

Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq

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The world's failure to prevent or halt the Rwandan genocide was described as a "sin of omission" by UN secretary-general Kofi Annan.¹ British prime minister Tony Blair promised that "if Rwanda happens again we would not walk away as the outside has done many times before," and insisted that international society had a "moral duty" to provide military and humanitarian assistance to Africa whenever it was needed.² The United States labeled as "rogues" states that "brutalize their own people and squander their natural resources for the personal gain of their rulers."³ Since 2003, the Sudanese government and its notorious Janjaweed militia have conducted a brutal campaign of mass killing and ethnic cleansing in response to an uprising by the Sudanese Liberation Army (SLA) and the Justice and Equality Movement, who have themselves attacked civilians in the Darfur region, though on a much smaller scale.⁴ Recent surveys place the number of deaths caused by direct violence between 73,700 and 172,154.⁵ Deaths from malnutrition and preventable disease in internally displaced persons camps stood at 108,588 in January 2005, with approximately 25,000 more having died in inaccessible regions.⁶ The British Parliament's International Development Committee put the total casualty figure at around 300,000.⁷ At least 1.8 million more had been forced to flee their homes.⁸ Following a

unanimous vote by the U.S. Congress in July 2004, Colin Powell took the unprecedented step of labeling the violence "genocide."

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¹ "UN Chief's Rwanda Genocide Regret," BBC News World Edition, March 26, 2004; available at news.bbc.co.uk/2/hi/africa/3573229.stm.

² Tony Blair, speech given to the Labour Party Conference, Brighton, U.K., October 2, 2001. I am grateful to Nick Wheeler for bringing this to my attention.

³ "The National Security Strategy of the United States of America" (September 2002), sec. V; available at www.whitehouse.gov/nsc/nss.pdf.

⁴ According to Alex de Waal, the government of Sudan has "consistently franchised its counter-insurgency operations to militia," in this case the Janjaweed. The government provides the militia with arms, intelligence, and air support and allows them to operate with complete impunity, creating an "ethics-free zone." Alex de Waal, "Briefing: Darfur, Sudan: Prospects for Peace," *African Affairs* 104, no. 414 (2005), p. 129.

⁵ These figures were offered in a detailed study by Jan Coebergh, "Sudan: Genocide Has Killed More Than the Tsunami," *Parliamentary Brief* 9, no. 7 (2005), pp. 5–6. The lower figure is extrapolated from an MSF survey and the upper one from a U.S. State Department report.

⁶ *Ibid.* These figures are extrapolated from data provided by USAID and the World Health Organization.

⁷ House of Commons International Development Committee, *Darfur, Sudan: The Responsibility to Protect*, fifth report of session 2004–05, vol. 1 (HC 67-1), March 30, 2005, p. 3; available at www.publications.parliament.uk/pa/cm200405/cmselect/cmintdev/67/67i.pdf.

⁸ UN News Centre, "UN Refugee Agency Withdraws Staff from South Darfur Over Sudanese Restrictions," New York, November 11, 2004; available at www.un.org/apps/news/story.asp?NewsID=12510.

Despite professed commitments to prevent future man-made humanitarian catastrophes, the world's response to the Darfur crisis has been muted. At the time of writing, a small, underfunded and understaffed African Union mission (AMIS) is deployed in Darfur. Although it has a mandated size of approximately 3,300, there are fewer than 1,500 AMIS peacekeepers on the ground. The force has proven unable to halt sporadic escalations of violence or prevent the humanitarian situation from deteriorating.⁹ The UN Security Council has taken an ambivalent position. On the one hand, it has to date failed to impose serious sanctions on Sudanese officials and has not contemplated using force to protect civilians or humanitarian aid. On the other hand, while it has yet to decide whether the UN Mission to Sudan (UNMIS), created recently to support, monitor, and verify the comprehensive peace agreement between the government of Sudan and the Sudan People's Liberation Movement/Army (SPLM/A) in the south, will play an active role in Darfur, there is a distinct possibility that it could.¹⁰ Moreover, on March 31, 2005, the council took the momentous step of referring the Darfur case to the International Criminal Court (ICC).¹¹

This article explores what international engagement with Darfur tells us about the norm of humanitarian intervention since the 2003 war in Iraq. Do states and regional organizations recognize that they have a "responsibility to protect" civilians at risk, as the International Commission on Intervention and State Sovereignty (ICISS) argued? Or is humanitarian intervention perceived as a "Trojan horse" used by the powerful to legitimize their interference in the affairs of the weak? I examine whether the Iraq war has shifted the balance between these two positions, posing the question: Is there more or less likelihood of global consensus on

armed responses to "supreme humanitarian emergencies"?¹² My response proceeds in two parts. The first provides a brief overview of the norm of humanitarian intervention, focusing on *The Responsibility to Protect* and on debates about the impact of the "war on terror" and the war in Iraq on it. The second offers a detailed study of the international response to Darfur.

