

# **The Protection-Neutrality Dilemma in Humanitarian Emergencies: Review of the Rwandan Genocide under the Human Rights Legal Framework**

## **Introduction: Humanitarian Principles**

Since most of all humanitarian actions are carried out within a context of armed conflicts, disasters, and instability, there is a need to guide the activities of humanitarian organizations. The core principles guiding all humanitarian organizations include Humanity, impartiality, neutrality and independence. The first three principles were made at the UN General Assembly Resolution 46/182 in 1991 while the fourth one, independence was added at the UN General Assembly Resolution 58/114 in 2004<sup>1</sup>.

Humanity refers to the fact that saving lives is the priority of any humanitarian action. This implies that humans must be saved and their suffering must be addressed equally for all. This breeds mutual respect, cooperation and unity amongst the people.

Impartiality talks about the fact that humanitarian actions must be without discrimination by age, sex, race, religion or as the case may be. The humanitarian organizations must address the needs of those in crisis based on urgency. This implies that regardless the political class, age, or other defining bracket, people must be cared for, based on whose need is most urgent.

Independence centers on the situation whereby humanitarian organizations are allowed to formulate and implement their policies regardless of the state actor(s). This means that the activities of the humanitarian organizations must not be influenced by the government's policies and activities i.e. they must be independent of the government in order for them to stay impartial and neutral.

Neutrality is one of the core principles which humanitarian organizations center their activities on. It explains that these organizations must not take sides during crisis and must not even involve in any discourse of racial, religious, political, or ideological nature. Humanitarian organizations perceived to be not neutral or side's one party in the conflict, causes more harm than good. It makes the conflict worse as it is seen in the case study to be discussed later.

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<sup>1</sup> Anggraeni, D. What are Humanitarian Principles? Pg. 2.

## **Protection-Neutrality Dilemma in Literature: Sovereignty and Military Intervention**

According to Ludlow and Boutros-Ghali, Humanitarian intervention can be described as a forced military intervention, sanctioned by the United Nations, in the affairs of a sovereign state, based primarily on humanitarian grounds.<sup>2</sup> The dilemma of protecting population and neutrality during humanitarian emergencies stemmed from the concept of sovereignty. The sovereignty concept talks about the non-interference of other state actors in the affairs of a state. This has been the main obstacle to humanitarian intervention.

Ludlow and Boutros-Ghali pointed out the fact that humanitarian intervention is marginally recognized, i.e. recognized by some states and opposed by others. This is because interventions are mostly seen as infringement of sovereignty in the state and it could lead to more chaos<sup>3</sup>. This has led to the international community doing nothing during crisis and the perpetuation of mass atrocities like the case of Rwanda.

Furthermore, where interventions happen, it causes factions and increased conflict. The intervention of the NATO in 1999 to halt Kosovo ethnic cleansing generated lots of controversies by those who see it as illegal due to the concept of national sovereignty and those who saw it as morally right to save humanity. However, the question put forward by Ayoob (2002) is vital in the face of sovereignty. Shall we uphold sovereignty in order to maintain order or invoke intervention in cases where states have failed in order to protect humanity and attain justice?<sup>4</sup> In the words of Bruderlein and Leaning (1999), military intervention is needed for civilian protection and it provides a neutral space.<sup>5</sup> It is pertinent to note that the neutral space being provided by military intervention can also be a targets for attacks by hostilities. This will be treated more in the concept of safe areas.

The dilemma that happens within humanitarian organizations during armed conflict situations on whether to protect or to be neutral poses a huge difficulty on conceptualizing neutrality. Leaning (2007) opined that most humanitarians do not even know what they mean by that term, neutrality as the concept has been ambiguous in the face of the civilian protection framework.<sup>6</sup> This framework of protection involves some elements of relief and being on the offensive in order to defend. So, the question she asked was, can one act within the framework of protection and also be neutral? This is a very hard nut to crack by the humanitarian organizations. Little wonder,

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<sup>2</sup> Ludlow, D. R. L., and Boutros Boutros-Ghali. Humanitarian Intervention and the Rwandan Genocide. p. 27.

<sup>3</sup> Ibid.

