan. While Rwanda, Uganda and Burundi backed the rebels, Zimbabwe and Angola fought on the side of the government of the DRC. However, the tactics used by the interventionist nations were many, and consisted in: (i) shifting alliances as needed to achieve the economic exploitation desired; (ii) disrupting humanitarian assistance, (iii) repeated military operations and violence, including rape, and other forms of attacks on civilians in areas rich in mineral resources, and (iv) pillage as a strategy of war.⁹⁵ A UN Panel of Experts indicated in its first report that, unlike Rwanda, Ugandan government did not benefit directly as a government from the resources exploitation in the DRC, but only individuals were gaining from it.⁹⁶

ARMED CONFLICT AND GENOCIDE: THE IMPLICATIONS OF ARMS SUPPLY TO FRAGILE REGIMES IN AFRICA

The unending armed conflicts and genocides in Africa are vivid examples of how the western powers have failed the people of Africa. In particular, the legacies of decades of colonization and the great powers' policies toward Africa bear some responsibility for

⁹⁵ Shah, Anup "Conflicts in Africa – The Democratic Republic of Congo" (October, 2003) Global Issues, at 2

⁹⁶ Report of UN Panel of Experts, April 2001

the cycles of violence and economic problems plaguing the continent. Restricting the flow of weapons and training and increasing support for sustainable development policies will enable the great powers, and indeed, the world community, to create the conditions needed for peace and stability to take root in Africa.

A major report about arms trade produced by William D. Hartung and Bridget Moix of the Arms Trade Resource Center⁹⁷ shows that from 1950 to 1989 the U.S. delivered over \$1.5 billion worth of weaponry to Africa. Many of the top U.S. arms clients – Liberia, Somalia, the Sudan, and Zaire (now DRC) - have turned out to be the top basket cases of the 1990s in terms of violence, instability, and economic collapse. Shortly after the RPF invasion in October 1990, the Rwandan Armed Forces (Forces Armees Rwandaises or FAR), the all-Hutu government army, expanded almost overnight from 5,000 to 28,000 men.⁹⁸

The FAR received considerable assistance in training and arms from the French government. President Francois Mitterand's son Jean-Christophe, was head of the African Office at the Elysee Palace, and was a close friend of President Habyarimana. Jean-Christophe is said to have been personally involved in the arms trade. Six hundred French paratroopers secretly took control of the counter-insurgency campaign.⁹⁹ The Egyptian government, with the intervention of then Foreign Minister Boutros Boutros-Ghali, sold \$5.9 million in ammunition, rifles, mortar bombs, rockets, and rocket

⁹⁷ Information available at <http://www.worldpolicy.org/projects/arms/reports/congo.htm> (accessed December 20, 2007)

⁹⁸ Melvern, Linda "A People Betrayed: The Role of the West in Rwanda's Genocid" (2000) Zed Books, London, (Quoting Belgian Senate "Commission d'Enquete Parlementaire Concernant les Evenements du Rwanda. Rapport, 6 Decembre, 1997 p 493.

⁹⁹ *Id*

launchers to Rwanda on October 28, 1990. South African arms dealers were also a major source of Rwandan armament. Between 1990 and April 1994, Rwanda spent an estimated \$112 million on arms, making it the third largest arms purchaser in Africa, after oil-rich Nigeria and Angola. The purchases were likely made with money diverted from loans by the World Bank.¹⁰⁰

Genocide in Rwanda was facilitated by the arming of the extremist militias. In 1992, the militia of the ruling MRND party, the *Interahamwe*, (those who stand together) was organized. The *Impuzamugambi*, the militia wing of the CRD, an extremist Hutu Power party organized by the *Akazu* elite to make the President's MRND seem moderate by comparison, followed suite. These militias were secretly trained in camps run by Rwandan army officers, armed with machetes, and grenades from arms shipments to the government.¹⁰¹

The supply of weapons of war is a lucrative business for those countries that deal in it. How to address these evil business dealings is obviously the least discussed aspect of genocide prevention measures at the level of the UN Security Council debates. In the few occasions when arms embargoes were imposed, implementation had fallen short of the desired result. One glaring instance is the July 2003 12-month arms embargo in the eastern part of the DRC where armed conflicts continued. The embargo was expanded throughout the country, but given the size and porous borders of the country, enforcement

¹⁰⁰ *Id*

¹⁰¹ G. H. Stanton, "Could the Rwandan Genocide have been Prevented"? available at <http://www.genocidewatch.org/COULD%20THE%20RWANDA%20GENOCIDE%2011> (accessed September 29, 2006)

of the embargo was impossible. When it was realized that the UN Mission in the Democratic Republic of Congo (MONUC) needed substantial increase, the U.S. opposed any more peacekeepers, claiming the \$1 billion mission is already too expensive for any further addition.

Comparing Iraq and the Congo, one commentator,¹⁰² has called President George Bush's justification of US intervention in Iraq to the effect that "Freedom is God's gift to every person in every nation," a glaring example of the hypocrisy of US foreign policy: "It is so hypocritical, because it is not in American interests to have democracy everywhere. In Iraq, there was a government holding valuable resources the US could not control. So the US took action. In the Congo, the US controls the government and the resources, so it doesn't really matter that millions of Congolese are dying."¹⁰³ On a universal level, Oxfam, in a survey conducted in 2000, criticized the international community for ignoring the DRC. When compared with the response in Kosovo, Oxfam pointed out that "In 1999 donor governments gave just \$8 per person in the DRC, while providing \$207 per person in response to the UN appeal for the former Yugoslavia. While it is clear that both regions have significant needs, there is little commitment to universal entitlement to humanitarian assistance."¹⁰⁴

¹⁰² Professor Didier Gondola, quoted in: Matthew Cheney, "Congo Genocide at: <http://vedana.net/2003/05/29/congo_genocide.shtml> (last accessed December 6,2006)

¹⁰³ *Id*

¹⁰⁴ Available at <http://www.globalissues.org/Geopolitics/Africa/DRC.asp> (accessed December 10, 2007).

