

Introduction

In April 1994, the long-simmering animosity between Rwanda's two primary groups, the Hutu and Tutsi, erupted into civil war and Genocide. Boldened by decades of propaganda, impunity and racially motivated violence, the ethnic Hutu government and its supporters engaged in a campaign of extermination that, over a 100-day period, would leave some 800,000 people (primarily Tutsis and moderate Hutus) dead; an event that was largely ignored by the rest of the world at the time.

While the international community's reaction to Rwanda's genocide was, by any standard, deplorable, the case of Rwanda proved to be a seminal turning point in post-cold-war international relations and international law. The legacy of Rwanda has inspired reform and innovation in how national governments and the international community can seek to prevent and respond to mass atrocities, as well as how they help societies to recover and rebuild after conflict. To this end, when we created this project, we did so not with the intent of explaining what happened in Rwanda, but examining why and how the events of 1994 occurred, and how they can serve to better direct the international community's responses to atrocities and government-sponsored violence in the future.

The contributors to the articles in this work have been selected for their personalized knowledge of Rwanda, and/or scholarship that has been clearly influenced by the genocide. Included amongst the writers are a number of scholars whose research and writings on Rwanda, the United Nations, and genocide are internationally recognized. Additionally, we have sought out contributions from people who have first-hand experience from Rwanda, be it as peacekeepers, aid workers, or members of the ICTR. As a result, readers might note that some of the authors remain affected by their experiences in Rwanda, and that even after the passage of a quarter of a century, their reflections have awakened raw and painful memories. These aspects have not been edited out of the contributors' articles; it is the opinion of the editors that these recollections and the authors' handling of them add to the value of the over-all work. To that end, we would also like to acknowledge those who were invited to take part in this special issue, but either declined outright or were ultimately unable to contribute due to the fact that their experiences in Rwanda continue to

haunt them. The fact that they cannot tell their stories is one of the lasting legacies of Rwanda.

1 Our Approach

The articles in this collection seek to recount, explore, and – where we can – explain the tragedy that was the Rwanda genocide and the nature of the international community's entanglement with it. We have, consequently, focussed the chapters around three themes:

1. The context – what went before, and how did (or did?) this set the conditions that allowed, or even facilitated, the genocide.
2. The crisis – how did the genocide evolve, and what parts did the wide range of, by turns, appalled, fretful, powerless, mislead – but nevertheless implicated – international community actors and witnesses play in the events.
3. The consequences – what happened after; what shadow has the Rwanda genocide cast since 1994 in relation to UN operations, UN doctrine, and (yet again) the 'never again' hopes of the international community.

Additionally, the articles are generally of three types: personal accounts; comment; and analysis. Many of the contributions mix all three modes, and we have encouraged this rather than sought to limit or compartmentalise the contributions; indeed, we think this a real strength of the editorial approach we have adopted, and the contributions provided. It is, after all, not possible to be dispassionate about genocide in the way that it is possible to be dispassionate about the legal limits of coastal state authority in the EEZ, the practicalities of detention on the battlefield, or the most recent GDP figures.

2 Outline of the Chapters

Colin Keating was the New Zealand Permanent Representative in the UNSC when the crisis unfolded, and he played a central role in trying to ensure the UNSC lived up to its international peace and security mandate in relation to Rwanda. His chapter is a searing and honest account from someone who witnessed the descent into genocide from the vantage point of UNNY. It is a challenging read, tracing (as it does) the sense of frustration, and even helplessness, at the UNSC as a general sense of post-Cold War international optimism was suddenly confronted by a series of almost simultaneous peacekeeping

crises – Somalia, Bosnia-Herzegovina, and Rwanda. Uncertainty as to information; the absence of mechanisms for due diligence and incorporation of alternative intelligence; a retreat on the part of some States from the required level of political will; unwillingness to fund, adequately empower, and resource missions; and the ever present influence of domestic politics – all acted to frustrate and even mislead the UNSC. Obstruction, distraction, obfuscation, fear, and ignorance all played a role in the Secretariat's response as well. As Keating explains, although some States saw quite clearly what was unfolding and called it out for what it was, the UNSC as an institution was to some extent taken by surprise – a shocking, condemnatory, but systemically and politically almost inevitable indictment on the UNSC, Secretariat, and some closely engaged States. And even though the UNSC ultimately – albeit to some extent with only minimal effect – shifted gears once the genocide was an undeniable fact, Keating assesses that subsequent introspection was perhaps fleeting, for he still finds it 'difficult to escape the conclusion that much of what should have been learned by the Security Council from the Rwanda tragedy is either absent or eroding'.