<sup>4</sup> M. Ayoob (2002). Humanitarian Intervention and State Sovereignty, *The International Journal of Human Rights*, 6:1, 81-102, DOI: 10.1080/714003751

<sup>5</sup> Bruderlein, C., & Leaning, J. (1999). New challenges for humanitarian protection. *BMJ : British Medical Journal*, 319(7207), 430. <https://doi.org/10.1136/bmj.319.7207.430>

<sup>6</sup> Leaning, J. (2007). The Dilemma of Neutrality. *Prehospital and Disaster Medicine*, 22, 418–421. <https://doi.org/10.1017/S1049023X00005148>

neutrality is very difficult to uphold in humanitarian settings. A qualitative systematic review of 66 journals on humanitarian actions in conflict settings carried out by Broussard et al (2019) revealed that the neutrality is the most challenging principle to uphold amongst the four core humanitarian principles.<sup>7</sup> Therefore, there is a need to study the protection-neutrality dilemma deeper using a case study in coherence with the provided literature.

## **Overview of Case study: Genocide in Rwanda**

Rwanda, a former colony of Belgium, was dominated with two major ethnic groups namely the Hutus and the Tutsis. Even though, there were no significant racial difference amongst these two groups, the social status stratified them into the ruling class and the masses. Rwanda experienced a massive genocide against the Tutsis in April 1994. This genocide claimed over 800,000 lives in three months as the Hutu-ruled government made operations to begin assassination of the Tutsis using the president Habyarimana's plane crash as an excuse.<sup>8</sup> The systematic attack was carried out to wipe out the Tutsi tribe in Rwanda so, there was an outrage in all parts of Rwanda as there were severe acts of genocide and crimes against humanity being perpetuated amongst women, children, injured and civilians. In July 1994, the opposition, the Rwanda Patriotic Front RPF won the war, overthrew the Hutu government and put an end to the genocide. However, this horrific event displaced over 3million Rwandans who became refugees and the activities of these refugee camps led to some other massacres which are seen as the aftermath of the genocide.<sup>9</sup> The attention received from the international community was very low but there was a visible presence of few humanitarian organizations like the UNHCR, the Doctors without Borders, and Red Cross.<sup>10</sup>

## **Coherency of the Article using the Rwandan Case Study**

The article written by Carola Weil explains the conundrum experienced by the office of the United Nations High Commissioner for Refugees (UNHCR) due to the increasing involvement of military operations in complex humanitarian emergencies. Complex humanitarian emergencies (CHEs) are humanitarian crises where there is a complete breakdown in authority

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<sup>7</sup> Broussard, G., Rubenstein, L. S., Robinson, C., Maziak, W., Gilbert, S. Z., & DeCamp, M. (2019). Challenges to ethical obligations and humanitarian principles in conflict settings: A systematic review. *Journal of International Humanitarian Action*, 4(1), 15. <https://doi.org/10.1186/s41018-019-0063-x>

<sup>8</sup> Alexander, H. (2004) Justice for Rwanda: Toward a Universal Law of Armed Conflict. 34, 26.

<sup>9</sup> United Nations (2000). The State of the World's Refugees. Chapter 10. Retrieved from <https://www.unhcr.org/publ/PUBL/3ebf9bb60.pdf> Accessed 24th December 2019

<sup>10</sup> Ibid.

due to conflict, and it requires an international response beyond the capacity of the local agency present within the state/country.<sup>11</sup>

CHEs is usually characterized by the displacement of large populations due to human sufferings (like wars, genocide, ethnic cleansing etc.), international assistance needed beyond the limit of one agency (multiplicity of actors in humanitarian actions), and imposition of barriers to humanitarian assistance by parties to the conflict. Due to the nature of the CHEs explained above, it requires the both the civilian and military operations in order to deliver humanitarian assistance in that setting.

The UNHCR which was the main humanitarian organization used in this article has been able to intervene in CHEs and protect lives but it comes with a cost. During the humanitarian intervention, the use of military has considerably affected the perception of the UNHCR by parties to the conflict and it is seen as being partial and not neutral, thereby defying the core ideals of what it stands for; impartiality and neutrality. This shows that even though the military intervention is relevant in complex humanitarian emergencies, it has “unintended” costs in terms of the humanitarian organization and the populations at risk.<sup>12</sup>

The intervention of the military in CHEs affects the political environment of the territory/state thereby infringing on the national sovereignty of such state. The engagement of the military intervention in CHEs by the international community has been uneven in the regions of the world. This could be as a result of the state of flux existing between the two norms of international protection; the norms of sovereignty and human rights.<sup>13</sup> The norm of sovereignty of a state seeks to protect its national borders and promote non-interference in its affairs by other states while the norm of human rights seeks to protect lives of humans irrespective of borders. Therefore, the international community is usually left with the choice of choosing one out of both norms. Even though the norm of human rights is gaining acceptance little by little, the traditional norm of sovereignty still seems to be existent and hold water. The reactions generated against the intervention of NATO in the Kosovo ethnic cleansing by the international community is an example of this. The principle of sovereignty was the given reason why there was little effort from the international community to militarily intervene in the Rwandan genocide.

