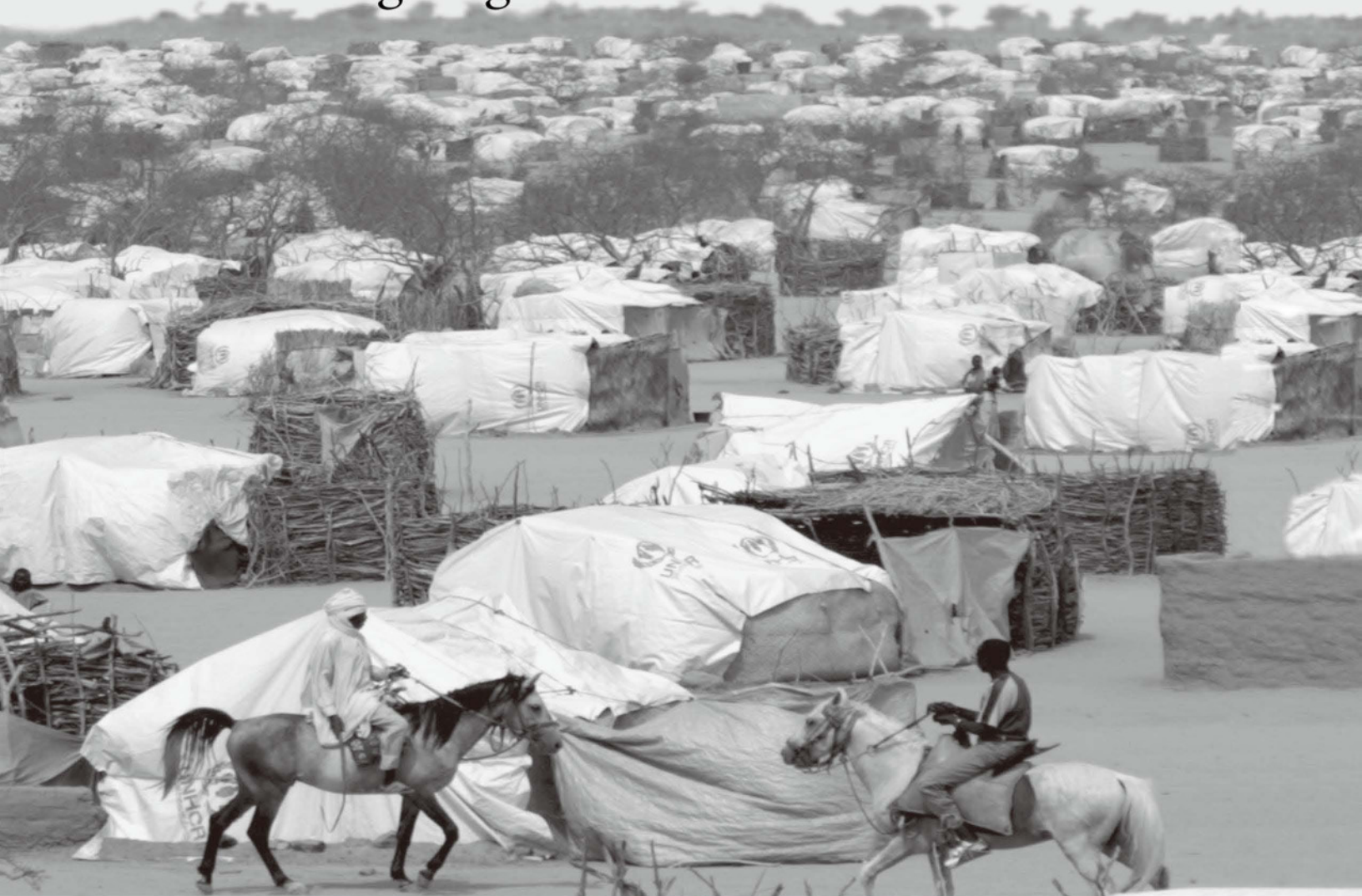


# GENOCIDE IN DARFUR

Investigating the Atrocities in the Sudan



EDITED BY

Samuel Totten and Eric Markusen

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This book is dedicated to the victims of the  
Darfur genocide and to those humanitarians  
and peacekeepers who gave their lives  
trying to protect the victims.

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*Genocide in Darfur: Investigating the Atrocities in the Sudan* could not have been produced without the contributions, insights, and help of a broad array of individuals and organizations. First and foremost, we wish to acknowledge the incredible support that Nina Bang-Jensen, Executive Director, Coalition for International Justice, and Stefanie Frease, Director of Programs, Coalition of International Justice, provided throughout the development of this book. In addition to co-authoring a chapter, Nina and Stefanie made countless contributions to this project, ranging from helping to persuade key Washington, D.C. “insiders” to contribute to the book to critiquing several of the chapters while in draft form. No editors could ask for more astute or hard-working colleagues. It was, indeed, an honor to work with Stefanie in the field and both Nina and Stefanie on this book.

In our estimation, what makes this book particularly unique and valuable is the expertise of each and every contributor. Thus, we sincerely thank all of the contributors to this volume. All are extremely busy individuals who work long hours in demanding jobs and gave up valuable time from immediate work at hand and family time to write their pieces.

We also wish to thank those members of the Darfur Atrocities Documentation Team (ADT) investigative team — Vanessa Allen, Debb Bodkin, Jamal Jafari, Linda Patrick, Jan Pfundheller, Brenda Sue Thornton, and Larissa Wakim — who shared their personal insights with us for inclusion in Chapter 6.

As readers may note, none of the translators, who were critical to the ADT, is mentioned by name herein. That is because it was feared that if

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their names became public it could result in severe repercussions for them should they return to Sudan, and/or their family members, many of whom are still in IDP camps in Darfur and/or unaccounted for. That said, we wish we could name each translator by name and provide a short account of his efforts. Our translators were committed to the success of the project, worked arduously under extremely trying conditions, and, as a result of the nature of their efforts, worked twice as hard as the interviewers. So, herein, we offer a heartfelt thanks to such diligent, caring individuals.

We also owe our editor at Routledge, Robert Tempio, a huge thank you for his enthusiasm from the start of this project and his support throughout the development of this book. We also wish to thank Charlotte Roh for her fine work as well. We greatly appreciate how she kept this book moving forward after Rob Tempio's departure from Routledge. And a special thanks to Taylor & Francis Group Project Editor Judith Simon for her expert guidance of the book through the production process.

Finally, we offer sincere thanks to the refugees themselves for agreeing to be interviewed by the ADT investigators — something we know must have been terribly difficult, as it required them to revisit the horrific experiences they suffered at the hands of the Government of Sudan and the *Janjaweed*. Some, perhaps many, of them have died since the interviews, as have their children. Others are still eking out an existence, but for how long?

## Introduction

In July and August 2004, a multinational team of investigators, the Darfur Atrocities Documentation Team (ADT), traveled to various points along the Chad/Sudanese border to interview some of the two hundred thousand refugees from the Darfur region of Sudan. Government of Sudan troops and Arab militia (known as the *Janjaweed*) had attacked village after village of black Africans in retaliation against rebel attacks on government installations, but in doing so they engaged in the mass killing and raping of innocent men, women, and children who had nothing to do with the rebel groups. Approximately 1.5 million black Africans had been forcibly displaced from their homes and at least one hundred fifty thousand had died as a direct result of the ongoing violence or of malnutrition and disease (Reeves, 30 July 2004).<sup>\*</sup> The investigators' purpose was to collect data that would enable the U.S. State Department to determine whether the mass violence being directed against African tribes (particularly the Fur, Massaleit, and Zaghawa) constituted genocide. The ADT conducted interviews with more than twelve hundred refugees over a five-week period. The State Department's Bureau of Intelligence and Research subsequently analyzed the data collected. Relying substantially on this data, on September 9, 2004, U.S. Secretary of State Colin Powell appeared before the Senate Foreign Relations Committee and announced that "genocide has occurred in Darfur and may still be occurring." With that announcement, the United States officially accused the Government of Sudan of perpetrating genocide.

<sup>\*</sup> Eric Reeves. 2004. "Darfur Mortality Update: July 30, 2004; Current data for total mortality from violence, malnutrition, and disease." <http://www.sudanreeves.org/modules.php?op=modload&name=Sections&file=index&req=viewarticle&artid=203&page=1> (accessed 4 July 2006).

The Darfur Atrocities Documentation Team, a project developed by the U.S. State Department and implemented in partnership with the U.S. Agency for International Development's Office of Transitional Initiatives (OTI) and the Coalition for International Justice (CIJ), a nongovernmental organization, was historic in several respects. First, it was the first official investigation by a sovereign nation of an ongoing case of mass violence for the express purpose of determining whether or not the violence amounted to genocide. Second, U.S. Secretary of State Powell's declaration was the first time that one government formally accused another government of ongoing genocide. Third, Secretary Powell, during his public testimony, invoked for the first time ever (by any government) Chapter VIII of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (UNCG), calling on the Security Council to take action "...appropriate for the prevention and suppression of acts of genocide..." Fourth, on September 18, 2004, the UN Security Council passed Resolution 1564, calling for the immediate establishment of an international commission of inquiry into the situation in Darfur. The latter constituted the first time that the UN had undertaken an investigation to determine whether genocide was being committed by a member state. Fifth, after reviewing and debating the report from the Commission of Inquiry, on March 31, 2005, the Security Council voted, in Resolution 1593, to refer the situation in Darfur to the International Criminal Court — the first time such a Security Council referral had occurred.

This book is comprised of essays that present a thorough overview and critical analysis of this historic government-sponsored genocide investigation. Its contributors include U.S. Government and nongovernmental organization (NGO) officials involved in the genesis of the project as well as the analysis of the data; those who were involved in designing the project and hiring and training investigators, interpreters, and support personnel; investigators who served on the ADT; and several scholars who were not directly involved with the project but who offered critiques of the ADT as well as reflections on its significance

#### *Goals of the Book*

Our primary goal in developing this book is to present a comprehensive examination of the genesis and evolution of the Darfur Atrocities Documentation Project, along with its key findings and the ramifications of the latter. Thus, in part, it provides a detailed discussion as to why and how such a project was launched under the auspices of the U.S. Government (how the kernel of the idea made its way through the various bureaucratic hallways of government), the methodology used in the investigation, and the actual or potential significance of the ADT.

We believe that the book serves many valuable purposes. First, as previously mentioned, it provides a detailed examination of a “first” in regard to the investigatory powers taken by a sovereign nation to ascertain whether genocide was occurring in another part of the world. Second, it provides current and future genocide scholars with useful insights into both the potential value of such an investigation as well as the limitations of such (especially in regard to the timing of the investigation and its ramifications). Third, it reveals how a world power reacted to the findings of its own investigation. Fourth, it documents how the international community reacted to the findings of such an investigation. Fifth, it delineates the seemingly good intentions and hard work of a handful of individuals within the U.S. Government who were ostensibly dedicated to do something concrete to draw attention to the ongoing crisis in Darfur. Sixth, it provides unique insights into the dedication of NGOs — in particular, the Coalition for International Justice — to assist people in critical need whose very existence is threatened because of who they are and where they reside. Finally, and possibly most significant of all, it provides a unique perspective into a genocide unfolding before the very eyes of the world.

#### *Organization and Chapters*

Chapter 1, by Robert Collins (Professor Emeritus of History at the University of California, Santa Barbara), provides essential background information on Sudan in general and the Darfur conflict in particular.

In Chapter 2, Andrew Natsios, who was Chief Administrator of the U.S. Agency for International Development (USAID) at the time of the investigation, describes how and why the U.S. Government decided to undertake a systematic investigation of atrocities that were being widely reported in Darfur. Natsios also discusses how USAID’s experiences in Darfur have led to important changes in the Agency in order to make it more effective in providing humanitarian aid and supporting United States national security.

Chapter 3 describes how the ADT was created and launched as a partnership between USAID, the U.S. State Department, and several NGOs, notably the CIJ. Co-authors Nina Bang-Jensen, Executive Director and Counsel of CIJ, and Stefanie Frease, CIJ’s Special Projects Director, who served as field director for the ADT, describe the process of establishing goals for the mission, securing funding, recruiting personnel, and coping with challenges in the field.

In Chapter 4, Jonathan Howard, a research analyst specializing in African public opinion for the U.S. State Department’s Office of Research, discusses the development of the research methodology, including the eight-page questionnaire used by the investigators in the field, and the process of analyzing the massive amounts of data contained in the over one

thousand interviews. He also summarizes the findings from the mission and discusses lessons learned from the overall experience.

The recruiting and training of the interpreters are discussed in Chapter 5 by Helge Niska, Professor of Linguistics at Stockholm University. Since it was known in advance that sexual crimes against women were widespread among the victim groups, efforts were made to recruit female interpreters. Under the circumstances, this proved impossible, so special training on how to interview and interpret with victims of sex crimes was provided to both interviewers and interpreters.

Chapter 6, by the book's co-editors, Samuel Totten and Eric Markusen, both of whom served as investigators on the ADT, details the briefings and training received by the 24 investigators prior to going into the field, challenges encountered in the field (e.g., extreme heat, flooding, vehicle breakdown, illness), and the information they obtained in their interviews with refugees. Insights and anecdotes from a number of the ADT investigators, dispersed throughout the chapter, vividly convey the human reality of suffering experienced by the refugees during the attacks on their homes and villages and the difficult conditions of their precarious existence in over-crowded refugee camps and settlements.

In Chapter 7, Steve Kostas, an attorney working with the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia, relates how the U.S. Government concluded that the atrocities being committed by the government of Sudan and its proxy Arab militias warranted being labeled "genocide." The chapter is based on interviews conducted with former U.S. Ambassador at Large for War Crimes Pierre-Richard Prosper and former U.S. Assistant Secretary of State Lorne Craner.

The implications, legal and otherwise, of the genocide determination are discussed in Chapter 8 by attorney Jerry Fowler, Director of the United States Holocaust Memorial Museum's Committee on Conscience. After reviewing the origins of the UN Genocide Convention, Fowler looks at the reasoning that led the U.S. State Department to conclude that the killings and deaths in Darfur constitute a case of genocide and the UN Commission of Inquiry to decide that they do not.

In Chapter 9, Kelly Askin, Senior Legal Officer for the Open Society Justice Initiative, who accompanied investigative teams into the field in order to focus specifically on gender crimes, discusses the widespread and systematic commission of rape and other sexual crimes against members of the targeted groups — the vast majority of whom were young girls and women — by Sudanese government soldiers and Arab militias.

Chapter 10 through Chapter 13 feature comments and criticism by individuals who were not involved with the ADT and, hence, offer "outsiders'" perspectives on the project and its significance. Taylor Seybolt, a

Senior Program Officer with the United States Institute for Peace, calls the ADT “both a great success and a disappointing failure.” Gerald Caplan, an independent consultant on Africa, who wrote the report on the Rwanda genocide for the Organizations of African Unity’s International Panel of Eminent Personalities, notes differences between United States and international responses to the 1994 genocide in Rwanda and the ongoing genocide in Darfur and suggests several lessons from Rwanda for Darfur. Gregory Stanton, a lawyer and former U.S. State Department official, who is currently a professor of human rights, argues in support of the genocide determination based on ADT data and then analyzes various reasons that help account for the fact that other relevant organizations, including the United Nations, the European Union, and human rights groups, like Amnesty International, may have been reluctant to reach a similar conclusion. A fourth “outsider’s” perspective is offered by University of Wisconsin political scientist Scott Straus, who examines some of the singular accomplishments of the ADT, but also considers why the international response to Darfur, notwithstanding the evidence collected by the ADT and the U.S. Government’s declaration of genocide, has been so “lackluster.” It should be noted that the views expressed in these essays do not necessarily reflect the opinions of the editors or other contributors to this book.

In Chapter 14, Samuel Totten examines the genesis and implementation of the Atrocities Documentation Project as well as the U.S. government’s determination that genocide had been perpetrated in Darfur between late 2003 and August 2004. In doing so, he considers and analyzes the rationale for the investigation and the reasoning for the determination as given by U.S. officials. He also delineates and discusses the perceptions of various scholars *vis-a-vis* the same issues, noting that many of the latter suspect that there were ulterior motives behind the development and implementation of the investigation as well as the genocide determination.

Finally, in the Afterword, Editors Markusen and Totten review some of the positive and even historic contributions of the ADT as well as some hopeful initiatives to end the violence by a variety of groups and organizations. But they also note the discouraging fact that, as the book went to press in Summer 2006, the situation in Darfur remained horrific. Only time and ensuing events will determine whether the ADT’s endeavors will be regarded as a milestone in the fight against impunity and the effort to establish the rule of law.

## Chronology: The Darfur Crisis

### 2003

**February 26, 2003** — Darfur rebels attack Sudanese military garrison at the town of Golu. Nearly two hundred soldiers are killed.

**March 2003** — Fighting breaks out in the Darfur region of western Sudan between Government of Sudan (GoS) forces and black African rebels with the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM).

**April 2003** — Refugees from Darfur flow into eastern Chad and tens of thousands also become internally displaced within Darfur as GoS troops and *Janjaweed* (militias from wholly and semi-nomadic Arab tribes) counterattacks against government installations by black African-led rebel groups (the SLA and JEM). The former do so by attacking rebel strongholds as well as carrying out indiscriminate attacks on the villages of black Africans.

**April 25, 2003** — Darfur rebels launch attacks against Sudanese military and police forces in Nyala and El-Fashir. The El-Fashir attack results in the deaths of more than thirty government soldiers, the destruction of several military aircraft, and the capture of the commander of the Sudanese air force base.

**September 4, 2003** — A cease-fire is agreed upon by the SLA and the GoS. The GoS promises to address the complaints of the rebels (e.g., that the needs of the black Africans residing in the Darfur region have been neglected by the GoS: needs such as lack of adequate representation of the



government, a lack of equal justice in the courts, a lack of roads, and inadequate schooling). Soon after, though, each side makes accusations that the other has broken the cease-fire.

**October 7, 2003** — The United Nation’s High Commissioner for Refugees (UNHCR) calls for over \$16 million to meet the needs of the Sudanese refugees who have fled to Chad.

**Early December 2003** — The *Janjaweed* carry out intensive attacks against black African villages during which they murder and rape civilians and burn the villages to the ground. Some ten thousand new refugees arrive in Chad.

The GoS restricts humanitarian access to the refugees by both refusing and/or delaying travel permits to Darfur.

**December 5, 2003** — UN Undersecretary-General for Humanitarian Affairs and Emergency Relief Coordinator Jan Egeland asserts that Darfur “has quickly become one of the worst humanitarian crises in the world.”

**December 9, 2003** — UN Secretary-General Kofi Annan states that he is alarmed by the human rights violations and lack of humanitarian access in Darfur.

It is estimated that over a half million people have been displaced from Darfur and that up to one million individuals are in need of humanitarian aid.

**December 23, 2003** — The UNHCR announces plans to establish refugee camps farther inside Chad in an effort to stave off the ongoing attacks against refugees in camps along the Chad/Sudanese border. It is estimated that approximately one hundred thousand Darfurian refugees have now sought refuge in Chad.

## 2004

**January 7, 2004** — The U.S. Holocaust Memorial Museum’s Committee on Conscience issues a “Genocide Warning” for Darfur, expressing concern that the organized violence underway could result in genocide.

UN Special Envoy for Humanitarian Affairs Tom Vraalsen travels to N’Djamena, Chad, calling on the GoS and the SLA to resume peace talks. He also calls on the GoS to allow greater access for humanitarian aid.

**Late January 2004** — Over the course of a single week, about eighteen thousand refugees enter Chad as the *Janjaweed* intensify their attacks in Darfur.

**February 10, 2004** — Following a promise by Sudanese President Omar Al Bashir to grant aid workers greater access to internally displaced persons (IDPs), UN Undersecretary-General for Humanitarian Affairs and Emergency Relief Coordinator Jan Egeland calls for a rapid humanitarian response.

**Early to Mid February 2004** — UN agencies continue to provide ever-increasing humanitarian support to the refugees based in Chad.

IDPs in Darfur complain that humanitarian aid being provided to them by the UN and various nongovernmental organizations (NGOs) is being stolen, on a regular basis, by the *Janjaweed*.

**February 18, 2004** — UN Undersecretary-General Jan Egeland deploys a UN Disaster and Assessment Coordination Team (UNDAC) to Darfur.

**March 19, 2004** — UN Special Envoy for Humanitarian Affairs Tom Vraalsen asserts that the crisis in Darfur is “one of the worst in the world.”

**March 30, 2004** — The UN Office for the Coordination of Humanitarian Affairs (OCHA) issues a report that claims attacks by the *Janjaweed* are taking place on a daily basis across Darfur.

**April 2, 2004** — After briefing the UN Security Council, Undersecretary-General Jan Egeland asserts that a coordinated “scorched earth” campaign of ethnic cleansing is being carried out by the *Janjaweed* against the black Africans of Darfur.

The UN Security Council issues a presidential statement of concern in regard to the humanitarian situation in Darfur and calls for a cease-fire.

**April 3, 2004** — A joint statement of “deep concern” is issued by UN Secretary-General Kofi Annan and the directors of UN agencies and programs in regard to both the critical humanitarian crisis and major human rights violations in Darfur.

**April 6, 2004** — Upon the request of UN Acting High Commissioner Bertrand Ramcharan, a fact-finding team from the Office of the High Commissioner for Human Rights undertakes an investigation in the refugee camps in Chad to assess the extent of human rights violations that have been perpetrated in Darfur.

**April 7, 2004** — During the course of the tenth-year commemoration of the beginning of the Rwandan genocide, UN Secretary-General Kofi Annan asserts that he fears the unfolding of a similar tragedy in Darfur and calls on the international community to act.

**April 9, 2004** — The GoS and rebel groups sign a forty-five-day “humanitarian cease-fire” (beginning on April 11), which allows for the deployment of observers from the African Union (AU). The agreement allows humanitarian assistance to be provided to the hundreds of thousands of IDPs in dire need of help.

**April 22, 2004** — The UN sends a second fact-finding mission to Sudan to undertake an investigation into alleged human rights violations in Darfur.

**May 4, 2004** — As a result of the UN’s human rights investigation in Darfur, it is reported that the GoS and *Janjaweed* are guilty of perpetrating a “reign of terror” against the region’s black African population. It is further asserted that among the crimes perpetrated against the black African population are killings, rapes, pillaging, destruction of property, and ethnic displacement.

The UN estimates that over one million black Africans have been internally displaced in Darfur as a result of the attacks by the GoS and the *Janjaweed*.

**May 7, 2004** — UN Acting High Commissioner for Human Rights Bertrand Ramcharan provides the UN Security Council with a report of the findings of the two UN-sponsored human rights investigations. He reports that they both found that the GoS and the *Janjaweed* have committed massive human rights violations, which is liable to “constitute war crimes and/or crimes against humanity.”

**May 13, 2004** — UN Secretary-General Kofi Annan calls on Sudanese President al-Bashir to rein in and disarm the *Janjaweed*, maintain the cease-fire while attempting to negotiate a final settlement to the crisis, and provide more ready and safe access for humanitarian workers.

**May 14, 2004** — An estimated sixty-five thousand refugees from Darfur are currently in Chad.

**May 17, 2004** — UN Secretary-General Kofi Annan has a meeting with the GoS’s Permanent Representative to the United Nations in order to express his alarm over the GoS’s continued interference and placement of obstacles (e.g., long visa delays and slow customs clearances) in the way of humanitarian access.

**May 20, 2004** — The UN Office for the Coordination of Humanitarian Affairs (OCHA) reports that its funds have been depleted and a looming crisis mounts due to a lack of adequate water, food, and healthcare services available for the IDPs.

The GoS promises, once again, to provide more ready access to those providing humanitarian care.

**May 24, 2004** — The cease-fire, which was brokered six weeks earlier between the GoS and rebel groups, is broken as the government and the rebel factions blame each other for an attack that resulted in the murder of forty-five people in a village south of Nyala.

**May 25, 2004** — The UN Security Council issues another presidential statement of “deep concern” in regard to the ongoing reports of human rights abuses in Darfur and, in doing so, calls on the GoS to both rein in and disarm the *Janjaweed*.

**May 26, 2004** — Undersecretary-General Jan Egeland informs the UN Security Council that the GoS continues to prevent humanitarian aid from reaching the IDPs in Darfur and that the number of IDPs has increased to two million people.

The Sudanese government and rebel groups reach an agreement that allows the first international observers into Darfur.

**May 27, 2004** — UN Secretary-General Kofi Annan’s office announces that the Secretary General continues to be deeply concerned over the situation in Darfur and that he is willing to mediate a settlement.

**June 8, 2004** — Approximately ninety thousand refugees are relocated to safer camps inside Chad by UNHCR.

**June 11, 2004** — The UN Security Council calls for an end to the violence in Darfur and calls on all involved actors to help make that a reality.

**June 14, 2004** — Following a visit to Darfur, Asma Jahangir, the UN’s Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, claims that GoS forces and the *Janjaweed* have committed numerous human rights violations, including the slaughter of civilians in Darfur villages.

**June 15, 2004** — UN officials report that every fifth child in Darfur suffers from severe malnutrition. Additionally, it is reported that many children suffer from dysentery, measles, and high fever, and that every day children in refugee camps are dying from starvation and exhaustion.

**June 18, 2004** — UN Secretary-General Kofi Annan names former Dutch Environment Minister Jan Pronk as the UN’s Special Envoy to Sudan.

The United States threatens to impose sanctions on Sudan due to the deteriorating humanitarian situation in Darfur.

**June 19, 2004** — Sudanese President al-Bashir orders all “illegally armed groups” to disarm.

**June 20, 2004** — Reports continue to flood out of Darfur regarding bombings by GoS-operated Antonov planes, the rape of black African women in *Janjaweed*-controlled camps, and the murder of black African men who attempt to escape from the camps.

**June 24, 2004** — U.S. Ambassador-at-Large for War Crimes Pierre Prosper asserts: “I can tell you that we see indicators of genocide and there is evidence that points in that direction.” Prosper further states that the U.S. Government “is actively reviewing” the possibility that genocide is taking place in the Darfur region.

The U.S. Holocaust Memorial Museum (Washington, D.C.) closes access to its main exhibitions for the first time in its history for a half-hour program on the humanitarian crisis in Darfur, Sudan, calls for immediate action.

**June 25, 2004** — Prior to his departure for Sudan, UN Secretary-General Kofi Annan states that he would use his forthcoming trip to press Khartoum to meet its obligations of protecting its civilians and disarming the *Janjaweed*. Noting that the black Africans of Darfur “are suffering a catastrophe” and that “terrible crimes have been committed” against them, Annan urges the international community to maintain pressure on Sudan. Asked if what was taking place in Darfur was ethnic cleansing or genocide, Annan asserted, “We don’t need a label to propel us to act.”

Lorne Craner, Assistant Secretary of State for the Bureau of Democracy, Human Rights, and Labor (DRL), in a meeting with leaders of several NGOs, including the Coalition for International Justice (CIJ), announces that he wants to send a team of investigators to Chad in order to interview refugees from Darfur.

**June 28, 2004** — The CIJ tells the U.S. State Department that it can recruit a team of investigators for the investigative mission to Darfur. This mission eventually becomes known as the Atrocities Documentation Project (ADP).

**June 30, 2004** — Secretary-General Kofi Annan arrives in Sudan for a three-day visit to Khartoum, Darfur, and Chad. While in Khartoum, Annan meets with GoS officials and also meets with U.S. Secretary of State Colin Powell concerning the Darfur crisis.

U.S. Secretary of State Colin Powell calls on Sudanese President al-Bashir to bring the *Janjaweed* under control, to begin negotiations with the Sudan Liberation Army (SLA) and the Justice and Equality Movement

(JEM), and to allow complete and unimpeded access to humanitarian agencies.

**July 2, 2004** — While visiting refugee camps in eastern Chad, refugees inform UN Secretary-General Kofi Annan about the “gross and systematic” human rights violations that have been perpetrated by the *Janjaweed* in Darfur.

Following a visit to Sudan and a tour of Khartoum, U.S. Secretary of State Colin Powell informs the GoS that the only way relations with the United States will be normalized is if the GoS makes immediate and effective efforts to rein in the *Janjaweed* in Darfur.

**July 3, 2004** — The United Nations and Sudan sign a joint communiqué in which each pledges to help to halt the conflict in Darfur. The GoS asserts that it will disarm the *Janjaweed*, bring to justice those responsible for human rights abuses, protect those in IDP camps from any additional attacks, resume peace talks with the rebel groups, and remove all obstacles to providing humanitarian assistance. The United Nations asserts that it will assist the African Union (AU) to quickly deploy cease-fire monitors and carry out more humanitarian relief.

The United Nations and GoS also agree to establish a Joint Implementation Mechanism (JIM) for the purpose of monitoring the agreement.

**July 5, 2004** — Upon the conclusion of his trip to Sudan and Darfur, UN Secretary-General Kofi Annan warns of “catastrophic levels” of suffering.

**July 7, 2004** — The UN Security Council issues a threat to impose an arms embargo and a travel ban against Sudan unless the GoS takes serious and effective measures to bring the Darfur conflict to an end. The Security Council reports it will begin reviewing the proposal in late July.

Briefing the UN Security Council via satellite link from Kenya, Secretary-General Kofi Annan reports that the situation in the IDP camps in Darfur is grave.

The UN Security Council’s President for July, Ambassador Mihnea Ioan Motoc of Romania, calls for sustained pressure on Khartoum to resolve the Darfur crisis.

Undersecretary-General Jan Egeland issues a warning that “hundreds of thousands of people may die” if the *Janjaweed* is not reined in and, ultimately, disarmed.

The Coalition for International Justice (CIJ) sends an advance team to Chad to field-test the [Darfur] Atrocities Documentation Questionnaire, hire interpreters, and evaluate the situation on the ground. In addition to CIJ personnel, the advance team includes representatives from the State Department’s Bureau of Democracy, Human Rights, and Labor (DRL), the

Bureau of Intelligence and Research, the American Bar Association's Central European and Eurasian Law Initiative (CEELI), and a consultant with vast experience working in Sudan.

**July 9, 2004** — The UN Commission on Human Rights reports that Arab militias, with ties to the GoS, have destroyed food and water resources in the Jabal Marrah area in West Darfur, Sudan.

The UN High Commissioner for Refugees (UNHCR) reports that humanitarian organizations continue to be denied access to “the most affected areas” in Darfur.

**July 12, 2004** — The GoS sends a 1,025-strong police force to Darfur to “maintain security, law, and order,” and to “uphold the sense of nationhood.” The police force's primary tasks, it is reported, are to protect refugee camps, set up security checkpoints along the border with Chad, and safeguard roads for the return of refugees. Ultimately, the force will be about six thousand strong, and include medics and traffic and riot police.

**July 14, 2004** — Oxfam warns of the “spectre of disease” and an outbreak of cholera and/or malaria in the refugee camps based in Chad.

The U.S. Holocaust Memorial Museum and American Jewish World Service host an emergency nongovernmental summit on Darfur, leading to the creation of the Save Darfur Coalition.

**July 15, 2004** — Secretary-General's Special Representative for Sudan Jan Pronk travels to Khartoum to take part in the first meeting of the Joint Implementation Mechanism (JIM).

The World Food Programme (WFP) reaches an agreement with Libya to allow transport through Libya in order to deliver emergency supplies to refugees in Chad and the IDPs in Darfur

**July 18, 2004** — The SLA and JEM break off peace talks in Addis Ababa, Ethiopia, asserting they will not take part until the GoS agrees to leave Darfur and to disarm the *Janjaweed*.

**July 19, 2004** — UN agencies report that the GoS is trying to pressure Darfur's massive population of IDPs to return to their home villages, even though the latter remain fearful of attacks by the *Janjaweed* and GoS troops.

The United Nations also reports that the number of people in the IDP camps has risen by one hundred thousand over the past month.

**July 21, 2004** — Secretary-General Kofi Annan reports that the United Nations has received only \$145 million of the \$349 million it has requested

to assist the people of Darfur. He also reports that the GoS has not taken “adequate steps” to meet its promise to disarm the *Janjaweed*.

**July 22, 2004** — In a unanimous vote, the U.S. House of Representatives passes H.R. Resolution 467, declaring the conflict in Darfur to be a case of genocide and urges the U.S. Government to take more robust action to intervene. The U.S. Senate, without dissent, unanimously concurs.

In a joint press conference, UN Secretary-General Kofi Annan and U.S. Secretary of State Colin Powell call on the international community to apply more pressure on the GoS to honor its promises *vis-a-vis* Darfur.

**July 23, 2004** — The leaders of the SLA and JEM agree to hold peace talks with the GoS.

**July 26, 2004** — The U.S. Holocaust Memorial Museum’s (USHMM) Committee on Conscience (COC) declares a genocide emergency for Darfur, which is the first such declaration in the COC’s nine-year history. It reflects the COC’s conclusion that there is a reasonable basis to believe that genocide is occurring in Darfur. The USHMM also opens a special exhibition on Darfur in order to alert visitors to the genocide emergency.

**July 29, 2004** — UN Secretary-General Kofi Annan issues a statement about continuing reports of rapes, other types of attacks, and acts of intimidation and threats against IDPs, especially in North and West Darfur.

The United States introduces a draft resolution at the United Nations threatening sanctions against Sudan if the government fails to control the militias in Darfur. (The United States later softens the wording of the resolution after some members of the UN Security Council expresses concern over the word “sanctions.”)

**July 30, 2004** — The UN Security Council passes Resolution 1556 13-0, with China and Pakistan abstaining, giving the GoS thirty days to disarm the *Janjaweed*, otherwise economic and military sanctions will be considered.

**August 2, 2004** — Following a trip to Darfur, Francis Deng, Secretary-General Kofi Annan’s Representative on IDPs, reports that Darfur remains in a state of crisis bereft of security and rife with human rights violations.

The United Nations begins dropping food by air into the Darfur region.

**August 4, 2004** — UN Secretary-General Kofi Annan asserts that the United Nations will continue to pressure the GoS to honor its pledge to protect IDPs and disarm the *Janjaweed*.



The United Nations reports that IDPs in Darfur now number approximately 1.2 million.

About one hundred thousand demonstrators march through Khartoum in a protest, sponsored by the Sudanese government, against the recent United Nations resolution demanding an end to violence in Darfur.

The GoS agrees with UN Special Envoy to Sudan Jan Pronk's action plan outlining concrete steps and policy measures regarding the disarmament of the *Janjaweed*. The AU reports that it is considering the possibility of increasing its three hundred-man observer mission to a full-fledged peacekeeping mission.

**August 5, 2004** — Jan Pronk and Sudanese Foreign Minister Mustafa Osman Ismail sign an agreement that commits Khartoum to undertake concrete actions over the course of the next thirty days to disarm the *Janjaweed* and improve security for the IDPs.

**August 6, 2004** — A UN human rights investigator says there is “overwhelming evidence” the GoS is complicit in the killing of civilians in the Darfur region.

**August 9, 2004** — The GoS rejects the AU's proposal for a peacekeeping mission, and calls the proposed plan a case of “colonialism.”

**August 12, 2004** — At a meeting of the Joint Implementation Mechanism (JIM), Khartoum presents United Nations officials with a plan delineating the actions that it will take to ameliorate the situation in Darfur.

**August 15, 2004** — Approximately one hundred fifty Rwandan troops arrive in Darfur to protect African Union (AU) cease-fire monitors. They are to be stationed in six regions where large IDP camps are located.

**August 19, 2004** — AU cease-fire monitors corroborate the fact that in the past week the GoS troops brutally mistreated IDPs at the Kalma camp in South Darfur and then looted the camp.

The Nigerian Senate approves plans to send up to fifteen hundred additional troops to join the AU cease-fire monitoring force in Darfur.

**August 20, 2004** — The UN's Special Envoy to Sudan, Jan Pronk, arrives in Darfur for a three-day mission that includes trips to IDP camps (including Kalma) and talks with local officials and humanitarian workers.

**August 23, 2004** — The GoS and representatives of rebel groups (SLA and JEM) conduct peace talks (which are sponsored by the AU) in Abuja, Nigeria, with the aim of bringing the conflict in Darfur to a close.

**August 25, 2004** — Declaring its operations in Sudan “grossly underfunded,” United Nations humanitarian agencies say they have received only \$288 million of the \$722 million needed to meet the needs of the IDPs.

**August 29, 2004** — UN Security Council Resolution 1556 expires. It does so with no clear-cut United Nations strategy for imposing sanctions against the GoS. In light of the divisiveness over the issue in the Security Council, many speculate that it is dubious as to whether sanctions will ever be imposed.

**August 30, 2004** — Darfur’s IDPs are “traumatized and humiliated and remain at risk of being raped, assaulted, and/or forced to return to their homes,” Dennis McNamara, Director of the UN’s Internal Displacement Division, reports during a press conference in Nairobi, Kenya.

The United Nations’ deadline for the Sudanese Government to both disarm militias and remove them from Darfur expires.

**August 31, 2004** — The peace talks between the GoS and the rebel groups are about to resume after rebel leaders walked out on August 29 following accusations of cease-fire violations.

**September 2, 2004** — The UN’s Special Envoy to Sudan, Jan Pronk, informs the UN Security Council that Khartoum has neither disarmed the *Janjaweed* nor stopped their attacks against civilians. He argues in favor of an expansion of the AU mission in Darfur (both in regard to its mandate and its size) in order to provide better protection for the IDPs. He further notes that the Sudanese Government should be commended for removing obstacles to humanitarian access and for deploying extra police in the region.

**September 3, 2004** — Secretary-General Kofi Annan reports to the UN Security Council that the international presence in Darfur must be increased as soon as possible due to the fact that the “vast majority of militias” have not yet been disarmed. The report concludes that a “scorched-earth policy” by the *Janjaweed* is responsible for most of the violence in Darfur.

**September 4, 2004** — The SLA and the Sudanese Government reach a cease-fire agreement, but almost immediately break into acrimonious debate where each side accuses the other of violating the agreement.

**September 7, 2004** — The World Food Programme (WFP) reports that it delivered food aid to more than 900,000 people during August, below

its target of 1.2 million because the rainy season made many roads impassable.

**September 9, 2004** — U.S. Secretary of State Colin Powell announces that the U.S. Government has concluded that the ongoing violence in Darfur constitutes genocide. It is the first time one sovereign nation has accused another sovereign nation of genocide while the conflict is still ongoing.

U.S. President George W. Bush states, “We urge the international community to work with us to prevent and suppress acts of genocide.”

*Note:* The sole action of the U.S. government following its declaration of genocide was to refer the matter to the UN Security Council. See September 18, 2004.

**September 13, 2004** — A World Health Organization (WHO) survey reports that more than two hundred IDPs are dying every day (or between six to ten thousand a month) in North and West Darfur because of *Janjaweed* attacks and unhygienic conditions in camps. Figures for South Darfur are not available because of security problems.

**September 14, 2004** — Under pressure from China, the United States eases its threat of oil sanctions against Sudan, revising its motion to the Security Council to read that the United Nations “shall consider” punitive action, rather than “will take.”

**September 15, 2004** — Talks between the Sudanese government and SLA and JEM break down after three weeks.

United Nations agencies investigate reports saying that as many as four thousand people have fled their villages in North Darfur and another five thousand recently arrived at a town in South Darfur over the past week.

**September 16, 2004** — UN Secretary-General Kofi Annan reports that he is sending High Commissioner for Human Rights Louise Arbour and Special Adviser on the Prevention of Genocide Juan Méndez to Darfur to assess the situation for the express purpose of making recommendations in regard to what can be done to protect civilians.

Annan also reports that he has informed UN Security Council members that he wants a proposed Commission of Inquiry (COI) to proceed for the express purpose of ascertaining whether genocide has occurred in Darfur.

The peace talks in Abuja, Nigeria, reach a stalemate.

**September 17, 2004** — Tom Vraalsen, Secretary-General Kofi Annan’s Special Envoy for Humanitarian Affairs in Sudan, undertakes the Greater Darfur Initiative, an appeal for \$23 million to help those IDPs in greatest need.

**September 18, 2004** — The UN Security Council passes Resolution 1564 (11-0, with Algeria, China, Pakistan, and the Russian Federation abstaining), which calls for the creation of a COI to determine whether genocide has occurred, and threatens possible sanctions against the Sudanese Government if the latter fails to comply with earlier resolutions. The resolution also supports expanding the role of multinational African Union (AU) troops in Sudan.

**September 19, 2004** — Sudanese President Omar al-Bashir claims he does not fear sanctions threatened by the United Nations: “We are afraid neither of the United Nations nor of its resolution.”

**September 20, 2004** — High Commissioner for Human Rights Louise Arbour and Special Adviser on the Prevention of Genocide Juan Méndez begin a week-long mission to Darfur, where they visit IDP camps and meet with AU monitors.

**September 21, 2004** — Arbour and Méndez report “a sense of fear pervading” the IDP camps in Darfur, and a pervasive skepticism among the IDPs that authorities can or will protect them.

**September 22, 2004** — In his first speech as Canadian Prime Minister before the UN General Assembly, Paul Martin criticizes the world’s slow reaction to the violence in Sudan, asserting that the United Nations has been bogged down with the legal definition of “genocide.”

United Nations agencies report that the number of IDPs has increased to 1.45 million and continues to rise.

**September 23, 2004** — Sudanese Foreign Minister Mustafa Osman Ismail informs the UN General Assembly that Sudan will respect human rights and work for peace in Darfur, but casts blame at the rebel groups for the conflict. He also denounces the UN Security Council resolution threatening action against Sudan.

**September 24, 2004** — In a UN Security Council meeting, UN Secretary-General Kofi Annan asserts that the “terrible violence” in Darfur constitutes a global issue, and “not simply an African problem.”

Nigerian President and AU Chairman Olusegun Obasanjo asserts that the AU force needs greater international funding and logistical support if

it is to expand to a size of about three thousand troops and take on new responsibilities.

**September 25, 2004** — UN High Commissioner for Human Rights Louise Arbour asserts that most of the IDPs are living in “prisons without walls,” but Sudanese Government officials continue to deny the scale and gravity of what is happening.

**September 30, 2004** — Reporting on the findings of their mission, UN High Commissioner for Human Rights Louise Arbour and Special Adviser on the Prevention of Genocide Juan Méndez tell the UN Security Council that international police officers are a must if the IDPs are to have any confidence that they will be protected if and when they leave their camps.

**October 4, 2004** — UN Secretary-General Kofi Annan proposes four ways in which the United Nations can assist the AU to expand its mission, including the establishment of a Darfur regional office of the UN Advance Mission in Sudan (UNAMIS).

**October 5, 2004** — UN Special Envoy to Sudan Jan Pronk informs the UN Security Council that the Sudanese Government continues to sponsor violence against innocent civilians in Darfur. More specifically, he states that the GoS has made no progress over the past month in disarming the *Janjaweed*, stopping their attacks or prosecuting those responsible for the worst atrocities. He also asserts that banditry is on the rise and both the GoS/*Janjaweed* and the rebel groups have frequently breached the cease-fire.

In his regular report to the Council, UN Secretary-General Annan asserts that the AU mission should have the power to protect IDPs and refugees, monitor the local police, and disarm the fighters, including the *Janjaweed*.

**October 7, 2004** — UN Secretary-General Kofi Annan names the members of the UN Commission of Inquiry (COI) whose task is to conduct an investigation into the atrocities in Darfur.

**October 15, 2004** — The World Health Organization (WHO) reports that at least seventy thousand people have perished since March 2004 as a result of poor conditions in refugee camps. It states that the refugees have died of diarrhea, fever, and respiratory disease, and that that toll *does not include* those killed in the ongoing violence.

**October 28, 2004** — The first contingent of the expanded AU cease-fire observation force arrives in Darfur.

**Early November 2004** — UNHCR reports that GoS-allied militias have launched at least six raids on refugees camped near Chadian–Sudanese border.

**November 4, 2004** — UN Secretary-General Kofi Annan reports to the UN Security Council that there are “strong indications” that war crimes and crimes against humanity have occurred on a “large and systematic scale” in Darfur.

**November 7, 2004** — The UN Office for the Coordination of Humanitarian Affairs (OCHA) warns that Darfur is facing its worst humanitarian crisis since 1988. It further states that, in certain cases, access for humanitarian workers is virtually nonexistent.

**November 9, 2004** — The GoS and the Sudanese Liberation Army (SLA) and the Justice and Equity Movement (JEM) agree to a halt of all military flights over Darfur and guaranteed access for humanitarian aid to the IDP camps in the region.

**November 18–19, 2004** — The UN Security Council meets in Nairobi, Kenya, to discuss the Darfur crisis, but fails to pass a resolution imposing any sanctions on the combatants.

**December 14, 2004** — Two aid workers from the British charity Save the Children are killed when their convoy comes under gunfire. The United Nations suspends humanitarian operations in response to the attack. Save the Children pulls out of Darfur a week later.

**December 23, 2004** — The UN High Commissioner for Refugees reveals plans to build safe camps in Chad, a good distance away from the border with Sudan, where militias continue to conduct attacks.

## 2005

**January 9, 2005** — The Comprehensive Peace Agreement is signed by the GoS and the SPLM, bringing to an end to twenty-one years of civil war between the government and rebel forces in the south of Sudan.

**January 12, 2004** — Jan Pronk, UN Special Envoy to Sudan, asserts that the crisis in Darfur has resulted in killing over one hundred thousand people. He warns that: “We may move into a period of intense violence unless swift action is taken and new approaches are considered.”

**January 24, 2005** — UN Secretary-General Kofi Annan, in an unprecedented meeting of the UN General Assembly to commemorate the Holocaust, issues a dire warning about the violence in Darfur.

**January 25, 2005** — The UN Security Council’s Commission of Inquiry (COI) releases its report to the Secretary-General. It concludes that serious violations of international law have occurred in Darfur, including “crimes against humanity.” It does not, though, conclude that genocide has been perpetrated. The COI recommends that the evidence of the crimes committed be referred to the International Criminal Court (ICC).

**January 26, 2005** — African Union (AU) observers accuse the Sudanese air force of bombing villagers in southern Darfur.

**January 29, 2005** — UN Undersecretary for Humanitarian Affairs Jan Egeland warns that violence and insecurity in Darfur is seriously impeding the delivery of humanitarian aid to displaced persons.

**February 2, 2005** — Researcher Eric Reeves releases the first of a two-part critical analysis of the UN Commission of Inquiry Report (COI) on Darfur, particularly criticizing its failure to find that genocide had been committed. The second part is posted on February 6. (Part 1 and Part 2 are available at: <http://www.sudanreeves.org/modules>.)

**February 4, 2005** — UN Special Envoy for Sudan Jan Pronk calls for a larger international military force in Darfur. He tells the UN Security Council that it is the only way to stop the raging violence. The Council debates whether war crimes trials should be held at the International Criminal Court (ICC), or even could be, given the United States opposition to the ICC.

**February 5, 2005** — The African Union (AU) warns that the security situation in Darfur has deteriorated during the past four months.

The U.S. Holocaust Memorial Museum organizes and hosts, in cooperation with Georgetown University’s Students Taking Action Now on Darfur (STAND), the National Student Leaders Conference on Darfur, which is attended by four hundred students from more than ninety schools across the United States and Canada.

**February 16, 2005** — UN High Commissioner for Human Rights Louise Arbour recommends that the UN Security Council refer the situation in Darfur to the International Criminal Court (ICC).

**March 2, 2005** — U.S. Senator Jon S. Corzine (D-NJ), with thirty co-sponsors, introduces S. 495, the Darfur Accountability Act of 2005, calling for the President of the United States to impose sanctions against individuals named as probable perpetrators of crimes against humanity in Darfur by the UN Commission of Inquiry (COI) on Darfur. It never comes to a vote before the full Senate.

Human Rights Watch reports that a high-level member of the *Janjaweed* informed its researchers that the Sudanese Government directed and supported attacks on Africans in Darfur. The GoS, though, denies its involvement.

**March 7, 2005** — *Médecins Sans Frontières* (Doctors Without Borders) issues a report stating that it has treated approximately five hundred women and girls who were raped between October 2004 and mid-February 2005. The report asserts that the five hundred treated rape victims represent only a fraction of those who have been sexually assaulted.

**March 15, 2005** — A senior United Nations official reports that the number of individuals who have died from disease and malnutrition in Darfur could be as high as three hundred-fifty thousand. That estimate is approximately five times the official WHO estimate.

**March 16, 2005** — Due to threats by the *Janjaweed*, the United Nations reports that it is withdrawing all its staff from part of western Sudan. In doing so, the United Nations is relocating to El-Geneina, which is in Darfur, near the Sudan/Chad border.

United Nations Human Rights experts call for urgent, effective action on Darfur.

**March 17, 2005** — Jan Pronk, the UN's Special Envoy to Sudan, states that the African Union peacekeeping force (currently at about two thousand) needs as many as eight thousand troops to do an adequate job of providing security.

U.S. House of Representative Donald M. Payne (D-NJ) introduces, with 132 co-sponsors, H.R. 1424, the Darfur Accountability Act of 2005, which directs the President to block property and assets of GoS officials and calls for the use of force, including a no-fly zone, to stop the genocide in Darfur. It never comes to a vote before the full House of Representatives.

**March 24, 2005** — The UN Security Council unanimously passes Resolution 1590, which authorizes the deployment of ten thousand soldiers and hundreds of police to southern Sudan to support the Comprehensive Peace Agreement between the Government of Sudan and the southern rebel groups.

**March 25, 2005** — The UN Security Council fails to pass a resolution that would end the crisis in Sudan. Sanctions against the GoS, again, cannot be agreed upon.

The UN Security Council vote on the French draft resolution to bring war criminals to trial at the International Criminal Court (ICC) is delayed.



**March 28, 2005** — The GoS asserts that fifteen military and security officials have been arrested on charges of murder, rape, and the burning of villages in Darfur. This is the first time arrests are made for crimes committed in Darfur. The GoS states that it wants to try the accused in a Sudanese court.

**March 29, 2005** — The UN Security Council approves a travel ban and an asset freeze for individuals accused of committing crimes in Darfur. The sanctions will apply in thirty days to individuals who will be identified by a special United Nations committee comprised of representatives from all fifteen member countries of the Security Council.

**March 31, 2005** — After debate and discussion of the Commission of Inquiry's Report on Darfur, Resolution 1593 is adopted by the UN Security Council, referring the situation in Darfur to the ICC. Eleven members of the Council vote in favor of the Resolution, while the United States, Algeria, Brazil, and China abstain.

**April 5, 2005** — The ICC obtains more than twenty-five hundred items of evidence collected by the UN Commission of Inquiry (COI) on Darfur, as well as a secret list of fifty-one names of individuals deemed by the Commission of Inquiry as being potentially responsible for the crimes committed in Darfur.

**April 21, 2005** — The CIJ announces that recently collected information suggest that nearly four hundred thousand people have died in the Darfur conflict since it began more than two years previously and that as many as five hundred people may be dying each day.

**April 29, 2005** — Reporter Ken Silverstein writes in *The Los Angeles Times* that the Central Intelligence Agency (CIA) flew in a private jet, a high-ranking Sudanese official, Salah Abdallah Gosh, the head of Sudan's intelligence agency, to Washington, D.C. to discuss antiterror policies, despite the fact that Gosh is thought by some to be heavily implicated in the genocide in Darfur.

**May 24, 2005** — Human Rights Watch declares that between 3.5 and 4 million people in Darfur are in need of food aid due to the conflict.

**May 26, 2005** — At a fundraising conference in Addis Ababa, Ethiopia, donor nations pledge \$300 million to help support (AU) forces in Darfur. The amount is several hundred million dollars less than the AU had requested.

**June 1, 2005** — Chief Prosecutor of the ICC, Luis Moreno Ocampo, decides that there is sufficient evidence to start a formal investigation into the Darfur situation.

**June 6, 2005** — ICC Prosecutor Ocampo publicly announces his decision to begin the official ICC investigation of crimes committed in Darfur. It is expected to be the largest investigation handled by the ICC since its establishment in June 2002. UN Secretary-General Kofi Annan has provided the ICC a list of fifty-one names, including top GoS officials, army officials, army commanders, *Janjaweed* leaders, and those suspected of murder and rape in Darfur. It is reported that Sudan is not going to cooperate with the ICC, and that it insists on prosecuting alleged perpetrators in its own courts.

**June 30, 2005** — U.S. Representative Henry J. Hyde (R-IL) introduces H.R. 3127, calling for sanctions against individuals responsible for genocide and other crimes committed in Darfur.

**July 6, 2005** — The International Crisis Group releases a report in which it asserts that a total peacekeeping force of between twelve and fifteen thousand is needed in Darfur, vastly more than the number currently deployed.

**July 9, 2005** — John Garang, leader the southern rebels, is sworn in as First Vice President of Sudan, under terms of the January 9th Comprehensive Peace Agreement.

**July 19, 2005** — The GoS signs a Declaration of Principles with leaders of the two rebel factions in Darfur. Despite the political overture toward peace, the situation on the ground remains volatile.

**July 21, 2005** — U.S. Secretary of State Condoleeza Rice visits the Abu Shouk camp for IDPs in Darfur.

**July 21, 2005** — U.S. Senator Sam Brownback (R-KS) introduces, with thirty-seven co-sponsors, S. 1462, a bill that calls for the President George W. Bush to impose sanctions against Sudanese Government officials and others responsible for genocide and other crimes committed in Darfur. It also authorizes the President to increase support for the African Union's mission in Sudan and places limits on the Sudanese Government's access to revenues from oil.

**July 29, 2005** — The United Nations releases a report stating that widespread rapes and sexual assaults are being committed in Darfur by Sudanese soldiers and police.

**July 30, 2005** — First Vice President of Sudan John Garang dies in a helicopter crash.

**September 15, 2005** — Continuing insecurity in Darfur prompts the closure of roads connecting El Geneina, the capital of West Darfur, leading to serious reduction in humanitarian aid to IDPs in the region.

**September 18–20, 2005** — More than twenty villages in North Darfur are attacked by GoS and *Janjaweed* fighters. Thousands of people are displaced from their homes.

**September 28, 2005** — UN Undersecretary-General for Humanitarian Affairs Jan Egeland announces that the United Nations will withdraw its workers in several areas of Darfur due to increasing violence.

**October 4, 2005** — UN Special Adviser on the Prevention of Genocide Juan Mendez issues a report based on his visit to Darfur between 19 and 26 September, warning of escalating violence, but noting an improvement in humanitarian access since the previous September.

**October 6, 2005** — The International Crisis Group (ICG) releases a report warning that prospects for peace are very low, notwithstanding ongoing negotiations in Abuja, Nigeria, between the GoS and Darfur rebel groups.

**October 9, 2005** — Thirty-eight members of an African Union team are kidnapped by rebels in Darfur.

**October 10, 2005** — Juan Mendez, Special Adviser to the UN Secretary-General for the Prevention of Genocide, warns of escalating violence in Darfur.

**November 18, 2005** — The U.S. Senate votes on and submits S. 1462 (see the entry under July 21, 2005) and passes it to the U.S. House of Representatives.

**November 21, 2005** — In his monthly report to the Security Council on Darfur, Secretary-General Kofi Annan warns that “the looming threat of complete lawlessness and anarchy draws nearer.”

**December 11, 2005** — Human Rights Watch releases a report on serious international crimes being committed in Darfur. The report names President Omar al-Bashir, and other top leaders in the Sudanese Government, as individuals who should be investigated for crimes against humanity.

**December 20, 2005** — The United Nations Children’s Fund (UNICEF) releases a report entitled “Child Alert Darfur,” asserting that as many as one million children displaced by the conflict in Darfur have not been

reached by humanitarian relief efforts due to the persisting violence and insecurity in the region.

**December 23, 2005** — Researcher Eric Reeves releases a report arguing that more than one million children have been “killed, raped, wounded, displaced, traumatized, or endured the loss of parents and families” in Darfur. (Available at <http://www.sudanreeves.org/index>.)

**December 29, 2005** — UN Secretary-General Kofi Annan warns that mass killing and rapes of civilians are continuing in Darfur.

## 2006

**January 11, 2006** — Physicians for Human Rights release a detailed report on the destruction of livelihoods in three non-Arab communities in Darfur. The report, “Darfur: Assault on Survival,” further underscores the genocidal nature of the Government of Sudan’s attacks against targeted groups.

**January 13, 2006** — The African Union (AU) extends its peacekeeping mandate in Darfur for two months in anticipation that the AU force of nearly seven thousand troops will ultimately be handed over to the United Nations.

**January 16, 2006** — Special Representative of the Secretary-General for Sudan Jan Pronk warns that the present peacekeeping force in Darfur is inadequate to end the violence.

**Early-April, 2006** — Chadian rebels attack N’Djamena, the capital of Chad. Chadian President Idriss Déby accuses Sudan of supporting and harboring the rebels, and subsequently cuts diplomatic relations with Sudan.

**April 25, 2006** — The UN Security Council imposes sanctions on four Sudanese accused of having committed abuses in Darfur. The sanctions are the first to be imposed against individuals vis-à-vis the Darfur crisis.

**April 28, 2006** — The World Food Programme announces it will cut food rations to refugees in half.

**May 1, 2006** — A day of protests is held across the globe calling for concrete and effective action in Darfur.

**May 5, 2006** — The GoS and a SLA faction sign a peace agreement. JEM rejects the agreement.

**May 8, 2006** — *The New York Times* reports that despite the signing of the peace agreement, violence in Darfur continues unabated.

**May 11, 2006** — United States Secretary of State Condoleezza Rice addresses the UN Security Council on Darfur, and, in doing so, she references the “Responsibility to Protect” and also submits a draft resolution on Darfur under Chapter VII of the UN Charter

**May 16, 2006** — In an unanimous vote, The UN Security Council passes a resolution on Darfur under Chapter VII to initiate the planning of a possible UN peacekeeping mission in Darfur.

**May 25, 2006** — The GoS rejects the proposal by the UN Security Council of deploying a peacekeeping force in Darfur under Chapter VII of the UN Charter. Instead, the GoS suggests that the UN take on a “watchdog” role to monitor the implementation of the peace agreement.

**May 25, 2006** — UN Special Envoy Lakhdar Brahimi announces the GoS’ agreement to allow a “technical assessment team” into Sudan.

**May 31, 2006** — The two rebel groups fail to meet the May 31st deadline to sign the peace agreement.

**June 1, 2006** — UN Humanitarian Coordinator Jan Egeland asserts that unless security conditions quickly improve in Darfur, the UN will be forced to pull its aid staff.

**June 5, 2006** — The UN Security Council travels to Sudan and applies pressure on the GoS to accept the deployment of an international force in Darfur.

**June 6, 2006** — The UNHCR reports that attacks along and across the Chad/Sudan border by the *Janjaweed* have become more “systematic and deadly.” It is estimated that up to 50,000 Chadian citizens have been displaced from their homes by the attacks.

**June 7, 2006** — In stating why he refuses to allow a UN peacekeeping mission into Darfur, al-Bashir compares the situation in Iraq by asserting that he is not going to allow a “foreign occupation” of Sudan.

**June 9, 2006** — Following tremendous international pressure, the two rebel factions holding out against a peace agreement sign an “annex” to the peace agreement.

**June 13, 2006** — A Joint UN-AU team arrives in Darfur to assess the situation in preparation for an international force. UN peacekeeping coordinator Jean-Marie Guehenno reports that the soonest a UN peacekeeping mission will be deployed to Darfur is January 2007.

**June 15, 2006** — Following a lengthy investigation (but not in Darfur itself due to the risky security situation), the International Criminal Court (ICC) reports evidence of large-scale massacres and rapes in Darfur to the Security Council. ICC chief prosecutor Luis Moreno-Ocampo states that, “The available information indicates that these killings include a significant number of large-scale massacres, with hundreds of victims in each incident.” Continuing, Moreno-Ocampo states that, “although some of the massacres appear to have been carried out with ‘genocidal intent,’ the final decision will not be made what to deem the crimes until a full investigation and analysis by the prosecutor’s office is completed.”



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Cartographic Section

Map of Sudan, showing the three Darfur provinces and the nine nations that border Sudan: Eritrea, Ethiopia, Kenya, Uganda, Democratic Republic of Congo, Central African Republic, Chad, and Libya (upper left corner under map of Africa). (UN map of Sudan, UN Cartographic Section, no. 3707 Rev. 7 May 2004. With permission.)

PART **1**  
The Background on Darfur



CHAPTER **1**  
**Disaster in Darfur:  
Historical Overview\***

ROBERT O. COLLINS

**Introduction**

Darfur (Land of the Fur) is the western region of The Republic of the Sudan (*Jumhuriyat as-Sudan*). It is approximately the size of France and is divided into three administrative states — North, West, and South — that represent the three ethnic zones of Darfur. Northern Darfur State is the home of camel nomads, a small minority of whom are Meidab Arabs, but the overwhelming majority are non-Arab Zaghawa. In the Western Darfur State, on both sides of the volcanic Jabal Marra massif towering three thousand feet above the vast Sudanic plain, live non-Arab sedentary farmers, the Fur, Massalit, Daju, and Berti. Southern Darfur State is inhabited by the cattle and camel nomads, the Baqqara, who claim Arab (*Juhayna*) origins and speak Arabic, but are ethnically the result of intercourse with their surrounding African neighbors after arriving in southern Darfur in the eighteenth century. All the peoples of Darfur are Muslims. A few Africans still practice their traditional religions, whose vestiges can be found in the Darfurian symbiotic Muslim practices on this frontier of Islam.

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\* A slightly revised version of this chapter first appeared in the Summer–Fall 2004 issue, No. 15–16, *African Geopolitics/Géopolitique Africaine*. Reprinted with permission.

The rainfall and drainage from Jabal Marra onto the fertile soils of the western province support a vigorous agriculture by the African settled cultivators, and this is in stark contrast to the semidesert of the north that is dependent for water on intermittent *wadis* and wells, many of which go dry in the winter months. In the south, the summer rains produce a rolling mantle of grass and reliable sources of water from wells and excavated reservoirs, *hafri*, for the Baqqara and their cattle.

This bucolic description of cultivators and herdsman peacefully tending to their traditional pursuits obscures the historic struggle for scarce resources by different people competing for land and water in Darfur. The past — and most certainly, the current crisis — in Darfur cannot be understood without its history, a fact often overlooked by the media and many of the non-Sudanese officials swept up in the disaster in Darfur.

### Darfur in History

Historically, Darfur was transformed from a geographic to a well-defined political entity by the establishment of the sultanate in 1650. Its foundations rested on a centuries-old tradition of state formation dominated by the Fur and a ruling elite that included members of all the principal ethnic groups in Darfur. The Fur sultanate consisted mostly of non-Arab cultivators who employed the organized resources of the state and its heavy cavalry to contain the Arab nomads in their seasonal pastures well beyond Fur and Massalit agricultural lands. This equilibrium was not to last. In 1874, al-Zubayr Rahma Mansur, the Ja'ali Arab slave trader who had created a personal fiefdom in the Bahr al-Ghazal in the southern Sudan, destroyed the Fur sultanate, opening the pastures and cultivations to the Baqqara Arab nomads. When in 1898 the British had destroyed the revolutionary religious Mahdist State, which had ruled the Sudan since 1885, Ali Dinar, who had inherited the title of sultan in 1890, restored the Fur sultanate and spent most of the next eighteen years driving the Arab nomads north and south of the agricultural lands surrounding Jabal Marra, which comprised the heartland of his sultanate. A significant difference today in this historic struggle for the land is the ferocity of the killing by the Kalisnikov rather than the spear or sword.

In 1916, Ali Dinar, who had been sympathetic to the Ottoman Empire during World War I, was killed by a British expeditionary force, and Darfur was annexed to the Anglo-Egyptian Condominium (1898–1956), which had succeeded the Mahdist State in the Sudan. The British soon learned that Darfur had little to contribute to the rebuilding of the Sudan. The principal city of El Fasher lay far to the west, and to this day there is neither

an all-weather road nor a railroad to this historic capital. In 1959, Sudan Railways completed a line to Nyala, capital of Southern Darfur State and 120 miles south of El Fasher, but its irregular service has never ended the region's isolation. Darfur had no exploitable resources, only subsistence cultivators and impoverished herdsmen. The administration consisted of a few resourceful British officers who kept law and order by ruthlessly enforcing gun control and little else, leaving the day-to-day governance to local African chiefs and Arab *shaykhs*.

The steady improvements in education and healthcare and the introduction of development schemes by British authorities in the greater Khartoum area along the Nile never made their way to Darfur. Peace, however, did result in the migration eastward of young men (all of whom were struggling in a stagnant subsistence economy) looking for work in the new riverain (riparian) development projects, particularly the vast Gezira cotton scheme south of Khartoum between the Blue and White Niles. Once by the river, however, they encountered discrimination by the *awlad al-bahar* (people of the river) for the *awlad al-ghareb* (people from the west).

The perceived differences between those Sudanese living along the Nile in villages, towns, and cities and those from the rural hinterland run very silent but very deep in the past and present Sudan. The *awlad al-bahar* (sometimes *awlad al-bilad*) are the descendants of the Arab migrants into the Nile valley, who were mostly *Ja'aliyyin* (pl. of *Ja'ali*) who infiltrated into the heart of the Sudan in the sixteenth and seventeenth centuries. They became a sedentary urban society with a literate elite who during the fifty years of British rule became a sophisticated, if not worldly, ruling class that reinforced the disdain and derision of their grandfathers and fathers for the rustic illiterate folk from the West, East, and South. It was among these simple farmers and coarse herdsmen in the western Sudan of Kordofan and Darfur that the Umma Party of Sayyid Abd al-Rahman could count on for the loyalty to solidify his political position in any Sudan of the future. His father, Muhammad Ahmad ibn Abdallah, the Mahdi, had recruited among the Baqqara and Fur the shock troops for his army that destroyed Egyptian rule in the Sudan and established the Mahdist State. They have remained passionately loyal to Mahdism, and after the independence of the Sudan in 1956, the Umma began to introduce selected sons of the old Darfur elite into the political life of Omdurman and Khartoum. Here they became assimilated into the ruling riverain *awlad al-bahar*; or, in the contemptuous words of the Darfurian political activist, Dr. Sharif Harir, they were corrupted by "riverization" after abandoning their traditional roots in Darfur for the political highlife of Khartoum.

The ethnic and cultural discrimination by the riverain-ruling elite in Khartoum against those Sudanese living on the periphery has historically established the pattern of governance by the *awlad al-bahar*, which constitutes a circumference of no more than a few hundred miles from the confluence of the two Niles and those lands beyond where the authority diminishes with the distance from the heartland. At no time in the past two hundred years has the central government of the Sudan — neither nineteenth century Turks nor twentieth century British and certainly not the independent Sudanese — actually governed Darfur, the southern Sudan, or even the Red Sea Hills. Officials from the central government occupied the periphery with scattered symbolic posts in the countryside and a garrison and governor in the traditional provincial capitals, but at no time have they rigorously administered, effectively controlled, or demonstrated the usual characteristics associated with governance, good or bad. Geography was much to blame, for El Fasher is some seven hundred miles from Khartoum and El Geneina, on the Chad border, another two hundred twenty miles across sandy plains and dunes, known as *goz*, stretching hundreds of miles around the mountain massif of Jabal Marra and crossed by ancient tracks whose reliability is largely determined by the weather. The fundamental reason for fragile governance in Darfur, though, remains the dearth of resources and political leadership by those in authority in the central government of Sudan who have preferred to adopt a policy of benign neglect.

Historically, ethnic tensions between farmers and herdsman, African and Arab, latent and volatile, have always been present and accepted in Darfur, but are exacerbated by long-standing competition for pasture, agricultural land, and water, the mundane matters so important in daily life in which verbal disputes can quickly erupt into violence. Quarrels over scarce resources became particularly acute during the great global drought of the 1980s that hastened the desertification of northern and central Darfur, and resulted in increasing tensions over water and grazing areas as the camel nomads moved south in search of both. The drought of the 1980s was not new, just more severe. In the past, the different ethnic groups had usually settled their disputes over land ownership and right to water wells by conferences, *ajaweed/muatamarat al-sulh*, of the traditional leaders whose rulings were invariably respected and honored. This mechanism began to break down when desertification was accompanied by the introduction of thousands of automatic weapons. By the 1990s, Darfur was short of water but awash in guns.

