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# YALE LAW & POLICY REVIEW

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## Getting It Right: What the United States Can Do To Prevent Genocide and Crimes Against Humanity in the Twenty-First Century

John Norris\*

*[Rwanda] sits as the greatest regret that I have from the time I was U.N. ambassador and maybe even as [S]ecretary of [S]tate, because it is a huge tragedy, and something that sits very heavy on all our souls, I think.*

– Former U.S. Secretary of State Madeleine Albright, February 25, 2004<sup>1</sup>

*You look at something like Darfur, and it just breaks your heart.*

– Former U.S. Secretary of State Colin Powell, September 20, 2008<sup>2</sup>

*[O]ne of the real regrets I've had is that we haven't been able to do something about Sudan.*

– Former U.S. Secretary of State, Condoleezza Rice, November 13, 2008<sup>3</sup>

### INTRODUCTION

It has become a dispiritingly sad and almost pro forma ritual: The outgoing U.S. Secretary of State expresses his or her regrets about failing to do enough to stop genocide and war crimes in remote regions of the world. The regrets are

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1. *Frontline: Ghosts of Rwanda* (PBS television broadcast Feb. 25, 2004), available at <http://www.pbs.org/wgbh/pages/frontline/shows/ghosts/themes/legacy.html>.

2. *The Next President: A World of Challenges* (CNN television broadcast Sept. 20, 2008), available at <http://transcripts.cnn.com/TRANSCRIPTS/080920/se.01.html>.

3. *Meet the Press with David Gregory* (NBC television broadcast Dec. 21, 2008), available at <http://www.msnbc.msn.com/id/28337897>.

sincere; I have no doubt. Yet, given the very predictability of this pattern, some hard questions should be asked. Three, or perhaps seven, years from now, will Secretary of State Hillary Clinton take a hushed moment in her exit interview with a media luminary of the day to express her qualms that more was not done to stop widespread killings in the Democratic Republic of Congo (DRC), Somalia, Chechnya, or Iraq? Why is it that Democratic and Republican administrations seem to struggle equally, albeit in different ways, with these foreign policy quandaries? Is the problem ultimately an institutional one, or is it more a question of leadership?

There are high expectations that the Obama Administration will break this wearying trend of inaction in the face of catastrophe. As a United States Senator, President Obama spoke passionately and eloquently about genocide and crimes against humanity.<sup>4</sup> He was a long-time advocate of a more forceful approach to dealing with Darfur, although his policy statements were carefully nuanced in that regard.<sup>5</sup> President Obama's key foreign policy advisers are well-known humanitarian hawks who view the fight against genocide, war crimes, and crimes against humanity not only as a moral imperative, but also as a key pillar of national security. Samantha Power, who has long had Obama's ear on the topic and is now serving at the National Security Council, won a Pulitzer Prize for her passionate writing on the difficulties the U.S. foreign policy establishment has faced in grappling with genocide, what she termed the "problem from hell."<sup>6</sup> Most of the profiles that appeared when Susan Rice was offered the U.S. Ambassador to the United Nations (UN) post noted her long history of calling for robust action against genocide.<sup>7</sup> Members of Obama's team have embraced the doctrine of "Responsibility to Protect." They have made careers

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4. A good example can be found in a taped interview then-Senator Obama conducted on February 15, 2006, in response to queries on Darfur from an advocacy organization. In this interview, Senator Obama noted, "Darfur is an important test case. We've already failed one test in Rwanda, we shouldn't fail another." Podcast: Senator Barack Obama, Darfur: Current Policy Not Enough Security (Feb. 15, 2006), <http://obamaspeeches.com/052-Darfur-Current-Policy-Not-Enough-Obama-Speech.htm> (last visited Apr. 16, 2009); see also JOHN NORRIS ET AL., MCCAIN AND OBAMA SPEAK OUT ON DARFUR AND MORE—SUMMARY (2008), available at [http://www.enoughactionfund.org/files/Obama\\_McCain\\_questionnaire.pdf](http://www.enoughactionfund.org/files/Obama_McCain_questionnaire.pdf).
  5. Obama called for the establishment of a no-fly zone over Darfur numerous times during the campaign, including on October 7, 2008, during the second Presidential Debate held at Belmont University in Nashville, Tennessee. *The Second McCain-Obama Presidential Debate* (NBC television broadcast Oct. 7, 2008), available at <http://www.msnbc.msn.com/id/27073997/page/12>.
  6. See SAMANTHA POWER, *A PROBLEM FROM HELL: AMERICA AND THE AGE OF GENOCIDE* (2002).
  7. See, e.g., Peter Baker, *Choice for U.N. Backs Actions Against Killings*, N.Y. TIMES, Nov. 30, 2008, at A12; Michael A. Fletcher & Colum Lynch, *Shift on U.N. Seen in Rice Nomination*, WASH. POST, Dec. 2, 2008, at A11.

arguing for the necessity of intervention, including the use of military force, in cases where mass violence is perpetrated against civilian populations, and sovereign governments are unwilling or unable to stop the killing.<sup>8</sup>

In December 2008, the bipartisan Genocide Prevention Task Force—co-chaired by Madeleine Albright and former Defense Secretary William Cohen—issued its findings on preventing genocide and major crimes against humanity.<sup>9</sup> The report—a commendable effort, well-timed for the new administration, and long in the making—gets it right on many of the big picture issues. The document concludes that genocide is ultimately preventable and rejects the historical determinism of “ancient ethnic hatreds” and other convenient excuses for inaction. The Task Force argues that genocide prevention is in the national interest and accordingly urges the president to make such efforts a national priority.<sup>10</sup> The report emphasizes the need for increased prevention funding and sharper inter-agency cooperation and communication in the early stages of violence.<sup>11</sup> The United States will never be effective in stopping mass killings until the president is willing to level with the American public about what is happening and what can be done to change course.