I argue that the situation in Darfur reveals two subtle changes to the humanitarian intervention norm. First, although the level of consensus about humanitarian intervention has not perceptively shifted, the debates on Darfur lend credence to the thesis that the Iraq war has undermined the standing of the United States and the U.K. as norm carriers.¹³ According to Martha Finnemore and Kathryn Sikkink, new norms only replace old ones after a period of contestation between advocates of the old and the new.¹⁴ If the credibility of those most associated with the new

⁹ See Thalif Deen, "New UN Force for Sudan Will Skirt Darfur Crisis," Inter Press Service, February 9, 2005; available at globalpolicy.igc.org/security/issues/sudan/2005/0208unskirts.htm. It is widely recognized that after an initial respite, the humanitarian situation has actually deteriorated despite AMIS.

¹⁰ UNSC Res. 1590 (March 24, 2005).

¹¹ UNSC Res. 1593 (March 31, 2005). Passed with eleven in favor and four abstentions (Algeria, Brazil, China, and the United States).

¹² This is Wheeler's term. Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2001), p. 34.

¹³ See also Nicholas J. Wheeler and Justin Morris, "Justifying Iraq as a Humanitarian Intervention: The Cure Is Worse Than the Disease," in W. P. S. Sidhu and Ramesh Thakur, eds., *The Iraq Crisis and World Order: Structural and Normative Challenges* (Tokyo: United Nations University Press, forthcoming). I owe the "norm carriers" idea to them.

¹⁴ A process they describe as "norm cascade." See Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (1998), pp. 887–918.

norm is undermined by perceptions that they have abused it or raised it for primarily self-serving purposes, the process of normative change is likely to be slowed or reversed.¹⁵ Traditional advocates of the new norm will find that their arguments have less resonance among skeptics. The problem is compounded by military overstretch on the part of key advocates of humanitarian intervention, in particular the United States and the U.K. In short, it has become harder for these states to persuade others to act decisively in humanitarian emergencies at precisely the moment when those states themselves are less able to bear the costs of acting outside the world's institutional framework. From the American and British perspectives there is no feasible alternative to collective action through the UN or AU in addressing the situation in Darfur, but they have been unable to build consensus about collective action at least in part, I would suggest, because of their diminished credibility as norm carriers.

Second, the Darfur debates have been deeply infused with the language of a "responsibility to protect." The meaning of that language, however, has been hotly contested. Changing the language of the intervention debate has done little to forge consensus or overcome the struggle between sovereignty and human rights. In the debates I examine, "responsibility to protect" talk was used to oppose international activism as much as to support it. If we accept Quentin Skinner's argument that actors will not act in ways that they cannot justify by reference to the prevailing normative context, it could be claimed that the brief period of acquiescence to humanitarian interventions in the 1990s was at least partly due to the absence of plausible arguments *against* them. This claim is made

more compelling when the absence of plausible arguments against intervention is set against the global consensus that horrors such as the Rwandan genocide should not have been permitted.¹⁶ In the Darfur case, as I will show, "responsibility to protect" language has now enabled *anti-interventionists* to legitimize arguments against action by claiming that primary responsibility in certain contested cases still lies with the state, and not (yet) with an international body. Given the credibility crisis confronting some of the leading advocates of humanitarian intervention, there is a real danger that appeals to a responsibility to protect will evaporate amid disputes about where that responsibility lies.

THE NORM OF HUMANITARIAN INTERVENTION

It is widely accepted that the Security Council has a legal right to authorize humanitarian intervention under Chapter VII of the UN Charter.¹⁷ There is also a partial consensus among some liberal states that there

¹⁵ Ward Thomas, for instance, argues that a new norm's vitality depends on its advocates being seen to practice it in good faith. Ward Thomas, *The Ethics of Destruction: Norms and Force in International Relations* (Ithaca: Cornell University Press, 2001), pp. 34–35.

¹⁶ The idea of "acquiescence" to the West's humanitarian agenda is taken from Wheeler and Morris, "Justifying Iraq as a Humanitarian Intervention," p. 15. My argument draws on Quentin Skinner, "Analysis of Political Thought and Action," in James Tully, ed., *Meaning and Context: Quentin Skinner and His Critics* (Cambridge: Polity Press, 1988), pp. 116–17. I am grateful to Nick Wheeler for suggesting this.

