Establishing Expectations for the *Genocide Convention’s* Use: Politics as Usual?

Suffering from lingering “Brickeritis,” the United States has persistently delayed or refused to ratify many treaties of the legalist paradigm despite frequent claims of global moral leadership.¹ The United States Senate waited 35 years to ratify the *Genocide Convention* after it entered into force and 25 years to ratify the *Racial Discrimination Convention* after it became international law. Additionally, the United States remains one of only two countries that has not ratified the *Convention on the Rights of the Child* and one of seven nations that has not ratified the *Convention on the Elimination of All Forms of Discrimination Against Women.*² This narrow engagement of international law reflects the broad influence of American Exceptionalism in shaping an American political consensus generally skeptical and dismissive of human rights treaties.³ Bush administration Ambassador to the United Nations, John Bolton, expresses the principal complaint of American Exceptionalists about the legalist paradigm: “For virtually

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³Kenneth Roth, “The Charade of U.S. Ratification of International Human Rights Treaties,” *Chicago Journal of International Law* 1 (2000): 351. American Exceptionalism is a perspective of international bodies of law that dismisses or seeks to weaken their enforceability because they are perceived as lacking the political legitimacy of the social contract to grant rights, unduly constraining national sovereignty, and inferring that American law remains inadequate to protect fundamental rights.
every area of public policy, there is a globalist proposal, consistent with the overall objective of reducing individual nation-state autonomy, particularly that of the United States.”

The substance of American Exceptionalists’ disagreement with the legalist paradigm therefore remains rooted in its structure. The legalist paradigm’s political construction fundamentally constrains nations’ sovereignty by asserting supreme jurisdiction in regulating the conduct of states and its agents and relies on state cooperation in order for international treaties and conventions to be enforceable. The Senate’s delay or refusal to ratify several human rights treaties manifests an ingrained Brickerite politics that perceives American compliance with the legalist paradigm to be “diminish[ing] our own Nation and the loyalty which we as citizens owe to that Nation,” according to former Republican Senator Jesse Helms. Underlying this debate, American Exceptionalists have held concerns about the effects of ratification of individual human rights treaties on existing legal controversies and tensions. During 1950s debates on the merits of the Genocide Convention, Southern Democratic senators claimed it could be used as a legal basis for challenging segregation and lynching and would constitute an overextension of federal power because states usually possess the responsibility of prosecuting cases of murder and other crimes within the Convention. Despite lobbying efforts by the Truman, Carter, and Nixon administrations, the Senate consistently genuflected to American Exceptionalist orthodoxy and rejected the Genocide Convention.

However, President Ronald Reagan pushed the Genocide Convention through the Senate in 1986 and guided implementing legislation into law in 1988. Complicating matters further, Regan initially opposed ratification of the Genocide Convention but changed positions to endorse

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6 Ibid., 21-2.
it in 1984. These events constitute landmark exceptions to the United States’ history of American Exceptionalism and raise two serious questions: why did Reagan flip-flop in his support for the *Genocide Convention* and how did he navigate the politics of American Exceptionalism?

Reagan supported the ratification of the *Genocide Convention* because of compelling political calculations of national and personal interests in conducive electoral circumstances. Responding to Soviet propaganda about American human rights hypocrisy, he wanted to eliminate the basis for such criticism by ratifying the *Convention*.\(^7\) In addition, Reagan hoped to attract Jewish votes for the 1984 presidential election and to move past his public relations blunder of speaking in a Bitburg cemetery containing Nazi graves.\(^8\) In order to appease Senators Jesse Helms, Orrin Hatch, and Richard Lugar, Reagan accepted their amendments to require the International Court of Justice’s jurisdiction over alleged American violations of the *Genocide Convention* to be dependent on presidential authorization, effectively nullifying this treaty’s international enforcement mechanism.\(^9\) Thus, in politically maneuvering to support the *Genocide Convention*, Reagan created a state of exception to American Exceptionalism because of political necessity and accommodated American Exceptionalists’ sovereignty concerns. Reagan’s opportunistic adoption and subsequent administrations’ political interpretations of the *Genocide Convention* ultimately reflect its essence as a collection of political claims of signatory rights and obligations. The Executive Branch’s self-interested uses of this treaty should therefore be expected because of the political construction of the legalist paradigm within the nation-state structure.\(^10\)