*The Price of Impotence*

When the British departed in 1956, they left behind the Sudan Defense Force, soon to become the Sudan Armed Forces (SAF). It was a disciplined, professional, mobile army, the finest in the Middle East, equal to the Arab Legion of Jordan. In the Arab–Israel War of 1967, the Sudanese battalion sent to Sinai to help the Egyptians refused to retreat, disdained to surrender, and had to be annihilated before the Israeli advance could proceed. Moreover, the British found their best soldiers from the peoples of the periphery — the Nuba and Dinka of the southern Sudan and the Fur and Baqqara from Darfur who, as the shock troops of the Mahdist armies, had established a reputation as fierce warriors during the Mahdiya and during their sporadic outbursts against the British — for the sons of the *awlad al-bahar* preferred the urban life of the riverain towns and a political or professional career to the hardships and hazards of soldiering. In 1956, the army was, in fact, the only national institution in the Sudan and in the past half-century of Sudanese independence has intervened three times — 1958, 1969, and 1989 — to seize power from incompetent, corrupt, and self-seeking political leaders who had been democratically elected. At the time of their respective coups, most Sudanese were delighted to see the politicians depart from government until later realizing the tyranny of military dictatorships that have ruled the Sudan for thirty-seven of its forty-eight years of independence.

The decline of the SAF began during the sixteen years of the rule of General Ja‘far Numayri (1969 to 1985) when the senior officers of the Sudan Defense Force were succeeded by younger, less professional officers who could not resist abusing their authority for their own personal advancement while at the same time fighting a war they could not win against the southern Sudanese insurgents. Moreover, the demise of a professional Sudanese fighting force was accompanied by the creation of the People’s Defense Force (PDF) after the Islamist *coup d’état* of 1989 to make the army theologically “correct,” yet, as it turned out, incapable of suppressing insurgencies.

During the 1970s and 1980s, the Islamic Charter Front (later the National Islamic Front, NIF), led by Hasan al-Turabi, methodically recruited young officers at the military academy into the NIF, among them Omar Hassan Ahmad al-Bashir. When Bashir and his fellow Islamist officers seized power on June 30, 1989, the Revolutionary Command Council founded the aforementioned PDF in order to protect the June 30 Revolution and to suppress the rebellion in the South, essentially replacing the army as the instrument to enforce the Islamization of the Sudan. The soldiers for the PDF were not volunteers but conscripts by a very unpopular draft

that numbered one hundred fifty thousand recruits by 1991. Instructors from the Sudan army introduced them to weaponry, but their indoctrination was more religious than military, including interminable lectures on Islam. The ideological guide for the Islamist state, Hassan al-Turabi, made clear that it would be impossible to “Islamize” the Sudanese army because its professional officers had been “secularized” and unwilling to accept an Islamist regime that required a “large popular defense force” that would create an “Islamized” society (Middle East Policy, 1992).

The PDF, though little more than a rabble in arms, was to crush the battle-hardened Nilotic veterans who constituted the bulk of the Sudan People’s Liberation Army (SPLA) forces in southern Sudan. When Colonel John Garang decided to defect from the Sudanese army after the mutiny of the Fifth Battalion at Bor in May 1983, he spent that summer forging them (along with a flood of other disaffected southern troops) into the Sudan People’s Liberation Movement (SPLM), whose military branch was separate from the political branch and was known as the Sudan People’s Liberation Army (SPLA). The latter trained in camps across the Ethiopian border and received support from the communist regime of President Haile Miriam Mengistu. Within two years, the SPLA was ready to take the offensive against the Sudanese army and later the PDF.

Neither the demoralized remnants of the old Sudan Armed Forces nor the massive cannon fodder of the PDF were trained, equipped, or motivated to fight in the semideserts of the West or the swamps and rainforests of the South. They suffered successive defeats, failing utterly to crush the insurgencies or to establish the authority of the Sudan government in these peripheral regions.

In 1986, Prime Minister Sadiq al-Mahdi, great grandson of the Muhammad Ahmad, al Mahdi, leader of the Umma Party, and a dominant figure in Sudanese politics since the 1960s, decided to reverse the failure of the Sudanese army to defeat the SPLA by arming with automatic weapons his Baqqara supporters on the southern Sudan frontier. He gave them freedom to pillage, rape, enslave, and kill the Dinka across the Bahr al-Arab (the Kiir) River, who supported the SPLA and its Dinka leader, John Garang. Riding their horses and brandishing their Kalisnikovs, the young Baqqara commandos from the Missiriyya and Humr, known as the *murahileen*, wreaked havoc and death upon the Dinka of the Bahr al-Ghazal and the Upper Nile for the next ten years. The other large Baqqara group to the west in southern Darfur, the *Rizayqat*, also carried out raids across the Dinka frontier to the south, but at the outbreak of the insurgency in Darfur, they turned this new and powerful weaponry against their northern African neighbors — the Fur, Massalit, and Zaghawa — with whom they had many ancient quarrels over territory and water.

After the Islamist *coup d'état* of June, 30 1989, the arming of the Baqqara *murahileen* continued under the illusion that these unruly, independent militias could be integrated into the PDF. More subtle but equally divisive to any settlement on the frontier of Islam was the determination by the regime to impose its Islamist ideology on all Sudanese — with Arabic culture, language, and Islam as the foundation of Sudanese society — even though less than half the Sudanese claim Arab origins and another third were non-Muslims. The Arabo-centric enthusiasm of Bashir and his National Islamic Front (after 1998, it became known as the National Congress Party) government reopened old and deep wounds in Sudanese society. Throughout the centuries there has been (by consent, intermarriage, or forced enslavement) a mixing of African and Arab in the Nile Basin that has produced those unique individuals today known as the Sudanese. The sensible Sudanese are more concerned about their cultural heritage than their genetic purity, but the hardcore fervently seek, through manufactured Arab genealogies, their direct descent from the Prophet. Injecting an ideological and racist definition as to who is “Arab” and who are *zuruq*, black, or the more pejorative epithet *abid*, slave, to distinguish between Arab and African — and justify the killing, rape, and enslavement of these marginalized people — has been the tragic legacy of the cynical and dysfunctional Islamist government of the Sudan.

#### *The Crisis in Darfur*

On February 26, 2003, some three hundred rebels calling themselves the Darfur Liberation Front (DLF), led by Abd al-Wahid Muhammad Ahmad Nur, a member of the Communist Party and the SPLM, the political arm of the southern insurgency movement, seized the town of Gulu, capital of Jabal Marra Province in the state of western Darfur. Equipped with automatic weapons, mortars, and “technicals” — Toyota trucks with mounted machine guns made famous in the Chadian wars with Libya — they attacked scattered police and army posts before retiring to their training camps in Jabal Marra. Two weeks later the DLF changed its name to the Sudan Liberation Movement/Army (SLM/A) and then “recaptured” Gulu in a fierce fire-fight, killing one hundred ninety five government soldiers and forcing the garrison to flee. Minni Arkou Minnawi, secretary-general of the SLM, the political arm of the movement, released to the press the *Political Declaration of the SLM*. In part, it stated that since the government of Khartoum had “systematically adhered to the policies of marginalization, racial discrimination, exclusion, exploitation, and divisiveness,” the objectives of the SLM are:

a united democratic Sudan ... predicated on full acknowledgment of Sudan's ethnic, cultural, social, and political diversity. Viable unity, therefore, must be ultimately based on the right of self-determination... . The fundamental imperatives of a viable unity are an economy and political system that address the uneven development and marginalization that have plagued the country since independence... . Religion and politics ... must be kept in their respective domains, with religion belonging to the personal domain and the state in the public domain... . SPLM/A firmly opposes ... the Khartoum Government's policies of using some Arab tribes ... to achieve its hegemonic devices that are detrimental both to Arabs and non-Arabs... . [Consequently], the brutal oppression, ethnic cleansing, and genocide sponsored by the Khartoum Government [have] left the people of Darfur with no other option but to resort to popular political and military resistance for the purpose of our survival (The Sudan Liberation Movement and Sudan Liberation Army 2003).

Within a few days the government security committee in western Darfur opened negotiations with the SLM, for the armed forces of the Sudan were insufficient and unprepared to fight a major insurgency in the West or isolate the insurgent's camps in the Jabal Marra massif. The SLM presented five demands — including an amnesty for the rebels and a pledge to implement development projects in Darfur — under a fragile cease-fire that soon collapsed on March 18 when Arab militias assassinated, near Geneina, a respected Massalit leader, Shaykh Saleh Dakoro. That was followed two days later by the destruction of much of the town of Karnoi by helicopter gunships.

The SLA retaliated on the 25th of March, when it seized the strategic town of Tine on the Chad frontier and captured large stocks of arms and equipment from its garrison. Thereafter, fighting raged throughout Western Darfur State in which the victories of the Sudan Liberation Army (SLA) dramatically revealed the inadequacy and incompetence of the Sudan army. The best the Government of Sudan (GoS) could do was to blame the revolt on “gangsters” and “highwaymen.” On Friday, April 25, an SLA force consisting of thirty-three technicals staged a hit-and-run attack on the airport outside El Fasher, now capital of the Northern Darfur State, destroying helicopters and Antonov bombers, occupying army headquarters, and capturing Air Force Major General Ibrahim Bushra. At the same time, another SLA unit captured four tanks in clashes outside of Kutum, seventy-five miles north of El Fasher. Ten days later, the SLA captured Colonel Mubarak Muhammad al-Saraj, chief of intelligence for public security in Aynshiro, north of Jabal Marra.



In the attack on El Fasher, the SLA was joined by Darfurians from the Justice and Equality Movement (JEM), which many in Darfur have called the “Opposition Forces.” There was little difference in the goals of these two resistance movements except the JEM (n.d.) “has come to rally all the peoples from the various regions of the Sudan into a broad based and inclusive Movement,” not just Darfur. Fighting now raged widely throughout Darfur. In late May, the SLA, north of Kutum, destroyed a Sudanese battalion, killing five hundred and taking three hundred prisoners. In mid-July, they attacked Tine again leaving two hundred fifty soldiers dead. On August 1, they captured Kutum, inflicting heavy casualties on the garrison before retiring after four days. The response to these victories by the GoS was to continue its denials that there was a resistance movement, and to rearm and unleash their Arab militias to rescue the army. Ironically, this new war in the West provided the Islamist regime with new opportunities for its preservation. As the most unpopular regime in the history of the independent Sudan, the government was now able to weaken any potential opposition by exploiting ethnic divisions, branding the insurgency as an African attempt to rid Darfur of the “Arab race,” whose dominance was the very foundation of the Islamist government and its extremists groups like the “Arab Gathering.” Moreover, with the prospect of peace at Naivasha after twenty-two months of negotiations with the SPLM, which would bring to an end the violent twenty-two-year civil war between the government and the southern insurgents led by the SPLM/A, the new war in Darfur would keep the army preoccupied with fighting instead of giving its disaffected officers the opportunity to plot a *coup d’état*. It would also provide a pretext to purge the army of Darfurian officers in March 2004 by accusing them of attempting to overthrow the government.<sup>1</sup>

The government militias consisted of the sons of former Baqqara *murahileen* now resuscitated as the *Janjaweed*, or *peshmerga* as they are known in western Darfur. Unlike the *murahileen* of the 1990s who were Baqqara from southern Kordofan, the *Janjaweed* of 2003 came from both the cattle Baqqara of southern Darfur and the camel Baqqara of central Darfur, but among them were strangers whom the local people suspected to be Arab extremists, perhaps Afghan–Arabs, or West African Muslims. The *Janjaweed* began their ethnic cleansing as early as October 2002 from their camps in Jabal Kargu, Boni, and Idalghanam in southern Darfur, with some five thousand *Janjaweed* in each, where they were equipped and trained by the Sudanese army. The Fur, whom Salah Ali Alghali, the governor of southern Darfur, openly vowed to exterminate, were singled out as the mounted *Janjaweed* commandos, usually comprised of one hundred warriors, would sweep down on a village just before dawn.<sup>2</sup> The pattern of destruction was the same. The men were killed, often mutilated,

the women raped, and the children sometimes abducted. The village was burnt, the livestock seized, the fields torched, and the infrastructure — wells, irrigation works, schools, clinics — methodically destroyed in a systematic scheme to drive the African population from their ancestral holdings. Ethnic cleansing to the *Janjaweed* meant clearing the land for Arab colonization. By January 2003, a few hundred Fur had been killed and hundreds wounded, but tens of thousands had fled from the wasteland left by the *Janjaweed*, more units of which were now being trained in camps in Northern Darfur State. Little did the Africans know that these early attacks were but the prelude to the firestorm that was to sweep through Darfur after the victories of the “Opposition Forces” in the spring and summer of 2003.

The *Janjaweed* killing and displacement of Fur, Massalit, and Zaghawa escalated throughout the summer and autumn of 2003 supported by helicopter gunships and Antonov bombers, while the Sudan army defeated the SLA north of Kutum in late August with heavy losses including two of its leading commanders. In September, the SLM signed a cease-fire proposed by the government of Chad that soon collapsed, and both sides returned to the fields of death and destruction. Throughout the remainder of 2003, fighting raged particularly in western Darfur with rhetorical claims of victory by both sides and occasionally a reliable report. On December 27, the JEM ambushed a *Janjaweed* column moving against the rebel-held town of Tine on the Chad border, inflicting very heavy losses, and in January 2004 the JEM repulsed another attempt to take Tine, reportedly killing over a thousand government troops and militias.

Increasingly, *Janjaweed* columns would pursue and kill those they had evicted, even crossing the Chad border to hunt down fleeing refugees. By February 2004, one year after the beginning of the insurgency, the conflict, ethnic cleansing, and displacement of Africans had conservatively claimed thirty thousand lives, forced a million people from their lands as Internally Displaced Persons (IDPs), and sent another two hundred thousand across the border into Chad. Another three hundred fifty thousand Darfurians were expected to die within the next nine months from famine and disease when the rains arrived in late spring. James Morris, the Executive Director of the World Food Program, observed, “In all my travels as the head of the World Food Program, I have never seen people who are as frightened as those displaced in Darfur” (UN News Centre, 2004).

#### *The International Community Struggles to Respond*

Although the numbers of black African IDPs and refugees steadily increased during the spring and summer of 2003 as the fighting escalated, it was not until September that the magnitude of the destruction

and displacement began to be recognized by the international humanitarian agencies. In October, *Médicins Sans Frontières* (MSF) reported that thousands of IDPs had been traumatized by the violence, but when the United Nations and other humanitarian agencies sought entrance into Darfur to assess and relieve the suffering, they were met with manipulative obstruction from the Khartoum government. The UN humanitarian coordinator in the Sudan, Mukesh Kapila, “bitterly complained about slow and cumbersome travel procedures as well as permission to visit affected areas being withheld . . . . [Continuing, he warned that] the situation in the Greater Darfur Region of western Sudan could result in the worst humanitarian crisis in the Sudan since 1998” (quoted in Reeves, 2004b). By the end of November, the international relief agencies were thoroughly alarmed about a looming food crisis in western Sudan, particularly when the Ministry of Agriculture refused food aid for Darfur from the U.S. Agency for International Development (USAID). In December, the UN Secretary-General’s Special Envoy for Humanitarian Affairs for Sudan, Tom Vraalsen (2003), was more than blunt about the crisis situation: “Delivery of humanitarian assistance to populations in need is hampered mostly by *systematic denied access*. While [Khartoum’s] authorities claim unimpeded access, they greatly restrict access to the areas under their control, while imposing blanket denial to all rebel-held areas. . . . [P]resent humanitarian operations have practically come to a standstill.”

By New Year 2004, virtually all the respected international humanitarian organizations, including the International Crisis Group (ICG), Amnesty International, the Red Cross, MSF, and the various United Nations agencies, were reporting the enormity of the disaster, the violation of human rights, and the need for relief assistance. Also, by then, the term “ethnic cleansing” to describe the devastation in Darfur became commonplace among diplomats, aid workers, and the media. Among the many statements made by the various organizations were as follows: “*Systematic* human rights abuses against unarmed civilians have been reported including against women and children . . .” (emphasis in text) (Ramcharan, 2004a) and, “Forty percent of the refugees from fighting in Sudan’s western Darfur province were children under five. About 75 percent of the adult refugees were women . . . . All the ingredients are in place for a rapid deterioration of the humanitarian situation” (Rafirasme, 2004). As for the emotions of the international community, the title of Amnesty International’s report on Darfur of February 3, 2004, expressed them well: “Too Many People Killed for No Reason.”

During this period, the United States reaffirmed its commitment to addressing the immediate protection and assistance needs of those in Darfur. Norway’s Minister of Foreign Affairs, Jan Petersen, declared that

“Norway will, together with other donors, do what is necessary to provide humanitarian relief and protection...” (Government of Norway, 2004). And Canada’s Foreign Minister, Bill Graham, announced that “It is imperative that agencies providing humanitarian assistance have immediate, safe and unhindered access to Darfur” (Government of Canada, 2004).

When the Centre for Humanitarian Dialogue in Geneva sought to broker an agreement for humanitarian access, both the SLM and the JEM readily agreed, but Khartoum refused, arguing disingenuously that the issue of humanitarian access had been politicized, used for military gains, and was subject to manipulations. Besides, when President Bashir announced on February 9 that the Sudan army and militias had crushed the rebellion, the proposed peace talks in Geneva were obviously irrelevant. Three days later, the rebel forces, now numbering some twenty-seven thousand men, shot down two army helicopters and in the succeeding weeks launched hit-and-run attacks near El Fasher and cut the road from Khartoum to Nyala, the capital of Southern Darfur State.

When the world commemorated the tenth anniversary of the 1994 Rwandan genocide in April 2004, the international media could not avoid comparing the two human rights disasters in Rwanda and Darfur. And UN Secretary-General Kofi Annan could hardly remain silent, for he had been the Under-Secretary-General for all United Nations peacekeeping missions in 1994 and had had ultimate responsibility for the United Nations force in Rwanda under Lt. General Roméo Dallaire. Indeed, genocide in Darfur was much on his mind. On April 7, Annan declared that “If [full humanitarian access] is denied, the international community must be prepared to take swift and appropriate action. By ‘action’ in such situations, I mean a continuum of steps, which may include military action . . . . The international community cannot stand idle” (Annan, 2004a). His UN humanitarian coordinator in Sudan, Mukesh Kapila (2004), who had also been with the United Nations in Rwanda during the genocide, argued that “the only difference between Rwanda and Darfur now is the numbers involved . . . . This is more than just a conflict, it is an organized attempt to do away with a group of people.” The response by Foreign Minister Mustafa Ismail on behalf of the GoS was succinct and no surprise. “Some UN officials do not keep to the truth when speaking about the situation in the Sudan to the extent at which we can label some of their statements as lies and acts of deception” (quoted in Reeves, 2004a).

In late March, President Idriss Deby of Chad, who was deeply concerned about the influx of Sudanese refugees and the violence spilling into Chad, offered to mediate in N’Djamena. The Sudan government readily agreed, for its traditional ally would hardly be the neutral mediator he claimed to be. The SLM and JEM, who together represented a single delegation,

wanted a different venue but reluctantly accepted N'Djamena when assured of their safety by the United States. The atmosphere was poisoned by eight days of bickering over the status of the international observers whose presence was demanded by the SLM and JEM, with the United States favoring the rebel position to permit observers and the French supporting Idriss Deby and, by proxy, the Sudan government, who wanted to disbar them. This division effectively enabled Deby to minimize the role of the western observers to only the first sessions dealing with humanitarian concerns. They were later excluded from the political talks that were to follow. Once at the table, the Chadian team promptly presented a complete draft cease-fire agreement in English, French, and Arabic that did not include several points agreed upon in earlier discussions with the SLM and JEM delegation. Deby acknowledged these oversights but insisted they would be subsequently included after the signing ceremony, but they never were. The SLM and JEM in their naiveté and inexperience foolishly agreed. The cease-fire agreement without its amendments was duly signed on April 8 to end hostilities for forty-five days (which was renewable), to free prisoners, and to facilitate humanitarian access to the victims of the war. The Sudan government committed itself to “neutralize armed militias.”

After two sessions during separate political talks two weeks later, the parties signed a political agreement on April 25, 2004 that stipulated a conference of “all representatives of Darfur” to seek a comprehensive and final solution to the conflict, in which “the government of the Sudan must assure that the armed militias are neutralized and disarmed according to a program to be decided upon.”<sup>3</sup> Before the ink was dry, both the SLM and JEM disavowed the agreement on April 26 and 27, respectively, stating its delegation had exceeded its mandate (thus, revealing internal schisms within each movement — tensions between Zaghawa and Fur/Massalit in the SLM, as well as disagreements between the political wing of the JEM led by President Khalil Ibrahim and his military commander, Jibril Abel Karim, who he accused of being in the pay of the Sudan Military Intelligence. Both the SLM and JEM would have nothing to do with an all-inclusive conference of Darfurians, insisting on direct political talks with the government to reach “a comprehensive settlement.” The government announced it would continue its preparations for convening the forum at some future date.

Despite the fact that both sides agreed to continue the humanitarian cease-fire agreement of April 8, this deal was badly flawed. There were gross discrepancies between the English and Arabic versions, the scope of which could not be attributed to mistranslation. Divisions among the international observers, combined with the less than neutral mediation of President Deby and the internal tensions within the rebel movement,

provided Khartoum the opportunity to exploit these divisions — a tactic expertly employed by the Islamist government in the past and throughout its infamous history of negotiations. When the African Union (AU) was asked to establish a Cease-Fire Commission, it further marginalized western representation. There were different versions of the article in the agreement pertaining to the neutralization of the militias, the Arabic text carrying an additional provision requiring the rebels to confine their forces to specific camps that was totally unacceptable to the “opposition forces.”

The Sudan government clearly appeared to have gained the initiative after the negotiations at N’Djamena, despite the fact that the continued prosecution of the war in Darfur had deepened the division within the inner circle of the Islamist Movement, the name for those few thousand hard-core Islamists dedicated to preserving the Revolution of 1989. On the one hand, there were those who supported the peace talks with the SPLM to end the twenty-year-old conflict between the northern and southern Sudan while seeking to reconstitute the Islamist Movement into an effective political party; on the other hand, there were those determined to reject any peace agreement with the SPLM. The latter were more concerned with consolidating their authority in order to control the state than the prospect of having to share it with the SPLM. Indeed, the government, at least early on, adroitly employed the fragility of the peace talks with the SPLM to divert United States and European Union (EU) attention from Darfur by implying it is the price for a peace agreement at Naivasha. On May 18, Khartoum appeared to have received its reward when Secretary of State Colin Powell announced that the Sudan would be removed from the list of those not fully cooperating in the war on terrorism. Be that as it may, it is important to note that the Sudan was not removed from the State Department’s list of state sponsors of terrorism because of the government’s failure to close the offices of Hamas and the Palestinian Islamic Jihad in Khartoum.

Despite the public outcry, declarations from the EU and unanimous Congressional resolutions from the United States demanding “unconditional and immediate access to Darfur to humanitarian aid organizations,” the Sudan government had successfully frustrated western humanitarian efforts by its wall of Byzantine bureaucratic procedures to obtain visas and proper permits to work in Darfur. The SLM/A and the JEM had not proved particularly helpful either. Indeed, the SLM/A has emphatically rejected aid coming from government-held territory on the likely assumption that it would simply give the *Janjaweed* an excuse to attack the SLA and loot relief goods given to the IDPs. Despite their dearth of political experience, they had learned not to trust Chad as a venue or as a mediator. They insisted, with little conviction, to be allowed to coordinate their positions

to present a common front in any direct negotiations with the GoS as they had done at N'Djamena. Khartoum, however, continued to remain aloof, to delay, and to manipulate. Having successfully lobbied the UN Human Rights Commission not to re-institute the position of Special Rapporteur for Human Rights and convinced that the Security Council would not place ethnic cleansing in Darfur on its agenda, the GoS brazenly mobilized support in the UN Human Rights Commission not to consider the report by its own Acting High Commissioner for Human Rights, Bertrand Ramcharan (2004b), which described the “reign of terror” imposed by the government of the Sudan and government-sponsored *Janjaweed*.

Despite massive international demands to disarm the *Janjaweed*, on May 14, the Sudan's Foreign Minister, Mustafa Ismail, contemptuously refused to “disarm the militia as long as weapons remained in the hands of rebel forces . . . . The *Janjaweed* were a spontaneous tribal response to rebels who are predominantly Zaghawa” (quoted in *Al-Hayat*, May 14, 2004 and cited in International Crisis Group, May 23, 2004).

On May 19, President Omar Hassan Ahmad al-Bashir arrived quietly with no fanfare in Nyala to demonstrate his solidarity with the *Janjaweed*, who he reviewed as they paraded past him astride their fierce horses, shouting, and brandishing their automatic weapons. Equipped with their racist ideology and warrior culture, the government had no intention of disarming, controlling, or arresting the *Janjaweed*. A week later, the UN Security Council condemned the attacks and atrocities committed by the *Janjaweed* and called upon the Sudan government to disarm them. The government responded by easing restrictions on issuing visas and humanitarian access, but the staffs of the nongovernmental organizations (NGOs) were still required to give local Sudanese aid commissioners twenty-four-hour notice to travel beyond the three principal towns — El Fasher, El Geneina, and Nyala.

#### *The Media, Diplomacy, and Humanitarians*

Thereafter, throughout a long, hot summer of terror, flight, and survival, events in Darfur were characterized by the massive outcry in the international media demanding their governments come to the aid of the people of Darfur and asking how best to protect and aid the hundreds of thousands of IDPs and refugees. They were frustrated and angered by the prevarication and obfuscation of the GoS in its negotiations with the United Nations, the United States, and the EU, and with the representatives of the SLM and JEM at Abuja, Nigeria. The disingenuous and contradictory statements by the GoS were accompanied by repeated attacks from the armed forces and their allied *Janjaweed* militia on the people of Darfur, which

provided fuel for the intensive debate then taking place as to whether the disaster in Darfur constituted genocide.

The Western media — newspapers, magazines, journals, television, and the Internet — have relentlessly featured the plight of the beleaguered civilians of Darfur. Many harsh denunciations carried the guilt of the silence or dilatory response to the Rwanda genocide in 1994 that came vividly to mind during the ten-year memorial services for that tragedy held in April 2004. The media in the Arab world, even the usually strident *Aljazeera* were more subdued. They were embarrassed by a conflict now between Arabs and Africans, not just among Africans as in Rwanda, and by the rhetorical appeals for Arab solidarity with Sudanese Islamists committed to the spread of Arabic language, culture, and religion. Reporting by the Western media was accompanied by demonstrations in Europe and the United States, countless meetings, and speeches, both provocative and practical, exhorting their governments to do something to protect the Africans of Darfur.

The political response from the West was ambiguous, their humanitarian response emphatic. With its armed forces ensnared in Afghanistan and Iraq, the United States was unwilling to commit its few remaining troops to a difficult military mission in yet another Muslim country. Although both Britain and France had regularly been involved in peacekeeping missions in Africa, neither was inclined to plunge into isolated Darfur to challenge an Arab Islamist government. Both the United States and the EU sought to resolve this dilemma militarily by urging the AU to intervene, while at the same time promising to provide the necessary logistical support, diplomatically through the UN Security Council, and humanely by drastically increasing humanitarian aid and facilitating its passage to Darfur. By August, the AU Cease-Fire Commission of one hundred twenty five monitors under the Nigerian Brigadier General Okonkwo, who had helped stabilize Liberia, was in Darfur supported by three hundred troops from Rwanda and Nigeria, which constituted the African Union Mission to Sudan (AUMIS). They had orders to protect the United Nations monitors and provide security so that IDPs could avail themselves of humanitarian assistance, but the GoS adamantly refused to accept any AU peacekeepers with a mandate to impose peace by force, thereby emasculating the AU armed presence and limiting it to solely protecting AU personnel in Darfur who were there to monitor the violence. In his report to the Security Council on August 30, Secretary-General Kofi Annan urged the rapid expansion of AUMIS.

Diplomatically, by mid-July the United Nations had established the Joint Implementation Mechanism (JIM) to monitor events in Darfur, whose report to the Security Council, combined with pressure from the United



States, resulted in Security Council Resolution 1556 demanding that the GoS cease immediately all offensive military operations, disarm the *Janjaweed*, arrest their leaders, and report back to the Security Council in thirty days. In response, the GoS convened an All Darfur conference on August 11 and 12 calling for “harmony” and “peaceful coexistence” with much rhetoric and little reality. More substantially, Olusegun Obasanjo, President of Nigeria and the African Union, arranged for direct negotiations between the GoS and the representatives of the SLM and the JEM at Abuja. Neither side was in a mood for compromise. After many days of argument over the agenda, the two sides ended up deadlocked as to whether the rebels should be disarmed along with the *Janjaweed* and then placed in cantonments (temporary quarters) where the SLM and the JEM perceived they could easily be destroyed. A constant theme running throughout the negotiations was the complete lack of credibility of the GoS — their legacy of too many agreements dishonored. On August 30, Kofi Annan dutifully submitted his report required by Resolution 1556 in which he concluded that the GoS had “not met its obligation” to stop “attacks against civilians and ensuring their protection” (United Nations, 2004a).

While the military and diplomatic initiatives remained dismal, a greater humanitarian effort began to reach many more IDPs and refugees despite the rains that made the roads impassable, requiring that food, medicines, and supplies be transported by air or special all-weather vehicles. In July some nine hundred fifty thousand IDPs, out of an estimated 1.2 million received some food assistance, and over two hundred thousand Sudanese refugees in Chad were assisted by the UN High Commission for Refugees (UNHCR), governmental agencies (USAID alone had contributed \$212 million by September 2004), and the fifty-six NGOs operating in Darfur. By September there were over thirty-seven hundred international and national aid workers in Darfur who, by then, had greater access to rebel held areas, including those from which they had previously been excluded. Furthermore, a convoy of twenty trucks carrying four hundred forty tons of wheat flour arrived at Bahai on the Darfur border having crossed seventeen hundred miles (twenty-eight hundred km) of the Sahara Desert from Benghazi and, thence, over the Ennedi Plateau on the old caravan route established in 1811. Still, only half of the \$531 million needed for the United Nations response for food aid had been provided.

During the summer of 2004, the GoS could no longer fail to respond to the mounting international pressure to ease its restrictions on the humanitarian NGOs. But Darfur is an isolated region and Khartoum infamous for its Byzantine regulations and bureaucracy, and that was the reality the Western humanitarian agencies had to contend with despite the rhetoric of cooperation that poured forth from the government media. In fact, the

hard-liners in Khartoum frequently pointed out that only four of the fifty-six registered NGOs were Islamic, the remainder composed of crusaders determined to convert the Muslims of Darfur into Christians.

*Prevarications and Genocide*

Although the GoS had received a thirty-day reprieve from Resolution 1556, presumably to act on the demands from the United Nations, its response was more smoke and mirrors than constructive efforts to curb the marauding *Janjaweed*. During the spring and summer, the GoS had repeatedly denied that it had any control or even influence over the *Janjaweed*. During discussions in the JIM in August, however, the government had to accept the overwhelming evidence that the militia had been trained, armed, and supplied by the army — including those *Janjaweed* who had not been incorporated into the PDF. Moreover, the killing, raping, and pillaging had not stopped. The flood of reports from UN monitors and humanitarian personnel, NGO staffs, and Amnesty International and Human Rights Watch could not be ignored. During the latter half of August, the *Janjaweed*, operating sometimes from government camps and supported by government armed forces, continued the destruction of Darfur and its inhabitants. Villages in the Yassin area northeast of Nyala were destroyed and their inhabitants slaughtered during a week of *razzia* (raids), while further to the west, near El Geneina in the Nertiti area and at Masteri, those IDPs, of whom there were thirty thousand, who ventured from their camp were regularly assaulted as part of “the consistent and widespread pattern of atrocities (killings, rapes, burning of villages) committed by the *Janjaweed* and government forces against non-Arab villagers” (Powell, 2004).

By February 2004, the ethnic devastation by the *Janjaweed razzias* was so widespread and consistent that some commentators began to warn of genocide in Darfur (See Amnesty International, 2004; Justice Africa, 2004; Annan, 2004c). Despite the rising demands from humanitarian agencies for the U.S. government to declare genocide, particularly after the U.S. Congress passed a unanimous resolution in July declaring the carnage in Darfur “genocide,” officials in the Bush administration, the United Nations, and the European Union were more restrained.

That same month, the leadership of the AU concluded there was no genocide in Darfur. Not surprisingly, the Arab League and the influential Organization of the Islamic Conference reached the same conclusion. The personal representative of Kofi Annan in the Sudan, Jan Egeland, used the more sanitary “ethnic cleansing” that soon became fashionable. The reaction of the GoS was complete denial.

Much of the dialogue about genocide became focused on the sterile and legal definitions as to what actually constitutes “genocide.” The 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Article 1) obliges its signatories to prevent and punish if, indeed, genocide was/is taking place.

Following U.S. Secretary of State Colin Powell’s visit to Darfur at the end of June, an Atrocities Documentation Team (ADT) was, rather belatedly, being organized by the U.S. Department of State. In mid-July and early August, the ADT conducted over a thousand interviews with Sudanese refugees who had crossed the border into Chad. Having assessed the work of the ADT and other reports by a wide variety of agencies, Colin Powell, in testimony before the Senate Foreign Affairs Committee on September 9, 2004, concluded that “genocide has been committed in Darfur, and that the government of Sudan and the *Janjaweed* bear responsibility — and genocide may still be occurring.” Despite the determination and declaration of genocide, Powell (2004) asserted that “no new action [by the U. S.] is dictated by this determination.” This was the first time that a sovereign nation had accused another sovereign state of genocide under the 1948 Genocide Convention. Secretary Powell was careful in his declaration to invoke Article VIII of the Genocide Convention, which enables its signatories to refer the matter to the United Nations for any further action it considers appropriate “to prevent genocide.” By referring the matter to the United Nations, the United States thereby had fulfilled its obligation.

The proposed draft of the U.S. resolution to the UN appeared to recognize the reality that the United States, having expended most of its diplomatic capital in Iraq, could no longer prevail in negotiations with members of the Security Council to get tough with the GoS. Its resolution benignly requested a rapid expansion of the three hundred AU troops in Darfur without raising the thorny question of defining whether they were to be simply security forces to protect monitors and IDPs or interventionist peacekeepers. Regular international surveillance flights would continue to watch the *Janjaweed* and the armed forces of the GoS, which U.S. reconnaissance flights had been flying, and it would be left to UN Secretary-General Kofi Annan to assess whether acts of genocide had been carried out in Darfur and by whom. Secretary Powell hoped for “the possibility of sanctions” particularly on petroleum that would, of course, ensure a veto by the Chinese who were dependent on imported oil and had no intention of jeopardizing their large and productive concession in the Sudan.

After a week of intense negotiations with members of the UN Security Council by U.S. Ambassador John Danforth, the United States submitted its carefully drafted second resolution on Darfur, co-sponsored by Germany, Romania, Spain, and the United Kingdom that was adopted by the

Security Council on September 18, 2004 by a vote of eleven to zero with Algeria, China, Pakistan, and Russia abstaining. The principal articles of Resolution 1564 on Darfur “declared its [UN] grave concern that the Government of the Sudan had not fully met its obligations noted in Resolution 1556” (Article 1), the first Darfur resolution of July 31, and endorsed “the African Union to enhance and augment its monitoring mission” (Article 2), but remained silent about any “peacekeepers,” which the Sudan government adamantly opposed in Darfur. Article 12 of the resolution also requested the Secretary-General to “rapidly establish an international commission of inquiry ... to determine ... whether or not acts of genocide have occurred and to identify the perpetrators ... .” It further stated that in the event that the Sudan does not comply with Resolution 1556 [July 31] “or this resolution,” the Security Council “shall consider taking additional measures ... such as to affect Sudan’s petroleum sector” (Article 14), while still scrupulously avoiding any mention of sanctions (United Nations Security Council, 2004b). Not surprisingly, the GoS condemned the resolution, and Mutrif Siddiq, undersecretary in the Sudan Foreign Ministry, declared on state-run television, “This resolution, according to our assessment, frustrates our aims and is discreditable.”

Without peacekeepers, only monitors and vague demands for accountability without any provisions for enforcement, the GoS can satisfy its critics by the customary rhetoric of obfuscation and the token easing of restrictions on the humanitarian agencies. The United States declaration of genocide in Darfur may intensify the debate of this terrible tragedy, but the Sudan will remain inviolate behind its denials and assured that the threat of international intervention has dissipated, leaving them to practice their own diplomacy of “splendid isolation.” Protected by the geographical vastness of their country, secured by infusions of oil revenues, and with no viable Sudanese opposition, the Islamist regime will continue to contain its marginal ethnic groups by divide and rule and, when applicable, terror.

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## Notes

1. After the signing of the Machakos Protocol in July 2002, which established the principles by which peace negotiations would be conducted to end the twenty-year civil war in the Sudan between the Government of Sudan (GoS) and the Sudan People's Liberation Movement/Army (SPLM/A). After the GoS and the SPLM/A had agreed to a general cease-fire in October 2002, the negotiations were opened at Naivasha in Kenya under the auspices of the Intergovernmental Authority for Development (IGAD). It involved the active participation by the international community represented by the troika of Great Britain, Norway, and the United States. The subsequent talks at Naivasha were lengthy, complex, and contentious before a Comprehensive Peace Agreement (CPA) was signed on January 9, 2005.

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2. Alghali's candid comments soon made him a liability in Khartoum, which was already under increasing pressure from the international community to end the conflict in Darfur. He was, however, replaced as governor of southern Darfur by a more discrete but hard-line member of NIF, Al Masnan Idriss, who Human Rights Watch has placed on its list of Sudanese to be tried by the International Criminal Court for their role in the killings and destruction in Darfur.
3. Agreement between the Government of Sudan on one part, the Sudan Liberation Movement and the Justice and Equality Movement on the other under the auspices of H. E. Idriss Deby, President of the Republic of Chad, Chief of State, assisted by the African Union and the United Nations, N'Djamena, April 25, 2004.

## CHAPTER 2

# Moving Beyond the Sense of Alarm

ANDREW S. NATSIOS

### **The Importance of Places like Sudan**

In 1956, Sudan freed itself from British rule and became one of the few independent countries in sub-Saharan Africa. This east African country with an estimated population of forty million has since then been the scene of almost incessant conflict. More than two million of its people have died from famine and war-related causes, and millions more have been displaced.

Sudan is also the largest country in Africa, about one-quarter the size the United States. It borders nine states in one of the poorest and most troubled regions of the world. Internally, Sudan endured one of the longest-running civil wars in Africa, some twenty-two years in length (which only came to an end in January 2005). Externally, over these same years, it has found itself dealing with cross-border violence in a series of wars that have erupted in virtually all the countries surrounding it. It has both contributed to the general instability that has rocked the Horn of Africa and been victimized by it.

In 1989, a coup engineered by General Omar Hassan Bashir established the Revolutionary Command Council for National Salvation, which gave Sudanese politics a decidedly more fundamentalist orientation. The coup occurred the day the Northern Government was to sign a peace agreement with the South. The National Islamic Front (NIF) took over as the leading

party, led by Dr. Hassan al Turabi, who inspired and planned the change in regime. They seized the moment to reinvigorate the war effort against rebels in the South, who are divided from the Arab and Islamic North by religion and race.

The South long suffered marginalization and condescension at the hands of the North. As historian Bernard Lewis (1992) points out in *Race and Slavery in the Middle East*, the Arab perception of black Africans was formed in the experience of a trans-Saharan slave trade that goes back a millennium, predating the trans-Atlantic trade that brought West Africans to the Americas by some six hundred years. The bloody civil war that raged off and on since independence only added to the historic grievances.

In 1992, Sudan played host to Osama Bin Laden. Bin Laden used his considerable wealth and contacts to gather around him the veterans of the Afghan war against the Soviet Union. They were shocked by the ease of the American victory over Iraq in the Gulf War and the attitude of the Arab ruling elites who allowed the U.S. military to remain in the region. Six years later (in 1998), United States embassies in Tanzania and Kenya were bombed by *Al Qaeda*. This was the same year that the United States bombed a Sudanese facility suspected of fabricating weapons of mass destruction.

In summary, this was the situation in Sudan that faced President George W. Bush in 2001, and these are some of the reasons why he immediately made Sudan one of his principal foreign policy concerns. Its pathologies infected the entire Horn of Africa, the source of the humanitarian crises that periodically gripped the region. Moreover, it posed an active threat to the peace in an area of the world that had assumed great strategic importance for the United States. Thus, it made strong claims on the attention of the new administration for both moral and strategic reasons.<sup>1</sup>

Nine months later, on September 11, we knew that the national security of the United States was even more directly affected by what had taken place in Sudan and other failed states in the region. By best estimates, more than twenty thousand *Al Qaeda* operatives in the 1990s passed through camps in Sudan, Somalia, Afghanistan, and elsewhere.<sup>2</sup> It was there that they were indoctrinated and trained and became foot soldiers in a new global war.

The National Security Strategy document declares, in a succinct and a disarmingly straightforward statement, that “America is now threatened less by conquering states than by failing ones.” Few, it seems, have grasped the full thrust of what is being said here. Simply put, Sudan is a test case of the challenges that the world now faces. What had transpired there and in other failed states of the region was to become the catalyst of the most fundamental reorientation in the strategic thinking of the United States



since World War II and the Cold War, as well as the most sweeping reorganization of its foreign policy apparatus.

### The Vision for Sudan

U.S. Deputy Secretary of State Robert Zoellick articulated the goals the Bush administration is trying to achieve in Sudan when he appeared before the House International Relations Committee on June 22, 2005: “A unified and peaceful Sudan that contributes to regional development and cooperates on counter-terrorism; a participatory and inclusive democratic government in a federal system that respects human rights and shares resources for the benefit of all Sudanese.”

Substantial steps were taken in this direction upon the signing of the Comprehensive Peace Agreement (CPA) in January 2005 in Naivasha, Kenya. This historic compromise permitted the North to retain *Sharia* (Islamic) law while allowing the South to gain a large measure of autonomy. A power-sharing agreement provided that the First Vice President of a new Government of National Unity in Khartoum would be represented by the President of the Government of Southern Sudan. Moreover, after six years, the South could opt out of this arrangement and decide for independence by referendum. Protocols had also been signed on how to share oil revenues, on establishing parallel monetary systems in the North and South, and on security arrangements involving the two armies.

How certain geographic areas would be administrated was also decided. These had been flashpoints of conflict in the past and include, Abyei, the Southern Blue Nile, and the Nuba Mountains.<sup>3</sup> In 1992, in the Nuba Mountains, *jihad* was declared against a group associated with the Sudan People’s Liberation Army (SPLA), but its attempt to establish *Sharia* law there failed. In 1998, the Northern army and the militias began a campaign of starvation in the oil field zones of the Upper Nile Province in southern Sudan. In this instance, the focus was on oil revenues, not the extension of Islamic law. This may have indicated a softening of ideology on the part of Khartoum. It was part of the evidence of a new realism, where the very survival of the regime became more urgent than Islamic ideology.

The prospects for peace and reconciliation between North and South brightened after negotiations began in Machakos, Kenya, where the overall framework for peace emerged. But peace for the country as a whole dimmed because of events that were to take place in the West of the country, in Darfur. This was the scene of the world’s worst humanitarian crisis at the time — the consequence of a genocide, according to former U.S. Secretary of State Colin Powell, and the subject of this essay.<sup>4</sup>

Sudan is in the early stages of implementing the North/South Agreements, which is the result of complex and detailed negotiations that started in 2002. Quite simply, the tenuous peace we are witnessing in one part of the country cannot gain traction if war is raging in another part. This means first and foremost putting a definitive end to the violence in Darfur and assuring against its renewed outbreak. It means beginning the process of reconciliation among groups in the area to encourage the voluntary return of people to their homes. It means restoring pillaged property and helping to rebuild shattered lives and devastated villages. And it means, finally, calling the perpetrators of atrocious crimes to account.

A cautious optimism is warranted for at least two reasons. Leaders of both the South and North have a strong interest in working together to solve the Darfur problem and shore up the North/South peace. The North may be particularly reticent at this moment to resume the war in the South when it must contend with the Darfur whirlwind it has sown in the West. The Northern leadership may also feel the pressure of the referendum that looms in the South in 2011. Among other things, failure to reconcile differences by then will cause Khartoum to lose control of territory that contains vast stores of oil riches. Secondly, the international community has been mobilized. It is taking significant steps, through the African Union (AU), to reinforce security in the area and is assembling the carrots and sticks to move the peace forward.<sup>5</sup> It is now essential to keep the attention of the world community focused and engaged.

### **Developing a Strategy to Document the Atrocities in Darfur**

This chapter presents an account of the efforts by the U.S. Government (USG) to develop a strategy to document the atrocities in Darfur and to bring its plight to the attention of the U.S. Congress and the world. It is offered as an object lesson of the changed dynamic in which the humanitarian and development mission of the U.S. Agency for International Development (USAID) now operates.<sup>6</sup> It is also offered to illustrate some of the new tools we are using to fulfill our mission as well as some of the changes we have initiated at the agency to bring it into better alignment with the national security imperatives of the present day.

#### *The Historic Background to the Violence in Darfur*

Khartoum traders and mercenaries carved out a state in the area of present day Sudan through conquest of the upper Nile Valley in the nineteenth century. The administration of the state fell to a very small circle of rulers principally drawn from Arab tribes in the Nile valley. Khartoum has essentially operated as an Arab metropolis, surrounded by impoverished

sub-Saharan expanses. The riverine Arab-dominated center presides over a very weak political system that has tried to extend its power base by co-opting the leaders of regional tribal groups.

The face Sudan presents to the outside world is one that is culturally Arab and religiously Muslim. It has been a member of the Arab League since its independence. Its diplomats are drawn from Arab ranks and they can appear at diplomatic gatherings as readily in Western business suits as in turbans and robes. Internally, however, the country is much more complex.

While the North is the home to Arab tribes and Khartoum gives it an urban cast, the East is home to the pastoral Beja, who trace their ancestry to the ancient peoples of the Nile, the Nubians. In the South is found animism and Christian communities and traditional African tribal structures. Cleavages in the country are sharp and run along ethnic, tribal, racial, geographic, and religious lines.

The West is the location of the three provinces of Darfur. This “Land of the Fur” existed as the Independent Fur Sultanate for well over two centuries before being conquered by the British in 1916. Unlike the country as a whole, cleavages here are muted. The religion of the region is nearly entirely Muslim. Ethnically and racially, it is mixed. This is the result of a fascinating history of migration by West Africans that took place over the centuries. The search for arable land set these impoverished peoples in motion; they later were drawn along the same migratory path, out of religious obligation, to Mecca. Upon settling in Darfur, they mixed with nomadic Arab peoples from the North. Simple tribal mores prevail in Darfur, in large part because of its poverty and geographic isolation. This is not the likely tinder for a genocide. It is rather the formula for a way of life fixed in time and tradition. This is but one of the paradoxes in the extraordinarily complex history of Darfur.

The most salient cleavage for understanding the genocide could be described as an *economic* one, properly understood. It is the story of conflicting ways of life and land disputes in what is essentially a premodern setting and a very harsh environment. The land of the Fur has supported both farmers and nomads. These have imported ways of life from the West, and the North and Near East, which have persisted through the millennia. The commingling of these groups has created a very complex social network.

Both groups are heavily dependent on rainfall: the farmers in their desert-edged villages for the subsistent agriculture that sustains them and the nomadic herders for the grasses that feed their camels and flocks. The region is periodically subject to famine because of drought. (It is also subject to pests and plagues of various kinds, such as the locust infestation in 2004 and 2005.) This causes friction between the groups who are forced to compete for scarce lands and water sources, which has grown more

intense because of the growth in population. Their struggle for survival can turn violent at these moments. The tenuous equilibrium that has persisted between these groups has been periodically disturbed by nature. But, arguably, political changes in the last century have had a more pronounced destabilizing effect.

Britain ruled the country (following the First World War to 1956) by designating local sheiks and chiefs they favored as paramount leaders of administrative homelands. In Darfur, this displaced some of the traditional leaders as it blocked certain nomadic groups from access to the lands they had customarily grazed. The older, fluid social system that functioned according to certain tacit understandings among indigenous groups gave way to a more rigid administrative machinery that was designed for the convenience of the British. The severe drought and famine in 1984 was a particularly severe blow to the social system that had already been rendered fragile by colonial rule and the years of civil war, following independence, which had drained the country of resources.

Racist ideology plays an important part of the story, as it has in the history of other twentieth century genocides. And the psychology of “genocide” has become familiar through the sorry repetition of genocidal acts that the last century has witnessed. In 1987, Libya used the northwest Darfur corner as a backdoor to attack Chad. It had equipped and sent out the so-called Arab Legion, an Arab supremacist militia, to pursue Arab expansion in the mineral-rich sub-Saharan regions it bordered and to drive out the African tribes. Libya was not orchestrating a simple border raid on a poor country; it was pursuing a new strategy of pan-Arabism, couched in an emotionally charged ideology.

The sharp distinctions between Arabs and Africans in the racially mixed Darfur region had not been drawn until the ideology of pan-Arabism that came out of the Libya made itself felt. Some of the nomadic sheiks of the region came to see themselves as the avatars of Arabism, the authentic representatives of their Bedouin origins. They foisted a racial label on a farming people whose way of life they simultaneously disdained and felt threatened by. Turabi’s (NIF) fundamentalism was later to raise the political temperature even further in a country that now roiled with extremist ideology. When the GoS tried to impose *Sharia* law in 1983, it retriggered civil war in the South. This marked the first use of government-backed militias as part of a counterinsurgency strategy. Some of the cattle herding Arabs of Darfur were employed in a strategy of brutality, starvation, rape, and pillage that was to be visited upon Darfur two decades later.

Complaints of Arab militia harassment in Darfur surfaced in 2003, at the same time Khartoum was negotiating a cessation of hostilities in the war in the South. Rebels attacked the police station and the military

airport at Al Fasher, in the province of Northern Darfur, accusing the government of neglecting their region and arming militias. This sparked a more concerted campaign of counterinsurgency that eventually enlisted the *Janjaweed* militia and covered the whole of Darfur. This resulted in nearly two million internally displaced persons, including about one hundred fifty thousand Darfurians who escaped chaos by fleeing to refugee camps across the border in Chad. The leaders in Khartoum may have been pushed to take action by certain elements in the government who could not reconcile themselves to peace and thought that too much was being given away to the Sudan People's Liberation Movement (SPLM). There are loosely two rebel groups. The larger is the Sudanese Liberation Army (SLA). The smaller group is the Justice and Equality Movement (JEM). The latter is more militantly Muslim and has ties with National Islamic Front's Turabi, who was pushed from power by the current rulers as a liability in the post-9/11 world for his terrorist links. The rebel groups operate according to separate agendas and have added to the crisis in Darfur by diverting international aid and relief for their own purposes. Negotiations between the Sudanese Government and the two Darfurian rebel groups were held in N'Djamena, Chad, and led to a cease-fire in April 2004. This allowed the U.S. Agency for International Development (USAID) to mobilize a Disaster Assistance Response Team (DART). But the agreement failed to put an end to the conflict or to eliminate violence in Darfur.

*Why the Janjaweed Militia?*<sup>7</sup>

Many Darfurians have sought service in the Sudanese armed forces as one of the only practical alternatives to the hardscrabble existence that would otherwise be their lot. Demographic pressures that pushed against an unyielding land played its part in this. So did the weakening of traditional ties of clan and tribe that extraneous social and political forces came to exert. Khartoum, for its part, also needed the Darfurians. It came to rely on them to fill the ranks of its armed forces, which assumed critical importance in guaranteeing the state after independence and because of the wars, internal and external, which threatened it. For these reasons, the mainstay of the Sudanese national army, if not its officers (which remained Arab), came to be made up of Darfurians.

The phenomenon is similar to what happened in Great Britain in the course of forming a modern armed force that could serve the purposes of national unity and Empire. The British army came to rely on a core of Scottish effectives, who found in armed service an alternative to a similar hardscrabble existence in some very remote and very severe terrain. It offered to second sons, in particular, a way to escape marginalization that

was forced upon them by strict laws of primogeniture. Theirs was a hard position, for the customs and laws that made for the very possibility of the “clan” made these second sons redundant. But this also posed problems for Britain when certain clans and regions in Scotland became politically restive. In these instances, London would be forced to rely on Scottish troops to discipline their own kith and kin.

A similar dilemma faced Khartoum in the aftermath of the Darfur rebellion in 2003. Darfurian regulars in the Sudanese army could not be relied upon to fire upon their own people. This is why the *Janjaweed* was enlisted and let loose. And, once let loose, it became difficult to control. The Darfurian campaign may be coming to an end, not because sanity has prevailed, but because there is precious little left in Darfur to plunder and burn.

The risks for Khartoum at the present moment are great. It must contend with the rage of Darfurians. At the same time, the *Janjaweed* has indicated that it will not be the “fall guy” for Khartoum for actions that were licensed and abetted there. It is in the interest of the Khartoum leaders to treat the problem that they have created if they are not themselves to be victims of violent blowback. This would mark the vengeance of the Sudan periphery, long ignored and disdained, against the Arab metropolis that has culturally and politically dominated the country.

#### *Early Warnings*

USAID has long provided assistance to Darfur. I first visited Darfur in 1991 during an incipient famine where USAID was providing food aid. In 2001, I made my first trip back to Sudan as USAID Administrator. Even before this trip, Secretary Powell and I agreed to augment USG aid to more effectively respond to the drought that had gripped the region. Shortly after the violence in Darfur began, I led a United States delegation there to assess the crisis firsthand and evaluate the humanitarian needs. The USG responded with more than three quarters of a billion dollars in Fiscal Year (FY) 2003–2004 in humanitarian assistance for the Darfur emergency, and almost half a billion dollars more in FY 2004–2005. This marks a significant acceleration of aid because of an improving security situation, thanks in large part to the AU commitment of troops and peace monitors. Security, though vastly improved, remains problematic as many areas remain inaccessible to nongovernmental organizations (NGOs) and the United Nations.

USAID funds have supported a broad array of implementing partners, including CARE, the International Committee of the Red Cross (ICRC), UNICEF, and World Vision, among more than a score of others. The World

Food Program (WFP) has been the principal conduit of United States food aid, which accounts for 85 percent of all such aid reaching the region.

It was the smattering of NGOs on the spot that first reported on the presence of *Janjaweed* militia and the widening campaign of terror. In May 2004, they reported an aerial bombardment in North Darfur that killed at least twelve persons. Civilians also alluded to additional attacks and harassment in that region. That same month, in parts of South Darfur, *Janjaweed* attacks reportedly killed at least fifty-six persons. Local populations said that the *Janjaweed* continued to perpetrate rapes and assaults in the area. In West Darfur, security problems were particularly acute along the Sudan–Chad border. Large numbers fled new violence in late May, creating a new refugee outflow into Chad in early June. This followed the massive displacement that had taken place at the end of 2003. Some villagers in West Darfur reported that fear of *Janjaweed* attacks along the roads made them virtual prisoners in their own homes. Since the onset of violence, victims throughout Darfur consistently reported that government troops participated in attacks with *Janjaweed* militia and oversaw militia activity.

In early 2004, senior officials of the USG, including USAID staff, flew by helicopter over the region. Deliberate wholesale destruction was evident on the ground. One international human rights agency had reported that, in West Darfur alone, the *Janjaweed* attacked and burned fourteen villages in a single day. The USG began to document a long list of destroyed villages as well as to gather precise evidence of the scope of the violence that was being inflicted. In one village we knew about, all thirteen hundred structures were destroyed; in another village, all four hundred sixty-six structures; in yet another, out of seven hundred twenty structures, less than one hundred were left standing. The *Janjaweed* and GoS troops burned crops, killed or stole cattle, and destroyed irrigation systems, thereby devastating much of Darfur's economic base and discouraging eventual population return and complicating any future reconstruction effort.

Victims of the attacks by the *Janjaweed* and GoS military regularly described massacres, executions, and rapes committed in plain view. GoS planes were seen to bomb villages and attack them with helicopters. We received reports that some victims were buried alive and others mutilated after death. At one isolated location visited by USAID staff in Darfur, local leaders reported that attackers had raped more than four hundred local women and girls; some women reportedly were raped in front of their husbands, compounding the shame and humiliation inflicted by the attackers. We received reports of *Janjaweed* branding their rape victims, presumably to make the act of rape permanently visible and to discourage husbands from taking back their wives. A health survey in parts of West Darfur in

April 2004 found that wounds inflicted in the violence caused 60 percent of the deaths of children older than five years.<sup>8</sup>

Many of the estimated one million residents of Darfur who were displaced by the violence had been denied safety even in camps where they had gone to seek refuge. Armed *Janjaweed*, apparently under GoS instructions, claimed to be “protecting” camps of displaced persons who fled their attacks days earlier. Camp occupants endured additional killings, rapes, and theft of relief items. Those inside the camps had to deal with a network of informers. They said that they could not venture outside their camps or villages for fear of being assaulted by *Janjaweed*, who kept close watch, inside and out. Because many men feared death if they left, many families relied on women to venture outside of camps to forage for food, firewood, and other necessities because women need fear “only” rape, according to interviews with displaced families. Some communities refused to accept sorely needed humanitarian assistance because they feared that distributions of relief items might attract *Janjaweed* atrocities. A United Nations official reported that he had never encountered displaced populations as traumatized as the people he met in Darfur.

I can attest that they are also seething with rage. In my trip in September 2004, I was personally caught up in the violence. The intervention of the USAID team with which I was traveling prevented the stoning of a GoS official. These are the reasons why AU presence in the camps and overall peacekeeping operations are so crucial.

#### *The Problem of Access*

The Government of Sudan was slow to allow any outside presence in Darfur. International organizations and NGOs, the United Nations, and donors like USAID faced numerous obstacles in reaching victims of the conflict with humanitarian assistance. Early on, at the peak of the violence, in fact, it was necessary to wade through three levels of GoS bureaucracy before outside groups could get to their projects. First, NGO workers had to obtain visas to enter Sudan, a process that, in certain instances, took from six to eight weeks. Initially, USAID’s Disaster Assistance Response Team (DART) waited over three weeks to receive less than half of the twenty-seven visas requested from the Government in Khartoum. Second, the GoS impeded the access of relief agencies to Darfur once they were in Sudan through the issuance of required travel permits, which are frequently delayed or denied altogether. Third, the movement of relief workers in Darfur was hampered by GoS requirements for daily travel permits to leave the regional capitals to visit project sites. The GoS customs office also frequently impounded vehicles and other relief items and held them



for months when they were (and are) urgently needed for emergency operations in Darfur.

The denial of humanitarian access over many months had other cumulative effects. All of these tactics created an environment where many NGOs were fearful of speaking out because they were afraid of losing any access they may have had.

#### *Building the Case for Emergency Aid*

In April 2004, I requested the USAID staff to prepare an estimate of potential deaths in Darfur from starvation and disease given the existing circumstances. USAID's Office of Foreign Disaster Assistance (OFDA) issued a mortality study projecting that as many as three hundred thousand people would likely perish by early 2005 if the GoS continued to block most Darfur relief deliveries and the violence did not stop. Experts within USAID/OFDA based the mortality projection on death rates experienced during a 1998 conflict-induced famine in southern Sudan's Bahr el-Ghazal province, as well as previous famines in Ethiopia.<sup>9</sup> The study also arrived at its mortality projection after examining local vaccination rates and interruptions in Darfur's agricultural cycle.

Adding to our alarm was a nutrition survey conducted in Darfur that suggested that the mortality rate projected in the USAID report might be too conservative. A health survey in West Darfur concluded in late May 2004 that nearly five percent of all children under age five had died within the past three months at the surveyed locations — a mortality rate more than double emergency thresholds.

The mortality chart was the centerpiece of USAID testimony in Congressional hearings during the spring of 2004 where Roger Winter, the Assistant Administrator for the Democracy, Conflict and Humanitarian Assistance (DCHA) Bureau responsible for the humanitarian response, shared our analysis with lawmakers and the press. Its dramatic warning about the stunning number of lives immediately at risk helped galvanize public opinion. To my knowledge, such a scientifically grounded, predictive study had never been done before by the United Nations or any donor government during any previous humanitarian emergency. It placed added pressure on Sudanese officials to reduce their restrictions on emergency relief efforts in Darfur so that life-saving food, shelter, healthcare, and other aid could reach victims of the violence.

#### *Building the Case for Genocide*

Equally unprecedented was the USG's use of satellite imagery to inform the American public and the rest of the world about the extent of violence and devastation on the ground, the forced abandonment of entire villages,

and the mass migration of uprooted people to vulnerable new locations. Tapping into classified as well as unclassified sources, the interagency Humanitarian Information Unit (HIU), jointly supported by the State Department and USAID, was able to distill massive amounts of data and imagery into maps, photos, and charts that enabled U.S. Government officials to visualize the vast extent of the carnage in Darfur.

In June 2004, the HIU maps and imagery proved to be powerfully persuasive documents in our discussions with Congress, at the United Nations, and with other donor governments, some of which had not fully appreciated the magnitude and urgency of the crisis in Darfur. The availability of the aforementioned satellite imagery and new technologies that are capable of synthesizing data and creating visual representations to specification have proved to be invaluable tools. Commercial use of remote-sensing imagery meant that much of our material already was unclassified and ready for public use. We subsequently secured declassification of other material that helped greatly in showing the world what was happening in Darfur despite the Sudanese Government's attempts to hide reality by blocking access on the ground.

The surveillance imagery provided conclusive evidence that, by June 2004, at least three hundred seventy-seven villages in Darfur had been destroyed or damaged — a sobering testament to the systematic scope of the attacks by the Sudanese government military and *Janjaweed* militia. In a functional village, one can observe trees, animals, and houses with cone-shaped roofs made of grass. In a destroyed village, houses look like “donuts.” One sees the circular walls, without the roofs, which have been burned or otherwise destroyed. We continued to revise the maps as more information became available. By 2005, the imagery showed that the number of villages left damaged or destroyed was over eight hundred.<sup>10</sup>

In June 2004, I traveled to Geneva, Switzerland, to share our satellite imagery and mortality projection firsthand with some thirty-six donor nation representatives and United Nations officials attending a Darfur consultation meeting. The evidence that was presented became the basis for a formal statement condemning “grave violations of human rights and international law” in Darfur and demanding that “all acts of violence, particularly all forms of sexual violence, must stop immediately.” An additional U.S. Government pledge of \$188 million in humanitarian assistance for Darfur was announced, bringing the total United States contribution to nearly \$300 million in response to the crisis. Other countries eventually boosted their financial commitments as well. This brought contributions overall to almost \$472 million.<sup>11</sup>

In early July, I took an updated version of the imagery showing the destruction to UN Secretary-General Kofi Annan and then to the

“Permanent Five” representatives to the UN Security Council. The USG evidence we presented that day put to rest the lie that Darfur was something “invented” by the U.S., another “aggression” on our part, a further “insult” to an Islamic nation. It was also meant to rally the Permanent Members of the Security Council who might otherwise be tempted, for various reasons, to downplay what was allegedly happening in Darfur. This was yet another “crisis” being put on the docket of the world body that was already straining with other obligations and that would be competing for its attention and resources. It was also inconvenient for more ambiguous reasons. For some nations, “Darfur” would complicate relations with Khartoum at the very time they were being cultivated as a way of gaining access to the country’s oil wealth. This is part of the reason why some diplomats from the Permanent Five members of the Security Council displayed such attentiveness during the presentation. They were being presented evidence that could not be ignored.<sup>12</sup>

Classified imagery has long been used in closed-door diplomacy; the innovation for Darfur was in declassifying USG aerial photographs to use as a humanitarian tool before the United Nations and elsewhere. It was put to use to pressure the GoS. It was used to inform the U.S. Congress. It was put before the UN Security Council. And it was brought to U.S. airwaves in a segment of the television news show, the News Hour with Jim Lehrer. We used both commercial satellite imagery and the declassified aerial photographs. Both types pinpoint locations and show extent of damage, but the latter has been especially useful in providing temporal evidence — pictures of what a village looked like on a certain date, and then subsequent pictures showing the destruction.

The utility of this tool in tracking gross human rights abuses should not be underestimated. Satellite imagery and spectral analysis, which measures changes in ground surface composition, were put to use recently in Iraq to find mass graves. The new methods, which do not disturb the grave, impede any efforts to keep the graves secret, such as happened in Bosnia when bodies were moved in order to cover up mass killings. This will make it much harder for perpetrators of atrocities to hide their crimes.

As important as developments in satellite imagery are, there are limits to the effective use of such tools. Imagery can be misleading. For example, in Kosovo many buildings appeared intact from the air, but on-the-ground observation showed that their sides had been heavily shelled. Also, there could be other reasons for destruction or burn patterns aside from bombardment or ground attacks, e.g., brush fires. Imagery does not show the whole picture. It does not indicate perpetrators. Nor can it show intent and motive. Imagery is not “hard evidence” until ground-truthed by testimony and on-site investigations. However, imagery can indicate the best place

to start the investigative process, especially when access is not possible or negligible.

*Documenting Atrocities in Darfur*

In the summer of 2004, the U.S. State Department and USAID organized an Atrocities Documentation Team (ADT) to verify through firsthand testimony what satellite imagery showed in stark detail. U.S. Secretary of State Colin Powell did not make the genocide determination until after the team systematically gathered testimony from refugees in Chad and made its report.<sup>13</sup> The team was composed of staff from the State Department's Bureau of Intelligence and Research (INR), its Bureau of Democracy, Human Rights, and Labor (DRL), as well as from USAID, which also provided funding for the project. Experts were recruited from and by the Coalition for International Justice (CIJ) and the American Bar Association (ABA).

The ADT conducted a random-sample survey of Darfurian refugees in eastern Chad in July and August 2004. The team interviewed over eleven hundred refugees, many of whom had endured harsh journeys across the desolate Chad–Sudan border. Analysis of the refugee interviews points to a pattern of abuse against members of Darfur's non-Arab communities, including murder, rape, beatings, ethnic humiliation, and destruction of property and basic necessities. Many of the reports detailing attacks on villages refer to GoS and militia forces, preceded by aerial bombardment, acting together to commit atrocities. Respondents said government and militia forces wore khaki or brown military uniforms. Roughly one-half of the respondents noted GoS forces had joined *Janjaweed* irregulars in attacking their villages. Approximately one-quarter of the respondents said GoS forces had acted alone; another 14 percent said the *Janjaweed* had acted alone. Two-thirds of the respondents reported aerial bombings against their villages; four-fifths said they had witnessed the complete destruction of their villages. Sixty-one percent reported witnessing the killing of a family member. About one-third of the respondents reported hearing racial epithets while under attack; one-quarter witnessed beatings. Large numbers reported the looting of personal property (47 percent) and the theft of livestock (80 percent).

Numerous refugee accounts point to mass abductions, including persons driven away in GoS vehicles, but respondents usually did not know the abductees' fate. A few respondents indicated personal knowledge of mass executions and grave sites.

A subset of four hundred respondents was asked about rebel activity in or near their villages. Nearly nine in ten said there was no rebel activity before the attack. Nine percent noted rebels were in the vicinity; two percent said the rebels were present in their villages. The overwhelming

majority (91 percent) said their village was not defended at all against the attack. One percent asserted their village had been successfully defended and another eight percent cited an unsuccessful defense.

The report is based on results from personal interviews conducted by the ADT between July 12 and August 18, 2004. DRL, USAID, and the CIJ jointly designed the questionnaire in conjunction with other NGOs. INR provided technical assistance on questionnaire design and survey methodology. The teams used a semistructured interviewing approach that permitted the refugees to give the broadest possible accounts of the events they had experienced. The interviews were conducted in nineteen locations in eastern Chad, including the UN High Commissioner for Refugees (UNHCR) camps and informal settlements.

The Atrocities Documentation Project was a critical part of the evidence that led the USG to conclude that a genocide had taken place. It also catalyzed United Nations action. Nine days after the State Department's release of the *Documenting Atrocities in Darfur* report, the UN Security Council responded by instructing the UN Secretary-General to establish an International Commission of Inquiry (COI) to investigate human rights violations in Darfur and identify perpetrators. The subsequent United Nations report, issued in January 2005, concluded that "the Government of Sudan and the *Janjaweed* are responsible for serious violations of international human rights and humanitarian law amounting to crimes under international law." Although the United Nations inquiry did not characterize the crimes as genocide, United Nations investigators noted that "offenses such as the crimes against humanity and war crimes that have been committed in Darfur may be no less serious and heinous than genocide."<sup>14</sup>

The COI announced that it had identified specific Sudanese Government officials and members of militia forces responsible for atrocities in Darfur. It urged that the International Criminal Court (ICC) break the climate of impunity by prosecuting persons implicated in the worst crimes. The evidence the USG gathered will be critical in helping prosecute Sudanese individuals guilty of planning and executing the ethnic cleansing and widespread killings. Some contend that the perpetrators have modified their behavior in Darfur due to fear of indictment.

