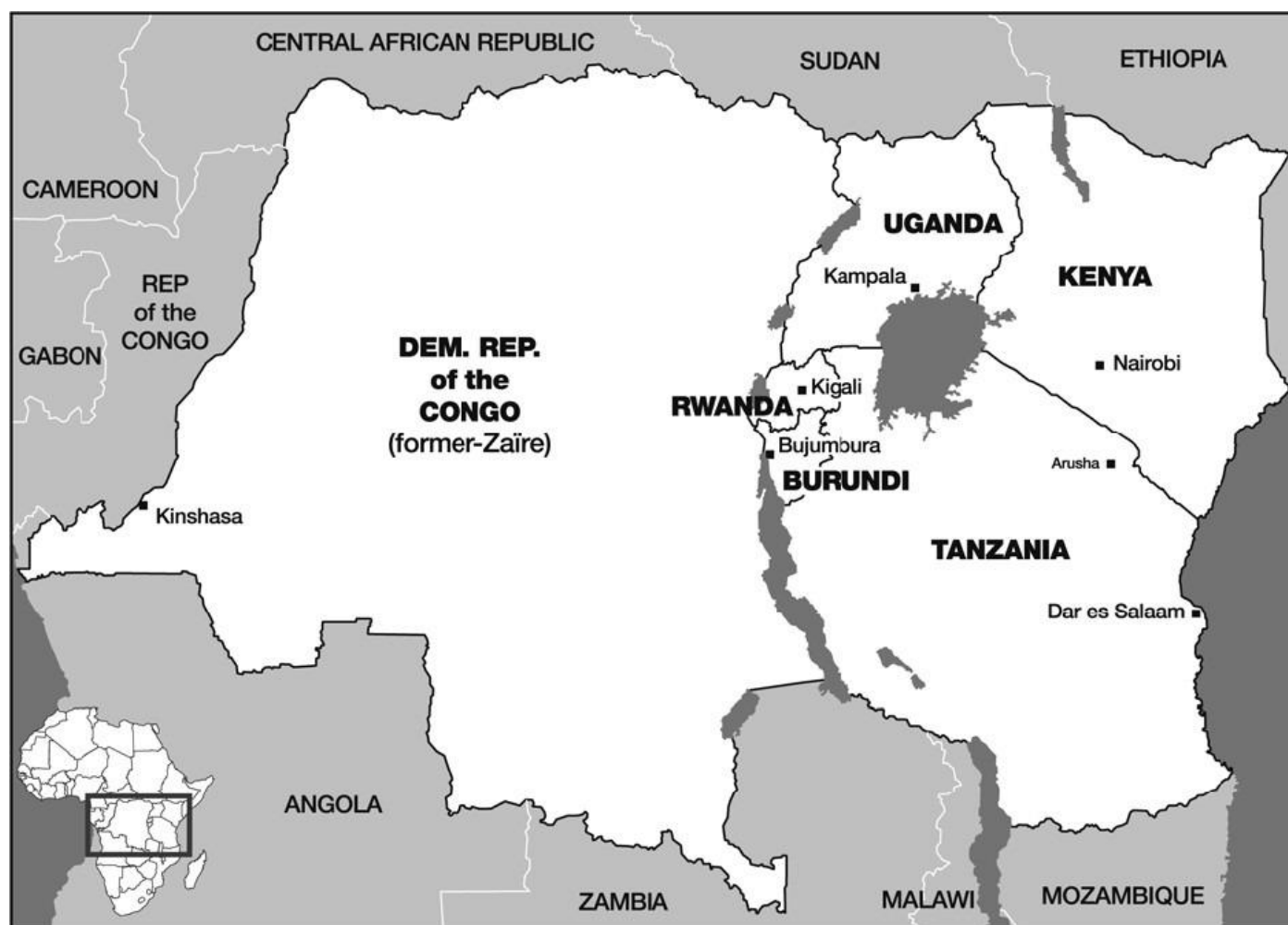


Places

[N.B.: This case study was prepared by Thomas de Saint Maurice for the French edition of this book. It is based exclusively on public documents and it partially uses the Case study prepared by Lina Milner published in the first edition of this book.]

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.



Map of the Great Lakes Region. Country names and borders on this map are intended to facilitate reference and have no political significance. © ICRC

Abbreviations

Rwanda

FAR: Forces armées rwandaises (Rwandese Armed Forces, i.e., armed forces of the former Hutu-led government))

FPR: Front patriotique rwandais (Rwandese Patriotic Front)

MRBD: Mouvement révolutionnaire national pour le développement (National Revolutionary Movement for Development)

UNAMIR: United Nations Assistance Mission for Rwanda.

Burundi

CNDD: Conseil national pour la défense de la démocratie (National Council for the Defence of Democracy)

FDD: Forces pour la défense de la Démocratie (Forces for the Defence of Democracy)

FROLINA: Front pour la libération nationale (Front for National Liberation) PALIPEHUTU: Parti pour la libération du peuple hutu (Party for the Liberation of the Hutu People)

Democratic Republic of the Congo

DRC: Democratic Republic of the Congo

FAC: Forces armées congolaises (Congolese Armed Forces)

RCD: Rassemblement congolais pour le démocratie (Congolese Rally for Democracy)

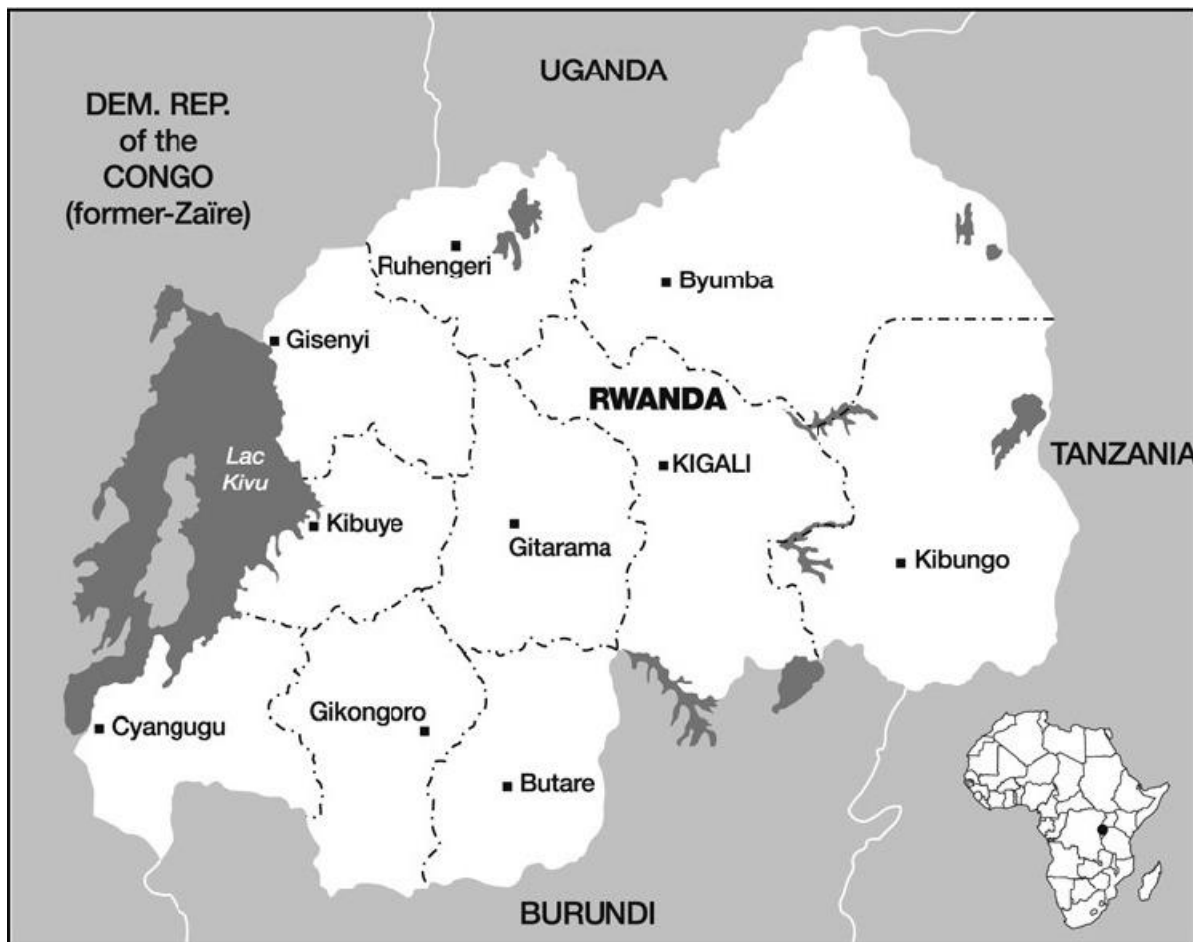
SADC: South African Development Conference

Angola

UNITA: National Union for the Total Independence of Angola

I. Genocide in Rwanda

[See also ICTR, The Prosecutor v. Jean-Paul Akayesu; Switzerland, The Niyonteze Case, and ICTR, The Media Case]



Map of Rwanda. Country names and borders on this map are intended to facilitate reference and have no political significance © ICRC

A. The genocide

[N.B.: For a description of the acts of genocide, refer to DES FORGES Alison and HRW-FIDH, *Aucun témoin ne doit survivre*, Paris, Karthala, 1999, 911 pp; PRUNIER Gerard, *The Rwanda Crisis, 1959-1994: history of a Genocide*, London, Hurst, 389 pp. See also the facts reported in the ICTR cases, available on <http://unictr.irmct.org>]

1) The genesis of the genocide

Source : "Hearing of Jean-Pierre CHRÉTIEN", in *Fact-finding mission on Rwanda. Minutes of the hearings from 24 March 1998 to 5 May 1998*, French National Assembly, Paris, <http://www.assemblee-nationale.fr/dossiers/rwanda.asp>. Original in French, unofficial translation.

Hearing of Mr Jean-Pierre CHRÉTIEN Director of Research at the CNRS

(Session held on 7 April 1998) Chaired by Mr Paul Quilès, Chairman of the Defence Committee

The Chairman, Mr Paul Quilès, welcomed the historian Mr Jean-Pierre Chrétien, who is Director of Research at the CNRS. [...] He added that Mr Jean-Pierre Chrétien adhered to the school of thought which holds to the view that the rift between Hutu and Tutsi is essentially a post-colonial creation. He therefore suggested that Jean-Pierre Chrétien explain the mission to gather information about the conflicts between that school of thought and other views. [...]

Mr Jean-Pierre Chrétien began by showing the specific nature of the ethnic problem in Rwanda, pointing out that the Hutu-Tutsi issue in the region of the Great Lakes represented a particular kind of ethnic problem as the Hutus and the Tutsis are not heterogeneous peoples gathered within artificial borders. A clear distinction therefore needed to be made between historical periods: the waves of migration which populated Rwanda some thousand years ago, the political history of the kingdoms dating back four or five centuries, and the complex social history characterized by various conflicts between regions and clans and by the distinction made between the Hutu, Tutsi and Twa ethnic groups, a distinction which, far from always having existed, progressively gained strength, especially since the eighteenth century with the ascent of the centralized monarchical governments.

These ethnic categories were not therefore invented by the colonizers; they existed before the latter arrived on the scene. It is consequently appropriate to analyse the evolution over time of relations between the Tutsis and the Hutus. Taking up the myth of the great Tutsi invasion, the colonial era saw an increase in the strength of a Gobineau-type mythology, according to which everything can be explained by the age-old clash between the Bantu and Hamitic racial groups. It gave rise to an ideological scenario with scientific pretensions. Mr Jean-Pierre Chrétien insisted on the omnipresent obsession with race under colonial rule: it suited the whites and fascinated the first generation of literate blacks, swelling the pride of the Tutsis, who were treated as if they were black Europeans, and annoying the Hutus, who were treated as if they were Bantu Negroes. To support his thesis, Mr Jean-Pierre Chrétien cited, in particular, the German Count von Goetzen who, in 1895, talked about *"large invasions from Abyssinia"* [...] and the *Journal of former pupils of Astrida (Bulletin des anciens élèves d'Astrida)* which claimed in 1948 that *"being of Caucasian origin like the Semites and Indo-Europeans, the Hamitic peoples originally had nothing in common with Negroes. The preponderance of the Caucasian type has remained clearly evident among the Batutsi ... their height – rarely less than 1.80 m – ... their fine facial features imbued with an intelligent expression, everything helps to justify the title bestowed on them by the explorers: aristocratic Negroes"*. Mr Jean-Pierre Chrétien thus showed that, far from pursuing a simple policy of "divide and rule", colonial rule was social management based on an ideology of racial inequality which pitted the Tutsis, who were treated as virtual aristocrats, against the Hutus, who were considered victims of a kind of scientifically legitimized human erosion. The colonizers therefore introduced racial discrimination into the heart of Rwandan society, in which social categories already existed. [...]

Turning next to the study of post-colonial Rwanda until 1990, Mr Jean-Pierre Chrétien stressed the specific nature of the Rwandan "democratic" project, which was based on a methodological mix of the numerical

dominance of the Hutu masses, who were perceived as a homogeneous community, and the indigenous nature of its members, defined as the only “true Rwandans”. When, with the coming of independence, the so-called “social” revolution erupted between 1959 and 1961, it thus targeted the whole Tutsi contingent, designating it collectively as being synonymous with a “*feudal*” system backed by the colonizing power. A model was then introduced into both the reality and the thinking of the day; backed and endorsed by the Belgian Christian democracy and the missionary Church, it referred to democracy and defined the Tutsi minority as both feudal and foreign from one generation to another. It was 1789 in reverse, with the hereditary orders not being suppressed but simply changed. A large number of quotations reveal this line of thought: for example, Grégoire Kayibanda, leader of that revolution, said in 1959 that the country had to be “*restored to its proprietors, the Bahutu*”; in 1960 Parmehutu declared that “*Rwanda [was] the country of the Bahutu (Bantu) and of all those, black or white, of Tutsi, European or other origins, who will shake off feudal-colonialist objectives*” and invited the Tutsis who did not share that way of seeing things to “*return to Abyssinia*”; [...] Behind the democratic language, the priority of ethnic identity, officially shown on identity cards, was imposed willy-nilly: democracy was a doctrine of ethnic majority in disguise. The propaganda disseminated by Parmehutu, the sole political party which became the MRND [National Revolutionary Movement for Development] in 1973, did not change. In July 1972, “*Ingingo z’ingenzi mu mateka y’Urwanda*”, the Parmehutu creed, affirmed, “*Tutsi domination is the source of all the ills suffered by the Hutus since the world began.*” [...] That official discrimination – “*respectable racism*”, as Marie-France Cros of the *La Libre Belgique* called it – was steeped in a sense of having a clear conscience and was endorsed both by social and democratic language and by the Church. Instead of redressing the balance, the regime in power between 1959 and 1994 only accentuated the marginalization or exclusion of the minority and tended to reflect the desire to marginalize if not exclude it. The problem cannot be tackled as if it were a regional matter with federal repercussions, nor as if it were a genuine social issue, since there were rich and poor people in both categories. Under those conditions, the binary nature of the relation makes it particularly explosive.

[...] Since prophecies of victimization can be said to justify preventive self-defence, fear was frequently exploited and, against the aforementioned background, played a key role in the crises in the region of the Great Lakes. From 1959 onwards, it was the essential tactical force driving popular mobilization during the massacres. Hence, at Christmas 1963, following an attack by Tutsi refugees, four soldiers were killed. By way of reprisal the Government sent ministers to organize “*popular self-defence*” in the prefectures. In September 1964, 10,000 Tutsis were massacred in the Gikongoro prefecture.

The cloud of genocide weighs heavily on Rwanda and that swiftly covered-up crisis foreshadowed by 30 years the programme of massacres and the genocide that occurred in 1994. The phenomenon recurred before that, in 1973, these crises thus constituting a legacy of experience and memories, fears and suspicions.

Mr Jean-Pierre Chrétien then turned to the end of the Habyarimana regime. In the late 1980s, the

unchanging political regime was faced with economic and social difficulties that were both structural and cyclical in nature – economic deadlock, structural adjustment, a sense of hopelessness among young people, the rise of the opposition, aspirations to pluralism of expression – to which was added the invasion by the Rwandan Patriotic Front (FPR) on 1 October 1990, followed by a simulated attack on Kigali on 4 and 5 October. The response to those events was twofold and contradictory: an opening-up to democracy and ethnic mobilization. Between 1990 and 1994, a race against the clock was truly on – the opponents being the logic of democratization and peace and the logic of war and racism.

