



Darfur: Whose Responsibility to Protect?

By Michael Clough*

In early 2004, mounting evidence of massive human rights abuses in the Darfur region of Sudan tested anew the international community's will and capacity to halt ethnic cleansing and protect civilians. The United Nations and member states responded with a flurry of missions, humanitarian assistance, calls for negotiations, demands for action by the government of Sudan, veiled threats of sanctions, support for African Union (A.U.) peacekeepers, and a commission of inquiry. By year's end, however, the pallid steps taken by the U.N. Security Council at a special session on Sudan held in Nairobi, Kenya, had called into question the commitment of Security Council members to follow through on their earlier resolutions—and no end to the catastrophic suffering of the people of Darfur was in sight.

The final act in the tragedy of Darfur is yet to be written. But enough of the story has already unfolded to conclude that the world's political leaders have failed to deliver on the promises made in the wake of the genocide in Rwanda in 1994 that they would “never again” dither in the face of a possible genocide.

In the decade after Hutu *genocidaires* slaughtered eight hundred thousand in Rwanda, the United Nations, governments, think tanks, and other groups around the world undertook a host of initiatives such as the International Commission on Intervention and State Sovereignty to identify ways to prevent armed conflict, strengthen U.N. peacekeeping, and protect civilians, especially children. The result has been a plethora of new principles, U.N. resolutions, recommendations, proposals, commitments, and the development of the “human security agenda.” In December 2004, the U.N. Secretary-General's High Level Panel on Threats, Challenges and Change (High Level Panel on Threats) acknowledged the failure of the U.N. to prevent atrocities against civilians and recommended reforms to enhance the U.N.'s capacity to carry out its collective security mandate. The High Level Panel also strongly endorsed the emerging norm that there is

* Michael Clough is currently serving as Africa advocacy director at Human Rights Watch. Africa Division colleagues Georgette Gagnon, Leslie Lefkow, and Jemera Rone contributed to the preparation of this essay, as did Iain Levine, program director at Human Rights Watch.

an international responsibility to protect civilians in situations where governments are powerless or unwilling to do so. So far, however, these initiatives have afforded no protection to the people of Darfur.

Between early 2003 and late 2004, the Sudanese government and government-backed Arab militias destroyed hundreds of African villages, killed and raped thousands of their inhabitants, and displaced more than a million and a half others. By December 2004, more than 70,000 people had died directly or indirectly as a result of the government's military campaign, hundreds of thousands more were at risk of death from starvation and disease, and security conditions throughout the countryside were still deteriorating.

To understand and learn from the still unfolding tragedy of Darfur, the international community must go beyond "never again" rhetoric and ask hard questions about why the U.N. has been unable to translate its post-Rwanda commitments into effective practice. International policymakers must confront the assumptions and interests that hobble the Security Council's ability to respond quickly and decisively to human rights crises in Africa and elsewhere. The United Nations must find ways to deter potential human rights abusers and act on early warning signs to protect civilians before the death toll begins to mount. Security Council members must address the yawning gap that exists between the peacekeeping challenge that they are asking the African Union to assume in Darfur and the capacity of that nascent organization to meet that challenge.

The Harrowing of Darfur

Public understanding of Darfur has been muddied by the understandable tendency of those who do not know Sudan to view this territory in the west of the country through the lens of the much more publicized civil war in the south. But unlike the decades-long struggle between successive Arab regimes in Khartoum and rebels drawn from predominately non-Muslim African communities in the south, the fighting in Darfur is of more recent origin—and all of the combatants and their victims are followers of Islam.

At first glance, the fighting in Greater Darfur, which includes the three states of North, South, and West Darfur, appears to be an ethnic clash. It pits an Arab-dominated government in Khartoum, aligned with ethnic militias drawn from some Arab nomadic groups that have long roamed freely across Darfur's forbidding desert and fertile farmland, against rebel groups drawn largely from three main African groups, two of which are traditionally settled agriculturalists or semi-pastoralists. But the reality is more complex. Until the mid-1980s, Arab herders and African farmers occasionally clashed,

but mostly co-existed peacefully. In fact, despite the ethnic polarization that now exists, there has been considerable ethnic fluidity and intermarriage.

The seeds of the conflict in Darfur were sown by decades of government exploitation, manipulation, and neglect; recurrent episodes of drought and increasing desertification leading to competition for ever-diminishing resources; a flow of arms and people caused by earlier wars in Chad; and the failure of the international community to hold the government of Sudan accountable for the human rights abuses committed over two decades in other regions of the country. Paradoxically, however, the immediate spark may have been progress in negotiations to end the twenty-one-year-long north-south conflict, which created fears among Darfurians that they might be excluded from the power- and wealth-sharing formula being negotiated by the government and the Sudan People's Liberation Movement/Army (SPLM/A), the rebel group that has waged a civil war in the south since 1983.