Andrew Wallis, a journalist and scholar deeply familiar with Rwanda, explains how one element of the permissive context for the genocide was established well in advance of the crisis itself. Wallis focusses upon the role and crimes of the coterie around President Habyarimana and his wife, Agathe. The power and longevity (two decades) of this network of self-interested, kleptocratic, violent, and to some degree internationally tolerated groups – the Akazu, Network Zero, and eventually the Interahamwe – ensured that an environment of ethnic tension, impunity, liberal resort to violence, and ultimately active undermining of the Arusha Accords, was well and truly in place by 1993. Indeed, as Wallis observes, the fact that 'the success of the peace process... would inevitably involve some form of compromise and power sharing was treated as treason' by many of those in power, threatened as they were by what that process could portend. Reading Wallis' short history of this fundamental contextual tinder almost leaves one with a despairing sense of consequential inevitability.

In his concise and pithy contribution, Jean Bou – one of Australia's official historians of peacekeeping – describes the rise, fall, and partial resurrection of the UN mission – UNAMIR. From its origins as the Uganda based UNOMUR, through the creation and almost extinction of UNAMIR, to the part resurrection of UNOMIR (II), Bou outlines how the mandate, resourcing, and contextual stars were never in alignment for UNAMIR, fatally compromising from the very outset any chance the mission had of preventing, or in any event stopping, the genocide: 'Unable to affect a peace that neither side wanted and lacking

the strength, mandate and political backing to stop the genocide, UNAMIR was limited to the significant but ad hoc roles of protecting the few people it could, exhorting the belligerents to talk and, perhaps most importantly, reporting on the atrocities around them'. UNAMIR, he concludes, was variously 'disdained' or 'tolerated' by all sides – RPF, Hutu militia, Rwandan Army – and this speaks powerfully to its effectively pre-ordained weaknesses. Even subsequent to the mid-1994 revamp, the same essential 'paradox' continued to vex and hamstring UNAMIR – that is, quite apart from resource incapacities, 'the mandate and reality were not in sympathy'. Subsequent atrocities such as Kibeho, the evolving political context, and increasing local contempt for the brave but utterly inadequate UNAMIR, meant that its ultimate withdrawal in March 1996 was for many States, and for the UN, an ongoing embarrassment, but a relief nonetheless.

John Frewen – at the time an Australian Army Captain, now a Lieutenant-General – provides us with a gripping personal perspective of the day to day tactical and operational frustrations of UNAMIR II. But, perhaps more importantly, he also delivers a very open account of the human costs and consequences of, but also the initiative and resourcefulness of an under-strength and weakly mandated UN Force which was mismatched to its context. Both UNAMIR and UNAMIR II, he writes 'failed the grand ideals of humanitarian intervention assigned them', which meant that the UN was ultimately relegated to the role of 'bystander to the ensuing carnage'. A confused mandate, and associated confusion as to use of force authorisations, inadequate resourcing, misjudgements as to the intentions of the main actors (and, indeed, the degree of respect they would afford the UN), failure of collective will, and misconceptions as to role, all played a part in UNAMIR and UNAMIR II trying – often heroically – to act as 'representatives of peace, where no true peace had yet settled'.

