



Unwilling and Unable:

The Failed Response to the Atrocities in Darfur

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About the Centre

The Global Centre for the Responsibility to Protect was established in February 2008 as a catalyst to promote and apply the norm of the “responsibility to protect” populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. Through its programs, events and publications, the Centre is a resource and a forum for governments, international institutions and non-governmental organizations on prevention and early action to halt mass atrocities.

Cover Photo:

Um Zeifa Village in Darfur, 2005. Polaris/Brian Steidle

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CONTENTS

Executive Summary	1
Introduction	2
The Conflict and the International Response . . .	2
Summer 2003	2
Winter 2003–04	5
Summer 2004	8
Winter 2005	12
Spring 2006	16
Late 2006/Early 2007	18
Summer 2008	20
Lessons Learned	24
Endnotes	27



Executive Summary

Starting in mid-2003, the government of Sudan responded to an armed rebellion in the western state of Darfur with a massive campaign of killing and expulsion carried out both by regular army troops and by a proxy force known as the Janjaweed. United Nations (UN) sources estimate that this orchestrated effort led to the death of at least 300,000 people, while over two million were forcibly displaced. Extensive documentation by the UN, human-rights organizations and the media leaves no doubt that the Sudanese government and the Janjaweed committed war crimes and crimes against humanity, and did so over a period of many years. Yet all attempts to stop the killing, whether by neighbors, regional organizations, Western states or the UN Security Council, proved ineffective. In 2005, states—including Sudan—unanimously agreed that they had a responsibility to protect populations from mass atrocities; but this abstract commitment has had little effect on the Sudanese government or on other UN member states who had made this pledge.

This report from the Global Centre for The Responsibility to Protect examines the entire sequence of events and asks, first, why the world manifestly failed to stem the violence, and, secondly, what ought to have been done in the face of a state apparently determined to perpetrate atrocities upon its own people. Specifically, the study seeks to pinpoint when during the early period action might have either prevented or minimized the violence, and to stipulate what should and could have been done by many different actors who, at various times, engaged with the government of Sudan. Consistent with the doctrine of the responsibility to protect, the report focuses not on scenarios of military intervention, but rather on the vast array of instruments, consensual and coercive, available to the international community—diplomatic engagement and mediation, targeted sanctions, the introduction of peacekeeping forces and international criminal prosecution.

Across the many years of violence, these instruments were in fact deployed—but tardily and timidly. States could not agree on difficult measures, and Khartoum was quick to exploit the cracks in the international response. The report concludes with a series of lessons which can be taken from the conflict in Darfur and applied to other settings, especially those in which a state intentionally commits abuses against its own citizens. Among these are the imperative for the Security Council and other organs to heed the early or premonitory signs of violence and that over time, conflicts grow more intractable and complex, effectively precluding modes of action which might have worked at an earlier point. The report also highlights the inherent tensions or even contradictions of engagement, such as the sometimes rival claims of “peace” and “justice.” The goal of the responsibility to protect, the report concludes, is not “to mete out just desserts,” but to stop atrocities.

Introduction

Starting in 2003, the Sudanese government and its proxy force, the Janjaweed, responded to a rebellion in the western province of Darfur with a series of attacks that have caused the deaths of some 300,000 civilians.¹ According to the United Nations (UN), the African Union (AU), and numerous independent observers, both Western and African, Khartoum's tactics have included the bombing and burning of villages, murder and rape, the systematic destruction of livelihoods, and the denial of humanitarian assistance.² United States (US) authorities described the violence as "genocide" in the summer of 2004;³ and a UN inquiry concluded six months later that the government and its allies had committed "crimes under international law." Although such acts were not deemed genocide, the UN inquiry concluded that they "may be no less serious and heinous than genocide."⁴ Despite such widely investigated and internationally endorsed allegations, the Sudanese government has rejected all claims of responsibility and indeed has even denied accounts of large-scale death. The international community has responded to Sudan's obstinacy with a combination of threats and blandishments but has proved unable to mount an effective response to the ongoing violence. Today much of Darfur's population remains in vast camps for internally displaced persons (IDPs), who are afraid to return to their homes; the Darfur rebel force, now fragmented into innumerable factions, has become a danger to civilians as well as to the state; and the regime in Khartoum, intact after years of international sanctions, continues to perpetrate abuses upon the people of Darfur.

It was in the midst of this dismal chain of events that the world's leaders gathered at the 2005 UN World Summit embraced the responsibility to protect (R2P), and thus committed themselves to act to protect peoples from mass atrocities when states are "manifestly failing" to do so. For this reason, the very word "Darfur" now evokes the failure of the international community to use the instruments at its disposal to stop war crimes, crimes against humanity, genocide, and ethnic cleansing.

The violence in Darfur has forced the international community to confront the vexing issue of state sovereignty. In many settings where atrocities have been committed, such as in the Democratic Republic of the Congo (DRC) or Somalia, the state has become feckless or state authority has vanished altogether, so that the international community may act without facing resistance from an incumbent regime or from its allies. The doctrine of the responsibility to protect stipulates

that the international community must step in where states are "manifestly failing" to protect their own peoples from mass atrocities. Recent history has shown that the hardest cases for effective action, politically if not tactically, are those where a functioning government resolutely opposes action by outsiders and appeals to those states who are reluctant to transgress sovereignty or those who do not share the view that the state is responsible for the atrocities. This is precisely what happened in Darfur.

The goal of this paper is to ask whether and how this calamity could have been avoided. It cannot be said, as it can be with Rwanda, that nothing was done. What happened all too swiftly in Rwanda happened far more slowly in Darfur; and during that time, much was said and much was done. But the words were too weak, and the acts too late and too timid. The international community might have been able to deter the regime by recognizing the rising campaign of violence at the very outset, in mid-2003. Key states could have insisted on incorporating Darfur into the larger political negotiations already underway between the government and the rebels of southern Sudan. Both the UN Security Council and regional bodies, above all the African Union (AU), could have threatened, and then imposed, a graduated series of punishments in order to significantly raise the cost to the regime of continuing its campaign of attacks. Why were these actions not taken? Does the failure to act effectively reflect a fundamental unwillingness to confront an intransigent regime?

The Conflict and the International Response

The background of the conflict in Darfur; the rise of rebel organizations; the emergence of the Janjaweed; the international community's failure to recognize the signs of growing violence

Summer 2003

The war between the army and rebel groups in Darfur is usually said to have started in the spring of 2003. It is not possible, however, to understand the motives of the rebels, or the intensity of the government's response, without some sense of Sudan's political history or of relatively recent developments in land-use patterns, religious and ethnic identity, and relations with neighbors, including Libya

and Chad. Sudan is a vast country comprising an array of linguistic, religious, tribal, and ethnic groups. For at least the last century, and especially since it gained independence in 1956, Sudan has been dominated by a minority comprising only about 5 percent of the population: the so-called “riverine Arabs,” a merchant class originating in the Nile valley north of Khartoum.⁵ The Arab elite has sought to compensate for its minority status by concentrating power and national resources in Khartoum. From the time of Gaafar al-Nimeiry—a military figure who overthrew a parliamentary government in 1969—Sudanese regimes have seen themselves as forces for modernization, as against the traditional social and political structures dominating the country’s periphery.⁶ Since 1989, when the National Islamic Front of Brigadier General Omar al-Bashir overthrew a largely technocratic and secular government, the regime has also sought to impose its religious principles on a population whose own traditions are both diverse and essentially moderate. It should come as no surprise that this brand of authoritarian rule has provoked unrest and rebellion throughout Sudan’s vast periphery.

A state of almost perpetual war has pitted Sudan’s vast periphery against the capital for the last two decades. However, none of these insurgencies, Darfur included, bears comparison to the war which, starting in 1983, divided the largely Christian and animist South, neglected even by the standards of a deeply impoverished country, against the ruling elite in the North. Sudan’s civil war, which constitutes one of the twentieth century’s great catastrophes, lasted 20 years, took 2 million lives, and displaced 4.5 million people from their homes.⁷ The war also provided succeeding regimes with a kind of laboratory of counterinsurgency tactics, including the use of *murahaleen*—Arab cavalry—to burn down villages and rape, plunder, and kill civilians. Indeed, the discovery of oil in the southern region in the late 1990s ratcheted up violence on both sides to new levels of ferocity, with southern rebels destroying villages and *murahaleen* abducting, and allegedly enslaving, women and children.⁸

The perpetual war of center against periphery forms the historical backdrop of the conflict in Darfur; but several other powerful forces must also be reckoned with. Darfur itself is a polyglot place of pastoralists and nomads, tribes who identify themselves as “Arabs” and as “Africans,” and various shades and intensities of Islam. While these identities were long fluid and even interchangeable, in recent years they have become “fixed and magnetized,” as one prominent scholar notes.⁹ This polarization of identity has given outsiders a ready means to mobilize groups to fight one another. Indeed, Mahmood Mamdani, an American scholar originally from Uganda, has argued that by sorting the peoples of Darfur into distinct tribal groups for their own political and administrative purposes, British colonial administrators laid

the foundations for the later conflict.¹⁰ Whether or not this is so, the politics of racial and cultural identity, starting in the 1980s and thereafter consciously manipulated by the Bashir regime, dramatically increased these tensions. Although the government conscripted the Africans of Darfur as loyal Muslims to fight alongside Arabs against the Christians of the South, the ideology of Arab supremacy made them inferior citizens of their own region and encouraged Arab tribes to view themselves as the natural masters of Darfur.¹¹

To this combustible mix were added demographic and climate changes that in turn affected land-use patterns. With population growth among sedentary tribes, the amount of land under cultivation steadily expanded, while increased immigration from nomadic tribes in Chad generated greater demand for grazing land. These population shifts coincided with the long-term process of desertification in the Sahel—almost unprecedented in its effect on the climate and soil of the Darfur region¹²—forced nomadic tribes to graze their animals on farmed land, rather than passing through corridors traditionally set aside for herding. Farmers fenced off their property; herders fought their way into enclosures. These two groups fought one another in a bloody civil war from 1985–87, an episode that further embittered relations between “Arabs” and “Africans.” Khartoum was quick to exploit this increasingly tense rivalry, offering to ensure the Arabs an upper hand in a zero-sum battle over resources in exchange for serving as the state’s proxy force in its endless struggle to reduce the periphery to obeisance.¹³

External actors added to an already explosive situation. Moammar Qaddafi armed the Arab tribes fighting against the Chadian regime of Hissene Habre, while the West, supporting Habre, armed the non-Arabs. All used Darfur as a rear base, thus ensuring that the region was awash with weapons. Skirmishes once fought with spears and clubs instead would be settled with AK-47s. Mamdani has described Darfur, like other conflicts in Africa, as a consequence of “regional tensions, which are in turn a by-product of the Cold War that led to a regionalization of proxy wars and internal conflicts in postcolonial Africa.”¹⁴

The ruling elite has consistently asserted that it is seeking to preserve the integrity of the Sudanese state in the face of ethnic nationalism. Scholars and regional experts, however, have attributed the state of almost perpetual war less to local rivalries, or to the legacy of the Cold War or colonialism, than to Khartoum’s insistence on maintaining political, economic, and cultural supremacy. The government’s response to these localized insurrections falls into a recurring pattern: a proxy force, equipped and coordinated by the army and intelligence forces, sows terror among civilians, while the regime systematically deprives the region of any resources

that might fortify a rebellion. The war that broke out in Darfur in 2003 should be understood within this larger pattern. As one noted scholar writes, “It is rather that the whole of [Sudanese government] policy and political philosophy since it came to power in 1989 has been verging on genocide in its treatment of the national question in Sudan.” Such practice, he adds, “has never been a deliberate well-thought out policy but rather a spontaneous tool used for keeping together a ‘country’ which is under minority Arab domination.”¹⁵

By 2000, dissident forces in Darfur had begun to regroup after earlier defeats. A group calling itself “The Seekers of Truth and Justice” clandestinely produced and distributed an explosive study called *The Black Book*, which minutely documented “the imbalance of wealth and power in Sudan.”¹⁶ The authors were Darfuris who occupied prominent positions in Sudanese society and politics. Some were allied with Hassan al-Turabi, an Islamist who had helped put Bashir in power and then turned against him. From this faction emerged the Justice and Equality Movement (JEM), an avowedly Islamist body that called for reform, but was also associated with Turabi’s own political ambitions as well as with the Zaghawa tribe to which most members belonged. The group was led by Khalil Ibrahim, a former official in the Bashir government. Other figures in the Darfuri leadership, many of them peasants who hailed from the Jebel Mara region and were less attracted to JEM’s Islamist agenda, formed the Sudanese Liberation Movement (SLM). (The group’s military wing was known as the Sudanese Liberation Army, or SLA). The group was led by Abdul-Wahid Muhammad Nur, a young Fur lawyer. While JEM sought Bashir’s overthrow, the SLA/M advocated national political reform, including a federal system of government with more resources and authority for Darfur.

The Black Book had called for political, rather than military, change. But the National Congress Party (NCP), the official governing political party, offered no space for peaceful political change. As two noted scholars of the region wrote of the rebels, “Theirs is not an insurgency born of revolutionary ideas, but rather a last-ditch response to the escalating violence of the Janjaweed and its patrons in Khartoum.”¹⁷ In February 2002, a rebel force recruited from the main African tribes—Fur, Zaghawa, and Masalit—attacked and burned a government garrison. Small-scale attacks continued throughout the year. And then, in April 2003, SLA forces staged a lightning attack on the government airfield in El Fasher, destroying helicopters and bombers, killing 75 soldiers, and capturing an air force commander.¹⁸ The coordination and scale of the operation showed that the rebellion posed a real threat to government control in the region. Over the next several months, the rebels won a series of battles against an army weakened by years of warfare in the South, raising the very real possibility that the entire

region could rise in revolt—Khartoum’s nightmare scenario. Unlike the South, the people of Darfur are Muslim and thus integral to Sudan’s Islamist identity. A successful rebellion in the region would threaten the regime’s claim to legitimacy. At the same time, because the regime had recruited heavily from Darfur’s African tribes to fight against the South, Khartoum could not trust the army to prosecute a war in the region.

