



A Case by Case Analysis of Recent Crises Assessing 20 Years of Humanitarian Action

***Iraq, Somalia, the former Yugoslavia, Rwanda,
Burundi, the former Zaire, Chechnya, and Kosovo***

working paper

*Médecins du Monde
wishes to thank everyone
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We are witnesses to the ever-increasing vulnerability of civilian populations during international and non-international conflicts. They are hostages trapped in situations beyond their control. Caught in the crossfire, they are murdered, starved, displaced, and pillaged when they should be protected. The events of the last twenty years are unbearable and intolerable. Civilians have never been less protected from violent conflict, despite the fact that the international community has continued to ratify an ever-growing number of legal instruments aimed at protecting them.

Iraq, Somalia, the former Yugoslavia, Rwanda, Burundi, the former Zaire, Chechnya, and Kosovo, are just some of the nations or regions where armed conflicts have taken a heavy toll on civilians. All of these crises are different. Some of them went on under the watchful eye of cameras from all over the world, while others were hidden behind impenetrable borders. But they all have one thing in common: civilians suffered enormously. They have been, either directly or indirectly, the victims of combat. They have been deprived of frequently blocked humanitarian aid and have not been taken into consideration during international negotiations.

Médecins du Monde has assisted people in Iraq, Somalia, Yugoslavia, Rwanda, Burundi, Zaire-Congo, and Chechnya during all of the conflicts endured in these countries. Gaining access to, assisting and providing medical attention to the most vulnerable sectors of the population has become a complex and dangerous exercise.

There are three fundamental objectives to humanitarian missions: assessing needs, reaching the most vulnerable victims, and supervising the aid provided to beneficiaries. Those three aims, in organisations such as Médecins du Monde, are guided by medical ethics. Equal access to medical care for all, without any discrimination, continues to be our driving force. But, imposing these objectives and ethics in times of violent conflict has become a veritable challenge. Combatants increasingly hinder access to combat zones, hence to those in greatest need. Access to these zones is either denied or authorised as best fits combat needs and never in an attempt to protect civilians. The assessment of needs and care given to the people in greatest danger are determined by combat strategy; just as the distribution of aid is subject to the goodwill of civil and military authorities who frequently misappropriate part of it.

The scope of action of humanitarian organisations is constantly growing narrower and more nebulous. In addition to having to adhere to their fundamental principals, non-governmental organisations are constantly assessing the negative effects that ensue from their actions. Humanitarian assistance at all costs can no longer be maintained as our presence may serve to back questionable practices and the aid we provide can be used as an instrument of war.

Over the last twenty years, our presence in most of the conflicts that have arisen has enabled us to observe that civilians lack protection and that the scope of action of humanitarian organisations is diminishing. Our actions are founded on deep convictions: the obligation to help people and to bear witness to their suffering. But they also have a legal basis, international humanitarian law. The latter provides for the protection of military personnel no longer engaged in combat as well as that of civilians. International humanitarian law also stipulates the conditions under which humanitarian aid is to be provided and the protection

guaranteed to humanitarian personnel. But here again international humanitarian law is not applied.

The very nature of humanitarian law explains, in part, why it is not implemented: there is no supranational legislative body to set laws; we have a decentralised system wherein rules have been conceived by states for states. There is no judicial system to interpret and guarantee the implementation of the rules. Lastly, there is no system of sanctions; there is no international armed entity to enforce, if need be, international humanitarian law.

Civilian populations and humanitarian organisations are now confronted with complex conflicts in which factions are not veritable organisations and as such, they bypass any form of control. The existence of these virtually uncontrollable players is characteristic of unstructured conflicts. These are conflicts where the State has disappeared and/or any another authority capable of exercising power. The enforcement of international humanitarian law calls for the goodwill of the powers that be, whereas the number of conflicts where there is a desire to apply the principles of international humanitarian law grow scarcer every day. This is especially true in ethnic conflicts where one of the objectives is ethnic purification or the exclusion of groups other than one's own. In this type of conflict, displacing and exterminating civilians are genuine objectives.

Another contemporary trend is states aggressing their own citizens. International humanitarian law does not contain provisions, even in the absence of organised resistance, that can be applied in cases where the military terrorises or massacres civilians. And yet, such acts may entail serious human rights violations and may even infringe the Geneva Convention of 1948 as relates to the repression of genocide. Internal turmoil is not covered by international humanitarian law because the latter only regulates the relation between opposing factions or extreme cases, such as genocide.

Furthermore, international humanitarian treaties and conventions only apply to international and non-international armed conflicts; they do not cover domestic upheavals, tensions, or internal violence. In addition, existing human rights defence instruments are limited in such cases as major treaties and conventions contain a derogation clause that allows signatories not to comply with most of their duties, with the exception of certain fundamental rights. Consequently, the guarantees stipulated in these legal instruments are not commensurate with the threats encountered by civilians in times of internal crisis.

Continual progress in customary international humanitarian law, the creation of an international criminal court, and the advances made in the organisation of international civil society will, we are hopeful, reinforce the implementation of international humanitarian law; although the solutions needed are complex, as has been proven by the studies conducted for several years now. The risks that accompany such changes are considerable. During the last few years, we have been witnesses to the misappropriation, by politicians, of the founding values of humanitarian organisations. Humanitarian type responses to crisis situations have become an "all too convenient decision" taken by politicians. The incapacity to establish political management of a crisis is increasingly hidden behind a humanitarian reaction on the part of the international community. It is easier to decide on a humanitarian response than it is to enter into a veritable peace process; the years of war in Yugoslavia are an eloquent example. Many conflicts continue even after humanitarian intervention is decided on by the Security Council; the African Great Lakes conflicts and the successive massacres that were perpetrated there speak for themselves.

Humanitarian aid has never solved a conflict or created the conditions necessary to the restoration or the maintenance of peace. Humanitarian aid is a gesture of assistance and of solidarity aimed at people who are suffering hardship; it is neither a system of conflict management nor a means of solving conflicts. Humanitarian aid can never replace political action; although we are already observing attempts at such phenomena. An international criminal court would be an 'easy' response, on the part of politicians, to crisis situations. Sending out a team of inquirers to collect evidence of massacres is an unacceptable way of responding to a situation in which civilians are in grave danger, as with Kosovo. The international community, under the impetus of civil society, runs the great risk of having the very instruments it is arming itself with misused, as has been the case for years with humanitarian aid.

Non-governmental organisations have learned to mobilise international public opinion and to set political strategies: increasing participation in international conferences and in the drafting of treaties are proof of this. The mobilisation of public opinion and better use of political strategies should converge on a single objective: to return the protection of mankind to the heart of the decision-making process of the body politic.

CHAPTER ONE.

**THE VULNERABILITY OF CIVILIAN
POPULATIONS AND ACCESS TO VICTIMS
ACTION TAKEN BY NGOs**

The failure to apply international humanitarian law, despite the existence of a right to humanitarian aid since 1949, has gradually led over the past decade to the emergence of a “right to intervene” concept. Its premises and its spirit were developed during a conference organised by Médecins du Monde and by Professor Mario Bettati, under the name “The Right to Intervene”. It proclaimed the right of victims to receive assistance and the “obligation of states to contribute” (to aid). Bernard Kouchner and Michel Rocard presented this concept before the United Nations who then took up its substance in two resolutions that mark, for some, the basis of the “right to intervene”. Whilst falling within the respect of national sovereignty (as the state concerned maintains a priority role and should give its agreement to intervention in its territory), these resolutions underline, with force, the indispensable nature of free access to victims “*of natural catastrophes and other similar emergency situations*”. General Assembly resolution 45/100 enabled the setting up of “*relief corridors for the distribution of emergency medical and food aid*”.

Ten years later, one can still attest to the failure to apply international humanitarian law. The number of dead, and wounded are continually increasing and the conditions of survival of civilian populations in these war contexts are increasingly precarious. These victims are becoming the targets of indiscriminate attacks and are subjected to methods that are prohibited by international texts: extermination, the use of famine as a weapon, acts of individual or massive reprisal, deportation, and so on. The fundamental principals of protection created for civilians under international humanitarian law are constantly neglected.

In parallel, in the field, we have witnessed the growing difficulties that our medical teams are encountering to bring assistance to these particularly vulnerable sectors of the population. Aid is siphoned off and manipulated. NGOs are the victims of direct or indirect attacks or are purely and simply forbidden access to areas where suffering groups of civilians are located.

One could be led to forget that, under certain conditions, **international humanitarian law guarantees aid to civilian populations in times of conflict**. In its rules of 7 June 1986, the International Court of Justice reminded: “[...] *in order to avoid being seen as an objectionable intervention in the internal affairs of another state, not only must humanitarian assistance be confined to the ends formally defined by the Red Cross, i.e. ‘preventing and relieving human suffering, protecting life and health [and] maintaining the respect of the human being’; it must also, and above all, be provided without discrimination to anyone in need [...]*”¹.

¹ ICJ (International Court of Justice), ‘Military and Paramilitary Activities in Nicaragua And Against Nicaragua’, Nicaragua vs. United States, ruling of 27 June 1986, paragraph 243.

I. Civilians: The First Victims of International Humanitarian Law Violations

The protection of civilians in war zones has constantly been the subject of treaties² and resolutions.³ However, civilian populations are paying an increasingly high price, whether or not they are the identified targets of conflicts. They are obliged to flee from combat areas, to avoid the combatants, and to provide for their basic needs. International law is no longer enforced; it is ignored by combatants who are perfectly aware of their impunity and the inefficiency of most of the sanctions in existence.

Iraqis, Somalis, Bosnians, Croatians, Serbs, Burundis, Rwandans, Congolese and Chechens have received no protection from the murderous strategies of the combatants who pursued them or exposed them to harm through their fighting.

² The main ones being the Geneva Conventions concerning the protection of civilians in times of war of 12 August 1949 and Protocol II.

³ E.g. resolution 2444 (XXIII), adopted by the United Nations General Assembly on 19 December 1968, 'The Respect of Human Rights in Times of Armed Conflict'.

❑ War and Extermination: *Civilian Populations as a Stake In War*

1. Ethnic Cleansing and Genocide

The extermination or the disappearance of a clearly identified section of the population has been the aim of the fighting in Bosnia and Rwanda. In Rwanda, the elimination of the Tutsi minority was the clear and openly accepted objective of political and military leaders who conceived, planned and organised the massacres that caused the deaths of 500,000 to 1,000,000 people. The ethnic cleansing policy developed and implemented by the Serbs had the aim, again quite open, of creating ethnically pure zones wherever Serb communities were established.⁴

These two wars targeted civilians, either to exterminate them or to force them away, and both were murderous, as this was their objective. The methods employed also proved to be of terrifying efficiency. Genocide and ethnic cleansing were prepared openly and down to the last detail. In these two countries, the criminalisation of the civilian population was a central issue in the strategies that were developed. This was based, well before any real action was taken, on the spreading of preconceived ideology with the sole aim of convincing people of the need for the other to disappear. Brandishing ancestral hatred and fear, and using the traditional denunciation of conspiracies; these strategies were instruments that brought people together. Moreover, these strategies were coupled with a context favourable to a return to a particular identity and the emergence of violence.

From the beginning of the 1980s, Serb political leaders presented their people as the victims of extermination. *“The sickness of the Serb imagination is the deep-seated cause of the conflict, the aim being to present countries with a fait accompli of conquest and depopulation [...] In this manipulation, the argument of genocide was exploited to convince the Serbs and the world that the Serbs were the victims of genocide and that what could appear to be aggression was but a defence against a mortal threat.”*⁵

In Rwanda, it was also the use of hatred and fear, which enabled the leaders to mobilise the Hutu population and to organise it into a self-defence militia: the life-blood of genocide. The fear of conquest by the so-called external Tutsi (refugees in neighbouring countries) was used throughout the 1980s and was amplified with the first incursions of the Rwandan Patriotic Front (RPF) in 1990. This ideology partly explains the ferocity of the massacres that were perpetrated and the levels to which the civilian population was involved. RPF leaders estimate that 2 million Rwandans committed crimes of blood with their own hands, or took part in a collective murder. *“The figure of 2 million is realistic”*, confirmed an observer from the United Nations High Commission for Human Rights. *“The government cannot criminalise 30 per cent of the population which nevertheless committed abominable crimes”*.⁶ In Bosnia, as in Rwanda, survivors reported that they were most often attacked by a neighbour or a

⁴ Policies of “ethnic cleansing” practised during the Yugoslav conflict were qualified as a “*form of genocide*” by the United Nations General Assembly: A/Res.47/121, 18 December 1992, preamble.

⁵ Yves Ternon, *L’Etat criminel, les génocides au XXe siècle* (The Criminal State: Genocide in the Twentieth Century). P(aris: Seuil, 1995), p.377.

⁶ Remy Ourdan, *Aux pays des âmes mortes*, (In the Land of Dead Souls) *Le Monde*, 31 March 1998, p.14.

colleague. In Rwanda, members of the same family killed each other. Many accounts from witnesses have shown that children also took part in the killings after having been specially trained.

The high level of preparation of those responsible also accounts for the violence and the extent of the massacres. In Rwanda, where the **planning and the preparation of the genocide** were particularly visible, campaigns to incite hatred and the elimination of the other were brought out in the media and particularly through the *Radio Télévision Libre des Mille Collines* (RTLM). In parallel, lists of moderate Hutus and Tutsis, or those considered as being opponents to the regime were established by local and national leaders. The militia were trained and armed long before 7 April, so that the extermination could take place rapidly and on a large scale.

These policies of hatred, easily imposed on civilian populations already convinced that they were victims, coupled with the creation of an efficient genocide organisation made possible the large scale massacres and the cruel, inhuman and degrading treatment perpetrated in Rwanda and in Bosnia.

Means of Extermination:

In this concern for “efficiency” desired by those in charge, the perpetrators of the **Rwandan** genocide were armed, trained and managed by the army or the militia. Most often, Tutsi were brought together in public areas, schools, stadiums or churches and massacred once they were all gathered. A large number of women were raped, and children were killed just as adults. In their accounts, survivors often reported being witnesses to the massacre of members of their families.

The scale of the violence and the massive killings organised in each hill were confirmed by the discovery of many mass graves. In his report⁷ dated November 1994, René Degni Ségui, Special Rapporteur to the United Nations Human Rights Commission gives a figure of approximately fifty mass graves. This number has risen since then.

Is there any need, faced with such acts, to state that none of the agreements signed by Rwanda under General Habyarimana was respected? The only reason to conduct this type of exercise is to use it as an example. **It is not the existence and ratification of a text that prevents the act.** Rwanda has, as have other states, ratified the 1948 Convention for the Prevention and Repression of the Crime of Genocide, the four Geneva Conventions of 1949 and the two Protocols, the 1989 Convention on the Rights of the Child, and the International Covenants on Human Rights of 1966. All the acts committed in April 1994 are prohibited by these texts. They were nevertheless carried out.

⁷ United Nations Economic and Social Council, ‘Report on The Human Rights Situation In Rwanda’, presented by René Degni Ségui, Special Rapporteur to the Human Rights Commission, 29 January 1996.

Sarajevo Under Siege
Excerpt from “The Yugoslav Hell: War Victims Speak Out”⁸
Médecins du Monde

On 5 April 1992, with their taking of the airport of Sarajevo-Butmir, the Yugoslav Peoples Army performed the first act in the siege of the Bosnian capital: bombing started in the night of 6 to 7 April -only a few hours following recognition by the EEC of Bosnia-Herzegovina's independence. Barricades rose. Almost 400,000 people took to the cellars and shelters that they were to stay in for many long months.

A Croatian from Bosnia. Mrs N.P., age 41, a lawyer from Sarajevo and a refugee in Varazdin (northern Croatia).

"For a month and a half I underwent the real suffering of war. Not a civil war, a real aggression [...] On 3 April 1992, we realised that the war was going to start. With the assault on Butmir on 5 April we went down into the shelters. Bombs fell all day long. There was constant shooting [...] I worked in a bank and I tried several times to get to work. But the part of town where my office was quickly fell under Serb control and I had to give up. I managed to get out before the Serbs started firing at the apartment building, but most people stayed. After I left, I learned from a phone call from my neighbours that some of the people in the building were dead.

I was a refugee in my own town for a month. After a few days I regretted having chosen Kresceko Brdo as a refuge, because the shelter there was even more dangerous. There were alarms three or four times a day. As the shelter in the house was not safe enough, we had to go to a nuclear shelter about 100 metres from the house. But the path to go there was very dangerous. The siren went off when the raid started, we were running as the bombs fell. Several times people were injured alongside me. I remember a young girl seriously injured by a bomb. The bombing lasted one hour to two. The worst raids took place at night. I spent whole nights in this shelter with the children. We ended up taking sheets down there. There were around 200 people. During the day they went home, and at night they slept in the shelter. Even though it was a nuclear shelter, the place was not prepared for bombings. It was very damp and stank horribly. We used a sort of metal can for a toilet. Nothing was ready, as everyone was convinced that they wouldn't dare attack a big city like Sarajevo. The food reserves were very low. My niece went to get some milk and saw a man in the queue get killed by a sniper, and another one get injured [...].

But what I regret most is my own town, Sarajevo, which was really a wonderful city, precisely because its inhabitants were of all sorts of origins. It was a unique city. Even in the happiest marriages, it's easy to spread discord. At the beginning of the war, people went together, unarmed, towards the guns: they didn't believe it was true."

⁸ Claire Boulanger, Bernard Jacquemart, Philippe Granjon, *L'enfer yougoslave, les victimes de la guerre parlent*

In the case of the **former Yugoslavia**, Serb fighters used the most varied “methods” to chase out or eliminate the non-Serb population living in the zones to be cleansed. **Extermination strategies** were implemented in order to frighten whole groups of villagers and to force them to flee. When the troops arrived in a village, the killings multiplied. *“There were around 160 Muslim and 160 Serb houses in our village. One day, the Serbs attacked Ceraki, a neighbouring village. They started to burn the houses. When they fled, some villagers were taken prisoner and others killed. The next day, the Chetniks arrived and arrested the men. Some were killed immediately. We saw 20 dead bodies on the ground”*.⁹ In July 1995, following the taking of the town of Srebrenica by General Mladic’s troops, 3,000 men were found dead. 5,000 are still missing. Here again the mass graves opened up by investigators show the extent of the massacres.

In parallel to these direct attacks, the Serbs increased the **sieges, blockades and bombings of the towns**. The inhabitants of Bukovar, Mostar, Sarajevo, Zenica, and Tuzla directly targeted by these assaults fled from urban areas, causing large movements of populations and flows of refugees that had serious consequences on the health of civilians.

The logic behind ethnic cleansing went as far as **deportation and the creation of concentration camps**. *“[...] On arriving in Bileca, they opened the back of the truck and ordered us to jump out one by one. [...] It was the same every day. We had little water, and no toilets. [...] The food was terrible. You could see people fading away. I lost 19 kilos. Some lost as much as 26. From time to time in the afternoon, a guard and his friends would come to beat us with their fists or pickaxe handles. They said that we were civilians who had been taken hostage. If ever a Serb from the region of Gacko was killed, they could easily eliminate ten, fifteen or even fifty people; they just did not care. [...] On 12 August, we found out that we were going to be exchanged for Serbs held in the region of Mostar ”*.¹⁰ In these camps, the internees were victims of **cruel, inhuman and degrading treatment**. Torture was carried out on a massive scale.

But that is not all. As in all current conflicts, rapes were committed in combat zones; in particular, those “cleansed” by the Serbs. In Bosnia, the large number of witnesses led some international bodies to speak of a systematic practice and to consider rape as an instrument of ethnic cleansing. In 1992, an enquiry commission mandated by the European Union concluded that *“the practice of rape in Bosnia is not a side effect of the conflict, it is an integral part of a policy of systematic humiliation; it is perpetrated with the deliberate intention of demoralising and terrorising communities so as to force them out of their region, thus demonstrating the power of the occupying forces”*.¹¹ The definition of crime against humanity found in the Statutes of the International Tribunal for the former Yugoslavia includes rape in the list of punishable acts (art. 5G), an innovation in relation to article 6C of the Statutes of the Nuremberg Tribunal.

Once again, these few lines on extremely serious acts would have no meaning if they did not go to show that the Yugoslav Federation had signed and ratified the most prominent texts in international humanitarian law, thereby undertaking to protect civilians in cases of conflict. The four Geneva Conventions, the two Protocols Additional to the Convention on the

(Yugoslav Hell: War Victims Speak) Médecins du Monde ed, (Paris: Berlfond 1994), p.172.

⁹ Ibid. p. 189.

¹⁰ Ibid. p. 203.

¹¹ Ibid. p. 293.

Prevention and Repression of Genocide, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment were at no time of any benefit to Bosnian, Croatian, or Serb civilians.

2. “Genocidal Massacres” and Deportation

The term of “genocidal massacre” was employed for the first time by Yves Ternon in his book *L’Etat criminel (The Criminal State)* to refer to situations that international bodies are not likely to, rightly or wrongly, qualify as genocide.

The massacres committed in Burundi and the Democratic Republic of Congo (DRC) on Rwandan refugees were perpetrated in order to eliminate a specific sector of the population, through fear of the other and as reprisal for previous violence. They can certainly be qualified as genocidal massacres. They prove, outside major crises qualified as genocidal, that extremely serious acts are committed in “low-threshold” conflicts -Burundi- or in conflicts where the objective is not openly the destruction of the other -the Democratic Republic of Congo (DRC).

In the each of these countries, wide-scale massacres were perpetrated. **In both cases the deep-rooted conviction of both ethnic groups was that the survival of the one could only be ensured by the elimination of the other.**

a. Burundi : Genocidal Massacres and Forced Movements

The history of **Burundi** has been stained by a succession of **massacres** which, since the country’s independence in 1962, fall within a pattern of “Hutu uprisings/Tutsi repression”. One of the most violent of these was marked by the assassination of President Ndadaye in October 1993 and brought about the deaths of tens of thousands of people, again followed by new massacres. In this conflict, the Burundian army, mainly led by Tutsis, opposed Hutu fighters. A large number of whom took refuge in neighbouring countries. NGOs gathered a great number of accounts from witnesses on civilian massacres.

The list would be too long to delve to go into at length, but the according to human rights defence organisations, the number of dead could be as high as several hundreds of thousands. Some of these associations speak of “**rampant genocide**”. For his part, the Special Rapporteur on Burundi to the United Nations Human Rights Commission spoke of “**genocide by attrition**”.¹²

Given the fighting between the Tutsi army and the Hutu militia, some areas of the country were in a genuine conflict situation, making them inaccessible to NGOs and to United Nations agencies, thus depriving the civilian population of any form of protection and assistance. This state of war forced civilians to flee -in constantly increasing numbers- in two separate groups. Mainly of Tutsi origin, **displaced persons** left the incursion areas and sought refuge in the camps. Which sometimes came under attack, although protected by the army. In July 1997, Amnesty International¹³ estimated the number of displaced persons to be 300,000. Most of

¹² United Nations, ‘Report of the Special Rapporteur on Burundi, Human Rights Questions: Human Rights Situations’ and ‘Report of the Special Rapporteurs and Representatives’, doc. A/51/459, 7 October 1996, p. 5.

¹³ Amnesty International, ‘Burundi: Forced Re-Location, New Forms of Breaches of Human Rights’, doc. AFR 16/19/97, 15 July 1997.

the displaced persons were Hutu in origin. They hid in the hills to escape the assaults led by the army and Tutsi militia.

In February 1996, authorities in Burundi adopted a policy of “**forced grouping**” of civilian populations. Officially, this measure was taken to protect civilians from attacks carried out by the Hutu “rebels” and to separate the civilians from the fighters. The camps were set up in the province of Karuzi, then in the provinces of Bubanza, Cibitoke, Kayanza, Muyinga, Gitega, rural Bujumbura, and Makamaba. In total, between 300,000 and 500,000 ethnic Hutus from all combat zones, went through these camps, under the obligation to go or be considered as rebels.

Amnesty International described the incarceration conditions and the punishments carried out on a massive scale on the civilian population thus deprived of their freedom of movement. These groupings, carried out by the army, gave rise to numerous punishments: **murders, cruel, inhuman and degrading treatment, destruction of goods, and disappearances.**

Along with the serious breaches of human rights to which they were victims, the people grouped together in these camps often had no means of subsistence as their lands had been taken from them. Given the unsanitary conditions and the particularly high levels of malnutrition there was a typhus epidemic at the beginning of 1997 that further weakened these already vulnerable civilians. Amnesty International recounts, “*on 20 March 1997, 135 people died and 144 others were wounded during attacks carried out on three camps in the province of Cibitoke. The government blamed members of the Hutu group for this massacre. However, according to other, reliable, sources, the killings were carried out by government soldiers during a punitive expedition following an attack by armed groups of Hutus on a neighbouring camp for displaced persons.*”¹⁴

b. Zaire and the Democratic Republic Of Congo: Massive Massacres and Disappearances

During the summer, which followed the genocide, the Tutsi Rwandan Patriotic Front (RPF) continued to advance, taking control of Rwanda. This forced a million of their Hutu compatriots to flee to Zaire. Among these refugees -grouped together in camps located on the border- were people guilty of genocide. In November 1996, harassed by those then called the “Banyamulenge rebels”, the refugees had to flee yet again. Some of them went back to Rwanda, whereas almost 400,000 others chose to penetrate even further into Zaire.

The actual conditions of this flight have been gradually revealed through the accounts of witnesses gathered by some NGOs and those of Roberto Garreton, Special Rapporteur on Burundi to the United Nations Human Rights Commission. The refugees were subject to manhunts carried out by the troops of the Allied Democratic Forces for the Liberation of Congo (ADFL) which were followed by -it was later discovered- by soldiers from the Rwanda Patriotic Army (RPA). This harassment came on top of heavy artillery attacks on the camps that had led to a large number of dead and wounded. In his report for April 1997, Roberto Garreton gave an inventory of the actions carried out during this “hunt”. “*13 February: approximately a hundred refugees massacred at Kingulube. 14 February: ADFL soldiers slit the throat of a refugee in Kibandamango. 20 February: in Luseke, in southern Kivu, 17 refugees killed. February: 29 refugees from Shabunda killed in Kingulube. 21*

¹⁴ Ibid. p. 16.

February: several people murdered during an ambush. 22 February: in Mitaba, 16 refugees hacked to death with machetes. 25 February: the Nunciature confirmed that 11 refugee priests and nuns were murdered at Kalima in the Maniema region by ADFL soldiers.¹⁵ Concurrent to the observations of the Special Rapporteur, other witnesses revealed the massive scale of the massacres carried out. Médecins Sans Frontières gave an account in one of its reports of the attack on the camps of Biaro and Kassese where 85,000 people disappeared. For its part, Médecins du Monde¹⁶ collected the accounts of refugees who escaped from the massacres of Wendji Sekri and Mbandaka in the north-west of the country. **No reliable numbers have been established. The number of people reported missing is estimated to be between 200,000 and 300,000.**

Proof of the scale of the massacres is that many accounts speak of the existence of **mass graves**. The Special Rapporteur explains that he “*went to two places where the existence of mass graves is clear, but that he could not count the bodies*”.¹⁷ Some refugees were forced to return to Rwanda; some were forced by the army, others by the U.N. High Commission for Refugees (UNHCR) which was unable, faced with the gravity of the situation, to carry out fully its protection mandate.

The problems encountered by the UNHCR are representative of **the significant difficulties NGOs had in accessing refugee populations**. Permission to approach refugees was frequently denied and humanitarian assistance personnel clearly observed that entire groups of people disappeared from the camps each time access was denied.

Rwanda, the former Yugoslavia, Burundi, and the Democratic Republic of Congo are examples of how fighters have developed real strategies for the elimination of civilian populations. All these states are, however, signatories of international conventions binding them to observe protection measures. In conditions where the elimination of one group is perceived as a condition of survival for another, the law loses all meaning and is not imposed on fighters regardless of the institution they represent -the State, national armies, militia, mercenaries, or civilians turned murderers.

¹⁵ United Nations Economic and Social Council, ‘Report on The Human Rights Situation in Zaire’, E/CN.4/1997/6/add.2, 2 April 1997, pp.14 and 15.

¹⁶ Médecins du Monde, *Témoignages de réfugiés rwandais, recueillis par un médecin de l’association sur le camp de Djoundou (Accounts of Rwandan Refugees*, collected by one of the associations doctors in the Djoundou Camp) (Congo-Brazzaville), June 1997.

¹⁷ Op.Cit. p.8.

□ Armed Struggle and War: *Civilian Populations As Instruments in Warfare*

As we have already seen, striking at civilians is an efficient way of weakening fighters. Increasingly, the fate reserved for civilians, is part of a planned war strategy; it is a variable likely to influence the opposing party and even modify the course of the conflict. Starving, moving or carrying out reprisals against a group of civilians is one way of directly getting at enemy fighters by depriving them of popular support or by cutting them off from their logistics base. This type of strategy currently exists in most conflicts. In Chechnya, towns and villages were totally destroyed by the Russian army's heavy weapons in order to deprive Chechen soldiers of all popular support. In Somalia, whole regions were starved out with the same objective. In the region of the African Great Lakes, there was a genuine policy of moving populations developed by opposing factions. In the former Yugoslavia, all the parties carried out reprisals against civilians. This list is not exhaustive.

All these actions are, however, condemned by international humanitarian law, in particular article 3 which is common to the four Geneva Conventions of 1949 which states what in 1949 the International Court of Justice called "*basic humanitarian considerations*",¹⁸ i.e. "*the minimal rules applicable in international conflicts and conflicts which do not have this character*".¹⁹ This article, which has customary worth, prohibits the following acts:

- Attacks on life and limb, particularly murder in all its forms, mutilation, cruel treatment, torture, and punishments;
- The taking of hostages; and
- Attacks on the dignity of individuals, especially humiliating and degrading treatment.

In addition to these basic measures, there is the prohibition of reprisals and attacks on civilians, civilian property and property which is essential for the subsistence of the civilian population, all of which are part of the four Geneva Conventions and the two Protocols of 1977.²⁰

1. Striking At Civilians: A Means of Weakening the Fighters

Unlike Rwanda, Bosnia, Burundi and the former Zaire, the strategies and the acts detailed above do not have the ultimate aim of exterminating a targeted part of the population. Striking at civilians, weakening them or eliminating them is not an end in itself but a means to an end which may be territorial, gaining power, defence, etc. Chechnya, the former Yugoslavia and Iraq are, however, conflicts where extermination practices were developed by all the parties.

In Chechnya and in Iraq, the national army put down uprisings aiming at territorial independence (that of Chechnya and Kurdistan) or opposing a repressive government (as is the case of southern Iraq). Striking at civilians emerged as a **military tactic** with a view to

¹⁸ ICJ, The Straights of Corfu Case, United Kingdom vs. Albania, decision of 9 April 1949, *Rec 1949*, p. 22.

¹⁹ ICJ, Military Activities in Nicaragua, (cited in note 1), paragraph 218.

²⁰ Cf. *Geneva Convention (IV)*, article 33, line 3; article 20, line 51 paragraph 6; article 52, paragraph 1, lines 53 c and 54, paragraph 4; article 55 paragraph 2; article 56, paragraph 4. Protocol (I), article 13, paragraph 2.

annihilating the logistical support of fighters and as a **political means** of weakening, by way of repression, popular support for fighters.

In these two conflicts, the armies used **massive bombings of civilian zones**. During the second Gulf War, for instance, the Iraqi army carried out ferocious repression on the Shiite uprising. **Heavy artillery** attacks were perpetrated in the south and in the centre of the country. On some sites, according to Amnesty International,²¹ the civilian population was used as a **human shield**. Women and children were placed on tanks when government forces entered the town of Tannuma, while they were bombing residential areas. These attacks continued until the United States, the United Kingdom and France set up a no-fly zone in 1992 to the south of the 32nd parallel. By unilateral decision taken by Washington in response to an incursion of the Iraqi army into Kurdistan, this zone was extended in 1996 to the 33rd parallel. Although this measure did bring air attacks to an end, the region still remained the scene of massive attacks, as reported on by Amnesty International for the year 1993, “A large number of women and children, who were not participating in the combats, were victims of summary executions by the government forces during attacks launched against civilian targets in the marsh region. These attacks were in line with the government’s attempts to strengthen its control of this vast area bordered by the towns of Al Amarah, Bassorah and An Nasiriya; a zone traditionally used as a refuge by opponents and deserters”.²² Arbitrary arrests and illegal executions continue to increase in this region.

