

## Reflections on the Difficulties of Defining Darfur's Crisis as Genocide

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In campuses and communities across North America, citizens of the United States and Canada have responded to the human rights disaster in Darfur with a civic mobilization unprecedented on an African issue since Apartheid. Instrumental to that mass movement has been the conviction that the crisis in Darfur is genocide, which evokes memories of the Holocaust, and more recently, Bosnia and Rwanda. Under the broad definition provided by the 1948 Genocide Convention, the crimes committed in Darfur are undoubtedly genocidal. But applying the Genocide Convention in this way—and emphasizing the term “genocide” over and above other heinous crimes against humanity—has complications that must be addressed by both genocide scholars and human rights activists.

Twelve years ago, the immediate response of the international human rights community to the genocide in Rwanda was awkward and confused, and the voices of outrage from ordinary citizens in the developed world were notably quiet. I deplored this at the time, and developed a critique of the organizational praxis of human rights organizations that distinguished between the “primary mobilization” of mass movements, such as the civil rights movement, and the professionalized “secondary” activism of specialist organizations that had subsequently taken up the torch and, in my view, neglected their grassroots constituency.<sup>1</sup> Some—such as Human Rights Watch director Kenneth Roth—lamented the lack of a grassroots constituency at the time, but such laments cannot be repeated in the instance of Darfur.<sup>2</sup> Tens of thousands turned out to rally on the Washington Mall in April 2006, and even larger numbers donned blue berets at a series of rallies across the world in September to call for U.N. troops to be sent to Darfur. Whether this level of mobilization is a unique occurrence that will give way to another long period of popular disinterest in human rights in Africa, or whether it represents the first step in the mobilization of the energies of a new generation, remains to be seen. Certainly, Mark Hanis and Andrew

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1. This critique went through numerous seminar versions. Part of it was published as: Alex de Waal, *Becoming Shameless: The Failure of Human-Rights Organizations in Rwanda*, *TIMES LITERARY SUPP.* (London), Feb. 21, 1997, at 3–4, and a fuller version was finally published as Alex de Waal, *Human Rights Organizations and the Political Imagination: How the West and Africa Have Diverged*, 2.4 *J. HUM. RTS.* 475 (2003).

2. Kenneth Roth, Letter to the Editor, *TIMES LITERARY SUPP.* (London), Mar. 14, 1997.

Sniderman, the founders of the Genocide Intervention Network,<sup>3</sup> see their aim as the creation of a permanent anti-genocide constituency.<sup>4</sup>

Darfur's crisis also witnessed another "first": the U.S. government formally determined that an event was genocide while it was in progress. On September 9, 2004, Secretary of State Colin Powell 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."<sup>5</sup> He then went on to note that U.S. policy would not change, making something of a mockery of the genocide determination. Powell's reading of the Genocide Convention—that it entailed no specific action by the U.S. government—was correct in law, and gravely disappointed those who had hoped that using the "G-word" would lead directly to U.S.-sponsored military intervention.

Over the preceding months, Sudan activists and senior U.N. officials had labeled the Darfur killings as "ethnic cleansing" and made comparisons with Rwanda precisely a decade earlier. The Department of State commissioned the Coalition for International Justice ("CIJ") to undertake an empirical study of the issue. Unable to travel to Sudan for their investigations, the CIJ team decided to make a survey of Darfurian refugees in Chad. The team members argued that the refugees' accounts were sufficiently detailed, consistent, and credible that the accounts should be taken as evidence, and that this evidence pointed to a pattern of systematic killing and other forms of ethnically targeted violence that fit the requirements of "genocide" in accordance with the 1948 U.N. Genocide Convention.<sup>6</sup> Meanwhile, the U.S. Congress voted in July that the atrocities in Darfur represented genocide.

The CIJ survey was sufficiently robust in methodology that its main conclusion is valid.<sup>7</sup> Particularly significant to the genocide determination was the "deliberate infliction of conditions of life calculated to destroy the group in whole, or in part."<sup>8</sup> These specific findings came as no surprise to those who had been documenting human rights violations during the Sudanese war since the 1980s. The CIJ cut through a Gordian Knot of whether and how to use the term "genocide" that had rumbled on among Sudanese human rights investigators and analysts since the earliest years of the war.

3. The organization was initially named the Genocide Intervention Fund.

4. See Rebecca Hamilton & Chad Hazlett, "*Not On Our Watch*": *The Emergence of the American Movement for Darfur*, in *WAR IN DARFUR AND THE SEARCH FOR PEACE* (Alex de Waal ed., forthcoming 2007).