Perhaps most importantly, the report observes that little progress is possible without genuine leadership at the highest levels.<sup>12</sup> Frequently, the need for better organization is overemphasized as the way to prevent genocide. Better early warning systems, more effective coordination meetings, a task force charged solely with investigating war crimes, a new deputy at the National Security Council in charge of prevention, and a hundred other eminently sensible suggestions have been proposed but ultimately remain insufficient. Everyone would welcome better intelligence and forecasting, but the idea that superior indicators or more efficient inter-agency meetings will fix the problem is an unhelpful myth.

Think of those places that have suffered catastrophic civilian killings over the last two decades: Bosnia, Burma, Darfur, eastern DRC, East Timor, Liberia, Rwanda, Sierra Leone, Somalia, and Sri Lanka. Did any of these situations truly catch policymakers unawares? The world was shocked by the speed and scope of the killings in Rwanda. In the months prior to the genocide, however, senior UN officials knew, and reported to headquarters, that large-scale massacres were in the advanced planning stages; indications included the large shipments

8. See *Preventing Genocide*, THE ECONOMIST, Dec. 13, 2008, at 43.

9. MADELEINE ALBRIGHT & WILLIAM COHEN, PREVENTING GENOCIDE: A BLUEPRINT FOR U.S. POLICYMAKERS (2008), available at [http://www.usip.org/genocide\\_taskforce/report.html](http://www.usip.org/genocide_taskforce/report.html).

10. *Id.* at xv, 6.

11. *Id.* at 17-51.

12. *Id.* at 1-13.

of machetes arriving in Kigali.<sup>13</sup> These reports were deliberately downplayed in both New York and Washington.<sup>14</sup> In Bosnia, a failed UN peacekeeping force actually helped separate the adult male population from other civilians before the men were massacred at Srebrenica by Bosnian Serb forces and dumped into mass graves.<sup>15</sup> Aerial photographs of the mass graves quickly became available at NATO headquarters. In Darfur, the killings and systematic efforts to drain the region of much of its civilian population have persisted for five years without even a hint of an effective response from the international community. The Bush Administration welcomed the head of Sudan's intelligence services as a visitor in Washington.<sup>16</sup> The UN continues to allow the Sudanese government in Khartoum to wield an effective veto over the operations of the peacekeeping force,<sup>17</sup> and the Sudanese President—facing an arrest warrant from the International Criminal Court on war crimes charges—personally wrote to President Bush asking if he would like to visit Sudan after his term concluded.<sup>18</sup>

How is it that the United States stood with its hands in its proverbial pockets as such atrocities took place? Perhaps it is more important to understand exactly how successive administrations have avoided addressing genocide and war crimes than to focus solely on the bureaucratic improvements that would make responses more effective. There is no substitute for genuine political will coupled with an educated public constituency that believes mass killings are unacceptable. To understand how the Obama Administration might deal with these fundamental challenges, it is important to step back and recognize the behaviors and tactics that other administrations have used to evade hard choices.

## I. A PRIMER ON HOW TO GET IT WRONG

Through hard experience, we now possess a virtual textbook on the many strategies our senior leaders have used to delay, derail, and postpone preventing war crimes around the globe. Although by no means exhaustive, the following responses represent some of the classic dodges employed.

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13. See PHILIP GOUREVITCH, *WE WISH TO INFORM YOU THAT TOMORROW WE WILL BE KILLED WITH OUR FAMILIES* 103-05 (1998).
  14. For an excellent collection of declassified documents at the National Security Archives, see *THE US AND THE GENOCIDE IN RWANDA 1994: EVIDENCE OF INACTION* (William Ferroggiaro ed., 2001), available at <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB53/index.html>.
  15. See JAN WILLEM HONIG & NORBERT BOTH, *SREBRENICA: RECORD OF A WAR CRIME* 33-45 (1996).
  16. See Ken Silverstein, *Sudanese Visitor Splits U.S. Officials*, *L.A. TIMES*, June 17, 2005, at A1.
  17. Editorial, *The UN Blinks on Darfur*, *CHRISTIAN SCI. MONITOR*, Aug. 3, 2007, at 8.
  18. Letter from Omar Hassan Ahmed Al-Bashir, President of Sudan, to George W. Bush, President of the United States, (Dec. 3, 2008), available at [http://enoughproject.org/files/publications/Enough\\_Said\\_Bashir.pdf](http://enoughproject.org/files/publications/Enough_Said_Bashir.pdf).