As mentioned earlier, there is usually a large displacement of populations (forced migration) during CHEs and this leads to security concerns within and outside the regions at risk. This is why there is a need for military operations during humanitarian intervention. However, on the other hand, the involvement of military in CHEs could actually expose the populations they are to protect to conflicts and dangers due to the fading of the distinction principle prevalent in

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<sup>11</sup> Refugees, United Nations High Commissioner for. “Coordination in Complex Emergencies.” UNHCR, <https://www.unhcr.org/partners/partners/3ba88e7c6/coordination-complex-emergencies.html>. Accessed 27 Oct. 2019.

<sup>12</sup> Weil, Carola. “The Protection-Neutrality Dilemma in Humanitarian Emergencies: Why the Need for Military Intervention?” *International Migration Review*, vol. 35, no. 1, Mar. 2001, p. 80

<sup>13</sup> Weil Carola, p. 82

modern conflict contexts. Since it is hard to differentiate between the combatants and non-combatants, and in a bid to stay neutral, they are unable to protect the population at risk. In cases like this, the UNHCR has to choose whether to stay neutral while jeopardizing their security.<sup>14</sup> In the case of Rwanda, UNHCR, in a bid to protect the population at risk, had the genocide perpetrators in the refugee camps, as it was difficult to distinguish between combatants and the non-combatants. Also, due to inadequate security, the UNHCR had to seek alliance with the Hutu Militia to effectively carry out their activities. The notion that the UNHCR with other humanitarian agencies was housing some of the extremist Hutus who participated in the killings drew attention from the new Rwandan government which was (Tutsi-led). This led to the massacre of lives in one of the largest refugee camps in Rwanda, the Kibeho camp, in December 1994.<sup>15</sup> This succinctly explains the protection-neutrality dilemma faced while involving military intervention in humanitarian activities.

The military intervention in CHEs is also needed because the displaced population as a result of the crisis could have spillover insecurity effects on other states within the region.<sup>16</sup> In order to avoid tensions, perceptions of refugee invasion, or actual conflicts breaking out in surrounding states, the military intervenes in order to contain the flows of the forcibly displaced. However, the military response is largely restrained in its operations by the principle of sovereignty. The refugee flows as a result of the Rwandan genocide were said to have destabilized the entire Great Lakes Region in Africa, especially in Zaire and the Democratic Republic of Congo.

According to Carola Weil, the importance of the military as a humanitarian agenda setter cannot be overemphasized as it has been used to uphold both norms of international protection in a conflicting manner.<sup>17</sup> The author gave two instances to describe this situation. Firstly, the aim of the military intervention in Bosnia is to protect the national borders of the state but they had to switch to the other norm of protecting human lives when ethnic cleansing started there. In contrast, the military intervention in Kosovo had the initial aim to protect lives during the ethnic cleansing but they stopped their operation due to heated reactions by the international community that they violated the norm of national sovereignty. Other functions of the military intervention in CHEs ranges from the provision, delivery and distribution of relief materials, provision of evacuation support, training civilian officers, to physically protecting human lives. In the Rwandan case, the UNHCR had to put with forming a relationship with the Hutu Militia as a military presence was needed for physical protection.

The operations of the UNHCR and other humanitarian organizations in Safe Areas also gives a clear picture of the protection-neutrality dilemma they face when involving military intervention. Safe areas basically are zones and territories where the civilian population at risk are being protected by humanitarian military forces during conflict situations. According to Stefano

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<sup>14</sup> Weil Carola, 85

<sup>15</sup> David Forsythe (2001). UNHCR's mandate: the politics of being non-political, Working Paper No. 33, UNHCR.

