



Sub-Saharan Africa: A Playground for Manipulation



MA International Relations in Historical Perspective

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Introduction

“Is there in the world a prince or a monarch who would decline to lend his support... Is there any State that would hesitate to give its protection to those endeavouring in this manner to preserve the lives of useful citizens?”¹

More than 150 years after the battle of Solferino, Henry’s Dunant’s remarks still give one food for thought. Amongst others, Dunant argued that humanity and civilisation necessitated an objective, independent and neutral international basis to relieve the wounded. His efforts led to the establishment of the International Committee for Relief to the Wounded, the future International Committee of the Red Cross (ICRC). Dunant felt strongly about neutrality; he emphasised that neutrality should be recognised in respect of the wounded and those who provide relief to the wounded.² It did not matter who they were, what they did and what they fought for, as long as their suffering was alleviated. Even though this predominantly illustrates how much of a humanitarian idealist Henry Dunant was, neutrality has become the bedrock principle of the ICRC. However, aid and political/military objectives have frequently become counterparts in the last decade. Accordingly, it has been argued that a neutral perception of aid is not realistic. There is a blurring distinction between humanitarian and military action; when both recipients of aid and providers of aid can hardly be protected and public security is at stake, the use of force cannot always be avoided.

It is a common fallacy that humanitarian crises develop because of shortages. Complex emergencies generally evolve because civilians’ right to food, drinking water etc. is taken away.³ Many scholars, amongst whom Alex de Waal and Fiona Terry, consequently believe that the provision of food to a civilian population will never be sufficient to resolve a humanitarian crisis. De Waal claims that ‘western governments and donating publics are deluded into believing the fairy tale that their aid can solve profound political problems, when it cannot’ [...] and ‘local people are deluded into believing that salvation can come from other than their own actions.’⁴ Moreover, Terry is convinced that aid is increasingly connected to peace and other political processes by the UN and donors.⁵

Clearly, humanitarian crises pose profound ethical challenges. According to Linda Polman, humanitarians help without asking themselves who they are helping.⁶ They will provide assistance

¹ Pierre Boissier, *Henry Dunant*, Geneva: Henry Dunant Institute, 1974, 10.

² Boissier, 14.

³ Linda Polman, *De Crisiskaravaan*, Amsterdam: Balans, 2008, 119.

⁴ Alex de Waal, *Famine Crimes: Politics & The Disaster Relief Industry in Africa*, Bloomington & Indianapolis: Oxford [etc.], 1997, 221.

⁵ Fiona Terry, *Condemned to Repeat? The Paradox of Humanitarian Action*, Ithaca and London: Cornell UP, 2002, 53.

⁶ Polman, 107.

regardless of manipulation of the offer, entry, passage and distribution of aid supplies. It is often unclear whether they aggravate or improve the situation in doing so. More specifically, aid workers (amongst whom die-hard humanitarian idealists like Dunant, as well as realists) are faced with a long-standing dilemma; do they continue to deliver assistance no matter what, or do they leave when conflicting parties exploit humanitarian relief and prolong wars by using aid as a weapon of war against their enemies?⁷

Humanitarian assistance appears to be an especially common and recurring weapon of war in internal armed conflicts in post-Cold War sub-Saharan Africa, as relief supplies have been diverted and/or starvation has been used as a weapon of manipulation in a number of countries. For instance, the provision of humanitarian aid has become entangled with the dynamics of conflict⁸ in Guinea, Sierra Leone, Liberia, Cote d'Ivoire, Sudan, South-Sudan, Eritrea, Ethiopia, Somalia, Uganda, Rwanda, Tanzania, the DRC, Angola, Zimbabwe, and Mozambique. Consequently, civilian populations have been increasingly confronted with violence, starvation, and death.

Internal Actors

Whereas victims are fairly easily identified, it is much more difficult to determine who is (in)directly responsible for causing extensive human suffering by misusing humanitarian aid. In internal armed conflict, withholding, diverting and looting consignments are methods of warfare mainly resorted to by local authorities, armed forces, and rebel groups. In so doing, these state and non-state parties fail to provide and protect medical aid, potable water and food. Moreover, warring parties regularly intimidate, harass and attack aid workers whilst they are attempting to assist and care for victims of armed conflict. Evidently, the mistreatment of humanitarian supplies and humanitarian personnel constitute serious violations of human rights.

External Actors

External actors do not wish to get embroiled in civil wars. Hence, the international community of states is often reluctant to actively protect human rights in internal armed conflicts. However, sentiments that the international community of states cannot remain idle appear to have increased since the end of the Cold War. William Wood believes that one cannot stand back when human rights are violated on a massive scale and international law is disobeyed. He recommends that

⁷ Polman demonstrates that Florence Nightingale (1820-1910) and Henry Dunant (1828-1910) were in fact confronted with the same dilemma during the Crimean War (1853-1856) and in the aftermath of the Battle of Solferino (1859). Whereas Dunant argued that victims of armed conflict should be cared for no matter what, and even enthused volunteers to assist in this, Nightingale objected to the voluntary character of aid, because she predominantly considered it governments' responsibility to take care of their sick and wounded. Moreover, Nightingale claimed that the involvement of volunteers would diminish war expenses and hereby prolong wars. In her opinion, aid should not be provided at all costs.

⁸ John Prendergast and Colin Scott, *Aid with Integrity; Avoiding the Potential of Humanitarian Aid to Sustain Conflict: A Strategy for USAID/BHR/ODFA in Complex Emergencies*, March 1996, 2.

international actors act against the abuse of aid and invent ways to confront local militias who are preventing the delivery of relief supplies.⁹ Moreover, Kraemer and Bhattacharya argue that ‘wealthy nations should be prepared to intervene beyond their borders to safeguard health and human rights,’¹⁰ when states or governments engage in intentional acts of cruelty towards civilians.

External actors can become accomplices to internal armed conflicts in various ways; for instance through conflict prevention, mediation, delivery of aid, or intervention. Like any other party to an internal conflict, they should act in conformity with the law and encourage others to do so. Yet, instead of solving famine and humanitarian crises, western governments mainly seem concerned with managing and containing crises.¹¹ Furthermore, over the years there have been examples of situations in which United Nations forces misbehaved; UN forces have for instance been accused of violating humanitarian norms and abusing human rights in Somalia.¹² It is important that the UN Security Council stops granting impunity to international forces and humanitarians. As Alex de Waal points out, ‘humanitarianism is about much more than delivering food and medicine: it is about respecting and, where possible, enforcing the letter and spirit of the 1948 Genocide Convention, the 1949 Geneva Conventions and the 1951 Refugee Convention, among others.’¹³

The Contrast Between Rules and Practice

This thesis exclusively focuses on the use of aid as a weapon of war in internal armed conflict. It draws upon international humanitarian law (IHL), international human rights law (IHRL) and international criminal law (ICL). Whereas IHL is specifically applicable to situations of armed conflict (both international and non-international), IHRL applies at all times. Due to the rapid development of international criminal law (ICL) in the mid 1990s and the strong link between IHL and ICL (as ICL is a useful body to enforce IHL), international criminal law has proven useful in governing internal armed conflict.¹⁴

Regardless of the nature of a conflict, abusing human rights, withholding aid and terrorising humanitarian agencies comprise violations of international law. Like states and non-state entities to an international conflict, parties to an internal conflict are expected to act in conformity with the law. Internal armed conflict is governed by conventional and customary law. As the ICRC’ study on customary rules of IHL demonstrates, the majority of treaty rules are nowadays applicable to

⁹ William B. Wood, “From Humanitarian Relief to Humanitarian Intervention: Victims, Interveners and Pillars”, *Political Geography* 15.8 (1996): 688.

¹⁰ John D. Kraemer, Dhruvajyoti Bhattacharya, Lawrence O Gostin, “Blocking Humanitarian Assistance: A Crime Against Humanity”, *The Lancet* 372 (October 2008): 1205.

¹¹ De Waal, 215.

¹² Monika Sandvik-Nylund, *Civilian Victims, Humanitarian Assistance and International Law*, Abo: Abo Akademi University, 2003, 143.

¹³ De Waal, 215-216.

¹⁴ Sandesh Sivakumaran, “Re-envisaging the International Law of Internal Armed Conflict”, *European Journal of International Law* 22.1 (2011): 220.

situations of internal armed conflict.¹⁵ Moreover, through national legislation IHL is binding on state parties as well as on non-governmental parties to internal armed conflicts.¹⁶ According to Sandesh Sivakumaran there even is such a thing as ‘an international law of internal armed conflict,’ which is rooted in the law of international armed conflict and has developed through ICL and IHRL.¹⁷

Notwithstanding existing principles, legislation, and approaches applicable to non-international armed conflict, warring parties seem to bend and neglect the rules and impunity for misusing assistance seems to prevail. To the best of my knowledge, no one has ever been brought to court for obstructing humanitarian assistance and starving populations to death. Although it is commonly recognised that rules and regulations are discarded on these counts, it appears to be difficult to hold anyone accountable for doing so. With reference to sub-Saharan Africa, one could however say that some positive steps towards accountability have been taken by the hybrid court that addresses the most serious crimes committed during the conflict in Sierra Leone.

In the case of Sierra Leone, former leaders of RUF and AFRC predominantly received sentences for unlawful killings, amputations, mass rape and the recruitment of child soldiers.¹⁸ Furthermore, Charles Taylor, the former president of Liberia was recently sentenced by the Special Court for Sierra Leone to 50 years in prison for aiding and abetting these crimes. Out of the SCSL cases, only three people (Sesay, Kallon and Gbao) were found guilty for intentionally directing attacks against personnel involved in a humanitarian assistance or peacekeeping mission and for violence to life, health and physical or mental well-being of personnel involved in such missions.¹⁹ Hence, this demonstrates that it remains difficult to get a legal basis for charges and to prove individual criminal accountability with regard to the misuse of aid.

The International Criminal Court in The Hague strongly emphasises that the age of impunity has been replaced by the age of accountability. Yet, the ICC is not likely to render any verdicts for crimes relating to the protection of aid and human rights in the majority of sub-Saharan African cases that have been brought before the International Criminal Court.²⁰ Regardless of the fact that perpetrators from Uganda, the DRC, Darfur and Kenya are facing indictments on these counts, and that some of these crimes are considered war crimes and crimes against humanity within the

¹⁵ Marco Sassòli, *How does Law Protect in War? Cases, Documents and Teaching Materials on Contemporary Practice in IHL*, Volume 1&2, ICRC, Geneva, 2006, 251.

¹⁶ Sassòli, 266.

¹⁷ Sivakumaran, 225.

¹⁸ The Special Court for Sierra Leone (SCSL), Cases against Fofana and Kondewa, Taylor, Sesay, Kallon and Gbao, Brima, Kamara and Kanu, Sankoh, Bockarie and Koroma. Available online at: <http://www.sc-sl.org/>

¹⁹ The Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao, Case No. SCSL-04-15-T, Summary of Judgement.

²⁰ Despite charges of attacks against a civilian population not taking part in the hostilities and cruel treatment of civilians in Uganda, despite charges of attacks against a civilian population not taking part in the hostilities in the DRC, despite charges of forcible transfer, extermination, attacks against a civilian population not taking part in the hostilities, and intentionally directing attacks against personnel, installations, material, units or vehicles involved in a peacekeeping mission in Darfur, Sudan and despite charges of forcible transfer in Kenya.

jurisdiction of the court, finding solid evidence to support such claims proves to be difficult. Additionally, the fact that the ICC merely has jurisdiction over the most heinous crimes committed after the treaty came into force (2002), and carried out by a national of a state party or committed on the territory of a state party,²¹ complicates matters further.

Nevertheless, realising accountability for using humanitarian aid as a weapon of war is crucial in order to diminish mortality rates and to advance future prospects. More specifically, state and non-state parties to a conflict should be held accountable for failing to fulfil basic needs, to authorise the humanitarian mandate, and breaking and disrespecting IHL and IHRL.²²

Research Question

This thesis endeavours to identify the problematic and multifaceted character of the use of humanitarian aid as a weapon of war in situations of non-international armed conflict in post-Cold War sub-Saharan Africa. Moreover, it means to assess which parties to internal conflicts can be held responsible for using this martial weapon (by means of blocking, attacking, manipulating or failing to provide or protect aid that is indispensable for people's survival). Accordingly, my research question is: *To what extent have rules regarding the provision and protection of humanitarian relief and human rights been disregarded in internal armed conflict in post-Cold War sub-Saharan Africa, and to what extent can parties to these conflicts be held accountable for applying humanitarian aid as an instrument of war?*

Relevance

Those studies and organisations that unequivocally recognise the use of humanitarian assistance in armed conflict as a weapon of war²³ mostly seem to focus on the way in which aid is used as such by local governments, dictators, and rebel groups. Others refer to the debacles in Somalia, Rwanda or the former Yugoslavia to support the claim that humanitarian assistance has not always been provided or protected sufficiently by the international community of states.²⁴ This thesis wishes to demonstrate that the misuse of aid by internal actors and the reluctance of external actors to act against this, are actually two sides of the same coin. According to Seybolt, their correspondence lies within the difficulty to uphold the neutrality of aid.²⁵ Dungen underlines the latter by claiming that the neutrality of foreign aid provided to relieve the suffering of a population, is especially easily

²¹ Considering that not all sub-Saharan African countries in which humanitarian aid has been obstructed and human rights have been neglected most excessively, are signatories to *The Rome Statute*.

²² Jon M. Ebersole, "The Mohonk Criteria for Humanitarian Assistance in Complex Emergencies", *Human Rights Quarterly* 17.1 (1995): 201.

²³ E.g. references hereto can be found in Alex De Waal, J.D. Kraemer, D. Bhattacharya and L. O'Gostin, Matthew LeRiche, Human Rights Watch Reports on Sudan and Ethiopia, and ICG Reports on Sudan and Somalia.

²⁴ Monika Sandvik-Nylund, 146; Jennifer Leaning, "When the System Doesn't Work," In: *A Framework For Survival*, Ed. K.M. Cahill, New York & London: Routledge, 1999, 44.

²⁵ Taylor B. Seybolt, "The Myth of Neutrality", *Peace Review* 8.4 (1996): 521.

compromised when delivered against the will of belligerents.²⁶ Amongst others, Dungen and Seybolt emphasise that it is hard to prevent the abuse of aid in internal conflict.

This thesis specifically focuses on the nature of the abuse of aid in non-international conflicts, as the number and complexity of these conflicts are currently increasing and relatively scarce attention has been paid to the abuse of aid in situations of internal armed conflict.²⁷ Principally, victims of internal armed conflict deserve the same protection as victims of international armed conflict, however, states have never accepted to treat these conflicts equally.²⁸ Hence, rules regulating non-international conflict are less developed.

Human Rights Watch and The International Crisis Group have published reports that focus on one or two case studies in which humanitarian relief supplies have been diverted, stolen or withheld.²⁹ Although many of these reports make recommendations on ways of enhancing accountability for this particular violation of human rights, there do not seem to have been many follow-ups; investigations into the implementation and achievements of mechanisms that were established to respond to the use of this weapon of war. Moreover, many books and articles appear to prioritise a legal perspective and mainly explore the legal context in which states and non-state parties to a conflict interact when providing humanitarian assistance.³⁰ Research into the way in which parties to a particular internal conflict are legally accountable for abusing aid and allowing aid to be misused, has hardly been carried out or is not easily accessible.³¹ To provide space for continuing the debate about the use of humanitarian assistance as a weapon of power and raising questions about the accountability of parties to internal conflict (including external parties), I would like to take the interdisciplinary road and combine legal and historical perspectives in this thesis.

Contributing to this debate is important because obstructing humanitarian relief (that is intended to relieve the suffering of a population) or using starvation as a method to further political or military objectives, often results in hunger. Over the last years several international efforts have been made to achieve the Millennium Development Goals (MDGs) by 2015. Eradicating extreme poverty and hunger are the first and foremost MDGs; halving the proportion of people who suffer

²⁶ Joakim Dungen, "A Right to Humanitarian Assistance in Internal Armed Conflicts Respecting Sovereignty, Neutrality and Legitimacy: Practical Proposals to Practical Problems", *Journal of Humanitarian Assistance* (2004): 3.

²⁷ Dungen, 1.

²⁸ Sassòli, 249.

²⁹ E.g. *Darfur: Humanitarian Aid Under Siege, Development Without Freedom: How Aid Underwrites Repression in Ethiopia, The Regional Crisis and Human Rights Abuses in West Africa: A Briefing Paper to the UN Security Council, Ending Starvation as a Weapon of War in Sudan, God, Oil and Country: Changing the Logic of War in Sudan, Somalia: To Move Beyond the Failed State and Sudan: Preventing Implosion*.

³⁰ E.g. Jelena Pejic, Marco Sassòli, Ruth Abril Stoffels, Arturo Carillo-Suárez, Vojin Dimitrijevic, David Forsythe.

³¹ I have looked into many databases and have read various articles, chapters and reports. Yet, I did not find any scholars who had analysed to what extent internal and external actors are legally accountable for obstructing humanitarian assistance in specific sub-Saharan case studies.

from hunger between 1990 and 2015 is part of this.³² Nonetheless, this goal does not appear to have been met in sub-Saharan Africa, as nearly one in three people in sub-Saharan Africa suffers from hunger.³³ The prevalence of hunger is highest in east, central and southern Africa³⁴ and these are regions in which humanitarian assistance has regularly been diverted.³⁵ Addressing the misuse of humanitarian supplies more effectively and improving access to civilians in areas of conflict, might contribute to reducing mortality rates.

Definitions

To provide some of sort of conceptual basis, this paragraph will define the most regularly-used concepts and point out which synonyms are used. Firstly, non-international conflicts and internal conflicts are used alternately throughout this thesis for conflicts which are situated within the borders of a state. Many scholars appear to consider the ICTY' definition of internal conflict as 'protracted armed violence between governmental authorities and organised armed groups or between such groups within a State,'³⁶ to be an adequate characterisation.³⁷ This thesis focuses on those conflicts which are internal in nature; however, they may have got a regional or international dimension after interference by a neighbouring state or the international community of states.

Secondly, the international community of states is often said to include 'national governments, the United Nations (UN) headquarters and its specialized agencies, regional political bodies (such as the Organization of African Unity and the recently renamed Organization on Security and Cooperation in Europe), and nongovernmental organizations (NGOs).'³⁸

Thirdly, humanitarian assistance refers to the supplies and services provided by the international community of states that are urgently needed for the survival of a population. Although one could perhaps distinguish between humanitarian assistance, humanitarian aid and humanitarian relief, they are considered synonymous in this study.

Fourthly, humanitarian action, humanitarian operations, humanitarian activities and humanitarian efforts are used to describe acts (usually initiated by international organisations,

³² United Nations Millennium Development Goals, A Gateway to the UN system's work on the MDGs. Available online at: <http://www.un.org/millenniumgoals/stats.shtml>

³³ See Appendix I; Percentage of Undernourished in Total Population, *United Nations Millennium Development Goals Report*, 2011. Available online at: <http://mdgs.un.org/unsd/mdg/Resources/Static/Data/2011%20Stat%20Annex.pdf>

³⁴ World Food Programme: Fighting Hunger Worldwide, Available online at: <http://www.wfp.org/>

³⁵ E.g. in Sudan, South-Sudan, Eritrea, Ethiopia, Somalia, Uganda, Rwanda, Tanzania, the DRC, Angola, Zimbabwe, and Mozambique

³⁶ Prosecutor v. Dusko Tadic, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (Appeals Chamber), 2 October 1995, par. 70.

³⁷ Rebecca Barber, "Facilitating Humanitarian Assistance in International Humanitarian and Human Rights Law", *International Review of the Red Cross* 91.874 (2009): 385.

³⁸ Wood, 671.

intergovernmental organisations or non-governmental organisations) that are meant to restore the rights civilians have been deprived of.³⁹

Fifthly, humanitarian organisations, humanitarian agencies, aid agencies, humanitarian personnel and humanitarian workers are used alternately to point out those who provide humanitarian assistance and engage in humanitarian action.

Sixthly, humanitarian crises and complex emergencies are considered synonymous. They often entail huge shortages, displacement and death. World Health Organization characterises complex emergencies as 'situations of disrupted livelihoods and threats to life produced by warfare, civil disturbance and large-scale movements of people, in which any emergency response has to be conducted in a difficult political and security environment.'⁴⁰

Finally, sub-Saharan Africa represents the region below the Sahara. Although the Sahara partially covers Mali, Mauritania, Niger, Chad and Sudan, these countries are considered to be sub-Saharan.

Methodology

The main goal of this thesis is to present an in-depth analysis of the way in which humanitarian assistance has been applied as a weapon of war in situations of non-international armed conflict in post-Cold War sub-Saharan Africa. Moreover, it endeavours to assess to what extent state and non-state parties to such a conflict are legally responsible for abusing aid and prolonging war and suffering.

To carry out this research, primary sources such as *The Geneva Conventions* and *The Rome Statute*, and secondary sources were examined carefully. To establish what scholars have argued about the abuse of aid and the interconnection between the provision of humanitarian assistance and the dynamics of conflicts, the first chapter briefly categorises the secondary literature regarding these topics. Above all, this thesis wishes to engage in the debate about humanitarian assistance. It attempts to bring together legal and historical approaches, because the lion's share of books and articles seem to favour one or the other. Rules codified in treaties and conventions highly appear to contrast practice, especially in sub-Saharan Africa. Therefore, the second chapter explores the rules and principles relating to the delivery and protection of humanitarian aid (legal) and the third chapter establishes in what way these rules have been disregarded in internal armed conflicts in four sub-Saharan African countries (historical).

Naturally, my research has certain limitations. Firstly, it does not include humanitarian assistance that is provided after natural disasters. Secondly, to narrow down this thesis' scope it

³⁹ Terry, 17.

⁴⁰ *Environmental Health in Emergencies and Disasters: A Practical Guide*, World Health Organization, 2002. Available online at: http://www.who.int/environmental_health_emergencies/complex_emergencies/en/

merely deals with internal armed conflicts in post-Cold War sub-Saharan Africa. Admittedly, sub-Saharan Africa is fairly general, as I do not refer to all sub-Saharan countries. The case studies that illustrate my argument most clearly, are mainly located in East Africa. However, due to disagreement about the precise regional classifications of Sudan (East Africa/North-Africa) and Rwanda (East Africa/Central Africa), and to demonstrate that humanitarian aid is generally applied as a martial weapon throughout Africa, I decided to keep a broad focus. Thirdly, one could argue that some of the conflicts in Sudan, Ethiopia, Somalia and Rwanda; the four case studies I chose to illustrate that there is a huge gap between rules and practice when it comes to the provision and protection of humanitarian relief, have had international ramifications. Nonetheless, do I characterise these conflicts as internal. Fourthly, this thesis does not make any recommendations on how to enhance accountability for abusing aid. This has already been done very often. Moreover, it is extremely difficult to come up with innovative ideas, especially without carrying out any interviews with international, inter-governmental or non-governmental organisations that were closely involved in humanitarian crises.

Structure

This thesis comprises five chapters; an introduction, a main body of three chapters and a conclusion.

The first chapter mainly introduces the reader to the misuse of humanitarian assistance as a method of warfare in internal armed conflicts in sub-Saharan Africa. It explains the link between asymmetric warfare and the abuse of aid, and highlights the up- and downsides of humanitarian action. Moreover, it describes in what way humanitarian relief supplies are wilfully blocked, humanitarian workers are deliberately targeted and aid is not provided and protected adequately. Additionally, it deals with international responses to the obstruction of aid and clarifies why it is difficult to enforce the law.

The second chapter intends to put together the legal framework of the provision and protection of humanitarian aid in non-international armed conflict. It incorporates treaty law, customary law, and international practice and observes to what extent rules have been established in respect of individuals' right to assistance and protection, and states' duty to provide, protect and facilitate aid. To structure my argument and provide a clear and comprehensible format of these rules, I drew two diagrams.

The third chapter explores the contrast between rules and practice by looking at the way in which humanitarian aid has been obstructed in non-international armed conflicts in Sudan, Ethiopia, Somalia and Rwanda. Through assessment of these case studies, it assesses which rules have precisely been disregarded and to what extent different actors are accountable for doing so.

Finally, the concluding chapter briefly reflects upon this thesis' main points and aims to provide an answer to my research question.

Chapter 1: The Use of Humanitarian Assistance as a Weapon of War in Sub-Saharan Africa

The humanitarian aid system is increasingly misused in sub-Saharan Africa. The manipulation of objects essential for the survival of civilians has long been recognised as one of the ravages of war, albeit without any express recognition of aid as a strategic military weapon. Since the end of the Cold War, a continuing shift from inter-state wars to internal conflicts can be detected. The disintegration of the former Soviet Union destroyed the symmetry of competition between the latter and the United States, and changed the context of war significantly.⁴¹ States that previously received military support from either one of these superpowers, were abruptly left to their own devices. Moreover, the end of the Cold War is a turning point because it produced a vacuum in Western strategic interest in Africa.⁴²

Not surprisingly, the vast majority of post-Cold War armed conflicts in Africa constitute internal wars. Governments are primarily fighting non-governmental armed groups⁴³ and the principle of equality of arms no longer seems to exist. Internal wars are fought between enemies that are unequal in many respects.⁴⁴ Moreover, belligerents adopt different tactics and strategies, as the first and foremost aim of asymmetric warfare is to find the opponent's Achilles' heel and to use the latter to one's own benefit. Trapped in civil strife and asymmetric hostilities, populations are increasingly targeted and unconventional weapons of war are more and more resorted to. Although weapons of war are most likely to refer to objects that are used in fighting or war, such as guns or swords, notably distinctive martial weapons can be identified when looking into recent armed conflicts in sub-Saharan Africa. An example hereof is impeding someone's access to humanitarian aid.