Under pressure from the domestic opposition and from foreign powers, the logic of democratization led to greater willingness on the part of the government to consider the issue of public liberties and to the acceptance of political pluralism in June 1991. From 1992 onwards, the shape of Rwandan political strategy was determined by three poles: the Habyarimana sphere of influence, supposedly represented by Akazu (the “household” from the north-west, headed, in particular, by the family of “Mrs President”, Ms Habyarimana); the domestic opposition, which was primarily Hutu; and finally, the armed opposition of the FPR, which was primarily Tutsi. Following meetings between the FPR and the Rwandan authorities, the signature of a cease-fire in July 1992 appeared to be a sign that things were moving beyond ethnic antagonism, which was a far too simplified a view.

Mr Jean-Pierre Chrétien emphasized how his meetings with the Hutu opposition had helped him to appreciate the situation before going on to stress that the resumption of anti-Tutsi killings had in no way been inevitable. He pointed out that the extremist reaction which embodied the logic of genocide had simultaneously assumed a violent form based on the racist propaganda and a more subtle form aimed at disrupting the opposition within the country. [...]

It was against that background that, in May 1990, the newspaper Kangura was founded with the help of Akazu finances, its task being to spread the racist “gospel”, and that, in April-July 1993, the “free” radio station “Radio-Télévision Libre des Mille Collines” (RTLHC), was launched under the leadership of Ferdinand Nahimana, an extremist who had been dismissed from his position as director of the Rwandan National Information Office (ORINFOR) by the opposition for having incited the pogroms in Bugesera. [...] [See ICTR, The Media Case]

This is how a climate of violence developed that was denounced by various players both in Rwanda and abroad [...]. Mr Jean-Pierre Chrétien pointed out that in March 1993 he himself had referred to “a *tragic slide into genocide*”.

Hence, a far-reaching political debate was then going on in Rwanda, setting the government’s ethnically oriented line against the democratic line adopted by the opposition. Moreover, those debates are mentioned in a whole series of texts, which no one could be unaware of. Those same texts provide evidence of the emergence, at the end of 1992, of a current close to the government and prepared for anything. [...] [Jean-Pierre Chrétien] recalled what had been said by President Habyarimana, who, in November 1992, referred to

the Arusha agreement as a “piece of trash”, and by Professor Mugesera, an influential member of the MRND, who called for the Tutsis to be eliminated. [...]

Tackling the course taken by the genocide itself, Mr Jean-Pierre Chrétien drew attention to the great many inquiries and testimonies providing evidence of the reality and the “normality” of the genocide. The propaganda employed in the press and on the radio during the events was part of an ongoing political culture that went back for more than thirty years and which revolved around three major topics: the priority of ethnic Hutu or Tutsi origins; the legitimization of a genuine racial conflict which condemned some while taking a totalitarian approach to defining the power of the others; and finally, the normalization of a culture of violence. It would admittedly have been difficult to conceive of the scale and the atrocity of the genocide in advance, but it was surprising that the international community took so long to notice it and to condemn it. [...]

2) ICRC, press release of 21 April 1994

[Source: ICRC Press Release, no. 1772, 21 April 1994]

Human tragedy in Rwanda

Geneva (ICRC) – Tens, maybe hundreds of thousands killed: the exact number of victims of the massacres that have swept Rwanda over the last two weeks will never be known. Terrified inhabitants have been fleeing the centre of the country and several hundred thousand displaced people are massed in the south and the north. The human tragedy in Rwanda is on a scale that the International Committee of the Red Cross (ICRC) has rarely witnessed.

In the hospitals in the capital, Kigali, surgeons have managed to save hundreds of lives. However, the wounded can no longer be taken to medical centres for fear that they will be killed before they arrive, and those that have been saved cannot leave hospital because to do so would mean certain death.

The need for humanitarian aid is also immense in outlying areas of the country, where hundreds of thousands of people, some of them wounded, have sought refuge. The displaced, who lack food and medical care, will be assisted by Rwandese medical staff as soon as security conditions allow. In addition, sanitation systems must be installed to minimize the risk of epidemics.

Since the start of the violence, about 30 ICRC delegates, the French team of *Médecins sans Frontières* and Rwandese Red Cross volunteers have risked their lives to preserve a measure of humanity in the midst of the carnage. What they have done is vital, but is no more than a drop in the ocean.

ICRC delegates on the spot are in constant contact with all parties concerned and are broadcasting messages on local radio stations, calling for an end to the atrocities and demanding that civilians, the

wounded and any people taken prisoner be spared.

B. The United Nations Assistance Mission for Rwanda (UNAMIR)

[Source: United Nations, Letter dated 15 December 1999 from the Secretary-General addressed to the President of the Security Council, S/1999/1257, 16 December 1999, "Enclosure: Report of the Independent Inquiry into the actions of the United Nations during the 1994 genocide in Rwanda"; available on <http://www.un.org>]

Enclosure Report of the Independent Inquiry into the actions of the United Nations during the 1994 genocide in Rwanda 15 December 1999

I. INTRODUCTION

Approximately 800,000 people were killed during the 1994 genocide in Rwanda. The systematic slaughter of men, women and children which took place over the course of about 100 days between April and July of 1994 will forever be remembered as one of the most abhorrent events of the twentieth century. Rwandans killed Rwandans, brutally decimating the Tutsi population of the country, but also targeting moderate Hutus. Appalling atrocities were committed, by militia and the armed forces, but also by civilians against other civilians.

The international community did not prevent the genocide, nor did it stop the killing once the genocide had begun. This failure has left deep wounds with Rwandan Society, and in the relationship between Rwanda and the international community, in particular the United Nations. These are wounds which need to be healed, for the sake of the people of Rwanda and for the sake of the United Nations. Establishing the truth is necessary for Rwanda, for the United Nations and also for all those, wherever they may live, who are at risk of becoming victims of genocide in the future.

[...] The Inquiry has analysed the role of the various actors and organs of the United Nations system. Each part of that system, in particular the Secretary-General, the Secretariat, the Security Council and the Member States of the organisation, must assume and acknowledge their respective parts of the responsibility for the failure of the international community in Rwanda. Acknowledgement of responsibility must also be accompanied by a will for change: a commitment to ensure that catastrophes such as the genocide in Rwanda never occur anywhere in the future.

The failure by the United Nations to prevent, and subsequently, to stop the genocide in Rwanda was a failure by the United Nations system as a whole. The fundamental failure was the lack of resources and political commitment devoted to developments in Rwanda and to the United Nations presence there. There was a

persistent lack of political will by Member States to act, or to act with enough assertiveness. This lack of political will affected the response by the Secretariat and decision-making by the Security Council, but was also evident in the recurrent difficulties to get the necessary troops for the United Nations Assistance Mission for Rwanda (UNAMIR). Finally, although UNAMIR suffered from a chronic lack of resources and political priority, it must also be said that serious mistakes were made with those resources which were at the disposal of the United Nations. [...]

II. DESCRIPTION OF KEY EVENTS

Arusha Peace Agreement [...]

Only a week after the signing of the Agreement, the United Nations published a report which gave an ominously serious picture of the human rights situation in Rwanda. The report described the visit to Rwanda by the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions. Mr Waly Bacre Ndiaye, from 8 to 17 April 1993. Ndiaye determined that massacres and a plethora of other serious human rights violations were taking place in Rwanda. The targeting of the Tutsi population led Ndiaye to discuss whether the term genocide might be applicable. He stated that he could not pass judgment at that stage, but citing the Genocide Convention, went on to say that the cases of intercommunal violence brought to his attention indicated “very clearly that the victims of the attacks, Tutsis in the overwhelming majority of cases, have been targeted solely because of their membership of a certain ethnic group and for no other objective reason.” Although Ndiaye – in addition to pointing out the serious risk of genocide in Rwanda – recommended a series of steps to prevent further massacres and other abuses, his report seems to have been largely ignored by the key actors within the United Nations system.

In order to follow up on the Arusha Agreement, the Secretary-General dispatched a reconnaissance mission to the region from 19 to 31 August 1993. [...] The mission was led by Brigadier-General Romeo A. Dallaire, Canada, at the time Chief Military Observer of the United Nations Observer Mission Uganda-Rwanda (UNOMUR). [...]

On 15 September, a joint Government-RPF delegation met with the Secretary-General in New York. The delegation argued in favour of the rapid deployment of the international force and the rapid establishment of the transitional institutions. Warning that any delay might lead to the collapse of the peace process, the delegation expressed the wish for a force numbering 4,260. The Secretary-General gave the delegation a sobering message: that even if the Council were to approve a force of that size, it would take at least 2-3 months for it to be deployed. The United Nations might be able to deploy some further observers in addition the 72 already sent, but even this would take weeks. Therefore the Rwandan people needed to be told that they had to rely on themselves during the interim period. The Government and the RPF had to make an effort to respect the cease-fire, the Secretary-General said, because it would be even more difficult to get troops if fighting were to resume. He also mentioned the enormous demands being made of the United Nations for troops, in particular in Somalia and Bosnia, and that the United Nations was going through a financial crisis.

The establishment of UNAMIR

On 24 September 1993, [...] the Secretary-General presented a report to the Security Council on the establishment of a peacekeeping operation in Rwanda (S/26488), based on the report from the reconnaissance mission. The report set out a deployment plan for a peacekeeping force of 2,548 military personnel. With operations divided into four phases, the Secretary-General proposed the immediate deployment of an advance party of about 25 military and 18 civilian personnel, and 3 civilian police. The first phase was to last 3 months, until the establishment of the Broad-based Transitional Government (BBTG), during which the operation would prepare the establishment of a secure area in Kigali and monitor the cease-fire. By the end of phase 1, the report of the Secretary-General stated that the operation was to number 1,428 military personnel. [...]

On 5 October, the Council unanimously adopted resolution 872 (1993), which established UNAMIR. The Council did not approve all the elements of the mandate recommended by the Secretary-General, but instead decided on a more limited mandate. [...]

Dallaire was appointed Force Commander of the new mission. He arrived in Kigali on 22 October. He was joined by an advance party of 21 military personnel on 27 October. The Secretary-General subsequently appointed a former Foreign Minister of Cameroon, Mr Jacques-Roger Booh Booh, as his Special Representative in Rwanda. Booh Booh arrived in Kigali on 23 November 1993.

On 23 November 1993, Dallaire sent Headquarters a draft set of Rules of Engagement (ROE) for UNAMIR, asking for the approval of the Secretariat. The draft included in paragraph 17 a rule specifically allowing the mission to act, and even to use force, in response to crimes against humanity and other abuses ("There may also be ethnically or politically motivated criminal acts committed during this mandate which will morally and legally require UNAMIR to use all available means to halt them. Examples are executions, attacks on displaced persons or refugees"). Headquarter never responded formally to the Force Commander's request for approval. [...]

The 11 January Cable

On 11 January 1994, Dallaire sent the Military Adviser to the Secretary-General, Major-General Maurice Baril, a telegram entitled "Request for Protection for Informant", which has come to figure prominently in the discussions about what knowledge was available to the United Nations about the risk of genocide. The telegram stated that Dallaire had been put into contact with an informant who was a top level trainer in the Interahamwe militia. The contact had been set up by a "very very important government politician" (who in later correspondence was identified as the Prime Minister Designate, Mr Faustin Twagiramungu). The cable contained a number of key pieces of information.

The first related to a strategy to provoke the killing of Belgian soldiers and the Belgian battalion's withdrawal. [...]

Secondly, the informant said that the Interahamwe had trained 1,700 men in the camps of the RGF, scattered in groups of 40 throughout Kigali. He had been ordered to register all Tutsi in Kigali, and suspected it was for their extermination. He said that his personnel was able to kill up to 1,000 Tutsi in 20 minutes.

Thirdly, the informant had told of a major weapons cache with at least 135 weapons (G3 and AK47). He was prepared to show UNAMIR the location if his family was given protection.

Having described the information received from the informant, Dallaire went on to inform the Secretariat that it was UNAMIR's intention to take action within the next 36 hours. He recommended that the informant be given protection and be evacuated, and – on this particular point, but not on the previous one – requested guidance from the Secretariat as to how to proceed. Finally, Dallaire admitted to having certain reservations about the reliability of the informant and said that the possibility of a trap was not fully excluded. As has often been quoted, the telegram nonetheless ended with a call for action: "Peux ce que veux. Allons-y." [...]

The first response from Headquarters to UNAMIR [...] ended "No reconnaissance or other action, including response to request for protection, should be taken by UNAMIR until clear guidance is received from Headquarters."

Booh Booh replied to Annan in a cable also dated 11 January. The Special Representative described a meeting which Dallaire and Booh Booh's political adviser, Dr Abdul Kabia, had had with the Prime Minister Designate, who expressed "total, repeat total, confidence in the veracity and true ambitions of the informant." Booh Booh emphasized that the informant only had 24 to 48 hours before he had to distribute the arms, and requested guidance on how to handle the situation, including the request for protection for the informant. The final paragraph of the telegram, para. 7, stated that Dallaire was "prepared to pursue the operation in accordance with military doctrine with reconnaissance, rehearsal and implementation using overwhelming force." [...]

Later the same day, Headquarters replied. Again, the cable was from Annan, signed by Riza, addressed this time to both Booh Booh and Dallaire. Headquarters stated that they could not agree to the operation contemplated in para. 7 of the cable from Booh Booh, as it in their view clearly went beyond the mandate entrusted to UNAMIR under resolution 872 (1993). Provided UNAMIR felt the informant was absolutely reliable, Booh Booh and Dallaire instead were instructed to request an urgent meeting with President Habyarimana and inform him that they had received apparently reliable information concerning the activities of the Interahamwe which represented a clear threat to the peace process. [...] If any violence occurred in Kigali, the information on the militia would have to be brought to the attention of the Security Council, investigate responsibility and make recommendations to the Council. [...]

The cable from Headquarters ended with the pointed statement that "the overriding consideration is the need to avoid entering into a course of action that might lead to the use of force and unanticipated repercussions."

[...]

Political deadlock and a worsening of the security situation [...]

The conclusion drawn was that determined and selective deterrent operations were necessary, targeting confirmed arms caches and individuals known to have illegal weapons in their possession. [...] UNAMIR sought the guidance and approval of Headquarters to commence deterrent operations. [...]

On 14 February, [...] the Belgian Foreign Minister, Mr Willy Claes, wrote a letter to the Secretary-General, arguing in favour of a stronger mandate for UNAMIR. Unfortunately, this proposal does not appear to have been given serious attention within the Secretariat or among other interested countries.

Dallaire continued to press for permission to take a more active role in deterrent operations against arms caches in the KWSA. The Secretariat, however, maintained the interpretation of the mandate which was evident in their replies to Dallaire's cable, insisting that UNAMIR could only support the efforts of the gendarmerie. [...] Annan emphasized that public security was the responsibility of the authorities and must remain so. "As you know, resolution 792 [sic] (1993) only authorized UNAMIR to 'contribute to the security of the city of Kigali, i.e., within a weapons secure area established by repeat by the parties?'" [...]

In a report on 23 February, Dallaire wrote that information regarding weapons distribution, death squad target lists, planning of civil unrest and demonstrations abounded. "Time does seem to be running out for political discussions, as any spark on the security side could have catastrophic consequences." [...]

The crash of the Presidential plane; genocide begins

On 6 April 1994, President Habyarimana and the President of Burundi, Cyprien Ntaryamira, flew back from a subregional summit. [...]

According to UNAMIR's report to Headquarters, at approximately 20.30, the plane was shot down as it was coming in to land in Kigali. The plane exploded and everyone on board was killed. By 21.18, the Presidential Guard had set up the first of many roadblocks. Within hours, further road-blocks were set up by the Presidential Guards, the Interahamwe, sometimes members of the Rwandan Army, and the gendarmerie. UNAMIR was placed on red alert at about 21.30. [...]

After the crash, UNAMIR received a number of calls from ministers and other politicians asking for UNAMIR's protection. [...]

