

# ***The massacre of refugees in Congo: a case of UN peacekeeping failure and international law***

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## ABSTRACT

The massacre of refugees during the 1996–7 war in Congo illustrates the gap between existing legal standards and their application, as the principle of sovereignty rationalises states' behaviour against helpless people. This paper assesses available information on the scale of the massacre, concluding that about 232,000 refugees were killed. It argues that firmness in demanding justice and protecting human rights does not require ignoring the objectives of stability and prosperity for any country, but rather that it is the best way of promoting those goals and strengthening state sovereignty within the international community. To implement international law related to refugees will require making states and non-state players responsible for their actions to the international community, since any outflow of refugees creates negative externalities or costs that are unequally borne by this community.

## INTRODUCTION

Africa is now a continent of refugees. In the words of Bakwesegha (1994: 77–8), 'African refugees are increasingly becoming a nationality.' These refugees are the product of man-made disasters and the result of leaders without a 'human face' (Cornia *et al.* 1987), who engage in political oppression, economic deprivation and wars. African refugees leave their homes because they hope that life outside their own country will be more tolerable and humane than what they leave behind. For 1.1 to 1.25 million Rwandan-Hutu refugees in Congo, this hope was, however, shattered when more than 200,000 of them were reported to have been killed during the civil war that toppled President Mobutu Sese Seko (Bradol & Guibert 1997; Garretón 1997; UNHCR 1998; Wilkinson 1997).

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Was the massacre of Hutu refugees a deliberate attempt to exterminate them, or was it an isolated act perpetrated by zealous commanders and unruly troops during the civil war? Are there rules restraining combatants from activities that violate principles of international law protecting refugees? Is the massacre of Hutu refugees a case of genocide? Are there solutions to prevent such occurrences in the future?

The purpose of this article is to answer these questions in the light of evidence and international law by arguing that humans are entitled to certain universal rights.<sup>1</sup> The underlying hypothesis is that the refugee issue is a 'trans-sovereign' (beyond sovereignty) problem and should be viewed as a case of negative externalities in the international setting in order to narrow the gap between existing legal standards and their application. The international community must establish specific guidelines to make international humanitarian law applicable and enforceable beyond states, because both states and non-state actors continue to violate principles set down in multilateral treaties, and their enforcement against violations of these treaties remains sporadic and weak.

The first section illustrates this contention by highlighting the historical context in which the massacre of refugees occurred. Second is a discussion of evidence and cover-up of the massacre. The third section analyses the role of international peacekeeping and the legal framework related to this massacre. The fourth section discusses the feasibility of some legal instruments that should establish a minimum standard to serve as a yardstick for the protection of refugees. Concluding remarks follow.

#### HISTORICAL CONTEXT OF THE MASSACRE OF REFUGEES IN CONGO

The massacre of refugees which occurred in Congo between October 1996 and September 1997 had its roots in the history of Rwanda. This history has been exhaustively assessed in the light of the 1994 Rwandan genocide (Braeckman 1994; Hintjens 1999; Prunier 1995), and need not be repeated here. This account therefore starts from the 1990 invasion of the Rwandan Patriotic Front (RPF), a Tutsi-dominated political and military group operating from Uganda.<sup>2</sup> The Rwandan army backed by Mobutu's elite troops with French support initially stopped the RPF (Callamard 1999; Gachuruzi 1999; Prunier 1995). Despite this victory, the indirect result of the invasion was a

militarisation of Rwanda and growing corruption among the political elite (Hintjens 1999). The military burden expanded from 1.6 per cent of gross national product (GNP) in 1989 to 8.4 per cent of GNP in 1994 (USACDA 1994: 91). At the same time, arms imports increased from \$10 million in 1989 to almost \$80 million in 1994 (USACDA 1994: 141). Not only did this militarisation increase the number of Rwandan troops from 7,000 to 30,000, it also engendered a rapid paramilitarisation of Rwandan society through the formation of *interahamwe* and *impuzamugambi* militias.<sup>3</sup> Increased corruption also occurred, including drug dealing and money laundering (Reyntjens 1995: 30–1).

As the RPF attacks intensified, so did the killing of the Tutsi in Rwanda by governmental forces. The apex of the killing occurred between April and June 1994, just after the plane carrying Habyarimana from peace negotiations in Arusha (Tanzania) was downed in early April 1994.<sup>4</sup> The two-month massacre, justifiably characterised as genocide, is estimated to have taken the lives of between 200,000 and 1 million Tutsi and moderate Hutu.<sup>5</sup> On 21 May 1994, the RPF took control of Kigali international airport, while the genocide was taking place. Two months later, it apparently controlled the whole country and named a Hutu, Pasteur Bizimungu, president of Rwanda. The result was the end of genocide and the outflow of 1.72 to 2.1 million Hutu refugees to Burundi, Congo, Tanzania and Uganda. Of this outflow, Congo hosted 1.1 to 1.25 million, and among these were some 20,000 to 25,000 soldiers (ex-Forces Armées Rwandaises/ex-FAR) and 30,000 to 40,000 Hutu militiamen (*interahamwe* and *impuzamugambi*) who had been responsible for the genocide in Rwanda.<sup>6</sup> The ex-FAR and Hutu militia represented less than 6 per cent of the Hutu refugees, but their presence in refugee camps would affect the political situation in Congo in two ways.

First was the security of the new Rwandan government, which was dominated by the Tutsi. Soon after crossing the borders, the ex-FAR began launching armed attacks into Rwanda from bases in refugee camps, with the aim of making Rwanda ungovernable. Second was their mere presence in North and South Kivu provinces of Congo, which tipped the demographic balance in favour of Congolese of Rwandan origin, known as Banyarwanda and Banyamulenge, who had lived there for many generations. These two issues are so interconnected that a brief political discussion of ethnic relations in the two Kivu provinces is warranted to understand the massacre of refugees in Congo.

The Banyamulenge<sup>7</sup> are Congolese of Tutsi origin who migrated to

South Kivu several centuries ago. They were separated from Rwanda in 1910 when boundaries in the Great Lakes region were redrawn by the colonial powers. Since then, they have remained quasi-homogeneous, preferring intra-group to inter-ethnic marriages. On the other hand, the term Banyarwanda includes natives of North Kivu (Banyabwisha), Rwandan immigrants during the colonial period and some 50,000 Tutsi refugees (Willame 1997). Unlike Banyamulenge, Banyarwanda constitute a mix of Hutu and Tutsi who largely intermarried and expressed solidarity on land rights against other ethnic groups in North Kivu.

The issue of land tenure in the highly populated region of North Kivu has been most acute in Masisi, where local ethnic groups have been outnumbered by the Banyarwandan immigrants. During the first Congo republic (1960–65), the Banyarwanda situation in North Kivu was generally stable up to 1962, when the electoral game engendered centrifugal forces regarding the allocation of legislative seats in the provincial assembly (Willame 1997). Despite some clashes between the Banyarwanda and local groups after that incident, the situation never escalated to a major conflict, except in 1964–65 after the Banyarwanda rebelled following provincial and legislative elections in Masisi that suspiciously gave the majority of seats to the Hunde group (Mathieu & Tsongo 1998). Since 1965, the Banyarwanda have been trying to put in place their own structure of power by disregarding local traditional authorities.

Even though land rights and traditional authority are major causes of ethnic conflict in Kivu, the economic success of the Banyarwanda frustrated local groups and created a sense of loss that led to hatred and the hunt for scapegoats. In the early 1970s, the Banyarwanda gained some political visibility in the office of President Mobutu following the appointment of Bisengimana Rwema to the position of chief of staff. The result was the law of 5 January 1972 that conferred Congolese (Zairean) citizenship on Banyarwanda, especially the natives of Rwanda and Burundi. Their political visibility heightened a sense of nationalism and a *laager* mentality, which made the locals more xenophobic about them. Since then, their influence in the political life of North Kivu has been resented by other ethnic groups for whom this influence represented domination by foreigners. More specifically, the nationalisation of small and medium-sized firms that occurred in November 1973 helped Banyarwanda to acquire vast areas of land in North Kivu, which they used as pasture in a region in which agriculture provides livelihood for more than 70 per cent of the people.

Local Hunde-Nyanga-Tembo groups accused the Banyarwanda of creating a secret hierarchical structure to advance their political and economic interests at the expense of local peoples. They also claimed that they were marginalised by Tutsi immigrants throughout the Mobutu period and that their land ownership rights in the hills were jeopardised (Gnamo 1999).

President Mobutu used a 'divide and rule' policy to play the ethnic card in the Kivu area, siding with one group at the expense of the other, according to circumstances and opportunity. From 1970 until the early 1980s, Mobutu sided with the Banyarwanda against local groups that contested his authority. After the death of Bisengimana, Kivu politicians lobbied in parliament to pass the law of 29 June 1981, which explicitly cancelled the citizenship rights of the Banyarwanda in Kivu, except for the native Banyabwisha. The law also prevented Congolese of Rwandan extraction from holding any public office. After the 1981 law, Mobutu encouraged anti-Banyarwanda sentiment among local ethnic groups.

Mobutu's attitude was dictated by the political advantage he could reap from the conflict, and he deliberately avoided taking a responsible stance. The democratisation process, which started in 1990, ignited an already tense situation, as local groups, now a minority in North Kivu, feared that the democratic game would isolate them from power and state spoils to the benefit of the Banyarwanda. In early 1993, several clashes between the different groups took the lives of between 7,000 and 14,000 people (Emizet 1997). By early 1994, local chiefs were able to stop the violence and bring some semblance of peace to the area.

The influx of refugees and the presence of the ex-FAR in refugee camps altered inter-ethnic relations in Kivu. In North Kivu (Goma), this broke an old alliance within the Banyarwanda, who, until July 1994, had fought together against local Hunde and Nyanga groups even when the Hutu and the Tutsi were involved in ethnic conflict in Rwanda. Second, the arrival of Hutu refugees, including ex-FAR and Hutu militiamen, also fuelled ethnic hatred towards the Banyamulenge in South Kivu over the land and nationality issues. Tensions flared and local politicians used the Hutu refugees to exploit rivalry over nationality rights in the two provinces. These Hutu newcomers had resources to accomplish their goal of creating a Hutuland in eastern Congo, given the blessing they received from Mobutu.<sup>8</sup>

In order to set up this Hutuland, the ex-FAR and Hutu militiamen started launching attacks on the Tutsi Congolese with the help of local ethnic groups, who used the opportunity to settle their old scores with

the Banyarwanda and the Banyamulenge. To make matters worse, the Transitional Parliament adopted the 28 April 1995 Resolution that stripped the two ethnic groups of their Congolese nationality. A few weeks later, the ex-FAR, Hutu militiamen and local groups started attacking the Banyarwanda in North Kivu. Then, the ex-FAR turned against the local population and drove hundreds of thousands of Banyarwanda Tutsi and local people out of their land in order to set up a 'Hutuland' from which to launch attacks on Rwanda. By December 1995, several hundreds of Tutsi and local people had been killed as they fought to protect their holdings against the ex-FAR and Hutu militiamen (Emizet 1997).

During the same year, the ex-FAR and Hutu militiamen also attacked the Banyamulenge, who put up military resistance. Some of them fled to Rwanda where they joined the military wing of the RPF, the Rwandan Patriotic Army (RPA). On 6 October 1996, the deputy governor of South Kivu asked the remaining Banyamulenge to leave, in accordance with the 1995 parliamentary resolution. He gave them six days to vacate the Mulenge area and go back to Rwanda or be attacked and killed. The Banyamulenge refused to leave and turned to the Rwandan government for help. This call for help suited the Rwandan government, which needed to deal with its own internal conflicts,<sup>9</sup> and repeated incursions of the ex-FAR into northwestern Rwanda. The only way to solve this dual security problem was for the RPF to attack the refugee camps in Kivu. Its strategy also included a move to prevent the West from intervening in the Great Lakes region with humanitarian assistance. The RPF feared that any international intervention would give the ex-FAR enough time to reorganise and launch a massive attack into Rwanda.