In an effort to maintain its authority, the regime turned to the Arab tribes of Darfur. Some of these tribes had been warring against pastoralists for decades, sometimes in the pay of external figures such as Qaddafi. In fact, the explicit alliance between Khartoum and Arab fighters appears to have begun in reaction to the formation of the SLA. Two days before the attack on the El Fasher airport, Janjaweed fighters, some wearing uniforms and allegedly operating as a government militia, killed 55 people in a market town in West Darfur.¹⁹ In June, Musa Hilal, a tribal warlord who was to become the leader of the Janjaweed, began to recruit forces, including by emptying prisons of Arab inmates.²⁰ Whereas government forces had focused their attacks on rebel strongholds, the Janjaweed began to target towns and villages with no rebel presence, using the same terror tactics that Khartoum had deployed elsewhere.

The UN and international nongovernmental organizations (NGOs) maintained a vast presence in Sudan during this time. Similar to diplomats working in the region, however, their attention remained focused on the North-South conflict. In February 2003, Amnesty International began calling attention to the violence between nomads and farmers in Darfur.²¹ Two months later, the organization noted that thousands of villagers had fled their homes following government attacks and called for an international commission of inquiry to be impaneled by the African Union, the UN General Assembly, or the UN Security Council. Other groups issued similarly alarming reports. Over the summer, sultans from African tribes came to Khartoum to plead with the UN for protection from Janjaweed warriors and government bombers.²² In mid-September, Mukesh Kapila, the UN’s resident and humanitarian coordinator, sent a report back to UN headquarters detailing Janjaweed atrocities and naming specific high-ranking figures in Khartoum who “support and direct” the militias. A humanitarian disaster appeared to be in the making.

As Kapila has recounted:

The first opportunity for UN action would have been in April to July, 2003, when the rebels had the upper hand. From my political conversations in Khartoum, I have no doubt that the GoS [Government of Sudan] was very hesitant with its

initial violent Darfur strategy and also uncertain of what the West might have done in a belligerent mood in the post-Baghdad bombing period. The Sudanese were anxious to maintain good relations with Bush. The trade deals with China and Malaysia and so on came later in 2003 and 2004; the oil contracts hadn't yet been signed; the economy was still quite rosy. Even talk of economic sanctions could have upped the ante for the government. And by July or August, the great powers knew about the sustained attacks. If the Security Council or the troika [the United States, United Kingdom, and Norway] had said to them, 'Look, we're watching, we know what's going on, you're getting in trouble if you carry on this way,' it would have made a difference. The violence didn't yet amount to crimes against humanity; the point of no return hadn't been reached.²³

Kapila conceded that in the summer of 2003 neither he nor others recognized the full measure of the danger in Darfur. And yet the familiar pattern of counterinsurgency-by-atrocity had already begun to take shape in this new setting. Tens of thousands of refugees had fled across the border to Chad, while the fighting had placed 500,000 IDPs within Darfur beyond the reach of urgent humanitarian assistance. Meanwhile, reports from the field painted an alarming picture of the growing Janjaweed rampage. A pattern of prior atrocities offers one of the strongest signs that such crimes will recur. There was thus good reason to take cognizance of the rising violence, even if—or precisely because—it had not yet reached the level of mass atrocities. Relatively modest measures might have restrained the government, which still had much to lose. And yet, as a British commission of inquiry later noted, the warnings of escalating violence “were not taken seriously.”²⁴

Why not? First of all, Darfur felt very remote to policy makers. Richard Williamson, then a diplomat with the US Mission to the UN, asserts, “We could have used a little shock therapy in 2003, near the beginning. We really didn't make the effort; it was a continent far away, little understood.”²⁵ The West was focused on Iraq and Afghanistan, as well as on the DRC, Sierra Leone, and the Balkans. Moreover, remonstrating with Khartoum over its behavior in Darfur might have imperiled something then seen as vastly more important by both Western and African diplomats: a peace agreement between the North and South. The rebel forces of the SPLM/A (Sudan People's Liberation Movement/Army) had reached a truce agreement with the government in October 2002, which was then extended through the end of March 2003. Diplomats believed that a permanent settlement to this civil war might be only weeks or months away.

The conflict in Darfur was thus left to the combatants themselves. In September 2003, the leaders of the SLA reached an agreement with government officials for a 45-day truce to be followed by negotiations on a peace agreement. But since the government refused to disarm the Janjaweed, rebel fighters could not take the risk of withdrawing to specified cantonments, as the agreement required. Nevertheless, this rickety compact was more than sufficient for an international community unwilling to be distracted from hopes of a North-South solution. Kapila, who had helped bring the two sides together, found little interest among diplomats in Khartoum in challenging the government on its conduct in Darfur. In October, he traveled to Washington, D.C., and key European capitals, briefing officials on the rapidly deteriorating situation and seeking to place the issue on the Security Council's agenda. He found no supporters. By early November, when the rebels renounced what had become a hollow compact, the violence in Darfur had begun to reach epic proportions.

At this early stage, as Kapila observes, the NCP was still relatively unsure of itself, economically shaky, and vulnerable to outside pressure. The Security Council might have given the regime pause merely by placing the issue on its agenda and receiving briefings from UN officials. Both influential neighbors, such as Egypt, and regional organizations, such as the Intergovernmental Authority for Development, could have approached the regime privately and offered to help mediate the dispute. Key donors could have warned that aid would be affected by the violence in Darfur. “My thesis,” says Kapila, “is not about what happened after December 2003; by then it was a no-brainer. But if you're really talking about prevention, the window was between July and December. We really have to mull over that period of time.”

Winter 2003–04

Violence in Darfur peaks with coordinated attacks on civilians; UN officials are divided over the appropriate response; the Human Rights Commission declines to criticize Khartoum; the African Union seeks to broker peace talks

By November 2003, the violence in Darfur had grown far worse, but also more opaque. Khartoum had, ominously, banned access to the area, and UN and human rights groups generally had to travel to Chad to learn from refugees the full measure of the horror. A delegation from Amnesty International reported that “[r]efugee after refugee, in widely scattered areas, told how militias armed with Kalashnikovs and other weapons, including bazookas, often dressed in green army uniforms, raided villages, burnt houses and crops and killed people and cattle...Some refugees described how villages were bombed by government

planes. People detained by the military security described torture and appalling conditions of detention.”²⁶ By the end of the month, the UN mission issued a briefing estimating that 600,000 Darfuris had been displaced from their homes and were forced to wander precariously through an increasingly deadly war zone. UN officials asserted that “[t]he humanitarian situation in the Greater Darfur Region of western Sudan may emerge as the worst humanitarian crisis in the Sudan since 1988 and is among the worst in Africa.” The mission recommended “strong international pressure on the Government of Sudan to control the militias.”²⁷

Throughout this period, a stream of high-ranking UN officials visited Khartoum, including Kieran Prendergast, head of the Department of Political Affairs (DPA); Ruud Lubbers, UN high commissioner for refugees; and Tom Vraalsen, UN humanitarian envoy to Sudan. All of them spoke to leading officials in the government but remained cautiously even-handed in their public statements. “When you read the reports,” says Brian Grogan, a UN humanitarian official in New York, “it was clear that the Janjaweed were committing the vast majority of the atrocities that were going on, but when we made statements, we’d be urging all sides to stop.”²⁸ Jan Egeland, the UN’s humanitarian coordinator, had read those reports and concluded that the time had come to cast off diplomatic nicety. In early December, he convened a press conference, declaring that Darfur “has quickly become one of the worst humanitarian crises in the world.” Four days later, Secretary-General Kofi Annan, using a text prepared by Egeland’s office, described the crisis in equally grave language.²⁹

By the end of 2003, however, the term “humanitarian crisis” could not adequately capture the ongoing brutality unfolding in Darfur, where government forces and the Janjaweed were killing their way across the province. One incident recounted in a 2005 UN inquiry, in which 250 people in the South Darfur village of Surra were killed, offers a vivid example of tactics that had become routine:

The Janjaweed and government forces attacked jointly in the early hours of the morning. The military fired mortars at unarmed civilians. The Janjaweed were wearing camouflage military uniforms and were shooting with rifles and machine guns. They entered the homes and killed the men. They gathered the women in the mosque. There were around ten men hidden with the women. They found those men and killed them inside the mosque. They forced women to take off their maxi (large piece of clothing covering the entire body) and if they found that they were holding their young sons under them, they would kill the boys.³⁰

The regime was now plainly perpetrating crimes against humanity and was using its Janjaweed mercenaries to carry out a campaign of ethnic cleansing against the people of Darfur. Despite increasing international criticism, Khartoum refused even to acknowledge that a war was in progress. In late December, Information Minister al-Zawhi Ibrahim Malik asserted, “There is no rebellion in Darfur, just a local conflict among specific tribes. The government has never armed any militias. The propaganda in the West is trying to exaggerate what is happening.”³¹ Two days later, however, President Bashir went on television to vow to his own people that the government would “use all available means, the Army, the police, the mujahideen, the horsemen, to get rid of the rebellion.”³²

By late 2003 and early 2004, diplomats and policy makers could no longer think of Darfur as just another Sudanese provincial conflict. Jan Egeland and his staff implored Security Council members to put the issue on the council’s agenda. Egeland later recalled:

I felt in my gut that we were front-row witnesses to ethnic cleansing of the worst kind. I met with every presidency [of the Security Council]. And I said, ‘The worst humanitarian disaster in the world is Darfur, and I am prepared to be invited to the Security Council to talk about it.’ But the US and UK pursued a line vis-a-vis me and others, which was, ‘We’re not going to have this on the Security Council agenda.’ The Norwegians took the same view. The three were so obsessed with getting a North-South agreement. I had never believed this argument—don’t spill the beans on Darfur when we’re so close to North-South. But those three countries had invested so much in the North-South process. The litmus test was that the US and UK did not do much to convince the presidencies. And it was clear that DPA [the UN Department of Political Affairs] would not help me with this. Nor was the media a big help at this time.³³

The argument against “spilling the beans” on Darfur was founded on the hope that a solution to one of the world’s most intractable wars might be around the corner, as well as the belief that reconciliation between the North and South was a precondition for resolving the conflict in Darfur. The Bush administration appears to have also had the more explicitly political rationale of reaching a settlement in time to bring President Bashir and John Garang, leader of the SPLM/A, to Washington for the Presidential Inauguration in late January.³⁴ As one deadline after another passed, both diplomats and activists became convinced that Khartoum was using the Naivasha process, as the negotiations were called after the Kenyan city in which they were held, to

pursue its plans in Darfur unhindered.³⁵ At the same time, John Garang had come to view the rebels as a proxy force of his own, undermining Khartoum both politically and militarily and draining resources away from the civil war.³⁶ Richard Williamson, by early 2004 the US representative to the Human Rights Commission, notes that “those who were raising the issue that we should speak out were being advised to temper their words because the bird was almost in the hand. That forestalled things for a little while; but by the end of February, it was clear the bird was not in the hand.”³⁷

International diplomats had good reason to pursue completion of the pact, known as the Comprehensive Peace Agreement (CPA), which offered a blueprint for the democratization of Sudan. At the same time, the British inquiry concluded that the consequences of marginalizing Darfur in order to pursue the CPA were ruinous: “In early 2004, with the international community prioritizing the CPA process, the Government of the Sudan unleashed its deadly and totally disproportionate counter-insurgency strategy. It was given a window of opportunity, and a reason to take it quickly. If Darfur had not been sidelined, there is no doubt that events would have turned out differently.” The inquiry further concluded that “[t]he international community could have [pushed harder on Darfur without risking the CPA negotiations,” and that “the sequential approach, attempting to parcel off Sudan’s problems rather than treat them in an integrated manner, was short-sighted, misleading and unhelpful, particularly so when dealing with a regime that is adept at playing games with the international community.”³⁸ Khartoum might, in fact, have responded to pressure on Darfur by jettisoning the CPA; but the sequential approach did allow the regime to continue pursuing its bloody policies in the region.

Although some UN officials pushed hard, if fruitlessly, against diplomatic resistance to tough action on Darfur, the UN Secretariat itself was sharply divided over how to properly respond to the violence. Isabelle Balot, a UN political affairs official stationed in Khartoum, explains, “We kept sending these reports back to headquarters, and then there was a terrible silence. We were under great pressure from the Sudanese government, and we received no political guidance.”³⁹ In fact, Kieran Prendergast did not agree with Kapila’s, or Egeland’s, calls for urgent action. “My own experience of Sudan,” Prendergast has said, “suggested to me that rather than this western concept of genocide, it was quite likely to be an extremely vicious pacification campaign by the government. It was standard operating procedure when they had an uprising of some kind to try to arm the local militias to put that down. Here the situation was complicated by drought and famine. Large numbers of people were dying because we were unable to get relief supplies to them in time.”⁴⁰

Rather than holding press conferences and seeking to brief the Security Council, Prendergast believed that it was “much more productive to deal with the government and say, ‘Your behavior is wrong, you are supporting militias who are doing A, B and C, please stop it.’” This was precisely the approach that the Department of Political Affairs recommended throughout this period.⁴¹ Critics of this approach observed that Khartoum used negotiation as a means to continue prosecuting its campaign of brutal ethnic cleansing and that while the drought had led to many deaths, the displacement of hundreds of thousands of citizens as result of ethnic cleansing had left the people of Darfur far more vulnerable to hunger and illness.

The violence reached its apogee in December and January. In early February, Sudan’s humanitarian affairs minister informed Kapila that his team would finally be permitted to visit selected areas a week later. “Of course,” Kapila said, “that meant that they would be finished with their work by then. They could even tell us to the day when to come back—and they were true to their word.”⁴² Kapila’s dispatches to New York became increasingly desperate. In a February 29 “humanitarian roundup,” he asserted that “[w]ithout increased and tangible security commitments from the authorities, the sustainability of future UN and NGO interventions to deliver humanitarian assistance to the Darfur region remains problematic.”⁴³ Two days later, he noted “reports of thousands of additional Janjaweed heading towards the Kass area”⁴⁴ in southern Darfur. Food distribution, public health, and sanitation for the swelling population of IDPs were increasingly threatened. Kapila believed that he was making no more headway with his own superiors than he had with Western diplomats. In late March he committed what he recognized would be seen as an act of insubordination: he arranged an interview with BBC television in which he described the violence in Darfur as “an organized attempt to do away with a group of people” and compared the situation to the early stages of the genocide in Rwanda.⁴⁵

Kapila’s accusations infuriated DPA officials, but emboldened others. On April 1, the European Union (EU) called for a no-fly zone in Darfur to be policed by the UN. On April 7—almost ten years to the day from the beginning of the genocide in Rwanda—Kofi Annan warned in a speech before the Human Rights Commission in Geneva that, should Khartoum remain intransigent, “the international community must be prepared to take swift and appropriate action,” including “military action.”⁴⁶ This was the first time any major figure had broached such a possibility. Annan’s own political advisors strongly objected to the threatening language.⁴⁷ It was clear that neither individual states nor global institutions were prepared to take even modest steps. On April 2, Jan Egeland was finally able to use the German presidency of

the Security Council to deliver a general briefing, which he then used to highlight the situation in Darfur. Egeland spoke of the many verified instances of coordinated government attacks on civilians as the “tip of an iceberg” in an “ethnic cleansing of hundreds of thousands.”⁴⁸ In the subsequent debate over a “presidential statement,” China, Pakistan, and Algeria successfully insisted on watered-down language, and so the final communiqué merely called on “the parties concerned to fully cooperate in order to address the grave situation prevailing in the region.”⁴⁹

The same dynamic prevailed in the Human Rights Commission, where the United States and the European Union introduced a resolution demanding that Khartoum stop killing civilians and provide unhindered access to affected populations. Annan’s speech had put African countries inclined to support Sudan in an uncomfortable position, but such states remained reluctant to issue demands to one of their own. The EU, unwilling to support language opposed by many members, agreed to an alternative resolution that excluded US demands and even thanked Sudan for having agreed to permit a delegation from the Office of the High Commissioner for Human Rights (OHCHR) to visit the country. Two weeks later, Sudan was elected to the 53-member commission.