5. *The Current Situation in Sudan and the Prospects for Peace: Hearing Before the S. Comm. on Foreign Relations*, 108th Cong. (2) (2004) (statement of Colin Powell, Sec'y of State of the United States).

6. Stephen A. Kostas, *Making the Determination of Genocide in Darfur*, in *GENOCIDE IN DARFUR: INVESTIGATING THE ATROCITIES IN SUDAN* 111 (Samuel Totten and Eric Markusen eds., 2006).

7. Its methodology does not permit its conclusions to be extrapolated to derive figures for overall excess mortality during the Darfur crisis. This is a separate controversy that will not be dealt with here.

8. Kostas, *supra* note 6, at 121. See also *PHYSICIANS FOR HUMAN RIGHTS, DARFUR—ASSAULT ON SURVIVAL: A CALL FOR SECURITY, JUSTICE AND RESTITUTION* (2006).

In 1987, two Sudanese academics documented ethnically targeted mass killings in the war zone of Bahr el Ghazal and the town of ed Da'ien, the latter outside the war zone.<sup>9</sup> The following year, an anonymous report, *Sudan's Secret Slaughter*, documented ethnically targeted mass killings in the city of Wau, carried out by the army and a proxy militia, targeting Dinka suspected of supporting the rebel Sudan People's Liberation Army ("SPLA"). In 1989, a report by Amnesty International on militia killings in Bahr el Ghazal documented a very similar pattern, and staff members of the organization internally described the killings as "genocidal."<sup>10</sup> Relief aid to the displaced population was obstructed,<sup>11</sup> and the deliberate starvation of civilians was instrumental in this author's conceptualization of famine as a crime.<sup>12</sup> A comparable series of massacres was carried out in the city of Juba in 1992. The Sudan government's assault on the Nuba Mountains in 1992-1993 was more ambitious in its aim, in that its objectives were not only crushing the rebellion and its civilian supporters, but also forcibly relocating the entire Nuba population out of their ancestral homeland and into "peace camps" where they would take on a new identity.<sup>13</sup> The systematic use of sexual violence was also documented in the Nuba, as a deliberate tool of destroying communities and creating a generation with a new identity. This campaign, mounted by a revolutionary government at the height of its ideological hubris, represented a more far-reaching attempt at violent social re-engineering than anything attempted before or since. Subsequent counter-insurgency campaigns in the Southern Sudanese oil fields<sup>14</sup> and in Bahr el Ghazal<sup>15</sup> were also mounted with a combination of indiscriminate violence and scorched earth tactics that equaled what the CIJ team described for Darfur.

Since 1985 if not before, the Sudan government's strategy for pursuing its counter-insurgency has set every major campaign down a particular path. In that year, the then-government of General Abdel Rahman Suwar al Dahab decided on what was subsequently called the "militia strategy."<sup>16</sup> Given the huge financial cost of mobilizing the regular army to fight the insurgency in the South and its borderlands, the political unpopularity of

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9. USHARI AHMAD MAHMUD & SULEYMAN ALI BALDO, *AL DIEIN MASSACRE: SLAVERY IN THE SUDAN* (Khartoum, University of Khartoum, 1987). They also provided the first evidence for abduction and enslavement of Southern Sudanese children and women in the context of militia raiding.

10. AMNESTY INTERNATIONAL, *SUDAN: HUMAN RIGHTS VIOLATIONS IN THE CONTEXT OF CIVIL WAR* (1989).

11. DAVID KEEN, *THE BENEFITS OF FAMINE: A POLITICAL ECONOMY OF FAMINE AND RELIEF IN SOUTHWESTERN SUDAN* 129-72 (1994); AFRICAN RIGHTS, *FOOD AND POWER IN SUDAN: A CRITIQUE OF HUMANITARIANISM* 94-96, 104-06, 152-56, 183-84 (1997).

