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**Darfur and Genocide:
Mechanisms for Rapid Response,
An End to Impunity**

Greg Austin and Ben Koppelman

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Elizabeth House
39 York Road
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Email: info@fpc.org.uk

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About the Authors

Dr Greg Austin is Director of Research at the Foreign Policy Centre in London. For six months in 2003, he led a team of 12 specialists reviewing UK conflict prevention policies supported by innovative 'pooled' funds. From February 2000 to January 2002, he held senior posts, including Director of Research and Director of the Asia Programme, in the Brussels and Washington offices of the International Crisis Group, the leading multi-national NGO, publishing field-based policy analysis in support of conflict prevention. He has held posts in the Australian National University, Bradford University (Peace Studies), the Australian Commission in Hong Kong, and the Senate Committee on Foreign Affairs, Defence and Trade in the Australian parliament. He has also worked as a Ministerial adviser in the development cooperation and defence portfolios, as an intelligence analyst, and as foreign affairs and defence correspondent for a leading Australian newspaper. He has undertaken consultancies for several governments and the European Commission. He is the author of *China's Ocean Frontier: International Law, Military Force and National Development* (1998); co-author of *Japan and Greater China: Political Economy and Military Power in the Asian Century* (2001) and *The Armed Forces of Russia in Asia* (2000); editor of *Missile Diplomacy and Taiwan's Future: Innovations in Politics and Military Power* (1997); and co-editor of *Power and Responsibility in Chinese Foreign Policy* (2001).

Ben Koppelman is a recent graduate from Cambridge University, who has since worked as a researcher on international debt relief with the UNDP in Central America before working at the Foreign Policy Centre.

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Disclaimer

The views in this paper are not necessarily those of the Foreign Policy Centre.

Abstract

This paper argues that the events leading up to the present genocide in Darfur were recognisable as indicators of genocide as early as September 2003, and perhaps much earlier. The United Nations, the USA, the UK and the EU are guilty once again of not responding early enough with appropriate measures to avoid such a catastrophe. They have failed once again to fulfil either the duty to prevent genocide or to punish its perpetrators. In spite of the loud noises or positive measures made in mid-2004, political leaders, including Kofi Annan, and Ministers in relevant governments must be held accountable for their ineffective action (or inaction) in the preceding twelve months.

Prior to the 1994 Rwanda genocide, there was no shortage of warning and no shortage of focussed policy attention in major capitals. Likewise, there has been no shortage of warning in the case of Darfur. Yet now, as in the Rwanda case, external actors have proven unable to find the right points of leverage for action.

The main lesson from Rwanda is that the way to find effective points of leverage is to re-humanise and re-personalise the problem. The victims must be appreciated more as people and the perpetrators more as desperate and cold-blooded individual personalities. Some of the most effective genocide prevention policies may be person specific, not systemic. This is the realm of personally targeted sanctions and this lesson has been all but ignored in the case of Darfur. To stop genocide, policy must be addressed to the personal psychology of the perpetrators. Personally targeted sanctions against known perpetrators, including the leaders of the government of Sudan, are a minimum, not a maximum, point of departure for policy response. Of the major powers, only the USA seems to think so at this time.

There are four broad conclusions from this paper:

- the need for fine grained analysis on which policy directed personally at the perpetrators can be based

- the need for a 'trigger mechanism' for automatic engagement of major powers and relevant international organisations in framing responses at the first appearance of prima facie evidence of genocide
- the need for rapid action against the individual perpetrators of the genocide
- the need for international NGOs to hold world leaders to account for failure to live up to their obligation to prevent genocide.

The paper makes the following specific recommendations for action:

- the UN Security Council must have a mandatory mechanism for prompt consideration of early warning of genocide
- major powers must have a mandatory requirement imposed in domestic legislation to report promptly to their parliaments on responses to early warning of genocide
- the trigger for such mechanisms to come into play should include credible warning of potential genocide from established international NGOs
- Another trigger mechanism could be prima facie evidence of crimes against humanity, such as the use of military aircraft to bomb civilian targets
- Prima facie evidence of genocide should automatically trigger personal sanctions of some sort against the perpetrators regardless of their political status or other political considerations.

The time has come. The solemn commitments of world leaders on the tenth anniversary of the Rwanda genocide must now be called to account. There is an urgent need for world leaders like Kofi Annan, Tony Blair and Javier Solana to review their responses to the Darfur genocide with a view to immediate remedy of the persistent incapacity of their governments or organisations to respond in a timely and appropriate manner. But this is also a shared responsibility among the 135 parties to the Genocide Convention. They also have a case to answer.

The slogan for action to prevent genocide must be: 'Find your moral compass, and get personal!' Use loud diplomacy, mixed with consistent and coercive 'quiet diplomacy'. Start with targeted sanctions and escalate from there.

CONTENTS

INTRODUCTION: DEFINING GENOCIDE.....	1
COMMITMENTS FOR RAPID RESPONSE TO GENOCIDE AFTER RWANDA	6
LESSONS FROM RWANDA.....	12
FINE-GRAINED ANALYSIS.....	17
A TIMELINE OF EARLY WARNING IN DARFUR	19
POLICY OPTIONS IN DARFUR IN 2003	27
THE HUMANITARIAN ALIBI	31
THE EXCUSE OF 'NO POLITICAL WILL'	39
CONCLUSION AND RECOMMENDATIONS	41

Introduction: defining genocide

By mid-2004, US officials were estimating that between 10,000 and 30,000 people in Darfur have been killed and that an estimated 320,000 could die by the end of 2004 regardless of the responses by the major powers or the UN.¹ Independent sources have reported mass killing of civilians (incidents involving more than 100 deaths) targeted against particular tribes (Fur, Masalit and Zaghawa). For example, an international NGO reported as follows:

Today 800,000 Africans from Darfur, Sudan have been driven from their homes by Arab militias, supported by Sudanese government air strikes, in the worst case of ethnic cleansing since Kosovo. 700,000 are in camps inside Sudan closed to relief organizations and the press. Over 100,000 have fled across the desert border into Chad, where over 10,000 have already died of hunger and thirst.

Armed by the Sudanese government, the Arab “Jingaweit” militias² murder, rape, and pillage African villages with impunity. Their leaders from the “Arab Gathering” credit the “Arab race” with “civilization,” and consider black Africans to be *abd* (male slaves) and *kahdim* (female slaves.) In Tweila, North Darfur, on 27 February 2004, according to the U.N. Darfur Task Force, the Jingaweit and Sudanese army murdered at least 200 people and gang-raped over 200 girls and women, many in front of their fathers and husbands, whom they then killed. The Jingaweit branded those they raped on their hands to mark them permanently so they would be shunned.³

On 19 July 2004, Human Rights Watch reported that it had incontrovertible evidence of the Government of Sudan’s support for the operations of the militias and for protecting them from punishment for atrocities.⁴

¹ Congressional Research Service, ‘Sudan: The Crisis in Darfur’, 16 June 2004, p1.

² The *Jingaweit* are Arab nomads.

³ Dr. Gregory H. Stanton (President, Genocide Watch), ‘Genocide Emergency: Darfur, Sudan’, (undated) <http://www.genocidewatch.org/Never%20Again.htm>.

⁴ ‘The Sudanese government had maintained that the Jingaweit militia are an autonomous entity, that Khartoum has no control over the marauding atrocities committed by the Jingaweit. In fact, what these documents show is that the

On 22 July 2004, the US Congress passed a resolution that classified the events in Darfur as genocide, calling for a UN resolution to impose sanctions against those responsible for the atrocities; to organise a multinational force to protect the displaced people and humanitarian workers; and to create a commission to investigate the crimes committed.⁵ On 24 June 2004, AFP reported remarks by the US Ambassador at large for war crimes, Pierre Prosper, that ‘we see indicators of genocide’ in Darfur, but ‘we are not in a position to confirm’.⁶ On 11 June, the State Department spokesman, Richard Boucher, noted that ‘we believe that the Government of Sudan is responsible for the ethnic cleansing occurring there’.⁷ On 21 April 2004, the US Administration reported that ‘in Darfur’, the Government of Sudan (GOS) ‘and the government-aligned Arab militia, the Jingaweit’, have jointly embarked on a “scorched earth” campaign in which thousands of innocent civilians have been beaten, raped and killed’.⁸ These words were written in response to a requirement imposed on the Administration in the Sudan Peace Act of 2002 for it to report on incidents which may constitute crimes against humanity or genocide. The US State Department has set up an office to collect information on war crimes in Sudan.⁹

government in Khartoum has been supporting the Jingaweit as a matter of official policy. They have been supporting them through recruitment, through armament, and through a policy of impunity, at least with respect to some of the atrocities committed by the Jingaweit.’ See report on a speech at a press conference at U.N. headquarters by Kenneth Roth, executive director of Human Rights Watch on 19 July 2004. <http://usinfo.state.gov/dhr/Archive/2004/Jul/20-51414.html>.

⁵ Reuters, ‘US Congress votes to declare genocide in Sudan’, 22 July 2004. See <http://www.reuters.com/newsArticle.jhtml?type=worldNews&storyID=5752016>. Please also see relevant resolutions passed in the US congress over the last month: <http://thomas.loc.gov/cgi-bin/query/D?c108:5:./temp/~c108M9TX8B> and <http://thomas.loc.gov/cgi-bin/query/D?c108:1:./temp/~c108p4Wm16>.

⁶ See AFP, ‘Evidence suggests “genocide” may be underway in Darfur: senior US officials’, 24 June 2004, <http://www.reliefweb.int/w/rwb.nsf/0/971e4b73b0772b0b85256ebe000cd4b2?OpenDocument>.

⁷ 11 June 2004, <http://usinfo.state.gov/ei/Archive/2004/Jun/14-378951.html>.

⁸ Memorandum for the Secretary of State, Presidential Determination No. 2004-29, 21 April 2004, <http://www.state.gov/p/a/rls/rpt/32018.htm>.

⁹ Ibid.

On 24 June 2004, the President of Sudan, Omar el-Bashir, challenged such reports, saying that 'foreign circlesare trying to find a substitute gate in Darfur to intervene in Sudanese affairs'.¹⁰ The Sudanese government has denied that it is supporting the Jingaweit.

But reports critical of the government version of events in Darfur have also been carried by Al Jazeera Television, which clearly does not mirror the imperialist ambitions ascribed by President el-Bashir to Western states. In April 2004, the Sudanese authorities arrested Islam Salih, the Qatar network's Khartoum bureau chief. On 10 April 2004, he was convicted of 'disseminating false news' and sentenced to one month in prison and fined one million Sudanese pounds (about £2,000) for his coverage of Darfur. Reporters without Borders called his imprisonment 'just one more example of the intolerable policy practised by the Sudanese authorities, especially the security services, who are trying to cover up the horrors committed against the civilian population in Darfur by government forces and the armed Arab militia'.¹¹

This paper accepts that reports from many independent sources, including eye witnesses, provide clear prima facie evidence of genocide. Substantial indirect evidence from past practices of the current Sudanese government, including a long-standing pattern of human rights abuses, suppression of the press and genocidal activities,¹² support the prima facie evidence of genocide in Darfur.