### *Relief and Protection*

USAID is the chief government agency charged with humanitarian relief work, a mission that regularly takes us to conflict situations. It is often the case in such "complex humanitarian emergencies" that an official government has ceased to exist or that local populations find themselves beyond the reach of its security personnel. Moreover, it is sometimes the case in such situations that government officials themselves are the perpetrators

of atrocities. A “protection” role for the agency in such situations is a logical extension of its “relief” mission.

In this regard, the documentation project in Darfur was an important step toward institutionalizing USAID’s role as a government tripwire for identifying and addressing protection problems and human rights violations and pushing for accountability of those responsible. Official USAID policy now explicitly states that “as a matter of priority, USAID will work where possible to ensure that basic protection and human rights for at-risk populations receive adequate attention.” The policy also emphasizes that USAID will support within the U.S. Government such efforts by working “to analyze, document, and respond to the protection problems of internally displaced persons (IDPs) during all phases of displacement.”

The “protection” function of the agency has been formally housed in the Office of Conflict Mitigation and Management (CMM), our Office of Transitional Initiatives (OTI), and the Office of Disaster Assistance (OFDA). In Darfur, more than \$2 million has been allocated in programs designed to promote protection and monitoring, support justice mechanisms and human rights associations, increase access to balanced information, and help develop conflict resolution frameworks.

In addition to its role in documenting the atrocities in Darfur and embedding a protection advisor in USAID’s DART team, OTI is canvassing Sudan diaspora groups (Sudanese humanitarian NGOs based in the United States that are not involved in the rebellion) to determine their capacity in handling information they possess regarding atrocities in Darfur. It is providing appropriate technical support to enable them to participate in transitional justice efforts in Darfur. Additionally, OTI has provided funding to double the number of human rights monitors in Darfur to sixteen and extend the duration of their mission. It also has provided training and leadership on protection issues, “know your rights” campaigns, and the strengthening of the humanitarian intervention (such as health, water/sanitation, and others) to include protective programming (e.g., dealing with issues such as firewood and rape).

OTI funded Physicians for Human Rights and the Harvard School of Public Health to produce a comprehensive report on *Rape as a Weapon of War in Darfur* (Gingerich and Leaning, 2004). The report uses a variety of perspectives (health, psychosocial, legal, societal) to analyze the problem and make recommendations for programmatic action. It is also providing funding to the CIJ for the production of two short films that document, for advocacy purposes, the atrocities being committed in Darfur.

## Conclusion

The Darfur Atrocities Documentation Project is notable for a number of reasons. It was the first investigation by a sovereign nation of an ongoing case of mass violence with the aim of determining whether or not the violence amounted to genocide. It was also the first time that any signatory of the Genocide Convention took steps under its provisions to get a UN Security Council response while a genocide was occurring.<sup>15</sup> This represents a critical test for the world body. It speaks to the very principles, which animated the founding of the United Nations and the credibility of the Charter under which it operates. It can be an important precedent for action when other outbreaks of genocidal violence appear in the future.

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## Notes

1. Shortly after assuming office in 2000, President George W. Bush signaled his interest in Sudan by making former Senator John Danforth a Special Envoy to Sudan. Danforth's report encouraged a deepening of American involvement. Along with counterparts from the United Kingdom and Norway, as well as front-line African leaders, he later proved himself indispensable in shepherding the Naivasha (Kenya) Accords to its conclusion. The President also made me the Special Humanitarian Coordinator for the country early in 2000. I had been head of the Office of Disaster Assistance during his father's administration and was the newly appointed head of the United States Agency for International Development (USAID). Since then I have been to Sudan more than a dozen times.
2. Estimates ranged as high as seventy thousand.
3. The U.S. team, including USAID, negotiated an agreement with the Sudan People's Liberation Army (SPLM) and Government of Sudan (GoS) to meet directly for the first time to discuss a Nuba Mountains cease-fire and to allow an international assessment of needs. The needs assessment was completed in January 2002 and the Nuba cease-fire was signed in Switzerland January 19 with Swiss and United States facilitation. Establishing this humanitarian access was immensely important in giving peace traction.
4. The Secretary of State made this charge before the Senate Committee on Foreign Relations on September 9, 2004, and provided the Committee with the evidence he had compiled.
5. With logistical help from the United States, the African Union (AU) is now playing an essential role in guaranteeing security. According to the AU, there are approximately five thousand military and civilian police currently deployed in Darfur. Plans were to increase the force level to approximately seventy-five hundred by the end of September 2005.
6. See Note 1.
7. The translation of *Janjaweed* is "a man with a horse and a gun."
8. Hearings before the Subcommittee on Africa, U.S. Senate Committee on Foreign Relations, 109th Cong., 1st Sess. (2005), testimony of Roger Winter, Assistant Administrator, Bureau for Democracy, Conflict, and Humanitarian Assistance, U.S. Agency for International Development.
9. The 1998 famine in Bahr el Ghazal was largely the result of denial of access by the Government of Sudan to the region.

10. The destruction of villages, which this documents, does not pinpoint the exact time that it occurred.
11. In April 2005, I accompanied Deputy Secretary of State Robert Zoellick, who represented the U.S. Government in Oslo, Norway, at a Sudan Donor's Conference. This brought \$4.5 billion in total pledges for the country, \$853 million being the official United States pledge.
12. Later in the month, I accompanied U.S. Secretary of State Colin L. Powell on a tour of Internally Displaced Persons (IDP) camps in Darfur. UN Secretary-General Kofi Annan and the Undersecretary-General for Humanitarian Affairs, Jan Egeland, were in Sudan at the same time and made courageously strong statements on Darfur. The U.S. Government subsequently urged the UN Security Council to pass a resolution that placed additional pressure on the Government of Sudan to follow through on its assurances to facilitate humanitarian access to Darfur and to stop the violence against innocent civilians.
13. According to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, genocide occurs when the following three criteria are met:

Specified acts are committed, such as killing, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about physical destruction of a group in whole or in part, imposing measures to prevent births, or forcibly transferring children to another group. These acts are committed against members of a national, ethnic, racial or religious group.

They are committed "with intent to destroy, in whole or in part, [the group] as such."

The totality of the evidence from the interviews conducted in July and August, and from the other available sources showed that:

- The *Janjaweed* and Sudanese military forces have committed large-scale acts of violence, including murders, rape, and physical assaults on non-Arab individuals.
- The *Janjaweed* and Sudanese military forces destroyed villages, foodstuffs, and other means of survival.
- The Sudan government and its military forces obstructed food, water, medicine, and other humanitarian aid from reaching affected populations, thereby leading to further deaths and suffering.
- Despite having been put on notice multiple times, Khartoum has failed to stop the violence.

In July 2005, Secretary of State Condoleezza Rice visited the sprawling Abu Shouk refugee camp, the second largest in the region. She did not retreat from the findings of her predecessor and was rather blunt in recounting what she saw. "The United States has called it by name, that is that a genocide was committed here," she said.

14. Resolutions 1556 and 1564 were issued subsequent to the U.S.'s reports to the Security Council of the United Nations. These increased international pressure for improved security and humanitarian access, held the Government of Sudan and the perpetrators of violence accountable, and expressed the Council's intention to consider further actions, including economic sanctions, in the event of noncompliance.
15. Article VIII of the Genocide Convention provides that Contracting Parties "may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III."



PART **2**  
The Investigation

CHAPTER 3  
Creating the ADT:  
Turning a Good Idea into Reality

NINA BANG-JENSEN AND STEFANIE FREASE

**The Seeds of the Atrocities Documentation Project (ADP)**

In late June 2004, the Coalition for International Justice (CIJ) was asked to attend a meeting of nongovernmental organizations (NGOs) at the U.S. State Department in Washington. We had no idea that that meeting would turn into a project of historic importance. Gathered around the table were representatives of groups with experience in working on the ground in Sudan or the region, documenting human rights abuses, and/or investigating or assisting in the prosecution of war crimes. While there were numerous reports that many crimes were being committed in Darfur, to its credit, the U.S. Government wanted to try to assess the extent and nature of the crimes. Lorne Craner, then Assistant Secretary of State for the Bureau of Democracy, Human Rights and Labor (DRL), took the lead.

In speaking to the assembled NGO representatives, Craner radiated determination. He said that the Bureau wanted to develop a survey questionnaire to help understand the nature of the crimes in Darfur in order in part to determine if they could be described as genocide under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (UNCG). He asked each group to offer suggestions about how best to embark upon such an effort in a manner that would be authoritative, rigorous, and fast. The first task was to design a questionnaire that would

capture the full extent of what the refugees experienced in Darfur before fleeing into Chad.

Calling upon his background in polling and survey research as a former high-level Congressional staff member and, more recently, as head of the International Republican Institute that engages in democracy and civil society promotion activities around the world, Craner challenged the group to consider designing a project that would produce a large, credible sample of data, immune to political manipulation (see Chapter 4, “Survey Methodology and the Darfur Genocide”). He set an ambitious goal of conducting over eleven hundred random interviews, a statistically significant sample, among the two hundred thousand Darfurian refugees scattered in ten refugee camps and numerous settlements along the eastern border of Chad. The assembled group of NGO representatives worked productively and collegially around the conference table with State Department staff to design a questionnaire within two days. At the third meeting on Friday, June 25, 2004, Craner announced that his goal was to send twenty people to Chad by the following Saturday. He then turned to everyone at the table and asked each representative, one-by-one, how many people their organization could commit to lending for such a project. Some could offer one or two people at some point in the near future, but none had sufficient trained personnel to take on the task individually or even collectively.

### **Accepting the Challenge**

As CIJ had extensive contacts with current and former personnel in the various United Nations war crimes tribunals and investigative bodies, we decided to try. Co-author Stefanie Frease called former colleagues that evening. These individuals, in turn, sent e-mails to their contacts. The response was immediate and heartening. By the end of the weekend, we had heard from many experienced criminal investigators, prosecutors, regional experts, and other specialists and believed we could quickly assemble a team of between twelve and twenty from many parts of the world. By Monday, June 28, 2004, we felt confident enough to call the State Department’s DRL Bureau to say CIJ could put together a team of investigators on the ground in Chad within about ten days.

The goal was to assemble small teams composed of individuals with diverse yet complementary skills. We wanted people who had investigated or prosecuted large-scale atrocities, others who had regional expertise, and those with experience in interviewing victims of sexual assault and others suffering from trauma. So, for example, we had a male prosecutor with experience at the Yugoslav tribunal, a female French-speaking refugee and trauma worker, an experienced female detective with gender crimes

experience, and a male genocide scholar, each of whom had experience working in difficult environments. This was typical of the six teams of four interviewers/investigators and four interpreters that we recruited. We were keen on getting people with solid investigative experience who knew how to take statements, ask nonleading, follow-up questions and avoid hearsay. With the assistance of Jerry Fowler of the U.S. Holocaust Memorial Museum's Committee on Conscience, we identified two social scientist genocide scholars. From the International Crisis Group, we identified some individuals with experience working in Sudan or the region.

Then a deluge of resumes from around the world started to arrive by e-mail and fax. (By the end of the summer, we had received close to one thousand inquiries.) Several applicants became energetic short-term interns in our Washington, D.C. office and helped us deal with numerous administrative and other tasks, such as arranging for visas; waiting in the airline ticket offices for tickets and then sending them to team members who lived on several different continents; hand-delivering cash to departing team members since credit cards and travelers checks were useless in Chad; tracking down mosquito nets, tents, rehydration powder; responding to applicants; communicating with worried family members, etc.

Despite the challenges, the group was buoyed by the response of talented investigators and others from around the world who were willing to take time off from their jobs and live in tents under harsh conditions. In the end, members of the team came from eight different countries. Many had worked or were working as criminal investigators and prosecutors for United Nations criminal tribunals, including the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the Special Court of Sierra Leone, and the UN's Serious Crimes Unit in East Timor.

Just as it was beginning to look like we might actually be able to get teams in the field in about a week, we started to receive briefings from various State Department bureaus and NGOs about the difficulties we could face on the ground. In particular, staff from the Bureau of Population, Refugees, and Migration and the U.S. Agency for International Development (USAID) warned of the many logistical hurdles — there was a lack of readily available food, water, and accommodation; potentially paralyzing weather conditions with the approaching rainy season; poor communication systems; extremely hazardous unpaved roads; and an already overstretched aid community. They advised it was only possible to take five to six people at most, not the sixty or so we knew we needed (including interpreters and drivers) to conduct a sample survey of this size. This stark evaluation sharpened our planning and equipment requirements.

To achieve the goal of conducting over eleven hundred interviews, CIS staff concluded that it would be best to stagger the arrivals of the teams of four investigators and accompanying interpreters by one or two days so as not to overwhelm the fragile infrastructure. That first week, at the end of June 2004, was a blur of telephone interviews, preparation of personnel contracts, gathering of information about what was and was not available on the ground, developing a field plan, writing budgets and proposals, figuring out what supplies each investigator would need, preparing planning documents and figuring out varying visa, medical, and transportation needs.

We coordinated with the State Department on the final version of the eight-page questionnaire, which they hurriedly printed and bound, along with laminated map booklets. We reached out to many NGOs with regional expertise, including Darfur Peace and Development, which provided invaluable practical advice without which we could not have succeeded. At the time, the Washington office of CIJ had a small, full-time staff and an extraordinarily resourceful and organized legal intern, Vanessa Allyn, a Peace Corp alumna, who had just arrived for the summer from Willamette Law School. Frease, who had extensive experience working in war zones and on criminal investigations, took the lead on the ADT throughout, and Nina Bang-Jensen, CIJ Executive Director, and Allyn assisted.

### **The Focus and Effort of the Assessment Team**

Having been involved in numerous field missions, Frease knew the importance of sending an assessment team out before the investigation teams arrived. The assessment team needed to accomplish a number of goals — to interview and hire interpreters who spoke tribal languages; to make contact with Chadian and refugee authorities; to enter into negotiations with local vendors to obtain cars, food, potable water, gasoline; to get a better sense of the logistical challenges on the ground; and to test the questionnaire. Among the mundane, but essential, tasks was determining where investigators would sleep and how investigators would get from one area of Chad to another, a vast country with challenging weather and topography. There were many concerns about the timing of the mission given the impending rainy season.

The assessment team was relatively small, and included representatives from the State Department's DRL Bureau, the Bureau of Intelligence and Research, one staff member from the American Bar Association's Central European and Eurasian Law Initiative (CEELI), and a consultant, Diane de Guzman, with vast experience working in Sudan. From CIJ's side there was Frease; John Thornton, a Florida-based litigator with human rights experience who was available for the duration of the project; a masterful

coordinator originally from Darfur; and a medical doctor also originally from Darfur.

CIJ staff arrived in Chad's capitol, N'Djamena, on Wednesday, July 7, with other members of the assessment team arriving the next day. Meanwhile, at CIJ headquarters in Washington, recruiting and hiring continued as logistical challenges abounded. For one, as the potential interviewers were coming from different continents and there was only one reliable airline servicing Chad and limited consular offices, much juggling ensued. Adding to the complications was the strong desire to make sure the four-person subteams were balanced in skills, backgrounds, and gender.

Arranging for and purchasing tens of thousands of dollars of airline tickets, obtaining visas, and reimbursing participants for certain supplies and equipment was, in many instances, paid for (at least temporarily) by CIJ staff members' personal credit cards and bank accounts. Bang-Jensen and CIJ's part-time Finance Manager, Shirley Long, received some odd looks from bank tellers because of the near daily withdrawals and wires from CIJ and personal accounts throughout the course of the project.

Once in Chad, the assessment team quickly set out renting vehicles and replacing communications equipment stolen from bags en route to N'Djamena. They also needed to recruit a small number of interpreters who spoke various tribal languages in addition to English and Arabic. Knowing it would be difficult to find professional interpreters, if any, CIJ recruited a talented Swedish professor and expert in field interpretation, Helge Niska, to assist in training and operations (see Chapter 5, "The Critical Link: Interpreters"). Dr. Niska and Jan Pfundheller, an experienced detective and trainer, arrived after the assessment team completed its work and just ahead of the first investigation team. Once in place, Niska and Pfundheller remained in Chad throughout the summer providing invaluable support to each of the teams.

Early Saturday morning, July 10, the assessment team and five newly recruited interpreters loaded up four rented four-by-four vehicles and headed east to Abeche, which is close to the Chad-Sudanese border. While Abeche is only about four hundred fifty miles (or seven hundred fifty km) from N'Djamena, the trip took more than thirty hours. Within minutes, the team confronted the types of challenges that would face the teams for the entire summer. Just before leaving the parking lot of the Hotel Novotel, a downpour briefly delayed departure; then ten minutes after leaving N'Djamena, the team faced its first government checkpoint and attendant delays associated with ensuring passage; within two hours one vehicle had a flat tire. A slow steady pace gradually evolved, which included periodic

but necessary tea breaks, refueling, prayer time for the drivers and interpreters who were all Muslim, as virtually everyone is in the region, and bathroom breaks for all, mostly in open fields.

That night, the advance team camped on the grounds of a government guest house kindly opened up to them by the local official in the village of Ati. The team members rose at 4:30 the next morning and were on the road by 5 a.m. Not long into the second day's journey, one of the vehicles had a brake problem; by 9:30 another car was stuck in the mud; a few minutes later, one of the team's vehicles was pulling a passing pick-up overloaded with passengers and goods from the same spot. Continuing on, they drove through wadis (flash-flood river beds that fill with astonishing speed) whose water reached the hood of the cars. The team finally arrived in Abeche at 3 p.m. and, through local contacts, was quickly able to find a house that they could use as the team's base camp for the summer.

At times, being an independent NGO caused some confusion over lines of authority. One of the few differences of opinion between CIJ and State officials came as a result of a misunderstanding over the project's goals. A State Department official who had not been involved in the planning meetings in Washington, but who had traveled to the region to participate in the assessment, was focused on conducting a total of two hundred interviews rather than the broader goal of recording nearly twelve hundred statements. At a meeting Sunday evening with United Nations High Commissioner for Refugees (UNHCR) officials, it became clear that the agency was so consumed by the ongoing aid operation that they could lend little support, including guaranteed access to United Nations flights. It meant that the teams would have to be self-sufficient with respect to housing, fuel, food, water, and ground and air transportation. This was our first hint that we would have to modify fundamental aspects of our plans in order to conduct the interviews within five weeks.

That evening we discussed the possibility of hiring planes to get the teams of investigators to the remote camp locations. The next morning Bang-Jensen spoke to Leah Werchik, the talented and resourceful program officer at USAID's Office of Transition Initiatives (OTI), the project donor in Washington. (Funding for the project came from OTI, then was passed through an available funding line at the American Bar Association's CEELI, and then to the project leader, CIJ.) Contrary to what one might think in dealing with a government bureaucracy, OTI has many people with practical field experience and Werchik immediately understood the necessity of shifting resources to cover the cost of renting planes. Our request to hire aircraft on an as-needed basis was quickly approved. CIJ also quickly realized that the original plan of providing a stipend to each team member for food and water was impractical. There was very little food in remote local

markets, bottled water could only be bought in Abeche, and there were no real restaurants. Before sending teams out, vehicles, therefore, were stocked with enough food and water for about one week and then resupplied halfway through their missions. Despite, or perhaps because of, these enormous challenges, team cohesiveness was strong.

On Monday morning, the assessment team headed to the Farchana camp, a two- to three-hour drive east of Abeche, to test the questionnaire and reinforce the methodology of randomly selecting refugees to interview. It also provided an opportunity to ensure all additional information vital to investigation team deployment was gathered, such as identifying the tribal composition of each camp, checking the availability of food and water in the local markets, identifying areas where the investigative teams could pitch their tents, and any other unforeseen logistical obstacles.

Over the next couple of days the assessment team split into two groups to conduct additional site surveys focusing on locations where the first three teams scheduled to arrive the next week would work. By the end of the week, Frease returned to N'Djamena to contact an airplane charter company, rent additional vehicles, and meet with the U.S. Ambassador and other officials to inform them of the team's progress and plan of activities. Unbeknownst to her at the time, violence had broken out in the Farchana camp among frustrated refugees, and when Chadian authorities intervened to restore order, two refugees were killed. Violence also erupted in the Breijing camp, near Farchana. In both instances, rumors flew about Sudanese infiltrators in the camps. More than one dozen refugees were arrested.

Concern over these events caused some in Washington to question whether the project should move forward. That next weekend was tense as UNHCR tried to clarify what precisely had happened and determine whether similar incidents were likely to happen in other camps. There was additional concern whether the project could be self-sustaining without support from UNHCR and other groups already on the ground. For a couple of days it looked like the project might be shut down before it had really begun. Indeed, at least one United States and one international official advised that the effort be abandoned.

As security concerns were being discussed, Undersecretary of State Mark Grossman's office contacted DRL representative Michael Orona, asking that fifty interviews be taken over the weekend, then analyzed and sent to Washington by Monday morning, July 19, so that Secretary of State Colin Powell could review and potentially refer to the information at the United Nations early that week. The team members in the field said they could do it, even though it would interrupt further testing of the questionnaire and logistical planning. By Sunday evening, fifty interviews had been recorded and analyzed and sent to Washington by the Monday deadline.



### **The Preparation and Work of the Field Investigators**

Within the next few days, some members of the assessment team returned to Washington.

CIJ's John Thornton, who was responsible for operations, and also conducted interviews, remained in N'Djamena to meet the first incoming teams of investigators whose arrivals were staggered by one day, and get them registered with local authorities and onto flights for Abeche. Frease had already returned to Abeche to meet the investigators and organize training for them and to give them time to get acquainted with their interpreters. In Abeche, each team received information and training about the history of the conflict, application of the survey methodology, working with interpreters, and approaches to taking statements from victims of sexual assault. Over the course of the next five weeks, the carefully selected interviewers arrived in small groups and were sent to separate areas of Chad. By project's end, the groups had covered all ten UNHCR-sponsored refugee camps in eastern Chad and several settlement areas along the border.

Conditions in the different areas varied tremendously. It was extremely hot in the north. There, Pundheller, Niska, and Frease were enthusiastically welcomed by exhausted team members during a mid-term visit. They had been living in extremely harsh conditions, without water for showers during the first few days, and they were getting low on food and bottled water. The temperature in the North, in the Sahara desert, often reached 130 degrees Fahrenheit (48 degrees Celsius) during the day.

Throughout the project, the ability to shift gears quickly was critical to its progress. In Washington, incoming team members were advised by CIJ to bring flavored rehydration powders for the water; not to bring solar showers, as buckets were faster and easier to use; and to scale back on supplies because of a fifteen kilogram (thirty-three pound) weight restriction on most of the flights. While phone service was sporadic, requests from CIJ's Frease, Thornton, Pundheller, and, eventually, Allyn, who spent the rest of her summer in Chad, came into CIJ's Washington office for hand-held radios, batteries, and more cash, which a number of interviewers carried in by hand as there was no way to wire money to Abeche. Resumes kept flooding in, Frease kept extending her stay, and CIJ staff in Washington struggled to communicate with the teams in the field through highly erratic satellite telephone service, to be responsive to changing requests when they were reached, and to keep in touch with the families of the team members who had questions and concerns.

During the entire project, individual team members carried their own supplies — one- or two-person tents, mats, flashlights, mosquito nets, etc. On reflection, it would have been helpful to have had one large tent per field

team, as well as camping chairs as interviewers found it increasingly difficult to record an average of five statements each day sitting on the ground without support. The exhausted interviewers would typically fall asleep in their tents by 7 p.m. and be up again at 4 a.m. to begin a new day.

The teams discovered that adhering to the random methodology was challenging to many of the experienced prosecutors and investigators because their professional impulse was to follow evidentiary links and to interview witnesses with the most compelling firsthand information or experiences. What each team was supposed to do was to, first, meet camp leaders and, then, once introductions had been made, begin counting off every tenth “occupied space” (whether that was a group of people standing under a tree or sitting in a tent), to identify the adults in that group, and select, based on the established protocol, the person to interview. (For a more complete description of the methodology and protocols, see Chapter 4, “Survey Methodology and the Darfur Genocide.”)

As team members finished their two-week assignments, they returned to Abeche for individual and group debriefings. Among the subjects that arose were common crime patterns, such as coordinated attacks between Sudanese Government forces and *Janjaweed* militias; the widespread use of aircraft, including Antonovs and attack helicopters; the killing of civilians, in particular, men and baby boys; widespread rape of girls and women, but also men; the frequent use of racial epithets; the destruction of food stores, crops, and burning of villages; the cutting down of fruit trees, the poisoning of water sources; and the destruction of mosques. Team members also discussed the need for additional and more-specific event codes to be added to the questionnaire, challenges in coding the crimes, issues of interpretation, among other issues.

Not far into the first team’s work, CIJ received word there would be two Congressional visits. Senator Bill Frist (R-TN), Senate Majority Leader, and Representative Donald Payne (D-NJ) were visiting the region because of their long-standing interest in Sudan. They wanted to meet with our teams in the field and observe or participate in interviews. Fortunately and coincidentally, the Congressional visits coincided with the visit of one of the world’s experts on gender crimes and war, Dr. Kelly Askin, a senior legal adviser to the Open Society Justice Initiative, an international NGO. She was able to share with Senator Frist her analysis of how the Genocide Convention applied to what she had observed. Roger Winter, then Deputy Administrator at USAID and long-time Sudan expert, accompanied Senator Frist. He had been instrumental in ensuring USAID/OTI funds were made rapidly available to support the project.

As the media was interested in talking to the members of Congress, the issue of just what team members should or should not say to the press

accompanying the Congressmen arose. Previously, team members had generally deferred to Frease in speaking with reporters encountered along the way. As an independent NGO, CIJ was, of course, not constrained from speaking to reporters, but there was concern that team security and the overall project could be compromised if its progress and locations were widely known. The fact that there was a team in the field collecting information was well known and had been confirmed July 20 by the State Department's spokesperson. At the daily press conference, Richard Boucher (Assistant Secretary of State for Public Affairs) said:

The State Department, the United States, has sent teams out to interview people, refugees in Chad, and over the last weekend and earlier this week, we've had a team of a half dozen or so people with, you know, Land Rovers and sleeping bags and equipment starting refugee interviews in camps in Chad near the Sudanese border to talk to people in, I think, a fairly systematic way about what happened to them, what they know, what we can identify as the atrocities and the perpetrators of things that might have occurred in ... Sudan.

At the request of the U.S. State Department in Washington, CIJ agreed to respond to press questions by addressing the data collection process, but not offering conclusory or summary statements while in the field, particularly on the question of genocide. CIJ had to walk a delicate balance between maintaining its independence while respecting State Department concerns about compromising the outcome of the analysis and research.

In the last two weeks of the project, the much-anticipated rains arrived in force. As the teams struggled to drive through huge expanses of desert, dry riverbeds suddenly turned into wadis, a mixture of rushing water and mud. At almost every turn, vehicles got stuck or stranded. One team spent the night in a refugee camp, another pitched its tents next to a wadi riverbed, waiting for the waters to subside enough to cross the next day.

Fortunately the CIJ medical evacuation insurance purchased for the interviewers was not used. Team members were felled by intestinal ailments, food poisoning, bug bites, sunstroke, the odd fever, and heavy ingestions of dust during sandstorms. (Two members were hospitalized briefly upon their return home, but have recovered completely.) Given the extremely treacherous road conditions (and lack of roads through portions of the desert), the fact that there were not serious accidents is a tribute to the skill and professionalism of CIJ's Chadian drivers. Two car axles broke, many tires were blown, radiators overheated, and all vehicles required major repair and maintenance by the end of the seven weeks of hard driving.

Six team members were there throughout most of or all of the project: it was essential to continuity. Of course though, they bore the brunt of the harsh conditions, logistical crises, pressure, and overall management.

Remaining team members filtered out of Chad between August 18 and 20, and the last completed questionnaires were hand-carried to CIJ's office in Washington. It was with a great sense of achievement that CIJ delivered more than twelve hundred statements to the State Department for processing and review.

State Department analysts, after coding and processing the first two hundred witness interviews, quickly realized they would need outside help with data entry and hired a firm in Ohio to do this work.

In the intervening weeks, team members returned to their home countries, and many remained in contact by e-mail or phone, sharing photos, and their impressions and analysis of the events they had recorded. Worried family and friends were happy to have them back. There were many administrative and financial matters for CIJ to tie up in Washington. Each team member completed evaluations so that any new project would benefit from our "lessons learned" over the summer.

### **The Finding Based on ADT (and other) Data**

Despite the fact that the interviewers were scattered in many parts of the world, they kept in close touch with each other and with CIJ, monitoring press reports about when the State Department analysis would be completed, speculating as to what the Department would conclude. During this period, CIJ was in contact with State and USAID/OTI staff engaged in the project, but did not know when the statistical and subsequent legal analysis would be completed. By the end of August, rumors circulated that there was a policy battle among various bureaus in the State Department. Common wisdom among commentators in the media and others who were closely following Darfur policy was that the Africa Bureau was resisting a genocide determination, largely on political and diplomatic grounds.

While CIJ was not a participant in the State Department's internal debate and analysis over its final genocide determination, CIJ staff was told that Secretary Powell himself was engaged in the review and had taken statements and the statistical analysis home over the first weekend in September 2004. There was growing anxiety among participants on the CIJ team over how the data would be interpreted. Those concerns were heightened by two newspaper articles — an August 25, 2004 article in *The New York Times* by Marc Lacey, in which it appeared he had a draft copy of an August 5 State Department analysis of the first two hundred fifty statements, and then a September 8, 2004 *Washington Post* article by Emily

Wax, quoting an anonymous, high-ranking State Department source as saying, “Use of the word genocide is ‘a political question now’ ... ‘not a legal one.’” To some on the scattered CIJ team, the latter was an affirmative sign that the threshold had been met for a genocide determination while others saw it as a worrisome indication that insufficient political will existed to follow through on what the facts supported.

State Department officials invited CIJ staff to a late-afternoon meeting on September 8, 2004, one day prior to Secretary Powell testifying on Darfur before the Senate Foreign Relations Committee. During that meeting and during a previous phone call with a high-level State Department official, it was hinted that Secretary Powell would make a strong, possibly unprecedented statement. No one revealed, however, what precisely he would conclude.

At 9 a.m. on September 9, the Senate Foreign Relations Committee convened in the largest hearing room in the Dirksen Building in Washington, D.C. Minutes before the hearing was to begin, Reuters Washington correspondent, Saul Hudson, provided CIJ’s Bang-Jensen and Frease a copy of Powell’s testimony, in which he stated that:

When we reviewed the evidence compiled by our team, we concluded — I concluded — that genocide has been committed in Darfur and that the government of Sudan and the *Janjaweed* bear responsibility, and that genocide may still be occurring.

Powell’s historic testimony represented several firsts. It was the first time the United States had ever publicly and formally documented and concluded that a series of crimes likely amounted to genocide, while those crimes were unfolding. It was the first time that the United States had ever announced its intention to formally invoke Article VIII of the Genocide Convention calling upon the United Nations to take action under its Charter to prevent and suppress “acts of genocide,” as well as to request a full United Nations investigation of all violations of international humanitarian law and human rights law that have occurred.

Team members around the world got in touch to discuss the finding. CIJ had already made it clear to everyone that as an independent NGO, it would not hesitate to disagree publicly, were the report not a good reflection of the information collected on the ground. It was gratifying instead to be able to endorse Secretary Powell’s non-judicial finding wholeheartedly. Indeed, team members with whom we spoke concurred with Secretary Powell’s assertion that the “specific intent of the perpetrators to destroy ‘a group in whole or in part,’ ... may be inferred from their deliberate conduct.” For those who heard firsthand from over twelve hundred refugees about their similarly harrowing accounts of attacks, murder, rape, racial

epithets, and destruction of their way of life, it was gratifying to know their voices had been heard, at least by some.

**Note**

1. Nina Bang-Jensen is CIJ's Executive Director/Counsel and Stefanie Frease is CIJ's Director of Programs (currently on leave) and was the leader of ADT on the ground in Chad.

CHAPTER 4  
Survey Methodology and  
the Darfur Genocide

JONATHAN P. HOWARD

**Introduction**

I arrived in my office the morning of June 24, 2004 to find a brief e-mail from my office director outlining a possible survey project involving Darfur — “about two hundred interviews, about ten days.” Three months later, U.S. Secretary of State Colin Powell testified before Congress, holding the results of what began as a small documentation project, but evolved into a body of survey data representing the unique stories of over eleven hundred randomly selected Darfuri refugees. The data, Powell testified, supported his conclusion that genocide was being perpetrated in Darfur.

Conducting public opinion research in Africa presents significant challenges to the survey methodologist.<sup>2</sup> Out of date and unreliable census data, populations unreachable through customary modes of transportation, and the thousands of languages spoken across the continent must all be taken into account when designing and fielding a survey. The Darfur Atrocities Documentation Team’s (ADT) mandate to conduct a large-scale, random sample survey in the refugee camps of Chad was perhaps one of the most methodologically and logistically challenging projects of its kind in recent history.

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The views presented in his chapter are solely those of the author and in no way represent the views or opinions of the U.S. Government or the U.S. Department of State.

This chapter traces the story of how that challenge was met, from inception through final data analysis. Though the history and development of the Darfur Atrocities Documentation Team mission is chronicled in greater detail in other chapters, this chapter's narrative relates the development of the project through the lens of the survey methodology applied by the team. The first section reviews how the project was designed prior to deployment, from questionnaire development to sampling methodology.<sup>3</sup> The second section examines the experiences of the team that implemented the survey in the field. The data processing and analysis stage is the subject of the third section, followed by the statistical results of the analysis. Finally, the strengths and deficits of the methodology as applied are evaluated in retrospect.

### **The Decision to Apply Survey Methodology in Documenting the Darfur Crisis**

Reports of atrocities perpetrated along ethnic lines and rooted in decades of political grievance had been trickling out of Darfur since 2003. By early 2004, the media began to focus increasing attention on the conflict. While it was clear that violence and displacement were increasing across Darfur, the precise nature and extent of the events remained unknown. Sudanese authorities denied reports as rumors, or isolated worst-case scenarios. As the U.S. State Department sought to stay abreast of the growing problem, a sound understanding of the scope of the conflict and its impact on the civilian population became increasingly important.

The three Sudanese states comprising Darfur — North, West, and South — cover an area the size of Texas and are sparsely populated by roughly seven to ten million people, mostly seminomadic pastoralists (herdsmen). The area has few paved roads, little telecommunications, and what transport exists is intermittently cut off by rains that fill *wadis* — dry sand river beds — in minutes. The State Department's knowledge about the unfolding crisis in Darfur was limited to information from nongovernmental organization (NGO) workers, media on the ground, and limited reporting from embassy and U.S. Agency for International Development (USAID) cables. By late June 2004, when this survey project began, the latest map from a series based on satellite imagery and compiled by the Humanitarian Information Unit (HIU)<sup>4</sup> revealed three hundred and one completely destroyed villages in the Darfur region, with another seventy-six significantly damaged. These two primary sources for information — field reporting and imagery — fell short, however, in two regards. The ad-hoc nature of field reporting, while consistently pointing to an ethnic dimension of the conflict, could not provide a reliable accounting of the



scale of the conflict; thus, it was impossible to determine to what degree the wrenching stories trickling out were representative of the Darfuri population at large. Analysis of the satellite imagery provided evidence that destruction was extensive, but could not establish the ethnicity of destroyed villages or the identity of the perpetrators. While it was possible to photograph destroyed villages, it was impossible from imagery alone to determine whether the villages were destroyed because of their ethnic composition.

Initially working independently, two bureaus within the Department of State, Intelligence and Research (INR) and Democracy, Rights, and Labor (DRL), concluded that a survey of refugees would provide the most accurate account of past and ongoing events in Darfur. INR conceived of a small team conducting two hundred interviews — a number that could be achieved by a team of three officers working over the course of ten days — while DRL Assistant Secretary Lorne Craner suggested that the Department set a goal of interviewing twelve hundred refugees. A sample of twelve hundred, while posing significant logistical challenges, could provide a more broadly representative sample of the Darfuri refugees residing in Chad. The decision to base the survey in Chad was necessitated by the ongoing conflict in Darfur, which would have presented significant security risks to the interview team.

When INR and DRL began coordinating their efforts in late June 2004, it quickly became apparent that conducting a full-scale survey among Darfuri refugees would present significant logistical and methodological challenges, and these were all taken into account as the planning of the project continued apace.

The questionnaire used to gather each refugee's testimony, the survey design as developed by the Office of Research, and the capabilities of the survey team recruited by the Coalition for International Justice (CIJ) all evolved rapidly as the project scaled up from two hundred to over eleven hundred interviews and adapted to continuously changing humanitarian and logistical realities on the ground.

#### *Questionnaire Design*

Prior to deploying to the field, representatives from INR, DRL, CIJ, and the Office of Research began developing the questionnaire. In order to adequately address the needs of both the State Department and CIJ, the questionnaire needed to collect data for three distinct purposes. The State Department needed quantitative data — statistics that captured the type and extent of the events taking place in Darfur. These included geographic data sought by the HIU that would allow analysts to connect the experiences of the refugees to specific locales. The NGO partners, specifically CIJ and the American

Bar Association (ABA), were interested in gathering narratives from each refugee that could provide a detailed picture of the conflict and possibly be used as the basis for future legal prosecution of the perpetrators.

The questionnaire drafting process began with a collaborative meeting between State Department and NGO representatives, which fleshed out the essential information the questionnaire needed to gather. A rough draft of questions was developed: “What happened to you? Were you physically harmed? Where did this happen? Can you identify who did this to you?” Since the issue of intent is key in ascertaining whether a situation constitutes genocide or not, several questions were included whose aim was to identify the nature and intent of the perpetrators’ actions. These questions included, “Did those who harmed or attacked you say anything to you?” and “Were there any particular groups or types of people who were singled out for harm?”

The next task was to take the first rough draft of questions and create a clear, logically ordered questionnaire that would effectively capture the narrative, quantitative, and spatial data the State Department and NGOs required. As most of the questions were open-ended, capturing the narrative of each refugee’s experience would be relatively simple, consisting of the interviewer’s transcription of the responses.

Even under the best survey conditions, generating quantitative data from qualitative responses is difficult. The process of coding open-ended responses<sup>5</sup> inherently involves human evaluation of the information and judgment calls when trying to fit responses into a finite set of codes. Creating a quantitative dataset from the refugee’s responses — many filled with emotion or, from the perspective of the researcher, incomplete — would present unique challenges.

Considering these challenges, the Office of Research took two steps to overcome them. As the coding process is subjective and essentially a series of judgment calls, it was decided that the interviewer and translator (the two people closest to the refugee) would initially code the narrative immediately following the interview for specific types of events,<sup>6</sup> the perpetrator(s) involved in each event, the date of the event, number of victims, and location. The decision to have interviewers perform initial coding in the field also allowed for clarification with the respondent if there was any ambiguity in the narrative. Subsequent to the field coding, during the data entry stage, an analyst in the United States reviewed the narrative and assigned codes, providing a cross-check for accuracy and ensuring that no relevant codes were missed.

Customary practice in coding open-ended survey questions involves collecting all survey responses, and then deriving response categories<sup>7</sup> from a randomly selected sample of the total responses. Defining response

categories, and their correspondent codes, usually occurs after the survey is completed. Our decision to have the interviewers conduct the initial coding in the field meant that the team designing the questionnaire had to generate a set of response categories, or event codes, in advance of the administration of the survey. A small group of individuals spent a grim afternoon writing a list of the types of experiences they anticipated the refugees might relate. The events list reflected both contemporary reports on the Darfur conflict, as well as human rights abuses that typically occur in large-scale conflicts. In the end, the group generated thirty-five event codes and ten perpetrator codes. The event and perpetrator codes, along with a blank grid, were printed on the back of each questionnaire as a “Preliminary Field Coding” form to be used by the interviewers.<sup>8</sup>

Our final challenge in the questionnaire design stage was creating an instrument to gather spatial data — information which would be used to locate each refugee’s village of origin. With reliable spatial data, we would be able to map or geo-reference reported destroyed villages and events, possibly identifying patterns in the attacks. Collecting such data for a region like Darfur is difficult, particularly when using a survey instrument. No reliable maps of Darfur were available down to the village level; the best maps available showed rivers, large towns, and what few roads existed in the three states. The Darfur team was also aware that most respondents would be illiterate, not necessarily understanding compass directions or metric distances.

Taking these challenges into account, the HIU created an atlas of Darfur that detailed the major natural features of the area, state boundaries, and the known towns and roads with their Arabic place names. An overall map was broken down into nine more detailed maps, each overlaid with grid quadrants. A series of questions asked the respondents to identify the state their village was located in, the name of the village, and the latter’s proximity to large towns and roads. Using this information, it was hoped that the interviewer and translators would work together to identify which grid quadrant the respondent was from.

The next step was to lay out the questionnaire on paper. Under customary survey conditions, questionnaires are pre-tested with a small group of respondents before the wording and order are finalized. Given the constraints posed by administering a survey in the midst of a humanitarian emergency, pre-testing and questionnaire editing would be limited to hand-written corrections in the field; it was thus imperative that the questionnaire be clear, concise, easy for the interviewers to use, and understandable to the respondents.

The first page of the questionnaire requested information from the interviewer about the time, date, location of the interview, and the name of the interviewer. A random-number grid provided the survey parameters

for sampling and respondent selection, a process that will be discussed later. Finally, the purpose of the interview is explained to the refugee and their consent for participation in the interview is requested. The second page recorded the demographic details of the respondent, as well as the geo-referenced information. Pages three through six were the core of the questionnaire; a series of open-ended questions intended to document the refugees' stories without prompting or leading the refugees' responses. The questions progress through four levels. Questions first pertain to the individual, then the family, village, and conclude with those about the refugee's journey to the refugee camp and observations of other villages along the way. In addition to providing space for the narrative response to each question, the questionnaire included spaces to record victim names, ages, dates of incidents, perpetrator descriptions, and other information useful to reconstructing the event after the fact.

Page seven contained questions for the interviewer, intended to assess the utility of the questionnaire, the comprehension level of the respondent, and some questions concerning the environment in which the survey was administered, such as whether the interview took place in private, the reactions of other refugees to the interview team, and whether or not the interview team was threatened in any way. The grid for field coding, as well as the lists of event and perpetrator codes, comprised the back page.

Once the layout was complete, the questionnaire was printed in a stapled booklet format, designed to withstand the field conditions in Chad. Fifteen hundred copies were checked as excess baggage and carried to the field by the initial survey team. As successive waves of interviews were completed, they were couriered back to Washington by some of the returning interviewers.

#### *Sampling Methodology: Design and Implementation*

Most random sampling methodologies utilize demographic data such as that obtained by a census of the total population to define the process by which the sample is drawn. From census statistics, a sampling frame<sup>9</sup> is drawn and a sampling method is applied in an effort to draw respondents whose overall demographic characteristics reflect that of the broader population. From a methodologist's perspective, the complete absence of demographic data about the Darfuri refugees was perhaps the most fundamental dilemma facing the Office of Research in developing the sampling plan. While we had a rough idea of the total size of the refugee population in Chad — around two hundred thousand — we did not have complete information about the size of all the refugee camps, the ethnic variations in the refugee population, or the percentage of refugees in UNHCR camps as compared to those in informal settlements. Demographic information

of this type is necessary to draw a stratified random sample<sup>10</sup> of the kind most commonly used in survey research today.

Given the lack of demographic data, a sampling methodology was developed that randomized respondent selection at two stages. While the approach utilized was not a truly random scientific sample, it did follow accepted practices of respondent selection in less developed areas of the world by using a random route method. Furthermore, the methodology was robust in preventing individuals, politically interested or not, from influencing respondent selection.

When the advance team reached the field, we found that the UNHCR camps were administered through a system of lettered grids or sectors. Sectors were added as new refugees arrived, and were generally ethnically homogenous. Using information supplied by camp administrators about the number and ethnic composition of the grids in each camp, teams attempted to distribute the number of interviews in each camp in a manner proportionate to the ethnic composition, increasing the representativeness of the results.

Between the methodology devised in Washington and the camp information gathered in the field, the following respondent selection process was applied in UNHCR camps. Interview teams, generally composed of four interviewers and four translators (two exceptions were in Goz Beida and Goz Amer where the distance between the two refugee camps, along with a swollen wadi, made it more practical to divide the teams into two interviewers and two translators each) first met with camp administrators to gather information on the camp sectors and their demographics. A list of the sectors and the ethnicity of their residents was drawn. The total number of interviews to be conducted in the camp was divided so as to be approximately proportionate to ethnicity, and then sectors were randomly selected for each ethnic group. Once ten interviews were conducted in a sector, another was chosen, until the number of interviews specified per ethnic group was reached.

Once a sector was selected for sampling, the interview team drove to the sector and identified the tent belonging to the sheikh for that sector. Each sector had one recognized sheikh, who served as both a religious leader and liaison between the refugee population and the camp management. The sheikh's tent served as the starting point for the interviewers, who set out along a random route in opposite directions from the tent. Every tenth occupied space was chosen for inclusion in the survey.

Once an occupied space was selected, the interviewers assigned numbers to the adults present, from left to right. Using a standard Kish grid,<sup>11</sup> printed on the front cover of the questionnaire and keyed to the first letter of the questionnaire serial number, the interviewer selected one of the

refugees present to be interviewed. Consent for the interview was obtained, and the interview was conducted in a private location, others being asked to leave the vicinity for the duration of the interview.

The interview teams applied a similar methodology for informal settlements. In the absence of the United Nation's sector structure, interviewers scouted the settlements for natural divisions and points of reference, such as *wadis*, trees, and rock formations. These divisions served as sampling sectors, with interviews equally distributed, and major landmarks as the starting point for random walks. The interview teams described the divisions and landmarks on the front of the questionnaire should their work need to be reconstructed.

#### *The Achieved Sample*

The two stages of randomization — through the random walk to select tents or other occupied spaces and use of the Kish grid to select individual respondents — worked well in the field. Interviewers found that people were very willing to be included in the survey; for the refugees selected, the interview was usually the first chance they had to tell their story from beginning to end. Though no overtly political motivations were apparent, people did ask to be included in the survey who were not selected, and sheikhs tried to steer interviewers to people with particularly egregious stories. Interviewers attributed this to an eagerness to be able to report the events witnessed, rather than intentional manipulation of the sample. The selection methodology enabled interviewers to gently decline such offers and assistance, and ensured that the sample broadly reflected the refugees' experience as a whole.

At the conclusion of the interview process, the Office of Research was able to evaluate the representativeness of the achieved sample. While unable to compare the sample against demographic data, as such information about the refugees was still unavailable, the evaluation confirmed that the applied methodology and oversight on the ground had yielded a sample that geographically captured the entire scope of Darfuri refugees in Chad. Interviews had been conducted in all UNHCR camps open at the time, as well as nine informal settlements. 58 percent of respondents were women and 42 percent were men, in keeping with the interviewers' observation that few fighting-age men were present in the camps (Table 4.1).

#### *Geo-referencing Events*

Heading into the field, the Darfur team had its doubts that it would be able to successfully map the events reported using the geo-referencing questions

**Table 4.1** Achieved Sample

<b>Location</b>	<b>Number of Interviews</b>
<b>UNHCR Camps</b>	
Breidjing	129
Djabal	109
Farchana	35
Goz Amer	79
Iridimi	126
Kounoungo	164
Mille	152
Touloum	70
<b>Other Refugee Clusters</b>	
Adre	2
Am Nabak	81
Atshana	47
Baggi	1
Bahai	10
Birak	14
Cariari	58
Duwas	7
Gabbina	33
Seneit	2
Tine	15
Unknown Location	2

developed by the HIU. Given the paucity of accurate map information and the largely illiterate population we intended to survey, the chances of gathering spatial data for a significant number of cases seemed unlikely.

The team's eventual success in this regard — the interviewers were able to designate a location for 90 percent of the reported events — was a testimony to the INR cartographers and the translators working on the Darfur project. During field training for the interviewers and translators, both were briefed on the spatial referencing questions and the atlas folio. The translators, many English students originally from the Darfur region, spent hours scrutinizing the maps and discussing amongst themselves the landmarks, cities, and roads depicted. From their collective knowledge of the region, they were then able to question the respondents using place names previously unavailable to us and, in an overwhelming majority of cases, successfully identify the origin of the refugee and the locations of reported events.

*Data Entry and Analysis*

The final dataset used for the “Documenting Atrocities in Darfur” report represented three successive waves of data entry. The first dataset was created in the field by the Atrocities Documentation Team (ADT), and comprised the first fifty interviews conducted by the advance team that deployed to the field in mid-July. The questionnaires and field codes were reviewed by the advance team, entered into an Excel® database, and transmitted through satellite modem back to Washington from the Darfur team’s base in Abeche, Chad.

Once the first team of interviewers was established in the field, some of the members of the advance team returned to Washington carrying a set of two hundred questionnaires — the original fifty, plus an additional one hundred fifty newly completed interviews. These were again coded by State Department officers in Washington, D.C. and the first-round Excel database expanded. As successive teams of interviewers rotated through Chad, the Office of Research hired an international public opinion research company to create a dataset from the remaining questionnaires.

After a briefing by a State Department official on the background of the conflict and the nature of the survey, the company’s team of professional coders read each questionnaire thoroughly, verifying and correcting if necessary the interviewer’s field codes. In all three rounds of data entry, a fifth of the questionnaires were randomly selected and recoded by an additional analyst to ensure accuracy in the coding process. Each questionnaire’s demographic information, event codes, and attendant information were entered into the dataset. Every questionnaire was entered by two different data entry specialists, or double-punched, to verify that the correct information had been entered. Once the two data entry specialists separately entered the data from a questionnaire, a computer compared the two and flagged any discrepancies.

From the final dataset, two databases were created. The first was the respondent database, in which each line of data represents an individual refugee with all related demographics and event codes for that refugee. Eleven hundred thirty-six refugees are represented in the refugee database. The respondent data set was used to generate the atrocity percentages in the final report, which reflect the percent of refugees who reported witnessing or directly experiencing each type of event (e.g., bombing, looting, village destruction, killings, etc.).

Because each respondent may have experienced the same event multiple times — numerous refugees had experienced several attacks during their journey to Chad — during the analysis stage it was necessary to write a syntax<sup>12</sup> to prevent the statistical software from counting multiple events



towards the total for the survey population. The Office of Research devised a short string of code that analyzed each refugee's twenty separate possible event codes in the database, and then assigned a value of 1 (experienced the event) or 0 (did not experience the event) for each type of event. This enabled accurate reporting of the percentage of refugees who had experienced each type of event.

A second event database was also created in which the multiple events from each refugee's story were separated so that each line of data in the event database represented a single event. Over ten thousand events are represented in the event database. The reported perpetrator percentages were generated using this database; perpetrator percents reflect the percentage of events in which specific perpetrators were implicated.

From the outset, the team decided to adopt a conservative approach to reporting data collected during the documentation mission. To this end, during all three stages of data entry, events were coded as either eyewitness or hearsay. Eyewitness events were those reported to have been directly witnessed by the respondent, while hearsay events took place outside the respondent's presence. The atrocity statistics that were eventually reported reflected only events reported as eyewitnessed by the refugees. The inclusion of hearsay reports — some of which, such as death of family members, were verified by respondents after the fact — increased the percentage of refugees experiencing each event, but the decision to conservatively report what we had gathered precluded our including them.

As the first wave of interviewers carried out their work in Chad, it soon became clear that the code list of events generated in Washington and printed on the questionnaire was insufficient to cover the range of human rights violations occurring in Darfur. Additional codes were developed at two points in the project; first by the advance team upon conclusion of the first fifty interviews, and second by the public opinion research company that carried out the third wave of data entry. In all, twenty additional event codes were developed. Several refined previously existing categories, four referred to specific groups targeted for violence, and the rest covered a range of acts from the burning of mosques to the disembowelment of pregnant women — acts the drafters of the questionnaire had not foreseen or could not imagine taking place.

### *Quantitative Findings*

The analysis of the data set confirmed the impression of the interviewers in the field — that killing, property destruction, and other human rights violations were epidemic in Darfur (Figure 4.1). Six in ten refugees witnessed the death of one or more family members, while two-thirds were present as members of their community were killed by members of the

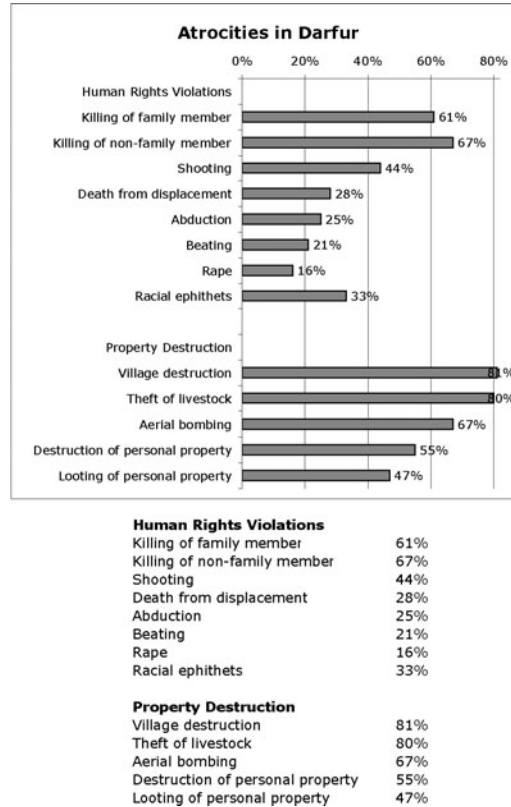
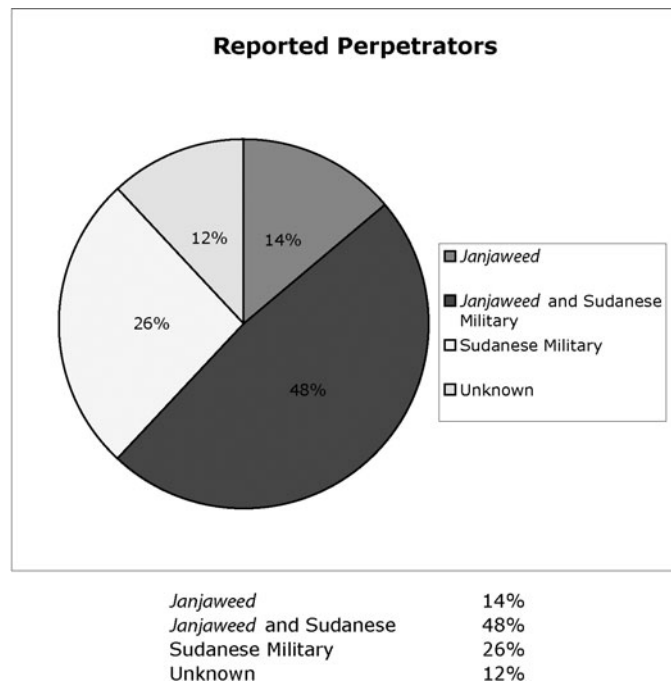


Figure 4.1 Atrocities in Darfur.

*Janjaweed* militia or Sudanese military. Abduction of community members, beatings, racial slurs, and rape were commonplace. Extreme forms of torture, sadism, and desecration of mosques were also reported by a small minority of refugees.

Village and property destruction were experienced by eight in ten refugees, and were the most commonly experienced atrocity. Two-thirds of refugees experienced aerial bombing of their village. Living on the fringes of the Sahara desert, such deprivations were not trivial; more than a quarter of refugees reported the death of a family or community member due to displacement.

The analysis of perpetrator responsibility for the atrocities yielded surprising results (Figure 4.2). Rather than demonstrating that the *Janjaweed* were acting independently in attacking villages, nearly half of atrocities



**Figure 4.2** Reported Perpetrators.

were committed by the *Janjaweed* militia and Sudanese military working in coordination. Another quarter of atrocities were committed by Sudanese troops, clearly implicating Khartoum in the events unfolding in Darfur.

### The Statistics in Narrative Context

Although the quantitative statistics generated by the Darfur ADT supported Secretary of State Powell's assertion that genocide was unfolding in Sudan, an assessment based only upon the summary statistics risks losing sight of the complexity of each refugee's story. The team's use of open-ended questions and documentation of the narrative recounted by each respondent preserved valuable details that contextualized each event.

Though each refugee's experience was unique, a pattern emerged, which pointed to a consistent method of attack being perpetrated upon the civilian population of Darfur by the *Janjaweed* militia and Sudanese military. The broad contours of the pattern are described below.

Prior to any ground attack, villages were often subjected to aerial bombing, which was perceived by some as a warning to leave the village and to

signal an imminent ground attack. Within days or even hours of the bombing, villages would be surrounded by *Janjaweed* militia and/or Sudanese soldiers, who formed a perimeter around the village. Light arms fire began from the perimeter and then the attackers would ride through the villages, targeting young men. Males were at times rounded up and executed or abducted, while women were raped. The latter act reflected a cultural logic of genocide; given that Darfuri culture regards ethnicity to be determined by the paternal bloodline — any women inseminated by *Janjaweed* attackers would bear offspring perceived to be Arab.

Villages frequently suffered multiple waves of attacks; in each successive wave, the militia and soldiers would loot livestock and transportable items of material value, often using Sudanese military vehicles to carry them away. Once a village was looted of all items of value, the houses were burned. In isolated cases, the attacks were accompanied by extreme acts of cruelty, such as the killing of children by burning and desecration of mosques.

Victims were not safe once they had fled their village; many respondents fled to neighboring villages, which were subsequently subject to attack. Sudanese aircraft also appeared to target escape corridors used by internally displaced persons (IDPs).

### **Applied Methodology in Retrospect**

In evaluating the methodology and findings of the survey conducted by the Darfur ADT, what lessons learned might inform future survey research into humanitarian crises? There are several notable limitations to the Darfur dataset that highlight the constraints of conducting surveys in extreme environments.

The problem of underestimation of mortality is well known to methodologists researching human rights violations, and applies to the Darfur survey as well. Put crudely, individuals killed in any conflict do not survive to tell the tale, or to be selected as a respondent in any survey. Thus, there is an inverse relationship between the percentage of people killed in a community and the likelihood that that attack will be documented in the survey. The proximity of the location of attack to the survey sampling point — the size of the village, and the disposition of survivors — can also impact the probability that a survivor will be sampled. The results obtained by the Darfur Atrocities Documentation Team thus should not be utilized as the basis for mortality estimates; alternative forms of mortality documentation would be necessary to verify the mortality rate within Darfur.

The decision to sample refugees residing in Chad, while a necessity for the security of the survey team, limited the dataset in several ways. Most notably, while broadly representative of refugees in Chad, the data cannot

be considered representative of the IDPs still in Darfur. While there are no indications that the Chadian refugees differ in any significant way from the IDPs, it is still not scientifically acceptable to project their exact experience to the broader IDP population. The respondents were primarily from the region of Darfur immediately bordering Chad, reflective of the fact that such individuals were able to cross the border with greater ease than those further inside the region. In addition, the refugees may represent better-off Darfuris who possessed the resources and means to reach and cross an international border. Finally, reports of events by Chadian refugees were dated because most of them fled the region a year or more prior to the survey.

Compared to other reported atrocities, rape — at 16 percent — was less common, though still alarmingly high. Nevertheless, the actual incidence of rape is likely under-reported due to a cultural bias against discussing sexual violence, and the predominance of male interviewers and translators working on the project.

### Conclusion

The Darfur Atrocities Documentation Project successfully applied survey methodology in the midst of a humanitarian crisis to achieve its aim to reliably document the nature and extent of the events that had occurred in Darfur. Secretary of State Powell's proclamation that genocide was unfolding in Sudan was a bold step to draw attention to the extreme suffering and terror inflicted upon the civilian population of Darfur. Unfortunately, while survey methodology can illumine dark corners of the world, it cannot solve the problems revealed, which remains the ongoing task of the international community.

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### Notes

1. The views presented in this chapter are solely those of the author, and in no way represent the views or opinions of the United States Government or the U.S. Department of State.
2. For the lay reader, some basic definitions of terms used in this chapter may prove helpful. A survey is defined by Scheuren (2004) as "a method for gathering information from a sample of individuals. This 'sample' is usually just a fraction of the population being studied. In a bona-fide survey, the sample is not selected haphazardly or only from persons who volunteer to participate. It is scientifically chosen so that each person in the population will have a measurable chance of selection. This way, the results can be reliably projected from the sample to the larger population." Survey methodology refers to the

rules and procedures used to select the individuals in the sample, and the way the selected individuals are interviewed (e.g., in person, by telephone, through the mail, or over the internet).

3. Sampling methodology refers to the rules guiding the selection of individuals from a broader population (in this case, Darfuri refugees residing in Chad) for participation in a survey. The degree to which the responses gathered from the individuals in the sample reflect the broader population is largely determined by the validity of the sampling methodology used. In an ideal simple, random sample, each member of the population has an equal chance of being selected for an interview.
4. The Humanitarian Information Unit is an interagency division within Intelligence and Research's (INR) office of the Geographer and Global Issues dedicated to collecting, analyzing, and disseminating information on humanitarian emergencies worldwide.
5. Coding of open-ended responses is the process of creating categories of meaningful responses that capture the substance of what the respondent said, and applying numeric values to each category so that they may be tabulated and analyzed by a statistical program.
6. Event refers to a specific incident reported by the refugee. The coding process applied numeric values to a specific list of events, such as killing, rape, destruction of property, etc., so that the percentage of refugees experiencing each type of event could be reported.
7. Response categories refers to the list of predefined events and their associated codes used in the field by interviewers. The list was supplemented in the field at the conclusion of fifty interviews and again during the coding process in the United States, as described later in this chapter.
8. See final page of the "Darfur Refugees Questionnaire (DRQ)." A copy of the DRQ is located in Appendix I of this book.
9. Sampling frame refers to the list of units to be sampled in a survey. This can be a list of all people in the population or a list of other types of population clusters, such as cities or, in the case of this project, refugee camps and the refugees residing in each camp.
10. A stratified random sample as defined by Agresti and Finlay (1997) "divides the population into separate groups, called strata, and then selects a simple random sample from each stratum." In contrast to a simple random sample of the entire population, a stratified random sample ensures that each strata — whether defined by ethnicity, geography, or another variable — is proportionately represented in the final sample.
11. A Kish grid is a numerical table used to randomize the selection of individuals from a group. See page 1 of the "Darfur Refugees Questionnaire" in Appendix I of this book.
12. A syntax is a short string of computer code used to instruct a program, in this case the statistical software package SPSS, to operate in a specific manner.

CHAPTER 5  
The Critical Link:  
Interpreters

HELGE NISKA

**Prologue**

In June 2004, I took part in a seminar arranged by the International Criminal Court (ICC) in The Hague on the use of interpreters in international court proceedings and in criminal investigations in the field. There, I gave a talk on the organization of interpreting services for immigrants and how the training of those interpreters is organized in Sweden. My talk must have had an impact on the organizers of the conference because only a few weeks later I received a telephone call from the Coalition for International Justice (CIJ), which had obtained my name from the ICC as someone with the kind of knowledge and experience in recruiting, testing, and training interpreters that would be helpful to the Darfur Atrocities Documentation Team (ADT) project CIJ was about to undertake. I accepted, and two weeks later I was on my way to Chad.

**ADT Interpreters**

*Locating the Interpreters*

A mission such as the CIJ was proposing would have been impossible without interpreters because few, if any, of the two dozen investigators knew

Arabic, let alone any of the many tribal languages of the refugees they were about to interview. Communicating via interpreters is part of the daily routine for nongovernmental organization (NGO) representatives, aid workers, and others in various parts of the world. Too often, though, bilingual “translators” are recruited haphazardly among people in the vicinity of the organization’s headquarters, and only after some time, if at all, does it become apparent that something has to be done about the interpreting process (or “translation” as it is often called, even if it is oral). The ADT was different. From the inception of the project, the leadership team understood the critical need for properly recruited interpreters, and they were willing to provide the funds for the training of those interpreters. This showed impressive foresight.

#### *Recruitment of the Interpreters*

Most of the interpreters for the ADT were recruited by an assessment team that traveled to Chad a couple of weeks before the regular interviews were to start. On this team were two representatives from the U.S. Darfur Friendship Society. Thanks to these people, who seemed to know every expatriate from Darfur living in the Chadian capital N’Djamena, a large number of people were asked to gather for an information and assessment meeting at a hotel in the capital. Of these people, a dozen individuals were selected as being the most suitable candidates for working as interpreters with the ADT.

In addition to the people recruited in N’Djamena, I did some supplementary recruitment onsite at our headquarters in Abéché to find interpreters in languages that had been hard to find earlier. We finally ended up with interpreters in the following language combinations: English and Arabic (18), English and Zaghawa (9), English and Masalit (4), English and Fur (3), English and Tama (2), English and Jabal (1), English and Dinka (1), English and Maba (Borgo) (1), and English and French (1).

#### *The Interpreters*

From earlier experience, team members knew that male interpreters could be a constraint on women to talk freely, especially about delicate matters as rape and sexual abuse that we foresaw would be dealt with in the interviews. Also, half of the interviewers were female. But despite our efforts, we were not able to recruit any women with the necessary linguistic and educational background here to serve as interpreters.

ADT’s expert on interviewing women who had been victims of sexual abuse, Jan Pfundheller, comments on the problems we faced and how we handled them. (She is a police officer from the United States who had also



worked as an investigator for the International Criminal Tribunal for the former Yugoslavia.)

During the second briefing Helge (Niska) and I held privately with the interpreters, I explained that we had tried to secure female interpreters to conduct sexual assault interviews, but had been unable to find ladies with the language capabilities.

I knew from past experience that success in these interviews could rest with them. Thus, I decided to enlist them as well as train them. It went like this: “I know that you know there have been many ladies and girls who have been victimized in this way. It is very important that the world know of these situations. These types of crimes violate international law. These crimes also have an impact on your country and culture. You have told me yourselves in our talks that, if a lady is the victim of such things, her husband may divorce her and she may become only a servant in her parents home, no longer marriageable and no longer respected.

In order to translate these ladies’ stories, you must be able to do several things. You must be able to repeat exactly what I ask the lady — using the correct translation for the English words in the local language. You must not interject any slang terms of your own. You must be able to be my voice in this matter with these ladies. And when the lady answers my question with her description of events, you must be able to translate exactly what she says into English.

As educated men who speak fine English, this may not sound difficult. But remember, you will hear me ask about things you would never speak of. The ladies will be telling things they would never tell their husbands or families. You know that no woman anywhere in the world wants to be the victim of such crimes.

I will convey to the ladies my appreciation and thanks that they shared these things with me. I will tell them I am sorry these things happened to them. But understand that there is something more important than those words from me. I will leave this place in a few weeks. You will remain. You are their countrymen. You are the educated men of their society. *Your* demeanor, *your* body language, and the manner in which *you* take your leave from these ladies at the completion of the interview will have a significant impact on them, as women, wives, and mothers.

Commenting on the above process and its ramifications, Pfundheller made the following observations:

These men and everyone in the region knew of the atrocities being committed. Many had seen them firsthand. I believe they came to understand just how much we cared, how we needed all of the facts, the verifications, the absolute core of truth. The number of animals stolen, the number of planes, the smells, the exact words, the color of the weaponry. I saw it in Bosnia and Kosovo in interpreters also, people who must have known that the horrors they were hearing were their own history, that the killed child could've been their own child, the rape victim could've been their sister or daughter. The reaction of these men tells me a great deal about the possibilities ahead. Although their skill levels varied, it was their desire and dedication to the task and their willingness to undertake such things that carried us forward.