12. ALEX DE WAAL, *FAMINE CRIMES: POLITICS AND THE DISASTER RELIEF INDUSTRY IN AFRICA* (1997).

13. AFRICAN RIGHTS, *FACING GENOCIDE: THE NUBA OF SUDAN* 242-75 (1995).

14. HUMAN RIGHTS WATCH, *SUDAN: OIL AND HUMAN RIGHTS* (2003).

15. HUMAN RIGHTS WATCH, *FAMINE IN SUDAN: THE HUMAN RIGHTS CAUSES* (1999).

16. Alex de Waal, *Some Comments on Militias in the Contemporary Sudan*, in *CIVIL WAR IN THE SUDAN* 142-56 (Martin Daly & Awad Alsikainga eds., 1994).

the draft, and the uncertain loyalty of many army officers, the government made the fateful decision to use proxy militia. To some extent this practice was already underway, but in July 1985 it was stepped up, when militia from two Arab tribes in South Kordofan and South Darfur, respectively, were given arms and coordination from Military Intelligence, and encouraged to raid and destroy the communities suspected of supporting the SPLA. Popularly known as *Murabaliin*, these militia were mobilized on a tribal basis (Misiriya and Rizeigat Arabs) and their targets identified on an ethnic basis—the Dinka. They were not paid but were allowed to keep what they looted, including cattle, household possessions, and even women and children. Only vague orders were given, and the insurgent areas were instead declared an ethics-free zone,<sup>17</sup> in which no reporting back was required, and no questions were asked. Military Intelligence's counter-insurgency formula comprised ethnically targeted killing, and total impunity.

The *Murabaliin* were formalized as part of the Popular Defense Forces in 1989, and other militia were formed on the same model. Among them were the *Janjaweed*, originally a Libyan-supported proxy in the Chadian civil war which entered Darfur as a freelance group in 1987, and who gradually established ties with Military Intelligence throughout the 1990s.<sup>18</sup>

The implication of this history is that at least five previous campaigns in the Sudanese civil war qualify equally well as "genocide." Looking further afield, if the label "genocide" is extended to each of these, it is hard to deny it to a much longer and equally dismal catalogue of exceptionally violent counter-insurgencies in Africa: the Ethiopian campaigns in Eritrea and Tigray in the early 1980s, the massacres in Uganda's Luwero Triangle in 1983-1984, Somali President Siad Barre's destruction of the northwest of Somalia in 1988, and at least half a dozen instances in the war in Congo.

However, for the purposes of this essay, let us remain focused on Sudan. The ethnic character of the killings and other acts of violence is beyond dispute. Both the empirical pattern and the racist epithets used by the planners and perpetrators of the violence are well documented. The question of intent is somewhat more ambiguous. There is no demonstrated intent to eliminate physically an entire ethnic group, and—with the exception of the Nuba in 1992-1993—no attempt to wholly eliminate the identity of a group. Both the stated and the real aim has been to subjugate the groups in question, in the context of the military and political threat they pose through suspected support of an insurgency. Members of those same targeted groups are able to live in peace in Sudanese cities and take positions in the government and army. During the Nazi Final Solution and the Rwandese genocide, the state's aim was to kill each and every member of the targeted group. The Sudanese government's concern is to kill enough of them to keep them down. The killings and other abuses are no accident:

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17. Alex de Waal, *Starving out the South, in CIVIL WAR IN THE SUDAN*, *supra* note 16, at 182.

18. JULIE FLINT & ALEX DE WAAL, *DARFUR: A SHORT HISTORY OF A LONG WAR* 57-64 (2005).

they are the systematic and predictable outcome of strategies for violence adopted by the Sudanese authorities, and they are both the effect and cause of Sudanese racism. To that extent, they fit well within Helen Fein's interpretation of the "intent" requirement of the Genocide Convention, namely that the actions should have a purposeful and deliberate character, rather than an accidental or unintentional one.<sup>19</sup>

The Darfur violence and at least five other preceding episodes in the Sudanese war fit Raphael Lemkin's rather capacious definition of genocide, as it is contained in the Genocide Convention. The mainstream tradition of genocide scholarship, however, has sought a narrower definition, emphasizing both eliminationist ideology and totalitarian control. This approach takes the Nazi Final Solution as the paradigmatic case of genocide, as noted by Robert Cribb:

The Holocaust became the paradigmatic event in genocide studies to an extent which is unusual in social science . . . . The vigorous debate over definitions, which has been a feature of genocide studies in the last two decades, centres in practice on identifying those features of the Holocaust which should be regarded as central to the concept and those which are circumstantial.<sup>20</sup>

For the tradition that Cribb describes, the diagnosis of Darfur as genocide is an innovation that will add significant new dimensions to the discipline. To examine why this is so, let us identify the following features that are common to each of the relevant episodes in the Sudanese civil war:

1. The group-targeted violence has unfolded in the context of a counter-insurgency campaign.
2. Much of the violence has had a racist (Arab supremacist) dimension, but equally significant, the government has sought where possible to use divide-and-rule tactics utilizing *non-Arab* proxies.
3. Most fatalities have occurred through hunger and disease consequent of displacement and destruction of livelihoods.
4. The violence has identifiable peaks and lulls, the latter occurring when the government has accomplished its immediate military goals, or (in the case of the Nuba) has scaled back its goals to military containment rather than outright victory.