In September 1996, the RPA and armed elements of Banyamulenge attacked Mobutu's army and the ex-FAR in the South Kivu area. On 18 October, the fight intensified around Uvira refugee camps, and one week later, several anti-Mobutu groups joined the Banyamulenge-led rebellion in order to oust Mobutu.<sup>10</sup> The RPA and its rebel groups captured Uvira and Bukavu on 18 and 30 October, creating an exodus of refugees northward. In mid-November, the RPA attacked the refugee camps around Goma, which hosted about 850,000 (800,000–900,000) refugees, from all sides, leaving a small eastern corridor towards Rwanda for refugees to escape. The result was the return of 500,000 to 700,000 refugees to Rwanda between 15 and 19 November. This was the first massive repatriation of the Hutu refugees, added to small seepages of several thousand Hutu back to Rwanda before November 1996.

A few days later, the Rwandan government declared that most refugees were back in Rwanda, and that there was therefore no need for an international humanitarian intervention, which had been approved the same day by the UN Security Council (UNSC). This declaration was welcomed by the SC, which annulled its humanitarian intervention in the Great Lakes region. However, some 500,000 to 600,000 Hutu refugees remained in Congo after the RPA attacked the refugee camps in South and North Kivu provinces. (The use of ranges and rounded numbers in estimating the Hutu refugees in Congo is due to the uncertainty of their flows given wide differences in data sources.)

Having gained partial control of its borders and repatriated hundreds of thousands of refugees, the Rwandan government decided to give the Banyamulenge war a national character in order to topple Mobutu. Because the Banyamulenge's visibility was still a hindrance for a mass movement in the Kivu area, the Rwandan government agreed to let Laurent Kabila from northern Katanga be the spokesman of the rebel movement, which became the Alliance of the Democratic Forces for the Liberation of Congo (ADFL).<sup>11</sup>

Seven months after attacking the refugee camps, the ADFL and its foreign allies entered the capital city of Kinshasa on 17 May 1997.<sup>12</sup> Soon after Kabila became the third president of Congo, human rights groups, foreign news agencies and the UN accused his troops of the massacre of more than 200,000 refugees during the civil war that had brought him to power. They depicted a horrific picture of atrocities and killings that stretched from Goma and Bukavu in eastern Congo, where the civil war erupted, to Mbandaka, located 1,220 km to the west on the other side of the country. According to these sources, the vast majority of refugees who fled from the east to the west of Congo were slaughtered by the RPA/ADFL troops. The exact number of these refugees, however, remains controversial, and therefore, the following section attempts to shed some light on the massacre of refugees from secondary sources.

THE MASSACRE OF REFUGEES: FROM THE UN INQUIRY TO  
COVER-UP

*The UN report*

On 6 March 1997, the UN High Commissioner for Human Rights asked the special rapporteur for Congo, Roberto Garretón, to investigate allegations of the massacre of refugees during the Congo civil war. After a short field mission, he issued a report that identified

more than forty possible massacre sites. He referred to them as acts of genocide and called for further investigations (UNESCO 1997). Then, in April, the UNSC established an investigating team to find the whereabouts of hundreds of thousands of refugees whom the UNHCR declared missing in Congo. The team's mission consisted of collecting evidence through interviews and visiting places where human rights violations occurred.

Before the team could even begin its work, the Kabila government requested that the team leader, Roberto Garretón, be replaced. Congolese officials accused Garretón of being against Kabila, given his early report that listed forty suspected massacre sites. Instead of refusing to compromise, the UN agreed to remove Garretón. After the UN had replaced him in August 1997 with the Togolese judge Atsu Kofi-Amega, the Kabila government requested that: (1) investigators be accompanied in the field by Congolese officials, at a cost of \$1.7 million per day; (2) the investigation would only cover eastern borderlands where the rebellion began; (3) the period covered would go back to 1993 to include the 1994 genocide inside Rwanda; and (4) no investigation would be made into crimes committed after Kabila took power on 17 May 1997 (Crossette 1998). The Kabila government also protested that the leader of the delegation, Atsu Kofi-Amega, be replaced by someone from a neutral country, because Togo had friendly relations with the Mobutu regime. In addition, it requested that the UN investigation be conducted in conjunction with a parallel one by the Organisation of African Unity (OAU).

These demands indicated a total lack of cooperation on the part of the Kabila government. First, the cost of \$1.7 million per day hardly reflected the daily cost of any working ministry in Congo. The second issue showed a cover-up because the Hutu refugees spread westward in the last days of the civil war and thousands of them were killed in Mbandaka, located 1,220 km away from the eastern border of Congo. Third, to extend the investigation prior to 1994 indicated the role played by the Rwandan government that wanted to link the massacre of refugees to the 1994 genocide. By giving in to Kabila's demands, the UN weakened its ability to carry out the investigation.

The Kabila government further blocked the investigation by organising street protests against the UN team in Kinshasa, and accused the team of maintaining close ties with the internal opposition. The bottom line was that the government was unwilling to cooperate by letting the investigation team start its inquiry in Mbandaka, where accounts by human rights groups, foreign news agencies and local



witnesses had reliably established the massacre of at least 1,000 refugees on 13 May 1997, just four days before Kabila's forces captured the capital city of Kinshasa (Garretón 1999). As pointed out by French (1998: A21):

an investigation in Mbandaka was particularly threatening. Killings in the east, near Rwanda, could perhaps be written off as random acts of overzealous or vengeful Tutsi soldiers. But for Hutu refugees to be tracked down and killed at the opposite end of this huge country, when Kabila's victory in the war was already assured, would strongly suggest deliberate extermination.

Therefore, to start the investigation in Mbandaka was not in the best interests of the Congolese and Rwandan governments.

In October 1997, the UN secretary-general, Kofi Annan, was on the verge of removing investigators, when the US envoy, Bill Richardson, announced a breakthrough in direct talks with President Kabila. But the Kabila government took two months before it authorised the investigation team to travel to Mbandaka. Despite efforts to block the investigation, the team was able to start its mission in February 1998 and work peacefully for 45 days, collecting data from witnesses and conducting forensic investigations. The team moved to Wendji, a small village located 24 km west of Mbandaka, which was the site of a large massacre of refugees. Before the UN team could start its work, it was stopped by an angry mob of hundreds of people armed with spears and machetes, forcing it to retreat.

On 17 April 1998, the secretary-general ended the investigation, because the Kabila government refused to cooperate. Nonetheless, the UN team was able to submit a lengthy report to the secretary-general with several recommendations. The report stated that from mid-October to mid-November 1996, the ADFL and elements of the RPA attacked camps in North and South Kivu provinces that housed refugees (see Garretón 1997; UNESCO 1997). Specifically, the report listed more than forty massacre sites and also established: (1) serious violations of human rights within refugee camps in eastern Congo; (2) the extent of foreign troops' participation in serious violations of human rights and humanitarian law during the armed conflict; (3) the intent underlying the massacre of Rwandan and Congolese Hutu beginning in October 1996; and (4) the removal of bodies from a mass grave site in Mbandaka, corroborating testimony that an effort was made to clean up such sites prior to the arrival of the UN team. The report concludes that there was enough evidence of refugee massacres to press forward with an investigation based on the accounts from

refugees, villagers, local UN staff members and soldiers. Reports from human rights organisations gave further testimony that the perpetrators of refugee massacres were Tutsi troops from Rwanda (Campbell 1997).

In an interview with the *Washington Post*, the Rwandan vice-president, Paul Kagame, concurred with these conclusions as he indicated that his government planned and led the military campaign that dispersed refugee camps in eastern Congo (Pomfret 1997). His major objective was to dismantle refugee camps because they hosted former Hutu soldiers who were using them as bases from which they were launching raids into Rwanda. A secondary objective was to topple Mobutu. He further declared that he had informed the US State Department in August 1996 that Rwanda was ready to dismantle these camps if the UN failed to remove them from the border area, and, according to him, the US took the decision to let it happen. Following the attack on the camps in late October 1996, and the return of about 600,000 (500,000–700,000) refugees to Rwanda, the US ambassador to Rwanda, Robert Gribben, agreed with Kagame's estimates that only tens of thousands of refugees remained behind.<sup>13</sup> This was far below the 500,000–600,000 estimated by the UNHCR and humanitarian agencies operating on the ground. The truth came out on 4 December 1996, when US officials testified before Congress and admitted that their assessment of refugees had been wrong, and that 400,000–500,000 refugees were left in Congo in late 1996, including some former Hutu soldiers and militiamen (US Congress 1997).

Circumstantial evidence suggested that a large number of Hutu refugees remained in Congo after October–November 1996, when eastern refugee camps were attacked by the Rwandan and ADFL soldiers. Kagame's declaration also situated elements of the Rwandan army on the terrain where crimes against humanity were committed (Reyntjens 1998: 11). One fact was clear: President Kabila could not allow any UN investigation to proceed because he relied for his own protection and leadership on elite Tutsi troops from Rwanda. However, in late January 1999, Kabila recalled Roberto Garretón to visit Congo. This change of heart came after Kabila was confronted with a rebellion by the Banyamulenge who felt politically threatened as the result of Kabila's move to end his military cooperation with Rwanda. The UN rapporteur stayed in Congo from 16 to 23 February, and issued another report summarising the situation in Congo since the democratisation process started in the early 1990s (Garretón 1999).

Given the controversy that surrounds the massacre of refugees, the next step is to assess refugee data chronologically from reports given by

the UNHCR, scholars (Bradol & Guibert 1997; Pourtier 1997; Prunier 1995), foreign news agencies, human rights groups, and Médecins Sans Frontières (Doctors Without Borders). The chronology also relies on a content analysis of 687 news clips around the globe downloaded from *www.lexis.nexis.com/universe* (1999). These clips are intended simply to provide a conspectus of global press coverage, from which to derive a broad range of magnitude figures and areas of consensus consistent with scholarly works and official reports. The content analysis uses a forward-looking strategy that follows the Hutu refugees from July/August 1994 to December 1997 by relying on ranges of whole numbers or their average to estimate the number of refugees unaccounted for during the Congo civil war.<sup>14</sup> A second method, backward-looking, assesses the accuracy of the first method in estimating the extent of the massacre of refugees by evaluating the number of Hutu refugees who were living in central and southern Africa as of December 1997, as well as refugees who were repatriated in the 1996–97 period. Accordingly, the two methods should yield results that are not too far apart.

#### *Evidence and cover-up*

The number of Hutu who fled in 1994 remains debatable. The US Committee for Refugees (1995) estimated a total of 1.72 million refugees, whereas the UNHCR (1995) indicated that 2.1 million settled in Rwanda's neighbouring countries in 1994. Congo itself hosted almost 60 per cent of refugees or 1.1–1.2 million, who were relocated in Goma (850,000), Bukavu (200,000–300,000) and Uvira (62,000). At the beginning of the exodus, the UNHCR had some hope that most refugees would return home after several thousands were repatriated from Rwanda's neighbours. But, by September 1994, it became clear that former Hutu politicians, soldiers and militiamen would not let refugees return to Rwanda. These armed groups started exhorting refugees to stay in their camps. According to aid agencies, former Hutu soldiers and militiamen executed whoever refused to follow their orders to remain in the camps. Some 4,000 refugees probably died in this fashion (JEEAR 1996).

