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United States Department of State

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INFORMATION MEMORANDUM

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φ Sudan Genocide

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Decl: 6/25/14

TO: The Deputy Secretary

FROM: L - William H. Taft, IV *WHT*
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SUBJECT: Genocide and Darfur

In the context of our review of whether the atrocities in Darfur constitute genocide, we are providing the following overview of genocide and the legal and practical consequences of any such U.S. determination.

What is genocide?

- Although Sudan is not a Contracting Party to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter, the "Genocide Convention"), the prohibition on genocide reflected in the Genocide Convention applies to Sudan both as a matter of customary international law and as a preemptory norm of international law (i.e., "jus cogens").
- In determining the meaning of "genocide" under customary international law, the Genocide Convention provides the internationally accepted definition. Article II of the Genocide Convention requires that three conditions be met:
 - specified acts are committed:
 - a) killing;
 - b) causing serious bodily or mental harm;

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Reason: E.O. 12958 1.5(d)

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- c) deliberately inflicting conditions of life calculated to bring about physical destruction of a group in whole or in part;
- d) imposing measures to prevent births; or
- e) forcibly transferring children to another group;
- these acts are committed against members of a national, ethnic, racial or religious group; and
- they are committed "with the intent to destroy, in whole or in part, [the group] as such".
- As is often the case in contemporaneously assessing whether genocide is occurring, the third required element (intent) is the most difficult to determine.
 - When ratifying the Convention, the United States included the following understanding: "(1) That the term 'intent to destroy, in whole or in part, a national, ethnical, racial, or religious group as such' appearing in article II means the **specific intent** to destroy, in whole or in **substantial** part, a national ethnical, racial or religious group as such by the acts specified in article II." (Emphasis added.)
 - The difficult question with respect to the application of article II to the situation in Darfur is whether the Arab perpetrators or Sudanese Government supporters have the specific intent to destroy the non-Arab members of certain ethnic groups, as such, in whole or substantial part.
 - * ○ In the case of Bosnia (Tab 1), the Secretary imputed genocidal intent based on the nature and scale of the atrocities associated with ongoing ethnic cleansing.

Who decides whether genocide has occurred?

- Our records reflect that the Secretary of State typically makes a determination whether genocide has occurred in a particular country.
- In recent years, after a careful evaluation of the facts in question, the Department has concluded that genocide occurred in Cambodia, Bosnia,

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Rwanda, and Burundi. In all cases but Cambodia, policy bureaus analyzed the acts of violence in the respective countries and, with L, recommended that the Secretary find that genocide was taking place.

What are the consequences of such a finding?

- Contracting Parties to the Genocide Convention have an obligation to prevent and punish acts of genocide in their territory. Article VI provides that persons charged with genocide "shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction."
- As Sudan is not a Contracting Party to the Genocide Convention, its obligations apart from not directly engaging or participating in genocide are not clearly established under customary international law.
- Based on the available facts, a determination that genocide has occurred in Darfur would have no immediate legal -- as opposed to moral, political or policy -- consequences for the United States.
 - In prior years, the Department rejected arguments by some human rights advocates for an expansive reading of article I ("The Contracting Parties confirm that genocide . . . is a crime . . . which they undertake to prevent and punish") that would impose a legal obligation on all Contracting Parties to take particular measures to "prevent" genocide in areas outside of their territory.
- From a policy perspective, however, a finding of genocide can act as a spur to the international community to take more forceful and immediate actions to respond to ongoing atrocities.
 - Article VIII of the Genocide Convention provides that any Contracting Party "may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression" of genocide and related genocidal acts.

Attachments: Tab 1: October 1 and February 10, 1993 Action Memoranda on Genocide in Bosnia

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