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19. Helen Fein, *Genocide: A Sociological Perspective*, 38.1 CURRENT SOC. 20 (1990); cf. Kostas, *supra* note 6, at 121 (discussing how the Darfur Atrocities Documentation Project and State Department arrived at their decision on the question of intent).

20. Robert Cribb, *Genocide in the Non-Western World: Implications for Holocaust Studies*, in GENOCIDE: CASES, COMPARISONS AND CONTEMPORARY DEBATES 124 (Steven Jensen ed., 2003).

5. The episodes prior to Darfur were all ultimately resolved through peace negotiations, though there is an unanswered question as to whether that peace will hold.

Scholarship on Sudan's civil wars and humanitarian crises has required analysis of the politics of conflict, military strategy, and, specifically, counter-insurgency; the creation of famine; and peacemaking. The dominant framework of genocide studies, by contrast, focuses on group-targeted repression, ideology, and totalitarian state machinery. Bringing the two fields of study together will enrich the capabilities of both. Several implications follow. One is the identification of "counter-insurgency genocide" as a generic type. The second, given the importance of the destruction of livelihoods and obstruction of relief to the Darfur genocide determination, is a sharper conceptualization of the creation of famine as a crime against humanity.<sup>21</sup>

The Sudanese cases also oblige us to look at the de-escalation of violence. The paradigmatic cases of genocide—the Holocaust and Rwanda—ended with military defeat for the perpetrators. The Sudanese war has been marked by peaks of violence, some of which qualify as counter-insurgency genocide, followed by lulls, which are not peace, and which qualify as nasty counter-insurgency with human rights abuses. Can we say that a genocide has ceased when the perpetrators are still in power and the conflict is still unresolved? During each lull, the government has retained the capability for re-escalating the violence. Analysis of the ending of genocidal violence is an important lacuna in genocide studies.<sup>22</sup>

The case of the *jihad* in the Nuba Mountains is an instructive variant on the "counter-insurgency genocide" pattern insofar as it was marked by a totalizing political ideology, namely, revolutionary Islamism.<sup>23</sup> After much discussion, myself and my colleagues at African Rights decided to use the term "genocide," both in the title of our report (*Facing Genocide*) and in our description of government policies during the 1992-1993 *Jihad* and subsequently ("genocide by attrition"). We were concerned about using the "G-word" and in retrospect, those worries were warranted. Our mission to the SPLA-controlled areas of the Nuba Mountains in April 2005 (preceded by a reconnaissance mission a few months before) was the first opening-up of this area since the beginning of the war ten years earlier. We had hoped that international attention would force the government to halt its cam-

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21. Charles Allen, *Civilian Starvation and Relief During Armed Conflict: The Modern Humanitarian Law*, 19 GA. J. INT'L & COMP. L. 1 (1989); Katrina Tomasevski, *Human Rights and Wars of Starvation*, in WAR AND HUNGER: RETHINKING INTERNATIONAL RESPONSES TO COMPLEX EMERGENCIES 70 (Joanna Macrae & Anthony Zwi eds., 1994); David Marcus, *Famine Crimes in International Law*, 97 AM. J. INT'L L. 245 (2003).

22. SOCIAL SCIENCE RESEARCH COUNCIL, HOW GENOCIDES END, available at <http://howgenocidesend.ssrc.org> (last visited Mar. 19, 2007).

23. See Alex de Waal & A.H. Abdel Salam, *Islamism, State Power and Jihad in Sudan*, in ISLAMISM AND ITS ENEMIES IN THE HORN OF AFRICA 71 (Alex de Waal ed., 2004).

paigns. In that, we had some success—notably, the number of rapes and killings of civilians dropped. We paid a price, with two of our staff members murdered by government death squads.<sup>24</sup>