In February 2003, the Darfur rebels of the Sudan Liberation Army shocked Khartoum by successfully assaulting government military forces in Fashir, the capital of North Darfur, and achieving a string of military successes. In response, the Bashir government launched a vicious counter-insurgency campaign in Darfur, patterned after earlier campaigns it had conducted in southern Sudan and the Nuba Mountains, using a proxy militia force, the so-called Janjaweed, made up of members of nomadic Arab tribes.

The first loud warnings of an impending human rights catastrophe came in October-November 2003, when U.N. agencies reported that villages had been burned and Amnesty International reported that Sudanese refugees in camps in Chad were describing "how militias armed with Kalashnikovs and other weapons . . . often dressed in green army uniforms, raided villages, burnt houses and crops and killed people and cattle." Shortly thereafter, Jan Egeland, United Nations under-secretary for humanitarian affairs and emergency relief, warned that the humanitarian situation in Darfur had become "one of the worst in the world." In December 2003, as Khartoum imposed tight restrictions on access to the region and launched a new offensive, U.N. Secretary-General Kofi Annan echoed Egeland's concern.

In April 2004, reporting by U.N. agencies, humanitarian nongovernmental organizations (NGOs), human rights groups, and the media started to reveal the enormity and nature of what was happening—and, on April 7, Kofi Annan, addressing the Commission on Human Rights on the 10th anniversary of the Rwanda genocide, called attention to the human rights abuses and growing humanitarian crisis in Darfur and called on the international community to be prepared to take swift and appropriate action.

Based on its investigations in Darfur and refugee camps in Chad at that time, Human Rights Watch found “credible evidence that the government of Sudan has purposefully sought to remove by violent means the Masalit and Fur population from large parts of Darfur in operations that amount to ethnic cleansing.” As a result of the mounting evidence that massive human rights abuses and crimes against humanity were being committed, the Security Council began—slowly and hesitantly—to pay attention to Darfur.

The United Nations and Darfur

For more than a year, from early 2003 until mid-2004, while the conflict in Darfur was escalating, the U.N. Security Council’s priority in Sudan was negotiations in Naivasha, Kenya to end the north-south civil war. Initially, false optimism that those negotiations would lead to a quick settlement that would change the overall political situation in Sudan may have caused some member states to discount the warning signs of a growing crisis in Darfur. Later, as it became increasingly impossible to ignore the evidence of serious violence and human rights abuse, the Security Council may have tried to keep Darfur off of its agenda out of fear that a discussion of Darfur would cause the government in Khartoum to pull out of the Naivasha talks. As a result, even in June 2004, when the Security Council passed Resolution 1547, which established a U.N. mission in Sudan to prepare to monitor implementation of a final agreement between the government of Sudan and the SPLM/A, Darfur was barely mentioned.

Before late July 2004, the Security Council’s only action on Darfur was a May 25, 2004 statement by the Council president calling on the government of Sudan to disarm the Janjaweed militias. This statement came after the council was briefed on the findings of two U.N. missions of massive human rights violations and grave humanitarian need, and after months of insisting that Darfur was not “on its agenda.” Two months later, after repeated appeals by a growing number of humanitarian and human rights groups, and visits to Darfur by Secretary-General Annan and many foreign ministers from Europe and the United States, the U.N. Security Council passed Resolution 1556, which demanded that the Sudanese government disarm the Janjaweed and bring to justice those leaders who had incited and carried out human rights abuses. The Security Council threatened to consider further sanctions if the government failed to comply. It also endorsed the deployment of an African Union force to monitor the April 2004 ceasefire agreement between the government and the rebels, which was already underway; and imposed a ban on the sale of arms to all “non-governmental entities and individuals” in Darfur—in other words the rebels and the Janjaweed militias, but not the government

that organizes, finances, directs, and supplies the Janjaweed. Resolution 1556 was approved by a 13-0 vote, with China and Pakistan abstaining.