In the post-Cold War period, sub-Saharan Africa has been plagued by a rash of complex emergencies. In many of these complex emergencies, 'the brutality and disorder that characterise the underlying internal conflicts constitute major threats to humanitarian action.'⁴⁵ This chapter relates the abuse of aid to the asymmetry of warfare. Furthermore, it reflects upon the up- and downsides of humanitarian action and provides an insight into ways of obstructing aid. Moreover, it discusses international responses, as well as states' responsibility to protect and mechanisms to enforce the law and achieve accountability. This chapter surely does not wish to produce a universal manual on how to go about humanitarian assistance during wartime. Clearly, the degree of impact depends on the conflict's location and other factors. However, this chapter aims to point out ways in

⁴¹ Toni Pfanner, "Asymmetrical Warfare from the Perspective of Humanitarian Law and Humanitarian Action", *International Review of the Red Cross* 87.857 (2005): 154.

⁴² De Waal, 133.

⁴³ Pfanner, 153.

⁴⁴ Pfanner, 173.

⁴⁵ Iain Levine, "Promoting Humanitarian Principles: The Southern Sudan Experience", *Relief and Rehabilitation Network Paper* 21, May 1997, 4.

which humanitarian assistance has been used as a martial weapon in sub-Saharan Africa and mainly intends to illustrate that obstructing aid is a widespread characteristic of modern warfare.

1.1. Humanitarian Aid and the Evolution of Warfare

In addition to the worldwide shifting context of conflicts and the rise of asymmetric strategies, the number and complexity of humanitarian crises has escalated over the last twenty years. Relief efforts have expanded rapidly and have become a matter of immense concern and financial burden to the international community of states. This obviously leaves one to question whether there is a parallel between 'the evolution of warfare and the transformation of humanitarian action.'⁴⁶

Withholding humanitarian aid is not necessarily an intrinsic part of asymmetric warfare. However, one could assume that belligerents involved in asymmetric conflicts are likely to disrespect IHL and IHRL, because they do not want to run the risk of losing the conflict. As Marco Sassòli points out, 'the weaker side in an asymmetric conflict often lacks the necessary structures of authority, hierarchy, communication between superiors and subordinates, and processes of accountability, all of which are necessary to enforce IHL and even more conspicuously IHRL rules.'⁴⁷ Secondly, asymmetric strategies and tactics complicate external actors' monitoring of compliance with IHL. Given that they usually cannot control nor get access to any side of the conflict, they cannot observe whether the law is respected.⁴⁸ Considering that there is a considerable likelihood that the law will be breached in asymmetric conflicts, it seems fair to say that asymmetrical warfare has a bearing on international humanitarian law.⁴⁹ Furthermore, Matthew LeRiche claims that warring factions in asymmetric conflicts will neither refrain from depriving non-combatants of aid on moral grounds, because they 'either believe they are fighting for the well-being of their own ethnic or cultural group, are attempting to deny rivals spoils, or are political and economic opportunists.'⁵⁰

State and non-state parties to an asymmetric conflict will not hesitate to obstruct humanitarian relief, if they are not held back by legal or moral restrictions. This is exactly why the international community of states should respond more effectively to the application of this weapon of war in non-international armed conflicts. International practice has shown that the international community of states is usually powerless against militias, rebel groups and governments who take on food as a weapon and wilfully block humanitarian assistance; international actors often cannot prevent that civilians are used as pawns in internal wars. It seems fair to argue that populations in

⁴⁶ Michel Veuthey, "The Respective Roles of International Organizations and Non-Governmental Organizations (NGOs) in Humanitarian Action", *Refugee Survey Quarterly* 23.4 (2004): 236.

⁴⁷ Marco Sassòli, "The Role of Human Rights and International Humanitarian Law in New Types of Armed Conflict", In: *International Humanitarian Law and International Human Rights Law*, Ed. Orna Ben-Naftali, Oxford: Oxford UP, 2011, 38.

⁴⁸ Sassòli, 36.

⁴⁹ Pfanner, 151.

⁵⁰ Matthew LeRiche, "Unintended Alliance: The Co-option of Humanitarian Aid in Conflicts", *Parameters* (2004): 104-105.

fragile states suffer particularly from a lack of assistance and protection. Fragile states are delicate social and political environments which often do not have the capacity to adapt to, respond to and recover from violent conflict.⁵¹ When the international community of states responds to food shortages or gross human rights violations, social and political constraints should therefore be taken into account.

1.2. Humanitarian Action: Principles and Challenges

The humanitarian assistance community is made up by people in need, national governments, UN agencies, non-governmental organisations, political missions, military contingents and donors.⁵² Whereas internal wars are predominantly fought between national governments and non-state armed groups, civilians usually bear the brunt of the burden. Assistance to civilian populations is offered by humanitarian actors and subsidised by donors. When civilians' right to the supplies essential for their survival is taken away, and national governments fail to address shortages and human rights violations, international actors attempt to relieve the suffering of civilians. NGOs try to gain access to areas of internal conflict and the UN Security Council may decide to send in specialised bodies and agencies to monitor human rights abuses, to provide humanitarian assistance, to contribute to peace building initiatives etc.

Humanity, impartiality and neutrality are the three main principles of humanitarian action. The *Principal Commitments from the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Response Programmes* encourage that humanitarian action be undertaken in line with commitments to humanity, impartiality, neutrality, independence, cultural sensitivity, local capacity building, participation, reducing future vulnerabilities and making ends meet, accountability and dignity.⁵³ Ideally, humanitarian actors abide by these principles and provide aid to any person in need, regardless of race, faith, or political affiliation.⁵⁴ It is however a voluntary code of conduct; they can never be sanctioned for doing otherwise. Although the majority of humanitarian workers appears to be dedicated to follow the principal commitments, neutrality and impartiality are from time to time complicated and compromised by the difficult environments in which these actors operate.

Not surprisingly, there are up- and downsides to humanitarian action. Emergency relief provided by external actors does not automatically have a positive outcome. Given that

⁵¹ *Humanitarian Assistance in Conflict and Complex Emergencies*, World Food Programme, June 2009 Conference Report and Background Papers, 38.

⁵² Taylor B. Seybolt, "Harmonizing the Humanitarian Aid Network: Adaptive Change in a Complex System". *International Studies Quarterly* 53 (2009): 1028.

⁵³ *Principal Commitments from the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Response Programmes*, The International Federation of Red Cross and Red Crescent Societies and the ICRC, 1994, Available online at: <http://www.ifrc.org/en/publications-and-reports/code-of-conduct/>

⁵⁴ Seybolt, "Harmonizing the Humanitarian Aid Network: Adaptive Change in a Complex System", 1031.

humanitarian assistance has unintended consequences, Smock believes that humanitarian relief may unintentionally put across negative ethical messages.⁵⁵ In addition, Prendergast and Scott underline that providing aid and promoting peace sometimes fuel the conflict and have a paradoxical effect.⁵⁶ For instance, providing humanitarian aid easily results into an imbalance between external resources and domestic resources. International NGOs usually have more resources than local organisations and they often persuade domestic NGO staff to come and work for them. The latter does not really contribute to local peace building initiatives. In addition, aid can weaken local capacities, as it undermines 'the development of local people to cope with crises through traditional authority and social structures.'⁵⁷ Furthermore, international assistance can contribute to the war economy as it frees resources for combat.⁵⁸ Moreover, an aid economy can develop when people become dependent on huge amounts of aid for extended periods of time.⁵⁹

1.3. The Misapplication of Humanitarian Aid

In wartime, local distribution systems often break down and civilians' access to food is heavily troubled. War destroys a country's national environment; civilians can no longer grow their own crops. Subsequently, humanitarian crises easily arise. As humanitarian assistance is often jeopardised by security issues, these crises rapidly intensify. Local authorities and opposition groups are usually in command of humanitarian access; they decide under what conditions humanitarian organisations obtain access to victims and are allowed to relieve the suffering of civilians.⁶⁰ Warring parties are therefore primarily responsible for obstructing humanitarian relief and using the supplies and resources of external actors to prolong wars.

Humanitarian relief operations that are intended to resolve crisis situations are thwarted in many ways. Most scholars differentiate between four means of obstructing humanitarian aid: (1) restricting people's access to aid and withholding aid, (2) forcibly displacing civilians (e.g. to attract aid), (3) looting and diverting aid for war-making, and (4) the installation of taxes, roadblocks and other obstacles to harass and intimidate humanitarian workers. Seeing that humanitarian personnel are increasingly targeted and attacked, this constitutes a fifth method of obstruction (5).

⁵⁵ David R. Smock, "Humanitarian Assistance and Conflict in Africa", *The Journal of Humanitarian Assistance* (1997): Summary.

⁵⁶ Prendergast and Scott, 1.

⁵⁷ Prendergast and Scott, 10.

⁵⁸ Prendergast and Scott, 11.

⁵⁹ LeRiche, 109.

⁶⁰ Polman, 15.

1.3.1. Restricting Access and Withholding Aid

Firstly, manipulation of people's access to humanitarian aid has been recognised in Zimbabwe and Sudan, as well as in Angola, Liberia, Somalia and Mozambique.⁶¹ For instance, in Zimbabwe, Robert Mugabe cut off international aid to manipulate the elections in Zimbabwe.⁶² In doing so, he blocked millions of people's access to the food and health care that had been provided by external actors.

Due to the militarisation and politicisation of aid, providing humanitarian assistance clearly has political as well as humanitarian implications.⁶³ Nonetheless, giving medical aid, drinking water and food to a population as well as failing to do so, have mistakenly yet frequently been considered apolitical activities. Relief supplies have regularly been denied to civilians or been stolen from them,⁶⁴ because dictatorial and military governments used 'the withholding of food as a political weapon to exacerbate human suffering.'⁶⁵ Hence, from 1991 to 1993, starvation was used as a weapon of power by Somali militias in order to dislocate people and to obtain resources from the international community of states.⁶⁶ Similarly, it was used in a Liberian camp near Monrovia in July 1996, where hundreds of civilians were held against their will without access to food in order to attract humanitarian assistance to a specific region.⁶⁷

Notwithstanding that the use of starvation as a weapon of war is prohibited under international humanitarian law, it has often been used in the post-Cold War period because it is a quick, cheap and effective weapon. In addition, accountability for breaking these rules has rarely been ensured. The denial of food to a population has often resulted in widespread famine. For instance in Sudan, 'the steady interruption of international relief supplies has threatened to turn a cyclical humanitarian crisis into a permanent emergency that leaves significant numbers of Sudanese without any means to subsist and highly vulnerable to even minor supply shocks.'⁶⁸ In addition, international practice shows that civilians starving to death attract humanitarian organisations. Hence, it regularly happens that local militias and dictators draw humanitarians (involuntarily) into their conflicts so they can exploit their money and supplies.⁶⁹ Generally, the more violence occurs, the more assistance is offered.

⁶¹ Prendergast and Scott, 4.

⁶² Kraemer, Bhattacharya and O Gostin, 1203.

⁶³ Kathleen Hill Hawk, *Constructing the Stable State: Goals for Intervention and Peacebuilding*, Westport: Praeger Publishers, 2002, 110.

⁶⁴ Smock, Summary.

⁶⁵ Gebre-Egziabher Kiroso & Dennis P. Hogan, "War, Famine and Excess Child Mortality in Africa: The Role of Parental Education", *International Journal of Epidemiology* 30.3 (2000): 447.

⁶⁶ Hawk, 110.

⁶⁷ Terry, 47.

⁶⁸ *Ending Starvation As a Weapon of War in Sudan*. International Crisis Group Africa Report N°54 Nairobi/Brussels, 14 November 2002, 2.

⁶⁹ Polman, 169.

1.3.2. Forced Displacement

Secondly, humanitarian assistance has been hindered by dispersing population movements. This happened in Sudan as well as in Ethiopia and Eritrea. The violence that was used whilst entire villages were burnt down and civilians were forcibly removed from their surroundings, resulted in gross human rights violations. The number of internally displaced persons (IDPs) in these countries created several challenges to the outreach programs of humanitarian actors. In Liberia, thousands of people were forced to leave their home areas and thousands of civilians were murdered.⁷⁰ One could claim that Liberia did not address regional instability and human rights violations. Moreover, it failed to provide adequate assistance and protection to IDPs and could not prevent the abuse of aid by government forces and rebel factions.⁷¹ Accordingly, 'Liberia presents a situation where effective protection and assistance to refugees is inextricably linked to the provision and effective protection of assistance to internally displaced persons.'⁷²

1.3.3. Looting, Diversion and Aggression

Thirdly, aid supplies have regularly been looted and diverted. Additionally, consignments, distribution centres and aid agencies have been attacked. Obviously, the entire aid system suffers from these attacks.⁷³ Humanitarian goods, especially food and drugs, are used by insurgencies and government forces for consumption, barter or sale and even for export.⁷⁴ Hence, a common characteristic of modern day internal warfare is that a relatively large proportion of consignments ends up in the hands of warring parties.⁷⁵ In Liberia, food and other items essential to the survival of civilians were repeatedly stolen. Moreover, 'in the mid-1990s, several aid agencies that were present in Liberia shortened their relief operations 'after the theft of \$20 million in equipment during that country's civil war.'⁷⁶ Taking into consideration that Liberian fighters rarely received salary, one could however argue that the Liberian authorities hereby basically gave them a virtual license to enrich themselves through other means.⁷⁷

⁷⁰ *The Regional Crisis and Human Rights Abuses in West Africa: A Briefing Paper to the U.N. Security Council*, Human Rights Watch Report, June 2003, 2.

⁷¹ *The Regional Crisis and Human Rights Abuses in West Africa: A Briefing Paper to the U.N. Security Council*, 7.

⁷² Ibid.

⁷³ John Prendergast, *Frontline Diplomacy: Humanitarian Aid and Conflict in Africa*, London: Lynne Rienner, 1996, 20-21, In: Matthew LeRiche, "Unintended Alliance: The Co-option of Humanitarian Aid in Conflicts", *Parameters* (2004): 108.

⁷⁴ Prendergast and Scott, 6.

⁷⁵ Ruth Abril Stoffels, "Legal Regulation of Humanitarian Assistance in Armed Conflict: Achievements and Gaps", *International Review of the Red Cross* 86.855 (September 2004): 515.

⁷⁶ Sarah Kenyon Lischer, "Collateral Damage: Humanitarian Assistance as a Cause of Conflict". *International Security* 28.1 (2003): 84.

⁷⁷ *The Regional Crisis and Human Rights Abuses in West Africa: A Briefing Paper to the U.N. Security Council*, 9.

1.3.4. Other Obstacles

Fourthly, other abuses of humanitarian aid and human rights have occurred in post-Cold War sub-Saharan Africa. For instance, aid supplies have been taxed, and roadblocks and checkpoints have been installed to intimidate aid workers and make resources for war-making.⁷⁸ In Rwandan refugee camps humanitarian aid became part of 'the mechanisms of oppression and violence,'⁷⁹ as refugee warriors (who were living amongst civilians) levied tax from civilians and international organisations to make enough money to provide for their armies and to buy guns.⁸⁰ Moreover, in Liberia and Somalia, belligerents forcibly confiscated relief items from civilians after these had been distributed by aid agencies.⁸¹

1.3.5. Targeting Humanitarian Workers

Fifthly, due to the gradual shift from inter-state wars to civil wars, humanitarian actors are more and more drawn into the heart of internal conflicts. Through the delivery of aid during wartime, aid organisations increasingly become part of the war machinery.⁸² Humanitarian personnel is intentionally targeted; they are soft targets considering that they do not carry any weapons and mostly attempt to establish relieve schemes for civilian populations without military escort.⁸³ However, from time to time they need to cast aside principles of neutrality and impartiality and depend on military actors to ensure their own safety.

In Liberia, aid agencies have often been terrorised and attacks on humanitarian workers have occurred.⁸⁴ Humanitarian personnel did not have any security guarantees and most of the country (and civilian populations in need of assistance and protection) could not be accessed by aid agencies.⁸⁵ Furthermore, in Sierra Leone three former leaders of the former Revolutionary United Front (Sesay, Kallon and Gbao)⁸⁶ and three former members of the Armed Forces Revolutionary Council (Brima, Kamara, Kanu)⁸⁷ committed attacks on UNAMSIL peacekeepers and humanitarian assistance workers.

Partly due to the multiple ways in which civilians' access to assistance can be obstructed, it has proved extremely difficult to ensure the protection of civilians in internal armed conflicts. However, access to civilians and the provision of supplies to those who actually need it to survive,

⁷⁸ Prendergast and Scott, 7.

⁷⁹ Terry, 25.

⁸⁰ Polman, 107.

⁸¹ Terry, 52.

⁸² Pfanner, 167.

⁸³ However when their security is severely threatened, humanitarian organisations may sacrifice principles of neutrality and impartiality and request that military forces protect humanitarian personnel, support the work of humanitarian actors with logistical and protection services or provide direct assistance to a population.

⁸⁴ *The Regional Crisis and Human Rights Abuses in West Africa: A Briefing Paper to the U.N. Security Council*, 2.

⁸⁵ Ibid.

⁸⁶ The Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao, Case No. SCSL-04-15-T.

⁸⁷ The Prosecutor v. Brima, Kamara, and Kanu, Case No. SCSL-04-16-T.

will only improve when belligerents are willing to respond to a crisis. More specifically, the misuse of aid is very likely 'when the receiving state is unwilling or unable to impose political order and demilitarize the refugees.'⁸⁸

1.4. Responses to Obstruction of Aid in Internal Conflicts

Responses of the international community of states to challenges posed by complex emergencies vary. Above all, it is essential that international actors comply with the law and set the right example. It is therefore unacceptable that in Angola and Liberia, access to aid was not merely interfered with by local governments and warring factions, but also by regional peacekeeping forces. As Prendergast and Scott point out, both UNITA and the government frequently restricted humanitarian access to territories occupied by their opponents in the 1993-1994 civil war in Angola.⁸⁹ Additionally, in Liberia aid was blocked by the regional peacekeeping force, ECOMOG.⁹⁰ Remarkably, measures against these regional peacekeeping forces were not taken.

When parties to a non-international conflict continuously fail to provide and protect humanitarian assistance and safeguard human rights, the United Nations Security Council can impose sanctions (either targeted or comprehensive sanctions) on states in whose territory aid has been impeded. Yet, sanctions are generally not an effective response to humanitarian crises, because they often increase malnutrition and the spread of diseases.⁹¹ Moreover, economic embargoes jeopardise one's right to food and water.

Furthermore, military means such as 'enforcing a no-fly-zone in which no military aircraft would be permitted, accompanying occasional aid flights by fighter aircraft as a deterrent to government attack, or destroying the airstrips from which government aircraft operated that attacked aid deliveries, as well as the aircraft themselves,'⁹² can be necessary if humanitarian access is denied on a regular basis and civilians are starving to death on a massive scale. However, military responses to complex emergencies frequently make it more difficult to enforce respect for international law and the humanitarian mandate.⁹³ It is important that Rules of Engagement (REO) are established when armed force is applied, because 'legally ROE define the boundaries of a commander's action consistent with applicable domestic and international law.'⁹⁴ Furthermore, these rules may help to maintain neutrality and impartiality.

⁸⁸ Lischer, 81.

⁸⁹ Prendergast and Scott, 4.

⁹⁰ Prendergast and Scott, 4.

⁹¹ *Horn of Africa Region: The Humanitarian Crisis and International Response*, Congressional Research Service January 2012, 22.

⁹² *Ending Starvation As a Weapon of War in Sudan*, 18.

⁹³ Ebersole, 193.

⁹⁴ Dennis Dijkzeul, "Old Optimism and New Threats", In: *Between Force and Mercy: Military Action and Humanitarian Aid*, Ed. Dennis Dijkzeul, Berlin: Berliner Wissenschafts-Verlag, 2004, 73.

However, the tricky question with regard to military action remains: who is the judge when it comes to determining whether this does not merely aggravate a humanitarian situation? Regardless of humanitarian claims that are made in order to justify humanitarian interventions, opponents consider military interventions into the internal affairs of another state to be a violation of international humanitarian law. They argue that one's sovereignty should always be respected on the basis of Article 2 (4) of *The UN Charter*, which prohibits the use of force against the territorial integrity or political independence of another state.⁹⁵

Aid organisations appear to be powerless against the abuse of aid in internal armed conflict. They are to their heads' up involved in a nonstop selection process and have limited means, manpower and time.⁹⁶ As pointed out by Linda Polman, international aid organisations can in fact only oppose looting, diversion and theft of aid, if one of them has the monopoly on assistance in a specific area or country.⁹⁷ This is however exactly what aid organisations try to prevent from happening. Moreover, it is why they close their eyes to corruption and often do not mention supplies that have been stolen or diverted.⁹⁸ Honesty about the whereabouts of resources is usually unthinkable; aid agencies deceive to provide relief. Alex de Waal states that 'to insist on following the principles enshrined in a code of conduct would entail withdrawing on the first day of the field.'⁹⁹

Clearly, the Dunant/Nightingale dilemma occasionally presents itself again; do you continue to provide aid no matter what or do you resign when it appears to do more harm than good? It has happened that international aid organisations resigned because they did no longer consider their presence and assistance in conflict or post-conflict situations worthwhile. For instance, MSF France used to manage a camp for amputees in Sierra Leone, Murray Town Camp, and laid down this responsibility because of the abundance of visitors. Here, many journalists, intergovernmental organisations such as the EU and AU, NGOs etc. exploited the camp and the victims living in the camp (mostly under-eighteen amputees and their families) to guarantee funding. According to MSF they jeopardised the human dignity of victims in doing so.¹⁰⁰

1.5. Enforcement of the Law

Because of the delivery of humanitarian assistance, thousands of lives have undoubtedly been saved in post-Cold War sub-Saharan African countries. Despite the fact that humanitarian action intermittently seems to have contributed to genocide and aggravation of conflict,¹⁰¹ most scholars

⁹⁵ *The UN Charter*, Chapter I, Article 2 (4).

⁹⁶ Liesbet Heyse, *Choosing the Lesser Evil: Understanding Decision Making in Humanitarian Aid NGOs*, Universiteit Leiden, 2004, 3.

⁹⁷ Polman, 104.

⁹⁸ Polman, 105.

⁹⁹ De Waal, 143.

¹⁰⁰ Polman, 68.

¹⁰¹ Smock, Summary.

agree that the value of assistance and saving lives outweigh negative consequences of humanitarian assistance. Then again, it appears to be commonly agreed that international law is hardly adhered to in non-international armed conflicts and that suitable accountability mechanisms for violating the right to humanitarian assistance are lacking.

Over the years, various mechanisms to enforce the abundance of rules and regulations pertaining to humanitarian assistance have been established; such as codes of conduct which included specific references to the provision and protection of aid in internal conflict, international fact-finding commissions and the Humanitarian Ombudsman Project.¹⁰² The latter project researched whether an ombudsman was applicable in humanitarian situations.

Nevertheless, none of these mechanisms exactly meet the requirements of a capable measure to enforce the law of the rights and duties in respect of humanitarian assistance. The effectiveness of these mechanisms is limited by the very nature of the abuse of aid. Firstly, because 'humanitarian assistance is an individual right that is generally abused on a collective scale, and the mechanisms tasked with guaranteeing individual protection are unable to provide redress against such violations.'¹⁰³ Secondly, the right to humanitarian assistance is mostly taken away in complex humanitarian emergencies and solutions can only be effective when implemented immediately.¹⁰⁴ The latter rarely happens, as it takes a considerable amount of time to find donors, embark on relief operations and reach civilian populations. Thirdly, mechanisms that have previously been established to promote respect for the right to humanitarian aid are usually not effective during wartime, because of its exceptional context.¹⁰⁵ Fourthly, a number of violations is committed by non-state parties to a conflict and their conduct cannot easily be controlled or altered.¹⁰⁶

Evidently, implementation of the law is heavily complicated by the nature of situations of internal armed conflict; under these circumstances is not very likely that anyone will be taken to court.¹⁰⁷ The success of these mechanisms will always depend on the political will of states, as the vast majority of humanitarian crises are political crises with immense humanitarian consequences. Humanitarian actors mostly operate in contexts where there is no political structure and no compliance with international humanitarian law. In such environments it seems necessary to convert humanitarian action into political action; providing relief is not sufficient, because 'humanitarian agencies are caught between governments seeking an alibi for their political inaction and media tending to focus on human tragedy rather than its political roots.'¹⁰⁸ The ICRC and MSF argue

¹⁰² Terry, 51.

¹⁰³ Stoffels, 525.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ Stoffels, 528.

¹⁰⁸ Joelle Tanguy and Fiona Terry, "Humanitarian Responsibility and Committed Action". *Ethics and International Affairs* 13.29 (1999): 33.

however that tying humanitarian aid to conflict resolution puts neutrality at risk. Conflict resolution initiatives endanger the possibility of enlarging humanitarian space.¹⁰⁹ For this reason, MSF merely attempts to be an agent of change by emphasising the political responsibilities of local and international community of states pertaining to the right to assistance.¹¹⁰

To increase respect for IHL and IHRL, impunity for abusing aid needs to be fought. States do not seem too keen on prosecuting perpetrators for crimes relating to the provision and protection of humanitarian aid, because it is a costly post-hoc response. Moreover, the international community of states (as promoters of accountability) are frequently doing a balancing act, as mediation sometimes fails when insisting on accountability. Prosecution should nonetheless be strongly encouraged, because it is all about establishing effective deterrents on the long term.¹¹¹ According to Daryl Mundis, there are five follow-up options of violations of the rules and regulations regarding humanitarian assistance in internal conflicts. Firstly, ad hoc international tribunals (1) or mixed international criminal tribunals (2) could be established. Moreover, the international community of states could either leave national governments to prosecute alleged perpetrators (3), or international resources could be freed to assist national governments in prosecuting supposed offenders (4). However, the international community of states could also choose to simply sit back and ignore these gross violations of IHL and IHRL (5).¹¹²

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ De Waal, 152.

¹¹² Daryl A. Mundis, "New Mechanisms for the Enforcement of International Humanitarian Law," *The American Journal of International Law* 95.4 (October 2001): 934.

Chapter 2: The Rules and Regulations of Humanitarian Assistance in Internal Armed Conflict

This chapter deals with the rules and regulations of the provision and protection of humanitarian assistance in situations of internal armed conflict. It limits its scope to armed conflicts of a non-international character, because relatively little attention has been paid to the intricacy of applying existing humanitarian standards to internal armed conflicts. The problem of applicability arises, because the categorisation of non-international conflicts is not always as plain as a pikestaff and contemporary enforcement mechanisms malfunction or are not in place at all .