To the south, the **marsh region** was also subject to an internal blockade and a genuine destruction plan. It is one of the most hard-hit regions of the country. The “third river” plan was developed in the 1950s with the aim of draining the marshes in order to extend areas that could be cultivated. This programme was maintained and seemed to be in line with a broader project aimed at the destruction of the area. As the work progressed, with the drying out of the land, drinking water became scarce in villages and natural resources began to disappear. Fish, reeds and bamboo died out, depriving the population of their traditional sources of food, cattle fodder, fuel, and building materials. According to the Special Rapporteur of the United Nations Human Rights Commission,²³ a government document dated 30 January 1989 outlines a destruction plan for the marsh region. Entitled “*Third Anfal*” -after the name given to the bombing campaigns carried out in Kurd areas- it shows the government’s desire to “clean the area”. Its effects are still underlined by an internal blockade that has affected the south of the country since the setting up of the exclusion zone. Food rations distributed by the Iraqi government are not handed out to these populations whereas supplies and medicines are sent to the zone north of the 32nd parallel. The hospitals of Bassorah and *An Nasiriya* have apparently been emptied.

There is nothing new about this situation. For many years now, Iraqi, Turkish and Iranian authorities have been carrying out reprisals against the Kurds because of their claims to independence. Iraqi Kurdistan served as a rear base for Shiite opponents in the south of the country as well as to Iranian and Turkish Kurds. Throughout the 1980s, the army carried out air and land raids. Several accounts, some of which come from the Special Rapporteur of the Human Rights Commission, talk of napalm bombs being used during these raids.

²¹ Amnesty International, ‘Iraq: Human Rights Violations Since the Uprising’. *Summary of Concerns of Amnesty International*, July 1991, p. 11.

²² Amnesty International, *Annual Report 1994*.

²³ Max Van des Stoel, U.N. doc. E/CN.4/1993/45, p.40-41.

In 1991, the putting down of the Kurdish uprising gave rise to massive reprisals on the civilian population. Images of Kurds fleeing the acts of violence and exaction perpetrated by the military were broadcast all over the world. In April 1991, the United States, France and the United Kingdom responded to the concerns expressed by the Security Council by launching Operation "Provide Comfort"; an attempt to cope with the situation. Its objective was to protect humanitarian convoys and enable refugees to return. A safe haven was created and a no-fly zone defined to the north of the 36th parallel. While the objective of this intervention was officially only humanitarian, the result was the de facto creation of an autonomous Kurdish government.

The allied troops pulled out some months later; they were replaced by 500 U.N. peacekeeping troops. That number was quickly reduced to a few dozen. From that point on, the only protection of the area came from air surveillance by aircraft taking off from Turkey. Turkey, as well as Iran, had frequently carried out air raids, as had Iran, and land incursions into Kurdish territory, in reprisal for acts committed by its own independence movements. Thus, on 20 March 1995, 35,000 Turkish soldiers penetrated into Iraqi Kurdish territory, supported by combat aircraft and helicopters. Several towns, including Zakho, were occupied.

Although the situation in **Chechnya** is different, here again, civilians were victims of targeted military attacks. The Russian army **bombed** villages and used massive artillery fire, while indiscriminate machine gun fire increased as the war wore on. The names of the martyred towns of Novogroznensky in February 1996, of Vedemo, of Dargo or of Argoun in March and April 1996 can be included as can that of Cerdnovodsk, for the same period. Here, *"the Russians used helicopters to attack civilian convoys and burned the town after having pillaged it"*.²⁴ The bombing of Grozny remains in the memories of those who were in the field. Along with the air raids, the Russian army **massacred** the civilian population. In April 1995, the town of Samachki was razed: *"Chechen resistance fighters had left several days before, on the request of the elders. When the Russian troops arrived at the gates of the town, the elders told them that there were no longer any fighters in the town. Despite this, without a single shot being fired, the Russians started to systematically bomb the town and then to cover it with napalm. 80 per cent of the town was wiped out. Those that could, fled. Many of them arrived in Cernovodsk. Their accounts are awful and frightening. The women and children hiding in cellars to protect themselves from the bombings came out because of the napalm. Then the troops that were positioned in the four main streets of the town systematically killed them [women and children]. [...] Officially there were 156 dead and more than 200 wounded"*.²⁵

In Chechnya, as in Iraq, opponents used civilian populations to slow down the progress of government forces and to draw the attention of international public opinion. In Chechnya, in a number of cases, independence fighters took refuge in towns and villages that were still populated by civilians in order to find protection. In Samachki, for example, Chechen fighters were still in the town a few days before the Russian offensive. These soldiers also proceeded with wide-scale hostage taking. The most spectacular case was certainly that of Budennovsk, *"In June 1995 [...] approximately a thousand civilians were taken hostage in Budennovsk, a town in the south of Russia, by an armed group of Chechen fighters. They were under the command of Chamil Bassaev, an officer in the army of Chechen President Djokhar Dudaev. Bassaev claimed that he was acting without the knowledge or approval of the President. On*

²⁴ Médecins du Monde, report sent via fax from team in the field, 18 March 1996.

²⁵ Médecins du Monde, report sent via fax from team in the field, 10 April 1995.

14 June, approximately 40 people were killed when the Chechens invaded the town. They gathered the hostages and took them to the hospital, where they held them along with hospital staff, patients and visitors. During a press conference held at the hospital, Chamil Bassaev declared that he and his men would fight to the death and, if necessary, would kill the hostages to obtain what they wanted, i.e. that the Russians proclaim a cease-fire and pull their forces out of Chechnya. The lives of the hostages were put in jeopardy when Russian troops attempted an assault on the building on 17 June. Some hostages were placed in front of windows to act as human shields for the Chechen fighters. Most of the hostages were freed on 19 June, when the Chechen forces left Budennovsk. However, more than thirty went with them to act as a human shield –on a voluntary basis- and were only freed when the convoy finally arrived in Chechnya on the next day. At least 123 people were killed between 14 and 20 June during actions carried out either by Chechen forces or Russian forces.”²⁶

The situation was the same in Iraq, particularly in Kurdistan, where the fighting between the different parties, namely the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK), caused a large number of civilian deaths. In 1995 and 1996, during the fighting between these two factions, there were a large number of illegal executions and disappearances perpetrated by both sides. According to the UNHCR,²⁷ during the taking of Arbil in January, the PUK arrested civilians for their family ties with members of the KDP. They were apparently executed following a summary trial a special court, set up by the PUK. In 1996, the American State Department²⁸ confirmed that the KDP had carried out many illegal executions and attacks, notably in a camp on the Iranian border that took in refugees from zones under PUK control.

It is clear that the massive attacks and bombings that the civilian populations were victims of caused, in most cases, the destruction of **property essential for their survival**. In Kurdistan, farming areas were bombed or mined, making them very dangerous for planting. In Chechnya and in Bosnia, extensive areas of farming land are still mined and cause accidents on a daily basis, mutilating or killing civilians. **Hospitals** have never had any particular protection and in a number of cases they were wiped out as any other civilian property might have been. Bombing destroyed the Grozny Children’s Hospital, to give but one example.

Whether it is in Iraq or Chechnya or any other conflict studied in this report, **cruel, inhuman and degrading treatment was afflicted on civilians**. To varying degrees, the Iraqi army, the Russian army, the Chechens and the Kurds are responsible for such acts. Rape and torture were carried out in all the conflicts. They appear, as is the case with pillage, to be increasingly inevitable in conflict situations against which humanitarian organisations and human rights defence organisations seem to be fighting alone. Nevertheless, these acts are prohibited under article 3 common to the Geneva Conventions.

We could furnish a multitude of examples, but this has already been done by human rights defence groups. The carrying out of our medical duties has enabled us to see them in our day to day activities with the victims. The few examples given above suffice to show the extent to which the protection of civilians during periods of conflict has been jeopardised. They also suffice to prove how civilian populations are hostages to warring strategies and how they

²⁶ Amnesty International, press release.

²⁷ UNHCR, ‘The Human Rights Situation in Iraqi Kurdistan’, .background paper on Iraqi refugees and asylum seekers, Geneva, September 1996, section 4.4:

²⁸ U.S. State Department, ‘Iraq Report on Human Rights Practices for 1996’.

participate, indirectly, in striking out at enemy fighters.

2. Using Civilians As Instruments in Warfare

Civilians are the targets of attacks and of massive and murderous repression. The aim is twofold: to cut the enemy off from its logistics base and to discourage popular support. With this in mind, fighters develop genuine strategies to reach their objectives: moving and grouping civilians, managing the flows of refugees (expulsion, pushing back) setting up a state of “chaos”, etc. Even though the term might appear cynical and shocking, it is nothing more or less than “stock management”. The fighters, whether or not they are fighting for the Government, detain a means of exchange or a means of constraint, the value of which is commensurate to the size of the group of civilians they are meant to protect.

a. Management of Flows of Refugees and Displaced People

Given the new emphasis placed on civilian populations, all current conflicts generate flows of refugees and displaced persons. Civilians flee from combat, reprisals and acts of repression, or are in search of assistance from humanitarian organisations. In certain situations, due to fear or the intensification of combat, the flows can spring up spontaneously. **They can also be caused and orchestrated by political or military leaders for whom the control of a mobile, and easily mobilised population, is an advantage, or a source of protection during a conflict.**

This type of strategy can be illustrated by the Hutu refugees who fled Rwanda in 1994 in order to reach, for a large majority of them, Zaire. The exodus started at the beginning of the summer and was organised by the former Rwandan army and the militia who were outflanked by the advances of the Rwanda Patriotic Front (RPF). A large part of the population who took part in this flight had never participated in the massacres, even if an estimated 50,000 people (out of 1.3 million people in 1995) responsible for organising and carrying out the genocide were present in the Kivu camps, according to the UNHCR annual report. Although extremely high, this figure is far from representing all refugees. In fact, these populations fled under the pressure of fear, convinced that once the RPF had taken control in Rwanda they would exterminate all the Hutus as reprisal against the planning and carrying out of the genocide. From another point of view, such a large number of civilians would provide protection -in the form of a human shield- for those responsible for organising and carrying out the genocide. Hidden among the civilians, who included a large number of women and children, they could **benefit from a form of protection** provided by their refugee status. But, above all, they were **recipients of humanitarian aid** from United Nations agencies and NGOs. Never would aid have been deployed on such a large scale if the camps had only been populated by people guilty of genocide. The final motivation was tactical in nature. By ensuring the presence of a large number of refugees -who was difficult to move- those responsible for the genocide could maintain their presence on the Rwanda border and thus **transform the camps into rear bases**. To keep them from becoming depopulated, rumours were spread giving accounts of the murder and massacre of all the Hutus in Rwanda. These rumours maintained the refugees in a genuine state of fear that kept them from returning and under constant pressure. These tactics were denounced by NGOs.

The dilemmas experienced by non-governmental organisations from 1994 to 1996 are

representative of this extremely chaotic situation. Should they stay and provide assistance for the civilian population, among whom there were people responsible for genocide, or should they abandon men, women and children a particularly vulnerable group, in such a context? Some, including Médecins Sans Frontières, chose to leave and not to assist the genocidal group. Médecins du Monde decided to stay with the women and children. Both choices are equally respectable and reflect a position taken in the name of principles and values that are identical in nature. This difference illustrates the difficulties facing NGOs, and all those involved, in adapting their methods of action in such complex circumstances.

Those responsible for organising and carrying out the genocide are not alone in having exploited the flows of displaced persons and refugees. The attack on the Kivu camps by the “Banyamulenge” movement and the return of more than 600,000 civilians show that the Rwanda authorities also carried out a policy of “stock management” with respect to these populations. Rather than maintain the rear bases outside their borders, they preferred to force the civilians to return, so as to manage from inside the major risks of destabilisation linked to their return. This policy made it possible to carry out an initial sorting process of the population: all those who, instead of returning to Rwanda fled into Zaire, were considered as the presumed authors of the genocide. Many of them were eliminated without any further form of trial. However, while it is clear that those responsible for the genocide were in majority among those fleeing into Zaire, it should not be forgotten that civilians were carried along, “captured”, in this flight, by the leaders of the former camps, to serve once again as human shields and as bait for humanitarian aid. The return of some of the refugees and displaced persons, the massacre of many others, and the flight of the remainder towards Congo-Brazzaville enabled Rwanda to bring an end to the problem of the border camps. Although the current internal situation calls into question the validity of this solution, this does not mean that Rwanda did not manage this human mass, assessing the costs and benefits of each of the hypotheses.

One last example of the use of the flow of civilian populations in the region is civilian containment camps in Burundi. The existence of the latter prove that the use of civilians can be motivated by the will to cut off a rebellion movement from its logistical rear bases or its support in a zone (cf., above).

In sum, the massive flows of refugees that accompany conflicts are largely the consequence of military strategy and rarely spontaneous. Seen as human shields, as bait for the humanitarian aid and the protection ensured by NGOs and United Nations agencies, civilians are a genuine stock of resources or of potential danger and are managed as such by the parties to the conflict.

b. The Chaos Strategy

The chaos mentioned here generates, in the case of the disintegration of the State, deep-seated dysfunction of which civilians are the first victims. Of the five conflicts analysed in this report, it is certainly the Somali situation which best illustrates this point.

Somalia is made up of tribes divided into a multitude of sub-tribes that are defined by lineage and descent. It is representative of nations where the centralised state model, which produces political, social and economic regulations, has never corresponded to reality. Colonisation and the subsequent dictatorship set up by Siad Barré in 1969 attempted to introduce a centralised state structure, while using the tribe and sub-tribe system to regulate conflicts or to construct

opportunistic alliances. This completely unrealistic system gradually crumbled following the war with Ethiopia and the war of independence of Somaliland. The latter was the first murderous act of the generalised conflict that ravaged Somalia. According to some figures, more than 10 per cent of the inhabitants were massacred on this occasion, 15 per cent were mutilated and 50 per cent fled to refugee camps located in the region of Ogaden in Ethiopia.

In the rest of the country, the progressive radicalisation of the tribes and their subdivision –as evidenced by the creation of a multiplicity of parties each one with its own militia- led to a generalised conflict that broke out in 1991. The first taking of Mogadiscio by anti-Siad Barré forces gave rise to violent combats and caused a genuine manhunt through the town for inhabitants who did not belong to the party of the winning clan. The city was ravaged a second time in 1992, a victim of the fighting between the two main “warlords” from the same tribe, General Aidid and Mohamed Mahdi. According to estimates these violent confrontations left 14,000 dead.

From 1991 to 1992, Somalia was in a genuine state of chaos, the result of the Aidid/Mahdi conflict and the counter-offensives launched by the other leaders. Peopled mainly by the Digil and Rahanweyn sub-tribes, the south of the country was particularly affected. It was crossed three times by different factions, was the scene of pillage, rape, massive destruction, and was deserted by refugees and displaced persons. A direct consequence of the fighting was severe famine, which is thought to have caused more deaths than the fighting itself. In the south, another region was severely affected: the zone inhabited by the black populations of Jubba and of the Wabi Shebelle Valley. These populations are sedentary and have no warring tradition; they were the targets of systematic pillage. Their villages were burned and their harvests destroyed or stolen.

Examples of this kind abound. Civilians were caught up in an uncontrolled spiral of violence, while being tied by the clan rules of tribes and families. According to the UNHCR,²⁹ 1 million Somalis left their country at the end of 1991 to take refuge in Ethiopia, Djibouti, Yemen, and Kenya. According to Gérard Prunier,³⁰ 1.5 million Somalis -out of a total estimated population of 7 million or more- were displaced during the summer of 1992 within the country -Somaliland, Mogadiscio and the south- or became refugees. At this time, food shortages were prevalent virtually everywhere. Malnutrition levels in 1991-1992 reached almost 90 per cent in some regions and the entire population no longer had access to health care. According to Médecins Sans Frontières,³¹ the mortality rate among the displaced reached 16.5 per cent in June 1992.

In this context, humanitarian aid rapidly appeared as a genuine stake for all those involved in the conflict. It was siphoned off, pillaged and re-sold. The various factions and their leaders managed aid in a strategically biased fashion. Consequently, the decision was taken, very late in the day, to resort to international intervention. The interposing of the United Nations in Somalia is dealt with on page 48 ff. of this report. We should point out that the forces that were assigned to this region marked by extreme violence took part in and were guilty of serious actions and breaches of international humanitarian law. These forces were, at times, veritable players in the conflict.

²⁹ UNHCR, ‘Kenya Operation’, *Information Bulletin*, February 1994, p. 2.

³⁰ Gérard Prunier, ‘Somalia: Civil War, Intervention and Withdrawal 1990-1995, Writenet (UK).

³¹ Médecins Sans Frontières, ‘Populations en danger’, 1992, p.61.

By the end of the UNOSOM II mandate, in March 1995, only United Nations agencies and NGOs remained in Somalia. While no explosion of violence followed this withdrawal the situation was not and is not resolved. The fratricidal war that opposed President Mahdi and the son of General Aidid, following the general's death in 1996, is not over. Attempts at conciliation are frequent, but come to nothing due to the multiplicity and complexity of alliances concluded at all levels.

It is impossible to sum up the Somali situation in so few lines. The complexity and the failure of all of the external parties involved to understand the situation call for caution. However, this brief description does give an insight into the fact that in such a context of generalised chaos no form of protection is provided to civilians. Whether they are caught in the crossfire, bound by their own tribal membership, or serving as bait for humanitarian aid, there is no law that protects civilians. More than in other context, Somalia illustrates the impossibility of imposing a legal order aimed at protecting civilians, but that has been designed for the State.

Modern methods of warfare are constantly giving rise to tactics that involve the taking of hostages or the elimination of entire sections of the population. In this often-confused context, humanitarian organisations are frequently caught in a situation where they have a moral obligation to care for the victims of the conflict –the reason for their presence- while being incapable of protecting them. For fifty years, organisations have been faced with this same dilemma, which began with the presence of Red Cross delegations in Nazi concentration camps. The issues that arise today are equally serious. In the interest of civilian populations, we need to measure the consequences of our activities in times of war. If humanitarian assistance only serves to repair the wrongs caused by its presence and to be used and manipulated by assassins, is it still desirable? And under what conditions? We must now reflect on the place that we occupy in major crises and try to provide solutions that are in line with a defined health ethic and determined policies.

II.

Access To Victims: NGOs Confronted with Violations of International Humanitarian Law

On today's battlefields NGOs constitute both an indispensable ally and an undesirable witness. Present in order to alleviate the suffering of civilian populations, they possess extremely liquid goods which have the potential to strengthen loyalties to and dependence on leaders. On the other hand, NGOs are unwanted witnesses. Because they are 'observers' close at hand, they often suffer the consequences for editorials that appear in progressive periodicals, for the political initiatives taken by the governments of countries where their headquarters are based, and for the stance taken by these governments.

Rather than choosing between being an instrument and being identified as a target to be eliminated, we must now raise real questions about our practices and the problems created by our behaviour in the field. This requires redefining the criteria we use when analysing situations, and perhaps our notion of what a victim is. This ultimately leads us to redefine our policies and methods for taking action.

□ The Conclusions We Have Drawn from Our Experience: *An Ever-growing Number of Obstacles and a Deterioration of Security*

*“During the Cold War, relief workers operated on the sidelines of conflicts, protected by invisible shields of neutrality. Now, while no firm statistics are available, it seems that several hundred of them are killed each year”.*³² These two lines sum up the conclusion most frequently reached by humanitarian organisations when explaining the greater number of obstacles encountered when emergency assistance is provided and the greater dangers their teams must face.

The situation we now see in the field originated with the end of the Cold War (the collapse of the Berlin wall in 1989 and the fall of the Soviet Union in 1991). The fall of the Soviet Union was characterised by an increase in local conflicts, whose specific nature generated what Koenraad Van Brabant identifies as the three primary factors that increased the vulnerability of persons working for humanitarian organisations: *“greater exposure to danger, [...] contempt for international humanitarian law, [...] the disappearance, on a local level, of the recognition of the impartiality and neutrality of humanitarian organisations and their teams”.*³³

One of the main characteristics of the post-Cold War period is the re-emergence of claims based on national and ethnic identity. Accompanying this is an increase in an attitude of non-recognition for those seen as “other”, the exploitation of civilian populations as a means or as targets of war; and the disappearance of the distinction between combatants and non-combatants (cf., preceding chapter). Simultaneously, we increasingly observe what Jean-Christophe Ruffin defines as “grey zones,” i.e. zones of chaos where war and organised crime go hand in hand, and where all authority disappears giving way to illegal activities based on the trafficking of drugs, arms, precious materials, inter alia, and on the subjugation of the population, without nationalistic and revolutionary rhetoric being abandoned as such. Due to this generalised context, *“in June 1997, the United Nations considered that 53 countries were ‘unsafe’ to varying degrees”.*³⁴ In November 1997, European Community Humanitarian Office (ECHO) pointed out, *“before 1992, it was said that safety was not a “major problem” for the United Nations”, but “ statistics showed one death per month among United Nations employees in 1992, one death every other week in 1993, and one death per week in 1994; the number of deaths dropped back to one per month in 1995 and 1996, but there was a total of nine deaths during the first two months of 1997”.*³⁵

Everyone is aware of the undeniable violence. However, awareness of violence involves a major risk, namely judging humanitarian activities only in terms of the danger they entail for expatriates, thereby excluding the civilian victims from the debate. Dealing with the problems of the safety of humanitarian personnel must be an integral part of *“the humanitarian*

³² John Promfet, ‘Plundering the Aid Givers’, *International Herald Tribune*, 24 September 1997.

³³ Koenrad Van Brabant, ‘Cool Ground for Aid Providers: a multi-track approach to risk reduction’, Overseas Development Institute ed, June 1997.

³⁴ Maureen Connelly, ‘Security and Humanitarian Assistance’, Bochum University, 25 September 1997.

³⁵ UNSECOORD (Office of the U.N. Security Co-ordinator) quoted in ‘Security of Relief Workers and Humanitarian Space’, ECHO Working Paper, 14 November 1997.

imperative itself: how to provide help to those who need it?”³⁶

It is, therefore, fundamental that NGOs think more deeply and calmly about safety and security issues, without falling into the trap of self-glorification, claiming that every act directed against humanitarian personnel is a political act. We must also avoid the simplistic conclusion that humanitarian need must be greater than the risk involved. We must return to what the International Committee of the Red Cross (ICRC) presents as “*a humanitarian ethic focusing on a basic imperative, the interests of the victim*”.³⁷

In addition to these safety problems, NGOs have been made far more vulnerable these past years because of other types of attacks. Humanitarian, political, and military initiatives have been combined in a confusing way, and there has been an alarming increase in the number of humanitarian organisations. Large funding institutions are partly responsible for this situation, as they seek to avoid giving certain NGOs a “monopoly” and also attempt to strike a balance between member-states. This blending of roles has considerably weakened the position of humanitarian teams who are the target of an increasing number of attacks.

In this general context, we can now define four obstacles that hinder the access of humanitarian organisations to victims:

- Safety and security;
- Politics and safety, in cases where despite “political” agreements on access to victims or providing aid, no sufficient guarantee of safety can be obtained;
- Politics, this is especially the case in conflicts related to ethnic identity; and
- Culture and religion, an example of this is the discrimination between men and women for access to care introduced by the Taliban in Kabul.

To this list must be added the more insidious obstacles which may be raised by funding organisations. For example, in 1991, ECHO advised a French NGO to turn a project for the benefit of the “Shiites of Southern Iraq” into a project for the benefit of the “Kurds in the North”. There are also obstacles created by entities of a greater political nature: in May 1992, Médecins du Monde and Pharmaciens Sans Frontières were called before the representatives of the European Union, France, and the High Commissioner for Refugees in Zagreb only to be told that “*they would not have access to community funds if they went to work in Bosnia.*”

We must bear in mind certain underlying factors, namely that “*access to victims is no longer as easy to negotiate, humanitarian assistance is no longer perceived as neutral by its beneficiaries [or by those who would like to be beneficiaries], and it is often used by the parties of a conflict toward aims other than impartial assistance.*”³⁸ Lastly, “*even if humanitarian organisations can still do effective work in most situations of conflict, the increasing number of safety related incidents, which results in preventing the deployment of assistance or in forcing unilateral withdrawal of operations, now leads these organisations to call into question the methods used up until now to guarantee the safety of their*

³⁶ ECHO, cf. note 4.

³⁷ ICRC (International Committee of the Red Cross), ‘Respect And Protection Of The Personnel Of Humanitarian Organisations’ preparatory document for ‘The First Periodical Meeting on International Humanitarian Law’, Geneva 19 – 23 January 1998.

³⁸ Maureen Connelly, cf. note 34.

personnel”.³⁹

This observation led the ICRC to break with the fundamental principle of not resorting to armed protection and to accept, as of 1995 “*possible recourse to armed protection to guarantee the safety of personnel and volunteers, the safe delivery of assistance material, the protection of this material in warehouses and distribution points, and the protection of administrative property*”. With this proviso that, “*possible recourse to armed protection, in particular armed escort, must first of all take into account and be in the interests of the victims and the needy*”.⁴⁰

³⁹ ICRC, document, cf. note 37.

⁴⁰ ICRC, Council of Delegates, ‘Armed Protection Of Humanitarian Aid’, December 1995.

For the other humanitarian organisations, which do not possess the research and discussion resources of the ICRC, the problems of access to victims and security of humanitarian personnel can be approached through several simple questions:

- Why are we here? This implies constantly reassessing the founding principles of the association and the commitment of its members.
- Does our mission reflect the aims of the association?
- Do we have access to the population? Can we provide assistance?
- Is our presence useful? Is our assistance needed? Are we needed as observers or for protection?
- Is there a risk that we might become part of the problem?
- Does our presence contribute to resolving the problem, or does it hinder political action that has the potential to tackle the real causes? We need to remain very cautious about the present tendency of politicians to turn what are clearly political problems into strictly humanitarian ones.

Lastly, we must stress that even if recent security-related incidents where the victims were people working for humanitarian organisations were indeed motivated by political interests, many of these incidents primarily reflect the chaos and crime reigning in certain regions. Other incidents are simply due to the “human factor” and the sometimes-unacceptable behaviour of humanitarian workers. For these reasons, the ICRC places great emphasis on recruiting and training its personnel as is claimed, “*our safety measures begin with recruitment*”.⁴¹

⁴¹ ICRC, Council of Delegates, ‘Safety of Personnel in the Field’, November 1997.

□ Attempts at Analysis:

Lawless Zones and the Confused Image of Humanitarian Organisations

Our diminishing capacity to assist victims highlights two issues. First, wars increasingly constitute lawless zones for civilian populations and NGOs. Second, humanitarian organisations project a confused image. Their impartiality is called into question by political authorities and by the populations concerned who too often identify these organisations with the states where their headquarters are located. Imbued with a culture of advocacy, they are also accused of exaggerating emergencies and making civilians appear as victims. Lastly, they occasionally act inappropriately or even indecently in emergencies; this generates a certain degree of animosity among civilians.

1. Lawless Zones

International humanitarian law was created by states, for states. For a long time it was limited to conflicts between states: it cannot be applied to non-international conflicts except in cases where a national army opposes a rebellion -provided that the rebellion is sufficiently organised so as to allow transition from internal disorders to an international conflict. This distinction is essential, as it determines the nature of the applicable law. The conventional instruments of international law apply only to armed conflicts, whether international or non-international. It does not cover less intense situations that are called “internal disorders” and “internal tensions”.⁴² Treaties dealing with human rights are intended to handle these situations. Nevertheless, restrictions may be placed on the exercise of the rights and liberties recognised by these treaties.

In most cases, conflicts are non-international. They are the scenes of opposition between an increasing number of different players, and they include foreign interference which is sometimes difficult to identify. The parties to the conflict may be national armies, opposition movements in the form of organised military groups, militias and loosely structured popular movements. Legally defining these parties becomes totally impossible if we take in to account outside interference, which may come in the form of funding for one or more of the groups, the delivery of weapons, as well as the furnishing of military training and rear bases. Intervention may be overt or covert. The juxtaposition of the various players, resources, objectives, and strategies makes armed conflict particularly dangerous for civilians and for NGOs. Moreover, this multiplicity of factors makes their environment totally unpredictable.

The Congolese conflict, for example, reached the aforementioned level of complexity during certain periods. There were local militias such as the Mai Mai. There were foreign armed factions: the former Rwandan Army; Interahamwe; and a highly organised opposition group, the ADFL. There was also the national army, the *Forces Armées Zairoises* (FAZ), and foreign troops from Rwanda and Uganda. All of these factions were fighting for very different or opposing objectives, strategies and resources. The Congolese civilian population and Rwandan refugees found themselves in the midst of these conflicts, as did the NGOs. All were unable, in view of the situation, to call for laws to be enforced or to demand access to

⁴² Cf. Geneva Convention, Protocol (II), article 1, paragraph 2.

victims. The degree of complexity in the levels of intervention and involvement in the fighting encouraged the exploitation of humanitarian activities, and made the safety of their personnel more precarious. Aid constitutes a source of wealth that can be plundered, an instrument that fosters the creation of allegiances, bait, and it is seen as a source of embarrassment. NGOs must therefore take into account all these perceptions in order to guarantee their safety and to “negotiate” access to civilians.

In addition to these conflicts involving great number of participants, another type of conflict is becoming increasingly frequent; namely conflicts in which states do not participate. Since the end of the Cold War, certain states have undergone processes of internal disintegration, leading to outbreaks of violence and to the non-application of international law (on occasion, it has been completely disregarded). These processes of disintegration, under the impact of ethnic and territorial claims, make law irrelevant. In situations like Somalia and Liberia, where all forms of the State have disappeared and opposing factions, clans, and militias have been left to confront each other, international law is no longer a reference. People are subject to a situation of diffuse and intense chaos. The result is that humanitarian aid gradually becomes a stake in the conflict. It is a source of wealth, an economic resource and the object of various predatory practices.

Lastly, wars of extermination also create zones of lawlessness, and this affects civilians and NGOs. In this specific case, civilians inevitably disappear from combat zones, either because they are massacred or because they have fled. Civilians obviously do not benefit from any form of protection from combatants, as they are the targets of combatants’ violence. Nor do NGOs benefit from any respect for the law. They may even become the targets of attacks as well, all anyone has to do to become a target is be in the wrong place at the wrong time, or be perceived as an obstacle. NGOs are given access to civilians to regroup or move them, but they are only allowed to carry out their mission if it is of some benefit to the combatants.

In fact, all the conflicts presented here generate military practices that kill civilians, obstruct the activities of NGOs and place their staff in danger. The growing number of players is a factor that fosters the decline of safety. These players have been deprived of the financing they received during the Cold War from one of the superpowers, they are now forced to find alternate and illegal resources. Connections with organised crime are on the increase in drug-producing zones, and mercenaries are placed at the disposal of large companies to protect the exploitation of natural resources -oil, minerals, etc. Lastly, in zones lacking natural resources, a predatory economy is developing, mainly based on looting civilian property and on diverting humanitarian aid. Strategies that mainly affect civilians and are based on the destruction of goods essential to the survival of the enemy have developed. In such cases, obstacles that impede access to civilian populations directly benefit such strategies.

All these practices make the activities of NGOs dependent on arbitrary circumstances. NGOs cannot gain access to victims and provide them with assistance unless this assistance serves the interests of one or several players involved in the conflict at a given moment. Thus reducing the humanitarian role of NGOs to nothing more than a tradable good.

2. A Confused Image in the Field

The multiplicity and scope of the obstacles encountered by the NGOs in the field are not only

due to the complexity of the situations in which they operate. NGOs must take responsibility for part of these difficulties that are the product of their methods of operating and of analysing situations.

a. How NGOs are Perceived

The image complaisantly propagated by television in the West of the good doctor providing food and care to civilians struck by famine or war is in no way representative of the image beneficiaries have of humanitarian organisations. Contrary to what we would like to believe, NGOs and their staff in the field are not simply viewed as providers of altruistic care or as a source of aid and protection.

The first reason for this discrepancy in perceptions is due to an incapacity to overcome a major source of confusion that persists in certain regions. A large portion of the population is unable to distinguish between NGOs and the nations they come from. At the root of this confusion is undoubtedly a basic mistrust of humanitarian aid, which is often perceived as a profoundly Western concept, and is thus identified with former colonial practices. Consequently, in some African regions it is very difficult for a French NGO to avoid being identified with the French State. We are generally perceived as its logistical arm and as a legitimisation of French influence; we are thus partly responsible for whatever effects these may have.

This phenomenon is particularly observable in the Democratic Republic of Congo, where with the arrival of the new authorities, French NGOs have had to confront accusations because their headquarters are located in France. In Rwanda, it is sometimes an insurmountable challenge to disassociate an organisation from France and its complete support for the previous regime, which was responsible for the genocide.