THE CONSEQUENCES OF FOREIGN ARMS DEAL ON THE CRISIS IN THE DRC

As with most conflicts in Africa, the crisis in the DRC has much to do with the legacy of colonialism. After 75 years of colonial rule, Belgium left very abruptly, surrendering the political rights to the people of Congo in 1960 without the economic rights for the country to flourish. A few months after Patrice Lumumba became head of state, he was overthrown with US and European support for a Cold War ally, Mobutu Sese Seko, as well as for the rich resources that would then be available cheaply, rather than used for Congo's own people and development.¹⁰⁵ Evidence even emerged that, when then US president, Dwight Eisenhower met his national security advisers to talk about the situation in Congo two months after independence, he said Lumumba, the country's first prime minister, should be eliminated.¹⁰⁶ US policy toward Mobutu was rationalized on the grounds of fighting "communism" and Soviet influence in Africa, but the US was clearly more concerned with securing its own interests in the region than helping foster a stable, secure, and peaceful future for the people of the sub-region. Lumumba was nonaligned in geopolitical-cold war sense, so not seen in favorable light by the US and its allies worldwide.

Mobutu's dictatorship was prolonged by the U.S, providing over \$300 million in weapons and \$100 million in military training. The US supplied arsenal was used by

¹⁰⁵ See *supra* note 96.

¹⁰⁶ Ingram, Derek "40 Years on – Lumumba still haunts the West", (September, 2000) Gemini News Service.

Mobutu to repress his people and plundered the economy of the Congo, a country he soon renamed “Zaire”, for nearly four decades until his brutal regime was overthrown by Laurent Kabila’s forces in 1997. Since then, there have been many internal conflicts where all sides have been supported by various neighbors. Most importantly, the conflict has been fueled by weapons sales and by military training. Weapons supplies have come mainly from the former Soviet bloc countries as well as the U.S.

The G-word has not been frequently used in describing the atrocities that went on in the DRC for a long time. However, pointers are to the effect that the DRC has been the scene of the greatest humanitarian crisis in the world today, with a death toll outstripping that of Sudan’s Darfur region.¹⁰⁷ Another account claims that the crisis in the DRC has claimed more lives than any armed conflict since World War II.¹⁰⁸ A landmark report in the *Lancet* medical journal dubs the then decade-old war that has plagued the DRC “the world’s deadliest humanitarian crisis. With 38,000 people dying every month, the mortality equivalent of the Southeast Asian tsunami, the report accuses the rich donor countries of ‘miserably failing the people of Congo’.”¹⁰⁹ A report¹¹⁰ by the *Control Arms Campaign* in January 2006 highlights the devastating human cost of the arms trade in the DRC. The report also condemns the world’s continuing failure to control the arms trade in the DRC. The countries that supply guns to the DRC must agree on clear principles on the exportation of small arms to prevent weapons from getting into the wrong hands. As

¹⁰⁷ UN Under Secretary General for Humanitarian Affairs Report (2005)

¹⁰⁸ Behind the Numbers: Untold Suffering in the Congo (March 1, 2006)

¹⁰⁹ Mortality in the Democratic Republic of the Congo: A Nationwide Survey (January 7, 2006)

¹¹⁰ The Call for Tough Arms Controls: Voices from the Democratic Republic of the Congo (January 4, 2006)

one humanitarian officer has put it “there are so many weapons here that each person makes his own law.”¹¹¹

PREVENTING GENOCIDE IN AFRICA: FAILURES AND LESSONS LEARNED.

The U.S. is undoubtedly the most powerful nation on the surface of this earth. It has the capacity, not only to respond to crises, but also to mobilize broader international community’s response. As successive U.S administrations are faced with genocide in Africa, each has claimed to be ‘doing every thing possible’ to respond. The Clinton administration refused to name the unfolding Rwandan ‘genocide’ back in 1994, hence it did nothing to stop it or mobilize an intervention in the form of an international peacekeeping force.¹¹² In both Darfur and the DRC, the Bush White House systematically blocked multinational peacekeeping initiatives. In October 2005, for instance, Ambassador John Bolton sided with representatives from China, Russia and Algeria in blocking the US Special Adviser on the Prevention of Genocide, Juan Mendez, from briefing the Security Council on human rights violations in Darfur.¹¹³ In all of these three situations (Rwanda, Darfur and DRC) however, both Presidents Clinton and Bush were forthcoming with support to humanitarian efforts.

¹¹¹ Available at <http://www.globalpolicy.org/security/issues/kongidx.htm> . (last accessed January 10, 2006)

¹¹² Ferroggiaro, ed. “The U.S. and the Genocide in Rwanda 1994: Information, Intelligence and the U.S. Response,” Footnote #11: US Department of State, cable number 94 State 099440, to US Mission to the United Nations, New York, “Talking Points for UNAMIR Withdrawal” April 15, 1994.”: See also, Gerald Caplan, “Why we must never forget the Rwandan Genocide,” *Pambazuka News: Weekly Forum for Social Justice in Africa*, 1 April 2004.

