Sudan's Genocide: Punishment before Prevention

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I. Introduction

In 2004, the situation in Darfur, Sudan was described as the “worst humanitarian crisis in the world...”¹ More than two million people have been affected by the ongoing conflicts between the Government of Sudan and rebel groups.² More than 1.2 million people have been internally displaced³ and more than 200,000 have fled to the neighboring country of Chad.⁴ Mortality rates suggested that more than 300,000 people would die due to restrictions on humanitarian aid by the end of 2004.⁵

These statistics have caused the international community to investigate whether the events in Darfur suggest that the Sudanese Government has committed the international crime of genocide.⁶ The U.N. and the U.S. have both responded to this question.⁷ The U.N. has stated that the Sudanese Government’s actions do not rise to the level of genocide.⁸ The United States, however, through Secretary-General Colin

* J.D. Candidate, The Dickinson School of Law of the Pennsylvania State University, 2006; B.A., Brigham Young University, 2003. I would like to thank Professor Tiyanjana Maluwa for his insight and my wife Leah for her support.

3. Id.
4. Id.
6. See discussion infra Part IV.
7. Id.
8. See discussion infra Part IV.A.
Powell, has stated that Sudan’s actions do constitute genocide.\(^9\) Despite these conflicting interpretations of the surrounding events in Darfur, both the U.N. and the U.S. chose to refrain from sending military aid to directly end the conflict.\(^10\)

The evidence suggests that genocide has indeed occurred in Darfur.\(^11\) The U.N. has not correctly interpreted the events surrounding the Darfur crisis and has therefore failed to “prevent”\(^12\) genocide from occurring.\(^13\) While the U.S. has interpreted the surrounding events in Darfur correctly, it too has failed to act in accordance with the Genocide Convention to “prevent”\(^14\) or stop the perpetrators of genocide.\(^15\)

Part II of this paper will discuss the historical background of the Genocide Convention as well as those events leading up to the crises in Sudan. Part III will discuss the elements of the crime of genocide, including its original interpretation, recent interpretation, and its application to the surrounding events in Sudan. Part IV will discuss how the U.N. and U.S. have interpreted the situation in Sudan and how their actions fail to conform to the Genocide Convention. Finally, Part V will conclude by suggesting that the U.N.’s five-point action plan should be utilized and that U.N. reforms will be needed to carry out this plan to fruition.

II. Historical Background

A. The Road to a Convention on Genocide

In 1944, Raphael Lemkin coined the word “genocide” in his book *Axis Rule in Occupied Europe*.\(^16\) He derived the term from the Greek word *genos* meaning “race” or “tribe” and the Latin word *cide*, meaning “killing.”\(^17\) However, for much of history genocide was referred to as the “crime without a name.”\(^18\)

The early events of the twentieth century are littered with examples

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9. See discussion infra Part IV.C.
10. See discussion infra Parts IV.B, D.
11. See discussion infra Part III.
13. See discussion infra Part IV.A.
15. See discussion infra Parts IV.B, D.
16. RAPHAEL LEMKIN, AXIS RULE IN OCCUPIED EUROPE (1944).
of this once nameless crime: South-West Africa,19 Armenia,20 Ukraine,21 and Europe’s Holocaust.22 These tragedies were the primary impetus for the Genocide Convention in 1948.23

Article 1 of the Genocide Convention declares its purpose: “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.”24 Despite the ratification of the Genocide Convention, genocide has allegedly occurred throughout the world in Africa, Burundi, Rwanda, Uganda, Paraguay, Brazil, India,

19. See generally Jon Bridgman & Leslie J. Worley, CENTURY OF GENOCIDE: EYE WITNESS ACCOUNTS AND CRITICAL VIEWS 4 (Samuel Totten et al., 1997). In the beginning of 1904, a local German commander (von Trotha) in South-West Africa grew tired of the Hereros, members of the Bantu tribe in South-West Africa. See generally, Jon Bridgman & Leslie J. Worley, CENTURY OF GENOCIDE: EYE WITNESS ACCOUNTS and CRITICAL VIEWS 4 (Samuel Totten et al., 1997). The German commander, von Trotha, ordered the removal and extermination of the Herero people. Id. at 15. The German government eventually ordered von Troth to end the extermination, however, of the 80,000 Hereros; only 20,000 remained in South-West Africa. Id. at 3.

20. See generally Rouben P. Adalian, The Armenian Genocide, in CENTURY OF GENOCIDE: EYE WITNESS ACCOUNTS and CRITICAL VIEWS (Samuel Totten et al., 1997). In 1915, the Armenians revolted against the Ottoman Empire because the government failed to guarantee security of property and life. See Rouben P. Adalian, The Armenian Genocide, in CENTURY OF GENOCIDE: EYEWITNESS ACCOUNTS AND CRITICAL VIEWS 41 (Samuel Totten et al., 1997). In response to the Armenian uprising, the Ottoman government developed a plan of deportation, execution, and starvation of the Armenian population. Id. at 43. The plan was so effective that eight years later the Armenian population had vanished from Anatolia and the historic West Armenia. Id. at 41. The Armenian population was ultimately reduced from approximately 1,800,000 to about 32,500 people. See LEO KUPER, GENOCIDE: IT'S POLITICAL USE IN THE TWENTIETH CENTURY 113 (1991).

21. James E. Mace, Soviet Man-Made Famine in Ukraine 79, in CENTURY OF GENOCIDE: EYEWITNESS ACCOUNTS AND CRITICAL VIEWS (Samuel Totten et al., 1997) (explaining that Stalin is responsible for the millions of lives lost due to famine):

It is now generally accepted that in 1932-1933 several million peasants—most of them Ukrainians living in Ukraine and the traditionally Cossack territories of the North Caucasus (now the Krasnodar, Stavropol, and Rostov on the don regions of the Russian Federation)—starved to death because the government of the Soviet Union seized with unprecedented force and thoroughness the 1932 crop and foodstuffs from the agricultural population.

See id.


23. Genocide Convention, supra note 12.

Bangladesh, Cambodia, Sri Lanka, and other areas since 1948.  Although members to the Genocide Convention have punished actors of genocide on different occasions under Article 1, they have yet to invoke the most important purpose of Article 1: to prevent genocide.