### A. *"It's Very Complicated"*

Claiming complications is a perennial favorite of Department of State spokespersons and presidents hoping to avoid taking action. Bosnia was described as a cauldron of ancient ethnic hatreds. Claims abound that the situation in Darfur has degenerated into chaos and anarchy that make blaming any single party for events on the ground or holding them accountable virtually impossible—even when it is clear that government-directed forces are doing most of the killing. A discussion about Rwanda turns into a debate about the Belgian colonial legacy, identity cards, ethnography, and the history of cattle ownership rather than a focus on what should have been done to stop the killing immediately. In short, administrations frequently try to avoid dealing with genocide and war crimes by insisting that the situation on the ground is so complex that only career professionals could even begin to make sense of it. Moreover, such systematic complications are used to suggest that there is no reason for the United States to intervene or for the American public to lose sleep over these events. Most presidents and Foreign Service officers possess a natural gift for making international issues sound more convoluted than they really are, so this strategy should not be surprising.

This is not to say that addressing genocide and war crimes is easy, but ascertaining the responsible parties in mass atrocities is usually not difficult. If thousands of people are being killed and driven from their homes, evidence of such death and dislocation typically abounds, and a fairly bright line often can be drawn back to the perpetrators. If satellites can read license plates from outer space, can it be so difficult to determine which side in a conflict has perpetrated a massive ethnic cleansing campaign or systematically wiped out the adult male population of a rival group? In an age of unprecedentedly pervasive electronic eavesdropping, does it really take years to discern the facts of mass killings in Bosnia or Rwanda? If any president begins his speech from the podium by stating: "It is a very complex situation," his address most likely will close with an equally stirring call to inaction.

### B. *"Maybe Weapons Would Help"*

The idea that simply providing a beleaguered population with weapons to defend itself would absolve world powers from moral approbation is a well-worn one. In both Bosnia and Kosovo, there was considerable discussion of keeping the United States and NATO out of the war while providing weapons to those who were suffering wave after wave of war crimes.<sup>19</sup> During the 2008 presidential campaign, Senator John McCain advocated providing air defense systems to the southern Sudanese to prevent a replay of the mass killings that

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19. See Raymond Bonner, *NATO Is Wary of Proposals To Help Arm Kosovo Rebels*, N.Y. TIMES, Apr. 4, 1999, at A8; Alan Riding, *Kohl Urges Arming of Bosnian Muslims*, N.Y. TIMES, June 23, 1993, at A6.

marked Sudan's long-running north-south civil war.<sup>20</sup> The idea is a tidy one: Washington can provide weapons without having to put any of its own troops in harm's way. This strategy worked well during the Cold War amid multiple proxy conflicts, so why not retain the approach? Given that civilians already are bearing the brunt of killings, pouring more ammunition on to the fire usually does not make a great deal of sense. Further, in conflict situations like the former Yugoslavia or present-day Darfur, the state has been actively involved in killings, and even sending numerous shipments of M15 rifles to rebels is not an effective opposition to the government's modern air force. The inflow of weapons and half-hearted foreign interventions can also be used by despotic leaders to justify even more outrageous attacks against civilian populations accused of collaborating with foreign powers. Thankfully, regional leaders are often instrumental in rejecting this perpetually recurring and ineffective policy approach. They understand that a broader and more intense conflict will usually spill over national borders and that excess weaponry can help a war mutate and burn even longer.

### C. *The "Q Word"*

For presidents and secretaries of state facing a rising tide of public sentiment to do something, anything, about mass atrocities, the "Q word"—quagmire—has always been an important fallback. It is not a long word, but its eight letters powerfully and effortlessly evoke images of Vietnam and Iraq. Invoking the potential for quagmires through foreign intervention also allows most U.S. administrations to claim an imaginary high road: Their desire to protect the U.S. population from endless and intractable commitments overseas. The quagmire concept plays well with left, right, and libertarian affiliates. Even if the president does not want to utter the word directly, it is easy to find congressional allies or enemies who are more than willing to do so.

The primary problem with the quagmire epithet is that it has not proven true in most humanitarian interventions. NATO-led operations in both Bosnia and Kosovo, although full of tension and some near-disasters, did not involve major ground combat with U.S. forces. American troops, as part of a broader UN-authorized coalition, did remain on the ground for a number of years after the initial interventions, but their presence remained mostly custodial in keeping formerly warring parties firmly separated. Well-designed efforts in Sierra Leone and Liberia produced similar results.<sup>21</sup> The tasks of reconstruction and reconciliation are undoubtedly long-term endeavors, but what are the alterna-

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20. See NORRIS ET AL., *supra* note 4, at 2.

21. See generally CLIFFORD BERNATH & SAYRE NYCE, REFUGEES INT'L, REPORT ON THE UNITED NATIONS MISSION IN SIERRA LEONE (2002), available at <http://repository.forcedmigration.org/pdf/?pid=fmo:3164> (arguing that the limited UN peacekeeping mission in Sierra Leone was a success); INT'L CRISIS GROUP, LIBERIA: STAYING FOCUSED (2006), available at <http://www.crisisgroup.org/home/index.cfm?id=3872> (describing peacekeeping efforts in Liberia).

tives? Another typical option may be additional years of unfettered violence and literally billions of dollars in taxpayer money to support humanitarian relief that keeps people nourished but does not stop the killing.