\(^7\) Powers, “*A Problem From Hell*”, 160.
\(^8\) Ibid., 161-3.
\(^10\) Following from the discussion on page two, the political construction of the legalist paradigm refers to the organization of international law, requiring a state actor to willingly restrict its national sovereignty through
In order to better understand the effectiveness of Reagan’s state of exception assertion, the history of this administration’s push for the ratification of the *Genocide Convention* will first be explored in detail. The Rwandan and Darfurian genocides will then be examined because they present distinct presidential applications of the *Genocide Convention* that will assist in empirically evaluating the thesis. The Clinton administration purposely avoided terming the Rwandan violence as “genocide” in order to avoid “…commit[ting] us [U.S. government] to actually ‘do something.’”  

Refusing to invest American resources or risk political repercussions, Clinton unmistakably interpreted the *Genocide Convention* in order to satisfy his political interests. Contrastingly, the Bush administration labeled the Darfurian ethnic cleansing as “genocide” but arguably did not meet its intervention responsibility under the *Convention*. This case seemingly challenges the thesis and suggests that the *Genocide Convention* might principally be an authoritative legal instrument that sometimes operates independently of states’ political self-interests.

During the 1970s and early 1980s, Soviet media continued to taunt the United States because it made claims of moral leadership even though it had not ratified the *Genocide Convention*. During his 1981 confirmation hearing, Secretary of State nominee Alexander Haig Jr. noted that American ratification of the *Convention* would be very useful in combating Soviet propaganda and would be consistent with American post-World War II efforts to draft this

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11 Powers, “A Problem From Hell”, 363. This language appeared in a May 1, 1994 Office of the Secretary of Defense discussion paper that presented explicit instructions to not use the word “genocide.”


13 Ronayne, *Never Again?*, 36. In December 1979, Moscow Radio mocked the United States’ commitment to human rights: “Why has the United States not ratified the 1948 *Convention of the Prevention and Punishment of the Crime of Genocide*. Eighty-two countries have ratified it but the United States did not. Moreover, it is not by accident…but after long debates in the Senate. It can hardly be said that the whole world is out of step, while the United States is in step.” Furthermore, the Soviet news service *Tass* asserted that the United States’ refusal to ratify the treaty conveyed “Washington’s unwillingness to assume firm judicial commitments in the sphere of human rights.”
treaty. United States Ambassador to the United Nations, Jeane Kirkpatrick, made similar claims of ratification being in American national interests. Although this Cold War argument eventually served as many senators’ primary justification for supporting ratification, the Regan administration ignored human rights activists’ appeals for a presidential endorsement of this treaty during until October 1984. Until that time, Reagan and most senators did not feel sufficient political urgency to make ratification a priority.

However, the 1984 presidential election brought a confluence of conducive circumstances that established a persuasive calculus for Reagan to support ratification of the Genocide Convention. The American Bar Association (ABA), a long-time influential opponent of ratification, changed positions in 1976 and thereby greatly weakened the credibility of lobbyists fighting Convention enactment. While the ABA previously made arguments that many senators found convincing, the Liberty Lobby and other Convention adversaries circulated spurious populist claims that marginalized them in Convention debates among senators. By 1984, Convention proponents wielded greater influence in Congress and therefore reduced the political risk of supporting ratification. On the eve of the Republican National Convention, Reagan advisors calculated that he would actually receive a net gain from publicly supporting