But until June 2004, and even now, most major powers, including the USA and the UK, like the UN and the EU, have been making efforts to claim (quite misleadingly) that 'ethnic cleansing' in Darfur is not genocide or to avoid the question of genocide entirely.

¹⁰ 'Foreigners using Darfur Crisis to Intervene in Sudan', *Sudan Tribune*, 24 June 2004, http://www.sudantribune.com/article.php3?id_article=3578.

¹¹ Sudan Net, 'PR: Al-Jazeera Bureau Chief Receives Prison Sentence; News Blackout On Events in Darfur Region', <http://www.sudan.net/news/press/postedr/276.shtml>.

¹² As mentioned above, the passing by the US Congress in 2002 of the Sudan Peace Act, which requires the Administration to report on a number of matters in Sudan, including acts of genocide, is one indicator of the past record of the Government of Sudan in this area.

Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 stipulates that the following acts, inter alia, are genocide:

- 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.¹³

If 'ethnic cleansing' includes killing members of the group or causing them serious bodily harm, this is prima facie evidence of genocide. The Convention does not define dimensions, big or small, or any scale for an action to amount to genocide. The Convention provides that extermination targeted specifically against a 'part' of the group because of its identity is enough to constitute genocide.

Article 1 of the Convention established an obligation on states both to prevent genocide and to punish its perpetrators. However, in the face of evidence of genocide in Darfur, the international community has so far failed once again to fulfil either the duty to prevent or the duty to punish. The most recent moves, in June and so far in July 2004, appear to have some preventive potential, but as of 27 July, only the USA has shown any strong interest in punishing the perpetrators on an individual basis.

But even the potentially preventive actions of June and July 2004 have come far too late for the protagonists to claim that they have acted in a timely or appropriate manner to prevent genocide.

By January 2003, exiled Sudanese rights activists claimed that the conflict in the Darfur region was developing from 'ethnic cleansing into genocide'.¹⁴ Unlike the leaders of the major powers, they recognised that once 'ethnic cleansing' crosses the threshold from

¹³ The full text of the Convention is at Appendix A.

¹⁴ AFROL News, 'Sudan Again Accused of Genocide in Darfur', 21 January 2003.

forced relocation to include 'killing members of the group' or 'causing them serious bodily harm', it becomes genocide under the terms of the Convention to Prevent and Punish the Crime of Genocide. Attacks by Sudanese military aircraft on villages in Darfur in July 2003 were not just war crimes, but should have been recognised, in the context of other reporting and the recent history of Sudanese politics, as *prima facie* evidence of genocide. Of some note, Sudan is not a party to the Convention.

As of 28 July 2004, the international community's response to the conflict in Darfur has been totally inappropriate. On the one hand, it has acted too late; and, on the other hand, the type of response has been cloaked in the so-called 'humanitarian alibi' whereby the humanitarian needs of the victims obscure the political need to address the perpetrators. The loud and urgent appeals to the humanitarian needs of the victims appear to have been used by some political leaders to obscure the lack of fulfilment by major powers and the UN to their obligation to prevent genocide and to punish the perpetrators.

Two successive cease-fires in Darfur have presented some obstacles to a more coherent and effective international response. Major powers and the UN placed some hope that these would at least stop the violence. But in the face of evidence of genocide, it needs to be accepted that a cease-fire – without moves to punish the perpetrators and to end the cycle of impunity – may be worthless.

Certainly, the enormity of the humanitarian crisis is beyond doubt, and the immediate relief of the victims of Darfur must be the highest international priority. However, this is not the main focus of this paper. Instead, this paper highlights the longer term problem of how to prevent genocide in the future by drawing attention to the urgent need to bring the perpetrators of the Darfur genocide to account.

The paper begins with a summary of recent commitments by the UN Security Council and by member states to prevent genocide. It reviews the rushes of rhetoric and practical policy changes

recommended after Rwanda to better equip the international community with a capacity to prevent genocide.

The subsequent section reviews lessons to be learnt from Rwanda. It asserts that the Darfur case shows how little the main lesson from Rwanda has filtered into the everyday consciousness of the responsible political leaders or officials in the major powers. This is followed by a review of the need for highly-detailed ('fine-grained') analysis to provide a better basis for good policy to stop genocide.

The paper then reviews events of the Darfur crisis, assessing when early warnings arose. The authors are not specialists in any way of Sudanese affairs. In this section, the authors rely totally on reporting by a variety of independent international organisations, such as the International Crisis Group, a variety of news sources, and reports from parties to the conflict.

This is followed by comment on the 'excuse of lack of political will', noting that political leaders can only build the necessary will by more actively reporting in public on the warning signs of genocide as they begin to emerge.

Finally, in light of this, the paper offers recommendations for future mechanisms to help prevent genocide, as well as drawing conclusions about the major powers' political will to prevent genocide and how this affects the seriousness of their commitment to do so.

Commitments for rapid response to genocide after Rwanda

The UN Security Council, the USA, the UK and the EU made various commitments to prevent genocide as a result of recommendations to the Security Council in 2001. The commitments came after the finalisation of a commission to investigate the failure of the international community to act in a timely fashion to prevent the

Rwanda genocide,¹⁵ as well as other UN reports on conflict prevention, including the Brahimi report¹⁶ in 2000 and a report of the UN Secretary General, Kofi Annan, in 2001.¹⁷

On 2 October 2001, UK Prime Minister Tony Blair suggested that another genocide would oblige the UK to act:

And I tell you if Rwanda happened again today ... we would have a moral duty to act there also.¹⁸

Annan in his 2001 report noted that there had been sufficient early warning of Rwanda but no effective response:

Reviews by the United Nations, the Organisation of African Unity (OAU) and national legislatures of some troop-contributing countries have agreed that there was ample early warning and opportunity for response to the 'preventable genocide' of April 1994.....We have an obligation to the victims of violence in Rwanda and elsewhere to take seriously this challenge of prevention.¹⁹

He later noted that:

The United Nations has a moral responsibility to ensure that vulnerable peoples are protected and that genocides never occur again.²⁰

Annan recommended to the Security Council the following measures:

- to consider innovative mechanisms, such as establishing a subsidiary organ, an ad hoc informal

¹⁵ United Nations, 'Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda', 15 December 1999. See <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N99/395/47/IMG/N9939547.pdf?OpenElement>.

¹⁶ United Nations, 'Report of the Panel on United Nations Peace Operations' (Brahimi Report), 21 August 2000. A/55/305, S/2000/809, 21 August 2000.

¹⁷ Report of the UN Secretary General, 'Prevention of Armed Conflict', A/55/985-S/001/574, 7 June 2001.

¹⁸ Speech to the Labour Party Conference, 2 October 2001.

¹⁹ Report of the UN Secretary General 'Prevention of Armed Conflict' 2001.

²⁰ Ibid.

- working group or other informal technical arrangement to discuss prevention cases on a continuing basis, as well as other early warning or prevention cases brought to its attention by members states
- to make more active use of preventive deployments before the onset of conflict, as appropriate
- to make full use of information and analyses emanating from United Nations human rights mechanisms and bodies in its efforts to prevent armed conflicts.

The Security Council as a whole affirmed its intentions to strengthen international efforts at conflict prevention and called on the appropriate action by member states.²¹ Some P-5 members, including the USA and UK, and the EU subsequently re-committed themselves to early warning and effective response in such cases as Darfur. The major Western powers committed themselves to a global role in conflict prevention through signature of various G-8 Declarations on conflict prevention (beginning in Berlin 1999) and through the statement of the Development Assistance Committee High Level Meeting (Paris 2001) on 'Helping Prevent Violent Conflict'.

The UK responded to these reports by setting up its innovative Conflict Prevention Pools. In 1999, a cross-cutting review on conflict prevention in Africa was established, in response to concerns at the lack of appropriate policy instruments for funding conflict prevention activities in Africa. The resultant review, chaired by the International Development Secretary, reported in 2000 and proposed the establishment of a pooled budget for conflict prevention in sub-Saharan Africa, bringing together the Foreign and Commonwealth Office, the Ministry of Defence and the Department for International Development (DFID).

During the Africa review, it was agreed that a review for the rest of the world would follow on immediately, to be chaired by the Foreign Secretary. A draft report of this review was agreed in May 2000, and

²¹ Resolution 1366 (2001), S/Res/1366 (2001).

recommended the creation of a Global Conflict Prevention Pool, covering the rest of the world outside sub-Saharan Africa.

The UK was the only European government to respond in such an imaginative and potentially powerful manner. (Of some note, the new Africa Pool, for which Sudan is identified as a high priority, had not as of March 2004 funded any significant programs addressing the violence in Darfur.)

The EU set up a complex crisis response structure and significantly enhanced its conflict prevention efforts. Before the year 2000, there was virtually no intelligence cooperation within the EU institutions in the fields of early warning for conflict prevention. By 2003, a system for such cooperation had been designed and endorsed by all the principal stakeholders. A new multinational, multi-service intelligence staff was set up, producing intelligence for its entire range of customers.²² A Joint Situation Centre (SITCEN) was established in 2003 to provide a joint assessment service to EU institutions.²³ By January 2004, the intelligence division had given its first 'early-warning hotspots' presentation and, together with the Policy Unit in the office of the EU High Representative, Javier Solana, jointly drafted the first global overview watch list paper for agreement by the EU's politico-military structure.

In January 2004, Solana gave the key-note speech at the Stockholm International Forum conference on 'Preventing Genocide: Threats and Responsibilities'. This was the first major intergovernmental conference on this subject since the UN adopted the Genocide Convention in 1948. Solana said:

You have underlined the grave responsibility that we – all governments and organisations represented here – now bear for

²² Graham Messervy-Whiting, *Global Europe in Action*, Speaking notes for Foreign Policy Centre/British Council/Open Society Institute Conference, Goethe-Institut, London, 3 November 2003.

²³ *Ibid.*

the prevention of genocide. The first step is taken when we each clearly acknowledge our responsibility.²⁴

Kofi Annan told this meeting:

There can be no more important issue, and no more binding obligation, than the prevention of genocide.²⁵

In January 2004, 55 governments signed the Stockholm Declaration on Genocide Prevention²⁶ at the International Forum mentioned above.²⁷

The signatories of the Declaration included Albania, Argentina, Armenia, Australia, Austria, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Holy See, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Macedonia, Malta, Morocco, Netherlands, Norway, Poland, Portugal, Romania, Russia, Rwanda, Serbia and Montenegro, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, East Timor, Turkey, Ukraine, United Kingdom, USA and Uruguay.

The signatories affirmed their commitment to 'doing our utmost for the prevention' of genocide and to:

²⁴ Speech by Javier Solana, EU High Representative for Foreign Policy, on the occasion of the Stockholm conference 'Preventing Genocide: Threats and Responsibilities', 28 January 2004, http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/discours/78847.pdf.

²⁵ Address by the UN Secretary General, Kofi Annan, to the Stockholm International Forum, Sweden, January 2004.

²⁶ For text of the Declaration, see Appendix B and www.preventgenocide.org/prevent/conferences/StockholmDeclaration28Jan2004/htm.

²⁷ The conference was the fourth and final in a series of intergovernmental conferences. The first conference in January 2000, 'The Holocaust', was an assembly of world leaders, resulting in the 'Stockholm Declaration on Holocaust Education, Remembrance and Research'. The two subsequent conferences were titled 'Combating Intolerance' (2001) and 'The Conference on Truth, Justice and Reconciliation' (2002).