It must also be pointed out that it can be very convenient for authorities to accuse NGOs of spying for the country their organisation is based in, or of other evils, for reasons likened to internal or external politics. Attacking French authorities either directly or indirectly through NGOs for their collusion with the Mobutu regime has constituted a way for the new government to exemplify its struggle against the practices of the previous regime. As for foreign policy, the accusations sometimes made against French NGOs were an effective way for the new regime to clearly choose sides in the tug-of-war taking place between the French and the Americans. Using the same methods, the French government used humanitarian arguments -not without ulterior motives- to promote international intervention. The evacuation of the members of the emergency cell and of the State Secretariat for Humanitarian Action by the French Air Force units stationed in Bangui considerably harmed NGOs. The criticisms made by the State Secretary of the decision to evacuate NGOs from the city of Kisangani only confirmed in the eyes of the Congolese the collusion they perceived between NGOs and the French authorities. In this specific case, the French organisations' main mistake was certainly the failure to send teams to the Goma region to work with the Congolese civilians located in the zone held by the ADFL. Even if the ADFL had announced that it would refuse to allow French NGOs to enter the area and develop their projects, requests should have been made. Such requests would probably have made our impartiality more visible and would have avoided having humanitarian aid perceived as solely earmarked for the Hutu refugees from Rwanda.

In addition to being identified with a state, NGOs are increasingly perceived as bridgeheads

for international interventions. This argument is mainly based on the criticism often made of NGOs -especially those of the “without borders” tradition- for dramatising emergencies. Although it is true that “publicising dangers” often gets international attention, “publicising logistics” is often more opportunistic, and aims at showing an organisation’s ability to manage an emergency situation. We all too often appeal to the international community through the media with catchy phrases designed to attract attention to a complex situation. In this connection, the “Stop Ethnic Purification ” campaign of Médecins du Monde, which compared Milosevic to Hitler, is debatable.

For French NGOs, and in particular for Médecins du Monde, for whom the role of witness is one of its founding principles, using the media is an old reflex. The fact that the media are progressively losing interest has often led us to overstate the situation at hand, forcing us into regrettable positions concerning civilians. We do bear in mind that media publicity may have a disastrous effect on a given situation. The Special Representative of the United Nations in Burundi often warned of the danger of contributing to persuading the Hutus and the Tutsis of Burundi that they were victims of genocide, as this fear of genocide is precisely the main argument used by extremists on both sides.

The primary trap that NGOs fall into is “staging logistics in emergency situations”. The increase of various types of equipment - 4WD vehicles, radios, etc.- and spectacular identification through stickers for operational bases brings civilians to ask legitimate questions about the real motives behind the work carried out. Along the same lines, the dignity of these civilians may be offended by the arrival of a parade of “humanitarian workers and journalists”. What can be said about the about the waste of dispensary tents, way stations, and trucks on the Gisenyi road during the return of refugees to Rwanda? Was not the superfluous aid due to the fact that it was a must for NGOs to be there?

It is a perfectly acceptable fact that NGOs seek visibility, as it is an easy way to build legitimacy by proving their capacity to act. This visibility is aimed at donors, funding sources, national authorities, and the international community. This mixing of goals sometimes creates the impression that civilians are far from being a major concern for NGOs, and do not constitute the main objective of the decision to act. Above all, this reveals the competition that exists between the various humanitarian organisations and seems to confirm the idea that there is a “victims market”.

In addition to these collective excesses, there is also the individual behaviour of certain expatriates who sometimes seem to forget that caring for people means understanding and listening to them -and above all, making certain not to shock them. How can we establish a relationship based on trust -with civilians who are already mistrustful- if the only link created with “local” personnel is the link between employers and employees? How often have we seen the expatriates in our Médecins du Monde teams spend their time in the field inside the humanitarian microcosm without making any contact with the local populations? Under these circumstances, why are we surprised when we are looted, robbed, and when we are targets of extortion? After all, we represent a source of great wealth and our missions are perceived as having unlimited money.

Too often, we arrive in the field with no real awareness of how fundamentally Western our commitment to aid is. In most of the societies in which we are active, mutual help and solidarity are natural social phenomena that are the almost institutionalised principles of family, village, religion, or community. Volunteer work as we know it does not exist in a subsistence

economy. On the other hand, we would like volunteer work to be recognised and to be a source of protection and respect. As Ahmedou Ould Abdallah explains: “*I think that at first the Burundis were delighted that we were interested in them; they were curious. However, after while they wondered whether humanitarian aid was not an end in itself, a selfish activity. After being in contact with them, the people -in particular the inhabitants of the capital- began to suspect that NGO volunteers were helping them in order to help themselves [...] I was often asked, ‘Wasn’t it their parents who left for Kathmandu backpacking a few years ago?’ ‘Didn’t they just choose new destinations in the Third World?’ Another question I was frequently asked was, ‘Didn’t they come here to get away from unemployment?’ Reactions like these are understandable, and perhaps even healthy, in a milieu where nobody does anything for nothing*”.⁴³ Even if the questions asked by Burundis are hurtful to the people whose commitment is based on a sincere desire to put the principles of solidarity into practice, they should also lead us to rethink, and most importantly to improve, our methods. We have been considering these problems for a long time, but no real change has been perceived in the field. How can we combine visibility and respect, effectiveness and integration, professionalism and commitment? These are undoubtedly the challenges we currently face within our organisation.

b. Our Understanding of Situations

In conjunction with the sometimes questionable behaviour found in the field, the image of NGOs in the field is also unclear due to the speed with which we take action. All our initiatives in conflicts stem from emergencies. When we decide to provide help to civilians suffering from war, we send a fact-finding mission within days after our decision, shortly followed by an operational team. The purpose of the fact-finding missions is to locate the most vulnerable sectors of the population, define their main medical needs, and the resources required to meet these needs. Once the team is in the field, the intensity of the medical work it faces prevents it from making a true analysis of the society in which it is operating, of the surrounding conflict, its roots, or its impact on a national and regional scale. This is why a real analysis, based on a conceptual framework which takes into account the complexity of the situation, is indispensable. Even if we continually strive to improve the quality of the analysis of the medical situation before intervening, our assessment of the social and political situations is insufficient. This assessment is nonetheless an essential element in determining which sector of the population is the most threatened, in anticipating safety problems and ensuring the quality of our role as witnesses.

We must therefore be rigorous. For each new initiative, we must identify and quantify: (a) the official reasons for the conflict, the players, their reciprocal objectives, strategies for mobilising the populations (based on politics, ethnic group or other ties, i.e., community or religious, territorial, economic, etc); (b) the level of civilian participation in the conflict and as logistical support for the combatants; or (c) the use of civilians to attract humanitarian aid i.e., the creation of sanctuaries etc.; (d) alliances between the different factions, how they change and their implications, and foreign intervention and its objectives, etc.

The use of a conceptual framework of this type would undoubtedly allow us to improve the quality of our work as well as our capacity to be effective witnesses. This framework might also be a way of transcending the political categories that we apply to situations, and would help us to solve our growing difficulties in defining the notion of victim.

⁴³ Ahmedou Ould Abdallah, Stephen Smith, *La diplomatie pyromane* (Fire Raising Diplomacy), (Paris : Calmann-Lévy, 1996), p. 91.

We are now learning to “rethink the world”, to take into account its unpredictability and changes. We are also learning not to fall into the traps of the utopian concept of “the peoples’ awakening”. For example, a liberation movement is not necessarily an improvement over a dictatorship, and a revolution is not necessarily more progressive than a military regime. In the same way, a war does not simply oppose an oppressor and a victim in a dual relationship. The processes of conflict are far more complex. The victim can become an oppressor, and vice-versa.

Moreover, there are no such things as good victims and bad victims. There are only victims, and it is only their existence that motivates our actions. The internal debates that took place at Médecins du Monde while our teams were providing aid to the Rwanda refugees fleeing the advance of the ADFL in ex-Zaire illustrate this difficulty. Among these refugees were members of the former Rwandan army and Interahamwe, who were responsible for the genocide. In fact, some of us did not consider them to be good victims, although epidemiological statistics prove that their health situation was alarming. Sometimes it is difficult to reconcile the doctor’s impartiality with the militant’s commitment, and this difficulty is precisely what gave rise to our mission: “to provide care and bear witness”. It must be understood that reporting on the existence of massacres perpetrated on Hutu refugees in no way lessens the seriousness of the crimes committed by certain Hutus.

Precisely because it is increasingly difficult to find one’s bearings in the complexity of current crises, we should perhaps confine ourselves to broad fundamental principles if we wish to go beyond the opacity of these conflicts. Each individual’s right to life, right to the respect of physical and moral integrity, and to dignity must be our basic points of reference.

We can avoid falling into the “*humanitarian trap*”, or at least anticipate its effects, by analysing situations on the basis of objective factors. Carrying out this type of analysis, its transcription into operational decisions, and its implementation in our role as witnesses will certainly allow us to be more effective in our missions and strengthen the legitimacy of our appeals. This will probably make us more realistic, and perhaps somewhat disenchanted. It is up to us not to “lose our soul”. Rigor and objectivity are not synonymous with passivity, any more than impartiality means neutrality. Reconciling medical care with the role of witness makes it possible to combine all the qualities inherent to both while respecting ethical principles.

□ **International Civil Society:**

The Capacity of NGOs to Influence the International Community

The “French doctors” were the result of the indignation triggered by the silence that surrounded the death of thousands of Biafrans at the end of the 1960s. Médecins du Monde was also born out of indignation -the abandonment of the boat people on the South China Sea. Since then, the political structure of the international arena has changed profoundly. From reasoning in terms of blocs, we have moved to reasoning in terms of regional and world-wide integration. In this scheme of things, the notion of collective security seemed, for awhile, certain to triumph.

These ideological and cultural changes brought humanitarian action to the forefront at the beginning of the 1990s. Small associations made up of a few militants were changed into structured and institutionalised organisations. Humanitarian action became a profession and began to be carried out in all accessible countries. Médecins du Monde is now active in over 30 countries and is developing many programs in France.

Created in a militant spirit, NGOs “without borders” -particularly Médecins du Monde- have chosen as their mission to provide care and to speak out against the causes of suffering. The founding of Médecins du Monde triggered a snowball effect, a wave of enthusiasm among artists, intellectuals and journalists who conveyed these denunciations to states. Little by little, everyone started conducting “humanitarian activities”. States also took advantage of this enthusiasm and began calling their initiatives “humanitarian”.

Of course, all of the attention focused on this type of aid, and the spread of the humanitarian “label”, had a perverse effect. It motivated scientists and thinkers to become interested in the social and political aims of humanitarian assistance. The publicity given to various shortcomings related to the collapse of Yugoslavia, the bags of rice in Somalia, and our impotence in the Great Lakes region of Africa have led those who supported us to take considerable distance. For several years now, these developments have shown us the limits of our methods and have encouraged us to diversify them so as to meet new challenges.

1. The Ability of NGOs to Raise Public Awareness

Médecins du Monde mobilises public opinion for distant causes (Biafra, Afghanistan, boat people in the China Sea, etc.) and for causes closer to home (Mission France) -these being the founding purpose of Médecins du Monde. The Association is made of simple citizens seeking to promote universal values in civil society. Médecins du Monde seeks to enhance public awareness, which is at the heart of our principles, so that phenomena denounced by national or international decision-makers may be taken into consideration and solved.

If we go back in time, the very first appeals were expressions of indignation. Doctors sent to the other end of the world to provide care for victims denounced atrocities before the cameras of the journalists accompanying them or who joined them later on. Up until the Gulf War, the journalist/humanitarian worker team constituted a couple bound by mutual interest. Without journalists, humanitarian activists had no way of publicising the cause that they were

defending. Moreover, without humanitarian activists, journalists frequently did not have access to information or sites. Traditionally, humanitarian organisations arrived first and constituted a source for journalists, who were able to join them by means of the logistics that had been set up. In Afghanistan, where any form of travel was dangerous and complicated, journalists attached themselves to teams and moved around the country with them. In the China Sea, journalists were guests on Médecins du Monde boats.

The Gulf War marked a real fracture in this relationship; this was confirmed in Bosnia and Somalia. The images of war broadcast live by CNN and the logistical resources deployed by Ted Turner's channel pushed all television editorial staff in the West to change their methods and devote serious resources to covering key foreign events. Consequently, their dependence on humanitarian organisations came to an end. Since then, journalists no longer need NGOs, except peripherally. Journalists have their own logistical systems and they move around on their own. The breaking of this bond created a certain distance that favours analysis and criticism. To journalists, humanitarian organisations are now just like all other entities active in the field. Consequently, they are subject to the same type of criticism as that which is addressed at United Nations agencies. Our weaknesses have been dissected and analysed, and we have often lost credibility and legitimacy in the eyes of journalists. This process of distancing between journalists and humanitarian organisations was completed during the conflict in former Yugoslavia. The failure of these two eyewitnesses -the journalist and the humanitarian- to convey the horror, along with the reaction of the public and decision-makers finalised the break. Somalia and its disturbing images (the landing of the troops of operation Restore Hope; the heavily armed Mad-Max-type guards "protecting" humanitarian workers; and the publicised arrival of aid) finally convinced journalists that the term "emergency intervention" could involve the military, the government, and/or humanitarian organisations.

The Great Lakes crisis confirmed the resentment that humanitarian workers felt toward journalists. Already scandalised by the lack of media coverage of the Shiites in Southern Iraq and the abandonment of Somalia during the first years of the war, we had trouble forgiving the news priorities set by journalists during the genocide in Rwanda. During the first months of the massacres, headlines were devoted to the deaths of Ayrton Senna and Jackie Kennedy. It was not until the spread of the cholera epidemic in Goma, during the summer of 1994, that the media showed a sudden interest in Rwanda. With a few rare exceptions, the genocide and its hundreds of thousands of deaths did not receive the media coverage that was warranted.

Concomitant to the "divorce" between journalists and humanitarian activists, another separation was becoming apparent, namely between humanitarian organisations, on one side, and artists and intellectuals, on the other. Until the conflict in former Yugoslavia, prominent personalities were willing to use their fame to serve distant causes defended by humanitarian organisations. Ethiopia, the Sahel region, and Cambodia are some of examples of the occasions when artists and intellectuals helped attract public attention and collect funds. It seems that the war in Yugoslavia was the last time they co-operated in humanitarian initiatives. Several famous actors and singers did participate in the campaign conducted by Médecins du Monde called "Stop Ethnic Purification". Some of them even agreed to go to Serbia and Bosnia. It was precisely during this period, however, that the break was completed. The emergence of the phenomena related to social exclusion in France gradually steered this type of co-operation to other causes.

This process was completed by growing criticism made of humanitarian initiatives in Bosnia and Somalia, combined with the increasing distance taken by journalists. As for the

“intellectuals”, they chose to go beyond humanitarian action and make Bosnia the object of their political commitment. Their mobilisation strategies were based on methods other than those used by NGOs. In view of the geographical proximity and history, the conflict in former Yugoslavia required more than a humanitarian response. Although we might only agree with them on this point, we are still entitled to raise questions about their total lack of involvement during the genocide in Rwanda, the Great Lakes crisis, and during the conflict in Chechnya.

The gradual distancing of journalists, artists, and intellectuals from humanitarian organisations has had serious consequences. It has become extremely difficult to mobilise public opinion. Journalists ask us for help less and less frequently and open their columns or programs to us only on rare occasions.

We, nonetheless, have everything to gain from this process of distancing. This does not mean that the humanitarian mandate we have taken on is being called into question. What is in fact being challenged is certain of the methods we have developed and/or the approaches we have adopted. No one is denying the medical care we give to civilians; the comfort we provide is acknowledged by all. However, we are becoming aware of the difficulties we have analysing our activities, rigorously evaluating their impact, and understanding the situations in which we act. It is not easy for us to gain access to the media because we are no longer a source of information.

Certainly journalists need to be more self-critical of how they set priorities concerning the news they transmit; the media now expect analyses based on information which they do not have. The time when it sufficed to reveal crises and express indignation is over. We are no longer the “discoverers” of conflicts and dramatic situations. Our proximity to victims, however, does provide us with the resources to back up our indignation with arguments, and to base it on a rigorous analysis. Our proximity has only had positive results for the beneficiaries.

This new trend, now well underway, in the relationship between journalists, intellectuals, artists and humanitarian organisations, has already led to changes in our methods of taking action. We have moved toward initiatives aimed at political decision-makers, instead of remaining content with media appeals.

2. The Capacity of NGOs to Influence Political Decisions

In this context, where the fundamental tie with the media has become loose, and where the adjective “humanitarian” is used to describe a number of processes which have nothing to do with the purpose we have chosen to serve, it has become harder for us to bear witness. Indignation alone, however strong it may be, is no longer enough. In the same way, public opinion no longer has enough leverage to influence political decisions or to force people to consider a problem. At a time when the number of nearby causes is increasing, suffering in distant places⁴⁴ no longer generates waves of solidarity or indignation. While a link still exists between citizens and the homeless, between illegal immigrants or the jobless who have used up their rights to unemployment benefits and have no access to medical care, the link between the evening news viewer and the Rwandans, Chechens, or Somalis is increasingly

⁴⁴ Cf. Luc Boltanski, *La souffrance à distance*, (Suffering From Afar), (Paris, Editions Métailié. 1993).

tenuous and not very conducive to action.

In view of these developments, recourse to alternative approaches has become increasingly necessary. Having adopted the methods of human rights organisations as a model, humanitarian associations now tend to develop non-media initiatives targeting relevant decision-makers. Médecins du Monde has developed lobbying activities aimed at French decision-makers -members of the government and members of Parliament- to speed up the voting on a law allowing co-operation between French legal authorities and the International Tribunal for Rwanda. Large-scale efforts to disseminate information and to mobilise members of Parliament have been made in co-operation with other associations -Amnesty International and the International Federation for Human Rights among others. The law was adopted, and some of the amendments proposed were accepted. This type of initiative is repeated whenever immigration laws are changed.

On an international scale, putting pressure on the United Nations increasingly appears to be a way of getting an issue on the agenda, whether it is the safety of volunteers or access to medical care for the women of Kabul. We discovered this method of action long after Anglo-Saxon organisations and the human rights associations did. We are gradually learning to grasp the decision-making process and to pinpoint the mechanisms on which we base our actions.

The success of this type of action depends on several factors. First, we must be capable of producing rigorous assessments of situations, and of making recommendations based on these assessments, so that the targeted decision-making bodies can use them. Here again we must go beyond mere indignation. Second, we must set up truly strategic alliances. Co-operation and combining complementary expertise with other entities -other humanitarian NGOs, human rights associations, citizens' organisations and discussion forums- have become indispensable for dealing with complex decision-making processes and the wide variety of factors involved in making decisions. Lastly, we must build strategies that help us present our demands to decision-makers. Having a variety of "targets" and priorities are prerequisites for success.

Co-operation, lobbying, and political action, which were still remote from our traditional methods several years ago, are now being developed. These initiatives do not exclude media campaigns -which are more in keeping with our habits -but they are complementary to them. Some causes require a combination of both, while others can be defended only through true mobilisation of public forums, yet others exclusively call for confidential approaches. Increasing the number of strategies offers the advantage of choice. In some situations, it is impossible for us to make open denunciations because this would endanger the safety of our personnel. Alliances with human rights associations with no representatives in the field, or setting up strategies entailing "confidential" initiatives make it possible to overcome this difficulty. These initiatives also give us the opportunity to eliminate the ambiguity surrounding initiatives aimed at the public, and protect us from accusations of wanting to compete with other NGOs.

This type of political action does not, however, provide solutions to all of our problems. Just as media appeals concerning the fate of a community do not always trigger the expected political reaction, these methods are not always effective. It is clear that we will increase awareness of the problems we raise only if we put them in a favourable context. For example, the right time to obtain the passing of a law allowing co-operation between the Arusha Tribunal and French legal authorities was several months after the genocide. On the other

hand, obtaining measures that will enable co-operation, thus overcoming the barriers in French politics concerning international criminal law, is highly unlikely.

Cultural differences, errors in judgement, advances in the transmission of information combined with our capacity to conduct political action are factors that have profoundly changed our perception of the contexts in which we operate and determined our methods of action. As we are partly responsible for the image we convey of ourselves and of our commitment, it is important for us to rethink and debate a veritable code of ethics on how we intervene. As we can no longer hide behind the screen of medical aid, we must continue our political commitment and seek better understanding of the situations in which we work. This is the type of demanding standard by which we will be judged in the future and which will enable us to pursue our endeavour.

CHAPTER TWO

THE INTERNATIONAL COMMUNITY

PROTECTING CIVILIAN POPULATIONS AND

OBTAINING ACCESS TO VICTIMS:

POLITICAL DECISIONS

Since the creation of the United Nations and other international organisations, conflict resolution has been based on negotiation mechanisms that encourage the use of peaceful channels. Established in a context where international conflicts prevailed, these mechanisms are intended for states. They fully respect national sovereignty and thus prevent any intrusion into purely domestic affairs. In order to respond adequately to social change and to developments in the nature of conflicts, exclusive use of the aforementioned mechanisms has become the rule. Thus, when peace and international safety are threatened, the Security Council can examine internal conflicts in an effort to provide a solution. The United Nations Security Council has “*primary responsibility for the maintenance of international peace and security*”;⁴⁵ it has the means to adopt the measures that it considers necessary.

The settling of differences must be arrived at through peaceful means. Chapter VI article 3 of the Charter of the United Nations states, “*the parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice*”. To promote peaceful settlement of disputes, the Security Council can propose the deployment of a peacekeeping force. Its mission is defined in agreement with the parties in question, and the peacekeeping force cannot, under any circumstances, resort to the use of force in carrying out their mandate.

Should a situation continue in such a way as to threaten international peace and security, the Security Council can resort to coercive measures in accordance with Chapter VII of the Charter of the United Nations (Collective Security). On the basis of article 41 of the Charter, diplomatic and/or economic sanctions may be taken. If these prove to be inadequate, the Security Council “*may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockades, and other operations by air, sea, or land forces of Members of the United Nations*”⁴⁶. Placed under the command of the U.N. or of one of the Member-States, actions can also be carried out in collaboration with a regional organisation. This force shall make use of the means that it considers necessary for imposing peace.

In order to prevent any confusion between peacekeeping operations and coercive measures, let us refer to the definitions provided by Brigitte Stern:

“**Peace operations-** (which would include) *all kinds of operations having different purposes, but which are always based on the consent of the parties:*

- *Preventive operations, before the conflict;*
- *Classical intervention operations, after a cease-fire; and*
- *Peace consolidation operations, after a settlement.*

Coercive operations- *these might also have different purposes, but they are all based on Chapter VII:*

- *Operations intended to restore peace, where the forces would be used in an impartial manner against anyone who would hinder humanitarian or other missions of the U.N.; and*

⁴⁵ Cf. Article 24 of the Charter of the United Nations.

⁴⁶ Cf. Article 42 of the Charter of the United Nations.

Operations intended to impose peace, where the forces would be used against an aggressor.

*The characteristics of these operations are that they would be undertaken in cases of internal or international conflict ”.*⁴⁷

Since the beginning of the 1990s, interventions by the international community, as decided upon by the Security Council in accordance with Chapter VII of the Charter of the United Nations, have multiplied: Kurdistan, Somalia, Rwanda, etc. During this same period, a multitude of other situations failed to attract the attention of the international community; consequently, they did not lead to any intervention, although international peace and security were under severe threat.

In addition to providing for military interventions, for the establishment of diplomatic negotiations, and for economic sanctions, Chapter VII also served as the basis for the implementation of an international legal system. This was done through the creation of the two international tribunals that were assigned the task of trying the people responsible for serious international human rights violations in the former Yugoslavia and in Rwanda.

It is within the framework of Chapter VII of the Charter that an increasing number of United Nations missions have been qualified as humanitarian in nature. The establishment of corridors, the protection of convoys, and the safety of aid personnel are now central elements in these interventions. This evolution, which may appear to be an application of the obligation to provide assistance or a strengthening of the duty to intervene, has not been without problems. One may legitimately ask whether **the use of these military forces is truly a means for ensuring better protection of civilians and thus better access to assistance.**

Finally, the intensification of acts of violence committed against civilians compels us to question the **relevance of existing sanctions. Are these sanctions truly preventive? Are they an efficient means of coercion?**

⁴⁷ Brigitte Stern, 'The Evolution of the Role of the United Nations in the Maintenance of International Peace and Security', speech before the U.N. Congress on Public International Law, Towards the twenty-first century : International Law as Language for International Relations, New York, 13-17 March 1995; quoted in Houzel Renaud,, 'Rwanda 1993-1997', in *L'ONU et les opérations de maintien de la paix*. CEDIN ed, Paris, 1997, p. 137.

I.

The Protection of Civilian Populations: Obtaining Access to Victims and the Intervention of the International Community

*“With the end of the Cold War, the Security Council strengthened its resolve to broadened considerably the notion of ‘a threat to peace’, adding to it significant violations of human rights. Such was the case in Iraq, Bosnia-Herzegovina, Rwanda, and Haiti, concurrently taking into account ‘humanitarian distress’ situations such as the one in Somalia. In this manner, the Security Council established a framework of authority for a genuine assistance policy for civilians in distress”.*⁴⁸

Today, the Security Council can impose access to humanitarian assistance by conditioning it upon the preservation of international peace and security. One might be led to believe that since the mandate of the intervention forces is the protection of the means of assistance, the agreement of the parties to the conflict is not required, therefore solving the problems concerning access to victims. Our experience, notably in Bosnia and Somalia has proven to us that the opposite is true, international intervention forces do not provide the expected solutions.

One must keep in mind that the Security Council is a political body wherein decision-making is subject to both constraints and concessions. Within this framework, the vulnerability of civilian populations is far from being the topic that is given the highest priority. The five permanent members of the Security Council prepare the plans and assess those that suit them on the basis of their bilateral diplomatic relations. The result being that the missions of the intervention forces are normally quite vague, their objectives are general in nature, and the analysis of the situation is often too fragmentary. The Security Council can find itself unable to take a decision, even when faced with situations that are extremely serious.

⁴⁸ Pellet, Alain, Op. cit. p. 8.

❑ **The Decision to Intervene:** *Kurdistan, Somalia, and the former Yugoslavia*

1. The United Nations Operation in Iraq

a. Review of the Context

The second Gulf War and the intervention of allied forces, which had as an objective the preservation of the territorial integrity and sovereignty of Kuwait, created favourable conditions for civilian uprisings in Iraq among the Shiite population in the south and the Kurdish population in the north. These uprisings were in reaction to oppressive policies that have been in place for years. The uprisings were brutally suppressed by the Iraqi army (c.f. Chapter One). The ensuing massacres have been described as “*genocidal practices*⁴⁹” by the United Nations Special Rapporteur on Human Rights.

b. Media Coverage of the Crisis

In April 1991, television stations around the world broadcast images of the Kurdish exodus which, when combined with the testimony of NGOs, were enough to mobilise public opinion in western countries. But little was heard, outside of Iraq, of the repression of Shiite groups in the south of the country that took place shortly after the Kurdish exodus.

c. The Decision

On 5 April 1991, the Security Council adopted resolution 688 -proposed by France- with a vote of ten in favour, two abstentions and three opposed, it authorised the deployment of operation “Provide Comfort” in accordance with Chapter VII of the Charter.

Opposition to the project came from Yemen, Zimbabwe and Cuba who called into question the jurisdiction of the Security Council. According to their analysis, the Security Council had exceeded its powers with regard to the maintenance of international peace and security between states. According to Yemen, resolution 688, “*creates a dangerous precedent which could hinder the Security Council with regard to its role and responsibilities in the maintenance of international peace and security, and which would lead to it interfere in the internal affairs of states*”.

Using much the same line of reasoning, China and India justified their **abstention** by stating that the Security Council should not interfere in the internal affairs of states, regardless of the humanitarian situation.

The ten votes in favour were based on three arguments. First, the flow of refugees could represent a threat to international peace and security. Second, the violation of human rights is a matter of international concern when it involves a crime against humanity. Lastly, the responsibility of the Security Council is linked to the consequences of Iraq’s use of force during the invasion of Kuwait.

⁴⁹Max Van des Stoel, ‘Report on the Human Rights Situation in Iraq’, United Nations Human Rights Committee, doc.E/CN.4/1992/31.

d. The Scope of the Mandate

The Mandate

The Mandate Had Several Main Objectives:

- ? To create humanitarian corridors in order to allow assistance to reach the civilian population;
- ? To promote the return of Kurdish refugees from Turkey and Iran;
- ? To establish humanitarian aid centres;
- ? To establish safety zones; and
- ? To establish a no-fly zone north of the 36th parallel.

The Means

21,700 soldiers from eight countries were deployed and 7,000 tonnes of food were furnished and delivered to the refugees.

Duration of the Intervention

The Americans, the British, and the French launched operation Provide Comfort on 13 April 1991, and it continued until 12 July 1991. At that time, a rapid intervention force of approximately 3,000 men was deployed in southern Turkey to prevent any incursion by the Iraqi army. During the month of September 1991, these troops were withdrawn. Only a few units were left at the Incirlik air base in southern Turkey, and their task was to carry out aerial surveillance of the area north of the 36th parallel. To protect the Shiites in southern Iraq from Iraqi army attacks, a no-fly zone was established south of the 32nd parallel in August 1992. In the spring of 1996, subsequent to an incursion by the Iraqi army into the protected area of Kurdistan, Washington unilaterally decided to extend this no-fly zone to the 33rd parallel.

e. Assessment

The aim of Operation Provide Comfort -and of its offshoots- was to bring to an end the repression suffered by the Kurds and to make it possible to provide humanitarian assistance to victims.

Ending the Repression of the Kurds

Three months after deploying troops, the allies came to the conclusion that the situation had sufficiently improved and decided that it was possible to withdraw from northern Iraq and to leave only a deterrence force in southern Turkey. Concurrently, the agreement protocol signed with Iraq in April went into effect; it provided for the presence of 500 U.N. peacekeeping troops. This figure of 500 soldiers has never been attained. When the third agreement protocol was signed, approximately 30 men were still in the field. Moreover, as they had been forbidden to use force they were incapable of protecting the civilian population.

On the other hand, the **aerial protection** provided from Turkey by the allies did deter the Iraqi army from carrying out raids; although it did nothing to prevent bombing attacks by Turkey or Iran. Of varying frequency since 1991, these attacks caused numerous victims and resulted in significant population displacements (cf. Chapter One). Furthermore, aerial

protection did not prevent Saddam Hussein from using his land troops, as clearly demonstrated by the support he lent to Barzani, the leader of a Kurdish faction, during the taking of Arbil in August 1996.

Also noteworthy is the fact that a large part of the Kurdish territory is south of the 36th parallel, i.e. outside the area under allied control. Consequently, civilians there are under the *de facto* authority of Baghdad; because of this refugees began heading towards Kirkuk, located in the protected zone.

Access to the Civilian Population

The humanitarian efforts of the United Nations were carried out within the framework of the agreement protocols signed with Iraq in April 1991, November 1991, and October 1992. Desiring to see Iraq maintain its territorial integrity, the United Nations accepted to have Iraq lay down the rules for further action. This is how the embargo that Iraq is under was imposed in Kurdistan.

We can rejoice in the fact that operation Provide Comfort improved access to civilian population groups while also allowing a broader distribution of assistance and a return of refugees. Nevertheless, when Iraq refused to renew the agreement protocol in June 1992 –they withdrew their refusal a few months later– and refused to provide the visas to U.N. personnel, no deterrent measures of any kind were taken. Consequently, NGOs disassociated themselves from the United Nations action plan and subsequently entered Iraqi territory illegally via Turkey. The latter refused to grant visas to humanitarian aid personnel after November 1996. NGOs were forced to obtain access via Syria.

When Iraq refused to sign the second protocol, the United Nations could have drawn up agreements with bordering countries, particularly with Turkey, who plays a major role in the assistance project for the Kurds. This would have ensured the continuity of aid to the Kurds. Turkey's central role in the Kurdish problem has always been ignored by the Security Council, both with regard to the delivery of humanitarian aid and to the protection of civilian population groups who are regularly attacked by Turkish or Iranian troops.

The third agreement protocol, signed in October 1992, included a new clause that obliged the NGOs, whose operations had always been part of the United Nations action plan, to negotiate the content of their programmes with Baghdad. The clause has allowed the Government of Iraq to keep a tight grip on the aid programmes carried out in Kurdistan and to be closely informed of the activities of humanitarian aid personnel.

