

The Unbearable Constancy of Atrocity Crimes in Darfur and the Eastern Congo

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¶1 On 5 and 6 October 2006, the Center for International Human Rights at Northwestern University School of Law convened, in partnership with Catholic University in Leuven, Belgium, the Fifth Annual Transatlantic Dialogue on a human rights issue of exceptional concern to the international community. For years—since 2003 in Darfur, Sudan, and since at least 1998 in the eastern region of the Democratic Republic of the Congo (eastern DRC)—massive atrocities have overwhelmed the civilian populations in Darfur and eastern DRC and resulted in millions of deaths and injuries and almost unlimited property and agricultural damage. Indeed, the situation in eastern DRC has resulted in the greatest number of deaths—estimated at around four million—of any mass atrocity on the African continent or anywhere else in modern times. The relentless ethnic cleansing of African tribes people from Darfur has surpassed the ravaging of Bosnia and Herzegovina in the early 1990s and led to an estimated 200,000 deaths and 2.5 million displaced persons.

¶2 The purpose of the October 2006 conference on *The Humanitarian Crises in Darfur and the Democratic Republic of the Congo* was to examine accurately the fate of these two regions in the context of the *atrocity crimes*—namely, genocide, crimes against humanity, and war crimes¹—that were shaping the horrific outcomes in the lives of so many millions of innocent victims and then to offer some proposals for how to reduce the violence and seek a more stable and peaceful outcome for oppressed people. My colleague at Northwestern University School of Law, Professor Steve Sawyer, and I had no illusions about the limitations of what we could accomplish in an academic setting on the shores of Lake Michigan. But at least I naively wondered in early 2006 whether the two regions would remain topical targets of inquiry by the fall of that year. Negotiations were underway with Sudan and the rebel groups in Darfur which indeed resulted in the Darfur Peace Agreement of 5 May 2006.² The U.N. peacekeeping operation in the

¹ A discussion of the term “atrocity crimes” can be found in David Scheffer, *Genocide and Atrocity Crimes*, 1 GENOCIDE STUDIES AND PREVENTION 1, 229-50 (2006); and David Scheffer, *The Merits of Unifying Terms: ‘Atrocity Crimes’ and ‘Atrocity Law,’* 2 GENOCIDE STUDIES AND PREVENTION 1, 91-96 (2007).

² The Darfur Peace Agreement, signed on 5 May 2006 in Abuja, Nigeria, can be accessed at <http://allafrica.com/peaceafrica/resources/view/00010926.pdf>.

eastern DRC, MONUC, was picking up steam and the worst of the atrocities appeared to be abating.³ But the unbearable constancy of the atrocity crimes in Darfur and the eastern Congo proved unchallenged by October of 2006 and we knew, unfortunately, that the conference had as much, if not more, relevancy than when the initial plans were made so many months before. Through publication of much of what was discussed at the conference in this issue of the *Northwestern Journal of International Human Rights*, which co-sponsored the event, we hope the key elements of what the participating experts examined and proposed can resonate in policy circles where such information and unsolicited advice always needs to be heard even if decision-makers sometimes think otherwise.

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The *Journal* editors selected six of the presentations at the conference for publication. Their diverse range of opinion and analysis has lost none of its saliency today as the situation in both regions remains dire. The first article records the opening address of the Honorable Barbara Masekela, who is the Ambassador of the Republic of South Africa to the United States. She provides an essential African perspective from perhaps the leading government in diplomatic endeavors on the continent. Ambassador Masekela's remarks proved somewhat provocative and unconventional, at least to a Western audience, as she did not jump onto any interventionist bandwagon for either Darfur or the eastern DRC. Rather, she speaks of an African methodology of "a collective and inclusive effort" that avoids "making unconditional demands," which "is more often than not a recipe for failure." She stresses the need for lasting solutions and counsels against quick humanitarian fixes. Her government's preference clearly is to work through the African Union to "both safeguard the people of Darfur and have the support of all the stakeholders in Sudan." Ambassador Masekela seeks "constructive dialogue" for "the kind of world we all hope for." Hers is a sobering point of view, one that triggered both admiration for its frankness and consternation at its seeming unwillingness to act boldly to stop the atrocity crimes and bring relief to the peoples of Darfur and the eastern DRC in real time.

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The second article is Professor Jan Wouters' comprehensive and penetrating insight into "The Transatlantic Dialogue on Africa," which should well serve scholars, the non-governmental community, and government officials in understanding the American and European relationships with and respective interests in Africa. Among the points raised by Professor Wouters are the pragmatic realities of energy needs and counterterrorism swamping the rhetoric of democracy, human rights, rule of law, and good governance. He stresses the critical role multilateral institutions are playing in Africa, how the United States and the European Union are strengthening their cooperation in enhancing African Union capacity for peace support operations, and their mutual dialogue on the aspirational aims for Africa in promoting democracy, human rights, rule of law, and good governance. Professor Wouters also offers an interesting view on the problem of migration and how Europe simply cannot immunize itself from "ever stronger migratory pressures" and the "rather painful gap between words and deeds in the transatlantic dialogue" regarding development aims and trade, particularly in EU and U.S. agricultural policies that undercut African efforts to join the global market. All

³ The United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) is described at <http://www.un.org/Depts/dpko/missions/monuc/>.

of these points need to be considered and factored into effective responses to the humanitarian crises in Darfur and the eastern Congo.