B. The Road to the Crisis in Darfur, Sudan

Sudan has only had eleven years without major conflict since Sudan gained its independence in 1956. The Sudanese Government and the Sudan People’s Liberation Movement, also called the Sudan People’s Liberation Army (SPLM/A), are the main parties to the ongoing conflict in Sudan. The Sudanese conflict continues to be driven by self-determination, religious freedom, scarce resources, and political inequality.

In 1987, the ongoing conflicts between Arab nomads and non-Arabs (the Fur) resulted in an Arab alliance of twenty-seven tribes. This nomad militia became known as the “janjaweed.” The Furs, in retaliation, aligned with the SPLA, and continued to oppose the Sudanese Government throughout the 1980’s and early 1990’s.

In 1994, the conflict intensified as the Sudanese Government armed the janjaweed and enlisted their help against the Fur. The Sudanese Government rewarded the janjaweed for their help by redrawing territorial boundaries. The new boundaries took away centrally located fertile plains of Jebel Marra in the Darfur region of Sudan from the Fur. The ethnic separation of different classes of people was the ultimate result of this shift in boundaries.

Although these conflicts continued through 2002, the Sudanese Government and the SPLA were successful in signing the Machakos protocol, a Memorandum of Understanding, and a security
arrangement regarding humanitarian aid.\textsuperscript{37} Despite these achievements, after the SPLA seized the southern town, Torit, the Sudanese Government decided to break off all peace talks.\textsuperscript{38}

In February 2003, the SPLA formally took up arms against the Sudanese Government and took the position that the Government had "marginalized and impoverished the Darfur region by consistently favoring the Arab populations over indigenous Africans."\textsuperscript{39} The SPLA also demanded a fair share of the area's oil revenues.\textsuperscript{40} The Sudanese Government, along with the assistance of the janjaweed, reacted with aerial bombings and army attacks on villages.\textsuperscript{41} As death tolls rose and the number of displaced people grew, the international community was forced to pay closer attention to the growing crisis in Darfur.\textsuperscript{42}

III. The International Law of Genocide

Regardless of whether or not genocide has actually occurred in Sudan, the analysis must begin with Article 2 of the Genocide Convention. The Convention includes acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group. Article 2 specifically includes killing, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about physical destruction in whole or in part, imposing measures intended to prevent births, and transferring children by force to another group.\textsuperscript{43} Article 2 can further be broken down into three basic components: groups, the \textit{actus reus}, and the \textit{mens rea}. Each of these parts can only be
applied to the events surrounding Darfur when they are combined with an understanding of the original interpretation of the Convention along with recent applications of international law.

A. Groups

The Genocide Convention currently only protects national, ethnical, racial and religious groups. Although included in earlier drafts, linguistic and political groups were excluded from the Convention. The Venezuela Representative to the U.N. explained that the “purpose of the convention was not to protect any and every group; if that were the case, other groups or workers, activists, scientists, etc., should also be taken into consideration.” After the Rwanda crisis, the tribunals made it clear that the Genocide Convention was not a protector of individual identities, but rather memberships of a national, ethnical, racial or religious group. Therefore, for genocide to have occurred in Darfur, the Sudanese Government must have targeted at least one of the groups listed in Article 2. The protected groups listed in Article 2, however, are not further defined within the Convention. Therefore, a proper analysis must include past and recent authoritative interpretations of the Convention in order to determine if the victims of the Sudanese conflict fit under the defined groups.

1. National Groups

The International Criminal Tribunal for Rwanda (ICTR) in Prosecutor v. Akayesu, recently defined a national group as “a collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties.”

The groups affected by the ongoing conflicts in Darfur include the non-Arab Fur, Masaalit, and Zabhawa communities. Even though these groups share a legal citizenship in Sudan, along with the same accompanying rights and duties, it remains uncertain whether minority

44. **Id.**
45. *See* Secretariat Draft of the U.N. Genocide Convention, U.N. Doc. E/447 (1947). “The purpose of this convention is to prevent the destruction of racial, national, linguistic, religious or political groups of human beings.” Ad Hoc Committee Draft of the U.N. Genocide Convention, U.N. Doc. E/AC.25/SR.1 to 28 (1947). This draft included as protected groups: national, racial, religious or political groups. *Id.*
47. **Schabas,** *supra* note 18, at 63.
49. *Id.* ¶ 512.
groups within a nation meet the definition of a "national group" under the Convention. William Schabas, a legal genocide expert, holds the majority view and argues that "[c]onfusing mass killing of the members of the perpetrator's own group with genocide is inconsistent with the purpose of the Convention, which was to protect national minorities from crimes based on ethnic hatred." If future tribunals, in Sudan, accept this view then the minority status of the Fur, Masaalit, and Sabhawa would not qualify as a national group protected under the Convention.

Although unlikely, a progressive tribunal looking to expand the scope of "national groups" could find the authority for such an argument in a United Nations rapporteur discussing the atrocities in Cambodia by the Khmer Rouge. The rapporteur suggests that the intentional destruction of part of a national group may meet the definition under the Convention. The issue, however, was ultimately left undecided.

2. Ethnical & Racial Groups

Although the Convention identifies "ethnical" and "racial" groups as separately protected groups, tribunals have struggled to distinguish one from the other. Generally, the term "ethnical" is broader and encompasses more people. The International Criminal Tribunal for Rwanda (ICTR) in Prosecutor v. Akayesu has defined an ethnic group, "as a group whose members share a common language or culture." In contrast, a racial group is "based on the hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors."

International observers have found that while non-Arab African Sudanese civilians have been specifically targeted by the ongoing conflicts, the Arab Sudanese populations have been left untouched. Conversely, a memorandum submitted by The European Sudanese

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51. See SCHABAS, supra note 18, at 114-20.
52. Id. at 120.
56. See SCHABAS, supra note 18, at 126.
58. Id. ¶ 514.
60. Id. § 3(8).
Public Affairs Council (ESPAC) has taken the view that the "Arab" and "African" distinction is not racial, but cultural. Furthermore, ESPAC does not agree with the view that the Sudanese Government is systematically targeting one ethnic group over another. If this were the case, then no protection could be offered under the Convention, because cultural groups are not protected by the Convention.