The tragic killing of the Belgian peacekeepers took place against a backdrop of an escalated confrontation with Rwandan soldiers outside the Prime Minister's house. [...] [I]n Camp Kigali, the United Nations peacekeepers were badly beaten, and later, after the Ghanaian peacekeepers and the Togolese had been led away, the Belgian soldiers were brutally killed. [...]

Describing the shortcomings and lack of resources of UNAMIR, Dallaire did not believe he had forces capable of conducting an intervention in favour of the Belgians: “The UNAMIR mission was a peacekeeping operation. It was not equipped, trained or staffed to conduct intervention operations.” [...]

About 2,000 people had sought refuge at ETO [école Technique Officielle], believing that the UNAMIR troops would be able to protect them. There were members of the Interahamwe and Rwandan soldiers outside the school complex. On 11 April, after the expatriates in ETO had been evacuated by French troops, the Belgian contingent at ETO left the school, leaving behind men, women and children, many of whom were massacred by the waiting soldiers and militia. [...]

Within a couple of days of the crash of the Presidential plane, national evacuation operations were mounted by Belgium, France, Italy and the United States. The operations were undertaken with the aim of evacuating expatriates. The Force Commander informed Headquarters of the arrival of the first three French aircraft during the early hours of the morning of 8 April. In a cable dated 9 April from Annan (Riza), Dallaire was requested to “cooperate with both the French and Belgian commanders to facilitate the evacuation of their nationals, and other foreign nationals requesting evacuation. [...] This should not, repeat not, extend to participating in possible combat, except in self-defence.”

Withdrawal of the Belgian contingent

The Secretary-General met the Foreign Minister of Belgium, Mr Willy Claes, in Bonn on 12 April. In the minutes of the United Nations from the conversation, Claes' message to the United Nations was described as follows: “The requirements to pursue a peacekeeping operation in Rwanda were no longer met, the Arusha peace plan was dead, and there were not means for a dialogue between the parties; consequently, the UN should suspend UNAMIR. [...]

The Secretary-General informed the Security Council about the Belgian position in a letter on 13 April. The letter stated that it would be extremely difficult for UNAMIR to carry out its tasks effectively. The continued discharge by UNAMIR of its mandate would “become untenable” unless the Belgian contingent was replaced by an equally well-equipped contingent or unless Belgium reconsidered its decision. [...] The Permanent Representative argued that since the implementation of the Arusha Peace Agreement was seriously jeopardized, the entire UNAMIR operation should be suspended. It is the understanding of the Inquiry that in addition to this and subsequent letters to the Council, the Belgian Government conducted a campaign of high level démarches with Council members in order to get the Council to withdraw UNAMIR.

The continued role of UNAMIR [...]

In a [...] cable on 14 April, Dallaire made clear the dire consequences of the Belgian withdrawal, which he described as a “terrible blow to the mission”.

On 13 April, Nigeria had presented a draft resolution in the Security Council on behalf of the Non-Aligned

Caucus advocating a strengthening of UNAMIR. [...]

[...] [T]he United States initially stated that if a decision were to be taken then, it would only accept a withdrawal of UNAMIR, as it believed there was no useful role for a peacekeeping operation in Rwanda under the prevailing circumstances". [...]

DPKO [the UN Department of Peacekeeping Operations] argued that since there did not seem to be any real prospects of a cease-fire in the coming days, it was their intention to report to the Council that a total withdrawal of UNAMIR needed to be envisaged. [...]

Dallaire responded on 19 April arguing in favour of keeping a force of 250 as a minimum presence, and against a total withdrawal: "a wholesale withdrawal of UNAMIR would most certainly be interpreted as leaving the scene if not even deserting the sinking ship." He also pointed to the risk of dangerous reactions against UNAMIR in the case of a withdrawal. [...]

On 21 April, the Council voted unanimously to reduce UNAMIR to about 270 and to change the mission's mandate. [...]

New proposals on the mandate of UNAMIR

By the end of April, however, the disastrous situation in Rwanda made the Secretary-General recommend a reversal of the decision to reduce the force level. Boutros-Ghali's letter to the Security Council of 29 April (S/1994/518) provided an important shift in emphasis – from viewing the role of the United Nations as that of neutral mediator in a civil war to recognising the need to bring to an end the massacres against civilians, which had by then been going on for three weeks and were estimated to have killed some 200,000 people. [...]

On 13 May, the Secretary-General formalized his recommendations in a report to the Security Council, which outlined the phased deployment of UNAMIR II up to a strength of 5,500, emphasizing the need for haste in getting the troops into the field. The United States proposals contained i.a. an explicit reference to the need for the parties' consent, the postponement of later phases of deployment pending further decisions in the Council and requirement that the Secretary-General return to the Council with a refined concept of operations, including among other elements the consent of the parties and available resources. [...]

UNAMIR II established

The Council adopted resolution 918 (1994) on 17 May 1994. The resolution included a decision to increase the number of troops in UNAMIR, and imposed an arms embargo on Rwanda. [...]

A few African countries signalled some willingness to contribute, provided they received financial and logistical assistance in order to do so. By 25 July, over two months after resolution 918 (1994) was adopted,

UNAMIR still only had 550 troops, a tenth of the authorized strength. Thus the lack of political will to react firmly against the genocide when it began was compounded by a lack of commitment by the broader membership of the United Nations to provide the necessary troops in order to permit the United Nations to try to stop the killing. [...]

In order to follow-up resolution 918 (1994), the Secretary-General also sent Riza and Baril to Rwanda, among other things to try to move the parties towards a cease-fire and to discuss the implementation of resolution 918 (1994). The special mission to the region took place between 22 and 27 May. In a report to the Security Council dated 31 May, the Secretary-General presented his conclusions based on that mission. The report includes a vivid description of the horrors of the weeks since the beginning of the genocide, referring to a “frenzy of massacres” and an estimate that between 250,000 and 500,000 had been killed. Significantly, the report stated that the massacres and killings had been systematic, and that there was “little doubt” that what had happened constituted genocide. [...]

III. CONCLUSIONS

The Independent Inquiry finds that the response of the United Nations before and during the 1994 genocide in Rwanda failed in a number of fundamental respects. The responsibility for the failings of the United Nations to prevent and stop the genocide in Rwanda lies with a number of different actors, in particular the Secretary-General, the Secretariat, the Security Council, UNAMIR and the broader membership of the United Nations. This international responsibility is one which warrants a clear apology by the Organization and by Member States concerned to the Rwandese people. As to the responsibility of those Rwandans who planned, incited and carried out the genocide against their countrymen, continued efforts must be made to bring them to justice – at the International Criminal Tribunal for Rwanda and nationally in Rwanda. [...]

1. The overriding failure

The overriding failure in the response of the United Nations before and during the genocide in Rwanda can be summarized as a lack of resources and a lack of will to take on the commitment which would have been necessary to prevent or to stop the genocide. UNAMIR, the main component of the United Nations presence in Rwanda, was not planned, dimensioned, deployed or instructed in a way which provided for a proactive and assertive role in dealing with a peace process in serious trouble. The mission was smaller than the original recommendations from the field suggested. It lacked well-trained troops and functioning material. The mission’s mandate was based on an analysis of the peace process which proved erroneous, and which was never corrected despite the significant warning signs that the original mandate had become inadequate. By the time the genocide started, the mission was not functioning as a cohesive whole: in the real hours and days of deepest crisis, consistent testimony points to a lack of political leadership, lack of military capacity, severe problems of command and control and lack of coordination and discipline. [...]

2. The inadequacy of UNAMIR’s mandate [...]

The responsibility for the limitations of the original mandate given to UNAMIR lies firstly with the United

Nations Secretariat, the Secretary-General and responsible officials within the DPKO for the mistaken analysis which underpinned the recommendations to the Council, and for recommending that the mission be composed of fewer troops than the field mission had considered necessary. The Member States which exercised pressure upon the Secretariat to limit the proposed number of troops also bear part of the responsibility. Not least, the Security Council itself bears the responsibility for the hesitance to support new peacekeeping operations in the aftermath of Somalia, and specifically in this instance for having decided to limit the mandate of the mission in respect to the weapons secure areas. [...]

10. The lack of political will of Member States [...]

In sum, while criticisms can be levelled at the mistakes and limitations of the capacity of UNAMIR's troops, one should not forget the responsibility of the great majority of United Nations Member States, which were not prepared to send any troops or material at all to Rwanda. [...]

It has been stated repeatedly during the course of the interviews conducted by the Inquiry that the fact that Rwanda was not of strategic interest to third countries and that the international community exercised double standards when faced with the risk of a catastrophe there compared to action taken elsewhere. [...]

C. “Operation Turquoise”

1) Security Council resolution 929 (1994)

[Source: United Nations, S/RES/929, 22 June 1994; available on <http://www.un.org/documents/>]

Resolution 929 (1994) Adopted by the Security Council at its 3392nd session 22 June 1994

The Security Council:

Reaffirming all its previous resolutions on the situation in Rwanda, in particular its resolutions 912 (1994) of 21 April 1994, 918 (1994) of 17 May 1994 and 925 (1994) of 8 June 1994, which set out the mandate and force level of the United Nations Assistance Mission for Rwanda (UNAMIR),

Determined to contribute to the resumption of the process of political settlement under the Arusha Peace Agreement and encouraging the Secretary-General and his Special Representative for Rwanda to continue and redouble their efforts at the national, regional and international levels to promote these objectives, [...]

Noting the offer by Member States to cooperate with the Secretary-General towards the fulfilment of the objectives of the United Nations in Rwanda (S/1994/734), and stressing the strictly humanitarian character of this operation which shall be conducted in an impartial and neutral fashion, and shall not constitute an interposition force between the parties, [...]

Deeply concerned by the continuation of systematic and widespread killings of the civilian population in Rwanda, [...]

Recognizing that the current situation in Rwanda constitutes a unique case which demands an urgent response by the international community,

Determining that the magnitude of the humanitarian crisis in Rwanda constitutes a threat to peace and security in the region,

1. *Welcomes* the Secretary-General's letter dated 19 June 1994 (S/1994/728) and agrees that a multinational operation may be set up for humanitarian purposes in Rwanda until UNAMIR is brought up to the necessary strength;

2. *Welcomes* also the offer by Member States (S/1994/734) to cooperate with the Secretary-General in order to achieve the objectives of the United Nations in Rwanda through the establishment of a temporary operation under national command and control aimed at contributing, in an impartial way, to the security and protection of displaced persons, refugees and civilians at risk in Rwanda, on the understanding that the costs of implementing the offer will be borne by the Member States concerned;

3. *Acting* under Chapter VII of the Charter of the United Nations, authorizes the Member States cooperating with the Secretary-General to conduct the operation referred to in paragraph 2 above using all necessary means to achieve the humanitarian objectives set out in subparagraphs 4 (a) and (b) of resolution 925 (1994); [...]

[N.B.: These subparagraphs read as follows:

“(a) Contribute to the security and protection of displaced persons, refugees and civilians at risk in Rwanda, including through the establishment and maintenance, where feasible, of secure humanitarian areas; and

(b) Provide security and support for the distribution of relief supplies and humanitarian relief operations;”.]

9. *Demands* that all parties to the conflict and others concerned immediately bring to an end all killings of civilian populations in areas under their control and allow Member States cooperating with the Secretary-General to implement fully the mission set forth in paragraph 3 above; [...]

2) ICRC, memorandum of June 1994

[Source: *Mémoire sur le respect du droit international humanitaire*, ICRC, Geneva, 23 June 1994. Original in French, unofficial translation.]

Since the events of 6 April 1994, Rwanda has experienced an unleashing of violence and a humanitarian disaster that are without precedent in recent history and that are characterized by the systematic extermination of a large portion of the population. At the same time, the conflict between government forces and the Rwanda Patriotic Front (RPF) has resumed and has not ceased to escalate, also taking its toll in terms of victims, suffering and destruction.

In accordance with the terms of United Nations Security Council Resolution 929, member States were authorized to send armed troops to Rwanda with the option, in certain circumstances, of using force.

As the promoter and guardian of international humanitarian law, the International Committee of the Red Cross (ICRC) would like to draw attention to the following points. Any armed hostilities between foreign troops and armed forces or groups opposing them and the direct consequences thereof are governed by the principles and rules of international humanitarian law as contained, in particular, in the four Geneva Conventions of 1949 and in customary law relative to the conduct of military operations, reaffirmed in Articles 35 to 42 and 48 to 58 of Protocol I of 1977 additional to the Geneva Conventions.

All parties concerned must take the necessary steps to respect and ensure respect for international humanitarian law, especially:

I. PROTECTION OF PERSONS NOT – OR NO LONGER – TAKING PART IN THE HOSTILITIES

Persons who are not, or no longer, taking part in the hostilities, such as the wounded, the sick, prisoners and civilians, must be protected and spared in all circumstances:

- All the wounded and sick must be collected and cared for, without any distinction, in accordance with the basic provisions of the First and Fourth Geneva Conventions;
- Civilians who refrain from acts of hostility must be spared and treated humanely; in particular, attacks on their life, their physical integrity or their personal dignity, hostage-taking and the passing of sentences without a fair trial are prohibited;
- Combatants and other persons taken captive and those who have laid down their arms are entitled to the same protection; they must be handed over to the immediately superior military officer and, in particular, must not be killed or ill-treated;
- Combatants and civilians who have been captured must also be treated humanely and in accordance with the provisions of the Third and Fourth Geneva Conventions respectively;

- In particular, they must be detained in places where their security is ensured and which offer satisfactory material conditions with regard to hygiene, food and shelter:
- Any form of torture or ill-treatment is strictly prohibited;
- The right to receive ICRC visits must be respected and upheld.

II. CONDUCT OF MILITARY OPERATIONS

The armed forces do not have an unlimited right as to the choice of methods and means of warfare; a clear distinction must be made, in all circumstances, between, on the one hand, civilian objects and civilians who are not taking part in the hostilities and who refrain from acts of violence and, on the other, combatants and military objectives:

- Attacks against civilian persons or objects are prohibited;
- All feasible precautions must be taken to avoid injury to civilians, loss of civilian life and damage to civilian objects; in particular, civilians must be kept out of danger resulting from military operations and their evacuation must be organized or facilitated when security conditions so require and permit;
- Attacks that strike military objectives and civilians without distinction are prohibited, as are those that may be expected to cause incidental loss of life among the civilian population or damage to civilian property which would be excessive in relation to the concrete and direct military advantage anticipated;
- It is prohibited to use weapons or methods of warfare that cause unnecessary suffering to persons placed hors de combat or that render their death inevitable; it is prohibited to give orders to leave no survivors;
- Goods indispensable to the survival of the civilian population, such as food, crops, cattle and drinking water installations and supplies, must not be attacked, destroyed or put out of operation.

III. RESPECT FOR THE EMBLEM OF THE RED CROSS AND MEDICAL ACTIVITIES

Medical or religious staff, ambulances, hospitals and other medical units and means of medical transport must be protected and respected; the emblem of the red cross, which is the symbol of that protection, must be respected in all circumstances:

- The freedom of movement needed by all Red Cross staff and medical staff called upon to assist the civilian population and persons who are hors de combat must be ensured and the safety of that personnel guaranteed;
- Any misuse of the emblem of the red cross is prohibited and will be punished.

IV. RELIEF OPERATIONS

Relief operations for the civilian population that are solely humanitarian, impartial and non-discriminatory in nature must be facilitated and respected. The staff, vehicles and premises of relief agencies must be protected.

V. DISSEMINATION OF INTERNATIONAL HUMANITARIAN LAW

The parties concerned must ensure that all military and paramilitary forces and other militias acting under their responsibility know their obligations under international humanitarian law. It is essential that appropriate instructions to ensure respect for those obligations be issued repeatedly.

VI. ROLE OF THE ICRC

The ICRC, whose principal mandate is to protect and assist the victims of armed conflicts, stresses its desire to help ensure, in agreement with the parties concerned and insofar as its means allow, respect for the humanitarian rules and to carry out the tasks conferred upon it by international humanitarian law.

Geneva, 23 June 1994

D. UN 1997 Report on the issue of refugees

[Source: United Nations, E/CN.4/1997/61, 20 January 1997; available on <http://www.ohchr.org>]

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Rwanda submitted by Mr. René Degni-Ségui,

Special Rapporteur of the Commission on Human Rights, under paragraph 20 of resolution S-3/1 of 25 May 1994

[...]