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14 Ibid., 36.
15 Powers, “A Problem From Hell”, 158.
16 Ronayne, Never Again?, 20-24, 32-33. From 1950 to 1976, the American Bar Association executed a lobbying campaign against Senate ratification of the Genocide Convention and highlighted four central reasons for their position. First, the ABA concluded that Article II’s language “intent to destroy, in whole or in part, a national, ethnical, or religious group” could be legally used to overturn segregation and to institute anti-lynching laws. Second, the ABA asserted that criticism of any protected group could be interpreted as “mental harm” and that the Convention would therefore unduly constrain free speech. Third, the ABA suggested that the Convention would unfairly transfer state powers to prosecute some criminal cases to the federal government. Fourth, the ABA contended that the Convention constituted an overreach of international law into domestic affairs. In February 1976, the ABA House of Delegates changed positions and issued a resolution stating that their past statements on the Genocide Convention “were no longer pertinent” and urged ratification based upon human rights considerations. 17 Ibid., 33. Senator Chris Dodd sharply criticized the Liberty Lobby for its claims that “moving children from one place to another and even birth control” could constitute genocide in 1981 Senate Foreign Relations Committee hearings: “The way you read the white paper [the Liberty Lobby’s “White Paper on the Genocide Convention”], it sounds as though if you take your children to Disneyland, you could in effect be charged with genocide.”
ratification. They concluded that he would secure significantly more Jewish votes through endorsing the Convention and would experience reduced conservative blowback because the Senate would be unable to schedule potentially volatile hearings on ratification until after the election. Thus, Reagan announced his support for the Convention in a speech at the B’nai B’rith international convention and grounded his change in position as a product of human rights concerns after “a long and exhaustive [administration] study of the convention.” Democratic Senator Joe Biden and others criticized the situational politics of Reagan’s support: “This is the first President who eight weeks before the end of a campaign announced his support for the [UNGC] having been silent up to that point.”

Reagan’s electoral support and later Senate mobilization for ratification reflect the importance of timing to these efforts. While the expansion of his voting bloc politically justified Reagan’s flip-flopping, damage control of the Bitburg cemetery scandal created political urgency for Senate action. In commemoration of the fortieth anniversary of World War II, the White House planned for Reagan to lay a wreath in West Germany’s Bitburg Cemetery in April 1985. Presidential staffers did not know that the occupants of the burial ground included forty-nine Nazi Waffen SS officers. Many Jewish organizations and politicians condemned the ceremony as disrespectful to Holocaust victims and unfit for an American president. Reagan stubbornly chose to proceed with the Bitburg visit but quickly moved for Senate ratification of the Genocide Convention in order to politically move past his controversial participation in the ceremony.

Department of Justice lawyer Harold Koh, who studied the legal implications and risks of

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19 Ibid., 160.
20 Ronayne, Never Again?, 37. In his speech, Reagan appealed to American human rights leadership when discussing his support for the Convention: “And I want you to know that we intend to use the convention in our efforts to expand human freedom and fight human rights abuses around the world. Like you, I say in a forthright voice, ‘Never again.’”
21 Ibid., 37.
ratifying the *Genocide Convention*, commented on the new founded political urgency of Senate ratification of the this treaty: “Bitburg wasn’t a reason for the shift, it was the only reason.”23

In campaigning and mobilizing Senate votes for ratification, Reagan challenged American Exceptionalism because he viewed these actions as necessary to protect his political power. Explaining the conceptual underpinning for Reagan’s calculus, Italian political philosopher Giorgio Agamben describes political necessity: “Necessity is not a source of law, nor does it properly suspend the law; it merely releases a particular case from the literal application of the norm.”24 American Exceptionalism continued to exercise great influence in maintaining the Senate’s refusal to ratify many other treaties of the legalist paradigm, including the *Convention on the Rights of the Child* and the *Convention on the Elimination of All Forms of Discrimination Against Women*. Nonetheless, Reagan successfully coordinated ratification of the *Genocide Convention* by crafting a state of exception argument. He opportunistically convinced enough American Exceptionalist senators that the United States’ propaganda war with the Soviet Union required ratification of the *Genocide Convention* such that it passed 83-11 on February 23, 1986.25 Agamben clarifies the legal framework of a state of exception and thereby largely captures Reagan’s *Genocide Convention* politics: “[T]he state of exception is the opening of a space in which application and norm reveal their separation and a pure force-of law realizes (that is, applies by ceasing to apply) a norm whose application has been suspended.”26