Above all, this chapter aims to provide this thesis' legal basis by delineating relevant provisions of international humanitarian law (IHL) and international human rights law (IHRL). Considering that international customary law nowadays constitutes one of the primary sources of international law,¹¹³ it takes into account treaty law as well as customary law.

Furthermore, it considers breaches of states as well as violations of non-state parties, as it wishes to shed light upon the two-sidedness regarding humanitarian assistance. Hence, it will look into the use of humanitarian aid as a weapon of manipulation by states (national governments) and non-state parties (e.g. armed insurgents, rebel movements), and it will reflect upon the inaction (of national governments, local militia, the international community of states) with regard to providing humanitarian relief supplies and protecting human rights. This two-sidedness is particularly important because both scenarios endanger civilians populations and may contribute to the latter's exposure to violence, starvation and death.

2.1. Parties to Internal Armed Conflict

Clearly, victims and perpetrators are the foremost parties to a conflict, regardless of its character. Whereas people who do not actively take part in the hostilities are consequentially considered victims, those who do, could be identified as perpetrators. The majority of armed conflicts in post-Cold War sub-Saharan Africa constitute civil wars. Accordingly, the population of the country in which the conflict is situated is generally comprised of victims as well as perpetrators.

Identifying victims and perpetrators proves problematic, as civilians and warriors often live amongst each other and physically look like one another. To make matters worse, combatants and non-combatants are often dependent on each other; they have- and take on multiple identities. Besides the fact that the distinction between civilians and belligerents often becomes blurred, classification of a non-international armed conflict is not always clear-cut. Internal conflicts can evolve into conflicts of an international character when nationals of neighbouring countries decide to

¹¹³ Sonja Boelaert-Suominen, "Grave Breaches, Universal Jurisdiction and Internal Armed Conflict: Is Customary Law Moving Towards A Uniform Enforcement Mechanism for all Armed Conflicts?" *Journal of Conflict and Security Law* 5.63 (2000): 64.

support one party or another and engage in the conflict. It is difficult to determine which rules apply, because such wars leave different groups fighting and can both be classified as internal conflicts and international conflicts.

The international community of states frequently becomes a party to an internal conflict by means of providing aid. Officially, the UN, its specialised organs, regional political bodies (intergovernmental organisations) and NGOs cannot be considered parties to an internal conflict,¹¹⁴ because they are external (non-state) actors who are not bound by IHL. Nonetheless, it is commonly agreed that the international community of states should respect the law of armed conflict, when it becomes involved in internal conflict by means of peacekeeping, peace-enforcement or humanitarian operations.

There appears to be much controversy over the involvement of the international community of states in such conflicts. Some argue that one cannot turn a blind eye to gross human rights violations; they claim that the international community of states has a moral and legal responsibility to assist those in dire need and ensure compliance with international humanitarian law and international human rights law. Others claim however that humanitarian assistance merely exacerbates the situation. Notwithstanding this controversy, it is beyond doubt that members of the international community of states are a vulnerable party to internal conflict. They operate in territories which usually do not have a government and a functioning health, transportation, police or welfare system.¹¹⁵ Furthermore, those who offer humanitarian relief no longer seem to be regarded as respected, protected and neutral actors. Humanitarian efforts are increasingly threatened and medical, religious and humanitarian personnel easily become victims of an anarchy they cannot control.¹¹⁶

Obligations to provide humanitarian aid and protect human rights in situations of non-international conflict may not be as explicitly laid down in instruments of humanitarian law as they are with regard to international conflicts.¹¹⁷ However, international law has always promoted minimum humanitarian standards in the conduct of hostilities regardless of the context in which war is fought.¹¹⁸ Hence, the so-called Martens clause, Article 1 of *Protocol I* and the Preamble of *Protocol II Additional to The Geneva Conventions*, order that civilians and belligerents are at all times protected by 'the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.'¹¹⁹

¹¹⁴ Sassòli, 290.

¹¹⁵ Kevin M. Cahill, *A Framework for Survival*, New York & London: Routledge, 1999, 3.

¹¹⁶ Ibid.

¹¹⁷ Sandvik-Nylund, 22.

¹¹⁸ David P. Forsythe, "Legal Management of Internal War: The 1977 Protocol on Non-International Armed Conflicts", *The American Journal of International Law* 72.2 (1978): 273.

¹¹⁹ Sandvik-Nylund, 19.

2.2. International Humanitarian Law

International humanitarian law clearly outlines what is and is not permitted in situations of armed conflict. It applies to governments as well as individuals and it aims to regulate the consequences of war for humanitarian reasons, such as upholding the dignity of humanity.¹²⁰ International humanitarian law originally governed armed conflict between states; the latter were the only players bound by international law. However, over the years, IHL has expanded significantly. It is currently applicable to conflicts between states, disputes between a state and a non-state actor, and clashes between two or more non-state actors.¹²¹ More specifically, besides binding states, IHL obliges non-state parties who fight (e.g. rebel groups, armed insurgents) to act in accordance with IHL, and protects those who do not participate in warfare (most often civilians).¹²² Although some scholars claim that international humanitarian law should not apply to these combatants because their actions should in no way be legitimised, others emphasise that IHL may affect the conduct of these parties in ways that domestic law cannot.¹²³

IHL is largely codified in treaties, of which *The Geneva Conventions* and the *Protocols Additional to The Geneva Conventions* are most notable. These treaties are complemented by universally accepted rules, which are based on the practice of states. Altogether, these rules make up a body of customary international humanitarian law. Whereas treaty law is merely binding on its contracting parties, customary law binds all states.¹²⁴ According to The International Committee of the Red Cross, customary international humanitarian law is of critical importance in contemporary situations of international and non-international armed conflict because it fills the gaps left by treaty law and increases the protection of victims.¹²⁵ Rebecca Barber claims that ‘in the case of international armed conflict, there is a strong foundation in international law on which humanitarian actors can rely to demand that humanitarian assistance be facilitated.’¹²⁶ Nonetheless, as the majority of sub-Saharan conflicts is non-international, this foundation appears to be of limited application to the majority of contemporary conflicts in sub-Saharan Africa. Customary international humanitarian law seems to fill this gap; as the ICRC report (2005) on customary rules of international

¹²⁰ The International Committee of the Red Cross, War & Law, War and International Humanitarian Law. Available online at: <http://www.icrc.org/eng/war-and-law/overview-war-and-law.htm>

¹²¹ The International Committee of the Red Cross, Resource Centre, Relevance of International Humanitarian Law to Non-State Actors. Available online at: <http://www.icrc.org/eng/resources/documents/misc/5f8jez.htm>

¹²² Cedric Ryngaert, “Non-State Actors and International Humanitarian Law”, Working Paper for The Institute for International Law, K.U. Leuven, 2008, 1.

¹²³ Ryngaert, 2-3.

¹²⁴ Vojin Dimitrijevic, “Customary Law as an Instrument for the Protection of Human Rights”, Istituto per gli Studi di Politica Internazionale (ISPI) Working Papers, 2006, 6.

¹²⁵ The International Committee of the Red Cross, War & Law, Customary International Humanitarian Law. Available online at: <http://www.icrc.org/eng/war-and-law/treaties-customary-law/customary-law/index.jsp>

¹²⁶ Barber, 384.

humanitarian law reveals, out of the 161 rules of customary IHL 149 rules apply to internal armed conflict.¹²⁷

According to Monika Sandvik-Nylund, the First World War displayed a massive gap in the rules of war. Although *The Lieber Code* (1863) allowed for humanitarian considerations and *The Hague Conventions* (1899 and 1907) prohibited certain methods of warfare, there were hardly any regulations relating directly to the protection of the civilian population.¹²⁸ In the years following WWI, the International Committee of the Red Cross made a huge effort to resolve the situation by presenting several draft conventions regarding the protection of civilians. These were not commonly accepted before the outbreak of the Second World War.¹²⁹ Nevertheless, during the 1949 Diplomatic Conference in Geneva, four conventions were adopted to advance minimum standards of humanity and expressly protect those who do not actively take part in warfare.

The Fourth Geneva Convention is specifically concerned with the protection of civilian persons in time of war, especially those residing in subjugated areas. It has been considered a giant step forward in the protection of civilians, because it extended the principles of protection and respect for combatants to the civilian population.¹³⁰ All but one (Art. 3) of the provisions of *The Fourth Geneva Convention* apply to victims of conflicts of an international character. This gap was remedied by the adoption of two *Protocols Additional to The Geneva Conventions* in 1977; the first relating specifically to the protection of victims of international armed conflicts and the second to the protection of those involved in non-international armed conflicts.¹³¹ Accordingly, whilst *The Fourth Geneva Convention* and *Additional Protocol I* regulate the provision and protection of humanitarian aid in international armed conflicts,¹³² Article 3 common to *The Geneva Conventions*, *Additional Protocol II* and international customary law establish rules for the protection of humanitarian assistance and human rights in non-international armed conflicts.¹³³

Nowadays, *The Geneva Conventions* have been ratified by 194 nations and apply universally.¹³⁴ *Protocol I and II Additional to The Geneva Conventions* have not been ratified by all countries. However, the majority of provisions are part of customary law and therefore apply to all parties to a conflict.

Art. 3 common to the four *Geneva Conventions* has regularly been considered a mini-convention within the *Conventions*, because it briefly summarises the most essential rules. For

¹²⁷ The International Committee of the Red Cross, War & Law, Customary International Humanitarian Law.

¹²⁸ Sandvik-Nylund, 10-11.

¹²⁹ Sandvik-Nylund, 11-12.

¹³⁰ Sandvik-Nylund, 12.

¹³¹ Sandvik-Nylund, 13.

¹³² Barber, 381-382.

¹³³ Barber, 385.

¹³⁴ The International Committee of the Red Cross, War & Law, The Geneva Conventions of 1949 and their Additional Protocols, October 2010. Available online at: <http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>

instance, it stipulates that people who do not actively participate in the hostilities be treated humanely and will not be exposed to violence, taking of hostages, outrages upon human dignity and unjust trial.¹³⁵ Furthermore, it demands that respect and care be given to the wounded and sick, and it permits impartial humanitarian organisations such as the ICRC to offer their services to any of the parties to the conflict.¹³⁶ Finally, it requires parties to the conflict to strive to abide by all or part of *The Geneva Conventions* and claims that applying its provisions shall not have an effect on the legal status of the parties to the conflict.¹³⁷ Hence, the application of humanitarian rules will not wear down the sovereignty of a state, as the authority of the opposition does not have to be recognised by the *de jure* (lawful) government.¹³⁸

Because of its application to both international *and* non-international armed conflicts, Art. 3 common to *The Geneva Conventions* has often been regarded a groundbreaking article. Although Art. 3 does not explicitly characterise non-international armed conflict, international tribunals have ruled that Art. 3 applies ‘whenever there is protracted armed violence within the territory of a State between government forces and organized armed groups or between such groups.’¹³⁹ Additionally, Article 1 of *Additional Protocol II* categorises non-international armed conflict as a confrontation in the territory of a state that exceeds the level of intermittent violence or instability, but falls short of inter-state conflict.¹⁴⁰

2.3. International Human Rights Law

International human rights law complements international humanitarian law in that it specifically deals with people’s most intrinsic rights. In fact, it sets ‘the minimum standards to which individuals are entitled by virtue of their membership in humanity,’¹⁴¹ such as the right to life, health and human dignity. In contrast to international humanitarian law, international human rights law does not merely relate to situations of armed conflict but is applicable at all times.

IHRL is made up of multilateral treaties and customary law. *The UN Charter* (1945) has often been considered an inspiration to IHRL, because human rights became especially important after the Second World War. Nevertheless, although *The UN Charter* encouraged parties to respect human rights and fundamental freedoms without distinction of race, sex, language, or religion,¹⁴² references

¹³⁵ *The Geneva Conventions*, Geneva, 12 August 1949, Art. 3.

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ *The Law of Armed Conflict: Non-International Armed Conflict*. The International Committee of the Red Cross. June 2002, 5. Available online at: http://www.icrc.org/eng/assets/files/other/law10_final.pdf

¹³⁹ *Ibid.*

¹⁴⁰ *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, Geneva, 8 June 1977, Art. 1.

¹⁴¹ Terry, 17.

¹⁴² *The UN Charter*, San Francisco, June 1945, Chapter I, Article 1.3.

to human rights were scarce.¹⁴³ Subsequently, as Dimitrijevic points out 'there was not much substance in the commitments taken if one could not rely on some sources of non-conventional law.'¹⁴⁴ An example of such a source of non-conventional law is *The Universal Declaration of Human Rights*, which was drafted by the UN in 1947. These days, *The Universal Declaration of Human Rights* seems to have been accepted universally. As its provisions cannot be repudiated, it has established a universal standard of human rights and human dignity for all nations. In addition to some other important resolutions of the UN General Assembly, *The Universal Declaration of Human Rights* should therefore be regarded 'as a contribution to the formation of *opinio juris*[;] an indispensable contributing element to the creation of customary law.'¹⁴⁵

Given that conventions such as *The International Covenant on Civil and Political Rights* and *The International Covenant on Economic, Social, and Cultural Rights* have been ratified by the majority of countries and therefore seem universally accepted, international human rights law appears to be part of customary international law. Yet, Dimitrijevic states that the existence of customary norms relating to human rights is a hotly debated subject because 'states do not usually make claims on other states or protest violations that do not affect their nationals.'¹⁴⁶ He accurately points out that states are the main bearers of responsibility for enforcing human rights standards and that they will therefore not always actively encourage other states to comply with IHRL. However, he additionally demonstrates that the International Court of Justice has repeatedly placed human rights in the field of customary international law.¹⁴⁷ Besides Dimitrijevic, other scholars argue that human rights norms have become part of customary international law and are binding on all states.¹⁴⁸

2.4. Rules of IHL Applicable to Humanitarian Relief in Non-International Conflicts

Clearly, states and non-state parties ought to act in conformity with international humanitarian law and international human rights law. *The Geneva Conventions* and its *Additional Protocols* are non-reciprocal; abusing its rules and regulations does not give other parties *cart blanche* to disregard their obligations.¹⁴⁹ Hence, if aid to civilians has been manipulated by one party to a conflict, another party should nonetheless continue its efforts to provide and protect humanitarian assistance.¹⁵⁰ Yet, international practice demonstrates that reciprocity, mutual dependence on- and compliance with the law, is often an illusion. Moreover, one should bear in mind that humanitarian organisations are formally not obligated to apply the provisions of *The Geneva Conventions* and its *Additional*

¹⁴³ Only to be found in *The Charter's* Preamble, Art, 1.3 and Art. 55.c.

¹⁴⁴ Dimitrijevic, 7-8.

¹⁴⁵ Dimitrijevic, 8-9.

¹⁴⁶ Dimitrijevic, 7.

¹⁴⁷ Dimitrijevic, 29.

¹⁴⁸ Anthony D'Amato, "Human Rights as Part of Customary International Law: A Plea for Change of Paradigms", *Ga. J. Int'l & Comp. L.* 25 (1996): 32.

¹⁴⁹ Sandvik-Nylund, 16.

¹⁵⁰ Sandvik-Nylund, 45-46.

Protocols,¹⁵¹ because these are only binding on warring states and non-state parties present within that state.

Providing the bare necessities of life, such as medical assistance and supplies, drinking water, and food to the most vulnerable people in situations of armed conflict is integral to IHL.¹⁵² Once populations are deprived of these basics and further deprivations can no longer be avoided,¹⁵³ states and non-state parties to an armed conflict are obligated under international humanitarian law to do everything within their power to provide the humanitarian assistance and health care that is necessary for the survival of a civilian population. This necessitates that they allow others (e.g. humanitarian organisations and humanitarian personnel) to enter their territory and offer humanitarian relief when failing to do so themselves. Secondly, as states and non-state parties have the duty to protect people from serious violations of international law, they ought to protect those who do not participate in warfare. To this extent, protecting objects indispensable to people's survival, protecting humanitarian organisations and humanitarian personnel attempting to relieve the suffering of a population, and limiting weapons and tactics seems necessary. Nowadays, there is a lot of debate about states' legal obligation to provide aid, as the idea that states have certain obligations 'outside their own borders has started to gain more common acceptance.'¹⁵⁴ More specifically, Olivier de Schutter claims that 'the right to food imposes on all States obligations not only towards the persons living on their national territory, but also towards the populations of other States.'¹⁵⁵

Protocol II Additional to The Geneva Conventions exclusively deals with the protection of victims of non-international armed conflicts. With regard to the provision of humanitarian assistance and the protection of victims, Articles 9, 11, 13, 14, 17 and 18 of *Protocol II Additional to The Geneva Conventions* appear to apply. Firstly, Articles 9 and 11 declare that medical and religious personnel must be respected and protected as well as medical units and transports. Secondly, Art. 13 calls for the protection of civilians against the dangers arising from military operations, attacks, acts or threats that are primarily intended to increase terror, on the condition that these civilians do not directly participate in the hostilities.¹⁵⁶ Thirdly, Art. 14 covers the protection of objects indispensable to the survival of the civilian population in non-international armed conflict.¹⁵⁷ Hence, it strictly forbids the use of starvation as a weapon of war as well as any efforts 'to attack, destroy, remove or

¹⁵¹ Sandvik-Nylund, 50.

¹⁵² Kraemer, Bhattacharya, O Gostin, 1203.

¹⁵³ Terry, 17.

¹⁵⁴ Sabine C. Carey, Mark Gibney and Steven C. Poe, *The Politics of Human Rights: The Quest for Dignity*, Cambridge: Cambridge UP, 2010, 53.

¹⁵⁵ Olivier de Schutter, "The Right to Food", The Interim Report of the Special Rapporteur on the Right to Food, submitted to the UN General Assembly, 2008. In: *The Politics of Human Rights: The Quest for Dignity*, Ed. Sabine C. Carey, Cambridge: Cambridge UP, 2010, 54.

¹⁵⁶ *Additional Protocol II*, Art. 13.

¹⁵⁷ *Additional Protocol II*, Art. 14.

render useless for that purpose, objects indispensable to the survival of the civilian population such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works.¹⁵⁸ Fourthly, Art. 17 outlaws the forced displacement of the civilian population because of any reason related to the conflict, unless the security of civilians is at stake. In addition, it demands that all possible measures be undertaken to arrange 'satisfactory conditions of shelter, hygiene, health, safety and nutrition' in case there is no other option but displacement. Fifthly, Art. 18.1 of *Additional Protocol II* allows relief societies located in the territory of the High Contracting Party to provide assistance to the victims of armed conflict and determines that civilians may help to collect and care for the wounded, sick and shipwrecked.¹⁵⁹ Although humanitarian assistance cannot really be effective, when forced upon combatants, Art. 18.2 furthermore designates that impartial, neutral, and humanitarian relief actions be undertaken when civilians lack the necessities essential for survival, regardless of the consent of the parties to a conflict.¹⁶⁰ However, when a party actually agrees to humanitarian actions of such a character, they are correspondingly obligated to guarantee free passage for humanitarian consignments.¹⁶¹ Otherwise, the consent of the party concerned is in fact pointless.

In addition, under customary international humanitarian law, states and non-state parties have the duty to provide humanitarian relief to those who need it most desperately and to protect civilians and the objects essential for their survival. More specifically, customary law forbids the use of starvation of civilians as a method of warfare¹⁶² and prohibits 'attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population.'¹⁶³ Furthermore, the ICRC considers the duty to respect and protect humanitarian relief personnel and objects used for humanitarian relief operations,¹⁶⁴ and the duty to allow and facilitate the rapid and unimpeded passage of impartial humanitarian relief that is carried out without any adverse distinction,¹⁶⁵ as rules of customary international law which apply in all conflicts.¹⁶⁶ Finally, under customary international humanitarian law, states and non-state parties have the duty to guarantee civilians' access to relief assistance. They should therefore make certain that measures are taken to enable authorised humanitarian personnel to exercise their jobs.¹⁶⁷

¹⁵⁸ Ibid.

¹⁵⁹ *Additional Protocol II*, Art. 18.1.

¹⁶⁰ *Additional Protocol II*, Art. 18.2.

¹⁶¹ Sandvik-Nylund, 38.

¹⁶² Customary International Humanitarian Law, The International Committee of the Red Cross, Part III, Chapter 17, rule 53. Available online at: http://www.icrc.org/customary-ihl/eng/docs/v1_cha

¹⁶³ Customary IHL, Part III, Chapter 17, rule 54.

¹⁶⁴ Customary IHL, Part II, Chapter 8, rules 31 and 32.

¹⁶⁵ Customary IHL, Part III, Chapter 17, rule 55.

¹⁶⁶ Barber, 387.

¹⁶⁷ Customary IHL, Part III, Chapter 17, rule 56.

2.5. Rules of IHRL Applicable to Humanitarian Relief in Non-International Conflicts

International human rights law regulates the relationship between states and individuals. Whereas certain rights might temporarily be ignored in crisis situations, there are some intrinsic rights, such as the right to human dignity and life, that may never be disregarded. Accordingly, victims of armed conflict who lack access to the supplies and health care they need in order to stay alive and maintain their dignity are entitled to assistance. One's right to the latter is recorded in IHRL. Likewise, under international human rights law, individuals have the right of protection against serious violations of international law and humanitarian organisations have a right to protection when providing aid that is impartial in character.

Customary rules regarding individuals' right to assistance and protection, such as those present in *The Universal Declaration of Human Rights*, recall that 'everyone has the right to a standard of living adequate for the health and well-being of himself and of his family'¹⁶⁸ and that motherhood and childhood are to be given special care and assistance.¹⁶⁹ Moreover, according to Art. 3 of *The Universal Declaration of Human Rights* everyone has the right to life, liberty and security.¹⁷⁰

Numerous provisions of IHRL assign rights to individuals and duties to states. For instance, *The International Covenant on Economic, Social, and Cultural Rights* (ICESCR) reaffirms one's inherent right to life. It recognises a person's right to an adequate standard of living for himself and his family, including adequate food, clothing and housing.¹⁷¹ One's right to drinking water falls within the protection offered by Article 11 of the ICESCR, because it is essential in obtaining an adequate standard of living.¹⁷² In addition, Art. 11 urges state parties to the covenant to take account of one's right to be free from hunger and to take measures against the latter. Furthermore, Art. 12 of *The International Covenant on Economic, Social, and Cultural Rights* encourages state and non-state parties to take steps to meet victims' demands for humanitarian assistance and security, as it recalls a person's right to the enjoyment of the highest attainable standard of physical and mental health.¹⁷³ Additionally, *The International Covenant on Civil and Political Rights* (ICCPR) demands that the right to life be protected by law and that no person shall be arbitrarily deprived of his life.¹⁷⁴ The protection of this right encourages states to adopt positive measures to ensure humanitarian relief

¹⁶⁸ Including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

¹⁶⁹ *The Universal Declaration of Human Rights*, New York, December 1948, Art. 25.

¹⁷⁰ *The Universal Declaration of Human Rights*, Art. 3.

¹⁷¹ *The International Covenant on Economic, Social, and Cultural Rights*, December 1966, Art. 11.

¹⁷² Barber, 394-395.

¹⁷³ *The International Covenant on Economic, Social, and Cultural Rights*, Art. 12.

¹⁷⁴ *The International Covenant on Civil and Political Rights*, December 1966, Art. 6.1.

for those present in their territory or subject to their jurisdiction.¹⁷⁵ Likewise, *The African Charter on Human and Peoples' Rights (The African Charter)* protects the right to life. It emphasises human inviolability, by ordering that no human being may be deprived of the right to life because one is entitled to respect for one's life and the integrity of one's person.¹⁷⁶ Moreover, like *The International Covenant on Economic, Social, and Cultural Rights* it stipulates that everyone has the right to enjoy the highest attainable standard of physical and mental health and that parties of *The African Charter* should adopt measures to protect the health of their people and guarantee medical care.¹⁷⁷

2.6. Overlapping Bodies of Law

Scholars seem to concur that there is a considerable overlap between international humanitarian law and international human rights law. Above all, IHL and IHRL are complementary because they share a common ideal; protecting the dignity and integrity of a person.¹⁷⁸ Moreover, IHL protects the individual against states, states against states and individuals against individuals and IHRL protects the individual against states.¹⁷⁹ Furthermore, developments in international and national jurisprudence have shown that these bodies of law coincide on a range of subjects.

Firstly, one could argue that IHRL complements the protection provided by humanitarian law.¹⁸⁰ The International Court of Justice, the principle judicial organ of the UN, has established that protection given by IHRL does not cease to exist in wartime: 'human rights provisions continue to apply in times of armed conflict unless a party has lawfully derogated from them on the grounds of national emergency.'¹⁸¹ Accordingly, the application of human rights law to armed conflict cannot be contested.

Furthermore, the parallel application of IHL and IHRL has been represented in resolutions of the Security Council. The UNSC has regularly pressured parties to a conflict to fulfil their obligations; for instance, it has imposed sanctions on non-state armed groups for violating their obligations of IHL.¹⁸² Additionally, the Office of the High Commissioner for Human Rights provided assistance to governments and other entities to help implement human rights standards and fulfil their obligations with regard to the protection of human rights. In doing so, the UNSC and the Office of the High

¹⁷⁵ Barber, 392.

¹⁷⁶ *The African Charter on Human and Peoples' Rights*, Nairobi, June 1981, Art. 4.

¹⁷⁷ *The African Charter on Human and Peoples' Rights*, Art. 16.

¹⁷⁸ Cordula Droegge, "The Interplay Between IHL and IHRL in Situations of Armed Conflict", *Isr. L. Rev.* 40.2 (2007): 312.

¹⁷⁹ Sassòli, 345.

¹⁸⁰ Droegge, 310.

¹⁸¹ Barber, 391.

¹⁸² Cedric Ryngaert and Anneleen Van de Meulebroucke, "Enhancing and Enforcing Compliance with International Humanitarian Law by Non-State Armed Groups: An Inquiry into some Mechanisms", *Journal of Conflict & Security Law* 16.3 (2011): 465.

Commissioner for Human Rights have made a commendable effort to enhance compliance with both IHL and IHRL.

