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**LAW OF ARMED CONFLICT AT THE OPERATIONAL LEVEL
RWANDA AND AN UNLAWFUL ORDER**

By

Colonel B. W. MacLeod

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ABSTRACT

In the autumn of 1993 the United Nations (U.N.) authorised the deployment of a United Nations Assistance Mission to Rwanda (UNAMIR) to supervise the transition to peace in accordance with the terms of the Arusha Accord signed earlier that year. Unfortunately, the conditions were not met and genocide resulted in the massacre of approximately 800,000 people. Within the U.N. Headquarters, there was considerable debate as to what action to take. The options ranged from a complete withdrawal of the force to its reinforcement. In the early weeks of what later became defined as genocide, the U.N. Force Commander, General Dallaire reports that he received the worst of all possible orders – to withdraw the force. General Dallaire refused the order on the grounds that to do so would result in the slaughter of approximately 30,000 people under the protection of his UNAMIR force. This paper argues that, based on the laws of armed conflict (LOAC) and other international laws and conventions, General Dallaire had a legal responsibility to refuse this order as being unlawful.

INTRODUCTION

On 4 August 1993, the Rwandan Government and the Rwandese Patriotic Front (RPF) signed the Arusha Peace Accord. Following decades of regional violence, this agreement provided a broad role for a neutral international force to assist in bringing peace to the region. This international force was to supervise the implementation of the agreements over a twenty-two month period. Amongst numerous other requirements, UN resolution 872(1993) mandated the United Nations Assistance Mission to Rwanda (UNAMIR) to supervise integration of the armed forces of the two parties, contribute to the security of Kigali city, and assist in coordination of humanitarian assistance in conjunction with relief operations.¹

All did not go according to plan. Ambitions of the disputing parties and a myriad of international considerations facilitated the now well known genocide which resulted in the massacre of approximately 800,000 Rwandans. Preceding this genocide, in the early days of the mission, the UNAMIR force commander, General Romeo Dallaire, determinedly committed his force and himself toward achieving mandated goals. However, these goals were not realized. A complexity of developments resulted in the reduction of the UNAMIR force at a time when the evidence of genocide was prevalent. The circumstances surrounding the onslaught of these massacres resulted in approximately 30,000 Rwandans falling under the protection of the UNAMIR force in a Kigali stadium. By stretching his reduced force to the utmost, General Dallaire secured the safety of this thirty thousand. Preceding the worst of this slaughter, General Dallaire contends that he was ordered to withdraw the UNAMIR force from Rwanda.² This order he believed would result in the subsequent demise of the 30,000 Rwandans under the protection of his force. Consequently, General Dallaire refused the order.³

This paper argues General Dallaire's legal responsibility to disobey this withdrawal order as being unlawful. The 30,000 Rwandans in the care and protection of the UNAMIR force were clearly at risk of being slaughtered should General Dallaire have withdrawn. The ground situation leading up to the time that General Dallaire reports receipt of the order, and the relevant events that followed demonstrate this point. The focus remains on the operational commander's perception based on the information available to him at the time. The applicable Laws of Armed Conflict (LOAC) and other international laws and conventions, which support General Dallaire's legal obligation to refuse the order, are clear. As a member of the Canadian Armed Forces, General Dallaire was legally bound by the aforementioned laws and conventions. Based on the operational commander's understanding of the situation at the time, General Dallaire had a legal obligation to disobey the withdrawal order as being unlawful.

¹ Carlsson, Inavagar; Sung-Loo, Hung; Kupolati, Rufus, M. *Report Of The Independent Inquiry Into The Actions Of United Nations During The 1994 Genocide In Rwanda*.

Ahttp://www.un.org/News/ossg/rwanda_report.htm. 15 Dec 1999. pp2-5

² Dallaire, R.A., LtGen. (Retd). *Command Experiences In Rwanda, Extracts from the Human In Command: Experiencing the Modern Military Experience*. New York: Kluwer Academic/Plenum Publishers, 2000. P9.

³ Ibid, p.9.