In a later article, Richard Williamson called the acquiescence of EU president Mary Whelan, ambassador from Ireland, “a disgrace” and explained how “well-meaning but misguided diplomats had allowed their understandable desire for consensus decision-making or, absent that, the broadest possible support to blind them to the principles of decency and humanity they believed in and turn their backs on the victims in Darfur.”⁵⁰ Williamson might, however, have added that the deep embitterment toward the United States after the bruising 2003 debate over the war in Iraq made it difficult for other Western states to follow Washington’s lead and gave developing countries a handy pretext to resist an American initiative.

Advocates of tough measures give some credit for resolve at this critical moment to the US government. A May 2004 analysis by Human Rights Watch concluded that “there has been little public condemnation from key individual European governments,” while African states “have made little or no public condemnation of the government of Sudan’s abuses.” While “the US government has taken the strongest public stance on Darfur of any individual government,” the lack of coordination between the United States and Europe has “permitted the government of Sudan to play various governments against each other to its advantage...”⁵¹

African states remained notably quiet during this period.

The AU’s constitutive act authorized intervention to stop “war crimes, genocide and crimes against humanity” by a member, but in the case of Darfur, the organization sought to play a role as neutral arbiter between the state and insurgent forces. The AU’s Peace and Security Council was briefed on the conflict in early March. At the end of the month, Alpha Oumar Konaré, chairman of the African Union Commission, dispatched a team to N’djamena, the capital of Chad, where talks between the government and the rebels were scheduled to take place. On April 8, the two parties signed a 45-day ceasefire, “automatically renewable,” in which they agreed to release political prisoners, facilitate the delivery of humanitarian assistance, and seek a lasting political solution. The Sudanese government established a “ministerial committee” to implement the agreement and vowed to bring to justice those who abused human rights. In late May, the AU established a Ceasefire Commission and assembled a team of observers to be stationed in Darfur, with the goal of monitoring compliance with the ceasefire agreement. This would be the beginning of much deeper AU engagement and of a long and frustrating effort to find a solution to a conflict which none of the parties seemed willing to bring to a close.

The violence had already advanced too far for agreements such as the N’djamena ceasefire to last. Nor did the mere inclusion of the conflict in the deliberations of the Security Council and the Human Rights Commission prove to have any deterrent effect on Khartoum. But the regime might still have been influenced by the realization that its brutal behavior had unified the world against it. Egeland and other diplomats believe that strong statements by the council and the commission and by regional bodies such as the AU, and the threat of international isolation, might have convinced President Bashir that the same tactics he had used in the past might now carry dangerous consequences. The threat of sanctions from either global or regional bodies might have made a difference. And any threat from the international partners in its emerging oil trade—and above all, from China—would have forced the regime to reconsider its violent campaign. All such measures would have been far milder, and less difficult to adopt, than the threat of the use of force in any form; but even these proved far beyond the reach of the international community.

Summer 2004

Media and civil society groups publicize the atrocities; Kofi Annan visits Darfur, focusing attention on the conflict; the UN Security Council condemns the regime, but key states block the threat of sanctions; Khartoum defies the council’s will; the AU fields a team of military observers and prepares a larger peacekeeping mission

The tide of diplomatic opinion began to turn in May 2004. On May 7, the UN high commissioner for human rights released a report accusing the Janjaweed of sowing “a reign of terror” across Darfur.⁵² (The report had been prepared earlier, in time for the commission’s vote on the Darfur resolution, but the high commissioner had agreed to withhold it in exchange for a promise by Khartoum to allow his investigators access to Darfur.⁵³) In a briefing to the Security Council that same day, Bertrand Ramcharan, the acting high commissioner, declared that violations of human rights by the government and its proxies “may constitute war crimes and/or crimes against humanity.” On May 25, the council issued a much sterner presidential statement, asserting that it “strongly condemns” the “large-scale violations of human rights and of international human rights law” described in the OHCHR report and elsewhere and “demands that those responsible be held accountable.”⁵⁴ Secretary-General Annan also became more active, pressing Sudan’s UN ambassador to stop restricting access to Darfur’s burgeoning population of IDPs. Khartoum agreed to remove some restrictions on the movement of aid workers. Here was evidence that the Sudanese government would respond to pressure, if grudgingly.

As the news media gained more access to Darfur, accounts of the horrors multiplied, along with calls for action. In mid-June, Nicholas Kristof recounted in *The New York Times* the horrific tale of an attack on the village of Ab-Layha by a force of 1,000 Janjaweed mounted on horses and camels and backed by government troops in trucks as well as Antonov bombers. The militia and army killed 100 or so villagers, Kristof reported.⁵⁵ And “to ensure that the village would be forever uninhabitable....the Janjaweed poisoned wells by stuffing them with the corpses of people and donkeys,” blew up a dam, and burned down the village school, clinic, and mosque. Using a figure of 320,000 deaths for the entire conflict to date (which later came to be seen by epidemiological experts as inflated), Kristof wrote that if the people of Ab-Layha “aren’t victims of genocide, then the word has no meaning.”

By mid-2004, one million Darfuris had been displaced by war, many of whom were struggling to survive in makeshift camps; about 200,000 of them had fled across the border to Chad. Humanitarian organizations could barely scrape the surface of so vast a population. The death toll was high even in those camps served by NGOs. Doctors Without Borders reported in mid-June that at the West Darfur camp of Mornay, with 80,000 civilians, 200 people were dying every month from “violent acts, starvation and disease.” Terrified residents could not venture out for food or firewood, since “the same militiamen who conducted the scorched-earth attacks on their villages [controlled] the periphery of Mornay camp.”⁵⁶

Owing to a shortage of food, one out of five children suffered acute malnutrition.

By this time, the regime’s consistent denials of the scope and nature of the violence could no longer obscure the truth. In addition to growing media coverage, human rights NGOs, including Amnesty International and Human Rights Watch, were offering regular reports from the field. In July, human rights figures came together to form the Save Darfur Coalition, which would go on to become a leading source of advocacy and information on Darfur—and a focus of criticism both from those committed to quiet diplomacy and from other advocates and scholars who viewed their confrontational policy prescriptions as simplistic.⁵⁷ The vast humanitarian operation by then under way meant that both local and international actors had fanned out across the affected area—even though portions of Darfur remained inaccessible. It was no longer the nature of the conflict that was in question, but rather the nature of the international community’s response.

Under growing pressure to act, Annan visited Sudan in late June—during the same time as US secretary of state Colin Powell. He met with President Bashir and other senior officials in Khartoum and then took a tour of IDP camps—one of which had miraculously vanished in the middle of the night, presumably because the government had not wanted the secretary-general to see the conditions there.⁵⁸ Annan heard horrific tales of rape and abuse from camp-dwellers. Annan and Bashir signed a joint communiqué in which the Sudanese government committed itself to remove all obstacles to humanitarian work, to “end impunity” for abuses of human rights, to “immediately start to disarm the Janjaweed,” and to resume political talks on Darfur.⁵⁹ Almost as soon as Annan cleared Sudanese airspace, government forces bombarded several villages in North Darfur and government officials beat up and arrested some of the camp leaders who had spoken to the secretary-general.

The visit demonstrated the limits of the secretary-general’s position. Despite the growing clamor for coercive measures, Annan had sought to sway Khartoum with offers of economic development. President Bashir, he said, “seemed to understand that if he wants to come out and join the family of nations and open up to investments he needs to gain the respect of the international community.”⁶⁰ But Annan also conceded that he was offering carrots because he had no authorization from the Security Council to warn the government of the consequences of inaction. “I don’t,” he said, “see anybody rushing in with troops.” Despite his deferential dealings with Sudanese leaders, Annan told the council that it must demand that Khartoum disarm the Janjaweed and protect endangered civilians.⁶¹

Annan's visit did, however, help bring the plight of Darfur to the world's attention. Editorials in newspapers across the West began to demand urgent action, including, if necessary, some form of humanitarian intervention. *The Economist* suggested in late July that if Security Council members blocked an arms embargo or oil sanctions, "outsiders should be prepared to use force"—ideally in the form of an AU force with Western support. British general Mike Jackson declared that 5,000 troops could be quickly moved to Darfur, as a much smaller force had in the (vastly easier) case of Sierra Leone.⁶²

In mid-July, Washington, with strong backing from London, introduced a Security Council resolution threatening to impose sanctions on the Sudanese government.⁶³ On July 29, with the council due to meet, Annan issued a statement asserting that he was "gravely concerned about reports of continuing intimidation, threats and attacks against internally displaced persons in Darfur," as well as by "reports of rape by Janjaweed militias." Nevertheless, China, Russia, Pakistan, Algeria, Angola, the Philippines, and Brazil objected to the threat of sanctions. France, which had commercial interests in Sudan—and which had little desire to associate itself with Anglo-American campaigns for coercive action—proved a lukewarm supporter of the resolution. The United States relented, and the following day, the council approved resolution 1556, demanding that the government of Sudan disarm the Janjaweed and bring to justice those who had violated international humanitarian law. But rather than threaten sanctions, the council vowed to consider measures under Article 41, which authorizes coercive, but non-military, actions. The council requested the secretary-general to report back on Khartoum's compliance within thirty days. Even then, China and Pakistan abstained. The Pakistani ambassador complained that the resolution placed undue blame on the government of Sudan. Khartoum's own representative insisted that Sudan was adhering to the terms of the joint communiqué and called the resolution a "Trojan horse" for American activists working clandestinely with the rebels in Darfur.⁶⁴

Resolution 1556 had several direct effects, not all of them beneficial, on the situation on the ground. First, Khartoum understood once again that the Security Council was too divided on Darfur to pose a real threat to its campaign of violence. That campaign, if anything, accelerated in August. By then, according to one account, the Janjaweed were operating out of 16 fixed camps in just one of Darfur's three states; five were shared with regular government troops, and three had helipads.⁶⁵ At the same time, the regime recognized that a show of cooperation could reduce public pressure and agreed to lift some of the restrictions on humanitarian access. Khartoum had begun to learn that it could loosen or tighten the spigot of humanitarian access, and thus of the

suffering of civilians, to manipulate public opinion abroad.

Finally, in order to implement the terms of resolution 1556, Jan Pronk, the secretary-general's special representative in Sudan, persuaded the government of Sudan to accept a "Plan of Action" intended to protect IDPs. The plan—painfully reminiscent of the ill-fated "safe havens" established in Bosnia in 1993—established seven sites around which the government would establish 20-kilometer "safe zones" where security was to be guaranteed by enhanced police detachments. The IDPs felt almost as threatened by the Sudanese police, into whose ranks Janjaweed members had been inducted, as by the army. Worse still, because several of the safe zones overlapped with rebel-held territory, the army could now attack the rebels under the pretext of carrying out the terms of the Plan of Action. The safe areas concept was "quickly abandoned," as an NGO report later noted.⁶⁶ Both the UN and the United States were sending out mixed signals. On July 9, the US Congress had characterized the violence in Darfur as "genocide." In early September, the Bush administration formally adopted that description. Washington thus crossed a line at which it had notoriously balked in the case of Rwanda, when the State Department refused to use the word "genocide" for fear that, under the terms of the Genocide Convention, the US government could be compelled to intervene. But the administration resolved this dilemma by ignoring the terms of the convention. Colin Powell stated flatly in Senate testimony that "no new action is dictated by this determination."⁶⁷ The gravest moral accusation that could be leveled at a state appeared to have no more than rhetorical significance.

The regime was, in fact, blatantly ignoring or glossing over its obligations. In July, Oliver Ulich, the Sudan desk officer for the UN Office for the Coordination of Humanitarian Assistance, visited a disarmament center to monitor government compliance with the requirements of resolution 1556. "You had people dressed like Janjaweed throwing ancient rifles in a pile," he recalls. Ulich wrote the 30-day report mandated by the council and made sure that it was "as harsh as [he] could make it." Ulich believes that the summer of 2004 presented the international community with its best opportunity for decisive action: "There was never more high-level attention; there was never more momentum; there was never stronger language in the resolutions."⁶⁸

In early September, with the 30-day deadline having passed, the United States introduced a resolution calling for sanctions against Sudan. Ambassador John Danforth pointedly noted that any council member standing in the way of the resolution would have to explain why it favored "stepping back and letting people die and be shot down by helicopters and raped."⁶⁹ Once again China and others objected to sanctions;

EU states remained reluctant to push hard; and rather than face the threat of a Chinese veto, Washington and its allies on the council agreed to water down the resolution's tough language. On September 18, the council passed resolution 1564 calling upon the secretary-general to establish a commission of inquiry to determine whether the government had indeed committed genocide, and stating that it "shall consider" sanctions in the face of non-compliance.⁷⁰ Algeria, China, Pakistan, and Russia abstained in voting.