By deciding to strictly enforce the agreement protocols signed with the Iraqi authorities, the Security Council systematically accepted to ignore the subterfuges employed by Baghdad to hinder access to the civilian population: manipulation of exchange rates, refusal to grant visas, and refusal to renew agreement protocols. Moreover, no sanction of any kind has ever been imposed for attacks on United Nations personnel. Iraq has been able to brazenly violate the text of the protocol, without ever having any measure taken or sanction enforced to penalise violations.⁵⁰

⁵⁰ The Agreement Protocol stipulates the following: “*The Government of Iraq must quickly and effectively take all necessary measures in order to facilitate and ensure the safety of humanitarian convoys as well as the delivery of humanitarian assistance throughout the country. The Government of Iraq shall continue to cooperate in order to provide access to United Nations personnel to all parts of the country which may require*

The United Nations have progressively adopted an attitude that is in contradiction with the prevailing attitude at the time of the vote on resolution 688. The same type of contradiction exists between the position of the Security Council and the one adopted by the United States, although the latter is a permanent member of this body. **In their efforts to gain access to the Kurdish population and to distribute aid throughout the area, United Nations agencies and NGOs have been confronted with hurdles, some of which have been difficult to overcome.**

The Principle Deficiency of This Intervention

At no time did the United Nations adopt, for the southern region of Iraq, protective measures similar to those implemented for Kurdistan. And yet, in 1991, the Shiites were subject to particularly bloody acts of reprisal; this repression continued until the implementation of the no-fly zone in 1992. The response was slow in coming when one considers the suffering endured by these people who were systematically suspected of collusion with Iran. The response has above all been seriously inadequate. Even now, nothing can prevent the Iraqi army from carrying out land operations or acts of repression in the area of the marshlands. In addition, because of the stringent blockade, it is virtually impossible to obtain access to the civilian population in this region.

2. The United Nations Operation in Somalia

a. A Review of the Context

By 1992, Somalia had already endured several years of **a state of war** throughout the country, in addition to an unprecedented famine. Particularly severe fighting took place in the capital and in the south of the country, leaving the population bled dry due to the pillage and destruction inflicted by the various factions. Given the precarious safety conditions in the field, NGOs and United Nations agencies were faced with serious **problems obtaining access** to population groups, a situation that forced aid organisations to surround themselves with armed guards. Finally, humanitarian convoys were blocked when entering zones controlled by opposing factions and the equipment of the NGOs was regularly subjected to pillage and theft.

b. Media Coverage of the Crisis

The fall of dictator Siad Barre and the taking of Mogadishu by rebel factions occurred in the midst of the Persian Gulf crisis. These events totally escaped the attention of the international press. A few months later, they continued to be overshadowed by the beginning of the hostilities in the former Yugoslavia. It was not until **July 1992** that the first images of death in the city of Baidoa made international public opinion aware of the gravity of the situation. One had to wait for the images of children dying on television before certain countries (until then these countries -the United States first among them- had been absorbed by conflicts considered to be of greater geo-strategic importance) addressed this crisis and put it on the international agenda.

urgent assistance, whether by air or by road ". On 18 April 1991 the Agreement Protocol was published by the Congress of the United States in a document entitled, *'The Aftermath of War: The Persian Gulf Refugees Crisis, A Staff Report Prepared for the Use of the Subcommittee on Immigration and Refugee Affairs of the Judiciary United States Senate, 102 Congress First Session, May 20, 1991, (Washington: U.S. Government Print Office, 1991), pp. 27-29.*

c. The Decision

Given the presence in Somalia of its operational agencies, the United Nations were always aware of the political situation and of the sanitary condition of the population.

The Security Council's first decision was taken in January 1992, with the adoption of resolution 733; it called for an arms embargo and for humanitarian assistance. On 24 April resolution 751 brought about the creation of the United Nations Mission in Somalia (UNOSOM). It consisted of 50 military observers whose task was to monitor the cease-fire agreed upon by the various factions on 3 March 1992. The observers were also to provide protection for U.N. personnel, installations and equipment in the ports and airport of Mogadishu. They were also to escort humanitarian aid to the distribution centres in the capital and its immediate surroundings. In September 1992, the scope of the mission was broadened to include the entire country. It was not until November of that same year that the U.N. Secretary-General asked the United States to prepare to intervene in Somalia due to the overall deterioration of the situation.

With this in mind the Security Council adopted, on 3 December 1992, resolution 794 which provided for the deployment of the United Task Force in accordance with Chapter VII of the U.N. Charter. This resolution was unanimously accepted by the members of the Security Council, without any public objection to the use of force. The preliminary discussions relative to the duration, objectives, and co-ordination of the intervention were carried out between the Secretary-General and the United States; the dominant position held by the latter was to mark the entire operation.

d. The Scope of the Mandate

The Mission

The United Task Force, organised by the United States in collaboration with France, the European Union and Japan was given the task of restoring the security conditions required for the carrying out of humanitarian operations.

The Means Provided for the Mission

The task force was authorised to use any means necessary to carry out its mandate; this turned operation Restore Hope into a large-scale military and humanitarian campaign. Within the span of a few weeks, *“more than 36,000 foreign troops from 22 countries [including approximately 24,000 American soldiers] occupied several cities and villages in central and southern Somalia; they undertook the opening of the food supply delivery routes and the creation of distribution networks”*.⁵¹

The Duration of the Mission

Operation Restore Hope ran from December 1992 to May 1993. During that time, the

⁵¹ P.J. Shraeder, 'La présence américaine dans la Corne après la fin de la guerre froide : rupture et permanences', (American Presence in the Horn After the End of the Cold War: Breaks and Continuity), *Politique Africaine*, n° 50, June 1993, p. 59.

Security Council decided, based on a proposal by the Secretary-General, to launch the second phase of the United Nations Mission in Somalia; also in accordance with Chapter VII of the Charter. The task of UNOSOM II was to take whatever measures were necessary, including coercive measures, to establish the security conditions required for the carrying out of humanitarian operations, throughout the country; this meant completing the work begun by the United Task Force. UNOSOM II was also mandated to, “*help the people of Somalia to rebuild the economy and the social and political life of the country, to re-establish institutional structures, to ensure national political reconciliation, to recreate a Somali state based on democratic principles, and to reorganise the economy and infrastructure of the country*”⁵². This operation came to an end in March 1995.

e. Assessment

The United Task Force was deployed in seven of Somalia’s fifteen provinces; this represents 15 per cent of the territory and access to 60 per cent of the population.

Achievements

Access to assistance improved. Significant quantities of medical equipment, medicines and food were distributed throughout the country. These supply operations supported and re-equipped, until December 1993, 32 hospitals, 81 paediatric and gynaecological-obstetrical clinics, and 103 vaccination units operating throughout the country. Surgical wards, open to the entire population, were also established. In December 1993, the capital’s supply of drinking water was restored to 40 per cent of its pre-civil war capacity.

Nutrition among the people also showed a marked improvement. In the areas most affected by the famine, in particular the Baidoa-Bardera-Luuq “triangle of famine”, the malnutrition rate dropped considerably, from between 40 to 60 per cent to between 11 to 38 per cent. In other regions, this rate came close to zero. The mortality rate also dropped significantly.

Throughout 1993, a large number of refugees and displaced persons were able to spontaneously return to their homes. In Kismayo, local agreements made possible the return of almost 50 per cent of the people who had fled. In Baidoa, 80 per cent of displaced persons and refugees returned home.

Inadequacies

The safety of the convoys

During the first few weeks, the United Task Force correctly carried out its mission: the convoys were protected, the escorts were available, and warehouses were supervised. But as the troops became exposed to the complexity of the situation and to the extreme fragility of alliances the problems relating to the convoys and to the safety of humanitarian aid personnel resurfaced. Once again, access to civilians and the delivery of assistance were hindered. The absence of long-term strategy and especially the increasing number of contradictions between the position of the United Nations and the orders given by the United States command thoroughly perverted the operation. The transformation of the United Task Force and of UNOSOM II into genuine participants in the conflict resulted in a loss of security for all of

⁵² U.N. Security Council resolution 865 (1993).

the people in the field, i.e. U.N. agencies, NGOs, etc.

In June 1993, the order to capture General Aidid -complete with reward- placed UNOSOM in a war context. Troops developed a “steamroller” strategy, which meant overwhelming the country in an effort to pacify it. This also meant multiplying slow-paced manoeuvres with a large number of men in order to comb through inspection zones. The mobilisation of a large part of the troops for this operation meant that they were no longer available to protect humanitarian aid convoys. At times, certain NGOs had to wait for a month before obtaining the requested protection needed in order to delivery supplies.

In addition to reduced availability, the programming of escorts was often completely disrupted because of the demands linked to military operations. In the end, the establishment of checkpoints, of roadblocks and of off-limits zones by **international troops accentuated the difficulties involved in gaining access to the civilian population.**

The Security of Personnel and Installations

The military activities of UNOSOM led to the deterioration of the situation. This had serious repercussions on the security conditions of NGOs and of humanitarian personnel in general. As of June 1993 theft and violence increased; these acts were perpetrated against NGO personnel. The civilian population easily associated these acts with the United Task Force and UNOSOM.

The Major Errors and the Mishandling of the Peace Mandate

The Security Council’s main mistake was certainly that it based its decisions on an erroneous analysis of the Somali situation. At no point in time did this analysis take into account the complexity of clan structure, although it is one of the driving forces behind the war, along with the establishment and breaking of alliances.

The deployment of the troops should have been based on a thorough analysis of the clan ties of all of the leaders and people involved. Even though this might not have allowed for the possibility of anticipating changes in alliances, it might have helped to increase the capacity of the troops to react and to adapt -something the United Task Force and UNOSOM II were never able to accomplish. The massive deployment of almost 40,000 men in a zone booby-trapped with a conflict having family, local and regional roots, could not have provided a solution, not in the face of so much complexity.

The latter was the Achilles tendon of the international operation. This is perfectly clear from a reading of the mission entrusted to the UNOSOM II in May 1993: *“to help the people of Somalia to rebuild the economy and the social and political life of the country, to re-establish institutional structures, to ensure national political reconciliation, to recreate a Somali state based on democratic principles, and to reorganise the economy and infrastructure of the country”*.⁵³ These objectives were completely out of touch with the actual situation, for two reasons. First, because there is no political or historical basis for the concept of the State in Somalia. Gérard Prunier explains, *“arising out of a strongly egalitarian society, the Fronts and other Movements are elements of social differentiation which do not represent clans, although they originate in clans. They have set themselves up as an apparently unavoidable*

⁵³ Ibid.

force for foreigners, and they managed to convince the United Nations that the return of peace would be the result of reconciliation, a surrealistic process if we consider that their one and only point of agreement is their interest in the disappearance of the State. [...] The concept of the State, such as it was imposed by the hierarchy at the time of the decolonisation is dead and will never return, because there is no social, cultural, or economic basis for it in the Somali world".⁵⁴ The second reason that demonstrates that UNOSOM's mission was ill adapted is directly linked to the context. How can reconciliation be envisioned -after only a few months of the United Task Force's presence- when nothing had been done to alleviate the causes of the Somali crisis?

In addition to this error in analysis, the main criticism directed at the international operation relates to the manner in which its mission was carried out. As of June 1993, the Operation was assigned a military objective, the capture of General Aidid, thus propelling UNOSOM into a war context. Trapped in this mindset, the peacekeeping troops violated international humanitarian law and human rights. United States offensives in July and October 1993 -part of the efforts to capture General Aidid- resulted in the death of several hundred Somali civilians. International troops were also involved in arbitrary arrests. Several hundred Somalis were illegally detained for several days, completely cut off from the outside world. Investigations on human rights violations committed by Belgian, Canadian, and German⁵⁵ contingents resulted in charges being raised against military leaders.

What stands out about this operation is that United Nations forces were guilty of violations, although their role was to prevent them. Equally clear is the fact that the disarming of factions was undertaken despite the lack of any intervention policy or accompaniment in this process. Finally, when the United States unilaterally decided to hunt down General Aidid, the military aspect of the operation prevailed over the humanitarian aspect, thus thwarting the operation's initial objectives.

3. The United Nations Operation in the former Yugoslavia

a. Review of the Context

The intervention of the United Nations in the war in the former Yugoslavia -throughout 1991- was limited to imposing an arms embargo, as decided on 25 September of that year. During this first phase, the European Union was the principle mediator in the negotiations between Serbia, Slovenia, and Croatia. The Brioni Agreement, signed in July 1991, brought an end to the fighting between Slovenes and Serbs, although the efforts of the European Union did not result in any kind of settlement between the Croats and the Serbs. The European Union was also unable to prevent the extension of the conflict to Bosnia-Herzegovina as of 1992.

The European Union's inability to solve a crisis taking place at its very doorstep was, at the time, linked primarily to the divergent political views of its most important members. Germany was in favour of recognising the independence of Croatia and Slovenia, whereas the United Kingdom and France preferred maintaining the Yugoslav Federation. Given these divisions, and its inability to implement coercive measures in order to impose the cease-fires negotiated under its aegis, the European Union quickly came to be viewed as a force that, due

⁵⁴Gérard Prunier, 'La disparition totale de l'Etat somalien', (The Total Disappearance of the Somali State): unpublished explanatory essay, 1993.

⁵⁵ United Nations Human Rights Commission, doc. E/CN.4/1996/4, 22 February 1996.

an insufficiently cohesive political point of view, was incapable of bringing the belligerents to a settlement of the crisis. From that point on, the European Union limited its support to the decisions of the Security Council, although its members continued to develop their own national strategies. In this regard, President Mitterrand's visit to Sarajevo in June 1992 - without any previous consultation with his European Union partners- is eloquent.

b. Media Coverage of the Crisis

European and North American media were present in the former Yugoslavia from the beginning of the confrontations between Slovenes and Serbs. They gave the emerging conflict huge coverage. Taking place barely a few short hours of flying time from major European capitals, the conflict captured the attention of journalists who had just finished their coverage of the Gulf War in real-time and were still covering the exodus of the Iraqi Kurds.

c. The Decision

On 21 February 1992, the Security Council adopted resolution 743, which provided for the deployment of a peacekeeping force in the former Yugoslavia: the United Nations Protection Force (UNPROFOR).

By the end of the conflict, the Security Council had adopted 91 resolutions, 51 of which refer specifically to Chapter VII of the Charter of the United Nations.

d. The Scope of the Mandate

The Mission

The initial objectives of the mandate were repeatedly broadened throughout the war. Among the most important of these extensions were resolution 758 dated 8 June 1992, which entrusted UNPROFOR with the reopening and protection of the Sarajevo airport; resolution 776 dated 14 September 1992, which assigned UNPROFOR the protection of the convoys of humanitarian aid and of prisoners released in Bosnia; resolution 836 dated 4 June 1993, which authorised the use force in order to protect the six security zones; and resolution 871 dated 4 October 1993, which authorised UNPROFOR to use force in Croatia in order to carry out its mission.

Resolutions followed one after the other in an effort to adapt the mandate of the United Nations Protection Force (UNPROFOR) to the manner in which the conflict was developing. On 30 November 1995, the previous resolutions culminated in the adoption of resolution 1026, which prolonged the existence of the force until the implementation of the Dayton Agreements. On 20 December, the NATO Implementation Force (IFOR) officially replaced UNPROFOR.

The Means Provided for the Mission

UNPROFOR, with its contingent of 10,000 men, was deployed in the field as of April 1992. The number of troops increased to 39,000 in 1995, with more than 22,000 stationed in Bosnia-Herzegovina and approximately 16,000 in Croatia. The number of soldiers increased as the mandate was broadened. For example, when the protection of the security zones was assigned to UNPROFOR, resolution 844 authorised the deployment of 7,600 men to carry out this task.

Paradoxically, critics have always complained about the inadequate number of troops deployed by the United Nations Protection Force.

The Duration of the Mission

UNPROFOR began its mission in April 1992 and ended it in December 1995, at which time it was replaced by IFOR under NATO command.

e. Other Measures Taken by the International Community

The international community, working through the United Nations, has taken decisions that go beyond the framework of the UNPROFOR. It did so to protect the civilian population, to force belligerents to respect international human rights, and to reach a settlement of the conflict.

The First Embargo

In July 1991, the European Union imposed the first arms embargo. This decision was extended to all of the members of the Organisation for Security and Co-operation in Europe (OSCE, formerly the Conference on Security and Co-operation in Europe) in September and was later the subject of Security Council resolution 713. The arms embargo was adopted with the consent of the former Yugoslavia, whose Secretary-General for Foreign Affairs had commented that “*today, we have to defend ourselves from ourselves*”.⁵⁶

This embargo was subsequently reinforced, particularly against the Federal Republic of Yugoslavia (Serbia and Montenegro). On 20 May 1992, resolution 757 imposed an economic, commercial, and financial blockade on the Federal Republic of Yugoslavia, which did, however, allow goods to move freely through its territories. This sanction was adopted as reprisal for the open support that Yugoslavia was lending to the Bosnian Serbs and to the Croats. It was further specified, during the vote for a new resolution in June 1992, that this blockade did not concern humanitarian goods.

In November of that same year, the sanctions imposed on the Federal Republic of Yugoslavia were reinforced by resolution 787, which prohibited the transiting of sensitive merchandise – a list of the merchandise was drafted – throughout the territories covered by the embargo. This resolution also asked the Member-States to take the necessary measures in order to apply this decision. NATO and the Western European Organisation (WEO) were entrusted with maritime surveillance, while the OSCE, the European Union and the WEO were to take care of land and inland waterway measures. Adopted in April 1993, resolution 820 extended the geographical coverage of the embargo to include the areas in Bosnia and Croatia under Serb control and prohibited transiting any merchandise through these territories. Controls were also strengthened.

The Creation of No-Fly Zones

To “*ensure the safety of humanitarian flights to Bosnia-Herzegovina [...] (and to) adopt a*

⁵⁶Théodore Christakis, ‘L’ONU, le Chapitre VII et la crise yougoslave’, (The U.N., Chapter VII and the Yugoslav Crisis), *Perspectives internationales*, CEDIN, University of Paris I ed, (Paris: Montchrétien,, 1996), p. 20.

decisive measure for the cessation of the hostilities”⁵⁷ on 9 October 1992, a no-fly zone was established under Security Council resolution 781; it concerned military flights over Bosnian-Herzegovina’s airspace. Authorisation, however, to use force to ensure the respect of this no-fly order was not given until March 1993.

Entrusted with aerial surveillance, NATO adapted its structures in order to carry out, with the help of AWACS planes, operation “*Deny Flights*”. Despite these measures, flights in the no-fly zone increased. Between October 1992 and December 1995, a total of 7,552 violations of the airspace were recorded.⁵⁸ It is known, despite the absence of any detailed analysis that these flights were primarily carried out by the Serbs of Belgrade.

The Responses to Violations of Security Council Decisions

The international community continually refused to carry out armed operations in the former Yugoslavia; it always maintained UNPROFOR’s peacekeeping mandate. Security Council resolution 770, which authorised the use of force in order to ensure the delivery of humanitarian assistance only concerned the Member-States, in no way did it alter the mandate of the U.N. Protection Force. The same was true of Security Council resolution 998 adopted on 16 June 1995, which created the Rapid Reaction Force (RRF) with a complement of 12,500 men. Its objective was to allow UNPROFOR to carry out its peacekeeping mandate without modifying it.

And yet, certain events regularly put the armed intervention debate back on the agenda. The explosion of a mortar shell in the Markale market in Sarajevo on 5 February 1994 generated a very emotional response from international public opinion. As reprisal for this explosion, NATO was authorised to deliver an ultimatum to the Serbs whereby the latter were instructed to withdraw all artillery equipment within a 20-km radius around Sarajevo. Otherwise, the Serbs would be exposing themselves to NATO air strikes. These strikes did not take place because of a momentary lull in the shelling and the fact that some equipment was indeed moved. The bombing of Sarajevo gradually resumed a short time after the deadline for the ultimatum.

In fact, the only military response to Serb violations was the air strikes carried out by NATO from February 1994 onward. At that time, Serb bases in Bosnia and Croatia were targeted. On two occasions, the Serbs took peacekeeping troops hostage.

It was not until the signing of the Dayton Agreements that military intervention, through the formal establishment of NATO’s role, was determined. As part of the framework for the application of these peace agreements, NATO deployed a multinational force, IFOR. This in itself was one of three ‘firsts’ for the organisation: it was the first land operation with the task of ensuring the respect of the demarcation lines between the two entities, it was the first operation outside its zone (the territories of NATO Member-States), and it was the first operation with non-Member States.

The Negotiations

The entire period of the war was marked by a multitude of diplomatic initiatives favourable to

⁵⁷ U.N. doc. S/RES/781, §.2 and 8 of the preamble.

⁵⁸ *U.N. Chronicle*, Vol.33, n°1 (1996); p.26.

a settlement of the conflict. Trips made by the European Troika (the past, present and future chairmen of the Council of Ministers of the EEC) increased in frequency, as did bilateral contacts in which European heads of state or the members of their Governments. None of these efforts, however, ever resulted in the establishment of an agreement, other than the Brioni Agreement.

Among of these fruitless efforts was the International Conference for Peace in the former Yugoslavia, sponsored by the United Nations and the European Union that was held in London in August 1992. This conference led to the establishment of the International Conference on the former Yugoslavia, which was jointly chaired by Lord Owen, on behalf of the European Union and by Cyrus Vance, on behalf of the United Nations. On 3 January 1993 the Vance/Owen peace plan was proposed. It provided for the division of Bosnia into 10 provinces. This plan was accepted by the Croats, but rejected by the Serbs (who confirmed their opposition in May during the Athens summit) and the Muslims, who finally accepted it in March.

This first plan was followed by several different proposals, all of which were rejected by one or another of the parties to the conflict. For example, the Muslims rejected the Owen/Stoltenberg plan, which provided for the division of Bosnia into 3 autonomous republics, with 52 per cent of the territory for the Serbs, 30 per cent for the Muslims, and 18 per cent for the Croats. In fact, true progress in the negotiations did not occur until the American negotiator, Richard Holbrooks, came onto the scene. In September 1995, he obtained the signing of the first tripartite agreement that recognised the integrity of Bosnia-Herzegovina and the creation of a Croatian-Muslim Federation and of a Serb Republic.

This agreement was followed by three main conferences. The first true negotiations were held in Dayton; these resulted in the overall peace agreement signed on 21 November 1995 that provided for the maintenance of the Bosnian state with its internationally recognised borders, along with two entities: the first a Croatian-Muslim entity (51 per cent of the territory), and the second a Serb entity (49 per cent of the territory). The London conference defined the civilian aspects of the peace agreement; it provided for the creation of a Peace Implementation Council, under the direction of Carl Bildt, with the participation of the G7, Russia, the European Union and the Organisation of the Islamic Conference. The Paris Conference finally hosted the signing of the agreement.

f. Assessment

The Protection of Civilians

It is difficult to establish clearly the beneficial effects of the UNPROFOR presence for civilians. It certainly prevented an almost immediate crushing of Bosnia in 1992, and its joint efforts with NATO were able to prevent excessive use of air power by Serb forces. On the whole, however, the impact of these missions on civilians was relatively insignificant.

Difficult though it may be to identify the beneficial effects of the presence of the U.N. Protective Forces, it is, on the other hand, quite evident that its presence in no way halted the ethnic cleansing carried out by the Serbs. One can even go further and say that certain of its actions have had particularly perverse effects. An example of this is the **creation of the security zones** decided upon by the Security Council, the protection of which was entrusted

to the UNPROFOR. This type of operation was carried out in Srebrenica, and shortly thereafter in Sarajevo, Bihac, Tuzla, Zepa, Gorazde, and the surrounding areas. The expression “security zone” meant that no armed attack or other hostile act could be directed against the zones and that humanitarian assistance to the civilian population had to be ensured. To ensure the total respect of these zones, the Security Council extended the UNPROFOR mandate to prevent attacks, monitor the cease-fire, organise the withdrawal of military or paramilitary units -other than those of Bosnian Government forces -occupy strategic positions, and participate in the delivery of humanitarian assistance. UNPROFOR was authorised to use all necessary means, including force in cases of self-defence, to carry out its mandate in the event of bombings, armed incursions, or deliberate obstructions to its freedom of movement or that of humanitarian convoys.

These zones, almost all of which were enclaves in Serb territory, were easy targets and were used as bait by the Muslim forces. The latter frequently encircled them and launched attacks against Serb forces knowing full well that they would benefit from UNPROFOR and NATO protection in the event of return fire. On several occasions, notably Bihac and Gorazde in 1994, UNPROFOR and NATO returned Serb fire, while the Serbs were returning Bosnian fire. Responsibility for this situation lies with the Security Council, as it chose to detach inadequately supplied contingents to ensure the protection of these zones and, most of all, as it decided not to impose the total demilitarisation of these zones until June 1995. The Security Council must assume most of the responsibility for the victims of these attacks.

Moreover, the confrontations that took place in June 1995 made it impossible to implement a joint disarmament agreement. At that moment UNPROFOR decided to no longer return fire (as with Zepa and Srebrenica) for strategic and security reasons. By withdrawing its troops from Gorazde, UNPROFOR left the door open to Bosnian government troops without exposing themselves to Serb reprisals for NATO raids. The people in these security zones were thus totally abandoned at the very moment when they represented major stakes for all of the parties actively involved in the conflict.

We could continue with our comments relative to these security zones, which in no way prevented the incessant bombardment of Sarajevo; on the contrary, the fact that they were enclaves further hindered humanitarian aid.

Humanitarian Access to Civilians

Humanitarian aid was central to the concerns and decisions of the Security Council throughout the war. This led to criticism of the Security Council: it was only providing a humanitarian response to a crisis that required political and military measures. The importance attributed to humanitarian aid led the Security Council to condition humanitarian aid upon the re-establishment of international peace and security. In resolution 770 dated 13 August 1992, the Security Council indicated, “*humanitarian assistance in Bosnia-Herzegovina is an important element in the Council’s effort to restore international peace and security in the area*”.⁵⁹

In this context, we call into question the benefits -for civilians- of United Nations

⁵⁹ U.N. Security Council resolution 770 quoted in ‘L’ONU, le Chapitre VII et la crise yougoslave’, (The U.N., Chapter VII and the Yugoslav Crisis), *Perspectives internationales*, CEDIN, University of Paris I ed, (Paris: Montchrétien, 1996), p.159.

intervention. Certain positive effects are undeniable. The air bridge established for Sarajevo meant that the population of the city could be re-supplied despite the Serb blockade. But how many times was the air bridge cut-off by fire from Serb troops? The latter consistently led to the closing of the airport and the halting of all supply operations carried out for the benefit of civilians. Also, how many times were supply operations to the security zones interrupted by Serb roadblocks, some of which remained in place for weeks? True, convoys were escorted by UNPROFOR troops, but these troops were inefficient against the haggling and roadblocks imposed by Serb forces. Because of their limited role, UNPROFOR could never impose access to civilians.

By refusing to entrust UNPROFOR with means that were adequate for the situation in the field, the Security Council deprived it of any genuine efficiency in the area of humanitarian assistance. Convoys were able to get through only when the Serbs accepted to let them in. Under such circumstances, convoys would have got through even without the presence of UNPROFOR. In difficult cases the presence of the United Nations Protection Forces never represented a constraint in the eyes of the Serbs and in no way did it facilitate the passage of convoys. By preventing direct attacks, UNPROFOR certainly did increase the physical safety of the convoys, but it never fulfilled its role as a “facilitator” of convoy passage.

❑ Absence of Intervention

1. Burundi: Decision or Wilful Indecision?

No international intervention of any kind was ever decided on for Burundi, despite the existence of a genuine conflict during which for years one massacre followed another. The United Nations did carry out activities in Burundi: a Special Rapporteur to the Secretary-General was assigned there, multiple investigative commissions or technical commissions succeeded each other, and a Special Rapporteur for the Human Rights Commission was appointed. The Organisation of African Unity (OAU) tried to play a central role in negotiations, in various preventive measures and in the fact-finding missions that were dispatched.

Although there has been no visible and massive outbreak of violence, as was the case in Rwanda during the 1994 genocide, the number of victims is increasing and the situation does not seem to be headed towards a settlement. How then can one explain the absence of any intervention? Is it a choice based on risk analysis? Or is it the refusal of the international community -only barely masked by the diplomacy of conferences and of investigative committees- to become involved in the conflict?

a. The Central Role of the Secretary-General and the Wait-and-See Policy of the Security Council

The gravity of the conflict in Burundi burst onto the international scene in October 1993, with the assassination of President Ndadaye. The Secretary-General of the United Nations, Boutros Boutros Ghali, who delegated Under-secretary-General James Jonah as Special Envoy to investigate the situation, immediately condemned the assassination. This initial condemnation was followed by those of the Security Council and the General Assembly.

In order to deal with the deterioration of the situation, (which was the result of the confrontations that followed the assassination of President Ndadaye and caused between 50,000 to 100,000 deaths, according to Amnesty International),⁶⁰ Ahmedou Ould Abdallah was designated as the Secretary-General's Special Representative for Burundi on 5 November 1993. At the same time, the OAU decided to establish, under the direction and control of the Secretary-General of the OAU, an International Protection and Observation Mission to Re-establish Confidence in Burundi.

Throughout the crisis, the United Nations Secretary-General played a central role in the adoption of measures by the United Nations. Many of these were his own initiatives -the Security Council playing a much lesser role. The involvement of the Secretary-General (whose mandate is, after all, quite restricted) partly explains the nature of the measures taken: fact-finding mission in March 1994, technical mission in August 1994, and Regional Conference. The Secretary-General called on the Security Council many times and proposed the implementation of various scenarios. After the attack on the personnel of humanitarian organisations and on Rwandan refugee camps, he presented, on 29 December 1995, three different proposals before the Security Council, in an effort to check the deterioration of the

⁶⁰ Amnesty International, 'Burundi, Time for International Action to End a Cycle of Mass Murder', (doc AFR 16/08/94).

situation.⁶¹

- The establishment, as a preventive measure, of a rapid force stationed in Zaire and ready to intervene in the event of a serious catastrophe;
- The deployment of armed guards, similar to those of U.N. peacekeeping troops in Iraq, with the objective of providing protection to the personnel of humanitarian organisations on site; and
- The deployment of human rights observers, in keeping with the recommendations made by Paulo Pinheiro, the Special Rapporteur for Burundi, and of Ayalla Lasso, the High Commissioner for Human Rights.

The decision to deploy a preventive force in Zaire was never taken up by the Security Council, despite a second appeal from the Secretary-General on 2 January 1996. On the other hand, a few initiatives were revived, namely the deployment of human rights observers on 9 January 1996, thanks to European financing and the organisation of the first United Nations-Burundi security meeting on 12 January to study the safety conditions in the country. Resolution 1040 dated 29 January was limited to a call for a political dialogue between the parties and was accompanied by a threat: in the absence of a dialogue, measures would be taken in accordance with Chapter VII of the Charter of the United Nations (the imposition of travel restrictions on extremist leaders and an embargo on the sale of weapons).

Throughout a two-year period, the Secretary-General continued to appeal to the Security Council in an effort to push it to take concrete measures in order to prevent a “Rwanda-style” flare-up in the conflict. Despite the considerable involvement of the Secretary-General, the Security Council remained particularly inactive in the face of the Burundian problem and was particularly hostile to any kind of intervention. An investigative mission was sent into the field in order to determine what type of non-military arrangements could ensure the security of humanitarian aid personnel. In its conclusions, the mission stressed that due to prevailing violence and to government opposition to any intervention, peacekeeping troops would be incapable of protecting humanitarian aid personnel; they could even become targets for the extremists on all sides.⁶²

b. The Security Council Favours an African Solution to the Problem in Burundi

In 1996, it seemed that the Security Council was going to deal with Burundi, given the gravity of the situation. In resolution 1049 dated 5 March 1996, it called for “*Burundi to engage, as a matter of urgency, in serious negotiations and mutual accommodation*”. It also called on the Secretary-General to continue his consultations in preparation for, “*the steps that might be taken to support a comprehensive dialogue and for a rapid humanitarian response in the event of widespread violence or a serious deterioration in the humanitarian situation in Burundi [...]*”. This decision was linked to the Report of the Secretary-General, S/1996/116, which asked the Security Council to begin studying the creation of a multinational force of 25,000 soldiers, to be directed by a single Member-State and authorised to use force in accordance with Chapter VII of the United Nations Charter, as the Government of Burundi had indicated that “*it would accept no foreign humanitarian operation which included a*

⁶¹ United Nations, doc. S/1995/1068.

