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The Silent War

In February 2003, conflict in Darfur erupted bringing calamitous changes that included torture, annihilation of villages, massacres, and rape against the native people of Sudan, specifically the Fur, Masalit, and Zaghawa tribes. This deadly conflict was initiated by the Sudanese Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM). These rebel groups attacked the government's predominately Arab military forces at El Fasher, North Darfur on April 24-25, 2003, in response to allegations the government was oppressing the indigenous tribes of Western and Southern Sudan. In retaliation against the uprising and *false* accusations, President Omar Hassan al-Bashir employed a tactic called counterinsurgency against the Fur, Masalit, and Zaghawa tribes of the Darfur region. He deployed a militia commonly known as the Janjaweed – or devils on horseback – that crushed the revolt and established a capricious form of martial law.

Unfortunately, al-Bashir continued his scorched-earth techniques, spawning a myriad of human rights violations and war crimes¹ that were not addressed by the United Nations (U.N.) until 2007.² Under the U.N. Charter, peacekeeping operations can be deployed to the “most difficult physical, social, economic and political environments” around the world.³ There are three aspects to peacekeeping which include peacemaking, peace enforcement and peace-building. Peacemaking is responsible for addressing areas where conflict is in progress. Peace enforcement is able to implement coercive measures to restore “peace

¹ Enough, *Roots of the Crisis – Sudan*, N.D., <http://www.enoughproject.org/conflict_areas/darfur_southern_sudan/roots-crisis> (26 March 2013).

² "UNAMID Background - African Union/United Nations Hybrid operation in Darfur," N.D., <<http://www.un.org/en/peacekeeping/missions/unamid/background.shtml>> (22 April 2013).

³ "What is peacekeeping?," <<http://www.un.org/en/peacekeeping/operations/peacekeeping.shtml>>.

and security in situations where the Security Council has decided to act in the face of a threat to the peace, breach of the peace or acts of aggression.”⁴ Peace-building is responsible for “reducing the risk of lapsing or relapsing into conflict... by addressing core issues that affect the functioning of society and the State.”⁵ Each of these aspects forms a partnership which reinforces the other and increases the likelihood for successfully restoring peace and security.

Peacekeeping is administered by the U.N. Security Council whose primary responsibility is the “maintenance of international peace and security... and the restoration of the rule of law [through the] deployment of troops and police from around the globe.”⁶ A crucial element of peacekeeping is impartiality. Impartiality in U.N. peacekeeping forces “should not be confused with neutrality or inactivity [as it is necessary to remain] impartial in their dealings with the parties to the conflict, but not neutral in the execution of their mandate.”⁷ Furthermore, peacekeeping forces “should not shy away from a rigorous application of the principle of impartiality for fear of misinterpretation or retaliation.”⁸

In July 2007, the U.N. African Mission in Darfur (UNAMID) was established under Security Council Resolution 1769. The core mandate of this operation involved “protecting civilians, facilitating humanitarian aid, monitoring and verifying implementation of agreements, re-establishing the rule of law and assisting the political process in Darfur.”⁹ Regrettably, the passage of time has confirmed, that despite the intervention by the U.N. peacekeeping forces and vehement “outrage from around the world, demanding an end to the brutality, the deadly conflict continued.”¹⁰

⁴ What is peacekeeping?, <<http://www.un.org/en/peacekeeping/operations/peacekeeping.shtml>>.

⁵ What is peacekeeping?, <<http://www.un.org/en/peacekeeping/operations/peacekeeping.shtml>>.

⁶ “What is peacekeeping?,” N.D., <<http://www.un.org/en/peacekeeping/operations/peacekeeping.shtml>> (22 April 2013).

⁷ “Principles of UN peacekeeping,” N.D., <<http://www.un.org/en/peacekeeping/operations/principles.shtml>>, (26 April 2013).

⁸ “Principles of UN peacekeeping,” <<http://www.un.org/en/peacekeeping/operations/principles.shtml>>.

⁹ “African Union/United Nations Hybrid operation in Darfur (UNAMID),” N.D. <<http://www.un.org/en/peacekeeping/missions/unamid>> (22 April 2013).

¹⁰ Amnesty International, *History of the Darfur Conflict*, 2010, <<http://www.amnestyusa.org/our-work/countries/africa/sudan>> (6 March 2013).