Could the Bush administration have used more leverage on the council? Charles Snyder, then the State Department's special envoy to Sudan, insists that officials did all they could: "Powell made many phone calls trying to force this to closure; Danforth was saying tough things in the council. But Pakistan was dug in on the issue of sovereignty, and the Chinese were dug in as well."⁷¹ Washington's capacity to win over reluctant members on the Security Council was quite possibly at an all-time low. Another US diplomat involved with the issue, however, asserts that Washington simply did not try very hard. "I kept trying to get Condi [Condoleezza Rice, national security advisor and later secretary of state] to call or send a letter to Beijing on the need to get China to engage on Sudan," he asserts. "When it was raised, which was seldom, it was during the laundry list end of the discussion. It goes to the question of, how much do you care? We never went beyond rhetoric in offloading this to the UN."⁷²

Although the United States could have pressed for action more zealously than it did, the chief obstacle to robust action was international opposition to coercive measures. Why did so many council members, as well as Sudan's neighbors and the regional bodies to which it belonged, oppose applying sanctions, or even the explicit threat of sanctions, even after UN bodies had documented Khartoum's systematic violations of international humanitarian law? Many argued that such measures would only harden the regime's resistance. Some also spied hypocrisy in the allegations against an African and Islamic state. Munir Akram, then Pakistan's permanent representative, and a highly influential figure in the Non-Aligned Movement, stated, "People say 'Darfur, Darfur, Darfur.' People in Pakistan say, 'What about Kashmir? There are issues of double standards and so forth. The world is a brutal place, and you only do what you can do.'"⁷³

Akram was the most outspoken figure in council deliberations; but it was China, with its veto power, that consistently tipped the scales. China was then scouring Africa for new sources of oil and other key resources. In 1996, at a time when Western oil companies were pulling out of Sudan, which the US had listed as a state sponsor of terrorism, China had bought a 40 percent stake in the country's chief oil consortium. China later helped Sudan build, and then expand, the country's

major oil refinery. By 2004, Sudan was supplying 10 percent of China's imported oil, while China was helping Khartoum build a pipeline to the Red Sea and was allegedly Sudan's most important source of weaponry.⁷⁴ Implicit in China's trade relations was the protection it could offer Khartoum from censure by the Security Council and other international fora.

China's position on action in Darfur, however, cannot be wholly reduced to its trade policy. China has long been one of the chief defenders of the principle of absolute sovereignty. During council deliberations, its ambassador to the UN, Wang Guangya, quietly but persistently registered these concerns in the face of largely Western calls for punitive action against the Bashir regime. As he later explained:

To respect sovereignty is the basic norm of international law. In some countries there is a problem, where the protection of their own people is neglected. The UN can come in a quiet way, providing help, providing advice. But the role to play is not to impose it when the government is functioning. Of course there are cases where you can say that the country is a failed country, the state is a failed state. But if the government is functioning, it means that you are imposing your will on the people and the government. I think the best way to do it is by giving good advice wherever you can, tough way or soft way, to let the government pick up its main responsibility, because the UN cannot do it on behalf of the government. Sanctions can only be used as a last resort, when other diplomatic means have been exhausted.⁷⁵

Ambassador Wang's formulation flies in the face of the doctrine of the responsibility to protect, which does not apply only to failed states, which by definition lack the capacity to act. A state may be "manifestly failing" to protect its people either because it cannot or because it will not do so. Wang said that he accepted the doctrine of R2P, but also viewed as sacrosanct the principle of noninterference in the domestic affairs of other states. Moreover, he was not convinced that either Khartoum or the Janjaweed had committed mass atrocities. The situation in Darfur, he said, was "very complicated," and he could understand both why the people had risen up against poverty and neglect, and why the government "of course responded and tried to put down the rebellion."

Although Security Council was blocked, regional institutions continued to work on the multiple conflicts in Sudan. The Naivasha talks between the North and South continued under the aegis of IGAD. And starting in July, the African

Union sponsored negotiations between the Darfur rebels and the government, known as the Inter-Sudanese Peace Talks, to implement the terms of the April ceasefire. Pursuant to the N'djamena ceasefire agreement, the AU had fielded a force of military observers, which by the fall numbered 465. The ceasefire under observation, however, was increasingly tattered—or even hypothetical. In a report to the AU, Alphonse Konare wrote, with careful even-handedness, “The activities of armed robbers, armed militias and rebels, which included highway robbery, vehicle snatching and attacks on police stations and villages, resulting in loss of arms and ammunitions, have continued unabated....The Janjaweed have also continued to commit atrocities in the region.”⁷⁶ The current mission, Konare concluded, “cannot provide an effective coverage of Darfur,” though “an international mission, if sufficiently widespread, would have a positive effect” on the effort to preserve the ceasefire.

In late July, with the approval of Khartoum, the AU began planning to expand the mission, known as the African Union Mission in Sudan, or AMIS. Whether or not such a force would be able to bring an end to the violence, it did serve crucial diplomatic purposes. Western countries, eager to do something but unwilling to send troops themselves, were happy to pay for an African force instead. President Bashir was prepared to permit soldiers whom he knew would not interfere in his ongoing war against the rebels. Regional states meanwhile were keen to provide what came to be known as “an African solution to an African problem.” In late October, the AU formally proposed a force of 3,320 soldiers, observers, and civilian police expected to cost \$221 million. The mandate of the expanded AMIS force would be to “monitor the situation proactively” and report violations of the ceasefire; assist in confidence-building; facilitate the delivery of humanitarian aid; and “contribute to the improvement of the security situation throughout Darfur, it being understood that the responsibility for the protection of the civilian population lies with the GoS.”⁷⁷ Civilian protection, in short, would not be part of the mandate, as it had come to be in such UN peacekeeping settings as Sierra Leone and the DRC.

The AU had at least stepped into the breach created by the blockage at the Security Council. Something was surely better than nothing. At the same time, the organization had never engaged in peacekeeping before; its Military Staff Committee, the equivalent of the UN's Department of Peacekeeping Operations (DPKO), consisted of a few people in an office in Addis Ababa. As one NGO hopefully noted, “Darfur is a test case for the AU as a new regional organization, and for the Peace and Security Council in particular.”⁷⁸ It was, however, a profoundly unfair test for this fledgling force.

By the fall of 2004, a modest force deployed to monitor a largely neglected ceasefire agreement was simply too weak to affect the calculations either of the regime or of the rebels. It is hard to imagine any purely consensual strategy that would have changed those calculations. Khartoum had to be made to fear the consequences of its actions. This would have required a far tighter mesh between words and deeds. The words, at times, at least from Washington, implied an almost bottomless commitment. But the deeds were modest—at times, feeble. Washington could have walked more softly and carried a bigger stick. Beijing could have looked beyond the policy of protecting allies from censure. The AU, the Arab League, and other regional bodies could have reproached the regime rather than so single-mindedly protecting it from “Western intervention.” Instead, Sudan's deft diplomats were able to play its allies and neighbors against its critics.

Winter 2005

Khartoum reaches a peace agreement with the South, but one that excludes Darfur; the UN commission of inquiry accuses the regime of systematic crimes against civilians; the Security Council refers the issue to the International Criminal Court (ICC) and establishes a program of sanctions; but the council rebuffs Annan's request for a more robust peacekeeping force

The Sudanese government had put off signing a peace deal with the South since early 2003, both because it was deeply reluctant to share power and wealth with the South and because the eagerness of the troika and other Western parties for the agreement gave Khartoum the freedom to do as it wished elsewhere.⁷⁹ By late 2004, though, it had become apparent that the army would never win a decisive victory over the SPLM; the regime may also have feared that the United States would forcefully overthrow it as it had the Taliban in Afghanistan.⁸⁰ At a special meeting of the Security Council held in Nairobi on November 19, senior officials of both sides signed a memorandum of understanding committing themselves to a settlement. On January 9, 2005, Vice President Ali Osman Taha and John Garang signed the long-sought Comprehensive Peace Agreement, otherwise known as the Naivasha Accords.

The agreement formally ended Africa's longest civil war. Great hopes attended this moment. The CPA accepted the South's right of self-determination, to be decided by a referendum, and included a promise by the state to address the economic and social “deterioration” of the region. In the preambular language, the parties also asserted that the agreement offered a “model for good governance in the Sudan that will help create a solid basis to preserve peace and make unity attractive.” Moreover, by including John Garang,

who embraced the idea of a single federalized Sudan and was widely seen as a future president, into a government of national unity, the accords promised to transform Sudanese politics.

However, the regime in Khartoum may not have been thinking in those terms at all. As Jean-Marie Guéhenno, former UN under-secretary-general of peacekeeping operations, has explained:

The Sudanese are consummate crisis managers. For them, it's just getting through the year. From Bashir's point of view, he wanted the international community out, but he didn't want to craft a national solution. There was always ambiguity about what the north-south agreement meant. Was the NCP telling Garang that he could have the South, they would make a deal on the oil, and they would keep the North? Or was this supposed to bring about a fundamental democratic transformation of Sudan? It wanted to be a little bit of both.⁸¹

In their eagerness for a North-South pact, negotiators thus accepted a deal that could serve Bashir's purposes, and perhaps Garang's, but not the larger goal of crafting an inclusive national formula.

Darfur itself had been purposely left to one side. Ambassador John Danforth, who had shepherded the agreement to a conclusion and organized the Nairobi session, did not want Darfur to derail the Naivasha process at the last minute. He was convinced that settling the civil war was a precondition to resolving the conflict in Darfur. His colleagues in the troika, and in key African states, largely agreed. The international community's insistence on treating the two conflicts serially, rather than simultaneously, as many experts implored, had an unintended, if scarcely unpredictable, side effect. "The CPA represented legitimacy for Khartoum," explains Fabienne Hara, then an official in the UN's Department of Political Affairs. "Since Darfur wasn't included, it meant that Khartoum could walk away from any commitment there."⁸² The regime had, after all, walked away from the ceasefire it had signed with the rebels the previous April, as well as from the joint communiqué it had signed in July. And now the Americans, Khartoum's harshest critic, had switched from sticks to carrots. By late 2004, the Sudanese government faced far more international scrutiny on Darfur than it had earlier, but it could live with the barbs of NGOs and editorials in major Western newspapers. The regime interpreted the change in tone from the United States and other major actors as a *carte blanche*; by early December, government forces and the Janjaweed were sweeping through Darfur once again.

Khartoum also knew that it could count on much of the developing world to provide diplomatic cover. Only five days after the Nairobi meeting, the General Assembly's Third Committee, which is responsible for human rights, adjourned for the year without debating—much less voting on—a resolution condemning Sudan or Zimbabwe, which had been accused of mounting a campaign of terror against slum-dwellers. The South African delegate, representing the AU, accused the West of "double standards" for singling out developing countries for criticism and declared that "the African group regrets the abuses of a multinational organization like the United Nations to settle disputes on human rights."⁸³

Other mechanisms of accountability, however, were also at work. Kofi Annan had appointed an international commission of inquiry pursuant to resolution 1564, and on January 25 the commission submitted its final report. The commissioners concluded: "Government forces and militias" had "conducted indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement, throughout Darfur. These acts were conducted on a widespread and systematic basis, and therefore may amount to crimes against humanity."⁸⁴ The report also found that rebel forces were "responsible for serious violations of international human rights and humanitarian law which may amount to war crimes." Since Sudan was not a signatory of the Rome Statute establishing the International Criminal Court, and thus could not be subject to its jurisdiction absent a referral from the Security Council, the commission "strongly" recommended that the council "immediately" refer the matter to the ICC. The clarity of this directive was, however, vitiated by the conclusion that the government of Sudan had not perpetrated genocide, since its apparent intent was "to drive the victims from their homes primarily for purposes of counter-insurgency warfare," rather than to exterminate them.

By early 2005, Darfur had become the central preoccupation of the Security Council, as well as an overwhelming focus of NGOs and the broader international community. The High-Level Panel on Threats, Challenges and Change, which Kofi Annan impaneled, had delivered its report, which included a call for states to embrace the responsibility to protect.⁸⁵ Darfur offered glaring proof of the need for such a principle of action. Even absent a finding of genocide, the commission of inquiry had confirmed the full scale of the horror. And in a report to the Security Council in early February, Annan stated that, despite the formal ceasefire in Darfur, "fighting on the ground continues, and those responsible for atrocious crimes on a massive scale go unpunished."⁸⁶ The number of Darfuris in need of assistance had reached 2.3 million,

vastly outstripping the capacity of humanitarian groups. At this time, the AU force had only begun to deploy.

The Security Council had three distinct obligations: (1) To establish a peace operation to enforce the CPA; (2) to authorize action to stop the atrocities in Darfur that the commission of inquiry had described; and (3) to refer the matter to the ICC, as the commission had recommended. In mid-February, the United States, once again taking the lead, circulated a resolution calling for a UN peace mission to police the North-South agreement and the imposition of a freeze on the assets of leading Sudanese officials implicated in the atrocities as well as other penalties. The draft, however, did not call for referral to the ICC because the Bush administration opposed the court, as it did many multilateral instruments. US diplomats instead proposed, implausibly, that an entirely new court be established in Arusha, Tanzania, but owing to unanimous opposition, the idea was not included in the draft resolution. An alternative source of opposition came from the AU, which opposed any form of external legal judgment of the Bashir government. Nigeria, chair of the AU, proposed the establishment of an African panel for criminal justice and reconciliation, which would emphasize “justice and reconciliation” rather than punishment.⁸⁷ Sudan supported the proposal.

The council spent the next six weeks debating these modalities, while violence in Darfur continued, if at a far lower level than in late 2003 and early 2004. The AU had promised to have a force fully deployed by the end of February, but it was nowhere near achieving that goal. Moreover, UN officials believed that the situation called for at least 8,000 troops, with a robust mandate and the equipment to match, rather than 3,500 lightly-armed and largely unprepared soldiers from African armies. At a meeting in late February, Under-Secretary-General Guéhenno presented four options: (1) provide logistical aid to the AU; (2) assemble a combined AU/UN force; (3) replace the AU with a more robust UN force; and (4) authorize a multinational force, similar to the Australian-led force that had deployed to East Timor in 1999.⁸⁸ Each option was more robust than the one before and therefore less politically palatable. Who would lead a multinational force? Certainly the United States would not. The United Kingdom was tied up in Iraq. France had never played a significant role in Sudan and would not now. Perhaps a joint EU/NATO (North Atlantic Treaty Organization) mission could be launched. Although the idea sounded implausible, Annan did not want to be publicly accused of timidity, as he had been in the past regarding both genocide in Rwanda and ethnic cleansing in Bosnia.⁸⁹

On March 7, Annan called all fifteen members of the council to his office for a highly unusual meeting. The secretary-

general himself laid out the four options, making it clear that the council’s decision should not be governed by Khartoum’s insistence on the weakest possible force. It was to no avail, the members unanimously opposed all options save the first. The extraordinary meeting marked the end of the one serious attempt to use real force against the Sudanese government and the Janjaweed, an idea that Annan himself had first broached a year earlier.