Moreover, Cordula Droege indicates that a number of international treaties and instruments, such as the 1989 *Convention on the Rights of the Child* and *The Rome Statute* of the International Criminal Court,¹⁸³ integrate both IHL and IHRL provisions.¹⁸⁴ For instance, Art. 6 of the *Convention on the Rights of the Child* draws on IHRL as it declares that every child has the right to life and health, and encourages state parties to ensure to the maximum extent possible for the survival and development of the child.¹⁸⁵ Then again, Art. 38 of the *Convention on the Rights of the Child* draws on IHL, as it orders states to respect and to ensure respect for rules of IHL which are relevant to the child, to take all feasible measures to ensure that children under the age of fifteen do not take part in the hostilities, to refrain from recruiting children under the age of fifteen, to take all possible measures to protect and care for children who are affected by war.¹⁸⁶ In addition, *The Rome Statute* draws on provisions of IHL and IHRL and enforces respect for international humanitarian law and international human rights law by defining specific violations as acts to be protected under international criminal law.

The provisions of *The Rome Statute* mostly apply to conflicts of an international character. Nonetheless, its jurisdiction over certain crimes reaches to internal armed conflicts and this has led to a very significant development in treaty law applicable to non-international armed conflict.¹⁸⁷ Although the articles of *The Rome Statute* that relate to the provision of humanitarian assistance and protection of civilians predominantly draw on IHL, crimes against humanity are mostly considered systematic and widespread violations of human rights. Anthony Cassimatis appears to identify IHL and IHRL in the court's jurisdiction, as he states that 'on the IHL side, the court's jurisdiction extends to war crimes in international and internal armed conflicts and crimes against humanity and genocide committed during armed conflict [and] on the IHRL side, both genocide and crimes against humanity do not depend on the existence of an armed conflict.'¹⁸⁸

Art. 8.2.c. (i and ii) of *The Rome Statute* classifies serious violations of Art. 3 common to the four *Geneva Conventions*, such as violence to life and person and outrages upon personal dignity, as war crimes. Furthermore, intentionally assaulting humanitarian personnel, buildings, installations, material, medical units or vehicles, using the distinctive emblems of *the Geneva Conventions* in

¹⁸³ As well as The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict of 2000, The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law and most recently The Draft Convention on the Rights of Persons with Disabilities.

¹⁸⁴ Droege, 317.

¹⁸⁵ *The Convention on the Rights of the Child*, November 1989, Art. 6.

¹⁸⁶ *The Convention on the Rights of the Child*, Art. 38.

¹⁸⁷ Boelaert-Suominen, 88.

¹⁸⁸ Anthony E. Cassimatis, "International Humanitarian Law, International Human Rights Law and Fragmentation of International Law". *International and Comparative Law Quarterly* 56 (2007): 631.

conformity with international law, constitutes a war crime in non-international armed conflicts.¹⁸⁹ Applicable to non-international conflicts is also Art. 8.2.e (iii) of *The Rome Statute*, which states that ‘intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict’¹⁹⁰ is a war crime.

Oddly, *The Rome Statute* claims that starvation is only a war crime when committed in international armed conflict. Yet, inclusion of the latter in *the Rome Statute* of the ICC reveals that it holds a strong position in international law.¹⁹¹ Moreover, it may be argued that the starvation of civilians in internal armed conflict constitutes a war crime under customary international law.¹⁹² Furthermore, Art. 7.1.d of *The Rome Statute* establishes that the deportation or forcible transfer of a population is a crime against humanity.¹⁹³ Besides, Jelena Pejic contends that both in international and non-international armed conflicts, forcibly transferring civilians¹⁹⁴ is a war crime under *The Rome Statute*.

Kraemer, Bhattacharya & O Gostin argue that wilfully inflicting widespread harm upon civilians by means of blocking humanitarian assistance to those in need or creating humanitarian emergencies constitutes a crime against humanity.¹⁹⁵ More specifically, as Art. 7.1.b of *The Rome Statute* points out, extermination is a crime against humanity ‘when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’¹⁹⁶ and when it includes ‘the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population.’¹⁹⁷ However, establishing whether all parties to the conflict knew of the attack and determining whether the manipulation of humanitarian assistance was primarily intended to destroy a certain population proves difficult, as this can hardly be measured by any means.

Due to the expanding reach of customary law, provisions of international humanitarian law are increasingly applicable to non-international armed conflicts. Whether or not the denial of humanitarian assistance eventually leads to starvation or consequential death of civilian populations, customary law seems to oblige states and non-state parties to consent to and facilitate humanitarian

¹⁸⁹ *The Rome Statute*, Rome, July 1998, Art. 8.2.e. (ii).

¹⁹⁰ *The Rome Statute*, Art. 8.2.e. (iii).

¹⁹¹ Sandvik-Nylund, 27.

¹⁹² Jelena Pejic, “The Right to Food in Situations of Armed Conflict: The Legal Framework”, *International Review of the Red Cross* 83.844 (2001): 1100.

¹⁹³ *The Rome Statute*, Article 7.1.d.

¹⁹⁴ Pejic, 1101.

¹⁹⁵ Kraemer, Bhattacharya & O Gostin, 1204.

¹⁹⁶ *The Rome Statute*, Article 7.1.b.

¹⁹⁷ *The Rome Statute*, Article 7.1.b.

assistance, in both international and non-international armed conflicts.¹⁹⁸ This obligation¹⁹⁹ has been recognised by customary IHL and international human rights law. States should therefore agree to, and smooth the progress of humanitarian assistance, because their sovereignty indirectly encompasses the responsibility to protect and to strengthen the security of the civilian population.²⁰⁰

2.7. Enforcers of Respect for IHL and IHRL

The United Nations appears to be the main enforcer of international humanitarian law and international human rights law. It predominantly strengthens international law through the General Assembly, the Security Council, and the Office of the High Commissioner for Human Rights. These bodies have repeatedly restated the importance of applying- and complying with IHL and IHRL and called for the protection of human rights in situations of armed conflict.

One could say that the General Assembly of the UN has contributed considerably to the enforcement of the provision of humanitarian assistance.²⁰¹ General Assembly *Resolutions 43/131 and 45/100* recall that one of the most important principles of the UN is achieving ‘international cooperation in solving international problems of an economic, social, cultural or humanitarian character.’²⁰² Despite the fact that these UN resolutions refer to victims of natural disasters as well as to victims of similar emergency situations, leaving victims without humanitarian assistance genuinely appears to be regarded as inhumane. *Resolution 45/100* therefore demands that the international community of states responds effectively and promptly to these victims’ needs and reaffirms the necessity of close cooperation between intergovernmental, governmental and non-governmental organisations, relevant offices of the UN and any ad-hoc mechanisms set up by the Secretary-General.²⁰³ It furthermore urges states to facilitate the transportation of humanitarian assistance.

Similarly, as emergency situations have regularly been an impediment to the coordination of humanitarian relief, *Resolution 46/182* calls upon all parties to further strengthen the collective efforts of the international community of states in providing, protecting and coordinating humanitarian aid. To this extent, a set of guiding principles was adopted in December 1991,²⁰⁴ which provided a detailed framework for emergency relief. Last year, the twentieth anniversary of *Resolution 46/182* led to the creation of a guide that summarises the key policy decisions of the General Assembly and the Economic and Social Council with regard to humanitarian affairs.²⁰⁵

¹⁹⁸ Barber, 391.

¹⁹⁹ Hence, states only have a duty to consent to assistance and facilitate assistance; there is no legal obligation to provide aid yet, but the latter has certainly been challenged over the last couple of years.

²⁰⁰ Barber, 397.

²⁰¹ Stoffels, 532

²⁰² *GA/RES/43/131* (1988) and *GA/RES/45/100* (1990), New York: United Nations General Assembly.

²⁰³ *GA/RES/45/100* (1990).

²⁰⁴ *GA/RES/46/182* (1991), New York: United Nations General Assembly.

²⁰⁵ Reference Guide on the Normative Developments on the Coordination of Humanitarian Assistance

Besides, the adoption of *Resolution 46/182*, the General Assembly established the Department of Humanitarian Affairs (DHA) in 1991. Amongst other things, this department negotiated access for aid organisations and humanitarian supplies and enhanced the coordination of aid with political and peacekeeping initiatives.²⁰⁶

The UN has not only called for observance of international law through the General Assembly, but also through the Security Council. Clearly, the prolongation of an internal armed conflict and the continuation of flagrant breaches of international law can have international repercussions. When international peace and security are jeopardised, the UNSC can take several steps to ensure respect for the law. It has access to peaceful and military means to encourage parties to a conflict to put an end to the hostilities and respect the law. Chapter VI of *The UN Charter* deals with the pacific settlement of disputes. It orders parties to any dispute that is expected to endanger the continuation of international peace and security to '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.'²⁰⁷ The UN Security Council encourages states to take on such solutions. Nonetheless, when parties to a conflict fail to end their dispute and human rights continue to be violated, action with respect to threats to peace, breaches of peace, and acts of aggression is permitted under Chapter VII. These threats to peace go beyond armed attack and usually entail extensive suffering and crimes against humanity.²⁰⁸ In these cases, Art. 41 of *The UN Charter* allows The Security Council to use measures not involving the use of armed force to give effect to its decisions, such as '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.'²⁰⁹ Moreover, when these measures are inadequate, Art. 42 stipulates that action by air, sea, or land forces may be used in order to preserve or reinstate international peace and security.²¹⁰

2.8. Difficulties of Enforcing Respect for the Law

Notwithstanding attempts of the primary enforcers of IHL and IHRL, enforcing respect for the law in internal armed conflicts remains a problematic issue. As mentioned before, determining under which circumstances and to what extent rules regulating non-international conflicts apply, is a huge challenge due to the complexity of classifying the nature of a conflict.²¹¹ In view hereof, Carrillo-

in the General Assembly and the Economic and Social Council Since the Adoption of *General Assembly Resolution 46/182*. Office for the Coordination of Humanitarian Affairs, 2011.

²⁰⁶ Jan Eliasson, "The Challenges of Humanitarian Action", In: *A Framework for Survival*, Ed. K.M. Cahill, New York & London: Routledge, 1999, 189.

²⁰⁷ *The UN Charter*, Chapter VI, Article 33.1.

²⁰⁸ Kraemer and Bhattacharya, 1204.

²⁰⁹ *The UN Charter*, Chapter VII, Article 41.

²¹⁰ *The UN Charter*, Chapter VII, Article 42.

²¹¹ Arturo Carrillo-Suárez, "Hors de Logique: Contemporary Issues in International Humanitarian Law as Applied to Internal Armed Conflict", *Am. U. Int'l L. Rev.* 15.1 (1999): 8.

Suárez argues that Art. 3 and *Additional Protocol II* do not suffice when it comes to enforcing IHL; parties to- and characteristics of contemporary non-international armed conflicts vary to such a great extent,²¹² that minimum humanitarian standards should be further developed.

Secondly, with regard to the provision of humanitarian assistance, effective implementation of Art. 3 common to *The Geneva Conventions* and the provisions of *Additional Protocol II* often does not occur on a national level because states are reluctant to recognise the legal consequences of non-international armed conflicts. Moreover, they strive to hold on to principles of sovereignty and non-intervention.²¹³

Thirdly, because the right to humanitarian relief has not yet become an independent right, only a minimum of protection is currently provided in situations of armed conflict.²¹⁴ Consequently, Sandvik-Nylund emphasises that humanitarian assistance should be recognised as an extension to the rights to life, food, drinking water and health in order to enhance protection.²¹⁵

Fourthly, some states and non-state parties deliberately refuse to recognise the applicability of IHL and IHRL²¹⁶ or simply ignore the law. The likelihood that these parties will engage in a constructive dialogue on respect for the law is negligible. Furthermore, some parties to a conflict lack the political will to comply with the provisions of IHL. Moreover, the fact that several territories of conflict cannot be accessed because of threats to security, neither facilitates the observance of the law, nor contributes to opening up any dialogue whatsoever.²¹⁷

Fifthly, in the territory of a conflict, domestic law applies and often offers 'additional protections and limits on behaviour, and may provide a framework of safeguards that have to be respected in situations of non-international armed conflict.'²¹⁸ Nevertheless, in the unique context of internal armed conflicts in which different actors jointly operate, it is as difficult to measure compliance with domestic law as it is to measure conformity with international law. Ideally, states take over the tasks of the UN and regional bodies, and become the main legislators and enforcers of the law. However, this would only have a likelihood of success if states were to agree that it is in their interest to comply with the law. Although this appears to be a time-consuming objective, several recommendations have been made to promote compliance with- and increase respect for international humanitarian law and international human rights law in situations of internal armed conflicts. For instance, Michelle Mack considers it necessary that all parties to a conflict develop a positive attitude towards the law, because states are more likely to respect the law when they

²¹² Carrillo-Suárez, 7.

²¹³ Carrillo-Suárez, 6.

²¹⁴ Carrillo-Suárez, 6.

²¹⁵ Sandvik-Nylund, 82.

²¹⁶ Michelle Mack, "Increasing Respect for International Humanitarian Law in Non-international Armed Conflicts", *International Committee of the Red Cross*, Geneva, 2008, 11.

²¹⁷ Mack, 12.

²¹⁸ Mack, 10.

exhibit a positive attitude. Merely informing parties about the law and the obligations it entails, evidently does not guarantee compliance.²¹⁹ The International Committee of the Red Cross has contributed greatly to encouraging parties to internal armed conflicts to act in conformity with IHL and IHRL. It has used a number of legal tools to increase respect for international law, such as special agreements, unilateral declarations, inclusion of humanitarian law in codes of conduct for armed groups, inclusion of humanitarian law in ceasefire or peace agreements, and grants of amnesty for mere participation in hostilities.²²⁰ Despite the efforts of the international community of states, IHL and IHRL are continuously violated and accountability for these violations is rarely realised.

2.9. The International Community of States

When states fail to fulfil their duties with regard to supplying the minimum standards of protection to which civilians are entitled in situations of armed conflict, the international community of states often becomes involved to take viable measures to ensure the provision of humanitarian aid and protect the life, health and dignity of individuals in non-international armed conflicts. The international community of states endeavours to provide humanitarian assistance in a nonviolent manner²²¹ and in accordance with the principles of humanity, impartiality, neutrality, distinction, proportionality and necessity. Problems often arise when these principles are applied to humanitarian relief. Although the ICRC puts forth that the humanitarian character of assistance rules out any hint of intrusion or interference,²²² the latter is contentious when aid provided during conflict does not remain separate from the conflict.²²³

Although external humanitarian assistance can only be refused legitimately when it fails to fulfil the criteria of being humanitarian, impartial, and non-discriminatory,²²⁴ parties to a conflict have regularly refused international humanitarian assistance that met these principles. In case aid is provided nonetheless, it usually does not contribute to making peace. Conflicts might even intensify, because parties use the assistance of the international community of states to protract their wars.²²⁵ When humanitarian assistance is exploited directly as an instrument of war, or is perhaps less overtly misused to aggravate the causes of insecurity and war, the provision of aid may unintentionally fuel the conflict.²²⁶ Although a considerable number of lives could be saved with international aid supplies, the international community of states time and again faces complicated operational dilemmas; should they continue to provide aid with the knowledge that substantial proportions will

²¹⁹ Mack, 13.

²²⁰ Mack, 16.

²²¹ Terry 19-24 and Sandvik-Nylund 13-16.

²²² Sandvik-Nylund, 42.

²²³ Mary B. Anderson, *Do No Harm: How Aid Can Support Peace – Or War*. Boulder/London: Lynne Rienner Publishers, 1999, 1.

²²⁴ Sandvik-Nylund, 35.

²²⁵ Stoffels, 515.

²²⁶ Prendergast and Scott, 3.

never reach civilian populations or should they turn their backs and avoid complicity to serious violations of international law.

Manipulating and withholding humanitarian aid to a population clearly constitutes a violation of international human rights, a war crime and a potential crime against humanity.²²⁷ However, it does not automatically give the international community of states a license to intervene and use armed force to compel states to accept humanitarian assistance,²²⁸ because this undermines the very idea of humanitarian action and impartial relief to victims of armed conflict.²²⁹ Then again, states' refusal to accept humanitarian aid and protect the life and human dignity of civilians is illegitimate and this can neither be ignored by the international community of states. Many scholars have looked into states' obligation under public international law to provide humanitarian assistance to civilians.²³⁰ It is commonly accepted that states should take care of- and protect their own people. Nonetheless, they often fail to provide and protect assistance. One could argue that the international community has a certain responsibility to respond to outrageous shortages of food, water and health care. Moreover, when a state fails to protect its own people, more interesting than the question of the state's moral obligation to provide assistance is the question of the state's legal duty to act upon such failure. Proponents of the so-called principle of Responsibility to Protect (R2P) believe that 'where a population is suffering serious harm, as a result of a internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.'²³¹ They will probably argue that under these circumstances, the duty to protect entails a duty to assist. Nonetheless, whether states and non-state parties are in fact legally accountable for their inaction when they decide not to offer assistance remains a controversial issue.

Accessible mechanisms to ensure the protection and provision of humanitarian aid, as well as compliance with international humanitarian law and international human rights law, appear to fall short. Individual accountability for impeding the access of a civilian population to humanitarian assistance is rarely realised nowadays, as perpetrators who use this martial weapon are neither easily arrested nor prosecuted. Moreover, third party accountability issues arise when the international community of states engages in internal conflicts, because of a lack of clarity regarding the accountability of international actors under international humanitarian law.

Currently, states seem to enjoy an exemption from legal accountability with respect to the use of force. The creation of the ICC and prior establishment of the ad hoc tribunals for the former

²²⁷ Kraemer, Bhattacharya & O Gostin, 1203.

²²⁸ Stoffels, 538.

²²⁹ Pfanner, 170.

²³⁰ Sandvik-Nylund, 2.

²³¹ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, December 2001, Synopsis, xi.

Yugoslavia (ICTY) and Rwanda (ICTR) have certainly brought about new developments in international criminalisation of atrocities carried out in internal conflicts.²³² However, in order to enhance individual accountability for obstructing assistance essential for the survival of a civilian population and hampering the legal protection of victims of armed conflict, legal and non-legal tools should clearly be developed more extensively.

2.10. Protection and Assistance

This chapter has endeavoured to display the quantity of existing rules and regulations that are applicable to the provision of humanitarian assistance and protection of human rights in situations of non-international armed conflict. The right to humanitarian aid, an acceptable standard of living, protection etc. and the duty to protect and accommodate victims of armed conflict with assistance etc. mostly hinge on protection and assistance.

Two individual rights and two obligations of states and non-state entities could be placed under the umbrella of protection. Those who do not participate in warfare have a right to be protected against serious violations of international law (1). Additionally, medical, religious and humanitarian personnel providing aid that is impartial in character, are entitled to protection and freedom of movement to conduct humanitarian operations (2). Accordingly, obstructing their vehicles, medical units, equipment etc. is prohibited.²³³ In order to guarantee the protection of victims of armed conflict and those attempting to relieve their suffering, states and non-state parties ought to look after objects indispensable to people's survival and avoid the use of starvation of civilians at all costs (3).²³⁴ Finally, to protect civilians not partaking in warfare, states have the duty to avoid displacement (4).²³⁵ In case there is no other option but displacement, they should ensure that objects indispensable to the survival of those internally displaced are protected. The first diagram visualises which rights and duties relate to protection and which rules and principles order compliance with IHL and IHRL on these points.

One individual right and two obligations of states and non-state entities could be put under the umbrella of assistance. Victims of armed conflict who lack access to the supplies and health care they need in order to stay alive and maintain their dignity have a right to assistance (5). Accordingly, states and non-state parties to a conflict have the duty to provide the humanitarian assistance and health care that is necessary for the survival of the civilian population within its territory (6). This

²³² Carrillo-Suárez, 4.

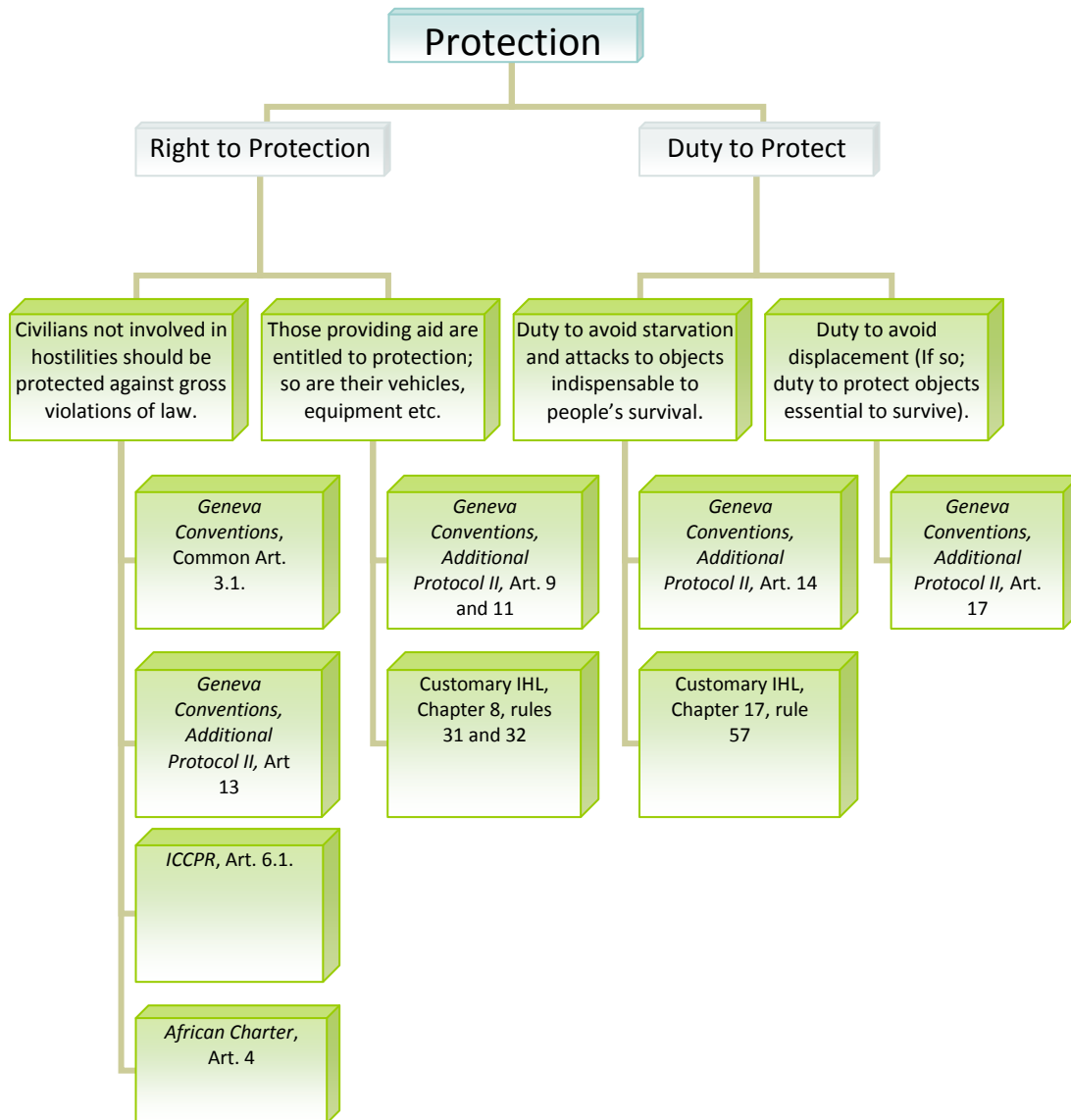
²³³ This is not only a violation of IHL; it constitutes a war crime under international criminal law.

²³⁴ The use of starvation is not merely a violation of IHL; it is commonly accepted as a war crime under customary international law. Moreover, one could even claim that it is a crime against humanity under international criminal law, when committed as part of a widespread or systematic attack directed against civilians.

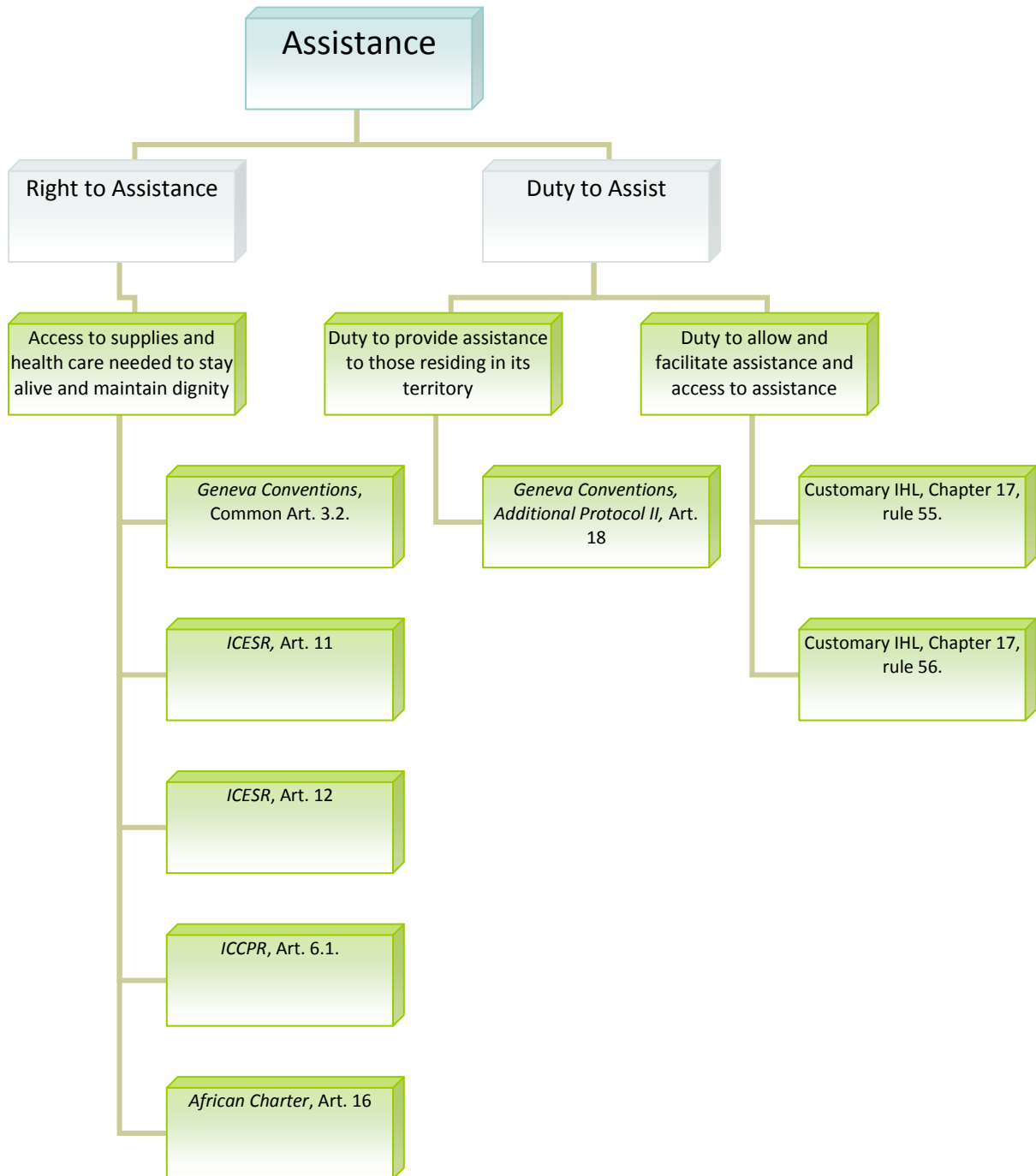
²³⁵ Forcible transfer/displacement is not only considered a violation of IHL; it constitutes a war crime and crime against humanity under international criminal law.

means that when they fail to provide such aid by themselves, they should allow others to enter their territory to guarantee assistance to civilians suffering undue hardship (7). The second diagram visualises which rights and duties relate to assistance and which laws and regulations govern the latter.