- use and develop practical tools and mechanisms to identify as early as possible genocidal threats to human life and society in order to prevent the recurrence of genocide, mass murder and ethnic cleansing
- shoulder responsibility to protect groups identified as potential victims of genocide, mass murder or ethnic cleansing
- draw upon the range of tools at our disposal to prevent such atrocities
- ensure that perpetrators of genocidal acts are brought to justice.

On 7 April 2004 in a speech in Geneva commemorating the 10th anniversary of the 1994 genocide in Rwanda, Kofi Annan announced his future appointment of a Special Advisor on Genocide Prevention and launched an Action Plan to Prevent Genocide. The Five Point Action Plan includes:

- preventing armed conflict which usually provides the context for genocide
- protection of civilians in armed conflict, including a mandate for UN peacekeepers to achieve this
- ending impunity through judicial action in both national and international courts
- information gathering and early warning through a UN Special Advisor for Genocide Prevention making recommendations to the UN Security Council on actions to prevent or halt genocide
- swift and decisive action along a continuum of steps, including military action.

Annan noted that the UN badly needed clear guidelines on how to identify cases of potential genocide and how to react to them. He said that:

such guidelines would ensure that we have no excuse to ignore a real danger of genocide when it does arise. They would also provide greater clarity, and thus help to reduce the suspicion that allegations of genocide might be used as a pretext for aggression.

Annan expressed the hope that guidelines on responding to genocide that were recommended by the International Commission on Intervention and State Sovereignty (ICISS) would be taken up by the High Level Panel he had appointed to address future challenges facing the UN, and that the work of this Panel would 'bring consensus within reach'. He urged 'all Member States to make a real effort to achieve it'. ICISS had been set up by the Canadian government specifically for the purpose of promoting more effective responses to genocide.

There is some reason to believe, based on the unfolding of the Darfur crisis, that any such commitments have been largely rhetorical. There has been little effective learning of the most important lessons from the Rwandan genocide.

Lessons from Rwanda

One of the overwhelming lessons of the international inaction in the face of the Rwanda genocide is that there was no shortage of warning and no shortage of focussed policy attention in major capitals. The main problem was that no external actor could find the right points of leverage to intervene effectively. The hunt for policy options was confined either to the analysis of the structural underpinnings of the conflict or in the potential of classic state-to-state preventive diplomacy. This was the wrong place to be looking.

The one lesson from Rwanda that we all must learn first is that when there is a threat of deadly violence, the first priority must be to cajole or contain the potential perpetrators. Political leaders need to re-humanise and re-personalise the problem.²⁸ The victims must be appreciated more as people and the perpetrators more as desperate and cold-blooded individual personalities. Some of the most effective genocide prevention policies may be person specific, not systemic. Here, the lead in preventive measures might be taken from the

²⁸ See Samantha Power, 'Bystanders to Genocide', *The Atlantic Online*, September 2001, www.theatlantic.com/issues/2001/09/power.htm.

obligation in the 1948 Convention to punish the 'persons committing genocide or any of the other acts enumerated in Article III ... whether they are constitutionally responsible rulers, public officials or private individuals'.

On this reading, the failure to prevent the genocide in Rwanda can be put down in part to the lack of recognition of the relative simplicity of the highest priority task. Political leaders in the major powers acted as if the possibility of genocide could only be thwarted once the external powers had an elaborate and agreed plan for the political and economic future of the country that satisfied all of their domestic neuralgias about intervention. Instead, what was needed was either a simple plan of prevention addressed directly to cajole or contain the perpetrators, or a simple plan of supervised exodus of the target group away from the threat.

A senior international jurist involved in the prosecution of crimes against humanity in the past decade has noted that too often the use of systemic descriptors (such as 'tribal conflict') prevents clear policy formulation about bringing individual perpetrators to account.²⁹

Rwanda and genocide apart, the same principal lesson emerges from the literature on conflict prevention in general. In order to 'prevent', policies must have a much more explicit commitment to changing the opinions of leaders and key groups, and to changing the political dynamics and power relationships of a given community or political entity, both in the short and long terms.³⁰ This point was expressed eloquently by the 1997 Carnegie Commission on Preventing Deadly Conflict:

In the Commission's view, mass violence almost invariably results from the deliberately violent response of determined leaders and their groups to a wide range of social, economic, and political

²⁹ Interview with one of the authors, September 2001.

³⁰ See Greg Austin, 'Preventing Terrorism? Direct Measures First – Intrusive, Normative and Personal!', in David Carment and Albrecht Schnabel (eds), *Applied Conflict Prevention: Opportunities and Constraints*, Lexington Books, Lanham MD, 2004, pp. 303-40.

conditions that provide the environment for violent conflict, but usually do not independently spawn violence.³¹

The Commission continued:

Mass violence results when leaders see it as the only way to achieve their political objectives, and they are able to mobilize groups to carry out their strategy. Without determined leaders, groups may riot but they do not start systematic, sustained campaigns of violence to achieve their goals; and without mobilized groups, leaders are unable to organize a fight.

The International Commission on Intervention and State Sovereignty highlighted a related consideration: if 'responsibility' for the outbreak of conflict is to have any meaning, 'it should ultimately reside in specific places and institutions, and with specific people'.³² It is one corollary of the establishment of the special International Courts and of the International Criminal Court that individual people must in the end bear the responsibility for initiating the actions for which they are being called to account. Similarly, comprehensive conflict prevention efforts must include measures that address the political choices of leaders and their supporters.

Thus, a good indicator of the likely effect of conflict prevention measures is the degree to which they are targeted at specific political leaders or key groups, and the degree to which they may have changed the attitudes of those leaders or groups towards the use of force.

The significance of bringing individual perpetrators to account for acts that together constitute genocide is that it ends the appearance that they and others can act with impunity. This is clearly the realm

³¹ Carnegie Commission on Preventing Deadly Conflict, *Preventing Deadly Conflict: Final Report*, Chapter Two. See <http://www.wilsoncenter.org/subsites/ccpdc/pubs/rept97/finfr.htm>.

³² ICISS, *The Responsibility to Protect: Research, Bibliography, Background*, International Development Research Centre, Ottawa, 2001, p. 207. This point was well made by one of the co-chairs of the Commission, Gareth Evans, in his earlier works. See Gareth Evans, *Cooperating for Peace: The Global Agenda for the 1990s and Beyond*, Allen & Unwin, St Leonards, 1993.

of personally-targeted sanctions and personally-targeted incentives but these have not been seen as a necessary and central dimension to the problem of genocide prevention.

For example, even Human Rights Watch (HRW), in its ten point lessons from Rwanda published on the tenth anniversary in 2004 did not identify personally targeted sanctions or incentives as a headline for policy action. The HRW ten lessons were:

- stop the violence before it becomes genocide
- react promptly and firmly to preparations for the mass slaughter of civilians
- pay close attention to the media in situations of potential ethnic, religious, or racial conflict. In cases of impending genocide, be prepared to silence broadcasts that incite or provide directions for violence
- be alert to the impact of negative models in nearby regions
- obtain accurate information about what is happening on the ground
- identify and support opponents of the genocide
- call the genocide by its rightful name and vigorously condemn it. Commit to permanently opposing any government involved in genocide, including refusing it assistance in the future
- impose an arms embargo on the genocidal government
- press any government seeming to support the genocidal government to change its policy
- be prepared to intervene with armed force.³³

Thus, while the HRW list has good pointers for the Darfur case, including the need to call genocide by its rightful name and to support the opponents of the genocide, it restricts its recommendations for punitive measures to the genocidal government as a whole.

³³ Human Rights Watch, 'Rwanda Lessons Learned: Ten Years after the Genocide', 29 March 2004, <http://www.hrw.org/english/docs/2004/03/29/rwanda8308.htm>.

The need to concentrate on individual perpetrators has demanding implications for the resources to be devoted to the problems. Good genocide prevention reporting must provide not only analysis of the conflict dynamics and consideration of the full range of available prevention tools (political, economic, legal and military) like those listed in the HRW ten-point list. It must also offer recommendations that concentrate on proposals likely to have a direct effect on the most pressing problems, as well as identifying the pressure points for each of the parties (named individuals or organisations and their assessed vulnerabilities) so that policy measures can be brought to bear in a targeted fashion. To do this, the motivations of key actors have to be well-documented and conspicuously so, in a way that is separate from the narrative of events.

It would be wrong to imagine that a good picture of the motivations behind most of the key players in all conflict situations can be formed. In many cases, there is little information available and, therefore, some informed speculation has to be offered. However, another constraint is that such motivation should not be conceived exclusively in strategic or enduring terms. There needs to be some account of how motivations can shift according to the unfolding dynamics of a conflict.

Apart from identifying the most effective domain of response as lying in direct sanctioning of the perpetrators, the best studies of the Rwanda genocide identified one other key factor: the absence of a trigger mechanism for rapid response to genocide. The report of the Organisation of African Unity (OAU) concluded:

What the Genocide Convention badly lacks, as the secretary-general of the International Commission of Jurists explained to the Panel, is 'a trigger mechanism', which results in firm, appropriate action that prevents such atrocities ever being perpetrated by mankind again. At present the convention is almost purely reactive, in effect only providing for action after the crime has been committed, by which time it is too late for the victims and, indeed, for humanity in general.³⁴

³⁴ For text, see www.visiontv.ca/RememberRwanda/Report.pdf.

The need for triggers and preventive action in the warning stages of possible genocide must however be balanced against an important consideration concerning the definition of genocide, a consideration also identified in the OAU report on Rwanda:

We are concerned, however, that the currency of the concept not be debased too frivolously by its trivialization. Any massacre is deplorable; so is any violation of human rights. But very few constitute genocide. If any atrocity can be considered an act of genocide, and if we cry 'genocide' after every injustice, then words will lose their meaning and the gravity of the offence will soon wane. For all of humanity's evil deeds, genocide is not yet a commonplace occurrence on this earth, and we feel strongly that such words and concepts be carefully husbanded and used with the greatest care. That is why we encourage the pursuit of a definition that is comprehensive and functional.

Fine-grained analysis

The Carnegie Commission on Preventing Deadly Conflict identified 'skilled analysis of developing trends' as a necessary complement to 'early warning' in conflict prevention and management.³⁵ But much of the literature, while focusing on the need for good analysis and early warning, has neglected the need for more detailed diagnosis of the exact nature of the conflict.³⁶ One study of this aspect of conflict prevention revealed serious gaps in analytical practices for conflict analysis.³⁷ All too many case studies confirm that mis-diagnosis of the conflict is a major cause of the failure of even the best-intentioned prevention efforts.³⁸

³⁵ Executive Summary of the Final Report, Carnegie Commission on Preventing Deadly Conflict, Carnegie Corporation of New York, 1997, p. 5.

³⁶ See Luc van de Goor and Suzanne Versteegen, 'Conflict Prognosis: Bridging the Gap from Early Warning to Early Response', Part One, Netherlands Institute of International Relations, The Hague, November 1999.

³⁷ Ibid.