The main reason behind their strategy was that they also enjoyed a constant flow of humanitarian resources from the UN and non-governmental organisations (NGOs), so that any massive repatriation of refugees could have deprived them of lucrative humanitarian aid. In addition, the return of refugees to Rwanda would have left them

vulnerable to arrest and would thwart their plan of creating a Hutuland in Kivu and restoring Hutu supremacy in Rwanda. Therefore, they were reluctant to see the mass of Hutu refugees returning home. Former Hutu leaders in refugee camps kept almost complete control over the rest of the refugees. As Prunier (1995: 314) points out:

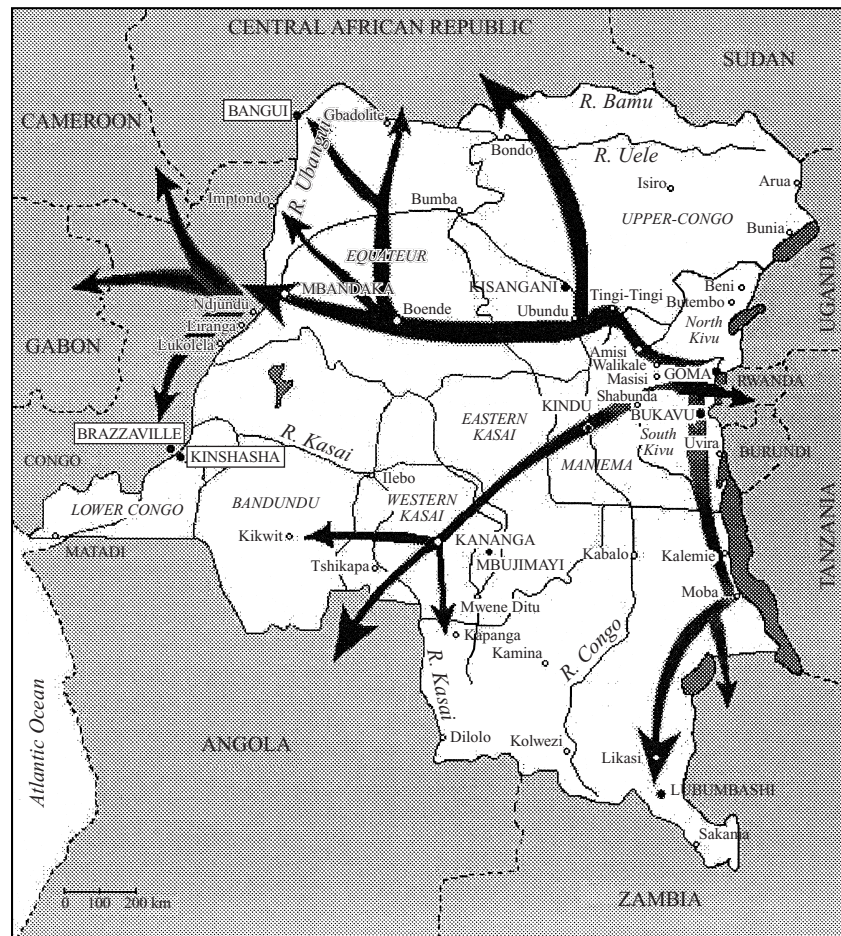
They monopolised the distribution of humanitarian aid ... In the distributions, they gave priority to themselves, and then to the ex-FAR or *Interahamwe*; after that they sold the extra rations to obtain cash for the financing of further political or military operations.

After 1994, the Hutu refugees became human shields and hostages of the ex-FAR when these soldiers started launching attacks on Rwanda from the refugee camps. Repeated incursions of the ex-FAR into Rwanda from Congo resulted in the RPA attacks on the camps in October–November 1996. These early attacks cost the lives of 6,800–8,000 refugees, and forced the repatriation of 500,000–700,000 refugees back to Rwanda.

A survey of the different data sources shows that, on average, the number of refugees returning to Rwanda from 15 to 19 November 1996 was roughly 600,000. Three sources out of 687 news clips report the lower bound of 500,000 and seven give the upper bound of 700,000. Most sources oscillate between 550,000 and 650,000, giving an average of 600,000. Subtracting 600,000 from 1.1 or 1.2 million gives a range of 500,000–600,000 or about 550,000 refugees who remained in Congo, a number that is close to the 400,000–500,000 refugees given by US officials to the US Congress in late 1996 (US Congress 1997).

In early December 1996, the UNHCR and aid agencies observed refugees moving from four different directions after the RPA/ADFL coalition attacked refugee camps (see Map 1). From Goma (North Kivu), they fled northwest towards Masisi and Walikale. By the end of December 1996, some 215,000 (180,000–250,000) refugees were in Walikale and 60,000 (55,000–65,000) in Masisi. Some survivors of this group of refugees split once in Ubundu: one column moved northward to the Central African Republic via Bondo, and the other reached Cameroon, Gabon, Congo-Brazzaville, and Central African Republic via Boende and Mbandaka.

Refugees who were housed around the town of Bukavu (South Kivu) moved in three different directions. The largest group of 115,000 (100,000–130,000) refugees remained in South Kivu by hiding in the mountains; many of its survivors later crossed the border via Cyangungu (Pourtier 1997: 50). The second group of 60,000



MAP 1. Dispersal of Hutu refugees from eastern Congo, 1996/97  
 Source: Data for map from UNHCR (1997: 16–17) and Pourtier (1997: 31)

(55,000–65,000) refugees went from Bukavu to an area north of Lake Kivu. This group might have reached other refugee camps in North Kivu before the RPA/ADFL soldiers attacked these camps. The third group strode south and some of its survivors reached Angola via Shabunda, Kindu and Kananga. According to Map 1, two small groups split in Kananga and, moved toward Kikwit and Kapanga. In late 1996, the UNHCR relocated 52,500 (45,000–60,000) in Shabunda, which is hundreds of kilometres west of Bukavu. The last group, which was probably a group of fewer than 25,000 refugees, met with other

refugees in the Uvira area and headed south. Its survivors reached Zambia via Kalemie, Moba and Lubumbashi (see Map). Thus, of 550,000 refugees who were unaccounted for in December 1996, a total of 527,500 were located by late December 1996 in Walikale, Masisi, Shabunda, hidden in South Kivu mountains, and in the direction of Kalemie. The difference between these two numbers gives **22,500** (550,000 less 527,500) refugees missing as of mid-December 1996 after the first attack on their camps by the RPA/ADFL soldiers in October 1996. This number and others that follow below should be treated with caution, because they are only estimates and fall within the potential range of uncertainty for gross estimates of over half a million.

The second series of attacks on refugees came in late December in Walikale and Masisi, sending refugees towards Amisi and Tingi-Tingi, located several hundred kilometres northwest of Walikale (see Map). Of 275,000 refugees in Walikale and Masisi, only 140,000 reached Amisi and Tingi-Tingi. By mid-January 1997, the two camps hosted 80,000 (70,000–90,000) and 60,000 (55,000–65,000) refugees respectively. Subtracting 140,000 from 275,000 gives 135,000 refugees missing or killed. The sum of 135,000 and 22,500 (already missing) is **157,500** refugees unaccounted for as of mid-January 1997.

The third series of attacks occurred on 5 February 1997, when the RPA/ADFL forces stormed Shabunda. Witnesses indicated that soldiers fired on refugees approaching a bridge on the Ulindi (Lindi) River. They also indicated that rebel forces separated out the local residents, then killed the refugees. In other cases, soldiers pushed refugees over the bridge crashing onto the river rocks several yards below (Cahn 1997). Two weeks later, the UNHCR found in Kalima some 28,000 (26,000–30,000) refugees who had fled from Shabunda when rebel forces attacked it. Of 52,500 refugees housed in Shabunda in January 1997, 24,500 (52,500 less 28,000) were unaccounted for in February. Adding this number to 157,500 (in bold in the previous paragraph) gives **182,000** refugees missing in early February 1997.

From 9 February onward, several attacks occurred and the RPA/ADFL soldiers captured Amisi and Tingi-Tingi. Five days later, the two camps were empty, but in late February, news agencies and aid workers reported some 85,000 refugees including 2,000 orphans in the vicinity of Ubundu (see Map 1). In other words, from 140,000 refugees located in Amisi/Tingi-Tingi camps in mid-January 1997, 55,000 never made it to Ubundu, located less than 200 km from Tingi-Tingi. Adding this number to the 182,000 already missing gives **237,000** refugees unaccounted for in early March 1997.

On 15 March, Kabila's forces captured Kisangani. By this time, many Hutu militiamen and ex-soldiers had abandoned the refugee columns and were trekking off to the west, leaving behind some 85,000 refugees (Bradol & Guibert 1997: 145). The UNHCR settled 17,000 (16,000–18,000) at Biaro and 68,000 (65,000–71,000) at Kisesa or Kasese. In April, the two camps were attacked by fresh troops probably from Goma or Rwanda. Reports from Human Rights Watch confirmed that, on 17 April, some 400 heavily armed soldiers landed at Kisangani airport and then moved south across the river in the direction of the two camps. From 21 to 26 April, they stormed the Kisesa and Biaro refugee camps. For the next four days, troops sealed off the areas and reports from local citizens indicated that soldiers recruited them for burial detail. Accounts from human rights groups and aid agencies showed that 200–700 refugees drowned trying to cross the Congo River around Ubundu. In early May 1997, aid workers moved to Kisesa and Biaro, but found nobody in the former refugee camps. Most of the refugees had already left the camps and were moving westward when aid workers spotted them. After lengthy delays, the ADFL gave the UNHCR sixty days to ferry refugees on to planes at Kisangani airport. The UN began the airlift of refugees on 27 April and by late May 1997, it had repatriated some 45,000 Hutu refugees home from Kisangani.

Of 85,000 refugees housed in Biaro and Kisesa, 45,000 went back to Rwanda and 40,000 were still missing. This number and 237,000 (boldface in the previous paragraph) add up to 277,000 refugees unaccounted for as of late April 1997. But on 12 May, some 30,000 refugees emerged in Mbandaka and 12,000 in Wendji in western Congo. Subtracting 42,000 from 277,000 gives some **235,000** refugees missing in late May. Another airlift took place in Mbandaka and tens of thousands of refugees flew back to Rwanda.

Several other killings were sporadic and isolated. In December 1996, some news agencies reported a massacre of 300 refugees in Mboko. Another massacre occurred in Yalikala (50 miles southwest of Kisangani), where witnesses said Tutsi soldiers shot sixty-eight refugees dead on April 28. In Musenge, nearer the Rwanda border, at least 250 bodies in the forest behind what local residents called 'the slaughterhouse' provided evidence that rebels massacred the Hutu refugees during their westward drive. Robert Garretón also reported that several mass murders of refugees took place in North and South Kivu between November 1996 and February 1997 (UN ESC 1997: 6–10). In Moba, several hundreds refugees were killed while waving white flags. Human Rights Watch also reports more than 1,500 to have been

murdered in 'three villages' (Campbell 1997). The killing that most shocked the international community occurred on 13 May 1997 in Mbandaka and Wendji, just four days before the ADFL entered the capital city of Kinshasa and Kabila's victory was already certain. Rebel forces killed some 500–2,500 (1,500) Hutu refugees and threw their bodies into the Congo River. Humanitarian organisations and peasants buried more than 140 refugees in communal graves. A few days before Kabila's inauguration, hundreds of refugees were also massacred in Uvira. In summary, these sporadic killings add up to a conservative range of 3,000–7,000 or 5,000 deaths, which makes an overall total of **240,000** refugees missing.

This brief chronology highlights one critical fact: the number of refugees reaching each new refugee camp was smaller than at the preceding camp. This is an indication of systematic and deliberate killing. But Médecins Sans Frontières also reported that twenty to thirty refugees died every day in refugee camps from severe malnutrition, dehydration, exhaustion, malaria, yellow fever and other diseases (Bradol & Guibert 1997: 143). Given this conservative figure and 330 days from mid-November 1996 to mid-September 1997, some 6,600–9,900 refugees are likely to have died from disease and other factors mentioned above. Subtracting this range from 240,000 gives another range of 230,100–233,400, or an average round number of **232,000** refugees who were probably killed during the Congo civil war.