III. THE PROBLEM OF THE RETURN OF REFUGEES

133. A durable solution to the problem of the return of Rwandan refugees, an ongoing concern of the international community, has eluded UNHCR, the OAU and the States of the Great Lakes region, despite the considerable efforts that they have made. The Rwandan refugee crisis has become increasingly more complicated and has degenerated into an armed conflict that threatens the security and stability of the Great Lakes region and involves the risk of causing an “implosion”.

134. The truth is that the continued presence of Rwandan refugees in neighbouring countries has put all of UNHCR's strategies to the test and has created what is called the “eastern Zaire crisis”. [...]

B. Failure of the strategies of the Office of the United Nations High Commissioner for Refugees

150. After the failure of two diplomatic attempts to settle the Rwandan refugee crisis at the Cairo (29-30 November 1995) and Tunis (18-19 March 1996) Conferences, organized under the auspices of the Carter Center in Atlanta, UNHCR adopted two sets of strategies. The first, which was to be selective, ended in failure and the second, which was new and was based on a comprehensive approach, also did not survive the crisis in Zaire.

1. The “selective” strategies

151. In order to deal with the obstruction of the Rwandan refugees’ return, which was caused primarily by acts of intimidation in the camps, UNHCR adopted measures at the end of 1995, in cooperation with the host countries concerned, that turned out to be inadequate. Some were aimed directly at the intimidators, while others were designed to promote repatriation.

(a) Measures aimed at the intimidators

152. These measures were designed to separate the intimidators from the other refugees in order to enable the latter to decide freely whether or not they wanted to return to Rwanda.

153. Intimidators are refugees in the camps who spread propaganda for the non-return of refugees and/or exert physical or psychological pressure on them to force them to give up the idea of returning to Rwanda. The intimidators come mainly from the ranks of former FAR and militia members and persons linked to the former regime. According to an Amnesty International report (AFR/EFAI/2 January 1996), the intimidators operate mainly by means of tracts. One tract, distributed in the Mugunga camp in September 1995 and translated from Kinyarwanda, stated:

“Of all those that UNHCR repatriated, not one is still alive ... The Tutsi have taken over the Hutus’ belongings and those who dare speak out are massacred mercilessly ... UNHCR wants to repatriate the refugees as it usually does, illegally, knowing full well that they will be killed. Dear brother, we know you have problems, but suicide is no solution. Candidates for death can go home. They have been warned.”

154. At the Regional Conference on Assistance to Refugees, Returnees and Displaced Persons in the Great Lakes Region held in Nairobi on 7 January 1995, it was decided that persons suspected of genocide and intimidators should be separated from genuine refugees. That strategy was integrated into the Plan of Action adopted by the Bujumbura Regional Conference on Refugees and Displaced Persons in the Great Lakes Region, held in February 1995. On the spot, however, it turned out to be difficult, if not impossible, to identify the persons covered by these categories. Moreover, even if it had been possible to identify them, their separation or removal from the camps would have been dangerous. Thus, when the Zairian authorities arrested 12 refugees regarded as intimidators in the Mugunga camp on the basis of a list drawn up and provided by UNHCR, the refugees in the camp became aggressive towards UNHCR officials, going as far as

to threaten them during the attempted census they had wanted to conduct.

155. The planned measures against the intimidators generally did not yield the expected results. Only a few dozen intimidators were arrested out of the tens of thousands operating in the camps. From mid-December 1995, when the implementation of these measures began in Zaire, until May 1996, UNHCR reported the arrests of 34 intimidators. The number was hardly more than 41 in September 1996, according to the latest report of the Special Rapporteur for Zaire (E/CN.4/1997/6/Add.1 [available on <http://www.ohchr.org>]). The failure of the strategy of removing the intimidators from the camps forced UNHCR to consider other measures to encourage the repatriation of Rwandan refugees.

(b) Measure to encourage repatriation

156. These measures, which relate mainly to information campaigns for repatriation, are either incentives or deterrents.

(i) Incentives

157. As part of its policy to encourage the voluntary repatriation of Rwandan refugees, UNHCR set up video information centres in March 1996 containing information on possibilities of assistance for returning to Rwanda. A document prepared by the UNHCR Public Information Section goes into considerable detail about the possibilities available to the refugees: "Five centres – named Ogata, Mandela, Nyerere, Martin Luther King and Gandhi – were inaugurated at Kibumba camp in the Goma region. Each of the centres – tarpaulin over wooden frames built for 300-400 people – is equipped with televideos, radios and public address systems. The project involves plans for 16 such centres in the Goma camps and others in the Bukavu and Uvira regions. On the whole, the films shown about life in several prefectures in Rwanda have been well received by the refugees, who come from these prefectures".

158. It must, however, be recognized that the strategy of visits organized by UNHCR in and to the camps has not yielded the expected results. Mistakes have sometimes been made that have not made UNHCR's task any easier. For example, one of the two refugees taken to Rwanda by UNHCR to check out the situation was arrested in May 1996, as soon as he arrived in his home commune, on charges of having taken part in the genocide. Such an incident could only have had a negative impact on the programme of incentives to return. Following this new failure, UNHCR undertook to implement deterrent measures.

(ii) Deterrent measures

159. These measures are intended to set up obstacles to the ongoing presence of refugees in the camps. As is known, most of the refugees have set up survival structures which are both commercial (restaurants, shops, transport, etc.) and social (schools, dispensaries, etc.). Some of these activities offer obvious advantages, if only because they reduce food and financial dependence and eliminate idleness, which leads

to crime. However, as these activities prosper, they encourage the refugees to stay in the camps instead of returning to Rwanda. In order to remedy this situation, UNHCR undertook to dismantle these structures and decided to close the schools and shops operating in the camps. It also decided to reduce the daily food ration given to each refugee, lowering it from 2,000 to 1,500 calories.

160. These measures were not well received by the refugees and by a number of humanitarian organizations. The former denounced them, particularly through the Rassemblement pour le retour des réfugiés et la démocratie au Rwanda (Union for the Return of Refugees and Democracy to Rwanda) (RDR), calling them “disguised forced repatriation”. The latter considered that these measures were serious violations of some fundamental human rights, particularly the right of children, including refugee children, to education. [...]

2. The comprehensive strategy

161. The new strategy, intended to be both comprehensive and integrated, was adopted at a meeting of the UNHCR Executive Committee on 11 October 1996. It proposes four sets of measures: concerted measures aimed at dealing with the present situation; measures applicable to each individual country; measures to be taken jointly with the International Tribunal for Rwanda; and measures to be applied by the international community.

(a) Measures to be applied in an integrated manner

162. These measures comprise four main elements:

(a) UNHCR encourages the selective and progressive closure of the camps for the Rwandan refugees and active assistance in their repatriation. These measures must be implemented in conjunction with the exclusion clause applicable to intimidators and other leaders in the camps;

(b) UNHCR is to assist the Governments of the host States in determining on a case-by-case basis the status of persons not wishing to return to Rwanda. In doing so, they will automatically exclude asylum for persons sought by the International Tribunal against whom there is sufficient evidence of participation in the genocide. Such persons will have to be transferred to other locations for interrogation;

(c) Those persons losing their refugee status will cease to enjoy the international protection of UNHCR;

(d) In accordance with the Bujumbura Integrated Plan of Action, the above measures should be applied through close cooperation between the country of origin, the host countries and the international community.

(b) Measures to be applied in each of the countries concerned

163. These measures concern the country of origin, Rwanda, and the two host countries, the United Republic of Tanzania and Zaire.

(i) Rwanda

164. The Rwandan Government is to: (a) continue to promote the repatriation and resettlement of the refugees, in particular through an appropriate information campaign and the implementation of measures to reassure the refugees, in conformity with the Arusha Accord; (b) ensure the prosecution of persons suspected of genocide, under the Genocide Act, in order to break with the tradition of impunity; and (c) continue to cooperate with the Human Rights Operation in Rwanda, whose presence must be reinforced.

165. For the large-scale return of the refugees, food stocks will have to be constituted with UNHCR assistance. Furthermore, UNHCR will have to: (a) draw the attention of the authorities to real-estate and land ownership disputes; and (b) in agreement with the donor community, give emphasis to aid for the returnees, including specific projects for vulnerable groups. This will apply particularly to women, for whom a comprehensive programme entitled "Initiative for Rwandan women" is due to start in 1997. This programme aims at promoting the economic power of women, strengthening social structures in the post-genocide society and facilitating the process of national reconciliation within the country.

(ii) United Republic of Tanzania

166. The Tanzanian Government is requested to: (a) initiate, with UNHCR assistance, the process of case-by-case consideration of requests from candidates for asylum, excluding those persons against who there is sufficient evidence of participation in genocide. A recently created separation camp will be available for this purpose; (b) tighten security around the camps because of the risks involved in such an exercise; and (c) afford protection to innocent persons with good reasons for not returning to Rwanda, not with a view to their integration, but for their eventual repatriation.

167. UNHCR, for its part, is committed to acting in concert with the international community to assist the United Republic of Tanzania in the rehabilitation of the environment and infrastructure destroyed by the presence of refugees in the part of its territory concerned.

(iii) Zaire

168. The Government of Zaire and UNHCR are requested to:

(a) Proceed with the selective and gradual closure of the camps. Those persons wishing to return to Rwanda will be given logistical support for their return and reintegration; the others will have to be separated from them by a screening process, after which those eligible for international protection will continue to be

protected by the Government, without this in any way entailing their local integration;

(b) Considering the dangers involved in implementing this strategy, provision has been made for a number of accompanying measures: the Government of Zaire is to increase and strengthen the Zairian contingent, initially set at a maximum of 2,500 soldiers, for security in the camps. International aid will be provided to expand the contingent and ensure its training and supervision. There will have to be a proportional number of international security advisers, with specific commitments from the Governments concerned;

(c) Interested Governments – with UNHCR assistance – should agree with the Zairian authorities on specific measures to deal with cases of the manipulation of the refugees by intimidators (for example, violent sabotage of census operations) and to ensure that aid is not diverted to former FAR members still militarily active in North Kivu and South Kivu. With the assistance of the international community, the Government of Zaire must be called upon to dissolve the so-called “banana plantation” headquarters of the former FAR members and dismantle its military facilities. Zaire will cooperate fully with the International Tribunal;

(d) UNHCR must immediately inform the refugees in the camps located in Zaire that violent sabotage of its recent attempt to count the refugee population is an intolerable affront to its mandate, confirming the bad faith of the camp leaders. A broad information campaign will have to be directed towards making the refugees aware of the fact that the blockage created by those leaders had led to a situation where food aid would be strictly controlled and reduced, especially to prevent it from being diverted. This measure will be linked stepwise to the gradual closure of the camps. UNHCR, with strong support from Governments, must seek the full cooperation of the Zairian Government in this regard;

(e) In order to respect the fundamental right of all children to education and to solve the problem of repatriation, the Government of Zaire will have to reopen primary schools for the refugee children and provide the means to protect them against manipulation and delinquency.

169. The Tripartite Commission (Rwanda/Zaire/UNHCR) will have to ensure greater coordination in the operation to close the camps. Lastly, in cooperation with donors and partners, UNHCR must endeavour to increase the assistance now being provided for the rehabilitation of the environment and infrastructure destroyed by the presence of the refugees in Zaire.

(c) Measures to be applied in cooperation with the International Tribunal

170. Together with the procedures to identify persons subject to the exclusion clause, every effort will have to be made to secure full support for reinforcing the activities of the International Tribunal to investigate and search for suspects.

171. In agreement with the Tribunal, UNHCR will determine the modalities for strengthening their cooperation. Governments have a central role to play in implementing the procedures aimed at separating

and excluding persons suspected of genocide from international protection and bringing them before the Tribunal.

(d) Measures to be taken by the international community

172. The close link between the refugee crisis and peace in the Great Lakes region means that its problems have to be solved through the adoption of an integrated strategy encompassing the security, judicial, political and humanitarian dimensions. UNHCR intends to continue its close cooperation with the United Nations and the Organization of African Unity in this area. In addition to the financial aid expected from them, Governments must be requested to increase their assistance to Rwanda with a view to creating conditions of security there (for example, assistance in the administration of justice) and to provide incentives for the refugees to return. Governments will have to maintain a balance between the aid granted to refugees and assistance for the survivors of the genocide. They will have to bear in mind the major objective of national reconciliation.

173. Governments will also have to be requested to extend their full support to Rwanda, the United Republic of Tanzania and Zaire in the implementation of the measures described above and to take all necessary steps to deal with present tensions. They are invited to take care of the damage caused by the refugees to the environment and infrastructures in those three countries.

174. UNHCR had not yet begun implementing that ambitious programme when the crisis erupted in eastern Zaire. [...]

E. International repression: the ICTR

[See UN, Statute of the ICTR; ICTR, *The Prosecutor v. Jean-Paul Akayesu*; ICTR, *The Media Case*. See also generally the ICTR website, <http://unictr.irmct.org>]

[Source: International Crisis Group, *Rwanda Tribunal: The Countdown*, Press Release, Nairobi-Brussels, 1 August 2002; available on <https://www.crisisgroup.org/>]

Rwanda Tribunal: The Countdown Delays and Rwandan obstruction threaten ICTR independence and credibility

Nairobi/Brussels, 1 August 2002: The International Criminal Tribunal for Rwanda (ICTR) is about half way through its mandate, but at the current rate it has no chance of completing its work by the finishing date of 2008.

A new ICG report, *The International Criminal Tribunal for Rwanda: The Countdown*, [available on

<https://www.crisisgroup.org>] says that there are two main factors affecting the ability of the court to complete its work: the overly ambitious prosecution schedule and the lack of effective efforts to reform the Tribunal's processes and speed up hearings.

Five cases of utmost importance are still waiting to be heard – one dealing with the media, two involving the military including an alleged mastermind of the genocide, Theoneste Bagosora, and two involving former ministers and political party leaders. These trials are crucial to revealing important truths about the preparation, launch and execution of the Rwandan genocide in 1994. The media case is the only one that is actually underway. [See ICTR, The Media Case]

ICG Africa Program Co-Director Fabienne Hara said: “It is vital that the Tribunal rationalises the number of cases before it, concentrates on its core mandate, and implements reforms to speed up hearings. Without this, confusion and obstruction threaten the Tribunal's mission and will reduce its impact on the political reconstruction of Rwanda and the region to zero”.

A crisis has also developed between the Tribunal and the government of Rwanda over investigations into crimes allegedly committed by members of the Rwandan Patriotic Army (RPA) in 1994. Authorities in Kigali have blocked all assistance to the ICTR in breach of their international obligations and have demanded the investigations be dropped. This tension is only likely to get worse and it is vital that the UN Security Council gives strong and unambiguous support to ensure the ICTR's credibility and independence. The Tribunal must not be seen as an instrument of victors' justice.

ICG Central Africa Program Director Francois Grignon said: “In this context it is unfortunate that the Security Council delegation did not visit the Tribunal in its annual trips to Central Africa in 2001 and 2002. This sends a dangerous signal of disinterest to Rwanda about the mission of the UN Tribunal and its role in ending the crises in Congo and in Burundi”.

In the Congo war, the Rwandan government has long demanded the arrest of génocidaires on Congolese territory, so it is paradoxical that just as the DRC government agreed to open an office to assist ICTR investigations in Kinshasa, the Rwandan government is paralysing the work of the Tribunal. Both Kinshasa and Kigali have toyed with international justice. The only way to end this is to ensure that the Tribunal is reformed and credible – and to demand that both states respect their international obligations towards it.

F. National repression in Rwanda

1) Gacaca: gambling with justice

[Source: *Amnesty International, Rwanda: Gacaca – gambling with justice*, Press Release 103/02, AI Index: AFR 47/003/2002, 19 June 2002; available on <http://www.amnesty.org>]

“The gacaca system of community tribunals may represent an opportunity for genocide survivors, defendants and witnesses to present their cases in an open and participatory environment. This could be an important step towards national reconciliation and resolving Rwanda’s prison crisis,” Amnesty International said today, in reaction to Rwanda’s inauguration of a new community-based tribunal system designed to address the backlog of cases from the 1994 genocide.

