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The International Criminal Justice System's Response to Genocide:

A Case Study of the Darfur Conflict and President Omar Hassan Ahmad al-Bashir

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I. Introduction

The criminal justice system, first developed over hundreds of years ago, was put in place to protect, punish, and offer retribution for victims. While maintaining safety and security, it has been assigned the task of creating laws or 'criminal codes' in an effort to complete these vital functions. To fulfill the purposes of the criminal justice system, these laws must target a wide continuum of crimes, both on the domestic and international level. In turn, the criminal justice system's ideals and purposes are manifested within international law's response to conceivably the most horrendous crime on earth: genocide. Therefore, by exploring the relationship between the criminal justice system and genocide, much can be learned with regards to appropriately responding to mass atrocities. For to end genocide, international law must work to hold perpetrators responsible, give retribution to victims, and most importantly, strive to protect the world from future mass atrocities.

There are a number of strategies that can be implemented by the international community in the furtherance of the overall goal of preventing and responding to genocide. These include sanctions, military action, public outcry, divestment, and criminal indictments, to name a few. While each has notable pros and cons with regards to their effectiveness in preventing and responding to mass atrocities; depending on the particular circumstances, criminal prosecution plays an especially critical role in the process. International law lays the groundwork for how mass atrocities, such as genocide, will be dealt with, and in turn, what the international community's responsibility is with regards to prevention and response. In turn, as international law has developed over the years, its' ability to respond to crimes threatening global peace and security has become paramount in combating genocide.

In turn, the recent indictment by the international court against Sudan's President Omar Hassan Ahmad al-Bashir on charges of crimes against humanity, offers a current application and analysis of the role of international law in prevention and response to mass atrocities. The examination of the indictment of the Sudanese President, for his role in the ongoing violence occurring in the Darfur region of Sudan, presents pertinent insight into the critical task international law has in holding perpetrators of mass atrocities responsible and deterring future atrocities from occurring. While international law is by no means a cure-all to ending mass atrocities and requires cooperation from the States, it lays the vital framework for the international community to follow in an effort to end conflicts and deter future crimes. Overall, the criminal justice system, more specifically international law, is one of the world's greatest assets and needs to be better understood and utilized in combating genocide.

This article proceeds in three parts. Part II introduces a background on genocide, analyzing the question of what is genocide and the worldwide impact of international law and genocide. Part III further reveals the role of international law in prevention and response to mass atrocities. This section describes international law's overall purpose and function and its' effectiveness in carrying out these roles. Part IV focuses on the case study of President Omar Hassan Ahmad al-Bashir of Sudan. This section presents background on the ongoing mass atrocities occurring in Darfur and international law's recent response to the situation. The case study offers a fitting backdrop in applying and revealing the vital functions international law plays in prevention and response to genocide.

II. Background on Genocide

A. What is Genocide?

"Genocide" was first termed in 1944 by Polish law professor, Raphael Lemkin. The term was constructed through the combination of the Greek *genos* (race or tribe) with the Latin *cide* (killing). Lemkin first introduced the following definition of genocide in the doctrine of international law,

> [A] coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves… Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group (Nersessian, 2007, p. 243).

The Nuremburg Trials', which prosecuted prominent members of the political, military, and economic leadership of Nazi Germany, indictment of the major war criminals and the closing arguments of the British and French prosecutor provided one of the first references to the crime of genocide in international law (Nersessian, 2007, p. 244). Although only war crimes, crimes against humanity, and crimes against peace were included in the final judgment at Nuremburg, the indictment and other proceeding references to genocide were descriptive in nature. It was not until the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide in 1948 that the new legal terminology, genocide, was no longer treated as a subset of crimes against humanity. Identifying genocide as an international crime, the Convention defines the term as:

> [A]ny of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial 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 part;
> (d) Imposing measures intended to prevent births within the group;

> (e) Forcibly transferring children of the group to another group (Satkauskas, 2005, p. 400).

Currently, international law continues to define the crime of genocide as described in the 1948 Genocide Convention.

While largely apparent from its' definition, genocide is an international crime and concern for two main reasons: the special intent required and the extremely serious injury it strives to inflict. Therefore, since it is an inchoate offense, international law can respond to the criminal violation of genocide as soon as it starts, even if injury has not become evident. As stated by David Nersessian (2007), a lecturer on Law at the Boston University School of Law, this is because "offender's malevolent intent and an underlying act against group members" is all that is needed for genocide to become an international matter (p. 263). Yet, despite the fact that genocide has been deemed an international matter, thus far, the United Nations (UN) has been ineffective in preventing or ending multiple cases of mass atrocities including, Rwanda, Kosovo, Cambodia, and Darfur, making the further development of international law of critical importance.