<sup>16</sup> Weil Carola, 86

<sup>17</sup> Weil Carola... 88

Recchia, even though these safe areas improve civilian protection on a short term, they can actually lead to more exposure of the civilian population to danger.<sup>18</sup> This is because safe areas can be high priority targets for the opposition parties of the protected groups. Also, safe areas increase the probability of the protected groups to call for secession and independence from the total state which could lead to more revolt. This was the outlook in Rwandan “Safe Areas”. The camps in eastern Zaire and the Democratic Republic of Congo had the involvement of the Hutu armed militias, who controlled the significant parts of the UNHCR operations due to lack of inadequate security. With arms in control, some of them tried rebelling against the new Rwandan government and in response, this caused these safe zones to be high targets for the government. The December 1994 massacre in Kibeho camp attest to this.

Due to these reasons and a host of others, safe areas are dangerous in the long run. The dilemma faced by humanitarian organizations in safe areas is that the use of military to protect these areas can instigate the opposition parties to target these places, as the humanitarian intervention is being seen as non-neutral. So, usually, they usually exercise a degree of caution in involving the military in order to look neutral. But in that way, they might not be able to carry out the protection function.

## **Human Rights Framework**

The human rights framework holds the rights possess by every human being as a result of his or her human dignity. They are abilities to be exercised as regards all aspects of life. Human rights enable all individuals to determine their own lives in equality liberty and respect for human dignity.<sup>19</sup> Human rights also define the linkages within the individuals and the state in terms of power relations. The framework specifies the line government cannot cross in relating with the people as humanity principle takes preeminence in the light of human rights hence, the human rights seek to protect the freedom, humanity and dignity of all human beings.

According to the UN Office of the High Commissioner for Human Rights, human rights are all encompassing. They range from political, economic, social, and cultural to civil rights.<sup>20</sup> The political and civil rights of people for example includes the right to life, right to liberty, right of humane treatment of prisoners, right to participate in the running of public affairs, right to a fair trial before execution, freedom from slavery and torture, freedom of expression, freedom of movement, and the freedom of association and assembly.

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<sup>18</sup> Recchia, Stefano. (2018) “The Paradox of Safe Areas in Ethnic Civil Wars.” *Global Responsibility to Protect*, vol. 10, no. 3, May 2018, pp. 362–86. DOI.org (Crossref), doi:10.1163/1875984X-01003006

<sup>19</sup> Inter-parliamentary Union and the United Nations (Office of the High Commissioner for Human Rights). *Human Rights. Handbook of Parliamentarians* no 26. Retrieved from <https://www.ohchr.org/Documents/Publications/HandbookParliamentarians.pdf> Accessed 24th December 2019

<sup>20</sup> Ibid.

The socio-cultural/economic rights of humans in any given society includes the right to work and favorable work conditions, right to found a family, right to health, rights to quality education, right to social security, protection of the family, and right to an overall adequate standard of living. Other collective rights within the human rights framework include the rights of national, ethnic, linguistic minorities, peace, free use of wealth and natural resources.

In the light of the above, it can be deduced that human rights are universal. They are the same and are applied equally to everyone in any given society. This is because the human rights framework is based on human's dignity and liberty regardless of their age, race, gender, color, ethnicity, language, religion, economic class, or any other distinguishing characteristic. In view of this, it can be said that human rights cannot be taken away from a human being except under clearly defined legal conditions. Since every human possess these rights on the basis of dignity, it cannot be stripped off an individual. Legal conditions can restrict some of the rights; freedom of movement, for example.

Human rights are also seen to be indivisible and interdependent. This implies that each of the human rights depend and are related to one another. Therefore, violating one or more can lead to violating all of the human rights. Denial to quality basic education for example, can influence the right to participate in public affairs, right to health, rights to social security and the right to an adequate standard of living. This was reiterated clearly at the World Conference on Human Rights held in Vienna in 1993. It was stated that, "***All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.***"<sup>21</sup> This enjoins governments to take the issue of upholding human rights serious and respect these rights. There are grave consequences for leaders who ignores this call as it affects the smooth running of public affairs. Sadly, not all societies respect these rights for individuals.

A fundamental principle that human rights is based as seen from the above is equality and non-discrimination. Since they are universal, it means the rights are applied to every human being regardless of the race, color or gender. Therefore, all persons must be treated equally and not discriminated towards in the light of human rights. The worst human right violations have erupted as a result of discriminating towards individuals on the basis of their race, color, religion or ethnic group. This was what led to the human rights violation in the 1994 Rwandan genocide.

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<sup>21</sup> Ibid.