⁶² United Nations, doc. S/1996/116.

military component of whatever type".⁶³

Boutros Boutros Ghali felt Burundi was a 'test case' for the United Nations that would test its capacity to carry out preventive measures. The discussions relative to an intervention continued throughout the summer of 1996 as the situation continued to deteriorate. Given the absence of French and American interest in such a measure, an inter-African solution gained favour. This is why the Security Council asserted the need to promote an African solution to the Burundian problem. It also supported the mediation efforts undertaken by former Tanzanian President Julius Nyerere and encouraged the OAU to organise a regional conference on peace, security, and the development of the Great Lakes region. The Security Council did not exclude the possibility of a multinational force. The United Nations backed the creation of "regional military assistance" under the aegis of the OAU. The creation of such assistance was adopted during the Arusha Summit on Burundi held on 25 June 1996 and later confirmed at the OAU summit in Yaounde at the beginning of July.

In this international context, Major Buyoya carried out his coup d'état and the OAU took the decision to impose an embargo; this decision was supported by the Security Council. Although the latter condemned the coup d'état and supported the embargo decision and the efforts of Julius Nyerere, it did let the OAU retain the leadership of the management of the crisis. This attitude was maintained throughout 1997. As early as 24 January 1997, the Security Council approved the joint proposal of the Secretaries-General of the United Nations and of the Organisation for African Unity to name Ambassador Mohamed Sahnoun as Joint Representative for the Great Lakes region, and more specifically for the Democratic Republic of Congo (the former Zaire) and Burundi.

c. Does the Absence of Intervention in Burundi Constitute a Genuine Decision?

Through this brief overview of the decisions taken by the Secretary General and the Security Council we see that at no time did the executive body of the United Nations make a genuine decision on the basis of an analysis of the situation relative to the risks faced by the population. On the contrary, it would seem that since 1993 this body has increasingly developed a tactic of avoidance.

The role of the Special Representative of the United Nations Secretary General

Ahmedou Ould Abdallah, former Foreign Minister of Mauritania, remained in Burundi for two years. His efforts and his perception of the situation in Burundi are explained in the interviews given to journalist Stephen Smith and published in a work entitled *Fire Raising Diplomacy*. His impressions can be summed up by the following anecdote drawn from the preface to the book: "*it was at the end of January 1994, only a few weeks after the terrible massacres that followed the assassination of President Ndadaye and had cost more than 50,000 lives, other sources claim 100,000 lives. [...] "The city will burn"; a very agitated local politician threatened him. "We're going to sack the country!" [...] Calmly, Ahmedou Ould Abdallah drew a box of matches from the pocket of his trousers. "Please, go ahead", he answered. "I already have my return ticket. It's your houses and your factories that are going to burn. Your people are going to be the ones to suffer"*".⁶⁴

⁶³ Ibid.

⁶⁴ Ahmedou Ould Abdallah, Stephen Smith, (cited note 57). p. 9.

During his two-year mandate, three guidelines directed the efforts of the Special Representative of the Secretary General of the United Nations. His aims were to force the two parties to communicate and to confer, to support democratic institutions and civil society, and to avoid international intervention. *“The situation in Burundi today is not the same as it was in Rwanda in 1994. Most of the time, we don’t even ask exactly who is threatening whom with genocide, whether it’s the Hutus threatening the Tutsis or the other way round. The fact is that the army has said that it will fight any foreign military intervention down to the last man. We also know that the Hutus want this military intervention; for them, it would be a way of pitting a foreign army against the Tutsi army. We also know that we can’t put a peacekeeping soldier behind every Burundian[...] In short, nothing can be done: in Burundi as in Rwanda, foreign troops are perceived as being favourable to one group and unfavourable to the other. On that basis, their arrival could unleash large-scale massacres. Simply mobilising them or calling up the various national contingents that would operate under the U.N. flag would be enough to provoke killings. Should foreign troops be deployed in Burundi, one can only hope that they will stay for fifty years, in other words, the time that it would take to teach two generations of Burundians how to live in peace”*.⁶⁵

⁶⁵ Ibid. p. 78.

The Role of the Organisation for African Unity

As of 1996, the Security Council favoured African management of the crisis in Burundi by supporting the initiatives of the OAU and of Tanzanian mediator, Julius Nyerere. For the OAU this support of its political role was a way of reaffirming its position in the Great Lakes crisis. Prior to this, it had played a minor role compared to that of the United Nations. It is interesting to note that since 1994, the OAU's principal efforts have been limited to the organisation of regional conferences that generally consider the problems from a humanitarian, rather than political, point of view.

Promoting the role of the OAU should theoretically have given an aura of neutrality to the intervention proposals for preventive action and peacekeeping. And yet, at no time were the initiatives of the African organisation seen as being of greater impartiality or more acceptable to the Burundians. During the Arusha Summit held on 25 July 1996, when the principle of the creation of "regional military assistance" under the aegis of the OAU, was accepted and even given the support of several nations, including the United States, Burundi expressed its rejection of any kind of foreign intervention. The technical mission staff, whose task it was to settle the logistical details of the Arusha Plan, was even refused entry to Burundian territory. It is also true that the Arusha decision heightened the tension among both Tutsi and Hutu extremists; furthermore, the force was viewed "*by Hutu extremists as having the task of strengthening the Tutsi army, while the latter believed that the aim of the force was to neutralise the Tutsi army*".⁶⁶

The OAU's major problem was that it could not present itself as a neutral force in the crisis in Burundi. The truth is that countries neighbouring Burundi simply cannot take an impartial stance; this is due to the complexity of the Great Lakes crisis and its implications for all of Eastern and Central Africa. How can Hutus in Burundi perceive Rwanda as a neutral player in a war that is pitting them against the Tutsis? The country with the most ambiguous position was certainly Tanzania. The former president of Tanzania was trying to play the role of negotiator while the presence of Hutu camps on Tanzania's border with Burundi meant that his country was involved in the conflict. The heightening of tensions between these two countries over the course of 1997, as seen by Tanzania's "determination" to maintain the embargo against its neighbour, illustrates the degree to which the OAU was incapable of offering impartial mediation. The presence of refugees from Burundi in Tanzania, Rwanda and Uganda renders any 'uneventful' regional intervention impossible.

d. Assessment

There is little point in speculating whether or not intervention might have reduced the level of violence that Burundi is experiencing. It would certainly be wiser to rely on the views of the Special Representative of the Secretary General, Ahmedou Ould Abdallah, whose knowledge of the country and whose level of reflection on this matter cannot be challenged. On the other hand, one might wonder as to the refusal of the Security Council to deal with a situation in which it had been called upon to act several times. Since 1993, the number of massacres committed by extremists on both sides have multiplied, camps of forcefully displaced persons have been established and widely denounced, notably by United Nations agencies. NGOs have

⁶⁶ *Le Monde*, 'Les hésitations de la communauté internationale', (The Hesitations of the International Community), 24 July 1996.

had considerable difficulty in obtaining access to civilians and are in serious danger. Three ICRC delegates have been murdered, and the teams from Médecins du Monde-France were forced to leave the country.

Given these ‘indicators’, Burundi should have been and should still be a subject for reflection and action within the Security Council. The Special Representative has already done considerable work, in the areas of prevention and of what is now referred to as *state building*. Dialogue was initiated between the different parties, as were consultations in an effort to avoid the worst possible scenario. But this work was interrupted and it is now too late to speak of prevention. Even if intervention has been ruled out for good reasons, other solutions can be envisioned and a genuine *peacemaking* effort must be carried out; the terms for such an undertaking still need to be determined. They will have to take into account various Burundian players, first among them is civil society.

2. Chechnya: The Blocking of the Decision and The Wall of Silence

The United Nations never handled, on a political level, the conflict that pitted Chechen separatists against the Russian army from December 1994 to the autumn of 1996, although the criterion of civilian vulnerability should have sufficed to stir the interest of the Secretary General and the Security Council. Unlike Burundi, no question was ever raised about the Chechen situation. An international political cloak seems to have been thrown over this war, despite the level of violence perpetrated by the combatants and the degree of media coverage that the crisis received. Indeed, the international press regularly reported the extent of the bombings suffered by the people and the fate of “martyred cities”. Even though no particular emotion was perceived on the part of public opinion in the principle Member-States of the Security Council, the fate of Chechen civilians was related by many media organisations, and the practices of the Russian army were denounced by various NGOs; the media also reported these denunciations. On several occasions, Chechen combatants also tried to ‘create an event’ notably by taking high profile hostages and by calling the attention of international opinion to the occupation of their country by the Russian army. Despite this relative visibility, the decision-making structure of the Security Council remained totally blocked and Chechnya never made it into the U.N. agenda.

a. The Russian Federation’s Veto

There is no need to delve very far to discover the main reason for this blockage: Russia’s veto within the Security Council. In its capacity as a permanent member, the Russian Federation has the right to veto, this means that it can oppose any decision which goes against its interests. This mechanism, which was used often and much criticised throughout the entire Cold War, once again demonstrated its ‘efficiency’ in this type of context. By using its veto for any question related to Chechnya and by threatening to use it should this matter nevertheless be raised through other procedures, Russia effectively ‘blocked’ the entire process. The Security Council and the Secretary General could not afford to run such a risk while the Bosnian war was still raging, or later on, during the Dayton Peace Agreements negotiations. Consequently, the Security Council never expressed its concerns on this matter, not even symbolically. Boutros Boutros Ghali had set the general tone back in January of 1995, when he indicated that this was an internal Russian matter.

b. The Responsibility of the Other States

The current political context, whether international or regional, is characterised by the existence of a certain degree of interdependence between states. States no longer act without having assessed the political and economic consequences of their decisions. The use of the right to veto right is currently particularly visible within the Security Council; it was used on an almost daily basis throughout the Cold War –one must not forget that other bodies encountered the same type of hurdle. To further aggravate the situation, the Chechen war came at a time of intense international activity: the increasing leverage of the United States in an effort to reach a settlement of the war in former Yugoslavia; the shock felt by European countries vis-à-vis the incapacity of the European Union to take a stance and play the role of a political force in the Yugoslav crisis; the negotiations concerning the expansion of NATO to former Warsaw Pact countries (for which Russia's agreement was indispensable); the process of integrating Russia into international bodies in an effort to firmly establish it "*in the democratic camp*" (the G7, the Council of Europe, the partnership project with NATO, candidacy for membership in the World Trade Organisation, etc.); and finally, the thorny question of the delivery of oil from the Caspian Sea to the terminals on the Black Sea via the oil pipeline that runs through Chechnya.

This conjunction of these interdependent factors explains why no action was taken, symbolic or concrete, which could have helped the Chechen people.

Symbolically, no protest was ever made with regard to the serious violations of international human rights committed by both the Russian army and the Chechen combatants. Only the countries of the Organisation of the Islamic Conference asked Russia, in January 1995, to bring its offensive to an end, as they felt that Moscow was violating international law by using force against civilian objectives. At this point several other protests were also heard. Similarly, when the bombing of Grozny intensified and the massacre of the civilian population became too visible, the countries of the Member-States of the European Union vaguely criticised the offensive. France officially deplored the situation in January 1995, and Germany expressed its 'great concern'. At the same time, the United States also expressed their concern about the 'terrible tragedy' and the tactics used by the Russians.

These protests stand out as the rare exceptions in the midst of the great silence that surrounded 20 months of the war. Even the massacres of civilians in Samachki in April 1995, in Gudermess in December of that same year, or in Cernovodsk in March 1996 failed to elicit any condemnations. No protests were made after the bombing of Gudermess by the Russian army in reprisal for the taking of the city by a Chechen commando unit, an attack that cost the lives of 300 civilians. Also noteworthy is that at the same time, most of the heads of state of the so-called "important" countries (President Clinton first among them) were participating in the commemoration of the 50th anniversary of the end of the Second World War which was held on 9 May 1995. As a justification for abandoning of Chechnya, various states always fell back on the same arguments: isolating Russia would be the worst choice and Boris Yeltsin is the only acceptable politician on the Russian political landscape.

However, many a compromise could have been avoided, and conditions could have been imposed or maintained, without making the isolation of Russia necessary.

The following three examples speak for themselves:

- **The case of the political and commercial partnership agreement between the**

European Union and Russia. Initially deferred at the exhortation of the European Parliament (as Russia was informed on 9 March 1995 during a visit to Moscow by the Troika of the European Union, then presided by Alain Juppé), this agreement was finally signed on 17 July 1995, owing to a temporary drop in the intensity of the battles.

- **The procedure for membership in the Council of Europe.** A suspension of this procedure was initially decided upon in February 1995, after a condemnation “*without reserve relative to the blind use of military force against the civilian population*”, issued by the Political Affairs Committee of the Parliamentary Assembly. For a time, it seemed that the Council of Europe had decided to protest the acts of violence committed in Chechnya. On the initiative of the Legal Affairs and Human Rights Committee and of the Parliamentary Assembly, an investigation was carried out in the field. The report that ensued confirmed that serious violations of international human rights had been committed by Russia and by Chechen combatants. Certain passages even made it clear that the Russian military hierarchy was aware of these acts of violence and went so far as to encourage them. Despite the fact that membership in the Council of Europe implies the recognition by all of the Member-States of the “*principles of the primacy of the law and that all persons in its jurisdiction benefit from human rights and fundamental freedoms*” and their commitment to “*strive to settle international and internal disputes by peaceful means*”, the procedure was quickly put back on the agenda, and Russia’s membership obtained a favourable vote on 28 February 1996. Once again, the same argument was used, and it is mentioned in the concluding chapter of the opinion paper produced by the Parliamentary Assembly: “*Russia does not yet meet all of the standards of the Council of Europe. Nevertheless, integration is preferred over isolation and co-operation over confrontation*”

The discrepancies between the commitments undertaken by Russia and the situation in the field gave rise to a dispute between President Yeltsin and Leni Fisher, President of the Council of Europe. When the former instructed the 12 deputies representing his country to “*block any attempt to pressure Russia, or to meddle in its internal affairs*”, the latter replied that “*human rights are never an internal affair. [...] Chechnya is even less of an internal affair than most since Chechnya never signed the treaty creating the Russian Federation*”. This is the one and only occasion when this legal argument, sustained by the Chechens, would be mentioned by one of Russia’s international supporters.

- **The IMF Loan.** On 11 April 1995, Russia was granted a 6.8 billion-dollar loan by the IMF, without the slightest protest being uttered.

Other examples could certainly be listed, but it is clear that the aforementioned examples are sufficient to demonstrate the passivity of the international community and its complicity in the wall of silence that surrounded the Chechen crisis. Describing a problem as a “strictly internal matter” does not free the parties to the conflict from having to respect the fundamental principles of international human rights, any more than it dispenses the signatories to the Geneva Conventions (notably, the fourth Convention, article III common to all of the Conventions) from respecting the law. Russia itself described this war as a non-international armed conflict, thereby meeting the conditions of article 1 of Protocol (II) Additional to the Geneva Conventions in accordance with the decision of its Constitutional Court on the legality of the military intervention in Chechnya dated 31 July 1995. The decision clearly mentioned that Protocol II bound both parties to the conflict, thereby confirming the rights and obligations of the Chechen rebels. Through this decision, the Constitutional Court

recognised that Protocol (II) applied to the Chechen conflict.⁶⁷

The Chechen war was particularly bloody and the civilian population had no protection of any kind. NGOs had tremendous difficulty gaining access to people. In addition to being subject to the goodwill of the Russian military when trying to get through check-points and having to put up with administrative red tape when entering Russia, they were also targets for acts of violence committed by soldiers and by certain Chechen factions. The increase in the number abductions and pillages obliged most NGOs to withdraw; it was the only way of ensuring the safety of their personnel. The settlement of the crisis, which remained a strictly internal matter, brought the battles to an end but in no way solved the fundamental questions that had motivated the fighting. One can still legitimately ask how the question of autonomy or of independence will be decided.

For the time being, it is impossible for NGOs to work in Chechnya. Médecins du Monde, had decided to maintain its presence, but was forced to withdraw in November 1997 due to the increase in acts of violence committed by certain extremist clans against foreigners. The wall of silence remains in place, although certain signs lead us to suspect that Islamic fundamentalism may be on the rise and this in country where religious traditions, rich in by local and regional cultural characteristics, are based on an open and tolerant view of Islam.

⁶⁷ Cf. article by Paola Gaeta, 'The Armed Conflict in Chechnya Before the Russian Constitutional Court', *European Journal of international Law*, Vol 7, n° 4 (1996), pp. 563-570.

How efficient are International Missions Aimed at Fostering Access to Civilians?

The missions carried out in Somalia, Kurdistan and former Yugoslavia had mixed results. During these operations, people rarely benefited from improved protection and access to assistance was neither generalised nor long-lasting. Although in Somalia access was improved for the duration of operation Restore Hope, the security and working conditions of the NGOs deteriorated as soon as UNOSOM II was re-deployed. In Bosnia, the presence of UNPROFOR did not prevent the regular closing of the Sarajevo airport and it did not help NGOs gain access to security zones. An examination of the mandates and of the means made available to each of these missions also explains their frequent deficiencies vis-à-vis the situation in the field. When these missions were confronted with situations where the degree of unpredictability was particularly high, their demanding mandates and the methods used prevented them from being as efficient as might otherwise have been possible.

The ‘humanitarian’ label affixed to these missions often allowed the international community to provide the appearance of a response, rather than an actual solution. The Bosnian, Somali and Rwandan crises required political, rather than humanitarian solutions. This is illustrated by the fact that the conflict in Somalia is still ongoing, as is the civil war in Rwanda. The use of this humanitarian label has resulted in its being denatured by mandates that combine political and assistance goals; this, in turn, has promoted the emergence of “state humanitarianism”. Also, the use of the “humanitarian” label for a crisis requiring massive mobilisation of public opinion may be an internal consideration for the government promoting the intervention.

In addition to dysfunction and perverse effects, submitting these interventions to a political decision-making process resulted in their having a profoundly non-egalitarian character. As the Chechen example demonstrated, the vulnerability of the civilian population and the hindrance of humanitarian assistance did not constitute true decision-making criteria. Rather, such a decision is linked to the interest that one or another of the “great powers” may have in this situation. By “great powers”, we are not just referring to the members of the Security Council of the United Nations, but also to Germany, Japan and to certain regions which, due to integration processes, are gaining political influence on the international scene and developing strategies which have to be taken into consideration.

In this context, the reasons for taking action are legion:

- Economic -in order to preserve a particular resource (who would have cared about Kuwait if it were not overflowing with oil?);
- Geo-strategic -the unleashing of international actions is motivated by a desire to maintain regional balance; and
- Political -supporting or promoting the removal of a political leader or of a system and, above all, maintaining or conquering an area of influence.

Given the importance of these criteria, certain areas are not of interest to the “great powers”. If areas are located outside strategic zones, they are deprived of any ability to represent a genuine interest. If, on the other hand, they are located inside one of these areas, they become an internal affair.

II. Sanctions

Levied Against Individuals and Against States

To the people working for NGOs, international humanitarian law often seems like a diverse set of legal provisions that are ill adapted to the reality encountered in the field. Witnesses to the atrocities suffered by victims they provide care to, our medical teams are increasingly hindered in their efforts to provide relief to the most vulnerable sectors of the population. Doctors are all aware of the existence of international humanitarian law which specifically codifies the means and methods of combat and the conditions of access to the most vulnerable sectors of civilian populations; they find it more and more difficult to believe in the effectiveness of international humanitarian law. The lack of sanctions against those responsible and the difficulty in determining liability and bringing those guilty to trial seems to render international humanitarian law meaningless and raises a number of questions (although it is on the basis of this law that we are able to take action). How can we bring the people who are responsible to trial? How can we make certain that they will be sought and arrested? How can we sanction perpetrators without weakening civilian populations?

Although we do have legislation, our international system does not contain sufficient enforcement measures to sanction violations. All the initiatives that have been taken seem to run up against the principle of national sovereignty and the refusal of certain States to allow “interference” of other States.

Recent history definitely proves that the sanctions that do exist are not very dissuasive. **Diplomatic isolation**, provided for under Chapter VII, Article 41 of the U.N. Charter, may take a variety of forms and penalises the status of the U.N. member-state sanctioned. This implies the reduction of the number of accredited diplomats, the suspension of voting rights, and can go as far as exclusion from the U.N. system; although this last measure has never been taken. Generally, isolation precedes, occurs at the same time, or follows the severance of bilateral relations with a number of other states. This explains how the Yugoslav Federation was excluded by the signatories of the International Covenant on Civil and Political Rights from the working group of the United Nations Commission on Human Rights in March 1994 for their support of the Serbs in Bosnia and their policy of ethnic purification.

It is worthwhile to analyse how the U.N. Commission on Human Rights operates. The work and the official accusations issued by the U.N. Commission often seem to have no effect. However, it has become increasingly clear that being on the list of states against which special procedures have been implemented -be it the naming of a Special Rapporteur or an investigation within the framework of confidential procedures- does constitute a political issue which can have a dissuasive effect.

When a state commits a violation of one of its international obligations, thus infringing a provision of international humanitarian law, that state incurs liability on an international level and falls under the obligation to remedy the situation. The terms and conditions of redress may vary but if material damage has been inflicted, payment of pecuniary damages is the most common form of remedy practised. Resolution 687 dated 3 April 1991 constitutes the

basis of the system created by the United Nations to remedy the damage caused by the invasion and occupation of Kuwait by Iraq. In Paragraph 16, the Security Council reaffirms that Iraq is “*liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait*”.⁶⁸ A fund to pay compensation was even created to collect the required sums to provide such indemnification. These provisions, however, are only applicable in connection with international conflicts. In non-international conflicts, victims must petition the national courts for redress. In the majority of cases, national courts are not in a position to follow up on claims filed due to the lack of a national compensation fund.

Economic sanctions may also be levied against a state that violates its international obligations. This type of sanction is analysed in more detail below.

Finally, with Nuremberg, The Hague and Arusha, the idea of **international criminal liability** of individuals has progressively developed, but not without an enormous effort. The fight against the impunity of those responsible for crimes has progressively become the focus of entire national reconstruction and reconciliation processes. This evolution is based on the conviction that the peace and reconstruction process cannot occur unless both states and individuals responsible are singled out and brought to justice. The difficulties experienced by certain Latin American countries since their transition towards democracy are significant illustrations of this. How can democracy be promoted when those responsible for executions and torture remain unpunished or still hold the reins of power? How can relief be provided to victims and their families when the crimes or atrocities committed go unpunished and seem to be progressively forgotten?

1. Individual Liability: an International Criminal Justice System

Establishing an international criminal justice system is an objective that the majority of NGOs are committed to. For Médecins du Monde, the struggle against impunity is one of our core values and principles which each one of us -in the field and at home- believes in and actively supports. In all the missions we conduct in connection with reconstruction following conflicts or massacres, the fight to ensure that those responsible do not go unpunished corresponds to a real therapeutic necessity for the victims and their families.

In the chapter entitled *L'impunité ou la conspiration du silence (Impunity, or the Conspiracy of Silence)*, of the Preface to the book *Rwanda, le jour d'après (Rwanda the Day After)*,⁶⁹ Dr. Claude Aiguevives, Psychiatrist and Vice President of Médecins du Monde explained the importance of justice from a medical standpoint.

“The genocide of the Tutsis in Rwanda not only terrorised survivors, it left their lives meaningless. They have no future as long as has not been justice rendered. All too often, those who survive under these conditions feel 'guilty to be alive'. Those who survived the Rwanda genocide are now going through the same experience as those who survived the Jewish holocaust.

⁶⁸ Resolution 687 dated 3 April 1991 (§16).

⁶⁹ Maria Malagardis, Pierre Laurent Sanner, *Rwanda, le jour d'après* (Rwanda, the Day After), Somogy, Médecins du Monde, eds, Paris, 1995, p. 17.

Impunity only serves to strengthen this feeling. For a long time in France, rape victims did not dare go to the police. The police lacked the appropriate means to deal with this type of case and rapists apparently seemed to benefit from impunity, as the crime remained a secret. Child abuse and incest suffer the same lot. These crimes cast a shadow of blame on the innocence of the victims and prevent them from filing charges.

Victims need our support to come out from the shadows and hand the evil having caused their suffering over to the police or the courts. These victims have explained how important it was to have the violation of their body and of their humanity recognised as a crime prohibited by law.

All too often, victims feel they are responsible for what happened to them. There must be some reason to explain why they had to suffer; it must be because they are women, children, Tutsis or foreigners. When victims understand that the injury can be qualified and judgement rendered they -once again- find their bearings within the organisation of human society: 'the entire community recognises that the tragic event I lived through is something outside of my doing and evil.' Justice is thus the beginning of the victim's psychological recovery. Justice makes it possible to once again belong to the human community that has acknowledged the harm inflicted.

We must fight against the taboo of rape and incest, against the lack of awareness and the silence. The more horrible the crime against humanity is the more victims there are and the harder it is for the truth to be revealed. When genocide has been committed it is always denied. 'The very magnitude of the crimes gives murderers, who claim they are innocent and lie outright, the assurance that it will be much easier to believe them rather than the victims', writes Hannah Arendt

No one has yet to be prosecuted for the genocide in Rwanda. This chapter of history remains to be written, but the revisionists of history are already at work. Médecins du Monde decided to stay in Rwanda after the genocide to prevent the isolation of victims from leading to the negation and these crimes, which would then be forgotten. We know that only justice can prevent new massacres. How can people mourn so many dead if the events remain secret? The law of silence generates blind violence. Time will not quell the desire for revenge. In the latter half of the 1970s, the Armed Faction of the Armenian movement [ASALA] dug up the past for the third consecutive generation because the genocide of Armenians has yet to be prosecuted.

Can the victors act as judges if they themselves are victims of these atrocities? The answer is yes, if the law is upheld. A verdict handed down by the victims themselves serves a twofold purpose: it will be instructive and will serve to keep the events from being forgotten.

Can Rwanda prosecute cases in the name of the five hundred thousand dead? The answer is no, as the country's justice system is powerless.

The creation of an international tribunal to prosecute those allegedly responsible for the genocide has been seen as a sign of hope [...] The states that have been called on to assist in this effort seem to be in no hurry and too often shy away from their duties. This is all part of the conspiracy of silence.

The world prefers to ask Rwandans for tangible signs of reconciliation. It has been suggested that both sides could share liability for crimes, equality leading to absolution. Should this surprise us? The world must go on and it is acceptable to negotiate with General Radko Mladic, despite the fact that he has been accused of crimes against humanity. Was not Khieu Samphan, the spokesman of the Khmers Rouge, officially invited to attend the Conference on Cambodia in 1980?

Refusal to forget the past has given new life to activist movements. As players in humanitarian action, we have worked side-by-side with countless victims of humanitarian efforts. Today, it is our duty to break the law of silence [...]"

a. General Background and Fundamental Principles

The development of an international criminal justice system corresponds to a growing belief that the international community is indeed responsible for the protection of civilian populations. This is at least what we hear in political discourse around the world today. This idea originated with the Nuremberg trials, although the decision-making process and the situation which led to the creation of the ad hoc tribunals for Rwanda and former Yugoslavia are fundamentally different from those involved in the Tribunals set up after World War II. The latter were established by the states who were victorious in a conflict that had reached a worldwide scale. In the cases of former Yugoslavia and Rwanda, the two Tribunals were created through a decision of the U.N. Security Council; this gives them both an international and political dimension.

The urgency of the situation explains the decision-making process surrounding the creation of these two tribunals. The Tribunal for former Yugoslavia was supposed to be a factor in preventing new crimes; this explains why it was created during the conflict. In Rwanda, the enormity of the massacres and the fact they were labelled “genocide” called for a swift response -facilitated by the precedent set by the Yugoslavian Tribunal- from the international community. This is why in both cases the decision was taken by the Security Council pursuant to Chapter VII of the U.N. Charter, so as to avoid the drafting of a treaty or convention that would have required several years.

Chapter VII entrusts the Security Council with primary responsibility to maintain peace and international security and vests the Council with specific means. Both aforementioned tribunals were created by reference to Article 41: *“The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These **may include** complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication and the severance of diplomatic relations.”* By basing its decision on the words “may include”, the Security Council considered that establishing an International Tribunal with clearly limited jurisdiction was indeed one of the measures that could be taken to restore peace.

Establishment of the Two International Tribunals

International Tribunal for former Yugoslavia

Background:

The International Tribunal for the prosecution of serious violations of international humanitarian law in former Yugoslavia was established in 1993, during the conflict, to punish crimes already committed and to prevent new crimes from occurring. This decision was adopted although the international community had shown that it was incapable of taking the required action to stop the conflict. The magnitude of the crimes, committed just a few hours away by plane from Paris, Bonn, or London, made it absolutely necessary to adopt a measure which would respond to the public's expectations. Certain people felt that the creation of the International Tribunal was an easy way out for Governments as it avoided the use of strong military force.

Process leading to the creation of the tribunal:

On 22 February 1993, the U.N. Security Council adopted resolution 808 and decided that "*an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991*".

On 25 May 1993, the U.N. Security Council issued a new resolution expressing once again "*its grave alarm at continuing reports of widespread and flagrant violations of international humanitarian law occurring within the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina, including reports of mass killings, massive, organised and systematic detention and rape of women, and the continuance of the practice of ethnic cleansing*".⁷⁰ The resolution officially established the International Tribunal on the basis of Chapter VII "*ensuring that such violations are halted and effectively redressed*".⁷¹

How the International Tribunal functions:

The International Tribunal is composed of a Prosecutor appointed by the Security Council and 11 judges elected by the U.N. General Assembly. It has two Trial Chambers used in the 1st instance and one Appeals Chamber.

Jurisdiction and applicable law:

The International Tribunal's jurisdiction covers the entire territory of former Socialist Republic of Yugoslavia. It has been given authority and jurisdiction since 1 January 1991, date at which, according to the Security Council, the hostilities started.

Applicable law includes: serious violations of the Geneva Conventions of 12 August 1949, violation of laws or customs of war, acts of genocide, -the definition given in the 1949 Convention is cited in full- and crimes against humanity "*committed during an international or national armed conflict and directed against any civilian population whatsoever*" - Article 5 of the Statute lists them: "*murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecution on political, racial and religious grounds, and other inhuman acts*".

Article 9 of the Statute of the International Tribunal lays down the principle that the Tribunal and national courts shall have concurrent jurisdiction. According to Paragraph 2, the Tribunal has primacy over national courts and may formally request national courts to defer to the competence of the International Tribunal.

Background:

Contrary to the tribunal set up for former Yugoslavia, the International Tribunal for the prosecution of serious violations of international humanitarian law in Rwanda was established after the genocide. The establishment of the Tribunal ended a long period of inaction on the part of the international community who had been incapable, during the genocide, of taking any measures that could have ended the massacres. In the eyes of many, the establishment of a Tribunal was yet again a temporary halfway measure established by an international community who was still incapable of bringing a halt to the genocide.

Process leading to the creation of the tribunal:

Reaffirming its "*grave alarm at acts of genocide and other widespread, flagrant and systematic violations of international humanitarian law occurring in Rwanda*", the Security Council issued resolution 955 on 8 November 1994 and established an International Tribunal to prosecute those presumed responsible for these acts. The Tribunal was also founded on the basis of Chapter VII of the U.N. Charter.

The process leading to the establishment of the tribunal was somewhat ambiguous. Rwanda, although a member of the Security Council, voted against the resolution for the following reasons: "*(a) the jurisdiction of the International Tribunal does not include acts committed during the period between 1990-1994 during which the massacres were planned and a number of Rwandans killed; (b) the Tribunal was given jurisdiction to also hear crimes which the national courts could have handled; (c) the number of judges was insufficient; and (d) the Tribunal did not have its own prosecutor [Editor's note: the same prosecutor is appointed to both International Tribunals]. Another reason Rwanda was not satisfied was the fact that the Statute of the Tribunal did not provide for the death penalty [...] and only provided for imprisonment. According to Rwanda, this constituted discrimination as local courts would apply the death penalty for certain crimes pursuant to national law*".⁷²

How the tribunal functions:

This Tribunal uses the operation of the Tribunal for former Yugoslavia as a model. The Prosecutor is the same for both International Tribunals.

Jurisdiction and applicable law:

Pursuant to resolution 955, the Tribunal "*shall have the power to prosecute persons responsible for serious violations of International humanitarian law committed in the territory of **Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring states, between 1 January 1994 and 31 December 1994.***"

Applicable law includes the crime of genocide, crimes against humanity and serious violations of Article 3 common to the four Geneva Conventions and (II) Additional.

