

BRIEFING — DARFUR: THE INTERNATIONAL COMMUNITY'S FAILURE TO PROTECT

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This article is the third in a series of briefings addressing issues raised in The Commission for Africa Report and the G-8 Summit in Gleneagles in 2005.

OUR COMMON INTEREST, the March 2005 report of the Commission for Africa, squarely acknowledged that much more must be done to prevent conflict in Africa if development in the continent is to accelerate. In passing, the report called for practical means to implement 'agreed criteria for humanitarian intervention and the use of force, drawing on the principles of the "Responsibility to Protect" human life'.¹

Six months later, Responsibility to Protect (or R2P in shorthand) became the centrepiece of efforts to reform the United Nations (UN) at the 2005 World Summit and is now widely accepted as providing the criteria for international responses to conflict and large scale atrocities.

Such broad acceptance of the doctrine of R2P is a real advance, but implementing it is proving to be a much tougher test of international political will. The most obvious case for the first application of the new doctrine is Darfur, but the international community has conspicuously failed to take the steps necessary to protect the people of Darfur. Instead, while the world has been looking on, the regime in Khartoum and its proxy Janjaweed militias have conducted a systematic campaign of atrocities in Darfur since early 2003, a campaign that continues today.

Responsibility to Protect: a background

The 2005 World Summit was the largest ever gathering of world leaders. Its avowed purpose was to mark the sixtieth anniversary of the UN by taking bold decisions on development, security and human rights, and the reform of the UN itself. Unfortunately, the outcomes failed to meet expectations, and

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1. The Commission for Africa, *Our Common Interest: Report of the Commission for Africa* (The Commission for Africa, London and Addis Ababa, 2005), p. 172 (http://www.commissionforafrica.org/english/report/thereport/english/11-03-05_cr_report.pdf, 17 July 2006).

the opportunity to make the reforms necessary for the myriad of challenges confronting the world in the twenty-first century was largely squandered.

However, the recognition by world leaders, convening as the General Assembly, of an international collective responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity was one of the significant achievements of the World Summit.² This doctrine was subsequently endorsed by the Security Council,³ marking its emergence as a nascent international norm.

The road to this recognition was a long one. When countries came together to create the UN in the immediate aftermath of the Second World War, they endorsed the sanctity of state sovereignty, in an understandable reaction to its trampling during the war. Reflecting this, the UN Charter included a clear statement of non-interference: 'Nothing...shall authorize the UN to intervene in matters which are essentially within the domestic jurisdiction of any State'.⁴ And, despite early recognition in the 1948 Convention on Genocide that sovereignty was not a defence against gross human rights violations,⁵ the Cold War and the emergence of newly decolonised states ensured the primacy of non-intervention until the 1990s.

Support for international intervention to address gross human rights abuses emerged with the reinvigoration of multilateralism following the end of the Cold War. Hence, the UN and US intervention in Somalia in 1992 was driven by humanitarian concerns, but the subsequent humiliation and unseemly withdrawal of those forces in early 1994 quickly undercut what international enthusiasm there was for intervention on humanitarian grounds. The pusillanimous international responses to genocide in Rwanda and the Balkans, most notably in Srebrenica, were the consequence. When such intervention did occur, in Kosovo, the international legal basis for it was unclear.

The lack of an accepted framework for intervention in the face of egregious abuses led Kofi Annan to issue a challenge to the General Assembly in 2000:

If humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violations of human rights?⁶

2. The other achievements of the World Summit included agreement to establish a Human Rights Council, a Peacebuilding Commission to help countries transition to peace, and a commitment to achieve the Millennium Development Goals by 2015. See the 2005 World Summit Outcomes adopted by the General Assembly, General Assembly Resolution 60/1, 24 October 2005.

3. See the United Nations Security Council Resolution on the Protection of Civilians in Armed Conflict, SC Res. 1674, 28 April 2006.

4. Charter of the United Nations 26 June 1945, Article 2(7).

5. Convention on the Prevention and Punishment of the Crime of Genocide, adopted by Resolution 260(III)A of the United Nations General Assembly, 9 December 1948.

6. Millennium Report of United Nations Secretary-General, *We the Peoples: The role of the UN in the 21st century* (United Nations, New York, 2000), Chapter 3, paragraph 217.