“However, the extrajudicial nature of gacaca and the inadequate preparation for its start, coupled with the present government’s intolerance of dissent and unwillingness to address its own poor human rights record, risk subverting the new system,” the organization added. *“It is therefore imperative that both the Rwandese government and the international community take steps to ensure that gacaca complies with minimum international standards of fair trial.”*

The huge number of detainees charged with genocide-related offences has proved an impossible task for the country’s formal judicial system. The new system, loosely based on a traditional mode of settling disagreements within local communities, will try tens of thousands of detainees accused of offences in categories 2, 3 and 4 of Rwanda’s genocide legislation.

While Amnesty International sees the pressing need to bring to justice people accused of participation in the genocide, the organization fears that if key shortcomings in gacaca are not promptly addressed, the new system will fail to provide the justice, truth or reconciliation promised by the Rwandese government. “Gacaca may become a vehicle for summary and arbitrary justice that fails defendants and genocide survivors alike,” it added.

Rwandese government leaders readily admit that gacaca is flawed but argue that there is no alternative. The international donor community, which is funding gacaca, has largely concurred with this assessment.

Amnesty International is principally concerned with the extrajudicial nature of the gacaca tribunals. The gacaca legislation does not incorporate international standards of fair trial. Defendants appearing before the tribunals are not afforded applicable judicial guarantees so as to ensure that the proceedings are fair, even though some could face maximum sentences of life imprisonment.

For the most part, those who will serve as gacaca magistrates have no legal or human rights background. The abbreviated training they have received is grossly inadequate to the task at hand, given the complex nature and context of the crimes committed during the genocide.

Amnesty International also questions whether there will be an open and free flow of information during the hearings, whether all parties will be heard impartially, and whether the presumption of innocence until proven

guilty will be respected. Pre-*gacaca* trial sessions observed by Amnesty International delegates in 2001 were marked by intimidation and haranguing by officials of defendants, defence witnesses and local populations.

The recent human rights record of the Rwandese government is characterized by the denial of freedom of expression and association, arbitrary arrests, illegal detentions and other violations of human rights. "The Rwandese government's unwillingness to curb ongoing human rights violations, or investigate past abuses by its own state agents undermines the credibility of its pronouncements on the need for accountability, truth-telling and justice in relation to *gacaca*."

Implementing *gacaca* also entails huge logistical problems. Tens of thousands of detainees will have to be transferred from central prisons to their home communities for the *gacaca* hearings. The Rwandese government has not clarified how and in what conditions the detainees will be transported, accommodated, fed and treated at the local level. The government's failure to address these issues could deepen the cruel and inhumane conditions faced by Rwanda's prison population.

Recommendations

There is room for the Rwandese government and the international community to improve *gacaca* and establish accountability for all past and ongoing human rights abuses in Rwanda. For this to be achieved, the Rwandese government must:

- ensure that *gacaca* complies with internationally recognized fair trial standards, including the presumption of innocence and the right to adequate time and facilities to prepare a defence;
- ensure that *gacaca* defendants, especially those facing long terms of imprisonment, have the right to appeal to the formal court system;
- ensure that defendants are present when the *gacaca* magistrates categorize their offences;
- put in place an independent and effective program of monitoring the *gacaca* hearings, with the findings made public;
- provide adequate protection to magistrates, defendants and witnesses and promptly investigate any allegations of intimidation;
- provide assurances that conditions of detention will respect international minimum standards, including the right to human conditions of detention and freedom from torture; and
- open investigations into human rights violations committed by their own forces before and since coming to power.

Amnesty International is also calling on the international community to support the Rwandese government in establishing a monitoring program for *gacaca*, ensuring that it is independent, effective and transparent; to ensure that the Rwandese authorities take prompt action to address violations of fair trial standards arising during *gacaca*; and to provide all necessary support to enable the Rwandese government to meet its obligations under international standards regarding conditions of detention.

Background

As many as one million Rwandese were brutally killed by their fellow Rwandese during the 1994 genocide and its aftermath. These killings were accompanied by numerous acts of torture, including rape.

The *gacaca* system will try detainees accused of offences in categories 2 through 4 of Rwanda's genocide legislation. Category 2 includes alleged perpetrators of or accomplices to intentional homicides or serious assaults that led to death. Category 2 defendants who do not confess face maximum terms of imprisonment of between 25 years and life if convicted. Category 3 contains persons accused of other serious assaults against individuals. Category 4 covers persons who committed property crimes. Category 1 relates to the most serious genocide offences and includes individuals who allegedly organized, instigated, led or took a particularly zealous role in the violence. Category 1 defendants will continue to be tried by the formal court system.

The burdens faced by the post-genocide judicial system in Rwanda have proved insurmountable. Rwanda's special genocide chambers have tried less than six percent of those detained for suspected genocide offences. There are now approximately 110,000 Rwandese in the country's detention facilities, the vast majority of them still awaiting trial. Many were arbitrarily arrested and have been unlawfully held for years with minimal or no investigation of the accusations lodged against them. The overcrowding and unsanitary conditions within detention facilities amount to cruel, inhuman and degrading treatment with deaths resulting from preventable diseases, malnutrition and the debilitating effects of overcrowding.

Legislation establishing the *gacaca* tribunals was enacted in early 2001. In late 2001, 260,000 adults of "integrity, honesty and good conduct" were selected by local communities to serve as magistrates on the more than 10,000 *gacaca* tribunals. These magistrates received limited training in early 2002.

2) The issues of detention

[Source: ICRC, ICRC News 01/13, 5 April 2001, available on <http://www.icrc.org/eng/>]

Rwanda: Emergency aid in Rilima Prison

Over the last few days, the ICRC has stepped up its aid to Rilima prison, situated in the region of Bugesera, south-east Rwanda. The majority of the 7,400 inmates are being held awaiting trial, but deteriorating hygiene has killed dozens over the last few months. Poor detention conditions and lack of food are accentuating the effects of malaria (endemic in the region), typhus (diagnosis still to be confirmed) and diarrhoea.

A week ago, the ICRC initiated measures to increase the amount of water available at the prison, repairing a pump and installing additional storage tanks. The organization is currently arranging treatment for dozens of

the most severely ill detainees, having already supplied the necessary medicines. The ICRC is also ready to assist the Rwandan authorities in fully disinfecting the prison, for which the materials required will be available in a few days. The health and interior ministries have been briefed on the seriousness of the situation in this prison.

The ICRC lacks the means to take over from the Rwandan authorities, and nor does it wish to do so; it is the authorities who are responsible for detainee health and prison hygiene in their country. The ICRC is encouraging the bodies responsible to devote the attention and resources to this problem that it requires, while fully aware that the Rwandan population at large does not necessarily live under hygienic conditions or have access to health care.

The ICRC delegation is maintaining contact with the Rwandan authorities, both locally and at the highest level, in an effort to improve the functioning of the bodies responsible for Rilima prison and all other places of detention in Rwanda. The aim is that preventive measures taken by the government should prevent any recurrence of a similar emergency in the coming months.

The ICRC makes regular visits to places of detention in Rwanda, meeting over half the food requirements of 92,000 detainees spread over 19 central prisons.

Rwanda is currently trying to deal with the problem of holding 115,000 detainees, most of them accused of involvement in the genocide of April to July 1994. Some 20,000 are being held in village lockups, of which three-quarters are in the provinces of Gitarama and Butare.

Discussion

1. What distinguishes genocide from other crimes? What is the difference between an act of genocide and a serious violation of IHL? Between genocide and a crime against humanity? Do massacres carried out for political reasons come under the term genocide? [See also ICTY, *The Prosecutor v. Tadic* [Part B., paras 618-654 and Part C., paras 238-249 and 271-304]; ICTR, *The Prosecutor v. Jean-Paul Akayesu* [Part A., paras 492-523]]
2. How does IHL address acts of genocide? Are the provisions dealing with genocide applicable no matter what the context? In law? In practice? Is IHL applicable in situations that are not armed conflicts? In what ways does it fall short when confronted with situations of genocide? (See for example GC I, Arts 12(2) and 50; GC II, Arts 12(2) and 51; GC III, Arts 13 and 130; GC IV, Arts 32 and 147; P I, Art. 85(2))
3. Who can be held internationally responsible for the genocide? The Rwandan State? Even if today, the Rwandan authorities are for the most part Tutsis? The whole international community? The United Nations? Specific third States (France, Belgium, the United States)? Can the leaders of these States and of the United Nations be prosecuted for their inaction before the genocide, as they were aware of its preparation? For their inaction during the genocide? [See *The International Criminal Court* [Part A., Arts 6 and 30]]
4. a. In what case is the UN obliged to intervene in a non-international armed conflict?

- b. Does Art. 1 common to the Geneva Conventions and Protocol I oblige States Parties to intervene militarily in a conflict in order to “ensure respect for IHL”? Can they authorize such interventions? Do they oblige States Parties to obtain the mandate to intervene from the Security Council?
5. How do you balance reacting to serious violations of human rights against respect for State sovereignty?
6. How is IHL applicable to UN forces? To foreign forces intervening in accordance with a Security Council resolution? [See UN, Guidelines for UN Forces, and Belgium, Belgian Soldiers in Somalia]
7. Could the intervention of these forces be seen as a means of implementing IHL?
8. Is it possible to make a clear distinction between the role these forces can play in resolving a conflict, on the one hand, and in protecting humanitarian assistance, on the other?
9.
 - a. How do the Conventions and their Additional Protocols protect refugees present in an area where hostilities erupt? Are the provisions the same in the context of international armed conflict and non-international armed conflict? What are the consequences of and reasons for the lack of reference to refugees in IHL relating to non-international armed conflicts? (GC I-IV, Art. 3; GC IV, Art. 70(2); P I, Art. 73; See also the 1951 Convention Relating to the Status of Refugees, available on <http://www.unhcr.org>, and Organization of African Unity, Convention Governing the Specific Aspects of Refugee Problems in Africa)
 - b. Putting aside the qualification of the conflict, what is the status of a refugee in an area where hostilities break out between the State from which he is fleeing and the State in which he has taken refuge? (P I, Art. 73)
10.
 - a. Do the measures of forced repatriation taken by UNHCR with respect to the Rwandan refugees contravene Art. 45 of Convention IV?
 - b. Moreover, should the repatriation of refugees be accompanied simultaneously by guarantees of adequate security and genuine reception facilities in their country of origin? Does the international community have an important role to play at that level?
11.
 - a. Can an armed combatant enjoy refugee status? And the protection of IHL? Can an unarmed member of the former Rwandan Armed Forces who took part in the genocide of the Tutsis enjoy refugee status? And the protection of IHL? (GC IV, Arts 3, 4 and 5; 1951 Convention Relating to the Status of Refugees, Art. 1.F(a) and Art. 32(1), available on <http://www.unhcr.org>)
 - b. Is it incumbent on UNHCR to separate armed individuals from unarmed refugees? On the international community? On the country of origin? On the country of refuge? On the ICRC? On what grounds?
 - c. On what grounds can armed refugees be prosecuted for offences committed inside the camps themselves?
 - d. Does the principle of non-refoulement also apply to armed refugees? And to those presumed to have committed the genocide in Rwanda in 1994? (1951 Convention Relating to the Status of Refugees, Art. 33(1), available on <http://www.unhcr.org>)
12.
 - a. With respect to refugees suspected of having committed war crimes during the genocide in Rwanda, should a distinction be made between those who have supposedly laid down their arms and those who have not? Between those who are said to have committed war crimes, crimes against humanity or ordinary law crimes, and those who are simply former combatants?
 - b. In accordance with your reply, when is a refugee considered to have committed crimes? Does it suffice that he belonged to the armed forces which committed the crime? Or that he still belongs to

those armed forces?

13. Should a humanitarian organization also feed those guilty of genocide? Even if they have not laid down their arms? Will it lose its status as a humanitarian organization if it feeds those guilty of genocide? What if that is the only way to feed innocent refugees?
14. What rules of international law are contravened by a State which supplies arms to armed refugees? In particular if the recipients belong to an armed group which has committed the crime of genocide?
15. Does Rwanda have an obligation to prosecute the perpetrators of the genocide which occurred in its territory? According to the 1948 Convention on Genocide? According to the Geneva Conventions and their Protocols? (Convention on the Prevention and Punishment of the Crime of Genocide, New York, 9 December 1948, available on <http://www.ohchr.org>; GC I-IV, Arts 49/50/129/146 respectively; P I, Art. 85(1))
16. Why does P II contain no provisions criminalizing actions in the context of non-international armed conflicts? Does it, on the contrary, impel the authorities in power to grant the perpetrators impunity when it calls on them “to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict”? (P II, Art. 6(5))
17. Does universal jurisdiction extend to those responsible for genocide? Can it be exercised within the context of both international and non-international armed conflicts? In regard to the perpetrators of genocide, is the 1948 Convention on Genocide explicit on this point?
18.
 - a. Are the prison conditions described above compatible with IHL? Can those who have committed serious breaches of IHL invoke the guarantees relating to treatment contained in IHL? (GC IV, Art. 146(4); P I, Art. 75; P II, Arts 2(2), 4 and 5)
 - b. Does the gacaca system appear to respect minimum guarantees relating to the institution of independent and impartial criminal proceedings? How can the lack of judicial guarantees in the Rwandan legal system be redressed while simultaneously accelerating the completion of criminal proceedings?
 - c. How could the international community mobilize to put an end to this situation?
19. Could the ICTR take charge of the criminal proceedings of some of the 110,000 accused in Rwandan prisons? How? Why does international justice only consider the cases of individuals who planned and prepared or perpetrated genocide? Is the ICTR only charged with judging perpetrators of genocide? Does it also have jurisdiction to judge crimes committed during the armed conflict between the former government of Rwanda and the FPR?

II. Civil war in Burundi



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A. The “villagisation” phenomenon in Burundi

[Source: United Nations, E/CN.4/1997/12, 10 February 1997; available on <http://www.ohchr.org>]

Second report on the human rights situation in Burundi submitted by the Special Rapporteur, Mr. Paulo Sérgio Pinheiro, in accordance with Commission resolution 1996/1 [...]

II. OBSERVATIONS ON THE HUMAN RIGHTS SITUATION [...]

C. Obstacles to the right to freedom of movement and freedom to choose one's residence [...]

56. [...] [A]larming is the policy of forcibly herding people into camps; this is being done by the *de facto* Government in several provinces with the self-confessed aim of keeping tighter control over the population groups and cutting the rebels off from their supply and recruitment bases. During December 1996, a large

number of collines in the provinces of Karuzi, Bubanza, Cibitoke and Ruyigi have reportedly been emptied of their inhabitants. It is reported that persons refusing to submit to this policy find themselves rapidly accused of complicity with the rebels and treated as enemies. Yet, agreeing to go to the camps set up for them would mean losing the confidence of the rebels and their supporters. The situation in Karuzi province during the second half of December was particularly difficult, since the population groups that the authorities are said to have tried to force into the camps came precisely from communes in which the rebels apparently had numerous supporters. The Burundi authorities are reportedly considering further initiatives of this type in other provinces, so as to protect civilians from the machinations of the rebels and identify the latter.

57. Between late November and early December 1996, the number of displaced persons in Burundi increased suddenly and sharply, mainly because of the authorities' policy of moving certain population groups from the *collines* into camps and because of the intensification of the fighting in which civilians reportedly found themselves caught in the crossfire between the rebels and the army. Some sources suggest that up to 200,000 Burundians of Hutu origin, or even more, may have already been forced into these makeshift camps. In addition, people flee from the fighting and hide in the environs of their homes. In Rural Bujumbura, it is reported that dozens of people in a state of advanced malnutrition have little by little emerged from the forest where they had been hiding for months in very precarious conditions. Several NGOs have suggested that large numbers of Burundians may have made for Rwanda to escape the violence sweeping Cibitoke province. [...]