In February 2013, following a decade of violence perpetrated by the Sudanese government against the Darfurians, the predominately Arab government of Sudan and the JEM rebel faction signed a cease fire agreement. Yet, as political scientists, historians, and scholars scrutinized the historical situation transpiring in Darfur, many question why peace enforcement wasn't at the forefront of the U.N. peacekeeping operation. By the time the U.N. intervened in 2007, there was irrefutable evidence that some of the "world's worst human rights and humanitarian catastrophes" had been perpetrated against the Fur, Masalit and Zaghawa.¹¹

A component within the U.N. Charter provides for peace enforcement, which utilizes coercive measures to ensure, the core mandate of, safeguarding civilians at risk. The International Criminal Court (ICC) is an example of coercive measures utilized with disappointing results. Elise Kepler, of the Human Rights Organization based in New York, states, "the U.N. Security Council needs to put more pressure on [the government of] Sudan to cooperate," in an effort to guarantee that al-Bashir and numerous Sudanese officials will appear before the ICC for prosecution.¹²

The ICC is the "first treaty-based permanent court" to be empowered with the authority to investigate persons accused of war crimes, crimes against humanity, and genocide.¹³ This court was founded on the Rome Statute, which dictates international communities can intervene only if "a state is 'unable' or 'unwilling' to carry out investigations or prosecutions" of accused perpetrators on their own.¹⁴ In 2004, Resolution 1564 was passed by the U.N. Security Council, declaring the ICC had the authority "to investigate reports of violations of international humanitarian law and human rights law in Darfur [and] to determine whether or not acts of genocide [had] occurred, and to identify the perpetrators of such

¹¹ Amnesty International, <<http://www.amnestyusa.org/our-work/countries/africa/sudan>>.

¹² "ICC Issues Second Arrest Warrant for Sudan's al-Bashir," *VOA - Voice of America English News - VOA News*, 11 July 2010, <<http://www.voanews.com/content/new-genocide-charges-warrant-for-sudan-president-98248329/121706.html>> (22 April 2013).

¹³ Alina Ioana Apreotesei. "Genocide and Other Minority Related Issues in Cases Before the International Criminal Court." *Miskolc Journal of International Law* 5, no. 2 (2008): 16-27.

¹⁴ Apreotesei. "Genocide...", 1.

violations with a view to ensuring that those responsible are held accountable.”¹⁵ Unlike any other international institution, the ICC received the highest recognition and ratification from twenty-two African states representing approximately twenty percent of the continent.

In 2005, the U.N. Security Council referred, for the first time, the case of Darfur to the ICC. This referral led to an in-depth investigation into the crimes allegedly committed in Darfur. The ICC engaged in a fact finding mission utilizing interviews with victims and witnesses, documents submitted by Nongovernmental organizations (NGO's), refugee testimonials and articles in the western news media.¹⁶ The ICC's Chief Prosecutor, Luis Moreno Ocampo, believed Sudanese President al-Bashir 'masterminded' the Darfur genocide.¹⁷ In response to this belief, he recommended the ICC's panel indict and issue arrest warrants for Omar Hassan al-Bashir, several Sudanese government officials, and members of the Janjaweed militia for the crime of genocide. Unfortunately, these arrest warrants have been ignored by African leaders and the African Union, effectively emancipating dangerous tyrants, enabling them to perpetuate their reign of terror.

The actions undertaken by the ICC in Darfur, Sudan have proven ineffective insofar as the arrest warrants, issued for al-Bashir and his proxy militia, the Janjaweed, continue to generate repercussions that “put people at risk.”¹⁸ Many believe the pursuit of peace, in war-torn Sudan, should be the priority.¹⁹ The African Union views the decisions of the ICC as a “new form of Western imperialism,” that complicates and fuels the constant debate over an atrocity that should have ended long ago.²⁰

These fears concerning the ascendancy of 'western imperialism' are not without merit. The government of Sudan responded adversely to the arrest warrants issued by the ICC, using them as

¹⁵ Apreotesei, “Genocide...”, 4.

¹⁶ John Prendergast and Colin Thomas-Jensen, "Darfur," 2011, <<http://www.crimsofwar.org/a-z-guide/darfur/>>, (26 April 2013).

¹⁷ Peter Goodspeed, "Sudan President 'Masterminded' Darfur Genocide: ICC," *National Post | Canadian News, Financial News and Opinion*, 14 July 2008, <<http://www.nationalpost.com/news/story.html?id=654422>> (March 26, 2013).