B. Worldwide Impact of International Law and Genocide

Since the adoption of the Genocide Convention in 1948, international law has seen a number of positive developments in the establishment of international criminal tribunals to back the Convention's terms. The foremost includes the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1991 and the International Criminal Tribunal for Rwanda (ICTR) in 1994, which were put in place to prevent and punish genocide. Since Nuremberg, these tribunals mark the first time that the international community has brought forth and held accountable those responsible for genocide. In addition, a permanent international criminal

tribunal, the International Criminal Court (ICC) was established in 2003. The ratification of the ICC further builds upon the Genocide Convention in that,

> By joining the ICC, 1) additional countries have accepted that genocide and other mass atrocities are international matters, 2) once ratifying the Rome Statue, which created the ICC, States must enforce the international rule of law within their own borders and if they fail, agree that the ICC can intervene, and 3) the ICC provides domestic punishment against genocide and other crimes under international law (Chung, 2008, p. 228-229).

In addition to the cases of human right abuses mentioned earlier, these tribunals have been faced with the task of responding to mass atrocities in Angola, Burma, Somalia, Indonesia, Chile, Sierra Leone, Bosnia, and Iraq, to name a few.

While international law has developed over the years, there is one large problem that it continues to face in its' response to genocide: the conflict between respect for state sovereignty and peace among States, and the protection of basic human rights (Critchlow, 2009). To resolve this conflict, international law looked to the International Commission on Intervention and State Sovereignty (ICISS) to address and develop policy on the issue of humanitarian intervention. The group produced a report titled, "Responsibility to Protect" (R2P). The report's central theme, R2P, has two key elements:

> 1) that each State has a responsibility to protect its' populations from genocide, war crimes, ethnic cleansing, and crimes against humanity; and 2) that the international community has a responsibility to protect populations from these same human rights violations (Critchlow, 2009, p. 328).

Overall, the report clearly states that sovereignty should not be viewed as a legitimate defense by the international community against vital humanitarian intervention. Combined, the principles of R2P and the Genocide Convention lay the groundwork for combating genocide through international law like never before. They create the potential for a partnership between States and international law to actively work toward effectively responding to genocide rather than waiting until the violence has run its' course. While, currently, this partnership remains obscure at best,

further understanding of the functions and purposes of international law in response to genocide will shed light on the importance of this relationship.

III. Background on International Law

A. Functions and Purposes of International Law

Before the relationship between response and prevention of genocide and international law can be explored, the overall functions and purposes of criminal law must be examined. There are two main functions of criminal law: 1) deciding the offender's criminality in relation to the offense they are charged with, and 2) rating the seriousness of the crime, ensuring that the punishment fits the crime. International law has similar functions. Due to the fact that the International Criminal System's (ICJ) main focus is mass atrocities, they are tasked with the responsibility of holding perpetrators responsible in numerous situations that may or may not constitute as genocide. For example, the ICTY was "established for the prosecution of persons responsible for serious violations of international humanitarian law" (Bibas & Burke-White, 2010, p. 8). Likewise, the preamble which founded the ICC states that, "the most serious crimes of concern to the international community as a whole must not go unpunished . . ." (Bibas & Burke-White, 2010, p. 9). In turn, the tribunals for Rwanda, Yugoslavia, and the ICC have developed procedures that give little regard to speed and efficiency, but instead focus on procedural regularity and finding the truth. This is in line with the ICJ's concern in determining an offender's criminality in extremely grave and vicious crimes. Overall, prosecutions through the international procedure not only denounce and condemn crimes, but also answer the public's call for justice against political and military leaders that contributed to the atrocities.

C. International Law's Effectiveness

The effectiveness of international law in fulfilling its' functions and purposes as described above can be debated. According to Stephanos Bibas and William Burke-White (2010), both Professors of Law at the University of Pennsylvania Law School, many scholars describe international criminal law as "uncoordinated, and perhaps even ineffective" (p. 16). Yet recently, more courts have begun to enforce international criminal law. Courts at the international level established by international treaties or by the U.N. Security Council include: the ICC, ICTY, ICTR, and the United Nations Special Tribunal for Lebanon (STL). While only limited to the most serious crimes, these international courts have jurisdiction over half of the world's countries and over one-third of the population on earth (Bibas & Burke-White, 2010). In turn, due to its' vast jurisdiction, international law has the ability to play a large role in granting restorative justice throughout the world.