¹¹³ See generally, “John Bolton’s Work at the UN: The Situation in Sudan,” Office of the Public Liaison, Fact-sheet forwarded by the White House, quoted in: “A Tale of Two Genocides...”, see [http://www. Stop Bolton.org](http://www.StopBolton.org)> (accessed September 30, 2006), as well as “Three Strikes, You’re Out: Bolton Fails Darfur, Take Action Now to Oust Bolton” (Action Alert) August 2006.

The Bush administration provided logistic support to the AU multinational forces in Darfur. But there was no strategy by the U.S. authorities to protect the population of Darfur from on-going genocide at the time. Despite Bush's initial hesitation on Darfur, his administration introduced or supported numerous UN Security Council resolutions on Darfur, condemning the violence, urging an end to atrocities, and even imposing some limited sanctions on those perpetrating war crimes and crimes against humanity. These lessons came too late, but can serve to prevent genocide from occurring in the future.

THE NEED FOR JUST AND BALANCED INTERNATIONAL ECONOMIC DEVELOPMENT AND TRADE ORDER

The conflicts that are taking place in Africa have multiple interwoven causes. While rooted in structural inequity between the center and the various organs, tensions have often been exacerbated by a combination of environmental calamity, political opportunism and regional geopolitics. To a great extent, human rights violation, ethnic conflicts, wars and genocides in Africa are a direct consequence of the scramble for scarce resources, and are therefore, economy-driven. There is no dearth of international trade and economic relations treaties. There are the World Trade Organizations (WTO); which succeeded the General Agreement on Tariffs and Trade (GATT), several other multilateral trade and economic development agreements between the West and African nations, such as the Lome Convention.¹¹⁴ However, the implementation of these

¹¹⁴ The Lome Convention is a trade and development co-operation agreement between the EU states and 71 African, Caribbean and Pacific (ACP) states. See Orji, Ifem E. "Less Accords ACP-CEE de Lome – Un Cas d'Application: Le Nigeria" LLM Thesis, University of Paris-Saint Denis, France (1984).

instruments does not reflect the original intentions of the contracting parties on the contractual basis of equality. The original objectives have often been misapplied.¹¹⁵

Much of the suffering and poverty in Africa is man-made. For centuries, the West plundered natural resources of African nations, and enforced trade and debt policies that are stacked in its favor. Victoria Brittain has succinctly summarized it thus: “colonialism brought Europe undreamed of wealth, rubber, ivory, copper, gold, cotton, cocoa, tobacco – all flowed out of Africa, leaving behind a newly impoverished peasant workforce. The new economy demanded a system of migrant labour that destroyed for ever the unity of traditional communities.”¹¹⁶ Most African nations still groan under the unfair burden of exploitative economic policies imposed and perpetuated by the rich countries. These policies have been upgraded to what may be termed ‘old wine in a new bottle’ approach after decades of political independence and globalization based on the so-called sovereign equality of states.

In his book, “Globalization and its Discontents”, Joseph Stiglitz¹¹⁷ writes that “the IMF uses its powers to run a virtual empire for US capital, forcing poor nations to open

¹¹⁵ The EU argues that multilateralism, driven by globalization and policed by multilateral agencies like the WTO, has served to undermine Lome. Richard Gibb has argued that “the Union’s new strategy, to create a series of free trade areas linking Europe with regional groupings of ACP states, has the potential to damage the cause of regional solidarity among developing countries. (see R. Gibb “Post-Lome: the European Union and the South” (June , 2000) Third World Quarterly Vol. 21 no. 3 pp. 457-481

¹¹⁶ The Guardian, January 2, 1999

¹¹⁷ Stiglitz, Joseph, Globalization and its Discontents, available at <[http://www.goacom.org/overseas-\(accesseddigest/Trade&Justice/Mar05%20Africacommission%20report.htm](http://www.goacom.org/overseas-(accesseddigest/Trade&Justice/Mar05%20Africacommission%20report.htm)> (last visited October 10, 20/07)

the way for financial speculators and corporate theft.” Conditionality,¹¹⁸ which often refers to the policies a donor nation or a lending institution like the IMF and the World Bank, expect the receiving or borrowing country to follow in order to be able to avail itself of the aid or loan have sometime been used to perpetuate economic neo-colonization. Evidence have shown that rather than work as contained on paper, the Structural Adjustment Programs (SAP) often prescribed has exacerbated the plight of loan recipient nations, a good example being Nigeria during the late 1980s and early 1990s under the military presidency of General Ibrahim B. Babangida.

Through the cure-all-ailments structural adjustment programs, they have put excessive pressure on the already anorexic state to further slim down by selling off state assets, cutting down on subsidies on essential social services. The states are thus, pushed further to the abyss while the corrupt leaders bolster their positions and wealth. In the words of Professor George Kirya,¹¹⁹ it amounts to the saying that “he who pays the piper chooses the tune.” The donors tend to prescribe what they think should work as far as they are concerned, and this has often caused detrimental results. Because of the forced deregulation, growth in sub-Saharan Africa fell from 36% between 1960 and 1980 to minus 15% between 1980 and 1983.¹²⁰ A report appearing in the Independent newspaper in 2005 claims that “for every pound that wealthy countries have put into Africa over the

¹¹⁸ In order to receive funding from the World Bank or IMF, borrower countries are asked to undergo economic reform, commonly known as Structural Adjustment Programme (SAP), as a way to bring about poverty reduction.

¹¹⁹ Kirya, George B. “Donor Conditions on Overseas Aid: Constructive Framework or Damaging Straitjacket?” available at: <<http://www.africacentre.org.uk/Trade>> (last accessed March 4, 2007)

¹²⁰ *id*

past 30 years, \$17 was taken out.”¹²¹ According to the October 2005 edition of Congressional Research Service (CRS) report:¹²²

U.S. aid to Africa reached a peak in 1985, when global competition with the Soviet Union was at a high point. As the Cold War eased, security assistance levels for Africa began to drop. In 1995, at the outset of the 104th Congress, substantial reduction in aid to Africa had been anticipated, as many questioned the importance of Africa in the post-Cold War era.