Guéhenno says that he understood perfectly well that the council would never have agreed to authorize a humanitarian intervention. Both China and Russia would have almost certainly vetoed such a measure. It is, however, worth asking whether a “coalition of the willing” could have acted, as had been the case in Kosovo. The Bush administration, tied down in Afghanistan and Iraq, would almost certainly not have supplied troops. Furthermore, after 9/11 Khartoum had shrewdly decided to share intelligence on terrorism with Western agencies, especially the US Central Intelligence Agency. For all the administration’s rhetorical bluster, senior officials might have resisted any action that would have ended Sudan’s cooperation on counterterrorism. No Western state had a postcolonial relationship with Sudan, as the United Kingdom had with Sierra Leone or France with Chad. And no African state viewed the violence as a threat to the larger region, as Nigeria had when it intervened in Sierra Leone’s armed conflict. In short, there was no political will, and very little public appetite, for such an effort.

And if a major power had proved willing to lead a multinational force without a Security Council imprimatur? The sheer size of Darfur, the utter lack of infrastructure, the difficulty of re-supply in a remote, landlocked area would have made any such effort incredibly challenging. Afghanistan and Iraq were not encouraging precedents, and the result might have been calamitous. Mere failure, however, might not have been the worst calamity. Sudanese diplomats had relentlessly framed such an action as the third installment of a Western crusade against Islam initiated in Afghanistan and Iraq. This narrative played well throughout the Islamic world and in much of the developing world. An armed intervention might thus have provoked uprisings, or at the very least widespread public outrage, elsewhere in the Islamic world.

Could the Sudanese, alternatively, have been pressured to “invite” such a force, as the Indonesian government had finally agreed to do in East Timor? Guéhenno asserts, “For military deployment to have worked, you would need to get to the point where they were feeling, ‘The Janjaweed is out of control; we’ve lost all our credibility.’ I think some Sudanese generally really did believe that; they would have liked to out-source the solution. But then you would have needed a real commitment from the international community.”

The moral clarity required to mobilize public opinion in favor of such an intervention, moreover, had begun to dissipate. Some officials and scholars insisted, alternatively, that the needed commitment was political and diplomatic rather than moral and military. “We should have analyzed the state interest better, instead of just blaming them,” argues Fabienne Hara. “You have to understand their thinking. They’re a very small clique, and it’s a huge country. There’s a culture of rebellion. If they accepted a robust UN peacekeeping force, they felt they would be destroyed. There was too much emphasis on peacekeeping and not enough on politics”⁹⁰—on fashioning a solution which Khartoum could have lived with. The scholar and activist Alex de Waal has advanced a similar claim. He has written, that regardless of popular outrage, the Bashir regime was too staunch to be compelled by international pressure to act against its perceived self-interests. Rather than try to intimidate a truculent regime, the West should have been reassuring President Bashir that it was not seeking regime change: “It is only with stability at the centre that the crises in the peripheries can be tackled.”⁹¹

This argument gained additional credence over time as the rebels’ own cause lost its initial salience. By late 2004, the ranks of the insurgents had begun to fragment; the SLA blamed a rogue force for a rash of attacks on Sudanese policemen. Entirely new rebel groups began to appear—some making their mark through attacks on government forces, others allying with the regime. Incidents of banditry and plunder became increasingly common. Sudan began to look less like Rwanda and more like Somalia. With all sides abusing civilians, the case for intervention on humanitarian grounds became increasingly problematic.

Most regional actors had taken this position from the outset. Indeed, one way of characterizing the steady difference between the international and the regional approaches to Darfur is through the question of consent. At the UN, and in Western circles generally, advocates fought back and forth over the issue of how Khartoum could be pressured or compelled to act against its own perceived self-interest. By contrast, both the AMIS force and the ongoing Inter-Sudanese Peace Talks overseen by the AU had as their premise the need to secure the regime’s consent.

African voices, however, were scarcely unanimous in seeking “softer solutions.” The Darfur Consortium, a coalition of largely African NGOs, criticized the logic of “African solutions to African problems,” asserting that “[t]he people of Darfur cannot be sacrificed to a political climate where the determination of a coordinated and effective international response is held hostage to a polarized and fragmented global community.”⁹² Kithure Kindiki, a Kenyan legal scholar,

went further, asserting, “The current focus on peacekeeping is insufficient. The peacekeeping option is limited insofar as there appears to be no peace in Darfur to keep. Further, chances of bolstering the fledgling AU peacekeeping force in Darfur have been thwarted by Khartoum’s firm refusal to give consent to such UN presence. The only avenue left is to pursue forcible humanitarian intervention to protect civilians in Darfur, even as the diplomacy over the GoS’ consent to UN Peacekeeping and other initiatives goes on.”⁹³ Kindiki advocated a force of human rights-respecting African states authorized by the AU—not, it must be conceded, a terribly likely outcome.

In the end, the Security Council sorted its three obligations into separate resolutions passed at the end of March. Resolution 1590 established the United Nations Mission in Sudan (UNMIS), a 10,715-strong UN peacekeeping force to monitor the terms of the Comprehensive Peace Agreement. Resolution 1591 imposed travel bans and asset freezes on individuals found to be committing human rights abuses or obstructing the peace process. China, Russia, and Algeria abstained. Only by excluding the threat of an oil embargo had a Chinese veto been avoided. Resolution 1593 referred the allegations made by the international commission to the ICC. This agreement was the most unexpected of all, since the Bush administration—which in 2001 had withdrawn the US’s signature on the treaty establishing the court—had threatened to block any attempted referral. Finally, forced to choose between a cherished ideological principle and the need to hold the Sudanese government accountable for its crimes, Washington agreed to abstain on the resolution—as did China, Algeria, and Brazil.

By the spring of 2005, the Bashir regime was in a far stronger position than it had been before. By signing the CPA, it had met a major demand of the international community and ended a war that had drained its resources and much of its international good will; whatever onerous obligations it had incurred toward the South lay in the future. The rebellion in Darfur no longer seemed to pose a threat to the state. The swift growth of oil revenues diminished the regime’s vulnerability to economic sanctions. Moreover, the international community was divided between working with Khartoum to build on the CPA and forcing the regime to change its policy toward provincial insurrections. This was a formula for failure, at least in regard to Darfur. Far greater unity would have been needed to compel the Bashir regime to halt the Janjaweed’s continuing attacks against villages and brutal harassment of IDPs—if they even could have done so at this point—to stem the growing tide of anarchy and create a sufficiently secure environment to allow the hundreds of thousands who had fled to return home.

Spring 2006

The AU deploys a peacekeeping force, which suffers from crippling deficits; the Security Council fails to enforce threatened punishments; Khartoum pushes for the Darfur Peace Agreement, but only one rebel group agrees to sign

AMIS was an ad hoc, shoestring affair. The Security Council, unwilling to field a peacekeeping force, had decided instead to “outsource the mission to a fledgling entity,” as a UN peacekeeping official puts it.⁹⁴ Finding available troops was not the chief problem, as it so often was the case with UN-led operations; African states showed impressive readiness to furnish soldiers, although actual deployment in the field often proved maddeningly slow. Willing states, however, could provide little in the way of transport, fuel, housing, food, or other provisions. Despite operating in a vast territory, AMIS had few air assets, inadequate troop transport capacity, and perpetual shortages of fuel, thus severely reducing mobility. To make matters worse, the AU lacked altogether the peacekeeping knowledge or administrative capacity that the UN had built up over decades. UN officials tasked to work with the AU found themselves dealing with a “commodore” from the Ethiopian navy. Senior AU officials bristled at advice from the UN and from donors; Alphonse Konaré rebuffed all such offers.⁹⁵ According to Hedi Annabi, then the deputy head of UN peacekeeping, the department “brought him here for a reality check. We gave him a briefing on how DPKO works. We’ve got 350 people; they’ve got zilch.”⁹⁶ Konaré remained adamant: the AU needed no advice from the West.

The AU did, however, desperately seek the financial help that West had promised. An American private contractor provided much of AMIS’ infrastructure; the EU paid for operations; individual countries supplied materiel. But the financing of the mission was maddeningly slow and inconsistent (as UN peacekeeping missions themselves often find to be the case). Soldiers were not paid on time, while equipment and fuel failed to arrive in the field.⁹⁷ Other problems originated with the AU forces themselves: deployments lagged months behind schedule; translators were almost impossible to come by, as were female police officials, who played a crucial role in working with the torrent of rape cases. The soldiers themselves often showed great courage, as well as resourcefulness, in defending civilians from attacks. But they were under-funded, ill-trained, throttled by logistical problems, and dwarfed by the magnitude of the crisis.

President Bashir had agreed to accept an AU force because he thought it would give way before Sudanese demands; and he proved right. Khartoum insisted that a Sudanese soldier

accompany every detachment of AU troops, thus further persuading civilians that the African troops were an arm of the government, rather than a source of protection from the state. AMIS was also subject to continual harassment. Government officials would block the supply of jet fuel, thus grounding planes; they would deny visas to non-African trainers or mechanics, so that no one could drive the donated armored personnel carriers. The AU did not push back. The mission’s mandate was to monitor compliance with the ceasefire arrangements and facilitate the delivery of humanitarian assistance; troops were not broadly authorized to protect civilians in the face of abuse.

By late 2005, the explosion of mass violence against civilians that had begun in the fall of 2003 had largely played itself out. The goals of the ethnic cleansing campaign had essentially been achieved. Both scholars and epidemiological experts have documented a significant reduction in deaths among noncombatants during this time.⁹⁸ Violence, however, was growing in and around the camps, and rebels were increasingly clashing with government forces. The United States and the EU began to pressure the AU’s Peace and Security Council—the equivalent of the UN Security Council—to handover the mission to the United Nations. In the short term, senior UN officials sought to expand AMIS’s troop strength and fortify its mandate. In January, the Peace and Security Council accepted “in principle” that UN peacekeepers could be deployed in Darfur. The following month, the UN Security Council authorized the secretary-general to begin preparing such a mission. President Bashir reacted by declaring that Darfur would become “a graveyard” for foreign troops.⁹⁹ Moreover, the regime insisted that any new force must wait until negotiators meeting in the Tanzanian town of Arusha had reached a Darfur peace agreement. In March, the Peace and Security Council reaffirmed its commitment to accept UN peacekeepers, but then, to the great frustration of UN and Western officials, extended the AMIS mandate for another six months. Khartoum had succeeded once again in staving off the prospect of more muscular action.

At the same time, the Security Council had largely lapsed into inaction after the flurry of activity the previous March. According to one account, China and Russia repeatedly stymied the deliberations of the committee created by the council to enforce the sanctions regime it had imposed. Kofi Annan had established an Independent Panel of Experts to look into violations of the council’s arms embargo and other restrictions. The sanctions committee, as two prominent activists have asserted, “repeatedly delayed—or even prevented—the publication of reports” by the panel.¹⁰⁰ Although a January report identified 17 individuals who had undermined peace in Darfur, and the International Commission of Inquiry had singled out 51

individuals responsible for serious violations of international humanitarian law, the committee imposed sanctions on only four figures.

Moreover, the council did not remain engaged on the issue of accountability. According to Juan Méndez, the secretary-general's special advisor on the prevention of genocide, "The Council acted as if once they made the referral, everything was in the hands of the ICC, and they didn't need to worry about it. That was fatal to the ICC's opportunity to do its work inside the country." Khartoum refused to let investigators work in Darfur or to cooperate in any way with the tribunal. More broadly, Méndez concludes, "The international community basically allowed Khartoum to dictate the pace and sequence of negotiations on everything—from accountability to protection to humanitarian assistance to the peace process."¹⁰¹

The AU, with the help of the major Western donors, continued to convene the parties in the hope of reaching a settlement—a regional version of the CPA, with power-sharing and promises of development. Meeting in Abuja, Nigeria, in early July 2005, soon after the Government of Unity authorized by the CPA took office, the government, the SLM, and JEM endorsed a set of general principles to guide such an agreement. These included "respect for the diversity of the people of the Sudan" as well as for the "territorial integrity and unity" of the country; democracy; nondiscrimination; federalism; equitable distribution of national resources; and the establishment of a "Darfur-Darfur dialogue" to ensure the full engagement of ordinary citizens and the full range of stakeholders.¹⁰² But faith in the CPA was deeply shaken a few weeks later when John Garang was killed in what appears to have been an accidental helicopter crash.

The AU continued bringing government officials and leaders of the major rebel factions together for the Inter-Sudanese Peace Talks, during which the rebels' united front, always shaky, began to disintegrate altogether. In late October, a rival faction of the SLM led by a commander named Minni Minnawi declared itself the legitimate representative of the group. Increasingly desperate attempts by Salim Salim, the AU special envoy and chief mediator, and a succession of high-level US figures, including Deputy Secretary of State Robert Zoellick, failed to heal the rift. The Minnawi faction declared that it would not participate in any negotiating session attended by its rival, led by Abdel Wahid, and would not be bound by agreements reached by the SLM's prior leadership. Minnawi began to move against dissident commanders within SLM/A. Despite the factional rivalries, the peace talks continued, as AU and Western officials engaged those rebel factions willing to sit down with the government and one another.

The moment scarcely seemed ripe for an effective agreement between the regime and insurgent groups. Khartoum, however, continued to view such a deal as a prerequisite for even discussing a UN peacekeeping force. In March, Vice President Ali Osman Taha, widely considered a moderate within the regime, stated that Khartoum might, in fact, accept such a force following a pact. This encouraging news gave a fillip to the Abuja discussions and persuaded Robert Zoellick that the time had come to push the rebels and the government to sign a deal. By this time, however, JEM had also dropped out of the talks. When the Darfur Peace Agreement, or DPA, was completed on May 5, only the SLA/MM (the breakaway faction named after Minni Minnawi) was willing to sign along with the government. Both the Wahid faction and JEM expressed objections to various aspects of the deal. Perhaps, though, as Alex de Waal suggests, the prospect of a UN force had raised their hopes that the humanitarian intervention they had long wished for was now close at hand, leading them to view "any political compromises or offers of AMIS peacekeepers as an unacceptable second best."¹⁰³ De Waal views this dynamic as a dangerous form of moral hazard and a crucial unintended consequence of threats of outside intervention in civil conflicts.