In a similar vein, Bruce 'Ozzie' Oswald – also an Australian Army participant in UNAMIR II and now a greatly respected analyst of UN mandates and operations – also provides an insider's perspective on the mission. Oz was the Australian contingent Legal Officer and is almost uniquely qualified to comment upon the legal ills and opportunities that attended UNAMIR. It is also fair to say that the academic Oz is in very many ways a product of his experience of Rwanda and UNAMIR. Oz looks to three seminal legal lessons learned from the Rwanda operation. The first is the need for coordination and early – indeed pre-set – institutional cooperation in investigating mass atrocity. As he notes, intra-mission competition for resources, relevance, and mandate can (and in Rwanda did) lead to bureaucratic delay and loss of evidence. The second is the – ongoing – uncertainty that surrounds the interrelated matrix of use of

force, RoE, and self-defence. The rise of Protection of Civilian mandates, and the need to educate the Secretariat as to the manner by which use of force is controlled by military contingents was – as other articles also note – a key consequence of the Rwanda mission. The third issue Oz deals with is detention operations – more specifically, the variety of detainee types that are encountered in UN operations, from criminal detainees through to people who wish to be detained for their own protection. The long operational and legal tail that the simple act of taking a detainee brings into play was, for Oz, one of the key insights he took away from UNAMIR, and one from which INTERFET operations in East Timor in 1999–2000 certainly benefited. His six legal lessons from Rwanda are as concise and practical an elaboration of pragmatic operations law concerns as one is likely to find.

As with John Frewen and Bruce Oswald, Phillip Drew and Brent Beardsley were also on the ground during UNAMIR, Phil as the Canadian Intelligence Officer, and Brent as the Military Assistant to the UNAMIR Force Commander, Major-General Dallaire. In this joint chapter, Phil and Brent take up Ozzie's RoE theme and describe the UNAMIR RoE 'from the inside': process, content, uncertainties. As they observe, the UNAMIR RoE was vexed from the outset by a series of procedural and political pressures which proved insurmountable for UNAMIR in terms of establishing an agreed, approved, and accepted RoE profile. The first was the inability, incapacity – and indeed the unwillingness – of the Secretariat to agree, let alone approve, the draft RoE. This in turn meant that debates and uncertainties as to mandate scope and interpretation in relation to use of force, self-defence, and tasks and roles – the outcomes and resolution of which are often, but not always, expressed in RoE – were never resolved. These debates and uncertainties thus continued to dog UNAMIR, leading in effect to the legally incorrect, operationally nonsensical, and at a human level disastrous 'do not intervene' conclusion. Drew and Beardsley do not say that an approved, agreed, and accepted RoE would have solved everything: 'if a force does not have the capacity to perform a given task, then it is folly, and potentially dangerous, to provide it with RoE to do that thing'. Indeed, as they astutely note, in some ways the 'don't engage' approach may have (paradoxically) actually 'spared the tiny UN force from annihilation'. Nevertheless, the 'wilful neglect' of the UN in allowing uncertainty as to RoE – and so much else about UNAMIR – to continue played a clear role in the outcomes.

In her contribution, Tamsin Phillipa Paige, an innovative scholar of UNSC history and practice, analyses the 'inadvertent complicity' of the UNSC in the genocide. By analysing the discourse employed in assessing the nature of the threat to the peace represented by the situation in Rwanda, Paige lays bare the nuanced differences in argument and approach employed by each of the

P5. Her assessment indicates several fundamental points. The first is the expressed preference amongst the P5 for a negotiated solution – in many ways, an almost blind unwillingness to change course, even after the genocide commenced, from the initial commitment to negotiations and (failed) peace accord implementation. The second is that the P5 as a collective were committed to public institutional reliance upon reports from the Secretariat for UNSC situational awareness and recommendations. That is, despite their own independent access to information, and the fact that some of the E10 – such as NZ – worked hard to bring these alternative sources of information to the table, the P5 were collectively reluctant to allow these independent assessments and reports to enter the chamber in any meaningful way. This was a consequence of both P5 management of their own situational interests but also of deeper predilections and beliefs about the role of the UNSC in such situations. Her conclusion is that ‘When all of this is considered the only reasonable conclusion that we can reach is that the Security Council, at the behest of the French, was complicit through their inaction in the Rwanda genocide.’