As the debate went forward, however, congressional reports and bills acknowledged U.S. humanitarian, economic, and other interests in Africa. Aid levels did fall, but began a gradual recovery in 1997.¹²³ The U.S commitment to helping Africa should be based on good, accountable governance, and economic policies in the recipient states in line with the consensus reached at the International Conference on Financing for Development at Monterrey in 2002. The conference agreed on a new world model for development that called on developing countries to establish sound economic and social policies, and for developed countries to support these efforts through an open trading system, private capital flows, and additional development assistance.¹²⁴

¹²¹ The Independent of March 9, 2005.

¹²² Copson, Raymond W. CRS Issue Brief for Congress “Africa: U.S. Foreign Assistance Issues” Foreign Affairs, Defense, and Trade Division, Updated October 25, 2005, The Library of Congress.

¹²³ With the end of the Cold War, U.S priority in Africa faded as more effort was focused in reducing US budget deficit. Moreover, policymakers were placing increased emphasis on human rights and commitment to economic reform programs in making their decisions on aid allocation. Consequently, aid to some African countries that had been major Cold-War aid recipients, such as DRC (then Zaire) and Liberia, was sharply reduced. A major increase in aid took place in 2003 because of large quantities of food aid provided to Ethiopia and southern Sudan, as well as a boost in spending through the Child Survival and Health Programs Fund in response to the African HIV/AIDS pandemic. The global AIDS Initiative focus countries are: Uganda, Kenya, South Africa, Nigeria, Zambia, Ethiopia, Tanzania, Mozambique, Rwanda, and Cote d’Ivoire,

¹²⁴ U.S. Department of State, Fact Sheet: “The United States and International Development: Partnering for Growth” Office of the Spokesman, Washington DC (May 10, 2006)

GREAT POWERS ARMS PROLIFERATION IN AFRICA:
PROMOTING FREEDOM OR FUELING CONFLICT?

“Arms, arming, armies and armed conflict as well as a deleterious political economy” writes Professor Herbert Ekwe-Ekwe,¹²⁵ “characterize the tragedy of contemporary Africa... The economics of Africa’s arms, arming and armed conflicts, as should be expected, have had a strangulating effect on the continent’s resources....” Matching actions with words is a missing element in international politics and in diplomatic circles. A lot has been said by policy makers about the imperative of a global reduction in arms supplies to Africa, albeit the world over, but the lucrative inducement from the trade as a source of revenue to states has not allowed its realization. In September 1998, then US Secretary of State Madeleine Albright announced at a UN meeting that arms exporting states “bear some responsibility” for a trade which “fuels conflict, fortifies extremism and destabilizes entire regions” in Africa and worldwide.¹²⁶ Notwithstanding, the US has dramatically increased its involvement and arms sales to the Horn of Africa and East Africa in the last few years. The trend is expected to extend with full force to sub-Saharan Africa if the proposition by former US Secretary of Defense Donald Rumsfeld to unify Africa Military Command is implemented.¹²⁷

Foreign powers, particularly the U.S and France, continue to be actively involved in Africa, sustaining pliant leaders and protecting their transnational oil companies and

¹²⁵ *Supra* note 40

¹²⁶ Rich, Anna “U.S. Exports Arms to the World” Third World Traveler, Resist newsletter, May 1999, also available at: http://www.thirdworldtraveler.com/Pentagon_military/USArmsExport_World.html (last accessed 11/28/06).

¹²⁷ Church, William “Africa: US Arms Sales Increase” News and Commentary, October 17, 2006. The Consolidation is expected to unify the current split command structure of the US European Command controlling most of Africa, and the Central Command directing US Military activities in Egypt, Sudan, Eritrea, Ethiopia, Djibouti and Kenya into a single command.

other economic interests. They have done so by training and equipping the armies of their allies through their intelligence services and private military companies.¹²⁸ The practice of treating lethal goods as just another product to be promoted and sold is problematic on a more fundamental level. While the US is very concerned about its responsibility to prevent nuclear proliferation, there is no corresponding acknowledgement of the danger of filling the world up with conventional weaponry, even when, as in the case of Iraq or Somalia, US supplied arms later boomerang back to hit American troops.¹²⁹ While the US maintains partial sanction against Sudan, China has become the country's largest supplier of weapons, where its sales include fighter aircraft and helicopters. China has used the threat of its Security Council veto to stall or dilute UN resolutions on Darfur, arguing the situation in Sudan is an internal affair in which the international community should not delve into.

Several armed struggles, killings humanitarian crises rage on in different parts of Africa: Nigeria's Boko Haram; Uganda, Mali to name a few. It does not matter what name it is called: insurgents, terrorists, war-lords etc., they use arms and ammunitions manufactured in the West and supplied to such fighters. In the case of Nigeria, the Boko Haram, according to several news items, out fires the Armed Forces of the Federal Republic of Nigeria. In a desperate letter "Why We Could not Defeat Boko Haram" to

¹²⁸ *Id*, Noting that "In the wars that have ravaged Rwanda and DRC since 1996, African-American mercenaries and the private security firm with strong links to US power structures, Brown & Root, have been supporting Rwanda and Uganda war efforts with sophisticated weaponry that has included helicopter gun-ships fitted with 105 mm cannons, rockets, machine guns, landmine ejectors and infrared sensors. The well-connected U.S. private military company, the Military Professional Resources Inc., has led America's train and equip program in Nigeria and Angola, primarily to pacify the oil enclaves in these countries.