## Human Rights Violations in the Rwandan Case Study

From the case study that was given as regards complex humanitarian emergencies, the post-Rwandan genocide, it was seen that human rights were violated on a grand scale. Crimes against humanity including genocide, torture, rape, slavery and deliberate starvation are the worst forms of human rights violations as they strip off individuals' dignity, respect and freedom. According to the UN OHCHR, the human rights violations which was perpetrated after the Rwandan genocide can be broadly classified into four major categories. These include, *violations of the rights to physical integrity and to life, violations of property rights, violations to freedom of expression and violations of the right to personal security*.<sup>22</sup>

There were several reports of executions, abduction and forced disappearances during the post-Rwandan genocide. The perpetrators involve the Hutu Militia and the State. After the three months of genocide, these rights were still violated. In April 1995, close to 4,000 people in the Kibeho camp were killed by soldiers of the Rwandan Patriotic Front. Also, in November 1995, the state was involved in 62 of the cases of murder resulting from inhumane treatment of prisoners of war. The Gikongoro Massacre, which claimed over 140 lives, was directly carried out by the government soldiers and was acknowledged by the then minister of Defense himself who claimed that they made "excessive use of their weapons".<sup>23</sup>

Forced disappearances and kidnappings were also rampant during the genocide. These cases would be reported missing after being detained and tortured by the military men of the then government. Some prominent personalities who are victims of this violation include the retired captain of Rwanda's former armed forces, Deo Kabera, who was arrested on his return from Zaire in August 1995, Ephrem and Bagabo Hakizimana, and so on. Over 18 "missing persons" cases were recorded in August 1995 alone<sup>24</sup>. This abduction of persons is intended to secure sensitive information or spread terror as these missing persons are usually killed and buried in secret.

The main feature of the violation of property rights is the illegal occupancy of property. Resettling after the genocide experience gave rise to this problem especially in the large urban areas of Rwanda, like Kigali, Kibungo and Byumba. Human rights observers identified at least 18 cases connected with dispute over real estates in November 1995.<sup>25</sup> Some of these cases ended in Murder, death threats and even imprisonment.

On the part of freedom of expression violations, there was a high level of serious intimidation and aggression towards journalists, religious leaders and other people who try to make their opinions known to the general public. Newspaper houses were suspended and closed down in

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<sup>22</sup> Dégni-Ségui, R. (1996). Report on the situation of human rights in Rwanda. Retrieved from <http://digitallibrary.un.org/record/228462>

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.



Rwanda as the freedom of the press became subject to scrutiny. Some of these newspapers include Le Messager, Le Tribun du Peuple, Ar-en-Ciel and the Le Partisan. Le Partisan was closed down for reporting the huge and overestimated expenses claimed to be incurred during the fifth-year remembrance of a former military leader, Fred Rwigema<sup>26</sup>. Several cases of death threats to intimidate journalists in Rwanda during this period continued.

The freedom of expression in the religious community was not spared in the violations. Priests of the catholic church of Rwanda were harassed and threatened between October 1994 and August 1995. Two of these priests were found dead<sup>27</sup>. The government also imprisoned some 44 members of the Seventh Day Adventist Church for curtailing curfew and not being obedient to the rules of the country. This is politically engendered as it was widely perceived that these Christian groups were allies of the former ruling administration. Other professional categories like the magistrates, active members of political parties, civil society organizations and the likes also witnessed constant intimidation through arrests, death threats, and restriction of activities. This led to political oppression which undermined the rule of law as the time.

The number of arrests and detentions continued to skyrocket throughout the genocide and beyond. Between 800 and 1,200 arrests were made per week and some of the reasons were on baseless grounds such as “disturbing the peace at night” within October to mid November 1995. Most of these arrests were made without a warrant and by officials who have no legal authority to do so. This includes the soldiers, communal policemen and the burgomasters. The detained do not even have an idea of the charges against them. It was recorded that only 8% of the 2000 people detained in the central prison of cyangugu, for example, had files recording evidence against them.<sup>28</sup> Some of these files are even incomplete and not sufficient enough for prosecution. In detention centers and prison, there are worse living conditions which limits access to good environment, health and adequate living conditions. These living conditions are worsened by overcrowding, torture and other inhumane treatment of the detainees.