The contradictory findings suggest that politics can push one view or another. However, the Rwanda Tribunals have suggested that strong ethnic distinctions are not necessarily required. For example, the Rwandan Hutus, Tutsis, and Twas all "share the same national territory, speak the same language, believe the same myths and share the same cultural traditions." In Rwanda, however, the Hutus, Tutsis, and Twas have been manually separated into ethnic groups through identification cards. No such identification system has taken place in Sudan. Therefore, if no ethnic distinction exists between the Arab and non-Arab people of Sudan, then the non-Arab people may not qualify as a distinct ethnic group. Thus, it is likely that a "battle of experts" will entertain future Sudanese tribunals regarding this issue.

3. Religious Groups

The United States' Genocide Convention Implementation Act of 1978 defines a religious group as a group of persons "whose beliefs, doctrines, practices, or rituals" are "distinctive in terms of common religious creed..." The ICTR, in Akayesu, has broadened this definition as "one whose members share the same religion, denomination or mode of worship." In 1999, the U.N. Group of Experts for Cambodia concluded that, "persecution by the Khmer Rouge of the Buddhist monkhood might qualify as genocide of a religious group." However, the Group of Experts for Cambodia distinguished religion

62. Id.
63. See Genocide Convention art. 2, supra note 12.
65. Id.
66. Id. ¶ 35. In 1931, the Belgians issued identification cards to the different classes of people in the country. Id. Since its inception, the identification card has become a tool for discrimination among the different groups in Rwanda. Id.
67. See Memorandum, supra note 62.
68. Genocide Convention Implementation Act of 1987 (Proxmire Act), S. 1851, s. 1093(7).
70. See SCHABAS, supra note 18, at 129.
from religious groups. The extermination of religion would only constitute cultural genocide, which was not included in the final draft of the Convention. Specifically, the Convention requires the “destruction in whole or in part,” of a religious group and not the destruction of religion.

In Sudan, Muslims dominate the national government and make up between sixty-five and seventy-five percent of the population. Those that are non-Muslim are either Christian or belong to a traditional religion indigenous to the area. This distinction is important because Article 65 of Sudan’s Constitution declares that the Islamic Sharia will be the basis for Sudan’s legislation. However, the non-Muslim southern portion of Sudan has demanded and was granted an exemption from Sharia law. The Sudanese Government has not extended this exemption to civilians in Darfur, even though civilians in Darfur are predominately Muslim and they regard themselves as “culturally separate from the Arabs who dominate the Khartoum government.” Sudan’s media advisor has said that, “Darfur is in the north, so Sharia law should apply. It is not negotiable.” In addition, the Sudanese government has declared a “jihad” against rebels not willing to accept Sharia law.

While civilians in Darfur share different religious beliefs from the Muslim populations of Sudan, their situation may only qualify as a cultural genocide, which is not specifically covered under the Convention, because many Christians and non-Muslim followers living

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73. Id. art. 2.
75. Id.
77. See WORLD FACT BOOK, supra note 74.
79. Id.
82. Genocide Convention art. 2-3, supra note 12.
outside of Darfur have not been affected or specifically targeted.\textsuperscript{83} William Schabas shares this view and asserts that a religious connection is more difficult to show than an ethnical or racial one.\textsuperscript{84}

Although the view held by Schabas and others will most likely prevail, a strict interpretation of the Genocide Convention should not be underestimated. The Convention requires the destruction in “whole or in part,” of a religious group. The conjunction “or” leads to the conclusion that the destruction of every member within a religious group is not required. It is unclear, however, what percentage or portion of a religious group will be required to make up a “part” under the convention. While non-Muslims in Darfur may make up a “part” of the religious group, Schabas’ view that religious genocide is difficult to prove is correct.

\section*{B. Required Acts and Intents}

The law of genocide consists of a physical element, \textit{actus reus}, and a mental element, \textit{mens rea}.\textsuperscript{85} The purpose of requiring both elements is to exclude acts that are accidental, committed without intent, or committed without the requisite knowledge.\textsuperscript{86} For this reason, genocide is a difficult crime to prove.

1. The \textit{actus reus} of Genocide

The physical elements of genocide in the Convention are found in Article II (a) through (e).\textsuperscript{87} Each act constitutes genocide under the Convention if the requisite mental element is also present.\textsuperscript{88}

a. Killing Members of the Group

The term “killing” during the Convention was not controversial among member states.\textsuperscript{89} The use of this term was first proposed by Saudi Arabia in 1946\textsuperscript{90} and was later adopted as the first form of genocide by the Sixth Committee.\textsuperscript{91} The Rome Statute\textsuperscript{92} adopted the

\begin{thebibliography}{99}
\bibitem{84} See \textsc{Schabas, supra} note 18, at 129 (explaining that religious genocide is very easily classified as cultural genocide, which is not protected under the Convention).
\bibitem{85} See \textit{id}. at 151.
\bibitem{86} \textit{Id}. at 206.
\bibitem{87} Genocide Convention art. 2, \textit{supra} note 12.
\bibitem{88} See discussion infra Part III.B.2.
\bibitem{89} See \textsc{Schabas, supra} note 18, at 157.
\bibitem{91} U.N. ESCOR, Ad Hoc Committee on Genocide, 13 mtg., at 8, U.N. Doc.
\end{thebibliography}
Convention’s definition with only minor alterations. The ICTR in Akayesu, explained that the act of killing members of a group requires two parts. First, the victim must be dead; and second, death must have resulted from an unlawful act or omission.

In September 2004, the U.S. estimated that at least five hundred deaths occurred each day from the crisis in Sudan. The U.S. also projected that deaths would escalate to 2,400 per day by the end of December 2004 if international action was not taken. A best-case scenario would have produced more than 320,000 deaths between April 1, 2004 and December 31, 2004. Therefore, it would be difficult to argue that victims have not been killed.

The second material element, death resulting from an unlawful act or omission, was fulfilled by the ongoing actions of the Sudanese Government. Specifically, the Sudanese Government had conducted aerial attack missions, led deadly raids across the international border between Sudan and Chad, and sponsored janjaweed attacks that have directly caused the deaths of thousands of civilians in Sudan’s Darfur region.

The U.S. Government found that between January 2003 and September 2004 the Sudanese Government implemented a “scorched earth policy.” This policy was carried out with both aerial and ground attacks. The U.S. found that ultimately this “scorched earth policy” “destroyed African Sudanese Villages, killing and driving away its people....” In contrast, Arab Sudanese villages were left untouched. Under Article 2(a), the evidence supports the clear conclusion that the Sudanese Government’s unlawful actions have caused directly and indirectly the death of many Darfurians.