2.10.1. Diagram 1



2.10.2. Diagram 2



Chapter 3: The Contrast Between Rules and Practice

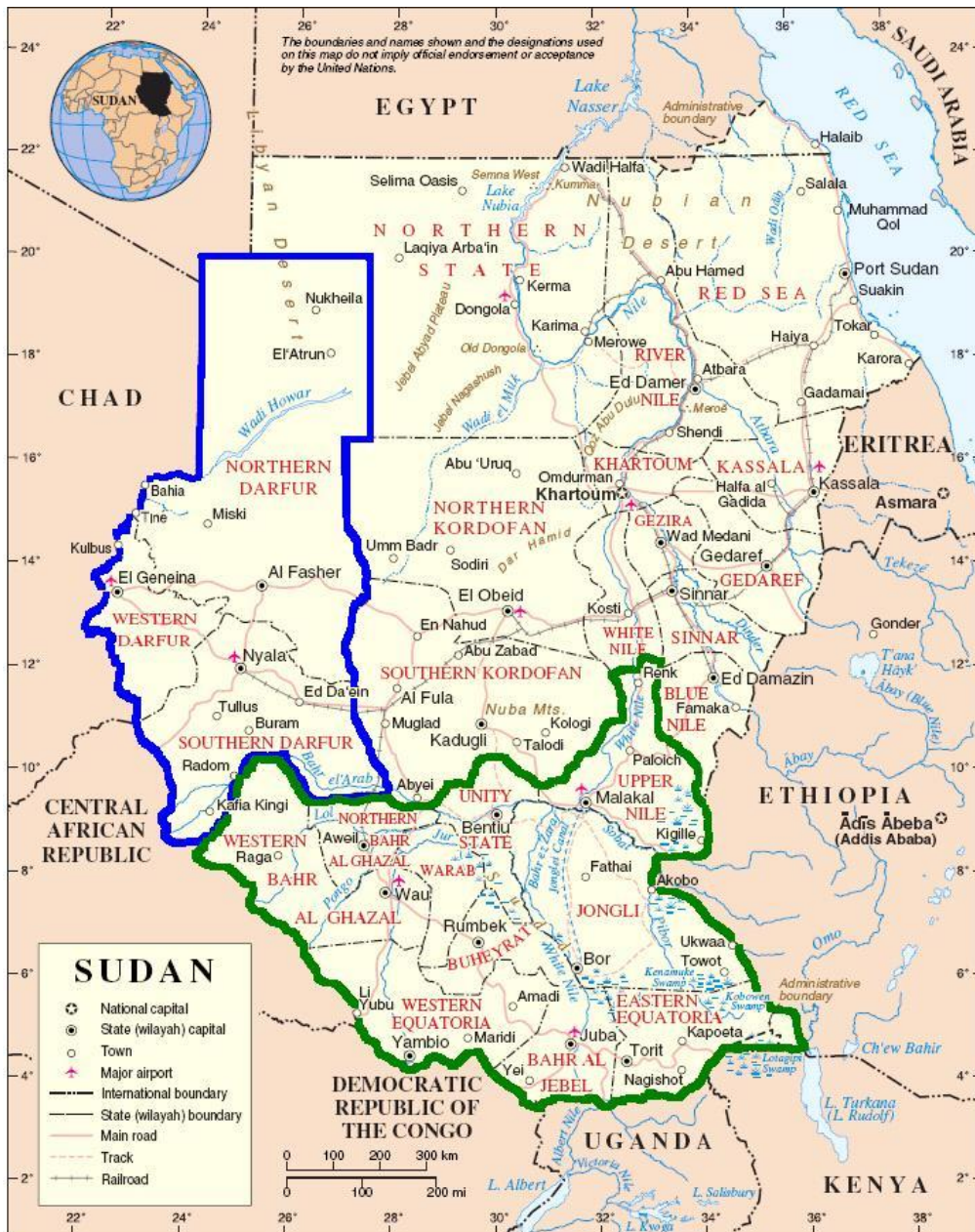
Recommendations regarding the provision and protection of humanitarian aid have regularly been given and the previous chapter demonstrates that there are many rules in respect of individuals' right to assistance and protection, and states' duty to provide and facilitate humanitarian relief. Nonetheless, there seems to be little compliance with the law in internal armed conflicts. Flagrant breaches of international humanitarian law and international human rights law are commonplace. Moreover, the contrast between rules and practice with regard to the use of humanitarian assistance as a weapon of war seems to be huge.

In order to emphasise the necessity of bridging the gap between what is agreed on in international discourse, and how this should be applied in practice, this chapter will look into four case studies. More specifically, it will analyse which rules and regulations have been broken in respect of the provision of humanitarian assistance and protection of human rights in non-international armed conflicts in Sudan, Ethiopia, Somalia and Rwanda. This analysis will primarily be completed by using the criteria I established in paragraph 2.10. of the previous chapter:

- (1) civilians' right to protection,
- (2) humanitarians' right to protection
- (3) the duty to avoid starvation and attacks to civilian objects essential for survival
- (4) the duty to avoid displacement
- (5) civilians' right to access to aid
- (6) the duty to provide aid to those in its territory
- (7) the duty to facilitate assistance and access to assistance.

Furthermore, this chapter will attempt to identify why the practice turned out different. Through the aforementioned case studies, it will address issues pertaining to accountability and assess to what extent parties to internal conflict can be held accountable for obstructing aid. To simplify matters, it does not incorporate the backgrounds, main causes and consequences of non-international armed conflicts in Sudan, Ethiopia, Somalia and Rwanda but will merely give a brief introduction into these environments to demonstrate why aid delivery is challenging and complex.

3.1. Sudan



3.1.1. Conflict History

Sudan reached independence in 1956. Ever since, it has virtually been in a continuous state of conflict. This chapter takes into account the conflict between the Arab north, which is mostly inhabited by Muslims, and the Christian, mostly African south, up to the point of South-Sudan's independence in July 2011.²³⁶ Moreover, it incorporates the inter-ethnic conflict taking place in Darfur. Both the north-south conflict and the conflict in Darfur are in this thesis regarded as non-

²³⁶ South-Sudan reached independence in 2011; therefore, the unrest we are currently witnessing around the Heglig oil region would classify as an international conflict between Sudan and South-Sudan.

international armed conflicts, although the latter involves certain elements that could support its classification as an international conflict.²³⁷

In 1983, Sudan People's Liberation Movement (SPLM) and Sudan People's Liberation Army (SPLA) aimed to set free the whole of Sudan from northern rule in order to redefine power relations.²³⁸ However, war continued unabated and initiatives to establish peace between the SPLM/A (foremost rebel movement in southern Sudan) and the authorities in Khartoum came to a stand-still when the National Islamic Front (NIF) led a coup in June 1989.²³⁹ Through this military coup, Omar Al-Bashir, leader of the NIF, prevented the approval of a bill suspending sharia law. Subsequently, the NIF outlawed opposition parties, endeavoured to Islamise the judicial system, and boosted the war between the north and south by proclaiming jihad against the Christian, mostly African south.²⁴⁰ Since Al-Bashir, who currently presides over Sudan, and the NIF have come to power, political and military organisations from all over the country have joined the SPLM/A in opposing the government.²⁴¹

Between 1994 and 2001 several negotiations between the government (and its affiliated militias) and the SPLM/A (and its allied militias) took place and various regional and international peace initiatives were undertaken to bring peace.²⁴² Nonetheless, a specific agreement was only reached in Kenya in 2002, when the parties signed *The Machakos Protocol*. Amongst other things, the latter ordered a self-determination referendum in the south and maintained sharia law in the north. Moreover, the parties agreed to carry on the discussion about power sharing, wealth sharing and human rights.²⁴³

In June 2004, the UN Security Council welcomed the establishment of a political mission, the United Nations Advance Mission in the Sudan (UNAMIS), to facilitate communication between the parties concerned, to urge the parties to sign a comprehensive peace agreement and to set up preparations for a peace support operation.²⁴⁴ Officially, Sudan's north-south civil war came to an end in January 2005, when this *Comprehensive Peace Agreement (CPA)* was signed. Nevertheless, whilst the CPA integrated the National Congress Party (NCP; the new name of the NIF) and the

²³⁷ Barber, 382.

²³⁸ Sharif Harir, "Recycling the Past in the Sudan", In: *Short-Cut to Decay: The Case of the Sudan*, Eds. Sharif Harir and Terje Tvedt, Uppsala: Nordiska Afrikainstitutet, 1994, 12.

²³⁹ International Crisis Group: Working to Prevent Conflict Worldwide, Key Issues, Research Resources, Conflict Histories, Sudan Conflict History, Available online at: <http://www.crisisgroup.org/en/key-issues/research-resources/conflict-histories/sudan.aspx>

²⁴⁰ Ibid.

²⁴¹ *God, Oil and Country: Changing the Logic of War in Sudan*, International Crisis Group Africa Report N°39, Brussels, 28 January 2002, XI.

²⁴² Such as those monitored by the East African regional body; the Inter-Governmental Authority on Development (IGAD).

²⁴³ "United Nations Mission in the Sudan", United Nations Website, Available online at: <http://www.un.org/en/peacekeeping/missions/unmis/background.shtml>

²⁴⁴ S/RES/1547 (2004), New York: United Nations Security Council.

SPLM/A into a Government of National Unity (GNU) and included agreements on outstanding issues, ethnic-religious conflicts remained rife.²⁴⁵ In October 2006, a new constitution was endorsed and a new government was appointed, merely because of a lack of political will within the National Congress Party (NCP).²⁴⁶ Despite its abundance of resources, the NCP appeared unwilling to innovate and develop ways to put an end to the civil war.²⁴⁷ Although national elections and the self-determination referendum were postponed repetitively, Southern Sudan reached independence in July 2011. Needless to say, hostilities and instability still have not ceased to exist.

After years of protracted fighting over shortages of resources, the situation in Darfur, a province in Western Sudan, deteriorated substantially in 2003. Rebels of the SLM/A (similarly named but slightly different from the SPLM/A) and the Justice and Equality Movement (JEM) attacked a government force and accused the authorities in Khartoum of favouring Arabs and tyrannising black Africans.²⁴⁸ Depending mostly on the Arab Janjaweed militia when using armed force in response, government forces subsequently embarked on an ethnic cleansing campaign of African tribes.²⁴⁹ Meanwhile, groups splintered, inter-rebel fighting increased and the government lost control over the multitude of militias.

As the situation escalated, the UN Security Council decided to expand the UNAMIS mandate to Darfur in July 2004. The African Union mostly mediated talks on Darfur and their leadership and engagement was supported by the UNSC. The Security Council determined that the situation in Darfur represented a threat to international peace and security and to stability in the region, and demanded (under Chapter VII of *The UN Charter*) that necessary measures be taken to reach a political agreement and put an end to serious violations of human rights and IHL.²⁵⁰ As thousands of civilians did not have access to the minimum necessities of life and a humanitarian catastrophe was unfolding in Darfur, an enormous international relief effort was simultaneously launched.

The conflict in Darfur did not end after the *CPA* had been signed. To enforce the implementation of the *CPA*, the UNSC established the UNMIS in March 2005. Amongst other things the mandate of UNMIS included support for implementation of the *CPA*, facilitation and coordination of humanitarian assistance, and the return of refugees and internally displaced, and contribution to

²⁴⁵ International Crisis Group: Working to Prevent Conflict Worldwide, Key Issues, Research Resources, Conflict Histories, Sudan Conflict History.

²⁴⁶ *Ibid.*

²⁴⁷ Dijkzeul, 43.

²⁴⁸ International Crisis Group: Working to Prevent Conflict Worldwide, Key Issues, Research Resources, Conflict Histories, Sudan Conflict History.

²⁴⁹ *Ibid.*

²⁵⁰ *S/RES/1556* (2004), New York: United Nations Security Council.

international efforts to protect human rights in Sudan.²⁵¹ During that same month, the Security Council referred the Darfur situation to the International Criminal Court in The Hague.²⁵²

In May 2006, the *Darfur Peace Agreement (DPA)* was finally signed. Yet, both the *CPA* and *DPA* were frequently undermined due to the absence of several parties to the conflict and inflexibility of the NCP.²⁵³ In the following years, the UNMIS continued its mission and the AU and UN joined forces by means of a joint mission (UNAMID) in Darfur. Neither these, nor recent UN peacekeeping operations in Sudan that were deployed by the Security Council to Sudan (UNISFA) and South-Sudan (UNMISS) following South Sudan's independence in 2011, have been able to truly consolidate peace.²⁵⁴

3.1.2. Violations Under the Umbrella of Protection

Sudan is a party to *The Geneva Conventions and Protocols I and II Additional to The Geneva Conventions* and therefore bound by these treaties. Furthermore, it has signed and ratified *The International Covenant on Civil and Political Rights* and *The International Covenant on Economic, Social, and Cultural Rights* and like all African states, it is a party to *The African Charter on Human and Peoples' Rights*. Moreover, as a member state of the United Nations, it agreed to accept and carry out the decisions of the Security Council. However, Sudan is not a state party to *The Rome Statute of the International Criminal Court in the Hague*; it signed *The Rome Statute* but did not ratify it. Therefore, the ICC could not exercise jurisdiction over crimes committed in Sudan or by a national of Sudan until the UN Security Council referred the situation to the Court and ordered the investigation of alleged crimes. In March 2005, the situation in Darfur was referred to the ICC. Since its referral, Sudan has often been encouraged to ratify the *Statute* and cooperate more actively to ending impunity. However, as the decision of the UNSC triggered considerable anger from Sudan, it has not yet done so.

3.1.2.1. Civilians' Right to Protection

In the post-Cold War era, several rules of IHL and IHRL relating to the protection of civilians and civilian objects have been disregarded in Sudan. The principles of common Art. 3 have been violated on both sides; war crimes have been committed by government forces as well as by SPLM/A forces. Aid has not exclusively been denied and manipulated by the Sudanese government; these policies and practices have been used by the SPLM/A in a similar manner. Whilst the government can be held responsible for indiscriminately attacking civilian populations from the air, applying starvation as a

²⁵¹ *S/RES/1590* (2005), New York: United Nations Security Council.

²⁵² *S/RES/1593* (2005), New York: United Nations Security Council.

²⁵³ *Sudan: Preventing Implosion*, International Crisis Group Africa Report N°68, Nairobi/Brussels, 17 December 2009, 1.

²⁵⁴ "United Nations Mission in the Sudan", United Nations Website.

weapon of war, displacing civilians and indirectly supporting the slave trade, the SPLA and its allies are to blame for attacking civilians, blocking relief convoys and recruiting (child) soldiers against their will.²⁵⁵ Hence civilians' right to protection against serious violations of international law, as prescribed by both IHL and IHRL, has neither been respected by government forces nor by SPLM/A forces. In so doing, Sudan has disregarded its duties and neglected fundamental rights of those who do not participate directly in warfare.

Security Council *Resolution 1556* recalled that the government of Sudan carries the primary responsibility to respect human rights, uphold law and order, protect the people within its territory and ensure that all parties respect international humanitarian law.²⁵⁶ Strangely, notwithstanding many precedents 'there has never been a UN Security Council Resolution condemning or sanctioning the government of Sudan for persistent breaches of international law,²⁵⁷ and peace agreements. Whilst the government blocked humanitarian relief, attempted to depopulate the areas around the oilfields, and suspended relief flights undertaken by the UN-led Operation Lifeline Sudan (OLS), it prioritised military objectives and put the lives of many civilians at stake. Consequently, it neglected war victims' right to protection against serious violations of human rights and infringed IHL, IHRL as well as Sudan-related agreements.²⁵⁸

3.1.2.2. Humanitarians' Right to Protection

Those attempting in a neutral manner to relieve the suffering of victims of armed conflict are entitled to protection. However, humanitarians' work has become exponentially more difficult in Sudan due to the splintering of groups, clashes that evolved between rival factions of the SPLM/A and their banditry on the roads.²⁵⁹

In order to prevent the exploitation of humanitarian aid, the Sudanese government passed several laws regulating non-governmental organisations. Nonetheless, humanitarian personnel is increasingly threatened, harassed and intimidated by both sides to the conflict. Hence, 'there is increasing harassment, arbitrary detentions, and intimidation of aid workers by government officials, and arbitrary administrative regulations are affecting the humanitarian activities of many agencies working in Darfur, even in areas that are secure.'²⁶⁰ Additionally, non-state parties to the conflict in Darfur continue to loot relief supplies and target aid workers to such a degree that certain roads and areas have become no-go-areas for humanitarian agencies.²⁶¹

²⁵⁵ *God, Oil and Country: Changing the Logic of War in Sudan*, XI-XII.

²⁵⁶ *S/RES/1556* (2004), New York: United Nations Security Council.

²⁵⁷ *Ending Starvation As a Weapon of War in Sudan*, 12.

²⁵⁸ *Ending Starvation As a Weapon of War in Sudan*, 4.

²⁵⁹ *Darfur: Humanitarian Aid under Siege*, Human Rights Watch Report 1, March 2006, 14.

²⁶⁰ *Darfur: Humanitarian Aid under Siege*, 2.

²⁶¹ *Darfur: Humanitarian Aid under Siege*, 2 and 7.

Impunity for these threats, harassments and attacks on humanitarian workers seems to prevail. In 1992, UNICEF attempted to enforce a relief boycott after four expatriates, three of them aid workers, had been killed in Southern Sudan. Although UNICEF's hopes were up that the boycott would lead to investigation of the murders and prosecution of the murderers, the latter failed.²⁶²

The protection of humanitarian personnel can hardly ever be guaranteed and this leaves one faced with the dilemma of staying behind because of security threats or going in nonetheless. A climate of insecurity prevailed in Darfur, as both the government and rebel movements attempted 'to improve their bargaining positions through military advances on the ground.'²⁶³ On a number of occasions, humanitarian organisations were forced to leave conflict-affected areas as a precaution against violence. Moreover, in 2006 more than a third of civilians in southern Darfur were inaccessible to relief agencies because they resided in areas that were considered to be too dangerous.²⁶⁴

Ethnic cleansing is both a war crime and a crime against humanity. The government regarded civilians in Darfur as its opponents, because they shared the same ethnicity as the rebels of the SLA and the JEM.²⁶⁵ This put those who attempted to provide assistance to civilians in Darfur at a much higher risk of being targeted.

3.1.2.3. Duty to Avoid Starvation and Attacks to Objects Necessary to Survive

Thirdly, starvation and attacks to objects indispensable to people's survival should be circumvented by states as well as non-state entities. In Sudan, rules on the conduct of hostilities were most frequently broken by government forces when they attacked civilian objects attempting to weaken the support system of the insurgents.²⁶⁶ Moreover, the SPLM/A acted in a similar way when relying on 'guerrilla tactics against government supply lines or, increasingly, oil infrastructure.'²⁶⁷

Furthermore, civilian populations have become particularly vulnerable because the government demolished crops and livestock. It seems fair to say that 'famine in the war-torn regions is not a by-product of indiscriminate fighting but a government objective that has largely been achieved through manipulation, diversion and denial of international humanitarian relief.'²⁶⁸

3.1.2.4. Duty to Avoid Forcible Displacement

According to estimations of the IDMC, Sudan has one of Africa's largest populations of internally displaced. In African countries where large parts of the population have been displaced,

²⁶² De Waal, 147.

²⁶³ *Darfur: Humanitarian Aid under Siege*, 7.

²⁶⁴ *Darfur: Humanitarian Aid under Siege*, 7-8.

²⁶⁵ *Darfur: Humanitarian Aid under Siege*, 15.

²⁶⁶ *God, Oil and Country: Changing the Logic of War in Sudan*, XII.

²⁶⁷ *Ibid.*

²⁶⁸ *Ending Starvation As a Weapon of War in Sudan*, 2.

governments or its allies factions are most regularly responsible for displacement. Yet, armed opposition groups have similarly forced people to flee from areas where government forces had little influence or capacity to fight banditry.²⁶⁹

The government of Sudan has promoted the displacement of civilians and undercut the latter's ability to look after themselves. In so doing, it failed to avoid forced displacement and protect those internally displaced, as well as the objects they needed to survive. Not surprisingly, the SPLA/M did not refrain from forcibly removing populations either. Evidence can be found that the Sudan People's Liberation Army moved 'a large displaced population along the Sudan-Uganda and Sudan-Kenya border'²⁷⁰ in order to ensure that the SPLA headquarters would always have access to 'a food supply line in strategic locations from aid agencies serving the displaced.'²⁷¹

3.1.3. Violations Under the Umbrella of Assistance

It is commonly agreed that those not involved in the fighting have a right to a reasonable standard of living, so they (and their families) can stay alive and maintain their dignity. As one cannot easily separate civilians' right to access to assistance from states' duty to provide aid to the populations within their territory, these two criteria will be combined to demonstrate in which way civilians' right to access to assistance was taken away and Sudan failed to carry out its duty with regard to providing aid.

3.1.3.1. Civilians' Right to Access to Aid and States' Duty to Provide Aid to those in its Territory

Civilians' right to access to assistance has definitely been breached, because there are many examples which illustrate that people died because this right had been taken away. For instance, an estimated 60000 people starved to death because of the Sudanese government' ban on airdrops in the southern region Bahr el Ghazal in 1997.²⁷²

Food shortage and famine are consequences of the North-South war as well the conflict in Darfur; on both occasions warring parties withheld or blocked assistance on religious or racial grounds. Corrupt military governments have succeeded one another and were usually not willing to confront the humanitarian crisis.²⁷³ Consequently, the need for effective humanitarian assistance to reach civilians who were cut off from humanitarian assistance, was huge.

Despite the presence of thousands of peacekeepers, rules have been disregarded. The Sudanese government has failed to provide assistance to those residing in their territory. The government is believed to have disobeyed its obligations, because it did not endeavour to obtain

²⁶⁹ *Global Overview of Internal Displacement in Africa*, Internal Displacement Monitoring Centre, 2011, 36.

²⁷⁰ Prendergast and Scott, 5.

²⁷¹ *Ibid.*

²⁷² Polman, 128.

²⁷³ Philip Johnston, "Relief and Reality", In: *A Framework for Survival*, Ed. K.M. Cahill, New York & London: Routledge, 1999, 219.

international support to ensure the minimums essential to survive.²⁷⁴ In 1999, the government, the SPLM and the United Nations signed an agreement to improve humanitarian access to war-affected populations.²⁷⁵ Nonetheless, the government contravened this agreement for years through abuse of its sovereign right by banning relief flights and obstructing relief operations.²⁷⁶ In order to establish a comprehensive peace, it is inevitable that strategies be developed to take away these restrictions on access to humanitarian aid.

3.1.3.2. *Duty to Facilitate Assistance and Access to Assistance*

States and non-state entities have a duty to facilitate the delivery of life-saving humanitarian assistance and make sure people in need have access to assistance. This includes smoothing the entrance for humanitarian organisations; allowing others to offer assistance to civilians when they cannot do so by themselves. On both sides, there have been impediments to aid; it is therefore considered important that all parties to the conflict are willing to negotiate the removal of institutional barriers to unrestricted access for humanitarian organisations.²⁷⁷

Sudan has a record of hindering humanitarian relief. Reaching those Sudanese who need help most desperately proves to be highly problematic, as obstacles to humanitarian operations cannot easily be removed. Access to humanitarian aid has mostly been restricted by the government, which used its sovereign right to deny access to its territory so food and medical supplies could not reach civilians.²⁷⁸ Moreover, whilst the government pursued its ethnic cleansing campaign in Darfur, it obstructed nearly every bit of assistance that was offered by the international aid community and continued to do so until the international community of states put intense international pressure on the government. At that time however, the number of internally displaced people had already risen to the max.²⁷⁹ Besides manipulation of aid by government forces, Human Rights Watch has collected reports about SLA forces in North and South Darfur taking part in stealing vehicles, abducting Arab Sudanese working for local NGOs, and diverting aid to ultimately have enough extras to sell.²⁸⁰

There have certainly been several multilateral efforts to provide humanitarian aid to the population of Sudan. Operation Lifeline Sudan, a humanitarian programme mandated by the United Nations in 1989, wished to provide assistance to civilian populations on both sides of a conflict.²⁸¹

²⁷⁴ Barber, 394-395.