The focus of this paper remains on the implications of LOAC and other international laws and conventions at the operational level. Therefore it will not attempt to develop technical legal arguments deemed appropriate for a court of law. Instead, the focus will be on the operational commander's understanding of the ground situation at the time he received the withdrawal order. This understanding indicates General Dallaire's obligation to refuse the withdrawal order as unlawful. It must also be acknowledged that the circumstances with which General Dallaire and his force were confronted were extremely stressful. No attempt will be made to address the effect that such stress and the related moral and ethical dilemmas surrounding this operation may have had on General Dallaire's judgement. Nor will there be any attempt made to challenge the contradictory evidence as to the issuance of this withdrawal order.⁴ The operational commander's understanding of the situation led to his determination to refuse the order. To achieve the stated objective, it is necessary to understand how the operational situation evolved from the commander's perspective and which led to the 30,000 Rwandans falling under his protection. It starts with General Dallaire's appointment as force commander.

THE GROUND SITUATION

With the passing of U.N. Resolution 872 (1993), General Dallaire was appointed Force Commander of the mission. At the time, General Dallaire had been the Chief Military Observer to the United Nations Mission Uganda-Rwanda (UNOMUR). Thus, it can be assumed that he was well aware of the regional situation and the nature of the long-standing dispute.⁵ As force commander, he deployed to Kigali on 22 October 1993 and was joined by his advance party on 27 October

Before the UNAMIR mission had been fully established, things started to deteriorate within country. Between November and December 1993, about 60 people were ruthlessly murdered. Already concerns existed about the armed activity in Rwanda including the existence of armed militia. In December, the U.N. Under-Secretary-General for Political Affairs traveled to Rwanda to warn Rwandan President

⁴ Carlsson, Inavagar; Sung-Loo, Hung; Kupolati, Rufus, M. *Report Of The Independent Inquiry Into The Actions Of The United Nations During The 1994 Genocide In Rwanda*.

[Ahttp://www.un.org/News/ossg/rwanda_report.htm](http://www.un.org/News/ossg/rwanda_report.htm).15Dec 1999.p.40. The report does not provide any evidence that the withdrawal order had been given. However, it does state that on 20 Apr 94, the options considered included the withdrawal of the force, but that the Secretary-General did not support this option. In recognizing the time differences, it is probable that this option was discussed with General Dallaire, which he refused out of concern for those under his protection. The report further reflects that the withdrawal option was withdrawn as a considered course of action on the same day (21 Apr 94) General Dallaire acknowledges having refused to comply.

⁵ Destexhe, Alain. *Rwanda And Genocide*, Tranlated by Marschner, Alison. New York University Press, Washington square, New York. 1994/95.pp.11-45. Destexhe provides a comprehensive summary of the historical relationship between the Tutsi and Hutu. He also expands on the European influence, and in fact significant contribution to the racism which evolved only after European interventio.

Habyarimana that the U.N. had information of his plans to kill the opposition and that the U.N. would not tolerate this.⁶

On 10 December, the U.N. Secretary-General's Special Representative in Rwanda held a meeting with the political parties in an attempt to put the Arusha Accord back on track. Both parties reaffirmed their commitment to this agreement, but the planned timetable was never implemented. The few achievements realized proved to be only those objectives that played into the hands of the two opposing parties. These included the installation of an RPF battalion in Kigali and the inauguration of President Habyarimana. Furthermore, the Broad-Based Transitional Government (BBTG) was not established, and the National assembly was not formed because of disagreement among the parties.⁷ It is unlikely that General Dallaire missed the relevance of these obvious threats towards the realization of the accord objectives. These concerns became more profound as time passed.

On 11 January, General Dallaire sent a message to U.N. Headquarters requesting authority to protect an informant. This informant, who was later identified as the Prime Minister Designate (Mr. Faustin Twagiramungu was to assume his post as part of the accord transitions to a multi-party government), advised General Dallaire of a conspiracy under development. It included the planned killing of Belgian soldiers to provoke their withdrawal, the assassination of opposition deputies, and the registration of all Tutsi in Kigali with the believed intent to exterminate them. Also, the informant advised General Dallaire that the Interahamwe had trained 1,700 men in the RGF camps and had scattered these men in groups of 40 throughout Kigali. The informant claimed that his personnel were able to kill up to 1000 Tutsi in 20 minutes. Adding credibility to his report, the informant added that he himself had been in charge of a demonstration on 8 January, aimed at targeting opposition deputies and Belgian soldiers. General Dallaire knew that this demonstration did take place and that the Belgian forces were harassed. Furthermore, the Prime Minister Designate reported a major weapons cache, which was to be distributed imminently.⁸ Despite any doubts as to the veracity of this report, it is understandable that the operational commander considered these allegations seriously. According to the informant's report, General Dallaire would have perceived that not only was the very foundation of his mandate at risk, but also, his force was a potential target, with stated intent to force a withdrawal and thus eliminate any resistance to a campaign of genocide. The evidence shows that this information figured prominently in General Dallaire's future deliberations and actions. Although this informant reinforced earlier reports of such a plan, as implied through the aforementioned discussions with President Habyarimana, the veracity of these allegations needed to be confirmed.