However, Reagan’s state of exception argument remained more nuanced than Agamben’s analysis because Reagan accommodated the concerns of outflanked American Exceptionalists in order to ensure the *Convention’s* ratification. The treaty contained a reservation that paralleled

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23 Ibid., 163.
the Bricker amendment by requiring implementation legislation in order for the *Convention* to become law, effectively making ratification a symbolic exercise.\(^{27}\) Additionally, the Lugar-Helms-Hatch Sovereignty Package asserted that the *Convention* could not force the United States to pass bills or to perform other actions it deems to be in conflict with the *Constitution* and that the International Court of Justice’s jurisdiction for any cases involving the United States required American approval. Although Reagan endorsed these reservations, his support for the *Convention* constituted a state of exception argument based in political necessity.

Pushing the treaty through Congress, Reagan used the *Genocide Convention* to his political advantage by building Jewish support for his administration and by preventing the alienation of influential Republican American Exceptionalists. Reagan exercised great care in navigating the politics of this treaty and demonstrated the thoughtful political calculus that French philosopher Jacques Derrida asserts as the underpinning of law: “Law is per se and as much the bringing to bear of a rule, it is the ‘element of calculation.’ ”\(^{28}\) While Reagan’s acceptance of the Sovereignty Package appeased many American Exceptionalists, his decision produced new challengers to his *Genocide Convention* politics. Nine parties to the *Convention* filed formal complaints with the United Nations that claimed the Sovereignty Package raised serious questions about whether the United States ratified the treaty in good faith. These Western European states noted that the United States’ constitutional supremacy reservation to the *Convention* contradicted a foundation of treaty law that a county cannot invoke domestic law as a reason for failing to meet its international obligations.\(^{29}\) The European parties’ criticisms

\(^{27}\) Leblanc, *The United States and the Genocide Convention*, 143, 253-4.


\(^{29}\) Leblanc, *The United States and the Genocide Convention*, 144. Denmark, Finland, Ireland, Italy, the Netherlands, Norway, Spain, Sweden, and the United Kingdom all filed complaints with the United Nations regarding the United States’ Sovereignty Package reservations to the *Genocide Convention*. 
highlight the reality that the Sovereignty Package effectively defanged the treaty.\footnote{Ibid., 253-4. The Sovereignty Package eliminated the treaty’s enforcement mechanism, asserted the primacy of the Constitution in situational disputes between it and the Convention, and limited the scope of definitions of “intent to destroy” and “mental harm” in Article II and the terms for extradition of defendants in Article VII.} Derrida comments on the substance of the Europeans’ grievance: “Inasmuch as the law presupposes the legitimacy of its own origin,” the political compromises that shape the substance of many laws prompt skepticism about their credibility.\footnote{Gehring, “The Jurisprudence of the ‘Force of Law,’ ” 58.} This insight conveys the essence of the Genocide Convention as a series of political claims of rights and obligations that state actors mediate according to their own interests. Although the moral authority of the Convention and the seriousness of its subject might suggest that it would function independent of politics, the significant political effects of this treaty demand that its ratification operate in a political context.