#### *D. False Choices*

Framing issues in all-or-nothing terms is a classic gambit of military and diplomatic officials aiming to avoid thorny issues. By cleverly describing potential U.S. involvement as the starkest possible choice between doing nothing and invading a country with 200,000 troops to topple the sitting government, administration officials handily place their thumb on the scale in favor of inaction. A corollary of this strategy is to insist that the U.S. military is already overstretched, thereby precluding involvement in the growing crisis. Yet, the range of alternatives to end mass killings, genocide, and war crimes are wide and varied. The need for massive military intervention is almost always a last resort, and it is usually the result of a decided failure to take other discrete steps earlier in the process. Tougher action by the United States earlier in the conflicts in Bosnia, Liberia, Darfur, the DRC, and elsewhere could have helped contain the situations and sent a clear message to militia leaders and others that their abuses would not be tolerated. It is important to remember that the most effective tool to prevent genocide is not military force late in a process, but early, concerted efforts at peacemaking. Scores of methods exist that can be employed before placing boots on the ground in a hostile environment: support for the International Criminal Court, targeted sanctions, naming and shaming, intensified efforts to dry up financing of responsible parties, and enforcement of a no-fly zone, to name a few.

Those who conduct mass killings are often shrewd and cynical students of American politics and diplomacy. They have a tendency to read a quick yet ineffectual response from Washington as a green light for wider abuses, and they interpret Washington's ineffectiveness as a free ticket to impunity. It would have been far less likely that former Yugoslav President Slobodan Milošević, Sudanese President Omar al-Bashir, former Liberian President Charles Taylor, and others would have mounted such intense and murderous rampages if they had paid a cost earlier in their careers for such depravity. As soon as Milošević realized he could tie UN peacekeepers to bridges and sit comfortably untouched in Belgrade, it was a short leap to thinking that he would pay nothing for supporting militias that summarily executed large numbers of civilians.<sup>22</sup> Bashir perfected his divide-and-conquer tactics in the Sudan's north-south civil war; if he had paid a cost for his earlier targeting of civilians, the situation in Darfur may never have arisen in the first place.<sup>23</sup> During the north-south conflict, the

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22. See RICHARD HOLBROOKE, *TO END A WAR* 94-111 (1999).

23. See generally GARETH EVANS, INT'L CRISIS GROUP, *GOD, OIL AND COUNTRY: CHANGING THE LOGIC OF WAR IN SUDAN*, (2002), available at <http://www.crisisgroup.org/home/index.cfm?id=1615&l=1> (giving background on the Sudanese civil war and discussing the government's divide and conquer strategy).



Sudanese government often practiced a deliberate strategy of turning southern ethnic communities against one another as a means to weaken the overall impetus behind southern independence movements. This strategy included arming local groups as proxy militias and encouraging grave human rights abuses, such as slave raids against rival groups. This bitter counter-insurgency strategy further opened deep ethnic fissures in the south and further unraveled Sudan's social fabric. The Sudanese government resorted to a similar tactic in the western Sudanese region of Darfur when a rebellion broke out there, using Janjaweed militias against Darfuris. One could reasonably assume that if the Sudanese government had encountered effective resistance from the international community to its tactics in the north-south war, it would not have replicated them in Darfur.

### E. Regional Solutions

The U.S. government is never a greater supporter of regional institutions than when it wishes to avoid active involvement or leadership. This is particularly, but not uniquely, true in Africa. The United States has been eager to seize on the mantra "African solutions to African problems" when steering clear of messy situations and mass violence in Darfur, the DRC, northern Uganda, and Zimbabwe.<sup>24</sup> The phrase was coined by a noted African political economist, George Ayittey. Ayittey has argued that many of Africa's problems are self-inflicted and stem from poor governance, winner-take-all rule, corruption, and other factors.<sup>25</sup> He suggests that solutions for the continent will be more effective if Africans feel they have ownership over implementation—not that the policies have been imposed externally.

Yet, it remains abundantly clear that few regional African institutions are equipped to intervene effectively where mass violence against civilians occurs. The African Union (AU) is simply an amalgam of countries bound together by geography and little else. With little coherence, the AU lumps together dictatorships and democracies, free markets and closed economies, and north and

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24. In 2001, while touring Africa, Secretary of State Colin Powell maintained, "Africans themselves must bear the lion's share of the responsibility for bringing stability to the continent." Paul D. Williams, *Keeping the Peace in Africa: Why "African" Solutions Are Not Enough*, 2008 ETHICS & INT'L AFFAIRS 309, 311 (quoting Ofeibea Quist-Arcton, Powell Promises U.S. Support but Says Africa Must Help Itself, (May 29, 2001), <http://allafrica.com/stories/200105290190.html> (last visited Mar. 11, 2009)). The recently established U.S. Africa Command has promoted its efforts as part of a broader strategy to let "Africans deal with African problems." *Id.* at 311 (quoting Press Briefing, Lt. Gen. Walter L. Sharp, Changes to the Unified Command Plan To Create an Africa Command (Feb. 7, 2007), available at <http://www.africom.mil/getArticle.asp?art=1548>).