Melanie O’Brien’s chapter provides a vital element of the contextual background to Rwanda in 1994–1995, and to UNAMIR, naming and defining the fundamental horror that happened, and was allowed to happen, in Rwanda – genocide. She traces the origins of the term from Lemkin through to the Genocide Convention, and through a number of iconic cases. O’Brien exposes for us some of the (still) unresolved tensions that have vexed the concept of genocide: The tension between broader cultural and existential approaches, and narrower physical and biological destruction approaches; and genocide as process or event. She also outlines some of the legal challenges that attend several of the key terms in the generally accepted definition of genocide: ‘destroy’, ‘in part’, ‘groups’, ‘intent’, and so on. She then concludes with an important and politically nuanced point essential to understanding the politics and afterlife of the Rwanda genocide – the ‘weight of the “g” word’.

In his second chapter, Phil Drew – as noted previously, also a participant in UNAMIR as the Canadian contingent intelligence officer in mid-1994 – then leads us through much more of the harrowing detail surrounding the how and why of the genocide in Rwanda specifically. He does so by comparing the ‘predictable path’ to the genocide in Rwanda with the waypoints along the road to the Holocaust, identifying the indicia of parallel development. This comparative assessment is both possible and instructive, he notes, precisely because ‘genocides don’t just happen; rather they are the manifestation of planned and deliberate campaigns to bring about the destruction of an identifiable national, ethnical, racial or religious group.’ Using Stanton’s ‘Ten Stages of Genocide’ as his framework, Drew employs comparative touchstones – racism as

ideology, perversion of law and normalisation of racism, impunity, hate propaganda, organised campaigns of extermination, and the bitter post-script of perpetrator escape and genocide denial – to illustrate the similarities in evolution as between these two genocides. He concludes that ‘it is abundantly clear that post-1959 Rwanda was a society that was well-primed for genocide; all the hallmarks of a pending genocide were present’. The lost final chance to avert the crime – represented by the UNSC and key States failing to properly grasp the situation in Rwanda, and as a consequence consciously deciding to avoid a robust response – meant that none of ‘the thousand early warnings that something appalling was about to occur in Rwanda’ were heeded.

As an investigative journalist, author, and practitioner involved in the legal aftermath of the genocide, Linda Malvern builds on the foundations laid by O’Brien (the ‘what went before’ of the concept of genocide), and the Rwanda specific comparative analysis provided by Drew, and outlines the abhorrent – almost unbelievable – malignant afterlife of the genocide in the form of ongoing genocide denial. As Malvern observes, the Rwanda typology of genocide denial attempts to leverage a form of ‘moral equivalence’ between Hutu and Tutsi groups by claiming that both massacred each other and that, consequently, whilst Rwanda witnessed an abhorrent series of tit-for-tat mass killings, it was not a genocide. Consequently, this campaign – as Malvern indicates – does not focus on denying that mass atrocities took place; rather it is perpetrated through the artifice of re-casting the event as a series of iterative mass atrocity crimes on both sides, in an attempt to de-fang the particular moral opprobrium of the atrocity by removing the sting of the label ‘genocide’.

The next two chapters then explore two further discrete aspects of the afterlife of the Rwanda genocide. David Simon, a political scientist, challenges us to think about the lessons learned, or not, from Rwanda through the prism of the current persecution and – as is before the ICJ as this journal goes to press – genocide of the Rohingya. Simon assesses that the situation of the Rohingya exposes the ‘hollowness’ of the ‘never again’ post-Holocaust, post-Rwanda, post-Srebrenica assurances of institutional and communitarian lessons (not) learned, or indeed of learning the wrong lessons. As Simon outlines, there were in fact significant changes post-Rwanda to the international genocide prevention architecture; yet ‘the nature of the changes to the international atrocity prevention regime that ensued, and then the global response to the genocide against the Rohingya in Myanmar... still falls short of what is necessary to prevent genocide’. The ‘wilful ignorance’, ‘deception’, ‘cowardice’ that dogged the UNSC in 1993–1994, and the nature of the key proposed institutional and doctrinal solutions developed – organisational human rights actors and monitors,