¹⁷ Nicholas J. Wheeler, "The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society," in Jennifer M. Welsh, ed., *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004), pp. 32–41.

is a moral right to intervene without council authorization in extreme cases.¹⁸ It is highly unlikely that the Security Council would have objected had others used force to halt the 1994 Rwandan genocide.¹⁹ Throughout the Security Council's deliberations about Rwanda, no state publicly argued that either the ban on force (Article 2(4)) or the nonintervention rule (Article 2(7)) ought to prohibit armed action to halt the bloodshed.²⁰ Moreover, as Simon Chesterman has argued, there is little evidence to suggest that sovereignty concerns inhibit states from saving strangers when they have the means and desire to do so.²¹ Throughout the 1990s, the Security Council expanded its interpretation of "international peace and security," authorizing interventions to protect civilians in so-called safe areas (Bosnia), maintain law and order, protect aid supplies (Somalia), and restore an elected government toppled by a coup (Haiti). However, two questions remain hotly contested: First, who has the authority to sanction humanitarian intervention when the Security Council is blocked by the veto? Second, when should a humanitarian crisis trigger potential armed intervention? I argue in the following sections that although a partial consensus on these questions was established during the 1990s, there is now deep division about how to interpret the effects of the "war on terror" and the invasion of Iraq on that consensus.

The Partial Consensus on Humanitarian Intervention

As mentioned earlier, in the past few years many liberal states have begun to accept the proposition that intervention not authorized by the Security Council could be legitimate. NATO's intervention in Kosovo was a watershed in this regard. A commission of experts found the intervention to be "illegal

but legitimate," meaning that while it did not satisfy international society's legal rules, it was "sanctioned by its compelling moral purpose."²² This finding implies a degree of consensus around the idea that states have a moral right to intervene to save strangers in supreme humanitarian emergencies. A Russian draft Security Council resolution condemning the intervention was rejected by twelve votes to three (Russia, China, and Namibia).²³ While the failure of the Russian draft did not constitute retrospective authorization, it does add credence to the idea that there is a moral consensus among liberal states and some others about the right of intervention in supreme humanitarian emergencies.²⁴ The claim that the

¹⁸ The debates among liberal states about whether to intervene in Kosovo provide the best demonstration of this moral consensus. See Alex J. Bellamy, *Kosovo and International Society* (London: Palgrave Macmillan, 2002). The best theoretical expression of this liberal consensus can be found in Michael Walzer, "The Politics of Rescue," in *Arguing about War* (New Haven: Yale University Press, 2004), pp. 67–81.

¹⁹ It is important to note, however, that five states abstained when France requested a Security Council mandate to launch Operation Turquoise in Rwanda, most citing concerns about France's motives. See Wheeler, *Saving Strangers*, p. 232.

²⁰ See Michael Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda* (Ithaca: Cornell University Press, 2002); and Wheeler, *Saving Strangers*, pp. 231–41.

²¹ Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001), p. 231.

²² Independent International Commission on Kosovo, *Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2000), p. 4; and Ian Clark, *Legitimacy in International Society* (Oxford: Oxford University Press, 2005), p. 212.

²³ It is remarkable that even traditionally conservative states such as Malaysia chose to side with NATO rather than to abstain. UNSC 3989th meeting, S/PV.3989, March 26, 1999; available at www.un.org/Depts/dhl/resguide/scact1999.htm.

²⁴ Nicholas J. Wheeler, "The Legality of NATO's Intervention in Kosovo," in Ken Booth, ed., *The Kosovo Tragedy: The Human Rights Dimensions* (London: Frank Cass, 2001), p. 156.

consensus extended beyond Western liberal states in the Kosovo case is further demonstrated by the Organization of the Islamic Conference's support for the intervention, which was communicated to the Security Council in a letter stating, "A decisive international action was necessary to prevent humanitarian catastrophe and further violations of human rights" in Kosovo.²⁵ This is a *partial* consensus, however, because many, if not most, of the world's states do not subscribe to the view that in exceptional circumstances unauthorized intervention may be legitimate. In addition to the well-recorded hostility of Russia, China, and India, the Non-Aligned Movement responded to Kosovo by declaring its rejection of "the so-called right of humanitarian intervention, which has no legal basis."²⁶

Further evidence of a developing moral consensus about humanitarian intervention in supreme humanitarian emergencies has emerged since Kosovo. Article 4(h) of the AU's Constitutive Act, signed on July 11, 2000, awarded the new organization "the right . . . to intervene in a Member State pursuant to a decision by the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity."²⁷ And in 2001, Kofi Annan used his Nobel lecture to argue, "The sovereignty of states must no longer be used as a shield for gross violations of human rights."²⁸ In the same period there were myriad authorized and unauthorized interventions.²⁹

In 2001, the Canadian government gave the high-profile ICISS the task of establishing common ground on the question of humanitarian intervention.³⁰ The ICISS recommended replacing the atavistic terminology of humanitarian intervention (sovereignty vs. human rights) with the new language of the "responsibility to protect." It called for an approach that looked at the

problem from the victim's point of view. It insisted that the primary responsibility to protect civilians lay with the host state and that outside intervention could only be contemplated if the host state proved either unwilling or unable to fulfill its responsibilities.³¹

On the question of when to intervene, the ICISS adopted the commonly held view that intervention should be limited to "extreme" cases—in other words, Wheeler's "supreme humanitarian emergencies" and Tom Farer's "spikes."³² Outside intervention, it argued, was warranted in cases in which there was large-scale loss of life or ethnic cleansing, whether deliberately caused by the state or facilitated by neglect or incapacity. The question of authority proved thornier. The

²⁵ S/1999/363, March 31, 1999, annex.