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E/AC.25/SR.13 (1948); see also U.N. ESCOR, Ad Hoc Committee on Genocide, 12 mtg., U.N. Doc. E/AC.25/SR.12 (1948) (explaining that before the language was adopted the language read, “killing members thereof”).


94. See Schabas, supra note 18, at 157-58.

95. Id.


97. Id. at § 3 (13)(B).

98. Id.


100. See Schabas, supra note 18, at 157-58.


102. Id. at § 3(8).
b. Bodily or Mental Harm

The second prohibited act that constitutes genocide falls short of killing, but is still satisfies the elements of genocide.\(^{103}\) The language surrounding the “mental harm”\(^{104}\) component of this act was debated at length, unlike the “bodily harm” component, which “was affirmed without difficulty.”\(^{105}\)

The International Law Commission requires that, “the bodily harm or the mental harm inflicted on members of a group must be of such a serious nature as to threaten its destruction in whole or in part.”\(^{106}\) It is unclear exactly how this should be applied; it is clear however, that rape, torture, and inhumane degrading treatment could fall into the scope of Article 2(b).\(^{107}\) International case law also suggests that bodily and mental harm does not need to be permanent, only serious.\(^{108}\)

In one location of Darfur, leaders reported that Sudanese Government sponsored attackers had raped more than four hundred women and girls.\(^{109}\) Husbands were often required to watch as their wives were raped and then branded on the hand “in an effort to stigmatize them.”\(^{110}\) While rape was not considered a crime under Article 2(b) at the time of the Convention,\(^{111}\) the international community has appropriately included it within its application in recent tribunals.\(^{112}\)

While fear alone is not covered under Article 2(b),\(^{113}\) it may be a symptom of serious bodily and mental harm. In Darfur, the men fear traveling outside of their village so much that “many families rely on women to perform journeys because women need ‘only’ fear rape.”\(^{114}\)

The constant raids by janjaweed militias and the Sudanese Government have produced broken limbs, dismemberment, and disfiguration.\(^{115}\) Many of these are the direct result of bombings on

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\(^{103}\) See Schabas, supra note 18, at 159.

\(^{104}\) Id. at 160.

\(^{105}\) Id. at 159-60 (explaining that the mental component ran into some early obstacles, but was later added by way of amendment with political pressure from India).


\(^{107}\) See Prosecutor v. Karadzic and Mladic, IT-95-5-R61 and IT-95-18-R61, ¶ 93 (July 11, 1996).


\(^{109}\) Testimony of Roger Winters, supra note 5.

\(^{110}\) Id.

\(^{111}\) See discussion infra Part III.B.1.b.

\(^{112}\) See Akayesu, ICTR-96-4-T, ¶ 521 (Sept. 2, 1998); see also Prosecutor v. Kayishema and Ruzindana, ICTR-95-1-T, ¶ 108 (May 21, 1999); see also Schabas, supra note 18, at 161-60.

\(^{113}\) See Genocide Convention art. 2(b), supra note 12.

\(^{114}\) Id.

\(^{115}\) See Darfur in Flames, supra note 51.
villages believed to hold members of the SPLA.116 Human rights organizations continue to fill reports with evidence of serious physical and mental crimes against civilians.117 Systematic bombings along with constant beatings and rapes in Darfur have caused both serious bodily and mental injuries that violate Article 2(b) of the Convention.118

c. Conditions of Life

Member states of the Convention wanted not only to punish acts that eliminated the existence of a specific group, but also the conditions that would bring about physical destruction of that group.119 Article 2(c) was specifically included in the convention due to the conditions inflicted upon Jews in Nazi concentration camps during World War II.120 The Trial Chamber of the International Tribunal for Rwanda interpreted Section 2(c) to include the subjection of “a group of people to a subsistence diet, systematic expulsion from homes and the reduction of essential medical services below minimum requirement[s].”121 In addition, the Rome Statute explains that “[t]he term ‘conditions of life’ may include, but is not necessarily restricted to, deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes.”122

116. Id. at 17.
117. Id. at 29. Human Rights Watch has reported that, “one eighteen-year-old girl was assaulted by the Janjaweed who inserted a knife in her vagina, saying ‘You get this because you are black.’” Id. Other reports indicate that a routine punishment is to cut the breasts of women or to give parents the choice “whether they would prefer their children were shot or thrown in the fire.” Id.
118. See Genocide Convention art. 2(b), supra note 12.
120. U.N. ESCOR Ad Hoc Committee on Genocide, 6th Sess., 4th mtg., at 14, U.N. Doc. E/AC.4 (1948). France offered the following example:
[T]he ghetto, where the Jews were confined in conditions which, either by starvation or by illness accompanied by the absence of medical care, led to their extinction, must certainly be regarded as an instrument of genocide. If any group were placed on rations so short as to make its extinction inevitable, merely because it belonged to a certain nationality, race or religion, the fact would also come under the category of genocidal crime.
121. Akayesu, ICTR-96-4-T, ¶ 506.
122. THE INTERNATIONAL CRIMINAL COURT: ELEMENTS OF CRIMES & RULES OF PROCEDURE & EVIDENCE 51-52 (Roy S. Lee ed., 2001) (explaining that the Rome statute used the reasoning in the ICTR Judgment in Akayesu to expand the meaning of the term “conditions of life” which was placed in a footnote rather than the actual text of the statute). Despite these useful interpretations, courts have failed to sufficiently define the term “calculated.” Id. at 52. Therefore, it will be up to future courts to determine whether conditions “calculated” to bring about the physical destruction of the group, in whole or in part are a mental or material element. Id. at n.41.
The District Court of Jerusalem in *A-G Israel v. Eichmann* distinguished the acts in Section 2(c) of the Convention from those in Section 2(a) and 2(b), reasoning that proof of results is not required.\textsuperscript{123} The only proof needed is proof of the conditions calculated to bring about the physical destruction of the group, in whole or in part.\textsuperscript{124} If results were proven, however, then the acts in question would clearly fall into Section 2(a) killing, or 2(b) serious bodily or mental harm.\textsuperscript{125}

Like the Government of Rwanda,\textsuperscript{126} the Sudanese Government and their sponsored militias\textsuperscript{127} have directly carried out the systematic expulsion of civilians from their homes in the Darfur region of Sudan.\textsuperscript{128} This plan of systematic expulsion, according to the United Nations High Commission for Refugees, has displaced more than 1.4 million people in Darfur.\textsuperscript{129} Of those civilians that have been displaced, more than 200,000 have been forced to cross into Chad as refugees.\textsuperscript{130}