¹⁸ *Darfur and the ICC...*, <<http://www.hrw.org/news/2009/03/27/darfur-and-icc-myths-versus-reality>>.

¹⁹ *Darfur and the ICC...*, <<http://www.hrw.org/news/2009/03/27/darfur-and-icc-myths-versus-reality>>.

²⁰ *Darfur and the ICC...*, <<http://www.hrw.org/news/2009/03/27/darfur-and-icc-myths-versus-reality>>.

provocation to complicate the desperate circumstances of the indigenous people. A blatant, detrimental response involved the expulsion of thirteen humanitarian aid organizations which comprised roughly forty percent of the aid Sudanese refugees and IDP's received.²¹ The eviction of these aid organizations left the Darfuri people vulnerable, exposing them to attacks sponsored by the government of Sudan and executed by the Janjaweed militia.

The expulsion of the humanitarian aid groups from Sudan affected not only Darfur, but the rest of Sudan and the surrounding countries as well. These organizations provided supplies, necessary for any hope of survival, to the refugees fleeing Darfur and migrating into surrounding regions.²² Unfortunately, the remaining humanitarian aid organizations that al-Bashir allowed to remain, were unable to provide the essential provisions for everyone once cared for by outside nongovernmental (NGO) humanitarian aid organizations. The ICC's indictment of al-Bashir corresponds to the expulsion of humanitarian aid organizations and demonstrates how difficult it can be to anticipate the retaliatory effects these actions may precipitate.

Julie Flint, a filmmaker and author of several articles relating to the crisis in Darfur,²³ said, "the ICC is a blunt sword – there are other, less risky forms of justice."²⁴ Flint believes actions such as reparations, reconciliation, and justice should be ranked as lower priorities. She advocates peace first. However, the ICC Prosecutor Moreno Ocampo refutes this argument declaring a lasting peace cannot be achieved without justice. Ocampo firmly believes that removing and bringing to justice any who might attempt to revive the genocide, against the peoples of the Fur, Masalit, and Zaghawa tribes in Darfur, will inevitably engender an era of sustainable peace to the war-torn land of Sudan.

²¹ *The Devil Came On Horseback*. DVD. Directed by Annie Sundberg. (2007; US: Break Thru Films, 2013).

²² *Darfur and the ICC...*, <<http://www.hrw.org/news/2009/03/27/darfur-and-icc-myths-versus-reality>>.

²³ Adam Dawelbait, "Julie Flint and Darfur Crises," in *Sudan Tribune*, 6 March 2010, <http://www.sudantribune.com/spip.php?page=imprimable&id_article=34363> (26 March 2013).

²⁴ Julie Flint, "Sudan: Justice and Hunger," N.D., <<http://africanarguments.org/2009/03/06/justice-and-hunger/>> (26 March 2013).

Moreover, Flint calls attention to the fact that Sudanese President, Omar Hassan al-Bashir, does not feel obligated to cooperate or acquiesce to the ICC. Bashir claims he is exempt from prosecution by the ICC because, even though Sudan signed the Rome Statute it has yet to ratify it.²⁵ The ICC disagrees, insisting they have jurisdictional rights over the crimes committed. Their authority remains intact, over war crimes, crimes against humanity, and genocide. This debate over jurisdictional boundaries blurs the effectiveness of the ICC further complicating an already volatile situation.

John Bolton, ex-general counsel for the U.S. Agency for International Development and America's ambassador to the U.N. under President Bush,²⁶ stated "the ICC lacks effective oversight... [and] graphically demonstrates why [it] is fundamentally flawed."²⁷ Bolton has realized the ICC is "marginally effective, poorly administered, and its priorities diffuse," especially in Darfur.²⁸ In essence, Bolton believes enough research has been done to understand the fracas between power and conflict in Sudan. Bolton, Julie Flint and Alex de Waal, who is the executive director of the World Peace Fund and a foremost expert on the Sudan, believe it is imperative to act responsibly to end this silent horror.

Bolton does not support the actions taken by the ICC. Instead, he wants to empower the Sudanese peopling providing them with the opportunity to overthrow al-Bashir under their own power. Bolton believes this would give the native people the authority to determine the punishment they would enact against al-Bashir and the Janjaweed militia. He advocates a coup be carried out by the surviving civilians of Darfur and the formation of a new regime ruled by these people.