The DPA incorporated much of the language agreed upon the previous July, including provisions for the sharing of wealth and political power, a plan to disarm and reintegrate both the Janjaweed and rebel groups, and the Darfur-Darfur dialogue. The agreement, however, offered no meaningful guarantees on implementation and was silent on the question of a UN peacekeeping force. The failure of key parties to sign discredited the agreement in the eyes of many Darfuris, above all members of Abdel Wahid's Fur tribe. Many IDPs felt that the DPA lacked mechanisms that would bring the conflict to an end and permit them to return home. Moreover, the one faction that signed the agreement—the SLA/MM—enjoyed far less legitimacy among Darfuris than did the Wahid faction. Indeed, the SLA/MM soon reconstituted itself as a pro-Khartoum militia, wreaking havoc in Darfur—chiefly on the non-signatories—rather than abiding by the terms of the DPA. The pact thus had the ironic effect of accelerating the fragmentation of the rebel forces. Its terms proved unenforceable. Matters were scarcely helped when the AU mission expelled the non-signatories from the Ceasefire Commission, which investigated violations of the agreement.

During this period, those who sought to act in Darfur were trapped between an AU force that was intrinsically unequal to the situation and a hypothetical UN force that could not be brought into being. In early 2006, the UN prepared extensive plans to fortify AMIS; but the plans would not even begin to be implemented until the following year. Potential contributors to a UN force backed off after Khartoum threatened to launch

a jihad in response. Attempts to enforce existing coercive measures, including sanctions and criminal prosecution, proved half-hearted. Proposals to establish a no-fly zone, enforced by NATO, which would ban all government planes from Darfur's airspace, foundered on the unwillingness of major European states to adopt such measures. Moreover, the growing fragmentation of the rebel forces meant that even had these or other measures succeeded in making the government more amenable to ending its campaign of terror in Darfur, there was no guarantee that it would find a true interlocutor. The conflict had been allowed to fester for so long that solutions that had once seemed straightforward now appeared dangerously simplistic.

Late 2006/Early 2007

The council authorizes a Chapter VII peacekeeping force, but Khartoum vows to resist its deployment; the conflict grows more fragmented and increasingly draws in Sudan's neighbors; Darfuris largely reject the DPA as ineffectual

With the Darfur Peace Agreement completed, the focus of diplomatic action shifted back to convincing Khartoum to accept a UN force. The mass killings and orchestrated expulsions of 2003–04 had essentially ended, chiefly because half or more of Darfur's population now lived in camps. A UN force was needed to enforce the terms of the DPA, to protect civilians inside as well as outside the camps from attacks by both rebels and the Janjaweed, and to establish a climate of security that would enable IDPs to begin returning home. On May 16, the council passed resolution 1679, calling for the creation of such a force. Although it invoked Chapter VII of the UN Charter, both Russia and China stipulated that the force had to be acceptable to Khartoum, thus nullifying the coercive underpinning of the resolution.

In August, with the Security Council considering a stronger version of the resolution, the Arab League stated its opposition to any force that Sudan opposed. Nevertheless, on August 31, the council, led by the United States and the United Kingdom, passed resolution 1706 mandating UNMIS, the force deployed in furtherance of the CPA, to assume AMIS's responsibilities no later than the end of 2006. Sudan was only "invited" to accept such an outcome.¹⁰⁴ This time, China, Russia, and Qatar abstained. Hours after the vote, the Sudanese government vowed to prevent a UN force from deploying. Despite the resolution's threatening language, the council made no effort to impose a force on the intransigent regime. The UN resumed negotiating with Khartoum the terms under which a UN force might be acceptable. Without explicitly saying so, the UN thus acknowledged that resolution 1706 was, in fact, inoperable.

Here, as elsewhere, it may be argued that since the international community was plainly not going to find sufficient will to confront the regime and its doomsday threats, it ought instead to have focused on addressing the growing humanitarian crisis—which meant working with the regime rather than confronting it—and forging a political solution acceptable to the Sudanese government. Alex de Waal asserts that the preoccupation with a UN force undermined the DPA, fostered "erroneous and unrealistic expectations" in the West, and "fed inflated hopes and fears in Sudan."¹⁰⁵ De Waal also observes that while much thought was given to the size and identity of the peacekeeping force, to its cost and its mandate, little attention was paid to its "strategic purpose and concept of operations." Could UN troops—which was to say, largely African troops operating under a new aegis—forcibly disarm the Janjaweed? Could it protect millions of at-risk civilians in the midst of conflict? Was this yet another example of sending peacekeepers where there was no peace to keep?

These questions are difficult to answer because a combination of differences between the UN and AU, and the delaying tactics of the regime, kept the proposed force from actually being fielded. Throughout 2006, the UN had engaged in extensive planning for the mission. The force that officials in DPKO envisioned, and that Kofi Annan described in a report in the summer of 2006, was designed to remedy the chief defects of AMIS, which it would incorporate. In addition to the human rights, political, and administrative support that AMIS lacked, the UN force was to have the mandate and the capacity to "deal proactively with spoilers, including in a pre-emptive manner"; "mobile infantry battalions" to mount foot patrols around towns and villages; "airmobile patrols" to deliver troops quickly to remote areas; a "quick-reaction" capability; and aerial surveillance provided by fixed-wing aircraft and helicopters.¹⁰⁶

How could this robust and aggressive force be reconciled with the government's repudiation of resolution 1706? An array of senior UN officials visited Khartoum in an effort to establish common ground on broad principles for the mission, including that Sudan would give explicit consent for the deployment and that the secretary-general himself would choose the troop-contributing countries.¹⁰⁷ Even with these stipulations, the regime continued to resist the idea. In August, the government even submitted to the Security Council its own plan to pacify Darfur, featuring the deployment of 22,500 troops from the Sudanese army, along with 4,000 from the SLA/MM, and 3,348 from AMIS.¹⁰⁸ This was not treated with great seriousness even by the regime's allies. At the General Assembly session in September, Bashir succeeded in watering down many of the provisions of resolution 1706. Whether or not at the

behest of Khartoum, the AU's Peace and Security Council extended AMIS through the end of 2006, without endorsing the transition to the UN. Jan Pronk urged diplomats to focus on beefing up AMIS, since Khartoum would block a UN force.

The AU remained extremely reluctant to accept a substantial UN role in the peacekeeping mission. In mid-November, after intense negotiations with Kofi Annan in Addis Ababa, the AU agreed to sign a memorandum of understanding to cooperate on political, humanitarian, and military measures. The Addis agreement called for the UN to assist AMIS with a "light support package," consisting of logistical and technical supplies and personnel, and a "heavy support package" of 2,250 specialized military personnel, 300 police officers, and over 1,000 civilians.¹⁰⁹ UN peacekeeping officials then began immensely protracted negotiations with the AU over the mandate, composition, and command structure of the hybrid mission; the question of which of the two organizations would exercise authority over the various components of the mission proved extremely contentious. Only eight months later, in late July 2007, had UN diplomats bridged these differences to the point where the Security Council could formally authorize the hybrid mission. The AU/UN Hybrid Operation in Darfur, or UNAMID as it was to be known, would be the largest and most ambitious mission in UN history, with 26,000 soldiers and police officers explicitly mandated to protect civilians. Sudanese officials continued to object to elements of the force and impose limits.

Meanwhile, in the absence of either a political settlement or a deterrent force, the conflict continued to ramify along new and dangerous dimensions. Fighters from a number of groups that had refused to sign the DPA formed a new organization, the National Reconciliation Front, which launched fresh attacks.¹¹⁰ The SLA/MM served its new master by becoming a force for terror in Darfur; its fighters came to be known as the "Janjaweed II."¹¹¹ In late 2006, Arab tribes in Darfur began turning the weapons that they had received from the government against one another, leaving hundreds dead. Continued attacks on towns and villages by government forces and militias produced another 250,000 IDPs. Attacks on humanitarian workers increased as well, leading a number of groups to withdraw from the area. The IDP camps themselves were increasingly absorbed into the conflict, with all sides supplying weapons to their partisans and banditry becoming more common. The combination of violence inside the camps, the perilous situation of aid workers, and the sudden influx of new IDPs magnified Darfur's ongoing humanitarian crisis. Malnutrition rates for children under five surged from 13 to 16 percent in 2007. (The emergency threshold is 15 percent.) The rate for children six to 29 months old was 21 percent.¹¹²

The conflict also took on increasingly regional dimensions. Both Chad and the Central African Republic were extremely fragile states with their own history of rebellions and coups; leaders of both countries and Sudan had supported rebel groups seeking to unseat neighboring regimes; and Libya, the chief regional power, had at various times sponsored insurgent movements in all three countries. Some scholars have argued that these closely linked struggles have evolved into a self-sustaining "system of conflict."¹¹³ One of the many braids of this system was the role of the Zaghawa, the tribe that made up the bulk of JEM fighters. Khartoum viewed JEM as the instrument of Chadian president Idriss Deby, himself a Zaghawa, and believed that Deby was using the rebel group to threaten Khartoum's rule. In April 2006, an anti-Chadian militia sponsored by Khartoum fought its way to the outskirts of N'Djamena; it was repelled only with the last-ditch help of France, which sent Mirage fighter planes to attack the insurgents. Deby, in turn, continued to use his own proxy forces to destabilize the Sudanese government. In early 2007, soldiers of the Chadian army crossed into Sudan to fight Darfur-based rebels, further raising tensions.

In the midst of these tensions, the DPA proved to be a thoroughly ineffective instrument. Khartoum simply ignored provisions it disliked, including above all the requirement to disarm the Janjaweed. Moreover, the refusal of key rebel actors to endorse the agreement continued to undermine agreement's legitimacy. As a report from the South Africa-based Institute for Security Studies noted, "The perception that Abdel Wahid Nour was sidelined in the process, whether true or not, has been critical to the creation of distrust in the Abuja talks and the suspicion of international motives for trying to resolve the conflict."¹¹⁴ AMIS, which was charged with enforcing the agreement, came to be seen as an adjunct of Khartoum and of the increasingly hated SLA/MM, thus breeding resentment of the AU force. In the course of region-wide discussions convened pursuant to the DPA's establishment of a Darfur-Darfur dialogue, representatives of a wide range of groups scorned the AU force and called for a UN-authorized intervention. An official from a local NGO complained that the AU, like the Arab League, "responds to governments," most of them dictatorships, "which is why people look at the AU with suspicion."¹¹⁵

The twelve months following the signing of the DPA was a wasted period. The international community, which had championed the agreement, left its implementation up to the parties themselves, who felt little incentive to accept its provisions. The UN force envisioned by the DPKO might have been robust enough to deter attacks by both rebels and government forces and thus help make both sides more amenable to a political settlement. The key states backing the mission, however, were neither willing to overcome

Khartoum's resistance nor fully acknowledge that they would have to accept Khartoum's terms. A more sober acceptance of political limits might have sped up a compromise solution. Outside actors could muster neither persistent diplomatic engagement nor convincing pressure. By this time, Darfur had now shifted to the margins of the world's concern.

Summer 2008

Peace talks in Libya fail when rebel groups refuse to attend; the UN peacekeeping force is plagued both by obstruction from Khartoum and by the reluctance of donor countries; the ICC indicts President Bashir, provoking strong opposition from Africa and the developing world; advocates increasingly despair of the effectiveness of coercive measures

The passage of resolution 1769 had given rebel factions hope that a UN force would soon be deployed. In a meeting held three days after the passage of the resolution, UN and AU negotiators, including Salim Salim and Jan Eliasson, who had been appointed the previous December as the secretary-general's special envoy to Sudan, found the rebels more amenable to political negotiations. Nine of the factions had come together around a common agenda; five others had joined the "United Resistance Front." Of the major groupings, only Abdel Wahid's SLA kept its distance. In September, the new UN secretary-general, Ban Ki-moon, traveled to Sudan, Chad, and Libya in order to lay the groundwork for a new round of talks. AU officials insisted that such talks be held in Libya, despite the fact that major donors objected and rebel factions recoiled from holding talks in a stronghold of pan-Arab ideology. The UN conceded, and talks were scheduled for the city of Sirte, starting on October 27.

The Sirte talks, however, proved to be another fruitless endeavor. As Eliasson described:

I was really hoping we could make the difference between peace and war [but] things started to go bad right away. One of the two groups wouldn't come to Libya. Then the deployment of the hybrid force was proceeding so slowly. The psychological impact was that the movements, who felt that this was so important, saw that in fact nothing was happening. Second, the movements were split. In the beginning of September, JEM split into two factions who hated each other. Once the faction that left the JEM accepted to come to Sirte, the other leader refused. Third, the major issue for the government of Sudan and the SPLM was the north-south issue. That cooperation got very bad. In October, the

SPLM suspended work with the government. So they refused to go to Sirte with the government of national unity. Then another movement dropped out because they said they were coming to the talks on the basis that they were dealing with the government of national unity.¹¹⁶

Eliasson and Salim continued trying to bring the parties together. In February 2008, Eliasson told the Security Council that the rebel groups were "not ready to engage in substantive talks" and still, four months after Sirte, "lack[ed] consolidated positions."¹¹⁷ He observed, moreover, after a period of relative calm that "the security and humanitarian situation in Darfur and the region has dramatically deteriorated," thus further reducing the rebels' willingness to suspend hostilities and seek a peaceful settlement. At the same time, some scholars have placed fault not only with the factions but with the mediators themselves, who insisted that the discredited DPA remain the basis for discussions, and whose "lack of preparatory work to ensure that the principals were ready to negotiate an agreement in good faith" doomed the talks to failure.¹¹⁸ In late June 2008, Eliasson and Salim briefed the council for the last time before stepping aside in favor of a single UN-AU mediator. "The political process has reached an impasse," Salim admitted bluntly.¹¹⁹ The rebel movements were either unprepared or unwilling to negotiate; others "insist[ed] on preconditions that are clearly illegitimate"; still others "claim[ed] an exclusive monopoly on representation and [were] dismissive of all other movements." And some were still openly committed to warfare. Six weeks earlier, 3,000 JEM soldiers had launched an audacious surprise attack on Omdurman—the largest city in Sudan, which is located just across the Nile from Khartoum—and had been repulsed only when the government had dispatched special security forces. JEM was still staunchly determined to overthrow the government.

The relationship between security and political negotiations was always a complex and reciprocal one. The Sudanese government refused to consent to stronger peacekeeping arrangements until an agreement had been reached on the political goals that peacekeepers would serve. The rebels were reluctant to sign off on a political deal that was to be enforced by an AU mission that they did not trust. This produced a standoff, with the proposed UNAMID force trapped in the middle. Since neither the government nor the rebels were especially eager to enter talks that might entail serious compromise, neither had a real interest in ending the stalemate. Only outside actors—the UN, the AU, the major donors—could have generated incentives for conflict resolution, through pressure on the regime, the rebels, or both. This did not happen.