To meet this challenge, the Canadian government set up the independent International Commission on Intervention and State Sovereignty (ICISS) chaired by the President of the International Crisis Group Gareth Evans and Algerian diplomat Mohamed Sahnoun. The Commission handed down its report, *Responsibility to Protect*, in December 2001.⁷

The report reframed the debate, away from one setting human rights against sovereignty, to one in which the responsibility of a sovereign nation to protect its citizens was paramount. Sovereignty so approached is not a legal question of control over a jurisdiction but instead places responsibilities on the sovereign government.⁸ Each state has the obligation to protect its population from serious harm resulting from internal war, insurgency, repression, or state failure. The corollary of this was an obligation on the international community to intervene when a state has failed, through lack of willingness or capacity, to protect its own people.⁹ Significantly, it is a responsibility on the international community not just to react to situations of compelling human need but also to prevent serious harm and to rebuild to address the causes of the harm.

In a remarkably short period of time, the doctrine of R2P was embraced by key quarters of the international community, notably the UN Secretary-General Kofi Annan,¹⁰ the European Union (EU), the African Union (AU), and the UN High-Level Panel on Threats, Challenges and Change.¹¹ This culminated with R2P's endorsement by the General Assembly at the 2005 World Summit in the following form:

Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means.

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.¹²

7. International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (International Development Research Centre, Ottawa, 2001). See also International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Research, bibliography, background* (International Development Research Centre, Ottawa, 2001).

8. *Ibid.* See also Francis M. Deng et al., *Sovereignty as Responsibility: Conflict management in Africa* (The Brookings Institution, Washington, DC, 1996).

9. *Ibid.* See also Gareth Evans and Mohamed Sahnoun, 'The responsibility to protect', *Foreign Affairs* 81, 6 (2002), pp. 99–110.

10. Secretary-General Kofi Annan, *In Larger Freedom: Towards development, security and human rights for all* (United Nations, New York, 2005).

11. Report of the UN High Level Panel on Threats, Challenges and Change, *A More Secure World: Our shared responsibility* (United Nations, New York, 2004).

12. 2005 World Summit Outcomes adopted by the General Assembly Resolution 60/1 24 October 2005, articles 138 and 139.

This formulation was subsequently approved by the UN Security Council in its resolution on the Protection of Civilians in Armed Conflict in April 2006.¹³

International principle gathers momentum through widespread state recognition and practice to become international law. With formal recognition by the General Assembly and the Security Council, the doctrine has developed into a nascent international norm. But the key test of any new international norm or law is recognition by states themselves that they are bound to act in accordance with the obligations.

And it is in Darfur where the gap between formal recognition and implementation is at its greatest.

Darfur: the background

Since early 2003, the government of Sudan has responded to an insurgency by rebel groups in Darfur by unleashing its proxy Janjaweed militias on the rebels' tribal groups. The government supported the resulting ethnic cleansing campaign with well-coordinated air strikes and joint ground operations. The two main rebel groups, the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM), are recruited mainly from the largely agrarian Fur and Massalit and the mostly nomadic Zaghawa, the three largest Darfurian groups of African descent.¹⁴ The strategy of the government has been to 'drain the swamp' by driving civilians from their villages, thereby denying the rebels sanctuary in much of Darfur. This campaign has left more than 200,000 dead, most from conflict-related disease and malnutrition. More than two million have been forced from their homes.¹⁵

And the devastation extends beyond Sudan's own borders. Some 200,000 Darfurians are refugees in neighbouring Chad. Chad's government was itself nearly overthrown in April 2006 by rebels backed by the government of Sudan. The rebels advanced to the outskirts of the capital N'Djamena and were only just turned back. They are now regrouping for further attacks.

Sudan's responsibility to protect

Khartoum has the primary responsibility to protect its own citizens against atrocities. But it has wilfully and flagrantly flouted this responsibility.

13. SC Res 1674. The R2P reference in resolution 1674 was also acknowledged in Security Council Resolution 1706 on Darfur.

14. For an excellent account of race and identity in Darfur see Alex de Waal, 'Who are the Darfurians? Arab and African Identities, violence and external engagement', *African Affairs* 104, 415 (2005), pp. 181–205.

15. The International Crisis Group has published considerable reporting and analysis on the Darfur conflict — most recently, Crisis Group Africa Briefing No. 39, 'Darfur's fragile peace agreement', 20 June 2006; Crisis Group Africa Report No. 105, 'To save Darfur', 17 March 2006; and Crisis Group Africa Briefing No. 28, 'The AU's Mission in Darfur: Bridging the gaps', 6 July 2005.