³⁸ See for example, Michael S. Lund, Barnett R. Rubin and Fabienne Hara, 'Learning from Burundi's Failed Democratic Transition, 1993-1996: Did International Initiatives Match the Problem', in Rubin (ed), *Cases and Strategies for Preventive Action*, pp. 86-88.

For example, in intra-state conflict there is a common disposition to reiterate or accept the view that communal or ethnic divisions are primordial, rather than politically contingent and contemporary.³⁹ This type of mis-diagnosis of a conflict may actually feed into the hands of the party provoking the violence.

A UK government publication, *Conducting Conflict Assessments: Guidance Notes* (2002),⁴⁰ provides one of the best indications of how detailed this conflict assessment must be. The conflict assessment process advocated, now known as Strategic Conflict Assessment (SCA), is a sophisticated conflict analysis and policy analysis tool, which in many respects mirrors the collective experience of the Foreign Office, Ministry of Defence, Joint Intelligence Committee, Defence Intelligence Staff and the Secret Intelligence Service. According to one official with extensive experience in intelligence analysis, the virtue of the conflict assessment model was that it contained not just the best elements of a sound intelligence assessment method, but also a very sound approach to mapping the possible responses of the UK in the context of actions by other international actors.⁴¹

³⁹ David Keen, 'War and Peace: What's the Difference' in Adekaye Adebajo and Chandra Lekha Sriram, *Managing Armed Conflicts in the 21st Century*, Frank Cass, London, 2001, pp. 6-8. According to another source: 'The "primordial" explanation sees the main source of conflict in a deep sense of identity: ethnic conflicts arise when ancient hatreds are unleashed because certain authoritarian controls were removed. The theory attributes conflicts to systemic causes outside the control of group leaders and thus of third parties as well. The other view, "instrumentalism", sees such conflicts arising from policies pursued by groups who use group identity as a tool to mobilize people in pursuit of specific gains. Conflict may be fomented by elites who manipulate the symbols dear to their group and who can stir resentment against other groups. They invoke hatred through propaganda, or they take covert actions to provoke violent reactions from their followers. This implies that group emotion does not usually combust spontaneously: it must be whipped up. From this perspective, ethnic conflicts are less subject to unalterable forces and more contingent on the action of elites and individual leaders.' See Lund, *Preventing and Mitigating Violent Conflict Conflicts*, <http://www.caii-dc.com/ghai/>.

⁴⁰ See DFID, 'Conducting Conflict Assessments: Guidance Notes', January 2002. The principal authors of this were Jonathan Goodhand, Tony Vaux and Robert Walker.

⁴¹ For further analysis of this point, see Greg Austin, Emery Brusset, Malcolm Chalmers and Juliet Pierce, *Evaluation of the Conflict Prevention Pools: Synthesis Report*, DFID Evaluation Department, March 2004, pp.51-5.

The 51-page guidelines cover three main issues: conflict analysis (structures, actors and dynamics), a mapping and assessment of international responses to date, and the development of future responses (strategies and options). The guidelines, which disappointingly disavowed their potential as a standard formula, highlighted important points arising from conflict prevention literature that needed to be addressed in any conflict assessment methodology.

One of the most important of these points is the need for an analysis of both structures and actors, and how the two interact. While this may seem self-evident, the guidelines note that ‘actor oriented analysis involves a “fine-grained” analysis of individual incentives and motivations’. The guidelines went on to note the centrality of ‘perceptions and the meanings that people attribute to events, institutions, policies and appeals for public support’. The guidelines noted the need for analysis of each conflict at international, regional national and local levels. Most importantly, the guidelines observed that conflict is a dynamic social process in which the root causes can over time become increasingly irrelevant. For the present authors, this means that the longer a conflict has dragged on, the more essential it becomes for states wanting to end the violence to address primarily the personal motivations of individual leaders who seek to benefit from it.

In terms of English language sources available in the public domain, there is little sign of the necessary fine-grained analysis of the principal perpetrators of the Darfur violence. There is some doubt that it exists in public. There are indications, such as the USA’s public discussion of imposing personal sanctions on the militia leaders, that such detailed analysis does exist inside the US intelligence agencies. If it does, it should be made public (to the extent that protection of sources allows).

A timeline of early warning in Darfur

There were two key early warnings of genocide in Darfur prior to 2004. The first sign was the consistency of major human rights

abuses from 1999 onwards, especially the government’s manipulation of the justice system and its security forces to persecute the people of Darfur. The second sign was the Sudan government’s commission of blatant war crimes in the summer of 2003 when its air force attacked and demolished hundreds of defenceless Sudanese villages. Appendix C lists the reports from the Darfur Information web-site to 2 July 2003 which, even without the benefit of hindsight, provides prima facie evidence of genocide beginning sometime earlier than July 2003. The following narrative summarises the main events, drawing in large part on reporting by independent observers, especially the International Crisis Group.

Darfur’s six million people comprise around a fifth of the country’s total population. Attacks in the current conflict have been perpetrated against specific groups comprising about one fifth of the Darfur population: the Fur, Masalit and Zaghawa tribes (800,000, 185,000 and 190,000 people, respectively).⁴² The area of Darfur is roughly one tenth of the size of Sudan. The Darfur region is largely an arid plateau with the fertile Marrah Mountains and volcanic range occupying the centre and western regions, where the Fur and Masalit tribes farm; while the nomadic Zaghawa inhabit the northern Libyan Desert (see map).⁴³

The government claims that the conflict stems solely from the increasing desertification and over-farming of Darfur areas, generating tensions between farmers and nomads. However, according to analyses by the International Crisis Group (ICG) and Amnesty International, this would be an incorrect interpretation of the events.⁴⁴ The current conflict is essentially rooted in a government strategy of Arabisation to change the demography of

⁴² Joshua Project, ‘People groups by Country,’ July 2004, See <http://www.joshua-project.net/countries.php?rog3=SU>.

⁴³ Global Security.org, ‘Paramilitary groups: Darfur’, June 2004. See <http://www.globalsecurity.org/military/world/para/darfur.htm>.

⁴⁴ The following narrative draws heavily on the following reports: ICG Africa report No. 76, ‘Darfur Rising: Sudan’s New Crisis’, p.2, 25 March 2004; Amnesty International, ‘Sudan: Empty promises? Human rights violations in government controlled areas’, 16 July 2003; and ICG, ‘Sudan’s Other Wars’, Africa Briefing, 25 June 2003.

the region, rewarding the nomadic communities that have served as its de facto militia and thus ensuring a support base there.

According to ICG, the 'Arab Gathering' was established in the late 1980s with a supremacist ideology that alluded to the killing of lesser non-Arabs and looting of their farms.⁴⁵ Unsurprisingly, the Fur claimed that the 1987-1989 war against them was genocidal with the aim of destroying their economic base and resettling their land with Arab tribes.⁴⁶ In 1991-1992, the Sudan government generously armed hastily assembled militias drawn from local Arab tribesmen to crush a revolt in the Darfur region. To reward the Arab militias, the government redrew administrative boundaries at the expense of black African groups already settled there. The Sudan Government's support for the Arab tribes over the black African tribes may have been the main cause for the emergence in early 2003 of the Sudan Liberation Army (SLA). The SLA took up arms against Khartoum's policies of marginalisation and racial discrimination, and its failure to protect farmers from attack.

Underlining the sentiments of the SLA are the massive human rights violations by the Sudanese government in Darfur. These occurred in part as a consequence of the promulgation of the National Security Emergency Law (NSEL). The government suspended the basic liberties and rights of key sections of the population. This explains why the country 'remains under the iron-tight grip of the omnipresent security apparatus, which continues to enjoy virtual impunity'.⁴⁷

The lack of economic opportunities combined with the vast proliferation of small arms smuggled in from war-torn south Sudan, Chad, Libya and Central Africa have encouraged acts of banditry in Darfur. Consequently, in May 2001 the government used the NSEL to clamp down on Darfur uprisings by creating Special Courts under the premise of trying supposed acts of banditry, armed robbery,

⁴⁵ ICG Africa Report Number 76, 'Darfur Rising: Sudan's New Crisis', p.10, 25 March 2004.

⁴⁶ Ibid. p.6.

⁴⁷ Statement of the UN Special Rapporteur for Human Rights in Sudan reporting to the UN Human Rights Commission, quoted in the US Department of State Country Report on Human Rights Practices for Sudan 2003.

possession of weapons as well as 'anything else considered a crime by the Governor of the State or the Head of the Judiciary'.⁴⁸

However, this has provided cover for the targeted persecution of non-Arab tribes, especially given that the government repeatedly portrays the political events in Darfur as solely criminal, labelling the rebels as bandits and armed gangs and the conflict itself as mere banditry.⁴⁹ In addition, while the authorities have cracked down on Fur communities possessing weapons, leaving them defenceless, Arab nomadic groups have been allowed to remain armed.⁵⁰

Moreover, the Sudanese Minister of Justice claimed that the special courts set up under the NESL were necessary to deal with the conflict because of the impracticality of convening a regular court of justice in a war zone.⁵¹ However, this in no way validates the gross injustice of these courts: two of the three Special Courts judges do not require legal qualifications since they are military officials; defendants are refused legal representation; and confessions are legitimate sources of evidence even if later withdrawn by the accused.⁵²

Further freedoms laid down in the Constitution and the international human rights standards ratified by the Sudanese government have been negated by the National Security Forces Act. This provides the security forces with total immunity for their actions, allowing them to detain anyone incommunicado and without charge.⁵³ Torture has been commonplace. Using these forces, the government has carried out extra-judicial killings, which is especially disturbing when both the Minister of Justice and the Minister of Information admit that they have no control over the forces' actions.⁵⁴

⁴⁸ Ibid.

⁴⁹ ICG Africa Report No. 76, 'Darfur Rising: Sudan's New Crisis', p.2, 25 March 2004.

⁵⁰ Amnesty International, Report on Sudan, *Darfur: Too many people killed for no reason*, 3 February 2004.

⁵¹ Sudan Organisation Against Torture: 'Country Report on the Human Rights Situation in Sudan March 2003-March 2004', p.5.

⁵² Ibid.

⁵³ Amnesty International, 'Sudan: Empty promises? Ending human rights violations in government controlled areas', 16 July 2003.

⁵⁴ Ibid.

Since 2001, the NSEL has provided for the suspension of publications,⁵⁵ the detention of journalists and pre-publication censorship.⁵⁵ Articles about government policy in Darfur are prohibited from being published unless provided by the Ministry of Defence.⁵⁶ For example, in December 2003 the Al-Jazeera office in Khartoum was searched (without warrant) and then closed, with its director detained incommunicado for seven days followed by a month's imprisonment because of publishing unofficial reports on the Darfur conflict.⁵⁷

Government security forces have targeted not only rebels but also Darfur civilians suspected of supporting them. For example, in July 2002, security forces arrested eleven leaders of the Fur tribe for reporting attacks by members of Arab militia; in late April 2003, the World Organisation Against Torture highlighted the increased arbitrary mass arrests and risk of torture against members of the Zaghawa tribe in Darfur;⁵⁸ and in August 2003, security forces arrested and beat 24 men suspected of supporting the rebels in Darfur.⁵⁹

According to the Sudan Organisation against Torture, groups associated with the events in Darfur were increasingly targeted and subjected to torture.⁶⁰ From March 2002 to March 2003, the number of people sentenced to death in Sudan significantly increased with nearly all of them occurring in Darfur: approximately 19 were executed while another 133 awaited execution.⁶¹ Finally, when the peace talks collapsed in December 2003, simultaneously there was

⁵⁵ US State Department Country Reports on Human Rights Practices for Sudan 2001.