and R2P – have not functioned as hoped. Simon proposes that two factors – in particular – may help explain this. The first is that the UNSC (particularly through use of the veto) can still remain wilfully ignorant when it wants to – and R2P does not and cannot prevent this. The second is the lack of internal coordination and unity of effort within and amongst the different actors and pillars of the evolved post-Rwanda atrocity prevention scheme, which can still hamstring the UN and international community's ability to identify pre-genocide indicators and warnings, and to halt genocides once they commence. 'In sum', he concludes, 'the core lesson from the UN's failure in Rwanda was not learned: that the current structure of the Security Council... is unlikely to authorise either a protection-driven intervention mission or a punitive procedure'.

Another political scientist, Adam Jones, then challenges us to think about the Rwanda genocide from a different perspective – that of gender: gendered anxieties, gendered agents, and roles, and gendercidal targeting. His chapter is a timely reminder that beyond its abhorrent nature and universally abhorrent consequences, genocide is as multi-dimensional as any other *jus cogens* level crime. Jones describes two broad typologies of genocide – 'gendercide', and 'root and branch genocide', which are 'distinguished by the different operations of the gender variable in each'. As Jones outlines, the Rwanda genocide evidenced a broad range of gendered aspects – from leveraging ethnicised gender tropes, through the sometime employment of gender-based genocidal approaches (execution, rape), to the economic and social consequences (planned or not) that are the legacy of gendered genocide. 'The "gendering" of a given genocide', he concludes, 'therefore encompasses the cultural configurations that influence the mobilisation of perpetrators and the targeting of victims, as well as the sexed bodies that are damaged or destroyed in genocidal campaigns'.

Emily Crawford, a highly regarded and insightful scholar of LOAC and ICL, explores one set of key institutional and legal responses to, and consequences of, the Rwanda genocide – the ICTR and the revival of ICL that the ICTR and the ICTY heralded. Tracing the development of the concept and institutions of ICL, Crawford observes how 'Beyond just their mere existence, the case law of the [ad hoc] tribunals, the ICTR in particular, were pivotal in progressively developing the international law of genocide, and the law of non-international armed conflict'. This is not least because the tribunals 'revived international criminal law as a discipline'; it is also because the jurisprudence of the ICTR was especially significant in the evolving jurisprudence in respect of genocide, and sexual violence as a means of genocide and as a war crime, the criminalisation of violations of both Common Article 3 of the Geneva Conventions and

Additional Protocol II, and the political leadership dimensions of command responsibility. 'While the record of the ICTR', she concludes 'was not without its problems, it nevertheless was an important institution, both for its own program of work, as well as for its contribution to re-establishing international criminal law as a distinct and permanent part of the international legal landscape'.

Crawford's chapter is neatly complemented by Mark Drumbl's equally compelling contribution on the domestic Rwandan legal and institutional response to the genocide. Drumbl notes the international (ICTR) and extraterritorial (genocide related cases in Canada, France, Belgium, and Germany) judicial responses to the genocide, but focuses his contribution on tracing the two main levels of Rwanda's judicialised domestic response to the genocide. He describes the foundations, operation, and legacy of organic criminal law and courts, and the employment of 'gacaca' – 'justice in the grass', a 'form of local dispute resolution' to adjudicate many genocide-related crimes. This multi-level approach was necessary, Drumbl notes, because the 'staggering number of genocide suspects... did more than, to draw from Hannah Arendt, "explode the limits of the law", they also exploded the capacity of whatever infrastructure that remained'. Drumbl takes some time to describe the utility of the gacaca in particular. He notes how – in a post-atrocity political context where no truth and reconciliation commission was established – this mechanism ('steeped in reconciliation, reconstitution, and reintegration', and empowered in order to 'attain both legal and extra-legal goals') nevertheless 'involved the local community sitting in judgment of persons having committed mass atrocity in the same community'. There was, as he concludes, a 'lack of congruence' between the nature and objectives of the international and Rwandan justice responses, and indeed also as between the two main Rwandan justice responses. But whether this is simply a valuable insight, or something more fundamental, is as yet undetermined, and to some extent hinges around his ultimate assessment that 'Whether the intense turn to criminal law in the aftermath of the Rwandan genocide... attained retributive, deterrent or expressive goals remains debated'.