25. See GEORGE AYITTEY, *AFRICA BETRAYED* (1992). Ayittey coined the phrase "African Solutions" in an October 7, 1993 op-ed in the *Wall Street Journal*. George Ayittey, *An African Solution for Somalia*, WALL ST. J., Oct. 7, 1993, at A18. However, the concept is best elucidated in *Africa Betrayed*.

south. It is a club for which there is no membership standard, and it is therefore unsurprising that the AU's default position is to avoid offending even the most heinous warlords. Even casual observers could have guaranteed that the AU-led peacekeeping force initially installed in Darfur would simply serve as a placeholder as the suffering continued. The Southern African Development Community has been largely ineffective in addressing the long, steady slide in Zimbabwe, although a number of countries in the region have bravely bucked public sentiment and called for President Robert Mugabe to stand aside.<sup>26</sup>

Despite these shortcomings, the United States still can work with regional organizations to halt genocide and war crimes. Indeed, this is the ideal result in normal situations. But efforts by the United States to pass the buck to regional organizations while it stands on the sidelines are rightly interpreted by regional governments as abdicating responsibility. Take these comments made by then-U.S. Assistant Secretary of State for African Affairs Jendayi Frazer in February 2006:

The United States has said that a genocide has occurred in Sudan and we continue to be concerned about the security environment in Darfur. As far as the question of U.S. troops, I think that what we need to do is put the focus on strengthening the [African Union Mission in Sudan] force that's there.<sup>27</sup>

Frazer's words also underscore the need for the United States to support once again the development of regional organizations as bodies reflecting a core commitment to shared values: democracy, human rights, and free and fair trade. The United States succeeded during the Cold War by continually expanding the number of countries in Europe that shared these core values. The time has come to replicate that formula in Asia, Africa, and Latin America. Expecting the AU to respond effectively in Darfur when its active members include despotic nations such as Sudan itself, Zimbabwe, and Equatorial Guinea is a pipe dream.

F. *"Let's Send Peacekeepers, but Not Our Own"*

If all else fails for an American president eager to avoid dealing with genocide and war crimes, there is no better place to turn than the UN. The UN can be an endless wellspring of dilatory tactics, bureaucratic entanglements, and opportunities to blame shortcoming on allies, enemies, and faceless functionaries.

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26. Jonathan Clayton, *The Silent Neighbours Find Their Voice*, TIMES (London), June 26, 2008, at 6.

27. Jendayi E. Frazer, Assistant Sec'y of State for African Affairs, & Kristen Silverberg, Assistant Sec'y of State for Int'l Org. Affairs, Briefing on U.S. Efforts in Darfur and U.S. Efforts To Lead the UN Security Council and Work with the African Union and Other Nations on a Transition of the African Union Mission in Sudan to a UN Mission (Feb. 3, 2006), <http://2001-2009.state.gov/p/af/rls/rm/2006/60376.htm>.

During the 1990s, the United States rather painfully learned how inadequate UN peacekeeping missions can be. Disastrous efforts in Bosnia, Somalia, and Rwanda compelled many people to doubt the relevance of the UN and its ability to play a positive role in the world. For example, the first UN peacekeeping mission in Bosnia, the UN Protection Force (UNPROFOR), was an unmitigated fiasco. Operations had to be cleared not only through military commanders but also through a cumbersome UN political process. UN peacekeepers were taken hostage and tied to bridges by Serbian forces to prevent these structures from being bombed.<sup>28</sup> UNPROFOR was unsuccessful at defending itself and even worse at defending civilians.<sup>29</sup> In a similarly shameful exercise, UN peacekeepers in Rwanda were essentially ordered to stay out of the way in 1994<sup>30</sup> as *Interahamwe* (paramilitary forces) and the Hutu military killed approximately 800,000 people in 100 days. Militias swept into compounds to murder civilians literally minutes after UN peacekeepers left the grounds. Equally troubling, the international community refused to take action against the Hutu militias and army members who conducted the genocide and fled to refugee camps in the DRC (then Zaire). The failure to deal with the *génocidaires* not only denied justice to the families of those killed Rwandans, it also helped ensure that eastern DRC slipped further into its own long-running cycle of killings, reprisals, and competition for mineral wealth. Critics warned that the world was headed for an age of anarchy filled with failing states, civil wars, and near-biblical clashes over basic resources at a time when the UN did not seem capable of making a difference.

## II. STUMBLING TOWARD SUCCESS

For a period, generally in the latter half of the 1990s and at the turn of the century, the U.S. government seemed much more willing to make hard choices in combating war crimes and crimes against humanity. After the dismal peacekeeping failures of the early 1990s, the international community (usually, but not always, led by the United States) experienced a modest but important string of successes in protecting civilians against their own marauding governments in Bosnia, Kosovo, Sierra Leone, East Timor, and Liberia. These successes were uneven and often messy, but they were much better than the alternatives and vastly superior to the horrific status quo in these regions. A rare but important early example was the preventive UN force deployed in Macedonia to help the country avoid entanglement with the violence suffered elsewhere in the former

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28. CAROLE HODGE, *BRITAIN AND THE BALKANS* 111 (2006); Roger Cohen, *After 2d Strike from NATO, Serbs Detain U.N. Troops*, N.Y. TIMES, May 27, 1995, at A1.