¹²⁹ Rich, Anna, "U.S. Exports Arms to the World" available at http://www.thirdworldtraveler.com/Pentagon/USArmsExport_World.html (last accessed November 28, 2006)

Nigeria's President and the President of the Senate, a Commanding Officer lists "corruption, maladministration, lack of resources and troop motivation" among the factors militating against "a successful campaign to end Boko Haram's deadly reign of terror in the northeast."¹³⁰ There is no dearth of information about the superior fire power of the insurgent Boko Haram over the Nigerian government.¹³¹ Boko Haram has captured several local council areas in the Northeast and successfully bomb and massacre tens of thousands citizens all over the country. It is mere lip service for the West to sell such

¹³⁰ Why we could not defeat Boko Haram – Army Commander writes a powerful letter to Nigerian President. http://www.kendallharamon.net/t19/index.php/t19/article/why_we_could_not_defeat_boko_ (accessed January 15, 2015).

¹³¹ The Prosecutor of the International Criminal Court said "Boko Haram has likely committed crimes against humanity" <http://www.un.org/apps/news/story.asp?realfile/www.unodc.org/story.asp?NewsID=criminal+court&Cr=#.UxjUE Idv8E> (accessed January 10, 2015); The BBC "Government troops have carried out extrajudicial killings and torture of suspected Boko Haram members in past crackdowns" <http://www.bbc.com/news/world-africa-20163435>; Amnesty International <http://www.amnesty.org/en/news/nigeria-deaths-hundreds-boko-haram-suspects-custody-requires-investigation-2013-10-15> noting that "Nigerian authorities have also arrested thousands of people across northern Nigeria, holding many of these prisoners incommunicado without charge or trial for months or even years. In some cases, prisoners have been detained in inhuman conditions, tortured or even killed" (accessed January 14, 2015; The Economist (November 19, 2014) "Why Nigeria has not yet defeated Boko Haram" <http://www.economist.com/blogs/economist-explains/2014/11/economist-explains-10>, noting that Boko Haram "has expanded its membership, range of operations and the territory it controls to the point where two dozen cities are beyond government control. This has happened despite the fact Nigeria is now Africa's largest economy and has a highly capable political elite. Currently the army is fighting insurgents for control of the city of Chibok where Boko Haram abducted 276 schoolgirls on April 14, 2014. How come Nigeria's situation keeps getting worse, given international support for the Nigerian government?"; Chicago Tribune "Nigeria's Boko Haram is back with a vengeance" <http://www.chicagotribune.com/news/opinion/editorials/ct-boko-haram-edit-0115-20150111..> (accessed January 15, 2015); Human Rights Watch "Nigeria: Boko Haram attacks likely crimes against humanity" <http://www.hrw.org/news/2012/10/11/nigeria-boko-haram-attacks-likely-crimes-against-humanity> (accessed January 10, 2015; The Wall Street Journal "Boko Haram overruns village and army base in Northeast Nigeria" <http://www.wsj.com/articles/boko-haram-overruns-village-and-army-base-in-northeast-nigeria-1420467667> (accessed January 5, 2015; The Telegraph (UK) "Boko Haram is now a mini Islamic state with its own territory" <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/113377Haram-is-now-a-mini-Islamic-State-with-its-own-territory.html>; Courtney Brooks "Fears mount that Boko Haram could bring Nigeria to the brink" <http://america.aljazeera.com/articles/2014/3/7/nigeria-boko-haramanalysis.html>; Jacob Zenn "Boko Haram's international connections" <https://www.ctc.usma.edu/posts/boko-harams-international-connections> (accessed January 10, 2015; Human Rights Watch (May 1, 2013) "Nigeria: Massive destruction, death from military raid" <http://www.hrw.org/news/2013/05/01/nigeria-massive-destruction-deaths-military-raid> (accessed January 14, 2015; Thomas Gaist "Boko Haram seizes key multi-national military base in northern Nigeria (January 8, 2015) <http://www.wsj.com/en/articles/2015/01/08/boko-j08.html> (accessed January 16, 2015).

heavy weaponry to insurgent and terrorist groups and expect them to use the arms in a way other than to kill and main innocent citizens caught up in the fire power. The table below helps place the argument in context.

**Table:
Significant Wars/Conflicts/Insurgencies in the World 1990 – Date/On-going**

COUNTRY	Started	War	Conflict/Insurgency	Ended
AFRICA				
BURUNDI	10/1993	Civil		8/2005
C/ D'IVOIRE	9/2002	Civil		3/2007
GUINEA	2013		Clashes	2013
G/BISSAU	1998	Civil		1999
KENYA	2005		Turbi village massacre	-
	2007		Kenyan crisis	2008
LIBERIA	1999	Second civil		2003
MALI	1990	Civil		1995
	4/2002		Azawad insurgency	On-going
	2007		Insurgency/Maghreb	2009
	2012		2/Tuareg rebellion	On-going
	2012		3/Tuareg rebellion	On-going
MAURITANIA	4/2002		Northern Mali conflict	On-going
NIGER	1990		Insurgency/Maghreb	1995
	4/2002		1/Azawad insusrgen	On-going
	2007		Insurgency/Maghreb	2009
	2012		2/Azawad insurgency	On-going
NIGERIA	1999		Tuareg rebellion	On-going
	2009		Islamist insurgency	On-going
	2004		Boko Haram insurgency	On-going
			Niger Delta conflict	1/2002
RWANDA	10/1990	Civil		7/1994
	4/1994		Rwandan genocide	7/1994
S/LEONE	3/1991	Civil		1/2002
UGANDA	1996		Allied Dem. Forces	-
	1996		Uganda Nat. Res. Front	2002
<u>Central Africa</u>				
CAR	2004	Civil		2007
	2012		CAR conflicts	2014
CHAD	1998	Civil		2002
	4/2002		Insurgency/Maghreb	On-going
	12/2005	Civil		1/2010
CONGO Rep.	1997	Civil		1999
DRC	10/1996	1/Civil		5/1997
	8/1998	2/Civil		7/2003
	1999		Ituri conflict	2007
	2004		Kivu conflict	On-going
	2007		ADF insurgency	On-going
<u>Southern Africa</u>				
MOZAMBIQUE	2013		Internal conflict	On-going