Presidential politics further dictated the schedule for Senate passage of implementation legislation. On November 5, 1988, Reagan was in Chicago campaigning for Vice President Bush just two days before Election Day and held a signing ceremony for the Proxmire Act implementation legislation in an O’Hare Airport hangar.\footnote{Ronayne, Never Again?, 41.} Named after Democratic Senator William Proxmire, the legislation incorporated Article II’s definition of genocide into federal criminal law and specified punishments for individual violations. Reagan again made a special appeal to Jewish voters: “We finally close the circle today. I am delighted to fulfill the promise made by Harry Truman to all people of the world and especially to the Jewish people.”\footnote{Powers, “A Problem From Hell”, 168.} The opportunistic timing of Reagan’s initial support and Senate mobilization for the Genocide Convention and signing of the Proxmire Act convey the self-interested situational politics of the Genocide Convention. As the Reagan administration demonstrated, the Genocide Convention carries significant moral weight and can be used to target diverse groups with marginalized
histories. Thus, the *Genocide Convention* observably exists as a political instrument whose self-interested use therefore seems unavoidable.

The Clinton administration’s handling of the Rwanda genocide serves as the seminal example of this analysis. During his 1998 visit to Kigali, Clinton deflected responsibility for his administration’s slow response to the violence by pleading that he did not recognize the scale of the crisis. However, internal administration memos demonstrate Clinton’s assertion to be an unequivocal lie and the foremost role of politics in determining the United States’ application of the *Convention* to the Rwanda genocide.

From the advent of the Rwandan violence, the Clinton administration held definitive evidence of genocide building in Rwanda but exercised great care to ensure that a legal conclusion of genocide and its resulting political obligations were avoided. A series of Department of Defense memos quickly established the likelihood, eventual scale, and the identities of the perpetrators of the genocide. On April 11, 1994, five days after President Habyarimana’s plane was shot down, Undersecretary of Defense for Policy Frank Wisner received a memo contending that “unless both sides can be convinced to return to the peace process, a massive (hundreds of thousands of deaths) bloodbath will ensue.” A reconnaissance mission by American special operations forces confirmed this prediction. Within a week of the start of the violence, two dozen American soldiers entered Kigali and found “so many bodies that you could walk from body to the other without touching the ground.” Based upon this

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34 Rory Carroll, “U.S. Chose to Ignore Rwandan Genocide,” *The Guardian*, March 31, 2004, Accessed May 2, 2011, http://www.guardian.co.uk/world/2004/mar/31/usa.rwanda. In his formal address in Kigali, President Clinton denied having substantive intelligence on the scale of the Rwandan genocide: "It may seem strange to you here, especially the many of you who lost members of your family, but all over the world there were people like me sitting in offices, day after day after day, who did not fully appreciate the depth and speed with which you were being engulfed by this unimaginable terror."

35 Powers, “*A Problem From Hell*”, 354. The death of Rwanda’s president in the April 6 plane crash was used as pretext for Hutu extremists to begin their violent extermination campaign against Tutsis and moderate Hutus.

36 Ibid., 354-5.
grounded knowledge and further analysis, the Department of Defense realized that Rwandan military officers initiated a campaign of ethnic cleansing that constituted genocide in a May 9 intelligence report. The CIA already reached this conclusion of genocide in an April 23 presidential brief. Clinton therefore had a substantive awareness of the Rwandan genocide, making his administration’s legal posturing deceitful and his 1998 assertion of ignorance shameful.

During the Hutus’ 100 day campaign that killed over 800,000 Rwandans, the Department of State purposefully and continuously refused to acknowledge the existence of genocide. Legal counsel explicitly informed policymakers of the political obligations assumed from determining the Rwandan violence to be genocide and cautioned use of “g-word” in order to avoid such commitments. From late April through late June, the Department of State’s public relations followed this strategy during press conferences and public statements. In an April 28 question and answer session, spokesperson Christine Shelly parsed the language of the Convention to suggest a genocide determination could not made because the perpetrators’ intent remained unclear. By June 10, Shelly said that “acts of genocide” occurred in Rwanda but not genocide per se. The Clinton administration maintained this stance of nuanced genocide-denial because senior officials had “Somalia syndrome” and viewed Rwanda to be outside of American