### *Testing*

According to widely acknowledged professional standards, an interpreter, besides possessing the necessary linguistic and communicative skills, is supposed to be neutral and unobtrusive, not letting his/her personal knowledge of the parties and circumstances color the interpreting. Under normal circumstances, the recruitment procedure of new interpreters can be a fairly long process, including various screening procedures and aptitude tests.<sup>1</sup> Such a battery of tests, however, could not be used in the very short time span at our disposal in Chad. What we did try to do, however, was to test the applicants in relation to some issues of a personal nature that can impact the interpreter's job. This was done in the form of an interview where the aim was to get a profile of the applicant's ability to work as an interpreter, taking into consideration the delicate nature of the job. Among the many issues taken up for discussion were education, ethical standards, expectations in taking the job ("Why do you want to be an interpreter with this project?"), contacts with the immigrant's/refugee's home country, politics (personal involvement in the conflict), religion, ethnicity, attitude toward authorities, the applicant's own situation, and reactions to criticism. Some were touched upon only briefly and some more in-depth depending on the situation.

Obviously, such issues as religion and politics have to be discussed with great caution in order to not violate the personal integrity of the applicant; nevertheless, they are issues that have to be addressed since they can influence the work of the interpreter.

The interview of the interpreters was conducted in English. The goal of the interviewing process was, besides assessing the applicants' knowledge of English, to filter out individuals who were too committed personally or

politically to the conflict and thus might not be able to be neutral as they went about their jobs. It is worth noting that funding was not available to test the applicants' skills in the other languages concerned.

*Joint Training: The Interpreter and Investigators*

It was decided from the outset that the introductory training of both interpreters and interviewers should be done in joint training sessions. The idea behind this was that it was extremely important for the successful outcome of the project that the interpreters know as much as possible about the purpose of the mission and the methodologies of the investigation, including the interviewers' demands on the interpreter. If one knows how a person thinks, it is easier to interpret him or her. As for the interviewers, it was a natural way of learning the dos and don'ts of speaking through an interpreter while at the same time getting acquainted with the constraints that the ethical rules impose on the interpreter's work.

A typical introductory training session for interviewers and interpreters consisted of the following:

1. Introductions of the participants in the ADT (interpreters, interviewers, and staff).
2. Presentation on the focus of the ADT (Project Coordinator Stefanie Frease).
3. Background to the conflict in Darfur (U.S. State Department official).
4. Interviewing: Problems and issues, e.g., sexual assaults (Jan Pfundheller).
5. Interpreting: Rules for interpreting, rules for using interpreters (Helge Niska).
6. Methodology of the investigation, discussion of the questionnaire (U.S. State Department official).
7. Cultural awareness, e.g., social hierarchy in the tribes concerned (local staff members).

Such sessions lasted almost a full day including meal breaks and a necessary mid-day rest. One day is admittedly a very short time for a course in any subject area, but this was the time that was allocated for such. After the introductory session, sometimes on the same afternoon or evening, the investigators and "their" interpreters left for the interview location. But since the investigators arrived in small groups over a period of three days, most of the interpreters actually had the opportunity to sit in on the training session for several days in a row. This was obviously of great value for the interpreters.

The guidelines/rules that were given to the interpreters were as follows:

- The interpreter is neutral and impartial.
- The interpreter should only accept assignments for which he is competent.
- The interpreter must keep confidentiality at all times.
- The interpreter shall convey the message as exactly as possible (concealing nothing, adding nothing, changing nothing).
- The interpreter shall not accept any other duties during the interpreting session than to interpret.
- The interpreter shall continuously strive to improve his professional skills.

It was repeatedly stressed that the interpreters should only interpret (“translate orally”) what the interlocutors (e.g., the interviewers and interviewees) were saying. The interpreter was told that if there is something the interlocutors did not understand, they needed to let the interpreter know this and vice versa. Furthermore, the interlocutors were informed that if they needed clarification, they should ask the original speaker via the interpreter. In other words, the interpreter was not allowed to answer questions on his own.

Satisfactory interpreting requires that the interpreter has (1) good linguistic knowledge in his/her working languages, (2) good factual knowledge of the subject areas involved, (3) knowledge of special terminology, and (4) correct interpreting technique. An additional prerequisite that came up during the training sessions was empathy. The interpreter, while being a neutral translator, must still be able to understand why people behave the way they do, and he must treat every client — in this case, refugee and investigator alike — with respect. This has to do with establishing and maintaining confidence, which is of utmost importance in such sensitive circumstances.

#### *Adjusting the Role to the Circumstances*

It is important to bear in mind that the interpreters were hired to help the primary parties — in this case, the investigator and the refugee — to converse with one another. While the interpreter was a necessary part of the communicative situation, it was the interlocutors who had to decide what the interpreter was to say. Thus, it was made clear in the training session that it was not for the interpreter to decide what is important or unimportant, proper or improper to say.

In this project, we introduced a very important exception to the general rule: In the first contact between the investigator and the interviewee, it was

decided that the interpreter would take an active role in greeting and introducing the investigator to the refugee. The reasoning behind this was that the interpreter, having knowledge about the local customs and rules of politeness, was best suited at creating an atmosphere of confidence and trust.

*Rules for Speaking through an Interpreter*

Most of the investigators had previous experience speaking via an interpreter, but I thought it would be valuable to discuss the ground rules and compare them with the corresponding ethical rules for the interpreters. Among them were the following:

- Use simple language. The investigators were informed that most of the interpreters had not mastered English as they had their first language and, for many, English was their third or even fourth language. Thus, I stated that “you should avoid technical terms and jargon when possible. If you must use technical terms or legal terms, which are necessary to use in the investigation, be sure to explain them or be prepared to give an explanation if the interpreter asks for one.” (The reciprocal obligation for the interpreters, I explained, was to immediately ask for clarification if there was something they didn’t understand.)
- Be clear and concise, speak in short sentences. “The more long-winded you are,” I informed them, “the more difficult it will be for the interpreters to understand you and the higher the risk of being misinterpreted.”
- Speak directly to the interviewee. “Do not ask the interpreter to ask the refugee a question,” I directed them.
- The interpreters are taught to use direct speech (to speak in first person), thus, when a refugee says, “My house was burnt down,” the interpreter will say, “My house was burnt down.”
- Don’t use the interpreter as an expert. “Remember that it is you who is responsible for the material outcome of the interview — not the interpreter.” Again, the interpreter has a corresponding rule: “Remember,” I told the interpreters, “you are the language and translation expert, not an expert on the subject matter.”

That said, an exception to this rule was agreed upon, and that was that the investigators had the right to consult with the interpreter in regard to cultural matters. The interpreters also had a right to intervene when they deemed it necessary, but it was stressed that this right was to be used with great caution.

### *Mid-Term Assessment*

The investigating teams and their interpreters usually spent ten days in the interviewing location, and it was decided that the “headquarters” staff would do a mid-term assessment after each of the teams was in the field for several days or more. These trips were made either by small plane or by four-wheel vehicles. We usually had only a couple of hours at our disposal for each meeting because the teams were anxious to conduct as many interviews as possible. Nevertheless, the investigating teams always seemed happy to meet us and discuss their experiences.

The mid-term assessments were not conducted as joint meetings. Rather, we (the project coordinators, Pfundheller and myself) talked to the investigators and the interpreters separately. In this way we could get the opinions of each, and not only of their own work, but also of the experience of their co-workers. In general, there was a feeling of satisfaction over the results of the work and of the cooperation between investigators and interpreters. There were, though, exceptions. One interpreter had to be dismissed because of a lack of confidence by the investigators; there was a feeling that the interpreter did not only translate, but added his own opinions during the translations.

### *Mid-Term Assessment Interpreter Training*

During the mid-term assessment, we also had time to have a short training session for the interpreters. The session consisted of debriefings that included discussions about each interpreter’s field experiences. The discussion included any difficulties they faced as well as positive aspects and outcomes.

A frequent issue that was broached was how to cope with psychological stress. Difficult situations that the interpreters had encountered or were thinking about were acted out in role playing. Pfundheller took the role of the investigator and one of the interpreters played a refugee. I then commented on each situation from a technical and ethical point of view.

### *Feedback and Debriefing After the Initial Assignment*

Upon the conclusion of the first team’s work and prior to the work of the second team, there was a break in the investigations and everyone returned to headquarters in Abéché. I had thought that the interpreters would be exhausted after ten days in the bush and be grateful for a couple of days rest before the next assignment, but to my surprise and delight they actually insisted on more interpreter training. As a result, the fellows gathered at headquarters for two additional days of training.

The first day, we went through some of the points that the investigators had raised about the interpreting: (1) Respect for all parties. There had been occurrences where the investigator felt that the interpreter had

treated a refugee with disrespect. (2) Interpreting technique. I addressed the critical need to not add, omit, or change anything. This rule had been broken on several occasions. (3) And, neutrality. Again, I stressed not to let their own knowledge or commitment influence the interpreting. This had become a big problem on one of the teams.

We had a good discussion about the necessity to heed the rules and about having the trust of the investigator. Another discussion was on how to avoid getting too involved with the personal fates of the refugees or the political implications of the investigation. To conclude the day, I presented a lesson on terminology, basics about concepts and terms, and I held a discussion as to why terminology is important. Then we examined terms related to medicine and law. I must say, I have rarely met such a devoted group of “students”; you could have heard a pin drop.

The following day we had a long role-playing session, once again with the invaluable help of Pfundheller as the investigator while the individual interpreters took turns playing the role of a refugee.

### **Conclusion**

The investigators almost unanimously expressed their satisfaction with the interpreters’ work and vice versa. Ultimately, the mission was accomplished. But there are a couple of issues that still need to be addressed. Many investigators said that this was the first time they had seen such an effort put into the recruiting and training interpreters for this type of field work, and that it had paid off. In light of that, it is a pity there isn’t an international “interpretation service” agency in case there is a need of a mission of this sort again and thus “our” interpreters would be in line for a position.

Second, having been a teacher at an interpreting school for many years, many of the things that I encountered in this project forced me to rethink a lot of “truths” about interpreter training that I had lived by for so long. At my university, a basic course for public service interpreters (the kind of interpreting that comes closest to the Darfur project) spans a full academic year, plus an additional two semesters each for those seeking a specialization in legal *or* medical interpreting. Be that as it may, I now realize that it is possible to achieve satisfactory, if not perfect, results, and within a very limited amount of time and with a very limited group of people to recruit from, if (1) interpreters are recruited for work on a limited, clearly defined subject area, (2) individuals who meet, at least, the minimum criteria stipulated are recruited, and (3) interpreters and interviewers are trained together, and, in doing so, a feeling of cooperation and helpfulness between the interpreters and the users is achieved. I am quite convinced that even

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from such a modest start, it is possible to develop a good interpretation service.

**Note**

1. In fact, I have been instrumental in developing an ambitious recruitment test for community interpreters in Sweden, which consists of both oral and written tests of general knowledge about the societies and cultures concerned, basic translation skills, etc.



CHAPTER 6  
Moving into the Field and  
Conducting the Interviews:  
Commentary and Observations  
by the Investigators

SAMUEL TOTTEN AND ERIC MARKUSEN

**Introduction**

This chapter provides a discussion of the efforts of the twenty-four investigators who were on the the Darfur Atrocities Documentation Team (ADT). In doing so, it summarizes the predeployment briefings and training, the process of moving into the field, interactions with refugees, the investigators' impressions of the data being collected, problems encountered in the field, post-mission debriefing, some lighter moments, and final thoughts about the mission.

**The Mission**

*Predeployment Briefing and Training in Abeche*

Each four-person investigative team flew into N'Djamena, the capital of Chad, and was shuttled to the desert town of Abeche, in eastern Chad, which served as the operations base for the project. In a rented house on a small compound along a back street in the dusty town, the Coalition

for International Justice (CIJ) welcomed the incoming investigators who arrived in small staggered groups over five weeks in July and August 2004.

The compound consisted of an unfurnished concrete four-room building with a surrounding mud wall and a covered verandah. There was an outside pit toilet that the local staff preferred and one inside toilet (that clogged regularly), a basic shower, and sink. Two local women were hired to cook, and all meals were prepared on top of a small wire basket filled with bits of coal. Eventually, a small propane burner was brought in to speed along the meals. CIJ purchased twenty foam sleeping mattresses from the local open-air market, which were placed in the two rooms the men used for sleeping and in the large room used by the women.

Jan Pfundheller, a seasoned investigator who was both a trainer for incoming teams and a field investigator, recalled, “We also purchased, at a dear price, three rough wooden tables and four wooden benches. They were our desks and tables. The electricity came on at 10 p.m. and went off at 5 a.m. This occurred on most nights, but not all. The heat was always, always stifling, and the flies always present.”

In this compound, the investigators, along with their interpreters, received several hours of briefing and training organized by CIJ. U.S. State Department analyst Michael Orona provided an overview of the history of the conflict in Darfur, as well as the current situations in Darfur and along the Chad side of the Chad–Sudanese border. A Sudanese doctor/refugee discussed the culture and customs of the refugees. Stefanie Frease, the project director, described the overall project, explained the operational plan, provided location assignments, and discussed communications and safety procedures. Jonathan Howard from the State Department’s Office of Research explained the methodology for conducting the interviews and went over the way the eight-page questionnaire (Darfur Refugees Questionnaire) devised for the investigation was to be filled out. He explained that the questionnaire had been developed in Washington, D.C. via a collaborative effort involving members of various nongovernmental organizations (NGOs) and staff from the U.S. State Department. Throughout, he emphasized the importance of the systematic, random selection of respondents. He also discussed the way in which to divide the huge refugee camps into quadrants, how to actually conduct randomized interviews, and how to code the questionnaire (see Chapter 4, “Survey Methodology and the Darfur Genocide”). Helge Niska, a linguistics professor from Sweden, explained the best approaches to use in working with interpreters. He also spent considerable time with the interpreters to ensure they understood the basics of interpreting and taught them vocabulary related to violent crime (see Chapter 5, “The Critical Link: Interpreters”).

Since previous reports had indicated widespread rapes of Darfuran women, Pfundheller, a former investigator at the UN International Criminal Tribunal for the Former Yugoslavia (ICTY) with considerable experience in dealing with cases of sexual assault, provided a valuable tutorial on effective techniques to use with victims of such crimes. The investigators and interpreters were told that most victims of sexual assault have great difficulty talking about such traumatic experiences, and that interviewees may refer to such crimes by using euphemisms (e.g., the victims, themselves, might comment that “they humiliated us” or “they did the worst to us,” while male respondents might say “they tried to marry our women”).

The team members were informed that the approximately two hundred thousand people who were living in the camps in United Nations-issued tents and improvised shelters represented about 10 percent of the total number of people displaced by the conflict in Darfur as of summer 2004. These were the “lucky ones” who had escaped the horror of Darfur and who were now, for the most part, receiving food, water, and other aid from the United Nations and other humanitarian agencies.

Pfundheller noted that:

The toughest challenge in regard to providing a comprehensive briefing was the time constraints we faced, as it was imperative to get the investigators out to the field as soon as possible.

In every case, the investigators had made very long flights across many time zones. They landed in N’Djamena, the capital of Chad, spent from eight to twenty-four hours there waiting for transport to Abeche. They took tiny four-passenger planes to Abeche, which, depending on the wind, took between three and five hours. As soon as they arrived at the compound in Abeche and dropped their duffel bags, orientation began.

The incoming investigators had to deal with jet lag and the impact of the searing heat at the same time they underwent briefings and then immediately headed out to conduct interviews. Fortunately, everyone involved was a highly qualified professional and each of them felt that being on the ADT was something far more important than personal needs.

### *Moving into the Field*

Following the day of briefings, teams of investigators were outfitted with walkie talkies and a Thuraya satellite phone and then departed for their sites — one or more of the ten refugee camps and numerous settlements in Eastern Chad near the border with Sudan. Some reached their sites via

four-wheel drive vehicles, while others were transported by small four-seater aircraft.

Upon reaching their sites, teams set about establishing themselves in various ways. For example, the team sent to the southeastern town of Goz Beida, contacted the sheik of Goz Beida (who had provided the land for the establishment of the massive refugee camp on the outskirts of the village) in order to inform him of the focus and purpose of their work and to seek his imprimatur and support. Other teams contacted the officials of the refugee camp to which they had been assigned. (It should be noted that prior to the team's arrival, an advance team had visited all sites and met with local officials and United Nations and NGO representatives to advise them of the team's impending arrival.)

Once the teams set up their camps, they drove out to the dusty and massive refugee camps comprised of thousands of United Nations tents and various makeshift accommodations, where they met with the *umda* (the head of all sheiks) and the other sheiks residing in the camp to explain the mission and secure final permission to conduct the interviews. The meetings, generally over cups of hot, sweet tea, often took place on a tarp near the shade of a tree or collection of bushes, with all of the leaders sitting around the *umda* and scores of refugees — men, women, and children — standing as they listened to the conversations between the investigators, who spoke through their translators, and the *umda* and sheiks.

Once the introductions were made and permission was granted to work in the camps (as it was in every case), teams of two (an investigator and his/her interpreter) selected a section of the camp and counted off every tenth tent in order to conduct an interview. Once at the tent, if more than one adult was present, the method outlined by the State Department for randomly selecting the individual was used, and the person selected was asked if he/she would be willing to be interviewed. Once a person agreed, everyone else in the immediate area was politely asked to leave. The latter was to provide the interviewee with the opportunity to answer the questions as he/she saw fit without any pressure from family members or outsiders. In only a small number of cases did people decline to be interviewed — some individuals were so ill they did not have the energy or inclination to speak; while in other cases, particularly towards sunset when they were busy preparing meals, some simply apologized and said they didn't have the time to do so. When this occurred, the interviewer–interpreter team moved on to the next occupied tent and repeated the process.

At the outset of each interview, the investigator had his/her interpreter introduce, first, himself and then the investigator. Next, the investigator, through the interpreter, explained the nature and purpose of the interview. The interviewee was informed that the investigator and interpreter

were there to speak with him/her about his/her experiences in the Darfur region of Sudan, and that his/her name, specific identity, and personal information would remain confidential. Further, it was explained that taking part in the interview did not guarantee compensation for losses or deaths experienced by his/her household, nor did it mean that the individuals in their household would necessarily be able to bring specific charges against anyone or testify at trials. Each interviewee was also told that the decision to participate in the interview was entirely voluntary, and that if he/she chose not to be interviewed, then such a decision would be respected.

The interviewer began by asking basic demographic information — name, age, ethnic group, and years of schooling. Next, using a series of laminated maps that had been provided to the investigators, respondents were asked to locate the town, village, or settlement from which they had been forcibly driven. Then, the respondents were asked questions about when and why they had left their villages; if they had been personally harmed (and if so, how); if other members of their family, or fellow villagers, had been harmed or killed (and if so, how); if property — including livestock, bags of grains and seeds, and household goods — were stolen or destroyed; if their home and/or village had been destroyed, partially or completely; if particular groups were singled out for harm; and if any members of their household or village had died on the journey to the camp or settlement in which they were now living in Chad. They were also asked to identify and describe the perpetrators of the attacks, note whether the attackers said anything to them during the attack, and explain why they thought they had been attacked. Finally, they were asked if, after fleeing their homes and villages, they had been attacked again and by whom (and how), and if they had witnessed or heard about attacks on other people and villages.

Interviews lasted between fifty minutes and two hours. The amount of time each interview took depended on the number of incidents the person experienced, as well as the depth and detail with which he or she was able to describe the events. When respondents said that they had been injured, follow-up questions were asked in order to obtain precise details. When respondents said they witnessed the injury or death of family members or fellow villagers, interviewers asked for the name, age, gender, and relationship of each victim; cause of death; as well as how the respondent knew of the injury or death (e.g., personally witnessing the attack, discovering the bodies after the perpetrators had departed, hearing about it from relatives or other villagers).

*Interactions with the Refugees and the Type of Information Gathered*

Many of the stories related during the interviews were difficult to listen to, for not only were the events described horrific, but the countenances, voices, and body language of the interviewees conveyed the great amount of suffering they had experienced. The investigators heard stories ranging from bombings by Antonov aircraft to the beatings of the interviewees and/or family members and others, the shooting of individuals to mass killings, and individual rapes to gang rapes of young women and mothers (often in front of family members). In addition to the trauma caused by the attacks on their homes and villages and the flight to Chad, the refugees were experiencing continuing hardship in the camps, and many infants and children showed signs of malnutrition.

Speaking of her various experiences in war-torn countries, investigator Linda Patrick made the following observation: “I found working in the refugee camps in Chad much harder than working in Kosovo and Bosnia. In Chad, the refugees were in areas that had no resources and, for the first time, I saw people who literally had nothing.” Investigator Debbie Bodkin, a police officer from Canada with extensive experience conducting homicide investigations, recounted:

My very first interview will stay with me forever. Our team was on the outskirts of the village of Bahai and our driver had gone into the town and brought back some recent refugees to speak with us. By the time we started it was dark and my interpreter and I sat on the porch of an abandoned school and did the interview by flashlight and candlelight while swatting the bugs away. The man we spoke to was wearing a dirty and torn *jalabia* and was so visibly sad it was hard to look at him without getting choked up. His pain was so fresh as he told us how he had watched his parents, wife, and child being killed. He cried throughout the interview, as did I. Even though he was hurting so badly, he still was gracious and thanked us for coming to try and help his people. His final words were, “Life is nothing anymore when you have no one.”

Eric Markusen, an investigator who had also interviewed victims in a number of war zones, commented, “For me, personally, the most heart-wrenching aspect of this mission was asking the respondents for details of their murdered relatives — spouses, children, parents, cousins, aunts, uncles. Many lost four or five or more relatives, and recording names, ages, gender, relationship, and cause of death left me emotionally exhausted.”

Speaking about a particularly moving moment, Pfundheller shared the following:

My last interview [one] day was with a beautiful ebony lady named Mohasin. She was clear and unflinching in her answers and conveyed the brutality of the village attack, the gang rapes, the slashing of the women, the killing of the village leaders. Men anally raped, then castrated and bleeding to death. She related the smells, the sounds, her fear, the village panic. She had a long wait in the sun to speak with me and yet she didn't seem to falter. At the end of the interview, I said to her what I had said to so many: "I thank you for speaking with me and telling me what happened. I am very sorry this happened to you." She responded to me in English, "Thank YOU my sister." I was completely surprised, and said, "You speak English." And she responded, "Yes, I am educated in English. Thank you for coming and hearing what happened; you are my sister." She squeezed my hand and then hugged me and walked away toward the tents. I got up, walked to the Land Rover, and got in the back. I put my head in my hands and sobbed.

One refugee told Sam Totten, one of the twenty-four investigators, a harrowing story of giving birth in the mountains while fleeing her burning village. Her husband and son had been killed in the village and then, in the mountains, four of her nephews and an aunt were murdered by Government of Sudan (GoS) soldiers and *Janjaweed* while they (the refugees) were cutting timber to make a shelter. The distraught young woman said, "I feel there is no justice in Sudan, maybe in the whole world. What can I believe in after losing my husband and son? And who will help me with my baby?"

Each investigator endeavored to interview an average of five refugees per day. The goal was for each team of four interviewers and four interpreters to conduct a total of two hundred interviews during their period in the field. In the end, local contingencies — such as bad weather, vehicle breakdowns, and security concerns — resulted in some teams being unable to meet that goal. Ultimately, the ADT conducted over twelve hundred interviews of which eleven hundred thirty-six were conducted using the random methodology and were, therefore, statistically analyzed later.

On top of interviewing between four to seven refugees a day, each investigator worked for about fourteen days consecutively — from around 6 a.m. to 5 to 6 p.m. Investigator Jamal Jafari observed that one of the most difficult aspects of conducting the interviews for him was "balancing a need to process the horrible stories we heard every day with the danger of becoming complacent after hearing up to fifty versions of similarly disturbing stories."

For each interview conducted during the day, the interviewers filled out a one-page “preliminary atrocity field coding sheet” that included approximately three dozen types of “event codes,” such as reports of killing of family, nonfamily, and mass execution; rape of self or others; abduction; beating; property destruction (partial or total); property theft (e.g., food stores, livestock, household goods); racial epithets; aerial bombing; and death caused by the displacement and flight to Chad (e.g., starvation, disease, injury). There was also approximately one dozen “perpetrator codes,” including such categories as Sudanese soldiers, *Janjaweed* militia, rebel militias, and foreigners.

*A Sample of the Refugees’ Experiences Related in the Interviews*

As previously mentioned, all refugees were asked to describe the attacks against their villages. What is included herein typifies the sort of stories that each investigator heard throughout his/her time in the field.

A 25-year-old Masaleit woman from West Darfur recalled the following:

They attacked our village at 6 a.m. First, I saw three black and green helicopters. They were shooting from the helicopters. Shooting villagers at random as they ran. I saw men, women, and children being shot and falling down. Then came four vehicles (green and black [GoS] vehicles). Men in cars wearing military uniforms. Then came about eighty horsemen [*Janjaweed*], also in same uniforms, same guns. [The attack was] six hours long.

Totten noted that the first interview he conducted was with a 23-year-old woman who related that she had been captured, beaten, and made to dance a lewd dance by several soldiers. She wouldn’t talk about the specific harm they had done to her, but her extremely sad countenance and tentativeness to speak indicated that she had experienced more than she was willing to tell. The GoS soldiers called her a “Tora Bora (a term used to infer that the person supported the Black African Sudanese rebel groups) prostitute.” Her cousin and her cousin’s twelve children were killed in front of her.

Totten learned of numerous massacres that were carried out in an area north of Mukjar. “I was informed by one interviewee (and heard similar stories from others) that about one hundred fifty to one hundred seventy-five people were blindfolded, tied up, and put on trucks. They were told they were being taken to a town called Garsila, but in fact they were taken just north of Mukjar to a valley where they were unloaded and machine-gunned.”

Investigator Larissa Wakim reported that:



One theme that came up in a number of interviews that I conducted, although I didn't hear this in many other investigators' accounts, nor have I read about it in other reports, was an accusation of gas attacks. Several interviewees spoke of oil drums dropped from airplanes, which exploded on impact. A green/blue gas was released and victims' eyes turned a bluish color before they died. Significantly, one man buried a number of bodies that he claimed had been killed by the gas, as they had no visible injuries or other obvious reasons for death. He, himself, had physical symptoms (including changed eye color), which he attributed to the attack. I am keen to know if this was something unique to the area where the people I interviewed came from or if others have heard similar accounts.<sup>1</sup>

Jafari remarked, "Like everyone else, I heard many horrendous stories. That said, some that stuck out included a woman who saw her neighbor's baby thrown up in the air and speared on a bayonet. She also witnessed the baby's father set on fire while still alive." Totten also reported the following:

A man from Ouorm reported to me that his village was attacked by Antonov airplanes and helicopters. "The Antonovs threw fire from above." GoS soldiers broke into his home and immediately shot and killed his son and shot his nephew, who ultimately died in Chad from his wounds. The soldiers were shouting, "Kill Nuba." The soldiers also took one of his wives and his five sons whom he never saw again and does not know if they are dead or alive. The man told me, "I lost everything but the clothes I have on now."

Totten was also informed by an interviewee that "those who fled their own towns after they were attacked by the GoS and the *Janjaweed* attempted to enter Delj, a town known to have water, where they were attacked and killed by the *Janjaweed*. The *Janjaweed* actually hid near the wells and waited for people to appear so they could kill them."

### *Rapes*

While it is highly probable that the incidents of rape were under-reported, every investigator and interpreter heard stories of rape by GoS troops and the *Janjaweed*, which took place in the victims' homes, in the dirt pathways of their villages, and/or in the mountains where the survivors had fled. Speaking of such, Pfundheller related the following:

On our third day at Breidjing refugee camp, Brent (Pfundheller's husband, a veteran criminal investigator who also served on the ADT) and his interpreter spoke with one of the *umdas* in the camp. During

the conversation, Brent asked if there had been sexual assaults in the *umda's* village. The *umda* confirmed that there had been many, and that although some of the victims had died as a consequence of the rapes, others from the village were in the camp. The *umda* said, "Our women have suffered greatly and suffer still. Please speak to them yourself."

The next morning, my interpreter and I accompanied Brent and his interpreter to the *umda's* tent. He had been called away to a meeting, but had left a sheik behind to speak with us. The sheik explained that the women were willing to talk with us. I told him that we would drive to a spot nearby just on the bank of the *wadi* where there were not so many people. We would wait for the ladies to come to us. He agreed and said he would tell them.

So we went down to the *wadi* and found two trees to sit under. I asked Brent to stay as I thought perhaps there would be eight or ten women and with that many I would need to split the interviews between us. Old ladies nearby came quickly to loan us their "*bombas*," the small stools of wood and woven goatskin they sit on to cook. [Extremely] grateful for their kindness, we settled in and waited. Soon we began to see women approach, walking over the small rise, toward us. They walked straight and tall, their bright clothes fluttering. And they came and came. I handed Brent my camera and told him to take some pictures, saying, "I think this is something very unusual."

Almost three hundred women and girls walked up in silence, and began sitting around me. I counted seventy-three who sat close in a circle under my tree.

Then, about seven to ten yards beyond, there were two hundred-plus more. The sheik approached and said, "Here are the women." I said, "Were all these women and girls raped?" He said, "Yes. These under the tree are willing to speak with you today, the others are a bit afraid to speak with you, but they wanted to come also so that you will know they also suffered in this way."

Knowing it would never be possible to interview such a group, but knowing I could not simply pick a few and send the others away without comment, I spoke with them. "Ladies," I said, "you honor me today by coming to speak with me. I will explain who I am and why I am here. My name is Jan and this man is Brent. We have come from America. America cares very deeply about what is happening in Darfur. My government has sent us to listen to you so you personally can tell us what is happening in Darfur. One of our government leaders, Colin Powell, came to Sudan, and he wants to know more about what has happened to you." (These silent ladies all murmured to each other at this point — clearly they considered Colin Powell's

concern to be important). “I understand that you have all suffered and are suffering still. I would like to hear from every one of you about what has happened. That will not be possible, as we are here for only a very short time. So, I would like to speak to about ten of you, if that is possible, and if you agree. But from all of you I ask that you take with you my personal regards and the regards from America. I cannot promise you more food distributions or more medicine for the children. I cannot tell you that you will return to your homes. I can only promise you that what has happened to you will be told to my government, and then perhaps to the world. After I choose the ladies that will be interviewed, I must ask the remainder to go some distance away so that these ladies might have privacy in their interviews with Brent and me. But they will need your presence and your support later and you will need theirs. Thank you ladies.”

Before the crowd of women left, I walked through the crowd thanking them. They held my hands, rubbed the skin on my forearms and touched my hair. We then picked several ladies at random and began our interviews, with the “ladies in waiting” sitting a distance away and approaching as their turns came.

A glimpse into the horror experienced by victims of rape is provided by excerpts from two interviews conducted by the ADT. When asked by an investigator what had happened to her and if she had been physically harmed in the attack on her village, a 25-year-old Masaleit woman from West Darfur described her ordeal: “Sixteen of us women [were] caught and raped there. I saw others being raped. [One was] raped vaginally, her breasts slashed. [A] stick was shoved in her vagina. [She was] very pregnant at the time. Four soldiers held her hands and feet, [and] took turns. [They also] shoved sticks far inside of her.”

A younger Masaleit woman, also from West Darfur, related the following to an investigator:

I was running after this [attack] carrying my baby and my three-year-old daughter. Two pickups, Toyotas, followed me with soldiers. A soldier took my baby son and said, “I will kill him.” I told the soldier, “You killed my husband, don’t kill my boy.” One other [soldier] said, “Don’t kill the baby.” My baby was laying near me, and my daughter was crying and trying to come to me, and they kicked her away. I was knocked down, and the first soldier had sex with me from the front. They were saying the government from Khartoum sent [them] and we [were to be] killed and raped and cleaned [from] their land. Ten soldiers rape[d] me and left me. I was bleeding and could not walk. They did this to me for nearly three hours. I was laying there while

my village burned. A man fleeing from another village found me and took me and my children to Masteri.

All my village — maybe three hundred fifty houses — burned. We had one hundred cows, ten goats, 20 million Sudanese pounds — all taken or destroyed. The village was not defended, and no rebels [were] in the village.

*Beatings, Torture, Injuries, and the Residual Effects*

Beatings and torture were common occurrences as the GoS and *Janjaweed* attacked village after village, breaking into homes, accosting people or chasing them, and tracking them down in surrounding fields, hills, and mountains. Many refugees continued to suffer both physical and mental anguish long after the atrocities to which they had been subjected. As one investigator, Larissa Wakim, reported:

I interviewed one gentleman who had been detained and tortured by GoS forces in a prison after fleeing his village, which had been attacked. When he talked about the treatment at the prison, he became visibly upset; he was unable to look at either me or my interpreter; he was silent for short periods of time to collect his thoughts, and he ceased talking when people walked past and would not continue until they were gone and then he could talk freely again. He avoided questions about what had happened to him in prison, and I began to suspect that he had been sexually molested by his captors. He had been with a group of prisoners, and although he said that they had been beaten, he claimed he had not been. I pressed him gently on this, to clarify what he was saying, but he confirmed his story and was not willing to go into any more detail.

He had an excellent memory and had provided very detailed observations about the attack on his village and aspects of his detention. (This was another signal to me that there was more to his story than he was willing to share because of the lack of information about particular aspects of his incarceration in prison.) We explained that with the information he had given us, we would be in a stronger position to create increased international pressure on the GoS and hold accountable those responsible. As we concluded the interview, we told him that if there was anything else that he remembered and wanted to add he could. He declined, and thus we thanked him and left.

Several hours later, we were wandering through the camp at the end of our day, and the man came up to me and said he had things he had forgotten and wanted to add to his testimony. Firstly, he said he had forgotten to mention that when the town he had been captured

in was itself attacked, he had seen helicopters and Antonov planes. Secondly, and more importantly, he wanted on the record that while in prison he had been mistreated — he had suffered a “man’s beating.” My interpreter was sure by the choice of words (and what we could see in the man’s body language and demeanor) that he had indeed been sexually tortured in some way.

This incident deeply touched me. He was so ashamed, so embarrassed, so determined to erase those memories from his mind that he had been unable to talk about them in the first interview. Yet, he had obviously spent the afternoon thinking about the purpose of the project in collecting statements and had come to the conclusion that disclosing to us what had happened to him was worth that discomfort and pain. It was just such a poignant illustration of someone who was suffering enormous emotional and mental anguish and yet was prepared to open up to the system in the hope it would help him and others like him find some solace and justice.

Speaking of an interviewee’s story that had touched him deeply, Jafari commented that:

One man’s story stuck with me particularly. He had lost a leg below the knee in one of the attacks. What stuck out was the fact that he made his living as a driver when nearly everyone else I met was a farmer. Here was the one man who definitely needed two legs for his livelihood and it’s clear that even if he could return to Darfur, his life would never be the same. It wasn’t the worst story I heard, but the most bitterly ironic.

#### *Destruction of Livelihood*

Any property that was not looted by the GoS and *Janjaweed* was destroyed by them. Houses and entire villages were burned to the ground, the carcasses of dead animals and human bodies were thrown into wells to poison them, and crops were razed and orchards chopped down.

A refugee who had been a man of great wealth in his village reported to Totten that the *Janjaweed* entered his orchard around midnight and cut down the entire grove that he had dedicated his life to planting and tending — “one hundred mango trees, twenty-five orange trees, and ten lemon trees.”

Most of the refugees interviewed had a very detailed memory of their losses of livestock — how many camels, sheep, goats, and donkeys had been stolen by the GoS or *Janjaweed*. The same was true for the number of sacks of grain, vegetables, and other goods stolen and/or destroyed by the GoS and *Janjaweed*. Totten also recalled interviewing a middle-aged man who had been extremely wealthy in Darfur:

He owned scores of cows, donkeys, and camels, had huge orchards, and even owned a wide array of mechanical devices that he used in his farming. As I got up to leave following the interview, the man motioned toward the inside of his tent, which was totally empty except for a cot and one blanket — it was, in fact, one of the barest tents I observed out of the hundreds that I had seen in the camp — and simply asked, “What am I supposed to do now?” The refrain has haunted me for all these months, for I had no answer then, just as I have no answer now.

Reflecting on her contact with the children in the refugee camps, Vanessa Allyn, who served as a field-based coordinator for the CIJ project, observed that, “I can’t help but think of how the children — reduced to nothing, with little food, clothing, or shelter — always seemed to be smiling. They were so resilient, and such an inspiration to see (especially for someone such as myself who lives in a very decadent yet dissatisfied culture).”

#### *Slurs Directed at the Black African Sudanese Population*

Time and again, investigators were informed by interviewees that the GoS and the *Janjaweed* called them disparaging and dehumanizing names, and also made comments that made clear they were not welcome in Sudan. For example, one man, who lost everything except the clothes on his back, reported that the *Janjaweed* screamed at him: “You are not a real Sudanese, you’re black. We swore to drive you away from this country on al-Bashir’s [the president’s] orders. We are the real Sudanese. No blacks need stay here.” Another man, whose father and mother were killed in their village, as well as the man’s baby son, was told by the *Janjaweed*, “We are going to cut off your roots.”

A refugee told Totten that following an attack on his village by Sudanese planes (Antonovs), the *Janjaweed* swooped in on horseback, and GoS troops raced in in land cruisers and burned the entire village down, killing over fifty people. As the *Janjaweed* carried out the attack, some screamed, “The President of Sudan ordered us to cleanse Darfur of the dirty slaves in order to establish the beginning of the Arab Union.”

#### *Problems Faced by ADT Personnel in the Field*

Investigators and their translators, as well as other ADT personnel, faced a variety of problems. That is understandable in light of the fact that temperatures ranged from the relatively balmy 90 degree Fahrenheit (30 degrees Celsius) in the south to the searing 130 degrees Fahrenheit (50 degrees Celsius) in the north (which is located on the edge of the Sahara Desert), and that some groups had to cross flooded *wadis* and/or were located in areas

in which torrential downpours were a common part of the day. Among some of the many problems encountered by various groups and individuals were, for example, various ailments (heat prostration took down several investigators and interpreters, but only for minimal amounts of time, and numerous people suffered from diarrhea and high fevers); two broken axles; numerous four-wheel vehicles stuck in flooded *wadis* (which, sometimes, took days to free up); difficulties with translators (a few translators were not very cooperative, including one who seemed to have an “agenda”); and key equipment that was sent to the wrong destination. Linda Patrick, who was based in northern Chad, stated that:

Certainly, a major problem was the 130 degree heat without any relief. [Before leaving home,] not knowing precisely how to prepare for those conditions or what to bring was of considerable concern. Water and rehydration was a key factor to survival and performance out in the heat. These unknowns for the first team [in the field] was a factor in settling into the actual interviews.

In regard to difficulties faced, Pfundheller provided the following observations:

The first day I arrived in Abeche, I went into the field with two officials from the U.S. State Department, one representative from the American Bar Association’s CEELI Program, and three interpreters. We went to Kounoungo Refugee Camp. Now I know you don’t drink the local water, but I had made the mistake of going to a tent for an interview and leaving my water bottle in the truck. Having ready access to your water bottle is important, especially if you’ve poured powdered Gatorade into it. It allows you to turn down any offer of anything else by saying, “I am drinking this special medicated water.” This is greeted with nods of understanding. But there I was without the water bottle. The host offered me a cup of water. I could not say no without offending, so I took it. After several minutes, the host inquired if the water was all right. Again, not wanting to offend, I sipped about one tablespoon of water. Oh what a mistake. I followed that up with two or three liters of bottled water. But by midnight I was in the throes of the worst diarrhea I’ve ever suffered.

It didn’t help that we were staying in the house of the local “governor,” which was gracious of him, but we found the place to be full of bugs, devoid of furniture, and equipped with a western toilet that looked the part but had never been flushed. And there was no toilet paper. The next day I was taken back to base. I have no memory of that day other than our wonderful Sudanese doctor coming to me

and telling me to immediately take Ciproflaxin (Cipro) or I would be in grave danger. I now have a deep respect for Cipro. It is a miracle, really.

Totten faced a different set of problems as a result of being caught out in the open during a sandstorm.

Early one morning while interviewing a refugee, winds began kicking up. At first, the wind was simply an annoyance as it resulted in people scurrying about the camp picking up loose items that were being blown about. But within minutes, the winds became fierce, creating funnels of sand that whirled through the camp, eventually engulfing the entire camp in a thick gauze of swirling sand. Rushing for the interviewee's open tent, the respondent, my interpreter, and I crawled in the tent, and quickly battened down the flaps, but even that did not stop the sand from blowing in and swirling around the tent. Within a half hour or so the winds died down, but the damage had been done. From that point on, I coughed incessantly, spitting out globs of sand-coated phlegm, and at night when I tried to sleep I would choke on the sand and phlegm in my lungs, and the only way I could avoid that was to prop myself up and try to sleep in a sitting position.

Once I got back to the States, I called the Center for Disease Control in Atlanta and was informed that the sand would eventually work its way out of my system in a month or so, which, indeed, it finally did.

I often find myself wondering how the refugees are managing, as they face such natural occurrences on top of everything else they are dealing with.

In regard to various teams' experiences with the flooded *wadis*, Pfundheller related the following.

By the time we were about to complete the mission, the rains had come. Torrential downpours. You would see it coming in the afternoon from far away, the black sky rolling toward you, then the lightning and thunder. We were out at border settlements, planning to return to Abeche the following day when the sky grew dark. The drivers explained that we were facing a major storm, and that staying an extra day would put us in danger of being stuck for several days. Since our return to Abeche was to be followed by an immediate departure to N'Djamena and then home, we decided to make a run for it. We quickly packed what was absolutely necessary and left the rest of our food, medicines, extra clothing, and most of the water



with lovely Australian missionaries and their three children we had shared a compound with for two days.

When it began to rain, it just poured down. The sky was pure black. We had three cars and we stayed as close together as possible given the poor visibility. At each *wadi*, our lead translator/fixer/miracle worker would leap out, walk the *wadi* to determine if we might make it, then wave us across. There were moments of complete silence followed with shouts of joy when we made it. But when we reached Wadi Mura at about nine o'clock in the evening, we clearly knew it was the end of our luck as the *wadi* had become a raging river. A supply truck had already attempted to cross, but had been carried fifty or so yards down-stream where it tipped over spilling all the cargo. Other travelers were stuck with us on the east side of the river. The mud hut selling tea with camel's milk on our side of the wadi was grateful for the upswing in business.

We were forced to settle in for the night. The interpreters warned us not to venture away from the vehicles as the rains would bring snakes to the riverbanks and we might not see them until it was too late. So, stiff and exhausted, we did what we could to sleep in the vehicles. We shared our Land Rover with two lovely U.S. Congressional staffers visiting the region (one of whom, I recall, worked for Congressman Henry Hyde [R-IL]). They were upbeat and uncomplaining and completely suited to the task.

In the morning, we attempted to cross the wadi. Every vehicle that went before us got stuck. Thankfully, we had paid for "insurance." Insurance on the east side of Wadi Mura consisted of \$80 (U.S.) to the group of locals. If you paid it in advance, it was \$80, if you failed to pay it and got stuck, it would be double. Our driver said, "Pay it." We did and we were glad. Only fifteen yards from the east riverbank and we were stuck. The strong pressure of the water against the vehicle was a concern, especially as we looked downstream at the supply truck on its side. Soon the water was pouring through the Land Rover — four inches or so deep on the floorboards.

The insurance paid off, as the gang of river men rocked us and pushed us — with a dozen of their number pulling on a thick hemp rope to inch us forward.

In spite of the major logistical challenges, none of the hurdles proved insurmountable. This was undoubtedly due to the outstanding planning that went into the project, the Herculean efforts by CIJ staff in Washington, D.C. and the CIJ staff based in Abeche (and especially Stefanie Frease who served as coordinator of the entire project in Chad), and the *esprit*

*de corps* felt by those involved with the project. Ultimately, none of the obstacles impeded the group's ability to reach the goal of collecting nearly twelve hundred interviews in Chad.

*Impressions of the Data Being Collected*

No one on the ground, of course, knew which elements of which crimes would be met by the data being gathered in the field. Nonetheless, in the evenings, team members shared and discussed some of what they were being told by the survivors. In regard to the issue of rape, Allyn commented that:

One thing that really stood out in my mind was the clear intent to use rape as a weapon of war. The perpetrators knew that raped women would be cast away and/or that having Arab babies would tear at the fabric of the culture. After hearing a large number of rape and sexual slavery stories, it started to seem like killing the women would have been too simple, that it wouldn't have inflicted enough harm on the group as a whole. The high incidence and prevalence of rape in this situation seemed horrifyingly purposeful.

Also, the targeting of males and male children seemed to indicate an attempt to eradicate a significant portion of the group and endanger the future existence of the group as a whole. The targeted killing of one gender (coupled with the debasement of the other), destruction of water sources, food supply, and shelter (in extremely harsh conditions) were all calculated efforts to make survival very, very difficult. When all of these factors began to coalesce, it didn't take long for me to see that what was occurring was definitely a case of crimes against humanity, if not genocide.

Patrick noted:

All of the stories, no matter which camp we went to or where the victims were from in Darfur, related the same sort of information. The young men in all the villages were taken, beaten, killed if found, as if the attackers were trying to wipe out that generation of young men. Many of the young girls were beaten and raped as if the attackers were trying to impregnate them with their own traits.

Pfundheller reflected:

During the course of the interviews I conducted with refugees, and in my conversations with my colleagues about the interviews they had conducted, it was so clear to me that what had taken place, and was continuing to take place (intentionally directing attacks against

a specific part of the civilian population — the black African Darfurians; willful killing; unlawful deportation and transfer of many tens of thousands; intentionally directing attacks against buildings that are dedicated to religion; committing mass rape, sexual slavery, forced pregnancy) was clearly, completely, and undeniably genocide. I don't think one of us left there thinking, "It's not as bad as I heard before I came." I think we all left wanting to scream at the world to "hurry, hurry up and make this stop. Can't you see what's happening here, for God's sake? Don't let this happen again."

While Samuel Totten and Brenda Sue Thornton, the two investigators who were based in Goz Beida with the first out in the field, discussed the data they collected and pondered how the U.S. Department of State would ultimately define the atrocities that were being perpetrated in Darfur, they were of a like mind that whether they were called crimes against humanity or genocide, there was a dire need for the international community to act immediately to stanch the killing, rapes, beatings, and the wholesale theft and destruction of property.

#### *Lighter Moments*

While the fieldwork was demanding, the weather trying, and the findings sorrowful, most experienced some lighter moments in the field that helped to relieve, even if only a little, the heavy burden and strain felt by most. Many of these "lighter moments" resulted from the investigators' interactions with the children in the camps, who, despite the hardships they had faced in Darfur and now in Chad, were relatively cheerful, extremely friendly, and happy to see the friendly faces of foreigners.

Of her interaction with the children in the refugee camps, Patrick remarked:

Meeting the children and seeing how they can adapt to anything and be happy with the smallest of pleasures was a moving experience. After the interviews, the children would gather around to learn English and wait for an empty water bottle, which they would put to a hundred different uses. I saw children making toys from tin cans, rubber thongs, and pieces of wood, and they were extraordinarily functional toys and carts. I met some young boys who were making bird catchers out of ordinary items, a small branch, donkey hair, and a piece of fabric. They could actually catch birds with them.

Every day after interviewing, Totten looked forward to engaging in banter with the children of "his" camp:

Every evening, my field partner, Brenda Sue Thornton, and I would meet back at our land cruiser, and before heading back to our campsite we'd interact with the children who gathered around us. To entertain them, I generally engaged in one of two activities, which they seemed to look forward to each day with great anticipation. The first involved my asking them in a Bugs Bunny-like, cartoonish voice, "Da, what's up, doc?" which they'd repeat in unison and giggle and laugh uncontrollably.

The second was to teach them how to play tag and then play it with them. I was always the initial "it" and when I lunged to tag someone, they would scream and careen off and scatter in all directions.

Over and above seeing the children's wonderful smiles and hearing their great waves of laughter, one of the most edifying aspects of these moments was always noticing a ring of adults on the periphery of the group smiling at the antics.

Speaking of some "down time," Pfundheller commented that:

One afternoon about two weeks into the mission and between field visits, Helge Niska, Vanessa Allen (our absolute ace intern), an interpreter, and I were sitting on the verandah, swatting flies, sweating, listening to Finnish radio (in Finnish, which only Helge understood) and passing the day away. The interpreter was explaining what he knew of America — especially the World Wrestling Federation. We, in turn, explained baseball. And then we taught him the "alternate" national anthem ("Take Me Out to the Ball Game"). We sang and laughed and sang. It was wonderful.

Bodkin emphasized the importance of the friendships that developed among her fellow investigators and their interpreters:

Combining the unbearable heat and the emotional turmoil from hearing the heart-wrenching stories, the time in the field could have gotten the best of me if it weren't for the wonderful friendships that developed between me and the other members of my team. It was amazing how the tragedies we listened to all day somehow forced us to become like friends who had known each other for years. We shared very personal things about ourselves and could also sit together in silence quite comfortably. It was like leaving family members when it was time to go home.

### *Debriefing Sessions*

As each set of team members concluded their work in the field and returned to the base camp in Abeche, they were debriefed about the data

they collected, any difficulties encountered, the usefulness of the questionnaire, the conditions in the camps, the cooperation of local officials and NGO personnel, the work of the interpreters, et al. Copious notes were taken during each debriefing session and many suggestions made by the first team were implemented for the benefit of the second team.

### **Final Thoughts**

Despite the difficult living and working conditions, many were reluctant to leave the field, as they had become even more dedicated to doing what they could to help end the killing and other crimes being committed in Darfur.

Speaking for herself, but voicing the sentiments of many investigators, Patrick said, “To discover the truth and be able to provide that to our own government, who then passed it onto the UN Security Council gave me a great sense of accomplishment.”

Jafari commented, “I was overwhelmed by the thanks received from some of the victims and local leaders for the work we were doing, but at the same time this was accompanied by guilt, knowing that even if the project had a great impact on United States policymakers, there was a good chance that not much would really change on the ground in the refugee camps or in Darfur.”

Wakim commented that:

The hardest part of the job for me was the feeling that we were fiddling while Rome burned. When my interviews echoed the same stories that I had read about in countless reports in preparation for the trip, it really made me wonder what on earth could come of our work. And even if it did lead to a definitional decision on whether genocide was occurring, would it be enough for action to actually be taken?

Pfundheller offered the following observation:

I am so grateful to the Sudanese victims of this terrible crisis who were willing to give up time in their day to tell me what happened to them. Their lives have become so incredibly difficult. Every day is a struggle to survive in harsh conditions, unwanted immigrants in a foreign land, at the mercy of the elements, disease, hunger, and poverty. And they live with the memories of seeing their children/families/communities destroyed by their own government forces, who should have been protecting (not attacking) them. Just as all of the investigators did, I spoke with the victims first-hand. I didn't read the account of the horrors and wonder what license had been taken. I didn't hear from the person who heard it from the victim. I

heard it from the victims themselves. And having heard it, knowing in my heart that I can and will stand up and say, “this happened” to whoever will listen, to whoever cares, and to those who do not. To give a louder voice to the victims and their horrific truths.

As for the international community’s reaction to the findings of the ADT, Jafari observed, “I can hardly put my disappointment into words. I can’t say at all that I am surprised. Sadly, I don’t think the international community has learned one lesson from Rwanda. Until there is a new mechanism empowered to react quickly to such situations, the response will likely be the same with the next genocide.”

Allyn speaking about the issue, commented:

The reaction has been appalling. I realize the machinery of the international community moves slowly, but there is no excuse for such an inadequate level of response. Not only is promised funding for aid not being delivered, but the reluctance to enforce more serious measures (such as a no-fly zone) will likely be an embarrassment in the future. The self-interest of UN Security Council members, be it China with oil interests, the United States with North–South peace agreement issues, or general international politics, are a shame upon each of them and the United Nations system as a whole.

I also feel that the reliance on AU [African Union] troops as some sort of piecemeal solution is an excuse to do less; there aren’t enough of them, they have no mandate to stop violence perpetrated against IDP [internally displaced persons] camps or the refugees themselves (rather they are mandated NOT to intervene), and they aren’t adequately supplied. It seems to come down to the same old racist/colonialist international attitude toward the “dark” continent: “It is an African problem, let the Africans solve it, and if they don’t solve it, the people who are dying are just Africans anyway. Let them go on slaughtering each other until they learn their lesson or all die, but we aren’t going to waste our precious western resources or lives on something like hopeless, chaotic Africa.”

Speaking in a similar vein, Wakim observed that:

The cynical side of me is not surprised [about the failure of the international community to undertake meaningful action to stop the killing and dying in the months since U.S. Secretary of State Colin Powell declared what was taking place in Darfur constituted genocide]; just, once again, disappointed by the international community’s inaction in the face of atrocity. Then, the human side of me feels helplessness, despair, and pure rage at our inability to raise ourselves’

our neighbors', and our families' responsiveness into action that would translate into concrete improvements for Darfurians.

Bodkin, from her perspective as a homicide investigator, offered the following comments:

My heart breaks knowing that even though our work was successful in many ways, the horrors are still continuing now as I write this. I know there are politics and money involved in making changes which causes things to be done slowly, but there is something terribly wrong with our system if the rest of the world can't step in quicker and make the killing stop. As a police officer, when I am at work back home, once I obtain the evidence to show an offense is being committed, action is taken immediately to stop the offender and bring him to justice. I guess I naively believed that this would happen in Darfur as well.

Totten, a scholar of genocide, asserted, "If the international community continues to waver and equivocate, there is no doubt in my mind that ten years from now the international community will apologize to the victims of Darfur just as it did recently to the Tutsis on the tenth anniversary of the 1994 Rwandan genocide. But such apologies are as hollow as they get when something could have and should have been done to save the people in the first place."

Finally, reflecting on the mission, investigator Brenda Sue Thornton wrote:

Today, virtually one year later, a year after our work in Chad, I reflect back on one of the women interviewed, her child, and all of the other refugees that my partner Sam Totten and I interviewed. And I think that they are all still there, if alive, under the blazing sun, waiting daily for the world to understand what happened and to send help. The woman probably has no idea where her other child is and no idea as to whether help will ever come. When asked about the project, the work that we did, this is the aspect I find the most troubling and saddening. Despite the documentation, despite countries knowing what went on and the status of these people, they are still there — waiting.

## Note

1. Another investigator, Samuel Totten, a member of the same four-person team as Larissa Wakim, also was informed about gas attacks from aircraft. Notably, though Totten and Wakim were on the same team, they were each based at a different refugee camp — Totten was at Goz Beida and Wakim was at Goz Amer, both of which were located in southern Chad. The proximity of the refugee camps suggests that the refugees Totten and Wakim spoke with likely fled areas that were also within proximity.

PART 3

## The Genocide Determination



CHAPTER 7

## Making the Determination of Genocide in Darfur

STEPHEN A. KOSTAS

### Introduction

During the summer of 2004, swelling domestic United States and international concern about the unfolding catastrophe in Darfur focused on whether the world, but particularly the United States, which had been so vocal about suffering in Sudan, would intervene to stop the atrocities. As in the past, much attention was also focused on whether governments would call the crimes by their proper name.

The reluctance of the Clinton administration to use the term genocide in relation to the former Yugoslavia and especially Rwanda in the mid-1990s had been roundly criticized and there was pressure not to make that mistake again. Commentators and scholars traced the source of that reluctance to a fear that once the administration did, it would face powerful pressure to intervene militarily. By late spring 2004, the Bush administration alternately described the situation in Darfur as a crisis, catastrophe, and ethnic cleansing, but resisted using the “g” word. The Legislative Branch, however, did not share the Executive Branch’s hesitancy. In mid-July, both houses of Congress passed concurrent resolutions identifying the situation in Darfur as a genocide and calling on the Bush administration to do so as well.

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The views expressed in his chapter are attributable to the author alone and do not necessarily reflect the views of the ICTY or the United Nations.

At the time, the U.S. State Department had teams of investigators<sup>1</sup> organized by the nongovernmental organization (NGO), the Coalition for International Justice (CIJ), on the Chad-Sudan border to interview people who had fled Darfur. The data collected by these teams of independent investigators, including a handful of State Department and U.S. Agency for International Development's (USAID) Office of Transition Initiatives (OTI) staff, was to be used by Secretary of State Colin Powell and his analysts to determine whether, in fact, genocide was occurring in Darfur.

In an effort to better understand what led the State Department to send investigators into the field and, ultimately, for Secretary Powell to reach the determination of genocide, Eric Markusen and I conducted two telephone interviews with Pierre-Richard Prosper, former U.S. Ambassador-at-Large for War Crimes, and I interviewed Lorne Craner, former Assistant Secretary for the State Department's Bureau of Democracy, Human Rights and Labor in person, in November 2005.

### **First Warnings about Darfur**

By all accounts, Andrew Natsios' frequent warnings of a growing humanitarian crisis in Darfur first alerted the U.S. Department of State (State Department) to the gravity of the situation there. Natsios, head of USAID, made nine trips to Sudan between late 2003 and spring 2004 and repeatedly warned key officials at the State Department that conditions in Darfur were grave and deteriorating. His equally focused Assistant Administrator and longtime Sudan hand, Roger Winter, also made multiple trips to the region. In late October 2003, Natsios briefed the State Department about the murder of nine Sudanese USAID relief workers in Darfur.

In the view of many international actors at that time, Darfur was a humanitarian catastrophe, but the ethnic component of the attacks was not fully appreciated. By late spring 2004, however, UN Undersecretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Jan Egeland (2004), warned the Security Council that the situation amounted to ethnic cleansing — a term with uncertain legal meaning, if any. The State Department itself estimated in June that more than three hundred thousand refugees would likely die from a lack of food and medicine without an immediate international response (Natsios, 2004).

Initially, the State Department had tried to address the mounting crisis in Darfur with "quiet diplomacy." President George W. Bush, Powell, and National Security Advisor Condoleezza Rice spoke with their counterparts in Sudan out of the public eye. Natsios joined the diplomatic effort when he visited Sudan in October 2003, delivering the administration's refrain that there would be no normalization of relations between Washington and

Khartoum until the atrocities in Darfur ended — a message carried during the North–South negotiations by the administration’s Special Envoy to the Sudan, former Senator John Danforth (R-MO), and its chief North–South negotiator, Senior Representative on Sudan Charles Snyder. The situation in Darfur became a constant issue in United States–Sudan relations when, in December 2003, a short-lived ceasefire between rebel groups and the government of Sudan broke down and the government escalated violence against civilians.

By spring 2004, however, the Bush administration exchanged quiet diplomacy for more robust, confrontational rhetoric. Officials in the State Department also realized they needed to learn more about what was happening on the ground. More than a year after hostilities began in Darfur, some in the State Department believed they lacked sufficient information on the racial or ethnic dimensions to speak about it in terms other than as a humanitarian crisis born of battles between rebels and a progovernment militia. Some, though, were also concerned that speaking about the underlying racial or ethnic dimensions would undermine hard-won progress at the North–South bargaining table.

During early 2004, Craner held regular intelligence briefings with the Bureau of Intelligence and Research (INR) and the Central Intelligence Agency (CIA). Prosper recalls that “as we moved into the spring of 2004, it became a little clearer, at least from the information that was emerging from our people as well as NGOs, that there was a deliberate targeting and killing of the African population.” With NASA satellite imagery acquired in April 2004, the State Department learned of the systematic destruction of Fur, Massalit, and Zaghawa villages — three hundred of five hundred seventy-six villages were completely destroyed and another seventy-six were partially destroyed (Igiri and Lyman, 2004, p. 11). In addition to seeing the amount of destruction taking place, Prosper recalls that the satellite images clearly revealed the selective targeting of black African villages. USAID posted these images on its website in an effort to persuade others of the extent of the damage and precision of the targeting.

After holding a number of meetings to examine satellite imagery and other intelligence on the region, Craner believed he had reached the limits of what he could learn without sending people to the region, and determined it was essential to get up-to-date information from the ground. In particular, Craner wanted detailed information about the population in the region, the distribution of ethnic groups, those responsible for the violence, the nature and scope of the violence, and the plight of the affected Darfurians.

### Rwanda and Standing Orders

Why was the State Department willing to investigate an internal conflict in a remote and undeveloped part of Africa? Had the State Department learned from the history of willful blindness (or worse) that has frequently characterized United States policy toward large-scale violence in Africa? It has been widely reported that early in his presidency, George W. Bush was presented with a National Security Council (NSC) memorandum summarizing a three-year investigation into the Clinton administration's response to the genocide in Rwanda and warning of the likely outbreak of ethnic violence in Burundi. President Bush wrote firmly in the memo's margin: "NOT ON MY WATCH" (Power, 2002a, p. 511). Craner recounts that, from the beginning of his tenure as assistant secretary, he had standing instructions from Powell and Marc Grossman, Under Secretary of State for Political Affairs, that "there was not going to be another Rwanda," and, with that in mind, the State Department devoted significant time to ensuring that the situation in Burundi remained under control in the first two years of Bush's presidency. The scar of Rwanda on the State Department was genuine, according to Craner, who cited the chapters on Rwanda and Cambodia in Samantha Power's *A Problem from Hell* as influential frameworks for his thinking about the response to Darfur.

But exactly what "not another Rwanda" meant to the administration remained unclear. Did Craner's standing order from Powell signify that the Bush administration would not claim ignorance while a large-scale catastrophe unfolded? Did it require that in the face of overwhelming evidence, the United States would call genocide by its rightful name? Did it suggest that the United States would not cling to formalistic legal notions of State responsibility in response to such suffering — that is, merely calling on Khartoum to protect civilians from attack? Was it a pledge that the Bush administration would not let another genocide unfold?

Certainly, the State Department's use of the term genocide largely remained tethered to a formal legal determination of its requisite elements. Just as the State Department clarified ten years before, with full knowledge that Hutus had already killed over three hundred thousand Tutsis, "the use of the term 'genocide' has a very precise legal meaning ... [and] before we begin to use [the] term, we have to know as much as possible about the facts of the situation..." (Shelley, 1994). In a similar vein, Secretary Powell explained on June 30, 2004, more than a year after the Government of Sudan (GoS) began widespread attacks that killed more than seventy thousand black African Darfur civilians, "the genocide definition has to meet certain legal tests... . It is a legal determination. And, based on what we have seen, there were some indicators, but there was certainly no full

accounting of all indicators that lead to a legal definition of genocide, in accordance with the terms of the genocidal treaties [sic]. That's the advice of my lawyers" (Powell, 2004a).

For Craner, "not another Rwanda" meant, at a minimum, that the State Department wouldn't remain willfully blind to the scale of violence in Darfur. Craner cited the efforts of foreign service officer Charles Twining, who was posted to the Thai–Cambodian border to interview refugees in 1975 and whose dispatches back to Washington were received with incredulity and disbelief until they were verified and expanded on by French and British reports (Power, 2002a, pp. 115–121). Then, as now, the State Department would only respond to information that it trusted before it would act to stop the violence, if it did at all. Prosper shared the sentiment, emphasizing, "again, we knew that the [civilian] population was being attacked, villages were being destroyed, we had reports of people being killed, raped, but we decided to get first-hand information rather than third- or fourth-hand through various organizations." Prosper stated that he was "not comfortable making a determination on what a human rights group was telling [him], because [he] had no idea what the methodology for reporting was."

At the time, Natsios was reporting credible information gathered by USAID workers in Sudan about the human costs of the conflict, and the State Department possessed sufficient satellite imagery and external reporting to conclude there were "indicators of genocide," as Prosper would eventually testify before the House of Representatives in late June 2004 (Prosper, 2004). Craner and Prosper both believed the State Department needed more information before it could "speak out conclusively" about genocide. Prosper wanted to avoid making a "half-statement" and believed that once a declaration was made on behalf of the United States, it couldn't be pulled back, so he wanted to ensure that they had solid information to support their statement that could then become "a catalyst for action."

### **Influences on United States Darfur Policy**

Several events during spring 2004 coincided to sharpen the State Department's resolve to send an independent team to investigate the situation in Darfur. United States policy in Sudan was already of special interest to the Bush administration, and had an important domestic constituency — the evangelical Christian community. Evangelicals had taken an interest in the plight of black Christians in southern Sudan and there was a growing left-right coalition on Darfur. The Bush administration was playing the lead role in brokering a deal to end Sudan's decades-old civil war in the South.

Moreover, the Bush administration was eager to point to its leadership on Sudan policy to demonstrate that they could speak with authority on grave issues of human rights at a time when issues around the treatment of detainees, particularly at Guantánamo and Abu Ghraib, threatened to strip the administration's voice of legitimacy on human rights issues (Craner, 2004).

Importantly, both UN Secretary-General Kofi Annan and the Bush administration used the tenth anniversary of the 1994 genocide in Rwanda to focus their rhetoric on the unfolding crisis in Darfur. Marking the anniversary, Annan delivered an "Action Plan to Prevent Genocide," including a somber warning that reports on the situation in Darfur left him "with a deep sense of foreboding" (Annan, 2004). After largely pursuing quiet diplomacy with Sudan, President Bush (2004) used the occasion to issue a statement condemning the atrocities in Darfur, marking a shift in rhetoric for the administration.

The United States tried to coordinate an international strategy to abate the violence in Darfur at the 2004 UN Commission on Human Rights meeting in Geneva that spring. Represented by Richard S. Williamson, Ambassador for Special Political Affairs, the State Department pushed for an aggressive stance on Darfur, but was ultimately thwarted by a lack of political will in the European Union (EU). After a special session at the Commission to address the situation in Darfur was blocked, Williamson (2004) warned, "ten years from now, the sixtieth Commission on Human Rights will be remembered for one thing and one thing alone: Did we have the courage and strength to take strong action against the 'ethnic cleansing' in Darfur? We will be asked, 'Where were you at the time of the ethnic cleansing?' 'What did you do?'"

In late April, the United States delegation to the Commission on Human Rights proposed a draft resolution condemning the war crimes in Darfur, calling the situation "ethnic cleansing," and appointing a Special Rapporteur on the situation in Darfur. But, on the last day of the Commission meetings, the EU, which had previously joined the United States, backed down in the face of Sudanese pressure. Instead, the EU joined the African Union (AU) and sponsored a weaker resolution that appointed an independent expert, but failed to condemn the crimes against humanity, war crimes, or other violations of international humanitarian law committed by the Sudanese government. Only the United States voted against the resolution.

The United States was exasperated by international inertia, and Craner believed that if the United States could *authoritatively* call it "genocide," it might mobilize European governments to take a more aggressive approach. Craner suggested that Europe's problematically patient approach

to conflicts in the Balkans, Rwanda, and Darfur resulted from a willingness to let the violence play out before intervening. To be sure, the United States has its own history of characterizing conflicts as intractable and intervention as futile (see, for example, Power, 2002a), but Craner suggested the Bush administration's Sudan policy revealed a different mindset that he admires, especially in the way Special Envoy Danforth and Special Representative Charles Snyder and Assistant Secretary for African Affairs Walter Kantsteiner pushed the North–South peace negotiations, and the determination with which Secretary Powell engaged the GoS.

### **Designing the Inquiry**

During late winter 2004, Craner and Prosper began discussing methods to obtain better information about the situation in Darfur. With a background in polling, Craner pushed for better human intelligence using an empirical, survey-based method. Prosper, a former prosecutor for the International Criminal Tribunal for Rwanda, recalled how effectively refugee surveys were used to gather information about the conflict in Kosovo, a process that he had worked on creating when he was Special Counsel and Policy Adviser to his predecessor, Ambassador David Scheffer. Both Craner and Prosper realized they were heading into new territory for the State Department. Indeed, never before had investigation teams been sent to the field to survey refugees in order to determine, in a statistically and empirically formulated manner, the nature and scope of a conflict as it was unfolding.

The two approached the problem with a prosecutor's clinical analysis and a poll taker's empirical sensibility, deciding to launch a "limited investigation" by random sample survey of Darfur refugee camps along the Chad border. For Prosper, the investigation into what he repeatedly called a "purely" legal question was valuable because it would remove politics from the determination. Prosper recalled the prevailing attitude as one of, "Let's just get the facts, let's call it what it is, and let's deal with it."

Both Craner and Prosper shared the objective of determining whether genocide had been committed and emphasized its persuasive rhetorical significance. For Prosper, investigating for genocide permitted an answer to a difficult legal question and would allow the use of a mechanism to refer the matter to the United Nations Security Council. Craner, who does not come from a legal background, considered the legal question of genocide to be formalistic, and neither as interesting nor as important as determining the scope of the attacks and the needs of Darfurians. For Craner, investigating genocide provided a useful tool in statecraft, and would help

to determine what was happening in Darfur in order to tailor a humanitarian response accordingly.