For the Security Council, Resolution 1556, despite its obvious weaknesses, was a significant step forward. In the eyes of most observers, however, it was yet another example of the council's abrogation of its responsibilities. By the time the resolution was passed, the gravity of the human rights abuses then still occurring in Darfur was already widely acknowledged. In late June, for example, Secretary-General Annan told reporters, "We all agree that serious crimes are being committed." Moreover, there were also already numerous, well documented reports of direct Sudanese government involvement in the perpetration of massive human rights violations in Darfur, including eyewitness accounts of joint ground attacks on civilians by government troops and the Janjaweed, and official documents containing orders for additional recruitment and military supply of ethnic militia groups. By July 2004, stronger measures directed at the government were justified and necessary, but they weren't adopted because at least one permanent member—China—and possibly another—Russia—presumably would have vetoed any resolution that included sanctions against the government or authorized direct U.N. intervention.

On September 18, 2004, after nearly two more months in which security and humanitarian conditions worsened and the government failed to protect civilians or fulfill its commitment to disarm the Janjaweed and prosecute perpetrators, the Security Council passed Resolution 1564. Declaring its "grave concern" that the government of Sudan had not fully met its obligations, the Security Council reiterated its call for the government "to end the climate of impunity in Darfur" by identifying and bringing to justice those responsible for the widespread human rights abuses. In addition, it called for an expansion of the African Union monitoring mission in Darfur and established a commission of inquiry to investigate reports of violations of international humanitarian law and human rights law and to determine also whether or not acts of genocide had occurred. Finally, it threatened, if the government failed to comply with this resolution and Resolution 1556, additional measures, "such as actions to affect Sudan's petroleum sector and the Government of Sudan or individual members of the Government of Sudan." Resolution 1564 passed by an 11-0 vote, with Algeria, China, Pakistan, and Russia abstaining. Thus, five months after receiving substantial evidence of government commission of massive human rights abuses, Security Council action was still largely limited to entreaties, investigations, veiled threats, and support for an A.U. force.

On November 18-19, 2004 the United Nations Security Council held a special session on Sudan in Nairobi, Kenya. The main purpose of the session was to put pressure on the government of Sudan and the SPLA/M to finalize the Naivasha agreement. In the

process of trying to promote a north-south settlement, the Security Council watered down its earlier commitment to end the suffering of civilians in Darfur. Resolution 1574, which passed unanimously, failed to include any specific criticism of the government of Sudan for failing to meet the demands to disarm and bring to justice the Janjaweed, which were in the Resolution 1556 and 1564, and it replaced the mild threats of sanctions in those resolutions with a vague warning that, in the future, it might consider taking “appropriate action against any party failing to fulfill its commitments.” In addition, it called on the U.N. and the World Bank to provide development aid, including debt relief to a government which, just months earlier, had been labeled genocidal by the United States and others.

Despite enormous developments in the institutions, standards, and policies that set out to protect civilians in conflict, the United Nations is still an association of sovereign states committed to traditional principles of international order and constrained by the ability of the five permanent members of the Security Council to veto collective action. As the Security Council reaffirmed in all three of the resolutions on Darfur, the U.N. is committed to preserving the sovereignty, unity, independence, and territorial unity of its member states. In fact, for the majority of U.N. members, when there is a conflict, the principle of state sovereignty still trumps all other principles and norms. The continuing force of this traditional principle was affirmed by the recent report of the High Level Panel on Threats, which declared that the starting point for any “new security consensus” must be an understanding “that the front-line actors in dealing with all the threats we face, new and old, continue to be individual sovereign States, whose role and responsibilities, and right to be respected, are fully recognized in the Charter of the United Nations.”

The norm of non-intervention in the “internal affairs” of a sovereign state flows directly from the principle of state sovereignty—and few norms are more fiercely defended by most U.N. member states than this norm. Many governments, especially those in Africa, Asia, and Latin America, understandably regard it as one of their few defenses against threats and pressures from wealthier and more powerful international actors seeking to promote their own economic and political interests. But the non-interference norm has also been used by barely legitimate governments to block international efforts to end gross abuses of their citizenry. That is what happened in the case of Darfur: Khartoum used sovereignty, first, as a veil to hide its brutal campaign against African villagers; and, later, as a shield to fend off calls for international action to protect its victims.

In addition, the veto power of the permanent members of the Security Council gives those five countries—the United States, Russia, the United Kingdom, France, and China—a unique power to protect and promote their national interests at the expense of

global interests. In the case of Darfur, the main impediment to stronger action by the Security Council has been China, which owns a 40 percent share of Sudan's main oil producing field. At the council's special November 2004 session in Nairobi, China, and possibly Russia, which is thought to be the main arms supplier to the Sudanese government, used the threat of a veto to pressure other members to water down Resolution 1574. But, as discussed below, even without the threat of a Chinese veto, it is doubtful that the council would have passed a resolution containing a serious threat of sanctions against Khartoum.