²⁶ See *Final Document of the XIII Ministerial Conference of the Movement of Non-Aligned Countries* (Cartagena, Colombia, April 8–9, 2000), pp. 41–42; available at www.nam.gov.za/xiiiminconf/index.html. It should be noted that the Non-Aligned Movement itself did not achieve a consensus on this position.

²⁷ *Constitutive Act of the African Union*; available at www.africa-union.org/About_AU/AbConstitutive_Act.htm.

²⁸ Kofi Annan, speech given to the Nobel Foundation, Oslo, Norway, December 10, 2001; available at www.nobel.se/peace/laureates/2001/annanlecture.html.

²⁹ Most of the unauthorized interventions were conducted with host nation consent, sometimes coerced. For a definitive list of these operations (up to February 2005), see tables 1 and 2 in Alex J. Bellamy and Paul D. Williams, "Who's Keeping the Peace? Regionalization and Contemporary Peace Operations," *International Security* 29, no. 4 (2005), pp. 35–36.

³⁰ Gareth Evans and Mohamed Sahnoun, "Foreword," in International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: IDRC, 2001), p. viii.

³¹ ICISS, *The Responsibility to Protect*, p. 17.

³² "Supreme humanitarian emergencies" and "spikes" refer to the idea that mass killing is either ongoing or imminent at the time of the intervention. See Wheeler, *Saving Strangers*, p. 34; and Tom Farer, "Cosmopolitan Humanitarian Intervention: A Five-Part Test," *International Relations* 19, no. 2 (2005), pp. 216–17.

ICISS proposed a three-layered distribution of responsibility. Primary responsibility lay with the host state. Secondary responsibility lay with the domestic authorities working in partnership with outside agencies. If the primary and secondary levels failed to ameliorate the humanitarian emergency, international organizations would assume responsibility. At this third level of responsibility, the ICISS accepted the view that primary legal authority for action was vested in the Security Council. If the Security Council was deadlocked, it argued that potential interveners should approach the General Assembly under the Uniting for Peace mechanism and, if that failed, work through regional organizations. In an attempt to increase the chances of consensus in the council, the ICISS recommended that its permanent members commit themselves to a series of criteria relating to the use of force in humanitarian emergencies. It was suggested that states always seek Security Council authorization before using force; that the council commit itself to dealing promptly with humanitarian emergencies involving large-scale loss of life; that the permanent members should commit themselves to not casting a veto to obstruct humanitarian action unless their vital national interests are involved; and that Security Council members should recognize that if they fail to fulfill their responsibility to protect, other states and organizations may take it upon themselves to act.³³ The commission insisted that the question of military intervention should be placed firmly on the Security Council's agenda if two "just cause thresholds" (large-scale loss of life and ethnic cleansing) and four "precautionary principles" (right intention, last resort, proportional means, and reasonable prospects) were satisfied.³⁴

Reactions to the ICISS report were generally positive, though there were notable signs

of dissent. It was received most favorably by states, such as Canada, Japan, Germany, and (to a lesser extent) the U.K., that had, since the intervention in Kosovo, been exploring the potential for developing criteria to guide global decision-making about humanitarian intervention.³⁵ When the Security Council discussed the report at its annual informal retreat in May 2002, almost all of the permanent members expressed disquiet with the idea of formalizing criteria for intervention. The United States rejected them on the grounds that it could not offer precommitments to engage its military forces where it had no national interests, and that it would not bind itself to criteria that would restrain its right to decide when and where to use force.³⁶ China had opposed the idea throughout the ICISS process, and while Russia was generally supportive, it insisted that no action should be taken without Security Council approval, a position that was unacceptable to the United States, the U.K., and France.³⁷ For their part, the U.K. and France, two advocates of the ICISS principles among the Permanent Five, expressed concern that formulating criteria to govern humanitarian intervention would not produce the missing ingredients of political will and consensus.³⁸

³³ ICISS, *The Responsibility to Protect*, paras. 4.19, 6.11, 6.29–40, and pp. xii–xiii.

³⁴ *Ibid.*, p. xii.