Although Prosper was concerned that the survey teams ask the right questions and get the information State Department lawyers needed, neither his office nor the Office of Legal Adviser had a hands-on role in constructing the questionnaire. There were meetings between lawyers from the Office of Legal Adviser and the National Security Council prior to the June 23, 2004 meeting that initially brought together State Department and NGO personnel to consider whether establishing this kind of unprecedented investigation was even possible, but once Craner learned what the lawyers needed, he didn't consult them on the questionnaire or on the Atrocities Documentation Team (ADT) process.

### **Insignificant Political Opposition to the Darfur Genocide Inquiry**

Craner and Prosper insist there was little sustained opposition to launching the genocide inquiry. Craner reflected that, "Yes, there were people of rank that were obstacles, but it's really the story of good people . . . . It's the way things should work . . . . There should always be people that say, 'Wait a minute, let's take another look at this,' but this is really the story of Secretary Powell and others doing their job right."

From the beginning to the end, the decisions were primarily made within the State Department. "The President felt that Secretary Powell was in the best place to deal with this issue," Prosper suggests. As such, the process was primarily a "State Department-driven operation," although parts of the White House's National Security Council, such as the African Affairs group and the "democracy shop" were also involved. Funding and leadership from USAID, and, in particular, OTI staff, were essential to the success of the ADT. Prosper insists, "There was never resistance, anywhere. And everyone was supportive of us from the highest levels to try to figure out what it was."

Craner, though, does lament that there were some at the State Department who might have tried to claim ignorance of the situation in Darfur if the State Department had taken a different approach, but, at the highest levels, there was no opposition. What little opposition Craner alludes to appears to have come from the African Affairs Bureau and Bureau of International Organization Affairs. Media accounts during the spring and summer of 2004 included speculation that there was opposition within the African Affairs Bureau to publicly declaring genocide in Darfur because of the concern that it would derail the North-South peace talks on which they had worked for years (Snyder, 2004). Craner indicates there may be some truth to those stories, but that ultimately Powell, Grossman, and Snyder believed stability in



Darfur was essential to the success of the North–South peace accords. Craner also suggests Powell, Grossman, and the leadership in African Affairs believed that if the Government of Sudan was committing genocide in Darfur, they could not be trusted in the North–South negotiations.

In the State Department’s Bureau for International Organization Affairs, some were concerned that finding genocide would trigger a referral to the International Criminal Court (ICC), a move seen to contribute to the court’s legitimacy, against which the Bush administration had steadfastly fought. Craner indicates these early objections were dealt with by making it clear that the ICC was a distant consideration, many steps down the line. Craner himself didn’t seem concerned about the potential for ICC referral, since it wouldn’t amount to an endorsement of the ICC by the United States.

Craner insists the obstacles were overcome early in process of designing the ADT and that he and Prosper didn’t require a political green light to design the inquiry. Craner and the Bureau of Democracy, Human Rights, and Labor (DRL) wanted to know what had happened in the region recently. Up-to-date information, it was thought, would help fashion appropriate responses. For example, if DRL learned that women were targeted for sexual violence, then they could adjust their humanitarian aid to meet specific related needs. DRL hoped to find out if it would be possible for the refugees to return to their land, if they would be able to farm, and if they had retained any cattle.

Both Craner and Prosper say that the Darfur genocide inquiry was viewed positively by the leadership in the State Department, where they described everyone as taking a “let the chips fall where they may” approach to the genocide inquiry and determination. Why did the State Department’s Darfur policy appear so unitary when other problems have often elicited a more fragmented response? The answer remains unclear, but appears at least partly due to significant institutional investment in the North–South peace accords as a showcase for United States leadership, and the politically active domestic constituency for intervention in Sudan. Craner emphasizes the administration’s commitment to securing the North–South peace agreement, and notes that numerous people inside and outside of government knew about Sudan and were invested in the success of State Department policy there.

Powell’s visible leadership on the issue appears to have cleared any internal opposition. Already heavily invested in a successful Sudan policy, Powell was increasingly dismayed by Sudan’s complete disregard for international calls to end the violence. Attempting to send the strongest signal to Khartoum, Powell arranged to visit Sudan with Kofi Annan at the end of June to inspect internally displaced persons (IDP) camps. According to

Prosper, Powell was “appalled by what he saw and what was hidden from him [on his visit], and he just really dug into the issue.”

### **Sending the ADT into the Field**

The State Department’s lack of experience on the ground in Darfur posed a significant problem when the DRL began thinking about sending investigation teams. As Craner recalls, “There weren’t many people to turn to with an understanding of the area — it was out in the middle of the desert.” Few knew what to expect when they got there. Early on, Craner recognized that the staff at the U.S. Embassy in Chad was too small to conduct the investigations without outside help.

Lacking the staff and expertise required to conduct the investigations, Craner proposed the novel approach of using State Department–NGO hybrid teams, and called in NGOs with investigatory experience and regional knowledge.<sup>2</sup> There was initially some opposition within his Bureau and the rest of the State Department to putting NGOs in such a prominent role. Some at State viewed NGOs with deep skepticism and saw them as reliable critics of (any) State Department policy. Craner, who had himself served as the president of an NGO, viewed them as the best available option.

As the ADT went into the field, Craner relied on a DRL analyst and lawyer, Michael Orona, to work alongside CIJ’s Stefanie Frease and address the myriad logistical problems that arose in the field. Craner praised Orona for his solid field judgment and knack for extricating himself from difficult situations.

Craner left the State Department at the end of July 2004, before the ADT investigators returned from Chad. He hadn’t, though, found anything unexpected in the ADT data being communicated back from the field prior to his departure. He felt confident that the ADT data would be considered in good faith and that, if it supported a genocide determination, no political calculation would prevent that conclusion.

### **‘Matching Facts to the Law:’ Arriving at the Genocide Determination**

Craner and Prosper presented the State Department’s approach as dispassionate and clinical. The purpose was “to make a pure decision” — a “clean legal and factual analysis” free of “policy considerations.” So, as Prosper explains, the key State Department decision-makers gathered all the available information and “analyzed the facts with the breadth of the law in mind — meaning, genocide, crimes against humanity, war crimes . . . . But after looking at it and looking at it carefully, it became abundantly clear to us that it fit [genocide].”

Once the ADT survey data came back to the State Department, several bureaus analyzed it for evidence of patterns of attack and destruction as well as elements of genocide. The ADT data was compiled into the now-public State Department report “Documenting Atrocities in Darfur,” (Report) and communicated to Secretary Powell. With the data and the UN Convention on the Prevention and Punishment of Genocide (Genocide Convention) in hand, Powell telephoned Prosper at home on a Saturday night to walk through the facts and the law. The two analyzed the facts summarized in the Report and those they had already collected. As Prosper recalls, “The big issue inside the State Department during that period was the question of intent, [and for] that we had to rely [on information from] outside of the Report.” Powell and Prosper had a long conversation about the actions of the government in Khartoum: “How they created these militias; they had the ability to rein them in and then did not; they acted in concert with the *Janjaweed* ... in attacking these villages ... the aerial bombardment and then *Janjaweed* would come in; and then the fact that the Government of Sudan would block humanitarian assistance to people in need.” It was enough, Prosper says, “to form the intent.”

The following day, Secretary Powell convened a conference call with his Chief of Staff Larry Wilkerson, Legal Adviser William Taft, IV, Assistant Secretary of International Organization Affairs Kim Holmes, Michael Kosack, who replaced Craner as acting head of DRL, Assistant Secretary of the African Affairs Bureau Constance Newman, and Deputy Assistant Secretary of the African Affairs Bureau Michael Ranneberger. The group again went through the facts and law, and the Secretary concluded, based on the available information and the understanding of the Genocide Convention, that genocide had been committed.

Prosper explained the factors that the group considered which pointed to genocide. First, they noted that villages of Africans were being destroyed and neighboring Arab villages were not. Large numbers of men were killed and women raped. Livestock was killed and water polluted. In IDP camps, the GoS was preventing medicines and humanitarian assistance from going in despite persistent international calls for access. Examining these factors, they concluded there was a deliberate targeting of the group with the intent to destroy it.

Prosper recalls the group examining the concepts of unlawful killing, causing of serious bodily and mental harm, and “the real one that got us, ... was the deliberate infliction of conditions of life calculated to destroy the group in whole, or in part.” Looking at the IDP camps, Prosper and Powell could not find any “logical explanation for why the Sudan government was preventing humanitarian assistance and medicine” into the camps “other than to destroy the group.” The GoS was seen as offering

unbelievable excuses, leading Powell to conclude that there was a clearly intentional effort to destroy the people in the camps who were known to be almost exclusively black African.

There was no real opposition among the group to the genocide determination. Some wanted clarification of the Genocide Convention, but Prosper, who was trial prosecutor for the International Criminal Tribunal for Rwanda case against Jean-Paul Akayesu and secured the first conviction for genocide in an international court, was able to alleviate their concerns.

Prosper's experience as a prosecutor supported his understanding that genocidal intent could be inferred from the evidence as well as proved by express statements. As Prosper explains, Powell and he asked each other, if the GoS was not committing genocide then "what else are they trying to do?" "What else could their intent be but to destroy this group?" First, Powell and Prosper looked at the coordination and collaboration between the GoS and the *Janjaweed*. Then, Powell and Prosper examined how the government acted once they were shown to have knowledge of the perpetrators of violence, the targeting of black African tribes, and the scale of human destruction in Darfur. This part was most convincing. The Government of Sudan "had knowledge across the board. Let's *pretend* that it wasn't coordinated. They knew what was going on and not only did they do nothing to stop it, they intentionally obstructed assistance that would have bettered the situation. So, when you have knowledge, you take no steps to stop it, and then, when people are trying to help, you block the assistance, what else could you want other than for these people to die or to be destroyed."

To Powell the conclusion was clear. In the now well-known testimony before the Senate Foreign Relations Committee on September 9, 2004, Powell announced his determination "that genocide has been committed in Darfur and that the Government of Sudan and the *Janjaweed* bear responsibility — and that genocide may still be occurring" (Powell, 2004b).

### **Genocide, But No New Action**

Yet, Powell followed his first-of-a-kind genocide determination by concluding "no new action is dictated by this determination" (Powell, 2004b). To many, this was a disappointment. But, it should not have come as much of a surprise. In June 2004, in an interview from Sudan, Powell said, "I can assure you that if all of the indicators lined up and said this meets what the treaty test of genocide is then I would have no reluctance to call it that. Now, if it were genocide, we would certainly increase international pressure, but whether we would do more than we are now doing is a question that I can't answer. [Calling it genocide] doesn't open any real new

authorities to me, or give me any additional powers or responsibilities that I'm not now executing" (Powell, 2004a).

What did the U.S. Government hope would be accomplished by Powell's genocide determination? Prosper and Powell discussed the question of "what next" during their Saturday night phone call. They agreed that Article VIII of the Genocide Convention offered "a great tool" because it would allow the United States to call on the Security Council to take action that it considers appropriate for the prevention and suppression of acts of genocide. The treaty measure had never been invoked before.

Powell notified Kofi Annan of his intention to refer the matter to the Security Council, and the United States submitted a draft resolution the following day. The amended text, eventually adopted as Security Council Resolution 1564 (2004), called on the Secretary-General to "rapidly establish an international commission of inquiry, which would immediately investigate reports of human rights violations in Darfur, and determine whether acts of genocide had occurred there" (UN Security Council, 2004).

Was this increase in international pressure a legally, morally, or practically adequate response to a determination of genocide? Prosper confines his response to a legal analysis: "Well, this is a debate the international community will have to have in the future. The duty to respond and prevent has yet to be defined. I think what it really means is that you have to use the tools that are acceptable or available to you. It doesn't mean that every country has to launch a military offensive, but I think it ranges from diplomatic to military." As a legal matter, however, the State Department would not have deemed a diplomatic or military response to genocide as required since it does not recognize that the duty to prevent and to punish extends extraterritorially.

Instead, the Bush administration would stick to its self-described strong leadership and diplomatic role — condemning the conduct, pressing for action at the United Nations, and providing humanitarian assistance. Although Prosper believed that a military presence was needed, he suggests U.S. troops wouldn't have been accepted by the African Union. Instead, the United States "tried to empower the African Union" to restore peace. A year after the genocide determination, the African Union had deployed only about six thousand troops to Darfur — less than half the minimum number thought to be required — and they still lacked a United Nations mandate to protect civilians. Sending in American troops may have never been an option. On the campaign trail, candidate Bush told ABC News reporter Sam Donaldson, "I don't like genocide and I don't like ethnic cleansing, but I would not send our troops [to stop them]" (Power, 2002b).

Prosper considers the genocide determination to have mobilized the international community, but laments that "there's a lot more that could

have and still could be done.” Returning to its rhetorical significance, Prosper notes that the State Department’s inquiry and genocide determination “finally got everyone on the same page.” Before the ADT, “everyone was dodging the question. All these other countries, no one was taking leadership, no one was taking action. [The State Department] forced the issue, and put it on the Security Council calendar, forced the [UN] Commission of Inquiry investigation, and forced the passage of resolutions” that brought sanctions and peacekeepers to the region, and ultimately led the Security Council to refer the situation in Darfur to the ICC.

### Conclusion

The State Department’s decision to launch an empirical investigation into genocide and then determine that genocide had occurred — all while the conflict was ongoing — is a remarkable innovation in statecraft, stemming at least in part from the concern among key State Department officials that there must not be another Rwanda. The failure to prevent the Rwandan genocide seems to bear powerfully on thinking about Darfur. As welcome as the “never again” refrain is, the State Department’s Darfur policy makes it hard to gauge its reach and impact.

In retrospect, it is clear that the Clinton administration’s failure in Rwanda wasn’t due to poor information, but to a lack of political will (Ferroggiaro, 2004; Power, 2004, pp. 373–384, 508–516). In the past, American leaders felt no pressure to act from the electorate. Power (2002a) explains, “Genocide in distant lands has not captivated senators, congressional caucuses, Washington lobbyists, [or] elite opinion to stop genocide, [which] has thus been repeatedly lost in the realm of domestic politics... . [So] officials at all levels of governments calculated that the political costs of getting involved in stopping genocide far exceeded the costs of remaining uninvolved” (pp. 508–509).

Was this calculus significantly different with Darfur? Craner and Prosper acknowledge the significance of having a powerful bipartisan domestic constituency interested and informed about the situation in Sudan. They suggest that poor information wasn’t a barrier to action with respect to Darfur, and that the genocide determination was a tool to galvanize a political response. Was the ADT essential to the genocide determination? The answer appears to be *yes*. In Powell’s statement to the Senate Foreign Relations Committee, he stated that the genocide determination derived from the ADT investigation and was supported by other information gathered by the State Department. Prosper suggests proof of genocidal intent, the key legal dispute within the State Department at the time, ultimately came from information other than the ADT data. But, even on

the question of genocidal intent, the ADT data contributed significantly to State Department officials' evolving understanding of the GoS's role in the attacks. Although the ADT data may not have been considered the best proof of genocidal intent, it undoubtedly helped support the finding: 33 percent of interviewees heard racial epithets during their attack and black Africans were the overwhelming targets of violence while Arab villagers were spared. Having a wealth of trusted, internally verified facts about the scope and nature of the violence appears to have given the State Department the confidence it needed to make an authoritative statement about the genocide.

It isn't clear whether the investigation of Darfur atrocities and ultimate finding of genocide will make such an approach by the State Department more likely in future crises. Craner though, is enthusiastic about the potential use of social science methods to form State Department policy regarding ethnic conflict in the future. He is interested in developing a nongovernmental network of investigators, analysts, logisticians, and other experts ready for rapid deployment as crises arise. Such a mechanism is cheap by government standards; Craner estimates the ADT only cost "several hundred thousand dollars." As the ADT showed, this approach can generate detailed, up-to-date information about situations that critically demand a response. What policymakers do with that information is another question.

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## Notes

1. Referred to herein as the Atrocities Documentation Team, though that term first officially appeared when the State Department issued its report on September 9, 2004. See *infra*, note 3 and accompanying text.
2. For discussion, see Frease and Bang-Jensen, Chapter 3, this volume.



CHAPTER 8

A New Chapter of Irony:  
The Legal Definition of Genocide and the  
Implications of Powell's Determination

JERRY FOWLER

Legal scholar Diane Orentlicher once observed that the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (UNCG) “has come to embody the conscience of humanity.” She then acidly remarked that the Convention’s “moral force is surely ironic” in light of the persistent failure of governments to enforce its terms (Orentlicher, 1999, p. 153). Darfur adds another sad chapter of irony in the Convention’s history, given the dramatic incongruity between the sense of urgency that one might expect a plausible case of ongoing genocide to engender and the relatively lackadaisical international political response that actually has unfolded. As it turns out, this irony is embedded in the provisions of the Convention itself. After calling for international cooperation “to liberate mankind from such an odious scourge,” the Convention proceeds to define the crime of genocide in terms that, from the perspective of “preventing” or “suppressing” genocide, are problematic. It then offers only the vaguest sense of what should be done when genocide is imminent or actually underway.

### ‘To Liberate Mankind from Such an Odious Scourge’

Though there are examples of mass violence directed against identifiable groups dating back to antiquity, “genocide” as a term and a concept has a quite recent origin. Raphael Lemkin (1944), a Jewish lawyer who fled Poland after the German invasion in 1939, coined the word and introduced it in 1944. He derived it from the Greek for tribe or nation (*geno*) and the Latin for killing (*cide*). By genocide, Lemkin meant “a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves” (p. 79).

In no small part due to the efforts of Lemkin himself, his new word soon gained currency (Power, 2002, pp. 30–85). It was mentioned in the 1945 Nuremberg indictment as a description of war crimes committed by the defendants being tried before the International Military Tribunal (International Military Tribunal, 1945, para. VIII(A)).<sup>2</sup> In December 1946, the General Assembly of the newly created United Nations adopted a resolution that described genocide as “a denial of the right of existence of entire human groups” that “shocks the conscience of mankind” and “affirm[s]” that genocide is “crime under international law” (Resolution 96(I)).

That resolution also set in motion the process that resulted in the adoption of the Genocide Convention on December 9, 1948. The Convention itself is rather a spare document — nineteen articles, of which the last nine are more technical than substantive, dealing with matters such as where states that become parties to the Convention shall deposit their instruments of ratification or accession (with the Secretary-General of the United Nations); how many states must become parties before the Convention comes into force (twenty, a number that was reached in late 1950); and where the original copy of the Convention would be held (in the UN archives).

The Convention’s preamble invokes “international law” and “the spirit and aims of the United Nations,” as well as the condemnation of genocide “by the civilized world.” It echoes the General Assembly’s view that international cooperation is necessary to free humanity from the “odious scourge” of genocide. To that end, Article I specifies “genocide, whether committed in time of peace or in time of war, is a crime under international law which [the Contracting Parties] undertake to prevent and to punish.”

The heart of the substantive portion of the Convention is Article II, which defines genocide as a matter of international law. The definition has two essential components: specified physical acts (what lawyers would call the *actus reus*) and a particular state of mind (technically, a *mens rea*). The specified acts cannot constitute genocide unless they are committed with the requisite state of mind.

The specified acts are:

1. Killing members of the group.
2. Causing serious bodily or mental harm to members of the group.  
Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.
3. Imposing measures intended to prevent births within the group.
4. Forcibly transferring children of the group to another group.

The required state of mind, which distinguishes genocide from any other crime, is the “intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such.” Thus, merely intending to commit the specified acts is not enough. The perpetrators must also have a “specific” or “special” intent to destroy a protected group in whole or in part (Schabas, 2000, pp. 217–221). Establishing the subjective intent harbored in the minds of perpetrators can present vexing issues of proof, especially when events are unfolding in some inaccessible location. As discussed more fully below, the circumstances surrounding the commission of specific acts can provide evidence of the intent with which those acts are committed.

Several articles flesh out the central idea that genocide is an international crime and, therefore, punishable. Article III explains that not only genocide itself can be punished, but also “conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, and complicity in genocide.” According to Article IV, perpetrators are subject to punishment without regard to their status as “constitutionally responsible rulers” or holders of some other public office. In Article V, the parties “undertake” to pass whatever domestic legislation might be necessary to give effect to the terms of the Convention, specifically emphasizing punishment for genocide and the other crimes listed in Article III. For good measure, Article VI adds an unspecified “international penal tribunal”<sup>3</sup> as a possible venue for trying those accused of genocide, in addition to courts in the territory where the criminal acts were committed.<sup>4</sup> Article VII addresses the extradition of accused perpetrators from one country in order to stand trial in another.

As terse as the provisions related to punishment of genocide are, the Convention’s other avowed goal — that of genocide prevention — gets even shorter shrift. Article VIII merely states that a party to the Convention “*may* call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide” (emphasis added). Tossing the ball in the UN’s court, in other words, is permitted, but not required.

No other article refers to prevention, except for Article I's rather ambiguous statement that parties to the Convention "undertake to prevent" genocide. Exactly what obligation this language imposes is not clear. Particularly opaque is whether the undertaking to prevent genocide is directed at a state's own territory or territory under its control or whether it imposes some duty on parties to act wherever in the world genocide might be threatened or occur. Some scholars have asserted the latter (e.g., Toope, 2000, pp. 192–193). Yet the language of the Convention does not provide any indication that such an extensive obligation was contemplated. Indeed, it would be quite bizarre to think that the drafters intended in 1948 to make intervention in the internal affairs of other states obligatory for individual states or groups of states (through the broad interpretation of Article I), while recourse to the United Nations is merely optional (under the plain terms of Article VIII). Such a scheme diverges wildly from the structure for maintaining international peace and security established just three years earlier with the adoption of the UN Charter and the creation of the United Nations itself. And in the almost six decades since adoption of the Genocide Convention, there is scant evidence of state practice evincing a sense of obligation to prevent or suppress genocide in other countries pursuant to Article I.

When Bosnia argued to the International Court of Justice that all parties to the Convention had a duty under Article I to prevent genocide against it and its citizens, the ad hoc judge appointed by Bosnia itself could only observe, rather morosely, that "[t]he limited reaction of the parties to the Genocide Convention in relation [to past episodes of apparent genocide] may represent a practice suggesting the permissibility of inactivity" (International Court of Justice, 1993, para. 115). Likewise, the internal State Department memorandum to U.S. Secretary of State Warren Christopher that recommended in May 1994 that the United States begin to use the word "genocide" in relation to Rwanda noted that such a move "would not have any particular legal consequences" (United States Department of State, 1994).

### **Is, Is Not**

The UN Genocide Convention provided the framework within which U.S. Secretary of State Colin Powell and the U.S. Government considered in mid-2004 the question of whether genocide was occurring in Darfur. Applying Article II's legal definition to the facts gathered by the Atrocities Documentation Team (ADT) and from other sources, they concluded that genocide had been committed and that the Government of Sudan and its militia allies — the so-called "*Janjaweed*" — were responsible (Powell, 2004a).

In announcing his determination, Secretary Powell pointed to murder, rape, and other physical violence committed against members of non-Arab ethnic groups. This violence corresponded with the acts specified in Article II(a) and (b) of the Convention — killing members of a group and causing serious bodily or mental harm to them. He also pointed to the destruction of foodstuffs and other means of survival of the targeted groups, coupled with obstruction by the Sudanese Government of the humanitarian assistance that the victims needed in order to survive. This conduct, which itself inflicted a large number of deaths on the targeted population in addition to those who perished from direct violence, corresponded with Article II(c) — deliberately inflicting conditions of life calculated to bring about a group's physical destruction, in whole or in part.

As for the “intent to destroy” required by Article II, Secretary Powell concluded that intent could be inferred from the Sudanese Government's deliberate conduct. Inferring intent from conduct in the absence of direct evidence is widely accepted. The International Criminal Tribunal for Rwanda (ICTR), for example, has listed a number of circumstances that are relevant to determining “intent to destroy,” many of which are present in the case of Darfur: “The general context of the perpetration of other culpable acts systematically directed against that same group”; “the scale of atrocities committed”; the “general nature” of the atrocities; deliberately and systematically targeting members of some groups but not others; attacks on (or perceived by the perpetrators to be attacks on) “the foundation of the group”; “the use of derogatory language toward members of the targeted group”; “the systematic manner of killing”; and “the relative proportionate scale of the actual or attempted destruction of a group” (International Criminal Tribunal for Rwanda, 1998, paras. 523–524; International Criminal Tribunal for Rwanda, 2000, para. 166).

In this regard, Secretary Powell's testimony to the Senate Foreign Relations Committee emphasized that the scale and scope of the murder and rape of civilians as well as the actions of the Sudanese military and its militia allies were “a coordinated effort, not just random violence” (Powell, 2004b, p. 4). Additionally, in the report released along with the testimony, the ADT's investigation documented substantial use of racial epithets and derogatory language directed against members of non-Arab ethnic groups in conjunction with violence (United States Department of State, 2004, p. 4). Secretary Powell also noted Khartoum's failure to cease and desist from the attacks on the non-Arab groups and its continued obstruction of humanitarian aid even after having been repeatedly put on notice by other governments and the United Nations.

Invoking Article VIII of the Convention, Secretary Powell called upon the United Nations to undertake its own investigation. Thus, the only

specific outcome of the genocide determination was the September 18 passage by the UN Security Council of Resolution 1564, which requested that the Secretary General appoint an International Commission of Inquiry to look into whether acts of genocide had, in fact, occurred and to identify perpetrators of violations of international humanitarian and human rights law. While awaiting the Commission's report, the Council decided "to remain seized of the matter."

At the end of January 2005, the Commission issued its report, which documented the Sudanese Government's role in organizing, arming, and training the *Janjaweed* militia. Page after page of the voluminous report laid responsibility for serious violations of international humanitarian and human rights law at the government's doorstep. The Commission concluded that the government and its allies bore primary responsibility for massive violence against civilians that had a pronounced ethnic dimension. Addressing the particular terms of the Genocide Convention, the Commission noted that its investigation

collected substantial and reliable material which tends to show the occurrence of systematic killing of civilians belonging to particular tribes, of large-scale [actions] causing of serious bodily or mental harm to members of the population belonging to certain tribes, and of massive and deliberate infliction on those tribes of conditions of life bringing about their physical destruction in whole or in part (for example, by systematically destroying their villages and crops, by expelling them from their homes, and by looting their cattle). (International Commission of Inquiry, 2005, para. 507)

The Commission believed that this evidence could establish the physical acts enumerated in Article II(a) to (c) (International Commission of Inquiry, 2005, para. 518).<sup>5</sup>

But then the Commission explicitly "conclude[d] that the Government of Sudan has not pursued a policy of genocide" based on the absence of the required "intent to destroy." (International Commission of Inquiry, 2005).<sup>6</sup> Although the Commission acknowledged that the scale of atrocities, the systematic nature of the atrocities and racially motivated statements by perpetrators indicated genocidal intent, it asserted that "other more indicative elements" pointed to a lack of intent. The Commission identified three elements supposed to be "more indicative." (International Commission of Inquiry, 2005, para. 513).

First, in some unspecified number of villages, the attackers "refrained from exterminating the whole population" (ICI, 2005). As evidence, the Commission referred to one group of villages in which the Government Commissioner and the leader of the Arab militias executed about two

hundred twenty-seven people out of some twelve hundred who were captured after the attack. Apparently, fifteen of the executed were on a written list brought by the perpetrators, seven were village leaders (*omdas*), and two hundred five were accused of being rebels. The Commission's reference to the fact that the perpetrators did not "exterminat[e] the *whole* population" is puzzling. The plain language of the Convention includes an intent to destroy a group "in part." The Commission itself had explained in a previous paragraph that international case law establishes that "the intent to destroy a group 'in part' requires the intention to destroy a 'considerable number of individuals' or 'a substantial part,' but not necessarily a 'very important part of the group'" (International Commission of Inquiry, 2005, para. 492). The Commission failed to offer any reason why two hundred twenty-seven out of twelve hundred is neither a "considerable number of individuals" (in relation to that sample) nor "a substantial part" of that sample, especially when the community leadership was particularly targeted. Moreover, it seems to take at face value the perpetrators' reported assertion that the two hundred five murdered villagers were rebels, leading the Committee to distinguish between "the intent ... to destroy an ethnic group as such" and "the intention to murder all those men they considered to be rebels." Yet, on just the previous page, the Commission had included a number of quotes in which the perpetrators used ethnic identity, racial epithets, and terms like *Torabora* (slang for *rebels*) interchangeably (International Commission of Inquiry, 2005, n. 189).<sup>7</sup> The whole point of the government's campaign against the civilian population of the non-Arab ethnic groups was equating ethnicity with rebellion, rendering it nonsensical to distinguish an intent to destroy those ethnic groups from an intent to murder rebels. The targets were, by the Sudanese Government's apparent definition, one and the same.<sup>8</sup>

The second element cited by the Commission as indicating a lack of genocidal intent is that the Sudanese Government collects survivors of destroyed villages in camps for internally displaced persons (IDPs), where it "generally allows humanitarian organizations to help the population ... by providing food, clean water, medicines, and logistical assistance" (International Commission of Inquiry, 2005, para. 515). This element begs the question of whether the direct violence (i.e., murdering and raping) was of sufficient scale to evince the intent to destroy the targeted groups "in part," even though there are survivors who are not murdered outright. And the Commission offers no rationale why this element would be more indicative of intent than the scale and systematic nature of direct violence. It also skirts the issues of government obstacles to humanitarian aid, which were reduced but not eliminated only as a result of concerted international pressure in mid-2004; continuing elevated mortality rates in

these camps and continuing attacks (meaning murder and rape) against those who venture out of the camps in search of essentials of life such as firewood, water, or food.

The third element identified by the Commission is that some unspecified number of villages with a mixed ethnic composition had not been attacked at the time the Commission was undertaking its investigation. It is difficult to know what to make of this assertion as the Commission makes no effort to contextualize it. For example, it does not quantify the number of untouched villages in relation to the number of villages destroyed, or by relating the number of inhabitants of such villages to the number of civilians who were subject to murder, rape, or displacement. As important, previously unharmed villages were being attacked and destroyed *during* the time that the Commission was researching and writing its report (Steidle, 2005).<sup>9</sup>

The Commission's final paragraph of analysis regarding intent is perhaps the most difficult to fathom. It recounts a single anecdote from "a reliable source" in which one man was not killed when "attackers" (there is no identification of the attackers) took two hundred camels from him. By contrast, the man's younger brother resisted the theft of his one camel and was shot dead. "Clearly," the Commission concluded, "in this instance the special intent to kill a member of a group to *destroy the group as such* was lacking, the murder being only motivated by the desire to appropriate cattle belonging to the inhabitants of the village" (International Commission of Inquiry, 2005, para. 517). Perhaps the requisite intent was indeed missing in that one instance. But the relationship of that one instance to the overall situation — in which "pillaging and destruction ... appears to have been directed to bring about the destruction of the livelihoods and means of survival of" the targeted populations (International Commission of Inquiry, 2005, para. 638) — is a mystery.

### **Weighing the Evidence**

Although Secretary Powell and the Commission operated from a largely similar factual base, they reached diametrically opposite conclusions on the question of genocide. One explanation for this may be an issue that neither addressed explicitly — the weight of evidence necessary to reach a conclusion. In these circumstances, how much evidence of genocidal intent, in terms of quality and credibility, is necessary relative to evidence of a lack of intent?

The Commission hinted that it was applying an extremely high standard in assessing the evidence. "Courts and other bodies charged with establishing whether genocide has occurred," the Commission noted, "must, however, be very careful in the determination of subjective intent" (International Commission of Inquiry, 2005, para. 503). It then approvingly



quoted the International Criminal Tribunal for the former Yugoslavia for the proposition that “[c]onvictions for genocide can be entered only where intent has been unequivocally established” (International Commission of Inquiry, 2005, para. 503). In essence, the Commission adopted for itself the standard that intent must be shown “beyond reasonable doubt” — the weight of evidence necessary to convict an individual in a criminal trial (Rome Statute, Article 66.3). This is the most exacting burden imaginable, an understandable burden for a prosecutor to bear when a court is deciding the life or liberty of an individual.

Viewed in the context of this burden, the Commission’s analysis on the issue of genocidal intent is less mysterious. The three “elements” it cites, though not particularly compelling, do cast some doubt as to the existence of a genocidal intent on the part of the Sudanese Government. One might well conclude that the evidence of genocidal intent that is adduced in the Commission’s report, though quite strong, does not establish such intent “beyond reasonable doubt.”

But this standard is clearly wrong under these circumstances. The Commission was not a court of law, nor was it adjudicating the fate of individual defendants. The liberty of an accused defendant did not turn on its decision. Quite to the contrary, the Commission was only called upon to make a threshold finding on the basis of which the UN Security Council would decide whether to take additional action, including referring the situation to the International Criminal Court (ICC) for a full-fledged criminal investigation.

A review of the ICC Statute makes clear the Commission’s error in applying the “beyond reasonable doubt” standard. The Statute contemplates several stages through which a case proceeds, each stage requiring that a separate weight of evidence be met. When a situation is referred to the ICC, the Prosecutor is required to initiate an investigation unless “there is *no reasonable basis* to proceed” (Art. 53.1) (emphasis added). Having conducted an investigation, the Prosecutor may seek an arrest warrant if he/she can establish “*reasonable grounds to believe* that the person has committed a crime within the jurisdiction of the Court” (Art. 58) (emphasis added). The Court next is called upon to confirm the charges, which it will do if the Prosecutor offers “sufficient evidence to establish *substantial grounds to believe* that the person committed the crime charged” (Art. 61) (emphasis added). Finally, at trial, an individual can only be convicted if the Court is “convinced of the guilt of the accused *beyond reasonable doubt*” (Art. 66.3) (emphasis added).

Between “no reasonable basis to proceed” and “beyond reasonable doubt” lies a continuum in which the required weight of evidence steadily, and appropriately, mounts as the process moves forward. To eliminate that continuum and require a Prosecutor to establish guilt beyond a reasonable

doubt *as a condition* of launching an investigation would be nonsensical. Yet that is the standard of proof apparently applied by the Commission, in spite of the fact that its investigation was prefatory to any judicial action. The Commission's application of this standard is all the more erroneous in light of the constraints placed upon it by the amount of time available<sup>10</sup> as well as the continued commission of the very crimes it was supposed to investigate. It was not in any conceivable position to reach a conclusion "beyond reasonable doubt" on an issue as complex and problematic as genocidal intent.

Secretary Powell did not articulate what weight of evidence he looked for in making his determination. But the tenor of his analysis, which emphasized the necessarily limited nature of the ADT investigation and other information available, suggests that he was, in essence, asserting a *reasonable basis* for concluding that the Sudanese Government and its *Janjaweed* allies had committed genocide. The additional facts established by the Commission confirmed the existence of that reasonable basis.

### Politics, Not Law

If a determination of genocide is to be a predicate for further action — whether the launching of a judicial investigation or the launching of humanitarian intervention or anything else — the weight of evidence necessary for supporting that finding cannot be "beyond reasonable doubt." That level of evidence will simply not be available until those in danger are long dead. Commissions or diplomats or politicians can take endless refuge behind every fig leaf of doubt. Outside of a formal judicial process, it only makes sense to speak of a reasonable basis to believe that genocide is occurring or threatened.

But the ultimate irony of the Genocide Convention is that, when it comes to "preventing" or "suppressing" genocide, a determination of genocide does not trigger any form of action whatsoever. If this was not already clear from the Convention's plain language, it was made starkly so by Secretary Powell's assertion on September 9, 2004 that "no new action is dictated by this determination" (Powell, 2004a, p. 5). Secretary Powell's affirmative determination and the Commission's negative determination had the same effect. The Genocide Convention, for all its supposed moral force, in actuality contributes little to prevention and suppression.

Secretary Powell's request to the United Nations, pursuant to the permissive provisions of Article VIII, to launch an investigation was made "with a view to ensuring accountability," that is, punishment. Yet punishment is not the same as prevention or suppression. It inevitably occurs, if at all, after the time for preventing or suppressing has passed. One may argue

that a real enough threat of punishment may have a deterrent effect powerful enough to stop ongoing acts of genocide or prevent imminent acts. But that argument is purely theoretical and the continued deterioration of the situation in Darfur months after the Security Council referred the situation to the ICC suggests that the theory may be faulty.

Secretary Powell's request under Article VIII, Security Council Resolution 1564, the Commission's investigation, the Commission's analysis of genocidal intent, all were couched in the language of law drawn from the Genocide Convention and other legal instruments. But in a very real sense, the whole process was a burlesque of law. Essentially everything documented by the Commission was not only knowable, but actually known months and months before the Commission was even formed. Even as the Commission was conducting its investigation, the Government of Sudan was continuing to perpetrate the very crimes that the Commission was analyzing. During the whole time that the basic facts have been known, and even since the Commission released its report, no effective action has been taken by the so-called "international community" actually to stop the killing and the rape. It is as though one man is clubbing another on a street corner while bystanders respond with a prolonged reflection on whether the incident is premeditated murder or simple assault or even self-defense. Meanwhile, the crime continues.

Secretary Powell, near the end of his testimony in September 2004, told the Senate committee that "[w]e have been doing everything we can to get the Sudanese Government to act responsibly." He certainly deserves credit for going out of his way to identify himself with a difficult issue, and there are many officials in the State Department and elsewhere in the U.S. Government who have been working diligently on Darfur. But the definition of "everything we can" ultimately is a political question, not a legal one. And effective prevention and suppression of "genocide" — or other forms of mass atrocities against civilian populations — will not be through a sense of obligation under international law, but as the result of political pressure on governments by their citizens. As Samantha Power (2002) has argued, politicians will act to stop mass killing when the political cost of inaction outweighs the risk of acting (Power, 2002, pp. 510–511).

In preparation for the 2005 World Summit, held to mark the sixtieth anniversary of the United Nations, a draft General Assembly resolution was circulated that would have recognized an "*obligation*" of United Nations members to use various peaceful means "to help protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity." The draft also would have recognized a "shared *responsibility*" to take collective coercive action under the UN Charter if peaceful means fail and national authorities are "unwilling or unable to protect their populations."

In the end, the first passage was watered down to acknowledge a “responsibility” to use “appropriate diplomatic, humanitarian, and other peaceful means.” The second passage jettisoned the notion of a responsibility to act and replaced it with the statement that “we are prepared to take collective action ... on a case-by-case basis ... should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.” Being “prepared” to do something case-by-case is, in fact, consistent with actually *not* doing anything from case-to-case.

It may well be that the final language approved by the UN General Assembly represents a normative advance. It is certainly more explicit than anything in the Genocide Convention. It also broadens the circumstances in which action might be taken beyond the narrow category of genocide by adding war crimes, ethnic cleansing, and crimes against humanity, which might forestall endless arguments about the complex and problematic notion of genocidal intent. But the final language underscores that the prevention and suppression of genocide and other mass atrocities will never be accomplished by the international community or members of that community through a sense of legal obligation. It will happen, if at all, as a result of political or practical necessity. Only by recognizing and acting on this reality is there hope for ending the heartbreaking irony of a universally condemned crime that is allowed to transpire in broad daylight.

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## Notes

1. The views expressed are those of the author and not necessarily those of the Committee on Conscience or the United States Holocaust Memorial Museum.
2. The four counts in the indictment charged the defendants with crimes against the peace, war crimes, crimes against humanity, and conspiracy to commit the other crimes.
3. This idea came to fruition in July 2002 with the creation of the International Criminal Court. By January 2006, 100 countries had become members of the court. Neither the United States nor Sudan is a member of the Court.
4. It is now widely, though not unanimously, accepted as a matter of customary international law that genocide is subject to "universal jurisdiction," meaning that the crime can be adjudicated in any national court without regard to territorial or other connections (Schabas, 1999, pp. 353–368).
5. The Commission also addressed the issue of whether the targeted "tribal" groups are of the type ("national, ethnical, racial or religious") protected by the Genocide Convention and concluded that they are (International Commission of Inquiry, 2005, paras. 508–512). This is a more complicated question than might first appear (see, e.g., Schabas, 2000, pp. 109–114), but does not ultimately seem to be an issue with regard to Darfur.
6. At the same time, the Commission conceded that individuals, including government officials, may, in fact, have acted with genocidal intent (para. 520) begging the difficult question of how many government officials must harbor such intent before it is attributed to the state itself.
7. "Epithets that eyewitnesses or victims reported to the Commission included the following: 'This is your end. The Government armed me.' 'You are Massalit (a non-Arab ethnic group), why do you come here, why do you take our grass? You will not take anything today.' 'You will not stay in this country.' 'Destroy the *Torabora*.' 'You are Zhagawa tribes [a non-Arab ethnic group], you are slaves.'"
8. The Commission, as well as the State Department's ADT, found little or no evidence of rebel activity in villages that were attacked by the Sudanese Government and its militia allies.
9. One of the pictures brought back from Darfur by Brian Steidle, a former U.S. Marine who served on the African Union monitoring team, is of the body of a boy who looks about two years old, killed when his village was attacked. The date stamp on the photo is 2005/01/15, ten days before the Commission submitted its report to the Secretary General.
10. The Secretary-General requested that the Commission report back to him within three months of its creation (International Commission of Inquiry, 2005, para. 1).

CHAPTER 9  
Prosecuting Gender Crimes  
Committed in Darfur:  
Holding Leaders Accountable  
for Sexual Violence

KELLY DAWN ASKIN

**Introduction**

Sex crimes have a devastating impact far beyond the individuals physically violated by the assaults — the assaults destroy lives, families, communities, and associated groups. Not only do those who survive the violence suffer an attack committed against the most intimate, sacred parts of their bodies, but they also are (especially if the crime committed against them is reported to authorities or becomes known) forced to endure additional psychological, familial, social, cultural, legal, and religious implications, both on themselves and on others. No other form of violence has such a broad-reaching, adverse impact on the victim and associated groups. Vile acts of, for example, amputating limbs, beheading, and torture instill horror, but the crimes do not routinely cast stigmas or impact marriageability.

To intensify fear and humiliation, rapes in many violent conflicts are committed publicly and by more than one assailant. Women's reproductive capacity — including their potential to bear children for the victims or the victimizers' groups — is one of numerous reasons females are singled out for sexual assault. Discriminatory laws, customs, and practices regulating female sexual activity/sexual purity impose additional harms,

instead of protections. More detrimental consequences of sexual violence, such as HIV/AIDS and other contagious sexually transmitted diseases or infections, and damage to the reproductive system, are also common. Consequently, the shame and stigma are wrongly imputed to the victim/family of sex crimes. The historical practice of criminal justice systems (police, prosecutors, judges, legislators) marginalizing or ignoring rape crimes, or worse, revictimizing the victims; the sheer terror that threats of the crime evoke; the severe medical and reproductive repercussions; and the simple fact that for countless cowardly combatants, unlawfully attacking an unarmed woman or girl and raping her is more “attractive” than legitimately attacking an armed soldier/militia, are some of the reasons that sexual violence has become such an effective and potent instrument of war and vehicle of terror and destruction.

Rape and other forms of sexual violence have been prominent features of attacks committed by Government of Sudan (GoS) forces and their *Janjaweed* proxy against non-Arabs in all three states of Darfur. In fact, it is difficult to find a comprehensive report on the most serious crimes committed in Darfur that does not include sex crimes. Murder, rape, pillage, forced displacement, and razing of villages are part and parcel of ground attacks. If a village attack involves either GoS forces or their *Janjaweed* puppets and collaborators on the ground, rape virtually always forms part of the attack. Even in instances when the primary purpose of a particular attack is not to directly kill or displace civilians, but instead, for example, to steal their cattle, rape still routinely occurs. And when the primary purpose of an attack is to inflict maximum harm on the civilians and drive survivors into the desert and out of the territory, sex crimes are particularly rampant and vicious.<sup>1</sup>

A multitude of reports on crimes committed in Darfur have been published over the past two years, and analogous to other armed conflicts around the world, these reports confirm that sexual violence is committed both strategically and opportunistically in Darfur.<sup>2</sup> Opportunistic rapes are committed because the atmosphere of war — and the violence, lawlessness, chaos, and hatred it produces — creates the opportunity. Random rapes cause as much fear and trauma as the orchestrated crimes, sometimes more because of their unpredictability. Once it becomes clear that superiors do not disapprove of sexual violence, the opportunistic rapes typically then become more public, more frequent, and more violent, growing indistinguishable from and becoming part of the organized rapes committed at least in part to inflict widespread terror and harm on the targeted group.

Even if it cannot be proved that rape was officially encouraged or initially intended, when the crimes become well known and superiors fail to disapprove of the crimes and/or acquiesce and tolerate the abuse, it signals

tacit approval. And the fact is that the entire world was informed repeatedly about the rapes in Darfur. Undoubtedly, the political and military leaders knew of them and their silence demonstrated official tolerance and even encouragement. By the time the government expressed purported outrage of the rapes, they had been raging unabated for some two years, hundreds of thousands had been killed, millions were displaced, and Darfur was in shambles as a result of the scorched earth policy of the GoS, with the conditions of life intentionally inflicted upon the black Darfuris so dire that women and girls have been forced to knowingly risk rape by venturing outside internally displaced persons (IDPs) camps for food and firewood in order to try to survive inside the camps.

### **Historical Treatment of Wartime Rape in Law and Society**

Since recorded wartime history, rape has been a common characteristic of armed conflict. From Viking invasions to the Crusades to the First and Second World Wars, and the hundreds of international and noninternational armed conflicts in between, there is a litany of reports of rape and other sexual atrocities committed during the course of the conflicts. The literature is so replete with depictions of rape during war that it is exceptional to read in detail about one (war) without reading about the other (rape). Yet, until relatively recently, most reports depicted sexual assault as an inevitable consequence of war — a regrettable by-product of war or simply as a common feature of war, not as a serious crime, much less a means of attack, which could, in fact, significantly and dramatically impact the war.

Beginning in the Middle Ages, the customs of war gradually treated rape as a war crime, and not the legitimate right of a victor as part of the so-called spoils of war, as had been largely accepted until around the 1400s. For centuries, rape was considered primarily a crime committed against a man's property. By the end of the nineteenth century, wartime rape was widely criminalized, but seldom punished. Even by the mid-twentieth century, rape was regarded principally as a crime against honor or dignity, not a crime of violence.<sup>3</sup> And there is little indication that it was then considered as bad as — or worse than — death.

In contemporary laws, sexual violence is a crime under both customary laws and codified laws. More recently, the 1949 Fourth Geneva Convention and the 1977 Additional Protocols to the Geneva Conventions explicitly forbid wartime rape.<sup>4</sup> Furthermore, the laws of war strictly mandate that combatants direct attacks solely against military objectives, including other combatants; they can never lawfully direct attacks against civilians or civilian objects.<sup>5</sup> When militaries respect the laws of war and promote notions of honor and even perhaps punish their own soldiers who commit



sex crimes, rape still occurs (as it does in law-abiding societies during peacetime). Even when rape is strictly forbidden by superiors who enforce the laws and take measures to prevent or punish the crime, and takes place less frequently and certainly less conspicuously, it remains a persistent occurrence (as do other war crimes). However, when targeting of civilians and the abuse of women is not expressly forbidden by the military and political leaders, and its perpetration is either explicitly or implicitly encouraged or just ignored, or, in some circumstances, even ordered, the regularity and brutality of the crime increases exponentially. This is the situation in most contemporary armed conflicts, including Darfur. Thus, while the sexual violence committed in Darfur is horrific, sexual depravity is not unusual during conflict situations, and sexual atrocities are not unique to Darfur. The universal recognition that rape is epidemic in armed conflict, and has been since time immemorial, puts all on notice, including leaders, about their frequent commission.

### **Sexual Violence in Darfur**

Many reports have documented atrocities in Darfur and over a dozen reports documenting these crimes have focused *exclusively* on rape and other forms of sexual violence, indicating its perceived gravity, its pervasiveness, and its need for redress.<sup>6</sup> International and local human rights organizations, United Nations bodies and agencies, government agencies, monitors, and reporters have been among those expressing alarm over the persistent episodes of sexual violence committed during attacks on villages, while in flight, and inside and outside of IDP and refugee camps. Nonetheless, because of significant underreporting of the crime (due largely to discriminatory treatment of victims by law and society), the actual number of rapes undoubtedly greatly exceeds even the high numbers already reported. Male rapes and other forms of sexual violence (especially mutilation) are increasingly reported and also occur with far greater frequency than statistics indicate.

Sex crimes are almost always accompanied by other forms of violence or abuse, such as beatings, forced nudity, enslavement, inhumane conditions, and/or destruction of homes, families, communities, and livelihoods. Many victims are regularly killed after being raped, but some are left alive simply because many perpetrators consider rape worse than death.<sup>7</sup> Damage to reproductive health and pregnancy are also regular features of rapes, with self-induced abortions to terminate the pregnancies not uncommon.

In 2004, the United Nations appointed five independent Commissioners to investigate and report on the most serious crimes perpetrated in Darfur. The Commission of Inquiry (COI) into crimes committed in

Darfur released its report in January 2005, concluding that atrocity crimes had been committed in all three states of Darfur by both GoS forces and *Janjaweed* militia. In summarizing its conclusion on the crimes committed on a widespread and systematic basis throughout Darfur, the report stated the following:

Based on a thorough analysis of the information gathered in the course of its investigations, the Commission established that the Government of the Sudan and the *Janjaweed* are responsible for serious violations of international human rights and humanitarian law amounting to crimes under international law. In particular, the Commission found that Government forces and militias conducted indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement, throughout Darfur. These acts were conducted on a widespread and systematic basis, and, therefore, may amount to crimes against humanity.<sup>8</sup>

The COI Report outlined the most common patterns of rape crimes, which had been previously documented and which were then confirmed by the Commissioners' own investigations:

First, deliberate aggressions against women and girls, including gang rapes, occurred during the attacks on the villages. Second, women and girls were abducted, held in confinement for several days and repeatedly raped during that time. Third, rape and other forms of sexual violence continued during flight and further displacement, including when women left towns and IDP sites to collect wood or water. In certain areas, rapes also occurred inside towns. Some women and girls became pregnant as a result of rape.<sup>9</sup>

As other reports similarly conclude, rape, gang rape, sexual slavery, and pregnancy (as a result of rape) were recurring themes in attacks throughout hundreds of villages in North, West, and South Darfur.

The most extensive documentation of crimes committed in Darfur, including sex crimes, was collected by the Coalition for International Justice and U.S. State Department's Atrocities Documentation Project in July and August 2004, during which over eleven hundred interviews were conducted in refugee camps in Chad and in several other unofficial makeshift camps just inside the Chad–Sudanese border.<sup>10</sup> Testimony of sexual violence obtained by the Atrocities Documentation Team (ADT) includes the following (names of villages typically phonetic; numbers used are to identify witness statements):<sup>11</sup>

- In western Darfur (near Beida) in June 2003, a Massalit man saw the *Janjaweed* cut out the stomachs of pregnant women. If the fetus was male, the *Janjaweed* hit the fetus against a tree; if female, the fetus was left in the dirt. The witness stated his sister was also raped. (41)
- In western Darfur (near Foro Borunga) in June 2003, a Fur man said his wife was raped by seven GoS soldiers, and thirteen other women were also raped during the attack. He saw horsemen take a baby from a woman's back, tear off its clothes and slice its stomach; another woman's baby daughter was smashed against a tree and killed. He witnessed approximately twenty male and seven female babies being killed. (6)
- A Fur woman fled an attack on her village in Darfur (near Bendesi) in August 2003. She witnessed a twelve-year-old girl being gang raped by five men; the girl died soon after the attack. The witness also heard of many children being abducted as slaves or cowherders. (4)
- During an attack in West Darfur (near Gokor) in November 2003, a Massalit woman was among forty women captured and gang raped by seven soldiers during an aerial and ground attack. Some males were also sexually assaulted. (336)
- A Massalit woman in West Darfur (near Senena) in December 2003 said twenty girls were captured by GoS soldiers and gang-raped (vaginally and anally) for three days. Three girls had nails put in their vaginas (one of whom died), two other girls had their vaginas sewn up, and five became pregnant from the rapes. All were unmarried. (491)
- In West Darfur (near Genena) in December 2003, a Massalit woman stated that she and six other women were taken to a GoS base (Dongeta) where they were held for three days and repeatedly gang raped (vaginally and anally, sometimes with sticks) while tied naked and spread eagle. The witness saw the bodies of three naked elderly women with foreign objects thrust in their vaginas. She also said another woman told her she had been tied to a tree and forced to watch her daughter being raped. (497)
- A Massalit woman in West Darfur (near El Geneina) in February 2004 saw GoS soldiers catch sixteen women with babies. They broke the baby boys' necks in front of the mothers and beat mothers with their own babies like whips until the babies died. (482)
- In Northern Darfur (near Karnoi) in January 2004, a pregnant Zaghawa woman and four girls (ages 12, 13, 15, and 16) were

abducted and raped by five to six soldiers each night, until their release five days later. (161)

- A Zaghawa woman in North Darfur (near Karnoi) had her village attacked in March 2004 and she and eight other women were abducted and raped. After a month, an officer with two stars on his shoulder made the soldiers let the women go. (170)

The ADT's interviewers also recorded testimony of epithets or slurs directed at the victims during the course of the sexual assaults. Rape often lasts for long periods of time and the perpetrators tend to communicate some of the reasons behind the attacks. Some of the rape testimony collected by the ADT, which includes racial or gendered comments, follows:

- During an aerial and ground attack on a village in North Darfur (near Karnoi) in June 2003, a female Zaghawa survivor reported that she was told, "We want to kill the men and take the women to be our wives." (542)
- During an attack in western Darfur (near Masteri) in November 2003, a Massalit woman was raped by ten soldiers who said that the government "sent them to kill and rape and clean their land." (287)
- During a ground attack in western Darfur (near Seleya) in November 2003, a Eregnan man reported hearing, "We will kill all men and rape women. We want to change the color. Every woman will deliver red. Arabs are the husbands of those women." (533)
- During a village attack in western Darfur (near Kruink) in November 2003, a male Massalit witness reported seeing twelve women raped and mutilated (breasts and vaginas cut) by GoS and *Janjaweed*, and being told, "You have no country here, you must leave and go to Chad." (325)
- A Massalit woman in West Darfur (near El Geneina) in December 2003 saw Arabs take eight male babies by their feet and slam them into the ground until they died; the *Janjaweed* told women being raped, "We rape you to make a free baby, not a slave like you." (489)
- A Fur male reported that in December 2003, a few months before his village in West Darfur (near El Geneina) was attacked, *Janjaweed* raped his daughter and two other girls (ages 14, 15, and 16) and said, "We will take your women and make them ours. We will change the race." (575)
- During an attack on her village in western Darfur (near Misterei) in January 2004, a Massalit woman reported that she was one of sixteen women caught and raped by four soldiers during an

aerial/ground attack. Three other rapes she witnessed included girls having their breasts slashed, two girls died from the gang rapes. The attackers told her, “If you like this, stay in Sudan; if you don’t, go to Chad.” (259)

- A Zaghawa woman in North Darfur (near Kotum) in March 2004 stated that sixteen girls from her village were abducted and gang raped. A perpetrator said, “From now and for twenty years, we will kill all the blacks and all of the Zaghawa tribe.” (803)
- A Massalit woman in South Darfur (near Garsila) had her village attacked in June 2004 by GoS and *Janjaweed*. Despite being four months pregnant, she fled, but was caught running by five men. They beat her with a whip, causing her to lose her baby. The attackers said, “Black prostitute, whore, you are dirty blacks.” (1056)

These are only a fraction of the reports of various forms of sexual violence inflicted on the black indigenous population in Darfur, but they demonstrate the consistency of the reasons behind the attacks, the regularity with which the rape crimes occur, and the calculated use of rape as an instrument to terrorize and destroy the targeted group. The gendered nature of many attacks — targeting fetuses or babies because of their sex and targeting some women because of their reproductive capacity or pregnancy — should not be minimized. Interviewees time and again told stories of black Darfurians being raped, raped by gangs or with foreign objects, or having breasts, vaginas, or penises mutilated. They also told of pregnant women having their wombs sliced open or women having their pregnancies forcibly aborted by beatings or other abusive treatment; babies, particularly male babies, being murdered; women made pregnant by the rapes; men and women forced into nudity; and women and girls being abducted and sexually enslaved. Males are often targeted in armed conflicts because they are viewed as the fighters or potential fighters, females are often targeted because they are viewed as the repositories of culture and the (re)producers of generations, or simply as the gender intended to serve and service men as is their perceived legitimate right. The form and nature of the violence often reflects these attitudes.

In the most progressive societies, impediments to reporting, investigating, and prosecuting rape still abound. In conservative and religious societies like Sudan, the obstacles multiply. As mentioned earlier, the misplaced shame and stigma of rape crimes and the revictimization by criminal justice systems, in particular, cause the crime to be underreported. When extremist laws or practices, such as the Islamic laws operating in Darfur, require women or girls to prove a rape by the testimony of four male witnesses and be subjected to an insensitively or crudely conducted

government medical exam, there is little incentive, and many disincentives, to reporting the crime. This is particularly true as the survivor may be charged with *zena*, adultery or having sex outside of a marital relationship, if she cannot prove the rape, especially if she is pregnant. This could result in public whippings and imprisonment, perhaps even a death sentence. At a minimum, it might result in the survivor being cast out of the community and precluded from marriage. In addition, the dysfunctional and discriminatory court system in Darfur (not to mention that the courts are controlled by the government, which is considered responsible for the atrocities) further reduces reporting of sex crimes.<sup>12</sup>

### **Rape as Genocide and a Crime against Humanity**

Since the mid-1990s, many articles and books have focused on how rape and other forms of sexual violence can be and have been prosecuted as war crimes, crimes against humanity, and genocide.<sup>13</sup> Crimes include rape, enslavement, sexual slavery, torture, persecution, mutilation, enforced sterilization, forced pregnancy, forced abortion, forced nudity, sexual humiliation, forced marriage, cruel treatment, and inhumane acts, some of which are explicitly listed in the International Criminal Court (ICC) Statute, and others implicitly covered under the “or any other form of sexual violence of comparable gravity” language of the ICC Statute.<sup>14</sup> Judgments in the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) have also convicted individuals of rape as crimes against humanity and instruments of genocide.<sup>15</sup> Because, as noted previously, there is already a plethora of information available on how gender-related crimes can be successfully prosecuted, these issues will be given only cursory treatment here.

The ICC can prosecute gender-related crimes under Article 6 (genocide), Article 7 (crimes against humanity), and Article 8 (war crimes) of the Statute. The specifically enumerated gender crimes in the Statute are rape, enforced prostitution, sexual slavery, forced pregnancy, enforced sterilization, and other forms of sexual violence of comparable gravity. Additionally, gender persecution and trafficking of women and children are also explicitly referred to in the Statute.<sup>16</sup>

Under the UN Convention on the Prevention and Punishment of Genocide (UNCG) and the ICC Statute, genocide means any of the acts listed in subparagraphs (a) through (e) committed with intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such. The five prohibited acts are: (a) killing members of the group, (b) causing serious bodily or mental harm to members of the group, (c) deliberately

inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, (d) imposing measures intended to prevent births within the group, or (e) forcibly transferring children of the group to another group.

“Killing members of a group,” prohibited in (a) is undoubtedly the most widely recognized means of committing genocide, although all five subarticles share equal prohibition. The other subarticles do not necessarily involve death, or even outright violence, as a means of destruction of a group. Rape as an instrument of genocide most often invokes subarticle (b) intending to destroy a protected group by causing serious bodily or mental harm to members of that group, and (d) imposing measures intended to prevent births within a group.<sup>17</sup> Rape, along with torture and enslavement, including sexual torture and sexual slavery, regularly takes longer to commit than other crimes, and the extended time and proximity together often, as previously noted, prompt statements by the perpetrator(s), which can be useful in discerning genocidal intent. The *Akayesu* Judgement of the ICTR is the seminal decision recognizing rape as an instrument of genocide.<sup>18</sup>

The ICTY and ICTR have also convicted persons for rape as a crime against humanity when the crimes formed part of a widespread or systematic attack directed against a civilian population. It is the attack which must be either widespread or systematic, not the rapes, although rape itself is frequently both widespread and systematic. Systematic rape does not mean each rape is meticulously organized and planned — it refers, among other things, to a plan or policy to sexually abuse women, which is often carried out by implicitly or explicitly encouraging or granting free reign to commit the crime.

There is every indication that the official policy of the GoS and *Janjaweed* forces is to wage, jointly or separately, concentrated and strategic attacks against black Darfurians by a variety of means, including through killing, raping, pillaging, burning, and displacement. Various forms of sexual violence regularly formed part of these attacks. As emphasized by the COI report: “The findings of the Commission confirm that rape and sexual abuse were perpetrated during attacks by *Janjaweed* and soldiers. This included the joint attacks by Government soldiers and *Janjaweed* attacks.”<sup>19</sup> BBC News reported the following regarding the attack of one village: “More than one hundred women have been raped in a single attack carried out by Arab militias in Darfur in Western Sudan ... . Another one hundred fifty women ... have been abducted.”<sup>20</sup> Rape crimes have been documented in dozens of villages throughout Darfur and committed in similar patterns, indicating that rape itself is both widespread and systematic.

The information available on crimes in Darfur suggest that the ICC can prosecute rape as a crime against humanity and an instrument of genocide, and that other forms of sexual violence, particularly forced pregnancy, sexual mutilation, and sexual slavery, are also common forms of attack and destruction in Darfur.

### **Individual and Superior Responsibility**

The ICC can prosecute both physical perpetrators and others responsible for sexual violence, including civil and military leaders and others who ordered, instigated, aided or abetted, or otherwise facilitated the crimes (individual responsibility) or who knew or had reason to know about crimes committed by subordinates under their control, but failed to prevent, halt, or punish the crimes (superior responsibility). In most situations, the persons most responsible for orchestrating war and the atrocities committed therein are not the physical perpetrators or even those physically present at the crime sites, unless they are military/militia leaders. More specifically, in the ICC Statute, individual criminal responsibility grants the court jurisdiction over persons who commit a crime, individually or jointly, or who order, solicit, or induce a crime, or who aid, abet, assist, or otherwise facilitate a crime. Participating in a common criminal purpose may also incur individual criminal responsibility.<sup>21</sup> Command and superior responsibility is invoked for military leaders and other superiors who (1) knew or should have known of crimes, or consciously disregarded information about them, and (2) where the crimes were committed by subordinates under their effective responsibility/authority/command and control, and they failed to take all necessary and reasonable measures within their power to prevent or repress the crimes or to submit the crimes to the relevant competent authorities for investigation and prosecution.<sup>22</sup>

In the jurisprudence of the World War II trials, as well as the ad hoc tribunals (ICTY and ICTR), and as incorporated in the ICC Statute,<sup>23</sup> crimes may be punished under the Joint Criminal Enterprise (JCE) theory of responsibility (also known as the common purpose doctrine). Essentially, a JCE is considered a form of commission, a form of individual criminal responsibility. A joint criminal enterprise is composed of a plurality of persons, participating in some way (through assistance or other contribution) to a common plan/design/purpose, which amounts to or involves a crime within the jurisdiction of the Court. The common plan can be agreed upon in advance, can materialize extemporaneously, and can be inferred from the facts.<sup>24</sup>

The ICTY has identified three distinct, but often overlapping, forms of JCE. JCE I is the basic form, in which all co-defendants share the same



criminal intent/goal. They knowingly participate in some way and intend the result. JCE II is the systemic form. It is a subset of JCE I and has primarily been applied to concentration camps or situations where there is an orchestrated campaign of persecution or oppression. In JCE II, there is an organized system of ill treatment, and defendants have awareness of the nature of the system and an intent to further that system. There is some form of participation in the system, but their participation does not have to be significant. JCE III is the extended form, where responsibility for crimes committed beyond the common plan can be incurred. This happens when a perpetrator — not necessarily the defendant — commits a crime outside the common purpose, but the act is a natural or foreseeable consequence of the criminal endeavor. Here, a defendant willingly takes a risk that additional predictable crimes will be committed. The various forms may, and often do, overlap or occur parallel to each other.<sup>25</sup>

In a culture of mass atrocity, it may sometimes be difficult to determine which crimes were part of the agreed upon enterprise and which were outside the scope of the intended crimes, but foreseeable nonetheless. Yet, in most situations of mass violence and oppression, rape and other common forms of sexual violence will not be mere foreseeable consequences; rather, they should be considered integral parts of the destruction, of the physical and mental violence intentionally inflicted on the targeted group. The fear and terror inflicted by sexual violence rivals and sometimes exceeds that of murder, as it is a crime calculated to inflict maximum harm on the targeted group. Treating sex crimes as simply foreseeable (JCE III), but killing, beating, torturing, and burning as intended (JCE I) or part of a system of ill treatment (JCE II), would distort the historical record and ignore the gravity and potency of the crimes. Thus, rape crimes should be prosecuted under JCE I and II, with JCE III rape prosecutions restricted to the situations where the joint criminal plan was very specific (e.g., summary execution of all boys over 13 years old in a village) and the rapes which occur are truly not planned, but are nonetheless foreseeable.<sup>26</sup>

In Darfur, the evidence suggests that GoS political and military leaders participated in a Joint Criminal Enterprise with their *Janjaweed* collaborators, whom the GoS armed, supplied, and directed for at least the first two years. Initially, many attacks were joint GoS and *Janjaweed* attacks, until virtually all black African villages had been attacked, and then the GoS appears to have largely left it to the *Janjaweed* and regular bandits to complete the destruction on the ground. From February 2003 to March 2005, in particular, a common mode of attack in Darfur was for a GoS plane or helicopter to bypass Arab villages and wage an attack (or surveillance) on black villages, in concert with or followed by ground attacks by government forces or government supported *Janjaweed* militia. During the

course of these attacks, civilian huts were destroyed, men, women, and children killed, women and girls raped, animals and other property stolen, child cattle herders and others abducted, and survivors forced into the inhospitable desert.

Aerial and ground attacks also commonly targeted life sources, such as water and food supplies, shelter, arable land, crops, livestock, and medical supplies.<sup>27</sup> In the context of Darfur, with temperatures soaring to 130 degrees Fahrenheit in the harsh desert environment in the daytime, but dropping dramatically some nights, such destruction was especially effective and quite naturally resulted in death and illness. Starvation, dehydration, exposure, infection, and disease were intended results of the intentional destruction of life sources and forced displacement.

The *ad hoc* Tribunals have not significantly developed the concept of command/superior responsibility beyond that promulgated by the post World War II trials, as most indictees in the Yugoslav (ICTY) and Rwanda (ICTR) Tribunals have been found guilty of individual responsibility. Indeed, the courts have found not only that many leaders regularly failed in their duty to prevent or punish crimes committed by subordinates, but also more egregiously, they incurred individual responsibility for facilitating the commission of the crimes. As might be expected, leaders who orchestrate, authorize, condone, encourage, or otherwise assist criminal activity do not then tend to endeavor to stop the crimes they orchestrated or punish those who committed the crimes they themselves authorized. Therefore, the ICTY and ICTR have tended to either convict on individual responsibility and dismiss the superior responsibility charges or find that the superior responsibility crimes were subsumed within the crimes incurring individual responsibility. Thus, the notion seems to be that if one orders a crime, one should not also be held responsible for failing to punish the subordinate who carried out one's orders.

Ignoring crimes committed by subordinates initially might fall under superior responsibility, failure to act. But when the silence continues, a potent message is sent to subordinates that superiors do not disapprove of their crimes, and this signals tacit approval, invoking individual responsibility. Additionally, Joint Criminal Enterprise (JCE), being a form of commission, is a form of individual responsibility, not superior responsibility. Still, when there is insufficient evidence available to prove that a leader participated in a JCE or facilitated the commission of a crime, holding him/her responsible for his/her duty to prevent or punish crimes committed by his/her *de facto* or *de jure* subordinates under his/her command and control remains a viable option.

