

IS THE BRUTALITY IN SUDAN GENOCIDE?

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It is without question the worst humanitarian catastrophe in the world today, with more than 30,000 dead and a million people driven from their homes, trapped in the searing desert heat without reliable supplies of food, water or medicine.

But are the people of Darfur victims of genocide? Do the atrocities visited on the farming families of western Sudan qualify as an organized, planned campaign of ethnic cleansing, or are they some lesser brutality?

While the conflict raged on this week (yesterday, Chad's army killed 69 Arab militiamen and a new United Nations report said that more than 16,000 children are suffering from malnutrition in the region), a bitter debate over the precise meaning of genocide and the status of the Sudanese conflict burst into the open, dividing the international community and threatening to further delay action to bring peace to the region.

The conflict cuts to a central dilemma in international law: If a conflict is proven to be genocidal, then the world's major powers are required under UN treaties to take action to stop it. But this burden of proof has itself become a hindrance to international action. Some observers have begun to complain that the concept of genocide, which entered international law as a result of the Holocaust committed by Nazis, has become so stringent and so difficult to apply that it should be abandoned in situations such as that of Sudan.

It is an argument that bears a sickening resemblance to a debate that took place almost exactly 10 years ago, when the world waffled over the precise status of what became known as the Rwandan genocide as more than 500,000 Tutsis and politically moderate Hutus were hacked to death by Hutus over 100 days. World leaders resolved not to let this happen again, but many of this week's disputes sounded uncannily familiar.

All week, top diplomats such as U.S. Secretary of State Colin Powell and Allan Rock, Canada's ambassador to the United Nations, have described the crisis in stark and urgent tones while deliberately avoiding use of the word genocide.

"Based on reports that I have received, I can't at this stage call it genocide," UN Secretary-General Kofi Annan offered Thursday."

"There are massive violations of international humanitarian law, but I am not ready to describe it as genocide or ethnic cleansing yet."

But according to The New York Times, senior White House officials are now considering upgrading the catastrophe's status from "ethnic cleansing" to "genocide," in part because of pressure from evangelical Christian groups.

The distinction is legally crucial. If Darfur is genocide, then the countries that have signed the UN Convention on Prevention and Punishment of the Crime of Genocide are required under Chapter VII of the UN charter to use armed force to put an immediate end to the conflict.

The 1948 convention provides a stringent definition of genocide. It must involve "acts committed with intent to destroy, in whole or part, a national, ethnical, racial or religious group," including killing, physically or mentally harming or preventing childbirth among members of the group, removing the group's children or imposing physical conditions that will destroy the group.

Human-rights groups say that Darfur easily fits into this definition, and that avoiding the genocide label is immoral. For much of the past year, nomadic "Arab" warriors known as Janjaweed have been slaughtering "black" farmers (the racial distinctions are not rooted in physical or religious differences) driving them out of their villages, killing their children, raping the women, taking the cattle and burning the buildings, often with support from Sudanese government bombers and the Khartoum government < an apparent effort to seize control of the region's natural resources.

"These people have not been displaced because they are involved in some age-old conflict. They've been displaced because of targeted attacks on civilians," said Leslie Lefkow, a researcher with Human Rights Watch in Amsterdam who returned from the region this week.

"There hasn't actually been a lot of fighting. There have been attacks and burnings and rapes, and it has clearly taken place with the knowledge and assistance of Khartoum. The people cannot leave the refugee camps because they will be raped or killed; it is the successful displacing of an entire population from rural areas."

Groups such as Human Rights Watch and Amnesty International have assembled sizable dossiers of research to show that the Darfur action involves a targeted attempt to eliminate the agrarian ethnic groups of western Sudan. They say that this easily qualifies as genocide.

"The step to be taken now is really to go the next step and consider Chapter

VII action at the Security Council," Ms. Lefkowitz said. "This would have political value because [of] the message sent to Khartoum, that the international community is not going to stand by and let this happen."

But governments and the UN have run into problems with two words in the genocide convention: with intent. While the Janjaweed raids may have come close to wiping out the rural ethnic groups of Darfur, it is difficult to prove that this is the specifically intended goal of the Khartoum regime. Human-rights groups have assembled numerous instances of Sudanese warriors declaring their genocidal intent, but the UN and some governments are waiting for documents or reports linking the actions directly to Khartoum.

A very similar debate took place in 1994, while the Rwanda slaughter was taking place. Harvard University scholar Samantha Power, whose book, *A Problem from Hell*, chronicles this period, found a U.S. Defence Department memo from May of 1994 warning officials to "Be careful. Legal [office] at State [Department] was worried about this yesterday. A genocide finding could commit us to actually 'do something.' " Of course, the United States and other countries did nothing, a failure that has led some activists and scholars to question whether the emphasis on proving genocidal intent is really necessary. Some say that "circumstantial" evidence should be allowed to prove genocide.

"There's no tangible evidence in this case," said Errol Mendes, a University of Ottawa law professor who has written extensively on crimes against humanity, "but these are Arab militia that are coming from fairly large distances on horseback. To prove genocide, you have to prove systemic planning. It was obvious in cases like Rwanda and Srebrenica [in Bosnia]. But here, one would look for what we lawyers call similar-fact evidence: If a particular ethnic group is targeting a particular area, then there can be little doubt that there was systemic planning."

But others suggest that the genocide convention itself should be avoided. Its weakness, they say, is that it sets as its standard the Holocaust, which was a meticulously documented, centrally planned action that used elaborate networks of prisons and death chambers. Other mass crimes can be equally serious and deserving of international action without being organized or carried out this way, they say.

"I think it's time to move away from these fine legal distinctions; those can be saved for after the fact. Now it's much more important to sensitize the public and the policy-makers into action," said Frank Chalk, a historian specializing in genocide at Montreal's Concordia University.

He is one of several scholars who are calling for a broad category of "atrocities crimes" that would carry an obligation of international action

without the stringent burden of proof required for genocide. The term was coined by Washington law professor David Scheffer, who says it "permits a much more accurate and focused discussion and I always find resonates better with policy-makers and the general public, who, in the end, we must be speaking to in order to advance this issue."

Mr. Scheffer believes that a simple category of atrocity crime would have permitted action in Rwanda and the Balkans, and would have made it possible to launch an international war against Iraq on humanitarian grounds.

In Sudan, Mr. Chalk pointed out, there is no question that what has taken place is both an atrocity and a crime; the specific perpetrators can be identified later.

"In Darfur, you have hundreds of thousands of displaced people, you have 30,000 people killed. That's enough, isn't it?"