While international law plays an important role in restorative justice, it also has the ability to individually hold those responsible for atrocities accountable. Sascha Bachmann (2009), a researcher of international law in general with a focus on international criminal law and international human rights law, argues that the necessary deterrence of human rights violators can be attained through an individual accountability system. This is supported by the,

> "Opening address of the US Chief Prosecutor Jackson before the International Military Tribunal for the Trial of the Major War Criminals (IMT) of Nuremberg: 'Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced'" (Bachmann, 2009, p.75).

Yet, despite the establishment of the Military Tribunal of Nuremburg in 1946, in which the idea of individual criminal responsibility was first recognized as part of international law, it was not viewed as a "guiding principle" in criminal law for many years. It was not until the 1990's that

further development of the doctrine of criminal accountability came about; first with the establishment of Yugoslavia and Rwanda tribunals; second with the increased resolve to prosecute international crimes; and third, with the establishment of the ICC (Bachmann, 2009).

With regards to the effectiveness of ICC specifically, as of June 2008, the court had only issued eleven arrest warrants against individuals relating to war crimes and crimes against humanity. This is in contrast to the thousands of communications and referrals the ICC Office of the Prosecutor has received in its' first five years of operation (Chung, 2008). The ICC reviews each referral, and then selects a small number of recommendations for investigation due to its' ability to only focus on the gravest crimes. In the end, the main purpose of the ICC's mandate, to seek accountability and name perpetrators promptly, is the hope that it will increase the likelihood that States will take advantage of the ICC's intervention and offer assistance in ending the conflict and deterring further crime. Therefore, due to the ICC's limited budget and high number of perpetrators, the court's work should reinforce a global system of accountability and justice rather than be viewed as the sole provider of accountability.

IV. Case Study- President of Sudan Omar Hassan Ahmad al-Bashir

A. Background on Darfur

A current case that allows for pertinent review of the ICC's role in responding to atrocious crimes is the ongoing conflict in the region of Darfur in Sudan. The conflict began over 25 years ago when a civil war began between the Muslims of the north and the Christians of the south due to the imposition of Sharia law on the country by the Arab dominated leadership. This conflict did not end until 2002, when the 20 year civil war ended after millions were killed and displaced. It was during this conflict, that the current Sudanese President Omar al-Bashir came to

power in a non-violent coup about 21 years ago. It was in 1993, that he was officially confirmed as president. Currently, al-Bashir has been indicted by the ICC on five counts of crimes against humanity and two of war crimes for his political responsibility in the conflict occurring in Darfur. On July 14, 2008, he became the first sitting head of state against who the ICC has issued an arrest warrant.

The Darfur crisis began in 2003, when rebel groups in the region attacked government military posts in response to the neglect of the region by the regime. As a result, the government released a counter-insurgency that continued to grow as time wore on. According to UN estimates, between 2003 and 2008, approximately 300,000 people lost their lives and at least 2 million were displaced, after begin forced to flee from their homes in Sudan's Darfur region (Koelbl & Windfuhr, 2010). As commander-in-chief of the armed forces, al-Bashir has been accused of being responsible for the bombing of villages and having armed and paid the Arab militias, referred to as the Janjaweed, to murder those in the region, force them to flee, and systematically rape the women. While the term genocide had been used by the Bush Administration in reference to the ongoing atrocities occurring in Darfur, initially the ICC ruled there was not enough evidence to charge him with three counts of genocide. The ICC Chief Prosecutor Moreno-Ocampo has appealed this decision, "arguing that prosecuting al-Bashir for genocide does not depend exclusively on whether it could be proved that the Sudanese head of state had genocidal intentions" ("Bashir charge," 2010). Yet, for the purposes of this discussion, the exact charges against al-Bashir are beside the point. For, merely the fact that the ICC issued an arrest warrant for al-Bashir allows for further study of the role international law can play in responding to mass atrocities in general.