⁵⁶ US State Department Country Reports on Human Rights Practices for Sudan 2003.

⁵⁷ Ibid. Please also see the Sudan.net article <http://www.sudan.net/news/press/postedr/276.shtml>.

⁵⁸ IFHR, 'Rights groups condemn government action in Darfur', Reliefweb, 30 April 2003.

⁵⁹ US State Department Country Reports on Human Rights Practices for Sudan 2003.

⁶⁰ Sudan Organisation Against Torture, 'Country report on Human Rights Situation in Sudan March 2003-March 2004', p.7.

⁶¹ Sudan Organisation Against Torture, Newsletter, Issue 37, p.3, March-May 2003.

a marked increase in the number of attacks on persons politically linked to Darfur.⁶²

These systematic human rights abuses against the African tribes of Darfur have been twinned with systematic military attacks. The Sudanese Organisation Against Torture holds that Arab militia attacks in Darfur between 1998 and mid-2002 left 5,000 people dead and destroyed 40,000 houses.⁶³ Militia attacks continued throughout 2002: in May, one attack burnt down 600 houses and killed 17;⁶⁴ in September, a militia of 150 killed 13 and destroyed 279 houses;⁶⁵ in November, 300 Arab nomads killed 15; on 31 December another incident left 35 people dead and 28 injured,⁶⁶ with another attack the next day, killing 25, ten of whom were thrown into fires by the attackers.⁶⁷

In February 2003, Darfur rebels retaliated against government installations but it was not until the attack on Al-Fasher airport on 25 April 2003, which killed 70 government soldiers and destroyed planes and helicopter gunships, that the SLA expressed its resolve and consequently catalysed the severity of the government's response.⁶⁸ In late April government-backed Arab militia attacked the Masalit, killing 55 and injuring 53. Tribal leaders claimed that the government had only just confiscated weapons from the tribe, leaving them defenceless.⁶⁹

⁶² Sudan Organisation Against Torture, Country report on the Human Rights Situation in Sudan p.3 and p.27, March 2003-March 2004.

⁶³ Sudan Organisation Against Torture, Newsletter Issue 32 p.1, April-May 2002.

⁶⁴ Ibid.

⁶⁵ Sudan Organisation Against Torture, Newsletter Issue 34 p.5, August-September 2002.

⁶⁶ Sudan Organisation Against Torture, Newsletter Issue 35 p.6, October-November 2002.

⁶⁷ Sudan Organisation Against Torture, Newsletter Issue 36 p.2, December 2002 to February 2003.

⁶⁸ Amnesty International, *Darfur: Too many people killed for no reason*, 3 February 2004.

⁶⁹ IFHR, 'Alarming situation of human rights in Darfur province', Reliefweb, 30 April 2003.

Amnesty International claims that government aircraft attacked civilian villages in North Darfur as early as June 2003.⁷⁰ This continued throughout July with daily bombardments of towns on the Chad border with 58 deaths on 16 July alone.⁷¹ While the SLA took the town of Kutum, the second largest town in North Darfur, armed militia attacked surrounding villages on 25 July, killing 15, followed by another 38 the next day and 43 on the day after that. As the SLA withdrew from Kutum on the 3 August, 42 people were killed in the area by Jingaweit on 5 and 6 August 2003.⁷² The SLA claimed that these militia have killed 300 civilians and destroyed 500 villages in the Kutum area during this period, compounded with government airstrikes, killing 46 civilians and destroying 500 villages in north Darfur on 24 and 25 August.⁷³ In addition, Amnesty International claims that in west Darfur during mid-August Jingaweit killed 26 people.⁷⁴

On 3 September 2003, the Chadian government brokered a ceasefire agreement between the SLA and the Sudanese government at Abeche in Chad. However, the agreement's terms were fundamentally flawed: on the one hand, not every rebel group was party to the ceasefire and so bombing campaigns by the Sudanese air force continued; on the other hand, Khartoum's official position was that the Jingaweit were in no way related to government strategy. Thus, Arab militia maintained their attacks on civilians.

Moreover, according to ICG, the ceasefire's security arrangements clearly favoured the government: the government was not committed to disarm its proxies, especially when the ceasefire proposed the trading of cantonment and disarming of insurgents for the 'withdrawal of irregular armed groups'; the government's view that

⁷⁰ Amnesty International, 'Sudan- Darfur: Too many people killed for no reason', 3 February 2004.

⁷¹ US State Department Country Reports on Human Rights Practices for Sudan 2003.

⁷² Amnesty International, 'Immediate steps to protect civilians and internally displaced persons in Darfur', Reliefweb, 29 August 2003.

⁷³ AFP, 'Rebels accuse Sudan government of killing 46 in Darfur', Reliefweb, 26 August 2003.

⁷⁴ Amnesty International, 'Sudan Darfur: Too Many People Killed for No Reason', 3 February 2004.

the crisis was an internal security matter was reinforced since the agreement's terms lacked political content; and no room was allowed for international intervention.⁷⁵

The SLA convened from 11 to 14 October 2003 to prepare an agenda for negotiations with the government at the end of the truce, calling for the involvement of UN, EU or AU observers in the negotiation process. At the same time, in a detailed memorandum addressed to the government, the 'Council of Fur Elders in Sudan' argued that their community was the victim of ethnic cleansing.

These words fell on deaf ears. Over the course of October, Jingaweit burned 23 villages, killing 30 people and displacing 3000 families in Nyalla, South Darfur, alone. USAID claimed there had been 7000 casualties between February and October in Darfur and a UN estimate suggested 3000 mortalities⁷⁶ and 10 per cent of the population displaced.⁷⁷

From December 2003, the Sudanese government began its policy of restricting humanitarian access to Darfur by refusing or delaying travel permits.⁷⁸ In December alone, 25,000 refugees fled into Chad, bringing the total number of refugees in Chad to almost 100,000.⁷⁹

Peace talks concerning the civil war in south Sudan progressed during January 2004 but the government used the three week break until talks resumed in mid-February to launch a massive military offensive in Darfur.⁸⁰ In late January 2004, a UN official claimed that a Sudanese warplane had attacked rebels on the Chadian side of the border,⁸¹ and during a one week period 18,000 new refugees entered Chad.⁸² On 27 February 2004 the Jingaweit and the army

⁷⁵ ICG Africa report No. 76., 'Darfur Rising: Sudan's New Crisis', p.22, 25 March 2004.

⁷⁶ AFP, 'Darfur rebels resume discussions with Sudan government', Reliefweb, 29 October 2003.

⁷⁷ IRIN, 'Deadlock in Darfur peace talks', Reliefweb, 31 October 2003.

⁷⁸ UN News, Darfur Crisis Timeline, July 2004.

⁷⁹ US State Department Country Reports on Human Rights Practices for Sudan 2003.

⁸⁰ ICG Africa Report No. 76, 'Darfur Rising: Sudan's New Crisis', p.2, 25 March 2004.

⁸¹ Darfur Crisis timeline, UN News, July 2004.

⁸² Reuters, 'Sudan rebels condemn government role in war in west', Reliefweb, 29 January 2004.

killed 67 people, abducted 16 schoolgirls and raped 93 others, including six in front of their families.⁸³ By the end of March 2004, more than 110,000 Darfurians had fled across the border into Chad with another 750,000 internally displaced within Sudan.⁸⁴

Policy Options in Darfur in 2003

It is immensely difficult to stop genocide once it has commenced, especially if the early attacks are not met with firm deterrents or punitive actions against the perpetrators. An air of impunity inexorably builds. If the major powers and the major international actors show consistently weak or ineffective responses, the perpetrators of the genocide are unlikely to feel constrained at all.

In the case of Darfur, as in other cases of genocide occurring in the context of a civil war, it may be quite difficult to determine precisely when a vicious and bloody conflict between two warring groups slips into genocide. Not all victims of genocide are unarmed, innocent and defenceless civilians. Many can be combatants. War itself builds a climate of impunity. But it is the present authors' view that the situation in Darfur in 2003 was quite unambiguous: there was one side perpetrating a genocide and their actions were in stark contrast to the low-intensity military operations of the other side, the SLA. At the same time, it is important to acknowledge that the SLA has been accused of serious human rights abuses, including the killing of civilians.

The main instruments available to the major powers and the international community through 2003 were as follows:

- full and open reporting of the atrocities, released in public

⁸³ ICG Africa Report Number 76, Darfur Rising: Sudan's New Crisis, p.17, 25 March 2004.

⁸⁴ UN News on Africa, 'UN rapporteurs gravely concerned by reports of ethnic cleansing in Sudan', 29 March 2004.

- dedication of significant, new analytical resources to the problem
- production of fine-grained analyses for internal use, laying out the motivations of the perpetrators and canvassing both incentives and sanctions/punishments that may affect their individual calculus
- an immediate calling of the UN Security Council
- an immediate calling of the relevant regional organisation
- immediate application of strong targeted sanctions and punishments against both national level and local level perpetrators
- declaration that until all violence stops, all formal contact with the perpetrators by international, governmental or commercial interests will be prohibited
- a plan for rapid escalation of application of the measures
- development or review of contingency plans for military intervention by an international peace force

During the Darfur genocide, these options were available to the international community as early as September 2003. By June 2004, no action had been taken in any way that might credibly have led the perpetrators to cease the genocide. Moreover, the perpetrators had every reason to believe that the major powers and the major international organisations would not act against them.

The UN has previously imposed sanctions against Sudan concerning state-sponsored terrorism, notably the attempted assassination of the Egyptian President in Ethiopia in June 1995. However, although the UN adopted measures against Sudan, it never established a corresponding sanctions committee.⁸⁵

On 26 April 1996, the Security Council imposed diplomatic sanctions against Sudan due to its failure to extradite those suspected of terrorism. These included reductions in the number of staff at

⁸⁵ UN Sanctions Secretariat, 'A Brief Overview of Security Council Applied Sanctions', 3-5 December 2000.

Sudanese diplomatic missions as well as restricting the entry or transit of Sudanese officials through members' borders.⁸⁶ By August of the same year, Sudan had still yet to comply with the OAU's and UN's demands and so a further ban was imposed by the UN on Sudanese aircraft being permitted to fly over or land in members' borders.⁸⁷

However, the provisions of the air embargo were never implemented because of humanitarian reasons and because of Egypt's unwillingness to support these measures.⁸⁸ Finally, a Security Council resolution on 28 September 2001 cancelled the above diplomatic sanctions imposed in April and August 1996.