In addition to forced expulsion, the Sudanese Government has knowingly contributed to the poisoning of wells, the plundering of crops, and the destruction of cattle, all of which are vital to survival.\textsuperscript{131} Likewise, the Sudanese Government has supported the janjaweed in their obstruction of humanitarian aid, including food, shelter, and medical care.\textsuperscript{132} More than 400 villages in Darfur had been destroyed as of August 2004.\textsuperscript{133} Health is also a problem.\textsuperscript{134} It is estimated that “one in three children in the refugee settlements in Chad is suffering from acute malnutrition.”\textsuperscript{135} Roger Winter’s testimony before the U.S. Committee on Foreign Relations and Africa best describes the destruction and conditions in Darfur:

> The long list of destroyed villages manages to convey a sobering

\textsuperscript{123} See Schabas, supra note 18, at 167 (citing A-G Israel v. Eichman 36 ILR 5, para. 196 (District Court, Jerusalem 1968).
\textsuperscript{124} Id.
\textsuperscript{125} Id.
\textsuperscript{126} See Akayesu, ICTR-96-4-T, para. 505.
\textsuperscript{127} Comprehensive Peace in Sudan Act of 2004, 50 U.S.C. 1701, § 3(6) (Sept. 9, 2004). “According to the Government of the United States and United Nations officials, the Government of Sudan has engaged in an orchestrated campaign, with the assistance of its Arab Sudanese proxy militia, the Janjaweed. . . .” Id.
\textsuperscript{128} Id.
\textsuperscript{129} Id. § 3(10).
\textsuperscript{130} Id.
\textsuperscript{131} Id. § 3(12).
\textsuperscript{132} Id. § 3(13).
\textsuperscript{133} Secretary Powell’s Remarks Before the Senate Foreign Relations Committee, State Pub. 11182, Released by the Bureau of Democracy, Human Rights, and Labor and the Bureau of Intelligence and Research (Sept. 2004), available at http://www.state.gov/g/drl/rls/36028.htm (last visited Aug. 7, 2005).
\textsuperscript{134} Id.
\textsuperscript{135} Id.
sense of the enormous scope of the violence and the crippling long-
term nature of the devastation: in one village we know about, all
1,300 structures are destroyed; in another village, all 466 structures
are destroyed; in yet another settlement, 628 of 720 structures are
destroyed; and the list goes on. In some cases we know the names of
the destroyed villages, while in some other cases the village name is
unknown to us even though the destruction left behind is evident. In
village after village, the attacks by Jingaweit and GoS troops have
burned crops, killed or stolen cattle, and destroyed irrigation systems,
thereby devastating much of Darfur’s economic base and potentially
discouraging eventual population return and reconstruction.136

The key issue is whether these conditions were “calculated” to bring
about the destruction of these groups. The Sudanese Government must
have inflicted these conditions upon the people with the idea that such
conditions would cause their destruction. Perhaps the greatest evidence
showing that the Sudanese Government intended and knew that such
conditions would bring about the destruction of protected groups was
their consistent actions. Even when deaths started to mount, the
Sudanese Government did little to change its actions that caused the
conditions that brought about the destruction. It does not appear that a
defense of ignorance will be an option for the Sudanese Government.

Despite these findings, other reports suggest that the Sudanese
Government did not intend these disasters to take place, but that they are
only a result of civil war.137 In addition, U.N. officials have suggested
that the Sudanese Government has tried to make humanitarian assistance
available to its citizens.138 Therefore, while the visual signs of Article
2(c) appear to be present, it may ultimately become a question of fact for
the tribunal rather than a question of law.

c. Measures Intended to Prevent Births

Like Article 2(c), Article 2(d) was included in the Convention
because of the actions of Nazi extremists.139 The ICTR in Akayesu,
interpreted the phrase “imposing measures intended to prevent births
within a group”140 to include sexual mutilation, sterilization, forced birth
control, separation of sexes, and prohibition of marriage.141 It is

136. Testimony of Roger Winters, supra note 5.
137. Memorandum, supra note 62.
138. Id.
139. See SCHABAS, supra note 18, at 172-73. The director of the Auschwitz camp
    was found accountable for sterilization and castration. Id. In addition, Ulrich Greifelt
    along with his associates was condemned for sterilization and a range of other methods
    aimed at preventing births. Id.
140. See Genocide Convention art.2(d), supra note 12.
important to note that Article 2(d) does not require the “prevention of births.” It is important, while the effects may be of use in proving Article 2(d), they are not necessary. In addition, unlike Article 2(c), measures intended to prevent births do not need to bring about the destruction of the group in whole or in part. Recently, rape has been discussed as a possible act under Section 2(d) of the convention. It has been argued that systematic rape has the potential to change the ethnic character of an entire population. In Akayesu, the ICTR explained:

In patriarchal societies, where membership of a group is determined by the identity of the father, an example of a measure intended to prevent births within a group is the case where, during rape, a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother’s group.

While rape is seen as a physical measure that can prevent births within a group, it can also be a mental measure, which would also meet the definition of Article 2(d).

It is clear that the Janjaweed have raped victims during the ongoing conflicts. However, it is difficult to conclude whether the Sudanese Government used rape as a mechanism to prevent births within a protected group. In addition, while human rights organizations, including Human Rights Watch, agree that measures intended to prevent births within a group are occurring, “few details are available.” Therefore, until reports that are more accurate are made, Article 2(d) is not likely to be a critical issue for future tribunals regarding the events in Darfur.

e. Transferring Children

The Greek government first presented Article 2(e) in order to call attention to a problem that Greece personally faced. Today, however,
Article 2(d) seems to be more political than practical. Many critics believe that it should not be specifically covered in the Genocide Convention because, “experience suggests that perpetrators of genocide will not consider children of groups worthy of survival any more than adults, yet the terms of the clause imply that they would.” In addition, the terms “forcible” and “children” are ambiguous and critics have debated their limits without any decisive answers.

Recently, the Australian Human Rights and Equal Opportunities Commission debated Article 2(d). They faced the issue of whether Australia’s actions of forcefully removing aboriginal children to families that did not share the same cultural characteristics constituted genocide under Section 2(e) of the convention. The Australian Commission concluded that such actions were genocidal in nature.