⁷² Flavia Latanzi, 'La répression pénale des crimes du droit international: des juridictions internes aux juridictions internationales', (The Prosecution of International Law Violations), in *Le droit face aux crises humanitaires* (The Law and International Crises), European Commission ed, (1995), p. 168 (note 114) and 174.

b. Searching for, Arresting and Judging Those Responsible

Searching for and arresting persons allegedly responsible for violations of human rights is dependent upon the political willingness of states to co-operate with the International Tribunals. It is true that state courts created after the break-up of former Yugoslavia or which remain in Rwanda can claim they have jurisdiction based on the principle of *ratione loci*. Likewise, the courts in any state may also claim they have competence to hear the case based on the principle of **universal jurisdiction**. “*Universal jurisdiction is one of the features of a system which due to the extreme gravity of the charges gives the criminal courts of any state the authority to prosecute persons guilty of a serious violation of international humanitarian law regardless of where the acts were committed, the type of act committed, and the identity of those charged*”.⁷³

Universal jurisdiction is the core reasoning behind the enforcement of international humanitarian law and the punishment of violations of the latter. This principle requires states to punish crimes -without there necessarily being a relationship between the jurisdiction of the court and the place where the crime was committed, the person perpetrating the crime or the victim- and to bring allegedly guilty parties to trial before an international court, and in the absence of one, to extradite them to a state where courts have issued an international order for their arrest. To compensate for the difficulties so often encountered when states claim jurisdiction *ratione loci* and the lack of willingness of most states to exercise universal jurisdiction; **primacy has been given to the International Tribunals**.

Finally, it should be stressed that in these two cases the Statutes of the International Tribunals provide for the possibility of retrying a person who has already been tried by a national court. Such action would be taken either because the crime for which the person was tried can be qualified as a common law offence or because the national court did not render an impartial and independent decision.

At the political level, the principal problem encountered by the Prosecutor of the two Tribunals is **judicial co-operation** between states to carry out investigations and to search for and detain those who are subject to an international order for their arrest. This problem is attributable to the states directly concerned by the crimes and the international community on, including certain States such as France. And yet, judicial co-operation was specifically provided for, under Articles 51, 52, 131 and 148 common to the four Geneva Conventions: “*No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party*”, with respect to serious violations of international humanitarian law.

This co-operation was also designed as essential to the proper functioning of international justice. This is why Security Council resolution 827, paragraph 4 that established the Tribunal for former Yugoslavia included the “*obligation of states to comply with requests for assistance or orders issued by a Trial Chamber under Article 29 of the Statute*”. Article 29 stipulates: “*1. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including but not limited to: (a) the identification and*

⁷³ G. Guillaume, ‘Terrorisme et droit international’, (Terrorism and International Law). RCADI, III, 215, p. 348 in “*Une justice internationale pour l’ex-Yougoslavie, mode d’emploi du tribunal pénal international de La Haye*”(International Justice for the former Yugoslavia: A Manual for The International Tribunal) CEDIN, IFHR, MSF eds, (Paris, L’Harmattan, 1994), p. 80.

location of persons; (b) the taking of testimony and the production of evidence; (c) the service of documents; (d) the arrest or detention of persons; (e) the surrender or the transfer of the accused to the International Tribunal.” However, no sanctions have been provided against states that refuse to co-operate with the International Tribunals.

c. Lack of Co-operation Among States Directly Concerned by the Crimes Committed

International Tribunal for the Former Yugoslavia in The Hague

By the end of November 1997, 78 bills of indictment had been issued by the International Tribunal for former Yugoslavia seated in The Hague; 54⁷⁴ concerned Serbs in Bosnia, among them are Radovan Karadjic and Radko Mladic, 3 were filed against Serb officers, 18 against Croatians in Bosnia, and 3 against Bosnian Muslims. Ten of these men are currently incarcerated in The Hague: three Serbs, four Croatian, and three Muslims.

At the date of this publication, two sentences have been issued. The first was that of the Croatian, Drazen Eredemovic, accused of participating in a firing squad in Srebrenica. He was sentenced to 10 years in prison. The second was against Dusko Tadic, a Serb from Bosnia and a former warden of the Omarska camp who received a 20-year sentence.

Out of the 78 persons indicted, 68 (mainly Serbs from Bosnia) still run free. Bosnian authorities immediately co-operated and handed over the three persons subject to a warrant for arrest. Croatians in Bosnia appear to finally be co-operating more seriously with the International Tribunal (10 persons were extradited on 6 October 1997). Serbia and the Serbs in Bosnia, however, are still strongly opposed to any form of co-operation. They contest the impartiality and primacy of the Tribunal and refuse to acknowledge NATO arrest warrants. Serb authorities claim that the Dayton Peace Agreement entrusted them with this task.

The International Tribunal for Rwanda at Arusha

In November 1997, 21 bills of indictment were filed. Back in 1995, Rwanda had already drawn up a list of 500 individuals considered as having been mainly responsible for the genocide. Among these 21 persons, two key political figures did appear before the Tribunal: Colonel Théonestre Bagosora and the Burgomaster, Jean-Paul Akayesu. The verdicts have yet to be handed down.

There are two problems that arise in the relations between Rwanda and the International Tribunal at Arusha. Rwanda opposed the creation of an international tribunal on the basis that it was unacceptable for principle perpetrators to be judged by an international court and thus be protected from the death penalty while those who had executed their orders would be tried by the Rwanda national courts, certain of them risking the death penalty. Due to this, Rwanda did not adapt its own legislation to the Statute of the International Tribunal, denying the latter any form of co-operation.

The second problem encountered is the state of the Rwandan justice system after the

⁷⁴ Of the 54 Serbs in question, two have died, including Simon Drljaca, former Chief of Police and Chief of the Secret Policy of the Serb entity in Bosnia who was the main person in charge of the Prijedor camp during the war; he was shot by SFOR soldiers in July 1997 during an attempt to arrest him.

genocide. The country was on its knees after the atrocities. Administrative, medical and judicial structures had been pillaged and partially destroyed. We all recall Prosecutor Kigali explaining, in the beginning of 1995, that he did not even have a pencil and paper to start drawing up the required documents and create files. The prison situation was dramatic at the time and remains so today. In 1995, Médecins du Monde set up a partnership with Juristes Sans Frontières (Lawyers without Borders) to take action inside prisons to ensure that prisoners receive health care and are registered at the prisons and to organise training sessions for judicial police inspectors and officers, as well as judges. The court system is slowly being rebuilt. A few trials have been held and have been highly criticised in the way they were handled. Over 80,000 people are still awaiting trial in prisons where the sanitary conditions are extremely precarious in spite of the major work accomplished by the International Committee of the Red Cross.

The current operating conditions of the judicial system and the lengthy process of investigating cases has slowed the pace of international justice. Investigators do not receive the required assistance and support in Rwandan territory to properly conduct their investigations. In addition, arbitrary arrests based on accusations made by the Rwandan army create a climate of fear among the population and increase the difficulties encountered when these investigations are being carried out.

d. Lack of Co-operation from Other States

In former Yugoslavia, particularly in Serbia, the SFOR appears to be the method best adapted for proceeding with direct arrests in the field. The problem is that no firm official instructions have been given that have demonstrated a real willingness to capture and arrest persons subject to an international warrant and to force them to appear before the International Tribunal. A number of articles in the press have reported on how Radovan Karadjic and General Mladic were able to pass checkpoints guarded by the IFOR and the SFOR. The sole military intervention organised took place in July 1997; the objective was to arrest two persons in Prijedor who had warrants out for their arrest. It ended in the arrest of one of one person and the accidental death of the other.

To justify the failure to act swiftly, two arguments have been put forward; these are in total contradiction with the task assigned to the International Tribunal: the fight against impunity. The first is the risk of endangering the fragile peace process. If the fight against impunity is one of the pillars on which states can be reconstructed on a democratic basis after a conflict, this argument sustains that the fight against impunity would constitute a potentially destabilising factor. What type of peace would there be and how long would it last if it is based on impunity across the board for the principal perpetrators of acts as serious as planning and executing an ethnic cleansing campaign? The second argument put forward is the necessity to preserve as much stability as possible so that elections can take place. Here again, we have seen that even if persons subject to an arrest warrant are not allowed to be candidates, they are always able to find a figurehead to represent them.

The main reason for these difficulties is the lack of political willingness on behalf of certain states to allow international criminal justice to be implemented properly. As stressed above, U.N. peacekeeping forces have a mandate that is quite vague. They can, however, arrest persons who are being sought if they are found during the execution of their peacekeeping activities. If there were true political willingness, these troops would have a clearly defined mandate and certain prerogatives or better yet, a veritable international police force would

have been organised.

Moreover, certain states have been directly accused of preventing the search for and arrest of persons charged. When Louise Arbour, Prosecutor of the two Tribunals arrived in France, she had scathing criticism for the French authorities and in particular the Minister for Defence. Her criticism concerned France's refusal to allow its officers present in Bosnia to provide oral testimony before the International Tribunal, including in particular, General Janvier, who commanded the UNPROFOR during the massacres in Srebrenica. Louise Arbour also reproached French military forces for not proceeding with any arrests in their zone. This includes the town of Pale in particular, headquarters of Radovan Karadjic. The only public reply given by France was a terse declaration from Alain Richard, the Minister for Defence, *"We are not in favour of making a spectacle of justice and that is what the International Tribunal does."*

According to Louise Arbour, the same problems occurred in terms of co-operation with the International Tribunal at Arusha. A list of military personnel summoned to testify was transmitted to the French authorities and the response received was identical to the one given to the International Tribunal in The Hague. France also declared that it did not have jurisdiction in either case to hear complaints filed with French judges by Rwandan and Bosnian victims. In addition, no search or investigation on French territory has ever been conducted regarding the potential presence of those responsible for these crimes. Although we know that in 1994 and 1995, a number of these people were able to seek refuge in France. The position of the French Government -to virtually block co-operation- is in line with the position it took in connection with the process to establish the Statute of the Permanent Criminal Court. This position may block the establishment of the Court's Statute or deprive the Court of any real means of action.

There are states, however, that have been much more co-operative with the International Tribunals. Great Britain and Belgium accepted to allow their military personnel to testify. Belgium and Canada have filed charges against those who are allegedly responsible for the genocide perpetrated in Rwanda and are present on their territories.

Finally, another question arises regarding the search for those presumed responsible for the Rwandan genocide. Why was there no inquiry carried out in the camps located in the Kivu Region between the end of 1994 and the end of 1996? Everyone -including NGOs who constantly denounced the situation- knew that those responsible for the massacres were hiding in these camps. The presence of almost 50,000 persons who carried out the genocide, as well as the people who gave the order, constituted a serious threat to Rwanda and an insult to Rwandan victims and everyone involved in the struggle against impunity. Again, why was no inquiry was conducted in November 1997 in the refugee camps located in Djoundou, Loukoulela, and Liranga, along the Congo River in Congo-Brazzaville.

➡ While the creation of these two Tribunals does constitute a real step towards instating an international criminal justice system, there are serious questions. When the first resolutions on the International Tribunal in The Hague were issued, NGOs saw this event as a major challenge for the international community, civilians and judges.

Considering the seriousness of the crimes committed and the precedents they constitute, the first International Tribunal, followed by the International Tribunal for Rwanda (the International Tribunal at Arusha) absolutely need to be effective. From the outset, the main

pitfalls these two Tribunals could expect to find were defined and stressed by both judges and NGOs. The primary pitfall was the lack of co-operation on the part of states directly concerned or States that could extradite or provide information on persons being sought. This pitfall could not be completely avoided, nor overcome. The attitude of France is a striking example of this. Other states, in particular African states have also provided a safe haven for those presumed responsible for the genocide and have refused to co-operate with the International Tribunal for Rwanda. Thus taking advantage of the door opened by the French Government.

Today, there are serious doubts as to whether these two International Tribunals have the capacity to fulfil the tasks they have been entrusted with. The financial difficulties experienced by the Arusha Tribunal only serve to lend weight to the criticism expressed by some and discredit these two legal structures established to continue the fight against impunity. Surprisingly, the judges and the two successive Prosecutors, Richard Goldstone followed by Louise Arbour have had a surprising amount of freedom to speak out and denounce the political obstacles they have encountered over the last few years.

The barriers put up by states and the slowing of the procedures that ensues send the wrong signals to all those who currently have something to fear from the establishment of true international criminal liability. This is also an ill omen for the future Permanent Criminal Court which was initially suggested in 1948 and whose Statute was scheduled to be completed and submitted for ratification in 1998. In spite of the action taken by the two Prosecutors and the strong level of co-operation among NGOs in this field, a veritable political barrier has been built by certain states -among who France vies for first place- threatening to block any real advancement.

2. An example of One of the Types of Sanctions Used Against States: The Embargo

Embargoes are part of the set of measures that do not imply the use of force; they are at the disposal of states or of the United Nations and are used to exert pressure on another state. Embargoes are always put forward by their instigator(s) as a response to an act that has been deemed illicit. Usually, embargoes can be either total or partial; they can encompass all of the external communication and exchanges of the country concerned or be limited to certain sectors –mainly arms and other military equipment. Embargoes can be imposed by a single country, by a group of countries, or by the United Nations in which case everyone must comply.

A system of selective embargoes was introduced in response to protests made by numerous NGOs concerning the disastrous effects on the health conditions and the food supplies in communities directly affected by embargoes. The system was set up in order to make embargoes “humane”. This system is under the control of a sanctions committee, and allows humanitarian goods to enter the nation under embargo. Whatever the circumstances, the perverse effects that embargoes have on the health of the population as well as on the economic activity and development of the country remain alarming. Moreover, the desired effects are never achieved. On the contrary, instead of turning a country against its leader, the latter is able to strengthen national unity by demonising the outside world.

a? Overview of the Embargoes Against Iraq and Burundi

The Embargo Against Burundi

Reasons for the decision:

The decision to impose an embargo on Burundi was adopted in response to the *coup d'état* led by Major Pierre Buyoya in July of 1996.

The Decision:

The decision was taken jointly by the countries of the region: Uganda, Tanzania, Kenya, Ethiopia, Cameroon, Zaire, and Rwanda. The latter acceded to the decision in mid-August 1996. The OAU, through its body for the prevention, management, and resolution of conflicts and the U.N. by means of Security Council resolution 1072 dated August 30, 1996 supported this regional initiative. The objective was to oblige Burundi into restore peace, the rule of law, and constitutional order.

The Scope of the Embargo

The embargo is economic, and is aimed at petroleum products, food, medicines, and school supplies, inter alia. In addition, Burundi is not allowed to export any of its tea or coffee crops, which have traditionally represented 85 per cent of its revenues.⁷⁵ Concurrently, almost all air traffic was interrupted. A regional committee based in Nairobi was put in charge of monitoring the sanctions and of supervising the enforcement of the decisions.

On the 9 September 1996, in order to stem the decline in medical and sanitary conditions, the sanctions committee authorised NGOs to bring in goods essential to the survival of the most vulnerable members of the population. In November of the same year, The World Food Programme (WFP) of the United Nations was able to reach an agreement with the committee whereby supplies could be sent to displaced communities.

The Embargo against Iraq

Reasons for the Decision:

The decision to impose an embargo was taken after the invasion of Kuwait in August 1990, in response to Iraq's persistent refusal to comply with United Nations resolutions. It is also seen as a reprisal for the acts of repression carried out by Iraqi troops against Shiite and Kurdish rebellions. The conditions for the lifting of the embargo are the destruction of unconventional weapons held by the Iraqi army. There is a special U.N. commission in charge of disarmament, UNSCOM. It is through this commission that the United States and Iraq lock horns, while literally holding the Iraqi people hostage.

The Decision:

The Security Council has adopted a large number of resolutions concerning the embargo.

- Resolution 661 -dated 6 August 1990- defined the sanctions and established a committee in

⁷⁵ *Le Monde*, 'L'Ouganda et le Rwanda vont sanctionner le Burundi', (Uganda and Rwanda to Take Punitive Measures Against Burundi), 9 August 1996.

charge of their implementation.

- Resolution 670 -dated 25 September 1990- deals with the implementation of sanctions for all means of transportation.
- Resolution 687 -dated 3 April 1991- defines the sanctions that are to be enforced after the cessation of hostilities.

The Scope of the Embargo:

- The conditions of the embargo state that it can only be lifted when Iraq fully complies with the resolutions adopted by the U.N. Security Council, and after “*in light of the policies and practices of the Government of Iraq*”.⁷⁶
- The embargo on Iraqi exports can only be lifted once a compensation fund has been created and the program for the destruction of unconventional weapons has been executed.
- The conditions for the lifting of the embargo on weapons have not been clarified.
- Goods that are essential to the survival of the Iraqi population are allowed to enter the country once the Sanctions Committee has given its approval. The U.N. Security Council has given the Committee the task of determining “*if circumstances are such that humanitarian grounds can be put forward*”.

The “Food for Oil” Resolution

Faced with the food shortages and health problems affecting the population, the Security Council adopted resolution 986, better known as the “food for oil resolution”. There had been two other previous resolutions that were not implemented, Resolutions 706 and 719 both adopted in 1991. Resolution 986 authorised Iraq to export oil worth 2 billion dollars over a six-month period in order to meet the needs of the population. One hundred fifty million of the two billion dollars have to be spent on the inhabitants of Kurdistan. It was only early in 1997, a year and half after it was adopted, that implementation of resolution 986 began.

B. Does the Embargo Constitute an Effective and Acceptable Sanction?

Many believe that the embargo is a sanction of dubious effectiveness carrying with it perverse effects mainly for the civilian population, whose health suffers heavy consequences in the short and medium term. In the long term civilians are also affected by the impact embargoes have on their country’s social and economic development.

Embargoes are unacceptable because the full weight of such penalties is borne by the population; they are the ones who suffer from the ensuing shortages. Very rarely do these shortages affect the people they were originally aimed at: the country’s decision-makers. In addition, within the political arena, embargoes foster the emergence of several phenomena. Popular support for the leader is further strengthened: the outside world is blamed for having caused the problems and its demonization helps to rally people around their leader. Iraq is a particularly eloquent example of this. On the other hand, an embargo may cause a worsening of the situation. At best, amid the chaos in the country, the resulting isolation may strengthen the political status quo.

For years, the perverse effects of embargoes have been criticised from both economic and social perspectives. The closing of borders and the drastic rationing of consumer goods foster the emergence of a parallel economy, which generates inflation and crime.

⁷⁶UN Security Council resolution 687, section F, paragraph 2, 3 April 1991.

Consequences of the Embargo on the Health of the Population

Generalised Deterioration of the Nutrition and the Health of the Affected Population.

One of the immediate consequences of an embargo is the drastic reduction in the supply of basic goods that are available to the population. The repercussions are almost immediately felt in the healthcare sector, particularly among the most vulnerable members of the population: pregnant women, nursing mothers, new-borns, and the elderly. Equally affected are patients suffering from chronic or acute illnesses requiring regular medical attention. They suffer severely when their treatments have to be stopped for lack of medicines. During an exploratory mission carried out in August 1995 in Iraq, a team from Médecins du Monde observed that a large number of children suffering from leukaemia and thalassaemia were not receiving any treatment. Under such conditions, illnesses that before the embargo were part of intensive prevention campaigns reappear on a large scale, as was the case with tuberculosis in Iraq and typhoid fever in Burundi. The deterioration of health care within the targeted country can quickly be assessed by looking at statistical trends in the mortality rate, especially the infant mortality rate. In Iraq, according to recent estimates, the current infant mortality rate stands at 124/1000 compared to 32/1000 before the war.

While the deterioration in health is directly linked to the decrease or even the disappearance of the supply of medicines, it is also largely due to the deterioration of nutrition. Before the second war in the Gulf, Iraq produced only 30 per cent of its food consumption. Since then food production in Iraq has dropped significantly due to the lack of fertilisers and the breakdown of production equipment that has not been replaced. According to the Secretary-General's report dated 2 June 1997, "*In April 1997, the United Nations Children's Fund [UNICEF], the World Food Programme [WFP] and Iraq's Nutrition Research Institute carried out a nutritional survey of 15,000 children under five years of age in 87 primary health care centres in the 15 central and southern governorates. Results showed that 25 per cent of the children were malnourished, of whom 27 per cent were chronically malnourished and 9 per cent acutely malnourished*".⁷⁷

In Burundi, the situation was already alarming before the embargo. The prevailing state of war has caused malnutrition to worsen. In his report dated February 1997, the Special Rapporteur to the U.N. Commission on Human Rights pointed out that the malnutrition rate in Burundi has doubled, it has gone from 6 per cent to 12 per cent.⁷⁸ These figures are not representative of the conditions in camps; according to Médecins Sans Frontières-Belgium and Action Contre la Faim the rate of acute malnutrition has gone from 14 per cent to 19 per cent and the rate of severe malnutrition has gone from 3.7 per cent to 4.9 per cent in just a few months.

Selection Procedures Mechanism

The introduction of selection procedures whereby medicines and food are allowed to enter the country has caused problems. In the case of Iraq, the procedures established by the Sanctions Committee for humanitarian goods are very complicated. They lengthen delivery times, which is harmful for the population. Delivery times for medical supplies run from 8 to 10 weeks, in

⁷⁷ U.N. doc. S/1997/419s

⁷⁸ U.N. Economic and Social Council, 'Report on Human Rights in Burundi', U.N. doc. E/CN.4/1997/12, 10 February 1997.

addition to any delay related to the request for approval by the Sanctions Committee for the export of goods to Iraq. Once the medicines reach Iraq, they undergo quality controls carried out by the KIMADIA, the Iraqi National Drugs and Medical Supplies Bureau. On average, it takes two weeks for the KIMADIA to run its controls, although it may take them longer if any additional controls are called for. Once the medicines are approved, they are distributed, according to need, to the different governorate health care centres. As there is a lack of co-ordination and of means of transport, patients receive the medicines 21 to 28 days after they are put into circulation. A hundred days can go by between the time the Sanctions Committee gives its approval and the moment the medicine is used by the patient. Such long delays obviously cause problems linked to the shelf life and storage of certain products, especially for those that need to be kept refrigerated at constant temperatures. *“A survey conducted by WHO in early November 1997 in the 3 northern governorates and 5 randomly selected governorates among the other 15 showed that out of 96 per cent of patients interviewed to whom treatment had been prescribed, only 39 per cent had received all the prescribed drugs and for 28 per cent of them prescribed drugs were not available in the health facilities visited. Sixty per cent of those interviewed expressed dissatisfaction with the services provided and 89.5 per cent with the non-availability of medicine, while 11 per cent complained about the non-availability of diagnostic services such as laboratory tests”.*⁷⁹

In the case of Iraq, where Security Council resolution 986 authorised the sale of oil for food, there were also many problems that limited the effects that that decision had on the civilian population. First, due to tension between the Iraqis and the Americans linked to UNSCOM, the measure was implemented almost a year and a half after the adoption of the resolution. Secondly, of the 2 150 000 dollars that were deposited into the sequestered oil sales account, less than half were used for the purchase of humanitarian supplies by the Iraqi government. 131.5 million US dollars were allocated to Kurdistan by the Sanctions Committee and distributed through an inter-agency U.N. program. The remainder of the money was distributed as follows: part was deposited into a compensation fund for Kuwaiti victims of the Iraqi invasion (Kuwait is claiming 45 billion dollars in damages), part was paid as operating expenses to the United Nations for their role in the enforcement of resolution 986, part went to pay for UNSCOM expenses, and part went to pay the transport expenses of Iraqi petroleum products transported via Turkey through the Kirkouk-Yumurtalik pipeline.

Due to the complex mechanism that had been established, deliveries were late and the quantities decided on have yet to be delivered. Out of the 2.2 million tons of food supplies that were due to be delivered, 1.7 tons were delivered in September 1997, this figures represents 75 per cent of the quantities that had been originally planned. The situation is even worse as far as medicines are concerned, out of the 210 million products planned for delivery only 20 million have been delivered, this constitutes 10 per cent of the total.

In a report written in 1997 the Secretary-General of the United Nations stated that *“ the population of Iraq continues to face a serious nutritional and health situation and there is an urgent need to contain the risk of a further deterioration, as indicated in the present report. The slow and erratic pace at which humanitarian inputs arrive in Iraq has been very unsatisfactory. At the close of Phase II, there are still outstanding deliveries under Phase I, and the overwhelming majority of Phase II inputs have yet to be submitted, processed and/or approved. Although I welcome the considerable improvements made in the approval process*

⁷⁹ Report of the Secretary-General in application of resolution 1111, §3 (1997) ; doc S/1997/935, 28 Novembre 1997.

*under Phase II, much remains to be done to ensure that this results in an overall increase in the speed of implementation of the programme”.*⁸⁰

The Consequences on the Economic and Social Development of a Nation

In addition to generating parallel economies and illegal activities, embargoes also serve to deteriorate the nation's social and economic environment. Embargoes foster unemployment and inflation, they put the middle class in a vulnerable position and the poorer classes in a highly precarious one. Although the contexts are different, Iraq and Burundi illustrate the aforementioned phenomena very eloquently.

In Iraq social and economic deterioration affects the general population while a small fraction is making profits from parallel economies. This phenomenon is especially observable in the field of medicine. In 1995, the Médecins du Monde team in charge of an exploratory mission observed illegal practices in hospitals. Prior to 1991, Iraq had a remarkably advanced health care system that included very sophisticated medical equipment. As there are no parts available to repair this equipment, hospitals can have, for example, scanners that cannot be used. There are only one or two incubators per maternity ward; frequently one can see three to four premature new-borns in the same incubator.

Conditions in Burundi are different. Due to a long-standing state of war, at the time the embargo was implemented, social and economic conditions in Burundi were already highly precarious. A large percentage of the population, particularly the Hutus, was displaced and malnourished. Medical supplies in dispensaries and hospitals were largely furnished by NGOs. According to Médecins du Monde estimates, before the embargo, the medical supplies available only corresponded to 30 per cent of needs. The embargo has worsened and accelerated the deterioration of a health care system that was already almost completely dependent on outside help before the war.

➔ In addition to the fact that embargoes are an unacceptable sanction because of the consequences they have on the civilian populations concerned they have never been effective. The regime in Cuba has survived more than thirty years of a United States imposed embargo. Saddam Hussein appears to be resisting equally well to the one that has been imposed on Iraq, and peace, security, and the rule of law have yet to be re-established in Burundi.

Embargoes are decided using highly discriminatory methods. If the failure to recognise the law is one of the reasons for imposing an embargo, then great many states should be under embargo. What we observed during every Security Council negotiation about Iraq was there was strong rooted disagreement, particularly on the part of the United States who hardened their stance against the Iraqi leader.

In the case of Burundi, Tanzania's stance, certainly the most extremist towards maintaining the embargo, does not lack ulterior motives. Relations between the two nations have been extremely tense owing to the presence of Hutu refugee camps on Tanzanian soil. These camps are used as rear bases during incursions. The presence of these camps has led the Burundi army to station troops on the border thus increasing tensions between both countries.

⁸⁰ Ibid., § 73

And yet there have been signs of an easing of tensions on the part of Major Buyoya. The National Assembly has been reconvened and the ban on political party activities has been lifted, as is required in the declaration that instituted the embargo in July 1996. According to Médecins du Monde-Switzerland, during an exploratory mission carried out in September 1997 it was evident that the number of forced refugee camps had clearly declined. Although the political situation remains alarming in Burundi and Major Buyoya's rise to power is unacceptable because it is anti-constitutional, the embargo no longer appears to be adapted to the situation. The embargo has generated isolation –which can only harm the country- and it has contributed to an unacceptable deterioration in living conditions.

Civilians are suffering the consequences of drastic reductions in the distribution of essential goods while arms trafficking has apparently escalated; arms reach their destinations without any apparent problems. On 8 December 1997 Human Rights Watch Published a report where they claimed that many countries were contributing to the civil war in Burundi through arms sales or by helping to deliver arms -both to government troops and to rebel forces- or by harbouring Hutu rebel bases. “*China, France, North Korea, the Russian Federation, Rwanda, Tanzania, Uganda, and the Democratic Republic of Congo have all lent military support to abusive forces in Burundi*”. Angola and Kenya are also mentioned in the report.

Furthermore, embargoes have effects that are contrary to the desired ones. Nations who are victims of this type of sanction can use it to their advantage. In Iraq, for example, the embargo has been used as a basis for both national and regional policies. The country's isolation has been used as an instrument to rally people around Saddam Hussein. And, in a very different manner, Burundi's isolation can only serve to strengthen both Hutu and Tutsi extremism.

Finally, the juridical validity of embargoes can also be called into question. As Adama Dieng stated, “*the very foundation of international humanitarian law is to provide assistance and protection to the victims of armed conflicts in order to alleviate their suffering. Economic measures aggravate the situation and turns much-awaited international aid into a formidable weapon against them*”.⁸¹ International humanitarian law has in several instances strictly prohibited collective sentencing⁸² and the use of famine as weapon in times of war,⁸³ and see, “*intentionally causing great suffering, or serious injury to body or to mental or physical health*” as serious breach⁸⁴. Also, other rights may apply: the right to life, protection from torture; from cruel, inhuman, and degrading acts; protection from discrimination; the peoples' sovereignty over natural resources; and the right to self-determination.⁸⁵ All of these rights can be deemed as customary or jus cogens. While Security Council embargo resolutions do not explicitly mention these texts, the Security Council cannot institute coercive measures that are genuine violations of international humanitarian law and human rights. It has been established that the health of civilian populations is seriously affected by these measures, even in cases when goods essential to their survival are not part of the embargo.

⁸¹ Adama Dieng, ‘La mise en œuvre du droit international humanitaire : les infractions et les sanctions’, (*Implementing International Humanitarian Law : Infringement and Sanctions*). in *Le droit face aux crises humanitaires*, (The Law and Humanitarian Crises) European Commission ed., (1995), vol I, p. 324.

⁸² Cf. Geneva Convention (IV); Protocol I article 33, article 75; Protocol II article 4, concerning fundamental guaranties.

⁸³ Ibid. Protocol I, article 54; Protocol II, article 14,.

⁸⁴ Cf. articles 50, 51, 130, and 147 common to the four Geneva Conventions.

⁸⁵ International Covenants on Human Rights, Article 1, common to both United Nations covenants signed in 1966, paragraph 2 states, “*In no case may a people be deprived of its own means of subsistence*” .

We should perhaps consider the reasoning used by Iqbal Al-Fallouji, former Chairman of the Drafting Committee of the diplomatic conference for the adoption of Protocols Additional to the Geneva Convention. *“Where humanitarian law is concerned what is prohibited by states can under no circumstances be tolerated under the control or authority of the United Nations. The international community cannot violate its own legality through Security Council resolutions that are of an exceptional nature. When the Security Council has to examine a peace violation, it must above all avoid tolerating or encouraging humanitarian violations. Embargoes that lead to famine among the civilian population are neither morally nor legally acceptable”*.⁸⁶

⁸⁶ Iqbal Al-Fallouji, ‘La légitimité de l’embargo médico-alimentaire contre l’Irak’, (The Legitimacy of the Food and Medicines Embargo Against Iraq), unpublished article p.6.

Annexe I.

Rwanda and the Democratic Republic of Congo:

A Series of Unresolved Crises

1. The Genocide: The Refusal to Prevent the Massacres and the Inability to Prosecute those Responsible

a. Numerous Warning Signs of Impending Genocide

The genocide perpetrated in 1994 in Rwanda was not the outcome of a sudden and unpredictable outburst of violence. On the contrary, it was perfectly foreseeable, given the numerous prior massacres that had occurred throughout Rwandan history, even before independence in 1962. Between 1959 and 1961, murderous attacks against the Tutsi population had already caused a mass exodus towards Rwanda's neighbours: Burundi, Uganda, Zaire, and Tanzania

Between 1962 and 1994, the massacres continued to spread and intensify. During this period, exiled Tutsis attempted several military incursions into Rwanda, all of which were followed by massive reprisals against "local" Tutsis. In 1973, in a context of violent ethnic strife, Major General Habyarimana seized power during a coup d'état. The Tutsis in exile began to organise themselves and in 1979, the Rwandan National Union (RANU), later renamed Rwandan Patriotic Front (RPF), was created.

In 1990, the RPF launched, from Uganda, its first military attack against Rwanda. As a direct consequence of this invasion, nearly 10,000 Tutsis living in Rwanda were arrested, and **France and Belgium deployed troops to protect their nationals**. In 1991, the RPF opened a new front in Byumba and Ruhengeri. In retaliation, the Tutsi population of Bagogwe was massacred.

The first warning signs of the upcoming genocide began to flash in 1992, with the emergence of an openly racist political party supported by the government, the *Coalition pour la Défense de la République* (CDR). At that time, the militias of the MRND -the governing party- organised massacres of Tutsis in Bugesera, Kibuye and Gisenyi.