The US had previously imposed unilateral sanctions against Sudan. In August 1993, the US State Department listed Sudan as a state sponsor of international terrorism, which led to the imposition of sanctions, including prohibitions on arms exports and sales, as well as restrictions on defence and financial assistances.⁸⁹ By November 1997, the President declared a national emergency to deal with the threat posed by Sudan to US security interests: assets of the Sudanese government controlled by the US were frozen and a trade embargo was imposed.⁹⁰ Sudan was further penalised in September 2003 through the cancellation of US aid funds since it had failed in its efforts to eliminate the trafficking of persons, a precondition set out in US legislation, the Victims of Trafficking and Violence Protection Act of 2000.⁹¹

On 21 October 2002 the US President signed the Sudan Peace Act, which provided the possibility of penalties should the Sudanese government not be engaged in 'good faith negotiations to achieve a

⁸⁶ UN Security Council Resolutions 1044, 31 January 1996, and 1054, 26 April 1996.

⁸⁷ UN Security Council Resolutions 1070, 16 August 1996.

⁸⁸ David Cortright and George Lopez, *Sanctions and the Search for Security*, 2002, p.118.

⁸⁹ CSIS, 'To guarantee the peace: an action strategy for a post-conflict Sudan-addressing US sanctions against Sudan', p.2, March 2004.

⁹⁰ See Executive Order 13067, 'Blocking Sudanese Government Property and Prohibiting Transactions with Sudan', 3 November 1997.

⁹¹ US Presidential Determination with Respect to Foreign Governments' Efforts Regarding Trafficking in Persons, No. 2003-35, 9 September 2003.

permanent, just, and equitable peace agreement, or has unreasonably interfered with humanitarian efforts'.⁹² In such a case, the President would be obliged to instruct directors of the international financial institutions to oppose extending any loan or credit to the Sudanese government; consider downgrading or suspending diplomatic relations; take necessary steps to deny the government access to oil revenues; and even seek a UN Security Council Resolution to impose an arms embargo.⁹³

However, the US policy towards Sudan appears in the public eye at least to have been incoherent. Surely Khartoum's genocidal strategy in Darfur was clear evidence of its failure to act in 'good faith negotiations'? Since this conclusion has not been recognised, the above threat of sanctions is rendered worthless.

The USA, UK and other major powers tend to promote behind-the-scenes or 'quiet diplomacy' as an effective tool in preventing violence in cases like Darfur where significant additional strategic considerations are in play. However, such efforts, not accompanied by loud public diplomacy attacking the perpetrators, may be utterly inappropriate for the Darfur conflict or other cases of genocide. A study of Kenya in the late 1990s concluded that quiet diplomacy combined with humanitarian assistance was insufficient to convince the government to cease using ethnicised violence as a political tool.⁹⁴ The study concluded that quiet diplomacy is doomed to fail when donors do not clearly address the root causes of ethnic clashes whether in their public statements or assistance projects.⁹⁵ These findings certainly accords with the intuitive feeling of the present authors about the ineffectiveness of quiet diplomacy, by itself, in the face of genocide.

Major powers and the UN have been fearful of angering Khartoum before it concludes a peace agreement in its civil war in the south. Furthermore, the political leaders of some major powers may lack

⁹² See US Public Law 107-245, 'Sudan Peace Act', 21 October 2002.

⁹³ *Ibid.*

⁹⁴ Please see Chandra Sriram and Karin Wermester, *Strengthening UN: Capacities for the Prevention of Violent Conflict*, 2003, Chapter 4.

⁹⁵ *Ibid.* p.91.

the political resolve to intervene in Darfur because of its commitments elsewhere in the world. Major powers do not want to jeopardise good relations with the Sudanese government in the 'war on terrorism'.

Darfur was omitted from the May 2004 Security Council agenda since the focus of discussion was on Iraq. Jan Egeland, the UN Emergency Relief Coordinator, later reprimanded the Security Council for not acting decisively in Darfur, highlighting the funding inequalities in emergency response efforts: in 2003, less than half of the \$2.2 billion appeal to help 13 African countries was funded, while donors fully met the \$1 billion sought for Iraq. He concluded that this 'reflects the harsh reality that political interests, strategic priorities and the media spotlight create enormously disproportionate responses'.⁹⁶

The leaders of major powers must be held accountable for their inaction. They had a range of options at their disposal, then as now. Not only did most leaders not take up these options, but actively blocked US efforts to put some of them into play. The international community is responsible for demonstrating a passivity that has allowed the Sudanese government to pursue its genocidal agenda. Furthermore, the international community has failed to fulfil its obligation, as promised by its rhetoric, to make any move toward punishing the perpetrators of the genocide.

The humanitarian alibi

A number of sources, including the US Congress, have now identified a genocidal campaign by the Sudanese government. The campaign began at least a year ago, possibly even earlier. Yet the international community has failed to respond appropriately in that time. Instead the international community has deluded itself into believing that the primary diagnosis of events is a humanitarian crisis.

⁹⁶ UN News Centre, 'Swift action needed to quell crises in hotspots like Sudan and Haiti - UN official', 28 May 2004.

The classification of the conflict in terms which emphasise its character as a humanitarian crisis (which it is) to the neglect of attention on the perpetrators of the violence only serves to mask the lack of political imagination on the side of the international community to find appropriate responses. Not only have the major powers and the leading international organisations acted too late, but they have preferred to represent the crisis in the Darfur region as a humanitarian crisis and to down-play the fact that it is a full-blown war zone.

This is a well-documented phenomenon known as the 'humanitarian alibi', the proposition that states and international organisations will often hide behind their provision of humanitarian aid in a particular conflict as an excuse or camouflage for their failure to develop a comprehensive political approach to the problems.

For example, on 7 January 2004, two UK Ministers noted: 'we reiterate our deep concern at the continuing humanitarian crisis resulting from the conflict in Darfur in western Sudan'.⁹⁷ In May, the UK government declared that 'the international response to Darfur is beginning to come together. We urge donors and international agencies to do more to avert a humanitarian catastrophe'.⁹⁸

The US response has been similar. Senior USAID Administrators had led humanitarian deliveries to Darfur as early as August, October and December 2003,⁹⁹ but it was only in June 2004 that USAID admitted that 'the conflict's impact on the civilian population became apparent last year',¹⁰⁰ and 'we know what is happening. US aerial photographs have recorded the massive scale of destruction

⁹⁷ Statement by Foreign Secretary, Jack Straw, and Secretary for International Development, Hilary Benn. See <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029391638&a=KArticle&aid=1073062299893>.

⁹⁸ DFID Press Release, 'Darfur Update', 12 May 2004.

⁹⁹ Roger Winter, Assistant Administrator of USAID, Testimony before the Subcommittee, US Senate, 15 June 2004.

¹⁰⁰ Ibid.

in Darfur'.¹⁰¹ There was evidence that 'some victims were buried alive and others were mutilated after death',¹⁰² and 'the [Sudanese] government is in the villages attempting to move mass graves; they are attempting to disguise some of the events that took place in the last six months'.¹⁰³ Yet USAID did not disclose whether discovery of this evidence through 2003 had been accompanied at the time of discovery by the sort of diplomatic pressure the USA was eventually to take by mid-2004.

Throughout the conflict, US actions appear to have been cloaked in the humanitarian description, though it has probably been the USA (almost alone) at the forefront of international efforts to promote robust and effective measures directed at the perpetrators. It has given some priority to ensuring immediate access for ceasefire monitors,¹⁰⁴ though it had reservations about whether the proposed monitoring mission was sufficiently robust given the significance and size of the problem.¹⁰⁵

The USA had of course made a variety of political interventions (in the style of quiet diplomacy) prior to mid-2004 in an effort to stop the violence. On 7 April, President Bush publicly condemned the role of the Sudanese government in the atrocities, saying that 'the Government of Sudan must not remain complicit in the brutalization of Darfur'.¹⁰⁶ In April 2004, US efforts at the UN Human Rights Commission to get a robust resolution 'expressing deep concern about the human rights situation in Darfur' were rebuffed. The European states, led by France, supported a resolution expressing concern about conditions in Darfur.¹⁰⁷ In June, as mentioned in the Introduction, one senior US official was prepared to canvas the view that there was evidence of genocide.

¹⁰¹ Statement by USAID Administrator, Andrew Natsios to the Joint UN-US-EU Donor Consultations on Darfur, Switzerland, 3 June 2004.

¹⁰² Ibid.

¹⁰³ Statement by USAID Administrator, Andrew Natsios, at Department of State Press Briefing Room, 27 April 2004.

¹⁰⁴ UN-US Press Release, Security Council Stakeout, May 7 2004.

¹⁰⁵ Ibid.

¹⁰⁶ See <http://www.whitehouse.gov/news/releases/2004/04/20040407-2.html>.

¹⁰⁷ CRS, 'Sudan: the Crisis in Darfur', 25 March 2004, p. 5.

A joint US-EU statement on 26 June 2004 repeated their humanitarian concerns about Darfur. Although the statement did say that 'those responsible for the atrocities must be held accountable', it encouraged all parties (including the perpetrators?) in Darfur 'to begin addressing the underlying political and social problems that have led to this crisis'.¹⁰⁸

These themes were reiterated a month later. Javier Solana met the Sudanese foreign minister on 23 July, urging Khartoum to arrest the leaders of Jingaweit.¹⁰⁹ Two days later, UK Development Minister Hilary Benn acknowledged that the crisis needs the rebels and government to reach a political solution.¹¹⁰ He also publicly affirmed his support for the US draft resolution at the Security Council, should the situation in Darfur not improve.

On 26 July 2004 the EU called for the Security Council to pass a resolution threatening sanctions if Khartoum fails to meet its commitments set out in its communiqué with the UN to disarm and neutralise the Jingaweit.¹¹¹

The new-found emphasis on the punishment of perpetrators is important but the impact of these new measures on the conflict is likely to be limited. First, neither the EU, UK nor USA has fixed a deadline for the Sudanese government to honour pledges to disarm the Jingaweit. Second, the EU failed to specify exactly what sanctions might be imposed on Khartoum.¹¹² Third, the EU, UK and USA have all failed to clarify in any detail the extent to which Khartoum is responsible for the actions of the Jingaweit militias.

The USA was clearly moving beyond a humanitarian response to Darfur at the start of July 2004 when it circulated a draft resolution before the Security Council concerning international sanctions

¹⁰⁸ Office of the Press Secretary, US-EU Declaration on Sudan, 26 June 2004.

¹⁰⁹ Statement of Spokeswoman of Javier Solana, 'EU High Representative for the CFSP, met with Mustafa OSMAN ISMAIL, Sudanese Foreign Minister', 23 July 2004.

¹¹⁰ Hilary Benn, 'Five vital stages to achieve peace', *The Observer*, 25 July 2004.

¹¹¹ ABC Online, 'EU maintains sanctions threat against Sudan', 26 July 2004. See <http://www.abc.net.au/news/newsitems/200407/s1162381.htm>.

¹¹² eu.bussiness.com, 'EU urges UN to threaten sanctions against Sudan', 26 July 2004. See <http://www.eubusiness.com/afp/040726142836.7s6tmwdp>.

against Sudan. Yet this too was inadequate since the proposed sanctions were to be imposed solely against the militia and not the Sudanese government.¹¹³

The humanitarian response by the G-8 is evident in its statement on 10 June 2004, which stressed the need to respect the humanitarian ceasefire and allow unimpeded humanitarian access to the region, pledging 'our countries' assistance in providing humanitarian aid to those in need'.¹¹⁴ However, there seems to be an inconsistency within the G-8 position since its statement also called upon 'the conflict parties to address the roots of the Darfur conflict and to seek a political solution'. It seems that the G-8 recognises that the conflict is essentially not a humanitarian problem but a political one, yet its statement on the conflict in no way addresses the questions of holding the perpetrators to account.