In December 1996, the Rwandan government organized a forced villagization program which aimed to put people in rural areas into specific villages and this resulted in massive human rights violation as the freedom and liberty of tens of thousands of Rwandans were greatly restricted.<sup>29</sup>

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<sup>26</sup> Report on the Situation of Human Rights in Rwanda. Retrieved December 22, 2019, from Relief Web website: <https://reliefweb.int/report/rwanda/report-situation-human-rights-rwanda>

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Human Rights Watch. Uprooting the Rural Poor in Rwanda—Conclusion... Retrieved December 24, 2019, from <https://www.hrw.org/reports/2001/rwanda/rwnvilg-17.htm>

## International Human Rights Law Breached by the Rwandan Government

International human right laws are the legal framework that is used to uphold the need to respect human rights at all levels across the world. They are usually agreements made by member states having a binding effect. The following are the international human rights treaties (*which were already in force before the human rights violation were perpetrated*) that the Rwandan government breached as a result of these massive violations of human rights explained earlier:

- The UN Convention on the Prevention and Punishment of the Crime of Genocide introduced in 1948 and enforced in 1951.<sup>30</sup> This admonished all member countries to prevent and punish actions of genocide during peace and during war. Rwanda ratified this treaty in 1975 but the several tales of massacre and genocidal actions that occurred in 1994-1997 was a major breach of this treaty.
- The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity introduced in 1968 and enforced in 1970.<sup>31</sup> This treaty explains that member states should not put a timeframe (statutory limitation) to court cases relating to war crimes and other crimes against humanity. Rwanda ratified this treaty in 1975. The Rwandan common law system dismissing cases related to the genocidal action committed is a major breach to this agreement.
- The UN International Covenant on Economic, Social and Cultural Rights introduced in 1966 and enforced in 1976.<sup>32</sup> This was to promote the rights to good health care, quality education, and an adequate standard of living. This covers the promotion of the economic, social and cultural rights as the name implies. This treaty was ratified by the Rwandan government in 1975 The arbitrary arrests, detentions, torture, villagization, forced disappearances and kidnappings experienced in Rwanda post-genocide reflects the breach of this law.
- The UN International Covenant on Civil and Political Rights introduced in 1966 and enforced in 1976.<sup>33</sup> This treaty was to encourage member countries to respect the human rights to life, rights to a fair trial, freedom of speech, freedom of religion, freedom of

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<sup>30</sup> United Nations. UNTC. Retrieved December 24, 2019, from [https://web.archive.org/web/20121020233944/http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-1&chapter=4&lang=en](https://web.archive.org/web/20121020233944/http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-1&chapter=4&lang=en)

<sup>31</sup> United Nations. UNTC. Retrieved December 24, 2019, from [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-6&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-6&chapter=4&lang=en)

<sup>32</sup> United Nations. UNTC. . Retrieved December 24, 2019, from [https://web.archive.org/web/20120917040858/http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-3&chapter=4&lang=en](https://web.archive.org/web/20120917040858/http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-3&chapter=4&lang=en)

<sup>33</sup> United Nations. UNTC. (2010, September 1). Retrieved December 24, 2019, from [https://web.archive.org/web/20100901184638/http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-4&chapter=4&lang=en](https://web.archive.org/web/20100901184638/http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-4&chapter=4&lang=en)

association and freedom of assembly. The treaty was ratified by the Rwandan government in 1975. The several executions of lives, imprisonment without a fair hearing, and censorship of the press, harassment and intimidation of religious groups revealed that the Rwandan government violated this treaty.

- The UN International Convention on the Elimination of All forms of Racial Discrimination introduced in 1966 and effective from 1969.<sup>34</sup> This reiterates the commitment of the member states to the elimination of racial discrimination and promote equality and unity amongst races and ethnic groups. Rwanda also ratified this treaty in 1975 but the genocidal actions carried out against the Tutsi minority and other forms of racial discrimination that existed few years after the genocide attest to the fact that Rwanda did not uphold this international law.
- The Convention on the Elimination of all Forms of Discrimination against Women introduced in 1979 and instituted in 1981.<sup>35</sup> This agreement basically enjoins member states to promote gender equality and respect the economic, social, cultural, civil and political rights of women in all spheres. Rwanda ratified this treaty in 1981. The several cases of rape, sexual assaults, and trafficking of women recorded during the Rwandan genocide and beyond reflected a serious violation of this treaty.
- The UN Convention on the Rights of the Child introduced in 1989 and enforced in 1990.<sup>36</sup> This treaty encourages member states to respect the cultural, social, economic civil and political rights of persons under age 18 (children). The Rwandan government ratified this agreement in 1991. However, the killings of children in several massacres in Rwanda is a breach to this convention.