37 Ibid., 355. The report stated that “an organized parallel effort of genocide [was] being implemented by the army to destroy the leadership of the Tutsi community.”
38 Carroll, “U.S. Chose to Ignore Rwandan Genocide.”
39–40 Powers, “A Problem From Hell”, 359, 361. A May 1 Defense Department interagency discussion paper noted the liability associated with a conclusion of genocide; ‘‘Genocide Convention: Language that calls for an international investigation of human rights abuses and possible violations of the genocide convention [sic]. Be careful. Legal at State was worried about this yesterday- Genocide could commit us [U.S. government] to actually ‘do something.’” A later Department of State cable conveyed this thinking in regard to the United Nations Security Council’s engagement of the Rwandan genocide: ‘‘The events in Rwanda clearly seem to meet the definition of genocide in Article II of the [Genocide Convention]. However, if the council acknowledges that, it may be forced to ‘take such action under the charter as they consider appropriate for the prevention and suppression of acts of genocide’ as provided for in Article VIII.”
41 Ronayne, Never Again?, 174.
interests. After the death of 18 American soldiers in a 1993 humanitarian mission in Somalia, Clinton advisors became very reluctant to intervene in United Nations missions in Africa and believed that any American operations in Rwanda would be costly and ineffective.\(^4^2\)

Furthermore, a consensus among the White House and members of Congress emerged that Rwanda was not a national interest or priority.\(^4^3\) Thus, the United States not only decided to avoid military intervention but coordinated an April 21 Security Council resolution to slash United Nations peacekeeping forces in Rwanda from 2,100 to 270 in order to eliminate any pressing expectation for American military intervention.\(^4^4\) By this time, over 100,000 Rwandans had been killed.\(^4^5\)

The White House valued narrowly defined American political interests over their political obligations under the *Genocide Convention* and therefore understandably interpreted it to reflect their priorities. The Clinton administration used a state of exception argument as the mechanism through which to “define law’s threshold” such that the *Convention* did not apply.\(^4^6\) Shelly’s assertions of uncertainty in the genocidal Hutus’ intent and a distinction between acts of genocide and genocide therefore provided legal facades for the Clinton administration’s underlying political calculation: “To put it simply, the president feared losing more votes and opinion poll percentage points than he would gain over any African intervention.”\(^4^7\)

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\(^4^2\) Ibid., 165-6. Administration officials applied Presidential Decision Directive 25 as a policy framework through which to determine that the United States should not intervene in Rwanda. Following the precedent of Somalia, the document instituted 16 factors that needed to be strongly considered before American forces intervened in United Nations humanitarian missions and that emphasized limited involvement and low costs.

\(^4^3\) Powers, “*A Problem From Hell*”, 352. Secretary of State Warren Christopher said on the April 10 edition of *Meet the Press* that “[i]t’s always a sad moment when the Americans have to leave but it was the prudent thing to do.” Senate Minority Leader Bob Dole made a similar but more direct declaration that the United States should not intervene in Rwanda: “I don’t think we have any national interest there. The Americans are out, and as far as I’m concerned, in Rwanda, that ought to be the end of it.”

\(^4^4\) Ibid., 366-70.

\(^4^5\) Ibid., 369.


\(^4^7\) Ronayne, *Never Again?*, 164.
While reviewing a summary of *Atlantic Monthly*’s study of the Clinton administration’s mismanagement of the Rwandan genocide in early September 2001, President George W. Bush scribbled “NOT ON MY WATCH” into the margins.\(^\text{48}\) Secretary of State Powell issued similar directives to senior Department of State officials that ordered “there [i]s not going to be another Rwanda.”\(^\text{49}\) Although these “never again” declarations convey good-faith commitments to addressing genocide, the actionable meaning of them remain unclear. They could be referring to willful public negligence when discussing genocide, unreasonable legal interpretations of the *Genocide Convention* based upon political considerations, or possibly a substantive commitment to preventing future genocides. An examination of the Bush administration’s handling of the Darfur genocide suggests that the White House could credibly claim to have fulfilled these goals to varying degrees, although it did not fully realize any of them.