The UN's use of the humanitarian alibi is evident when the UN Secretary-General's Special Envoy for Humanitarian Needs in Sudan, Tom Eric Vraalsen, was sent to Darfur at the start of December 2003 and Chad a month later with the objective to 'renew efforts to obtain a ceasefire under international supervision, and then help support humanitarian aid to the refugees'.¹¹⁵ A humanitarian ceasefire became the UN diplomatic priority and has remained so since.

For six months from the first ceasefire in September 2003 until the second one the following April, the international community continued to push for a humanitarian ceasefire. However, this rested on the Abeche talks being restored yet the terms of this agreement are biased towards the government (as discussed above).¹¹⁶ In early April 2004 a new ceasefire was agreed upon. On this occasion, all rebel groups and not just the SLA were involved and the parties

¹¹³ BBC, 'France opposes UN Sudan sanctions', 8 July 2004 (<http://news.bbc.co.uk/2/hi/africa/3875277.stm>).

¹¹⁴ G-8 Statement on Sudan, 10 June 2004 (<http://www.whitehouse.gov/news/releases/2004/06/20040610-7.html>).

¹¹⁵ ICG Africa Report No. 76, 'Darfur Rising: Sudan's New Crisis', p.25, 25 March 2004

¹¹⁶ Ibid.

were committed to facilitate the delivery of humanitarian assistance. However, to promote a humanitarian ceasefire based on this agreement, without any moves to bring the perpetrators to account, may have been misguided.

First, this ceasefire has been deliberately and repeatedly ignored, which suggests that the parties to it are not seriously committed to its terms.¹¹⁷ Second, there has been a lack of monitoring mechanisms needed to maintain adherence to the ceasefire. Although the AU has recently been tasked to deploy a monitoring team as part of the agreement, voices in the international community are concerned whether the AU is sufficiently robust to carry out its mandate, given the massive geographical size of the Darfur region. These considerations suggest that the call for a ceasefire does not have much effect on easing the crisis. It may be a fundamental error for the international community to recommend on every occasion a humanitarian solution if it has the inherent flaw of not addressing the question of accountability for atrocities.

The UN's classification of the nature of the crisis began to shift in mid-March 2004 when the UN Co-ordinator for Sudan declared that:

I was present in Rwanda at the time of the genocide, and I've seen many other situations around the world and I am totally shocked at what is going on in Darfur... The only difference between Rwanda and Darfur now is the numbers involved...it is more than just a conflict. It is an organised attempt to do away with a group of people.¹¹⁸

Yet this seems to have been the only time, or at least one of the few times, that a senior official in any international organisation has classified the situation in language that unambiguously means genocide. However, official reports by the UN continued to adopt a softer, humanitarian tone. On 31 March 2004, in a statement to the Darfur ceasefire talks in Chad, the UN Secretary-General Kofi

¹¹⁷ Ibid.

¹¹⁸ Statement by UN Co-ordinator for Sudan, Murkesh Kapila, BBC Online, 'Mass rape atrocity in west Sudan', 19 March 2004. See <http://news.bbc.co.uk/2/hi/africa/3549325.stm>.

Annan limited his language to concerns about the civilian casualties and human rights violations in the Darfur region.¹¹⁹

On 2 April 2004, Jan Egeland, the UN Emergency Relief Coordinator, returned to more severe terminology before the Security Council in a briefing on Darfur, describing it as a 'coordinated, scorched-earth campaign of ethnic cleansing'.¹²⁰ Unsurprisingly, however, the Council's reply was restrained, reiterating its 'deep concern about the massive humanitarian crisis'.¹²¹

A few days later, at the Stockholm Conference, Kofi Annan unveiled his five step-plan to combat genocide through the appointing of a 'Special Adviser on the Prevention of Genocide', who would report looming signs to the Security Council and General Assembly to help the international community take 'swift and decisive action' in response to warnings of genocide.¹²² On 13 May 2004, Kofi Annan wrote to the Sudanese president, urging him to disarm the Arab militias and improve humanitarian violations and access in the Darfur region.¹²³ A week later on 26 May 2004, the Security Council convened to hear a presidential statement that reiterated these concerns.¹²⁴

Unfortunately, the seriousness of such political resolve was undermined by the fact that Sudan was omitted from the May Security Council agenda. Darfur had to wait another two months until it made it onto the formal agenda for the first time. It is also unfortunate that the UN High Commissioner for Human Rights could only brief the Security Council behind closed doors on 28 May when he described Khartoum's actions as a 'reign of terror' of massive

¹¹⁹ UN Press Release, 'Secretary-General Says Devastating Conflict In Darfur, Sudan, Must Stop; Calls For Effective Humanitarian Ceasefire', 31 March 2004.

¹²⁰ UN Press Briefing on Humanitarian Crisis in Darfur, Sudan, 2 April 2004.

¹²¹ Ibid.

¹²² Statement of the Secretary General, 'UN Secretary General observes international day of reflection on 1994 Rwanda genocide', 7 April 2004.

¹²³ UN News Centre, 'Annan writes to Sudanese President urging disarmament of militias', 13 May 2004.

¹²⁴ Statement by the President of the UN Security Council, S/PRST/2004/18*, 26 May 2004.

human rights violations which 'may constitute war crimes and/or crimes against humanity'.¹²⁵

On 11 June, the Security Council passed a resolution on the peace agreement between the government of Sudan and the rebels in the south.¹²⁶ It provided for the appointment of a Permanent Resident Coordinator/Humanitarian Coordinator in Sudan. However, the resolution only made a minor reference to the current crisis in Darfur.

On 24 June, Kofi Annan set out on an official trip that would take him to Darfur and to Khartoum to meet with its President about the crisis. During this time, a joint communiqué between the UN and the Sudanese government was signed, which formalised the latter's commitments to end the human rights abuses and restrictions on aid workers in Darfur.¹²⁷ The government agreed to 'immediately start to disarm the Jingaweit and other armed outlaw groups'. Annan's report on this visit mentions Darfur only in very brief terms, paying most attention to the long-running peace negotiations with the rebels in the South. By 7 July the Council agreed to consider adopting a resolution on Sudan following a briefing from Kofi Annan upon his return.¹²⁸ When asked in connection with this trip whether there was genocide occurring in Sudan, Annan said the UN did not need a label to prompt it to act. This response is indicative of the way leading actors are reluctant to call genocide by its 'rightful name', as the Stockholm Declaration demands.

¹²⁵ UN News Centre, 'Swift action needed to quell crises in hotspots like Sudan and Haiti - UN official', 28 May 2004.

¹²⁶ UN Security Council Resolution S/RES/1547, 11 June 2004.

¹²⁷ 'Joint Communiqué between the government of Sudan and the UN on the occasion of the visit of the Secretary General to Sudan', 29 June- 3 July 2004.

¹²⁸ UN Press Release, 'Security Council says it will up pressure on Sudanese Government', 7 July 2004.

The Excuse of 'No Political Will'

Some political leaders would have us believe that there is no 'political will' in their communities and governments for firm action, especially in the case of the USA and UK with their forces heavily committed in Iraq. This is a ploy. If leaders were genuinely committed to the need to prevent and to punish the perpetrators, they would build the political will themselves. 'Political will' does not just fall out of the sky. Leaders must create it, as US and UK leaders sought so vigorously to do in the case of their invasion of Iraq. They must build the institutional base to provide both detailed assessments and the best policy options and they must be able to craft convincing arguments to garner support.¹²⁹ Most importantly, they must understand the spectrum of options and have a view of how to escalate pressure over a short time frame.

Most importantly, political leaders need to recognise the centrality to building political will of regular publication by them of highly detailed, authoritative studies of acts suggestive of looming genocide. These studies can be used to directly confront the perpetrators with the message that their actions cannot be concealed. According to a credible source, this approach worked in East Timor in 1999 when at least one interested government confronted a senior Indonesian military leader with classified intelligence confirming his direct authorisation of militia violence against civilians.¹³⁰ The violence all but stopped. The regular publication of such reports must be accompanied by sustained diplomacy at the highest levels with all key regional players, regional organisations and the UN.

There has been little evidence so far of a sustained effort anywhere to craft a coherent and effective multinational response to the Darfur violence. As will be discussed below, some potentially effective measures have been out on the table, but there has been little effort

¹²⁹ The best discussion of this remains that found in Gareth Evans, *Cooperating for Peace*, 1993.

¹³⁰ Interview with one of the authors.

to position these in an escalating application of pressure. One of the possible exceptions was the decision by US Secretary of State, Colin Powell, to visit Sudan immediately after a visit by the UN Secretary General, Kofi Annan, to give the impression of coordinated pressure. There is little evidence in public of effort to mobilise pressure from neighbouring Arab states, such as Egypt and Saudi Arabia, or other Islamic countries, such as Pakistan and Indonesia.

In short, there has been no effective or even barely credible international response to the genocide in Darfur. As one activist put it:

Early warning is useless without early response. In Darfur, as in Bosnia and Rwanda, the world has spoken loudly, but carried no stick at all.¹³¹

So far, the main political responses have come from the USA, EU and AU. At the very start of 2004, the EU played out the humanitarian alibi.¹³² Within a few weeks it had stiffened its resolve (somewhat ineffectively) by announcing an arms and military equipment embargo on Sudan and a public condemnation of the attacks by the Jingaweit militias.¹³³ Finally, when the Addis Ababa ceasefire was signed on 28 May 2004, the AU, with financial support from the EU's African Peace Facility, mobilised military observers to monitor the ceasefire's provisions and verify any violations.¹³⁴ Unfortunately, these moves are unlikely to have any effect on the motivations of the perpetrators of the genocide, or even much effect of any kind. The number of observers (40 monitors and 300 troops)

¹³¹ Dr. Gregory H. Stanton (President, Genocide Watch), 'Genocide Emergency: Darfur, Sudan', <http://www.genocidewatch.org/Never%20Again.htm>.

¹³² See for example, EU Press Release, 'EU Presidency declaration on the situation in Darfur, Sudan', 7 January 2004.

¹³³ EU Press Release, 'EU Presidency declaration on the imposition of an embargo on arms, munitions and military equipment on Sudan', 28 January 2004.

¹³⁴ EU Press Release, 'EU mobilises €12 million from Peace Facility to support African Union peace keeping operation in Darfur, Sudan', 10 June 2004.

falls considerably short of the numbers required if the AU mission is to carry out its mandate effectively.¹³⁵

A report of April 2004 by HRW concluded that the UK and other European powers interested in Sudan, such as Germany and the Netherlands, seem to be less interested in pushing for an early solution to the Darfur crisis, despite intense lobbying by non-governmental humanitarian agencies and others. They view the success of the peace talks between the Sudanese government and the southern rebels as the highest priority, and HRW concluded that those talks, in progress with forceful mediation by the troika of the USA, UK and Norway, appeared to be foundering as various deadlines came and went.¹³⁶

The UN's response has undermined its credibility for its efforts to move toward a 'culture of prevention'. The UN Security Council's presidential statement on Sudan on 10 October 2003 makes no reference at all to Darfur despite the ongoing atrocities. It is only nine months later that it first warms towards the possibility of a resolution on the Darfur issue. But as of July, the Council had not met to endorse specific new measures by external powers that might have contributed to stopping the genocide.