²⁷⁵ *Agreement on the Implementation of Principles Governing the Protection and Provision of Humanitarian Assistance to War Affected Civilian Populations*, Geneva, 1999, Available online at: http://www.reliefweb.int/sites/reliefweb.int/files/reliefweb_pdf/node-57372.pdf

²⁷⁶ *Ending Starvation As a Weapon of War in Sudan*, 9.

²⁷⁷ *Ending Starvation As a Weapon of War in Sudan*, i.

²⁷⁸ *Ibid.*

²⁷⁹ *Darfur: Humanitarian Aid under Siege*, 6.

²⁸⁰ *Darfur: Humanitarian Aid under Siege*, 23.

²⁸¹ Joanna Macrae, et al., "Conflict, the Continuum and Chronic Emergencies: A Critical Analysis of the Scope for Linking Relief, Rehabilitation and Development Planning in Sudan", *Disasters* 21.3 (1997): 224.

It was a reaction to the problems caused by the civil war in southern Sudan. Operation Lifeline Sudan did not succeed in resolving the humanitarian crises in the oilfields of Western Upper Nile, Eastern Equatoria and Southern Blue Nile because of structural and geographic limitations and calculated strategies of warring parties.²⁸²

Humanitarian relief does not automatically benefit from the development of enforcement mechanisms. When the International Criminal Court issued an arrest warrant for Al-Bashir in 2009, humanitarian assistance in Darfur became especially restricted. Numerous international NGOs were banished and the licenses of three national NGOs were withdrawn.²⁸³ When international NGOs are expelled, national NGOs are usually expected to carry on their programmes. Unfortunately, these NGOs do not always have the capacity to do so.²⁸⁴ Clearly, Sudan does not wish to cooperate with any ICC investigation.²⁸⁵ Since the situation in Darfur has been referred to the ICC, 'targeted attacks against humanitarian personnel in Darfur – including physical and sexual assaults, hijackings and abductions – increased dramatically.'²⁸⁶

In Sudan, there appears to be no such thing as unimpeded movement of humanitarian assistance or access by humanitarian organisations, as humanitarian agencies in Darfur were often held back by random administrative regulations. They either could not get hold of travel permits or sort out their visas.²⁸⁷ Consequently, the international community of states pressured the government in 2004 into implementing a new administrative system to accelerate the process and to overcome obstacles to the movement of humanitarian workers.²⁸⁸ Nonetheless, Khartoum and state-level governments continued to 'place arbitrary constraints on aid workers in Darfur by dubious administrative delays and red tape related to visa extensions, identity documents, and travel permits.'²⁸⁹ Besides these arbitrary constraints, both national and international humanitarian workers have regularly been confined because they provided assistance to victims who had been displaced or otherwise been affected. These incidents might have served as a deterrent to aid agencies, but it remains difficult to ascertain how many incidents took place, as humanitarian organisations generally remain silent about this to secure their access to those in need.²⁹⁰

Since 1990, aid in Sudan has increasingly been manipulated for war-making and prolonging wars. 'Both the government and the SPLA have shifted from using starvation as a military tactic to

²⁸² *Ending Starvation As a Weapon of War in Sudan*, 8.

²⁸³ Barber, 377.

²⁸⁴ Barber, 379.

²⁸⁵ *Darfur: Humanitarian Aid under Siege*, 20.

²⁸⁶ Barber, 377.

²⁸⁷ Barber, 378.

²⁸⁸ *Darfur: Humanitarian Aid under Siege*, 15-16.

²⁸⁹ *Darfur: Humanitarian Aid under Siege*, 18.

²⁹⁰ *Darfur: Humanitarian Aid under Siege*, 16.

the strategic manipulation of aid, both to provision their forces and to protect key garrisons.²⁹¹ When starvation of a civilian population is used as a weapon of war, IHL provides that impartial humanitarian organisations cannot be denied to a territory on arbitrary grounds. However, without the consent or cooperation of warring factions (as is the case in Sudan) these organisations can hardly operate.

3.1.4. Accountability

In the case of Sudan, rules relating to humanitarian assistance seem to have been broken by all parties to the conflict and accountability for violations of IHL and IHRL in respect of humanitarian assistance and the protection of human rights does not seem realised yet. Clearly, the ICC is an accountability mechanism which attempts to ensure compliance with the obligations stemming from civilians' rights. However, one could claim that the ICC is still in its initial phases of investigation and prosecution, as the majority of those that are indicted for committing war crimes, crimes against humanity and genocide in Darfur are still at large. For instance, an arrest warrant for President Omar Al-Bashir has been issued, but it is unlikely that he will be extradited any time soon.

Both the government of Sudan and non-state armed forces (such as the SPLM/A) can be held accountable for gross human rights violations, as they disregarded civilians' right to protection and access to aid, humanitarians' right to protection, and failed to avoid starvation, attacks to objects essential to civilians' survival, forced displacement and obstruction of aid. Furthermore, both government forces and rebel movements intensified humanitarian crises and mostly prevented and obstructed solutions that were offered by local and international aid agencies.

Although the international community of states was legally not obligated to interfere in the internal affairs of Sudan, the international community of states should have better exercised its moral duty to protect victims of armed conflict (R2P). Sudan failed to fulfil the responsibilities of a sovereign state and the international community of states should have acted upon this; it should have pressured the Sudanese government to a greater extent to stop attacks on civilians, improve humanitarian access, and facilitate UNAMIS and UNAMID. Despite the considerable number of UN-led relief and peacekeeping operations that were deployed to Sudan and South-Sudan, neither of these operations truly managed to relieve the civilian population, resolve conflicts and humanitarian crises and consolidate comprehensive peace. Moreover, the international community did not apply disciplinary pressure after humanitarian agreements were broken.²⁹² To a certain extent, the international community of states can therefore be held accountable for the humanitarian crises in Sudan.

²⁹¹ De Waal, 148.

²⁹² *Ending Starvation As a Weapon of War in Sudan*, ii.

It is difficult to establish precisely when state responsibility arises, especially in internal conflicts. Carey, Gibney and Poe distinguish between negative and positive obligations; the duty not to do something and the duty to do something.²⁹³ With regard to the case of Sudan, one could say that states' most important negative obligation; the duty not to harm others, has definitely not been fulfilled by Sudan. However, positive obligations such as the duty to protect human rights and assistance, have neither been accomplished by state and non-state parties to the conflict in Sudan nor the international community of states.

²⁹³ Carey, Gibney and Poe, 49.

3.2. Ethiopia



3.2.1. Conflict History

Ethiopia is the only African state that has never been colonised by a foreign power.²⁹⁴ Since the end of the Cold War, Ethiopia has however been involved in a number of international and non-international conflicts. This chapter does not take into account the border conflict between Ethiopia and Eritrea (1998-2000), but it deals with conflicts between government forces and non-state armed groups, such as the Ogaden National Liberation Front (ONLF) and the Oromo Liberation Front (OLF). Whereas the conflict between the government and the ONLF is situated in the Ogaden area of the eastern Somali Region, the disputes between government armed forces and the OLF about the latter's autonomy from central government²⁹⁵ largely affect the lives of those inhabiting the south. In the post-Cold War era, the lives of Ethiopian civilians have largely been affected in these two regions.

²⁹⁴ *Ethiopia: Ethnic Federalism and Its Discontents*, International Crisis Group Africa Report N°153, Brussels/Nairobi, 4 September 2009, 2.

²⁹⁵ *Ethiopia: Monitoring of Conflict, Human Rights Violations and Resulting Displacement Still Problematic*, Internal Displacement Monitoring Centre, Norwegian Refugee Council, 20 January 2011, 3.

Ethiopia is currently ruled by the Ethiopian People's Revolutionary Democratic Front (EPRDF) and led by Prime Minister Meles Zenawi. The EPRDF was established in 1989 as an umbrella of ethno-national fronts.²⁹⁶ Its coalition included the Tigrayan People's Liberation Front (TPLF), the Ethiopian People's Democratic Movement (EPDM), the Oromo People's Democratic Organisation (OPDO) and the Southern Ethiopia Peoples Democratic Front (SEPDM). It came to power in 1991, after Mengistu Haile Mariam's military regime (the Derg) was ousted.²⁹⁷ Ever since, the TPLF has been a dominant political force within the ethno-nationalist parties to the EPRDF. Given that the TPLF highly valued people's right to self determination, it is not surprising that a federal constitution (which institutionalised the political system of the Federal Democratic Republic of Ethiopia) was ratified in 1994, which 'defined the country's structure as a multicultural federation based on ethno-national representation.'²⁹⁸

The EPRDF wished to redefine the political landscape of Ethiopia on ethnic grounds, including citizenship.²⁹⁹ In order to do so, the EPRDF firstly invited all opposition parties to a transitional national conference in Addis Ababa in July 1991.³⁰⁰ During this conference, a provisional national charter was adopted, an 87-member Council of Representatives was created and the Transitional Government of Ethiopia (TGE) was established under the rule of the EPRDF.³⁰¹ Until this day the EPRDF has failed to keep its promises with regard to democracy, multi-party elections, human rights and self determination. This has caused friction between the government and ethnic-based opposition parties, communal and inter-ethnic animosities and armed conflict between ethno-national rebels and the government.³⁰²

Inter-ethnic and political tensions continued unabated throughout the years. The EPRDF's unwillingness to share power and 'rapid economic growth and increasing urbanisation accompanied by growing inequality and social tensions,'³⁰³ resulted into an election crisis in 2005. Allegedly and likely, the EPRDF committed election fraud and this triggered gulfs of post-electoral violence. Despite many protests and deaths, Zenawi was re-elected. The EPRDF set up a party-state system that perpetuated its rule but frustrated large parts of the population. As it did not accept any criticism and was obsessed with controlling political processes on all levels, this instigated 'former liberation

²⁹⁶ *Ethiopia: Ethnic Federalism and Its Discontents*, 4.

²⁹⁷ *Development Without Freedom: How Aid Underwrites Repression in Ethiopia*, Human Rights Watch Report 1-56432-697-7, October 2010, 12.

²⁹⁸ *Ethiopia: Ethnic Federalism and Its Discontents*, i.

²⁹⁹ *Ethiopia: Ethnic Federalism and Its Discontents*, 1.

³⁰⁰ *Ethiopia: Ethnic Federalism and Its Discontents*, 4.

³⁰¹ *Ibid.*

³⁰² *Ethiopia: Ethnic Federalism and Its Discontents*, 5.

³⁰³ *Ethiopia: Ethnic Federalism and Its Discontents*, 1.

fighters' paranoia and incite[d] opposition groups to consider armed struggle their only remaining option.³⁰⁴

Not surprisingly, the nature of internal conflicts in Ethiopia is predominantly ethnic. Confrontations have been especially violent between the EPRDF and the Ogaden National Liberation Front in the Ogaden area.³⁰⁵ Since the ONLF was outlawed by the government in 1994, government forces and insurgents have been involved in low-intensity armed conflict.³⁰⁶ To prevent attacks by the ONLF, the government started a counterinsurgency campaign in 2007. Human Rights Watch claims that the Ethiopian National Defence Force (ENDF) committed war crimes and crimes against humanity as it burnt down villages, indiscriminately killed, raped and tortured civilians and pursued a scorched-earth policy in the Ogaden.³⁰⁷

Ethiopia's contributions to fostering peace in the region, has surely had a positive impact on its reputation. Ethiopia receives high levels of donor support and investments. However, Zenawi is believed to abuse international investments and assistance to consolidate the rule of a repressive one-party state.³⁰⁸ Hence, in spite of all of this Ethiopia is severely struck by internal tensions and faces increasing problems.³⁰⁹

3.2.2. Violations Under the Umbrella of Protection

Like Sudan, Ethiopia is a party to a number of international instruments, such as *The Geneva Conventions, Protocols I and II Additional to The Geneva Conventions* and *The African Charter on Human and Peoples' Rights*. Besides, it has signed and ratified *The International Covenant on Civil and Political Rights* and *The International Covenant on Economic, Social, and Cultural Rights*. Yet, Ethiopia has neither signed nor ratified *The Rome Statute* of the International Criminal Court and it therefore has no obligation under the *Statute*. Being a member of the United Nations, it has however agreed to abide by the provisions of *The UN Charter*. In case Ethiopia would therefore be referred to the ICC by the Security Council, it is expected to fully cooperate with the Court.

Numerous rules have been broken in respect of the provision of humanitarian assistance and protection of human rights in Ethiopia. Firstly, civilians' right to protection has often been compromised, even though 'the inviolable and inalienable right to life, the security of person and liberty are enshrined in Article 14 of the federal constitution.'³¹⁰ The right to life and to protection against abuses of international law have been disrespected, as the ENDF and the ONLF used violence

³⁰⁴ *Ethiopia: Ethnic Federalism and Its Discontents*, 29.

³⁰⁵ *Ethiopia: Ethnic Federalism and Its Discontents*, 1.

³⁰⁶ *Ethiopia: Monitoring of Conflict, Human Rights Violations and Resulting Displacement Still Problematic*, 3.

³⁰⁷ *Ethiopia: Monitoring of Conflict, Human Rights Violations and Resulting Displacement Still Problematic*, 4.

³⁰⁸ Tesfa-Alem Tekle, "Ethiopia: Human Rights Watch Calls On Donors to Review Aid", *Sudan Tribune*, 20 October 2010.

³⁰⁹ *Ethiopia: Ethnic Federalism and Its Discontents*, 1.

³¹⁰ *Ethiopia: Monitoring of Conflict, Human Rights Violations and Resulting Displacement Still Problematic*, 5.

against civilians on multiple occasions and can both be held responsible for serious violations of human rights. Moreover, ONLF attacked numerous police and military targets.³¹¹

Secondly, humanitarians' right to protection has been breached by government forces and rebel movements. ENDF and police forces are believed to have threatened NGO personnel with beatings and death in order to make sure that they would only report ONLF activities.³¹² Furthermore, a fairly recent ambush on a UN convoy in the Ogaden region killed one World Food Programme staff member and injured another. Government forces and insurgency groups are pointing at one another as they try to wash their hands off the attack. It appears plausible that the convoy was targeted by ONLF or the Ethiopian government 'if the convoy was seen as being on its way to aid civilian populations that were thought to be support bases for their respective antagonists.'³¹³ The UN responded to the ambush by temporarily suspending food aid operations in the region.³¹⁴ Additionally, in 2008, the Swiss branch of Medecins Sans Frontières ceased its operations in the Ogaden area due to government intimidation, such as random arrests of humanitarian personnel.³¹⁵

Thirdly, there are not many records of the use of starvation or attacks against objects necessary to survive. However, MSF' decision to temporarily close down its operations in 2008 was said to have been a direct result of efforts by the Ethiopian authorities to block humanitarian access. According to the ONLF, 'deliberate starvation, denial of medical aid, extrajudicial killings and arrests and the torching of village huts' are commonplace in the Ogaden region.³¹⁶ One should however bear in mind that parties to the conflict accuse one another of a variety of things.

Fourthly, Ethiopia has not been able to avoid civilians' displacement. Moreover, this appears to be one of the countries' long-standing and biggest problems. Ethiopia has a long history of displacement, as aid was already used as an instrument of forced migration by the Mengistu regime in the 1980s.³¹⁷ It seems to be that the Ethiopian government has been unsuccessful in avoiding forced displacement and protecting IDPs. However, it has been reluctant to allow humanitarian organisations to enter the country, so not many assessments have been carry out. Research that has been done shows that inter-ethnic conflict between the Garre of the Somali region and the Boran of the Oromiya region displaced an estimated 160,000 people in March 2009.³¹⁸ Additionally, it

³¹¹ *Ethiopia: Monitoring of Conflict, Human Rights Violations and Resulting Displacement Still Problematic*, 3.

³¹² *Ethiopia: Monitoring of Conflict, Human Rights Violations and Resulting Displacement Still Problematic*, 4.

³¹³ Carol Gallo, "When A Humanitarian Convoy is Attacked in Ethiopia, Who is to Blame?" *Ogaden Online*, 2011. Available online at: <http://www.undispatch.com/when-a-humanitarian-convoy-is-attacked-in-ethiopia-who-is-to-blame>

³¹⁴ *Ibid.*

³¹⁵ "Ethiopia rebels say Addis starving Ogaden", *AFP*, 11 July 2008.

³¹⁶ *Ibid.*

³¹⁷ Tanguy and Terry, 30.

³¹⁸ *Global Overview of Internal Displacement in Africa*, 39.

demonstrates that Ethiopia's population constituted approximately 300.000 internally displaced people (IDPs) in 2010.³¹⁹

3.2.3. Violations Under the Umbrella of Assistance

Obligations with regard to assistance have been flouted for years by different parties to the conflict. In so doing, Ethiopian civilians' have been deprived of their right to access to assistance and their right to an adequate standard of living. Evidently, the Ethiopian government is responsible for the well-being of people within its territory; it is to blame for refraining from its duty to provide assistance to the populations within its territory. Moreover, the Ethiopian government should have smoothed the progress of 'active participation of relevant partners, including donor governments, UN agencies, national and international NGOs, civil society organisations and affected communities.'³²⁰

Firstly, civilians' right to access to assistance has been violated and Ethiopia's duty to provide assistance to those within its territory has been neglected. Ethiopia faces ongoing conflicts between government forces and insurgency groups. Since 2007, the government has frequently denied international organisations access to areas of conflict. In 2009, it even enacted draconian laws, such as *The Proclamation to Provide for the Registration and Regulation of Charities and Societies*, that heavily restricted the monitoring and reporting of human rights abuses committed by ENDF.³²¹ Furthermore, the Ethiopian government has repeatedly fuelled conflicts, and failed to assist in the delivery of humanitarian assistance and facilitation of civilians' access to aid. It contributed significantly to insecurity in displacement-affected regions of Somali, southern Oromiya, and Gambella.³²² Here, communities' access to food, health, nutrition and water were a major concern.³²³

Moreover, the humanitarian crisis in Ethiopia aggravated significantly when the government imposed numerous restrictions on the distribution of food and medicine. For instance, humanitarian agencies were required to use military escorts to deliver international assistance to areas of conflict, which usually had a negative impact on access to these areas.³²⁴ Despite worsening humanitarian circumstances, the government has restricted aid agencies operating in the Somali Region. In July 2007, it even banned operations of the ICRC and Médecins Sans Frontières.³²⁵ The government accused the ICRC 'of 'collaborating with the enemy (ONLF)' and 'spreading baseless accusations

³¹⁹ *Ethiopia: Monitoring of Conflict, Human Rights Violations and Resulting Displacement Still Problematic*, 3.

³²⁰ *Ethiopia: Monitoring of Conflict, Human Rights Violations and Resulting Displacement Still Problematic*, 5.

³²¹ *Ethiopia: Monitoring of Conflict, Human Rights Violations and Resulting Displacement Still Problematic*, 1.

³²² *Ethiopia: Monitoring of Conflict, Human Rights Violations and Resulting Displacement Still Problematic*, 4.

³²³ *Global Overview of Internal Displacement in Africa*, 46.

³²⁴ *Ethiopia: Monitoring of Conflict, Human Rights Violations and Resulting Displacement Still Problematic*, 6.

³²⁵ *Ibid.*

against the Ethiopian authorities.³²⁶ In addition, two staff members of Save the Children-UK were expelled in December 2007 because they were believed to divert food aid to rebels. These humanitarian workers acknowledged that many Ethiopians in the Somali region do not even attend food distributions out of fear for repercussions. Moreover, the same fear silences everyone, including aid workers.³²⁷

The inability to access food, seeds and fertiliser, agricultural land, credits, and other resources for development terrorises people; political loyalty has become a matter of survival.³²⁸ However, livestock has often been confiscated by government forces, traffic and assistance have been obstructed and restrictions on access to water, food, and other essential commodities have been imposed to cut off ONLF supplies. Hence, the government withheld food as a means of collective punishment; areas believed to be politically affiliated with opposition groups were given limited access to foreign aid.³²⁹ Clearly, areas cannot exactly be divided according to political affiliation, and this strategy endangered the lives of thousands of civilians not engaged in politics. The Ethiopian government has been exceptionally successful in silencing people, because people depend on foreign aid supplies. The majority of people stays quiet about abuses of human rights, as 'aid discrimination has made freedom of speech a luxury many Ethiopians quite literally cannot afford.'³³⁰ Lefkow supposes that international donors rather pretend that this does not happen than tackle the problem.³³¹

The martial strategies of EPRDF appear to have been successful; 'since the 2005 electoral debacle, when the party underestimated support for the opposition[,] the EPRDF multiplied its membership from 700,000 in 2005 to over 5 million by 2010.'³³² This came down to a 99.6 percent victory.³³³ In addition, in 2009 the EPRDF passed a law that regulates civil society organisations. 'It gives the government broad powers to oversee, sanction and dismantle entities it considers troublesome. Indirectly and in the long run it seeks to channel donor aid through government rather than NGO channels.'³³⁴ Clearly, unhindered and immediate access to the Ogaden region is necessary,

³²⁶ *Collective Punishment: War Crimes and Crimes against Humanity in the Ogaden area of Ethiopia's Somali Regional State*, Human Rights Watch Report 1-56432-322-6, June 2008, 88-89.

³²⁷ *Collective Punishment: War Crimes and Crimes against Humanity in the Ogaden area of Ethiopia's Somali Regional State*, 91.

³²⁸ *Development Without Freedom: How Aid Underwrites Repression in Ethiopia*, 4.

³²⁹ *Ethiopia: Monitoring of Conflict, Human Rights Violations and Resulting Displacement Still Problematic*, 6.

³³⁰ Leslie Lefkow, "Ethiopia: Aid as a Weapon", *The Ottawa Citizen*, October 25, 2010.

³³¹ Lefkow, "Ethiopia: Aid as a Weapon".

³³² *Development Without Freedom: How Aid Underwrites Repression in Ethiopia*, 67.

³³³ *Development Without Freedom: How Aid Underwrites Repression in Ethiopia*, 70.

³³⁴ *Ethiopia: Ethnic Federalism and Its Discontents*, 20.

so surveys can be conducted and the distribution of food can be monitored.³³⁵ Moreover, 'the government should lift the restrictions on commercial trade and civilian and livestock movement.'³³⁶

3.2.4. Accountability

In the case of Ethiopia, rules relating to humanitarian assistance mostly appear to have been infringed by the Ethiopian government. Despite numerous records of serious human rights abuses, accountability for past violations of human rights and international humanitarian law has not been realised in Ethiopia.

Both the government of Ethiopia and insurgency groups appear to be accountable for these gross violations of IHL and IHRL. Amongst other things, they accuse one another of compromising civilians' right to protection and access to aid, attacking humanitarian personnel, using starvation, and abusing aid. However, the majority of consignments is distributed under the auspices of the Ethiopian government. Accordingly, aid has become politicised (assistance is linked to political membership or supposed association) and poses a threat to the lives of many Ethiopians. Deliberate discrimination and denial of food constitutes a violation of people's civil and economic rights³³⁷

The human rights situation in Ethiopia is dreadful, despite investments and massive flows of aid supplies. To follow-up on political repression in Ethiopia and resolve the conflicts between government forces and non-state entities seems difficult. The international community of states has ignored or downplayed Ethiopia's problems for too long; it appears to have ignored the manipulation of aid in Ethiopia and is therefore partly accountable. 'Despite mounting evidence of serious violations of international human rights and humanitarian law committed by Ethiopian security forces in Somali Region, the international response to the situation has focused mainly on increasing humanitarian assistance, but neglected to address the systematic abuses that are the core cause of the deteriorating situation.'³³⁸ Although some members of the international community of states seem to consider food security more important than democracy in Ethiopia,³³⁹ one should bear in mind that the lack of democracy is in fact one of the main causes of political tensions.

Moreover, instead of actively trying to stop the abuse of foreign aid and the carelessness towards civilians' rights, the international community of states merely launched a joint investigation into mechanisms for monitoring and controlling the abuse of international assistance and detecting the politicisation of aid. This Development Assistance Group collected evidence that suggested that

³³⁵ *Collective Punishment: War Crimes and Crimes against Humanity in the Ogaden area of Ethiopia's Somali Regional State*, 7.

³³⁶ *Ibid.*

³³⁷ Under *The International Covenant on Civil and Political Rights* and *The International Covenant on Economic, Social and Cultural Rights*.

³³⁸ *Collective Punishment: War Crimes and Crimes against Humanity in the Ogaden area of Ethiopia's Somali Regional State*, 115.

³³⁹ *Ethiopia: Ethnic Federalism and Its Discontents*, 29.

donor programs were indeed vulnerable to politicisation by the Ethiopian government, but additionally found that donor programs produced reasonable results and that mechanisms to monitor the politicisation of aid were sufficient.³⁴⁰ In contrast, researchers who examined the abuse of donor-funded services, resources, and training opportunities during that same year (2010) reported to Human Rights Watch that these had repeatedly been employed as political weapons. In addition, they considered mechanisms to monitor to what extent these programs and resources had been used to threaten or reward people for joining the EPRDF and stop supporting the opposition, to be inadequate.³⁴¹

International actors agree that aid is most effective 'when defined by accountability and transparency, and when programs are participatory. Yet, development agencies have turned a blind eye to the Ethiopian government's repression of civil and political rights, even though they recognize these rights to be central to sustainable socioeconomic development.'³⁴² Donors keep providing the EPRDF with huge sums of money for development assistance and do not address the politicisation of aid, because they are aware that their efforts to contribute to Ethiopia's economic development will be worthless once they start confronting the government with its deplorable human rights record. In doing so, they are helping Ethiopia achieve the Millennium Development Goals. However, at the same time they are supporting and strengthening an oppressive state apparatus that can be held responsible for gross violations of human rights.³⁴³ This knowledge neither discourages donors, nor has it contributed to 'closer monitoring of local government officials, civil servants, and head teachers to see whether they implement decisions in a partisan or discriminatory fashion.'³⁴⁴

International donors set up Democratic Institutions Programs (DIPs) attempting to realise domestic accountability. These have failed massively and were unable to win support for parliament, the Office of the Ombudsman and other institutions.³⁴⁵ Some scholars argue that donors cannot help Ethiopia with achieving accountability, as the only true obstacle to accountability is the Ethiopian government. At this point humanitarian agencies, including the UN therefore can no longer protect civilians in Somali Region. The responsibility to protect civilians lies with the Ethiopian government, 'which must take serious measures not only to end the abuses, but to investigate and hold accountable the individuals responsible for them.'³⁴⁶ Yet, donor governments are partly responsible too because they provide high levels of assistance and investments to Ethiopia without demanding

³⁴⁰ *Development Without Freedom: How Aid Underwrites Repression in Ethiopia*, 6.