The second method of estimation is backward looking, and relies on the number of repatriated refugees from 1997–98 sources. As of December 1997, out of 555,000 Hutu refugees who were unaccounted for as of November 1996, 37,300 were living in Angola, Cameroon, Central African Republic, Congo-Brazzaville, Gabon and Zambia (US Committee for Refugees 1998). Congo-Kinshasa hosted some 20,000, but only 12,000 continued to receive humanitarian assistance (US Committee for Refugees 1998). Between January to December 1997, an estimated 180,000 (160,000–200,000) refugees were repatriated by road, and some 60,000 were airlifted from Kisangani and Mbandaka (UNHCR 1997). In late 1996, some 24,000 (23,000–25,000) refugees hidden in South Kivu mountains voluntarily returned to Rwanda. All these numbers add up to 321,300 refugees who were either living in neighbouring countries or repatriated out of the 555,000 missing in late 1996. The difference between these two numbers is 233,700 or 234,000 refugees who remain unaccounted for. Subtracting this from the previous estimate of 232,000 shows a difference of 2,000, which is less than 0.9 per cent of both estimates. Because the two methods give two



results that are almost the same, it is now possible to say with confidence that some **233,000** (232,000–234,000) refugees were probably killed during the Congo civil war. This number is not far from the minimum of 210,000 refugees (killed) reported by Médecins Sans Frontières (Bradol & Guibert, 1997: 148).

*Is the massacre of refugees a genocide?*

Most explanations of ethnic conflict in Rwanda emphasise colonial and neo-colonial manipulation of ethnic groups, demographic pressures on land and concomitant social cleavages, extreme obedience of masses, politics of exclusion from state spoils, and regime survival under conditions of socioeconomic crises and growing political opposition (Chrétien 1985; Hintjens 1999; Prunier 1995; Reyntjens 1994; Vidal 1985). Could all these factors also explain the massacre of refugees in Congo?

In their journey across Congo, the Hutu refugees had almost no knowledge of where they were heading, except away from their attackers, whom they recognised as being Tutsi, their countrymen (Campbell 1997). Rwandan soldiers used different and systematic tactics to attract refugees and kill them. Kleinschmidt (1997: 7), a UNHCR emergency team leader, remembers the massacre of refugees as ‘a living hell, a type of *Indiana Jones* movie gone mad, a surreal nightmare of ongoing slaughter and futility which left everyone scarred for life’. According to Roberto Garretón (1997), the killing of refugees was a planned endeavour since the starting of the RPA attacks on the refugee camps in eastern Congo. He accuses the RPF/ADFL in his report of:

The tactic of laying siege to camps before attacking them, irrespective of their importance as military targets; summoning the inhabitants of predominantly Hutu towns to meetings in schools or churches, so as to massacre them; issuing appeals over the official radio stations urging all those hiding in the forests to come out for medical care and food aid, so as to murder them; and hampering or opposing humanitarian operations in the camps.

Humanitarian organisations operating in Congo expressed their frustration at having been manipulated by the RPA/ADFL in what they described as ‘bait and kill’ operations (Campbell 1997). According to this view, aid agencies were required to be accompanied by an ADFL facilitator before locating and setting up stations for refugees dispersed in the forest. Once refugees had been tracked down

and assembled in small groups to facilitate the distribution of assistance, the RPF/ADFL forces would cut off access to aid agencies. This access would be allowed again several days later after refugees had disappeared and a large number had been massacred (Human Rights Watch 1999).

Other killings were more selective. Numerous refugees reported being overtaken throughout their trek by military whom they recognised as RPA (Campbell 1997). Human Rights Watch also reported an incident used by the RPA in Mbandaka that consisted of singling out refugees in the crowd (*ibid.*). Kabila's troops demanded that a resident shout in Lingala, the local language, to tell people in a crowd to quickly get down on the ground. Refugees in the crowd who did not understand Lingala remained standing and were subsequently singled out and fired upon by the RPA/ADFL forces. Local populations were even warned not to protect refugees because of the possibility of incurring their own death. They described a systematic purge of refugees by these troops that resulted in boys, young men, former military or militia, former members of government and intellectuals being selected for execution. Women and children were often encouraged to return to Rwanda but were occasionally allowed to flee further into the forest. Refugees returning from Congo to Rwanda during the first three months of the Congo civil war were largely women, children and the elderly, who confirmed that male refugees among them had been taken away by the RPA/ADFL. Boyer (1997), provides this grim and frightful account of the massacre of refugees:

They [*Tutsi soldiers*] separated the little boys from the girls ... And they started killing the boys. First they shot them, and then they cut them in half. So that ... if they came back to life they wouldn't be able to escape.

According to this account, the RPA was pursuing a policy of revenge to eliminate the Hutu refugees in a systematic fashion by killing as many as possible. The revenge was also fuelled by hatred and fear of reciprocal treatment. By cutting the boys in half, the Tutsi soldiers feared the same fate if they let them live. A powerless boy today may be a powerful one tomorrow. The absence of political accommodation between groups makes revenge and fear of revenge feed on each other. In this case, any past experience of violence sets a cycle of violence as this 'leaves a persistent residue in people's memories and attitudes' (Uvin 1998: 220), so that the perpetrators of the massacre of refugees feared revenge and engaged in some preventive killing in order to defend themselves. Another explanation is that the Tutsi contingent of

the ADFL was carrying out the killing of Hutu refugees out of a feeling of victimisation. As McKendrick and Hoffmann (1990: 471) point out, people who have been victims of violence or close witnesses of it during childhood, tend to repeat the same behavioural patterns throughout their lives.

The fact that some fresh troops landed in Kisangani for Ubundu suggested that orders to exterminate the Hutu refugees came from above. Obedience to the authorities made the perpetrators of the refugee massacres feel that they were part of state power. Just like the perpetrators of the 1994 genocide, the perpetrators of refugee massacres were following orders as combat troops. But these combat troops were denying the same order that should have rationalised their actions, until Vice-President Kagame acknowledged his role in the Congo civil war. Thus, the perpetrators of the massacre of refugees used methods reminiscent of the genocide that had been directed against them: 'Verbally attack the victims, deny – even in the face of the clearest evidence – that any physical violence is taking place or has taken place' (Prunier 1995: 241).

The massacre of refugees went on concomitantly with the clean-up of grave sites. According to UN investigations (Garretón 1997; 1999), Human Rights Watch (Campbell 1997), and Médecins Sans Frontières (Bradol & Guibert 1997), the perpetrators of the massacre of refugees made concerted efforts to conceal the evidence by cleansing massacre sites, burning corpses and killing or intimidating witnesses. International pressures on the Kabila government to cooperate with the UN investigation team contributed to intensified clean-up and intimidation efforts by the ADFL and its Rwandan ally, the RPF.

In the light of evidence, the killing of the Hutu refugees was a calculated and premeditated course of action, which started in eastern Congo and continued to the western part where refugees crossed the border. According to Article 2 of the 1948 Genocide Convention, such acts qualify as genocide. It involved the killing of the Hutu refugee group estimated at 4.5 per cent of the total Hutu population. The article refers to genocide as

any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group such as: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; and (e) forcing transferring children of the group to another group.

THE INTERNATIONAL COMMUNITY AND THE MASSACRE OF  
REFUGEES IN CONGO

*UN peacekeeping role and refugee issues*

On 4 August 1993, the different parties to the Rwandan conflict signed the Arusha Peace Agreement that called in the UN to play a major supporting role during a 22 month transitional period. The SC passed Resolution 872 in October 1993 creating UNAMIR whose goals included supervision of demobilisation, electoral processes, internal security, humanitarian relief, and mines clearance or awareness building. Three months later, the UNAMIR commander faxed a warning to the UN secretary-general that reliable sources indicated that a campaign was under way to register all Tutsi in order to eliminate them (Goose & Smith 1994). He proposed a UN intervention to recover arms and munitions, but his warning was completely ignored. On 6 April 1994, the Rwandan president died in a plane crash, and this death sparked ethnic conflict that resulted in the massacre of between 200,000 and 1 million Tutsi and moderate Hutu.

The failures of the UN in the Great Lakes region before 1994, especially at the timing of the Rwandan genocide, have been exhaustively documented and need not be repeated here. Nonetheless, it is important to recall that the Rwandan genocide occurred partly because some powerful UN members, such as the US, saw it as having little significance to their own interests. As Wheeler and Morris (1996: 161) rightly state, 'the principal force behind any reassessment of the non-intervention norm is not state leaders imbued with a post-Cold War ethic of humanitarian responsibility, but domestic public that pressures policy-makers into taking actions to relieve human suffering'.

The outflow of Hutu refugees followed when the RPF seized control of the government in July 1994. Among the refugees were the ex-FAR and Hutu militiamen who had committed the genocide earlier. The UNAMIR failed to disarm them before they crossed the Rwandan borders, because it received no power to do so. In December 1995, the UNSC further adjusted the UNAMIR mandate to focus primarily on facilitating the safe and voluntary return of refugees. Three months later, it ended the mandate, and the withdrawal of the mission was completed in April 1996, while 1.72 to 2.1 million Hutu refugees were still in Rwanda's neighbouring countries.

A UN peacekeeping mission involves recognition that a violent conflict or a threat to peace is occurring and must be stopped. It

requires the use of multilateral forces to monitor cease-fire lines and cease-fires, separate warring forces, promote law and order and offer humanitarian aid (Mingst & Karns 1995: 69). Thus, UNAMIR was dispatched to Rwanda to police a settlement already reached in the Arusha Accords, but it was not mandated by the UNSC to restore peace once this solution failed. The UNAMIR even faltered in carrying out humanitarian aid, although its peacekeeping mission included the right of access to populations in need, and the right of individuals to receive humanitarian assistance, in conflict situations.

Another failure of the UN occurred in early 1996, when the Rwandan government insisted that refugees be repatriated and their camps in Congo be dispersed. Its insistence grew as incursions of the ex-FAR into Rwanda from the refugee camps increased in number and scale. In the face of such clear warnings, the UN took no action to diffuse the situation. When the RPA attacked the refugee camps in late 1996, the UNSC once more addressed humanitarian issues in facilitating repatriation and the delivery of aid. It spent a month planning for a multinational military force to provide security for refugees and aid workers. But the UNSC, especially the US and the United Kingdom, dropped the plan and decided not to send combat troops, after the Rwandan government and the US ambassador to Rwanda declared that most refugees were already back home.

In brief, the UN failed to provide security in the Great Lakes region and failed to stop the massacre of refugees for almost ten months. Not only were hundreds of thousands of refugees denied humanitarian assistance, but some 233,000 were directly or indirectly killed in Congo. Having decided against humanitarian intervention, the UN could only deplore attacks against the Hutu refugees and obstruction of humanitarian assistance by different factions involved in the Congo civil war. There was little in the way of public protest in the West, and the silence that greeted the massacre of refugees was overwhelming. Many in the West were so enthralled with the demise of Mobutu and so enraptured with the image of Kabila, that they utterly failed to evaluate the events on the ground. Moreover, widespread sympathy was accorded to the RPF regime, as victims of the 1994 genocide. Therefore, few states took a stand to avoid rupture of relations with the RPF and the ADFL. Although the international community could have condemned the perpetrators of refugee massacres and called for their prosecution according to international treaties and other precepts of international law, it chose not to.

*International treaties and humanitarian law: refugees in war zones*

The first two international acts since World War II to protect refugees are the Convention Relating to the Status of Refugees of 28 July 1951 and the Protocol of 1967 (see Hamalengwa *et al.* 1988). The OAU also produced two documents dealing with refugee issues: the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and the 1981 African Charter on Human Rights and Peoples' Rights. Another document is the 1949 Geneva Conventions on the conduct of war. All the countries in the Great Lakes region are signatories to these documents. Therefore, agreements on the status of refugees are binding on them according to the doctrine of *pacta sunt servanda*, that treaties are to be carried out.