Several moves were then attempted to save the situation through mediation and regional negotiation. Thus, in July 1992, the first Peace Conference was held in Arusha. The resulting cease-fire was broken several months later and Léon Mugesera, a MRND party official, encouraged the population to throw all the Tutsis in the river "to force them to return to Ethiopia".⁸⁷ **In 1993, the "Radio Libre des Mille Collines", a radio channel supporting official views, began to broadcast ethnic hatred propaganda.**

In 1993, in reaction to the violent attacks committed by government-supported militias, the RPF broke the truce. At that time, several NGOs began to alert the international community about the situation of the Tutsi population. The International Federation of Human Rights, Human Rights Africa, the Inter-African Union for Human and Peoples Rights, and the International Centre for Human Rights and Democratic Development set up a **Commission of Enquiry**, which confirmed that "acts of genocide and war crimes" had been committed. By then, Amnesty International had already published a report on the persecution of Tutsis; according to this document, over 1,000 persons were murdered between 1990 and 1992.

During the slaughter, attempts at regional mediation and negotiation were pursued. In August 1993, **the Arusha Peace Agreements** were signed, whereby the signatories would share

⁸⁷ Maria Malagardis and Pierre Laurent Sanner, cited note 69, p. 89.

power in a transitional government for a period of 22 months, after which free elections would be organised. The two armies, the RPF and the Rwandan army, would be merged and an international peacekeeping force would guarantee the enforcement of the peace agreements.

On 5 October, the United Nations Security Council approved in resolution 872 the creation of a peacekeeping force for Rwanda, the United Nations Assistance Mission to Rwanda, UNAMIR. French troops left Rwanda. In January, the application of the Arusha agreements was blocked by the president and his supporters. Moderate Hutus were murdered in various parts of the country, and Hutu militias began to organise meetings calling for the elimination of "infiltrated Tutsis" and "Hutu traitors".

The Genocide

On 6 April 1994, the plane carrying President Habyarimana and the President of Burundi home from an international meeting was shot down over the capital of Rwanda. All the passengers and crew were killed. This event immediately triggered the first series of massacres in the city of Kigali. The Prime Minister and other moderate members of the government were murdered. France and Belgium reacted on the spot **by sending troops whose mission was limited to protecting and repatriating French and Belgian citizens. The President's wife and children, along with other important government officials, were also evacuated by the French troops.** On 16 April, once the evacuations were completed, French and Belgian troops departed, leaving the country in the throes of hate campaigns and massacres. On 21 April, the Security Council reduced the UNAMIR staff from 2,700 to 450 -soldiers and observers included. Three weeks later, on May 17, while the massacres continued, the Security Council voted the deployment of 5,500 U.N. peacekeeping forces in Rwanda and an arms embargo.

On 22 June, the **Security Council, defining what was happening** as a "humanitarian crisis", without **referring in any way to the notion of genocide, finally voted resolution 929, authorising an armed intervention in Rwanda.** On June 23, "Operation Turquoise", was launched in Zaire under French military command. On 5 July, a "**humanitarian security zone**" was created in south-western Rwanda. On 13 July, Hutus began to flee to Zaire. On 17 July, the RPF, having succeeded in taking over the country, proclaimed the end of the war. A national government was set up. On 21 August, Operation Turquoise was terminated and the French soldiers were replaced by UNAMIR forces.

From 7 April to 17 July 1994, 500,000 to 1 million persons were slaughtered in Rwanda. 2,400,000 fled the country; among these, more than 1 million fled to Zaire, causing a new disaster with the outbreak of a cholera epidemic during the summer of 1994.

b. The Reaction of the International Community

The Prevention of the Genocide

On the international level, no real policy of prevention was ever implemented, even though massacres had been a frequent occurrence in Rwanda since independence. Given ample warning of the impending genocide, the international community should have engaged in the preparation and development of such a policy. These warning signs were the following:

- Repeated Tutsi killings;
- Massive numbers of refugees in neighbouring countries;
- The increasing radicalisation of the Rwandan regime and the hate campaigns broadcast by the media;
- The organisation of an "armed rebellion" in Uganda; and
- The military offensives from 1990 onward.

The only real peacekeeping initiative carried out on the international level was the Arusha peace process, even though the provisions approved in August 1993 soon turned out to be unenforceable. The UNAMIR peacekeeping force, whose mission was to maintain peace and ensure the implementation of the agreement -blocked as of January 1994 -was unable to prevent the genocide.

During the Genocide

France and Belgium were the first countries to react by sending troops on 9 April to evacuate their nationals. These troops remained in Rwanda seven days, until 16 April. On 21 April, the Security Council reduced the number of UNAMIR troops. Finally, on 17 May, resolution 918, authorising a new deployment of UNAMIR II troops (5,500 men), was voted. One month later, only 503 soldiers had been deployed. UNAMIR's mandate was redefined as mainly humanitarian. Its mission was "*(a) To contribute to the security and protection of displaced persons, refugees and civilians at risk in Rwanda, including through the establishment and maintenance, where feasible of secure humanitarian areas; (b) to provide security and support for the distribution of relief supplies and humanitarian relief operations*". No explicit reference was made to Chapter VII of the U.N. Charter. The use of force was authorised for the purpose of self-protection, but no coercive or defensive action was allowed.

A military embargo was also voted, this time under Chapter VII of the U.N. Charter. On June 22, due to the emergency and upon recommendation of the Secretary-General, the Security Council voted resolution 929, approving a temporary, neutral and impartial multinational force (meaning that it could not act as an intervention force) whose mandate was identical to that of UNAMIR II. However, in this case, explicit reference was made to Chapter VII of the Charter. This operation was originally planned to last two months, and its aim was to give time for UNAMIR II to take up its positions.

Why was the decision-making process so slow and why was the international community incapable of making the appropriate decisions in view of the gravity of the situation?

The extent of the massacres and the absolute necessity to protect the targeted populations do

not seem to have ever been taken into account in the decision-making process, even though NGOs had warned international public opinion -from the start- about what was happening.

On 8 April, Médecins du Monde and Pharmaciens sans Frontières announced in a joint press release that, due to the escalation of violence, they were forced to evacuate their staff. New emergency teams were sent back to the area on 14 April. In a press release dated 26 April, Médecins du Monde repeated the information transmitted by its surgical team: "only very few of the seriously wounded escaped slaughter". In May 1994, during a Special Session of the Committee on Human Rights, many participants warned of the wide scale nature of the killings.

For a time, the Security Council, thus concealing its inability to take appropriate measures, focused the debate on the definition of genocide. The Human Rights Commission, during a Special Session, appointed a Special Rapporteur to carry out an investigation and establish the facts. In his first report submitted on 28 June, the Rapporteur, René Degni Segui wrote, "*the term 'genocide' is accurate as concerns the situation of the Tutsi population*". In response, the Security Council asked the Secretary-General to appoint a team of experts to verify the conclusions of the Special Rapporteur. The team was given six months to submit its own conclusions. In their first report submitted on September 29, the experts concluded that "premeditated acts of genocide" had been committed against the Tutsi population and recommended the setting up of an international tribunal. Thus, it appears that although the international community was very active and efficient as regards the evacuation of foreign nationals, it remained passive as the genocide was being perpetrated before its very eyes.

The only resolution of the Security Council to have been actually implemented was that authorising Opération Turquoise. This operation, conducted primarily by French troops under United Nations mandate, has been widely criticised, including by Médecins du Monde. This criticism hinges on two main points:

- The French Government's involvement and responsibility for the genocide, owing to its support of President Habyarimana's regime; and
- The fact that the operation was decided as a stopgap measure, to mask the Security Council's inability to obtain the necessary commitment of its members for the implementation of a multilateral intervention force.

One must add to this criticism that the mandate of Opération Turquoise did not include the disarming of the combatants. Furthermore, the fact that the security zone was located in the south-western part of the country essentially facilitated the flight of Hutus, among whom were many genocide perpetrators who of course were not disarmed. The French troops left on 22 August and were replaced by the new contingents of UNAMIR.

However, in defence of Opération Turquoise, it must be said that it saved many Hutu and Tutsi lives and provided logistical support to the NGOs during the cholera epidemic.

After the Passage of Genocide Troops

After the genocide, the international community's role focused on three main goals: maintaining UNAMIR II; prosecuting those responsible; and providing aid for reconstruction.

UNAMIR II stayed in Rwanda for almost two years, from August 1994 to March 1996. After

Opération Turquoise and the take-over of Rwanda by the RPF, its mandate was redefined upon request of the Secretary-General. Its new mission was to *"maintain security and stability in the north-west and the south of Rwanda, in the aim of encouraging the return of refugees and displaced persons; contribute to the security and support of humanitarian relief operations in Rwanda while the humanitarian organisations supervise the return of the refugees; foster national reconciliation in Rwanda through mediation and good offices"*.⁸⁸

The UNAMIR II mission was both successful and unsuccessful. Concerning the question of the security of the camps for displaced persons, mainly Hutu camps located in former Opération Turquoise zone, the men were disarmed and those believed to be guilty of genocide were arrested. However, the safety of the displaced persons was not always effectively ensured. The Kibeho refugee camp was attacked in May 1995 by the RPF and 2,000 displaced persons were killed. The 16 members of the U.N. forces present had received orders not to intervene. The task of ensuring the safe return of the refugees was not satisfactorily fulfilled, as proven by the small number of returning refugees.

The international community's second important role was in **the struggle against impunity** - identifying the culprits and holding them accountable. In resolution 955 of 8 November 1994, the Security Council, *"expressing once again its grave concern at the reports indicating that genocide and other systematic, widespread and flagrant violations of international humanitarian law in Rwanda have been committed"*, decided to set up an international tribunal for the purpose of prosecuting persons responsible for these acts. According to this resolution, by prosecuting those responsible for the genocide, the new international tribunal would contribute to the process of re-establishing international peace and security and foster reconstruction and national reconciliation in Rwanda. The specific problems encountered by the tribunal will be described below. However, it can already be said that once again, the international community's actual decisions and actions only very partially lived up to its professed determination to fight impunity. As far as facts are concerned, as of the end of 1997, the perpetrators of the genocide have yet to be brought to justice, both at the international (by the Arusha Tribunal or through international legal co-operation) and the national, Rwandan, levels.

Lastly, national reconstruction and reconciliation programmes were financed and developed by the international community, mainly via the NGOs or U.N. operational agencies. During a round-table meeting of donors in Brussels in January 1995, 587 million US dollars were raised in support of such programmes and to provide relief to the refugees. Thanks to these funds, police training programmes and programmes for the reconstruction of the judicial system were set up. A human rights observation mission was also created under the aegis of the High Commissioner on Human Rights. However, the new Rwandan authorities did not accept this type of funding and demanded that direct financing agreements be made. Given the drastic terms imposed on these agreements and the deteriorating security conditions, the attitude of the Rwandan authorities became increasingly negative. In December 1995, the Rwandan authorities drew up a list of undesirable NGOs and requested their departure. It became increasingly difficult for humanitarian workers to obtain permission to enter Rwanda and the relevant ministries even went so far as to request criminal records.

The situation in the western part of the country continued to deteriorate throughout 1997. In January, several NGOs were attacked and three Spanish volunteers working for Médecins du

⁸⁸U.N. doc. S/1994/924, Report of the Secretary-General on the situation in Rwanda 3 August.

Monde were murdered. Since then, the Ruhengeri-Gisenyi zone has been closed off and no member of the U.N. or of any NGO has been allowed to enter. To make things worse, civil war spread to many of the country's prefectures. The deterioration of the situation was due mainly to the fact that no solution was found to one of the genocide's major consequences: the flight of almost 2.4 million Rwandans to neighbouring countries.

2. The Absence of Political Solutions to the Refugee Problem

In addition to the massacres, the Rwandan crisis drove entire sectors of the population into exile. This has been a constant problem throughout the country's history, since the end of the 1950s. Until 1994, the massive departures concerned mainly Tutsis, who left in three main waves:

- From 1959-1960, after the civil war;
- From 1963-1966,
- following the reprisals against the Tutsi population after the armed raids of exiled refugees in neighbouring countries; and
- From 1973, during the repression and before and after the seizure of power by Major Habyarimana.

During the twenty years that followed the first wave of departures, refugees were able to settle in their new country, work and purchase land, and in some cases obtain citizenship. However, in the 1980s, the situation changed. Thus, a Zairean law dated 29 June 1981 modified the requirements for obtaining citizenship. According to this law, to obtain citizenship, the applicant must prove that *"one of his/her forebears belonged or belongs to one of the tribes established on the territory of the Republic of Zaire, within the country's limits established as of 1 August 1885"*. The law was retroactive and as such fostered anti-Rwandan and especially anti-Tutsi feelings in Zaire, especially in the Kivu region where Tutsis were relatively well off. This feeling continued to grow over the years. In Uganda, between 1982 and 1984, the government, headed by Milton Obote, expelled several thousand Tutsi refugees because of their support to opposition guerrilla movements. These people were rejected by Rwanda and remained stranded between the two borders, in some cases for several years. Later, when Yuvuni Museweni came to power, they were able to return to Uganda.

Despite the reluctance of neighbouring states to face the problem, the refugee issue was practically ignored by the international community. As far as Rwanda was concerned, the issue was addressed only when the creation of the RPF made it possible for the refugees to play a political role. The only solution devised by the Rwandan government was to encourage refugees to settle in their host country and obtain citizenship or work permits. Return was described by Hutu authorities as impossible, due to the high birth rate and the scarcity of land. After the country was taken over by the RPF in 1994, part of this "diaspora" returned to Rwanda, taking the place of Hutus fleeing the Tutsi army.

a. Nearly 1.5 million Refugees on the Rwanda-Zaire Border

About 2.4 million Rwandan citizens, mainly Hutu, fled to neighbouring countries. Nearly 1.5 million converged in Zaire, whose borders were left open. The present description concerns only the situation in the Kivu camps and does not address the problems encountered in other countries.

It soon became quite clear that the flow of refugees was not haphazard, but on the contrary, perfectly well organised. The leaders, who had all been involved in the genocide, supervised the population and set up the refugee camps. The civilian refugees were divided up according to their place of origin, and relief distribution was organised by former Rwandan Army and the Interahamwe on this administrative basis. The co-ordinator of the Médecins du Monde mission reported that when she arrived in the Mugunga camp she was, “*first struck by how these genocidal people were organised. Within ten days, they were divided up into administrative groups, per municipality and prefecture, under the control of genocidal militiamen*”. The arrival of the refugees caused a cholera epidemic in the Goma region that caused 50,000 deaths.

b. Deterioration of the Situation Within and Around the Camps

NGOs were quick to protest against the transformation of the camps on the border of Rwanda into sanctuaries. Some NGOs decided to leave, while others preferred to stay on so as not to abandon the population. From their creation up until October 1996, security was the main problem both within the camps and in the surrounding areas.

The Presence of Armed Men in the Camps

Within the camps, the civilian population was under the domination of persons who had actively participated in the genocide; this made them the hostages of leaders who to a large extent controlled the flow of information and the distribution of aid.

As regards humanitarian aid, the UNHCR turned out to be the only organisation in charge of managing this particularly complex and dangerous situation and of finding a solution, in spite of the lack of political support on the part of its donors and of the Member-States of the Security Council. In the camps, the main problem faced by the UNHCR and the NGOs was that the armed men were not separated from the civilian population. Indeed, to reach Zaire, most of the refugees had crossed the Opération Turquoise zone, where no disarming process was ever carried out, and their weapons had not been confiscated upon their arrival in the camps.

The problem of security has always been closely related to the question of the possession and circulation of arms. This problem had already been mentioned by the Special Rapporteur of the U.N. Human Rights Commission, René Degni Segui, and it was raised again several months later in the report of the Special Envoy of the U.N. Secretary-General, Mr. Shahyar Khan. However, this report did not trigger any decision on the part of the Security Council. The necessary financial and human resources being, in its opinion, unavailable, the Security Council chose not to intervene. A stopgap solution was found and special funding was granted to Zairean authorities to send an army contingent to enforce security in the camps.

The Problem of Armed Men in the Camps: The Lack of Adequate Solutions and Its Consequences

The Problems Encountered By the UNHCR

Once again, the inability of U.N. decision-making bodies to take appropriate measures led to dire consequences. The special contingent caused serious trouble in the region and within the camps. The army, unable to disarm former Rwandan Army soldiers and the militiamen, began to racketeer and plunder the population of the camps and the population of Zaire living in the surrounding areas. According to NGOs, the contingent's presence was an additional source of insecurity. Claude Moncorgé, in charge of the Médecins du Monde mission, reported, “*the main threat came from the situation of anarchy in the Zairean military, whose soldiers were racketeers and drunkards; the Médecins du Monde personnel feared them more than anyone else*”. In addition, these soldiers often joined the Hutus, of local origin and refugees, in committing acts of violence against the Tutsi population.

The presence of soldiers in the camps, in a position of control over the population, was one of the main obstacles preventing the return of the refugees to Rwanda. Indeed, those who wished to return home were threatened by the camp leaders and pressured into changing their minds. Faced with this difficult situation, the UNHCR applied **methods that were not in keeping with its mission** of protection. **Forced repatriation** operations were organised, “[...] *In August 1995, the forced repatriation of the population of the Mugunga camp was organised. We were pushed into trucks guarded by Zairean soldiers who beat us and took us to the prefecture of Gisenyi. There, we were crammed into a small room where we had to spend the night standing. The next day, UNHCR people came and gave us biscuits and water. We were then taken to the Kamira camp. A selection was made and all the grown men disappeared. Only those under age 20 remained. In Kamira, we were registered at the entrance of the camp. We were told that we had to return to our town of origin [...]*”.⁸⁹

Within a few days, nearly 13,000 Rwandan and 2,000 Burundi refugees were sent home by force.

The measures to encourage the return of the refugees having been unsuccessful, drastic means were used to convince those who still refused to leave to go home. In 1996, the **UNHCR decided to dismantle the facilities built in the camps**. Stores and schools were closed. Food rations were reduced from 2,000 to 1,500 calories per day. As a result, the refugees' attitude towards the personnel of the NGOs and of the U.N. agencies became more hostile and the security in the camps deteriorated.

Around The Camps: The Divisions Among the Communities

The Transformation of the Camps into Sanctuaries

The camps served as bases for numerous cross-border raids by former FAR soldiers and Interahawe members into Rwanda, making the border region particularly dangerous. The Rwandan authorities repeatedly denounced these raids which were causing an upsurge of violence in the entire western part of Rwanda. No specific measures were taken; the result

⁸⁹Witness accounts collected by a doctor from Médecins du Monde in the Djoundou camp in Congo-Brazzaville in June 1997.

was the beginning of a cycle of raids followed by reprisals, with particularly heavy consequences for the civilian populations caught in between.

The Deterioration of Security Conditions in the Region

The impact of the camps on the socio-economic situation and on the security of the entire Kivu region, in both the north and the south, was negative. As concerns **the socio-economic situation**, a few months after the cholera epidemic broke out, it soon became clear that the local population and the refugees had unequal access to health care and food distribution. This inequality fuelled strong feelings of resentment on the part of the Zairean population against the NGOs and the U.N. agencies, as well as against the refugees themselves.

The massive presence of Hutus in the camps also caused **divisions in the local Banyarwanda** population. This hostility, fostered as it was by the genocide, was aggravated by the presence of many genocide perpetrators -still armed- in the camps. The massive presence of refugees receiving international aid also fuelled the hostility of the Zairean population towards the Banyarwanda population. For many years, this ethnic group was the largest and wealthiest in both north and south Kivu, and was resented for it by the native groups.

In the north, these tensions led to sporadic conflicts, on the one hand between the Hunde or Nyanga militias and the refugees, and on the other hand between these same refugees and Tutsi groups. The same thing occurred in the south, with the additional factor that local and regional authorities openly advocated anti-Tutsi policies. The soldiers of the Zairean army contingent formed alliances either with the refugees or with local militias, depending on the opportunity at hand.

➡ The creation on the Rwandan border of refugee camps grouping nearly 1.5 million people, controlled by armed genocidal men and under the surveillance of a Zairean army contingent, was the cause of a major regional crisis. Despite the fact that warning signs had been flashing for several months, nothing was ever attempted to prevent this crisis. NGOs specialising in humanitarian relief and human rights protection repeatedly warned the U.N. and the Member-States sitting on the Security Council about the gravity of the situation, but no satisfactory response ever followed.

c. The Creation of a Crisis-Fostering Climate

As the situation deteriorated, mainly because of the camps, various groups began to voice demands and make alliances. The Alliance of Democratic Forces for the Liberation of Congo (ADFL) was the result of this joining of forces and means, though its members' respective aims differed. The creation of the Banyamulengue movement, the main player in the Zairean crisis, stemmed first and foremost from the determination of South Kivu Tutsis to resist persecutions. Thanks to the support of Rwandan authorities, which wished to solve the security problems caused by the camps, this group began to emerge as an important military and diplomatic player. The political ambitions of Laurent-Désiré Kabila and other local leaders enabled this Tutsi movement to play a significant political role in Zaire.

The Tutsi and Rwandan components of the Banyamulengue group was at first a handicap. The hunting down of Tutsis in the streets of Kinshasa after the first Banyamulengue actions in Kivu reflected the Zaireans' refusal to accept that a Rwandan group might play a political or military role in their country. The reaction of the population, especially in Kasai, Shaba and Kinshasa, upon seeing troops speaking Kinyarwanda during the "liberation" by the ADFL,

speaks for itself.

The Alliance, which represented different local and regional interests, also received the support of Uganda, a major political and diplomatic player in the area. The fact that the RPF had supported Yuvani Museweni when he came to power suggests that by helping the RPF, Museweni was not only taking into account economic interests, but was also "paying back" his debt to the RPF. The role played by the United States, which has not yet been accurately assessed, is more difficult to explain. Was this role motivated by the wish to oppose France in the latter's area of influence, or was it governed by economic considerations? It is difficult to say. In any case, the Banyamulenge, the ADFL and Rwanda set up an alliance with particularly good timing, from a regional and international point of view. Indeed, owing to the conflict of interests between America and France, added to the former's ability to block the Security Council's decision-making process, the international community was powerless to act.

At the end of October 1996, the crisis intensified when the Banyamulenge, supported by Rwanda and Uganda, launched an attack on the border towns of Bukavu, Uvira, Goma, etc. As they advanced, the refugee camps were deserted. Over 600,000 persons went back to Rwanda, while over 400,000 fled towards the interior of Zaire. The Banyamulenge attacked the camps with heavy artillery and numerous refugees were killed. However, no official figures were ever given. Thanks to the NGOs who aided them, we have some information on the plight of these Rwandans: long marches of hundreds of kilometres, camps haphazardly set up in dangerous zones, large-scale massacres, forced repatriation, etc.

Once again, only the U.N. agencies, such as the UNHCR, UNICEF, and the WFP, were mandated to find a solution. NGOs were very critical of the action taken by these three agencies, and in particular that of the UNHCR. Civilians were left with armed men and no population census was ever carried out.

From an organisational point of view, the UNHCR's action was far from satisfactory. No UNHCR delegate ever visited the Amisi camp, where about 40,000 refugees lived from December 1996 to February 1997. During the following months, forced repatriations to Rwanda intensified.

However, rather than criticise, it would be wiser to recognise that these agencies were not in a position to provide adequate solutions to the crisis. The mandate of the UNHCR, the WFP and UNICEF was not to regulate a major political crisis, whose consequences are still being felt in the entire region, but rather to provide relief and protection. These agencies cannot cope with political issues on their own. That is the role of the Security Council; but none of the latter's decisions aimed at regulating the crisis were ever implemented.

d. Chronology of Decisions

International reactions to the outbreak of the crisis were at first divergent. In October 1996, France called for the convening of an international conference. The proposal was at first supported by the U.N. Secretary-General. The United States, on the other hand, was in favour of setting up a Pan African force of intervention.

During the month of October, the French government hinted that it was not planning to deploy troops; then, after the "rebels" launched their attack, a mission was sent to evaluate humanitarian needs. On 31 October 1996, at a time when the Security Council would not consider the prospect of a military intervention, the Chairman of the U.N. General Assembly, Razali Ismail, declared: "*We are incapable, either collectively or individually, of taking action to prevent the huge tragedy which is unfolding before our eyes*".⁹⁰

The idea of a multinational force of intervention began to garner support only in early November. On November 5, the participants of the Nairobi summit -boycotted by Zaire who refused to negotiate with Rwanda- approved the idea of an intervention whose mandate would consist in protecting the small areas where aid would be delivered to refugees. France declared that it was willing to participate, on the strict condition that the 5,000 troops would include European, American and African soldiers. Their mission would be to supervise and ensure the security of the Goma and Bukavu landing runways so that humanitarian organisations could resume their work in the camps. On 13 November, the United States agreed to this proposal and Canada offered to take command of the operation. In turn, the "rebels" declared that "*everyone was welcome, except France*".⁹¹ Great Britain, Spain, Italy, Hungary, Finland, Denmark, Norway, Iceland, and Sweden offered to participate, and several Member-States of the OAU, South Africa, Ethiopia, Eritrea, Congo, Cameroon, Senegal, and Mali declared that they were ready to send troops. On November 15, in resolution 1080, **the Security Council authorised, under Chapter VII of the Charter, the deployment of a multinational force of 10,000 men under Canadian command. Its mandate was to ensure security in humanitarian corridors and provide relief to refugees in eastern Zaire.**

While the process of setting up the multinational force was dragging its feet, attacks against the camps intensified in Zaire, causing the population to flee in two directions: toward Rwanda and the interior of Zaire. The Americans were slow in sending their troops, which was limited to 1,000 men and logistical support. On November 22, the Stuttgart meeting, the aim of which was to examine various intervention scenarios, ended in failure, triggering the first disputes concerning the number of refugees and displaced persons in need of aid.

At the end of the month, a first Canadian contingent of 330 men was sent to prepare the field for action. Meanwhile, discussions concerning the multinational force were dragging on, only to end in failure when the force was disbanded on 23 December. According to participating states, the sole fact of announcing its creation would have been enough to ensure the return of the refugees to their country and get the "rebels" to promise that they would do nothing to hamper the work of NGOs assisting them.

A week before the force was disbanded, Médecins du Monde set up an emergency mission in

⁹⁰ *Libération*, article published 2 November 1996.

⁹¹ *Le Monde*, article published 16 November 1996.

the Amisi refugee camp, where 40,000 persons in a poor health were regrouped. Médecins du Monde also sent a mission to the Tingi Tingi camp, where over 100,000 refugees were living. A few months later, after eyewitness accounts of the massacres were publicly disclosed, serious obstacles began to prevent NGOs from continuing their work.

The reaction of the international community to the news that the multinational force was disbanded was far from unanimous. France was very vocal on the subject of humanitarian assistance. The U.N. was confined to the task of fostering negotiations between the ADFL and Marshal Mobutu. President Nelson Mandela of South Africa chose to play the role of mediator and the United States, as was later found out, discreetly but firmly supported the ADFL and Rwanda in their mutual aims.

On 24 January, a Special U.N. and OAU Representative, Ambassador Mohamed Sahnoun, was finally appointed to conduct negotiations between the parties. A five-point peace plan providing for the "immediate cessation of hostilities" was proposed on 19 February. Though the plan was accepted by the Zairean government and the ADFL, the latter, however, refused the cease-fire. The negotiations were broken off after Kisangani was taken in March, followed by Kinshasa a few weeks later.

These events, combined with the international community's inability to take action, led to very serious consequences. Several hundreds of thousands of refugees were massacred by the ADFL and Rwandan troops. Many of them died due to lack of assistance during their long march through Zaire.

As the ADFL troops advanced, the NGOs encountered more and more obstacles. The teams from Médecins du Monde, which had been present in the Amisi camp up until the arrival of Laurent Désiré Kabila's troops, were forbidden by the Goma authorities to return to the area. Médecins du Monde publicly denounced the fact that they were not allowed to enter the camps and that international aid was being used as bait to lure the refugees out of the woods where they were hiding.

3. The Failure To Identify Those Responsible for the Massacres

Several NGOs, among them Médecins sans Frontières and Médecins du Monde, began to collect eyewitness accounts of the events with a view to making a public denunciation of the massacres and persecutions perpetrated in former Zaire during the country's take-over by the troops of the Allied of Democratic Forces for the Liberation of Congo (ADFL) and the rout of the Zairean Armed Forces. The Special Rapporteur of the Human Rights Commission, Roberto Garreton,⁹² tried from the very start of the crisis to fulfil his mission of investigation and observation. In his annual report, prepared for the 1997 session of the Human Rights Commission, and in an intermediary report⁹³ dated 2 April 1997, he describes the first months of the conflict and quotes eyewitness accounts telling of the massacres perpetrated by

⁹² The United Nations Commission on Human Rights began to investigate the human rights situation in 1994 and appointed a Special Rapporteur, Roberto Garreton, from Chile until 1996. Despite numerous obstacles, Mr. Garreton was able to carry out his mission; in his report, he described the situation of the Tutsis in Kivu, warned about the blocking of the democratisation process and the problem of citizenship for the populations from Rwanda. In July 1996, following publication of this report, he was forbidden to enter Zaire, just as he was about to investigate the situation in Kivu, for this reason his report was based on eyewitness accounts collected in Rwanda.

⁹³U.N. doc. E/CN.4/1997/6/add.2.

members of the ADFL and confirming the presence of mass graves.

Given the gravity of the situation, a Joint Mission was set up to investigate the repeated reports of slaughter. Despite the pressure exerted by the Security Council, by end May/early June 1997 the mission was still unable to reach the concerned zones that were under ADFL control. The latter tried several times to intimidate the delegation sent to prepare for the mission's arrival. In its report, the joint mission wrote that "*a soldier fired a shot over their heads, telling them that it was a warning aimed at a specific member of the mission who was not to return to the area*", (author's note: Roberto Garreton, it would seem).⁹⁴ According to this report,⁹⁵ 68.2 per cent of the crime allegations concern the ADFL, the Banyamulenge and their allies; 16.5 per cent were perpetrated by the ADFL; 9.64 per cent by former Rwandan Armed Forces and Interahamwe; 2.03 per cent by the Rwandan Patriotic Army; 2.03 per cent by the Burundian Armed Forces and 1.52 per cent by mercenaries fighting with the Zairean Armed Forces. Lastly, the report specifies that "*the notion of crime against humanity would be appropriate to describe the past and present situation in the Democratic Republic of Congo*".⁹⁶

The ADFL authorities justified their attempts to hamper the Joint Mission's work by criticising its members and its mandate. Laurent Désiré Kabila demanded that **Roberto Garreton, whom he called a "biased and non-objective liar",⁹⁷ be fired**, but the other members of the mission refused to comply.

The new government of Congo also voiced other demands:

- **The extension of the period initially covered by the mandate.** The Joint Mission agreed to consider 1993 as the starting point for its investigation, so as to lay emphasis on the present situation and explain the causes of the crisis. Although this demand did not seem quite justified, as Roberto Garreton had already denounced the crimes committed by Marshal Mobutu's regime, it was nevertheless agreed to in order to foster an atmosphere of negotiation; and
- The Alliance also demanded that the Mission **include Congolese and OAU experts.** Obviously, the inclusion of Congolese experts would have jeopardised the Mission's claim to impartiality. Concerning OUA membership, the Human Rights Commission would in any event have to consult with the OUA and negotiate ways and means of action. Nonetheless, it was not within the Mission's power to meet this demand.

Despite the fact that the Mission members agreed to the demand concerning the period covered by the investigation, they still remained unable to carry out their research. To overcome these obstacles, the U.N. Secretary-General agreed to replace Roberto Garreton by Koffi Amega, a magistrate and former chief of the Togolese diplomatic corps; his deputy was appointed by the United States State Department. The new team was placed under the direct responsibility of the Secretary-General, solely responsible for defining its mandate.

⁹⁴U.N. doc. A/51/942 of July 2, 1997., p.24, Report of the Joint Mission in charge of investigating the massacre allegations and other human rights violations which have been occurring in eastern Zaire since September 1996.

⁹⁵ Ibid, §.95

⁹⁶ Ibid. §.92

⁹⁷ *Le Monde Diplomatique*, 'L'impossible enquête', December 1997, p.3

In spite of these concessions, the investigators were still not permitted to work. The Congolese authorities, after accusing the U.N. of "dragging its feet" with the mission, hinted that the new team could be rejected due to the new leader's nationality, "*given the ties which used to exist between Togo and former Zaire, Togo is not neutral*".⁹⁸ On the same day, 26 November 1997, a meeting of the friends (sponsors) of Congo was being held in Brussels, the members of the Commission of Enquiry, after a long period spent waiting in their Kinshasa hotel, were finally allowed to travel to Mbandaka, where, according numerous eyewitness accounts,⁹⁹ several mass graves were located. Soon after, under the pressure of "spontaneous" popular demonstrations, the Commission was forced to leave the region.