³⁴¹ *Development Without Freedom: How Aid Underwrites Repression in Ethiopia*, 26.

³⁴² *Development Without Freedom: How Aid Underwrites Repression in Ethiopia*, 4-5.

³⁴³ *Development Without Freedom: How Aid Underwrites Repression in Ethiopia*, 23.

³⁴⁴ *Development Without Freedom: How Aid Underwrites Repression in Ethiopia*, 35.

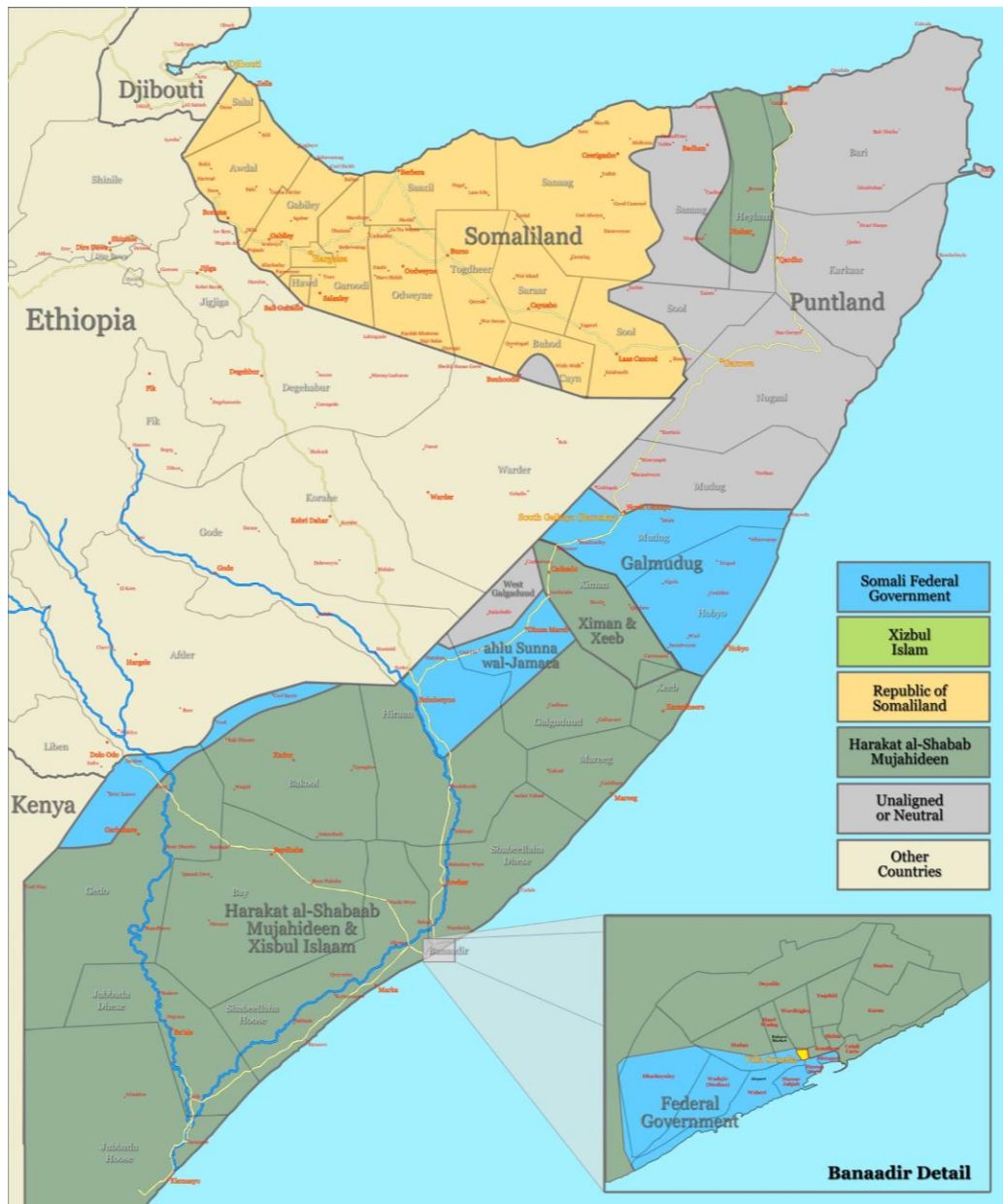
³⁴⁵ *Development Without Freedom: How Aid Underwrites Repression in Ethiopia*, 70.

³⁴⁶ *Collective Punishment: War Crimes and Crimes against Humanity in the Ogaden area of Ethiopia's Somali Regional State*, 124.

accountability for human rights violations.³⁴⁷ The international community of states faces a difficult dilemma: without international assistance food shortages will hit the Ethiopian population even harder (no guarantee of agricultural growth, food security etc.), at the same time a change of direction within the EPRDF is not very likely. Thus, assisting Ethiopia by means of development aid flows will only further the oppression of the Ethiopian population. Clearly, it is necessary to devise solutions for long-term development. As Human Rights Watch' title of the report underlines, there is no development without freedom. There is no democracy either; one party rules and their handling of international aid has a great impact on the livelihoods of the Ethiopian population.

³⁴⁷ *Collective Punishment: War Crimes and Crimes against Humanity in the Ogaden area of Ethiopia's Somali Regional State*, 124.

3.3. Somalia



3.3.1. Conflict History

Somalia gained independence in 1960. The years following its independence are generally characterised by drought and war. Due to immense fighting between warlords and clans within Somalia and across the Ethiopian border, Somalia is a country that is truly racked by conflict and factional strife. This chapter focuses on post-Cold War conflicts among rival factions in Somalia. Notwithstanding the involvement of the Ethiopians, the conflict in Somalia is regarded as an internal conflict. Rebecca Barber clarifies that the Ethiopian forces were perceived internationally as

supporters of the Transitional Federal Government (TFG) of Somalia; 'as such the conflict was not one that pitted the armed forces of one state against the armed forces of another.'³⁴⁸

Perhaps the most significant aspect of the Somali conflict is that Somalia has been without a functioning government for more than twenty years. Since the fall of Siad Barre's government in January 1991, there have been various attempts to form a Somali administration, but these have failed up to this day. Siad Barre headed the Darod clan and he was mainly ousted because his corrupt leadership fuelled by massive flows of international aid aroused jealousy amongst other clans.³⁴⁹ Embroiled in a civil war, the country was run by warlords who usually did not agree with each other. Consequently, the humanitarian situation in Somalia deteriorated rapidly and the civilian population endured incredible suffering. Considering that Somali society was generally trapped in famine and anarchic internal war, it proved difficult to relieve the civilian population.

Efforts to do so were however undertaken by the United Nations Operation in Somalia (UNOSOM I) in 1993. UNOSOM I was primarily initiated in order to provide urgent humanitarian assistance and to monitor the ceasefire.³⁵⁰ Despite UNOSOM I's efforts, the Security Council ultimately decided that the humanitarian crisis in Somalia continued to pose a threat to international peace and authorised UN member states to engage in the US-led Unified Task Force (UNITAF) to restore peace and encourage reconciliation.³⁵¹ The deployment of military forces in Somalia was put under the umbrella of Chapter VII of *The UN Charter* and was primarily conducted to end a humanitarian crisis. The Security Council authorised military intervention under Chapter VII of *The UN Charter* to specifically deal with human rights violations.

By means of democracy, Operation Restore Hope (the name attributed to UNITAF by the Bush administration in December 1992) wished to provide for a better future. Additionally, it endeavoured to protect food convoys and create a safe environment for the delivery of humanitarian assistance. However, aid provided by US-led troops was frequently manipulated by warlords. In the end, the US did not want to commit itself to nation building and was very eager to hand the situation over to the UN.³⁵² Accordingly, in May 1993, the Security Council ordered a smooth transition from UNITAF to UNOSOM II, as the latter's mandate included the rehabilitation of Somalia's political institutions and economy.³⁵³ UNOSOM II withdrew from Somalia in March 1995.

Over all, one could say that peace talks failed until August 2000, when various Somali leaders assembling in Arta, Djibouti, elected Abdiqasim Salad Hassan president of the Transitional National

³⁴⁸ Barber, 382.

³⁴⁹ International Crisis Group: Working to Prevent Conflict Worldwide, Key Issues, Research Resources, Conflict Histories, Somalia Conflict History. Available online at: <http://www.crisisgroup.org/en.aspx>

³⁵⁰ S/RES/751 (1992), New York: United Nations Security Council.

³⁵¹ S/RES/794 (1992), New York: United Nations Security Council.

³⁵² Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, Oxford: Oxford UP, 2000, 207.

³⁵³ S/RES/814 (1993), New York: United Nations Security Council.

Government (TNG).³⁵⁴ In the following years, violence continued unabated as other factions did not support the outcome of the gathering in Arta. In October 2002, the transitional government and 21 factions signed the *Declaration on Cessation of Hostilities, Structures and Principles of the Somalia National Reconciliation Process*,³⁵⁵ which showed the parties' commitment to the creation of federal governance structures, the cessation of hostilities, enhanced access for aid, endorsement of outcomes of the peace process, war against terrorism and the monitoring of the declaration.³⁵⁶ Whilst attempting to restore peace, security and stability, Somali clan leaders elected a new parliament in Nairobi, Kenya in August 2004.

President Abdullahi Yusuf Ahmed and Professor Ali Muhammad Geedi were appointed president and prime minister of the Transitional Federal Government of Somalia. Due to fragmentation and disagreement within the TFG; Yusuf's clan wished to locate the government in Baidoa and parliamentary speaker Hassan Sheikh Aden and a coalition of faction leaders (the Mogadishu warlords) wished to stay in Mogadishu, Ahmed and Geedi eventually headed a faction in Jowhar and Sharif Hassan Sheikh Aden and the Mogadishu warlords ruled in Mogadishu.³⁵⁷

Even though the TFG had been recognised by the AU, UN and IGAD, Abdullahi Yusuf was left to his own devices when he pleaded for foreign military assistance to consolidate his government.³⁵⁸ Despite previous reluctance to deploy military forces, in January 2005, IGAD proposed the deployment of 'a 10,500-strong Peace Support Mission to Somalia known as IGASOM.'³⁵⁹ Soon hereafter, the Islamic courts considered Abdullahi Yusuf a foreign pawn who predominantly aimed to further his personal objectives.³⁶⁰

In February 2006, Aden and the Mogadishu warlords had established themselves in Mogadishu as the Alliance for the Restoration of Peace and Counter-Terrorism (ARPCT). They opposed the Islamic court militias and allegedly received a considerable amount of financial support from Washington.³⁶¹

Clearly, neither Abdullahi Yusuf nor the ARPCT were accepted by the Islamic militias. In May 2006, the ARPCT and the Union of Islamic Courts' (UIC) got into heavy fighting. Subsequently, in June the UIC seized control of Mogadishu and soon after extended its grip to Jowhar. At this stage, the

³⁵⁴ Richard Cornwell, "Somalia: Distorting reality?" *African Security Review* 15.2 (2006): 77.

³⁵⁵ During peace talks which had been subsidised by the Intergovernmental Authority on Development (IGAD).

³⁵⁶ *Declaration on Cessation of Hostilities, Structures and Principles of the Somalia National Reconciliation Process*, Eldoret, 27 October 2002.

³⁵⁷ International Crisis Group: Working to Prevent Conflict Worldwide, Key Issues, Research Resources, Conflict Histories, Somalia Conflict History.

³⁵⁸ Cornwell, 77.

³⁵⁹ Paul D. Williams, "Into the Mogadishu Maelstrom: The African Union Mission in Somalia", *International Peacekeeping* 16.4 (2009): 515.

³⁶⁰ Cornwell, 77.

³⁶¹ *Ibid.*

Arab League intervened and negotiated a temporary ceasefire between the UIC and TFG.³⁶² Although the UIC and TFG engaged in multiple negotiations and appeared to recognise each others legitimacy, violence broke out again.³⁶³ The UIC' supposed link with terrorist groups, alarmed Western governments and Ethiopians. Not surprisingly, Ethiopian troops soon entered Somalia to back the TFG. UIC objected strongly to the presence of Ethiopians and in December 2006 the UIC gave Ethiopia an ultimatum to pull out its forces.³⁶⁴ In the end, the TFG gained the upper hand and a power vacuum was left in place.³⁶⁵

In January 2007, the African Union launched its peacekeeping mission in Somalia (AMISOM). AMISOM consisted of Ugandan, Nigerian and Burundi troops and was financially backed by the EU, the UK and the US.³⁶⁶ Amongst other things, AMISOM was mandated by the UNSC to support the Somali peace process, to assist in the consolidation of the TFG in Mogadishu, to protect key infrastructure, and to facilitate the provision of humanitarian aid and the repatriation of IDPs.³⁶⁷ However, in practice, AMISOM peacekeepers mostly struggled to protect themselves, as insurgents were advocating attacks on peacekeepers.³⁶⁸ Nonetheless, AMISOM's mandate was repeatedly extended.

In July 2007, a national reconciliation congress was organised in Mogadishu. However, UIC leader Sheikh Sharif Ahmed discarded clan-based process and did not want to attend.³⁶⁹ In September 2007, a new faction was established; the Alliance for the Re-liberation of Somalia (ARS). The ARS was headed by Sheikh Sharif Ahmed.³⁷⁰ Talks between TFG and ARS were initiated in May 2008 and *The Djibouti Agreement*, which was signed in June 2008 by TFG and some of the ARS, 'opened the door to cessation of hostilities and withdrawal of Ethiopian troops.'³⁷¹ Yet, security soon deteriorated again as 'an Islamist insurgency led by Al-Shabaab militant group spread to Lower Shabelle, Puntland, Hiran, Bay, Bakool and Juba regions, amid reports of retaliatory attacks by Ethiopian forces and renewed U.S. airstrikes on Islamist bases.'³⁷²

The fighting between Somali government forces and Al Qaeda-aligned militants of Al-Shabaab carries on. It is therefore not surprising that the Security Council recently stated that the situation in Somalia continues to constitute a threat to international peace and security in the region.

³⁶² Cornwell, 78.

³⁶³ Cornwell, 78.

³⁶⁴ International Crisis Group: Working to Prevent Conflict Worldwide, Key Issues, Research Resources, Conflict Histories, Somalia Conflict History.

³⁶⁵ Ibid.

³⁶⁶ Ibid.

³⁶⁷ Williams, 514.

³⁶⁸ Barber, 376.

³⁶⁹ International Crisis Group: Working to Prevent Conflict Worldwide, Key Issues, Research Resources, Conflict Histories, Somalia Conflict History.

³⁷⁰ Ibid.

³⁷¹ Ibid.

³⁷² Ibid.

Moreover, it stresses that it still requires a lot of help and attention, as it ‘underscores the importance of humanitarian aid operations, condemns any politicization of humanitarian assistance, or misuse or misappropriation, and calls upon Member States and the United Nations to take all feasible steps to mitigate these aforementioned practices in Somalia’³⁷³

3.3.2. Violations Under the Umbrella of Protection

Whereas Somalia is party to *The Geneva Conventions*, it is not a party to its *Additional Protocols*. One could therefore argue that humanitarian assistance in Somalia is merely protected by the minimum standards set out in Common Article 3 to the Geneva Conventions.³⁷⁴ Yet, although *Protocol I and II* are not binding on Somalia, the majority of their provisions are nowadays part of customary law and nonetheless apply to parties to a conflict. Somalia has signed and ratified *The International Covenant on Civil and Political Rights* and *The International Covenant on Economic, Social, and Cultural Rights* and is a party to *The African Charter on Human and Peoples’ Rights*. Furthermore, it is a member of the United Nations and correspondingly accepts and accomplishes decisions of the Security Council. Like Sudan and Ethiopia, Somalia is not a state party to *The Rome Statute*.

In Somalia, IHL and IHRL have been breached on a massive scale and famine, death, disease are increasingly commonplace. This chapter wishes to establish to what extent rules with respect to aid delivery and the protection of human rights have been broken in Somalia.

3.3.2.1. Civilians’ Right to Protection

When the United States interfered in the internal affairs of Somalia, international peace and security were supposedly jeopardised by the unfolding human rights crisis in Somalia and the obstacles to the delivery of aid.³⁷⁵ However, after UN-led and US-led operations had been deployed to Somalia, peace and security did not really improve. For instance, in the fire fight that ensued after UNOSOM II turned into a manhunt for Aideed, hundreds Somalis, including women and children, were killed.³⁷⁶ In so doing international actors only intensified the violence³⁷⁷ and failed to protect the civilian population.

Moreover, the United Somali Congress, a paramilitary organisation in Somalia whose members were partly represented in the TFG, are believed to have violated civilians’ right to protection. As Daniel Compagnon points out, the distinction between militias of the revolutionary

³⁷³ S/RES/1972 (2011), New York: United Nations Security Council.

³⁷⁴ Barber, 386.

³⁷⁵ Ruth E. Gordon, “Humanitarian Intervention by the United Nations: Iraq, Somalia, and Haiti”, *Texas International Law Journal* 31 (1996): 52.

³⁷⁶ Wheeler, 195.

³⁷⁷ Taylor B. Seybolt, *Humanitarian Military Intervention: The Conditions for Success and Failure*, Oxford: Oxford UP, 2007, 17-18.

forces of the United Somali Congress (USC) and bandits became blurred after the former had been given almost a free license to loot, kill and rape in Mogadishu.³⁷⁸

This distinction between civilians and militants became similarly blurred in hospitals, as patients were usually armed, everyone could walk in and out of hospitals, and no security measures were present to guarantee civilians' protection. Even so, MSF' work in these hospitals was no longer considered possible unless a system of security was established to control entry to the hospital.³⁷⁹ Besides MSF, other aid agencies asked opposing clans for protection. In the end, 'what started as a concession to enable MSF to operate the only surgical facility in the war zone developed into an entire security industry, not only contributing to the war economy, but creating a vicious circle of dependence from which it was difficult to escape.'³⁸⁰

3.3.2.2. Humanitarians' Right to Protection

In Somalia, the right of humanitarian personnel to protection has often been infringed. Non-state armed groups regularly kidnapped people to extract ransoms.³⁸¹ For instance, in April 1998 several humanitarian workers were kidnapped, and in June 2008 Islamist insurgents abducted several UN relief workers, amongst whom the head of UN refugee efforts in Mogadishu.³⁸² In addition to these abductions and harassments, humanitarian agencies were increasingly violently attacked; in July 2008, the UN Development Programme's national head got killed.³⁸³

Furthermore, the UIC' forces regularly launched attacks against AMISOM peacekeepers. The latter usually responded with violence and this has resulted in a huge wave of displacement (approximately 1.3 million fled Mogadishu in 2007).³⁸⁴ Moreover, it radicalised part of the Somali population and instigated an anti-Ethiopian and anti-American feeling.

Years of drought, ongoing violence, inflation of fuel and food prices have made Somalia dependent on food aid. Aid agencies are heavily restricted in their operations, because of the violence that is used against them.³⁸⁵ This violence is mostly coming from 'local groups with grudges against some relief agencies but also increasingly comes from deliberate action by some insurgent groups'³⁸⁶

³⁷⁸ Daniel Compagnon, "Somali Armed Movements: The Interplay of Political Entrepreneurship and Clan Based Factions," 79, In: Matthew LeRiche, "Unintended Alliance: The Co-option of Humanitarian Aid in Conflicts", *Parameters* (2004): 114.

³⁷⁹ Terry, 38.

³⁸⁰ Ibid.

³⁸¹ Ryngaert and Van de Meulebroucke, 444.

³⁸² G. Pascal Zachary, "Humanitarian Dilemmas", *Wilson Quarterly* 32.3 (2008): 45.

³⁸³ Williams, 521.

³⁸⁴ Williams, 521.

³⁸⁵ *Somalia: To Move Beyond the Failed State*, International Crisis Group Africa Report N°147, Nairobi/Brussels, December 2008, 18.

³⁸⁶ *Somalia: To Move Beyond the Failed State*, 19.

3.3.2.3. *Duty to Avoid Starvation and Attacks to Objects Necessary to Survive*

In the early 1990s, Somalia was trapped in famine and anarchic internal war. Living conditions rapidly went downhill and millions of people faced mass starvation as inflation pushed food prices even higher.³⁸⁷ Evidently, Somalia could not avoid starvation and attacks to objects necessary to survive and required foreign aid. By the time that UN-led operations and UNITAF were deployed to Somalia in order to provide assistance and put an end to the humanitarian crisis, many Somalis had already died as a result of starvation.

Although the American-led UNITAF initially succeeded in restoring order and alleviating the humanitarian situation in Somalia (it is estimated that UNITAF contributed to saving 100,000 or more lives),³⁸⁸ a state of anarchy soon returned when US military forces entrusted their responsibility of rebuilding Somalia's political institutions and economy³⁸⁹ to 16,000 UN peacekeepers and 1,200 supporting American troops.³⁹⁰ Bennett Romberg maintains that the killing of twenty-four Pakistani peacekeepers by local militias drastically changed the mission of UNITAF, as the United States was hereafter no longer merely determined to reduce starvation, but to capture Muhammad Farah Aided, who was thought to be the main perpetrator. Hence, the United States additionally failed to avoid starvation and attacks to object essential for the survival of a population.

3.3.2.4. *Duty to Avoid Forcible Displacement*

It seems fair to say that Somalia has been unable to fulfil its duty to avoid forced displacement, when considering that Somalia nowadays has about 1,460,000 million internally displaced.³⁹¹ Population movements across the country have been linked to the continuous drought but also the incessant fights in south and central Somalia.³⁹² Moreover, TFG officials resented and possibly obstructed the provision of aid to internally displaced persons because they believed IDPs supported the insurgency.³⁹³

3.3.3. *Violations Under the Umbrella of Assistance*

Somalia has not adhered to the principles and rules of IHL and IHRL pertaining to humanitarian assistance. Moreover, the country's general lack of resources and effective governance, makes it one of the most challenging environment in which humanitarian organisations operate. In fact, humanitarian personnel rarely seems to have been confronted with similar levels of insecurity.

³⁸⁷ *Somalia: To Move Beyond the Failed State*, 1.

³⁸⁸ Walter Clarke and Jeffrey Herbst, "Somalia and the Future of Humanitarian Intervention", *Foreign Affairs* 75.2 (1996): 84-85.

³⁸⁹ *S/RES/814* (1993), New York: United Nations Security Council.

³⁹⁰ Bennett Romberg, "The Precedents for Withdrawal", *Foreign Affairs* 88.2 (2009): 5.

³⁹¹ *Global Overview of Internal Displacement in Africa*, 40.

³⁹² *Global Overview of Internal Displacement in Africa*, 37.

³⁹³ *Somalia: To Move Beyond the Failed State*, 19.

3.3.3.1. *Civilians' Right to Access to Aid and States' Duty to Provide Aid to those in its territory*

Somali civilians have mostly been confronted with violence of local militias whose looting and extortion heavily complicated the distribution of humanitarian aid supplies.³⁹⁴ In so doing, these local clans seriously compromised civilians' access to assistance.

Levels of insecurity have long been extremely high in Somalia. Whereas the humanitarian space is restricted by unrelenting attacks on humanitarian actors, in 2009 3.25 million people (which represents 43% of the Somali population) needed assistance to ensure an adequate standard of living.³⁹⁵

When Somalia could not live up to its duty to provide aid to the Somali population, international actors interfered within its internal affairs. UNITAF subsequently kept thousands of deaths at bay, however, many people died nonetheless (possibly because aid arrived too late). Moreover, the assistance provided by the international community of states fuelled the rivalry between warlords.³⁹⁶

3.3.3.2. *Duty to Facilitate Assistance and Access to Assistance*

Over the years, Somalia has mostly abstained from its duty to facilitate the delivery of humanitarian assistance and to ensure that those in need have access to assistance. Consequently, misappropriation of resources of the humanitarian aid system has occurred on multiple occasions. Local authorities and non-state militias appear to be primarily responsible for obstructing aid supplies and civilians' access hereto.

Firstly, banditry in Somalia 'took the diversion of food aid to unprecedented levels'³⁹⁷ Secondly, Somali clans have used foreign aid to supply their forces. According to LeRiche, one of the reasons for the failure of the intervention in Somalia in 1992 was the ignorance with regard to the use of humanitarian aid as a logistical support system.³⁹⁸ Thirdly, humanitarians' work has been heavily restricted by illegal checkpoints, roadblocks and looting by local authorities and armed groups. In August 2008, 'the UN reported that there were at least 325 roadblocks throughout Somalia, most of them staffed by the TFG or clan militia, and almost all of them demanding payment of fees or protection money.'³⁹⁹ Moreover, in 2011 the situation in Somalia deteriorated severely because government forces as well as insurgents obstructed civilians' access to relief supplies and diverted every bit of assistance for their own gain.⁴⁰⁰

³⁹⁴ Wheeler, 176.

³⁹⁵ Barber, 381.

³⁹⁶ Seybolt, 1027.

³⁹⁷ Terry, 40.

³⁹⁸ Matthew LeRiche, 105.

³⁹⁹ Barber, 380

⁴⁰⁰ *Global Overview of Internal Displacement in Africa*, 38.

3.3.4. Accountability

In the case of Somalia, the rules and regulations of the provision and protection of humanitarian assistance have mostly been disregarded by Somali clans and the United States. Accountability for crimes involving the abuse of humanitarian assistance and the lack of protection against serious human rights violations has definitely not been realised in Somalia. Although 'UN Security Council Resolution 794 affirmed that those who deliberately impeded the delivery of food and medical supplies to Somalia would be held individually responsible,'⁴⁰¹ individual criminal accountability for obstructing aid in Somalia has not been achieved. Moreover, according to the Website of World Food Programme, famine was again declared by the FSNAU and FEWS NET in July 2011. This demonstrates that humanitarian relief efforts need to be continued; there appears to be no quick fix to the Somali conflict.⁴⁰²

Local authorities and clans can be held accountable for disregarding civilians' right to protection and assistance and aid workers' right to protection. Additionally, they failed to prevent the use of starvation, forcible displacement and the misuse of aid. One could even say that Somalia generally abstained from its duties towards the Somali population.