The first basic obligation of any state signatory of the 1951 Convention is the 'non-refoulement' provision. Article 31(1) states that

No contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. (Grahl-Madsen 1972: 9)

Accordingly, Rwanda's neighbours had to accommodate 1.72 to 2.1 million refugees, because refugees' fear for their safety if they returned home was founded on the ground that a Tutsi controlled army had taken power in Rwanda after thirty-three years of Hutu leadership. Nonetheless, the refoulement provision hardly prevents many host countries from forcing refugees back home. For example, the government of Congo (then Zaïre) forced more than 14,000 refugees to return to Rwanda in August 1995 following a decision by the UNSC (Resolution 1011) to suspend its arms embargo against Rwanda, a move opposed by Congo. The Congolese government justified its action by security considerations. Article 3:2 of the General Assembly Declaration on Territorial Asylum provides a clause, according to which compulsory return of refugees may be justified 'only for overriding reasons of national security or in order to safeguard the population, as in the case of mass influx of persons' (UNGA 1967). The Congo case indicates how political issues tend to overshadow humanitarian concerns. The SC responded wisely and concurred with the Congolese government by requesting it to stand by its humanitarian obligations to refugees.

Related to the non-refoulement provision is the right of refugees to return home. The presence of armed Hutu elements in refugee camps

complicated the repatriation of refugees. Throughout their flight across Congo, the ex-FAR and militiamen intimidated refugees by discouraging them from returning home, but allowed them to flee further into the dense Congolese forest. As refugees moved westward and into more remote areas, killings became more indiscriminate as women and children were included in the massacre. Not only were the Hutu refugees killed in large numbers, but they were also denied the right to return home as specified by international law.

The right to return home is part of international customary law, and stopping people from returning is a violation of the 1951 Convention and the 1967 Protocol. Particular provisions exist in international law that uphold the right to return home in situations of armed conflict (Frelick 1990). This right is essential because exile is a fundamental deprivation of homeland. The right to return has also been incorporated in the International Covenant on Civil and Political Rights, according to which 'no one shall be arbitrarily deprived of the right to enter his own country' (UNGA 1988). In addition, the right itself is linked to family reunification based on the principle of family unity. Therefore, any refugee who was forced to remain in Congo was denied a basic human right.

Another issue linked to international law is the disarming of combatants crossing national borders. Unfortunately, governments tend to ignore this precept of international law in order to accommodate former friendly governments. For example, the French *chargé d'affaires* in Congo, Hervé Ladsous, protested against the attempt by the RPF to cross into the 'safe humanitarian zone', and even indicated that armed persons would not be permitted access, no matter what their origin (Klinghoffer 1998: 84). But this message was not intended for the ex-FAR and Hutu militiamen who passed the zone with their weapons. The Mobutu government also let these troops cross the border and settle in refugee camps without being disarmed.

The presence of combatants in refugee camps raises a serious dilemma as to their eligibility for humanitarian assistance and protection. The 'exclusion clause' of the 1951 Refugee Convention can be applied if there is reason to believe that someone is responsible for war crimes or crimes against humanity. Because the ex-FAR and militiamen committed the genocide, they should have been denied international protection and humanitarian assistance. The international community had an obligation to separate them from *bona fide* refugees. However, the OAU Convention on Refugees recognises all people as *prima facie* refugees in any mass influx resulting from wars or

tragic events. Therefore, the perpetrators of the 1994 genocide had to receive protection and humanitarian assistance, just like all refugees in the camps.

Another area of international law concerns the behaviour of troops during hostilities or civil war in which insurgent groups occupy a portion of a territory and contest the legitimacy of its government. The Congo situation is illustrative. Contextually, there was no *de facto* state because the Mobutu state was collapsing and the ADFL was only in charge of a portion of the Congo territory. In addition, the Rwandan government had its soldiers in Congo, who, according to the evidence, carried out the massacre of refugees.

The nature and scale of killings and other violations of human rights committed against the Hutu refugees by warring parties in the Congo civil war differed significantly. Early incursions of the ex-FAR into Rwanda triggered the RPA attacks on the refugee camps in eastern Congo and the massacre of refugees. The Rwandan government rationalised the massacre on the ground that the refugee camps, which hosted 1.1 to 1.25 million Hutu, were close to Rwandan borders and served as sanctuaries to 60,000–65,000 former Hutu soldiers and militiamen, from which some of these armed men were launching raids into Rwanda. Therefore, the Rwandan government was only exercising its right of self-defence given the evidence that its territory was the victim of several armed attacks launched from the refugee camps. The Rwandan action is supported by some authorities who are reluctant to condemn armed attacks on the refugee camps when they occur, unless these camps are truly used for civilian and humanitarian purposes (see Mtango 1990: 101). Nonetheless, this rationalisation is misleading because the number of former Hutu soldiers and militiamen in refugee camps represented less than 6 per cent of all refugees.

Although the Rwandan government might have acted in terms of self-defence, the killing of refugees hundreds of kilometres away from the Congo–Rwanda borders is unjustifiable in such terms. The saddest part of this whole tragedy was that the massacre of refugees in their trek towards western Congo even occurred after the ex-Hutu soldiers had moved on and left the refugee camps behind them. Testimonies by refugees and eyewitnesses suggest that several violations committed by the RPA/ADFL soldiers consisted primarily of the widespread killing of children, women and civilian refugees who were too weak or sick to flee, and refugees who were returning to Rwanda (Campbell 1997). Human Rights Watch and Médecins Sans Frontières reported several incidents in which killings were carried out almost exclusively with



knives, machetes or bayonets to avoid scaring off other refugees ahead on the road and to leave fewer traces of killing (*ibid.*). All these killings seem premeditated and are condemnable by international law. As pointed out by Bothe *et al.* (1982), the prohibition of inhuman treatment by acts or threats of violence against civilians not involved in a conflict is absolute and permanent, and does not leave room for any violations in response to violations by the adversary party. This assertion supports the view that principles of humanitarian law remain applicable to refugees who are caught in the midst of armed conflicts.

Although there is no single body of law that deals adequately with the problem of armed attacks on refugees, their rights in armed conflicts are governed by the 1949 Geneva Conventions and the 1977 UN Additional Protocols. These documents contain specific prohibitions for the protection of refugees who are civilian victims of conflicts. For example, the Geneva Conventions set specific rules about the precept of *jus in bello* (just conduct of war), which limit the use of war on both moral and practical grounds by establishing standards of discrimination. This discrimination implies that force must not be used intentionally against non-combatants or civilian populations. The basis of this law is the recognition that the goal of war is the destruction of an enemy and not the destruction of individuals not participating in hostilities. Article 3 of the 1949 Conventions stipulates that persons not taking active part in internal conflicts shall in 'all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or many other similar criteria'. A minimum standard of Article 3 includes four types of acts that are prohibited at *any time and in any place* [emphasis added] with respect to civilians: violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; and the passing of sentences and the carrying out of executions without prior judgments being pronounced by a regularly constituted court. In the light of Article 3 and its minimum standard, the RPA/ADFL forces committed a crime against humanity, even though the massacre took place in the interstices of two competing state structures during the civil war that toppled Mobutu. Many authorities support the view that the presence of combatants in the refugee camps or settlements does not justify an indiscriminate attack on these camps or settlements whose inhabitants are mostly civilians, including women and children (Goodwin-Gill 1983).

The 1977 Protocols I and II extend the Geneva Conventions to

include refugees. Article 73 of Protocol I states that ‘Persons who, before the beginning of hostilities, were considered as stateless people or refugees under the relevant international instruments... shall be protected persons... in all circumstances and without any adverse distinction’ (ICRC 1991). The Hutu refugees in Congo migrated before the outbreak of the hostilities that ousted President Mobutu, and therefore had the status of ‘protected persons’ under international law. Article 51 (Protocol I) also prohibits both indiscriminate attacks against civilian populations generally or by way of reprisal.

Unfortunately, troops tend to ignore precepts of international law and often act against their own people. The behaviour of Tutsi troops in late April 1995 was illustrated in the Kibeho refugee camp, which was set up by French troops in 1994 inside Rwanda as part of ‘Opération Turquoise’. The RPA troops surrounded the camp in order to force refugees back home. Refugees panicked and tried to break out of an RPA cordon. Soldiers, mostly Tutsi, opened fire indiscriminately into the crowd of unarmed Hutu refugees for six hours (Bradol & Guibert 1997: 129). Witnesses on the scene placed the death toll between 4,000 and 8,000, whereas the government announced that only 300 refugees died and accused the UN field officers of falsifying the figures (*The Times*, London, 24.4.1995; Klinghoffer 1998: 64). Another massacre occurred four months later in Kanama (Rwanda) where more than 150 Hutu were killed by the RPA. As a Hutu former interior minister and RPF member, Mr Seth Sendashonga, pointed out, ‘one could understand in the beginning reaction of vengeance... But, whereas this sort of thing should have stopped, the reprisals have continued and have sunk to new depths’ (*Africa Research Bulletin* 1995: 11992).

In any case, military and armed attacks on refugees constitute violations of international human rights law (Vincent 1986). The 1951 Refugee Convention and its 1967 Protocols provide a strong link between refugee law, human rights law and the UN Charter. Members of the UN, of which Rwanda is a part, have an obligation to protect the human rights of refugees. In addition, a central provision of the 1967 Declaration on Territorial Asylum is that the granting of asylum is a humanitarian, non-political act and that, once asylum is granted, it must be respected by all other states, including the state from whose territory the refugees have fled (see Grahl-Madsen 1972). Therefore, by ordering the attack on the refugee camps, the Rwandan Vice-President Paul Kagame committed a crime against humanity as he violated precepts of international humanitarian law protecting non-

combatants. By the same token, the RPA was guilty of a crime against humanity because it attacked unarmed Hutu refugees even beyond the Rwandan borders with Congo. Some massacres occurred in the western part of Congo, indicating deliberate and premeditated killings of the Hutu refugees.

*Judicial decisions, scholarly writings and principles of law*

Previous court rulings highlight another source of international law to evaluate the severity of the massacre of refugees in order to bring the perpetrators to justice. The tribunals conducted by the victors in Nuremberg and Tokyo tried civilian leaders and top German and Japanese officers, for waging aggressive war, for war crimes and for crimes against humanity. For example, the trial (and execution) of Japanese General Tomoyuki Yamashita established that commanders were responsible for the actions of their troops. Despite the Yamashita precedent, progress in prosecuting war criminals has been slow and the prospect for bringing those responsible for the massacre of refugees in Congo remains problematic at best.

This precedent also remains at the core of legal debates between positivists or dualists/realists and naturalists or monists/idealists (Brownlie 1991). To the former, the state remains sovereign within its borders. In case of a conflict between international law and national law, the positivist assumes that the latter takes precedence over the former. The dualist perspective implies that the massacre of refugees in Congo should not implicate leaders in the Great Lakes region because they might have applied domestic law, and the imposition of international law on their behaviour should be viewed as a violation of state sovereignty. This right of states is even enshrined in Article 2(7) of the UN Charter that protects domestic jurisdiction, except in the application of enforcement measures under Chapter VII when a threat to international peace and security has been determined. An additional exception is the 'doctrine of incorporation' in the Anglo-American legal tradition that has long accepted that customary international law is part of the 'law of the land' and should be enforced, accordingly, by domestic authorities (von Glahn 1996). Naturalists support this view and argue that the role of international law is to protect minority groups from state terrorism. According to Lauterpacht (1950), the nation-state is a mere abstraction and a threat to human rights, thus, international law is a major buffer between individual rights and state terrorism. This view allowed him to contend that individuals were the

ultimate subjects of international law, which was created to protect the welfare of humanity.