Thus even in the shadow of Rwanda, the Security Council in 2004 failed to muster the collective will necessary to act quickly and decisively to end the humanitarian catastrophe in Darfur and hold accountable those who are responsible for creating it. This is not likely to change unless and until the United Nations accepts the principle, as recommended by the International Commission on Intervention and State Sovereignty and the High Level Panel on Threats, that all states have a "responsibility to protect" civilians faced with avoidable catastrophes, including mass murder and rape, ethnic cleansing by forcible expulsion and terror, and deliberate starvation and exposure to disease. Recognizing the responsibility to protect would provide the Security Council with the basis it needs to act in the face of a determined refusal by a sovereign state to protect its own citizens.

The United States and Darfur

In 1994, the Clinton administration initially used fine semantic distinctions to avoid calling the genocide in Rwanda by its true name—and it led the Security Council coalition against intervention. In 2004, the Bush Administration was the first and only Security Council member to declare that the abuses committed in Darfur constituted genocide—and it initially led the push for the Security Council to act. But U.S. leadership on Darfur was a mixed blessing.

In 2001-2002, the Bush administration had made ending the Sudanese civil war one of its top foreign policy priorities in Africa. Correctly or not, many observers believe it did so mainly because of pressure from conservative religious activists who have long campaigned against Khartoum's Islamist government for its gross human rights abuses in the non-Muslim south. When the rebel attacks and government counter-offensive began in Darfur, Washington was among those governments that were reluctant to criticize Khartoum for fear that doing so might derail the North-South peace initiative. On April 7, 2004, however, with a bipartisan handful of U.S. Congressmen calling for sanctions, President Bush condemned the "atrocities" in Sudan. In midsummer, Secretary of State Colin Powell traveled to Darfur. Then, on September 9, 2004,

Secretary Powell told the U.S. Congress that the State Department had concluded that genocide had been committed and that the Sudanese government and the Janjaweed bore responsibility.

However, the fact that the Bush administration was waging a globally unpopular war in Iraq without a U.N. mandate, inevitably affected how other U.N. member states responded, particularly once the graphic images of U.S. soldiers abusing Iraqi prisoners in Abu Ghraib were broadcast around the world. Khartoum seized the opportunity by portraying U.S. accusations on Darfur as part of a global American assault on Islam and Arabs. But the most disturbing aspect of U.S. policy toward Darfur is the striking inconsistency between Secretary of State Powell's finding in September 2004 that the government of Sudan and the Janjaweed had committed genocide and the administration's apparent decision in November 2004 to return to its earlier policy of trying to use carrots to induce Khartoum to sign the Naivasha accords. It was that shift, and not just the threat of a Chinese veto, that was responsible for the Security Council's failure to even debate the need to take stronger action to halt continuing human rights abuses in Darfur.

The African Union and Darfur

The idea of African solutions for African conflicts is an old one. Unfortunately, policymakers in the United States and other major powers have often used it as an excuse for their own inaction. In Darfur, the U.N. has sought to place most of the burden of carrying out the goals contained in Security Council resolutions 1556 and 1564 on the shoulders of the nascent African Union. Initially, the A.U. role was limited to providing a small force of military observers to monitor the April 2004 ceasefire agreement between the Sudanese government and two Darfurian rebel groups. In October, the A.U. agreed to expand its force to include more than 3,500 monitors, peacekeepers, and civilian police. Despite its limited mandate, much of the world is looking to the A.U. to provide the means to halt the human rights abuses in Darfur and restore security.

The decision to rely on A.U. monitors, peacekeepers, and police had broad support. Officials in the United States and Europe saw it as a way to avoid the risk that their military forces would become embroiled in another Mogadishu-like disaster, where U.S. forces acting under a U.N. mandate were drawn into a deadly conflict with local warlords. African leaders viewed it as an opportunity to establish the A.U.'s bona fides as the dominant political-military institution in Africa. And the Sudanese government apparently decided that the A.U. force was the best alternative to avoid the possibility of sanctions or U.S. or European intervention.

The ability of the A.U. force to help bring security and justice to Darfur will depend largely on the commitment of the United States and Europe to ensure that the A.U. force has the equipment, training, and logistical support necessary to carry out its mission. But it will also depend on the commitment of the A.U. Peace and Security Council. Most crucially, the A.U. needs a clear mandate to protect civilians from attacks. Without such a mandate, the A.U. force could be put in the position of watching helplessly while civilians are slaughtered.