In the end, the difficulties encountered by the Joint Mission and the Committee of Enquiry seem to have been the "logical" consequence of the repeated concessions made by international community throughout the crisis. While Roberto Garreton was forbidden to enter Congo and the Joint Mission was "bargaining" its mandate, French television was showing businessmen arriving in Lumumbashi to meet Laurent Désiré Kabila and sign contracts for the mining of precious minerals. The United States, pressured by American public under the shock of revelations of American support to Kabila and Rwandan troops, participated to a large extent in the negotiations pertaining to the Committee of Enquiry. On 25 October 1997, Bill Richardson, United States Permanent Representative to the U.N., announced that the Zairean authorities had agreed to let the committee work under certain conditions, in particular on condition that the international community would not link aid for reconstruction to the investigation.¹⁰⁰ The agreement was subject to other conditions as well: "*the team will provide objective information based on the facts established on the spot where the investigation is being conducted, and will avoid any bias concerning the group or individual having committed the alleged violation. The mission does not include the formulation of recommendations for judiciary action or any other punitive measures*".¹⁰¹ Lastly, the Government of Congo retained the right to veto the publication of the report.

Despite these demands, no real pressure, in particular as concerns the conditions affecting international aid, was ever exerted on the Congolese government so that it would allow the Commission to conduct its investigation. It goes without saying that those responsible for the massacres were thus given ample time to get rid of any incriminating evidence.

The obstacles encountered by the successive missions of enquiry and the weakness of the international community have created a dangerous precedent, at a time when many are demanding that an investigative commission be sent to Algeria. As a result, commissions and Special Rapporteurs will have little leverage against states that refuse to allow any form of control or investigation regarding the human rights situation within their borders. Indeed, thanks to the work of the United Nations Human Rights Commission, the dogma of absolute state sovereignty is now being seriously called into question; allowing states to consider human rights an internal affair would have dreadful consequences for the protection of civilian populations.

At the time this report was written the NGOs in the Goma area were still not permitted to

⁹⁸ Agence France Presse, dispatch, 28 August 1997

⁹⁹ A city located 600 km northwest of Kinshasa; according to eyewitness accounts collected by a doctor from Médecins du Monde, a massacre was perpetrated there in May 1997.

¹⁰⁰ *Le Monde*, article published 28 October 1997

¹⁰¹ *Ibid.*

leave the city freely, owing to the presence of Rwandan refugees in north Kivu, an area from which the UNHCR was expelled. In Kivu, militias and factions allied to the ADFL are increasingly getting involved in conflicts with the Congolese army, and the situation has become very dangerous. Tension between Rwanda and Congo is rising. According to all indicators, destabilisation is once again to be feared in the region.

Annexe II.

Kosovo: From Systematic Police Violence to Open Conflict

I. From Systematic Police Violence...

The confrontations that have been taking place in Kosovo for several months did not start as a sudden and unforeseeable explosion of violence. These confrontations are in fact the result of mounting extremism -which has never been completely contained- between two communities: the Serbs and the Albanians. Both of these communities claim that Kosovo is their homeland. Since the Serb conquest of Kosovo, which followed the fall of the Ottoman Empire, acts of harassment and discrimination against ethnic Albanians have steadily increased.

The first violent confrontations took place in 1974 during the adoption of the new Yugoslav constitution, which stated that Kosovo was an autonomous province rather than a republic. The people of Kosovo wanted the region to be declared a republic, but the new constitution allowed republics to secede. Hence the status of autonomous province, despite the claims and demonstrations of the people of Kosovo. Demonstrations continued to increase in size and frequency until 1981; they led to a violent awakening of Albanian nationalism and of a commitment, on both sides, towards confrontation. Although violence was widespread, the Albanians instigated sporadic acts that were carried out by either individuals or groups of individuals, while the violence instigated by the Serbs was state policy, enforced by the police and the army. For many years, acts of violence perpetrated by the State remained sporadic. During the 1980s, this type of violence became commonplace and was manifested by constant harassment towards ethnic Albanians¹⁰². Since then, massive numbers of arrests leading to trials and long prison sentences -for all leaders- have been on the rise.

In 1987, following a speech made by Slobodan Milosevic at Kosovo Solje, pressure from Serb authorities increased. The speech was made in response to a petition signed by 60,000 Serbs that publicly claimed that they were the victims of genocide (perpetrated by ethnic Albanians of Kosovo) and called for the removal of the Kosovo officials in charge. Subsequently, certain political leaders were removed from their posts and, in 1989, a state of emergency was declared throughout all of Kosovo. 1989 was a year marked by the measures imposed by Slobodan Milosevic. These measures aimed at erasing all political, legal, and cultural manifestations of the Albanian community of Kosovo. In March, the province lost its autonomy and Serbia took over all police, defence, and economic activities. In July 1990, Albanian language newspapers and radio stations were closed down and teaching in the Albanian language was prohibited. 52,000 Albanians (out of 182,000) working in the public sector were dismissed without severance pay.

Concurrent to these measures, surveillance and repression increased. The militia, who had played a violent role in Bosnia, had already entered Kosovo. The Arkan "Tigers" and the Seselj "Chetniks" maintained a state of terror and repression, particularly in Drenica, a zone where Albanian resistance operated.

¹⁰² Cf. Amnesty International, *Yougoslavie: l'opposition muselée* (Muzzled Opposition in Yugoslavia), Paris, 1986.

In September 1991, Kosovo leaders organised a referendum. The voter turnout rate was 87 per cent with 99.8 per cent of participants voting yes. The only state to publicly recognise the referendum was Albania. In May 1992, the people of Kosovo voted for a president and representatives of the National Assembly. Ibrahim Rugova was elected president. The National Assembly, however, has never been called into session due to police and army intervention. The elections were the starting point of a strategy of no violence that was developed by Ibrahim Rugova.

Many observers believe that authorities in Belgrade have set up a system of “**silent ethnic cleansing**”. Clearly, the **discrimination policies** created by Serb authorities during the 1980s illustrate the desire to remove all ethnic Albanians from influential posts. The prohibition of the Albanian language in the media, in schools, and in universities directly affected the identity of the Albanian community and its ability to ensure a future for itself. The type of police harassment that ethnic Albanians were submitted to during the 1980s had the same objective: to force as many Albanians as possible into exile. To deal with the situation, Ibrahim Rugova, the leading Albanian figure and head of the Kosovo Democratic League developed a strategy of non-violent resistance and boycotted all federal institutions. This led to the creation of a veritable parallel society complete with schools, universities, hospitals political parties, unions, etc.

During the war in Bosnia, this extremely tense situation, with peaks of violence, was maintained. At times there were 20,000 soldiers and members of special forces stationed in this small piece of land measuring 10,000 km². The Dayton Peace Agreements dampened most of the Albanian community’s hopes for an independent Kosovo. Believing that the international community had abandoned them, many Albanians were forced to question the validity of the peaceful stance supported by Ibrahim Rugova and the Kosovo Democratic League. Many believed that although non-violent resistance had strengthened Albanian identity and avoided large-scale violent conflict it had neither brought about independence nor eliminated daily acts of violence.

Feelings of profound dissatisfaction, the impression of being major loser in the Dayton agreement, and the dismantling of former Yugoslavia led many Albanians to take a more extremist stance and to join armed resistance groups. The war that both parties are engaged in is one that aims at wearing the other side down. Each side is trying to push the other into making a mistake that will shift all of the blame for the escalation of the conflict.

This entire period has been marked by an escalation in police violence against ethnic Albanians. Human rights activists, in particular, have been the targets of arbitrary arrests and illegal police detentions. Police stations and Serb prisons have been the stage of violent and brutal acts aimed at ethnic Albanians prisoners.

II. ...To open conflict

Since 1996 and the wave of confrontations that was set off by the death of a young Albanian student shot by a Serb sniper in the streets of Pristina, violence has continued to mount. The death of the Albanian student led to a series of assaults for which the Kosovo Liberation Army (UCK) claimed responsibility. In one of its communiqués, the Kosovo Liberation Army (UCK) warned the international community, “*continued support to the Serb aggressor and lack of recognition for the desires of the Albanian people mean that armed conflict in Kosovo and the Balkans will continue*”. The rise in violence along with the evolution of the crises toward open conflict did not surface on the international stage until winter 1998. By that time confrontations had taken on a whole new dimension.

- *Assaults against civilians and the massive destruction of property*

Assaults and combat were for the most part centred on the region of Drenica, a stronghold of the Kosovo Liberation Army (UCK) where 98 per cent of the population is Albanian. According to the International Federation for Human Rights, since autumn 1997, “*the inhabitants of this region have had to face systematic police harassment: unannounced searches carried out in their homes in an attempt to find arms, interrogations, police detention, arrests and conviction accompanied by long sentences for crime of opinion*”.¹⁰³

The end of February and the first week of March were marked by a strong military offensive in Drenica carried out by the special forces and the Serb militia. Civilians were the primary targets of this attack, as one witness recalls: “*Early Saturday morning, two helicopters started to bomb the houses in Cirez and Likoshan. There were approximately 15 tanks. There were men on foot, members of the police and of paramilitary groups. They had mortars and Kalachnikov machine guns; they started to shoot at specific houses, those of the members of the Sheremeti, Sejdiu, Ajeti, and Seferi families in Cirez. In Likoshan, they targeted the homes of members of the Ahmeti family. Then, they went inside. The shooting died down during Saturday night, but it started again, even more fiercely, at daybreak on Sunday. As soon as anyone in the house moved, they fired twice as much at him. They didn't stop shooting until Sunday night. The tanks left and so did the men on foot. We went out to go see the houses they had fired at the most. There were bodies on the floor, men, women, and children. There was blood in all of the rooms, everywhere, a real slaughter. They were in an indescribable, horrible state, they had all been mutilated, torn apart, their bodies were covered with bruises, their eyes had been torn out, and there were teeth on the floor. The genitals of some of the men had been severed. The walls were covered with bullet holes; the windowpanes were broken*”.¹⁰⁴

These attacks continued all during the spring and summer of 1998. Witnesses have stated that the same **strategy of mass destruction of civilian property and of terrorising civilian populations** was systematically used during each attack. Médecins du Monde working out of 4 municipalities in Drenica –Glllogvc, Malishevo, Rahovec, and Suharec, listed 42 villages that had been attacked -and this out of the 49 they operate in. In those 42 villages the number

¹⁰³ International Federation for Human Rights, report, ‘Le Kosovo sous la terreur de Milosevic’, (Kosovo Under the Terror of Milosevic), issued by an international investigative mission, (6-9 March 1998), p. 3.

¹⁰⁴ Ibid. p. 5

of homes that had been destroyed by heavy artillery or with flame-throwers was massive. Statistics show that 3,500 homes out of 8,500 were either destroyed or heavily damaged. Most of the crops were destroyed or left unharvested due to the ensuing flight of the civilian population. This left most families without food for the winter, which is particularly harsh in this mountainous region. In addition to all of the destruction that was caused, anti-personnel and anti-tank mines were planted in the areas surrounding the villages and their fields.

- ***Population Displacement***

The attacks led to the displacement of 250,000 people within Kosovo; 50,000 of these were in camps located in the mountains or in the forest, as they could not be housed in other villages. These camps were functioning until the NATO ultimatum in October 1998. From that point on, displaced persons headed back to their homes; unfortunately, not everyone returned to his native village. Many were taken in by members of their families in other villages. As the number of destroyed homes -and therefore uninhabitable- was particularly high many people could not return to their villages. It was not unusual to find 30 people living in the same house. In the 49 villages Médecins du Monde operates in, first estimates listed 22,500 displaced persons.

The Kosovo Liberation Army (UCK) plays an important role in the movements of the displaced population. Civilians are hostages caught between the very offensive strategy of the Serbs and the strategy of the (UCK) that aims at preserving the high profile of the crisis. Clearly, the UCK has quickly learned to make use of the images of war, particularly those involving the flight of displaced persons and of camps. Certain observers believe that certain villages were evacuated for no real reason, the objective being to create visible displacement of the civilian population.

- ***The current situation: extreme precariousness and terror (January 1999)***

Civilians living in the zones that have been targeted by Serb forces are extremely vulnerable because of two principal factors: living conditions are precarious and the presence of armed factions, special forces, and the Serb militia generates terror.

The terror and the permanent threat that exist are directly linked to the enormous and strategic presence of Serb Force, whose high visibility obstructs the freedom of movement of persons. Military convoys and Special Forces troops comb main roads. This mobile show of power is coupled with frequent checkpoints at major village crossroads that are controlled by the army and the Serb Special Forces. They cut off Albanian civilians from dispensaries and food stores. Humanitarian teams and human rights NGOs have frequently reported cases of brutality. Serb forces are also positioned overlooking certain villages or on major roads. Fire from either light or heavy artillery is frequently heard in these areas. This type of fire is used to frighten civilians; it sometimes causes the population displacements. Paradoxically, this very fear is an obstacle to displacement. As everyone is suspected of harbouring supporters or fighters of the Kosovo Liberation Army (UCK), they all remain in their villages or travel through the mountains out fear of being arrested and brutalised. Women experience the same difficulties. Those who have a close relative who is a member of the Liberation Army feel threatened, and then there are those too frightened to move. The presence of the military is a major factor in the destabilisation of the civilian population.

Illegal Acts Continue

Despite the presence of observers from the Organisation for Security and Co-operation in Europe (OSCE) (i.e., the Kosovo Diplomatic Observer Mission [KDOM]) and other increasingly present international entities (i.e., NGOs and United Nations agencies) exaction and illegal treatment aimed at ethnic Albanians are on the rise. Every day, all human rights NGOs with access to Kosovo report on arbitrary arrests, illegal police detention, as well as inhumane and degrading acts carried out in detention centres or prisons.

Alarming Health Conditions

Massive destruction and almost systematic pillage have left civilians in an extremely precarious situation, while food shortages have left most families dependent on humanitarian aid. Unfortunately, as many villages are located in isolated areas, reaching them during the winter, snow being the primary obstacle, is extremely difficult. Consequently, the amount of aid they receive is insufficient.

The health of the most vulnerable members of the population (pregnant women, nursing mothers, new-borns, and the elderly) has clearly declined. Precarious living conditions and reduced access to health care have contributed to the decline in health. We have seen Serb checkpoints strategically placed at the crossroads of several villages so as to prevent civilians from reaching the dispensary located in the major village. Another factor that keeps civilians away is their fear of the mobile patrols that comb major roads. The difficulties involved in reaching primary health care facilities also explain the destruction of many of these and the flight of medical personnel. According to many, doctors and nurses -most of them members of Mother Theresa's Albanian organisation- have frequently been the victims of exactions by Serb forces.

Hospitals and federal facilities are headed by Serb medical personnel and administrators. Consequently, Albanians are discriminated against, and when it comes to receiving medical care Serbs are given preferential treatment.

In Kosovo we find the various conditions pointed out in the conflicts we have already examined. As with the other conflicts, civilians are crucial to strategy. Here again, they are used by combatants as a means of reaching strategic objectives. Since the start of 1998, Kosovo has been the stage for international and non-international armed conflict. International humanitarian law is transgressed daily. Civilians are the targets of direct assaults and are frequently forced to migrate in order to avoid indiscriminate assaults. This situation and the exactions committed within the framework of a strategic war for which both sides are responsible put civilians, once again, in a highly vulnerable position.

III. The Management of the Crisis by International Entities, or the "Neither Nor" Policy

The attitude of the international community toward Kosovo could be summed up in the following phrase taken from a letter sent by the Ministers of Foreign Affairs of France and Germany to Messrs Milosevic and Rugova in December 1997, "*neither independence nor keeping the status quo*"¹⁰⁵.

¹⁰⁵ International Crisis Group, 'Neither Independence Nor Keeping The Status Quo', Kosovo Spring Report, 20

As was the case with the Kurds, the demands of the ethnic Albanians of Kosovo who are seeking independence are, in the eyes of the international community, a possible source of instability in the region. Since the signing of the Dayton Agreements, Kosovo has become one of the principle factors that call the said agreements into question. Paradoxically, the Dayton Agreements recognised the existence of homogeneous ethnic entities in the former Yugoslavia, but imposed cohabitation on the two communities in Kosovo henceforth destined to conflict.

1. Indifference in the Face of Exaction and Violence Against the People of Kosovo

Since the beginning of the crisis, Albanians and Serbs have developed various operating methods. We have seen how Serb authorities have adopted a strategy of harassment, discrimination, and exclusion toward the Albanian population. Since the start of the 1980s this strategy has entailed the use of particularly violent methods including arbitrary arrests and cruel, inhumane and degrading treatment.

The majority of ethnic Albanians have –along with their leader Ibrahim Rugova- opted for a strategy of no-violence. This strategy led to the creation of a parallel society as a means of struggling against discriminatory measures and of preserving the Albanian culture. The choice of this strategy is directly linked to the international context at the end of the 1980s: the fall of the Berlin Wall, the democratic transitions undertaken by former East Bloc states, the success of the Solidarnosc movement in Poland, and Vaclav Havel's rise to power. At the time, all of these events made the hopes of the people of Kosovo appear realistic.

We could ask ourselves, what real measure did the international community take in light of the implications of such a strategy? The creation of parallel government, health, and educational institutions is tantamount to creating a state within a state and to denying any possibility for a shared future. For over ten years Albanian and Serb children have been separated; they no longer share a common learning experience or a common vision of society. The bases of this separation have all been determined and laid down by international indifference. For the ethnic Albanians of Kosovo, what started out as a warning strategy has become a strategy for survival. Almost from the start, keeping the Albanian language in schools and fighting discrimination by creating parallel institutions were seen as means of fighting against what everyone saw as a desire for ethnic purity on the part of the Serbs.

In 1996, the religious community of Sant Egidio proposed a peace initiative. This Roman Catholic order had already taken part in several peace negotiations. Their efforts were in the field of education. On 1 September 1996, Messrs Milosevic and Rugova signed the “Rome Agreements”. The agreements called for the return of Albanian schoolchildren and university students to federal institutions and the setting up of a 3 plus 3 Commission (three Serbs and three ethnic Albanians from Kosovo). The Commission met on several occasions, but was unable to reach any decision. The Serbs believed that according to the agreement, the ethnic Albanians of Kosovo would return to federal institutions and follow the existing Serb curriculum, while the ethnic Albanians demanded the inclusion of the Albanian language. In October 1997, as negotiations were at a deadlock, the students and professors of the parallel university decided to withdraw their support of the 3 plus 3 Commission.

During this time, the only comments heard from the international community on the situation

in Kosovo could be summed up by those of the German Minister of Foreign Affairs, *"It is most important to start a dialogue, even if not all demands of the Kosovo Albanians will be fulfilled. They should not stage any militant actions, nor should they make demands for independence. There is no support for this in the international community"*.¹⁰⁶

Whether it is the OSCE, the member-states of the European Union, or the members of NATO, everyone adhered to the same policy. Indeed, even the United States who had taken a firm stance on several issues with Belgrade never went beyond this policy. Rather than truly addressing the crisis in Kosovo and taking a firm stance toward Mr. Milosevic, priority was given to the Dayton Agreements, out of fear of seeing a rash of demands for independence and conflicts arise throughout the region.

This position, unanimously held by the international community, fostered the emergence of an offensive and armed strategy among certain Kosovars. Since the beginning of 1998, the non-violence alternative has lost all credibility among the Albanians of Kosovo, many of whom now side with the backers of a more offensive strategy and are willing to resort to violence. During the course of 1998, the Kosovo Liberation Army (UCK) slowly made its way out of the isolation into which it had been confined because of the massive public support for Ibrahim Rugova's pacifist stance. This turnabout was mainly due to the profound feelings of abandon and injustice felt by Kosovo Albanians toward the international community. During the 1980s Albanians in Kosovo were isolated. Today they see themselves as the major loser of the Dayton Agreements; they have been left "in the hands of the Serbs".

Many Kosovo Albanians believe that their non-violent strategy did not "pay"; it did not win over the support of the international community that they had expected. The international community's refusal to address the crisis along with its refusal to become involved in the search for a solution and its inability to take part in any preventive action have led to a worsening of the situation. Moreover, the sharp escalation of the conflict, for almost a year now, has failed to stir the international community into taking any truly effective measure aimed at protecting civilians.

2. International reaction in the face of escalating violence

To date, the Kosovo Liberation Army (UCK) remains a mystery. According to differing sources, it came into being either in 1991 or in 1993. Two factors explain why it has gained the backing of both Kosovo Albanians and of the Albanians living in other regions of the world. The first is the refusal of the international community to listen to the demands of Kosovar members of the independence movement, despite their refusal to resort to violence. The ensuing feelings of abandon and injustice led Kosovo Albanians to see violence as a possible and legitimate alternative. Secondly, the fact that Albanian society is based on clans has favoured the growing support of the Kosovo Liberation Army (UCK). Until 1997, the heads of clans supported Ibrahim Rugova; their support brought with it the support of all of the families who are members of the clan. When the heads of the clans decided to shift their support to a strategy of violence, as before, the support of almost the entire population followed. This explains the rapid and massive support received by the Kosovo Liberation Army (UCK), as well as the equally rapid loss of support experienced by Ibrahim Rugova and the Kosovo Democratic League.

¹⁰⁶ Ibid. p. 12.

It was not until the Serb offensive in February 1998 that the Kosovo Liberation Army (UCK) entered the international stage and the media limelight. In the eyes of the international community, the acts of reprisal and the assaults on Serb posts by the Kosovo Liberation Army (UCK) transformed the internal crisis in Kosovo. While police violence had long reached particularly high levels, the pacifist strategy that the people of Kosovo had adopted kept the tension from mounting, as it finally did in February 1998.

From the start of 1998, the Serbs increased their offensives in Drenica in an effort to eradicate the armed independence movement. The Kosovo Liberation Army (UCK), for its part, adopted a policy aimed at making violent confrontations and their effects on civilians more visible. Increased media coverage of destroyed homes and of displaced persons camps located in the mountains have forced the international community to become aware of these events.

This awareness is manifest in the three priorities that the international community established:

- Kosovo can be autonomous, but not independent;
- The Kosovo Liberation Army (UCK) is a terrorist organisation and will not be recognised as legitimate; and
- The Dayton Peace Agreements must be upheld.

The latter turns Slobodan Milosevic into an avoidable intermediary.

Any subsequent response and its effects on civilians have been limited in scope and consequently ineffective. Although conditions for civilians have continually deteriorated, the international community has once again taken a decision aimed at averting a humanitarian catastrophe rather than addressing the real cause of the conflict.

The Measures That Have Been Adopted

In March 1998, a contact group which included Germany, the United States, Russia, France, Italy, Great Britain, and Northern Ireland proposed before the United Nations Security Council an arms embargo against the Federal Yugoslav Republic. Subsequently, the Security Council adopted three major resolutions: Res. 1160, dated 31 March 1998; Res. 1199, dated 23 September 1998; and Res. 1203, dated 14 October 1998.

In these resolutions the Security Council has described the situation in the following terms:

-**Armed conflict:** in resolution 1199, the Security Council takes into account the *“communication by the Prosecutor of the International Tribunal for the Former Yugoslavia to the Contact Group on 7 July 1998, expressing the view that the situation in Kosovo represents an armed conflict.”*¹⁰⁷

-**Humanitarian catastrophe:** in resolution 1199 the Security Council observes, *“the rapid deterioration in the humanitarian situation”* and observes *“impending humanitarian catastrophe”*¹⁰⁸. The conditions involving refugees and displaced persons is especially pointed out as the resolution states that *“the excessive and indiscriminate use of force by Serb security forces and the Yugoslav Army which have resulted in numerous civilian casualties and, according to the estimate of the Secretary-General, the displacement of over 230,000 persons from their homes”*.¹⁰⁹

-a **“threat to peace and security in the region”**¹¹⁰. The Security Council criticises *“increasing violations of human rights and of international humanitarian law”*¹¹¹.

The Security Council addresses several demands, based on the aforementioned observations, to both parties:

- The Security Council asks them to reach a political solution to the situation in Kosovo and *“Calls upon the authorities in Belgrade and the leadership of the Kosovar Albanian community urgently to enter without preconditions into a meaningful dialogue on political status issues (...) the principles for a solution of the Kosovo problem should be based on the territorial integrity of the Federal Republic of Yugoslavia”*¹¹². The Security Council also *“expresses its support for an enhanced status for Kosovo which would include a substantially greater degree of autonomy and meaningful self-administration”*¹¹³.

-The Security Council *“Demands that all parties, groups and individuals immediately cease hostilities and maintain a cease-fire”*¹¹⁴.

-The Security Council *“Demands also that the authorities of the Federal Republic of*

¹⁰⁷ United Nations Security Council resolution No. 1199, 23 September 1998 (S/RES/1199).

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Security Council resolution 1160, 31 March 1998 (S/RES/1160).

¹¹³ Ibid.

¹¹⁴ United Nations Security Council resolution No. 1199, 23 September 1998 (S/RES/1199).

*Yugoslavia and the Kosovo Albanian leadership take immediate steps to **improve the humanitarian situation** and to avert the impending humanitarian catastrophe”.*¹¹⁵

In order to ensure the protection of civilians in Kosovo, the Security Council demands that the authorities of the Federal Republic of Yugoslavia to:

-“*cease all action by the security forces affecting the civilian population and order the withdrawal of security units used for civilian repression*”¹¹⁶;

-“*facilitate, in agreement with the UNHCR and the International Committee of the Red Cross (ICRC), the safe return of refugees and displaced persons to their homes and allow free*”¹¹⁷ and

-[...]*unimpeded access for humanitarian organisations and supplies to Kosovo*”.¹¹⁸

The Security Council:

-“*Urges the Office of the Prosecutor of the International Tribunal established pursuant to resolution 827 (1993) of 25 May 1993 to begin gathering information related to the violence in Kosovo that may fall within its jurisdiction*”¹¹⁹.

And, finally the Security Council demands that

- the authorities of the Federal Republic of Yugoslavia accept the presence of an OSCE Verification Mission.¹²⁰

- Reporting on the Situation and on Implementation

Resolution 1160 “*Requests the Secretary-General to keep the Council regularly informed and to report on the situation in Kosovo and the implementation of this resolution no later than 30 days following the adoption of this resolution and every 30 days thereafter*”. And “*Further requests that the Secretary-General, in consultation with appropriate regional organisations, include in his first report recommendations for the establishment of a comprehensive regime to monitor the implementation of the prohibitions imposed by this resolution*”.¹²¹

Along with the Security Council, other entities attempted to solve this crisis. We have already mentioned a contact group involved in negotiations that led to an agreement with authorities in Belgrade. The conditions of that agreement were stipulated in subsequent Security Council resolutions. The Commonwealth of Independent States (CIS) and the United States were also involved in bilateral negotiations with authorities in Belgrade. The CIS -traditionally allied to the Serbs- steered negotiations toward support of the Federal Republic of Yugoslavia, while the United States, in keeping with their attitude since the Dayton Peace Agreements, maintained their firm position toward Slobodan Milosevic. The European Union, on the other hand, was unable to position itself as a political power capable of helping to solve this crisis. When European Union member-states become involved in international negotiations, they do

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Resolution 1160, cited note 11.

¹²¹ Security Council resolution 1203, 24 October 1998, S/RES/1203.

so as members of the Contact Group, the Security Council, or through bilateral relations with the Federal Republic of Yugoslavia. The European Union has never really become involved as political power within the international community.

In the face of the continuing deterioration of the situation and non-compliance with resolution 1160, the Security Council adopted resolution 1199. In the latter, the Security Council restated its demands and prohibitions, while underscoring the humanitarian situation. Following the resolution, the OSCE was asked to establish a Verification Mission in the field. On 15 October 1998, during the 189th plenary session of the OSCE Permanent Council, the following motion was adopted: *“The Permanent Council [...] Acting within the framework of the United Nations Security Council resolution No. 1199 [...] Declares the preparedness of the OSCE to embark upon verification activities related to compliance of all parties in Kosovo with the requirements set forth by the international community with regard to the solution of the crisis in Kosovo ”*¹²².

The agreement signed by Yugoslav authorities on 16 October 1998 in Belgrade defined the mandate that included 2,200 observers:

- To verify the maintenance of the cease-fire and to investigate compliance cease-fire violations;
- To receive weekly information regarding movement of forces;
- To look for and report on roadblocks and other emplacements which influence lines of communication erected for purposes other than traffic or crime control;
- To obtain information concerning border surveillance activities;
- To assist in the safe return of refugees and displaced persons and to facilitate humanitarian assistance;
- To report on allegations of abusive actions by armed forces or police personnel; and
- To facilitate access to detained persons.

By the end of October, NATO, faced with the deterioration of the situation and non-compliance on the part of the Federal Republic of Yugoslavia with the demands of the Security Council, gave authorities in Belgrade an ultimatum. Serb authorities had a week -this later became two weeks- to remove military forces and the Special Forces from Kosovo, otherwise Nato would proceed with air strikes.

Serb forces avoided NATO strikes by retreating several hours before the end of the deadline. Nevertheless, most observers reported their return a few hours after the deadline. While the Federal Republic of Yugoslavia has managed to maintain the appearance of compliance with Security Council demands, organisations present in the field have observed that Serb armed forces and Special Forces -mobile and non-mobile troops- are present in great numbers in the area. Military convoys and patrols comb roads daily. Military outposts are present throughout the zone.

In December 1998, the OSCE began to deploy observers. In January 1999. There were 800 observers in the area. The deployment of observers was delayed due to the difficulties encountered in Macedonia by the forces ordered to protect them. Everything led us to believe that, on orders from Belgrade, authorities in Macedonia created obstacles to the installation of

¹²² Organisation for Security and Co-operation in Europe (OSCE), Permanent Council decision n°. 259, 15 October 1998, PC.DEC/259/98.

these troops. Investigators with the International Tribunal at The Hague were not authorised to investigate or gather evidence.

In January 1999 everything led us to believe that Kosovo would remain in the wings of the international media stage for awhile (at least until springtime, when the weather would, once again, allow for open confrontation). The massacre of 45 people, however, put the conflict back on the agenda.

Following the massacre, the head of the OSCE mission accused Serb forces of crimes against humanity. The international community responded by sending to Kosovo investigators from the International Tribunal, headed by Mrs. Arbour, Prosecutor to the International Tribunal, and two NATO emissaries to Slobodan Milosevic. Despite the fact that Mrs. Arbour was not given authorisation to enter Kosovo and despite the threat to give the OSCE Mission Director 48-hour notice to leave the country, NATO quickly announced that it favoured a political solution rather than a military one. The choice of a political solution was most certainly aided by the suspicions held against the Kosovo Liberation Army (UCK). Many journalists had pointed out discrepancies in testimonies provided by witnesses and hypothesised that the Kosovo Liberation Army (UCK) could have staged the massacre.

Once again, the international community failed to adopt any genuine measure aimed at protecting civilians. By presenting the mission of International Tribunal investigators as an adequate response, the international community has made clear its attitude toward this conflict. What was presented as being an extremely firm stance was in reality nothing more than the implementation of a decision void of meaning because the international community lacked any political commitment. Indeed, the jurisdiction of the International Tribunal in Kosovo was confirmed by Security Council resolution 1160, dated March 1998, in which the Security Council "*notes that the authorities of the Federal Republic of Yugoslavia have an obligation to co-operate with the Tribunal*"¹²³. This means that Serb authorities must provide investigators with all of the administrative assistance they may require to gain access to the field. Slobodan Milosevic was well aware of the nature of the international community's response and did not hesitate to keep Mrs. Arbour and her collaborators from entering Kosovo.

The January crisis also clearly illustrates the extent to which Slobodan Milosevic is in control of the situation. He is, apparently, in complete control of the balance of power between the Serbs and the international community. Clearly, Mr. Milosevic has understood the international community's refusal to endanger the Dayton "Peace" Agreements by intervening to protect civilians. Consequently, he has plenty of leeway when it comes to managing the crisis in Kosovo. The increase in deadly and destructive offensives during the summer of 1998, the displacement of 250,000 people, and the failure to comply with Security Council demands have failed to move the international community to the creation of measures genuinely aimed at protecting civilian populations. The balance of power, which has been struck, is unfavourable to the international community, who certainly has much more to lose than Slobodan Milosevic himself.

¹²³ Resolution 1160, cited note 11.