Like Section 2(d), at this stage it is difficult to fairly and adequately evaluate whether there was a widespread plan to systematically remove children in Darfur to another group. The Sudanese Government has used the janjaweed as one of the main instruments in its “scorched earth policy.” Yet, even if the janjaweed had forcibly transferred children in Darfur to another group, the Sudanese Government must have known and intended for such a forced relocation to have occurred. This is difficult, because unlike Australia’s direct actions in 1997 against aboriginal children, the Sudan Government has not explicitly demonstrated these types of actions. Therefore, like Article 2(d), Article 2(e) will probably receive only a small amount if any discussion in future Sudanese tribunal decisions.
2. The \textit{mens rea} of Genocide

The \textit{mens rea} of genocide consists of two components: knowledge and intent. The text of the Genocide Convention requires that there be "intent to destroy."\textsuperscript{162} Therefore, negligent acts of genocide, if even possible, are excluded from the Genocide Convention.\textsuperscript{163} The degree of intent required under the Convention is "specific intent."\textsuperscript{164} The specific intent of genocide can be broken down into three parts. The actor must intend to (1) destroy, (2) in whole or in part, (3) a national, racial, ethnical, or religious group. “[I]ntent is a mental factor which is extremely difficult, even impossible to determine.”\textsuperscript{165} The Trial Chamber I of the International Criminal Tribunal for the former Yugoslavia has stated:

[Intent] may be inferred from a number of facts such as the general political doctrine which gave rise to the acts possibly covered by the definition in Article 4, or the reputation of destructive and discriminatory acts. The intent may also be inferred from the perpetration of acts which violate, or which the perpetrators themselves consider to violate the very foundation of the group-acts which are not in themselves covered by the list in Article 4(2), but which are committed as part of the same pattern of conduct.\textsuperscript{166}

The second component of the \textit{mens rea} of genocide requires that the perpetrator have knowledge of the acts.\textsuperscript{167} However, in \textit{Prosecutor v. Kayishema and Ruzindana} the ICT for Rwanda concluded it is unnecessary for an actor to have knowledge of every detail of a policy or plan constituting genocide.\textsuperscript{168}

Although establishing \textit{mens rea} is a difficult task, there is strong evidence to argue that in the case of Sudan, it is not impossible. First, the United States has reported that the Sudanese Government has systematically attacked hundreds of villages.\textsuperscript{169} Second, the Government of Sudan has verbally declared a jihad against those unwilling to accept Sharia law.\textsuperscript{170} Third, the large quantity of deaths, destroyed villages, and

\begin{footnotes}
\item[162] Genocide Convention art. 2, \textit{supra} note 12.
\item[163] See \textit{SCHABAS, supra} note 18, at 226-27.
\item[164] \textit{Id.} at 215-18.
\item[166] \textit{Id.} ¶ 524 (quoting the International Tribunal for the Former Yugoslavia, Decision Trial Chamber 1, Prosecutor v. Karadzic and Mladic, IT-95-5-R61 and IT-95-18-R61, ¶ 94 (July 11, 1996)).
\item[167] See \textit{SCHABAS, supra} note 18, at 206.
\item[169] Testimony of Roger Winters, \textit{supra} note 5.
\item[170] \textit{Id.}
\end{footnotes}
displaced peoples suggest that it would be difficult for the Sudanese Government to effectively argue that it did not have knowledge that such acts were being carried out.\textsuperscript{177}

Nevertheless, some reports continue to allege that there is not sufficient "evidence of the deliberate intention to kill people of a specific group," and to suppose otherwise is only "political opportunism."\textsuperscript{172} Despite this view, however, it is hard to deny that much like the Government of Rwanda, the Sudanese Government "knew or had reason to know that a large-scale massacre was imminent."\textsuperscript{173} The following statement by an official of the Sudanese Government strengthens that conclusion: "Our priority from now on is to eliminate the rebellion, and any outlaw element is our target. . . . We will use the army, the police, the mujahedeen, the horseman to get rid of the rebellion."\textsuperscript{174} Although these words could be taken out of context, considering them in conjunction with the Sudanese Government's actions appears to negate such an argument.

C. Evidentiary Conclusion: The Sudanese Government has Committed Genocide Under the Convention

The civilians of Darfur are a protected class under ethnic and racial groups in the Convention.\textsuperscript{175} Although some may argue that they are protected as a religious group, to do so would prove difficult.\textsuperscript{176} While it would be complicated to prove that the Sudanese Government had the requisite specific intent, the evidence does suggest that such an argument may prevail under Articles 2(a), (b), and (c).\textsuperscript{177} Yet, like past tribunals, future tribunals of Sudan will most likely not focus on Articles 2(d) and 2(e) in their analysis.\textsuperscript{178} Despite evidence that suggests that some of the actions targeted Darfur's civilians only for cultural purposes, the majority of the evidence suggests that the Sudanese Government has committed genocide in Darfur.\textsuperscript{179}

\begin{itemize}
\item See discussion infra Part I.
\item Memorandum, supra note 62.
\item Kayishema and Ruzindana, ICTR-95-1-T, para 94 Judgment (May 21, 1999).
\item ICG No. 76., supra note 29, at 16 (explaining that this statement describes a strong correlation between the Government of Sudan and the actions of the Janjaweed).
\item See discussion infra Part II.A.2.
\item See discussion infra Part II.A.3.
\item Genocide Convention art. 2, supra note 12, ¶ (a)-(c).
\item Id. art. 2, ¶ (d)-(e).
\item See discussion infra Part II.
\end{itemize}
IV. Different, but Still the Same: Interpretations and Actions taken by the U.N. and the U.S. in Response to the Crisis in Darfur, Sudan.

Completely uncovering and correctly analyzing situations that give rise to genocide is a terribly difficult task. An international panel on the events surrounding genocide in Rwanda experienced this difficulty concluding: “[a]ttempting to produce a recognizable snapshot of Rwanda in the year 2000 is no easy task. Data [is] poor, interpretation wildly, much is hidden beneath the surface, and not least, the regional conflict continues to have an impact on all other developments.”180 No better description could apply to the surrounding events in Darfur, Sudan. It is difficult, if not impossible, for governments and international organizations, such as the U.N. and the U.S., to precisely conclude whether genocide is occurring while conflicts continue. Supporting this conclusion is the historical verity that since its ratification in 1948 the Genocide Convention has never been invoked by contracting parties to “prevent” the act of genocide from occurring.181 It


Reservations:
(1) That with reference to article IX of the Convention, before any dispute to which the United States is a party may be submitted to the jurisdiction of the International Court of Justice under this article, the specific consent of the United States is required in each case.
(2) That nothing in the Convention requires or authorizes legislation or other action by the United States of America prohibited by the Constitution of the United States as interpreted by the United States.