Jane Boulden of the Royal Military College in Canada introduces the final section of the journal – dealing with consequences and lessons learned/observed/ignored/unidentified – with a general survey of the shadow of UNAMIR, and the Rwanda operation, in terms of the UN. Boulden traces the assessments and outcomes of a select set of reports – broader UN, DPKO specific, and AU – in order to ask 'has peacekeeping changed since Rwanda?'. On one level, she concludes, it has not: There was no discernible UN turning away from 'continued use of peacekeeping as a tool since UNAMIR'; the UNSC has continued to authorise operations 'that address intra-state conflict'; and the

many significant reports and doctrinal evolutions since Rwanda still tend to coalesce around the sacred nature of the three pillars of traditional peacekeeping – consent, impartiality, and minimum use of force. Boulden observes how these three pillars – and particularly ‘impartiality’ – have been subject to post-Rwanda debate and refinement, but indicates that this was in some ways the low hanging fruit. This is because it has proven – and continues to prove – much harder to deal with those other factors that this series of reports clearly agreed to be fundamental to the Rwanda context: The ‘clear, grim picture of dysfunction, missed opportunities, and failure at almost every turn’ that characterised the UN’s engagement with Rwanda in the lead up to, during, and in the aftermath of the genocide. Accepting that there has been significant normative change flowing from these many analyses of Rwanda and peacekeeping more generally, the fact that the 15 years of reports between Brahimi and HIPPO ‘overlap considerably in the points they raise and the recommendations they provide... demonstrates that not very much may have changed’.

Rob McLaughlin then continues this analytical endeavour with his focussed examination of the 1999 Independent Inquiry Report into the UN and the Rwanda operation, and the doctrinal legacies of that report in relation to UN RoE. McLaughlin traces the main findings of the Independent Inquiry Report with respect to UN RoE and associated doctrine, and then outlines the subsequent doctrinal and report-based see-saw between the traditionalist and progressive perspectives in terms of thinking around, and support for, robust RoE in peace operations. He concludes (along with Oswald, Drew, and others) that whilst progress is evident, the UN is still institutionally and doctrinally divided on the nature and role of RoE and associated doctrine for peacekeeping operations. This disconnect will continue to hamper operations until more clarity around issues such as self-defence, and use of force for mandate implementation, is achieved.

Finally, Stacey Henderson looks to the shadow of Rwanda in terms of the persistent – and persistently contested – concept of humanitarian intervention, and the evolution of the R2P doctrine. Tracing the ‘re-examination of the conceptualisations of sovereignty and the principle of non-intervention’ that evolved after Rwanda, Henderson describes the long journey towards R2P, and assesses the legal, normative, and institutional challenges that still attend the attainment of its goals. This is not least due to continued associations of R2P with coercive measures, which – as Henderson notes – often tends to reanimate, rather than move on from, the baggage around humanitarian intervention. Ultimately, however, Henderson concludes her chapter, and indeed the special edition, on a note of cautious optimism: Although it is in no way a panacea, R2P – at the very least – ‘raises the possibility that a greater range of

measures may be taken in response to the commission, or anticipation of, atrocity crimes in the future. The legacy of Rwanda is the hope, reflected in R2P, that silence and idleness will never again be the international community's response to genocide'.

3 Conclusion

As stated above, this collection of works deals with the context, the crisis and the consequences of a truly shocking time in the history of Rwanda and the lives of those that were in Rwanda in 1994. We hope that those who read this volume or dip into the specific chapters that follow will find that the richness of the personal accounts, comment and analysis has given them a better understanding of that shocking time. However, our ultimate hope is that every reader of this book comes away with a deeper commitment to do everything in their sphere of influence to condemn racism and other forms of intolerance, and ultimately, prevent another genocide.

Phillip Drew

Jeremy Farrall

Rob McLaughlin

Bruce Oswald