29. See generally ADAM LEBOR, "COMPLICITY WITH EVIL": THE UNITED NATIONS IN THE AGE OF MODERN GENOCIDE 23-54 (2006) (discussing the actions of the UN and UNPROFOR in the Bosnian crisis).

30. GOUREVITCH, *supra* note 13, at 150-54.

Yugoslavia.<sup>31</sup> The Macedonian example is notable as one of the genuine triumphs of preventive diplomacy. The 1999 NATO-led military action against Milošević's government later allowed approximately 800,000 Kosovar Albanian refugees to return to the homes and villages from which they had been ethnically cleansed. The presence of a U.S. warship off the coast of Monrovia helped convince Liberian warlord and President Charles Taylor that he should retire into exile, allowing the country to take rapid steps toward peace and reconstruction.<sup>32</sup> In East Timor, a multinational peacekeeping force led by Australia helped restore order and a sense of normalcy to the lives of people who had labored under repressive conditions for years.<sup>33</sup> Along with these humanitarian interventions, the basic notion that governments have a responsibility to protect their own populations gathered steam.<sup>34</sup> Sovereignty, while still a cornerstone of international law and practice, would no longer serve as an excuse for governments' perpetrating abuses against minority populations within their own borders. Action taken in Bosnia, Kosovo, Timor, and Sierra Leone, among other nations, made clear that the international community was willing to back its approach with reasoned and commensurate force if necessary.

The United States and its allies learned how to manage more effective peacekeeping and peacemaking operations, and American political leaders became more comfortable talking about the basic international norms worth defending. A few key defining factors of successful humanitarian interventions emerged. First, there had to be a clear leader of military operations, marshaling a modern military power with all the assets that accompany such stature. Second, regional institutions such as NATO and the European Union preferably would join the effort, and a UN mandate was welcome. The absence of either, however, would not deter like-minded nations from taking essential action to defend civilian targets from mass violence or ethnic cleaning. Third, military efforts needed support from robust diplomacy and efforts to strike a viable peace deal among the warring parties. The Dayton Agreement that ended the war in Bosnia was untidy, but the former Yugoslavia fortunately bears very little resemblance to the dark days of the siege of Sarajevo.<sup>35</sup> Reconstruction was understood to be a joint endeavor requiring involvement from multilateral institu-

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31. See HENRYK J. SOKALSKI, AN OUNCE OF PREVENTION: MACEDONIA AND THE UN EXPERIENCE IN PREVENTIVE DIPLOMACY 212-14 (2003).
  32. See Somini Sengupta, *Leader of Liberia Surrenders Power and Enters Exile*, N.Y. TIMES, Aug. 12, 2003, at A1.
  33. IAN MARTIN, SELF-DETERMINATION IN EAST TIMOR 119-31 (2001).
  34. See INT'L COMM'N ON INTERVENTION AND STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT (2001), available at <http://www.iciss.ca/report-en.asp>.
  35. For a discussion of some of the challenges of the Dayton agreement, see NIDA GELAZIS, ROBERT BENJAMIN & LINDSAY LLOYD, WOODROW WILSON CTR., INSTITUTIONALIZED ETHNIC DIVISION IN BOSNIA: A WAY FORWARD FOR IRAQ? (2007), [http://www.wilsoncenter.org/index.cfm?topic\\_id=1422&fuseaction=topics.item&news\\_id=309226](http://www.wilsoncenter.org/index.cfm?topic_id=1422&fuseaction=topics.item&news_id=309226).

tions. A critical mass of humanitarian intervention and post-conflict redevelopment experts supporting these principles emerged. Further accountability for past crimes had to be part of an enduring peace. Through special tribunals, alleged war criminals from Rwanda and across the Balkans found their way to The Hague, as did Taylor from Liberia.<sup>36</sup> The timeline of these events helps clarify important trends as well. Peacekeeping operations in Bosnia, Somalia, Rwanda, and Liberia during the early 1990s were widely regarded as failures, as were initial peacekeeping efforts in Sierra Leone at the end of the decade. Yet, when later peacekeeping operations in Bosnia (NATO), Kosovo (NATO), East Timor (Australia), and Sierra Leone (the UK) had clear and strong leadership, those operations were demonstrably more successful.

### III. AND THEN CAME IRAQ

The Iraq invasion and the policies of the Bush Administration, however, unraveled much of the momentum the international community achieved during the previous decade. Philosophically, President Bush made clear in the 2000 campaign that he felt the United States should not intervene even in cases as extreme as genocide.<sup>37</sup> In the early days of the Bush presidency, the Administration was eager to pull U.S. troops precipitously out of the peacekeeping operation in Bosnia—a decision that was only reversed after an outcry from NATO allies.<sup>38</sup> The attacks of September 11, 2001, and the subsequent Iraq invasion further accelerated a growing international divide in the debate on the merits of and proper strategies for humanitarian intervention. First, despite efforts by the Bush Administration to portray the Iraq invasion as a multilateral effort, many commentators and diplomats viewed the invasion specifically as a unilateral effort designed to achieve regime change. Second, instead of relying on multilateral institutions or international experts to help rebuild Iraq, the administration often turned such work over to untrained political cronies with little or no ex-