Unfortunately, Bolton's proposal seems to dismiss the fact that the Sudanese Liberation Army was comprised primarily of the Fur, Masalit and Zaghawa ethnic groups who experienced devastating

²⁵ Mithre J. Sandrasagra, "RIGHTS: Sudan Rejects ICC Warrants on Darfur," N.D., <<http://www.ipsnews.net/2007/05/rights-sudan-rejects-icc-warrants-on-darfur/>> (26 March 2013).

²⁶ "John Bolton Biography (Political Figure)," 2013, <<http://Infoplease.com>> (21 Apr. 2013).

²⁷ John Bolton, "Sudanese Dictator Thumbs His Nose at U.N.'s 'Criminal Court,'" 25 March 2009, <<http://www.humanevents.com/2009/03/25/sudanese-dictator-thumbs-his-nose-at-uns-criminal-court/>> (26 March 2013).

²⁸ John Bolton, "Courting Disaster," N.D., <<http://archive.frontpagemag.com/readArticle.aspx?ARTID=35853>> (26 March 2013).

consequences, when they pursued a rebellion against al Bashir's government in 2003. After suffering the rout of 2003, and enduring a decade of genocide and displacement it seems unrealistic that the Fur, Masalit and Zaghawa tribes could execute a successful coup against the government who intentionally sought to oppress them, simply because they were non-Arab Sudanese. It would appear, Bolton is suggesting the 'symptom' should treat the 'problem'.

The Center for American Progress along with the International Crisis Group co-founded the Enough Project in 2007. The stated mission of the Enough Project is to "end genocide and crimes against humanity."²⁹ This group actively conducts research in conflict areas to "raise awareness and facilitate initiatives [that will motivate] actions to address human rights crimes."³⁰ The Enough Project recognizes the effort the ICC has put forth in bringing this atrocity to an end.³¹ It supports the ICC's indictment of Omar al-Bashir and other Sudanese government officials, believing the court is making a good effort "towards accountability for genocide, war crimes, and crimes against humanity in Darfur."³²

Although the ICC intended the arrest warrants against Sudanese political figures and the Janjaweed to make the situation better in Darfur, a "major weakness [was exposed when the world realized] the ICC could issue indictments and arrest warrants yet lacked the army or police force capable of enforcement. Without 'teeth' to enforce its dictates, the ICC must rely on cooperation from [member] states [who are bound by Security Council Resolution 1593] to deliver war criminals to The Hague."³³ Security Council Resolution 1593, adopted in March 2005, requires that all member states cooperate fully with the ICC, executing their due diligence in apprehending war criminals. The Security Council considers Resolution 1593 binding, stating that it "obligates Sudan to cooperate with the [International Criminal] court."³⁴

²⁹ Enough, <http://www.enoughproject.org/conflict_areas/darfur_southern_sudan/roots-crisis>.

³⁰ "Enough Project," 2012, <<http://www.enoughproject.org/>> (26 April 2013).

³¹ Enough, <http://www.enoughproject.org/conflict_areas/darfur_southern_sudan/roots-crisis>.

³² Enough, <http://www.enoughproject.org/conflict_areas/darfur_southern_sudan/roots-crisis>.

³³ "International Criminal Court," *World Politics News Review*, 18 March 2012, <<http://worldpoliticsblog.wordpress.com/tag/international-criminal-court/>> (22 April 2013).

³⁴ *Darfur and the ICC...*, <<http://www.hrw.org/news/2009/03/27/darfur-and-icc-myths-versus-reality>>.

However, al-Bashir has traveled outside Sudan to member states of the ICC and has not been arrested or detained, creating a gap even the authority of the ICC cannot bridge. This separation, between member state compliance and apathy, has been complicated by a declaration from the African Union (AU) and several Middle Eastern states who claim they will not recognize indictments from the ICC. Furthermore, they will not hand over anyone accused of committing crimes by the ICC.³⁵ This revelation by the African Union and others continues to undermine the capability of the ICC to enforce its rulings.

Alex de Waal, a British writer and researcher on African issues, studied the “effects of famine, war, genocide, and the HIV/AIDS epidemics in Africa.”³⁶ He is convinced the “ICC...is badly misguided and that the Court’s Prosecutor [Luis Moreno Ocampo needs to establish procedures which will] assess the impact [their] actions [have actually had] on” the people of Darfur.³⁷ He accuses the ICC of engaging in action, prior to analyzing the repercussions that might result. De Waal condemns this approach alleging that the efforts of humanitarian aid organizations to improve stability are constantly thwarted, which aggravate the relationship between the ICC and the Sudanese government.³⁸ Although de Waal recognizes that obstinate security issues continue to expose the people of Darfur to risk, he observes these same security issues continue to impede the effectiveness of the ICC.