⁶ Carlsson, Inavagar; Sung-Loo, Hung; Kupolati, Rufus, M. *Report Of The Independent Inquiry Into The Actions Of United Nations During The 1994 Genocide In Rwanda*. P.5.

⁷ Ibid, pp4-5. It is further observed that sides signed the Arusha Accord for less than pure reasons. The President signed because a fall in the market prices left his country dependent on international assistance. To realize the necessary support, he was pressured into creating a multi-party government. This power sharing was the heart issue in the Arusha Accord. The Tutsi signatures did so because they did not want a bankrupt country, which could have resulted without the world support. It can be assumed that General Dallaire was aware of the ulterior motives of the two parties.

⁸ Ibid, pp5-6

After a meeting with the Prime Minister Designate, the U.N. Special Representative sent to verify this information reported his “*total, repeat total, confidence in the veracity and true ambitions of the informant*”.⁹ The U.N. Special representative also reported that the informant had only 24 to 48 hours to distribute the weapons, and advised U.N. Headquarters of General Dallaire’s intent to capture the weapons caches. The Headquarters responded that no military action was to be taken as it exceeded the UNAMIR mandate under resolution 872(1993). Instead, they directed that both General Dallaire and the Secretary-General’s Special Envoy confront President Habyarimana with the allegations, and advise him that this was a clear violation of the Arusha Accord and of the Kigali Weapons Secure Area (KWSA). As could be expected, the President denied any knowledge of the reported initiatives and the January 8 demonstration. He was urged to investigate and to report back to UNAMIR as soon as possible.¹⁰

In his report to the U.N., regarding the allegations, the Secretary-General’s Special Representative to Rwanda, who worked closely with General Dallaire, reported, “*The President... seemed unnerved and is reported to have subsequently ordered an accelerated distribution of weapons ...*”.¹¹ In a later report, on January 21, the Special-Representative reported that the President never did inform UNAMIR of any follow-up to the aforementioned allegations.¹² This was but one example of the many developments contributing to General Dallaire’s understanding of the evolving situation. His appreciation of events was to further influenced by a backdrop of concerning developments.

In the early months of 1994, ethnic tension, killings, arms distributions and military activities all increased. The Special Representative reported,

“increasingly violent demonstrations, nightly grenade attacks, assassination attempts, political and ethnic killings, and we are receiving more and more reliable and confirmed information that the armed militias of the parties are stockpiling and may possibly be preparing to distribute arms to their supporters. If this distribution takes place, it will worsen the security situation even further and create a significant danger to the safety and security of U.N. military and civilian personnel and the population at large”.¹³

The report continued to indicate that the Government Forces (RGF) were preparing for a conflict, and assessed that,

“should the present Kigali defensive concentration posture of UNAMIR be maintained, the security situation will deteriorate even further. We can expect

⁹ Carlsson, Inavagar; Sung-Loo,Hung; Kupolati, Rufus, M.*Report Of The Independent Inquiry Into The Actions Of United Nations During The 1994 Genocide In Rwanda ...*P.6

¹⁰ Carlsson, Inavagar; Sung-Loo,Hung; Kupolati, Rufus, M.*Report Of The Independent Inquiry Into The Actions Of United Nations During The 1994 Genocide In Rwanda... Pp.6-8*

¹¹ Ibid, P.7

¹² Ibid, p.7

¹³ Ibid, P.8

*more frequent and more violent demonstrations, more grenade and armed attacks on ethnic and political groups, more assassinations and quite possibly outright attacks on UNAMIR installations and personnel, as was done on the home of the SRSG”.*¹⁴

The recommendation to U.N. Headquarters was that UNAMIR be authorized to take a more active role in deterrent operations, targeting when necessary, arms caches and individuals known to have illegal weapons in their possessions.¹⁵

On 19 February 1994, President Habyarimana received a Security Council Statement expressing their deep concern about the deterioration in the security situation, particularly in Kigali. On 21 and 22 February, the Minister of Public Works and Secretary-General of the Parti social democratic (PSD) were killed. Tensions rose throughout the country. It is likely that the operational commander considered the relevance of these murders in relation to the informants prophesized attacks on the opposition.