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<sup>34</sup> United Nations. UNTC. Retrieved December 24, 2019, from [https://web.archive.org/web/20110211223019/http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4&lang=en](https://web.archive.org/web/20110211223019/http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en)

<sup>35</sup> United Nations. UNTC. (2012, August 23). Retrieved December 24, 2019, from [https://web.archive.org/web/20120823144158/http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](https://web.archive.org/web/20120823144158/http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en)

<sup>36</sup> United Nations. UNTC. (2014, February 11). Retrieved December 24, 2019, from [https://web.archive.org/web/20140211151110/http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](https://web.archive.org/web/20140211151110/http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en)

## International Humanitarian Law and the Rwandan Case Study.

International humanitarian law (IHL) is concerned with the situations of armed conflicts within and between states.<sup>37</sup> It is explicitly hinged on the principle to protect lives and restrict the parties involved in conflict to limit the damages of the conflict on humanity. The IHL helps to protect the combatants, the civilians and the injured in battle during armed conflict situations. Therefore, the International Humanitarian Law complements the International human rights law (IHRL) explained in the previous section.

The International Committee of Red Cross tried to distinguish between the IHL and the IHRL. One of the differences is that the IHL is applied during armed conflict situations while the IHRL is applied during war and peace alike. Also, the IHRL could be relaxed in cases of legal offenders but the IHL cannot be relaxed as it applies in emergency situations. While Human rights law does not concern itself with the conduct of hostilities, the IHL is mainly concerned with the activities of the hostilities in order to minimize human suffering during armed conflicts.

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The major instruments of the international humanitarian law include the *four Geneva Conventions and the three Additional Protocols*. The first Geneva Convention was adopted in 1864 and replaced in 1906, 1929, and 1949.<sup>39</sup> This convention stipulated the amelioration of the condition of the wounded and sick in armed forces in the field. The second Geneva Convention adopted in 1906 and revised in 1949 allows the exclusion of the condition of wounded, sick and shipwrecked members of armed forces at sea from the armed conflict.<sup>40</sup> The third Geneva Convention was adopted in 1929 and revised in 1949. This talked about the humane treatment of prisoners of war. The fourth Geneva Convention which was introduced in 1949 enforced the protection of civilian persons in times of war. Additional Protocol 1 stipulates some additional information to the Geneva Convention in the cases of international armed conflict (i.e. conflict between states) while the additional protocol 2 was applied in the cases of non-international armed conflict (i.e. conflict within states).<sup>41</sup>

Alexander (2004) pointed out that there were serious violations of the IHL in the Rwandan case study. Being a non-international armed conflict, the Geneva Conventions for the protection of war victims, injured soldiers, and the Additional Protocol II was gravely violated. These

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<sup>37</sup> More, Elizabeth (2007) "International Humanitarian Law and Interventions—Rwanda, 1994," *Genocide Studies and Prevention: An International Journal*: Vol. 2: Is. 2: Article 5. Available at: <https://scholarcommons.usf.edu/gsp/vol2/iss2/5>

<sup>38</sup> International Committee of the Red Cross [ICRC], "International Humanitarian Law: Answers to Your Questions," <http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/5kzf5n?opendocument>

<sup>39</sup> 1949 Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field | Centre for International Law. Retrieved December 24, 2019, from <https://web.archive.org/web/20140221161712/http://cil.nus.edu.sg/1949/1949-geneva-convention-i-for-the-amelioration-of-the-condition-of-the-wounded-and-sick-in-armed-forces-in-the-field/>

<sup>40</sup> *ibid*

<sup>41</sup> *ibid*

violations include carrying out executions, pillage, inhumane treatment of prisoners of war, torture, abductions, rape and other human rights violations as explained earlier.<sup>42</sup>

On the part of the international community, More Elizabeth noted that one of the serious violations of the IHL on the part of the international community was the non-intervention to end the genocidal actions in Rwanda.<sup>43</sup> The IHL allowed for intervention on the basis to protect lives and Rwanda has ratified these international laws and treaties right before 1994. However, there was no urgent intervention from the international community until close to 800,000 lives were lost and few efforts were made. This non-intervention, according to More Elizabeth, was aggravated by a visible lack of interest by the UN Security Council, a racist international humanitarian order, inability to tackle multiple armed conflict situations, and the increasing caution applied due to prior interventions.<sup>44</sup>

### **Way Forward: Responsibility to Protect (R2P)**

One of the major recommendations of the article reviewed was the proposal of a normative framework which will capture the protection of lives, freedom of movement and also uphold the principle of sovereignty. The Responsibility to Protect (R2P) is a similar framework which was approved four years after the article was published. The R2P was approved at the UN World Summit in 2005 while emerging firstly in an article written by the international Commission on Intervention and State Sovereignty in 2001. The R2P mandate is an international principle which basically guides societies against war crimes, ethnic cleansing, genocide and other crimes against humanity.