On September 9, 2004 in testimony to the Senate Committee on Foreign Relations, Secretary Powell announced that the Sudanese government’s coordinated campaign of systemic and targeted violence constituted “genocide.”\(^\text{50}\) This pronouncement remains very significant because it was the first time that the United States government declared the existence of genocide while it was ongoing.\(^\text{51}\) Additionally, after the September 11, 2001 terrorist attacks, the United States developed a strong strategic interest in Sudanese cooperation in counterterrorism operations, seemingly making this assertion of genocide more monumental because it contradicts

\(^{48}\) Powers, “A Problem From Hell”, 516.


realpolitik expectations. Powell’s conclusion resulted from a Department of State innovative quantitative assessment of conditions on the ground through Atrocities Documentation Team (ADT) surveys. Investigators amazingly conducted these demographically informed surveys of refugees in Chad with independence and impartiality, which a supervisor termed “let the chips fall where they may” attitude. This evidence builds a substantive countervailing case to the thesis’ claim that administrations’ interpretations of the Convention will necessarily be self-interested and that it constitutes a body of claims and obligations.

However, Gerard Prunier, a French historian, offers explosive evidence that taints the seemingly apolitical method of Powell’s genocide determination. In an October 2004 interview with a senior Bush administration official, Prunier writes that he “was assured that the Secretary of State Colin Powell had practically been ordered to use the term ‘genocide’ during this [sic] high-profile 9 September 2004 testimony to the Senate Committee on Foreign Relations…” This assertion reflects the substantial pressure on the White House to designate the Darfurian crisis as genocide. Many progressive black, conservative Evangelical, and liberal Jewish congressional representatives and organizations had labeled the violence as genocide and had lobbied President Bush for this designation. Moreover, several Democratic presidential candidates had termed the violence as genocide. Former Brookings Institution Senior Fellow


53 Stephen A. Kostas, “Making the Determination of Genocide in Darfur,” 118-24. Working with USAID and NGOs in Darfur, the Department of State sent Atrocity Documentation Teams into Chad in order to determine the scope and scale of the violence in Darfur and whether it constituted genocide. Through a statistically credible sampling of refugees, investigators confidently determined that the Janjaweed were conducting a campaign of ethnic cleansing that constituted genocide.

54 Ibid., 119.


and current United States Ambassador to the United Nations, Susan Rice, testified before the Senate Foreign Relations Committee that the Bush administration scrambled to address the Darfurian crisis in April 2004 in response to outside political pressure: “This [political pressure] prompted the administration to decide, belatedly, that its comparative silence was deafening.”

Prunier’s and Rice’s claims about the politicization of the Darfur genocide determination do not necessarily undermine the legal credibility of the ADT process or Powell’s Darfurian genocide declaration. However, these scholars’ assertions strongly suggest that Bush administration officials did not seriously engage the issue of genocide in Darfur until they experienced sufficient outside political pressure. This insight means that Bush administration officials did act self-interestedly in preserving the Sudanese government’s consistent cooperation in counterterrorism efforts until domestic political pressure became more powerful. Thus, the White House almost certainly did not fully embrace its legal obligations under the *Genocide Convention* until a diverse group of actors politically pressured the Bush administration to do so.

This conclusion suggests that influential genocide advocates significantly transformed the United States’ legal obligations under the *Convention* into more consequential political commitments because they moved the Bush administration into substantive engagement of the Darfurian genocide.

The Bush administration’s political perspective of the genocidal declaration and the White House’s follow-up actions to it further suggest that actors self-interestedly interpret the *Genocide Convention* according to situational political demands. During Powell’s September 9, 2007, Senate Committee on Foreign Relations, A “Plan B” To Stop Genocide: Hearing before the Committee on Foreign Relations. 110th Cong., 1st sess., April 11, 2007, 50.