It has been the prime mover behind the campaign of ethnic cleansing and has unleashed the Janjaweed militias on the people of Darfur. Despite undertaking on six occasions to disarm the Janjaweed — most recently in the Darfur Peace Agreement of 5 May 2006¹⁶ — and having been repeatedly directed to do so by the Security Council,¹⁷ the Sudanese government has yet to make even token efforts to meet its commitments. Even now Khartoum continues to recruit and arm militias and support their continuing attacks. And all the while, it has skilfully played the various rebel groups and tribes in Darfur and eastern Chad against each other, allowing it to claim vindication for its disingenuous and self-fulfilling assertions that Darfur is all about tribal rivalries and longstanding ethnic hatreds.

The international response

Khartoum's calculated actions are perhaps understandable for a brutal regime narrowly focused on its own survival — though no less deserving of condemnation because of it.

But the international community has no such excuse for its own failings. What makes these failings all the more tragic is that policy-makers and leaders around the world know exactly what is taking place in the region. They cannot plead ignorance. There has been no lack of warning about this campaign of ethnic cleansing as it has unfolded.

Thanks to the work of the International Crisis Group, Human Rights Watch, Amnesty International, and others such as Nick Kristof of the *New York Times* and Juan Mendez, the UN Secretary-General's Special Adviser on the Prevention of Genocide, these atrocities are all too well documented and publicized. Yet despite all the evidence, the international community has conspicuously failed in its responsibility to protect the people of Darfur.

The lead international actor on Darfur has been the AU. Darfur has been a test case for the fledgling organization. It has done as much as could be expected with its limited resources and mandate — but its limitations are now being cruelly exposed.

When the scale of the devastation became too overwhelming to ignore, in mid-2004, the AU established a small monitoring mission in Darfur, consisting of some 60 monitors and 300 troops to protect them. Over the

16. The N'Djamena ceasefire agreement of 8 April 2004; the N'Djamena agreement of 25 April 2004; the 3 July 2004 communiqué signed with the UN; the 5 August 2004 Plan of Action signed with the UN; and the 9 November 2004 Protocol on Security Arrangements signed at the AU-led Abuja talks. The government has also agreed to identify those militias under its control or influence in the 5 August Plan of Action and the 9 November Protocol. It reiterated its promise to disarm the militias in the 19 December 2004 ceasefire signed with the National Movement for Reform and Development (NMRD).

17. United Nations Security Council Resolutions 1556 (30 July 2004), 1564 (18 September 2004), 1574 (19 November 2004), 1591 (29 March 2005).

next couple of years, the mission has gradually expanded to some 7,000 troops. However, we have seen a big gap between intentions and capabilities.

A critical limitation of the AU mission is its mandate. It is largely an observer mission. It does not have a mandate to go out and proactively protect civilians. In fact, it can only protect civilians when they are being attacked in its presence, and only then if it feels it has enough troops to intervene — and too often it does not.

And an already fraught situation is rapidly deteriorating for the AU and those it is supposed to help protect. The government of Sudan launched a new military campaign in late August to try and wipe out the remaining rebel groups in Darfur. Funding and support for the AU mission is drying up. Many of its soldiers have been unpaid in recent months, and a force already grossly overstretched is being told, under the Darfur Peace Agreement, to do more with less.¹⁸

Although the AU may have been in the lead on the ground, it is only the UN that can ensure a coordinated, properly resourced, and legitimate international response to a conflict of this magnitude. But the UN, a creature of its member states, has been found wanting in Darfur. It has been appallingly slow to put any real pressure on the Sudanese government. It was only in March 2005, some two years after the conflict started, and in the face of repeated provocations from the Sudanese government — including its utter failure to disarm the Janjaweed — that the Security Council belatedly moved to impose sanctions against those impeding the peace process and committing human rights violations. And it took another year, and yet more egregious provocations, before any individuals were specifically targeted, and then only four of them — a low-level air force commander, a janjaweed commander, and two rebels.¹⁹ In August 2006, the Security Council finally passed a resolution providing for the deployment of UN peacekeepers to Darfur by the end of the year, but effectively conditioned deployment on the consent of Khartoum — ensuring that the deployment will not take place anytime soon, and almost certainly not by the end of 2006.²⁰

The Security Council has taken more robust action on the legal front. First, it established an International Commission of Inquiry.²¹ After an investigation, the Commission concluded ‘the international offences such as the crimes against humanity and war crimes that have been committed in Darfur may be no less serious and heinous than genocide’. Specifically

18. At the time of writing, it is unclear whether the AU mission will remain in Darfur much beyond 30 September 2006, the end of its current mandate. Khartoum has demanded that the AU mission leave then, unless it agrees not to hand over to the proposed UN mission at the end of the year. AU leaders have yet to respond to Khartoum’s demand.