France, which for years had played a largely passive role on Sudan, became an important force with the election of President Nicolas Sarkozy, who appointed as foreign minister Bernard Kouchner, the humanitarian activist who, in his own abortive campaign for president, had vowed to use forceful means to address the crisis in Darfur. After his initial proposals—including the creation of a “humanitarian corridor” into Darfur from Chad—were rejected as impractical, Kouchner focused on establishing a force to contain the conflict. In September 2007, the Security Council established the UN Mission in the Central African Republic and Chad (MINURCAT) and authorized an EU force in Chad, known as EUFOR.¹²⁰ MINURCAT involved 350 police and military liaison officers, as well as an equal number of civilians. EUFOR had an authorized ceiling of 3,700 troops and was tasked with protecting civilians and UN personnel in facilitating the delivery of aid. Neither mission, however, could deal with the immensely tangled political roots of the spreading conflict.

UNAMID, meanwhile, was plagued by two formidable problems: the recalcitrance of the Sudanese government and the skittishness of troop-contributing countries. In early October, the UN and the AU forwarded to Khartoum a list of available units. Khartoum objected to the non-African troops, including those from Thailand, Nepal, and Scandinavian countries. The agreement that Annan had forged in Addis the previous November had called for a force of “predominantly African character,” but Khartoum was demanding an exclusively African force. Jean-Marie Guéhenno, head of the DPKO, told the Security Council that there was “no alternative to these units because to prepare for deployment takes time....They need now to deploy, and they are ready to deploy.”¹²¹ Back and forth the discussion went, with the regime promising to consider some units and not others, failing to respond by agreed deadlines, offering to permit UNAMID to fly at night so long as it paid to upgrade the country’s airports, and engaging in other delaying tactics.

Some African countries came forward with offers of additional troops. In order to operate over the vast territory of Darfur, however, UNAMID needed the kind of air support that AMIS had never had. DPKO asked for 18 transport and six tactical helicopters; but officials found that none of the world’s militaries could, or would, spare the equipment—including those of the countries that had approved the resolution authorizing the mission. As the secretary-general wrote in a report to the Security Council in late December, a week before UNAMID was to replace AMIS, “Without the missing helicopters, this mobility—a fundamental requirement for the implementation of the UNAMID mandate—will not be possible.”¹²² Six months later, the secretary-general would still be waiting.

After years of demands and threats and entreaties, and after raising hopes of finally changing the fundamental security equation in Darfur, UNAMID’s formal takeover changed nothing on the ground. Outside of 1,800 additional soldiers from Rwanda and Nigeria, as well as civilian officials, the new force was simply AMIS with a new name. The secretary-general would later note that in the first quarter of 2008 “the only additional deployments to UNAMID were by the advance party of the multi-role engineer company from China and the formed police unit from Bangladesh”—340 troops in all.¹²³ Despite all the talk of tough rules of engagement, UNAMID forces were attacked four times in the first months of deployment and never returned fire.

The UN did have one other stick to wield against the Sudanese government—indictment by the ICC. Khartoum’s obstruction and delaying tactics, as well as the ICC’s own wariness about provoking a backlash that might damage peace discussions or negotiations over the introduction of a peacekeeping force, had prolonged the process of securing indictments. On April 27, 2007, however, ICC judges issued warrants for the arrest of Ahmad Muhammad Harun, a former government minister, and Ali Muhammad Ali Abd al-Rahman, known as Al Kushayb, a Janjaweed leader. Harun was alleged to have played a key role in recruiting, funding, and arming the Janjaweed; Kushayb was a militia leader who had worked closely with Haroun.¹²⁴ The two were charged with 51 counts of war crimes and crimes against humanity, including murder, torture, and rape.

Khartoum, of course, refused to hand over the indicted. The Sudanese government viewed the ICC as an arm of an implacably hostile US government and UN Security Council.¹²⁵ Of course the government also repudiated the underlying allegations. It made its contempt for the proceedings starkly apparent when Secretary-General Ban Ki-moon made his September visit in pursuit of peace negotiations; then the government announced that Harun would co-chair a committee on human rights in Darfur. Kushayb, then in jail, was released two weeks later.

In December, Luis Moreno-Ocampo, chief prosecutor of the ICC, told the Security Council that the Sudanese government “is not cooperating with my office, or with the Court.”¹²⁶ He returned again in June 2008 with the same report. He further noted that although the allegations against the two men dated to 2003–04 the government was still perpetrating atrocities against its people. “The entire Darfur region is a crime scene,” he asserted.¹²⁷ Although the indictment covered the acts of only two individuals, moreover, “the commission of crimes on such a scale, over a period of five years and throughout Darfur, has required the sustained mobilization of the entire State apparatus.” Moreno-Ocampo compared Khartoum to

“the Nazi regime” and to the military dictatorship of his native Argentina.

In mid-July, Ocampo asked the judges of the ICC to issue an arrest warrant for President Bashir himself, on charges of genocide, war crimes, and crimes against humanity. The regime responded by organizing angry mass protests and by fomenting opposition among developing states. Tanzania, the chair of the AU, asked the Security Council to invoke Article 16 of the ICC’s founding statute, permitting a delay of one year in a proposed prosecution. Tanzanian president Jakaya Kikwete said that he had acted after speaking to President Bashir. Tanzania’s foreign minister warned that the prosecution could have “grave consequences in Sudan and Africa in general”¹²⁸ and could derail what he described as ongoing efforts to produce a peace settlement. In the ensuing days, the AU, the Arab League, the Organization of the Islamic Conference, and the Non-Aligned Movement all joined this call.

Libya, South Africa, and Burkina Faso, the three African countries then serving on the Security Council, sought to amend a resolution extending UNAMID’s mission by requiring a one-year delay in the prosecution of Bashir, according to the terms of Article 16. The move might well have succeeded, since European countries feared that the outcry could doom the ICC itself and were thus prepared to grant the delay. The Bush administration was deeply divided about defending the use of an institution that it did not accept and had only with great reluctance agreed to abstain on the original resolution referring the case to the ICC. President Bush, however, was persuaded that the ICC was the only means by which Bashir and the other perpetrators could be brought to justice, and he vowed to veto the resolution if it contained the Article 16 language. The ICC opponents lost, but they did not go quietly. Both Russia and China spoke out against the prosecution of Bashir. China’s UN ambassador, Wang Guangya, called the prosecution “an inappropriate decision taken at an inappropriate time” and argued that it would fatally undermine attempts at political reconciliation.¹²⁹

Whatever the motives of the Article 16 advocates, there was a serious argument that seeking to arrest the president of Sudan would, in fact, damage opportunities for a peaceful settlement. A report from the Institute for Security Studies in South Africa noted that despite the very real concern that a cycle of violence might be created by unpunished gross violations of human rights committed during the armed conflict, nevertheless “one could argue that the move of the ICC at this particular time was not the right move and that it can be seen as a mistake by the Prosecutor.”¹³⁰ Both Guéhenno and Eliasson contend that the threat of prosecution, especially of Bashir himself, may have indeed

hardened rather than weakened the regime’s resistance.

Within minutes of the issuance of the ICC arrest warrant on March 4, 2009, Khartoum expelled 13 international humanitarian agencies and three local ones. These organizations together provided at least half of the humanitarian assistance sustaining some 4.7 million Darfuris reliant on aid. While the World Food Programme had available stocks of food, the abrupt withdrawal of help, including access to fresh water, placed hundreds of thousands of Darfuris at risk of water-borne disease. Human Rights Watch stated that the decision “may be an unlawful reprisal or form of collective punishment, which are violations of international humanitarian law.”¹³¹ In effect, Sudan’s president had forced the international community to choose between pursuing justice, in the form of the arrest warrant, and placing the people of Darfur—against whom he had allegedly perpetrated his crimes—at risk of death. Pressure from neighbors might have forced Bashir to rethink his strategy, but in fact Khartoum’s intransigence enjoyed wide support across the African and Islamic worlds. Bashir was welcomed with open arms at regional meetings after the ICC issued the arrest warrant.

The deep divisions over the ICC prosecutions, and Bashir’s cynical response to the arrest warrant, recapitulated the question at the heart of the entire international response to the crisis in Darfur: how could outside actors alter Khartoum’s brutal policy toward its own people? Persuasion and incentives had not worked; and yet pressure and actual punishments had never been strong enough to deter the regime from pursuing a policy that it considered essential to its very survival. More intense and targeted pressure, such as tough sanctions on government officials directing the Janjaweed, might have worked, but the international community was too divided to decide on such measures. Despite opposition to robust action, was it best for proponents of coercive measures to pursue only consensual solutions? A growing fear of renewed North-South violence, along with the perception that Darfur had more or less stabilized, only made this question more pressing. In mid-2008, Andrew Natsios, the former US special envoy to Sudan, wrote in *Foreign Affairs* that the chief strategic imperative was no longer stopping the violence in Darfur but supporting the Comprehensive Peace Agreement. “The best way for Washington to proceed,” he further argued, “is not by confronting Khartoum but by engaging it, even in the face of likely objections from the Darfur advocacy community.”¹³²

Barack Obama, who during the Presidential campaign had been a forceful critic of the Sudanese regime, ultimately chose the path laid out by Natsios. The new special envoy, L. Scott Gration, a retired Air Force general, pursued quiet

diplomacy and helped persuade Khartoum to permit many of the agencies to return after an interval of several months—during which, providentially, those groups that had been able to remain had managed to avert mass death in Darfur, even in the midst of the rainy season. The Obama administration, and especially Gration himself, came to believe that a policy of “engagement,” such as Natsios and others had recommended, would prove far more effective than public confrontation in regard to both Darfur and the implementation of the CPA. Gration treated Khartoum as an equal partner with the South in negotiations over the CPA, soft-pedaled criticism on Darfur, and even spoke, in language he would soon come to regret, of the need to offer interlocutors “gold stars” and “cookies.”¹³³ Many Darfur advocates viewed the new line as a betrayal, all the more shocking coming from an administration that had vowed to embrace the responsibility to protect. One leading activist wrote that US policy “has tilted dangerously in the direction of appeasement.”¹³⁴ Critics were somewhat mollified by the October 2009 publication of a strategy document stipulating that Khartoum would be rewarded only for “verifiable changes in conditions on the ground” and insisting on “accountability for genocide and atrocities.”¹³⁵

The engagement approach had the effect of closing the gap between Western and regional approaches to negotiating with Sudan. The UN had replaced Eliasson and Salim with Djibril Bassole, the former foreign minister of Burkina Faso. Bassole had sought to promote negotiations between Khartoum and JEM, one of the largest Darfur rebel groups, as a prelude to wider talks. Throughout 2009, the two parties met in Doha under the auspices of the Arab League. The Obama administration supported the talks, as did the African Union. Bassole also convened civil society groups that had been left out of previous discussions. In late 2009, these groups issued a declaration calling for a ceasefire and the disarmament of rebel groups and the return of IDPs; the carefully-worded statement avoided discussion of the ICC or of past atrocities.¹³⁶

Discussions between Khartoum and JEM reconvened in early 2010, and in February the two groups signed a preliminary agreement calling for direct talks on peace and power-sharing. The Liberation and Justice Movement, a coalition of 11 other rebel groups, also reached a ceasefire agreement, although the Wahid faction of the SLA continued to resist direct discussions with Khartoum. The government stepped up its attacks against the Wahid faction’s stronghold in Jebel Marra. The mild optimism generated by Doha was tempered by continued fighting, apparently unbridgeable divisions among the rebels, the marginalization of civil society groups that had forged the Doha Declaration, and the failure of talks held in N’djamenā subsequent to the signing of that document. The

advocacy group Enough concluded bluntly that “[n]either the Government of Sudan nor the international community seems concerned about securing genuine peace.”¹³⁷

The international community had indeed viewed Darfur merely as a sideshow, while the North-South situation occupied center stage. The CPA called for a referendum to be held no later than January 2011. Voters in the South would choose either to secede or to accept autonomy within a unitary state. It had, however, long been a foregone conclusion that southerners would vote for secession—if the referendum was free and fair. Gration and other international actors focused their efforts on promoting talks between the North and South on the most contentious issues surrounding the impending divorce, including border demarcation and the apportioning of oil revenue.

The widespread fear was that President Bashir would suspend or sabotage the referendum rather than accept an outcome he deemed unsatisfactory. Indeed, human rights groups accused Bashir of using proxy forces, including the feared Lord’s Resistance Army, to spread violence and instability in the South—the regime’s standard strategy for dealing with opposition. At the same time, Khartoum sought to strengthen its position through negotiation. Talks between the NCP and the SPLM began in late 2009. The two sides reached a series of agreements, including the demarcation of agreed portions of the border and the establishment of a South Sudan Referendum Commission. In addition, the National Assembly passed a bill laying out the modalities for the referendum. These were modest achievements, at least in the face of the immense challenge of arranging a soft landing in the aftermath of partition. They represented a rare instance of forward momentum and perhaps were a partial vindication of Washington’s engagement policy.

The CPA had also called for national elections to be held as a prelude to the referendum; these were ultimately scheduled for April 2010. The elections were to be a crucial step in the process of national reconciliation and democratization established by the CPA. It was also widely understood within the international community that President Bashir would not permit any such provisions to obstruct his path to victory. In the months before the ballot, according to the International Crisis Group, the NCP “manipulated the census results and voter registration, drafted the election law in its favor, gerrymandered electoral districts, co-opted traditional leaders and bought tribal loyalties.” Others were more inclined to give Sudan credit for holding the first real elections in its history. The Carter Center, one of the international NGOs monitoring the election, offered restrained criticism balanced with praise for “increased civic participation.”¹³⁸ The Obama administration’s reaction was also relatively mute. At the time,

I wrote: “The international community, including the Obama Administration, has thus made a strategic choice to give Bashir an election he was bound to rig in any case in order to increase the likelihood that he will accept a secession vote.”¹³⁹

The international community found itself in the same quandary it had faced in the early years of the Darfur crisis, when diplomats muted their response to the growing reports of violence out of fear of derailing peace negotiations between the North and South. Khartoum had exploited that reticence, continuing its campaign of mayhem in Darfur. This time the stakes were lower: the regime (as well as the government in the South) would be permitted to violate CPA commitments in order to focus on the greater goal of the referendum and ensuing partition. Would this calculation prove wiser in April 2010, than five and six years before? Diplomats nervously hoped that President Bashir and his circle could be, in effect, successfully appeased. Most advocates viewed the bargain as cynical and self-defeating.