³⁵ See Nicholas J. Wheeler, "Legitimizing Humanitarian Intervention: Principles and Procedures," *Melbourne Journal of International Law* 2, no. 2 (2001), pp. 552–54.

³⁶ Jennifer M. Welsh, "Conclusion: Humanitarian Intervention after 11 September," in Welsh, ed., *Humanitarian Intervention*, p. 180.

³⁷ Ian Williams, "Writing the Wrongs of Past Interventions: A Review of the International Commission on Intervention and State Sovereignty," *International Journal of Human Rights* 6, no. 3 (2002), p. 103.

³⁸ Welsh, "Conclusion," p. 204, n. 4.

The U.S. intervention in Afghanistan seemed to support the idea of a partial moral consensus on the importance of humanitarianism in war. The U.S. administration felt obliged to argue that Operation Enduring Freedom would improve humanitarian conditions inside Afghanistan, even though it was widely recognized as a legitimate act of self-defense.³⁹ The 2003 invasion of Iraq, however, proved much more problematic. In this case, the political leaders of all the major troop contributors (the United States, the U.K., and Australia) gave considerable weight to the humanitarian case for war in their public justifications, though the formal legal justification was based on the enforcement of existing Security Council resolutions.⁴⁰ Although the humanitarian argument received support in some quarters, it was widely rejected.⁴¹ Whereas in the Kosovo case NATO could point to a moral consensus among liberal states and some others about the need to act, there was a much smaller consensus in the Iraq case, with many liberal states (such as Canada, Germany, and France) opposing the war.

The Effect of the "War on Terror" and the Invasion of Iraq

What impact has the so-called war on terror and the invasion of Iraq had on the partial consensus on the norm of humanitarian intervention? There are, broadly, three positions. The first group can be described as "optimists."⁴² This view accepts that states will only intervene in humanitarian emergencies when vital national interests are at stake; it makes a virtue of this, however, by arguing that since September 11 interests and humanitarianism have merged for many Western states.⁴³ Two factors contributed to this merger. On the one hand, Afghanistan demonstrates all too clearly the linkage between terrorism and state failure. The

strategic imperative to prevent terrorism therefore entails a humanitarian imperative to prevent state failure. As such, Western states are potentially more likely to respond decisively to humanitarian crises than they were prior to September 11.⁴⁴ On the other hand, the U.S. response to September 11, especially the so-called Bush doctrine of preemption, has reduced the normative significance of sovereignty. This, Farer argues, should lead us to expect more rather than fewer interventions.⁴⁵ The post-September

³⁹ See Colin McInnes, "A Different Kind of War? September 11 and the United States' Afghan War," *Review of International Studies* 29, no. 2 (2003), pp. 165–84; Nicholas J. Wheeler, "Humanitarian Intervention after September 11, 2001," in Anthony F. Lang, Jr., ed., *Just Intervention* (Washington, D.C.: Georgetown University Press, 2003), pp. 192–216; and Simon Chesterman, "Humanitarian Intervention and Afghanistan," in Welsh, ed., *Humanitarian Intervention*, pp. 163–75.

⁴⁰ See Adam Roberts, "Law and the Use of Force after Iraq," *Survival* 45, no. 2 (2003), p. 48.

⁴¹ Michael Ignatieff, an ICISS commissioner, was an early supporter; see Ignatieff, "Why Are We in Iraq? (And Liberia? And Afghanistan?)," *New York Times Magazine*, September 7, 2003, pp. 38ff. Kenneth Roth wrote one of the most detailed rejections in Ken Roth, "War in Iraq: Not a Humanitarian Intervention," Human Rights Watch World Report 2004; available at hrw.org/wr2k4/3.htm; see also David Vesel, "The Lonely Pragmatist: Humanitarian Intervention in an Imperfect World," *BYU Journal of Public Law* 18, no. 1 (2004), p. 56. It is also worth noting that the humanitarian argument was not raised in the Security Council's formal proceedings.

⁴² This terminology is drawn from Nicholas J. Wheeler and Alex J. Bellamy, "Humanitarian Intervention in World Politics," in John Baylis and Steve Smith, eds., *The Globalization of World Politics*, 3rd ed. (Oxford: Oxford University Press, 2005), p. 572.

⁴³ I am grateful to Nick Wheeler for this formulation.

⁴⁴ See Chesterman, "Humanitarian Intervention in Afghanistan," in Welsh, ed., *Humanitarian Intervention*; and Wheeler, "Humanitarian Intervention after September 11, 2001," in Lang, Jr., ed., *Just Intervention*.

⁴⁵ Tom Farer, "Humanitarian Intervention before and after 9/11: Legality and Legitimacy," in J. L. Holzgrefe and Robert O. Keohane, eds., *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas* (Cambridge: Cambridge University Press, 2003), p. 80.