B. The armed conflict

[Source: Amnesty International, Burundi Insurgency and Counter-Insurgency Perpetuate Human Rights Abuses, AI Index: AFR 16/034/1998, 19 November 1998; available on <http://www.amnesty.org>]

I. INTRODUCTION

Between December 1997 and September 1998 hundreds of people – many of them unarmed civilians – were killed in Burundi. Thousands more have been forced to leave their homes and are internally displaced or have fled to neighbouring countries, joining the hundreds of thousands of others who are already in exile or are displaced inside Burundi. Soldiers of the Burundian army have deliberately and arbitrarily killed hundreds of civilians – virtually all of them Hutu. Scores of other killings of unarmed civilians have been committed by members of the various armed opposition groups and other militia active in Burundi. Few of those responsible have been arrested and brought to justice. [...]

II. THE CONTEXT OF ARMED CONFLICT

Since late 1994, the *Forces pour la défense de la démocratie* (FDD), Forces for the Defence of Democracy, the armed wing of the Hutu-dominated *Conseil National pour la défense de la démocratie* (CNDD), National

Council for the Defence of Democracy, have been leading an insurgency against the Tutsi-dominated government forces. The armed wings of other Hutu opposition parties, the *Parti pour la libération du peuple hutu* (PALIPEHUTU), Party for the Liberation of the Hutu People, and the *Front pour la libération nationale* (FROLINA), Front for National Liberation, are also engaged in insurgency against the government. The armed conflict and other political violence have claimed at least 150,000 lives since late 1993, most of them civilian.

The Hutu civilian population has been caught in the middle of the conflict: viewed as supportive of the insurgency by the armed forces, and frequently the victim of reprisals by the armed forces, as well as increasingly the victim of attacks by armed opposition groups. Since the conflict started, civilians have also been the victims of fighting between different armed opposition groups. For example in Bubanza province in July 1997 up to 500 mainly Hutu civilians were reportedly killed by PALIPEHUTU because of their perceived support for the CNDD. Many civilians have had their property looted by both the army and armed opposition groups. The Tutsi civilian population has also been attacked by armed opposition groups, and those in camps for the internally displaced have been particularly vulnerable to abuses. [...]

In addition to the increased conscription, the government has initiated a self-defence program for all civilians. The government claims that the program is to encourage civic responsibility, including training the civilian population to support civil and military authorities in fighting the insurgency through surveillance. While recognizing the right of the government to take steps to protect civilians, Amnesty International is concerned that the self-defence program in itself may lead to further human rights abuses. Although government officials have on several occasions denied that the program involves providing the population with arms, at least in certain areas, including Bujumbura and Bururi Province, the Tutsi civilian population has been trained and armed by the government. In April 1998, the Governor of Rural Bujumbura province admitted that some of the local population had been given guns and grenades. [...]

In addition to the internal armed conflict, the Burundian army and armed opposition groups are also reported to be involved in the armed conflict in the neighbouring Democratic Republic of Congo (DRC) which broke out in August 1998. Although the government of Burundi has repeatedly denied involvement in the conflict, numerous sources in Burundi and in the DRC have reported that Burundian troops participated in the capture of Uvira, Kalemie and other towns in eastern DRC, assisting the Congolese armed opposition group, the *Rassemblement congolais pour la démocratie* (RCD), Congolese Rally for Democracy. The Burundian government is also reported to have lent other support to Rwandese and Ugandan troops, who also support the RCD, including by allowing troops and equipment to transit through Burundi. Amnesty International has received detailed information on hundreds of killings of unarmed civilians, mainly women and children, since the start of the conflict in DRC including by the RCD, the Rwandese security forces and allied groups. [...] The government of Burundi has alleged that Burundian armed opposition groups are involved in the conflict in the DRC, in return for the promise of support by President Laurent Désiré Kabila. [...]

III. HUMAN RIGHTS VIOLATIONS COMMITTED BY THE SECURITY FORCES

Extrajudicial executions and deliberate killings

Large scale killings of unarmed civilians, primarily by government forces, have continued throughout 1998 in violation of international humanitarian law and obligations of the Burundi government under international treaties it has ratified. The killing of persons taking no active part in the conflict in Burundi is in violation of common Article 3 of the 1949 Geneva Conventions which clearly prohibits “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” of all non-combatants. By ratifying Protocol II Additional to the Geneva Conventions, the Burundi government has undertaken obligations to respect and protect certain fundamental guarantees during non-international armed conflicts. These guarantees include the right of all persons not taking a direct part or who have ceased to take part in the hostilities to be treated humanely. Protocol II prohibits violence to life, torture and other human rights violations against such persons. In addition, the killings of unarmed civilians is in violation of the guarantee to the right to life enshrined in the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples’ Rights (African Charter), treaties which Burundi voluntarily ratified.

Amnesty International has received numerous reports of killings from the southern provinces of Makamba and Bururi, and from the province of Rural Bujumbura. The majority of killings have taken place in areas of armed conflict, making access to and verification of information particularly difficult. However, several clear patterns emerge.

Most killings by government soldiers of Hutu civilians, appear to take place in reprisal for insurgent activity or killings of soldiers or Tutsi civilians by Hutu-dominated armed opposition groups.

Unarmed civilians have been targeted and killed on the pretext that they were believed to be armed combatants. Scores of unarmed civilians have also been killed because members of the security forces have failed to isolate combatants from civilians. In the majority of cases reported to Amnesty International, it appears that little, if any, attempt is made to make the distinction. They include young children, who were killed individually in circumstances where it was clear that they posed no threat to the lives of soldiers or other civilians.

Scores of other civilians have been killed by government soldiers accusing them of failing to provide information on armed opposition groups, or having in some way protected or colluded with them. In some instances, it appears that soldiers were alerted by the local population to the presence of armed opposition groups but were unable or unwilling to engage in direct combat and resorted instead to reprisal attacks on civilians after the combatants had left.

Other civilians have been extrajudicially executed or have “disappeared” and are presumed to have been

killed shortly after their arrest by members of the armed forces.

In the majority of cases, members of the security forces who have committed such killings remain unpunished. (See the document Burundi: Justice on Trial (index AFR 16/013/1998) [available on <http://www.amnesty.org>])

Scores of civilians have also been killed or maimed because of the use of indiscriminate weapons such as anti-personnel mines. Government soldiers and combatants of armed opposition groups have also been killed and injured. All parties to the conflict are reported to have used anti-personnel and/or anti-tank mines. [...] The border between Tanzania and Burundi is now heavily mined apparently by the government to prevent incursions by the armed opposition groups it claims are using Tanzania as a base. The presence of mines in the border area also has the effect of preventing some people from fleeing the country and seeking asylum elsewhere. [...]

Discussion

1. Assuming that the situation in Burundi can be classified as a non-international armed conflict, does the Government have sufficient grounds to justify the forced displacement of the Hutu civilian population to assembly camps?
2. Are the authorities wrong to justify actions on the grounds of imperative military reasons and protection of the civilian population? Are they in breach of the prohibition of the use of forced displacement as a method of warfare? (GC I-IV, Art. 3; P II, Art. 17)
3. If the authorities are right to justify their actions on those grounds, are they in violation of Arts 4, 5-17 and 18 of Protocol II?
4. Do the policy of assembling the Hutu civilian population and the consequences for both the rebel groups and the civilian population contravene the prohibition to use starvation as a method of combat and the requirement to preserve objects indispensable to the survival of the civilian population? (P II, Art. 14)
5. Is IHL applicable to civilian self-defence militias? Are the members of such militias still “civilians” even though they carry weapons? (GC I-IV, Art. 3; P II, Art. 13(3))
6. Are reprisals prohibited by the IHL of non-international armed conflicts? By customary IHL? Is the concept of reprisals conceivable in a non-international armed conflict? Are attacks on villages where armed rebels are said to be hiding lawful under the IHL of non-international armed conflicts? Under what conditions? Do the principles of proportionality and distinction apply to non-international armed conflicts?

III. Armed conflicts in the Democratic Republic of the Congo

[N.B.: See also ICJ, Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda) available on <http://www.icj-cij.org>, and ICJ, Democratic Republic of the Congo/Uganda, Armed Activities on the Territory of the Congo]



Map of Democratic Republic of the Congo. Country names and borders on this map are intended to facilitate reference and have no political significance © ICRC

A. The qualification of the conflicts on the territory of the Democratic Republic of the Congo: multiple actors

1) Africa's First World War

[Source: BRAECKMAN Colette, "La première guerre mondiale africaine", in *Le Soir*, Brussels, 20 January 2001; Original in French, unofficial translation.]

Africa's First World War

The Democratic Republic of Congo (DRC) is the scene of "Africa's First World War", the first conflict involving

the armies of six different countries on the “dark continent”. As President Kabila is now dead, what is driving the different forces and what are they each aiming to achieve?

1. *Rwanda*. To justify the presence of its army in Congo, Kigali has consistently referred to its security needs, the necessity of tracking down the Hutu perpetrators of genocide and other “negative forces”. In fact, it is being driven by other compulsions: its desire to exploit the resources in eastern Congo, a dream of territorial expansion and, in any case, the desire to install a friendly if not submissive government in Kinshasa. It is to that end that the Rwandans are supporting the “Rally for Congolese Democracy” (RCD) that they would like to put in power in Kinshasa – by force or by negotiation. Moreover, having fought for Kabila, the Rwandans feel betrayed by their former ally; they are angry at him for having allowed Tutsis to be hounded in August 1998, with many of them being killed in Kinshasa, Lubumbashi and elsewhere. [...]

2. *Uganda*. Like Kagame, President Museveni feels that he was betrayed by his ally Kabila, whom he had helped to put in power. In fact, Kabila had opposed the Ugandan army’s systematic exploitation of the resources in the north-east of the country and did not intend to submit to the advice about political governance forced upon him by Museveni, who was behaving like the self-proclaimed patron of the region. Allied to Rwanda as much to put Kabila in power as to attempt to depose him, Uganda has distanced itself, however, from Kigali for two basic reasons: the first has to do with competition to exploit the mineral wealth in the east (illustrated by the three Kisangani wars); the second is political. In fact, while the Rwandans dream of pulling the strings of those who govern Congo, the Ugandans, whose security constraints are less strong, would like to put an autonomous, competent Congolese power in place and, to that end, they are supporting Jean-Pierre Bemba and train his army.

3. *Burundi*. The Burundian army admits to its presence in the DRC but it restricts its activities – which have to do with security – to the shores of Lake Tanganyika, on the South Kivu border: it operates on the other side of the border to track down Hutu rebels who are part of Kabila’s military machine. [...]

4. *Zimbabwe*. Zimbabwe is the most visible of Kabila’s allies, maintaining a force of 12,000 men in Congo, but it is not the most determinative element. Weakened by internal disputes and by the economic crisis resulting from poor management as well as from the fact that the international creditors are penalizing his country because of its involvement in Congo, President Mugabe is trying to pull out [...]. However, having entered the DRC in order to uphold the Kabila regime and, even more importantly, Congo’s territorial integrity and the sovereignty of Kinshasa, Zimbabwe cannot simply let go of a country in which it has invested a great deal; it is committed to continuing its assistance.

5. *Namibia*. Namibia maintains 2,500 men in Congo as part of its involvement in DRC under the SADC (South African Development Conference) agreements. Its objective is more to show its solidarity with Angola and Zimbabwe than to support the Kabila regime itself [...].

6. *Angola*. Rich and equipped with a seasoned army, Angola has given assistance to Kinshasa for

straightforward reasons: to implement the solidarity agreements between the SADC countries and, in particular, to prevent UNITA from establishing a rearguard base in the DRC. [...] With a watchful eye on their security and their borders, the Angolans would not be willing to tolerate RCD rebels and Rwandans pushing forward to Lubumbashi or Mbuji Mayi because, in their view, this could restore the opposition Angolan army headed by Jonas Savimbi to power. In fact, they suspect Kigali of having served as a centre for deliveries of weapons and of having collaborated with UNITA in military matters.

The toughest protagonists are Kigali and Luanda. On the other hand, only an agreement between these two capitals would be capable of securing lasting peace. Angola, which is currently ensuring security in Kinshasa and is supporting the Katangans in government, is being put in the position – whether it likes it or not – of being the real backer of the post-Kabila government.

2) UN, Report on the situation of human rights in the Democratic Republic of the Congo

[Source: United Nations, E/CN.4/2000/42, 18 January 2000, available on <http://www.ohchr.org>]

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report on the situation of human rights in the Democratic Republic of the Congo, submitted by the Special Rapporteur, Mr. Roberto Garretón, in accordance with Commission on Human Rights resolution 1999/56 [...]

II. THE ARMED CONFLICT

13. On 2 August 1998, war broke out in the Democratic Republic of the Congo, six days after President Kabila's expulsion of his former ally, the Rwandan Patriotic Army (APR), from the country. An unknown party, later known as the Congolese Rally for Democracy (RCD), attacked the Democratic Republic of the Congo with the support of Rwanda, Uganda and Burundi. Rwanda and Uganda have openly acknowledged their support, while Burundi continues to deny its involvement. In November 1998, another armed group, the Congolese Liberation Movement (Mouvement pour la libération du Congo – MLC), began to operate. By 31 August 1999, these groups had occupied 60 per cent of the territory. RCD split into two factions, one based in Goma (RCD/Goma) and the other in Kisangani, though it later moved to Bunia and changed its name to Congolese Rally for Democracy/ Liberation Movement (RCD/ML), better known as RCD/Bunia. Both factions signed the Lusaka Peace Agreement, despite strong internal disagreements, on 31 August. [...] A new rebel group, the Congolese Liberation Front (Front de libération du Congo – FLC) emerged in Bandundu, and is apparently supported by the National Union for the Total Independence of Angola (UNITA).

14. Invoking the inherent right of individual or collective self-defence, as set out in Article 51 of the Charter of the United Nations, and as recalled in Security Council resolution 1234 (1999) of 9 April 1999, troops from Angola, Namibia, the Sudan, Chad and Zimbabwe intervened in the conflict in support of the Congolese Armed Forces (FAC). In addition to the nine national armies, there are at least 16 irregular armed groups.

15. Throughout the country, both within and outside the occupied zone, the war is perceived as foreign aggression intended to lead to the secession of part of the country or its annexation by Rwanda. [...]

16. The violence has been extreme, especially in the east. The activities of the foreign-backed rebels have been countered by the terrorism of the Mai-Mai nationalist guerrilla fighters, who are supported by the population, with the commendable exception of human rights advocates who continue to oppose violence of any kind. [...]

Categorization of the conflict

20. In paragraph 41 of his report (E/CN.4/1999/31) [available on <http://www.ohchr.org>], the Special Rapporteur categorized the conflict in the Democratic Republic of the Congo as an internal conflict with the participation of foreign armed forces. Various facts make it necessary to reconsider this viewpoint. Foreign armies, including those who responded to the appeal by President Kabila to intervene in accordance with Article 51 of the Charter of the United Nations and those described by the Security Council as “uninvited” countries, have exchanged prisoners in accordance with the provisions of the Third Geneva Convention of 1949; prisoners have been visited and exchanged in territories of the “uninvited” countries; there have been clashes typical of any war between foreign national forces in Congolese territory; and “uninvited” States have signed the Lusaka Ceasefire Agreement, which specifically refers to prisoners of war and the mixed nature of the conflict. The Special Rapporteur therefore believes that there is in fact a combination of internal conflicts (RCD against the Kinshasa Government and MLC against Kinshasa) and international conflicts, such as the conflict between Rwanda and Uganda in Congolese territory, clashes between the Rwandan and Ugandan armies and FAC. In the international conflicts, respect for the four Geneva Conventions is required, while, in the internal conflicts, the provisions of article 3 common to the four Conventions are applicable. [...]

B. The Lusaka cease-fire agreement of 1999

[Source: United Nations, Letter Dated 23 July 1999 from the Permanent Representative of Zambia to the United Nations Addressed to the President of the Security Council, S/1999/815, (Annex: Cease-fire Agreement); available on <http://www.un.org>]

Letter dated 23 July 1999 from the Permanent Representative of Zambia to the United Nations Addressed to the President of the Security Council [...]

Annex Cease-fire Agreement

Preamble

We the Parties to this Agreement; [...]

Determined to ensure the respect, by all Parties signatory to this Agreement, for the Geneva Conventions of 1949 and the Additional Protocols of 1977, and the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, as reiterated at the Entebbe regional Summit of 25 March, 1998:

Determined further to put to an immediate halt to any assistance, collaboration or giving of sanctuary to negative forces bent on destabilising neighbouring countries;

Emphasising the need to ensure that the principles of good neighbourliness and non-interference in the internal affairs of other countries are respected;

Concerned about the conflict in the Democratic Republic of Congo and its negative impact on the country and other countries in the Great Lakes region; [...]