The international community of states bears significant responsibility for the humanitarian debacle in Somalia, as UN and US-led operations intensified violence, failed to ensure Somalis' right to protection and assistance, and did not manage to avoid starvation and attacks to objects indispensable for people's survival. Notwithstanding its initial successes, it is commonly agreed that UNITAF was not a successful mission. Although it provided humanitarian relief and contributed to ending the famine, the most important consequence was that it did not bring political reform.⁴⁰³ Furthermore, UNITAF can neither assert that it has established high standards of accountability and respect for IHL and IHRL in Somalia.⁴⁰⁴ What had begun as a peacekeeping mission, soon turned into nation building, and the United States' rapid withdrawal from Somalia clearly demonstrates that the US did not want to get embroiled in Somali politics to such a great extent.

⁴⁰¹ Terry, 36.

⁴⁰² *Somalia: To Move Beyond the Failed State*, International Crisis Group Africa Report N°147, Nairobi/Brussels, December 2008, 31.

⁴⁰³ James Mayall, "Humanitarian Intervention and International Society: Lessons from Africa", In: Jennifer M. Welsh, *Humanitarian Intervention and International Relations*, Oxford: Oxford UP, 2004, 133.

⁴⁰⁴ John Borton, "The State of the International Humanitarian System" *Refugee Survey Quarterly* 17.1 (1998):18.

3.4. Rwanda



3.4.1. Conflict History

The conflict in Rwanda is rooted in the ethnic animosity between Hutu and Tutsi. The colonists long considered the Hutu majority biologically inferior to the Tutsi and therefore systematically discriminated the Hutu and privileged the Tutsi.⁴⁰⁵ However, attempting to remedy past injustices, the colonial administration shifted their support from the Tutsi minority to the Hutu majority in 1959.⁴⁰⁶ During 1959-1961, the Hutu led a rebellion against the Tutsi. Rwanda officially reached independence in 1962, when *UN General Assembly Resolution 1746* terminated the Belgian trusteeship.⁴⁰⁷ That same year, the Tutsi-dominated monarchy was replaced by a Hutu-led republic and a new wave of political and social instability was introduced by this transition.⁴⁰⁸ Clearly, ethnic violence was looming. Moreover, a refugee crisis was born, as hundreds of thousands of Tutsi fled the country and settled in neighbouring countries, such as Uganda. Despite the fact that a large part

⁴⁰⁵ *Ensuring Durable Solutions for Rwanda’s Displaced People: A Chapter Closed Too Early*, Global IDP Project, Norwegian Refugee Council, 8 July 2005, 6.

⁴⁰⁶ John Eriksson, *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience*, Odense: Strandberg Grafisk, March 1996, 13.

⁴⁰⁷ *GA/RES/1746* (1962), New York: United Nations General Assembly.

⁴⁰⁸ *Ibid.*

of the Rwandan population ended up in refugee camps located across the border with the DRC (then Zaire), the conflict in Rwanda has been characterised by the UN Security Council as a non-international armed conflict.⁴⁰⁹ Hence, this chapter will assess to what extent rules governing the provision and protection of humanitarian aid have been respected in Rwanda itself, as well as in the Rwandan refugee camps (such as Goma in the DRC) that accommodated millions of Rwandan civilians in the aftermath of the 1994 genocide.

The Tutsi who fled to Rwanda's neighbouring countries in the post-colonial period, soon established their own political entity, the Rwandan Patriotic Front (RPF).⁴¹⁰ Rwanda was invaded by the RPF army in October 1990, when the RPF endeavoured to oust the Hutu-dominated government of President Juvenal Habyarimana.⁴¹¹ Between 1990 and 1993 Rwanda was subsequently embroiled in a civil war. In response to this war, the Organisation of African Unity and several western governments forced the Rwandan government to implement a peace agreement.⁴¹² Although neither Habyarimana's government nor the RPF managed to achieve a military victory, in August 1993 *the Arusha Accords* were signed by both parties to the conflict and a UN peacekeeping contingent (UNAMIR) was established.⁴¹³ It had a substantial humanitarian component and aimed to facilitate the peace agreement. The Hutu appeared to have agreed to power-sharing, yet its hard-liners were secretly preparing a genocide.⁴¹⁴ UNAMIR soon found out that Hutu extremists were planning acts of genocide and warned the UN Secretariat. However, its strength was reduced rather than reinforced when these acts took place. Consequently, UNAMIR stood by while hundreds of thousands of people were getting murdered. Moreover, in response to the killing of ten UN soldiers, 'the Belgian contingent, the largest and most operational, was precipitately withdrawn.'⁴¹⁵

In April 1994, President Juvenal Habyarimana, was killed in a dubious plane crash; his plane was shot down right before it was supposed to land. The ethnic polarisation between the Hutu and Tutsi culminated in a genocide immediately hereafter. Although there remains a heated debate over exact numbers, it is estimated that Hutu extremists slaughtered between 500,000 and 800,000 Tutsis and moderate Hutus in round about 100 days.⁴¹⁶ The genocide was curbed by The Rwandan Patriotic Army (RPA) in June 1994. The RPA was mainly comprised of Tutsi who had left the country in the

⁴⁰⁹ *The Prosecutor v. Jean-Paul Akayesu (Trial Judgement)*, ICTR-96-4-T, International Criminal Tribunal for Rwanda (ICTR), 2 September 1998, Judgment, para. 605. Available online at:

<http://www.unhcr.org/refworld/docid/40278fbb4.html>

⁴¹⁰ Lischer, 80.

⁴¹¹ *Ibid.*

⁴¹² Seybolt, "Harmonising the Humanitarian Aid Network: Adaptive Change in a Complex System", 1039.

⁴¹³ Lischer, 80.

⁴¹⁴ *Ibid.*

⁴¹⁵ Borton, 16-17.

⁴¹⁶ Seybolt, "Harmonising the Humanitarian Aid Network: Adaptive Change in a Complex System", 1039.

post-colonial period out of fear to be persecuted and massacred, and it formed a transitional government after it had put an end to the genocide.⁴¹⁷

The Rwandan genocide was followed by a refugee crisis in the DRC (1994-1996). Evidently, the genocide and civil war in Rwanda heavily destabilised the region. In the following years, many Rwandans continued to live in refugee camps outside the Rwandan border. Refugee camps attempted to accommodate the large amounts of civilians who had run away from Rwanda but could barely manage. The complex emergency that evolved in and around those camps clearly attracted a multitude of humanitarian organisations; amongst them were agencies that had never dealt with large-scale crises.⁴¹⁸ Not surprisingly, immense chaos ensued. Due to competition between organisations, inefficiency and losses followed. Moreover, assistance that was intended to relieve refugees in such camps was regularly diverted by Hutu perpetrators of the Rwandan genocide. They often established military training bases next to the Rwandan Hutu refugee camps, from where they could stockpile weapons, recruit and train refugee fighters and initiate cross-border attacks against the new Tutsi-dominated regime in Rwanda.⁴¹⁹ These Hutu extremists 'soon controlled the refugee camps, maintained much of their military capacity, and prevented civilians from returning to Rwanda.'⁴²⁰

At this point, one might wonder to what extent the international community of states responded to the ongoing hostilities between Hutu and Tutsi and the evolving humanitarian catastrophe in refugee camps. However, after the US-led military intervention in Somalia had failed in 1992/1993, Western countries became relatively reluctant to intervene in ongoing wars where there was no strategic interest. This change in attitude has often been used to justify 'the ineptness of the political response to both the 1994 genocide in Rwanda and the armed elements in the refugee camps.'⁴²¹

3.4.2. Violations Under the Umbrella of Protection

Rwanda is a party to *The Geneva Conventions, Protocols I and II Additional to The Geneva Conventions* and *The African Charter on Human and Peoples' Rights*. In addition, it has signed and ratified *The International Covenant on Civil and Political Rights* and *The International Covenant on Economic, Social, and Cultural Rights*. As a UN state member it has taken on the responsibility of contributing to- and carrying out resolutions of the Security Council; these are clearly binding on all UN member states. Rwanda is not a state party to *The Rome Statute* of the International Criminal Court in The Hague.

⁴¹⁷ Ibid.

⁴¹⁸ Seybolt, "Harmonising the Humanitarian Aid Network: Adaptive Change in a Complex System", 1036.

⁴¹⁹ Lischer, 79.

⁴²⁰ Seybolt, "Harmonising the Humanitarian Aid Network: Adaptive Change in a Complex System", 1041.

⁴²¹ Borton, 16.

In Rwanda, many rules of IHL and IHRL were violated in the post-Cold War period. This chapter attempts to portray which rules regarding the provision and protection of humanitarian relief and the protection of human rights have been broken in Rwanda. Firstly, one could argue that civilians' right to protection has regularly been disregarded, whilst aid became 'part of the mechanisms of oppression and violence'⁴²² in the Rwandan refugee camps. Moreover, international NGOs' decision to hire security personnel in order to prevent militias from stealing aid intended for civilians, often produced more violence.⁴²³

Secondly, the right to protection of medical and religious personnel, medical units and transports has occasionally been ignored. In Rwandan refugee camps humanitarian assistance clearly became a cause of conflict. Aid was militarised and politicised and victims of the conflict (mostly Tutsi and moderate Hutus) bore the brunt of the burden. Sarah Lisher claims that humanitarian organisations were left to their own devices in these highly violent environments, whilst militant leaders continued their slaughtering, the DRC lacked the ability to control the border with Rwanda and external actors refused to demilitarise the militants.⁴²⁴ Hence, they were neither backed nor protected by Rwanda, the receiving state or external actors and often could not do much to improve the situation.

Some humanitarian workers who had been attracted to refugee camps such as Goma, were unaware of the genocide that preceded the refugee crisis. These humanitarian actors were especially vulnerable to the manipulation of Hutu militants; as a result of Hutu propaganda efforts they were led into believing that the Hutu had been the foremost victims of the civil war and that there was no such thing as a genocide.⁴²⁵ Despite these humanitarians' naivety, they were equally entitled to protection and so were their units and equipment.

Although there are not many clear examples to demonstrate that the state's obligation to avoid starvation and attacks to objects necessary to survive has been abandoned, there are several examples of the state's inability to avoid forcible displacement. Hence, in spite of the duty to avoid the latter, an estimated 650,000 Hutu were removed from their homes when an insurgency in the north-western prefectures of Ruhengeri and Gisenyi was stopped by the Tutsi-led government in 1997-1998. Following their displacement, they were forced to live in makeshift camps. According to *Additional Protocol II to the Geneva Conventions*, a state is obliged to provide assistance to the internally displaced. However, in December 2000 the UN ceased to consider these Hutu as IDPs and

⁴²² Terry, 25.

⁴²³ Polman, 34.

⁴²⁴ Lischer, 107.

⁴²⁵ Lischer, 83.

argued 'governmental and international efforts to stabilise the situation through durable solutions [had] advanced beyond the threshold of what still could be called internal displacement.'⁴²⁶

Furthermore, shortly after the 1994 genocide, approximately two million Hutu fled to the DRC, Burundi and Tanzania either out of fear that the RPA would seek revenge or because of threats by Hutu extremists. These Hutu are generally known as new case-load refugees.⁴²⁷ The international community of states has had to overcome several hurdles to provide assistance and protection to these IDPs. Because of principal issues of sovereignty, it was difficult to get access to displaced populations. Moreover, there was 'a continuing lack of clarity about organizational responsibility for IDPs within the humanitarian system.'⁴²⁸

With regard to the conflict Rwanda and the refugee camps outside its borders, the international community of states mostly seems to have failed to respond adequately to forcible displacement. In early April 1994, France and Belgium, and perhaps the United States, intended to use their troops force to halt the killings, but they dropped the idea when 'the RPF, suspicious of French intentions, warned that it would attack soldiers who stayed longer than was necessary to evacuate foreigners.'⁴²⁹ The UN had by then withdrawn most of its troops. In mid-June 1994, French soldiers who were still present in Rwanda undertook Operation Turquoise. They established a safe haven, a zone turquoise, in south-west Rwanda which accommodated internally displaced persons. In so doing, the French tried to save the lives of Tutsi and moderate Hutu, as well as protect the territory and legitimacy of the interim government.⁴³⁰ In retrospect, the French have been heavily criticised for they way in which they acted with regard to the humanitarian zone they established. Although French troops took some measures against the Hutu militia, they simultaneously permitted 'genocidal officials to continue exercising their functions. Even after conceding a RPF victory, the French took no action against the genocidal authorities, permitting—and apparently in some cases assisting—they to flee the country.'⁴³¹ Moreover, in April 1995, the RPA repatriated the IDPs in this zone turquoise and this resulted into huge violence.⁴³² Some 4,000 displaced persons were massacred at the Kibeho camp in southwest Rwanda in April 1995 as a result of the violent forced closure of camps because insurgents were suspected to be inside.'⁴³³

⁴²⁶ *Ensuring Durable Solutions for Rwanda's Displaced People: A Chapter Closed Too Early*, 4.

⁴²⁷ *Ensuring Durable Solutions for Rwanda's Displaced People: A Chapter Closed Too Early*, 7.

⁴²⁸ Borton, 19.

⁴²⁹ *Leave None to Tell the Story Genocide in Rwanda*, Human Rights Watch Report 171-1, March 199, 22.

⁴³⁰ *Leave None to Tell the Story Genocide in Rwanda*, 24.

⁴³¹ *Leave None to Tell the Story Genocide in Rwanda* 24.

⁴³² *Ensuring Durable Solutions for Rwanda's Displaced People: A Chapter Closed Too Early*, 7.

⁴³³ Terry, 32.

3.4.3. Violations Under the Umbrella of Assistance

Rwanda has repeatedly failed to confront its most urgent problems. Whereas the 1994 genocide did not require the immediate provision of aid, the 1994-1996 refugee crisis most certainly did. Consequently, this paragraph mostly deals with the latter. The international community of states responded to the complex emergency that evolved in refugee camps by embarking on one of the largest humanitarian relief efforts it had ever mounted. Clearly, the amount of humanitarian aid agencies present in and around Rwanda was huge. Nevertheless, civilians' right to assistance was ignored from time to time, as aid was increasingly militarised. In spite of immense international public attention, major donor investments and the large number of aid agencies present in refugee camps to distribute supplies, aid organisations were constantly doing a balancing act; whereas reducing the level of assistance would limit civilians' right to assistance and an adequate standard of living, increasing the level of assistance would make more aid available for manipulation.⁴³⁴

The international community of states does not seem to have fulfilled its duty regarding the provision of aid to the Rwandan population and it is commonly perceived that it failed to handle the refugee crisis adequately. Humanitarian assistance to Rwandans who fled to Tanzania and the DRC produced a disastrous outcome; an estimated 80,000 people died in refugee camps in Zaire and Tanzania and in IDP camps in Rwanda.⁴³⁵

Like Sudan, Ethiopia and Somalia, Rwanda has the obligation to make sure people in need receive assistance. Therefore, it should have facilitated assistance and access to aid. It appears to be that mainly Hutus have broken the rules provided for by customary IHL. For instance, in order to finance their armies, Hutu governments imposed levies on food supplies distributed in Goma by humanitarian organisations.⁴³⁶ In addition, militant leaders diverted 'large amounts of aid by inflating population numbers and pocketing the excess.'⁴³⁷ As the level of aid one receives depends on the number of people present in the camps, it was in the interest of the warring parties to keep refugee camps populated. Furthermore, by living off the same food supplies and making profit at the expense of refugees, these Hutu leaders were subsequently able to regain their strength and continue their slaughter of Tutsis. Without such assistance the war had supposedly waned a lot sooner.⁴³⁸ Yet, besides MSF there has not been any record of humanitarian agencies that withdrew from the camps once the most emergent needs of civilians were met, to prevent the protraction of hostilities.⁴³⁹

Whereas insurgents therefore mostly used refugee camps as bases of supply, international assistance was important to the government because it freed up 'finances for the purchase of arms,

⁴³⁴ Lischer, 108.

⁴³⁵ Seybolt, "Harmonising the Humanitarian Aid Network: Adaptive Change in a Complex System", 1041.

⁴³⁶ Polman, 31

⁴³⁷ Lischer, 84.

⁴³⁸ Polman, 39.

⁴³⁹ Tanguy and Terry, 34.

mercenaries, and the payment of soldiers.⁴⁴⁰ In addition, local militia are believed to have obstructed access to assistance in Goma, as an average of sixty percent of all distributed aid supplies was stolen by them. Although part of these consignments were used for their own troops, part were sold to civilians in the refugee camp.⁴⁴¹ The latter enabled Hutu extremists to protract their violence and carry on acts of genocide.

3.4.3. Accountability

In comparison to the other three case studies, accountability has somewhat been realised in Rwanda, because of the establishment of the International Criminal Tribunal for Rwanda (ICTR). The ICTR is an international body that was created to exercise criminal jurisdiction over those who committed acts of genocide and other serious violations of IHL in Rwanda. Obviously, the ad hoc tribunal for Rwanda has strengthened the framework for the prosecution of war crimes in internal armed conflicts.⁴⁴² Despite the fact that some Hutu extremist were actually held criminally accountable for acts of genocide and other serious right violations, the case study of Rwanda is nonetheless considered a humanitarian debacle, especially with regard to the response of the international community of states. Moreover, the case study of Rwanda differs from the other case studies, because it involved genocide. International actors are more clearly accountable with regard to the conflict in Rwanda, because under Art. 3 of the Genocide Convention state parties are 'not only under an obligation not to commit genocide themselves, but they are also under a legal obligation to do everything in their power to 'prevent' genocide in other countries.'⁴⁴³

Neither Rwanda nor the international community of states could effectively protect the civilian population in Rwanda and enforce compliance with the law. For instance, Hutus disregarded civilians' and humanitarians' right to protection in the refugee camps, and the international community of states merely intensified violence when it hired security personnel to protect those involved in humanitarian action. It seems fair to say that Rwanda abandoned its duty to avoid displacement and warriors can be held accountable for diverting and manipulating aid. Moreover, the UN and its member states have failed to prevent the militarisation of the Rwandan refugee camps. However, aid agencies cannot be held accountable for this, 'because it was neither their task nor within their capacity to ensure the civilian character of the camps.'⁴⁴⁴

The international response to the genocide and civil war in Rwanda has justly been heavily criticised. For some reason, the international community of states did not feel compelled to resort to armed force and address the political causes of the Rwandan crisis, but merely responded to the

⁴⁴⁰ LeRiche, 108.

⁴⁴¹ Polman, 34.

⁴⁴² Mack, 31.

⁴⁴³ Carey, Gibney and Poe, 46.

⁴⁴⁴ Terry, 17.

genocide and civil war in Rwanda by means of offering humanitarian assistance. Regardless of the fact that after the debacle in Somalia Western countries had become relatively reluctant to interfere in conflicts where there was no strategic interest, it is nearly unthinkable that the majority of Western governments sat back and that UNAMIR's strength was not reinforced. Especially when considering the fact that US, Belgian, and French policymakers knew that Tutsi were being murdered because of their ethnicity⁴⁴⁵ (UNAMIR had told the UN Secretariat that the Hutu were planning acts of genocide).

Due to the ineffectiveness to respond to the 1994 genocide and the militarisation of refugee camps, the international community of states became a bystander to genocide and immense violence. As it failed to handle the refugee crises in Rwanda, the DRC and Tanzania adequately, it can additionally be held accountable for the lack of provision and protection of assistance, and protection of human rights. Moreover, the French in particular, can be held partly accountable for the massacre of thousands of IDPs in the 'zone turquoise'.

Surely, the international community of states can distil lessons from the Rwandan experience and when looking at the abundance of evaluations, reports, papers and dissertations etc. that have been written about Rwanda, this actually appears to be the case. Since the US-led operation in Somalia and the international response to the situation in Rwanda failed, the international humanitarian aid system has significantly increased its evaluative activities.⁴⁴⁶ It has currently been widely agreed that humanitarian organisations (UN agencies, the ICRC, and NGOs included) can no longer ignore the political and military context in which they provide their services. Despite the desire for neutrality, it is virtually impossible for material assistance to have a neutral effect in a conflict situation. Recognizing that fact, aid organizations should press for external political and military intervention when faced with a militarized refugee crisis, such as the Rwandan refugee crisis.⁴⁴⁷

⁴⁴⁵ *Leave None to Tell the Story Genocide in Rwanda*, 21.

⁴⁴⁶ Borton, 21.

⁴⁴⁷ Lischer, 109.

Conclusion

This thesis has endeavoured to answer the following research question: *To what extent have rules regarding the provision and protection of humanitarian relief and human rights been disregarded in internal armed conflict in post-Cold War sub-Saharan Africa, and to what extent can parties to these conflicts be held accountable for applying humanitarian aid as an instrument of war?*

Clearly, humanitarian aid has been obstructed in a number of sub-Saharan African countries in the post-Cold War period. The abuse of aid is a widespread characteristic of modern warfare. The context of conflicts has altered and there appears to be an increasing trend of asymmetric war strategies, internal conflicts and humanitarian crises. Over the last twenty years, aid has become increasingly militarised and politicised and populations mostly bear the brunt of the burden. Humanitarian assistance has been manipulated in several ways, varying from restricting someone's access to aid and withholding aid, resorting to forced displacement to attract aid, looting, diversion and aggression, turning to other obstacles and targeting humanitarian workers.

There are many rules regulating the execution of humanitarian assistance and the protection of human rights in situations of non-international armed conflict. These rules are provided for by international treaty law and customary law and can either be identified as rules of international humanitarian law or international human rights law. Under IHL, the provision and protection of aid and victims of armed conflict' human rights in internal conflicts are protected by common Art. 3 to the *Geneva Conventions*, several provisions of *Additional Protocol II* and numerous rules of customary law. Provisions of the *ICESCR*, the *ICCPR* and the *African Charter* mostly recall civilians' rights to such assistance and protection under IHRL. One could say that the rights and duties pertaining to humanitarian assistance mostly rely on protection and assistance.

Despite the abundance of rules, there is a huge gap between rules and practice. In Sudan, Ethiopia, Somalia and Rwanda rules and regulations of humanitarian assistance have been broken on numerous occasions. Civilians' right to protection and assistance and humanitarians' right to protection have been ignored and states' duty to avoid starvation and attacks to objects that are essential to people's survival as well as states' responsibility to evade forced displacement have been abandoned. Moreover, states could often not fulfil their duty to provide and facilitate access to aid to those present within in their territory, and often had to rely on foreign aid. IHL and IHRL were simply not recognised or wilfully disrespected by parties to internal conflicts in Sudan, Ethiopia, Somalia and Rwanda, and aid was regularly manipulated and humanitarian relief was used as a weapon of war.

With regard to the cases of Sudan and Ethiopia, government forces and insurgent movements seem mostly accountable for the application of humanitarian aid as an instrument of war. However, the international community of states did not succeed in protecting human rights in Sudan and the multiple UN missions that were deployed to Sudan could not broker comprehensive

peace. Moreover, in the case of Ethiopia aid provided by the international community of states furthers the oppression of the Ethiopian population.

Like the Sudanese and Ethiopian government forces and rebel groups, local authorities and clans in Somalia and Hutu militias in Rwanda can be held responsible for obstructing and abusing assistance. Yet, the case studies of Somalia and Rwanda leave more room for pointing fingers at the international community of states. The latter bore significant responsibility for the humanitarian debacle in Somalia, as UN and US-led operations merely intensified violence, UNITAF neither brought political reform nor established high standards of accountability and respect for IHL and IHRL. In addition, the response of international community of states to the genocide and refugee crises in Rwanda and neighbouring countries has been considered ineffective and inadequate, as it failed to provide and protect assistance, and protect human rights. Out of the external actors that were present during the genocide and civil war in Rwanda, the French can be held particularly accountable as they closed their eyes to genocidal officials and could not prevent the 1995 massacre of thousands of IDPs in its 'zone turquoise'. Although impunity seems to have been bestowed on all parties to internal conflicts in Sudan, Ethiopia, Somalia and Rwanda for disregarding the rules and regulations of humanitarian assistance and misappropriating aid, accountability has somewhat been realised by the International Criminal Tribunal for Rwanda.

Over all, it seems fair to say that rules that were established and are still being developed with regard to assistance and protection, cannot be lived up to in practice because there often is no political will to change the situation. Greater political will must therefore be mustered and humanitarian actors should be agents of change. Besides relieving civilian populations, international actors should fulfil their own responsibilities as well as emphasise other states' responsibilities towards civilians more openly.

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Appendix I

Percentage of Undernourished in Total Population⁴⁴⁸

	1990-1992	1995-1997	2000-2002	2005-2007
World	16	14	14	13
Developing Regions	20	18	16	16
Northern Africa	<5	<5	<5	<5
Sub-Saharan Africa	31	31	30	26
Latin America & the Caribbean	12	11	10	8
Caribbean	26	28	22	24
Latin America	11	10	9	7
Eastern Asia	18	12	10	10
Eastern Asia excluding China	8	11	13	12
Southern Asia	21	19	20	21
Southern Asia excluding India	26	26	23	23
South-Eastern Asia	24	18	17	14
Western Asia	6	8	8	7
Oceania	-	-	-	-
Caucasus and Central Asia	16	13	17	9
Developed Regions	<5	<5	<5	<5
Least Developed Countries (LDCs)⁴⁴⁹	40	41	36	32
Landlocked Developing Countries (LLDCs)	34	34	30	26
Small Island Developing States (SIDS)	24	25	21	21

⁴⁴⁸ *United Nations Millennium Development Goals Report, 2011.*

<http://mdgs.un.org/unsd/mdg/Resources/Static/Data/2011%20Stat%20Annex.pdf>

⁴⁴⁹ Sudan, Ethiopia, Somalia and Rwanda belong to the least developed countries as of 1 January 2011. MDG Regional Groupings, <http://mdgs.un.org/unsd/mdg/Resources/Static/Data/Regional%20groupings.doc>