The A.U. experiment in Darfur is a critical test of Africa's ability to assume responsibility for regional crises. If it succeeds, it could substantially enhance the international community's ability to halt future human rights catastrophes in Africa. If it fails, it could set the stage for a long series of bitter and divisive debates over the necessity for and legitimacy of international humanitarian intervention on the continent.

Preventing Future Darfurs

Over the past two decades, countless reports and studies have declared the need to develop more effective early warning and conflict prevention mechanisms. The International Commission on Intervention and State Sovereignty, for example, recently declared that "prevention is the single most important dimension of the duty to protect." Yet, while the last decade has seen many initiatives in this area, the atrocities in Darfur provide stark evidence that the international community has not yet found a way to translate theories of preventive action into effective practices.

Justice is the most powerful deterrent to future injustice. Justice requires holding the perpetrators of human rights abuses accountable and ensuring that the effects of their injustice are reversed.

In the case of Darfur, the Sudanese government's brutal counterinsurgency tactics—including promoting ethnic militias, scorched earth warfare, aerial bombardment, massive forced displacement, and the blocking of humanitarian aid to the victims—are the same tactics it used to combat rebels in other parts of the country. If the international community had held Sudanese government officials and the militia leaders it backed in its other counterinsurgency wars accountable for the abuses they committed in those earlier campaigns, Khartoum might have been deterred from unleashing the Janjaweed in Darfur. But the gross abuses in southern Sudan's twenty-one year war never made it onto the Security Council agenda. These abuses are almost entirely ignored in the draft North-South peace accords. Similarly, if the international

community had taken steps to ensure that previous exercises in ethnic cleansing were reversed, Khartoum would have had less reason to believe that it would succeed in using force to effect lasting changes in the map of Darfur.

It is for these reasons that the results of the U.N. commission of inquiry's investigations will be very important. By documenting the crimes that have been committed, identifying perpetrators, and recommending the best means to ensure that the perpetrators are prosecuted, the commission of inquiry can help not just to bring justice to Darfur, but also to deter future Darfurs. But it will be equally important for the international community to ensure that the victims' of Khartoum's ethnic cleansing strategy are returned to their lands and provided help to re-establish their lives. Their villages must be restored. Their cattle and property must be returned or replaced. And they must be compensated for their loss of family members.

Early action to protect civilian populations against emerging threats is an equally important international imperative. As the Commission on International Intervention and State Sovereignty noted, preventing conflicts from escalating and endangering civilian populations requires three things: early warning, a preventive action toolbox, and political will. In the case of Darfur, all three were lacking, but especially the last two.

There were early warning signs in Darfur. But mere warnings, even if combined with reports of scattered attacks on civilian populations, are rarely enough to prompt the international community to act. The problem is two-fold. Global policymakers are reluctant to intervene in "internal matters" unless and until localized conflicts escalate beyond some indeterminable magic threshold that makes them obviously legitimate matters of international concern; and the global public seldom begins to demand action until it is presented with graphic evidence of large-scale suffering. Therefore, even if the ravaging of a few villages by government forces and ethnic militias is recognized as an early warning sign, it is almost never sufficient to set in motion early preventive actions.

The real key to preventing future Darfurs, as noted above, is legitimizing the idea of early action to protect civilian populations, and then creating the tools necessary to provide protection. That will require efforts by both the international institutions and national governments. Paradoxically, inviting and facilitating early small-scale civilian protection efforts is the best option a government has to avoid the possibility of later, much more threatening, calls for international sanctions and intervention. If, for example, instead of attacking African villages in Darfur, the government of Sudan had quickly engaged the international community in efforts to protect villagers from the effects of fighting between the government and rebels, it would have almost certainly

gained substantial international credibility. This would have obviated the need for international recriminations and threats against the government—and, at the same time, it would have almost certainly enhanced Khartoum’s bargaining position in negotiations with the Darfur rebels.

The continuing failure of national governments facing the prospect of deadly domestic conflicts to accept the need for early action to protect civilian populations presents the international community with a difficult choice. When conflicts begin to unfold, it can continue, as in Darfur, to wait for civilian suffering to become so widespread and evident that global outrage makes international action unavoidable. Alternatively, it can embrace the idea of an international responsibility to protect—and begin to develop the means necessary to act on that responsibility before its only options are after-the-fact sanctions and military intervention.

Conclusion

The failure to prevent atrocities in Darfur is almost certain to lead to more international hand-wringing. But the victims of massive human rights abuse do not need another chorus of “never again” or new rhetorical commitments by the U.N. Security Council. Instead, they need a determined effort by the United Nations and its member states to confront the underlying reasons for their failure to deliver on the commitments they have already made to prevent armed conflict, protect civilians, and ensure justice.