ASIA

COUNTRY	Started	War	Conflict/Insurgency	Ended
ISRELI-PALESTIN	1948	Occasionally	Armed Conflicts	On-going
AFGHANISTAN	2001	Civil	-	On-going
SYRIA	2011	Civil	-	On-going
IRAQ	2011		Insurgency	On-going
IRAN	2004		Iran-PJAK conflict	On-going
YEMEN	1998		Al-Qaeda insurgency	On-going
	2004		Shia insurgency	On-going
	2009		South Yemen insurgenc	On-going
PAKISTAN	2004	Civil-N/W	-	On-going

EUROPE

COUNTRY	Started	War	Conflict/Insurgency	Ended
RUSSIA	2009		North Cauc, insurg	On-going
UKRAIN	2014	War in Dunbas		On-going

MAGHREB-NORTH/ HORN OF AFRICA

COUNTRY	Started	War	Conflict/Insurgency	Ended
<u>Maghreb</u>				
ALGERIA	1991	Civil		2002
EGYPT	1/2011	-	Egyptian revolution	On-going
	2/2011		Sinai insurgency	On-going
	11/2012		Egyptian protests	7/2013
	6/2013		Egyptian protests	7/2013
	7/2013		Political violence	On-going
LIBYA	2011	Civil		2011
	2011		Post-civil war violen.	On-going
	2014		Operation dignity	On-going
MOROCCO	4/2002		Insurgency in Maghr.	On-going
SUDAN	2003	Civil – Darfur	Nomadic conflict	On-going
	2005	With Chad	S/Sudan violence	2010
	2009	-	Sudan-SFR conflict	On-going
	2011	-	Insurgency	On-going
	2011	-		On-going
	3/2012	Border-S/SSud		9/2012
	2013	Civil - S-Sud.		On-going
TUNISIA	4/2002		Insurg/Maghreb	On-going
	12/2010		Tunisian revolution	1/2011
<u>Horn of Africa</u>				
SOMALIA	1/1991	Civil		On-going
	1995		Ogden insurgency	2008
DJIBOUTI	11/1991	Civil		12/1994
ERITREA	5/1998	Civil/Ethiopia		5/2000

NORTH AMERICA

COUNTRY	Started	War	Conflict/Insurgency	Ended
MEXICO	1994		Chiapas conflict	-
	2006	Drug war		On-going

SOURCES: Compiled from: “Wars in progress” <http://www.internationalrelations.com/wars-in-progress> (accessed January 12, 2015); “Armed conflicts in Africa: What are the solutions?” <http://www.socialistinternational.org/viewArticle.cfm?ArticlePageID=877> (accessed January 15, 2015);

Jeffrey Gettleman (2010) "Africa's forever wars" <http://foreignpolicy.com/2010/02/11/africas-forever-wars> (accessed January 15, 2015); "List of ongoing armed conflicts" http://en.wikipedia.org/wiki/List_of_ongoing_armed_conflicts (accessed January 15, 2015); "Significant ongoing armed conflicts, 2014" <http://www.infoplease.com/ipa/A0904550.html> (accessed January 15, 2015).; "Conflicts in Africa: Causes and prospects for resolutions" <http://worldviews.igc.org/awpguide/conflict.html> {accessed January 14, 2015); "Major episodes of political violence- 1946-3013" <http://www.systemicpeace.org/warlist.html> (accessed January 15, 2015).

As the above table show, Africa is afflicted by war. Most of Africa's wars stem from a long time consequences of colonization. Notably, the artificial boundaries arbitrarily drawn by the colonial masters did not take into consideration the natural African realities and values. Also, other factors such as ideology, religion, racial and ethnic sentiments are culprits. Over the period 1990 to present, more wars have taken place or still on-going in Africa than in any other continent. Rwanda, Burundi, Sudan, Liberia, Sierra Leone, DRC, and Uganda have had major wars. According to the United Nations definition, a war is considered to be major if it is military conflict inflicting 1,000 battlefield deaths per year.¹³² Aside the major wars, there are also insurgencies and rebellions, which although not considered outright war, have caused the death of tens of thousands if not millions of innocent civilians. The Boko Haram insurgency in Nigeria readily comes to mind. These situations will stay on as long as arms and ammunitions of war continue to flow into the hands of the war lords, not only of African extraction, but the world over.

The danger posed by indiscriminate supplies of weaponry and other deadly war material to Africa can rightly be said to be the cause of instability that is rampaging the African geo-polity, indeed the world, sending innocent citizens to untimely grave, and creating millions of displaced persons and refugees, most of whom are not welcome in

¹³² Global Security "The World at War" <http://www.globalsecurity.org/military/world/war> (accessed January 15, 2015).

the West.¹³³ The fact is, if nothing is done, and urgently too, Africa in particular, will be destroyed permanently. At the scale things now stand, considering the massive involvement of the great powers in the production and supply of arms and ammunitions to Africa, the whole world is at war without calling it that. If the great powers and indeed the international community as a global village is serious about playing credible roles in the prevention of genocide and other armed conflicts, humanitarian crises, poverty and disease tearing Africa apart, all should endeavor to reduce foreign military and arms build-up on the continent of Africa.