¶5 Eric Reeves, Professor of English Language and Literature at Smith College and one of the world's foremost observers and commentators on the situation in Darfur,⁴ writes in "Darfur: 'A very inconvenient development'" that, "Rather than confront the difficult challenges in halting vast, ethnically-targeted human destruction, all international actors of consequence settled for political and diplomatic half-measures, or merely symbolic measures—and too often allowed, for convenience's sake, the crisis to be defined as essentially humanitarian in nature, with an overlay of unfortunate tribal conflicts animated by competition for diminishing natural resources." Professor Reeves recognizes the international community's haphazard and often very blinkered approach to Darfur, and his perspective contrasts sharply from that offered by Ambassador Masekela. He points to the difficulties in implementing U.N. Security Council Resolution 1706 (31 August 2006), a prescient observation given the fact that by the summer of 2007 that resolution—aimed at deploying a robust force of 22,500 troops and security personnel into Darfur—continued to remain only partially implemented and its core purpose of providing region-wide security in Darfur almost completely unfulfilled. Professor Reeves' skepticism remains well-founded, unfortunately, and his lament that the "emerging legal norm of a 'responsibility to protect' ...has been so abjectly abandoned" is right on the mark.

¶6 The fourth article on "Humanitarian and Security Challenges" is by Steven Lenahan, the Executive Officer, Corporate Affairs, of AngloGold Ashanti Limited, headquartered in South Africa. Mr. Lenahan describes how his mining company dealt with an extortion payment of \$8,000 to a militia group, the Front for National Integration, in the Ituri region of northeastern DRC in January 2005. His is a frank and even remarkable admission of conduct. He writes "that this was quite obviously inconsistent with both our own business principles and commonly accepted conventions for the protection of human rights." Mr. Lenahan sets forth the lessons learned from the incident, which include the need for corporate transparency regarding the corporation's business activities, the primacy of sustaining integrity in its operations (failing which the corporation should leave the region), the importance of being guided by the wide range of voluntary standards for corporate human rights responsibility (including the U.N. Global Compact), taking formal steps to become a formal subscriber to the Voluntary Principles on Security and Human Rights, and a far deeper engagement with local initiatives to address the consequences of poverty and enhance the development of communities in the mining area. Mr. Lenahan recognizes that both equities—foreign direct investment (which develops local human capital and a sustainable economy) and the basket of protection of human rights, promotion of democracy, and eradication of poverty—must be simultaneously pursued in the Ituri.

¶7 In the fifth article, "The Options for U.S. Policy on Darfur," Richard S. Williamson, who is a partner of the international law firm of Mayer, Brown, Rowe & Maw and, among many past government postings, is a former U.S. Representative to the U.N. Commission on Human Rights, sets forth an excellent overview of the situation in Darfur and recommendations for how to shape U.S. and international policy. Citing the procrastination and obfuscation of the international community, Williamson asks, "Isn't it

⁴ See ERIC REEVES, *A LONG DAY'S DYING* (2007).

time to leave our dreamworld and address the raw, grim, horrific reality in Darfur?" He recommends an increase in humanitarian assistance, a Security Council freeze on the assets and commercial activities of Sudan's leadership and rebel leaders, NATO and U.S. help for International Criminal Court Prosecutor Luis Moreno Ocampo to gather evidence of atrocity crimes in Darfur, NATO logistical support for peacekeepers and a NATO no-fly zone over Darfur, and a U.N. Charter Chapter VII peacekeeping force on the ground in Darfur with or without acquiescence from Khartoum.

¶8 Finally, John Prendergast, who in October 2006 was a senior adviser with the International Crisis Group in Washington, D.C., and is now Co-Chair of ENOUGH, a non-governmental organization focusing on stopping and preventing genocide and mass atrocities, offers one of the most penetrating analyses of the situation in Darfur, drawing upon his long years of work in Africa and his many visits to eastern Chad and to Darfur since 2003.⁵ He is critical about the U.S. policy of "gentle persuasion" and concludes, "It doesn't seem to have worked." He argues for multilateral punitive measures as an alternative both to the gentle persuasion approach and to the military intervention battle-cry. Mr. Prendergast points to economic, political, judicial, and military initiatives that should be undertaken to bring enough pressure onto Khartoum to reverse its devastating policies in Darfur. The primary judicial initiative would be for the United States to provide support to the International Criminal Court, which is seized with the situation in Darfur and has been actively engaged in investigating and, in early 2007, indicting leading Sudanese government and Janjaweed militia leaders on charges of perpetrating atrocity crimes.⁶ Among the military measures would be a no-fly zone and the use of force to create safe havens in a non-consensual environment. In sum, Mr. Prendergast argues that, "We've barked but we haven't bitten." I would add that what Richard Williamson and John Prendergast propose is to bite smartly and tactfully to make real change occur in the ethnically cleansed terrain of Darfur.

¶9 These are among the most profound issues of our time, and I hope the readers of this issue of the *Northwestern Journal of International Human Rights* not only will learn more about the atrocities discussed here, but also recognize that every effort must be made by governments, the non-governmental community, international organizations, and the private sector to stop these senseless slaughters and mass displacements of human beings just trying to live normal lives.

⁵ See DON CREADLE & JOHN PRENDERGAST, *NOT ON OUR WATCH* (2007).

⁶ The official record of International Criminal Court documents on the Darfur investigations and prosecutions can be accessed at <http://www.icc-cpi.int/cases/Darfur.html>.