11 record does not fully support these claims. For instance, the West's contribution to UN peace operations remains paltry, the United States has not made a significant troop contribution to reconstruction efforts in Afghanistan, and it played only a marginal role in alleviating the crises in Liberia and Haiti.⁴⁶

The second perspective, shared by some involved with the ICISS, is that the "sun has set" on the humanitarian intervention agenda. This claim is arrived at from two directions. Thomas Weiss, the commission's director of research, argued that the United States and the UN's political will to act in humanitarian emergencies has "evaporated" because of their obsession with Afghanistan, Iraq, and the war on terror.⁴⁷ This position is helpful inasmuch as it highlights the fact that the overstretched American and British militaries are unlikely to be used in frontline roles, and that strategic considerations related to the "war on terror" are likely to trump humanitarian concerns when the two collide. On the other hand, it overstates the extent of humanitarian interventionism prior to September 11. In the 1990s, the world failed to "save strangers" in the Balkans, Rwanda, and elsewhere, and the legitimacy of humanitarian intervention remained hotly contested.⁴⁸ Indeed, the Security Council has yet to authorize humanitarian intervention against a fully functioning state without the latter's consent.⁴⁹

The second way of arriving at the conclusion that the "sun has set" on humanitarian intervention suggests that the use of humanitarian justifications to defend the invasion of Iraq was widely perceived as "abuse." ICISS cochair Gareth Evans argued that the "poorly and inconsistently" argued humanitarian justification for the war in Iraq "almost choked at birth what many were

hoping was an emerging new norm justifying intervention on the basis of the principle of 'responsibility to protect.'"⁵⁰ This view is widely held among critics: Ian Williams argued that the Iraq war brought "humanitarian intervention into disrepute"; Richard Falk lamented that the war risked undermining consensus at the UN; Karl Kaiser insisted that "Washington has lowered [consensus on] the humanitarian intervention approach to an unprecedented level"; John Kampfner suggested that "there has been no better time for dictators to act with impunity"; and The Fund for Peace project collating regional responses to humanitarian intervention found that in the one consultation conducted immediately before the Iraq war, in Europe, participants were reluctant to support humanitarian intervention for fear of tacitly legitimizing the invasion of Iraq.⁵¹ David

⁴⁶ See Richard Bruneau, "Selfishness in Service of the Common Good: Why States Participate in UN Peacekeeping" (unpublished ms.), p. 3.

⁴⁷ Thomas G. Weiss, "The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era," *Security Dialogue* 35, no. 2 (2004), p. 135; and James Traub, "Never Again, No Longer?" *New York Times*, July 18, 2004, p. 12.

⁴⁸ See Wheeler, *Saving Strangers*, p. 295.

⁴⁹ A point developed in Paul D. Williams and Alex J. Bellamy, "The Responsibility to Protect and the Crisis in Darfur," *Security Dialogue* 36, no. 1 (2005), p. 41.

⁵⁰ Gareth Evans, "When Is It Right to Fight?" *Survival* 46, no. 3 (2004), pp. 59–82.

⁵¹ Respectively, Ian Williams, "Intervene with Caution," *In These Times*, July 28, 2003, p. 7; Richard Falk, "Humanitarian Intervention: A Forum," *Nation*, July 14, 2003, available at www.thenation.com/doc.mhtml?i=2003071485=forum; Karl Kaiser, "A European Perspective on the Post Iraq New International Order," paper presented at the Center for Strategic and International Studies, Jakarta, Indonesia, July 29, 2003; available at www.csis.or.id/events_past_view.asp?id=5&tab=0; John Kampfner interviewed by Tim Dunne, available at www.ex.ac.uk/shipss/news/kampfner.htm; and The Fund for Peace, *Neighbors on Alert: Regional Views on Humanitarian Intervention*, Summary Report of the Regional Responses to Internal War Program, October 2003, p. 6.

Clark, a former special advisor to the British Foreign Office, argued that "Iraq has wrecked our case for humanitarian wars. As long as U.S. power remains in the hands of the Republican right, it will be impossible to build a consensus on the left behind the idea that it can be a power for good. Those who continue to insist that it can, risk discrediting the concept of humanitarian intervention."⁵² The key question, however, is whether states share this view.