The ICC Prosecutor, Luis Moreno-Ocampo, has consistently stated that his office intends to focus on leaders bearing the greatest responsibility for

the most serious crimes. For Sudan, then, the ICC will likely indict less than a dozen civil and military leaders (used here to encompass *Janjaweed*/ militia) for war crimes, crimes against humanity, and possibly genocide in Darfur. There is little dispute that war crimes and crimes against humanity, including sex crimes, have been committed. Many genocide experts have concluded that genocide has also been committed in Darfur.<sup>28</sup> The COI report unconvincingly reached a different conclusion, which caused the Government of Sudan to imply the Commission had exonerated it of all serious criminal activity. The U.S. Government has called the crimes in Darfur a genocide and, despite its hostility to the ICC, did not veto a Security Council resolution referring the situation in Darfur to the ICC.<sup>29</sup>

### **Holding Leaders Accountable for Sex Crimes**

As noted previously, the ICC has indicated it intends to focus principally on investigating those holding the highest level of responsibility for justiciable crimes. Leaders have a duty to protect the civilian population and provide justice to those who have been victims of crimes. In Darfur, GoS leaders have not only failed this duty, but also they are implicated in committing or otherwise facilitating the atrocities. In *Kvočka*, the ICTY Trial Chamber emphasized that special measures needed to be taken to ensure that women placed in vulnerable positions during armed conflict are protected from sexual violence. It further noted that after reports or knowledge of such crimes, persons in positions of authority are placed on notice; to prevent being held accountable, extra measures must be taken to prevent sex crimes.<sup>30</sup> Even if one took the dubious view that consistent reports of rape crimes in conflicts throughout the world over the past one thousand years, much less the explosion of rape reports filed during wars over the last decade, did not put leaders on notice that sexual assaults are common means of destroying a village or harming the targeted group, the recurring reports every month of rape crimes in Darfur certainly did put the political and military leaders in Sudan on notice that rape was a frequent occurrence in Darfur. In reports by the United Nations, of which Sudan is a member, the prevalence of rape is highlighted and raised as a grave concern.

A wide range of United Nations experts have repeatedly noted that rape crimes flourish in Darfur with the full knowledge of the government. For example, Louise Arbour, the UN's High Commissioner for Human Rights, who is also the former Chief Prosecutor of the ICTY and ICTR, as well as former member of the Supreme Court of Canada, stressed, "There is a credible base of evidence that there is a severe, severe, serious amount of sexual violence that is not being properly addressed."<sup>31</sup> On June 21, 2005,

Jan Egeland, the UN Undersecretary for Humanitarian Affairs, reported that “in Darfur, rape is systematically used as a weapon of warfare.”<sup>32</sup> Mukesh Kapila, the UN Coordinator for Sudan, discussed the mass rape committed in Darfur and emphasized: “It is more than just a conflict. It is an organized attempt to do away with a group of people.”<sup>33</sup> Sima Samar, the UN Special Rapporteur for Human Rights in Sudan, stated that “gender-based violence continues unfortunately with impunity” and that the government’s excuses were unacceptable.<sup>34</sup> And Juan Mendez, UN Special Advisor to the Secretary-General on the Prevention of Genocide, emphasized that even by September 2005, “the rape of women remained too prevalent.”<sup>35</sup>

It is relatively straightforward to hold persons criminally responsible for sex crimes when they commit them physically, directly order the crimes (and there is documentation or other evidence), or they are physically present at crime sites and either encourage or otherwise aid and abet the crimes. As noted previously, it is also largely accepted that the most culpable government and military leaders do not have to be physically present at crime sites to be held accountable for the policies they dictated in directing a widespread or systematic attack against a targeted civilian group. Nonetheless, an attack on village after village may involve murder, torture, rape, pillage, and forced displacement; yet, in prosecutions, all but the sex crimes will typically be attributed to the leaders as part of their official policy.

While in theory it should not be particularly complicated to hold political/civilian or military leaders criminally responsible, either as individuals or as superiors, for sexual violence when the crimes are widespread or systematic, not to mention notorious, in practice there has been enormous reluctance to hold leaders and nonphysical perpetrators accountable for sex crimes, as opposed to other crimes. In general, the attitude seems to be that leaders do not have to be physically present at crime sites to be held responsible for the carnage that ensues during the course of carrying out a plan or policy to harm the targeted group, whereas sex crimes are regularly treated by investigators, prosecutors, and judges as different/private/special crimes, outside the scope of any intended attack. The notion — held by many investigators, prosecutors, trial attorneys, and judges — appears to be that leaders should not be held accountable for *sex* crimes unless there is incontrovertible proof that they ordered the crimes, or knew about them and *personally* intended their commission. This attitude is not only legally and factually inaccurate, it is morally untenable, provides a flawed, sexist historical record of the events, and denies justice to half the population. Failing to hold leaders accountable for sex crimes when they occur regularly and consistently over weeks and months, much less years, suggests that the crimes are not considered serious or are deemed personal/private issues.

It also ignores consistent and credible reports that conclude that wartime rapes are used strategically as weapons of war or instruments of terror.

That said, the ICTY has recognized that leaders can be held accountable for sex crimes when they were neither present nor ordered the crimes. For example, in the *Plavsic* case before the ICTY, a former leader of *Republika Srpska*, pled guilty to one count of persecution as a crime against humanity, in exchange for dropping the other seven charges, including the genocide counts. To accept a guilty plea, the Chamber had to be satisfied that the guilty plea was informed, voluntary, and unequivocal, and that there was a sufficient factual basis that the crimes were committed and that the person pleading guilty participated in them. Plavsic's guilty plea on the persecution as a crime against humanity charge, accepted by the Tribunal, included acknowledging responsibility for rape crimes.<sup>36</sup> The persecution count accused Plavsic of participating in a Joint Criminal Enterprise to plan, instigate, order, and aid or abet the persecution of non-Serbs in Bosnia-Herzegovina. The means of persecution included killing, raping, torturing, forcibly displacing, and committing other inhumane acts against civilians and destroying civilian property. Accepting the guilty plea and convicting Plavsic of persecution as a crime against humanity, the Chamber noted that she was neither as influential nor powerful as many other leaders, and played a lesser role in facilitating the crimes. Nonetheless, she incurred responsibility for rape and other crimes for acquiescing in them. As Plavsic herself stated, "[A]lthough I was repeatedly informed of allegations of cruel and inhuman conduct against non-Serbs, I refused to accept them or even to investigate."<sup>37</sup> She thus bore individual responsibility for the crimes, being a leader who knowingly participated in a joint criminal endeavor to persecute non-Serbs. She may not have specifically intended the rapes, but nonetheless she had knowledge of them and made no effort to indicate disapproval, to complain, or to initiate preventive measures, thus incurring individual responsibility for the crimes.<sup>38</sup>

To be sure, the orchestrators of mass atrocity in Darfur know what is happening on the ground and receive full and detailed reports of events. The political, military, and militia leaders have no doubt that when they order an attack, the violence that will ensue will take many diverse forms, including rape. In the extraordinary event that they were so naïve that they did not know initially, they certainly knew after reports were issued, and still the leaders continued urging or ignoring unlawful attacks on civilians with full knowledge that rape — and other crimes — would form part of the attacks.

The Government of Sudan has not made a secret of its intent to refuse to cooperate with the ICC, which also may include denying visas to ICC investigators and prosecutors to enter the country. Thus, there will be some

difficulty in investigating crimes within Darfur itself, at least until Sudan is forced or induced to cooperate with the Court. Nevertheless, refugees who are victims of and witnesses to crimes in Darfur are in dozens of countries around the world, over two hundred thousand in Chad alone, and many would undoubtedly be willing to give evidence to the Court. States Parties to the ICC — one hundred countries as of November 2005 — are required by the ICC Statute to cooperate with the Court, and many of these countries have valuable intelligence information on evidence of crimes and the most culpable parties. The UN Security Council, African Union, European Union, UN bodies and agencies, and nongovernmental organizations can also play a positive role in assisting the Court. To be sure, the obstacles confronting the ICC are many, but with perseverance, integrity, and creativity, the challenges can be overcome and the people of Darfur can receive some measure of justice for the atrocities committed against them.

## Notes

1. See, for example, Human Rights Watch, “Sexual Violence and its Consequences among Displaced Persons in Darfur and Chad,” *HRW Briefing Paper*, 12 April 2005; *Medecins sans Frontieres*, “The Crushing Burden of Rape: Sexual Violence in Darfur,” 8 March 2005; *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*, January 25, 2005; Gingerich, Tara and Leaning, Jennifer, “The Use of Rape as a Weapon of War in the Conflict in Darfur, Sudan,” *Physicians for Human Rights*, October 2004; Human Rights Watch, “Empty Promises? Continuing Abuses in Darfur, Sudan,” 11 August 2004; Amnesty International, “Darfur: Rape as a Weapon of War: Sexual Violence and its Consequences,” Amnesty International, 19 July 2004.
2. Most recently, see Kristof, Nicholas D., “Sudan’s Department of Gang Rape,” *New York Times*, 22 November 2005; Fisher, Jonah, “A Culture of Impunity in Darfur,” *BBC News*, 26 September, 2005; Report of the UN Special Advisor on the Prevention of Genocide, Visit to Darfur, Sudan 19–26 September, 2005, dated 4 October 2005, available at: [http://www.protectdarfur.org/Pages/Download\\_Docs/Special\\_Advisor\\_Report\\_1005.pdf](http://www.protectdarfur.org/Pages/Download_Docs/Special_Advisor_Report_1005.pdf)
3. The historical treatment of the laws and customs of war concerning rape, from customary law to codified law, is discussed in detail in Askin, Kelly Dawn (1997). *War Crimes Against Women: Prosecution in International War Crimes Tribunals*. Transnational Publisher, pp. 18–48.
4. Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 6 U.S.T. 3516, 75 U.N.T.S. 287 [Fourth Geneva Convention]; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 3, 16 I.L.M. 1331 (entered into force December 7, 1978) [Additional Protocol I]; Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, S. Treaty Doc. No. 100-2, 1125 U.N.T.S. 609 (entered into force December 7, 1978) [Additional Protocol II].
5. Protocol I, *supra*, arts. 35, 48–60. While the laws of war accept that civilians may be killed or injured during activities directed against military objectives, as collateral damage, nonetheless civilians cannot be the object of or the target of an attack. Further, many precautions are required to be taken to minimize the risk of civilians being injured during an attack against military objects.
6. See, for example, Amnesty International, “Sudan: Surviving Rape in Darfur,” *AFR* 54/097/2004, 9 August 2004; Amnesty International, “Darfur: Rape as a Weapon of

War: Sexual Violence and its Consequences,” AFR 54/076/2004, 19 July 2004; Amnesty International, “Sudan: Mass Rape, Abduction and Murder,” AFR 54/125/2004, 10 Dec. 2004; Amnesty International, “Sudan: Systematic Rape of Women and Girls,” AFR 54/038/2004, 15 April 2004; Amnesty International, “Sudan: Rape as a Weapon of War,” AFR 54/088/2004, 19 July 2004; Medecins Sans Frontieres, “The Crushing Burden of Rape, Sexual Violence in Darfur,” 8 March 2005; Human Rights Watch, “Darfur: Women Raped Even After Seeking Refuge,” 12 April 2005; UNICEF, “Darfur Region in Crisis: Girls and Women Terrorized by Widespread Rape in Darfur,” 20 October 2004; Refugees International, “Rape, Islam and Darfur’s Women Refugees and War Displaced,” 24 August 2004; Fritz, Mark, “In Darfur, Wood-Gathering Women Walk Through a Minefield of Rape,” 19 August 2004, International Rescue Committee; Hampton, Tracy, “Agencies Speak Out on Rape in Darfur,” *Journal of American Medical Associations*, 294(5): 3, August 2005; Kristof, Nicholas D., “A Policy of Rape,” *New York Times*, 5 June 2005; Polgreen, Lydia, “Darfur’s Babies of Rape are in Trial from Birth,” *New York Times*, 11 February 2005; Dixon, Robyn, “In Sudan, Rape’s Lasting Hurt,” *Los Angeles Times*, 15 September 2004; Wax, Emily, “‘We Want to Make a Light Baby’: Arab Militiamen in Sudan Said to Use Rape as Weapon of Ethnic Cleansing,” *The Washington Post*, 30 June 2004, A01; Dealey, Sam, “Rape is a Weapon in Darfur, but Sudan’s Government Doesn’t Want to Hear About It,” *Sudan Times*, 28 August 2005, citing TIME/US ed.; BBC News, “Mass Rape Atrocity in West Sudan,” 19 March 2004; BBC News, “UN attacks Darfur ‘fear and rape,’” 25 September 2004; Sengupta, Somini, “Rampage of Rape in Sudan Continues Undeterred,” *New York Times*, 27 October 2004; SOAT, “Darfur: Abduction and Rape in Nyala,” 20 September 2005; Masciarelli, Alexis and Eveleens, Ilona, “Sudanese Tell of Mass Rape,” BBC News, 10 June 2004.

7. For example, Refugees International reported: “As you have raped me, please don’t leave me alive ... kill me with your gun’ begged Almina to her rapist. ‘May shame kill you’ was the reply of the *Janjaweed* militiaman who raped her.” *Refugees International, Rape, Islam, and Darfur’s Women Refugees and War-Displaced*, 24 August 2004.
8. Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, January 25, 2005, p. 3 [COI Report], available at: [http://www.un.org/News/dh/sudan/com\\_inq\\_darfur.pdf](http://www.un.org/News/dh/sudan/com_inq_darfur.pdf)
9. COI Report, *supra*, paras. 334–336.
10. See U.S. Department of State, Documenting Atrocities in Darfur, September 2004, available at: <http://www.state.gov/g/drl/rls/36028.htm>. See also other chapters in this book, especially Part 2: Chapter 3 (Bang-Jensen and Frease), Chapter 4 (Howard), and Chapter 6 (Totten and Markusen).
11. Unpublished statements collected by the CIJ/USAID Atrocities Documentation Project (on file with author).
12. See especially, Access to Justice for Victims of Sexual Violence, Report of the UN High Commissioner for Human Rights, 29 July 2005, pp. 13–26, available at: <http://www.ohchr.org/english/press/docs/20050729Darfurreport.pdf>
13. In addition to the writings of many other academics, legal experts, or journalists, I have also already written on various ways to prosecute gender crimes. See, for example, Askin (1997), *War Crimes Against Women, supra cit*; Askin, Kelly D. (1999), “Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status,” *American Journal of International Law*, vol. 93, pp. 97–123; Askin, Kelly (1999), “Crimes Within the Jurisdiction of the International Criminal Court,” *Criminal Law Forum*, vol. 10, pp. 33–59; Askin, Kelly D. (1999). “Women and International Humanitarian Law,” pp. 41–87, in Kelly D. Askin and Dorean M. Koenig (Eds.), *Women and International Human Rights Law*, Vol. I, Transnational; Askin, Kelly D. (1999), “The International War Crimes Trial of Anto Furundzija: Major Progress Toward Ending the Cycle of Impunity for Rape Crimes,” *Leiden Journal of International Law*, vol. 12; Koenig, Dorean M. and Askin, Kelly D. (2000). “International Criminal Law and the International Criminal Court Statute: Crimes Against Women,” pp. 3–29, in Kelly D. Askin and Dorean M. Koenig (Eds.), *Women and International Human Rights Law*, Vol. II, Transnational; Askin, Kelly Dawn (2000). “Women’s Issues in International Criminal Law: Recent Developments and the Potential Contribution of the ICC,” pp. 47–63, in Dinah Shelton (Ed.), *International Crimes, Peace, and Human Rights: The Role of the International Criminal Court*,

- Transnational; Askin, Kelly D. (2001). "Comfort Women — Shifting Shame and Stigma from Victims to Victimizer," *International Criminal Law Review*, Vol. 1; Vandenberg, Martina and Askin, Kelly (2001). "Chechnya: Another Battleground for the Perpetration of Gender Based Crimes," *Human Rights Review*, 2(3): 140–156; Askin, Kelly D. (2003). "The Quest for Post-Conflict Gender Justice," *Columbia Journal of Transnational Law*, 41(3): 509–521; Askin, Kelly D. (2003). "The Kunarac Case of Sexual Slavery: Rape and Enslavement as Crimes Against Humanity," pp. 806–817, in Andre Klip and Goran Sluiter (Eds.), *Annotated Leading Cases of International Criminal Tribunals*, Vol. 5, Intersentia; Askin, Kelly D. (2003). "Prosecuting Wartime Rape and Other Gender-Related Crimes Under International Law: Extraordinary Advances, Enduring Obstacles," *Berkeley Journal of International Law*, vol. 21, pp. 288–367; Askin, Kelly D. (2004). "The International Criminal Tribunal for Rwanda and Its Treatment of Crimes Against Women," pp. 33–88, in John Carey et al. (Eds.), *International Humanitarian Law: Challenges*, Vol. 2, Transnational; Askin, Kelly D. (2005). "Gender Crimes: *Jus Cogens* Violations and Universal Jurisdiction," pp. 57–66, in Evelyn A. Ankumah and Edward K. Kwakwa (Eds.), *African Perspectives on International Criminal Justice, Africa Legal Aid*; Askin, Kelly D. (2005). "Gender Crimes Jurisprudence in the ICTR," *Journal of International Criminal Justice*, vol. 3, pp. 1007–1018; Askin, Kelly D. (2005). "The Jurisprudence of International War Crimes Tribunals: Securing Gender Justice for Some Survivors," pp. 125–154, in Helen Durham and Tracey Gurd (Eds.), *Listening to The Silences: Women and War*, Martinus Nijhoff.
14. Rome Statute of the International Criminal Court, 1998 Sess., U.N. Doc. A/CONF.183/9 (1998) (entered into force July 1, 2002) [ICC or Rome Statute], at art. 7.
  15. See, for example, *Prosecutor v. Jean Paul Akayesu*, Judgement, ICTR-96-4-T, 2 September 1998 [Akayesu Trial Chamber Judgement]; *Prosecutor v. Kunarac et al.*, Judgement, IT-96-23-T and IT-96-23/1, 22 February 2001 [Kunarac Trial Chamber Judgement]; de Brouwer, Anne-Marie L.M. (2005). *Supranational Criminal Prosecution of Sexual Violence: The ICC and the Practice of the ICTY and the ICTR*, Intersentia.
  16. ICC Statute, *supra*, art. 6, art. 7(1)(g), and art. 8(b)(xxii) and 8(e)(vi). Under the crimes against humanity provisions of the Statute, "enslavement" is specifically noted to include "the exercise of such power in the course of trafficking in persons, in particular women and children" (art. 7(2)(c)) and "persecution" explicitly includes gender-based persecution (art. 7(1)(h)).
  17. See, for example, Askin (1997), *War Crimes Against Women, supra cit.*
  18. Akayesu Trial Chamber Judgement, *supra cit.*
  19. COI Report, *supra cit.*, para. 338.
  20. BBC News, "Mass rape atrocity in West Sudan," 19 March 2004.
  21. ICC Statute, *supra cit.*, art. 25.
  22. ICC Statute, *supra cit.*, art. 28 (the requirements for military commanders and other superiors are slightly different.)
  23. ICC Statute, *supra cit.*, art. 25(3)(d).
  24. *Prosecutor v. Tadic*, Judgement, IT-94-1-A, 15 July 1999 [Tadic Appeals Chamber Judgement], at para. 227.
  25. See, for example, *Prosecutor v. Tadic*, Judgement, IT-94-1-A, 15 July 1999 [Tadic Appeals Chamber Judgement], at paras. 195–229; *Prosecutor v. Kvočka*, Judgement, IT-98-30-T, 2 November 2001, at paras. 77–119 [Kvočka Trial Chamber Judgement], *Prosecutor v. Kvočka*, Judgement, IT-98-30-A, 28 February 2005, at paras. 77–119 [Kvočka Appeals Chamber Judgement]; *Prosecutor v. Ntakirutimana*, Judgement, ICTR-96-10A and ICTR-96-17A, 13 December 2004, at paras. 461–468; *Prosecutor v. Milutinovic et al.*, Decision on Dragoljub Odjanic's Motion Challenging Jurisdiction — Joint Criminal Enterprise, IT-99-37-AR72, 21 May 2003 [Ojdanic Joint Criminal Enterprise Appeal Decision]; *Prosecutor v. Stakic*, Judgement, IT-97-24-T, 31 July 2003, paras. 438–442 [Stakic Trial Chamber Judgement]; *Prosecutor v. Krnojelac*, Judgement, IT-97-25-A, 17 September 2003, paras. 64–124 [Krnojelac Appeals Chamber Judgement]; *Prosecutor v. Vasiljevic*, Judgement, IT-98-32-A, 25 February 2004, paras. 94–111 [Vasiljevic Appeals Chamber Judgement]; *Prosecutor v. Brdjanin*, Decision on Interlocutory Appeal, IT-99-36-A, 19 March 2004 [Brdjanin Interlocutory Appeal Decision]. See also *Rwamakuba v. Prosecutor*, ICTR-44-AR72.4, Decision on Interlocutory Appeal Regarding Application of Joint Criminal



- Enterprise to the Crime of Genocide, 22 October 2004 [Rwamakuba Interlocutory Appeal Decision on JCE and Genocide].
26. See, for example, the Krstic Trial Chamber Decision, *supra cit*, where the summary execution of all fighting-age men and boys in Srebrenica was held to be a joint criminal enterprise (JCE I), but the rape crimes committed during the course of the JCE deemed foreseeable (JCE III) under the circumstances of mass violence and persecution.
  27. See, for example, Physicians for Human Rights, “Destroyed Livelihoods, A Case Study of Furawiya Village, Darfur, Preliminary Briefing,” 2005, available at: [http://www.phrusa.org/research/sudan/pdf/darfur\\_briefing.pdf](http://www.phrusa.org/research/sudan/pdf/darfur_briefing.pdf)
  28. See, for example, some of the reports on Darfur crimes included on the following websites: <http://www.preventgenocide.org/>; <http://www.darfurgenocide.org/>; <http://www.genocidewatch.org/Never%20Again.htm>; <http://www.savedarfur.org>
  29. United Nations Doc. SC Res. 1593, S/RES/1593, 31 March 2005.
  30. Kvočka Trial Chamber Judgement, *supra cit*, para. 318.
  31. BBC News, “UN attacks Darfur ‘fear and rape,’” 25 September 2004. The Commission of Inquiry made a similar statement: “On their part, the authorities failed to address the allegations of rape adequately or effectively.” *COI Report*, *supra cit*, para. 336.
  32. See <http://www.wluml.org/english/newsfulltxt.shtml?cmd%5B157%5D=x-157-249107>. Accessed September 13, 2005.
  33. “Mass Rape Atrocity in West Sudan,” BBC News, 19 March 2004.
  34. *Sudan Times*, “Sudan Failed to Try Darfur War Crimes — UN Rights Official,” 23 October 2005.
  35. Jonah Fisher, “‘Culture of Impunity’ in Darfur,” BBC News, 26 September 2005.
  36. See *Prosecutor v. Plavsic*, Plavsic Sentencing Judgement, IT-00-39 and 40/1, 27 February 2003, at paras. 27, 29, 34, 120, 126 [Plavsic Sentencing Judgement].
  37. Plavsic Sentencing Judgement, *supra cit*, para. 51.
  38. Plavsic Sentencing Judgement, esp. at paras. 55, 121.

PART 4

The Significance of the Darfur  
Atrocities Documentation Project:  
A Precedent for the Future?

*The Perspective of 'Outsiders'*

CHAPTER **10**  
**The Darfur Atrocities  
Documentation Project:  
A Precedent for the Future?**  
*A Perspective from Washington, D.C.*

TAYLOR B. SEYBOLT

The Darfur Atrocities Documentation Project (ADP) was both a great success and a disturbing failure. The project and the report, “Documenting Atrocities in Darfur,” had great value in at least three respects. First, the Project played a pivotal role in the U.S. Government’s declaration of genocide in Darfur. Second, Secretary of State Colin Powell’s and President George W. Bush’s evocations of the UN Convention on the Prevention and Punishment of the Crime of Genocide (UNCG) in response to the report helped to keep Darfur on Washington’s political agenda. Third, the field interviews and timely analysis of data in mid-2004 showed that a determination of genocide can be made before it is too late to respond. Despite all this, the Darfur Atrocities Documentation Project led to virtually no action to stop the genocide. The combination of high-level attention and near complete lack of action bodes poorly for future efforts to respond effectively to ongoing mass killing.

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The U.S. Institute of Peace does not take positions on policy issues. The views expressed in this book are the author’s alone.

### A Pivotal Role

The single most important reason the ADP grabbed the attention of Washington was that it was “plugged in.” It originated within the government, had a strong champion in the State Department, and issued its findings as a State Department document. No other investigation led by a nongovernmental organization could claim the same advantage.

The U.S. Agency for International Development’s Office of Transitional Initiatives (USAID/OTI), located in the executive branch of government, approached several nongovernmental organizations (NGOs) in early 2004, asking them to document the violence in Darfur in a systematic way. The legislative branch of government got in on the act when the U.S. House of Representatives and the Senate passed a “sense of the Congress” resolution (a resolution that is not legally binding) in early July 2004, calling on the Secretary of State to make a determination of whether genocide was taking place (H. Amdt. 651 to H.R. 4754).

Despite this official encouragement, NGOs and government officials were skeptical that such a documentation project could be done. Lorne Craner, Assistant Secretary of State for Democracy, Human Rights and Labor, did not accept their skepticism. He convened a series of meetings and insisted that a government–NGO investigation take place. The Coalition for International Justice (CIJ) took on the challenge and the Office of Transitional Initiatives paid the costs. Without Craner’s forceful advocacy, from a position of authority within the executive branch of government, the documentation project would not have happened (correspondence with Bang-Jensen, 2005).

In addition to being plugged in, the report had an effect on the political establishment because it reinforced an already fervent call for attention to Darfur. The administration of President George W. Bush had declared its interest in Sudan from the beginning of its first term in the White House, largely in response to great concern among its supporters on the “Christian Right” with the ill treatment of Christians in southern Sudan, at the hands of Muslims from the north. (Although the religious persecution perspective was overly simplistic and oriented toward the southern provinces, not the western Darfur provinces, it served to raise Sudan’s profile in Washington.) Concern in Washington and New York was great enough that U.S. Secretary of State Colin Powell visited Darfur in June 2004, as did United Nations Secretary-General Kofi Annan.

A number of NGOs across the ideological spectrum raised the alarm about Darfur. Some engaged in fieldwork to document killing, rape, and expulsion of civilians. For instance, Physicians for Human Rights (PHR), a premiere organization in the use of medical expertise to document human

rights violations, conducted an investigation along the Sudan/Chad border in May 2004, together with the Open Society Justice Initiative (OSJI). The investigation led PHR to call for intervention to stop the genocide before CIJ even put its team together (PHR, 2004a; PHR, 2004b, p. 5). Other groups engaged in different kinds of political pressure tactics. For example, the Save Darfur Coalition, a group of over one hundred faith-based organizations, issued a call for action in August 2004 and continued to facilitate citizen involvement through the summer of 2006. Suggested actions ranged from prayer vigils to school education days to writing letters to Congressional members and the President (Save Darfur Coalition, 2006).

Be that as it may, the final reason the report was taken so seriously was its rigorous methodology, discussed in previous chapters of this book. The population sampling technique and the size of the sample, combined with satellite imagery of destroyed villages, was more convincing than “dozens” of interviews conducted by other organizations and the episodic coverage by news media. A determination of genocide by one government against another, after all, must be based on the best possible evidence at the time.

### **On the Political Agenda**

Based in part on the evidence compiled by the ADP, on September 9, 2004, Secretary of State Powell testified to the Senate Foreign Relations Committee that the Government of Sudan was committing genocide against the people of Darfur. (It is interesting to note that the report itself does not use the word “genocide.”) He was pushing on an open door. Two days earlier the House and Senate had passed concurrent resolutions citing the 1948 UNCG and declaring genocide in Darfur (H. Con. Res. 467; S. Con. Res. 133). President Bush repeated the accusation of genocide in front of heads of state from around the world, who were gathered at the UN General Assembly on September 21, 2004.

The momentum gained from consensus within the government, together with continued interest from domestic political constituents, kept the violence in Darfur near the top of Washington’s political agenda for an unusually long time. President Bush reaffirmed the finding of genocide at the June 2005 summit meeting of the Group of Eight (G-8). Condoleezza Rice, who replaced Colin Powell as Secretary of State in 2005, visited Darfur in July. Her deputy, Robert Zoellick, visited Sudan four times between April and November, 2005. The Congress constantly engaged in legislative action regarding Darfur, including the allocation of money for aid and calls for the imposition of sanctions on individuals responsible for crimes against humanity. In November 2005, the Senate passed the “Darfur Peace and Accountability Act of 2005” (S. 1462). The Act, described in

more detail later, called for the United States to support the African Union Mission in Sudan (AMIS) and to take diplomatic and economic measures to try to stop the ongoing violence.

The sustained attention has been rather extraordinary for a crisis with no obvious security or economic ramifications for the United States and where there are virtually no U.S. military personnel deployed (except for one or two advisors to AMIS). Humanitarian crises such as Darfur usually elicit no more than a sad shake of the head and some emergency assistance money from official Washington. For evidence of common reaction to atrocities, one need look no farther than the brutal war in southern Sudan for most of its 21-year duration, the devastating conflict in the Democratic Republic of Congo in the late 1990s, or the present crisis in northern Uganda.

Of course the relationship between Sudan and the United States is more complex than the issue of Darfur alone. The U.S. Government is heavily engaged with the new Sudanese “government of national unity” to promote implementation of the Comprehensive Peace Agreement that ended the long-running war in southern Sudan. The two governments also cooperate on counter-terrorism efforts. The importance of Sudan as a source of regional instability, a producer of oil, and a player in the arena of transnational terrorism help to explain Washington’s attention. Nevertheless, among these many interests, the particular concern with violence against civilians in Darfur has persisted.

### A Timely Report

One often hears that the definition of genocide has a serious drawback in practice — by the time we know an event is genocidal, it is too late to do anything. The ADP and other calls for action proved that claim wrong. When the report was published and the U.S. Government declared genocide, a tragic number of people already had been killed or died as a consequence of being driven from their homes. Yet, many more people were still alive and in peril. More than a year after the report, there is still the opportunity to save the lives of people who are caught up in the violence and who are the target of *Janjaweed* and army raids.

If foreign governments and international organizations do not take action to protect civilians, it is likely that many more people will perish. The *Janjaweed* militia have not been reigned in by the Sudanese Government; the government and the Darfur rebels are stalled on the battlefield and have made no progress at the negotiating table; the main rebel group, the Sudanese Liberation Army (SLA), is fracturing, making command and control even less certain than it was; and civilians, foreign aid workers,

and African Union peacekeepers continue to be attacked. The situation is clearly ripe for more violence. It is also ripe for action to stop the killing. The documentation of genocide did not come too late.

The question of being able to identify a genocide before it is too late to react will remain open, not least because most governments and the United Nations do not officially believe the events in Darfur constitute genocide. The United States is the only country to declare genocide. The UN Commission of Inquiry on Darfur described widespread massacres and forcible expulsion, but decided they did not meet the genocidal standard of intent to kill members of a group because of their group membership (United Nations, 2005). Perhaps it will remain true that most policymakers will recognize genocide only after most of a targeted group has been wiped out, in which case it *will* be too late to act. The lesson of the ADP is that this need not be the case. But people in a position of power must be willing to live up to the obligations of the Genocide Convention (UNCG) that their governments have signed.

### **Ultimately, Not Enough**

One cannot help but be concerned about the political precedent that has been set. The U.S. Government clearly recognized in September 2004 that genocide was underway in Darfur. It has done next to nothing in response. No other country has done any better, and the United Nations has proven ineffective.

The President of the United States referred to “crimes my government has concluded are genocide” in the General Assembly of the United Nations (Bush, 2004). That statement obligates the United States, as a signatory of the Convention on the Prevention and Punishment of Genocide, under international law to try to prevent the continuation of genocide and to punish individuals found guilty of genocidal crimes. Yet, the Bush administration has not taken military action, such as imposing a no-fly zone to prevent the aerial bombardment of villages before the militia attacks. It has not taken economic action, such as blacklisting oil tankers that dock at the port of Sudan. (The United States does not buy Sudanese oil, but in the global petroleum market those same tankers carry oil from other locations to the United States.) It has not taken diplomatic action, such as appointing a presidential envoy, like former Senator John Danforth who helped to broker the Comprehensive Peace Agreement between the North and South. Furthermore, the United States failed to act in the UN Security Council to support referral of the matter to the International Criminal Court (ICC), to which it is ideologically opposed. (It should be noted that the United States did not block the referral to the ICC, preferring instead

to abstain from the vote.) The Bush administration's declaration of genocide has proved to be a substitute for action, not a call to action.

The U.S. Congress did no better until 15 months after its declaration of genocide. Most of the legislative action on Darfur since the resolutions "declaring genocide in Darfur, Sudan" did not consist of the passage of laws, but of proposals, counter-proposals and debate — cheap talk. The legislation that was passed before November 2005 was largely to provide humanitarian aid. While the people of Darfur desperately need aid, what they need more is protection.

Finally, on November 18, 2005, the Senate passed a bill intended to help protect civilians and to punish individual perpetrators. Specifically, it called for the rapid expansion of the size and mandate of AMIS and for NATO, the European Union, and the United States to provide the resources necessary for expansion. It insisted that the U.S. President work to impose a countrywide arms embargo, deny access to U.S. ports for ships that export Sudanese oil, and impose targeted sanctions on individuals responsible for genocidal crimes. It also called on the President to appoint a high-level envoy to lead diplomatic efforts (S. 1462). If all of those provisions are implemented, they could make a real difference on the ground.

The United States is not alone in deserving criticism for inaction. No government has been able to bring itself to do more than make pronouncements or take small, weak measures. Some countries, such as China and Russia, are openly hostile to the idea of pressuring Sudan to stop the killing. UN Security Council resolutions on Darfur — while well intentioned — all have had no effective enforcement mechanisms built into them.

Sadly, the lack of action should not surprise us. Governments are most likely to act when they perceive threats to their primary interests or an opportunity to promote their primary interests. When secondary or tertiary interests are at stake, we can expect to see only weak responses, especially when taking action involves risks. Preventing and punishing genocide and mass killing in most parts of the world is still a weak interest for states, despite recent progress in the international human rights debate on state sovereignty and the "responsibility to protect" individuals. The perpetrators of genocide and mass killing, in contrast, have very strong interests at stake. To stop atrocities, outsiders must act swiftly, be willing to take risks, and be prepared to pay possibly significant costs in blood and treasure. Until governments see living up to their obligations under the UNCG as a strong interest, we can expect to witness continued passivity in the face of inhumane brutality.

Even projects that are able to shape political debate, as the Darfur Atrocities Documentation Project did, depend on political leaders to decide and to act. The most troubling aspect of the rhetoric in Washington is that



governments with the power to act now understand that it is acceptable to allow mass killing even when they cannot deny knowledge of it. The excuse of ignorance, behind which governments hid during the Rwandan genocide, is not available in Sudan. Once again, when faced with genocide, governments and their people are content with discussion and humanitarian aid. The people of Darfur need peace or long-term protection so they can return safely to their land and start their lives over again.

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Samuel Totten interviews a Darfur refugee in Goz Beida, Chad (July, 2004).



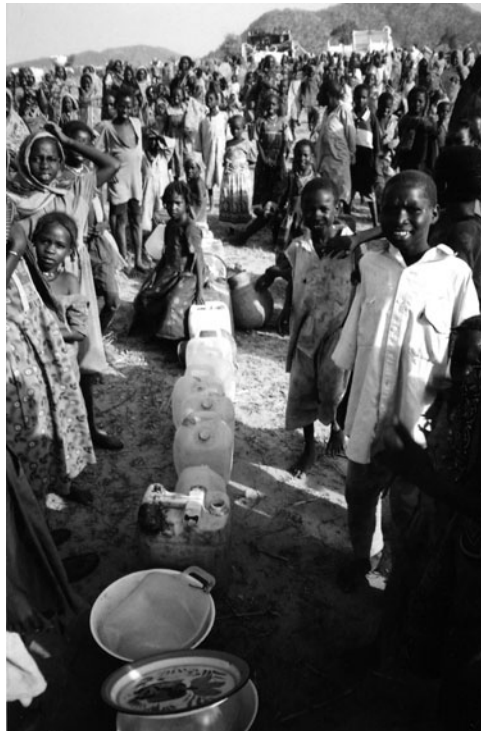
Section of the Cariari refugee camp, on the border between Chad and Sudan, which contained tens of thousands forced from their villages in Darfur. Photo by Eric Markusen.



Section of the Cariari refugee camp, where camp authorities were unable to provide tents, but only tarps to cover personal belongings. Photo by Eric Markusen.



An elderly woman in the Iridimi refugee camp after being interviewed by the Atrocities Documentation Team. Photo by Eric Markusen.



The daily line up for water in the Goz Beida refugee camp.

CHAPTER **11**  
**From Rwanda to Darfur:  
Lessons Learned?**

GERALD CAPLAN

**Introduction**

Even before the 1994 Rwandan genocide ended, some began wondering when “the next Rwanda” would be. Not “if,” but when. Despite Indonesia in 1965, Burundi in 1972, and Cambodia from 1975 to 1978, genocide had receded in the public consciousness. From the late 1960s, it is true, memory of the Holocaust was in full bloom. But the Holocaust was treated as almost a self-contained phenomenon separate from “ordinary” genocide. Indeed, the Herero’s extermination by the Germans in southwest Africa in 1904 was unknown beyond a few experts, and any attention paid to the earlier Armenian genocide was mainly the crusade of Armenians. As for the post-Holocaust massacres of half-a-million Communists in Indonesia, the slaughter by the Tutsi army of perhaps two hundred thousand Hutu in Burundi, including all those with secondary education, and the deaths by beating, starving, or torture by the Khmer Rouge of a million and a half Cambodians, none quite seemed to meet the standards set down in the 1948 Convention on the Prevention and Punishment of Genocide (UNCG).

Rwanda was different. Rwanda was a “classic UNCG genocide,” fulfilling all the conditions, and it reminded the world that a half-century after the world first vowed “never again,” genocide had not disappeared. What

Primo Levi had said of the Holocaust was now said about Rwanda: It happened, so it will happen again. For some, it happened soon enough. For them, Srebrenica in 1995 seemed “another Rwanda,” and indeed, the international Criminal Tribunal for the former Yugoslavia eventually decided that the murder of eight thousand Muslim Bosnian males by Bosnian Serb soldiers and militias was indeed genocide. But this has been a controversial issue. Cold-bloodedly murdering eight thousand Bosnian Muslims was beyond question an egregious war crime, even a crime against humanity, but, some wondered, did it belong in the same category as killing one million Armenians or six million Jews?

Rwanda, however, left no room for ambiguity. Ironically, the seeming absence of genocide since 1945 had made most observers refuse to take seriously in advance that an actual genocidal conspiracy was being hatched in Rwanda before 1994. Once it was over, it seemed all but inevitable that others could, and would, follow. For many, early in the new millennium, Darfur seemed well on its way to becoming “the next Rwanda.” The urgent question then emerged: Had Rwanda taught the world any lessons that might help prevent Darfur from following in its path?

### **Three Lessons from Rwanda**

Assuming, of course, that there really are any lessons at all that the past can teach the future, it is possible to isolate three from the unmitigated catastrophe of 1994 Rwanda. Of these, the first, and most obvious, is profoundly disheartening to all those who favor intervention in crises where no interests beyond the humanitarian are at stake. The second and third are apparently, or potentially, encouraging. To seek a ray of hope out of a genocide borders on the desperate, but in the curious universe of those who study genocides in order to prevent them, what else is there to hold on to?

The horror of the Rwandan genocide extends beyond its intrinsic bestiality. What’s also notable is, first, how swiftly it became evident that this was a “perfect storm” of a genocide, and, second, how easily it could have been prevented. (Before addressing the betrayal of Rwanda by the “international community,” genocide prevention activists must not forget that it could have been prevented most successfully if the Hutu conspirators who plotted to “cleanse” Rwanda of its Tutsi citizens had simply called off their plot.) Yet the genocide was not formally named as such by the vast majority of governments and institutions, including the United Nations and the Organization of African Unity, until the one hundred days of slaughter had virtually come to an end. Moreover, not only was the genocide not prevented, it was not even marginally mitigated. From the first day to the

last, not a single reinforcement arrived in Rwanda to bolster the puny United Nations force of four hundred that was trying desperately to save the relatively few Tutsi that it could.

Thus, the first lesson from Rwanda — the harsh unwelcome reminder (as if the world needed another) — was that the global powers-that-be are capable of almost infinite callousness and indifference to human suffering if geopolitical or political interests are not at stake. Calls for forceful intervention based strictly on humanitarian grounds, as we have learned the hard way once again in Darfur, are simply irrelevant to those with the means to intervene.

Here, I refer essentially to the UN Security Council, and within that body to the remarkably powerful five Permanent Members (P5) who alone hold a veto over all its resolutions. Since United Nations missions can only be authorized by the Security Council, and since any one of the P5 can veto any resolution, the leverage of the United States, Britain, France, Russia, and China can hardly be exaggerated. Those who have begged for a more assertive response in both Rwanda and Darfur understand the immutability of this phenomenon.

Often, middle powers are looked to as a means to exert pressure on the inner sanctum of the P5. Canada, northern Europe, and the Scandinavian countries are all seen, sometimes naïvely, as being less in the thrall of self-interest and more open to humanitarian projects. In trying to leverage action for Darfur, activists placed considerable hope on these countries. The role of Belgium in 1994, though, shows both the leverage that a middle power can play and the perverse use it can make of that leverage.

For one hundred ten years prior to the Rwandan genocide, no external power played a more deplorable role in Africa than Belgium — a tiny country responsible for giant crimes against humanity. Its impact on Congo, Rwanda, and Burundi was catastrophic. The turbulent history of the entire Great Lakes region in the twentieth century would have been profoundly different if it had not been for Belgian colonial rule. And in 1994, just as the genocide was exploding across Rwanda, the Belgian Government sought to bring pressure on the Security Council to withdraw (in its entirety) its six-month old UN Assistance Mission for Rwanda (UNAMIR). In light of the fact that ten of Belgium's United Nations troops had been murdered by Rwandan Government soldiers less than a day after the genocide was triggered by the shooting down of the Rwandan president's plane, the Belgian government decided it was politically impossible for its troops to remain in Rwanda. Their withdrawal very substantially undermined UNAMIR's capacity, and its lethal consequences were not merely theoretical. In fact, it immediately and directly led to the death of some twenty-five hundred Rwandans being protected by Belgian troops at the Ecole Technique

Officielle (ETO) school compound in the capital, Kigali. At least the Belgian Government had the good sense to feel humiliated by the decision to abandon Rwanda at its moment of greatest need and, thus, sought to cover its guilt by prodding the entire world to share its culpability.

To the everlasting sorrow of Rwanda, the Belgians found the administration of U.S. President Bill Clinton ready and willing. Largely for their own entirely short-term partisan reasons, with pathological United Nations-hating Republicans breathing down their necks, the Clintonites were unprepared to have anything whatsoever to do with sending a new United Nations mission to a tiny African country which, as is invariably said, almost no American could even find on a map. Among the P5, France was the only country genuinely concerned about Rwanda for its own perverse reasons of francophone solidarity, and it was stealthily seeking a way to intervene on behalf of the Hutu extremist *genocidaire* government. It was left to U.S. Ambassador to the UN, Madeleine Albright, to lead a vigorous movement in the Security Council to literally decimate UNAMIR's twenty-five hundred-odd force. Britain, for reasons British journalist-historian Linda Melvern is still trying to unravel, fell in solidly behind the Americans. Russia and China were largely uninterested, a situation that would change significantly in the case of Darfur. At the end of the genocide's second week, with an estimated one hundred thousand or more Tutsi and almost all prominent moderate Hutu already dead, and the genocide gaining daily momentum, the Security Council voted to reduce the UNAMIR mission to two hundred fifty men. UN Force Commander Romeo Dallaire, furious and sick at heart, disobeyed this explicit instruction and managed to retain four hundred men for the duration of the genocide.

Even now, it is impossible to recapitulate these events without feeling they cannot possibly be true. But as virtually all authorities on the subject agree, and as the Security Council's reaction to Darfur a decade later makes entirely clear, they were only too true, and their lesson was clear. There seemed barely any depths to which the members of the "international community" would not sink if it was deemed necessary to its national interests, even if that interest was nothing more nor less than, in Belgium's case, covering up a cowardly abandonment of a people at ultimate risk, or for the United States, winning an impending election. Political expediency was all, and human need seemed completely irrelevant.

However, two other lessons of the international reaction, distressing as they were at the time, seemed to offer a certain hope for intervention in future crises. First, were the lies told by both U.S. President Bill Clinton and UN Secretary-General Kofi Annan when later apologizing for their inaction during the 100 days. Both claimed that they were insufficiently

aware of the situation at the time. These claims, on the part of both men, have been repudiated beyond a shadow of a doubt. They knew everything, or at least everything they wanted to know. Nevertheless, their very disingenuousness permitted the inference that the next time “another Rwanda” loomed, if it could attain a sufficiently high public profile, the Security Council would no longer have the excuse of ignorance and, thus, have little alternative but to intervene. This apparent truth initially gave heart to the movement to intervene in Darfur.

Second, as already noted, almost no one in an official position at the time agreed to characterize Rwanda as a genocide and, led again by the Clinton administration, actually denied that a genocide was, in fact, in progress. This refusal to affirm the obvious was tied directly to the Clintonites’ electoral fears. Government lawyers studying the 1948 Genocide Convention appear to have decided that accepting the genocide label would trigger a major obligation on the administration to intervene actively. That such an interpretation was highly debatable is neither here nor there. It was perfectly possible to argue that a mere Security Council resolution satisfied the wording of the UNCG. But Clinton’s advisors chose not to adopt this reading. Their judgment powerfully affected Clinton’s public stance.

Television captured a moment of true self-debasement when a U.S. State Department spokesperson, Christine Shelly, tried to explain to reporters that Rwanda was the scene of “acts of genocide” but not of genocide. When pushed to indicate how many “acts of genocide” constitute one full genocide, Shelly, obviously humiliated beyond words, explained that she wasn’t authorized to deal with that question. (To her everlasting chagrin, several documentaries on the genocide include footage of her disastrous performance, unforgivingly immortalizing her forever.) The difference between this pathetic moment and subsequent American reactions to Darfur under President Bush could hardly have been more glaring.

And indeed, Clinton’s position that there was no full-blown genocide in Rwanda unwittingly provided the glimmer of hope out of an act of unsurpassed political opportunism. If Rwanda was “not quite” a genocide, and therefore intervention was not obligatory, it surely followed logically that if a genocide were declared in future, would it not mean that intervention was mandatory, inescapable? That logic, combined with the prospect that if a disaster was well-enough publicized, the world would have little choice but to move in, offered some real hope that the “next Rwanda” would not be betrayed and abandoned as the original Rwanda had been.



### The Next Rwanda

Then came Darfur. Less than a decade after Hutu Power was defeated, the world had found its “next Rwanda.” It is irrelevant to the argument of this essay that genocide authorities (including those represented in the present volume) disagree about whether the conflict is a genocide or not. All agree that it has had many of the dimensions of a genocide, that it is an appalling catastrophe, and that robust intervention is demanded. As we know, no such intervention has occurred, and as of this writing (Summer 2006), the situation seems to have deteriorated substantially and become even more complex — the almost inevitable consequence of the world’s meager response to date. From the point of view of the hopes raised by two of the optimistic lessons from Rwanda, the response of the “international community” to the crisis in Darfur can only be considered a giant, tragic set-back. It is not too much to say that Darfur shows that only the first despairing lesson — the bottomless cynicism and self-interest of the major powers — remains valid, while the hopes have been largely destroyed.

After all, by the middle of 2004, at the very latest, everyone who counts knew that an overwhelming political and humanitarian man-made disaster had befallen western Sudan. On April 7, when he rightly should have been in Kigali for the commemoration of the tenth anniversary of the Rwandan genocide, Kofi Annan was instead in Geneva unveiling a new five-point plan for genocide prevention and announcing that the world must not permit Darfur to become “another Rwanda.” Everyone who counts soon either visited Khartoum to plead with the Government of Sudan that was orchestrating the crisis, or popped in at a displaced persons or refugee camp in Darfur or across the border in Chad. When Annan and Colin Powell make a stop somewhere, you know that it is already a major story. It may not have competed with the Michael Jackson trial, but even in the mainstream media, Darfur stories, features, and opinion pieces were remarkably common for a crisis so remote and complex.

The crisis in Darfur, in other words, was fairly big news. This was unlike Rwanda. Clinton and Annan knew all about Rwanda, but media coverage for many weeks was both minimal and distorted (“tribal savagery”) so the public remained largely uninformed. Yet despite Darfur’s profile, the Security Council was effectively paralyzed by the conflicting interests of the veto-casting P5. This time China, thirsty for Sudan’s oil, and Russia, anxious to sell arms to a genocidal government, also played spoiler roles. The Council passed a series of powder-puff resolutions each threatening the killers in Khartoum that if they did not rein in their *Janjaweed* forces they would be forcefully confronted with yet another resolution. Perhaps not since a representative of Rwanda’s *genocidaire* government retained his

position on the Security Council through the entire 1994 genocide has the Security Council appeared to be more of a joke than over Darfur.

### **The Role of the United States**

Yet there was another reason for hope. For reasons already documented in this book, both the Congress and Executive Branch of the U.S. Government publicly declared that Darfur constituted a genuine genocide under the 1948 Convention. Such a radical and dramatic step was unprecedented in United States history. Both chambers of Congress (the House and the Senate) hastily and unanimously passed their own resolutions declaring Darfur to be a genocide with barely an explanation, let alone debate, and President Bush and Secretary of State Colin Powell each eventually followed with their own concurring declarations. To the genocide prevention community, this seemed the moment they had so long dreamed of and planned for. What would be the point of making this declaration unless significant action was being planned? It was true the Bush administration, and others, were modestly generous in providing humanitarian aid to the displaced and the refugees as well as funding for the Africa Union Mission to Darfur. But now, surely, with these declarations, was the long-awaited moment of qualitative escalation. Now we would see the kind of forceful intervention denied Rwanda that was crucial if the travesty in Sudan was to end.

In fact, all that was needed was to pay heed to the second part of Colin Powell's statement before the U.S. Senate Foreign Relations Committee. Yes, the United States had decided, upon looking at evidence of the investigation it had specifically commissioned (the exact opposite of Rwanda) that a genocide was taking place before the eyes of the world. Powell had no doubt what the world expected next, and said so explicitly: "Mr. Chairman, some seem to have been waiting for this determination of genocide to take action. In fact, however, no new action is dictated by this determination. We have been doing everything we can to get the Sudanese Government to act responsibly. So, let us not be preoccupied with this designation of genocide. These people are in desperate need and we must help them. Call it a civil war. Call it ethnic cleansing. Call it genocide. Call it 'none of the above'. The reality is the same: There are people in Darfur who desperately need our help" (Powell, 2004).

How was this possible? Had the historic declaration of genocide been nothing more than an opportunistic political ploy by the Bush administration to assuage some domestic pressure groups? Could even the Bush neocons [neoconservatives] be so cynical as to play politics with genocide? If not, how could this wholly unanticipated development be explained? How could

the esteemed Colin Powell participate in this destructive exercise, which has done so much to debase the currency of the Genocide Convention?

Within mere months of the U.S. Government's determination of genocide in Darfur, a new Bush administration betrayal of Darfur was exposed. First came the revelation that the CIA had sent a plane to Khartoum to ferry the head of Sudanese intelligence, General Salah Abdallah Gosh, to Washington for discussions with his American peers on the "war against terror." Sudan, it appears, had become "a crucial intelligence asset to the CIA" (Goldenberg, 2005). Nevermind that General Gosh's name is widely assumed to be among the fifty-one leading Sudanese officials named by the UN-appointed International Commission of Inquiry on Darfur. The "war on terrorism" obviously trumps genocide.

Later we learned just how close this tie really was. In October 2005, *Guardian* reporter Jonathan Steele reported the following:

Question: When do Bush administration officials cuddle up to leaders of states that the U.S. describes as sponsors of international terrorism? Answer: When they are in Khartoum. I know because I saw it the other day... . We were attending the closing dinner of a two-day conference of African counter-terrorism officials, to which the U.S. and U.K. were invited as observers. The western spooks were less than happy to have the western press on hand, especially as their names were called out. But loss of anonymity was a small price for the excellent cooperation both agencies believe Sudan is giving to keep tabs on Somalis, Saudis, and other Arab fundamentalists who pass through its territory... .

[The dinner] was in the garden of the headquarters of Sudan's intelligence service, not far from the Nile. Up stepped a senior CIA agent. In full view of the assembled company, he gave General Salah Abdallah Gosh, Sudan's intelligence chief, a bear hug. The general responded by handing over a goody-bag, wrapped in shiny green paper. Next up was the [British] M16 official, with the same effusive routine (Steele, 2005, n.p.).

There are still Darfur activists who believe that despite close working relationships between the Bush administration and precisely those Sudanese leaders against whom the International Criminal Court intends to issue warrants, the United States can still be relied on as an ally in pressuring Khartoum to end its war against the black Africans. I wish I could agree. The Khartoum Government is as canny as it is treacherous, and blithely uses its leverage to continue getting away with murder in Darfur. It now has trump cards with the Americans, the Chinese, and the Russians. Those of us who urge intervention on strictly humanitarian grounds have

no comparable influence whatsoever. The result is virtually preordained: The death and rape and suffering in western Sudan will continue.

Are there now lessons from Darfur, having seen that the only lesson from Rwanda that proved relevant was the most despairing one? It is almost too disheartening even to ask. But for those committed to genocide prevention or to interventions on strictly humanitarian grounds, tough questions must again be asked, creative new directions and mechanisms sought. The alternative is too ghastly to contemplate.

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CHAPTER 12  
Proving Genocide in Darfur:  
The Atrocities Documentation Project  
and Resistance to Its Findings

GREGORY H. STANTON

The U.S. Secretary of State, Colin Powell, on September 9, 2004 declared “that genocide has occurred in Darfur and the Government of Sudan and the *Janjaweed* bear responsibility, and genocide may still be continuing.”<sup>1</sup>

The State Department has not historically been forward leaning in making findings of genocide, as was notoriously evident during its refusal to apply the term “genocide” to Rwanda in 1994 until most of the eight hundred thousand victims had been murdered. For Darfur, however, the State Department’s Bureau of Democracy, Human Rights and Labor, and the Ambassador for War Crimes Issues, Pierre-Richard Prosper, adopted an exemplary strategy of proof. Prosper was the prosecutor in the *Akayesu* case,<sup>2</sup> which resulted in history’s first conviction after trial by an international criminal tribunal applying the Genocide Convention. The State Department’s strategy demonstrated the careful investigation and solid legal analysis that made Prosper such a formidable prosecutor at the International Criminal Tribunal for Rwanda (ICTR).

### The Atrocities Documentation Project

Prosper knew that proof of genocide must be based on authoritative facts. He arranged for the State Department's Bureau of Democracy, Human Rights and Labor to commission a thorough investigation by experts recruited by the Coalition for International Justice (CIJ), and funded by the U.S. Agency for International Development's Office of Transition Initiatives. The result was the Darfur Atrocities Documentation Project (ADP), the first use of systematic social science survey research to prove commission of genocide and crimes against humanity. An interviewing tool was formulated and tested, and systematic random sampling methods were then used to interview over eleven hundred eyewitnesses in Sudanese refugee camps in Chad, a sample large enough to be a statistically significant representation of the estimated two hundred thousand Darfuri refugees in Chad. The interviewing teams were carefully chosen and given full support for the project. Then Prosper and the State Department Legal Advisers' Office applied international law to the facts without determining in advance what the conclusion would be. The legal conclusions were properly separated from their political consequences.

The results of the CIJ report were shocking. Over 60 percent of the people interviewed had witnessed the killing of a family member. Two-thirds had witnessed the killing of a nonfamily member. Over 80 percent had witnessed destruction of a village. Two-thirds had witnessed aerial bombing of villages by the Sudanese government. And perhaps most chillingly, one-third had heard racial epithets used while they or their relatives were being murdered or raped. Assaultants often shouted, "Kill the slaves," and "We have orders to kill all the blacks." Over two hundred fifty thousand black Africans have died in Darfur and over two million people have been displaced from their homes. The State Department Report stated that as of September 2004, Arab *Janjaweed* militias, supported by Sudanese government bombing, had burned to the ground over six hundred villages.

### The Finding of Genocide

Genocide, as defined by the UN Genocide Convention, is "the intentional destruction, in whole or in part, of a national, ethnical, racial, or religious group, as such." Was the killing "intentional?" Yes. According to the elements of crimes defined by the Statute of the International Criminal Court, genocide must be the result of a policy, which may be proved by direct orders or evidenced by systematic organization. Was the killing in Darfur systematically organized by the al-Bashir regime<sup>3</sup> using government-armed *Janjaweed* militias, bombers, and helicopter gunships? Yes. Were the victims chosen because of their ethnic and racial identity? Yes.

Fur, Massalit, and Zaghawa black African villages were destroyed, while Arab villages nearby were left untouched. The State Department report concludes that the “primary cleavage is ethnic: Arabs against Africans.”<sup>4</sup> Does this conclusion constitute the intentional destruction, in part, of ethnic and racial groups? Yes. In short, the violence in Darfur is genocide, and it continues. The atrocities committed by the Sudanese Government and *Janjaweed* militias in Darfur meet all three requirements for genocide:

1. **The atrocities are intentional, evidenced by the systematic nature of their destruction** of major parts of the Fur, Massalit, Zaghawa, and tribal groups through killing and mass rape. The widespread expression of ethnic and racial intent to destroy by the perpetrators was strongly proven by the CIJ survey. The intent is specific — it is aimed at partial destruction of specific ethnic and racial groups. The fact that some members of the groups have been spared and allowed to flee to refugee and internally displaced persons (IDPs) camps is irrelevant to this finding of specific intentionality, contrary to the finding of the UN Commission of Inquiry. This is a case of “ethnic cleansing” being accomplished through genocide. The two crimes are not mutually exclusive.
2. **The crimes are directed against groups protected by the Genocide Convention.** The Fur, Massalit, and Zaghawa are ethnic groups who have their own languages, cultures, and preferential kinship systems, distinguishing them from the Arab perpetrators not by color, but by ethnicity. The claim by the Sudanese Government that both perpetrators and victims are alike is simply false. The fact is that the African groups being attacked are culturally distinctive, and their attackers certainly recognize the distinctions when they refer to their victims as “blacks” and/or “slaves.”
3. **The crimes include all the acts of genocide enumerated in the Genocide Convention:** Widespread mass killings of people targeted because of their ethnic identity; mass rape, causing serious bodily or mental harm to members of the groups; deliberately inflicting on the groups destruction of crops, poisoning of wells, and other conditions of life calculated to bring about their physical destruction in whole or in part; imposing measures intended to prevent births by the group (directly declared by rapists who tell their victims, “Now you will bear light-skinned children.”); and kidnapping the children of the group and forcing them into slavery.

The al-Bashir regime in Sudan has mastered genocide and ethnic cleansing, having combined these crimes before in the Nuba Mountains and

in southern Sudan, where over two million black Africans died over the course of the twenty-one-year-long civil war between the North and the South.<sup>5</sup> In the South, the government wants to confiscate rich oil reserves under the lands of the Nuer, Dinka, Shilluk, Nuba, and other black African groups. In Darfur, the regime is driven by the racist ideology of the “Arab Gathering,” a secretive elite reminiscent of the Ku Klux Klan or Nazi Party, that wants to “arabize” Sudan and drive out black Africans in order to confiscate their grazing lands, water resources, and cattle herds.

One of the most insidious aspects of the Sudanese Government’s genocide in Darfur is that its policy of direct mass murder is complemented by a longer-term strategy of what Helen Fein has named “genocide by attrition.”<sup>6</sup> Alex De Waal calls it “famine that kills.”<sup>7</sup> Mass murder by starvation has been a method of genocide for centuries, perfected by the Turks in Armenia in 1915 and by Stalin in 1933 Ukraine. It has been the strategy of choice of the Sudanese government, both in the South and in Darfur. It is a shrewd strategy because death comes slowly for many of its victims and denial is easy. All a government need do is arm and support militias, which drive a self-sufficient people off their land through terror, herd them into displaced persons and refugee camps, then systematically impede aid from getting to them, letting them slowly die of starvation and disease. The deaths can then be blamed on “famine,” “disease,” “ancient tribal conflicts,” or “civil war,” or most cynically, “failure of the international community to provide needed relief.”

### Resistance and Denial

There was dissent regarding the classification of genocide within the State Department’s Office of the Legal Adviser from die-hard deniers, including George Taft, who was one of the State Department lawyers who notoriously opposed calling the Rwandan genocide by its proper name for over two months in 1994. Even after more than two hundred fifty thousand people had died in Darfur, Taft told me personally in Washington, D.C., on August 16, 2005 (witnessed by the former U.S. Ambassador to Rwanda, David Rawson), that the Darfur mass murders do not constitute genocide, and he opposed use of the term *genocide* for Darfur. Fortunately, the State Department’s Legal Adviser, William H. Taft IV, and Secretary of State Colin Powell had already exercised better legal judgment in September 2004 as a result of the findings of the ADP and had determined that the mass killing in Darfur was genocide.

The legal deniers’ main argument is that the killings don’t fit the definition of genocide. Such “definitionalist” denial, which is based on technical legal doubt about proof of one of the elements of the crime of genocide



(usually intent), is most common among lawyers and policymakers who want to avoid intervention beyond provision of humanitarian aid. It results in “analysis paralysis,” which the State Department/CIJ ADT and report brilliantly overcame. Nevertheless, the European Union, the Secretary-General of the United Nations, and even Human Rights Watch and Amnesty International still avoid calling the crimes in Darfur by their proper name. There are five reasons for such reluctance.

1. Among journalists, the general public, diplomats, and lawyers who haven't read the Genocide Convention, there is a common misconception that a finding of genocide would legally require action to suppress it. Under this misconception and having been informed that the United States would take no action in Rwanda in 1994, State Department lawyers ordered avoidance of the word. They made their legal conclusion fit the Procrustean bed of United States policy.

Unfortunately, the Genocide Convention carries no such legal compulsion to act. It legally requires only that states—parties to the Convention pass national laws against genocide and then prosecute or extradite those who commit the crime. Article VIII of the Convention says they also “*may* call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide” (emphasis added). But, they are not legally required to do so. Article I of the Genocide Convention creates a moral obligation to prevent genocide, but it does not dictate military intervention or any other particular measure.

2. Another misconception is the “all or none” concept of genocide. The “all or none” school considers killings to be genocide only if the intent is to destroy a national, ethnic, racial, or religious group “in *whole*.” Their model is the Holocaust. They ignore the “in part” in the definition in the Genocide Convention. This school would render the Convention for the *Prevention and Punishment of the Crime of Genocide* (emphasis added) functionally useless, since genocide could only be found after an entire group was dead. It would also limit applicability of the Convention to just three cases: Armenia, the Holocaust, and Rwanda; a mistake that Dr. Alain Destexhe made in his 1994 book on the Rwandan genocide.<sup>8</sup>
3. Since the 1990s, a new obstacle to calling genocide by its proper name has been the distinction between genocide and “ethnic

cleansing.” Genocide and “ethnic cleansing” are sometimes portrayed as mutually exclusive crimes, but they are not. Professor William Schabas, for example, says “it is incorrect to assert that ethnic cleansing is a form of genocide, or even that in some cases, ethnic cleansing amounts to genocide.”<sup>9</sup> He argues that the specific intent of “ethnic cleansing” is *expulsion* of a group, whereas the specific intent of “genocide” is its *destruction*, in whole or in part. He illustrates with a simplistic distinction: In “ethnic cleansing,” borders are left open and a group is driven out; in “genocide,” borders are closed and a group is killed. The fallacy of the distinction arises from the misconception that an act or policy can have only one specific intent. Any prosecutor knows that the same act may have several intents and constitute the basis for several criminal charges. The Sudanese Government has at least two intents in Darfur. One is to destroy a significant part of the Fur, Massalit, and Zaghawa population of Darfur. That is genocide. The other intent of the Sudanese Government and their *Janjaweed* militias is to drive Fur, Massalit, and Zaghawa black African farmers off of their ancestral lands, *using* terror caused by mass murder, mass rape, mass starvation, and concentration camps run by *Janjaweed* and Sudanese army guards. That is “ethnic cleansing.” Thus, *both* ethnic cleansing and genocide are underway in Darfur.

4. Another way to avoid use of the term “genocide” is to confuse motive with intent. An example is the claim that the motive of the perpetrator is merely “ethnic cleansing” of a territory, not “genocide,” which requires the specific intent to *destroy*, in whole or in part, a national, ethnic, racial, or religious group. The UN Commission of Experts report of 2005 made this mistake. Ironically, the Commission report even included a paragraph saying motive and intent should not be confused, an exhortation the Commission promptly violated.<sup>10</sup> Even if a stated or otherwise evident motive of a perpetrator is to drive a group off its land (“ethnic cleansing”), the methods used to terrorize the group may include killing part of the group and other acts enumerated in the Genocide Convention, resulting in the destruction of the group, in whole or in part. That is what is happening in Darfur. That is genocide.
5. The most important diplomatic argument against using the term *genocide* was that it would antagonize the Sudanese Government, cut off United States ability to act as a mediator in “the peace

process,” and jeopardize Sudanese cooperation in the war on terror. George Taft explicitly stated this view to me when I discussed the State Department’s determination with him. This *realpolitik* argument has been especially effective in frightening diplomats who fear upsetting the peace processes between North and South, and now between Darfur rebels and the Sudanese government. In 2005 and 2006, the argument has become: “Don’t upset the fragile new order in Khartoum put in place by the agreements settling the civil war in the South. Let’s concentrate on getting the Darfur ‘rebels’ to reach a similar agreement with Khartoum in Abuja under the African Union. And by all means don’t jeopardize Sudanese cooperation with the United States in the war on terror.” Most recently that policy was demonstrated when the chief of the Sudanese intelligence service, Salah Abdallah Gosh, one of the main planners of the Darfur genocide, was flown by executive jet to confer with the CIA in Langley, Virginia.<sup>11</sup>

### Overcoming Appeasement

Meanwhile, the ethnic cleansing of Darfur is nearly complete, and genocidal massacres and rapes continue daily.<sup>12</sup> Diplomats repeatedly and naïvely avoid antagonizing genocidists, ignoring the fact that they are serial killers. Policies toward them based on fear lead only to appeasement and further genocide. Unfortunately, such appeasement now seems to be the main illusion driving U.S. policy.

It is time for the United States to recognize that seven thousand African Union military observers without a robust mandate cannot protect civilians in Darfur. We should seek a Chapter VII UN Security Council resolution mandating the African Union to protect civilians in Darfur, and calling on United Nations members to quickly provide it with strong military and financial resources. If the resolution cannot pass the Security Council, or if the African Union refuses the mandate, the United States and NATO should declare a no-fly zone over Darfur and enforce it with AWACS planes, NATO jets, and helicopter gunships. If Sudanese Government bombers and gunships violate it and continue to bomb and machine-gun villagers in Darfur, the planes should be shot down. NATO should also prepare a heavy infantry force to intervene if *Janjaweed* militias continue their reign of ethnic cleansing, mass rape, and genocide.

Those who are bystanders to genocide are guilty of complicity. In genocide, only the stars are neutral.