Recognising that the conflict in the DRC has both internal and external dimensions that require intra-Congolese political negotiations and commitment of the Parties to the implementation of this Agreement to resolve;

Taking note of the commitment of the Congolese Government, the RCD, the MLC and all other Congolese political and civil organisations to hold an all inclusive National Dialogue aimed at realising national reconciliation and a new political dispensation in the DRC;

Hereby agree as follows:

Article I: The Cease-fire

1. The Parties agree to a cease-fire among all their forces in the DRC. [...]

Article III: Principles of the agreement [...]

7. On the coming into force of the Agreement, the Parties shall release persons detained or taken hostage and shall give them the latitude to relocate to any provinces within the RDC or country where their security will be guaranteed.

8. The Parties to the Agreement commit themselves to exchange prisoners of war and release any other

persons detained as a result of the war.

9. The Parties shall allow immediate and unhindered access to the International Committee of the Red Cross (ICRC) and Red Crescent for the purpose of arranging the release of prisoners of war and other persons detained as a result of the war as well as the recovery of the dead and the treatment of the wounded.

10. The Parties shall facilitate humanitarian assistance through the opening up of humanitarian corridors and creation of conditions conducive to the provision of urgent humanitarian assistance to displaced persons, refugees and other affected persons.

11. a. The United Nations Security Council, acting under Chapter VII of the UN Charter and in collaboration with the OAU, shall be requested to constitute, facilitate and deploy an appropriate peacekeeping force in the DRC to ensure implementation of this Agreement, and taking into account the peculiar situation of the DRC, mandate the peacekeeping force to track down all armed groups in the DRC. In this respect, the UN Security Council shall provide the requisite mandate for the peace-keeping force. [...]

13. The laying of mines of whatever type shall be prohibited. [...]

22. There shall be a mechanism for disarming militias and armed groups, including the genocidal forces. In this context, all Parties commit themselves to the process of locating, identifying, disarming and assembling all members of armed groups in the DRC. Countries of origin of members of the armed groups, commit themselves to taking all necessary measures to facilitate their repatriation. Such measures may include the granting of amnesty in countries where such a measure has been deemed beneficial. It shall, however, not apply in the case of suspects of the crime of genocide. The Parties assume full responsibility of ensuring that armed groups operating alongside their troops or on the territory under their control, comply with the processes leading to the dismantling of those groups in particular. [...]

Representatives of the Parties have signed the Agreement [...]

For the Republic of Angola

For the Democratic Republic of Congo

For the Republic of Namibia

For the Republic of Rwanda

For the Republic of Uganda

For the Republic of Zimbabwe.

As witnesses

For the Republic of Zambia

For the Organisation of African Unity

For the United Nations

For the Southern African Development Community.

Annex 'A' to the Cease-fire Agreement Modalities for the Implementation of the Cease-fire Agreement the Democratic Republic of Congo [...]

Chapter 9: Disarmament of Armed Groups

9.1 The JMC [Joint Military Commission] with the assistance of the UN/OAU shall work out mechanisms for the tracking, disarming, cantoning and documenting of all the armed groups in the DCR, including ex-FAR, ADF, LRA, UNRFH, Interahamwe, FUNA, FDD, WNBK, UNITA and put in place measures for:

- a. handing over to the UN International Tribunal and national courts, mass killers and perpetrators of crimes against humanity; and
- b. handling of other war criminals. [...]

C. Violations of international humanitarian law

1) UN, Report on human rights in the Democratic Republic of the Congo

[Source: United Nations, E/CN.4/2000/42, 18 January 2000; available on <http://www.ohchr.org>]

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report on the situation of human rights in the Democratic Republic of the Congo, submitted by the Special Rapporteur, Mr. Roberto Garretón, in accordance with Commission on Human Rights resolution 1999/56 [...]

V. VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

A. By the Kinshasa Government

108. The principal violations of the law on armed conflicts by the forces of the Kinshasa regime and their allies were as follows:

Attacks on the civilian population

109. Especially the bombing of Kisangani and pillaging in the city in January (17 dead); the bombing of Zongo (120), Libenge (200), Goma (between 30 and 65 dead) and Uvira (3) in May; and the atrocities perpetrated by Chadian soldiers in Bunga and Gemena. In addition, the Zimbabwean army's bombing of rebel-occupied towns claimed many victims.

Murders in the north-east

110. In Mobe, some 300 civilians were killed, apparently during an unsuccessful search for rebels (second week of January 1999).

Sexual violence against women

111. While many general charges have been made, the most specific information relates to the flight of FAC soldiers from Equateur at the beginning of the year, when, in addition to committing robberies, they raped women.

B. By RCD and MLC forces

Attacks on the civilian population

112. The cruellest and most violent actions, committed without heed for the laws of war, were attacks on the civilian population, as reprisals for acts committed by Mai-Mai [...] Many of these massacres were carried out using machetes, knives or guns, and houses were usually set on fire at the same time. RCD claims that these incidents were provoked by the Interahamwe or the Mai-Mai, but these groups have no reason to commit massacres against the Congolese population or Hutu refugees, who account for most of the victims. These incidents [...] were denied by RCD, before finally being acknowledged as unfortunate mistakes. [...] A feature common to all these incidents is the attempt to cover up all traces immediately. Ugandan troops carried out similar massacres in Beni on 14 November, with an unconfirmed death toll of 60 civilians. [...]

Arson and destruction

114. In incidents mostly, though not always, unconnected to the massacres, RCD forces have set fire to and destroyed many villages.

Deportations

115. Mai-Mai and other persons have been arrested during military operations and transported to Rwanda and Uganda, where they usually disappear without a trace.

Mutilation

116. The Special Rapporteur received many reports of mutilation [...]. During his mission in February, he met an 18-year-old man, arrested along with another young man by Rwandan soldiers in a village in South Kivu on suspicion of collaborating with the Mai-Mai. The first man's genitals were cut off completely and he was abandoned in the jungle, from where he was later rescued, although he was left with irreparable physical damage. His comrade died when his heart was torn out.

Rape of women as a means of warfare

117. The Special Rapporteur received reports of rapes of women in Kabamba, Katana, Lwege, Karinsimbi and Kalehe. There were also reports of women being raped by Ugandan soldiers in towns in Orientale province. [...]

2) The Kisangani massacre of May 2002

[Source: ZAJTMAN Arnaud, "Massacre in Kisangani", in Libération, Paris, 30 May 2002; unofficial translation.]

Massacre in Kisangani

[...] Incident or premeditated crime? One thing is sure: at least 200 Congolese were massacred in cold blood on 14 and 15 May, some of them in appalling circumstances, at Kisangani in the eastern part of Congo-Kinshasa. For the last four years, the country's third-largest town has been in the hands of the rebel Rassemblement congolais pour la démocratie (RCD-Goma), an unpopular Rwandan-controlled organization. They are the ones who exercise de facto control over the region, [...] not President Joseph Kabila back in Kinshasa.

It all started at dawn on 14 May, when a group of mutineers hostile to the Rwandan occupation seized control of the local radio station. "If you're a Congolese soldier, grab a weapon. If you're a civilian, grab a stone. If you're a boxer, a wrestler or a karate expert, a wizard or a fetish-man, bring your knowledge, your power. The hour has come to throw out the Rwandans," announced the station, listing the names of buildings where Rwandans were living.

The 800,000 inhabitants of Kisangani were ready and waiting for a chance to rise up against the Rwandans and their Congolese supporters. Hopes of a quick return to normality had been dashed by the failure of the peace negotiations that ended last month in South Africa. The radio announcement fell on willing ears. Gradually, thousands of people congregated in the centre of the town, which lies between the Congo and the Tshopo rivers.

Jean-Paul is a foreigner of mixed race. He stayed indoors, terrified. "They were going to kill the Rwandans. Who'd be next? The genocide in Rwanda all started with the radio." The crowd responded to the broadcast. Five Rwandans were killed, including three civilians. Shot, stoned or burned alive.

[...] Suddenly, a group of "loyal rebel" soldiers took over the radio station. They stormed into the building, ordered the mutineers to leave and told the population to go home. They fired into the air in the streets of the town. The crowd broke up and it could all have ended there. But towards the end of the morning a group of "Zulus" arrived by plane from Goma, the headquarters of the RCD and of the Rwandan forces stationed in Congo-Kinshasa, in the extreme east of the country. The 120-strong unit of unknown origin was commanded by Rwandans. One group of "Zulus" plundered an alcohol warehouse, another drank beer near a church, a third was seen with the RCD's Kisangani commander of military operations, Laurent Kunda, who offered them whisky. Calm had returned, but these men had their orders, and they intended to carry them out.

A Belgian priest Guy Verhaegen heard the first shots. Shortly after, he saw the "Zulus" moving through the area. He stayed in his church compound and hid behind a wall, from which he could see some of what happened. "There were about fifteen of them on the back of a pickup. They were firing bursts from automatic weapons. I didn't hear anyone firing back. From time to time the vehicle stopped and the soldiers went into the houses. I don't know what they did there." Tenda Tangwa lives in the same area. He does know what the soldiers did. "They burst into the house and one of them went to the room of my 21-year-old son. He begged him not to shoot. The soldier replied: "It's God you need to pray to, not me," and executed him." The soldiers left the area in the middle of the afternoon. According to Father Verhaegen, 40 to 50 people were killed.

No mandate. The UN has a contingent of over 500 soldiers in Kisangani – Uruguayans and Moroccans. They are there to observe the "ceasefire". They did nothing. The Blue Helmets of the United Nations Observer Mission in the Democratic Republic of the Congo (MONUC) were armed ... but had no mandate to intervene. Kisangani is supposed to have been demilitarized two years ago under a Security Council resolution that has never been applied.

Meanwhile, the massacre continued. A large number of soldiers and policemen, affiliated with the RCD rebels but whose loyalty was less than certain in the eyes of the Rwandans, were arrested in various parts of town. In particular, these included policemen about to start training organized by the UN, the symbol of waning rebel power in the town. At least four were tied up and taken away to an unknown destination. There is still no news of them. At the end of the day a number of vehicles commandeered by the "Zulus" arrived at

high speed, stopping on the iron bridge over the Tshopo. They sealed off an area between the bridge, suspended above a hydro-electric dam, and a beach, a few hundred metres downstream.

Hands tied. "They were Rwandan soldiers. It was easy to recognize them. They had radios and they were speaking their language [Kinyarwanda, Ed.]," reported one local inhabitant. Local people heard shots coming from the beach all that afternoon and evening. Next day, the dam staff went back to work. The sluices had been closed the day before on account of the incident. Now they opened them, allowing the river to flow again. Which was when the truth emerged. "The fishermen were the first to see the corpses. They told us straight away. Dozens of bodies were appearing," reports one inhabitant, under condition of anonymity. "The bodies had been mutilated. Their stomachs had been cut open and stones had been put inside." "Some of them had been decapitated," adds another. Most of the victims had their hands tied together and were wearing military uniforms. The International Committee of the Red Cross was able to organize the recovery of the bodies. According to humanitarian personnel, between 50 and 150 corpses were fished out of the river. "If those soldiers had known Kisangani, they would never have committed their crime here. Everyone knows there's a counter-current," explained one local. Despite the large numbers already killed, executions continued in the bush around Kisangani.

A MONUC employee claims to have witnessed the execution of around 60 people at Kisangani airport on the afternoon of 15 May. Most of them were policemen or soldiers. "They were buried in a mass grave at the end of the runway," said the man, who wished to remain anonymous. The people of Kisangani are angry with the Rwandans and the rebels, of course, but also with the Blue Helmets: "These aren't peace-keeping observers. They're observers of Congolese corpses," fumes one woman. "We are in darkness." The heart of darkness.

3) UN, press release of 18 June 2002

[Source: United Nations, Press Release, GG/SM/8277, 18 June 2002; available on <http://www.un.org>]

SECRETARY-GENERAL STRONGLY CONDEMNS ACTS OF INTIMIDATION AGAINST UN MISSION IN DEMOCRATIC REPUBLIC OF the CONGO

The following statement on the Democratic Republic of the Congo was issued today by the Spokesman for Secretary-General Kofi Annan:

Yesterday, a Rally for Congolese Democracy-Goma (RCD-Goma) commander, accompanied by a team of armed elements, forcibly entered the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) facilities at the Onatra port in Kisangani. They manhandled the MONUC guard on duty, and abducted two MONUC staff members, who were taken to an RCD facility at the far end of the compound. They were released after about 20 minutes during which they were assaulted and sustained injuries to the face. This incident was followed by two subsequent forcible entries into MONUC facilities by RCD-Goma,

later yesterday afternoon and again this morning.

The Secretary-General strongly condemns these acts of intimidation against MONUC. The Secretary-General reminds the RCD-Goma leadership that MONUC is deployed in the Democratic Republic of the Congo to assist in the peace process. It can only do so with the full cooperation of the parties, who are responsible for ensuring the security of United Nations staff. The Secretary-General wishes to remind the RCD-Goma of its obligations in this regard, and calls on it to comply with relevant Security Council resolutions.

D. The United Nations Mission in the Democratic Republic of the Congo (MONUC)

1) The mandate

[Source: *Democratic Republic of the Congo – MONUC – Mandate*, available on the MONUC official site, <http://monusco.unmissions.org>]

According to Security Council Resolution 1291 (2000) of 24 February 2000:

MONUC had an authorized strength of up to 5,537 military personnel, including up to 500 observers, or more, provided that the Secretary General determined that there was a need and that it could be accommodated within the overall force size and structure, and appropriate civilian support staff in the areas, inter alia, of human rights, humanitarian affairs, public information, child protection, political affairs, medical and administrative support. MONUC, in cooperation with the joint Military Commission (JMC), had the following mandate

- To monitor the implementation of the Ceasefire Agreement and investigate violations of the ceasefire;
- To establish and maintain continuous liaison with the headquarters of all the parties' military forces;
- To develop, within 45 days of adoption of resolution 1291, an action plan for the overall implementation of the Ceasefire Agreement by all concerned with particular emphasis on the following key objectives: the collection and verification of military information on the parties' forces, the maintenance of the cessation of hostilities and the disengagement and redeployment of the parties' forces, the comprehensive disarmament, demobilization, resettlement and reintegration of all members of all armed groups referred to in Annex A, Chapter 9.1 of the Ceasefire Agreement, and the orderly withdrawal of all foreign forces;
- To work with the parties to obtain the release of all prisoners of war, military captives and remains in cooperation with international humanitarian agencies;
- To supervise and verify the disengagement and redeployment of the parties' forces.
- Within its capabilities and areas of deployment, to monitor compliance with the provision of the Ceasefire Agreement on the supply of ammunition, weaponry and other war-related materiel to the field,

including to all armed groups referred to in Annex A, Chapter 9.1;

- To facilitate humanitarian assistance and human rights monitoring, with particular attention to vulnerable groups including women, children and demobilized child soldiers, as MONUC deems within its capabilities and under acceptable security conditions, in close cooperation with other United Nations agencies, related organizations and non-governmental organizations;
- To cooperate closely with the Facilitator of the National Dialogue, provide support and technical assistance to him, and coordinate other United Nations agencies' activities to this effect;
- To deploy mine action experts to assess the scope of the mine and unexploded ordnance problems, coordinate the initiation of the mine action activities, develop a mine action plan, and carry out emergency mine action activities as required in support of its mandate.

Acting under chapter VII of the Charter of the United Nations, the Security Council also decided that MONUC may take the necessary action, in the areas of deployment of its infantry battalions and as it deems it within its capabilities, to protect United Nations and co-located JMC personnel, facilities, installations and equipment, ensure the security and freedom of movement of its personnel, and protect civilians under imminent threat of physical violence.

Further by its resolution 1565 (2004) of 1 October 2004,

the Security Council revised the mandate of MONUC and authorized the increase of MONUC's strength by 5,900 personnel**, including up to 341 civilian police personnel, as well as the deployment of appropriate civilian personnel, appropriate and proportionate air mobility assets and other force enablers, and expresses its determination to keep MONUC's strength and structure under regular review, taking into account the evolution of the situation on the ground.