The answer to this is difficult to gauge precisely. Of course, as noted earlier, many states opposed the ICISS agenda before Iraq. There is evidence, however, that some states that were initially supportive of humanitarian intervention have become less so as a result of perceived abuse in the Iraq case. Immediately after the Iraq war, a forum of social-democratic political leaders rejected sections of a draft communiqué proposed by Prime Minister Blair supporting the idea that the "responsibility to protect" ought to override sovereignty in supreme humanitarian emergencies. At least one of these states, Germany, had previously supported the ICISS agenda. German chancellor Gerhard Schroeder reportedly rejected the communiqué because he feared that any doctrine of unauthorized humanitarian intervention would be used by the United States and the U.K. to justify the Iraq war.⁵³ There is also clear evidence that in the Darfur case the Sudanese government linked American activism in Darfur with its actions in Iraq, portraying it both as oil-oriented and anti-Islamic, and that this strategy helped to reinforce African and Middle Eastern hostility to the idea of Western enforcement.⁵⁴ Importantly, neither of these cases clearly indicates an increased reluctance

to support humanitarian intervention per se. Sudan may have adopted its strategy regardless of events in Iraq, while Germany's position was directed more against the potential uses of criteria for intervention than against the idea of humanitarian intervention itself.

A subtle variation on this theme holds that while the Iraq war has not directly affected the norm of humanitarian intervention, it has impacted negatively on the ability of the United States and its allies to act as norm carriers. According to one analyst, the U.S. administration sacrificed its international credibility over Iraq and is therefore not well placed to lead in Darfur and elsewhere.⁵⁵ Similarly, at least one article in the British press suggested that were Prime Minister Blair to advocate intervention in the Sudan, "oil [would] be the driving factor."⁵⁶ Such skepticism is what led Kenneth Roth of Human Rights Watch to predict that one of the most troubling consequences of the attempts to justify the Iraq war in humanitarian terms was that "it will be more difficult next

⁵² David Clark, "Iraq Has Wrecked Our Case for Humanitarian Wars," *Guardian*, August 12, 2003, p. 16; available at www.guardian.co.uk/comment/story/0,,1016573,00.html.

⁵³ See Agence France-Presse, "British PM Urges Tougher Stance against Brutal Regimes," July 14, 2003; and Kevin Ward, "Process Needed so Countries Know When to Intervene to Protect Human Rights," CBS News (Canada), July 13, 2003; available at www.globalpolicy.org/empire/humanint/2003/0713canada.htm.

⁵⁴ Cheryl O. Igiri and Princeton N. Lyman, "Giving Meaning to 'Never Again': Seeking an Effective Response to the Crisis in Darfur and Beyond," CSR no. 5 (Council on Foreign Relations, New York, N.Y., September 2004), p. 21.

⁵⁵ Scott Straus, "Darfur and the Genocide Debate," *Foreign Affairs* 84, no. 1 (2005), p. 128.

⁵⁶ John Laughland, "The Mask of Altruism Disguising a Colonial War," *Guardian*, August 2, 2004; available at www.guardian.co.uk/comment/story/0,,3604,1273982,0.html.

time for us to call on military action when we need it to save potentially hundreds of thousands of lives.”⁵⁷

A third perspective suggests that the ICISS criteria for intervention should be viewed as constraints that will limit states’ ability to abuse humanitarian justifications rather than as enablers for intervention. Ramesh Thakur, another ICISS commissioner, argues that the moral consensus about the “responsibility to protect” is likely to be strengthened in the wake of Iraq as states come to realize that it provides a language that can be used to oppose legitimate intervention. According to Thakur, consensus on criteria will make it more, not less, difficult for states to claim a humanitarian mantle for their interventions.⁵⁸

The impact of the “war on terror” and the war in Iraq on the norm of humanitarian intervention is therefore hotly contested. There is certainly evidence that prior to the war in Iraq there was a general consensus about the necessity of intervention in supreme humanitarian emergencies when authorized by the Security Council, and a consensus among some liberal states that unauthorized intervention may be legitimate if the council is deadlocked. However, there are at least three plausible explanations for the direction the norm has taken since the Iraq war. As I will demonstrate in the remainder of the article, the Darfur case lends support to the idea that the humanitarian intervention norm has subtly changed in two ways. First, the credibility of the United States and the U.K. as norm carriers has diminished. Second, “responsibility to protect” language can be mobilized to legitimate opposition to intervention in humanitarian emergencies as well as to support it.

INITIAL ENGAGEMENT TO THE DEPLOYMENT OF AMIS

For much of 2003, the international response to the Darfur crisis was limited to the delivery of humanitarian aid. The main political effort during this period focused on the Naivasha process aimed at resolving the civil war between the Sudanese government and the SPLM/A. In early 2004, Mukesh Kapila, the UN’s coordinator for Sudan, accused Arab militia backed by the government of “ethnic cleansing” and warned that if left unchecked the humanitarian catastrophe in Darfur would be comparable to that in Rwanda.⁵⁹ Secretary-General Annan used a Rwandan anniversary speech to the UN Human Rights Commission to observe that unfolding events in Darfur “leave me with a deep sense of foreboding.” He continued:

Whatever term it uses to describe the situation, the international community cannot stand idle. . . . The international community must be prepared to take swift and appropriate action. By “action” in such situations I mean a continuum of steps, which may include military action.⁶⁰

⁵⁷ Kenneth Roth, “The War in Iraq: Justified as Humanitarian Intervention?” Kroc Institute Occasional Paper No. 25 (The Joan B. Kroc Institute, Notre Dame, Ind., 2004), pp. 2–3.