Kostas, “Making the Determination of Genocide in Darfur,” 113. State Department officials asserted in the late winter and early spring of 2004 that they lacked adequate information to evaluate the situation in Darfur beyond observations of armed conflict between rebel forces and the Sudanese government and the existence of a humanitarian crisis.
2004 testimony, he followed his genocidal assertion by stating that “no new action is dictated by this determination.” This argument effectively nullified any significant legal power of the Convention because Powell contended that genocidal findings do not impose any meaningful obligations to prevent and punish genocide under Article One. Although the United States fulfilled its obligation under Article VIII to recommend a United Nations investigation into the genocide and continued to provide humanitarian assistance to refugees and other victims, the United States performed no consequential actions that caused the Sudanese government to stop or even reconsider its genocide campaign.

Furthermore, the Bush administration purposefully became much less concerned with the Darfurian genocide after the president’s reelection. In April 2005, the Department of State began purposefully using a health-related metric, instead of a more accurate criminal violence method previously used in the ADT investigations, to measure the scale of the Darfur genocide in order that mortality estimates circulating in the media be low-balled. The Bush administration also became hesitant to call the genocide by its proper designation. Presidential Special Envoy for Sudan Andrew Natsios told the Georgetown Voice, a student newspaper, on February 8, 2007 that “[t]he ongoing crisis in Darfur is no longer a genocide situation but genocide had previously occurred in Darfur.” After experiencing significant political blowback

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60 Prunier, Darfur: the Ambiguous Genocide, 140. “What mattered was that attractive promises could be handed out without any sort of firm commitment being made. Predictably, the interest level of U.S. diplomacy on the Sudan question dropped sharply as soon as President Bush was reelected.”
61 Palloni and Parker, “Flip-flopping on Darfur,” 100. Palloni and Parker claim that the changed metric reflects a change in administration policy: “Although the President and the State Department subsequently reasserted the genocide charge, we conclude that policy on this issue was biased by an alliance with the Sudanese government in the war on terror.”
62 Senate Committee on Foreign Relations, A “Plan B” To Stop Genocide, 32.
from human rights activists, Natsios amended his statement. Indicating further reservations about the labeling of the Darfurian genocide, Natsios took almost two hours under intense questioning from the Senate Foreign Relations Committee in his April 11, 2007 testimony before he acknowledged the Darfurian violence as genocide. Bush did not need to further develop his political standing among human rights activists and therefore focused on the United States’ more practical need for Sudanese cooperation on counterterrorism. Susan Rice captured the Bush administration’s passive approach to the Darfurian genocide: “The administration talks tough, and then does little more than provide generous humanitarian assistance. It blusters and then, in the face of Sudanese intransigence or empty-promises, the administration retreats.”

The cases of the Reagan, Clinton, and Bush administrations’ engagement of the *Genocide Convention* present very compelling evidence that self-interested interpretations of the *Convention* should be expected because it ultimately exists as a series of political rights and obligations. This conclusion remains exceedingly important because it should have broad implications for policy-makers’ perspective of international law. The legalist paradigm indeed contains major weaknesses in its legal enforceability and political constraint of nation-states’ sovereign power. Nevertheless, a close examination of the political construction of the legalist paradigm renders these concerns unsurprising and establishes realistic expectations for the legalist paradigm’s utility. In order for the legalist paradigm to be effective, it must be perceived as an instrument that provides desirable political goals around which grounded support can be organized because of its moral and universal authority. This conclusion ultimately justifies the critical role of human rights NGOs and individual activists in making the legalist paradigm actionable for vulnerable peoples. Clinton administration National Security Advisor Anthony

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63 Ibid., 33-36.
64 Senate Committee on Foreign Relations, *A “Plan B” To Stop Genocide*, 44.
65 Ibid., 44.
Lake confirms this analysis. During a meeting with a Human Rights Watch official in the second week of the Rwandan genocide, Lake said that congressional representatives’ phones were not ringing and made a simple but demanding instruction: “Make more noise!”\textsuperscript{66}

\textsuperscript{66} Powers, “A Problem From Hell”, 509.
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