Understandings:
(1) That the term “intent to destroy, in whole or in part, a national, ethnical, racial, or religious group as such” appearing in Article II means the specific intent to destroy, in whole or in substantial part, a national, ethnical, racial or religious group as such by the acts specified in Article II.
(2) That the term “mental harm” in Article II(b) means permanent impairment of mental faculties through drugs, torture or similar techniques.
(3) That the pledge to grant extradition in accordance with a state’s laws and treaties in force found in Article VII extends only to acts which are criminal under the laws of both the requesting and the requested state and nothing in Article VI affects the right of any state to bring to trial before its own tribunals any of its nationals for acts committed outside a state.
(4) That acts in the course of armed conflicts committed without the specific intent required by Article II are not sufficient to constitute genocide as defined by this Convention.
(5) That with regard to the reference to an international penal tribunal in Article VI of the Convention, the United States declares that it reserves the
has only been used as a tool to "punish" actors of genocide.  

Therefore, it is not unexpected that despite inconsistent conclusions, by the U.N. and the U.S. regarding the situation in Darfur, both have declined to take direct action with military aid to prevent further attacks on civilians. Instead, both have opted for political negotiations and peace talks with the Sudanese Government and the SPLA. The actions on the part of the U.N. and the U.S. have not prevented or stopped genocide from occurring in Darfur, and therefore, have not fully complied with Article 1 of the Convention. In addition, even though Sudan's crises may not compare to the gravity of Rwanda's, genocide did occur to some extent in Sudan. Hopefully the Convention will be used to punish the perpetrators of genocide in Sudan, but even punishment is uncertain at this stage.

A. The United Nations Interpretation

In early 2003, the U.N. became concerned with the situation in Darfur, Sudan. At that time, Jan Egeland, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, concluded that Darfur "has quickly become one of the worst humanitarian crises in the world." A year later, U.N. officials began comparing the crises in Darfur to the Rwandan genocide of 1994. During that time, organizations throughout the world began to ask the U.N. to declare that genocide was occurring in Sudan and Kofi Annan responded by stating: "we [the U.N.] don't need a label to propel us to act." However, on September 18, 2004, Kofi Annan, under the direction of the Security Council, began an inquiry into whether genocide was taking place in Sudan. This inquiry found:

Hundreds of incidents have been reported involving the killing of civilians, massacres, summary executions, rape and other forms of sexual violence, torture, abduction, looting of property and livestock.

right to effect its participation in any such tribunal only by a treaty entered into specifically for that purpose with the advice and consent of the Senate. Id.

182. Genocide Convention, at art. 1, supra note 12.
183. See discussion infra Parts IV.B, D.
184. See discussion infra Parts IV.B, D.
185. Id.
187. Id.
188. Id.
189. Id.
as well as deliberate destruction and torching of villages. These incidents have resulted in the massive displacement of large parts of the civilian population within Darfur as well as to neighboring Chad. The reports indicate that the intensity of the attacks and the atrocities committed in any one village spread such a level of fear that populations from surrounding villages that escaped such attacks also fled to areas of relative security.

Despite these findings the Commission in charge of the inquiry concluded that the “crucial element of genocidal intent appears to be missing; at least as far as the central Government Authorities are concerned.” However, these conclusions were not without some doubt. The Commission admitted that certain individuals and Government officials may have committed acts with the required genocidal intent. Unfortunately, the Commission felt that such a determination could only be made by a “competent court” on a “case by case basis.” Therefore, it is not unusual that this inquiry has not changed Mr. Annan’s interpretation of the surrounding events in Darfur: “I cannot call the killing a genocide even though there have been massive violations of international humanitarian law.”

B. The United Nations’ Response

Although the U.N. has declared that the situation in Darfur does not amount to genocide, they are still bound by the Convention to “prevent” genocide from occurring. While the U.N. has not sent any forces into the region to stop the conflicts, they have responded in other ways, including: peace talks, safe camps for refugees, a Disaster and Assessment Coordination Team, presidential statements calling for a ceasefire, a signed joint communiqué, and police training. In addition, for only the second time in history, the Security Council met in Kenya to discuss the crises in Sudan and adopted Security Council

191. ICID Report, at 54, supra note 83.
192. Id. at 4.
193. Id.
194. Id.
195. Memorandum, supra note 62.
196. See discussion infra Part IV.A.
197. Genocide Convention art. 1, supra note 12.
198. Timeline, supra note 186.
199. Id.
200. Id.
201. Id. The Sudan and the U.N. pledged to “alleviate the conflict in Darfur” with a promise that the Government of Sudan will disarm the Janjaweed. Id.
202. Id.
203. Id.
Resolution 1574 which called for peace by the end of 2004.\textsuperscript{204}

The U.N.'s actions have resulted in the signing of a peace treaty between the Government of Sudan and the two rebel groups on January 9, 2005.\textsuperscript{205} Kofi Annan, the U.N. Secretary-General, stated,

This historic signing of the Comprehensive Peace Agreement by the Government of the Sudan and the Sudan People's Liberation Movement is an important milestone. It heralds the possible definitive end of a prolonged period of brutal conflict that has killed at least two million people, uprooted four million more, and forced some 600,000 to take refuge in neighboring countries.\textsuperscript{206}

Despite the signing of the peace agreement, the U.N. has remained cautious, stating that, "[t]he real challenge now is for all the parties to show the same commitment, determination and courage in fully implementing the Agreement, which will entail equally daunting challenges over a very long period."\textsuperscript{207} Unfortunately, while the peace agreement included the northern and southern parts of Sudan, it did not include Darfur, where the most serious conflicts have occurred.\textsuperscript{208} In a Security Council briefing after the signing of the peace agreement, a representative for the Secretary-General stated that, "there could be no question as to the priority task for 2005—the fighting in Darfur must be stopped and the conflict must be resolved."\textsuperscript{209} However, the violence in Darfur continues.\textsuperscript{210}

While the analysis presented in this paper suggests that genocide has taken place in Darfur, the U.N. has made progress when compared to past situations that have presented genocidal characteristics.\textsuperscript{211} Unfortunately, the U.N.'s reluctance to act indicates their unwillingness to use the Genocide Convention for both prevention and punishment.