Lessons Learned

The World is Not Yet Prepared to Act

The violence perpetrated against the people of Darfur by the Sudanese government and its proxies is not an ambiguous case of mass atrocities. Although it remains debated whether Khartoum’s brutal campaign amounted to genocide, there is little question that it constituted crimes against humanity. Yet a decade after Rwanda and the declarations of “never again,” the international community could not muster the will to act decisively. Some states objected in principle to any intervention; others were restrained by commercial or diplomatic calculations; others were not prepared to raise the ante high enough. Despite the massive and well-publicized violence, the reasons for insufficient action were simply more compelling than the reasons for action. There is little reason to believe that this calculus has since changed. Until it does, states prepared to defy the international community may continue to do so with impunity.

The Imperative of Early Action

At the very heart of the responsibility to protect doctrine is the idea of acting preventively, before large numbers of civilians have been killed. In order to act preventively, policy makers must make judgments about the likelihood of something happening that has not yet occurred. Those judgments will necessarily be uncertain, and at times will prove wrong,

but the appalling consequences of inaction require careful scrutiny of the early signs of mass violence. Attention must be heightened in cases where underlying factors make atrocities more likely to occur. These factors include a prior history of atrocities, a climate of ethnic tension, and environmental and demographic changes that may exacerbate pressures. There thus can be little doubt that these factors were present in Darfur.

The tragedy in Darfur was very different from that in Rwanda a decade earlier. There the genocidal paroxysm exhausted itself in a matter of weeks, and a rebel force swiftly drove the perpetrators from the country. Darfur can more readily be compared to Bosnia, where the international community had time to respond to new revelations of suffering and abuse yet failed to do so. Indeed by the time the chief UN bodies and regional organizations had begun to respond to ethnic cleansing in the former Yugoslavia, the worst of the violence had already occurred. The paradox of prevention is that policy makers do not normally take difficult actions until forced to do so by crisis—even though it is widely understood that the cost of action increases the longer one waits. State institutions are typically wired for response rather than for anticipation. R2P cannot be fully effective unless and until that wiring is changed. Both regional bodies and the UN need an early-warning capacity that responds to signs of impending catastrophe. More important, decision-making bodies such as the Security Council must be prepared to act on the basis of such early intelligence, rather than waiting until violence has reached its zenith.

Conflicts Grow More Intractable Over Time

Despite the immensely complex set of factors that fueled it, the conflict in Darfur had a relatively straightforward character for the first few years: the state and its proxies sought to crush a local rebellion by brutalizing the entire population from which the rebellion had sprung. This made calls for action relatively straightforward as well. If key states had been able to summon the will to act, further violence might have been averted, or at least circumscribed. But over time the battle lines became more and more scrambled. The insurgents split, and split once more. Deprived of means of survival, they turned increasingly to plunder and banditry and began to prey on the civilian population. Arab tribes turned against one another. A battle of bad guys against good guys devolved into a contest pitting many bad guys of different stripes against one another. Those who wished to intervene in some form no longer could easily say on whose behalf they were acting. Prospective political solutions thus became dizzyingly complex. The failure to act early thus radically diminishes the possibility of effective action.

Public Opprobrium Matters

During the early stage of the conflict, debate raged inside the UN, as well as in other venues, about whether public criticism or private diplomacy would prove more effective in influencing Khartoum. Thus neither the UN nor other actors spoke with one voice. As a forum of states, the UN is institutionally inclined to mute criticism of members in favor of behind-the-scenes demarches. While there will always be a place for such classic diplomacy, perpetrators of atrocities will rarely be moved by quiet remonstrances or even blandishments. Neither, of course, are they likely to change course in the face of public criticism, as the situation in Darfur so amply proves. The only way to rally public opinion in order to press member states to act, however, is through the kind of forthright public speech that Jan Egeland, Kofi Annan, and others engaged in once the magnitude of the violence became clear. In this regard, the role of the secretary-general cannot be underestimated. It matters that he visits the conflict zone and insists that the press accompany him; speaks out publicly and unambiguously; and carefully deploys his team, and other members of the extended UN family, to reinforce his statements. Though he does not have a stick, he does have a megaphone. The secretary-general will necessarily be constrained by his reluctance to criticize a member state and even more by his sensitivity to how far key states are prepared to go. However, there are times when the need for blunt public rhetoric must outweigh the calculus of “what the market will bear.”

Advocacy Groups and the Media Drive Western Public Opinion

As in Somalia and the Balkans, political actors responded to the crisis in Darfur only once it began to land on the front pages of newspapers. Even the strong public remarks of Kofi Annan and others had little effect until they began receiving widespread coverage in the media. Reports from organizations like Human Rights Watch and the International Crisis Group first brought home the magnitude of the crisis in late 2003 and early 2004. The formation of the Save Darfur Coalition in mid-2004 created a permanent voice for strong action to confront the regime in Khartoum. The combination of advocacy and media coverage led to widespread calls in leading Western media outlets for military intervention. Some scholars of the region, as well as critics of humanitarian action, have criticized the advocacy groups as naïve and even harmful.¹⁴⁰ Some of these groups certainly seized on exaggerated estimates of the death toll. Yet given Khartoum’s broad support among neighbors and other Islamic states, few leaders would have chosen to confront the regime at all absent the groundswell of public opinion created by advocacy groups and media coverage.

This phenomenon, however, barely extended beyond the Western democracies. With some exceptions, chiefly in Africa, civil society groups in the developing world paid relatively little attention to the atrocities; far fewer media outlets called for forceful action. In non-democratic states, of course, leaders are relatively free to ignore public opinion. The leaders of the major non-Western democracies were also under little pressure to confront Khartoum, and thus were far more free to act according to straightforward calculations of national interest. On balance, then, the problem was not that advocates were too loud or naïve but rather that they were all located in the same place. This has been the case in prior humanitarian crises and has been true in subsequent ones. Until the basic principles of the responsibility to protect are fully internalized in civil society around the world, leaders will feel free to ignore the commitment to act, which they themselves agreed to undertake at the 2005 UN World Summit.

The Neighborhood Must Respond

The African Union was slow to recognize the gravity of the situation in Darfur; and once it did so, despite language in the AU Constitutive Act requiring forceful action to stop atrocities, the organization’s response was shaped by a deep reluctance to violate the wishes of an important member. Neither the organization nor prominent members were prepared to criticize Khartoum; the peacekeeping force that the AU ultimately fielded was shaped by sensitivity to Khartoum’s own concerns as much as by operational requirements. The AU’s soft line made it that much more difficult for Western actors to adopt a harder line: why should countries far away be so critical if those closer to the problem apparently viewed it with less alarm? Moreover, the wish on the part of Western actors to defer to regional ones—to find “an African solution for an African problem”—gave extra weight to this softer line. The reluctance of African leaders to publicly criticize one of their own offered President Bashir a crucial firewall from global public opinion, and specifically from his indictment for war crimes, allowing him to characterize all such condemnations as a neocolonial war of the West against their former subject people.

International Actors Cannot Hide Behind Local Ones

Despite the crucial role of regional bodies, the obligation to act to prevent mass atrocities belongs to states collectively, not only to neighbors or to states that happen to occupy the same continent as victims. As noted above, neighbors and regional organizations often prove to be especially reluctant to confront leaders committing abuses against their own people. Slogans like “African solutions to African

problems” can all too readily degenerate, as Juan Méndez puts it, into “African complicity with African problems”—and Western complicity as well.¹⁴¹ Helping to strengthen these local actors must not take the place of concerted action by the international community, as it did when Security Council members cynically insisted that the AU peacekeeping force had the capacity to protect civilians in Darfur.

The Security Council is too Easily Distracted

The Security Council failed to seize on the crisis in Darfur at the moment of maximum leverage and failed to act robustly once it did so. But even when, starting in 2005, the council began to impose real penalties on Khartoum, it paid remarkably little attention to the work of enforcement. The council passed sanctions, and then allowed Russia and China to undermine their effect. The council referred the recommendation for criminal prosecution to the ICC and then promptly dropped the matter. The council oversaw the signing of the Comprehensive Peace Accord between the North and South and then made little attempt in the ensuing years to see that its provisions were honored. Having done “the right thing,” members absolved themselves of the obligation to ensure that their actions had the desired effect. The Security Council is a decision-making body rather than an operational one, but it has developed mechanisms, such as sanctions committees, to enforce its own decisions. These bodies tend to work in the shadows and are easily influenced by members with their own interests (as the Iraq sanctions committee notoriously was during the Oil-For-Food era). The Security Council must not content itself with issuing resolutions and then act as if they are self-enforcing.

Confronting Perpetrators Creates a Risk of Moral Hazard

Once the international community threatens to use coercive action against a state committing atrocities, indigenous forces opposing the state will see outside actors as their allies and act accordingly. The discovery that the international community is on their side enhances their sense of the righteousness, and the inevitable triumph, of their struggle. They will have little, if any, incentive for diplomacy and compromise. This phenomenon may account for the failure of the Darfur Peace Agreement and the persistent fractiousness of the Darfur rebel groups. Insurgents came to believe that the West would ride to their rescue; indeed they actively sought to provoke the West into doing so, in part by ensuring that negotiated solutions would not hold.

The recognition of the inevitable risk of moral hazard must condition the response of outside actors, but it must not

serve as a pretext for neutrality between radically unequal partners. Diplomats must make it clear that they are intervening on behalf of a people, not an insurgency. They must be prepared to walk away when rebel groups seek to manipulate negotiations for their own benefit, as happened in the run-up to the ill-fated DPA. They must also be quick to remind such groups not only of their own responsibilities but also of their own accountability, whether in regard to sanctions or to international prosecution for war crimes and crimes against humanity.

There is No One Solution to Peace v. Justice

It is not possible to say, even now, whether the ICC indictments of President Bashir and other senior figures will have had a positive or negative effect on the prospects for a peaceful settlement in Darfur. Nor is it clear whether justice will ever be done. Even where a criminal leadership has been supplanted by a new regime, as in Serbia, persuading the incumbent government to arrest an indicted figure from the predecessor regime is extraordinarily difficult; in settings where the regime remains in power, as in Sudan, indicted figures will remain beyond the reach of justice. A ruling elite whose chief members face the prospect of imprisonment may conclude that it has little to lose, and everything to gain, by resisting calls to negotiate itself out of power—or even by accepting the kind of robust peacekeeping force that might be able to enforce the will of the ICC. If the ICC prosecutor is to balk when perpetrators have the power to resist arrest, then the court will surrender its claims to impartial justice. Rogue leaders, moreover, genuinely fear the prospect of criminal prosecution; to eliminate that threat, even for the most prudent political calculation, is to sacrifice one of the few tools that can possibly compel compliance. Thus an ICC indictment and arrest warrant must be accompanied by intense diplomatic pressure to surrender indicted figures—even when they include the head of state.

The Goal is Not to Mete Out Just Deserts

Outside actors seeking to end atrocities will often face the dilemma of treating the perpetrator as he “deserves,” or treating him in whatever way is most likely to bring the violence to an end. This dilemma not only applies to the question of prosecution. Negotiators seeking to bring an end to the North-South civil war had to craft an agreement that Khartoum could accept; those now seeking to conduct the referendum without mass violence must once again satisfy the regime’s concerns about its own survival. The fact that a regime headed by an indicted war criminal may not deserve to survive cannot shape the discussions. The responsibility

to protect, as stipulated above, concerns civilian protection, not moral judgment. Advocates may often need to be reminded of this central fact. What is true as well is that when the international community has proved itself incapable of marshalling a coercive response to mass violence, it is left with no choice save consensual actions. Nothing is more harmful to the cause of ending atrocities than rattling an empty scabbard.

Endnotes

- ¹ The overall figure for civilian deaths in Darfur is matter of great dispute, with figures ranging from 100,000 to 400,000. The 300,000 estimate has been made by, among others, John Holmes, UN under-secretary-general for humanitarian affairs, in testimony before the Security Council on April 22, 2008 (S/PV 5872), available at: <http://daccess-dds-ny.un.org/doc/UNDOC/PRO/N08/313/07/PDF/N0831307.pdf?OpenElement>, and the Office of the Prosecutor of the International Criminal Court.
- ² *Report of the the International Commission of Inquiry on Darfur to the United Nations Secretary-General* (Geneva: UN January 2005), available at: www.un.org/News/dh/sudan/com_inq_darfur.pdf; statement by Baba Gana Kingibe, head of the AU mission in Sudan, 9/30/2004; Reports of the International Crisis Group--*Sudan's other wars*, 25 June 2003, available at: www.icg.org/library/documents/report_archive/A401020_25062003.pdf; Amnesty International, "Sudan: Crisis in Darfur – Urgent Need for International Commission of Inquiry and Monitoring," April 28, 2003, available at: www.amnesty.org/en/library/asset/AFR54/026/2003/en/094fac27-d6f9-11dd-b0cc-1f0860013475/afr540262003en.html; Justice Africa--*Prospects for Peace in Sudan briefing*, 14 March 2003.
- ³ See U.S. secretary of state Colin Powell's testimony to the Senate Foreign Relations Committee on September 9, 2004. Text available in US Department of State, "Powell Reports Sudan Responsible for Genocide in Darfur," September 9, 2004, available at: www.america.gov/st/washfile-english/2004/September/20040909115958JTgnilwoD0.5094873.html.
- ⁴ *Report of the International Commission of Inquiry*, 4.
- ⁵ Gerard Prunier, *Darfur: A 21st Century Genocide* (Ithaca, NY: Cornell University Press, 2008), 15.
- ⁶ Mahmood Mamdani, *Saviors and Survivors: Darfur, Politics, and the War on Terror* (New York: Pantheon Books, 2009), 185.
- ⁷ See, for example, "Sudan: Civil War and Genocide," by Francis Deng, in *The Middle East Quarterly*, Winter 2001, Vol. VIII, No. 1. <http://www.meforum.org/22/sudan-civil-war-and-genocide>
- ⁸ See, for example, "Sudan, Oil and Human Rights," Human Rights Watch, November 24, 2003 <http://www.hrw.org/en/reports/2003/11/24/sudan-oil-and-human-rights>.
- ⁹ Alex de Waal, "Who Are the Darfurians? Arab and African Identities, Violence and External Engagement," Social Science Research Council, October 10, 2004, available at: conconflicts.ssrc.org/hornofafrica/dewaal/.
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Notes

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