B. International Law's Response to al-Bashir

The debate over not only the effectiveness of ICC's issuances of an arrest warrant against President Omar al-Bashir, but also the question of whether the ICC has the power to do so, is contentious. Under international norms, the ICC can prosecute citizens only of signatory states, not citizens of nations, such as Sudan, that are not party to the court (Rivkin & Casey, 2008). In addition, in 2002, the UN's International Court of Justice upheld the notion that a country's most senior officials cannot be prosecuted until the State had given its consent, something the Sudan Government has refused to do. Yet, despite Sudan's claims that the ICC has no jurisdiction, the fact that the UN Security Council referred the individuals accused of war crimes in Darfur to the ICC for investigation in a 2005 UN report, has given backing to the court's investigation in Darfur (Waal & Stanton, 2009).

With regards to the effect the ICC's arrest warrant for al-Bashir has had on the region of Darfur thus far, there are a number of recent events that must be mentioned. The first is that al-Bashir responded to the issuance of his arrest warrant by expelling 13 international aid organizations, accusing them of working with the ICC on the arrest warrant. Three local groups were also shut down (Waal & Stanton, 2009). Yet, despite this setback, on February 23, 2010 al-Bashir signed a preliminary peace accord with the most powerful rebel group of the Darfur region after coming under new pressure as the ICC has decided to revise a petition to charge him with genocide over the killing in Darfur (Edwards, 2010). In addition, as outlined under the 2005 Comprehensive Peace Agreement, which created the government of southern Sudan, the country's first multiparty voting in more than 20 years has occurred this month, giving the people of Sudan the opportunity to elect a president, a national legislature, regional governors, and the leadership of the semi-automatic Sudan (Tisdall, 2010). Yet, despite these seemingly

positive advances in ending the atrocities occurring in Darfur, when further scrutinized, the current situation facing the people of Sudan becomes bleak.

First, reports have confirmed that violence is rising in the southern part of the country despite the Comprehensive Peace Agreement (Waal & Stanton, 2009). This could lead to catastrophic humanitarian consequences for the entire country if civil war is renewed in Sudan. Second, according to Jerry Fowler, the president of the Save Darfur Coalition in Washington, the national elections that took place this month are "virtually meaningless for Darfur…because of unregistered, displaced populations and widespread insecurity" (LaFranchi, 2010). Lastly, with regards to the ICC's actions against al-Bashir, the recent uprising in support he has received from diplomatic relations highlights the fact that the arrest warrant has been beneficial to Bashir, at least to some degree. This is supported by the fact that the Arab League and the African Union have come to his support and the indictment has produced for him sympathy within the population of Sudan. In turn, many expect al-Bashir to be confirmed as president in the elections that are currently occurring (Spiegel, 2010).

Despite these impediments, the ICC's issuance of an arrest warrant against al-Bashir is a positive step forward, and is supported by the fact that the number of violent deaths in Darfur have decreased substantially since (Waal & Stanton, 2009). Overall, the arrest warrant has led to providing more, rather than less protection, for the people of Darfur. This is due to the fact that if the ICC were not to charge President Omar al-Bashir, as stated by Dr. Gregory Stanton, president of Genocide Watch and immediate past president of the International Association of Genocide Scholars, the court "would be ignoring the evidence against al-Bashir and contributing to the impunity that Sudan's leaders now brazenly anticipate they will carry out" (Waal and Stanton, 2009, p. 334). In addition, the reality that the arrest warrant has led to the Sudanese government

revoking the licenses of major relief organizations merely highlights the "long-term genocidal intent of the al-Bashir regime toward the ethnic groups in the camps" (Waal and Stanton, 2009, p. 335).

C. The ICC's Indictment of al-Bashir and the Goals of International Law

In turn, the indictment of al-Bashir by the ICC marks significant progress in international law's overall goals of deterrence, protection of society, and the strengthening of the global system of justice. Since the establishment of the Genocide Convention in 1948, the ICJ has actively strived to put a structure into place that not only recognizes mass atrocities, but also prosecutes those responsible. Through the establishment of the ICC more than five years ago, the ICJ has advanced its' ability to respond to conflicts throughout the world that threaten the security and justice of the people. Currently, the indictment of al-Bashir on charges of crimes against humanity and crimes against war offers a present opportunity to explore how the ICC's ruling, thus far, strengthens international law and furthers its' primary goals in combating mass atrocities.