## Notes

1. Hearing of the U.S. Senate Foreign Relations Committee, 9 September 2004.
2. Jean-Paul Akayesu was a bourgmestre (mayor) in the Taba commune of Gitarama. On 2 September 1998, the ICTR found him guilty of “genocide, direct and public incitement to commit genocide, and crimes against humanity (extermination, murder, torture, rape, and other inhumane acts.)” One of the court’s most significant findings was that systematic mass rape is an act of genocide under Article 2 (b) of the Genocide Convention (“Causing serious mental or bodily harm to members of the group”) when it is intended to destroy the group (ICTR-96-4-1).
3. Lieutenant General Omar Hassan Ahmed al-Bashir took power in a military coup by the National Islamic Front (NIF) in 1989, when he became Prime Minister, and he has been President since October 1993.
4. State Department Report, page 1, Summary.
5. Eric Reeves (2005), “Darfur: Genocide Before Our Eyes,” in J. Apsel, Ed., *Darfur: Genocide Before Our Eyes*, New York: Institute for the Study of Genocide, p. 28.
6. Helen Fein (1993). “Accounting for Genocide after 1945: Theories and Some Findings,” *International Journal of Group Rights*, 1:79, p. 106.
7. Alex De Waal (2005, rev. ed.). *Famine that Kills. Darfur, Sudan*. London: Oxford University Press.
8. Alain Destexhe, M.D. (2004). *Rwanda, essai sur le genocide*. Paris: Editions Complexe.
9. William Schabas (2000). *Genocide in International Law*. Cambridge, U.K.: Cambridge University Press, p. 200.
10. Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General Pursuant to Security Council Resolution 1564 of 18 September 2004, 25 January 2005, paragraph 493: “Of course, this special intent must not be confused with motive, namely the particular reason that may induce a person to engage in criminal conduct. For instance, in the case of genocide, a person intending to murder a set of persons belonging to a protected group, with the specific intent of destroying the group (in whole or in part), may be motivated, for example, by the desire to appropriate the goods belonging to that group or set of persons, or by the urge to take revenge for prior attacks by members of that group, or by the desire to please his superiors who despise that group. From the viewpoint of criminal law, what matters is not the motive, but rather whether or not there exists the requisite special intent to destroy a group.”
11. *The New York Times*, June 18, 2005.
12. See daily news updates at: <http://savedarfur.org/go.php?q=latestNews.html> and <http://www.genocidewatch.org/SUDAN2003Page.htm>

CHAPTER 13  
'Atrocity Statistics' and  
Other Lessons from Darfur

SCOTT STRAUS

**Introduction**

The Darfur crisis has demonstrated, yet again, that an international commitment to prevent genocide does not meaningfully exist. That conclusion may not be surprising, but for those who need reminding, Darfur reveals the hollowness of the post-Holocaust promise of "never again." In Darfur, for nearly three years, the Sudanese Government together with militia proxies committed widespread, systematic violence against the region's black African population. The violence was public and often executed in broad daylight. The violence was massive: Arab perpetrators displaced more than two million black Africans and claimed the lives of more than two hundred thousand civilians. The early stages of the conflict did not attract much international concern; however, starting in mid-2004, Darfur received considerable attention in the U.S. press. Eventually, the violence led to unprecedented government focus in the United States, including the first time that an administration authoritatively accused another state of committing genocide while the genocide was happening.<sup>1</sup> Yet, as we know, despite the public nature of the violence, despite excellent information, and despite civil society and government attention, there developed no

concrete policy to stop the violence. Genocide persisted, yet again. The question of why deserves our attention.

My brief commentary here has two principal objectives. First, I want to explore some reasons why the international response to Darfur was so lackluster. Darfur's lessons are not those from Rwanda of a decade earlier. Unlike Rwanda, Darfur did generate considerable attention from citizens, scholars, and policymakers as the crisis unfolded. Unlike Rwanda, policymakers did not shy away from employing the term *genocide*. Darfur demonstrated that visibility and labeling violence *genocide* are not enough to trigger international intervention. Second, I want to highlight some important developments that emerged during the Darfur crisis. Chief among them, in my view, is the Darfur Atrocities Documentation Team (ADT). The ADT systematically collected evidence about patterns of violence in the midst of an unfolding crisis. Such documentation sets an important precedent. If a cogent policy to prevent genocide emerges over time, that policy should include social scientific documentation of atrocities. The ADT is a benchmark for future projects of this sort, and I want to highlight some important aspects of the project.

In the end, the international response to the Darfur crisis was a failure. Despite the renewed international attention to genocide in the wake of Rwanda and Bosnia, the international community did not act decisively to stop the systematic destruction of human lives. At the same time, there were important developments that happened during the Darfur crisis. For those who are interested in developing a more sophisticated and effective approach to stopping genocide, the task is to understand both what went wrong, but also what went right. The remainder of my commentary is one step in that direction.

### **Defining the Crime of Crimes**

Genocide is the “crime of crimes,” as is often said. The UN Convention on the Prevention and Punishment of Genocide (UNCG) was one of the first major international human rights treaties. The Convention itself differs from other treaties because it obligates signatories to “undertake to prevent” genocide. Yet the term *genocide* is a contested concept. Policymakers and scholars disagree about what constitutes genocide. Some believe genocide is the attempt to destroy whole groups, in particular ethnic, racial, and religious groups. Others believe that genocide is the attempt to destroy groups “in part” (as per the UNCG). Still others argue that genocide should not be limited to racial, religious, and ethnic groups; political, economic, and other social groups also are victims of genocide.<sup>2</sup> The

definitional debate is not likely to disappear soon. Darfur shows us why the conceptual disagreement matters.

As others in this book have shown, a major sticking point as the Darfur crisis unfolded was whether to label the violence *genocide*. After coming under pressure to use the word *genocide*, the Bush administration commissioned a study (hence, triggering the ADT). Later, the UN Security Council established a Commission of Inquiry (COI). Both investigations found broadly similar patterns of violence in Darfur. Yet, after reviewing the ADT results, Secretary of State Powell made a genocide determination, while the authors of the COI did not. We might take issue with the logic of the United Nations report, as Jerry Fowler aptly does in Chapter 8, "A New Chapter of Irony: The Legal Definition of Genocide and the Implications of Powell's Determination." But the difference of opinion is also rooted in ambiguity about what genocide is and what genocide is not.

Recognizing and resolving that ambiguity are critical to devising a future strategy for preventing genocide. If major international actors disagree about what genocide is, then "genocide" becomes a difficult term around which to galvanize major international action. Pierre-Richard Prosper (U.S. State Department, Ambassador-at-Large for War Crimes) is quoted as having wanted to make a pure legal determination about whether the violence in Darfur constituted "genocide." The sentiment is valid, but a "pure" genocide standard does not yet exist.

### **Atrocity Statistics**

The ADT did more than lay bare definitional disagreements. In particular, the ADT established and executed an innovative methodology for systematically documenting patterns of violence in the midst of a humanitarian emergency. The survey produced, in the words of Jonathan Howard (State Department Office of Research), "atrocity statistics." (See Chapter 4, "Survey Methodology and the Darfur Genocide") The term *atrocity statistics* is jarring, but the idea is extremely important. Systematic documentation should be a critical aspect of any response to a potential genocide. The ADT establishes an important precedent and, as such, I want to highlight a few important dimensions of the project.

First, the members of the ADT team designed a questionnaire to determine whether genocide was taking place. In so doing, the survey's authors operationalized genocide; they thought through what kind of evidence would be needed to make a genocide determination. The survey included questions about what respondents heard during attacks; analysts could, in turn, examine the responses to measure the perpetrators' intent. Both the survey questions and the responses are important for developing a more

precise understanding of genocide and for helping outsiders recognize when genocide is occurring. Whether future surveys replicate the same questions or develop new ones, the ADT survey is a benchmark in this regard.

Second, the ADT developed a creative sampling methodology that others may use in the future. As Howard describes well in his chapter, the ADT researchers sampled randomly, and they did so using an innovative “random route” technique. Anyone who has done field research on atrocities — whether the research is done in the name of journalism, scholarship, or a particular project — knows that asking questions about violence is never neutral. Often local elites want outsiders to come away with a particular version of events; in other instances, those who have suffered have a particular experience that they want to share. However, the ADT mandate was to document how widespread and systematic the violence was. In so doing, the investigators sought to understand how representative particular patterns of violence were and to do so they sampled randomly. Genocide and social science methods are not often paired. However, the ADT did pair them, and to great effect.

Third, the sample size was impressive. Like randomization, a large sample size mattered. Often international human rights organizations are limited in the scope of their investigations. Given financial, travel, or time constraints, human rights reports often are based on dozens of field interviews. By contrast, the ADT conducted more than eleven hundred interviews. The result was unusually comprehensive documentation of the character and extent of violence in Darfur. Future researchers may well find reason to improve on the methods, but the ADT set a standard for systematic, social scientific collection of evidence.

The ADT also was significant because it showed that with enough professionalism, resources, and dedication such an effort can succeed. No one should underestimate the difficulty of quickly executing a large-scale research project in the middle of an emergency in an area as remote as eastern Chad. The logistical challenges are formidable, as Stefanie Frease and Nina Bang-Jansen make clear in Chapter 3, “Creating the ADT: Turning a Good Idea into Reality.” Finding transportation, healthcare, money, food, shelter, and the like all require time and focus. Translation is also fundamental. The ADT brought experience and professionalism to bear on the project. I make the point because, based on my experiences in other contexts, notably Rwanda, I know how difficult and important the logistical and translation issues are.<sup>3</sup> The same is true for designing and carrying out a survey of more than eleven hundred refugees. The ways in which the ADT handled these issues provide a roadmap for future projects of this sort.



### Not Just Political Will

Yet, as we know, despite the professionalism and excellence of the ADT project, despite the team's findings, and despite Secretary Powell's historic genocide determination, little international action materialized to halt the violence in Darfur. Why? The standard answer concerns political will. When it is absent, politicians will not act and, thus, citizens must force genocide onto the national agenda. Much of this common wisdom comes from Rwanda, where the genocide received scant domestic attention at the time the violence occurred. However, Darfur's lesson is different. Darfur shows us that raising the profile of an issue and generating domestic political will are insufficient to galvanize a policy to halt genocide.

For a humanitarian emergency and for a complex crisis in a remote part of Africa, Darfur was a remarkably salient foreign policy issue. As the crisis developed, an unusual and bipartisan coalition of civil society groups emerged, calling for action. Editorialists in newspapers around the nation wrote about Darfur, and a vibrant student movement formed on college campuses around the country. U.S. Government officials were broadly responsive. Congress passed a historic resolution calling the violence in Darfur "genocide." Secretary of State Powell made a high-profile visit to the region. Powell later commissioned the ADT study, he reviewed the results, and he made a genocide determination. President George W. Bush followed suit. The genocide declarations were historic: Never before had a sitting government so authoritatively labeled an ongoing crisis *genocide*. There was, in short, real visibility to the issue, sustained pressure, and apparent political movement on the issue.

What then was the problem? Any answer must be speculative at this stage, but the evidence does point in a couple important directions. For one, the Genocide Convention incorporates a definition of genocide that leaves considerable room for uncertainty about how to identify genocide. But more than that, as Fowler argues in Chapter 8, the Convention does not establish concrete mechanisms for stopping genocide. Signatories to the treaty "undertake to prevent" and "suppress" genocide; the Convention also includes language allowing member states to "bring genocide" to the Security Council for action (which the United States did). But specific enforcement mechanisms beyond such language are nonexistent. The Genocide Convention is unusual amongst international human rights treaties for its comparatively strong language. Darfur, however, shows that the Convention is weaker than many imagined. If international inaction is to be avoided in the future, revisiting the Convention — and its definitions and mechanisms for prevention — is in order.

But there is another arguably more significant issue. Darfur shows that international politics — and particularly politics at the United Nations — matter. One reason that Darfur did not get traction at the United Nations was that China, especially, and Russia strongly opposed more forceful intervention to stop the violence. China has significant oil interests in Sudan; China also bristles when human rights trump sovereignty in the international arena. Russia also does not want human rights to be a standard for military intervention. With China and Russia firmly opposed to forceful action in Darfur, the UN Security Council became a dead end for generating a policy to halt the violence. Both China and Russia are permanent members of the Security Council and, as such, each has the ability to veto resolutions. Politics within the Security Council, thus, became a fundamental obstacle to forceful UN action on the issue. That matter needs to be taken seriously.

But Darfur also had fairly little traction in Europe. Diplomatic fallout from the war in Iraq is probably partly the reason. By the time Secretary of State Colin Powell made a genocide determination and requested action from the Security Council, his actions lacked some of the credibility that they had prior to Iraq. In the end, the United States was largely alone when pressing for forceful international action on Darfur. Preventing genocide is and should be a multilateral issue. Moreover, given its commitments in Iraq and Afghanistan, the United States was in no position to initiate a new troop deployment. Certainly the United States could have done more, but Darfur shows that a strategy to stop genocide needs to take international politics seriously. In the United States, an effective approach to preventing genocide might start with lobbying policymakers and generating political will, but the issue does not end there.

Those in civil society, academia, and government — as well as ordinary citizens — who care about genocide, successfully learned many of Rwanda's lessons. When the crisis in Darfur broke, many lobbied for action, and many urged the government to make a genocide determination. The international response to Darfur represents another failure and, as happened after Rwanda, we should try to understand the reasons behind the failure in order to prepare for the next potential genocide. The international community, such as it exists, may still be a long way from having a concrete and effective strategy to prevent genocide, but examining what went wrong *and* what went right in Darfur might change that in the future.

## Notes

1. Scott Straus, "Darfur and the Genocide Debate," *Foreign Affairs* 84:1 (2005), pp. 123–133.

2. For a longer discussion, see Scott Straus, "Contested Meanings and Conflicting Imperatives: A Conceptual Analysis of Genocide," *Journal of Genocide Research* 3:3 (2001), pp. 349–375.
3. For a discussion of my research in Rwanda, see Scott Straus, *The Order of Genocide: Race, Power, and War in Rwanda*, Ithaca, NY: Cornell University Press (forthcoming).

PART **5**

**Analysis of the Rationale and  
Reasoning Behind the U.S. ADP  
and Genocide Determination**

CHAPTER **14**

**The U.S. Investigation into the Darfur  
Crisis and Its Determination of Genocide:  
A Critical Analysis**

SAMUEL TOTTEN

**Introduction**

In July and August 2004, the U.S. State Department sponsored a field investigation (the Darfur Atrocities Documentation Project or ADP) whose express purpose was to ascertain whether genocide had been and/or was continuing to be perpetrated in Darfur. By that point in time, the Darfur crisis had been declared “the worst humanitarian disaster in the world” by Jan Egeland, the UN Under-Secretary for Humanitarian Affairs (UN, 2004, p. 1); the United States Holocaust Memorial Museum’s Committee on Conscience had issued a genocide warning with regard to the killings and death in Darfur; and both the U.S. House of Representatives and U.S. Senate had declared the crisis to be a case of genocide.

Following an analysis of the data collected by the Darfur Atrocities Documentation Team (ADT), Secretary of State Colin Powell declared, on September 9, 2004, in a statement to the Senate Foreign Relations Committee, that genocide had been perpetrated in Darfur.

In the year and a half since the investigation and subsequent declaration by Powell, heated debate has erupted over the motives and value of the ADP

as well as the validity of the genocide determination. Some have asserted that while crimes against humanity have been perpetrated in Darfur, genocide has not. What follows is a discussion of the stated purpose, methodology, and findings of the ADP as well as the debate over the motives behind the ADP and the determination of genocide by the U.S. Government.

### Findings

Ultimately, the State Department statistically analyzed eleven hundred thirty-six interviews conducted during the month-long ADP. Following the compilation and analysis of the survey data,<sup>1</sup> the State Department's Bureau of Intelligence and Research reported that "analysis of the refugee interviews points to a pattern of abuse against members of Darfur's non-Arab communities" (U.S. State Department, 2004a, p. 3). More specifically, the interviewees reported personally witnessing or experiencing the following:

- Killing of family member (61 percent)
- Killing of nonfamily member (67 percent)
- Shooting (44 percent)
- Death from displacement (28 percent)
- Abduction (25 percent)
- Beating (21 percent)
- Rape (16 percent)
- Hearing racial epithets (33 percent)
- Village destruction (81 percent)
- Theft of livestock (89 percent)
- Aerial bombing (67 percent)
- Destruction of personal property (55 percent)
- Looting of personal property (47 percent)

(U.S. Department of State, 2004a, p. 1).<sup>2</sup>

Significantly, the State Department report noted that "numerous credible reports corroborate the use of racial and ethnic epithets by both the *Janjaweed* and GoS military personnel: 'Kill the slaves! Kill the slaves!' and 'We have orders to kill all the blacks' are common" (U.S. Department of State, 2004a, p. 4).

In regard to those who carried out the attacks against the black Africans and their villages, the refugees' responses indicated the following:

- Both the *Janjaweed* and the GoS military (48 percent)
- The GoS alone (26 percent)

- The *Janjaweed* alone (14 percent)
- Unknown (12 percent)

(U.S. Department of State, 2004a, p. 4).

### The Factors Resulting in Major Conclusion(s) of the Investigation

Once the study was completed, the findings and analysis were turned over to U.S. Ambassador-at-Large for War Crimes Pierre-Richard Prosper and U.S. Secretary of State Colin Powell. Kostas (Chapter 7), who interviewed Prosper in order to ascertain how the United States came to the “genocide determination,” reports that “Craner and Prosper presented the State Department’s approach as dispassionate and clinical. The purpose was ‘to make a pure decision’ — a ‘clean legal and factual analysis’ free of policy considerations — [...and in doing so] ‘analyzed the facts with the breadth of the law in mind — meaning, genocide, crimes against humanity, war crimes...’” (p. 120).<sup>3</sup>

In a series of wide-ranging telephone conversations and meetings (between Powell and Prosper, and Powell and various Assistant Secretaries within the State Department) in which the participants compared and contrasted the findings of the ADP with the wording in the UN Convention on the Prevention and Punishment of Genocide (UNCG), it was gradually determined that genocide had been, and possibly continued to be, perpetrated in Darfur.

In speaking with Kostas and Eric Markusen during the course of a telephone interview, Prosper noted that he and Powell had a long and detailed discussion regarding the important but always sticky issue of “intent” (e.g., the genocidal “intent” of the perpetrators). Among the issues they discussed in regard to this matter were the following: “How they [the GoS] created these militias [the *Janjaweed*]; how they [the GoS] had the ability to rein them [the militias] in and then did not; how they [the GoS troops] acted in concert with the *Janjaweed* ... in attacking these [black African] villages ... the aerial bombardment and then *Janjaweed* would come in; and then the fact that the Government of Sudan would block humanitarian assistance to people in need” (quoted in Kostas, Chapter 7, p. 121). The aforementioned actions (and, in certain cases, lack of actions) led the State Department to infer “intent.”

Prosper also spelled out the factors that the State Department officials considered in coming to their determination of genocide, and among the most significant were the following:

- The villages of the black Africans were attacked and destroyed while nearby Arab villages were not.

- A large number of men were killed, while a large number of women were raped.
- The means to existence, such as livestock and water, were, respectively, killed and polluted.
- The GoS prevented both medical care (and medicine) as well as humanitarian assistance from being delivered to the internally displaced persons (IDPs) camps where people were dying from a lack of food, water, and medical attention (Kostas, p. 121).

Based on the above factors, Powell, Prosper, and the other State Department personnel involved in the determination “concluded that there was a deliberate targeting of the groups with the intent to destroy” (Kostas, Chapter 7, p. 121). Speaking about the latter, Prosper stated that while examining and discussing the concepts of unlawful killing, causing of serious bodily and mental harm, all of which are actions that constitute an act of genocide under the UNCG, “... the real one that got us ... was the deliberate infliction of conditions of life calculated to destroy the group in whole, or in part... . [In regard to the situation in the IDP camps, Prosper and Powell could not find any] logical explanation for why the Sudan government was preventing humanitarian assistance and medicine [into the camps] other than to destroy the group” (quoted in Kostas, p. 121). Kostas notes that “[t]he Government of Sudan was seen as offering unbelievable excuses, leading Powell to conclude that there was a clearly intentional effort to destroy the people in the camps who were known to be almost exclusively black African” (pp. 121–122).

Finally, and tellingly,

Prosper’s experience as a prosecutor supported his understanding that genocidal intent could be inferred from the evidence as well proved by express statements. As Prosper explains, Powell and he asked each other if the Government of Sudan was not committing genocide then “what else are they trying to do?” “What else could their intent be but to destroy this group?” First, Powell and Prosper looked at the coordination and collaboration between the Government of Sudan and the *Janjaweed*. Then, Powell and Prosper examined how the government acted once they were shown to have knowledge of the perpetrators of violence, the targeting of black African tribes, and the scale of human destruction in Darfur. This part was most convincing: The Government of Sudan “had knowledge across the board. Let’s pretend that it wasn’t coordinated. They knew what was going on and not only did they do nothing to stop it, they intentionally obstructed assistance that would have bettered the situation. So when you have knowledge, you take no steps to stop



it, and then when people are trying to help you block the assistance, what else could you want other than for these people to die or to be destroyed?” (Kostas, p. 122).

On September 9, 2004, in testimony before the U.S. Senate Foreign Relations Committee, Secretary of State Colin Powell stated that based on a consistent and widespread pattern of atrocities (killings, rapes, the burning of villages) committed by the *Janjaweed* and government forces against non-Arab villagers, the State Department had concluded that “genocide has been committed in Darfur and that the Government of Sudan and the *Janjaweed* bear responsibility — and genocide may still be occurring” (p. 4). Continuing, Powell stated that:

- The United States was continuing to press the GoS to rein in the *Janjaweed* and that the GoS needed to “stop being complicit in such raids” (U.S. Department of State, 2004b, p. 2).
- The United States continued to strongly support the work of the African Union (AU) monitoring mission in Darfur and, in fact, “initiated the mission through base camp setup and logistics support by a private contractor” (U.S. Department of State, 2004b, p. 2).
- The United States had also called for an “expanded AU mission in Darfur through the provision of additional observers and protection forces” and “identified \$20.5 million in FY04 funds for initial support of this expanded mission” (U.S. Department of State, 2004b, p. 3).

Then, acting under Article VIII of the UNCG, Powell reported that the United States was calling on the United Nations to initiate a full investigation into the situation in Darfur. In doing so, he said, “We believe in order to confirm the true nature, scope, and totality of the crimes our evidence reveals, a full-blown and unfettered investigation needs to occur” (U.S. Department of State, 2004b, p. 4).

Finally, Powell, in part, concluded his statement with these words: “Mr. Chairman, some seem to have been waiting for this determination of genocide to take action. *In fact, however, no new action is dictated by this determination.* We have been doing everything we can to get the Sudanese Government to act responsibly. So, let us not be preoccupied with this designation of genocide. These people are in desperate need and we must help them” (italics added) (U.S. Department of State, 2004b, p. 5).

### **Strengths and Limitations of the Investigation, the Genocide Finding, and Action Based upon the Genocide Finding**

The strengths of the ADP were many. More specifically, a methodologically sound study resulted from the thought, effort, and expertise put into the development of the questionnaire and the way the investigation was carried out. As part of the methodology, each and every one of the twenty-four investigators asked the same set of questions listed on the questionnaire and documented the findings using the same coding methods. Second, the number of interviews conducted constituted a number large enough to result in statistically significant findings. (For a discussion of this matter, see the U.S. Department of State's *Documenting Atrocities in Darfur*. Washington, D.C., 2004.) Also, "the final data set used for the *Documenting Atrocities in Darfur* report represented three successive waves of data entry" (J. Howard, see Chapter 4, p. 68). More specifically, as Jonathan Howard, an analyst with the U.S. Department of States' Office of Research, reports:

As successive teams of interviewers rotated through Chad, the Office of Research hired an international public opinion research company to create a data set from the remaining questionnaires. [T]he company's team of professional coders read each questionnaire thoroughly, verifying and correcting if necessary the interviewer's field codes. In all three rounds of data entry, a fifth of the questionnaires were randomly selected and recorded by an additional analyst to ensure accuracy in the coding process.

Each questionnaire's demographic information, event codes, and attendant information were entered into the data set. Every questionnaire was entered by two different data entry specialists, or double-punched, to verify that the correct information had been entered. Once the two data entry specialists separately entered the data from a questionnaire, a computer compared the two and flagged any discrepancies.

From the final data set, two databases were created. The first was the respondent database in which each line of data represents an individual refugee with all related demographics and event codes for that refugee. Eleven hundred thirty-six refugees are represented in the refugee database. The respondent data set was used to generate the atrocity percentages in the final report... .

Because each respondent may have experienced the same event multiple times — numerous refugees had experienced several attacks during their journey to Chad — during the analysis stage, it was necessary to write a syntax to prevent the statistical software

from counting multiple events toward the total for the survey population... .

A second event database was also created in which the multiple events from each refugee's story were separated so that each line of data in the event database reported a single event. Ten thousand three hundred and four events are represented in the event database... .

From the outset, the team decided to adopt a conservative approach to reporting the data collected during the documentation mission. To this end, during all three stages of data entry, events were coded as either eyewitness or hearsay. Eyewitness events were those reported to have been directly witnessed by the respondent, while hearsay events took place outside the respondent's presence. The atrocity statistics eventually reflected only events reported as eyewitnessed by the the refugees (pp. 68–69).

The efforts of the State Department's people on the ground in Chad and involved in the analysis of the data were seemingly impeccable. Indeed, State's personnel were serious, hardworking, dedicated, and demanding. From the outset, they seemed determined to collect and analyze the data in the most methodologically sound and accurate manner possible. Furthermore, the investigators on the ground were highly professional in their approach to the work at hand and were seemingly intent on collecting as much data as possible under extremely trying conditions, and doing so in a way that accurately reflected the experiences of each interviewee.

Be that as it may, there were certain weaknesses and limitations to the investigation. First, the most obvious limitation was that the investigation was conducted solely in Chad versus in Darfur *and* the refugee camps in Chad. Had the ADT been provided access to both those black Africans in IDP camps in Darfur as well as those who remained in any villages that had not been destroyed (and, for that matter, those Arab villagers, who were not attacked but may have witnessed the attacks on the black Africans), the data would have been much richer. Entry into Darfur for the purpose of an investigation was not, it seemed, an option — or at least not one that the U.S. Government wanted to pursue — either due to the danger it might present to the interviewers and/or the cost of either alienating the Sudanese Government or being rebuffed. Second, the respondents were largely limited to those from the most western states of Darfur, as well as those refugees who, for the most part, had the least distance to travel to Chad. Again, the data would have been richer had the investigators been able to interview a wider swath of the black African population in Darfur. Third, as the interviews were being conducted in the first two weeks of the ADT, various investigators found that there were certain categories/

codings not listed on the questionnaire (e.g., questions about disappearances, sexual violence other than rape, separation by gender, targeting of the elderly, rebel activity in and/or near the villages) that they were collecting information about. As a result, the coordinators of the ADT took such concerns and suggestions and passed them on to other investigators spread out along the Chad/Sudanese border. The question that remains is this: Were the other investigators informed in a timely manner about the additional categories? And if not, did the investigators of their own accord add additional categories where they saw fit? If only some of the investigators added additional categories, then there is the problem that the information collected, in respect to new categories, was incomplete. That said, *the major categories that the State Department used to make the determination of genocide were included on the questionnaire every investigator used and, thus, the latter concern did not have any bearing at all on the final determination of genocide.* Finally, the process of delineating the data on the questionnaires could have been much more detailed (and uniform) had the investigators been directed to write up the most detailed narratives possible versus delineating the findings, as many did, by simply highlighting and succinctly commenting on key points.

According to sources within the U.S. State Department, the final determination of genocide was arrived at in a methodical and deliberate manner in which the evidence gathered during the investigation was compared to the exact wording and concepts delineated in the UNCG. Be that as it may, numerous scholars have called into question the motive(s) behind the determination of genocide. Some have not only questioned the motives, but have questioned and/or attempted to refute the validity of the determination.

Prior to highlighting some of the many debates surrounding the motives and validity of the determination, this author (who happens to think that the determination of genocide was the correct one to make and who, it should be noted, was one of the twenty-four investigators with the ADP) wishes to raise some issues that have been discussed in other chapters. First, numerous authors have indicated that the Bush administration felt pressed to display its concern over Darfur. In fact, as Kostas notes: "U.S. policy in Sudan was already of special interest to the Bush administration and had an important domestic constituency — the evangelical Christian community. Evangelicals had taken an interest in the plight of black Christians in southern Sudan and there was a growing left-right coalition on Darfur (p. 115)."<sup>24</sup> Furthermore, as Lorne Craner explained, "The Bush administration was eager to point to its leadership on Sudan policy to demonstrate that they could speak with authority on grave issues of human rights at a time when issues around the treatment of detainees, particularly at Guantánamo and Abu Ghraib, threatened to strip the administration's voice of

legitimacy on human rights issues” (quoted in Kostas, p. 116). The latter points raise several questions: Was the determination of genocide truly as “dispassionate and clinical” (cum “apolitical”) as some within the Bush administration claim? Was there possibly a bias going into the investigation that genocide would be found (or, at the least, was there, as strange as this sounds, an ardent hope that it would be found), and did that somehow tip the scale in favor of such a determination? And was there already a plan that if a genocide determination was made the White House would simply pass the matter onto the United Nations, thus, being able to claim, as it did, that the United States need not do any more than it had already done? At this point in time, such questions are simply that, questions; however, they do merit further examination and study. It should be duly noted that the aforementioned questions are not raised to question the validity of the determination of the genocide, but to acknowledge that there may have been certain factors at work that favored a particular determination — that is, a certain propensity that may have tipped the scales, so to speak, in favor of making such a determination versus not doing so.<sup>5</sup>

There are a host of other questions that also come to mind: In “*A Problem from Hell: America and the Age of Genocide*,” Samantha Power (2002) reports that George W. Bush, after being elected and while reading about the Clinton administration’s failure in Rwanda, “wrote in firm letters in the margin of the memo: ‘NOT ON MY WATCH’” (p. 511). Power (2002) goes on to comment, “While he [George W. Bush] was commander in chief, he was saying, genocide would not recur” (p. 511). While he has obviously reneged on the promise he made to himself, there is the possibility that he may have thought that by declaring genocide (something the Clinton administration failed to do regarding Rwanda — and, in fact, as is well known, even went so far as to warn its officials/bureaucrats from using the so-called “g-word”), the Bush administration was, at least in part, trying to do something.

As for others, Alex de Waal (2005), an expert on the Sudan, has raised two questions about the genocide determination and his own responses to each of the questions further complicate the issue regarding possible motive(s) behind the determination:

Is the U.S. Government’s determination that the atrocities in Darfur qualify as “genocide” an accurate depiction of the horrors of that war and famine? Or is it the cynical addition of “genocide” to America’s armoury of hegemonic interventionism — typically at the expense of the Arabs? The answer is both. The genocide finding is accurate according to the letter of the law.<sup>6</sup> But it is no help to understanding what is happening in Darfur, or to finding a solution. And this

description merely serves the purposes of a philanthropic alibi to the U.S. projection of power.

In addressing the political nature of the determination of genocide, de Waal (2005) asserts that:

The September 9, [2004] determination is the first time the Genocide Convention has been used to diagnose genocide (rather than prosecute it) ... What does the United States determination signify? At one level, it is the outcome of a very specific set of political processes in Washington, D.C., in which interest groups were contending for control over U.S. policy toward Sudan. In this context, the call to set up a State Department inquiry into whether there was genocide in Darfur was a tactical maneuver destined to placate the anti-Khartoum lobbies circling around Congress (an unlikely alliance of liberal journalists and human rights advocates, and the religious right), while buying time for those in the State Department committed to pushing a negotiated settlement...

But at another level, the genocide determination reveals much about the United States role in the world today, and the unstated principles on which United States power is exercised. Those principles are shared by both the advocates of U.S. global domination and their liberal critics, and are revealed in the commonest narrative around genocide, which takes the form of a salvation fairy tale, with the United States playing the role of the savior...

For six decades, Americans have been dreaming of redeeming that historic fatal tardiness [i.e., in regard to responding to the Nazi-perpetrated Holocaust], and dispatching troops in time to save the day. Their failure to do so in Rwanda and Bosnia ten years ago sparked another round of soul searching and led directly to the Kosovo bombing campaign and the Darfur genocide determination.

de Waal's criticism that the September 9th determination was the first time the Genocide Convention had been used to diagnose genocide, *rather than prosecute it*, is, at least in this author's mind, misplaced. Indeed, it seems as if the use of the UNCG for the purpose of diagnosing genocide should, at least when it's used in a serious and conscientious manner, be praised rather than criticized. (Furthermore, the findings of the ADP led the United States to refer the matter to the UN, and the UN, following its investigation, referred the matter to the International Criminal Court (ICC). As a result of the latter, the ICC is now conducting an investigation into the atrocities in Darfur for the express purpose of bringing suspected perpetrators to trial. Thus, in fact, the ADP has contributed to the current effort to bring the perpetrators to trial.) Indeed, why shouldn't the

UNCG be used to diagnose genocide? Too often scholars, political analysts, activists, politicians, and the media posit guesses (some of which are wild guesses) in regard to whether a crisis constitutes genocide or not, and that is problematic. Is it not better to gather solid data — granted, preferably early on, and certainly much earlier than the United States did *vis-a-vis* Darfur — prior to making a determination? That is not to say that the international community should wait until a genocide determination is made to act to stanch mass killing. Indeed, whenever any threat or actual outbreak of mass killing takes place, then strong, effective measures should be taken to halt it immediately. It is, however, to say that an accurate determination is preferable to guess work.

As for de Waal's point that the pressure to establish a State Department investigation was "a tactical maneuver destined to placate the anti-Khartoum lobbies circling around Congress..., while buying time for those in the State Department committed to pushing a negotiated settlement," a question that comes to mind is, "What is the evidence for such an assertion?" If, though, even for the sake of argument, one assumes de Waal is correct, a question that arises is: "Just how significant is his point?" First, it is almost a given that most countries are going to attempt to negotiate a settlement before resorting to military means. And generally, that is a good idea. That said, negotiating with actors that are intransigent and not likely to negotiate in good faith is not only a waste of time but unconscionable when large numbers of people are being killed during the negotiation process. As we now know, the ongoing attempt to negotiate with both the GoS and the rebel groups has largely proved fruitless over a period of several years. Furthermore, it quickly became apparent that "talk" by the international community served, once again, as a substitute for action and, as it did, the killing and dying (both as a result of murder and genocide by attrition) in Darfur continued unabated. That was and is unconscionable. It seems, to this author at least, that a better "target" for de Waal to have taken aim at would have been the incessant talk carried out by the international community rather than the implementation of the ADP.<sup>7</sup>

Undoubtedly, intervention to halt the killing would have been preferable (at least to some, including this author) to the ongoing negotiations that got nowhere, as well as the ADP, but that was not in the cards for the United States in light of its ongoing "war against terrorism" in Afghanistan and Iraq. That is, it is dubious that the Pentagon would have readily — or, for that matter, even begrudgingly — agreed to send troops into another potential quagmire, especially when the armed services were already having difficulty recruiting enough personnel for the war in Iraq. Over and above that, the so-called "Somalia factor" still haunts many within the U.S. Government. The latter is a result of the October 1993 disaster

in which U.S. troops attempting to capture top advisors to Mohammed Farah Aideed were attacked by Somalia militia, and eighteen U.S. soldiers were killed and seventy-three wounded. A Black Hawk helicopter pilot was also kidnapped, and a dead U.S. soldier was dragged through the streets of Mogadishu. Finally, some prognosticators have also ventured that, in light of the United States and Sudanese collaboration on the “war on terror,” the Bush administration would not countenance an intervention that would put such cooperation at risk.

Furthermore, if de Waal is correct that the ADP was used as a ploy to stave off criticism while focusing on negotiations, it is also true that governments are not known for acting in the most altruistic manner possible. It is also a fact that governments act for a multiplicity of motives, some more — and some less — altruistic than others. Also, aside from totalitarian states, governments are not monolithic entities and some branches and/or departments of a government may address issues and make decisions that are not necessarily shared or in accord with another branch or department. And aside from all that, what is so grievous if the ADP was initiated under pressure and not for the best of reasons? Is that any reason to dismiss an investigation that was handled in a highly professional manner and that resulted in an analysis that was methodologically sound? At the very least, the United States was doing something besides talking.<sup>8</sup>

Another possible motive behind the ADP, which de Waal does not take into consideration, was the fact that sanctions had been threatened time and again by the UN, but such threats were never carried out and, thus, soon became little more than “paper tigers.” This continued to happen despite the fact that the United States introduced resolutions aimed at Sudan only to have them watered down by various members of the UN Security Council, purportedly, to avoid “upsetting Khartoum.” The point is that it is just as likely that the United States may have carried out the ADP, as Craner suggests (see Kostas, p. 116), in the hope that it might have moved the international community to action. And if so, that could hardly be construed as a questionable or despicable aim. de Waal is undoubtedly correct that the Darfur crisis did release, as he says, “another round of soul searching.” But is that necessarily bad? This author would submit that it is not. Would de Waal, one wonders, prefer the opposite reaction?

Granted, some critics of the ADP have asserted that the ADP was largely a cosmetic action — something fairly innocuous in the place of real action. Possibly. But then who would have thought that a finding of genocide would constitute an innocuous action? Still, the fact is, sadly, in many ways (and particularly in light of the lack of action by the United States to truly push the international community to halt the killing and death in Darfur) the assertion that it was largely cosmetic is difficult (if not



impossible) to refute. Again, the only saving grace is that the finding based on ADP data has led to the current attempt by the ICC to bring the perpetrators to trial. Still, that has done virtually nothing to protect the victims of the GoS and the *Janjaweed* over the past year and a half.

de Waal's assertion that the United States conducted the investigation in order to enact a "salvation fairy tale" so that it could play "the role of the savior" is, at least in one sense, so outlandish that it is utterly absurd. Possibly many at State and some within the Executive Branch felt that the investigation constituted a kind of salvation affair, but in the long run no one, it seems, including Powell and Bush, could conclude that the United States, in any way whatsoever, played the role of savior — and that is true for the simple but profound fact that the United States did the very minimum it could to *prevent* the killing and rape of the black Africans of Darfur: The minimum this side of doing nothing, that is; but, then again, if it had done nothing in the face of genocide, it would have been totally excoriated.

de Waal (2005) sees the determination of genocide as even more problematic than the motive(s) behind the investigation, and that has to do, as he puts it, with "... the fact that the group labeled as *genocidaire* in this [the Darfur] conflict are 'Arab' is no accident" (p. 7). More specifically, he asserts that

There's no covert master plan in Washington to brand Arabs genocidal criminals, but rather an aggregation of circumstance that has led to the genocide determination. It has special saliency in the shadow of the United States "global war on terror," misdirected into the occupation of Iraq and seen across the Arab and Muslim worlds as a reborn political Orientalism.

After 11 September 2001, the United States sees Muslim Arabs as actual or potential terrorists targeting the homeland. After 9 September 2004..., Arabs (and perhaps all Muslims, too) are actual or potential *genocidaires*, and their targets are Africans. It's sad but predicable that too many Africans will fall for this trap and that the brave efforts of the African Union to build a continental architecture for peace and security will be impaled on an externally constructed divide (pp. 7–8).

The latter argument of de Waal's is likely to attract considerable debate. Be that as it may, one, at the least, has to question the validity of his assertion and argument in light of the fact that the Bush administration has reached out to the GoS, an Arab-run government, for help in its fight against terrorism. More specifically, in May of 2005, the CIA flew Salah Gosh, head of Sudan's National Security and Intelligence Service, to CIA headquarters in Langley to confer with top CIA administrators. At the

time, the CIA must have known that Gosh was enmeshed in the Darfur crisis and likely issuing directives to the GoS troops and *Janjaweed*.<sup>9</sup> The point is, to paint the United States with such large swaths of opprobrium is somewhat misdirected — and, some would no doubt claim, sorely so.

It must also be pointed out, though, that the relationship between the United States and Sudan in the so-called “war on terror” raises the very real issue of just how much pressure the United States is really willing to place on the Sudanese Government. Desperate for allies on the antiterrorism front, it is highly unlikely that the United States will risk losing out on major assistance in the area of intelligence gathering, especially in such an area as “fecund” as Sudan.

Howard Adelman, a philosophy professor who has written extensively about genocide and issues of intervention, is another who vehemently disagrees with the United States’ determination of genocide and has also raised a host of questions regarding the motives of the United States. Among some of the many questions he has raised are: “What influence did the desire not to repeat American inaction on Rwanda have on characterizing Darfur as genocide?” “What was the influence of the Christian lobby on the resolutions?” and “What was the influence of the immanence of the 2004 election?” (Adelman, 2005, p. 1).<sup>10</sup>

There is no point in repeating the previous discussion in regard to whether or not the United States had honorable or ulterior motives in carrying out the investigation. As for Adelman’s criticism of the determination, he cites all of the actors who were and are in disagreement with it (e.g., the UN, the EU, Doctors Without Borders, and others), and asserts that the atrocities and other actions constitute, at worst, crimes against humanity. Over-reliance on the UN Commission of Inquiry’s (COI) findings, however, may be ill-advised.<sup>11</sup>

As for Doctors Without Borders, Adelman asserts that such a reputable group, whose leader called for an intervention early on during the 1994 Rwandan genocide and whose personnel have been on the ground for extended periods of time in Darfur, should be duly recognized when it claims that genocide has not been perpetrated in Darfur. But that is dubious advice for two reasons. First, Doctors Without Borders never conducted its own investigation to ascertain whether the crisis in Darfur constituted genocide or not. Second, Doctors Without Borders did not provide empirical, let alone conclusive, evidence to support its pronouncement. On a different front, it is also true that Adelman has a relatively close relationship with the AU and that he has previously asserted that he believes that calling for an international intervention undermines the will and efforts of the AU. Ultimately, it is only known by him how the latter affects his stance in regard to how the atrocities and death in Darfur should be categorized.

One of the fiercest critics of the determination of genocide by Powell and Bush was (and continues to be) Professor Eric Reeves of Smith College in Northampton, Massachusetts. Actually, Reeves agrees with the determination. It is the lack of action following the determination that has resulted in his caustic criticism. In a piece entitled “Secretary of State Colin Powell’s Genocide Determination: What It Does, and Doesn’t, Mean for Darfur,” Reeves (2004) asserts that “... by arguing in yesterday’s testimony before the Senate Foreign Relations Committee that the obligation to ‘prevent’ genocide entails so very little, Powell has done what his State Department spokesmen have done for months; he has made it less likely that the Genocide Convention will ever be used as a tool to serve the primary purpose for which it was created” (p. 1). Continuing, Reeves (2004) argues that:

... Powell’s genocide determination may actually signal the end of the Genocide Convention as a tool of deterrence and prevention. For if a finding of this sort, rendered in light of the most conspicuous evidence of ongoing genocide, prompts no action, then the precedent created during yesterday’s Senate testimony by the U.S. Secretary of State is wholly unfortunate.

The insistence that, despite a genocide finding, “no new action is dictated” reflects in part United States impotence at the UN, a function in many ways of diplomatic capital expended on the war in Iraq. Indeed, under questioning by Senators on the Foreign Relations Committee, it became painfully clear that the new U.S. draft resolution being circulated at the UN Security Council is not so much a draft as a plea. The proposed resolution is vague, without a clear or explicit threat of sanctions, and establishes no meaningful new benchmarks for Khartoum.

This provides a certain ghastly clarity in the new world of the twenty-first century — even genocide, even the crime that defined the actions in Rwanda and Eastern Europe during the Holocaust, does not entail any special response or effort of prevention. If this indeed marks the end of any particular obligations under the Genocide Convention, we may legitimately wonder whether the price paid for Powell’s determination is not exorbitantly high (pp. 2–3).<sup>12</sup>

Reeves is certainly justified in his disappointment in and criticism of the United State’s assertion that it had done all it could for the targeted population in Darfur and in its subsequent lack of action following the determination. Indeed, once the U.S. Government declared Sudan had committed genocide, it (the United States), aside from providing hundreds of millions of dollars, did the minimum it could (e.g., refer the matter to

the UN Security Council), without totally losing face. Furthermore, its justification that it had done everything it could do was not only disingenuous but a brazen lie. Be that as it may, Reeves' assertion that Powell and, thus, the United States, had "made it less likely that the Genocide Convention will ever be used as a tool to serve the primary purpose for which it was created" is, or so it seems, nothing short of hyperbole. Of course, only time will tell if Reeves is correct, but "ever" is a long time. Even if the international community takes another hundred years or more to act in good faith when it comes to genocide and makes effective use of the UNCG to prevent or halt genocide then all will not have been for naught. Be that as it may, one can certainly empathize with Reeves' sense of utter disappointment and share his dismay at the disastrous impact that the United States' timid and unconscionable response will not only have on the black Africans of Darfur, but is likely to have on a wide range of other groups that will, inevitably, face major human rights violations, including crimes against humanity and genocide, in the future.

As for Reeves' criticism of Powell's assertion that "no new action is dictated," Powell, of course, was talking about any action by the United States. Legally, Powell was absolutely correct. Be that as it may, many are bound to find Powell's (and the United States') position morally questionable, at best. Others are likely to counter that preventing and/or halting genocide should be a shared responsibility and not something to be left to a single nation, no matter how powerful it is. Still, when all is said and done — and not even taking into consideration the possibility of unilateral intervention — Reeves was correct in asserting that the United States could have done a lot more than it did.

Reeves is also highly critical of the lack of "teeth" in the resolution that the United States submitted to the UN Security Council. As Reeves (2004) put it, "What is most striking about Powell's testimony concerning the proposed U.S. resolution for the Security Council is its utter lack of enforcement provisions" (p. 7). One can hardly argue with Reeves' grievance, and this author sees no point in doing so. Again, the "actions" (or lack thereof) following the genocide finding left a lot to be desired, and that is a gross understatement. And, in the two years since the declaration, such lack of action is what has caused the most consternation among the critics of the U.S. Government in regard to its approach to Darfur.

Finally, Reeves blasts the U.S. Government for its tardy response to the ongoing crisis in Darfur:

Powell ... attempt[s] to suggest that the State Department responded in a timely fashion to the threat of genocide. This is not true. Ample evidence was available at the end of 2003, clearly suggesting that

genocide was occurring (by December 2003 the nature of the fall offensive by Khartoum and the *Janjaweed* became fully known). Human rights reports, alluded to at one point in Powell's testimony, were filled with details suggesting that genocide was unfolding. Certainly by February of 2004, as attacks on the African tribal populations of Darfur again dramatically increased, there was more than enough evidence to justify a genocide investigation. And yet the State Department deployed an investigative team only in July, almost half a year later. This was shamefully belated action — shamefully” (pp. 6–7).

Reeves' criticism is both fair and justified. The investigation could — and should — have taken place earlier. A government truly dedicated to genocide prevention would have seen to that. That said, to bring to fruition such an investigation is not within the purview of any single individual within government and, thus, it takes a good amount of time to move the idea through the various channels. One must also take into account the fact that there was a lot of in-fighting within State over Darfur and it no doubt took a great deal of effort and time to overcome objections to such an investigation. This is not in any way whatsoever to condone the tardiness of the investigation, but simply to acknowledge the reality of how governments work. Such a reality underscores the need for the establishment of a strong antigencide regime that is buffeted as little as possible by partisan politics and *realpolitik*. Currently, however, that is solely a goal and dream of genocide scholars and many human rights activists — and, skeptics, of course, might venture that it is little more than an utopian idea. Again, time will tell.

G rard Prunier, an expert on East Africa, the Horn, Sudan, and the Great Lakes of Africa, and the author of *Darfur: The Ambiguous Genocide* (2005), has also weighed in on the motives of the investigation, the genocide determination, and the aftermath of the latter. In regard to the motive(s) behind the investigation, Prunier seems to suggest that the ever-increasing pressure — from constituents, nongovernmental organizations, Congress, and others — for the U.S. Government to act may have prompted Bush to support a “genocide investigation” into the Darfur crisis:

On 1 June 2004, the members of Congress who sympathized with the SPLA sent President Bush a list of twenty-three names of *Janjaweed* supporters, controllers, and commanders who were either members of the GoS or closely linked to it. The message was clear — do something about these people. President Bush seemed to have been embarrassed by the implicit demand, all the more because supporters of the anti-Khartoum legislation tended to be more “on the left”

(insofar as this political category has relevance in U.S. politics) within both parties and within the fairly tight Black Caucus. President Bush could not be expected to care too much about “the left,” but unfortunately for him there was a core group of anti-Khartoum activists at the opposite end of the political spectrum, from where he drew most of his electoral support. Many fundamentalist Protestant organizations had rallied to the anti-Khartoum lobby activated by Nina Shea. Then by mid-2004 vocal Jewish groups, such as the Committee for the Holocaust Memorial (sic), in Washington had joined in the indignant chorus of protests about Darfur. The President thus found himself under pressure from an array of public opinion elements too wide to be ignored during an election year. But since the “realists” in the intelligence community kept insisting that Khartoum was too important to be harshly treated, these contradictory pressures led the White House to compromise on all fronts — supporting the Naivasha negotiations, [and] not putting too much practical pressure on Khartoum, but nevertheless passing legislation, which could be used as a sword of Damocles in case of noncompliance... . (pp. 139-140).

Continuing, Prunier (2005) drops a bombshell, of sorts, especially if the assertion is true: “This author was assured that Secretary of State Colin Powell had practically been ordered to use the term ‘genocide’ during this (sic) high-profile 9 September 2004 testimony to the Senate Committee on Foreign Relations, but that he also been (sic) advised in the same breath that this did not oblige the United States to undertake any sort of drastic action, such as a military intervention” (p. 140). Prunier’s source for the latter assertion was a “[c]onfidential interview with a high-ranking member of the U.S. administration, [in] Washington [in] October 2004” (p. 191). It is certainly possible, of course, that Powell had received a “push” in that direction. Be that as it may, there are three sticking points with Prunier’s statement. First, it comes from an unidentified source and cannot readily be followed up. That, of course, does not mean it isn’t true, but prevents verification of it. Second, Prunier uses the words “practically been ordered.” So, Powell, ostensibly, was not ordered to do so, but was strongly encouraged, pressured, prodded, or goaded to do so. Third, Prunier uses the words “advised to add.” “Advised,” of course, is not the same as being told, directed, or ordered to do so. The questions that arise from such wording are many, including but not limited to the following: Was Powell, in fact, “practically ordered” to use the word “genocide,” and did he cave in to the pressure and/or act the part of the “good soldier?” *Or*, was the analysis of the data collected by the ADT persuasive “enough” that Powell

felt comfortable using the word “genocide” on his own accord. Or, was the analysis of the data persuasive enough that Powell did not feel guilty using the word “genocide” when all but ordered to do so? The same sorts of questions, of course, are germane to his statement about the United States not being obligated to do any more than it already had done *vis-a-vis* Darfur.

Prunier concludes by asserting that “President Bush tried to be all things to all men on the Sudan/Darfur question. Never mind that the result was predictably confused. What mattered was that attractive promises could be handed around without any sort of firm commitment being made. Predictably, the interest level of U.S. diplomacy on the Sudan question dropped sharply as soon as President Bush was reelected” (p. 140). Prunier is certainly correct in regard to his comment about a lack of “firm commitment” being made in the aftermath of the determination. As for U.S. diplomatic efforts concerning Darfur, they have actually waxed and waned time and again over the course of the past two years. There have been spikes of interest (most recently in pushing for the deployment of UN troops and NATO involvement in Darfur), but there have also been mixed messages issued by Bush’s underlings in the State Department (e.g., in regard to whether the situation in Darfur still constitutes genocide and whether there is a need to push for tough sanctions on Khartoum and/or to prod the UN to undertake an intervention). Ultimately, Prunier *is* correct in suggesting that “talk over action” has been the *modus operandi* of the Bush Administration’s approach to protecting the black Africans of Darfur.

### **Ramifications of the ADP**

The development and implementation of the ADP, aside from the determination based on the data collected by its team, has numerous ramifications. And, of course, the genocide determination by the U.S. Government does as well. As one might surmise, some are positive and some are negative.

First, the development and implementation of the ADP set a precedent of sorts in regard to the way in which an individual nation can develop and conduct an official investigation for the express purpose of attempting to ascertain whether genocide is being perpetrated in some part of the world. Indeed, it proves that it can be done fairly quickly, efficiently, effectively, and relatively inexpensively. That, in and of itself, is significant, for far too often in the past, individual nations, the media, human rights activists, and the international community have relied more on guess work and piecemeal information seeping in from different sources than carefully collected and analyzed data in order to ascertain the nature of a violent crisis.

Second, the precedent has now been established for an individual nation to conduct an investigation into atrocities while they are being perpetrated for the express purpose of ascertaining whether genocide has been perpetrated or not. While this may appear to be of little note, its nothing of the sort. If nothing else, and this is significant, there is no excuse for nations with the financial wherewithal to fail to conduct such investigations when it appears as if a situation may be spiraling towards crimes against humanity or genocide. In other words, a new bar has been set in making a genocide determination. Now, it is up to human rights activists, NGOs, genocide scholars, and others to insist on such investigations.

Third, the ADP has provided a solid model for one essential component of an antigencide regime. Such investigations should become an integral part of any antigencide regime, and due to the ADP it is not a component that will need to be developed from scratch. In light of the fact that the ADP was not perfect (but what is), developers of future investigations can learn from both the strengths and weaknesses of the ADP.

As for the genocide determination, a precedent has been set in which one sovereign nation (the United States) has accused another sovereign nation (Sudan) of having committed genocide while the atrocities were still ongoing. This, in and of itself, was a historic occasion. The determination broke, if you will, a certain “barrier” of individual nations not making such an accusation when they were not only justified in doing so, but had a moral obligation, if signatories to the UNCG, to do so.

Be that as it may — and ironically and sadly — there is also the danger, as numerous scholars and commentators have asserted, that, in the end, the genocide determination by the United States could prove counterproductive. More specifically, the fact that the determination was made and then the matter was simply and solely referred to the UN Security Council does not bode well for those in favor of a proactive stance against genocide. Indeed, the fact that the determination did not result in *any concrete action* by the United States to attempt to halt the ongoing genocide may, in the short-run (but even here we are talking about the precious and fragile lives of untold numbers of people) — if not the long run — result in minimizing the “weight” and significance of such a finding. That is, other nations and international bodies may now perceive such determinations simply as a matter of course and of no great consequence.

As the cliché goes, only time will tell. That said, de Waal (2005) made the interesting point that “although Colin Powell insisted the U.S. policy towards Sudan would remain unchanged — thereby seeming to defeat the purpose of making the determination in the first place — there is no doubt that declaring genocide creates legal and political space for intervention” (p. 6).<sup>13</sup> It is, of course, still possible for a military intervention to take place



in Darfur. While most would agree that if an intervention is eventually carried out, it will have been horrifically late in coming; but, it is crucial to recognize and appreciate the fact that some two million displaced persons are still at the mercy of the GoS and the *Janjaweed* and are in need of all the help they can get in staving off even more terror and mayhem. And if an intervention does take place, then the genocide determination by the United States may well have served the important purpose, at least in part, of having “created the legal and political [and one might add, moral] space” for doing so.

### Conclusion

Aside from continuing to provide humanitarian aid, which was not, of course, inconsequential, the only other major action that the United States undertook following its determination of genocide was, as previously noted, to refer the matter to the UN Security Council. In doing so, it called for a more comprehensive study of the Darfur crisis. At the time, many scholars and activists raised the issue of whether another study was really needed, especially in light of the fact that no one — other than Khartoum, perhaps — doubted that grave crimes against humanity had been perpetrated against the black Africans and that they continued to perish each and every week in huge numbers due to the actions of the GoS and *Janjaweed*.

Again, a question that has been asked by many, though largely rhetorical, was: Did the U.S. actually do all it could? The answer to the latter was, and continues to be, an emphatic “no”! Among some of the many options that the United States could have pursued but chose not to — due no doubt to *realpolitik* — were the following: Push implacably for a multilateral effort to establish a no-fly zone over Darfur and/or do it alone; apply unrelenting pressure on the UN Security Council to establish a strong, Chapter VII mandate that would allow the AU troops (and others) to truly protect the black Africans at risk; apply equally unrelenting pressure on the AU to allow UN troops to join the AU troops in Darfur; provide the AU with top-notch training of its recruits and troops prior to their deployment to Darfur; provide the AU with ample military materiel and equipment, along with a guarantee of fuel and personnel to service equipment, such as four-wheel vehicles, planes, etc., versus providing dribbles of military support; serve notice to Khartoum that if it continued to interfere and/or outright block humanitarian aid from reaching the IDP camps, the repercussions would be serious and long-term — and then act on such in a timely and effective manner. Noticeably absent from this list is the possibility of the United States actually sending its own troops to Darfur, either as a multilateral or unilateral effort supported or not supported by the UN Security

Council. Again, as discussed previously, this, realistically, was never, at least as far as the Bush Administration was concerned, a real option. The point is, though, there is plenty that the United States could have done — and still can and should do — but it hasn't. And that is nothing short of shameful.

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## Notes

1. The field data for the eleven hundred thirty-six interviews were compiled using a standardized data entry process that involved the collection and coding of detailed information from each refugee respondent's set of answers. The researchers then used a statistical program to aggregate the data and analyze the results" (U.S. State Department, 2004, pp. 7–8).
2. "Reported atrocities were included in the data set only if the respondent directly witnessed the event. For the purpose of this study [*Documenting Atrocities in Darfur*], a respondent is considered to have 'directly witnessed' an atrocity if she or he was an eye-witness to the event, visually confirmed the death of victims, or, in cases of rape, was directly told about the atrocity by the victim. Hearsay accounts were excluded from the data set" (U.S. State Department, 2004, p. 1).
3. A key question that arises is whether political appointees are truly capable of being "dispassionate and clinical" when making such a judgment. Furthermore, can any decision made by governmental officials/entities truly be considered "pure?" That is, are not all decisions political in one way or another?

4. For an informative and detailed discussion as to what prompted the State Department to investigate the internal conflict in Sudan, see Stephen A. Kostas' "Making the Genocide Determination."
5. While State Department officials were conferring and coming to a decision as to whether the atrocities in Darfur constituted crimes against humanity or genocide, rumors leaked out from State that the final decision could "go either way." This suggests, if the rumors were correct, that there might not have been a foregone conclusion of genocide. It also suggests that the State Department officials, including Colin Powell, were determined to make the most accurate determination they possibly could.
6. Speaking of the atrocities committed by the GoS and the *Janjaweed*, de Waal (2005) asserts that "they have killed, burned, raped, and starved their way across the central belt of Darfur. In doing so, they have killed thousands of people and deliberately starved thousands more. They have also managed to stop a running insurgency that was rapidly seizing control of the entire region" (p. 2). He also asserts that "Powell is correct in law. According to the facts as known and the law as laid down in the 1948 Genocide Convention, the killings, displacement, and rape in Darfur are rightly characterized as 'genocide.' But his finding has significant political implications" (de Waal, 2005, pp. 2–3). Elsewhere, de Waal has asserted that "famine in Sudan is a crime, and has been a crime for the last 20 years, and the form of genocide that we are seeing in Darfur is, I would argue, a famine crime" (quoted in John F. Kennedy Library and Foundation, p. 5).
7. Some have also suggested that the United State's initiation of the ADP was a cynical ploy by the Bush Administration to "try to have it both ways." That is, it allowed the Bush Administration to assert that it was attempting to defend and protect human rights in Darfur, while also allowing it, in the end — especially by not pushing for an intervention — to attempt to solidify its relationship with the GoS.
8. This author is not so naïve as to think or believe that the investigation *might not have* been used as a sign of showing concern in a way that was not all that costly in terms of financial, political, or human capital (meaning lives lost) and, thus, used in place of calling for — if not leading — a major intervention to halt the killing. That is another issue, and one that needs to be addressed. And, if the latter is true, then the initiation of the ADP certainly was a problematic, if not sordid, affair.
9. Tellingly, Gosh reportedly is the number two person on the United Nation's list that was forwarded to the ICC of those who are suspected of having a hand in the killings in Darfur.
10. For a discussion of these and related questions (e.g., What is the evidence for genocide in Darfur? Why have other states not fallen into line with the United States in characterizing Darfur as genocide? What impact did the characterization of the crisis in Darfur as genocide have on the effort to get the Security Council to endorse sanctions against Sudan?), see Adelman's "Reading History Backwards: Rwanda and Darfur," a talk he presented at the 2005 International Association of Genocide Scholars conference in Boca Raton, Florida.
11. Debb Bodkin, a police officer based in Canada and the only person who served as an investigator for both the ADP and the Commission of Inquiry (COI), told this author that the data collected by the COI was unsystematic and not as focused as the ADP's. More specifically, in recent correspondence with the author, Bodkin commented as follows:

"During our briefing [about the COI] in Geneva, we were given no format or indication as to how the investigation and interviews were to be conducted. As a result every investigator conducted his/her investigation and interviews in whatever fashion he/she preferred. I cannot believe that with the vast difference in expertise of each investigator there would be any semblance of consistency in regard to the gathering of evidence. . . . The United Nations investigation did not have any laid-out parameters whatsoever and, as a result, an untrained interviewer could easily ask questions in a manner that would elicit whatever response the interviewer hoped to obtain. . . . [Also,] each investigator was open to choose who they interviewed and how. . . . As far as the soundness of the COI, when I compare it to any of the sexual assault or homicide investigations that I was part of during my police service in Waterloo, Ontario, it would not [have gone forward] due to the

low probability of a conviction, mainly because of the fact that the investigators did not meet the required adequacy standards to be conducting interviews and did not have the knowledge, skills, or ability to be doing so ..." (e-mail sent to the author, April 15, 2006).

Furthermore, Bodkin asserted that while the COI team was in Geneva, prior to entering the field, Antonio Cassese, who oversaw the COI, inferred that the COI would not result in a finding of genocide. More specifically, Bodkin, in recent correspondence with the author, conveyed the following: "Commissioner Antonio Cassese, who had traveled to Khartoum and some parts of Darfur for a few days and had conducted some interviews, stated that he felt that we would find that there were two elements of genocide missing: (1) target group (victims are from mixed tribes) and (b) mens rea (intent). He talked for a while and my personal opinion was that he was telling us that the outcome of the investigation would show that it was not genocide that was occurring. He did not specify how long he had visited nor how many interviews he had conducted, but I don't believe either was extensive. I felt it was very inappropriate for him to plant this opinion in the investigators' minds prior to starting the investigation and other investigators felt uncomfortable about it as well... The female Commissioner (Hina Jilani from Pakistan) stated: 'Go with an open mind.' During the briefing, I got the distinct impression that there was some tension between Commissioner Cassese and Commissioner Jilani as their comments often conflicted with one another and he was expressing what he thought our findings would be, whereas she always made comments about us doing our job open-mindedly" (e-mail received by the author on April 15, 2006).

Adding more fuel to the claim that the UN's Commission of Inquiry's findings are, at best, problematic is Gérard Prunier's cogent observation that "the Report of the UN Commission of Inquiry on the Darfur Violence was the latest but perhaps not only the final example of the world body ... acting ... in a ... show of egregious disingenuousness. The report documented violations of international human rights by "people who might have acted with genocidal intentions;" yet the situation was not genocide ..." (p. 143).

12. Reeves' (2004) criticism does not stop there. Continuing, he states that "despite his finding of genocide on the part of Khartoum, Powell preemptively pardons the regime by saying 'we are not trying to punish them.' But shouldn't genocidaires be punished? Shouldn't there be, as Powell explicitly suggests elsewhere, be an international tribunal to punish the crimes of genocide in Darfur and those guilty of this monstrous crime? ... How can Powell simultaneously find the regime guilty of genocide, but then declare that 'we are not trying to punish the Sudanese Government' and indeed we may have 'a mutual interest with the Sudanese Government?'" (p. 4). Actually, Powell's words could be understood in various ways (and, thus, could be misconstrued). Possibly he was "pardoning" the regime, but that seems dubious. At worst, Powell seemed to be apologizing for the genocide finding while also stating that the United States wanted to maintain, even if shaky, relations with Sudan. Or, Powell may have simply misspoke when he used the words "not trying to punish Sudan." Or, possibly, Powell was trying to send a distinct message: Sudan had better reign in its troops and the *Janjaweed* if it did not want the United States to come down hard on Sudan. Of course, in retrospect, we now know that, if the latter were the actual meaning of the words they were idle for, again, the United States has done little to nothing since September 2004 to halt the killing and death in Darfur.
13. de Waal perceived the creation of such a space as a negation, playing into the hands of the United States "hegemonic" push across the globe.

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She has lectured in over sixty-five countries and has published extensively in international criminal law, international humanitarian law, and gender justice. Among her publications are *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (1997), and the three-volume treatise *Women and International Human Rights Law* (1999, 2001, 2002).

**Nina Bang-Jensen** most recently served as the Executive Director of the Coalition for International Justice (CIJ), a nongovernmental organization that has offices in Washington, D.C. and The Hague, The Netherlands. For ten years, CIJ provided support to the two international *ad hoc* war

crimes tribunals for the former Yugoslavia and Rwanda in the form of legal and technical assistance, advocacy, public education, and independent reporting. For 6 years, beginning in 2000, CIJ provided similar assistance to hybrid (international–domestic) tribunals, including the United Nations-established Serious Crimes Unit in East Timor, the Special Court for Sierra Leone, and the newly emerging tribunal in Cambodia. In 2004, at the request of the U.S. Government, CIJ assembled and led a team of investigators from eight countries that interviewed over eleven hundred refugees from Darfur along the Chad border. The information collected by that team lead directly to the first official genocide determination and referral to the United Nations by the U.S. Government under the Genocide Convention.

Prior to joining CIJ, Bang-Jensen served as counsel to a U.S. senator and as chief counsel to a Senate subcommittee. In 1989 and 1990, she was the Deputy Director for the President’s Commission on Aviation Security and Terrorism, which investigated the bombing of Pan Am 103. She received her undergraduate degree, *magna cum laude*, from Princeton University and its Woodrow Wilson School for Public and International Affairs, studied diplomatic history in Denmark as a Marshall scholar, and received her law degree from the Georgetown University Law Center. She has taught about human rights enforcement as an adjunct professor of law at Georgetown University and serves on the boards of a number of human rights organizations.

**Gerald Caplan**, a Canadian, has a Ph.D. in African history from the School of Oriental and African Studies, University of London. He is author of *Rwanda: The Preventable Genocide*, the report of the International Panel of Eminent Personalities appointed by the Organization of African Unity to investigate the Rwandan genocide; founder of “Remembering Rwanda”; and co-editor with Eric Markusen of a special issue of the *Journal of Genocide Research* devoted to the tenth anniversary of the Rwandan genocide. He teaches a course on the genocide in Rwanda.

**Robert O. Collins** is Professor of History, Emeritus, at the University of California/Santa Barbara (UCSB). Educated at Dartmouth College, Balliol College, Oxford, and Yale University, he has taught at Williams College, Columbia University, and UCSB for forty years where he served as Dean of the Graduate School (1970 to 1980) and Director of the UCSB Center in Washington, D.C. (1992 to 1994). He has lectured in numerous American, European, Middle Eastern, and African universities and been a consultant to the Sudan government, the High Executive Council of the Southern Sudan Regional Government, 1975 to 1983, and Chevron Overseas Petroleum Inc., 1981 to 1991. He first went to the Sudan in 1956, a month after

independence, and has returned regularly to live, travel widely in every part of the Sudan, and carry out his historical research both in the archives and in the field, particularly southern Sudan.

Between 1962 and 1994, he published seven histories of the Sudan, southern Sudan, and the Nile. Among the books he has published (with Millard Burr) are *Requiem for the Sudan: War, Drought, and Disaster Relief, 1983–1993* (1994); *Africa's Thirty Years War: Chad, Libya, and the Sudan, 1963–1993* (1999); *Revolutionary Sudan: Hasan al-Turabi and the Islamist State, 1989–2000* (2003); and *The Nile* (2002). His latest books include *Alms for Jihad: Charities and Terrorism in the Islamic World* and *Revolution and Civil Wars in the Sudan: Twenty Collected Essays on the Sudan, Southern Sudan, and Darfur, 1962–2004* from Cambridge and Tsehai Publishers.

**Jerry Fowler**, a graduate of Princeton University and Stanford Law School, is staff director of the Committee on Conscience, which guides the genocide prevention efforts of the United States Holocaust Memorial Museum. His publications include “Out of that Darkness: Preventing Genocide in the 21st Century,” in Samuel Totten, William S. Parsons, and Israel W. Charny (Eds.), *Century of Genocide: Critical Essays and Eyewitness Accounts* (New York: Routledge, 2004). He also directed the short film, *A Good Man in Hell: General Romeo Dallaire and the Rwanda Genocide*. Fowler has taught at George Mason University Law School and George Washington University Law School. For the 2006–2007 academic year, he will be William F. Podlich Distinguished Visitor and Visiting Scholar at Claremont McKenna College in Claremont, California.

**Stefanie Frease**, as Director of Programs for the Coalition for International Justice, led the Atrocities Documentation Team in Chad in the summer of 2004. She has spoken widely on the crisis in Darfur, Sudan, and on other international justice-related matters. At CIJ, she led advocacy efforts on East Timor and assisted in the establishment of the UN's Serious Crimes Unit in East Timor. She is currently on a leave of absence while working at the International Criminal Court (ICC) in The Hague, The Netherlands as Project Manager/Field Investigations. Prior to joining CIJ, Frease worked in the investigation division of the Office of the Prosecutor at the International Criminal Tribunal for the former Yugoslavia from 1995 to 2000. Frease received a graduate degree from the School of International and Public Affairs, Columbia University, and an undergraduate degree from the Jackson School of International Studies, University of Washington. The chapter in this book was written while the author was with CIJ, and the views expressed are the author's alone and do not necessarily reflect the views of the ICC.