Across this backdrop, General Dallaire continued to press for authority to take a more active role. On several occasions he sought empowerment to actively capture known or suspected arms caches to assist in maintaining regional security. General Dallaire's requests were denied because UNAMIR did not have the mandate to do so. It was identified that such actions were the responsibility of the Gendarmerie. It is obvious from the evidence that General Dallaire remained concerned over the veracity of the informant's reports, and which seemed to be validated by the various attacks occurring throughout the region. Knowing that the Gendarmerie did not have the resources to both cordon and search for arms, General Dallaire proposed that any military support to the Gendarmerie in such operations was within the mandate. After questioning General Dallaire's proposal, U.N. Headquarters responded that UNAMIR's mandate only authorized them *“to contribute to the security of the city of Kigali, i.a. within a weapons secure area established by, repeat, by the parties.”*¹⁶ It is evident by General Dallaire's initiatives and the aforementioned arming activities, that he believed this Kigali weapons secure area would not be realized without UNAMIR intervention. Thus, Kigali would not be secure.

Despite what General Dallaire likely perceived as seemingly continuous roadblocks in the reduction of the risks to his force, his mandate and the Rwandan people, he maintained his vigilance. On 27 February, he reported his intents to move two companies, a small command group and a logistic component from the DMZ to Kigali to assist in guard tasks there. General Dallaire had established a number of security tasks associated with the protection of dignitaries and elected officials at risk. These individuals were important in the creation of the new government structure identified in

¹⁴ Carlsson, Inavagar; Sung-Loo,Hung; Kupolati, Rufus, M.*Report Of The Independent Inquiry Into The Actions Of United Nations During The 1994 Genocide In Rwanda...* P.8

¹⁵Carlsson, Inavagar; Sung-Loo,Hung; Kupolati, Rufus, M.*Report Of The Independent Inquiry Into The Actions Of United Nations During The 1994 Genocide In Rwanda...* P.8

¹⁶ Carlsson, Inavagar; Sung-Loo,Hung; Kupolati, Rufus, M.*Report Of The Independent Inquiry Into The Actions Of United Nations During The 1994 Genocide In Rwanda....* P.8

the accord. Those actually protected were those individuals targeted by supporters of President Habyarimana to be killed. Most Tutsi targeting was done through radio incitements, whereas the more moderate Hutus being targeted were identified by a discrete death list, a copy of which had been provided to General Dallaire by the informant. General Dallaire emphasized the urgency of the aforementioned operation in stating, “*the present serious increase in terrorist actions combined with the serious decrease in Gendarmerie and UNAMIR reaction capability could lead to an end to the peace process.*”¹⁷ It is obvious that he was growing increasingly concerned. Few of the requirements of the Arusha Accord had been realized and the security situation was deteriorating.

Despite the lack of progress made towards achieving the Arusha Accord objectives, on 5 April, the Security Council authorized a four month extension to the UNAMIR mandate. The following evening, the Rwandan President’s plane was shot down as it approached Kigali, killing everyone on board. Within an hour, the Presidential Guards, the Interahamwe, the Rwandan Army and the Gendarmerie all started to set up roadblocks. Unquestionably, General Dallaire was seriously concerned about this development, for he placed the UNAMIR force on red alert.¹⁸

That night General Dallaire attended a meeting at the RGF Headquarters (Hutu lead Rwandan forces) where he was advised that what had occurred was not a coup d’etat, rather the officers were establishing interim control. General Dallaire noted the absence of their recognition of the authority of the Prime Minister, Mrs. Uwilingiyimana. The RGF leadership refused to allow the Prime Minister to speak to the nation by radio to beseech calm, as General Dallaire, and the Special-Representative insisted.¹⁹ It can be assumed by his following actions that the significance of this refusal was not lost on the operational commander.