The R2P mandates the state to protect its people at all costs from the mass atrocities listed earlier and where the state cannot carry out this function well, the international community should assist. This ideology is explained in three pillars according to the outcome document of the R2P<sup>45</sup>:

- The first pillar implies that the state (government) has the ultimate responsibility of protecting its populations from risks of war crimes, genocide, ethnic cleansing and other crimes against humanity.
- The second pillar states that the international community can support and assist individual states to perform the obligation of protecting its population.

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<sup>42</sup> Alexander, H. (2004). Justice for Rwanda: Toward a Universal Law of Armed Conflict. 34, 26.

<sup>43</sup> More, Elizabeth (2007) "International Humanitarian Law and Interventions—Rwanda, 1994," *Genocide Studies and Prevention: An International Journal*: Vol. 2: Is. 2: Article 5. Available at: <https://scholarcommons.usf.edu/gsp/vol2/iss2/5>

<sup>44</sup> Ibid.

<sup>45</sup> About R2P: Global Centre for the Responsibility to Protect. . Retrieved October 26, 2019, from [http://www.globalr2p.org/about\\_r2p](http://www.globalr2p.org/about_r2p)

- The third pillar explains that where the individual states cannot effectively perform the function of protecting their people, the international community must intervene and carry out an appropriate collective action to protect the population, in a timely manner, according to the principles of the UN Charter.

The R2P concept was borne out of the fact that the world needed to guard against the genocides and ethnic cleansing that happened in the 1990s. Taking the inaction of the international community towards the Rwandan genocide, Kosovo Ethnic cleansing, and other terrible acts of violence that happened in Yugoslavia and other countries into consideration, the then Secretary General, Ban Ki moon, urged member states to formulate a legal and collective action to prevent future mass atrocities<sup>46</sup>. Hence, the responsibility to protect. When the R2P was generated, it was seen that the first pillar reinforces national sovereignty while the third pillar allows humanitarian intervention where, the state is a party to the mass atrocities or cannot protect its populations.

It is important to note that there is a distinction between the responsibility to protect and the right to intervene. The R2P rests on the former while the military intervention rests on the latter. Both of them are however seen as infringement of national sovereignty but the end goal of all is to save lives and address suffering for the population in crisis. R2P makes use of non-coercive methods to protect populations at risk but resort to the use of force as the last method especially in cases where mass atrocities are perpetuated. However, the action of the international community to adopt R2P and military intervention might not be wholly altruistic or selfless. It could have something to do with their political interests or alliance. The operation Turquoise explained earlier in the case study of Rwanda buttressed that.

This sufficiently explains the reason why the case study discussed in this article, the Rwandan genocide, is a clear-cut way of explaining the dilemma that exists within humanitarian organizations and the international community between protecting populations and the question of still being neutral if military intervention is taken.

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<sup>46</sup> Global Centre for the Responsibility to Protect. The Responsibility to Protect: A Background Briefing. P. 2

## **Conclusion**

The dilemma humanitarian organizations faces and how their neutrality can be compromised when having the need to adopt military intervention during humanitarian emergencies, has been critically examined in the foregoing. It was also seen that the human rights framework and the international humanitarian laws were violated seriously in the Rwandan case.

Effective measures should be put in place by the international community to heighten response to complex humanitarian emergencies in order to avert a repeat of the Rwandan case. The effective implementation of the “Responsibility to Protect” framework can be a good place to start the reformation.

In order to minimize neutrality compromise on the part of humanitarian organizations, assessment of local needs must be taken into consideration before kick starting humanitarian activities. Even though, this is hard to realize in the face of emergencies. There should also be corporate training of the military in humanitarian operations in order to formulate and implement innovative strategies which will enhance protection of lives and borders without compromising neutrality of humanitarian organizations.