As noted above, the USA (almost alone) has been at the forefront of international efforts to promote robust and effective measures directed at the perpetrators. Yet even its policy appears episodic, at least as far as the public record suggests.

Conclusion and Recommendations

The enormity of the humanitarian crisis in Darfur is beyond doubt and the immediate relief of the victims of Darfur must be the highest international priority. However, this is not the main focus of this report. Instead, this report highlights the longer term problem of how

¹³⁵ BBC Online, 'Annan warns of Sudan catastrophe', 6 July 2004, <http://news.bbc.co.uk/1/hi/world/africa/3868793.stm>.

¹³⁶ Human Rights Watch, 'Darfur in Flames: Atrocities in Western Sudan', April 2004, <http://hrw.org/reports/2004/sudan0404/>.

to prevent genocide in the future by drawing attention to the urgent need to bring the perpetrators of the Darfur genocide to account.

The international community must learn the simple formula: 'A war crime targeted towards an ethnic group because of its ethnicity is probably prima facie evidence of potential genocide'. No qualifications are needed. Where the war crime occurs against the background of past behaviour conducive to or indicative of genocidal behaviour by the perpetrator, then the warning signs must be accorded even more significance. The war crime itself should be enough to set the alarm bells ringing and provoke international condemnation and sanctions. As the UK Permanent Representative to the UN, Sir Jeremy Greenstock, noted in April 2000 in response to the Rwanda Commission report, the Security Council failed 'to respond to the drastically changing situation on the ground'. He suggested that for anything to change, world leaders would need to have the 'political stomach for hearing and responding to the unadorned truth'.¹³⁷

There are four broad conclusions from this paper:

- the need for fine-grained analysis on which policy directed personally at the perpetrators can be based
- the need for a 'trigger mechanism' for automatic engagement of major powers and relevant international organisations in framing responses on the first appearance of prima facie evidence of genocide
- the need for rapid action against the individual perpetrators of the genocide
- the need for international NGOs to hold world leaders to account for failure to live up to their obligation to prevent genocide.

¹³⁷ Statement in the Security Council by Sir Jeremy Greenstock KCMG, Permanent Representative of the United Kingdom, 14 April 2000.

Fine-grained Analysis

Policy to prevent genocide can only be based on the most detailed analysis of the motivations of the perpetrators. Until states show a commitment to undertake this analysis, then they should shut up and stop pretending that they take seriously their treaty obligation to prevent genocide. The Stockholm Declaration (Article 1) commits the parties to 'monitor and report genocidal threats ... in order to prevent the recurrence of genocide, mass murder and ethnic cleansing'.

But we see little sign of this in terms of the willingness of major powers or international organisations to assign the necessary analytical resources when *prima facie* signs of genocide arise. The obligation to prevent can only be meaningful if states re-assign significant assets to collective determination of the facts and public identification of the perpetrators when the first signs emerge.

There is little evidence in the public domain that this has happened in the case of Darfur. If it had, we might have expected to see names of actual perpetrators appearing more prominently in the international press.

Trigger Mechanisms

States are opposed to any automatic trigger mechanism that obliges them to act in international affairs. They prefer to maintain maximum flexibility to be able to evaluate the circumstances of the day and act in the most pragmatic fashion as circumstances allow. A case could be made that, in the case of the Genocide Convention, and the obligations accepted by some states in the 2004 Stockholm Declaration, the states parties have effectively surrendered this luxury. The obligation to prevent genocide, to have any meaning, must imply some sort of automaticity of response in the face of *prima facie* evidence of genocide.

The paper makes recommendations for action:

- the UN Security Council must have a mandatory mechanism for prompt consideration of early warning of potential genocide
- major powers must have a mandatory requirement imposed in domestic legislation to report promptly to their parliaments on responses to early warning of potential genocide
- the trigger mechanism for such mechanisms to come into play should include credible warning of potential genocide from established international NGOs
- another trigger mechanism should be *prima facie* evidence of crimes against humanity, such as the use of military aircraft to bomb civilian targets.

Rapid Coercive Action directed personally against perpetrators

A good indicator of the likely effect of genocide prevention measures is the degree to which they are targeted at specific political leaders or key groups, and the degree to which they may have changed the attitudes of those leaders or groups towards the use of force. The significance of bringing individual perpetrators to account for acts that together constitute genocide is that it ends the appearance that they and others can act with impunity. This is clearly the realm of personally-targeted sanctions but these have not been seen as a necessary and central dimension to the problem of genocide prevention. To stop genocide, policy must be addressed to the personal psychology of the perpetrators. Personally targeted sanctions against known perpetrators, including the leaders of the government of Sudan are a minimum, not a maximum, point of departure for policy response. Of the major powers, only the USA seems to think so at this time.

This paper recommends that:

- *prima facie* evidence of genocide should automatically trigger personal sanctions of some sort against the specific perpetrators, especially the leaders.

Accountability of Politicians for Failure to Prevent

The time has come. The solemn commitments of world leaders on the tenth anniversary of the Rwanda genocide must now be called to account. There is an urgent need for world leaders like Kofi Annan, Tony Blair and Javier Solana to review their organisational responses to the Darfur genocide with a view to immediate remedy of the persistent incapacities of their governments or agencies to respond in a timely and appropriate manner.

The slogan for effective action to prevent genocide must be: 'Find your moral compass, and get personal!' Use loud diplomacy, mixed with consistent and coercive 'quiet diplomacy'. But please, do not confuse loud wailing about the undeniable humanitarian needs of the victims with either action designed to end the genocide or action to bring the perpetrators to account. The victims also need to see the perpetrators disarmed, held accountable and punished. This is the obligation imposed by the Convention on the Prevention and Punishment of the Crime of Genocide.

Let the other 100-plus States Parties to the Convention step up to meet their responsibilities alongside the USA, UK, EU and UN agencies. It is becoming clear that these major powers and international organisations, as powerful as they are, may not be able to prevent genocide without a clearer commitment from other states: in Asia, in the Middle East, in Latin America and in Asia.

Map of Sudan



This map was taken from the online map library at the University of Texas (http://www.lib.utexas.edu/maps/africa/sudan_po100.jpg)

Appendix A: Convention on the Prevention and Punishment of the Crime of Genocide of 1948

The Contracting Parties,

Having considered the declaration made by the General Assembly of the United Nations in its resolution 96 (I) dated 11 December 1946 that genocide is a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world,

Recognizing that at all periods of history genocide has inflicted great losses on humanity, and

Being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required,

Hereby agree as hereinafter provided:

Article I: 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 II: 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 III: 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 IV: Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

Article V: 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 III.

Article VI: Persons charged with genocide or any of the other acts enumerated in article III 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 VII: Genocide and the other acts enumerated in article III 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 VIII: 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 III.

Article IX: 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 for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.

Article X: 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 XI: 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 non-member State which has received an invitation as aforesaid. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article XII: 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 XIII: On the day when the first twenty instruments of ratification or accession have been deposited, the Secretary-General shall draw up a *proces-verbal* and transmit a copy thereof to each Member of the United Nations and to each of the non-member States contemplated in article XI.

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 XIV: 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 XV: 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 XVI: 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 XVII: The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States contemplated in article XI of the following:

- (a) Signatures, ratifications and accessions received in accordance with article XI;
- (b) Notifications received in accordance with article XII;
- (c) The date upon which the present Convention comes into force in accordance with article XIII;
- (d) Denunciations received in accordance with article XIV;

- (e) The abrogation of the Convention in accordance with article XV;
- (f) Notifications received in accordance with article XVI.

Article XVIII: 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 each Member of the United Nations and to each of the non-member States contemplated in article XI.

Article XIX: The present Convention shall be registered by the Secretary-General of the United Nations on the date of its coming into force.

Text: U.N.T.S. (United Nations Treaty Series), No. 1021, vol. 78 (1951), p. 277.

Appendix B: Declaration by the Stockholm International Forum 2004

The Holocaust, as reaffirmed by the Stockholm International Forum Declaration of January 2000, challenged the foundations of human civilization. Recalling our responsibility to fight the evils of genocide, ethnic cleansing, racism, anti-Semitism, Islamophobia and xenophobia, we, the participants of the Stockholm International Forum 2004: Preventing Genocide: Threats and Responsibilities, conscious of our obligations and responsibilities under international law including human rights and international humanitarian law, deeply concerned with the repeated occurrence of genocide, mass murder and ethnic cleansing in recent history as well as with the widespread occurrence of impunity for such crimes, are committed to doing our utmost for the prevention of these scourges in order to build a more secure future for us all.¹³⁸

To this end we declare that:

1. We are committed to using and developing practical tools and mechanisms to identify as early as possible and to monitor and report genocidal threats to human life and society in order to prevent the recurrence of genocide, mass murder and ethnic cleansing.
2. We are committed to shouldering our responsibility to protect groups identified as potential victims of genocide, mass murder or ethnic cleansing, drawing upon the range of tools at our disposal to prevent such atrocities in accordance with international law and fully upholding the Convention on the Prevention and Punishment of the Crime of Genocide.
3. We are committed to ensuring that perpetrators of genocidal acts are brought to justice. We are also committed to supporting survivors of genocide to rebuild their communities and to return to normal life.

¹³⁸<http://www.preventgenocide.org/prevent/conferences/StockholmDeclaration28Jan2004.htm>.

4. We are committed to supporting research into the possibilities of preventing genocide, mass murder and ethnic cleansing.

5. We are committed to educating the youth and the wider public against genocidal dangers of all kinds through formal and informal educational structures. We are also committed to disseminating knowledge of these dangers to those involved in government, international organizations, non-governmental organizations, humanitarian and peace support operations and the media.

6. We are committed to exploring, seriously and actively, the options presented at the Forum for action against genocidal threats, mass murders, deadly conflicts, ethnic cleansing as well as genocidal ideologies and incitement to genocide, including the concrete proposals presented by the United Nations Secretary-General.

7. We are committed to cooperating in our search for effective measures against genocidal dangers with all members of the family of nations, in the United Nations and other relevant global and regional organizations as well as with non-governmental organizations, labour organizations, the media and with business and academic communities.

Appendix C: Timeline of Signature Reports and Impunity for the Darfur Genocide to 2 July 2003 from the Darfur Information Web-site

www.darfurinformation.com

Prior to 2002

Ethnicity from Perception to Cause of Violent Conflicts: The Case of the Fur and Nuba Conflicts in Western Sudan, Mohamed Suliman, 1997.

Report on Human Rights Violations in Darfur, 1998.

Ethnic Cleansing and Slaughter in Western Sudan against the Massalit, February 1999.

Effects of Central Government Policies, Tribal Conflicts, and Civil War in Darfur, July 1999.

Slaughter and Ethnic Cleansing Go Unnoticed in Western Sudan, 10 September 1999.

Anti-Government Riots, 15 September 2000.

Arrest of a Sudanese Lawyer in Nyala, 10 October 2000.

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