Immediately after the meeting, General Dallaire gave orders to ensure UNAMIR’s assistance in the maintenance of security in Kigali with the Gendarmerie and to try to maintain a state of calm. He also ordered enhanced security at the Prime Minister’s house and to escort her to the radio station, if and when General Dallaire could get the station to allow her to address the nation. Obviously, General Dallaire was concerned that the evolving situation needed deliberate action to ensure calm. However, the Belgian soldiers sent to the Prime Minister’s house were disarmed, taken hostage and brutally tortured and murdered. Despite the Prime Minister escape to a United Nations’ Volunteer compound in Kigali, she was tracked down and shot.²⁰ The informants warning appeared to be coming to fruition. General Dallaire must have been aware of this implication. Albeit, more evidence would reinforce the predictions before the day was through.

¹⁷ Carlsson, Inavagar; Sung-Loo, Hung; Kupolati, Rufus, M. *Report Of The Independent Inquiry Into The Actions Of United Nations During The 1994 Genocide In Rwanda...*P.9

¹⁸ Ibid, P.9

¹⁹ Ibid, P.10

²⁰ Ibid, P.11.

This same morning, members of the Presidential Guard attacked the homes of the Vice-President of the Liberal Party and the Minister for Labour and Social Affairs. The latter had been under the protection of UNAMIR troops for months as an opposition politician who had been subjected to propaganda and threats on Radio-Television Libre des Mille Collines (RTL). Reportedly, the security force was warned that the Presidential Guard was on their way, resulting in the Ghanaian UNAMIR troops fleeing to a neighboring property while the family was murdered.²¹ Similarly, Judge Kavavuganda was abducted and his family beaten and mistreated while his UNAMIR guard stood by. The aforementioned dignitaries, and numerous others, were protected based on the list provided to General Dallaire by the informant on 17 February. So-called “Death Squadron” had identified each for assassination. Many of the listed dignitaries were subsequently killed.²² Unquestionably, these developments would contribute to General Dallaire’s perception of the evolving situation and the associated threats to both the Rwandan people and his force. The informant’s report was materializing.

As evinced through the aforementioned, once the President’s plane was shot down, chaos overtook Kigali. The nature of the UNAMIR mandate and the related ROE prevented General Dallaire’s force of approximately 2,500 from taking the offensive action needed to have a decisive impact. By the morning of 8 April, just two days after the President’s murder, thousands of people had gathered at UNAMIR sites seeking refuge from the developing slaughter. Over 5000 alone had reported to the field hospital, a trend which would continue over the following days. Soon, 30,000 people were under the protectorate of UNAMIR in the Kigali stadium. Outside the secure area, a massacre was under way. Within a week, tens of thousands of people had been killed, and the carnage had just begun. Based on his knowledge of the informant’s forecast and the ongoing slaughter around his force, there can be doubt that the operational commander was convinced that the safety of the 30,000 depended on his ability to fend off Hutu extremists. To General Dallaire’s horror, UNAMIR was unable to protect all those seeking asylum. Of equal concern, his command was disintegrating. The Belgian peacekeepers were reverted to under command of their national evacuation troops, and were withdrawing from the mission. The Bangladeshi contingent simply stopped responding to UNAMIR Headquarters.²³ Thus, General Dallaire’s already limited flexibility was further curtailed. There could be little doubt based on the evolving situation that the worst of the informant’s predictions were coming to fruition. As the carnage increased around him, General Dallaire continued to seek the means with which to prevent it. However, the situation as viewed at U.N. headquarters was developing differently than General Dallaire had hoped.

As early as 9 April, three days after the President’s plane was shot down and well into the period of slaughter of the moderate Hutu and Tutsi people, U.N. Headquarters had already started discussions of the possibility of the withdrawal of UNAMIR. In a

²¹ Destexhe, Alain. *Rwanda And Genocide*, Translated by Marschner, Alison. New York University Press, Washington square, New York. 1994/95.P.11 The term “reportedly” is used because the UNAMIR inactivity and or evasive actions were reported after the fact and denied by those accused

²³ Ibid, Pp.22-24

message to both General Dallaire and the Special-Representative, they were advised that if events moved in a negative direction, it might be necessary to withdraw UNAMIR. Amidst this discouraging news, French and Belgian paratroopers arrived in Kigali to evacuate expatriates and the Belgian Contingent to UNAMIR.²⁴ During these evacuations adolescents armed only with machetes and sticks were slaughtering women and children who had been previously under the protection of the evacuating forces.²⁵ In the eyes of the operational commander, this carnage could only add credence to the informant's predictions, and thus raise concerns over the welfare of those Rwandans under UNAMIR protection. These results would certainly eliminate any doubts General Dallaire's may have had regarding the safety of those Rwandans under UNAMIR protection should the force pull out. He could only assume that there was very high potential that they too would fall victim to the onslaught of the Hutu extremists.