According to Eric Reeves, a “consultant to a number of human rights and humanitarian aid organizations operating in Sudan,”³⁹ de Waal fails to grasp the realities of the Darfur Crisis. Reeves, strongly supports the actions of the ICC believing “there is no peace process to be compromised.”⁴⁰ De Waal, however disagrees, stating justice is getting in the way of saving lives in Darfur. The ICC’s Chief Prosecutor

³⁵ *The Devil Came On Horseback*. DVD.

³⁵ *Darfur and the ICC...*, <<http://www.hrw.org/news/2009/03/27/darfur-and-icc-myths-versus-reality>>.

³⁶ "Alex de Waal – Speaker," 2013, <http://fora.tv/speaker/6695/Alex_de_Waal> (21 Apr. 2013).

³⁷ Eric Reeves, "Pursuing Peace and Justice in Darfur: The Role of the ICC," N.D., <<http://www.sudanreeves.org/2008/06/30/pursuing-peace-and-justice-in-darfur-the-role-of-the-icc/>> (26 March 2013).

³⁸ Alex De Waal, "Sudanese Uncharted Waters," N.D., <<http://africanarguments.org/2009/03/05/unchartered-waters/>> (26 March 2013).

³⁹ Reeves, <<http://www.sudanreeves.org/2008/06/30/pursuing-peace-and-justice-in-darfur-the-role-of-the-icc/>>.

⁴⁰ Reeves.

believes pursuing peace as the first priority, is misguided. He emphasizes the pursuit peace before justice will prevent the Darfur atrocity from ending. Reeves, speculates that debating the semantics of peace versus justice will merely complicate relief efforts directed at intervention in Darfur. Ocampo has seen the consequences of peace before justice during his tenure with the ICC. While serving as chief prosecutor in several South American and African countries, he witnessed the retaliatory actions by perpetrators who weren't removed. Unfortunately, history has verified that ousting despots often complicates a situation rather than alleviating it.

John Bolton points out the arrest warrants, issued for Sudanese President al-Bashir, have not achieved the intended outcomes of pressuring al-Bashir to halt the torture, massacres, rape and genocide in Darfur. He expresses alarm, convinced that the ICC and member states have only strengthened Bashir's stranglehold and enabling him to continue exploiting the Fur, Masalit and Zaghawa tribes.

Peter Goodspeed, an "award winning reporter" who wrote, "Sudan President 'Masterminded' Darfur Genocide" for the *National Post*,⁴¹ makes a strong argument that the ICC has impeded efforts by indicting political figures and serving unenforceable arrest warrants. The impotence of the ICC has thwarted the negotiation of peace with the Sudanese government, who sides with al-Bashir.⁴² Sudanese officials consider the warrants a ruse to undermine the stability and unity of Sudan.

As the debate continues, the ICC finds itself alienated from member states and world powers. One has only to look at the structure of the ICC to realize they are engulfed with internal struggles, as they try to reconcile the authority given them by the U.N. and the inability to successfully execute that responsibility. The absence of a law enforcement branch in the ICC makes many countries wary of their image as a "new form of Western imperialism."⁴³ They express grave concerns regarding the ability of the ICC to achieve

⁴¹ Goodspeed, <<http://www.nationalpost.com/news/story.html?id=654422>>.

⁴² Goodspeed, <<http://www.nationalpost.com/news/story.html?id=654422>>.

⁴³ Bolton, "Courting Disaster."

permanent change in physically and politically difficult environments under their jurisdiction, asserting they often precipitate negative repercussions.

A common misperception throughout the African and Middle Eastern world is the opinion that the ICC is a covert instrument of Western Imperialism, bent on exerting their dominance in countries embroiled in crisis. To support this claim, leaders throughout the Islamic world argue that the arrest warrants represent double standards and demonstrate selectivity in regards to war crimes. They assert that “no ad hoc tribunals were established to investigate war crimes committed by any of the five permanent members of the U.N. Security Council or those nations these powerful states might wish to protect.”⁴⁴ African leaders criticize the ICC for turning a blind eye on other cases of human rights violations around the world, pointing specifically to those committed by the U.S. and Britain in Iraq and Afghanistan.