Another argument against prosecution is the absence of a state apparatus of authority and control during the Congo civil war. According to this view, nobody should be responsible for the massacre of refugees, because it took place in the interstices of two competing state structures, between the collapsing Mobutu regime and the insurgent Kabila movement. No state apparatus of control and authority existed, and no sovereign state was really in charge of the area where the massacre of refugees occurred. In addition, the current government of Congo should not be blamed because some evidence indicated that an invading force, the largely Tutsi RPA, carried out the massacre of refugees by pursuing a policy of 'seek and destroy'.

Nonetheless, these situations should not provide any excuse to free the leaders of Congo and Rwanda from accountability for the massacre of refugees during the Congo civil war. In fact, international law offers specific guidelines regarding both situations of a civil war and an invading force. First is the case of the Congo civil war. In early 1997, the Kabila movement, the ADFL, was granted the status of a 'belligerent community' by many sovereign states, and therefore became responsible for all violations of the laws of war and for the treatment of foreign property and citizens as recommended by international law.<sup>15</sup> Because the Kabila movement was already a belligerent community in the first three months of 1997, the parent state (Mobutu government) was 'freed from all international responsibility for the acts of the rebels from the inception of the revolt' in all areas that the ADFL controlled (von Glahn 1996: 71–2). Second is the case of an invading force, and, according to the 1949 Conventions, all refugees remain protected by international law regardless of the existing power structure among warring parties. According to all these views, the RPF/ADFL troops perpetrated terrorist activities in Congo and must be held accountable for the massacre of refugees.

One major difficulty with this view of international law is that there is no political or administrative structure to back it up. This difficulty is compounded by the fact that even in the case of Chapter VII of the UN Charter, when international peace is threatened, the UNSC must be authorised by the state, which might have been the object of unlawful behaviour, before a UN investigation team is allowed to enter state boundaries. The refusal of the Kabila government to cooperate with the UN team illustrates this enshrined principle of state sovereignty. However, as the 1999 NATO attack on Yugoslavia

illustrates, when the UN fails to intervene on humanitarian grounds, any member can do so under Articles 1(3), 55 and 56.

Another counter-argument to naturalists is the dualist refusal to recognise the Nuremberg precedent as binding. Dualists dispute the precedent on the ground that the Nuremberg trials were successful because they were imposed by the victorious allies, and several conditions must be met to duplicate them:

the complete end of hostilities, the complete defeat of the losing side to provide the victors complete jurisdiction, the willingness of victorious side to prosecute the accused individuals, and these individuals must be capable of apprehension by the victorious side. (Mak 1995: 542)

All these conditions seem to exclude the RPF and the ADFL as possible perpetrators of the massacre of refugees, because the two parties accused of the massacre are currently in power in Rwanda and Congo respectively. Nevertheless, the Genocide Convention, of which the two governments are signatories, states in its Article 4 that persons committing any act of genocide in its different forms are punishable, whether *they are constitutionally responsible rulers, public officials, or private individuals* [emphasis added]. The present government of Rwanda has tracked down those who committed the 1994 genocide and agreed to apply the precepts of international law. This government must also accept to apply the same procedure in dealing with the massacre of refugees in Congo.

#### SHAPING STATES' BEHAVIOUR BEYOND SOVEREIGNTY: THE PROTECTION OF REFUGEES

The first issue in implementing international law on refugees must require host governments to outlaw insurgent groups in their territory. The Charter of the OAU even prohibits the use of force against an independent state, and Articles II and III indicate that one of the goals of the OAU is to defend states' sovereignty, respect their territorial integrity and independence, and condemn any subversive activity on the part of neighbouring states or any other state (OAU 1967). Furthermore, Article III of the 1969 OAU Convention imposes certain duties on refugees with regard to their host country, according to which all refugees 'shall abstain from any subversive activities against any member state and member states undertake to prohibit refugees residing in their respective territories from attacking any member state by using arms, press, or radio'. Article 23(2) of the 1981 African Charter on Human and Peoples' Rights also emphasises that the

territory of any member state shall not be used as bases for subversive or terrorist activities against the people of any other member state (Hamalengwa *et al.* 1988). In the light of these provisions, the Ugandan government violated international law by letting the RPF operate in its territory to carry out an armed attack against another member state. The same argument should apply to the Mobutu government that gave sanctuary to the former Hutu soldiers who made Rwanda ungovernable.

Legally, the two cases differ substantially. International law justifies the prosecution of these soldiers as the result of the 1994 genocide, while it rationalises the RPF's actions for waging war against the Rwandan government from 1990 to mid-1994, because every single human being has the right to a citizenship. Before 1994, the Hutu-dominated government in Rwanda was unwilling to open its door to a mass return of its nationals, mostly Tutsi, living in Uganda and elsewhere, on the grounds that Rwanda was already overpopulated. Meanwhile, the Rwandan refugees, mostly Tutsi, were denied citizenship in Uganda. Articles 13(2) and 15 of the Universal Declaration of Human Rights states that 'everyone has the right to leave any country, including his own, and to return to his country, as well as a right to a nationality, and ... no one shall be arbitrarily deprived of his nationality or denied the right to change nationality'. The Declaration rejects the use of force, and Article 29(3) specifies that these rights and freedoms may in no case be exercised contrary to the principles and purposes of the UN. Therefore, the Habyarimana government violated the right of its members to return home.

There is another argument in favour of the RPF, that it was exercising the right of its members to self-determination. As citizens of Rwanda, they exercised their rights to return home because the host country (Uganda) was unwilling to accommodate them. Thus, the UN, especially powerful states in the UN, should consider repatriation by force as a bargaining tool to punish states that generate massive waves of refugees. Firmness in applying international law is the best way of promoting international peace and strengthening state sovereignty. The NATO military mission in Yugoslavia set a humanitarian precedent that respect for human rights may be enforced even at the expense of state sovereignty.

Opponents of humanitarian interventions usually argue against any intervention based on the principle of sovereignty and non-interference, because there is no consensus on moral questions that lead to these interventions and powerful states may apply these principles selectively

(Franck & Rodley 1973). The result is divergence in terms of responses and some target states will view this selectivity with suspicion. Selectivity is also likely to result in humanitarian abuses, as any intervention by powerful states will be called humanitarian even when it is politically and economically self-motivated. The result is that humanitarian interventions will become vulnerable to states' abuses.

Proponents of humanitarian interventions contend that these abuses can be avoided by mandating the UN with the authority to monitor and carry out these interventions according to procedures that uphold respect for human rights, which must be understood in terms of freedom from fear and want. The UNSC should enforce actions to prevent human tragedies such as the massacre of refugees. Article 2(7) of the UN Charter gives the UN the right to overturn the rule that prohibits the organisation from becoming involved in the internal affairs of member states. If the UN fails to intervene, any member state can do so under Articles 1(3), 55 and 56 to protect human rights. Reissman and McDougal (1973) argue that the UN should take a stand and, in the absence of such an action, the organisation is doomed as an instrument for establishing international peace. The consent to endow the UN with more authority is contingent upon its most powerful members, which must authorise military operations, contribute troops and finance these operations.

An additional objection against humanitarian interventions is the realist argument that states always act for reasons of self-interest, and humanitarian motives remain a small part in 'a complex equation involving numerous stimuli, because most cases that involve humanitarian actions have mixed motives' (Mason & Wheeler 1996: 40). In addition, humanitarian interventions may endanger the lives of soldiers involved in the action, and it is viewed as a mistake for statesmen to risk the lives of their countrymen, purely out of humanitarian feeling (Krauthammer 1992). Related to this view is the idea that humanitarian interventions may involve the loss of lives of the very people whom these interventions were intended to help in the first place (*ibid.*). These situations call for prudence in the use of humanitarian interventions.

Another element of prudence occurs whenever states, such as China, which practise political oppression, remain reluctant to adopt policies favouring humanitarian interventions by fearing to set a precedent that might haunt them in the future. Finally, globalisation itself or the 'CNN effect' is both a blessing and a curse in motivating humanitarian interventions in the West. It is a blessing because it makes people aware

of the plight of others around the globe and the need for humanitarian interventions. It is also a curse since it may hasten the interruption of any intervention once 'body bags' start arriving home as citizens pressure their leaders to speed up the withdrawal of troops (Weiss 1994). Practically, the call to rescue starving or endangered people through humanitarian interventions makes sense in the short run: lives are usually saved when foreign troops protect relief workers and unprotected civilians (*ibid.*). But interventions out of humanitarian concerns overlook the cause of the problem and the long-term impact that any withdrawal of foreign troops might have. Therefore, any humanitarian intervention must include a long-term agenda to prevent the cause of the intervention itself from re-occurring.

Despite their drawbacks, a strong case can be made for humanitarian interventions when states are not performing their traditional functions of protecting their citizens and creating an enabling environment that sustains social order and human development. These interventions also remain appropriate tools to free people from fear and want. International humanitarian law is now an important framework to protect citizens against both states' abuses and any infringement of individual rights. Because the massacre of refugees took place outside state jurisdiction, international humanitarian law provides the first step to move beyond state sovereignty and towards responsible international behaviour.

To analyse human rights at this level of development requires an understanding of the principle of sovereignty with respect to non-state actors within both international and world societies. The overlapping area between the two societies rationalises the protection of human rights as the ultimate goal of development. International society 'is about the institutionalisation of shared identity among states', whereas world society 'takes individuals, non-state organisations and ultimately the global population as a whole as the focus of global societal identities and arrangements' (Shaw 1996: 56). In international society, states recognise each other as legitimate entities and are prepared to give each other equal status. Diplomatic validation is now a critical test for sovereignty. Although any state is free to enact and enforce whatever laws it wishes for its citizens, its own existence rests in the hands of other states. Pre-existing states are entitled to extend diplomatic recognition to another entity. Western recognition of the former rebel movements of Rwanda (RPF) and Congo (ADFL) was *de facto* sovereignty. The government, which is recognised *de jure*, obtains full legal and diplomatic privileges from the granting state.



A major problem with diplomatic recognition is that nobody any longer questions whether the new government fulfills the basic conditions of legality of a government as prescribed by international law, one of the conditions of which is the support of the majority of the population (Cervenka 1987). The speed with which states are recognised today tends to accommodate and justify even ruthless dictatorships, political repression and economic deprivation. Whenever a state becomes the principal threat to its citizens' well-being, the idea of statehood itself must be challenged, because statehood is not only about leadership, but is above all about the welfare of the people who make up the state. The provision of non-interference loses its rationale whenever the state acts against its own people. In this case, *de facto* and *de jure* recognition should be provisional and capable of being withdrawn unless the state can withstand the test. Emizet (1997: 87) suggests that 'national sovereignty should no longer be an excuse to sacrifice human life, dignity, and freedom'. The implication of this argument is that any humanitarian intervention becomes an essential means to protect people from the threat of the state itself. Leaders whose actions create mass suffering should no longer be allowed to hide their actions behind the veil of state sovereignty and non-interference. The perpetrators of the refugee massacre in Congo have gone scot free for their crimes, in contrast to Nazi criminals whom the West is still hunting down.

An emphasis on human security and well-being underlie the fact that conditions of humanitarian necessity, rather than states' interests, can be so grave and imminent as to command resolute action by the international community. Helton (1992: 375) suggests that 'a limited and proportionate form of non-consensual humanitarian assistance should be among the repertoire of responses available to the international community and deemed authorised by law'. Over time, the UN should have the mandate to by-pass state sovereignty if states or warring parties are at the root of an exodus or massacre of refugees, because humankind shares a common fate and destiny. A growing number of groups within civil society are now challenging the principle of state sovereignty and upholding human rights as the ultimate goal of development. According to Booth (1991: 542), 'the international system which is now developing...is ... an egg-box containing the shells of sovereignty; but alongside it a global community omelette is cooking'. This global community or world society omelette is the global civil society or *civilis societas*, which represents 'the conditions of living in a civilised community' (Lipschutz 1996: 107). The *civilis societas* has

its own legal codes separated from states' codes, because it negates the primacy of states over individuals and communities. This society is creating a 'trans-societal order' that 'challenges not only the cultural shape of international relations but the logic governing them' (Melucci 1989: 74, 86).