A recent Fox news report, the Nigerian Ambassador to the US blasted the US for refusing arms sales to fight Boko Haram.¹³⁴ The news item quoted the Ambassador, Professor Adebowale Ibidapo Adefuye as having told the Washington-based Council on Foreign Relations on Monday, November 3, 2014 that “the U.S government has up till today refused to grant Nigeria’s request to purchase lethal equipment that would have brought down the terrorists within a short time.” The build-up to genocide can take any shape, hence confronting such potentials threats early as they become known would prevent a repeat of Rwanda and other unspoken genocides like the Nigeria’s civil war against “Biafra,”

¹³³ By reason of this author’s involvement with immigration and asylum processes, these facts are familiar domains.

¹³⁴ Fox news (November 11, 2014) “Ambassador Blasts US for Refusing Arms Sale to Fight Boko Haram. <http://www.foxnews.com/world/2014/11/11/nigeria-ambassador-blasts-us-for-refusing-arm...> (accessed January 15, 2015).

NEVER AGAIN! SO BOKO HARAM NEED BE STOPPED

Early warnings, like in Rwanda and Darfur that the international community ignored, are clear now in the Boko Haram case in Nigeria! It should not be ignored! Mr. John Kerry, the US Secretary of State understands that Boko Haram must be stopped. According to the Vanguard Newspaper on the former US Senator, speaking in Sofia, Bulgaria, branded the Boko Haram massacres in northern Nigeria a crime against humanity “What they have done ... is a crime against humanity, nothing less... Boko Haram is evil and a serious threat not just in Nigeria and the region but to all of our values.” British Foreign Secretary, Mr. Philip Hammond, who was also in Sofia spoke about the possibility of “a special initiative with respect to Nigeria and with respect to Boko Haram.”¹³⁵

However, a recent news item published by the Vanguard Newspaper entitled “Boko Haram: US halts Israeli aid to Nigeria”¹³⁶ shows that:

Four hours after US Secretary of State, John Kerry met President Goodluck Jonathan and former Head of State, General Muhammadu Buhari, pledging his country’s determination to work with Nigeria and other countries to end activities of the Boko Haram terrorists, the Israeli media, yesterday, revealed that the US stopped Nigeria’s purchase of Chinook military helicopters from Israel to fight Boko Haram.

The source quotes the White House Assistant Press Secretary and Director for Strategic Communications, Ned Price, as saying that “reviews of such kind take place in the case of any requests for one country to transfer US-origin defense items to another country.”¹³⁷ According to the news report, US officials had told The Jerusalem Post that in consonance with the policy directive taken by President Barack Obama, such sales

¹³⁵ <http://odili.net/news/source/2015/jan/15/318.html> (accessed January 15, 2015).

¹³⁶ <http://odili.net/news/source/2015/jan/27/339.html> (accessed January 28, 2015).

¹³⁷ *Id*

must conform with the criteria for conventional weapons sales. Accordingly, the policy requires US transfers, including Boeing aircraft, to take into account “The risk that significant change in the political or security situation of the recipient country could lead to inappropriate end use”¹³⁸ of the weapon.

Amnesty International and Human Rights Watch have described images from Boko Haram bombings as “devastations of catastrophic proportions” according to the newspaper.¹³⁹ The government of Nigeria has no solution to the issue of the nearly three hundred girls abducted from a school in Chibok nearly a year ago, precisely in April of 2014, nor numerous other cases of abductions and kidnappings. The state of emergency imposed by the government in that part of the country over a year ago has had no effect. The insurgents have continued to wax from strength to strength. Like a helpless and powerless child, the government has continued to play down death tolls and casualty figures from Boko Haram superior fire power. Evidence¹⁴⁰ abound that the government of Nigeria has failed in her responsibility to protect the citizens, and defend her territory, especially as Boko Haram has now introduced the Sha’ria in parts of the northeast of Nigeria it occupies and controls. Haba!

Jacob Zenn, an analyst/expert on Nigeria has warned in a paper entitled “Why the West Must Unite to Help Nigeria Defeat Terrorism” that: 1) Boko Haram operates as al-Qaeda’s representative in Nigeria and must be challenged on a domestic, regional and

¹³⁸ *Id*

¹³⁹ See supra note 135

¹⁴⁰ See supra note 131

international level; 2) the U.S government's delay in designating Boko Haram a Foreign Terrorist Organization (FTO) initially hampered international attempts to combat the terror group's overseas financial transactions...3) the U.S State Department should clarify the standards used to make the terror designation and explain why Boko Haram did not receive the label under the leadership of former Secretary of State and Presidential hopeful, Hilary Clinton, despite traceable evidence linking Boko Haram to Osama bin Laden; 4) There are concerns in the international community and Nigeria that the U.S Democratic Party or its advisers may be associating themselves with northern politicians who are reportedly connected to Boko Haram in the lead up to the 2015 Presidential elections; 5) any political pact between U.S officials and the APC carries risk – the U.S should adopt a neutral approach to the Nigerian elections and political landscape, and 6) an international investigation that can bring sanctions against political and business leaders in Nigeria and abroad who are financing Boko Haram should be commissioned immediately.”¹⁴¹

Providing the insurgent Boko Haram access to weapons and ammunitions to the detriment of the legitimate government of Nigeria will be counter-productive. In the Rwandan situation, generous arms deals and other logistic supports were extended to the *Interahamwe* and *Impuzamugambi* militia groups that emboldened them to perpetrate their evil designs. When the world chorused in unison: “Never Again.”¹⁴² The fact that no genocide has been declared ever since Rwanda and Darfur could be a testament to the

¹⁴¹ Zenn, Jacob “Exposing and Defeating Boko Haram - Why the West Must Unite to Help Nigeria Defeat Terrorism” <http://www.bowgroup.org/sites/bowgroup.uat.pleasetest.co.uk/fil> (accessed January 15, 2015).