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36. See About the International Criminal Court, <http://www.icc-cpi.int/Menus/ICC/About+the+Court/> (last visited Mar. 11, 2009); About the International Criminal Tribunal for the Former Yugoslavia, <http://www.icty.org/sections/AbouttheICTY> (last visited Mar. 11, 2009); About the International Criminal Tribunal for Rwanda, <http://169.94.11.53/default> (follow the “About the Tribunal” hyperlink, then follow the “General Information” hyperlink) (last visited Mar. 11, 2009); About the Special Court for Sierra Leone, <http://www.sc-sl.org/ABOUT/tabid/70/default.aspx> (last visited Mar. 11, 2009).
37. In the October 11, 2000 presidential debate, then-Governor Bush said he would not have supported sending U.S. troops to stop the genocide in Rwanda. *The Second Bush-Gore Presidential Debate* (PBS television broadcast Oct. 11, 2000), available at <http://www.pbs.org/newshour/bb/election/2000debates/2ndebate2.html>.
38. See Steve Erlanger, *Europeans Say Bush’s Pledge To Pull out of Balkans Could Split NATO*, N.Y. TIMES, Oct. 25, 2000, at A12.

perience in post-conflict settings.<sup>39</sup> Third, stiff Iraqi resistance and the need for the United States to expand its troop presence significantly as the insurgency continued reinforced the notion that interventions can strain military forces and generate massive expenses and chaos. Iraq is now the 800-pound gorilla in discussions about humanitarian interventions and possible strategies in places like Darfur. Members of both major political parties have been loath to acknowledge that fact. Iraq has changed the calculus for most activists who would normally clamor for humanitarian intervention in Darfur led by the United States, NATO, or a robust UN force. In addition, the Iraq war has significantly drained U.S. military resources, making it less able to lend human support to any potential intervention. In short, the war in Iraq has impeded the promise of humanitarian intervention by years, if not decades, both philosophically and operationally.

Although the Bush Administration tried to portray the invasion of Iraq as a humanitarian intervention after the search for weapons of mass destruction proved fruitless, the invasion was always designed as a military operation to achieve regime change.<sup>40</sup> The responsibility to protect had nothing to do with the imperatives behind the invasion. But the “rebranding” of Iraq as a humanitarian intervention did have a powerful effect, in that it made both the American public and the international community extremely wary of the United States’ ability to use military force judiciously in support of human rights imperatives.

This new reality was probably revealed most starkly in Sudan. American activists who normally would have been calling vociferously for some form of military action simply did not trust the Bush Administration to carry out such an operation without making the situation on the ground, or relations with Arab states, even worse.<sup>41</sup> The Pentagon felt stretched incredibly thin in Iraq and Afghanistan and wanted no part of discussions about such operations. Although Osama bin Laden once called Khartoum home, political conservatives suggested that cooperating with Sudan on counter-terrorism issues was more important than the plight of Darfuris who continued to be driven from their

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39. For a telling description of this approach, see RAJIV CHANDRASEKARAN, *IMPERIAL LIFE IN THE EMERALD CITY* 83-99 (2006).

40. See Jonathan Tepperman, *Fighting Wars of Peace*, NEWSWEEK INT’L, Dec. 13, 2008, at 19, available at [http://www.jonathantepperman.com/Welcome\\_files/WorldView.pdf](http://www.jonathantepperman.com/Welcome_files/WorldView.pdf).

41. In discussions among advocacy groups, some activists were reluctant to call even for the imposition of a no-fly zone, fearing that it might provoke the Sudanese government to cut off aid supplies or intensify their campaigns against civilians on the ground. Others feared that the international community might half-heartedly enforce such a no-fly zone, thus angering the Sudanese government and intensifying the conflict on the ground without fundamentally changing the dynamics of the situation in Darfur.

homes and killed in large numbers.<sup>42</sup> To make matters worse, the Sudanese government appeared to be well aware of these divisions in the United States, and did everything it could to exploit them.<sup>43</sup>

Consequently, the international community has reverted to one of its worst habits from the early 1990s: authorizing UN forces while recognizing that they lack the requisite tools, resources, and military backbone. In Darfur, the DRC, and, potentially, Somalia, the United States has played a key role in supporting the establishment of peacekeeping missions that have no peace to keep and that are built around militaries unwilling or unable to keep the warring parties at bay.<sup>44</sup> Darfur in 2009 looks eerily similar to Bosnia in 1993. Government forces launch attacks on camps for the displaced, and UN forces spend hours trying to negotiate their way through roadblocks. This willingness to send undermanned forces into harm's way absent a viable peace process is shameful, incredibly corrosive to the standing of the UN, and ultimately tragic for the civilians that continue to be killed despite the presence of blue helmets. Conversely, it is clear that the United States either participates in or relies on its close allies for those peacekeeping missions it genuinely wants to succeed.