For many Africans the ICC is rapidly emerging as a Western court guilty of imposing its attitudes of ‘superiority’ concerning African war crimes and crimes against humanity. Unfortunately the majority of these claims depict the ICC as a corrupt court that disregards how their indictments will impact the African people,⁴⁵ possibly destabilizing physically and politically difficult environments within Africa.

In spite of the wide spread ambivalence surrounding the ICC, it still retains staunch supporters. Many believe the “[arrest] warrant [for al-Bashir] can marginalize his power [and] relax his [brutal] grip... preventing further crimes.”⁴⁶ The international community is optimistic that al-Bashir’s power will wane as time passes and the Sudanese people grow weary of war and famine. Unfortunately, this has yet to happen. Instead, al-Bashir continues his ‘counterinsurgency’, which Ocampo and the ICC have determined to be genocide. To date, the death toll is estimated to exceed 500,000 people. Many advocate that strategic planning and execution would have protected those at risk, while the ICC once again, finds themselves torn

⁴⁴ New African Magazine, *ICC: A Tool To Recolonise Africa*, N.D., <<http://www.newafricanmagazine.com/special-reports/sector-reports/icc-vs-africa/icc-a-tool-to-recolonise-africa>> (6 April 2013).

⁴⁵ New African Magazine, <<http://www.newafricanmagazine.com/special-reports/sector-reports/icc-vs-africa/icc-a-tool-to-recolonise-africa>>.

⁴⁶ *Darfur and the ICC...*, <<http://www.hrw.org/news/2009/03/27/darfur-and-icc-myths-versus-reality>>.

between authority and responsibility. As the ICC grapples with adhering to its original purpose of “ensuring that crimes against humanity and mass atrocities do not occur with impunity” they must also wrestle with their own shortcomings.⁴⁷ It is imperative that atrocities, like genocide and crimes against humanity, point resolutely to the silent horrors that demand justice.

On September 9, 2004 United States Secretary of State Colin Powell declared, in a testimony before the Senate of Foreign Relations Committee, that the on-going conflict in Darfur, Sudan was genocide. Less than a year later, on June 1, 2005, President Bush declared “that the killings in Sudan’s Darfur region constituted genocide,” and called for the doubling of international troops in Darfur.⁴⁸ While this declaration corroborated Colin Powell’s claim of genocide and appeased lawmakers and human rights groups, the U.N. argued that the situation in Darfur was “tantamount to crimes against humanity, but not technically genocide.”⁴⁹ In the book *Not On Our Watch* by John Prendergast and Don Cheadle, the authors substantiate that genocide occurred in Darfur based on their interviews with refugees and events they both witnessed during their time along the border of Sudan and Chad.⁵⁰ Genocide, from Article 6 of the Rome Statute, is defined by the international community as:

any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, radical 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

⁴⁷ Thaddeus McRae, *Origin and purpose of the International Criminal Court*, 5 April 2012, <<http://blog.invisiblechildren.com/2012/04/05/origin-and-purpose-of-the-international-criminal-court/>> (24 April 2013).

⁴⁸ Jim VandeHei, "In Break With U.N., Bush Calls Sudan Killings Genocide," *The Washington Post*, 2 June 2005, <<http://www.washingtonpost.com/wp-dyn/content/article/2005/06/01/AR2005060101725.html>> (21 Apr. 2013).

⁴⁹ World Without Genocide, "Darfur Genocide," 2012, <<http://worldwithoutgenocide.org/genocides-and-conflicts/darfur-genocide>> (6 April 2013).

⁵⁰ Don Cheadle and John Prendergast. *Not on our watch: the mission to end genocide in Darfur and beyond* (New York: Hyperion, 2007), 10.

part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.⁵¹

The Darfur atrocity has met every aspect of the internationally accepted definition of genocide. Moreover, countries including Great Britain, France, United States, most Latin American countries, Japan, and several other European democratic countries, concur that this atrocity is genocide; whereas countries that developed under communist rule or a dictatorship, such as Russia, China, Libya, Uganda, Turkey, and Burkina Faso, believe this atrocity is made up only of war crimes and crimes against humanity.