¹⁴² At the end of the Rwandan genocide, it most certainly was not about a repeat of genocide in that country, but rather, that it will never happen anywhere else on earth.

lessons learned. Evidently, Mr. Ban Ki- Moon, the U.N Secretary-General's appointment of an Under-Secretary-General/Special Adviser on Genocide Prevention, Mr. Adama Dieng, who succeeded Mr. Francis Deng, is a step in the right direction. Earlier on, the former U.N Secretary-General, Mr. Kofi Annan had, following the Rwanda genocidal violence, appointed Mr. Juan Mendes as Special Adviser to fill some critical gaps in the international system, while Mr. Edward Luck served as Special Adviser with focus on the *Responsibility to Protect (R2P)*.

According to the letter by Mr. Ban Ki-moon¹⁴³ addressed to the President of the Security Council, the responsibilities of the Special Adviser on the Prevention of Genocide are:

- Collecting existing information, in particular from within the United Nations 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;
- Acting as a mechanism of early warning to the Secretary-General, and through him to the Security Council, by bringing to their attention situations that could potentially result in genocide;
- Making recommendations to the Security Council, through the Secretary-General, on actions to prevent or halt genocide, and

¹⁴³ Ref: (S/2004/567)

- Liaising with the United Nations system on activities for the prevention of genocide and work to enhance the United Nations' capacity to analyze and manage information regarding genocide or related crimes.

Heads of States and Governments unanimously affirmed at the 2005 World Summit that each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. A consensus was reached at the Summit that when appropriate, the international community should assist states in exercising that responsibility by building their protection capacities before crises and conflicts break out. It was equally agreed that when a state is manifestly failing to protect its population from the four specified crimes, the Heads of State and Government confirmed that the international community was prepared to take collective action, through the Security Council and in accordance with the Charter of the United Nations.

Nevertheless, the need to reform aspects of the U.N Security Council composition and *modus operandi* still now, as ever calls for attention. While efforts may be at work to re-focus the functioning of the U.N, it is extremely very important that the international community reconsiders its approaches towards Africa in several aspects. In addition to more emphasis needing to be paid on trade, economic, social and developmental initiatives devoid of exploitative conditionality, membership of the Security Council should be enlarged to include the voices of emerging democracies. Africa, for instance deserves a permanent seat in the Security Council. Democratization of the Security Council is long overdue. The super powers preach democratic ideals, help to install or

unseat governments around the globe, but have not thought that the Security Council deserves to be democratized. The use of veto has only worked to promote the interests of the Council's member nations to the greatest extent.

CONCLUSION

The roots of conflicts in Africa go far beyond the rhetoric by the international community and the great powers, in particular, of providing humanitarian or emergency assistance to Africa whenever conflicts occur. Human rights abuse is a lesser evil compared to genocide, and often human rights abuses accompany genocide. Therefore, existing mechanisms for the punishment or safeguards against human rights violations¹⁴⁴ are inadequate to prevent or punish acts of genocide. Preventing genocide or solving problems created by it demand more stringent approach, and must be tackled from the sources.

The weakness of the international community in preventing genocide and enforcing punishment for crimes against humanity and war crimes can no longer be ignored. The negative impact of colonization and its modern form have for long been an unbearable burden on the African continent. Africa did not ask to be colonized. It was a unilateral action by the West, and that constituted a breach of Africa's sovereignty and territorial integrity, the sovereignty and respect for territorial integrity existed prior to

¹⁴⁴ The system of universal human rights provides for the monitoring of the implementation of human rights world-wide. But it did not confer a legal capacity upon individuals to enforce these rights, hence, in most instances, individuals are still 'objects', not subjects of international law. Presently, absolute sovereignty has been undermined by the norm of the "responsibility to protect" citizens which pierces the veil of sovereignty of states that harm or fail to protect their own peoples, particularly in time of war or serious crisis. See generally, Thomas H. Lee, *supra* note 9.

colonization.¹⁴⁵ The abundant natural wealth of Africa is being traded for arms and other weapons of war to perpetually subject the continent to underdevelopment. By training and raising the profiles of warlords to national, albeit, international prominence is damaging to Africa, indeed the entire humanity. Terrorist do not manufacture arms and weapons they use in carrying out their terror. The recent attacks in Paris, New York and other places in the West happened because terrorists had access to such weaponry. A way of controlling the sale and supply of war equipment needs be worked out.

The world community needs a forum for shared values, hence the greatest challenge that it faces today is to devise a strategy to overcome the world's structural inequalities that perpetuated extreme poverty and wars in Africa. For the good of the world community, the great powers have a choice between Kant's commonwealth of perpetual peace or the Hobbesian world of threat and *machtpolitik!*

¹⁴⁵ It dates back centuries in the context of regulated relationships and legal traditions among such disparate territorial entities as Egypt, China, and the Holy Roman Empire. However, the present foundations of international law with regard to sovereignty were shaped by agreements concluded by European states as part of the Treaties of Westphalia in 1648.