Although the development of a global civil society parallels that of the international society, these two societies also overlap and their common intersection is likely to widen as humanitarian-minded citizens keep mobilising state leaders towards respect for human rights as the ultimate goal of human development. As Finnemore (1996) contends, states' interests are now being defined by the norms, values and institutions of the global society. International diffusion and imitation have created an international setting in which states must adapt to international changing circumstances and follow international norms and rules. Unless states adapt their behaviour to the rising tide of the global civil society, they will perish from it.

The challenge of 'trans-sovereign' issues, such as refugee flows, transcends state borders and is no longer responsive to traditional or unilateral state policy actions (Mitchell 1995). The principle of sovereignty is now under siege, so that under grave humanitarian crisis the international community should have the upper hand. Since the end of the Cold War, the international community has, in several situations of humanitarian crisis, intervened without being invited by states or warring parties. As Boutros-Ghali (1992: 5) put it, 'Sovereignty is no longer absolute... Sovereignty must be kept in its place.' *The Wall Street Journal* (24.8.1992: A8) editorialised in a similar way by arguing that sovereignty is not an absolute right because starvation and wanton killing are 'everybody's business'... and 'any absolute principle of nonintervention becomes a cruel abstraction indeed'. This is also echoed by *The Economist* (5.11.1991: 11), which argues that the international community is 'increasingly concerned not just to see countries well governed but also to ensure that the world is not irreparably damaged – whether by global warming, by the loss of species, by famine or by war... National sovereignty be damned.'

Not only does the international community have an obligation to alleviate human suffering and deprivation caused by humanitarian crises, it also has an obligation to prevent these crises. Unfortunately, the international community tends to respond to refugee crises as they happen rather than trying to prevent them. For example, the international community spent almost \$1 million a day for a total of \$2 billion between April 1994 and December 1995 to assist the Rwandan

refugees. Although this assistance was badly needed, the problem that has been generating the Rwandan refugees since the late 1950s remains unresolved. The former Tutsi victims of violence have replaced the former Hutu perpetrators of violence with the same goal in mind: eliminate the other group by excluding it from power. The new Tutsi government of Rwanda is now repeating what its Hutu predecessor did in the past, and in the absence of external constraints, the cycle of violence is likely to feed itself and be self-reinforcing. The Rwandan problem is just a microcosm reflecting the African predicament. The state remains the largest employer providing benefits in exchange for loyalty, so that 'the need to control state resources has reinforced exclusion of potential rivals from power and most policies have been against development' (Emizet 1998: 61).

Western democracies and their competitive electoral systems illustrate the advantages of respect for human rights, since they maintain values such as fighting poverty and providing decent living conditions to citizens. In addition, they have established an institutional setting that frees people from fear of states' abuses. Nobody can deny that democratic governments provide an environment that protects human rights. Data on refugees show no mass movement from western democracies to other parts of the world. Accordingly, democratic states are more sovereign than authoritarian ones in protecting basic human rights. This implies that the spread of democracy is likely to foster respect for human rights worldwide, because democracy is a 'universal value' (Sen 1999). The protection of human rights requires institutional arrangements built from individuals' consent, mutual respect from other states and coexistence with other citizens, as part of a universal state of mankind (Brown 1996).



This article provides an analysis of the massacre of refugees in Congo. The primary argument is that the absence of firmness in demanding justice and protecting human rights ignores the objectives of stability and prosperity. The UN must play a major role in achieving these objectives. Today, under Chapter VI of the UN Charter, the UNSC has the authority to investigate situations that may lead to international friction with respect to human rights, and to recommend appropriate procedures. Furthermore, Chapter VII authorises the UNSC to determine the existence of any threat to international peace or act of aggression and to decide on appropriate measures to be taken. The

massacre of refugees in Congo was a tragedy aimed at eliminating a large portion of the Hutu ethnic group and should qualify as a case of genocide.

To prevent such a tragedy, the UN must be sensitive and responsive to early warnings from human rights groups in the fields. Because adherence to any law is an essential element of any legal system, the international community must develop adequate means of compliance and enforcement to make international humanitarian law effective. Therefore, any refugee issue becomes a case of negative externalities, which should require the UN to take a firm stand so that the generating country bears the costs of its actions.

Western and non-Western laws or moralities differ considerably on the rights of the individual versus the rights of the community. However, these rights overlap and there is no contradiction in protecting a community's rights by protecting individuals' rights and vice versa. People make communities and communities make people. Rights to life, right to a decent living and right to freedom are all individual and community rights. This implies that the massacre of refugees is a crime that violates individual and community rights. Though international law is fraught with many deficiencies, it remains relevant for contemporary international relations. States attach considerable importance to it and spend significant time and energy fighting over its interpretation while attempting to shape its evolution. Therefore, international law must be enforced to protect individuals from leaders who use state institutions for personal ambition, greed and nepotism.

#### NOTES

<sup>1</sup> People's basic rights are universal and include the following: right to life, liberty and security; freedom from physical and moral abuses; right to own property and protection against seizure of that property; right to work and to education; right to a decent standard of living adequate for oneself and family; and rights for solidarity within the UN system if states fail to provide a decent living to their citizens (UNGA 1988).

<sup>2</sup> The history of the RPF has received extensive coverage and there is no need to repeat it here. However, it is important to note that the RPF received massive financial support from many sources and especially from Tutsi living in Congo, who occupied prestigious positions in the government and the private sector (Gachuruzi 1999; Prunier 1995; Reyntjens 1994).

<sup>3</sup> The two terms stand for 'group working together for action' and 'group planning together' for action.

<sup>4</sup> Several hypotheses have been advanced for his death. According to one version, the president was killed by Hutu extremists, who neither supported the idea of national reconciliation nor approved his soft stand; it is suggested that French soldiers carried out the task of shooting down the plane. Another hypothesis argues that southern Hutu were to blame because they were opposed to the president's northern entourage and air support troops. A corollary to this hypothesis is that southern Hutu officers were exasperated by the stalled democratisation process and feared that they might be victims of northern extremists. A third hypothesis is that the RPF

was to blame, and may have been helped by the Belgian contingent of UNAMIR (Prunier 1995: 213–29; Reyntjens 1995: 21–50).

5 The Rwandan genocide of mid-1994 has attracted massive attention, and its origins have been exhaustively analysed (see Braeckman 1994; Franche 1995; Prunier 1995). Sources diverge on the number of people killed during the two-month massacre. Some sources give a low of 200,000 (von Glahn 1996), while others report a high of 1,000,000 (Prunier 1995: 263).

6 These estimates are based on official data of the Rwandan armed forces in mid-1994 from USACDA (1994). Bradol & Guibert (1997: 137) quote another source which argues that the percentage of ex-FAR and Hutu militiamen was 10 to 15 per cent of the refugee population in Congo. If this were true, then Congo hosted all the ex-FAR and militiamen, but data from Tanzania indicate that this country also received a large number of the ex-FAR and Hutu militiamen.

7 The term Banyamulenge emerged in 1967 to distinguish the pastoral ethnic group living in the Mulenge area in South Kivu from the Rwandan refugees, especially the Tutsi, who started migrating in 1959. This new identity gave the Banyamulenge some historical legitimacy over their lands, which was negotiated and accepted by other local populations such as the Bafulero and the Babembe (Willame 1997; Mathieu & Tsongo 1998).

8 According to Verschave (1994: 160), former Hutu politicians shipped and stocked in the stores that belonged to Mobutu's family some 20,000 tons of coffee worth \$50 million. He also indicated that some arms confiscated from the ex-FAR went to the benefit of Mobutu who sold them back to the same soldiers when they were ready to reconquer Rwanda. The Hutu politicians also brought with them 17 billion Rwandese francs, most of which was directly controlled by Mobutu (Prunier 1995: 321).

9 Tensions already existed within the Rwandan government after the 1995 Kibeho incident in which an estimated 8,000 Hutu were killed by the RPA. I discuss this incident later.

10 Note that Uganda, Burundi and Angola later joined the rebel movement intended to oust Mobutu. These players wanted to remove Mobutu and to secure their own borders with Congo (Reyntjens 1997).

11 The ADFL was made up of four political parties: The Party of the People's Revolution led by Laurent Kabila, the National Resistance Council for Democracy led by Kisase Ngandu, the Revolutionary Movement for the Liberation of Zaïre led by Massasou Nindanga, and the Democratic Alliance of Peoples led by Deogratias Bugera.

12 The rapidity with which the rebel forces gained on governmental troops can be explained by several factors. Most importantly, the Mobutu regime lost all credibility and legitimacy, and no powerful Western patron was willing to support it again. For other causes see Willame (1997).

13 By 1995, a strong pro-Rwanda lobby existed in the State Department, so that the US had become Rwanda's primary supporter in the international community (Rosenblum 1998: 198).

14 Because there are so many inconsistencies in data sources, the methodology used here relies on the average of several numbers or the average of a given range of two numbers (minimum and maximum). For example, if a source reports a range of 10,000 to 20,000, then the average of 15,000 is recorded. On other occasions, the mode is taken instead.

15 Certain communities lack statehood and yet occupy a territory extensive enough after the initiation of hostilities so that the conflict is no longer a mere local uprising, but rather becomes a state of belligerency. Three conditions must be satisfied to extend recognition to a rebel group: (1) a government and military organisation must have been established and be operative in the rebel-controlled area; (2) the rebellion must have reached a stage beyond mere local revolt – that is, a condition of warfare equivalent to conflicts between states had to have developed; and (3) the rebel group must control a reasonable portion of the territory (von Glahn 1996: 71–2). By early 1997, the Kabila movement had already satisfied all these conditions and was recognised by several Western democracies.

#### REFERENCES

- Adelman, H. & A. Suhrke, eds., *The Path of a Genocide: the Rwanda Crisis from Uganda to Zaïre*. New Brunswick & London: Transaction Publishers.
- Africa Research Bulletin*. 1995. 'Rwanda', 32, 9, 1–30 September.
- Bakwesegha, C. J. 1994. 'The OAU and African refugees', in Y. El-Ayouty, ed., *The Organization of African Unity after Thirty Years*. Westport, CT: Praeger, 77–96.