19. United Nations Security Council Resolution 1672, 25 April 2006.

20. United Nations Security Council Resolution 1706, 31 August 2006.

21. United Nations Security Council Resolution 1564, 18 September 2004.

the Commission found that 'government forces and militias 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'.²²

Confronted with these findings, the Security Council then referred the situation in Darfur to the International Criminal Court (ICC) for investigation.²³ The ICC started its investigation into Darfur three months later and is now actively investigating atrocity crimes committed there — despite much obstruction from the Sudanese government. In his report to the Security Council in June 2006, the ICC Prosecutor, Luis Moreno-Ocampo, dispassionately recounted to the Security Council that his team had collected evidence of large-scale massacres, thousands of 'slow deaths' from forced displacement and destruction of food-stocks, and hundreds of rapes, with many, many more going unreported. The challenge now for the prosecutor is to overcome Khartoum's obstruction and bring to justice those most responsible for these atrocities.

That leaves the EU, NATO, and the US as the remaining key international players. The EU approach has been largely to stand behind the AU. The EU has made it clear that it sees the AU as the lead international player in Darfur and that the EU's role is primarily to support an African solution to an African problem, by funding the AU mission — though that funding support is dwindling as the EU pushes for a UN rehatting of the AU mission. And NATO was initially a strategic competitor of the EU in Darfur. More recently, it has been providing expertise and logistical support to the AU mission. But NATO has no intention of going beyond its limited support and logistical role and actually putting troops on the ground in any significant numbers.

Then there is the US, which has a mixed record on Darfur. In its rhetoric, the US has been at the forefront of international action. Colin Powell and George Bush have both called Darfur a genocide. Powell and Condoleezza Rice have been to Darfur. The US has been generous in its aid contributions, supplying much of the food supplies to the displaced Darfurians. And in perhaps its most significant move to date, the US abstained from the Security Council vote on the ICC referral, allowing the referral to go through—a very big step for an Administration that had made opposition to the ICC an article of faith until then.

But while the US has called Darfur a genocide, it has yet to put real pressure on the Sudanese regime. There is a tragic irony about the US response to Darfur when compared with its response to Rwanda some 12 years earlier. Then, the Administration did everything it could to avoid

22. Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Geneva, 25 January 2005, p. 3.

23. United Nations Security Council Resolution 1593, 31 March 2005.

calling Rwanda a genocide — engaging in all sorts of semantics to avoid making that judgement, fearing that if it did it would have to take far stronger action than it was prepared to. This time round there has been little hesitation in labelling Darfur a genocide, in the light of far more ambiguous evidence — apparently on the cynical grounds that doing so did not impose any commensurate obligation to intervene.

Why has the world not acted?

The sad reality is that Darfur simply does not matter enough, and Sudan matters too much, for the international community to do more to stop the atrocities.

Much as governments in Europe and the US are disturbed by what is happening in Darfur — and they genuinely are — almost without exception they are not prepared to commit their troops on the ground in Sudan, hence their enthusiastic support for African solutions.

The issue is problematic for the US, because it has a close intelligence relationship with the Sudanese government in its war on terror. In 2005, it flew Salah Gosh, the Sudanese chief of intelligence and one of the architects of the Darfur atrocities, out to Virginia on a private plane for meetings with the CIA.

As for the UN, it is a creature of its members. So on the Security Council you have China, the largest importer of oil from Sudan, ready to block any overly intrusive UN measures. And both Russia and China are leery of UN intervention in civil conflicts, fearing it may lead one day to intervention in Chechnya or Tibet or Xinjiang.

The Arab League, and most of its member states, is xenophobically opposed to a Western-led intervention in North Africa, and strongly protective of one of its own. And the AU is operating in Darfur with the consent of the government of Sudan and is reluctant to push too hard for fear of being further marginalised. It has also been desperately trying to prove that it can resolve one of Africa's most destructive conflicts, even when all the evidence demonstrates that it cannot.

These motivations all combine to ensure that the international community shies away from effective intervention. Instead it focuses its efforts on providing humanitarian assistance — thereby addressing the consequences but not the causes.