One of the greatest goals of current international law is to end the impunity of mass atrocities that has continued to occur for hundreds of years. It has been over sixty years since the ratification of the Genocide Convention and genocide and other mass atrocities have only become more common in the years since. There are many reasons for this failure including: naked political calculations, imperfect knowledge, deference to sovereignty, and isolationism (Greenfield, 2008). Yet, it can be argued that potentially the most significant reason was the ICJ's lack of interest in holding individual perpetrators of mass atrocities responsible. With the establishment of the ICC, and in turn, the greater possibility of individuals being indicted for genocide, crimes against humanity, and war crimes, the ICJ has strengthened its/ ability to

prevent and respond to mass atrocities. The current ICC's arrest warrant for al-Bashir, the first by the ICC against a sitting head of state, highlights the increased importance the ICJ has placed on ending the impunity in which many cases of mass atrocities have been committed with.

The fact that many of the worst cases against humanity in the past century have been committed with impunity, has only encouraged more political leaders to ignore the laws of humanity. In turn, the current indictment of al-Bashir helps further achieve the ICJ's goal of deterrence as well. While there is no guarantee that the indictment against al-Bashir will lead to his prosecution any time soon, the mere fact that the ICC has placed an arrest warrant out for the current President of Sudan speaks volumes to the ICJ's continuing commitment to their goal to not only respond and punish perpetrators responsible for mass atrocities, but also prevent future conflicts. Furthermore, the indictment of al-Bashir is a powerful reminder to leaders of other States who have not signed the ICC that the UN Security Council has the authority to subject them to ICC jurisdiction (Waal & Stanton, 2009). For, despite the fact that Sudan has not ratified the Rome Statute, and therefore has not granted jurisdiction over such crimes to the ICC, international law has filed charges against al-Bashir. As a result of the indictment against al-Bashir, the ICC has forced other national leaders contemplating heinous acts to think twice about their actions for fear of the increasing possibility that they, too, will face justice. With regards to the ICC's charges against al-Bashir, Dr. Gregory Stanton stated, "the long dark age when war lords and dictators could commit atrocities with impunity is coming to an end" (Waal & Stanton, 2009, p. 339).

The ICC's indictment of al-Bashir also furthers international law's goals of protection of society and restorative justice. While the arrest charges are only the first step in prosecuting al-Bashir for his crimes, the ICC has intervened in an ongoing conflict in the hopes of persuading

States to take greater action in ending the violence. For, by issuing a warrant naming the national leader of Sudan, the ICC has given the international community the opportunity to press for execution of the warrant and potentially reduce current and further conflict in Darfur (Chung, 2008). While the international community has been uncooperative to date in arresting al-Bashir, the ICC's indictment has sent a strong message to the international community, and the people of Sudan, that international law is actively working to protect society and implement restorative justice to those whose security and peace has been seized or threatened by mass atrocities. Furthermore, in 2005, the issuance of ICC's arrest warrants for the top leaders of the Lord's Resistance Army (LRA) persuaded leadership to begin negotiations to bring an end to the 20-year war between the LRA and the government of Uganda. While it is unknown whether these individuals will face arrest and be prosecuted, the ICC's intervention has led to several hundred thousand refugees returning to their homes after years of living in refugee camps (Chung, 2008).

While there is no perfect solution to the situation in Darfur, the indictment of President Omar al-Bashir is a valuable tool that not only provides a means to ending the genocide, but also strengthening the global system of justice. Therefore, the ICC's arrest warrant of al-Bashir is indeed a step forward. In addition, history is on its' side. For, while this is the court's first arrest warrant against a sitting head of state, presidents have been indicted in other international tribunals before, including Slobodan Milosevic by the ICTY and Charles Taylor by the Special Court for Sierra Leone. Although each situation is different, in both of these cases, the pressure of indictment led to substantial advancements in the peace process and the charges helped opponents displace the leaders from power, and in turn, both Milosevic and Taylor "wound up on the chopping block" (Waal & Stanton, 2009, p. 336).