We also hoped to establish an airbridge that could bring in humanitarian supplies in support of the Nuba people, whose resilience was so impressive, and who had succeeded in initiating a cultural renaissance, marked by great mutual tolerance of different faiths, under the government onslaught. The humanitarian airbridge did indeed get established, but the Nuba soon lost control of the humanitarian program to foreign agencies with their own agendas. Most notably, evangelical Christian agencies began selective support of Christian communities, straining relations with the Muslims, and certain foreign solidarity groups portrayed the conflict in a manner that polarized relations between the Nuba and their immediate Arab neighbors. Nuba civic leaders who argued that it was necessary to find a political compromise and a means of living together with the Arabs were maliciously labeled as supporters of Khartoum. Nuba community leaders were more willing to contemplate accommodation with their enemies than their overseas supporters. Ironically, the silencing of the Nuba voices for peace meant that when the North-South peace agreement was hammered out in the Kenyan town of Naivasha in 2003-2004, the Nuba were poorly prepared for the negotiations, and ended up with a rather poor deal. The illusory hope of total liberation, sponsored by the international community, left them shortchanged. Sudan's Comprehensive Peace Agreement is currently in poor shape, and the Nuba Mountains may be one of the most vulnerable flashpoints should it unravel.

The danger of the word "genocide" is that it can slide from its wider, legally specific meaning, to a branding of the perpetrators' group as collectively evil. In turn, this narrows the options for responding. Having labeled a group or a government as "genocidal," it is difficult to make the case that a political compromise needs to be found with them. This leaves only various forms of pressure, such as sanctions, prosecution in a court of law, and, of course, military intervention. Sanctions rarely work. Prosecution is by definition too late for the specific crime in question. Military intervention is a clumsy tool that runs serious risks of failure and of inflammatory side effects.

A moral case can be made in support of the use of force to end atrocities and protect civilians, and this indeed is the foundation of the U.N. adoption of the "Responsibility to Protect." However, translating this principle into action is a very different matter. A full discussion of the challenges of providing security in Darfur lies beyond the scope of this essay: here it suffices to say that I believe that a non-consensual armed intervention

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24. Simon Noah was killed in March 1998 and Agostino Nur Shamila was assassinated in December 2001, just a few weeks before the ceasefire came into effect. A third human rights monitor was assassinated before he could take up his duties.

would be a grave error. U.N. Security Council Resolution 1706, adopted on August 31, 2006, called for 17,300 U.N. troops and at least 3300 civilian police to be provided for peacekeeping in Darfur, keeping open the option of deploying them without Khartoum's consent. But the figure of around 20,000 was derived directly from the implementation plan for the security arrangements section of the Darfur Peace Agreement, signed on May 5, 2006 (but not implemented). The joint U.N.-African Union security arrangements implementation team estimated that this number of troops and civilian police would be required to police the peace agreement. Policing Darfur and protecting its civilians without the cooperation of the government of Sudan would require a force of a greater magnitude and would not have a high probability of success.

An international armed intervention in Darfur, without the consent of the Sudanese government, and either led or instigated by the United States, would have the further complication of being seen in Africa and the Middle East as an arbitrary projection of American power into a Muslim and Arab country. The idea of America as global moral arbiter does not travel well.

Implicit in the use of the word "genocide" for Darfur is a moral calibration: genocide is worse than other crimes against humanity, and thus to question whether the atrocities in Darfur qualify as genocide is tantamount to minimizing, denying, or excusing the crime. This is surely a distortion. The crimes and blunders in Darfur are complex and fit uncomfortably, at best, within the category "genocide." For the purposes of stopping the killing and prosecuting those responsible, the use of the term "genocide" initially helped draw attention to the disaster, but it has subsequently become something of a distraction to effective action. Mass rape and mass murder do not cease to be crimes, whether or not they are committed as part of a genocide. This is the argument that was presented, albeit somewhat inelegantly, by the U.N.'s commission of inquiry into Darfur. Having balked at describing Darfur as genocide, the commission concluded: "International offences such as the crimes against humanity and the war crimes that have been committed in Darfur may be no less serious and heinous than genocide."<sup>25</sup> This may be legally debatable, but it was not moral cowardice, not least because the consequence was that Darfur was referred to the International Criminal Tribunal.

The strength of the American movement for Darfur, as manifest in the Save Darfur movement and the Genocide Intervention Network, is grounded in its members' sense that they, as Americans and world citizens, have a responsibility to do something to end the suffering in Darfur. It represents an important moral awakening in North America with respect to human suffering on the other side of the world. Without the label "genocide," it is unlikely that the Darfur movement would have gained such

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25. International Commission of Inquiry on Darfur, *Report to the United Nations Secretary-General, Pursuant to Security Council Resolution 1564 of 18 September 2004*, ¶ 4 (Jan. 25, 2005).



vigor and mass support. However, though consistent with the Genocide Convention, it expands the boundaries of what has been customarily recognized as genocide. This in turn requires genocide scholars and activists to gain expertise in the challenges of ensuring respect for the laws of war, preventing human-made famine, and making peace.