The Council decided that MONUC will have the following mandate

- to deploy and maintain a presence in the key areas of potential volatility in order to promote the re-establishment of confidence, to discourage violence, in particular by deterring the use of force to threaten the political process, and to allow United Nations personnel to operate freely, particularly in the Eastern part of the Democratic Republic of the Congo,
- to ensure the protection of civilians, including humanitarian personnel, under imminent threat of physical violence,
- to ensure the protection of United Nations personnel, facilities, installations and equipment,
- to ensure the security and freedom of movement of its personnel,
- to establish the necessary operational links with the United Nations Operation in Burundi (ONUB), and with the Governments of the Democratic Republic of the Congo and Burundi, in order to coordinate efforts towards monitoring and discouraging cross-border movements of combatants between the two countries, [...]
- without notice, the cargo of aircraft and of any transport vehicle using the ports, airports, airfields, military bases and border crossings in North and South Kivu and in Ituri,
- to seize or collect, as appropriate, arms and any related materiel whose presence in the territory of the

Democratic Republic of the Congo violates the measures imposed by paragraph 20 of resolution 1493, and dispose of such arms and related materiel as appropriate,

- to observe and report in a timely manner, on the position of armed movements and groups, and the presence of foreign military forces in the key areas of volatility, especially by monitoring the use of landing strips and the borders, in particular on the lakes.

The Council decided that MONUC will also have the following mandate, in support of the Government of National Unity and Transition

- to contribute to arrangements taken for the security of the institutions and the protection of officials of the Transition in Kinshasa until the integrated police unit for Kinshasa is ready to take on this responsibility and assist the Congolese authorities in the maintenance of order in other strategic areas, as recommended in paragraph 103 (c) of the Secretary-General's third special report,
- to contribute to the improvement of the security conditions in which humanitarian assistance is provided, and assist in the voluntary return of refugees and internally displaced persons,
- to support operations to disarm foreign combatants led by the Armed Forces of the Democratic Republic of the Congo, including by undertaking the steps listed in paragraph 75, subparagraphs (b), (c), (d) and (e) of the Secretary-General's third special report,
- to facilitate the demobilization and voluntary repatriation of the disarmed foreign combatants and their dependants
- to contribute to the disarmament portion of the national programme of disarmament, demobilization and reintegration (DDR) of Congolese combatants and their dependants, in monitoring the process and providing as appropriate security in some sensitive locations,
- to contribute to the successful completion of the electoral process stipulated in the Global and All Inclusive Agreement, by assisting in the establishment of a secure environment for free, transparent and peaceful elections to take place,
- to assist in the promotion and protection of human rights, with particular attention to women, children and vulnerable persons, investigate human rights violations to put an end to impunity, and continue to cooperate with efforts to ensure that those responsible for serious violations of human rights and international humanitarian law are brought to justice, while working closely with the relevant agencies of the United Nations.

The Council authorized MONUC to use all necessary means, within its capacity and in the areas where its armed units are deployed, to carry out the above tasks

The Council further decided that MONUC will also have the mandate, within its capacity and without prejudice to carrying out the above tasks, to provide advice and assistance to the transitional government and authorities, in accordance with the commitments of the Global and All Inclusive Agreement, including by supporting the three joint commissions outlined in paragraph 62 of the Secretary-General's third special report, in order to contribute to their efforts, with a view to take forward

- Essential legislation, including the future constitution,
- Security sector reform, including the integration of national defence and internal security forces together

with disarmament, demobilization and reintegration and, in particular, the training and monitoring of the police, while ensuring that they are democratic and fully respect human rights and fundamental freedoms,

- The electoral process.

2) Security Council resolution 1592 (2005)

[Source: United Nations, S/RES/1592 (2005), 30 March 2005, available on <http://www.un.org>]

Resolution 1592 (2005) Adopted by the Security Council at its 5155th meeting, on 30 March 2005

The Security Council,

[...]

Reaffirming its commitment to respect the sovereignty, territorial integrity and political independence of the Democratic Republic of the Congo as well as of all States in the region, and its support for the process of the Global and All-Inclusive Agreement on the Transition in the Democratic Republic of the Congo, signed in Pretoria on 17 December 2002, and calling on all the Congolese parties to honour their commitments in this regard, in particular so that free, fair and peaceful elections can take place,

Reiterating its serious concern regarding the continuation of hostilities by armed groups and militias in the eastern part of the Democratic Republic of the Congo, particularly in the provinces of North and South Kivu and in the Ituri district, and by the grave violations of human rights and of international humanitarian law that accompany them, calling on the Government of National Unity and Transition to bring the perpetrators to justice without delay, and *recognizing* that the continuing presence of *ex-Forces armées rwandaises* and Interahamwe elements remains a threat for the local civilian population and an impediment to good-neighbourly relations between the Democratic Republic of the Congo and Rwanda,

Welcoming in this regard the African Union's support for efforts to further peace in the eastern part of the Democratic Republic of the Congo, and calling on the African Union to work closely with MONUC in defining its role in the region,

Recalling its condemnation of the attack by one of these militias against members of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), on 25 February 2005, and welcoming the first steps taken to date to bring them to justice, in particular the arrests of militia leaders suspected of bearing responsibility for human rights abuses,

Reiterating its call on the Congolese parties, when selecting individuals for key posts in the Government of National Unity and Transition, including the Armed Forces and National Police, to take into account the

record and commitment of those individuals with regard to respect for international humanitarian law and human rights,

Recalling that all the parties bear responsibility for ensuring security with respect to civilian populations, in particular women, children and other vulnerable persons, and expressing concern at the continuing levels of sexual violence,

[...]

Recalling the link between the illicit exploitation and trade of natural resources in certain regions and the fuelling of armed conflicts, *condemning categorically* the illegal exploitation of natural resources and other sources of wealth of the Democratic Republic of the Congo, and *urging* all States, especially those in the region including the Democratic Republic of the Congo itself, to take appropriate steps in order to end these illegal activities,

[...]

Noting that the situation in the Democratic Republic of the Congo continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* to extend the mandate of MONUC, as contained in resolution 1565, until 1 October 2005, with the intention to renew it for further periods;
2. *Reaffirms its demand* that all parties cooperate fully with the operations of MONUC and that they ensure the safety of, as well as unhindered and immediate access for, United Nations and associated personnel in carrying out their mandate, throughout the territory of the Democratic Republic of the Congo, and in particular that all parties provide full access to MONUC military observers, including to all ports, airports, airfields, military bases and border crossings, and requests the Secretary-General to report without delay any failure to comply with these demands;
3. *Urges* the Government of National Unity and Transition to do its utmost to ensure the security of civilians, including humanitarian personnel, by effectively extending State authority, throughout the territory of the Democratic Republic of the Congo and in particular in North and South Kivu and in Ituri;
4. *Calls on* the Government of National Unity and Transition to carry out reform of the security sector, through the expeditious integration of the Armed Forces and of the National Police of the Democratic Republic of the Congo and in particular by ensuring adequate payment and logistical support for their personnel, and

stresses the need in this regard to implement without delay the national disarmament, demobilization and reinsertion programme for Congolese combatants;

5. *Further calls* on the Government of National Unity and Transition to develop with MONUC a joint concept of operations for the disarmament of foreign combatants by the Armed Forces of the Democratic Republic of the Congo, with the assistance of MONUC, within its mandate and capabilities;

6. *Calls* on the donor community, as a matter of urgency, to continue to engage firmly in the provision of assistance needed for the integration, training and equipping of the Armed Forces and of the National Police of the Democratic Republic of the Congo, and urges the Government of National Unity and Transition to promote all possible means to facilitate and expedite cooperation to this end;

7. *Emphasizing* that MONUC is authorized to use all necessary means, within its capabilities and in the areas where its armed units are deployed, to deter any attempt at the use of force to threaten the political process and to ensure the protection of civilians under imminent threat of physical violence, from any armed group, foreign or Congolese, in particular the ex-FAR and Interahamwe, encourages MONUC in this regard to continue to make full use of its mandate under resolution 1565 in the eastern part of the Democratic Republic of the Congo, and stresses that, in accordance with its mandate, MONUC may use cordon and search tactics to prevent attacks on civilians and disrupt the military capability of illegal armed groups that continue to use violence in those areas;

8. *Calls on* all the parties to the Transition in the Democratic Republic of the Congo to make concrete progress towards the holding of elections, as provided for by the Global and All-Inclusive Agreement, in particular in furthering the early adoption of the constitution and of the electoral law, as well as the registration of voters;

9. *Demands* that the Governments of Uganda, Rwanda, as well as the Democratic Republic of the Congo put a stop to the use of their respective territories in support of violations of the arms embargo imposed by resolution 1493 of 28 July 2003 or of activities of armed groups operating in the region;

10. *Further urges* all States neighbouring the Democratic Republic of the Congo to impede any kind of support to the illegal exploitation of Congolese natural resources, particularly by preventing the flow of such resources through their respective territories;

11. *Reaffirms its concern* regarding acts of sexual exploitation and abuse committed by United Nations personnel against the local population, and requests the Secretary-General to ensure compliance with the zero tolerance policy he has defined and with the measures put in place to prevent and investigate all forms of misconduct, discipline those found responsible and provide support to the victims, and to pursue active training and awareness-raising of all MONUC personnel, and further requests the Secretary-General to keep the Council regularly informed of the measures implemented and their effectiveness;

12. Urges troop-contributing countries carefully to review the Secretary-General's letter of 24 March 2005 (A/59/710) and to take appropriate action to prevent sexual exploitation and abuse by their personnel in MONUC, including the conduct of pre-deployment awareness-training, and to take disciplinary action and other action to ensure full accountability in cases of such misconduct involving their personnel;

13. *Decides* to remain actively seized of the matter.

* As of 1 October 2004, the total authorized strength of uniformed personnel stood at 17,175. This number included earlier increases of the Mission's strength to 8,700 and 10,800 by Security Council resolutions S/RES/1445 of 4 December 2002 and S/RES/1493 of 28 July 2003 respectively.

Discussion

1.
 - a. Is the conflict in the Democratic Republic of the Congo (DRC) international or non-international in nature? In order to determine the legal nature of the conflict, is it necessary to distinguish between the fighting taking place between government and rebel forces and the fighting in which foreign powers are involved? (GC I-IV, Arts 2 and 3)
 - b. What is the nature of the conflict between the governmental *Forces armées congolaises* (FAC) and the forces of the *Congolese Rally for Democracy* (RCD), for example? Between the governmental *Rwandan Patriotic Front* (FPR) and the (Rwandan rebel) *Interahamwe militias*, on Congolese territory?
 - c. Does foreign intervention automatically internationalize a conflict? Is a conflict classified the same way when Zimbabwean forces (together with the FAC) fight against the RCD, and when the (Rwandan governmental) FPR battles the FAC or other non-State armed groups allied to the Congolese Government?
 - d. Can a conflict situation be divided into as many bilateral relationships as there are internal and external parties to the conflict, so that the scope of applicable IHL varies according to the parties confronting each other? For example, is the scope of applicable IHL narrower in the conflict between the FAC and the RCD than in that between the FAC and the FPR? Even if the RCD is supported by the FPR?
 - e. What provisions are applicable in the case of non-international armed conflicts? As the DRC was not, at the time, party to Protocol II, was only Art. 3 common to the Geneva Conventions applicable? Were the conditions met for applying Protocol II? Is IHL enforceable against non-State armed groups? What about the application of IHL between the parties to a non-international armed conflict if they are "[d]etermined to ensure the respect [...] for the Geneva Conventions of 1949 and the Additional Protocols of 1977" (Preamble to the Lusaka Agreement)? Isn't this provision of the preamble valid only between States party to the agreement? Is this a recognition of the applicability of Protocol II even to States that have not ratified it?
2.
 - a. According to IHL, when is a territory considered occupied? (HR, Art. 42) Are Congolese territories controlled by Rwanda or Uganda occupied territories within the meaning of IHL? What are the

obligations of an occupying power under IHL?

- b. Are occupying powers entitled to exploit the natural resources of the territories they occupy? To what extent? Which provisions of IHL govern these questions? Does exploitation of this kind amount to requisition? If so, do the requisitions comply with IHL? What difference is there between seizing and requisitioning property? What is an occupier allowed to seize? What is an occupier allowed to requisition? Does IHL contain rules that are detailed enough to regulate both activities? Under what conditions does seizure comply with Art. 53 of the Hague Regulations? Are these conditions stipulated explicitly or implicitly in the provision? Is an occupying power responsible for private companies exploiting mineral resources? (GC IV, Art. 33(2); HR, Arts 23(g), 46(2), 47, 52 and 53) [See *Singapore, Bataafsche Petroleum v. The War Damage Commission*; *Israel, Ayub v. Minister of Defence*, and *Israel, Al Nawar v. Minister of Defence*]
 - c. Are the authorities of an occupying power obliged to comply with the rules of the Fourth Geneva Convention applicable to occupied territories? As regards the Congolese? As regards Rwandan nationals, in occupied territory for example? (GC IV, Arts 4, 13, 25, 26, 29, 45, 47 and 70; P I, Art. 73) [See *ICTY, The Prosecutor v. Tadic* [Part C., paras 163-169]] Are they entitled to arrest Congolese nationals in Congolese territory and transfer them to their own territory? (GC IV, Art. 49) Can Rwandan or Ugandan authorities arrest rebel Rwandan nationals in Congolese territory and transfer them to Rwanda or Uganda, respectively? (GC IV, Arts 4, 49 and 70(2); P I, Art. 73) [See *ICTY, The Prosecutor v. Tadic* [Part C., paras 163-169]] Is the practice of forced disappearances prohibited by IHL? Does IHL take up the issue of missing persons? (GC IV, Arts 26 and 137; P I, Arts 32 and 33; ICC Statute, Arts 7(1)(i) and 7(2)(i)) [See *The International Criminal Court*]
 - d. Are Congolese territories allegedly controlled by States allied to the Congolese authorities (Angola and Zimbabwe in particular) occupied territories? Even if they are controlled with the consent of the “host” State? Even if control takes the form of mine concessions? And if the allied States have been authorized to pursue a rebel movement on Congolese territory (the Angolan army against UNITA, for example)?
3. Can the ICRC deal with “the recovery of the dead and the treatment of the wounded” (Art. 9 of the Lusaka Agreement) or “organize the recovery of the bodies” (Document 3.C.2)? On what conditions? Must it identify the bodies before burying them? Is this the ICRC’s mandate? Are the parties obliged to accept the ICRC’s services? (GC I, Arts 9, 17 and 18; GC IV, Arts 10 and 140; P I, Art. 33)
 4.
 - a. What is the role of the UN forces in the DRC? Are they authorized to use force to prevent massacres? Could the UN be held responsible if they do not do so? Or the UN member States? Should the UN base its actions on the investigation report on UNAMIR so as not to repeat in the DRC the mistakes made in Rwanda? Are the situations comparable?
 - b. Does IHL prohibit attacks against UN forces? Are non-State groups bound by this prohibition? (ICC Statute, Arts 8.2(b)(iii) and 8.2(e)(iii)) [See *The International Criminal Court*; See also *Convention on the Safety of UN Personnel*, Art. 9]
 - c. Since the DRC is party to the ICC Statute, does the Court have jurisdiction over those responsible for such attacks? Over those responsible for other violations of IHL? Does the ICTR have jurisdiction over the perpetrators of violations of IHL in the context of the conflict in the DRC? At least for the aspects of the conflict that are extensions of the Rwandan conflict in Congolese territory (for example, the fighting in the DRC between the Rwandan Patriotic Army and the Interahamwe militias)? [See *The International Criminal Court*, and *UN, Statute of the ICTR*]
 5. How do the Conventions and the Protocols guarantee the right of the victims to assistance and

protection? Are the guarantees identical in the framework of international and non-international armed conflicts? Are the provisions of Protocol II on access to humanitarian aid more restrictive than those of the IHL of international armed conflict? (GC I-IV, Arts 9/9/9/10 respectively; GC IV, Arts 23, 30, 55, 59-62 and 148; P I, Arts 68-71; P II, Arts 5 and 18)

6. Are UN personnel bound by IHL? Should they be? Assuming that they are, how should the sexual exploitation and abuses committed by some of them be considered? Who would have the responsibility to prosecute these crimes?

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