**Jonathan P. Howard** is a research analyst specializing in African public opinion research for the U.S. Department of State. Howard served as the survey methodologist for the Darfur Atrocities Documentation Project, designing the sampling methodology, overseeing initial survey implementation in the field, briefing interviewers, and compiling and analyzing the resulting data. He holds bachelor's degrees in political science and philosophy from Wheaton College, as well as a master's in Comparative Politics from the University of Virginia.

**Stephen Kostas** is an International Bar Association Fellow at the Appeals Chamber of the UN International Criminal Tribunal for the Former Yugoslavia (ICTY). Previously he was a law clerk for H. E. Judge Theodor Meron at the ICTY. He has a Juris Doctorate degree from the University of Chicago, and a Ph.D. from Johns Hopkins University. He worked pro bono for the Coalition for International Justice.

**Andrew S. Natsios** served as Administrator of the U.S. Agency for International Development (USAID) from May 2001 to January 2006. During that period, he also served as Special Coordinator for International Disaster Assistance and Special Humanitarian Coordinator for the Sudan. In earlier service to USAID, Natsios held the positions of director of the Office of Foreign Disaster Assistance and assistant administrator for the Bureau for Food and Humanitarian Assistance (now the Bureau of Democracy, Conflict and Humanitarian Assistance).

From 1975 to 1986, Natsios also served in the Massachusetts House of Representatives. He is a graduate of Georgetown University and Harvard University's Kennedy School of Government, where he received a master's degree in public administration. He has written numerous articles on foreign policy and humanitarian emergencies as well as two books: *U.S. Foreign Policy and the Four Horsemen of the Apocalypse* (Center for Strategic and International Studies, 1997), and *The Great North Korean Famine* (U.S. Institute of Peace, 2001).

Natsios left his position as administrator of USAID to become a professor at Georgetown University's Edmund A. Walsh School of Foreign Service.

**Helge Niska** is lecturer, project manager, developer of study programs, and examiner of community and conference interpreters at the Institute for Interpretation and Translation Studies (TÖI), Stockholm University, Sweden. He teaches theory and practice of terminology, and theory of interpreting. Niska has served as an expert on public service interpreting services and interpreter training in numerous locales, including Chad, Scandinavia, the Baltic states, and South Africa.

**Scott Straus** is an Assistant Professor of Political Science and International Studies at the University of Wisconsin, Madison, where he teaches classes on genocide, human rights, and African politics. Straus is the author of two forthcoming books on Rwanda: *The Order of Genocide: Race, Power, and War in Rwanda*, from Cornell University Press, Ithaca, New York, and, with Robert Lyons, *Intimate Enemy: Images and Voices of the Rwandan Genocide*, from Zone Books, Cambridge, Massachusetts. Straus also recently published an article on Darfur in *Foreign Affairs*, and he has published in the *Journal of Genocide Research* and *Patterns of Prejudice*. He co-authored, with David Leonard, *Africa's Stalled Development: International Causes and Cures* (Lynne Rienner, 2003) and translated Jean-Pierre Chrétien's *The Great Lakes of Africa: Two Thousand Years of History* (Zone Books, 2003). Before starting in academia, Straus was a freelance journalist based in Nairobi, Kenya.

**Taylor B. Seybolt** is a Senior Program Officer at the United States Institute of Peace (USIP), in Washington, D.C., where he is engaged in making grants to civil society organizations in Sudan to strengthen the prospects of consolidating peace. Prior to joining USIP in 2002, he spent three years as the director of the Conflicts and Peace Enforcement Project at the Stockholm International Peace Research Institute (SIPRI) in Stockholm, Sweden. From 1997 to 1999, he was a research fellow at the Belfer Center for Science and International Affairs at Harvard University's Kennedy School. He holds a Ph.D. in political science from MIT. He is the author of *Knights in Shining Armor? The Success and Failure of Humanitarian Intervention* (SIPRI/Oxford University Press, forthcoming 2006). He was not involved with the Darfur Atrocities Documentation Project.

**Gregory H. Stanton** (Juris Doctorate from Yale Law School, 1982) was a law professor at Washington and Lee University School of Law from 1985 to 1991, Chair of the American Bar Association Young Lawyers Division Committee on Human Rights, and a member of the ABA's Standing Committee on World Order Under Law. Currently, he is the James Farmer Visiting Professor of Human Rights at the University of Mary Washington, Fredericksburg, Virginia.

Stanton served in the State Department from 1992 to 1999, where he wrote UN Security Council Resolutions 955 and 978, which established the International Criminal Tribunal for Rwanda. He founded the Cambodian Genocide Project in 1981 and has since worked to bring Khmer Rouge leaders to justice. In 2003 to 2005, he drafted rules of procedure and evidence for the mixed UN/Cambodia tribunal.

Stanton is President of Genocide Watch and Chair of the International Campaign to End Genocide. He is also Vice President of the International Association of Genocide Scholars.

## Afterword

As scholars who have each devoted decades to researching, writing, and teaching about genocide, we are proud to have served as two of the twenty-four investigators on the Darfur Atrocities Documentation Team (ADT). As we commented in the Introduction to this book, we regard this initiative as being truly historic for several reasons. The ADT was the first official investigation by a government into allegations of genocide committed by another government while the killing and dying were still underway. Data collected by the ADT were instrumental in the U.S. Government's unprecedented declaration that the Government of Sudan and its *Janjaweed* allies were guilty of genocide. The data collected by the ADT also served as the basis for the U.S. Government invoking, for the first time, Chapter VIII of the United Nations' Convention on the Prevention and Punishment of the Crime of Genocide to call on the UN Security Council to conduct an official criminal investigation of alleged genocide. As a result of Resolution 1564, passed on September 18, 2004, the Security Council established the UN Commission of Inquiry, whose report, released just a few months later, led the Security Council, in Resolution 1593, to refer the situation in Sudan to the International Criminal Court — both actions being unprecedented in the history of the United Nations.

Contributors to this book have identified other important aspects of the ADT Project. Andrew Natsios, the former Administrator of the U.S. Agency for International Development (USAID), writes that evidence collected by the ADT “will be critical in helping prosecute Sudanese individuals guilty of planning and executing the execution and widespread killings.” He also notes that the ADT “was an important step toward institutionalizing USAID's role as a government *tripwire* for identifying and addressing protection problems and human rights violations and pushing

for accountability of those responsible” (emphasis added). Nina Bang-Jensen and Stefanie Frease, both formerly with Coalition for International Justice, document how the ADT represents a unique, creative, and productive collaboration between U.S. Government agencies and nongovernmental organizations in addressing critical human rights violations. “Outsider” Gregory Stanton, a Yale-educated attorney involved in the establishment of the International Criminal Tribunal for Rwanda, notes that the ADT constituted “the first use of systematic social science survey research to prove commission of genocide and crimes against humanity.” “Outsider” Taylor Seybolt of the U.S. Institute for Peace points out that the ADT had “great value” insofar as it played a “pivotal role” in the U.S. Government’s declaration of genocide in Darfur, helped keep the issue of Darfur alive on the United States political agenda, and — perhaps most importantly — showed that “a determination of genocide can be made before it is too late to respond.”

Furthermore, as Gerald Caplan reminds us in his “outsider’s” essay, compared with the intentional avoidance by the international community and the United States to call the 1994 genocide in Rwanda by its proper name in order to justify inaction, the responses to the Darfur tragedy show some progress. If nothing else, for the first time, instead of looking the other way, both the United States and the United Nations made the crucial decision to put forth the time, effort, and funding to undertake criminal investigations of an ongoing case of mass killing that could lead to prosecution of its perpetrators.

It is our (the editors’) hope that the ADT may eventually come to be regarded as an important milestone in (1) the struggle against impunity for perpetrators of heinous international crimes, (2) the effort to replace the rule of force with the rule of law, and, most significantly, (3) the campaign to prevent genocide.

That hope, however, is obviously tarnished by the fundamental fact that, as this book goes to press in Summer 2006, there has not been any discernible improvement in the conditions under which helpless civilians in Darfur struggle to survive — and that is despite the declaration of genocide by the United States, the issuance of the UN’s Commission of Inquiry’s report, and the subsequent referral of the Darfur situation to the International Criminal Court. Indeed, it sickens us to think about the victims still being hunted down, killed, and raped even after they have sought safety and shelter in the internally displaced persons (IDPs) camps in Darfur and the refugee camps in Chad.

We cannot disagree with Taylor Seybolt’s assertion that “the Bush administration’s declaration of genocide has proved to be a substitute for action, not a call to action.” Other observers who were not associated with

the ADT or this book also have made such an accusation. Not long after the ADT's results were made public and Secretary of State Colin Powell made his declaration of genocide, Danish researchers Martin Mennecke and Elisabeth Moltke warned that "investigating [whether the conflict should be labeled 'genocide' or some other serious crime] runs the risk of becoming a mere substitute for stopping the widespread killings by means of political pressure or intervention" (Mennecke and Moltke, 2004, p. 1). The same point was reiterated more recently by Julie Flint and Alex de Waal (2005) in their book, *Darfur: A Short History of a Long War*, in which they conclude that the debate over the "g" word became "a hindrance to action" (p. 102).

One has to muse as to why neither the United States nor the United Nations has acted effectively to stem the ongoing atrocities in Darfur. Is it due, as some suggest, to both the United States and the United Nations not wanting to "endanger" the peace accord that Sudan signed with the rebels in the South, which ended the twenty year war that engulfed some two million lives? Is it due, as others suggest, to the fact that the United States already has its hands full with its current war efforts in Afghanistan and Iraq? Is it due to Western countries not wishing to engage in battle with a Muslim state, fearing an onslaught of terrorist activity by *Al Qaeda* and other groups, if not outright warfare with various Muslim states? Is it due to the fact that Sudan suddenly is playing "ball" with the United States in the latter's "war against terrorism"? Is it because both China, which has heavy petroleum interests in Sudan, and Russia, which has a large arms deal with Sudan, have threatened, time and again, to veto any sanctions against Sudan — and thus neither the United States nor the United Nations wants to go head-to-head with such powers? Is the United States' unwillingness to intervene militarily the result of the so-called "Somalia factor," which resulted in the deaths of U.S. military personnel when the United States attempted to subdue rebel forces there in 1993? Or, is it, as some have surmised, due to the fact that few really care about the victims because they are black Africans, and thus "expendable"?

The lack of action is likely a result of some combination of these reasons and more. Thus, once again, both *realpolitik* and a lack of political will, along with an unconscionable lack of caring, have come to the fore during a genocidal event — one which, unlike the genocide in Rwanda (1994), was declared a genocide while underway. And, we are painfully aware of the fact — pointed out by both Gerald Caplan and Gregory Stanton in their commentaries herein — that accusing the Sudanese Government of genocide has not stopped the United States from treating some members of that government in a respectful, business-as-usual, and even friendly manner. There, again, is *realpolitik* in action.

Like our ADT colleagues around the world, when we returned from Chad, we waited anxiously to see if, when, and how Secretary of State Powell would announce his conclusions on the question of genocide. We were relieved (as there were some fears that Powell would simply avoid taking a stand on the issue) when he told the world that he had concluded that the Sudanese Government was guilty of genocide. But our relief turned to dismay when, in the same testimony, shortly after his declaration of genocide, he asserted that no changes in U.S. policy were required. Our feelings were echoed by Eric Reeves, of Smith College, who has closely followed the unfolding genocide in Darfur. Writing the day after Secretary Powell's declaration of genocide, Reeves (2004) warned that "this provides a certain ghastly clarity in the new world order of the twenty-first century: Even genocide, even the crime that defined the actions in Rwanda and Eastern Europe during the Holocaust, does not entail any special response or effort of prevention. If this indeed marks the end of any particular obligations under the Genocide Convention, we may legitimately wonder whether the price paid for [Secretary] Powell's determination is not exorbitantly high" (n.p.).

Our enthusiasm for the Security Council referral of Darfur to the International Criminal Court (ICC), which the ADT Project played a crucial role in making possible, is diminished by the suspicion that the Government of Sudan is unlikely to cooperate with the Court. As Reeves (2005), who regards the present regime in Khartoum as being guilty of "serial genocide" for their mass killing campaigns against specified groups in the Nuba mountains in 1992 and in the southern oil regions in 1997, notes, "It is not in the self-interest of genocidaires to cooperate in their own prosecution ..." (n.p.). "Indeed," Reeves observes, "the very existence of an ICC investigation creates incentives for the NIF [the ruling regime in Khartoum] to sustain prevailing levels of insecurity in Darfur as a means of hampering possible investigation, even as such insecurity is now the most powerful tool of human destruction" (n.p.).

In the final analysis, while investigation and efforts to prosecute constitute a necessary move forward by the international community in regard to facing (versus ignoring) the horror and danger of massive atrocities, particularly those slouching towards crimes against humanity and/or genocide, they are far from sufficient. What was and still is needed but not yet available is a robust military intervention that is comprised of a highly trained force with an adequate number of troops and ample resources and the support to carry out the mission of halting the killing, rape, and destruction that continues to be carried out by Government of Sudan troops and the *Janjaweed*.

So, the question remains: Is there anything that anyone can do to attempt to halt the ongoing genocide in Darfur? It is a tough question to answer.

And, to be truthful, it is not as if everyone has cast a blind eye to Darfur. Professor Eric Reeves has written over one hundred detailed articles on Darfur and cast them out to the world via his Internet website. *The New York Times* columnist Nicholas Kristof has written one article after another on various facets of the atrocities being perpetrated in Darfur as well as pieces that lambaste, in no uncertain terms, the Bush White House, the UN Security Council, the European Union, and others for their lack of attention to the Darfurian tragedy. The U.S. Holocaust Memorial Museum's Committee on Conscience, which issued an early genocide warning regarding the situation in Darfur, has sponsored panel after panel on Darfur and has issued — and continues to issue — important updates regarding the crisis.

We (co-editors Totten and Markusen) initiated a letter-writing campaign over the Internet, urging concerned citizens to write letters to a host of officials (everyone from their Congressional representatives to President Bush and U.S. Secretary of State Condeleezza Rice to UN Secretary-General Kofi Annan and UN Special Advisor on the Prevention of Genocide Juan Mendez). The Save Darfur Committee, an alliance of over one hundred thirty diverse faith-based, humanitarian, and human rights organizations, has organized letter-writing campaigns and protests, and issued updates on both the plight of the black Africans of Darfur and how the international community has reacted (and not reacted) to the ongoing bloodshed in Darfur. University students across the United States have organized letter-writing campaigns, protests in front of Congress and the White House, and teach-ins. Samuel Totten has initiated his own Darfur petition campaign and has obtained over five thousand signatures from scholars, church leaders, and community members across the United States. One student group in Texas reports that it has collected over ten thousand signatures calling on the United States and the United Nations to do something more than pass anemic resolutions. Church groups and synagogues across the United States have educated their own congregants about the tragedy in Darfur and urged them to contact their representatives in Congress to do something besides talk about the situation. And that is just a fraction of what has taken place over the past two years or so.

That is all well and good, but the question that remains is: What good has it all done? First, it has kept the issue of Darfur alive and in the news. Second, it has educated large masses of people (young and old alike) about Darfur and what is happening there as well as what is not being done to prevent ongoing killing, deaths by attrition, and mass rape. Third, the concern by certain politicians (be they in the United States, Canada, or Europe) regarding the Darfur crisis may be a direct result of the ongoing letter-writing campaigns. The slow but sure increase in the number of African Union (AU) troops being deployed in Darfur and the assistance and



supplies provided the AU by the United States, the European Union, NATO, Canada, and others might also be a result of ongoing pressure applied on various governmental and intergovernmental officials and bodies.

All of that is good, but it still is not enough, and thus the question that remains is this: *What can be done to halt the killing, raping, and dying? The simple but profound answer is to apply much more pressure, pressure that is systematic, ongoing, and relentless, all aimed at prodding the United Nations, regional organizations, and individual nations to act and to act now.* Quite frankly, it is not enough to simply sign a petition, write a single letter, give some money, wear a wristband, or write a single article. Each and every individual who detests the thought of genocide must attempt to keep the pressure on the powers that be, and that means not being satisfied or complacent by carrying out a single action or two.

Some may, and indeed have, claimed that the ADT Project was a cover for real action by the U.S. Government, and thus little more than a Pyrrhic victory of sorts for those who want to see genocide prevented in a timely and effective manner. Truthfully, for at least some of us who were members of the ADT, it certainly feels that way. But another way of looking at it — and not through rose-colored glasses, but with the view that change is slow, despicably so when it comes to the protection of peoples' human rights in many developing countries — the ADP is simply, but profoundly, one more piece of an extremely complex and thorny puzzle, a puzzle called the prevention and intervention of genocide. Thus, if nothing else, and this, in and of itself, is significant, the ADT Project has established, once and for all, that an investigation into suspected genocide can be undertaken during the actual period the atrocities are being perpetrated.

Finally, though, the upshot is this: No matter what the atrocities (mass murder of men, women, and children; mass rape of girls and women; and/or wholesale destruction of villages and wells) in Darfur (or any place else for that matter) are deemed (e.g., crimes against humanity or genocide), the victim population should not have to wait for assistance and protection until an investigatory body has completed its study and analyzed its data. Indeed, any time, anywhere that there is the danger of an outbreak of massacres, the international community must act to prevent such from becoming a reality. Furthermore, when massacres actually occur is not the time to study the problem or solely refer the matter to the ICC, but rather it is the time to halt the killing. Until that lesson is learned and acted upon, we fear that the world is going to witness more Darfurs in the years ahead.

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## Appendices

# APPENDIX 1

## Darfur Refugee Questionnaire

Questionnaire Serial:

Camp:  Date:  Time Started:  Time Completed:

Interviewer:  Organization (NGO):   
 Interpreter:  Language Used:

**Location of Interview:** *Describe nearby landmarks / paths / locating information*

**INTRODUCTION**

Hello. My name is \_\_\_\_\_. I work with \_\_\_\_\_, and we are talking with refugees about their experiences in the Darfur region of Sudan. If you are willing, we would like to have a brief conversation with a member of your household who will be selected at random. The experiences you share with us will be kept confidential, and will be used by the \_\_\_\_\_ to prepare a report. Your name, and all information you give us, will remain confidential and will not be released in any reports. Participation in this survey does not guarantee compensation for losses/deaths experienced by your household, nor does it mean that the individuals in your household will be able to testify at trials or bring specific charges against anyone. We understand you may not want to talk about your experiences; if so, we respect your decision.

**HOUSEHOLD CONSENT**

<b>Would one of you be willing to speak with us?</b> <i>Interviewer: Circle Response.</i>	<b>1. Yes</b> <b>2. No</b>	<b>INTERVIEWER:</b> If members of the household decline to be interviewed, thank them and walk away. Mark "NO" and use a new questionnaire for the next interview.
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**RESPONDENT SELECTION**

**QA. How many members are there in your household, i.e. living here at the moment?**   
*Please include children. Interviewer: Record Number.*

**QB. Among these members, how many children are there below 18 years of age?**   
*Interviewer: Record Number.*

**QC. Interviewer: Record the names of the adults, and choose one using the Kish-grid table.**

No.	Age	Name	A	B	C	D	E	F	G	H	I	J
1			1	1	1	1	1	1	1	1	1	1
2			1	2	1	2	1	2	1	2	2	2
3			1	3	2	1	3	2	1	3	1	1
4			1	2	3	4	1	2	3	4	2	4
5			5	4	3	2	1	5	4	3	1	3
6			1	2	3	4	5	6	1	2	4	6
7			3	2	1	7	6	5	4	3	1	6
8+			1	2	3	4	5	6	7	8	2	8

**RESPONDENT CONSENT**

<b>Would you be willing to speak with us?</b> <i>Interviewer: Circle Response.</i>	<b>3. Yes</b>	INTERVIEWER: If the selected person declines to be interviewed, thank them and walk away. Mark "NO" and use a new questionnaire for the next interview.
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**RESPONDENT DEMOGRAPHICS**

<b>Name:</b>		<b>Father's Name:</b>	
<b>Date of Birth:</b>		<b>Place of Birth:</b>	
<b>Gender:</b>	1. Male 2. Female	<b>Ethnicity:</b>	1. Zaghawa 2. Fur 3. Masaleit 4. Other _____ 9. Don't Know / Refused
<b>Tribe:</b>		<b>Clan:</b>	
<b>Type/ Years of School:</b>	1. 0 2. 1-3 3. 4-6 4. 7-8 5. 9-12 6. 12+ 7. Islamic School 8. Other _____ 9. DK/ Ref.	<b>(If Female) Maiden Name:</b>	
		<b>What did you do? Did you work outside the home?</b>	

**RESPONDENT LOCATION**

<b>Q1. Which district do you come from?</b> <i>Interviewer: circle district.</i>	1. North Darfur 2. West Darfur 3. South Darfur
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**Q2. Name of Interviewee's Town or Village:**

In your language, what do you call your town/village? (Write the name as it sounds)	What is your town/village called in Arabic? (Write the Arabic name as it sounds)	Is your town/village known by any other name(s)? (Write the name/names as it sounds)

**Q3. Proximity of Interviewee's Town or Village to the nearest large town.**

Name of nearest large town in local language: (Write the name as it sounds)	Name of nearest large town in Arabic: (Write the Arabic name as it sounds)	How far is it to this town from your home village/town? (Write the number of kilometers)	What direction is this large town from your home village/town? (Write the direction as explained by interviewee)

**Q4. Proximity of Interviewee's Town or Village to the nearest main road.**

Name of nearest main road in local language: (Write the name as it sounds)	Name of nearest main road in Arabic: (Write the Arabic name as it sounds)	How far is it to this main road from your home village/town? (Write the number of kilometers)	What direction is this main road from your home village/town? (Write the direction as explained by interviewee)

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INTERVIEWER: Preliminary Atlas Coordinates: 

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 OFFICE: Final Atlas Coordinates: 

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RESPONDENT NARRATIVE

Q5. When did you leave your village? *Date or days since departure.*

Q6. Why did you leave your village?  

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Q7. What happened to you? Were you physically harmed?  

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<b>Incident Location:</b>		<b>Incident Date:</b>	
<b>Perpetrator Name(s):</b>		<b>Perpetrator Phys. Desc.:</b>	

Q8. Did those who harmed or attacked you say anything to you? Did the attackers say anything to each other during the event?  

--

Q9. Were any members of your household harmed? In what way?  

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<b>Incident Location:</b>		<b>Incident Date:</b>	
<b>Victim Name(s):</b>		<b>Ages:</b>	<b>Gender:</b>
<b>Perpetrator Name(s):</b>		<b>Perpetrator Phys. Desc.:</b>	

Q10. Did those who harmed or attacked your family say anything to them? Did the attackers say anything to each other during the event?  

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Q11. Were your household's water or food stores taken away or destroyed? If so, how? Were your cattle stolen? Did they have your brand?  

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<b>Incident Location:</b>		<b>Incident Date:</b>	
<b>Perpetrator Name(s):</b>		<b>Perpetrator Phys. Desc.:</b>	

**Q12. Did your household own property or things that were destroyed or stolen?**

<b>Item List:</b>			
<b>Incident Location:</b>		<b>Incident Date:</b>	
<b>Perpetrator Name(s):</b>		<b>Perpetrator Phys. Desc.:</b>	

**Q13. Did you see any one else in your village being harmed or taken away? How were they harmed? Where were you when this was happening?**

<b>Victim Names:</b>		<b>Type of Harm:</b>	
<b>Incident Location:</b>		<b>Incident Date:</b>	
<b>Victim Name(s):</b>		<b>Ages:</b>	<b>Gender:</b>
<b>Perpetrator Name(s):</b>		<b>Perpetrator Phys. Desc.:</b>	

**Q14. Was your village attacked / destroyed? If so, how and to what extent (e.g. burning/ shelling, partial/complete)? Were you and members of your family herded together and kept in groups before being expelled?**

--

**Q15. During the attack, were there any particular groups or types of people who were singled out for harm?**

<b>Incident Location:</b>		<b>Incident Date:</b>	
<b>Perpetrator Name(s):</b>		<b>Perpetrator Phys. Desc.:</b>	

**Q16. Were there any particular groups or types of people who were spared from harm?**

<b>Incident Location:</b>		<b>Incident Date:</b>	
<b>Perpetrator Name(s):</b>		<b>Perpetrator Phys. Desc.:</b>	

**Q17. Why do you think they did this to you, your household, or your village?**

--

**Q18. Since leaving your village, have any members of your household or village died on the journey to this camp? If so, how?**

<b>Incident Location:</b>		<b>Incident Date:</b>		
<b>Victim Name(s):</b>		<b>Ages:</b>		<b>Gender:</b>

**Q19. Since leaving your village, have you *personally witnessed* people or villages?**

<b>Victim Names:</b>		<b>Type of Harm:</b>		
<b>Incident Location:</b>		<b>Incident Date:</b>		
<b>Victim Name(s):</b>		<b>Ages:</b>		<b>Gender:</b>
<b>Perpetrator Name(s):</b>		<b>Perpetrator Phys. Desc.:</b>		

**Q20. Since leaving your village, have you *personally witnessed* attacks on other people or villages?**

<b>Victim Names:</b>		<b>Type of Harm:</b>		
<b>Incident Location:</b>		<b>Incident Date:</b>		
<b>Victim Name(s):</b>		<b>Ages:</b>		<b>Gender:</b>
<b>Perpetrator Name(s):</b>		<b>Perpetrator Phys. Desc.:</b>		



**INTERVIEWER OBSERVATIONS:**

<p><b>Q I A. In what type of shelter did the respondent live?</b></p>	<p>1. Tent                  2. Hut                  3. Straw / stick enclosure                  4. Plastic sheeting                  5. Nothing                  6. Other _____</p>
---	---

<p><b>Q I B. Were there any people present during the interview?</b></p>	<p>1. No one                  2. Spouse                  3. Children only                  4. Family members                  5. Small crowd                  6. Large crowd                  7. Other _____</p>
--	--

<p><b>Q I C. Did the respondent check with others for information to answer any question?</b></p>	<p>1. Yes                  2. No</p>
---	--

<p><b>Q I D. Do you think anyone influenced the respondent's answers during the interview?</b></p>	<p>1. Yes                  2. No</p>
--	--

<p><b>Q I E. Did you observe anyone intimidating the respondent during the interview?</b></p>	<p>1. Yes                  2. No</p>
---	--

<p><b>Q I F. Did the respondent appear nervous during the interview or for any specific question?</b></p>	<p>1. Yes – whole interview                  2. Yes – Question # _____                  3. No</p>
---	---

<p><b>Q I G. Did the respondent have difficulty answering any question?</b></p>	<p>1. Yes – Question # _____                  Type of Difficulty _____                  2. No</p>
---	---

**FOR THE INTERVIEWER**

<p><b>Q I H. How did your presence influence neighbors?</b></p>	<p>1. No interest                  2. Interest – looks                  3. Interest – questions                  4. Suspicion                  5. Fear                  6. Gathered</p>
---	---

<p><b>Q I I. Were you approached by any community / camp / militia representatives during the interview?</b></p>	<p>1. Yes (Specify) _____                  2. No</p>
--	--

<p><b>Q I J. Were you threatened during the interview?</b></p>	<p>3. Yes – Verbal threat.                  4. Yes – Physical threat.                  5. No</p>
--	--



**EVENT CODES:**

1. Killing — Family
2. Killing — Nonfamily
3. Killing — Mass (Specify # in comments)
4. Killing — Summary / displayed
5. Rape — Self
6. Rape — Other
7. Rape — With object
8. Abduction
9. Beating — Self
10. Beating — Others
11. Property destruction — Complete village
12. Property destruction — Partial village
13. Property destruction — Complete house
14. Property destruction — Partial house
15. Property destruction — Food stores
16. Property destruction — Personal items
17. Property theft — Looting
18. Property theft — Cattle
19. Property theft — Food stores
20. Whipping
21. Knifing
22. Branding
23. Sexual humiliation
24. Racial epithets
25. Reported rape
26. Reported killing
27. Aerial bombing
28. Attack from Sudanese military
29. Collateral damage — Property
30. Collateral damage — Killing
31. Collateral damage — Injury
32. Death from displacement — Starvation / dehydration
33. Death from displacement — Disease
34. Death from displacement — Infirmity
35. Other (*specify in comments*)

**PERPETRATOR CODES:**

1. *Jenjweed* militia
2. Arab villagers
3. Black villagers
4. Sudanese soldier(s)
5. Sudanese police
6. JEM militia
7. SLA militia
8. Camp / humanitarian workers
9. Foreigners
10. Others (*specify in comments*)

## APPENDIX 2

# Documenting Atrocities in Darfur

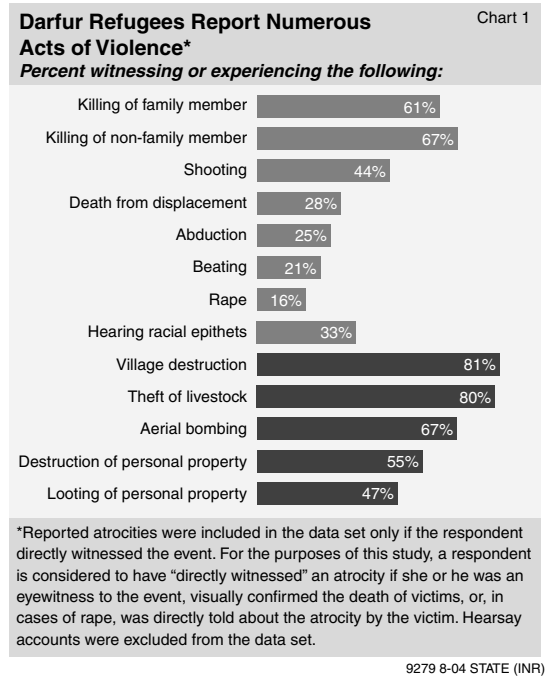
State Publication 11182

Released by the Bureau of Democracy, Human Rights and Labor, and the  
Bureau of Intelligence and Research  
September 2004

### Summary

The conflict between the Government of Sudan (GoS) and two rebel groups that began in 2003 has precipitated the worst humanitarian and human rights crisis in the world today. The primary cleavage is ethnic: Arabs (GoS and militia forces) versus non-Arab villagers belonging primarily to the Zaghawa, Massalit, and Fur ethnic groups. Both groups are predominantly Muslim.

A U.S. Government project to conduct systematic interviews of Sudanese refugees in Chad reveals a consistent and widespread pattern of atrocities committed against non-Arab villagers in the Darfur region of western Sudan. This assessment is based on semistructured interviews with eleven hundred thirty-six randomly selected refugees in nineteen locations in eastern Chad. Most respondents said government forces, militia fighters, or a combination of both had completely destroyed their villages. Sixty-one percent of the respondents witnessed the killing of a family member; sixteen percent said they had been raped or had heard about a rape from a victim. About one-third of the refugees heard racial epithets while under attack. Four-fifths said their livestock was stolen; nearly half asserted their personal property was looted. This assessment highlights incidents and atrocities that have led to the displacement of large portions of Darfur's non-Arabs.



**Figure A.1** Key findings of the Atrocities Documentation Team.

An Atrocities Documentation Team (ADT), assembled at the initiative of the U.S. Department of State's Bureau of Democracy, Human Rights and Labor (DRL), conducted interviews in Chad in July and August 2004. The team was primarily composed of independent experts recruited by the Coalition for International Justice (CIJ), and also included experts from the American Bar Association (ABA), DRL, and the State Department's Bureau of Intelligence and Research (INR) as well as the U.S. Agency for International Development (USAID). INR was responsible for compiling the survey data and producing the final report. USAID met the costs of the CIJ and ABA.

### Humanitarian Crisis

As of August 2004, based on available information, more than four hundred five villages in Darfur had been completely destroyed, with an additional one hundred twenty three substantially damaged, since February 2003. Approximately two hundred thousand persons had sought refuge in eastern Chad as of August, according to the UN High Commissioner for Refugees (UNHCR); the UN Office for the Coordination of Humanitarian

Affairs reports another 1.2 million internally displaced persons (IDPs) remain in western Sudan. The total population of Darfur is six million. The lack of security in the region continues to threaten displaced persons. Insecurity and heavy rains continue to disrupt humanitarian assistance. The UN World Food Program provided food to nearly nine hundred forty thousand people in Darfur in July. Nonetheless, since the beginning of the Darfur food program, a total of eighty-two out of one hundred fifty-four concentrations of IDPs have received food, leaving seventy-two locations unassisted. Relief and health experts warn that malnutrition and mortality are likely to increase as forcibly displaced and isolated villagers suffer from hunger and infectious diseases that will spread quickly among densely populated and malnourished populations (Figure A.1).

The health situation for the two hundred thousand refugees in Chad is ominous. The U.S. Centers for Disease Control and Prevention estimate that one in three children in the refugee settlements in Chad is suffering from acute malnutrition and that crude mortality rates are already well above emergency threshold levels (one per ten thousand per day).

### Human Rights Crisis

The non-Arab population of Darfur continues to suffer from crimes against humanity. A review of eleven hundred thirty-six interviews shows a consistent pattern of atrocities, suggesting close coordination between GoS forces and Arab militia elements, commonly known as the *Janjaweed*. (“*Janjaweed*” is an Arabic term meaning “horse and gun.”)

Despite the current cease-fire and UN Security Council Resolution 1556, *Janjaweed* violence against civilians has continued (cease-fire violations by both the *Janjaweed* and the rebels have continued as well). Media reports on August 10, 16, and 19 chronicled GoS-*Janjaweed* attacks in western Darfur. In addition to their work on the survey, the interviewers had the opportunity to speak with newly arrived refugees who provided accounts that tended to confirm press reports of continuing GoS participation in recent attacks. Refugees who fled the violence on August 6 and 8 spoke with the team, providing accounts consistent with media reports: Joint GoS military and *Janjaweed* attacks; strafing by helicopter gun ships followed by ground attacks by the GoS military in vehicles and *Janjaweed* on horseback; males being shot or knifed; and women being abducted or raped. Respondents reported these attacks destroyed five villages. Multiple respondents also reported attacks on the IDP camp of Arja.

The United Nations estimates the violence has affected 2.2 million of Darfur’s 6 million residents. The GoS claims it has been unable to prevent *Janjaweed* atrocities and that the international community has exaggerated

the extent and nature of the crisis. The GoS has improved international relief access to IDPs in Darfur since July, but problems, including lack of security and seasonal rains, have hampered relief programs. Survey results indicate that most Sudanese refugees state that *Janjaweed* militias and GoS military forces collaborate in carrying out systematic attacks against non-Arab villages in Darfur.

### **Ethnographic Background**

Darfur covers about one-fifth of Sudan's vast territory and is home to one-seventh of its population. It includes a mixture of Arab and non-Arab ethnic groups, both of which are predominantly Muslim (see Figure A.3). The Fur ethnic group (Darfur means "homeland of the Fur") is the largest non-Arab ethnic group in the region. Northern Darfur State is home to the nomadic non-Arab Zaghawa, but also includes a significant number of Arabs, such as the Meidab. Sedentary non-Arabs from the Fur, Massalit, Daju, and other ethnic groups live in Western Darfur State. The arid climate and the competition for scarce resources over the years have contributed to recurring conflict between nomadic Arab herders and non-Arab farmers, particularly over land and grazing rights. Various ethnic groups have fought over access to water, grazing rights, and prized agricultural land as desertification has driven herders farther south.

### **Political and Military Conflict**

Ethnic violence affected the Darfur region in the 1980s. In 1986, Prime Minister Sadiq al-Mahdi armed the ethnic-Arab tribes to fight John Garang's Sudanese People's Liberation Army (SPLA). After helping the GoS beat back an SPLA attack in Darfur in 1991, one of these Arab tribes sought to resolve ancient disputes over land and water rights by attacking the Zaghawa, Fur, and Massalit peoples. Arab groups launched a campaign in Southern Darfur State that resulted in the destruction of some six hundred non-Arab villages and the deaths of about three thousand people. The GoS itself encouraged the formation of an "Arab Alliance" in Darfur to keep non-Arab ethnic groups in check. Weapons flowed into Darfur and the conflict spread. After President al-Bashir seized power in 1989, the new government disarmed non-Arab ethnic groups, but allowed politically loyal Arab allies to keep their weapons.

In February 2003, rebels calling themselves the Darfur Liberation Front (DLF) attacked GoS military installations and the provincial capital of Al Fashir. The DLF complained of economic marginalization and demanded a power sharing arrangement with the GoS. In March 2003, the DLF changed

its name to the Sudan Liberation Movement/Army (SLM/A), intensified its military operations, unveiled a political program for a “united democratic Sudan,” and bolstered its strength to some four thousand rebels. The Justice and Equality Movement, with fewer than one thousand members, was established in 2002, but has since joined the SLM/A in several campaigns against GoS forces.

The GoS has provided support to Arab militia attacking non-Arab civilians, according to press and nongovernment organizations (NGO) reports. Refugee accounts corroborated by United States and other independent reporting suggest that Khartoum has continued to provide direct support for advancing *Janjaweed*. Aerial bombardment and attacks on civilians reportedly have occurred widely throughout the region; respondents named more than one hundred locations that experienced such bombardment (see Figure A.4). The extent to which insurgent base camps were colocated with villages and civilians is unknown. The number of casualties caused by aerial bombardment cannot be determined, but large numbers of Darfurians have been forced to flee their villages. According to press and NGO reports, the GoS has given *Janjaweed* recruits salaries, communication equipment, arms, and identity cards.

### **Current International Response**

On July 30, 2004, the UN Security Council adopted Resolution 1556, which demanded that the GoS fulfill commitments it made to disarm the *Janjaweed* militias and apprehend and bring to justice *Janjaweed* leaders and their associates; it also called on the GoS to allow humanitarian access to Darfur, among other things. The United Nations placed an embargo on the sale or supply of materiel and training to nongovernmental entities and individuals in Darfur. The resolution endorsed the African Union (AU) deployment of monitors and a protection force to Darfur. It requested the UN Secretary-General to report on GoS progress in thirty days and held out the possibility of further actions, including sanctions, against the GoS in the event of noncompliance.

The Security Council has expressed its deep concern over reports of large-scale violations of human rights and international humanitarian law in Darfur. The main protection concerns identified by the United Nations and corroborated by the ADT include threats to life and freedom of movement, forced relocation, forced return, sexual violence, and restricted access to humanitarian assistance, social services, sources of livelihood, and basic services. Food security has been precarious and will probably worsen as the rainy season continues. Many displaced households no



longer can feed themselves because of the loss of livestock and the razing of food stores.

Relief agencies' access to areas outside the state capitals of Al Junaynah, Al Fashir, and Nyala was limited until late May. Visits by UN Secretary-General Kofi Annan and U.S. Secretary of State Colin Powell in June 2004 brought heightened attention to the growing humanitarian crisis. As a result, the GoS lifted travel restrictions and announced measures to facilitate humanitarian access. Nonetheless, serious problems remain, specifically capacity, logistics, and security for relief efforts. USAID's Disaster Assistance Response Team and other agencies have deployed additional staff to increase emergency response capacity.

### Refugee Interviews and Survey Results

The Atrocities Documentation Team (ADT) conducted a random-sample survey of Darfurian refugees in eastern Chad in July and August 2004. The team interviewed eleven hundred thirty-six refugees, many of whom had endured harsh journeys across the desolate Chad–Sudan border.

A plurality of the respondents were ethnic Zaghawa (46 percent), with smaller numbers belonging to the Fur (8 percent) and Massalit (30 percent) ethnic groups. Slightly more than half the respondents (56 percent) were women (see Figure A.3).

Analysis of the refugee interviews points to a pattern of abuse against members of Darfur's non-Arab communities, including murder, rape, beatings, ethnic humiliation, and destruction of property and basic necessities. Many of the reports detailing attacks on villages refer to government and militia forces, preceded by aerial bombardment, acting together to commit atrocities. Respondents said government and militia forces wore khaki or brown military uniforms. Roughly one-half of the respondents noted GoS forces had joined *Janjaweed* irregulars in attacking their villages. Approximately one-quarter of the respondents said GoS forces had acted alone; another 14 percent said the *Janjaweed* had acted alone. Two-thirds of the respondents reported aerial bombings against their villages; four-fifths said they had witnessed the complete destruction of their villages. Sixty-one percent reported witnessing the killing of a family member. About one-third of the respondents reported hearing racial epithets while under attack; one-quarter witnessed beatings. Large numbers reported the looting of personal property (47 percent) and the theft of livestock (80 percent).

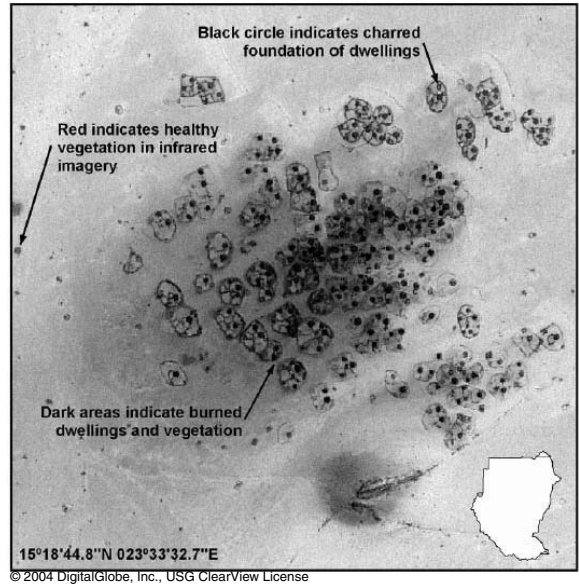
Most reports followed a similar pattern:

1. GoS aircraft or helicopters bomb villages.
2. GoS soldiers arrive in trucks, followed closely by *Janjaweed* militia riding horses or camels.
3. GoS soldiers and militia surround and then enter villages, under cover of gunfire.
4. Fleeing villagers are targets in aerial bombing.
5. The *Janjaweed* and GoS soldiers loot the village after most citizens have fled, often using trucks to remove belongings.
6. Villages often experience multiple attacks over a prolonged period before they are destroyed by burning or bombing.

When describing attacks, refugees often referred to GoS soldiers and *Janjaweed* militias as a unified group. As one refugee stated, “The soldiers and *Janjaweed*, always they are together.” The primary victims have been non-Arab residents of Darfur. Numerous credible reports corroborate the use of racial and ethnic epithets by both the *Janjaweed* and GoS military personnel; “Kill the slaves, Kill the slaves,” and “We have orders to kill all the blacks,” are common. One refugee reported a militia member stating, “We kill all blacks and even kill our cattle when they have black calves.” Numerous refugee accounts point to mass abductions, including persons driven away in GoS vehicles, but respondents usually do not know the abductees’ fates. A few respondents indicated personal knowledge of mass executions and grave sites.

A subset of four hundred respondents were asked about rebel activity in or near their villages. Nearly nine in ten said there was no rebel activity before the attack. Nine percent noted rebels were in the vicinity; 2 percent said the rebels were present in their villages. The overwhelming majority (91 percent) said their village was not defended at all against the attack. One percent asserted their village had been successfully defended and another 8 percent cited an unsuccessful defense (Figure A.2).

Respondents reported ethnic tensions in the region had risen over the past few years. For example, markets in which non-Arabs and Arabs had previously interacted have become segregated, and almost all villages are now said to be ethnically homogenous. According to many of the interviewees, GoS soldiers and *Janjaweed* attacked villages because of their non-Arab populations; men of fighting age have been abducted, executed, or both; and women and girls have been abducted and raped.



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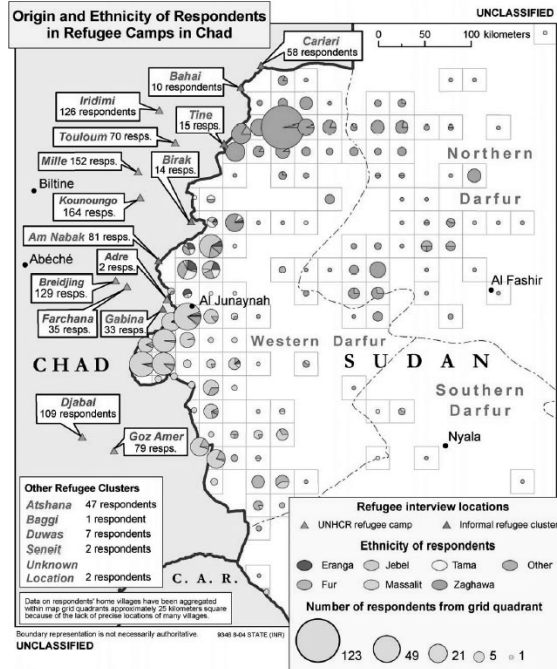
A refugee interviewed in Bahai camp reported that his home in Darurja was destroyed in February 2004 by *Janjaweed* who torched his village, stole his cattle and belongings, and raped 5-10 young women. The *Janjaweed* said “we will kill all blacks—this is not your homeland.”

**Figure A.2** Example of a destroyed village in Darfur. (With permission, DigitalGlobe Inc, USG Clear-view License, 2004.)

### Refugee Interviews and Survey Methodology

This report is based on results from personal interviews conducted by three teams between July 12 and August 18, 2004. DRL, USAID, and the Coalition for International Justice jointly designed the questionnaire in conjunction with other NGOs. INR provided technical assistance on questionnaire design and survey methodology. The teams used a semi-structured interviewing approach that permitted the refugees to give the broadest possible accounts of the events they had experienced. The interviews were conducted in nineteen locations in eastern Chad, including UNHCR camps and informal settlements.

Refugees were selected using a systematic, random sampling approach designed to meet the conditions in Chad. Interviewers randomly selected a sector within a refugee camp and then, from a fixed point within the sector, chose every tenth dwelling unit for interviewing. All adults were listed within the dwelling unit, and one adult was randomly selected. This methodology ensures the results are as representative as possible in light of refugee conditions. Interviews took place in private, with only the refugee, a translator, and the interviewer present.



**Figure A.3** Origins and ethnicities of refugees interviewed by the Atrocities Documentation Team.

Several characteristics of the survey must be underscored. First, accounts of atrocities may be dated, depending on when the individual refugee fled his or her village. Second, the data may actually undercount the extent of atrocities because mass attacks often leave few survivors. Third, most respondents come from villages within fifty miles of the border in Western Darfur and Northern Darfur States. Fourth, it is very likely that rapes are underreported because of the social stigma attached to acknowledging such violations of female members of one’s family.

The results are broadly representative of Darfurian refugees in Chad, but may not be representative of internally displaced persons still in Darfur because they were not included in the sample. A margin of error for this sample cannot be calculated because of the lack of accurate demographic information about the refugee camps and settlements. The methodology was designed to achieve as broadly representative a sample as was feasible under the prevailing conditions. Dates of events reported by refugees frequently utilized the Islamic calendar; these dates were then converted to dates on the Gregorian calendar (Figure A.3).

The field data for the eleven hundred thirty-six interviews were compiled using a standardized data entry process that involved the collection



**Figure A.4** Partially and completely destroyed villages reported to the ADT.

and coding of detailed information from each refugee respondent's set of answers. The researchers then used a statistical program to aggregate the data and analyze the results (Figure A.4).

APPENDIX **3**  
**The Crisis in Darfur**

U.S. SECRETARY OF STATE COLIN L. POWELL

Testimony before the Senate Foreign Relations Committee  
Washington, D.C.  
September 9, 2004  
(9:35 a.m. EDT)

**SECRETARY POWELL:** Thank you very much, Mr. Chairman. It's a pleasure to be back before the committee as you conduct these deliberations on one of the most difficult situations the international community is facing, and that's the tragedy in Darfur where, as you noted, so many hundreds of thousands of people are at risk, so many hundreds of thousands of people have been forced from their homes, from their villages to camps, and where there is an absolute need for the international community to come together and speak with one voice as to how we deal with this situation.

Mr. Chairman, I do have a prepared statement that I would like to offer for the record and then I will draw from that in my opening remarks.

**CHAIRMAN LUGAR:** It will be published in full and please proceed as you wish.

**SECRETARY POWELL:** Mr. Chairman and members of the committee, let me thank you for this opportunity to testify on the situation on Darfur, and let me begin by reviewing a little history. The violence in Darfur

has complex roots in traditional conflicts between Arab nomadic herders and African farmers. The violence intensified during 2003 when two groups — the Sudan Liberation Movement and the Justice and Equality Movement — declared open rebellion against the Government of Sudan because they feared being on the outside of the power and wealth-sharing agreements that were being arranged in the north-south negotiations, the “Naivasha discussions,” as we call them. Khartoum reacted aggressively, intensifying support for Arab militias to take on these rebels and support for what are known as the *Janjaweed*. The Government of Sudan supported the *Janjaweed*, directly and indirectly, as they carried out a scorched-earth policy toward the rebels and the African civilian population in Darfur.

Mr. Chairman, the United States exerted strong leadership to focus international attention on this unfolding tragedy. We first took the issue of Sudan to the United Nations Security Council last fall. President Bush was the first head of state to condemn publicly the Government of Sudan and to urge the international community to intensify efforts to end the violence. In April of this year, the United States brokered a ceasefire between the Government of Sudan and the rebels, and then took the lead to get the African Union to monitor that ceasefire.

As some of you are aware, I traveled to the Sudan in midsummer and made a point of visiting Darfur. It was about the same time that Congressman Wolf and Senator Brownback were there, as well as Secretary-General Kofi Annan. In fact, the Secretary-General and I were able to meet in Khartoum to exchange our notes and to make sure that we gave a consistent message to the Sudanese Government of what was expected of them.

Senator Brownback can back me up when I say that all of us saw the suffering that the people of Darfur are having to endure. And Senator Corzine was just in Darfur recently. He can vouch for the fact that atrocities are still occurring. All of us met with people who had been driven from their homes by the terrible violence that is occurring in Darfur; indeed, many of them having seen their homes and all their worldly possessions destroyed or confiscated before their eyes.

During my visit, humanitarian workers from my own Agency — USAID — and from other nongovernmental organizations told me how they are struggling to bring food, shelter, and medicines to those so desperately in need — a population, as you noted, Mr. Chairman, of well over a million.

In my midsummer meetings with officials of the Government of Sudan, we presented them with the stark facts of what we knew about what is happening in Darfur from the destruction of villages to the raping and the killing to the obstacles that impeded relief efforts. Secretary-General Annan and I obtained from the Government of Sudan what they said

would be firm commitments to take steps, and to take steps immediately, that would remove these obstacles, help bring the violence to an end, and do it in a way that we could monitor their performance.

There have been some positive developments since my visit, since the visit of Senator Brownback, Congressman Wolf, and the Secretary-General.

The Sudanese have met some of our benchmarks, such as improving humanitarian access, engaging in political talks with the rebels, and supporting the deployment of observers and troops from the Africa Union to monitor the ceasefire between Khartoum and the rebels.

The AU [African Union] Ceasefire Commission has also been set up and is working to monitor more effectively what is happening in Darfur. The general who is in charge of that mission, a Nigerian general by the name of General Okonkwo, is somebody that we know well. He is the same Nigerian general who went into Liberia last year and helped stabilize the situation there — a very good officer, a good commander who knows his business.

The AU's mission will help to restore sufficient security so that these dislocated, starving, hounded people can at least avail themselves of the humanitarian assistance that is available. But what is really needed is enough security so that they can go home, not be safe in camps. We need security throughout the countryside. These people need to go home. We are not interested in creating a permanent displaced population that survives in camps on the dole of the international community.

And what is really needed to accomplish that is for the *Janjaweed* militias to cease and desist their murderous raids against these people — and for the government in Khartoum to stop being complicit in such raids. Khartoum has made no meaningful progress in substantially improving the overall security environment by disarming the *Janjaweed* militias or arresting its leaders.

So we are continuing to press the Government of Sudan and we continue to monitor them. We continue to make sure that we are not just left with promises instead of actual action and performance on the ground. Because it is absolutely clear that as we approach the end of the rainy season, the situation on the ground must change, and it must change quickly. There are too many tens upon tens of thousands of human beings who are at risk. Some of them have already been consigned to death in the future because of the circumstances they are living in now. They will not make it through the end of the year. Poor security, inadequate capacity, and heavy rains, which will not diminish until later this month, continue to hamper the relief effort.

The United Nations estimates that there are over 1.2 million internally displaced persons (IDPs) in Darfur. In July, almost one million IDPs received food assistance. About two hundred thousand Sudanese refugees



are being assisted by the UNHCR and partner organizations across the border in Chad. The World Food Program expects two million IDPs will need food aid by October.

The U.S. Government provision of aid to the Darfur crisis in the Sudan and Chad totaled \$211 million as of September 2, 2004. This includes \$112 million in food assistance, \$50 million in nonfood assistance, \$36 million for refugees in Chad, \$5 million for refugee programs in Darfur, and \$6.8 million for the African Union mission.

The United States also strongly supports the work of the AU monitoring mission in Darfur. In fact, we initiated the mission through base camp set-up and logistics support by a private contractor that we are paying for. The AU mission is currently staffed with one hundred twenty-five AU monitors now deployed in the field, and those monitors have already completed twenty investigations of ceasefire violations and their reports are now being written up and being provided to the AU and to the UN and to the international community.

The AU monitoring staff is supported by a protection force of three hundred five troops, made up of a Rwandan contingent of one hundred fifty-five, who arrived on August 15, and a Nigerian contingent of one hundred fifty, who arrived on August 30th. Recognizing the security problems in Darfur, the United Nations and the United States have begun calling for an expanded AU mission in Darfur through the provision of additional observers and additional protection forces so their presence can spread throughout this very, very large area that is about, oh, 80 percent the size of the state of Texas. It is not a simple geographic or monitoring or military mission. It is very complex. Khartoum seems to have expressed a willingness to consider such an expanded mission.

I am pleased to announce, Mr. Chairman, that the State Department has identified \$20.5 million in FY04 funds for initial support of this expanded AU mission. We look forward to consulting with the Congress on meeting additional needs that such a mission might have.

As you know, as we watched the month of July — as you watched through the month of July, we felt that more pressure was required. So we went to the United Nations and asked for a resolution. And we got that resolution on July 30th, after a bit of debate, but it was 13-0 with two abstentions.

This resolution, 1556, demands that the Government of Sudan take action to disarm the *Janjaweed* militia and bring *Janjaweed* leaders to justice. It warns Khartoum that the Security Council will take further actions and measures, which is the UN term for sanctions. “Measures” is not a softer word. It includes sanctions and any other measures that might be contemplated or available to the international community. And it warned

Khartoum that the United Nations, through its Security Council, will take actions and measures if Sudan fails to comply.

That resolution urges the warring parties to conclude a political agreement without delay and it commits all states to target sanctions against the *Janjaweed* militias and those who aid and abet them as well as others who may share responsibility for this tragic situation. Too many lives have already been lost. We cannot lose any more time. We in the international community must intensify our efforts to help those imperiled by violence, starvation, and disease in Darfur.

But the Government of Sudan bears the greatest responsibility to face up to this catastrophe, rein in those who are committing these atrocities, and save the lives of its own citizens. At the same time, however, the rebels have not fully respected the ceasefire and we are disturbed at reports of rebel kidnapping of relief workers. We have emphasized to the rebels that they must allow unrestricted access of humanitarian relief workers and supplies, and that they must cooperate fully, including cooperating with the AU monitoring mission.

We are pleased that the Government of Sudan and the rebels are currently engaged in talks in Abuja, hosted by the AU. These talks are aimed at bringing about a political settlement in Darfur. The two sides have agreed on a protocol to facilitate delivery of much-needed humanitarian assistance to rebel-held areas, and are now engaged in discussions of a protocol on security issues.

These negotiations are difficult. We expect that they may be adjourned for a period of time after these initial agreements and we are some ways away from seeing a political resolution between the two sides. We are urging both sides to intensify negotiations in order to reach a political settlement. And I have personnel from State Department who are on the ground in Abuja on a full-time basis to assist the negotiators in their work.

When I was in Khartoum earlier in the summer, I told President al-Bashir, Vice President Taha, Foreign Minister Ismail, the Minister of Interior and others, that the United States wants to see a united, unified, prosperous, democratic Sudan. I told them that to that end we are fully prepared to work with them. I reminded them that we had reached an historic agreement on June 5th — an agreement that we had worked on for so long — an agreement between the Government of Sudan and the Sudan People's Liberation Movement, the so-called North-South agreement. And this North-South agreement covered all of the outstanding issues that had been so difficult for these parties to come to agreement on; they had come to agreement on. [sic]

Since then, the parties have been engaged in final negotiations on remaining details. However, the parties now are stuck on the specifics of

a formal ceasefire agreement and have not yet begun the final round of implementation modalities. Special Envoy Sumbeiywo met recently with the parties, but could not resolve the remaining ceasefire-related issues. Khartoum appears unwilling to resume talks at the most senior level, claiming that it must focus on Darfur. That would be fine if its focus were the right focus, but it is not. The SPLM [Sudan People's Liberation Movement] is more forward leaning, but still focused on negotiating details. We believe that a comprehensive agreement would bolster efforts to resolve the crisis in Darfur by providing a legal basis for a political solution and by opening up the political process in Khartoum.

President Bashir has repeatedly pledged to work for peace, and he pledged that again when I met with him earlier in the summer. But President Bush, this Congress, Secretary-General Annan and the international community want more than promises. We want to see dramatic improvements on the ground right now. Indeed, we wanted to see them yesterday.

In the meantime, while we wait, we are doing all that we can. We are working with the international community to make sure all those nations who have made pledges of financial assistance and other kinds of assistance meet their pledges. We are not yet satisfied with the response from the international community to meeting the pledges that they have made. In fact, the estimated needs have grown and the donor community needs to dig deeper. America has been in the forefront of providing assistance to the suffering people of Darfur and will remain in the forefront. But it is time for the entire international community to increase their assistance.

The United States has pledged \$299 million in humanitarian aid through FY05, and \$11.8 million to the AU mission, and we are well on our way to exceeding these pledges. Clearly, we will need more assistance in the future and we are looking at all of our accounts within the Department to see what we can do. And when we are beyond our ability to do more from within our current appropriations, we will have to come back to the Congress and make our requests known.

Secretary-General Annan's August 30th report called for an expanded AU mission in Darfur to monitor commitments of the parties more effectively, thereby enhancing security and facilitating the delivery of humanitarian assistance. The Secretary-General's report also highlighted Khartoum's failure to rein in and disarm the *Janjaweed* militia, and noted that the Sudanese military continued to take part in attacks on civilians, including aerial bombardment and helicopter strikes.

We have begun consultation in New York on a new resolution that calls for Khartoum to fully cooperate with an expanded AU force and for cessation of Sudanese military flights over the Darfur region. It also provides for international overflights to monitor the situation in Darfur and

requires the Security Council to review the record of Khartoum's compliance to determine if sanctions, including on the Sudanese petroleum sector, should be imposed. The resolution also urges the Government of Sudan and the SPLM to conclude negotiations, the Lake Naivasha negotiations, on a comprehensive peace accord.

And, Mr. Chairman, there is, finally, the continuing question of whether what is happening in Darfur should be called genocide.

Since the United States became aware of atrocities occurring in Sudan, we have been reviewing the Genocide Convention and the obligations it places on the Government of Sudan and on the international community and on the state parties to the genocide convention.

In July, we launched a limited investigation by sending a team to visit the refugee camps in Chad to talk to refugees and displaced personnel. The team worked closely with the American Bar Association and the Coalition for International Justice, and was able to interview eleven hundred thirty-six of the 2.2 million people the United Nations estimates have been affected by this horrible situation, this horrible violence.

Those interviews indicated, first, a consistent and widespread pattern of atrocities: Killings, rapes, burning of villages committed by *Janjaweed* and government forces against non-Arab villagers; second, three-fourths of those interviewed reported that the Sudanese military forces were involved in the attacks; third, villagers often experienced multiple attacks over a prolonged period before they were destroyed by burning, shelling, or bombing, making it impossible for the villagers to return to their villages. This was a coordinated effort, not just random violence.

When we reviewed the evidence compiled by our team, and then put it beside other information available to the State Department and widely known throughout the international community, widely reported upon by the media and by others, we concluded, I concluded, that genocide has been committed in Darfur and that the Government of Sudan and the *Janjaweed* bear responsibility — and that genocide may still be occurring. Mr. Chairman, we are making copies of the evidence that our team compiled available to you and to the public today. We are putting it up on our website now, as I speak.

We believe in order to confirm the true nature, scope, and totality of the crimes our evidence reveals, a full-blown and unfettered investigation needs to occur. Sudan is a contracting party to the Genocide Convention and is obliged under the Convention to prevent and to punish acts of genocide. To us, at this time, it appears that Sudan has failed to do so.

Article VIII of the Genocide Convention provides that Contracting Parties may, I will quote now, “may call upon the competent organs of the United Nations to take action, such action under the Charter of the United

Nations as they,” the competent organs of the United Nations, “as they consider appropriate, actions as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article III” of the Genocide Convention.

Because of that obligation under Article VIII of the Convention, and since the United States is one of the contracting parties, today we are calling on the United Nations to initiate a full investigation. To this end, the United States will propose that the next UN Security Council Resolution on Sudan request a United Nations investigation into all violations of international humanitarian law and human rights law that have occurred in Darfur, with a view to ensuring accountability.

Mr. Chairman, as I have said, the evidence leads us to the conclusion, the United States to the conclusion, that genocide has occurred and may still be occurring in Darfur. We believe the evidence corroborates the specific intent of the perpetrators to destroy “a group in whole or in part,” the words of the Convention. This intent may be inferred from their deliberate conduct. We believe other elements of the convention have been met as well.

Under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, to which both the United States and Sudan are parties, genocide occurs when the following three criteria are met:

First, specific acts are committed, and those acts include killing, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about physical destruction of a group in whole or in part, imposing measures to prevent births, or forcibly transferring children to another group. Those are specified acts that, if committed, raise the likelihood that genocide is being committed.

The second criteria: These acts are committed against members of a national, ethnic, racial, or religious group; and the third criterion is, they are committed “with intent to destroy, in whole or in part, the group, as such.”

The totality of the evidence from the interviews we conducted in July and August, and from the other sources available to us, shows that the *Janjaweed* and Sudanese military forces have committed large-scale acts of violence, including murders, rape, and physical assaults on non-Arab individuals. Second, the *Janjaweed* and Sudanese military forces destroyed villages, foodstuffs, and other means of survival. Third, the Sudan government and its military forces obstructed food, water, medicine, and other humanitarian aid from reaching affected populations, thereby leading to further deaths and suffering. And finally, despite having been put on notice multiple times, Khartoum has failed to stop the violence.

Mr. Chairman, some seem to have been waiting for this determination of genocide to take action. In fact, however, no new action is dictated by this determination. We have been doing everything we can to get the

Sudanese Government to act responsibly. So, let us not be too preoccupied with this designation. These people are in desperate need and we must help them. Call it civil war; call it ethnic cleansing; call it genocide; call it “none of the above.” The reality is the same. There are people in Darfur who desperately need the help of the international community.

I expect, I more than expect, I know that the government of Khartoum in Khartoum will reject our conclusion of genocide anyway. Moreover, at this point, genocide is our judgment and not the judgment of the international community. Before the Government of Sudan is taken to the bar of international justice, let me point out that there is a simple way for Khartoum to avoid such wholesale condemnation by the international community, and that way is to take action — to stop holding back, to stop dissembling.

The government in Khartoum should end the attacks and ensure its people — all of its people — are secure, ensure that they are all secure. They should hold to account those who are responsible for past atrocities, and ensure that current negotiations taking place in Abuja, and also the Naivasha accords, are successfully concluded. That is the only way to peace and prosperity for this war-ravaged land.

Specifically, Mr. Chairman, the most practical contribution we can make to the security of Darfur in the short term is to do everything we can to increase the number of African Union monitors. That will require the cooperation of the Government of Sudan.

And I am pleased that the African Union is stepping up to the task. It is playing a leadership role and countries within the African Union have demonstrated a willingness to provide a significant number of troops. And this is the fastest way to help bring security to the countryside through this expanded monitoring presence, so we can see what is going on and act to prevent it.

In the intermediate and long term, the security of Darfur can best be advanced by a political settlement at Abuja, and by the successful conclusion of the peace negotiations between the SPLM and the Government in Sudan, the Lake Naivasha accords.

Mr. Chairman, I will stop here and take your questions. Thank you.

## APPENDIX 4

# Convention on the Prevention and Punishment of the Crime of Genocide

*Adopted by Resolution 260 (III) A of the United Nations General Assembly on 9 December 1948.*

### Article 1

The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law, which they undertake to prevent and to punish.

### Article 2

In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group.
- (b) Causing serious bodily or mental harm to members of the group.
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
- (d) Imposing measures intended to prevent births within the group.
- (e) Forcibly transferring children of the group to another group.

### **Article 3**

The following acts shall be punishable:

- (a) Genocide
- (b) Conspiracy to commit genocide
- (c) Direct and public incitement to commit genocide
- (d) Attempt to commit genocide
- (e) Complicity in genocide

### **Article 4**

Persons committing genocide or any of the other acts enumerated in Article 3 shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

### **Article 5**

The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article 3.

### **Article 6**

Persons charged with genocide or any of the other acts enumerated in Article 3 shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties, which shall have accepted its jurisdiction.

### **Article 7**

Genocide and the other acts enumerated in Article 3 shall not be considered as political crimes for the purpose of extradition.

The Contracting Parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force.

### **Article 8**

Any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as



they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in Article 3.

#### **Article 9**

Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or any of the other acts enumerated in Article 3, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

#### **Article 10**

The present Convention, of which the Chinese, English, French, Russian, and Spanish texts are equally authentic, shall bear the date of 9 December 1948.

#### **Article 11**

The present Convention shall be open until 31 December 1949 for signature on behalf of any Member of the United Nations and of any nonmember State to which an invitation to sign has been addressed by the General Assembly.

The present Convention shall be ratified, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

After 1 January 1950, the present Convention may be acceded to on behalf of any Member of the United Nations and of any nonmember State, which has received an invitation as aforesaid.

Instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### **Article 12**

Any Contracting Party may at any time, by notification addressed to the Secretary-General of the United Nations, extend the application of the present Convention to all or any of the territories for the conduct of whose foreign relations that Contracting Party is responsible.

#### **Article 13**

On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a process-verbal and transmit a copy of it to each Member of the United Nations and to each of the nonmember States contemplated in Article 11.

The present Convention shall come into force on the ninetieth day following the date of deposit of the twentieth instrument of ratification or accession.

Any ratification or accession effected subsequent to the latter date shall become effective on the ninetieth day following the deposit of the instrument of ratification or accession.

#### **Article 14**

The present Convention shall remain in effect for a period of ten years as from the date of its coming into force.

It shall thereafter remain in force for successive periods of five years for such Contracting Parties as have not denounced it at least six months before the expiration of the current period.

Denunciation shall be effected by a written notification addressed to the Secretary-General of the United Nations.

#### **Article 15**

If, as a result of denunciations, the number of Parties to the present Convention should become less than sixteen, the Convention shall cease to be in force as from the date on which the last of these denunciations shall become effective.

#### **Article 16**

A request for the revision of the present Convention may be made at any time by any Contracting Party by means of a notification in writing addressed to the Secretary-General.

The General Assembly shall decide upon the steps, if any, to be taken in respect of such request.

#### **Article 17**

The Secretary-General of the United Nations shall notify all Members of the United Nations and the nonmember States contemplated in Article 11 of the following:

- (a) Signatures, ratification and accessions received in accordance with Article 11.
- (b) Notifications received in accordance with Article 12.
- (c) The date upon which the present Convention comes into force in accordance with Article 13.
- (d) Denunciations received in accordance with Article 14.

- (e) The abrogation of the Convention in accordance with Article 15.
- (f) Notifications received in accordance with Article 16.

**Article 18**

The original of the present Convention shall be deposited in the archives of the United Nations.

A certified copy of the Convention shall be transmitted to all Members of the United Nations and to the nonmember States contemplated in Article 11.

**Article 19**

The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

APPENDIX **5**  
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Documentation Project**

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