By 12 April, government forces and the RPF were deeply entrenched in the battle for Kigali. By this time, General Dallaire had extracted the Prime Minister Designate, Faustin Twagiramungu to the UNAMIR Headquarters in Kigali. On hearing of this initiative, the extremists commenced a series of verbal and military attacks on both the Headquarters and General Dallaire. General Dallaire was targeted for assassination²⁶. Following six days of mortar and Artillery attacks and efforts to over-run the headquarters, the Prime Minister-Designate was secretly removed from the country. This extraction coincided with the rebel forces overwhelming the extremists in the UNAMIR HQ area.²⁷ Based on the evidence presented there can be little doubt that the operational commander was convinced of the accuracy of the informant's predictions. The Belgians had been attacked and killed, forcing their withdrawal, the political assassinations were well underway as foretold, and the slaughter of the Tutsi had begun in earnest. The attacks on the headquarters confirmed the extremists' determination to drive the UNAMIR force from Rwanda, and get access to those under force protection.

By the end of April, it was estimated that 100,000 people had been killed. Two weeks later that number had doubled and by the end of May, an estimated half a million people had been slaughtered.²⁸ It was amidst this chaos that General Dallaire reports he was ordered to withdraw his force (21 Apr 94). He refused outright to comply with this order, arguing that he had 30,000 Rwandans from both sides under UNAMIR protection, in the Kigali stadium. He believed from experience that any withdrawal "*guaranteed their death*".²⁹ General Dallaire had witnessed the results of such withdrawals. When the Belgian contingent, without orders but under national direction, retreated they left nearly 4,000 Rwandans to their fate. The mutilated bodies of 2,000 of these were found two

²⁴Destexhe, Alain. *Rw.*"

weeks later, at the site where they had previously been under Belgian protection.³⁰ When one considers this evidence in conjunction with the growing carnage surrounding the UNAMIR force, there can be little doubt that General Dallaire, as the operational commander, had clear reason to believe that the 30,000 Rwandans were dependant upon his protection for their survival. None of the Rwandan national forces could be entrusted with this responsibility, as they were all involved in the carnage.³¹ It is obvious that General Dallaire had sufficient evidence that the informant's predictions were accurate. When these predictions are combined with both the reality of the ongoing onslaught and General Dallaire's knowledge of the lack of commitment by the warring parties towards the Arusha Accord, he had clear reason to believe the carnage was to continue. In the eyes of the commander, to leave would have resulted in the subsequent slaughter of the 30,000 Rwandans under UNAMIR protection. What rests to be determined is the authority under which he first, assumed this responsibility, and second, the legal justification for refusing the order.

THE LEGAL OBLIGATION

Arguably, one of the most contentious issues surrounding General Dallaire's actions in Rwanda revolves around his adherence to the mandate. The mandate as presented provides no room to interpret the protection of the Rwandan people, or the political leaders whom he protected. For the most part, the tasks assigned in the mandate, through U.N. Resolution 872 (1993), address only those of monitoring and investigating. The notable exception to this is the responsibility "*to assist in the coordination of humanitarian assistance in conjunction with relief operations.*"³² It is a bold step to extrapolate *assistance in the coordination* of humanitarian assistance to the provision of security. However, this was not the case. General Dallaire, himself acknowledges that on the morning of 6 April, after the shooting down of the President's plane, he had no further mandate.