As a senior UN official has bitterly noted, the international community is 'keeping people alive with our humanitarian assistance until they are massacred'.²⁴

24. Crisis Group interview, senior UN official, New York, March 2006.

The way forward

The AU mission has failed to stop the killings; NATO and the EU have made it clear they will not commit their own forces to Darfur; so the only option now is for the deployment of a UN peacekeeping force with a robust mandate requiring it to protect civilians and create an environment conducive to their return. Such a mission would enjoy the financial and military resources of the UN and member states, thus avoiding the hand-to-mouth existence of the AU mission. In its August 2006 resolution, the Security Council laid the groundwork for a UN force to be deployed to Darfur – and invited Khartoum's consent to the deployment. But senior figures in the Sudanese government have made it clear that such consent won't be forthcoming anytime soon, declaring that the resolution amounted to 'unjustifiable hostility against Sudan'.²⁵

The challenge now is to overcome Khartoum's opposition. Despite the ongoing atrocities perhaps warranting it, armed intervention by a UN peacekeeping force against the express wishes of the Sudanese government is not going to happen. Kofi Annan made this clear when he said 'The fact is, without the consent of the Sudanese government, we are not going to be able to put in the troops. So what we need is to convince the Sudanese government to bend and change its attitude and allow us to go in'.²⁶ And such an intervention would not get past the veto of China and perhaps Russia on the Security Council. In any event, an opposed intervention force would require tens of thousands of hardened troops, and probably far more, to fight its way into Sudan and protect itself against opposing Sudanese forces.

Sudanese agreement will only be forthcoming if the international community adopts a unified front and ratchets up, and maintains, the pressure on Khartoum. One precedent is Indonesia's acceptance, through gritted teeth, of international intervention in East Timor in 1999.

Earlier in 2006, such pressure appeared to be bearing fruit, with Khartoum grudgingly agreeing to the deployment of some form of UN mission, conditional on a peace agreement being reached with the rebels.²⁷ Intense international pressure then led to the Darfur Peace Agreement, with the government of Sudan and one faction of the rebel SLA group signing up in May 2006. The other faction of the SLA, and the JEM rebel group, refused to join them.

Of course, as is its habit, Khartoum soon resiled from its earlier agreement to a UN force, with President Bashir announcing 'there will not be any international military intervention in Darfur as long as I am in

25. 'Countdown to Sudan Carnage', *Scotland on Sunday*, 3 September 2006.

26. Secretary-General's Press Conference, New York, 13 September 2006.

27. State Department Daily Press Briefing, 16 May 2006.

power'.²⁸ He also raised the spectre of an international jihad against any such UN force²⁹ — sentiments reiterated by senior government officials following the passage of the August resolution.³⁰ This obduracy conveniently overlooks the fact that there is already an international military intervention in Sudan, in the south, in the form of a UN peacekeeping force to give effect to the Comprehensive Peace Agreement (CPA) that ended the long-running civil war there.

And Khartoum, despite its blustering, has a history of responding to international pressure — but only if it is unified and sustained. Most notably it signed up to the CPA, in part because of demands from the international community, led by the US. The regime calibrates its response to international coercion, always trying to do just enough to pre-empt any real sanctions. It has done so remarkably successfully in the last three years, aided and abetted by the international community's failure to speak with one voice.

Conclusion

Khartoum's campaign of atrocities in Darfur, and the failure of the international community's response, is a stark demonstration of the challenges facing the international community as it moves to operationalise R2P.

The problem is easy enough to state but far more difficult to resolve. Khartoum, intensely focused on its own self-interest and survival, has brutally implemented a counter-insurgency campaign in Darfur. The international community, with its disparate interests and varying levels of outrage, has expressed shock and horror, and applied some pressure — but lacks the political will to apply enough sustained pressure on the Sudanese regime to change its calculus of self-interest.

This failure is deserving of condemnation if for no other reason than it fails to meet the standards that world leaders set themselves when they signed up to the R2P principles. But there is a more fundamental reason to denounce their failure — namely the horrific suffering that has been inflicted on millions of Darfurians while the world stands by.

The danger is that the international community will settle for a low-intensity conflict in Sudan, as we have so many other times in Africa, leaving it to humanitarian agencies to keep millions alive in Darfur at a subsistence level. Until this first ethnic cleansing campaign of the twenty-first century is reversed, R2P will remain aspirational, not operational, and 'never again' will be 'yet again' once again.

28. 'Sudan rejects "colonial" troops', *BBC*, 20 June 2006.

29. 'UN faces threat over Darfur plan', *BBC*, 10 June 2006.

30. 'Sudan VP vows resistance to UN peacekeepers', *AFP*, 1 September 2006.

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