\textsuperscript{206} Id.
\textsuperscript{207} Id.
\textsuperscript{209} Id.
\textsuperscript{210} Id.

Now, however, violence was seeping into the camps and directly affecting humanitarian workers. Armed groups were re-arming and the conflict was spreading outside Darfur. December saw a build-up of arms, attacks on positions, raids on small towns and villages, and increased banditry and looting. New rebel movements were emerging and launching attacks in the area of oil facilities in western Kordofan.

\textsuperscript{Id.}
\textsuperscript{211} See supra notes 19-22 and accompanying text.
C. The United States’ Interpretation

On June 30, 2004 Secretary of State Colin Powell was asked in an interview why “the Administration [was] reluctant to call this genocide?”212 Colin Powell responded,

Well, why would we call it a genocide when 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. That’s the advice of my lawyers.213

However, Powell’s response changed two months later when he testified before the Senate Foreign Relations Committee.214 He explained that after a limited investigation in July by a team including the U.S., the American Bar Association, and the Coalition for International Justice, “genocide has been committed in Darfur and that the Government of Sudan and the Jingaweit bear responsibility—and that genocide may still be occurring.”215 Powell’s findings were adopted in the Senate with the Comprehensive Peace in Sudan Act of 2004.216

D. The United States’ Response

The U.S. took many steps, similar to those of the U.N., despite having affirmatively found that genocide was taking place in Darfur.217 The U.S. kept intact oil sanctions on Sudan in order to “ensure that the Government of Sudan neither directly nor indirectly utilize[d] any oil revenues to purchase or acquire military equipment or to finance any military activities.”218 In addition, the U.S brought the Darfur crisis before the Security Council in the fall of 2003 and President Bush was the first head of state to publicly condemn the actions of the Sudanese Government.219 In 2004, the U.S. was successful in negotiating a

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213. Id.
214. Testimony before the Senate Foreign Relations Committee, Secretary Colin Powell, U.S. State Department, Crisis in Darfur (Sept. 9, 2004), available at http://www.state.gov/secretary/rm/36042.htm (last visited Aug. 11, 2005) [hereinafter Powell Testimony].
215. Id.
217. See discussion infra Part IV.E.
219. Powell Testimony, supra note 213.
ceasefire, facilitating the intervention of the African Union in monitoring the ceasefire, and, with the assistance of the U.N. Secretary-General, obtaining a commitment from the Sudanese Government that it would take affirmative and immediate steps to end the violence and allow humanitarian aid to flow to civilians. Finally, the U.S. played a major role in the signing of the peace agreement between the Government of Sudan and the SLPA.

However, the question remains whether the U.S. sufficiently acted under the Convention after it declared that genocide had occurred in Darfur. The U.S. did not send military aid to stop the conflict, but focused instead on sanctions and peace negotiations in conformity with the will of the U.N. While this strategy was neither quick nor efficient, it did conform to Article 8 of the Convention, which states:

> 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 other acts enumerated in Article 3.

Article 8 gives the U.S. latitude to act in a manner that is most appropriate for the situation. In addition, Article 25 of the U.N.'s Charter of states that, "[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter." Therefore, the U.S. was bound to act in accordance with Security Council Resolutions 1547, 1556, and 1574, which did not include using an armed military to end the conflicts in Darfur. Therefore, under international law, the U.S. can only fulfill its full obligations to the Genocide Convention when the Security Council is in accordance with the U.S. interpretation of the surrounding events in Darfur.

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220. Id.
221. Id.
222. Id.
224. Genocide Convention art. 1, supra note 12.
225. Id. art. 8.
226. See Genocide Convention art. 9, supra note 12.
V. Conclusion

After the failure to prevent the crisis in Darfur, the global community must ask: What can we do to prevent another tragedy like Darfur from happening again? It is ironic that the U.N. gave the answer to this question in its response to the Rwandan crisis. Kofi Annan proposed a five-point action plan that would prevent genocide from reoccurring and which would satisfy the prevention clause of the Genocide Convention. The U.N. must prevent armed conflicts, protect civilians during armed conflicts, end impunity for the actors of genocide, gather information earlier through a U.N. Special Advisor for Genocide Prevention that can make recommendations to the Security Council, and take swift and decisive military action when necessary. Unfortunately for the civilians in Darfur, the U.N. did not implement this action plan before or during the crisis in Darfur. U.N. officials, including the Security Council, must not be afraid to use the word "genocide," they must not be afraid to act, and they must not be afraid to use the Genocide Convention for its first asserted purpose: "to prevent" acts of genocide.

Although the U.S. applied the term genocide to the surrounding events in Darfur, the U.S. also may not have acted in complete conformity with the Genocide Convention. Its actions during 2003-2004 did little to prevent the Sudanese Government or rebel groups from killing members of protected groups, causing serious bodily or mental harm to members of protected groups, or deliberately inflicting on those groups conditions of life calculated to bring about its physical destruction, in whole or in part. Yet, U.S. actions were constrained by the need for Security Council approval. Without such approval U.S. military action in Darfur would arguably have broken international law. Therefore, the prevention of genocide may be an impossible task.

230. Id.
231. Id.
232. Id.
233. Id.
234. Id.
236. See discussion infra Part IV.B.
237. Genocide Convention art. 1, supra note 12.
238. Id.
239. Id. art. 2(a).
240. Id. art. 2(b).
241. Id. art. 2(c).
242. See discussion infra Part IV.D.
without reforms to the structure and operation of the Security Council. Without such reforms, the remarks commemorating the 10th Anniversary of the 1994 genocide in Rwanda may become meaningless:

We must never forget our collective failure to protect at least 80,000 defenseless men, women and children who perished in Rwanda 10 years ago. Such crimes cannot be reversed. Such failures cannot be repaired. The dead cannot be brought back to life. So what can we do? First, we must acknowledge our responsibility for not having done more to prevent or stop the genocide.

Recently, hurricanes, tsunamis, and other natural disasters have shifted the international community’s attention away from Sudan. Nevertheless, help is still needed there, and even more help is needed to ensure the full utility of the Genocide Convention. Prevention has taken a back seat to punishment. It is time for the international community to recognize the order of these terms in the Convention: “prevention” followed by “punishment.”

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245. Id.