As the debate over terminology raged, the ICC felt obligated to investigate three aspects of the definition of genocide, which include (a) *actus reus*, (b) *mens rea*, and (c) the “concept of a protected group of people.”⁵² In the months following this investigation, the ICC determined that the atrocity in Darfur met only two of the three prescribed aspects of this definition. The decision and lack of enforceable action of the ICC has angered several countries who hoped the ICC would intervene ending a terrible crisis that should have ended long ago. Moreno Ocampo, the ICC’s chief prosecutor, continues to believe al-Bashir is the mastermind behind the counterinsurgency and deaths in Sudan. The ICC however, is unable to do anything more than indict the men they believe to be responsible. Fortunately, under the definition of liability if one government official, such as al-Bashir, is found guilty of genocide then, by association, Sudan would “be found responsible of genocide.”⁵³

To prove the guilt of these perpetrators, the ICC has “presented a new theory of liability: control over the crime.”⁵⁴ This theory:

is based on the idea that where a criminal offense is committed by a plurality of persons who have coordinated their contributions in order to realize the objective elements of a crime, any person

⁵¹ Apreotesei. "Genocide...", 7.

⁵² Apreotesei. "Genocide...", 4.

⁵³ Apreotesei. "Genocide...", 7.

⁵⁴ Alina Ioana Apreotesei, "The International Court At Work: The First Cases and Situations." *Eyes on the ICC* 5, no. 1 (2008): 11.

can be held responsible for the acts of others and therefore be considered principally liable for the crime.⁵⁵

Unfortunately, even after the Western world had declared this silent horror, genocide, nothing has been done to halt it. The inability of the ICC to enforce their arrest warrants, coupled with the indifference of member states, the death toll has become staggering. The counterinsurgency in Darfur has generated “an appalling degree of ...destruction [and yet] accountability remains almost nonexistent.”⁵⁶

Though some would consider the ICC an unwitting accomplice to the ongoing atrocities in Darfur, this same accusation can be leveled against the international world and the member states that declined to enforce the arrest warrants through their indifference. Sadly, the distraction regarding an accurate definition of the atrocities committed in Darfur, has enabled the international community and member states to remain apathetic. There is a quote by an anonymous author that states, “You have to decide, even to hesitate.” This hesitation, by the international world and member states, has allowed al-Bashir to pursue apartheid against the Sudanese people and their land, contributing to the ineffectiveness of the ICC.

The ICC was founded to administer justice for “crimes against humanity and mass atrocities... [so they] do not occur with impunity.”⁵⁷ Unfortunately, this organization has struggled, in the absence of their own police force, to bring justice to Darfur, allowing the crimes against indigenous communities and their women and children to continue unabated. Christine Chung, a senior trial attorney at the ICC, states the Darfur case was referred by the U.N. Security Council, and it is their responsibility to enforce the arrest warrants the ICC has issued. Deplorably, the Security Council has not authorized a police force which leaves millions of people vulnerable to al-Bashir’s counterinsurgency.

⁵⁵ Apreotesei, "The International Court...", 11.

⁵⁶ Apreotesei, "The International Court...", 2.

⁵⁷ McRae, <<http://blog.invisiblechildren.com/2012/04/05/origin-and-purpose-of-the-international-criminal-court/>> .

American author and Nobel laureate William Faulkner said, “the past isn’t dead. It isn’t even past.”⁵⁸ This quote poignantly addresses the enduring and troubling legacy of discrimination perpetrated against indigenous ethnic groups around the world, “determining where we have been, where we are, and where we will go.”⁵⁹ As the international world rushes to judge the ICC’s cycle of ‘effectiveness’, their conclusions must rest on more than the debate over terminology and the potential for collateral damage.

Dr. Kurt Mills, lecturer on International Human Rights said, “the existence of the ICC may serve to deflect attention away from...actions necessary to stop [this] atrocity.”⁶⁰ Though prudence dictates intervention is imperative, dilemmas over indictments that complicate the conflict, the endangering of indigenous people, and the semantic debate over terminology only continues to thwart the effectiveness of the ICC.

⁵⁸ Ian C. Friedman, "Words Matter," 2010, <<http://www.iancfriedman.com/?p=22>> (24 April 2013).

⁵⁹ Friedman, <<http://www.iancfriedman.com/?p=22>>.

⁶⁰ Kurt Mills, "Which Responsibility in Darfur." *Peace Review: A Journal of Social Justice* 20, no. 2 (2008): 178.

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