D. The Execution of al-Bashir's Arrest Warrant

Regardless of the ICC's future ruling on the charge of genocide against al-Bashir and the current spur in popularity and support he has received from the ICC's issuance of an arrest warrant, with the indictment, the ICC has taken the first step in reinforcing the global system of justice. For, in order to advance the most difficult aim of the Genocide Convention, the prevention of genocide, it must seek accountability and name perpetrators of mass atrocities promptly. Yet, since the ICC does not have the power to carry out arrests of perpetrators, it can merely lay the framework and then must largely depend on the 111 States that signed the ICC to act on the principle of R2P and take advantage of the ICC's intervention to aid in ending the conflicts and deterring further crimes. Further advancement in responding effectively to crimes of international magnitude is fundamentally subject to the States carrying out their part in holding perpetrators responsible. Therefore, the next step for international law must involve answering the critical question of: How is the ICC to enforce arrest warrants without state cooperation? For, both the logistics and political issues involved with relations between States and international justice are complicated matters that have yet to be significantly dealt with by the either the ICJ or the international community.

The issue of enforcing ICC's arrest warrant against al-Bashir is further complicated by the fact that the case in Sudan, which is against a number of other top leaders in addition to al-Bashir, is the first time the ICC has attempted to charge individuals from a State that has not signed the Roman Statute. In turn, the ICC has found themselves in uncharted waters, and further examination of the international community, Sudan, and the court's role in enforcing the arrest warrant and holding al-Bashir responsible is critical. First, since the ICC does not have its' own police force to carry out its warrants, it relies heavily on States, especially those of the

individuals it indicts, to enforce the court's mandate. Thus far, the ICC's track record in regards to state cooperation is:

> Of the four people -- all Congolese warlords -- surrendered to the ICC since it came into being in 2002, three were handed over by the government of the Democratic Republic of Congo and one by Belgium. Seven other people indicted before [al-Bashir] are still at large (Worsnip, 2009).

Although it has been established that Sudan is obligated to cooperate in turning al-Bashir over to the ICC regardless of the fact that the country is not a member, Sudan has refused. Also, while there are many UN peacekeeping troops in Sudan, the UN cannot be ordered to arrest al-Bashir and has stated that it will not do so unless it is mandated by the Security Council, something which is unlikely to occur (Worsnip, 2009). Therefore, al-Bashir faces the greatest risk of arrest when entering a State that is a member of the ICC. Yet, thus far, since only three out of the twenty-two States in the Arab world have ratified the Roman Statute and both the Arab League and the African Union have overtly criticized the ICC's arrest warrant, al-Bashir has continued to travel and maintain diplomatic contacts with many States. To date, Sudan, the UN, and other States, both those that are parties to the ICC and those that are not, have been uncooperative in enforcing the arrest warrant.

In turn, if the ICC is serious about holding al-Bashir responsible, international law must consider a number of additional measures that could be put into place in an effort to carry out the arrest warrant. In general, if Sudan continues to resist cooperating with the ICC the "Security Council may order the interruption of Sudan's economic and diplomatic relations and their means of communication and other sanctions" (DiCicco & Rojo, 2009, Execution of Warrant section). More specifically, a number of leading scholars have listed the following as "soft measures" that can be implemented when state cooperation fails:

(i) The use of economic aid inducements,
(ii) The use of diplomatic and economic sanctions on uncooperative governments,
(iii) Freezing the assets of indicted war criminals,
(iv) Offering individual cash rewards for information or assistance leading to the arrest or the conviction of indicted war criminals,
(v) The use of luring by deception for locating and apprehending indicted war criminals, and
(vi) The use of military force to effectuate apprehension (Wartanian, 2005, p. 1303).

While international law has the influence to implement many of these measures in order to drive States to comply with the ICC's arrest warrants, the court was set up in a manner in which state cooperation is essential to its' long-term success. However, when cooperation cannot be obtained, international law must continue to work to enforce the prosecution of perpetrators responsible through other means. For, international law's foremost purpose is to protect the safety and security of the world, and therefore must continue to implement and develop measures that further this purpose with or without state cooperation.

V. Conclusion

In conclusion, international law has gone to great extents to put into place tribunals to hold perpetrators of mass atrocities, including genocide, responsible. Nonetheless, they were not designed to operate unaided. Therefore, the ICJ must continue to move forward in furthering its' goals to prevent and punish those that commit genocide by implementing measures in which the States' role in holding these individuals responsible is enforced *or* other "safe measures" are taken. The limited cooperation of the international community with the ICC is a critical issue the ICJ must address. In the end, if the ICJ wishes to maintain its' initial structure in which state cooperation plays a significant role in the process of international justice, the ICJ must find new ways of persuading the States to do what the ICC deems necessary-- hold Bashir accountable for his actions and arrest him for the atrocities he is indeed responsible for.

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