*"...after Juvenal Habyarimana, the Rwandan President was killed on April 6, 1994, the only legal authority left in the country was the Prime minister, Agathe Uwilyngimana. She was key to preventing the country from sliding into civil war. It was essential that she be protected and moved to a radio station so that she could speak to her people. But by that time our mandate was over, so what was UNAMIR's official role in this situation? War was imminent: both sides were ready to renew the fighting, and ceasefire violations had escalated both in Kigali and in the demilitarized zone (DMZ)."*³³

³⁰ Dallaire, R.A. Lt Gen , (Ret,d).**Command Experience in Rwanda...** Pm.9

³¹ Carlsson, Inavagar; Sung-Loo,Hung; Kupolati, Rufus, M.**Report Of The Independent Inquiry Into The Actions Of United Nations During The 1994 Genocide In Rwanda...**P.9

³² Carlsson, Inavagar; Sung-Loo,Hung; Kupolati, Rufus, M.**Report Of The Independent Inquiry Into The Actions Of United Nations During The 1994 Genocide In Rwanda...**P.4

³³ Dallaire, R.A., LtGen. (Retd). **Command Experiences In Rwanda, Extract from The Human in Command: Experiencing the Modern Military Experience.** New York: Kluwer Acedemic/Plenum Publishers, 2000..pp m8-m9

Technically, the force still had the mandate assigned by the Security Council, but it is obvious that General Dallaire realized the futility of this mandate based on the ground situation. The mandate required the cooperation of the two parties, but they were involved in their mutual destruction. Through these observations, it is clear that General Dallaire, himself was certain that he was not working within the parameters of his mandate when he assumed the responsibility for the 30,000 Rwandans. Thus, it can be argued that as the operational commander, his motivations for protecting the public were based more on ethical and moral considerations than any interpretation of the mandate. Regardless of the weight these two factors had on General Dallaire's determination to protect the 30,000 Rwandan's who came to be under his protection, the LOAC confirm his responsibility to do so. The Canadian Forces publication on LOAC provides the following, which describes the situation in Rwanda.

“Common Article 3 to the 1949 Geneva Conventions and Additional Protocol II to the Geneva Conventions (APII) are the legal instruments dealing specifically with non-international conflicts”³⁴

There are two rules that apply:

a) any situation where, within a state's territory, clear and unmistakable hostilities break out between the armed forces and organized groups...;

b) any situation where dissident forces are organized under the leadership of a responsible command and exercise such control over a part of the territory as to enable them to conduct sustained and concerted military operations (intensive fighting...)³⁵

The conditions in Rwanda met both of these criteria. What remains to be determined is what this means to the operational commander as it relates to the aforementioned Common Article 3 and Additional Protocol II. Common Article 3 provides in part:

By Common Article 3, the parties to a non-international armed conflict occurring in the territory of a party to the conventions are obliged to apply, as a minimum, the following provisions:

*a) Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, **shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, gender, birth or wealth, or any other similar criteria.** (emphasis added).*

³⁴ Office of the Judge Advocate General. *The Law of Armed Conflict at the Operational and Tactical Level*. Canadian Forces Publication, (B-GG 005-027/AF-020. Sep 23, 1999. P.17-1

³⁵ International Committee of the Red Cross (ICRC). *Basic Rules Of The Geneva Conventions And Their Additional Protocols*. ICRC Geneva, September 1983. P.52

*To this end, the following are at any time and in any place **prohibited** with regard to such persons:*

- 1. violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*
 - 2. taking of hostages;*
 - 3. outrages upon personal dignity, in particular, humiliating and degrading treatment;*
 - 4. the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording al the judicial guarantees which are recognized as indispensable by civilized peoples.*
- b) *The wounded and sick shall be collected and cared for...*³⁶

The situation surrounding the UNAMIR force provides stark evidence that the aforementioned requirements were being blatantly violated on an overwhelming scale. By 21 April 1994, the day General Dallaire received the order, tens of thousands of people had been killed, a number which would reach 100,000 a week later.³⁷ It is common knowledge amongst students of LOAC that Common Article 3 was written to prevent a repeat of the German attempts at genocide during WWII. Although there was evidence that genocide was developing in this case, this had not been clearly defined by 21 April. Thus, assessments revolved around the ongoing massacre vice the genocide, which was eventually declared. Nonetheless, Common Article 3 was developed to address situations in which a state of war existed. Since international agreement was achieved on the article, it became obvious that situations could develop where a state of war may not be declared, but in all other forms it resembled war. Therefore, a means to protect non-combatants was required in such environments. Additional Protocol II was developed to fulfill this obvious shortfall. Since no state of war was declared in Rwanda, Additional Protocol II provides General Dallaire the legal framework with which to protect the 30,000 Rwandans.