- Booth, K. 1991. 'Security in anarchy: utopian realism in theory and practice', *International Affairs* 67, 3: 527-45.
- Bothe, M., K. J. Partsch & W. A. Solf. 1982. *New Rules for Victims of Armed Conflict*. Dordrecht: Martinus Nijhoff.
- Boutros-Ghali, B. 1992. *An Agenda for Peace*. New York: United Nations Publications.
- Boyer, J. 1997. 'Rebels', *Agence France Presse*, 7 August.
- Bradol, J.-H. & A. Guibert. 1997. 'Le temps des assassins et l'espace humanitaire, Rwanda, Kivu, 1994-1997'. *Hérodote* 86/87: 116-49.
- Braeckman, C. 1994. *Rwanda, histoire d'un génocide*. Paris: Fayard.
- Brown, C. 1996. "'Really existing liberalism", peaceful democracies and international order', in Fawn & Larkin, *International Society After the Cold War*, 29-46.
- Brownlie, I. 1991. *Principles of Public International Law*, 4th edn, Oxford: Clarendon Press.
- Cahn, D. 1997. 'AP Photo NY 192-AP graphic Congo refugee', *AP Worldstream*, 28 June.
- Callamard, A. 1999. 'French Policy in Rwanda', in Adelman & Suhrke, *The Path of a Genocide*, 157-83.
- Campbell, S. 1997. 'What Kabila is hiding: civilian killings and impunity in Congo', *Human Rights Watch* 9, 5A, October: 12-28.
- Cervenka, Z. 1987. 'The effects of militarization of Africa on human rights', *Africa Today* 34, 1-2: 69-84.
- Chrétien, J.-P. 1985. 'Hutu et Tutsi au Rwanda et au Burundi', in J. L. Amselle & E. M'Bokolo, eds., *Au coeur de l'ethnie*. Paris: Editions La Découverte, 129-65.
- Cornia, G. A. et al., eds. 1987. *Adjustment with a Human Face*. Oxford University Press.
- Crossette, B. 1998. 'UN Team says Congo army killed Hutu', *New York Times*, 1 July.
- Crossette, B. 1991. 'New ways to run the world'. 5 November: 11.
- Emizet, K. 1997. *Zaire after Mobutu: a Case of Humanitarian Emergency*. Helsinki: United Nations University/World Institute for Development and Economics Research.
- Emizet, K. 1998. 'Rebels vs. Democrats in power: how to build peace in Central Africa', *International Journal on World Peace* 15, 2: 55-69.
- Fawn, F. & J. Larkin, eds., *International Society after the Cold War*. New York: St. Martin's Press.
- Finnemore, M. 1996. *National Interests in International Society*. Ithaca, NY: Cornell University Press.
- Franche, D. 1995. 'Généalogie du génocide Rwandais: Hutu et Tutsi: Gaulois et Francs?', *Les Temps Modernes* 582: 1-58.
- Franck, T. M. & N. S. Rodley. 1973. 'After Bangladesh: the law of humanitarian intervention force', *American Journal of International Law* 67, 2: 275-305.
- Frelick, B. 1990. 'The right to return', *International Journal of Refugee Law* 2, 442: 234-45.
- French, H. W. 1998. 'Reports point to mass killings of refugees in Congo', *New York Times*, 27 May.
- Gachuruzi, S. B. 1999. 'The role of Zaire in the Rwandese conflict', in Adelman & Suhrke, *The Path of a Genocide*, 51-9.
- Garretón, R. 1997. 'Investigations in Eastern Congo and Western Rwanda: A Report for Physicians for Human Rights', Boston, 16 June.
- Garretón, R. 1999. 'Oral presentation of report by the special rapporteur on the situation of human rights in the Democratic Republic of Congo.' The 55th Session of the Human Rights Commission. Geneva, 31 March.
- Gnamo, Abbas H. 1999. 'The Rwandan genocide and the collapse of Mobutu's kleptocracy', in Adelman & Suhrke, *The Path of a Genocide*, 321-49.
- Goodwin-Gill, G. 1983. *The Refugee in International Law*. Oxford: Clarendon Press.
- Goose, S. & F. Smith. 1994. 'Arming genocide in Rwanda', *Foreign Affairs* 73, 5: 86-96.
- Grahl-Madsen, A. 1972. *The Status of Refugees in International Law*, vol. II, *Asylum, Entry, and Sejour*. Leyden: A. W. Sijthoff.
- Hamalengwa, M., et al. 1988. *The International Law of Human Rights in Africa*. Dordrecht and London: Martinus Nijhoff Publishers.
- Helton, A. C. 1992. 'The legality of providing humanitarian assistance without the consent of the sovereign', *International Journal of Refugee Law* 4, 3: 375-87.
- Hinjtens, H. M. 1999. 'Explaining the 1994 genocide in Rwanda', *Journal of Modern African Studies* 37, 2: 241-86.
- Human Rights Watch. 1999. 'Casualties of war: civilians, rule of law, and democratic freedoms', *Human Rights Watch* 11, 01 (A), February.
- International Committee of the Red Cross (ICRC). 1991. *Understanding Humanitarian Law: Basic Rules of the Geneva Convention and their Additional Protocols*. Geneva: United Nations.

- Joint Evaluation of Emergency Assistance to Rwanda (JEEAR). 1996. *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience*. Copenhagen.
- Kleinschmidt, K. 1997. 'It was smelly, stinking and dirty', *Refugees* 110, Winter: 7.
- Klinghoffer, A. J. 1998. *The International Dimension of Genocide in Rwanda*. New York: New York University Press.
- Krauthammer, C. 1992. 'In Bosnia, partition might do', *International Herald Tribune*, 9 September.
- Lauterpacht, H. 1950. *International Law and Human Rights*. New York: Praeger.
- Lemarchand, R. 1970. *Rwanda and Burundi*. New York: Praeger.
- Linden, I. 1977. *Church and Revolution in Rwanda*. Manchester: Manchester University Press.
- Lipschutz, R. D. 1996. 'Reconstructing world politics: the emergence of global society', in Fawn & Larkin, *International Society after the Cold War*, 101–31.
- Mak, T. D. 1995. 'The case against an international war crimes tribunal for the former Yugoslavia', *International Peacekeeping* 2, 4: 536–63.
- Mason, A. & N. Wheeler. 1996. 'Realist objections to humanitarian interventions', in B. Holden, ed., *The Ethical Dimensions of Global Change*. London: Oxford University Press.
- Mathieu, P. & M. Tsongo. 1998. 'Guerres paysannes au Nord-Kivu (République Démocratique du Congo), 1937–1994', *Cahiers d'Etudes Africaines* 38, 2–4: 385–416.
- McKendrick, B. & W. Hoffmann. 1990. 'Towards the reduction of violence', in B. McKendrick & W. Hoffmann, eds., *People and Violence in South Africa*. Cape Town: Oxford University Press, 123–54.
- Melucci, A. 1989. *Nomads of the Present: Social Movements and Individual Needs in Contemporary Society*. London: Hutchinson Radius.
- Mingst, K. A. & M. P. Karns. 1995. *The United Nations in the Post-Cold War era*. Boulder, CO: Westview.
- Mitchell, A. 1995. 'US freezes assets of cartel in new effort against drugs', *New York Times*, 23 October.
- Mtango, E.-E. 1990. 'Military and armed attacks on refugee camps', in G. Loescher & L. Monahan, eds., *Refugees and International Relations*. Oxford: Clarendon Press, 87–121.
- Newbury, C. 1998. *The Cohesion of Oppression: Clientship and Ethnicity in Rwanda 1860–1960*. New York: Columbia University Press.
- Organisation of African Unity (OAU). 1967. *Convention Governing the Specific Aspects of Refugee Problems in Africa*, Article III, Section 3. Addis Ababa: OAU Documents.
- Pomfret, J. 1997. 'Rwandans led revolt in Congo', *Washington Post*, 9 July.
- Pourtier, R. 1997. 'Congo-Zaire-Congo: un itinéraire géopolitique au coeur de l'Afrique', *Hérodote* 86/87: 6–41.
- Prunier, G. 1995. *The Rwanda Crisis: History of a Genocide*. New York: Columbia University Press.
- Reissman, M. & M. McDougal. 1973. 'Humanitarian interventions to protect the Ibos', in R. Lillich, ed., *Humanitarian Intervention and the United Nations*. Charlottesville, VA.: University of Virginia Press, 167–95.
- Reyntjens, F. 1994. *L'Afrique des grands lacs en crise: Rwanda et Burundi, 1988–1994*. Paris: Karthala.
- Reyntjens, F. 1995. *Rwanda: trois jours qui ont fait basculer l'histoire*. Bruxelles: Editions Institut Africain-CEDAF & Paris: L'Harmattan.
- Reyntjens, F. 1997. 'La rébellion au Congo-Zaire: une affaire de voisins', *Hérodote* 86/87: 57–77.
- Reyntjens, F. 1998. 'The new geostrategic situation in Central Africa', *Issue* 26, 1: 10–13.
- Rosenblum, P. 1998. 'Kabala's Congo', *Current History* 97, 619: 193–99.
- Sen, A. 1999. 'Democracy as a universal value', *Journal of Democracy* 10, 3: 3–17.
- Shaw, M. 1996. 'Global society and global responsibility: the theoretical, historical and political limits of "International Society"', in Fawn & Larkins, *International Society after the Cold War*, 47–62.
- The Times* [London]. 1995. '8,000 Hutu refugees mown down by government soldiers trying to close Kibeho refugee camp', 24 April.
- United Nations, Economic and Social Council (UNESCO). 1997. *Report on the Situation of Human Rights in Zaire, prepared by the Special Rapporteur, Mr. Robert Garretón, in accordance with Commission resolution 1996/77*. Commission on Human Rights, 53rd Session. New York: UN Publications.
- United Nations, General Assembly (UNGA). 1967. *Resolution 2200 A (XX)*, 16 December.
- United Nations, General Assembly. 1988. *Human Rights – A Compilation of International Instruments*. New York: UN Publications.
- United Nations High Commissioner for Refugees (UNHCR). 1995. *The State of the World's Refugees 1995*. New York: Oxford University Press.
- UNHCR. 1997. 'Mapping the refugee exodus and return', *Refugees* 110, Winter: 16–17.

- UNHCR. 1998. *The State of the World's Refugees 1998*. New York: Oxford University Press.
- UNHCR, Executive Committee. 1987. 'Conclusion No. 48 (XXXVIII)', *Military or Armed Attacks on Refugee Camps and Settlement*. UN Documents.
- United States, Arms Control and Disarmament Agency (USACDA). 1994. *World Military Expenditures and Arms Transfers*. Washington, DC: US Government Printing Office.
- US Committee for Refugees. 1995. *World Refugee Survey*. Washington, DC: IRSA.
- US Committee for Refugees. 1998. *World Refugee Survey*. Washington, DC: IRSA.
- US Congress, House of Representatives, Subcommittee of the House, International Relations Committee. 1997. 'Zaire'. 16 July.
- Uvin, P. 1998. *Aiding Violence: The Development Enterprise in Rwanda*. West Hartford, CT: Kumarian Press.
- Verschave, F.-X. 1994. *Complicité de génocide: la politique de la France au Rwanda*. Paris: Editions la Découverte.
- Vidal, C. 1985. 'Situations ethniques au Rwanda', in J. L. Amselle & E. M'Bokolo, eds. *Au coeur de l'ethnie*. Paris: Editions La Découverte, 167–84.
- Vidal, C. 1991. *La sociologie des passions*. Paris: Karthala.
- Vidal, C. 1998. 'Questions sur le rôle des paysans durant le génocide des Rwandais Tutsi', *Cahiers d'Etudes Africaines* 38, 2–4: 331–45.
- Vincent, R. J. 1986. *Human Rights and International Relations*. Cambridge University Press.
- von Glahn, G. 1996. *Law among Nations: an Introduction to Public International Law*, 7th edn. Boston & London: Allyn and Bacon.
- The Wall Street Journal*. 1992. 'Everybody's Business', 24 August: A8.
- Weiss, T. G. 1994. 'Triage: humanitarian interventions in a new era', *World Policy Journal* 11, 1: 56–69.
- Wheeler, N. & J. Morris. 1996. 'Humanitarian intervention and state practice at the end of the cold war', in Fawn & Larkins, *International Society after the Cold War*, 135–71.
- Wilkinson, R. 1997. 'The Great Lakes was one of the largest and most complex humanitarian crises in modern times', *Refugees* 110, Winter: 4–13.
- Willame, J. C. 1997. *Banyarwanda et Banyamulenge: violences ethniques et gestion de l'indépendance au Kivu*. Bruxelles: Institut Africain-CédaF and Paris: L'Harmattan.
- The World Conference on Human Rights. 1988. *The Vienna Declaration and Programme of Action*. Geneva: UN Publications.
- [www.lexis nexis.com/universe](http://www.lexis nexis.com/universe). 1999.