#### IV. WHITHER THE OBAMA ADMINISTRATION?

The Obama Administration inherits a difficult international legacy. It faces hot wars in both Iraq and Afghanistan and must contend with a military that has been pushed to its limits. A deepening financial crisis will have the dual effects of limiting resources and encouraging Americans to take a more insular view on potential foreign entanglements. Crises involving mass violence against civilians in the DRC, Darfur, and Somalia are burning brightly with no quick fix in sight. These conflicts have moved beyond the preventative stage into full-blown and enduring crises. Equally challenging, the Obama Administration has set a very high bar for itself with strong rhetorical support for humanitarian interventions and the responsibility to protect. Supporters fully expect the White House to deal decisively with mass violence against civilians around the globe. For example, in 2001, Susan Rice told the *Atlantic Monthly* that, after reflecting on her role in government during the Rwandan genocide, she "swore to

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42. See KEVIN FUNK & STEVEN FAKE, *THE SCRAMBLE FOR AFRICA, DARFUR-INTERVENTION AND THE USA* 50-51 (2008).

43. John Norris, Executive Director, The Enough Project, Testimony before the Congressional Human Rights Caucus (Sept. 10, 2008), available at <http://investorsagainstgenocide.org/2008-0910%20CHRC%20testimony%20of%20John%20Norris.pdf>.

44. See REBECCA FEELEY & COLIN THOMAS-JENSEN, *BEYOND CRISIS MANAGEMENT IN EASTERN CONGO* (2008), available at <http://www.enoughproject.org/publications/beyond-crisis-management-eastern-congo>; John Prendergast, John Norris & Jerry Fowler, Enough Project, A Letter to President-Elect Barack Obama: A Peace Surge for Sudan (Nov. 6, 2008), available at <http://www.americanprogress.org/issues/2008/11/pdf/sudanpeacesurge.pdf>.

[her]self that if [she] ever faced such a crisis again, [she] would come down on the side of dramatic action, going down in flames if that was required.”<sup>45</sup>

Rice’s sentiment is laudable, but the administration is under many, if not more, of the same pressures that led earlier administrations down the path of inaction. Political advisers will argue that tough action would expend too much political capital, career staffers at the State Department and Pentagon will sketch out nightmare scenarios of U.S. interventions gone wrong, and legislators will contend that domestic policy should trump international adventurism. President Obama will hear every argument that led previous Secretaries of State to make decisions they deeply regretted by the end of their tenures.

Some solutions are straightforward. The President can commit not to support peacekeeping missions if it is clear from the onset of planning that their design is fundamentally flawed and they lack the resources and commitment to be effective. The President can adopt many of the sensible recommendations of the Genocide Prevention Task Force and respond to crises with a much more preventive focus rather than waiting until they have escalated to the disastrous point where only poor policy alternatives remain. He can also take practical steps to expand American diplomatic presence around the globe, particularly in Africa, where many embassies remain woefully understaffed. The President and Secretary Clinton should also push hard to make sure that embassies are staffed with personnel who have specific regional expertise as well as a solid understanding of the complexities that attend peacemaking and post-conflict reconstruction.

In those situations where conflicts have already become intense, the President can take several crucial steps. Importantly, he can revive the spirit and practice of multilateral consultation and coordination that made earlier approaches to dealing with such conflicts more effective. The administration would be well-served by exploring the regional dimensions of the conflicts in Africa, and, given their complexity, avoiding the trap of treating these situations in isolation. Lastly, President Obama should assign talented and high-profile special envoys to take on the most difficult of conflicts, a policy he has embraced in the Middle East and with Afghanistan-Pakistan and promised to implement for Sudan. No matter how grim Somalia or Sudan may look today, these situations are not intractable, just as the situations in Liberia and Bosnia were not intractable.

Still, the hardest choice facing President Obama will be deeply personal. Will he stake his reputation on an honest conversation with the American public? Instead of explaining why we cannot act, will he passionately argue why we must? Instead of trying to contain crimes against humanity, will he move to stop them? In one sense, this President may be uniquely positioned to abandon his predecessor’s strategy for a very simple reason. His core constituency expects him to do so. Many of the President’s ardent supporters would view his administration’s failure to act robustly in the face of genocide as a fundamental

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45. Samantha Power, *Bystanders to Genocide*, ATLANTIC MONTHLY, Sept. 2001, at 84, 107-08.



betrayal of the ideals upon which he earlier campaigned. Since the dark days of the early 1990s, greater numbers of Americans now share the belief that the United States should play a role in stopping mass atrocities and war crimes when it can do so. This belief is reflected not only in the more than one million Americans who have become involved in Darfur activism, but also in the increased adherence to principles of prevention among scholars and policymakers.<sup>46</sup> Numerous groups, including the Enough Project, are working to expand and nurture this permanent constituency against mass atrocities and war crimes. Will public outcries be sufficient to ensure that President Obama overcomes the myriad bureaucratic forces in favor of inertia? The answer is difficult to predict. But it is clear that building a public constituency for robust action has often been the missing ingredient in the effort to combat genocide and war crimes.

### CONCLUSION

I wish the President every success in these vital endeavors, but I want to be clear that good intentions will not suffice. I, like many others, firmly believe that this country has a fundamental duty to combat genocide and war crimes. If President Obama is unwilling to fulfill that charge, then he should, and will, pay a growing political price for such intransigence.

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46. The Save Darfur Coalition alone has an e-mail distribution list of more than one million addresses. Save Darfur Coalition, M+R: Campaigns that Work, <http://www.mrss.com/savedarfur.html> (last visited Mar. 31, 2009).