*“In the case of intensive fighting, and in the absence of the acknowledgment of a state of war involving the application of the entire law of war, the provisions of the common article 3 still apply. In addition, the rules of the **Second Additional Protocol must be observed** (emphasis added)”.*³⁸

Amongst other provisions, additional Protocol II also provides the following fundamental guarantees:

*Although AP II contains no provisions relating to enforcement or punishment of breaches, it does contain **a statement of fundamental guarantees prohibiting at any time and anywhere** (emphasis added):*

³⁶ Office of the Judge Advocate General. **The Law of Armed conflict at the Operational...** P17-2

³⁷ Destexhe, Alain. **Rwanda and Genocide...**P49

³⁸ International Committee of the Red Cross (ICRC). **Basic Rules Of The Geneva Conventions And Their Additional Protocols.** ICRC Geneva, September 1983.P.53

- a. *violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;*
- b. *collective punishment;*
- c. *taking of hostages;*
- d. *acts of terrorism;*
- e. *outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;*
- f. *pillage; or*
- g. *threats to commit any of the foregoing.*³⁹

The aforementioned clearly provides the legal foundation upon which General Dallaire could argue his responsibility towards protecting the Rwandans. The following supports this argument in demonstrating his legal responsibility to apply these laws and conventions.

“The obligations binding on Canada in accordance with Customary International Law and Treaties to which Canada is a party are binding not only upon the Government and the CF, but also upon every individual. Members of the CF are obliged to comply and ensure compliance with all International Treaties and Customary International Law binding on Canada” (emphasis added)⁴⁰

General Dallaire was duty bound to respect the principles of the LOAC and other international treaties. He had 30,000 people under his protection and a legal duty to respect the aforementioned laws pertinent to his particular situation. However, the one remaining question to defend the stated thesis is the legal authority to refuse the order. Queens Regulations and Orders (QR&Os) article 19.015 provides:

Every Officer and non-commissioned member shall obey lawful commands and orders of a superior officer.

It has already been established that all Canadian Forces members are *obliged to comply and ensure compliance with all international treaties and customary international law*. It has further been established that the 30,000 Rwandan’s were, in the mind of the operational commander, dependant on his continued security for their survival. Thus, it can be easily conclude that the laws which ensured *fundamental guarantees prohibiting at any time and anywhere violence to the life, health and physical well-being of persons*, as defined in Additional Protocol II, do oblige General Dallaire to apply the spirit of this law. His understanding of the probable results from a force withdrawal demonstate that such an order, from his interpretation of the ground situation, would make it an unlawful order. The QR&Os clearly state the necessity to follow

³⁹ Office of the Judge Advocate General. *The Law of Armed Conflict at the Operational and Tactical level...* P17-3

⁴⁰ Office of the Judge Advocate General. *The Law of Armed Conflict at the Operational and Tactical Level*. Canadian Forces Publication, (B-GG 005-027/AF-020. Sep 23, 1999. P.i

lawful orders. The emphasis placed on the necessity that members *shall obey lawful commands* implies that unlawful orders shall not be followed. What is significant in this situation is not the order itself, but rather the expected outcome of the order. To withdraw the force appears to be rather benign and lawful by nature. However, General Dallaire's assessment of the potential outcome of this order, the slaughter of 30,000 people, makes this order unlawful. His withdrawal would be akin to knowingly facilitating the conditions for murder. Thus, it is concluded that General Dallaire had a legal responsibility to disobey the withdrawal order on the grounds it was an unlawful order.

CONCLUSION

This paper demonstrated General Dallaire's legal responsibility to disobey this withdrawal order as being unlawful. In the mind of the operational commander, the 30,000 Rwandans were unquestionably in the care and protection of the UNAMIR force, and were clearly at risk of being slaughtered should the force have withdrawn. The ground situation, as perceived by General Dallaire at the time that he received the withdrawal order, demonstrates this point. The applicable Laws of Armed Conflict (LOAC) and other international laws and conventions support General Dallaire's legal obligation to refuse the order. As a member of the Canadian Armed Forces, General Dallaire was legally bound by the aforementioned laws and conventions. It is therefore concluded that General Dallaire had a legal obligation to disobey the withdrawal order as being unlawful.

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