⁵⁸ Ramesh Thakur, “Iraq and the Responsibility to Protect,” *Behind the Headlines* 62, no. 1 (2004), pp. 1–16; and Ramesh Thakur, “Developing Countries and the Intervention-Sovereignty Debate,” in Richard M. Price and Mark W. Zacher, eds., *The United Nations and Global Security* (New York: Palgrave Macmillan, 2004), pp. 194–208.

⁵⁹ Cited in “Mass Rape Atrocity in West Sudan,” BBC News World Edition, March 19, 2004; available at news.bbc.co.uk/2/hi/africa/3549325.stm.

⁶⁰ SG/SM/9197 AFR/893 HR/CN/1077, April 7, 2004; available at www.un.org/events/rwanda.

In May 2004, Germany informally proposed the deployment of UN peacekeepers to Darfur, and it was widely rumored that Norway had offered to command such a force.⁶¹ The *New York Times* ran a series of articles exposing the massive human rights abuses there and calling for U.S. action, earning criticism from the Sudanese embassy.⁶² Human Rights Watch, Amnesty International, and the International Crisis Group also actively lobbied for action in Darfur.

In April 2004, the UN Human Rights Commission dispatched a fact-finding team to Darfur. The team found “a disturbing pattern of disregard for basic principles of human rights and humanitarian law, which is taking place in Darfur for which the armed forces of the Sudan and the Janjaweed are responsible.” It concluded that “it is clear that there is a reign of terror in Darfur,” and that the government and its proxies were almost certainly guilty of widespread crimes.⁶³ Before the commission could vote on a resolution based on the draft report, its content was leaked to the press. Pakistan and Sudan condemned the leak and called for an immediate inquiry.⁶⁴ Unwilling to force the issue, and concerned that a strongly worded resolution would be rejected by the commission’s African and Asian members, the EU members watered down a draft resolution they were preparing. The redrafted resolution neither condemned Sudan nor mentioned its crimes. It was passed with fifty votes in favor and only three against (the United States, Australia, and Ukraine).⁶⁵

The underlying dynamics of the Security Council’s attitude to Darfur became apparent when it met on June 11, 2004, to pass unanimously Resolution 1547, expressing the council’s willingness to authorize a peace operation to oversee the comprehen-

sive peace agreement in Sudan’s south. Although the resolution did not relate to Darfur, some council members nevertheless reaffirmed Sudanese sovereignty and expressed deep skepticism about humanitarian intervention. Pakistan reminded the council:

The Sudan is an important member of the African Union, the Organization of the Islamic Conference and the United Nations. As a United Nations Member State, the Sudan has all the rights and privileges incumbent under the United Nations Charter, including to sovereignty, political independence, unity and territorial integrity—the principles that form the basis of international relations.⁶⁶

That this was not the view of an isolated minority in the council was demonstrated by the fact that the resolution’s drafters felt it necessary to doff their caps to Sudanese sovereignty by inserting a passage “*reaffirming* its commitment to the sovereignty, independence and unity of Sudan.”⁶⁷ Pakistan, China, and Russia believed that the scale of human suffering in Darfur was insufficient to provoke serious reflection on whether

⁶¹ See Human Rights Watch, “Darfur Destroyed: Ethnic Cleansing by Government and Militia Forces in Western Sudan” (New York: Human Rights Watch, May 2004), pp. 56–57; available at hrw.org/reports/2004/sudano504; and Afrol News, “UN Peacekeeping Mission for Sudan Prepared,” May 28, 2004; available at www.afrol.com/articles/12789.

⁶² See, e.g., John Prendergast, “Sudan’s Ravines of Death,” *New York Times*, July 15, 2004, p. A23; and Embassy of the Republic of Sudan, “The New York Times Faulted Sudan,” April 13, 2004; available at sudanembassy.org/default.asp?page=viewstory&id=262.

⁶³ E/CN.4/2005/3, May 7, 2004, p. 3; available at www.unhchr.ch/huridocda/huridoca.nsf.

⁶⁴ Human Rights Watch, “Darfur Destroyed,” p. 55.

⁶⁵ E/CN.4/2004.L11/Add7, April 23, 2004.

⁶⁶ UNSC 4988th meeting, S/PV.4988, June 11, 2004, p. 4.

⁶⁷ UNSC Res. 1547 (2004), June 11, 2004; emphasis in original.

Sudan was fulfilling its responsibilities to its citizens, and the United States, the U.K., and France were reluctant to force them to do so. All three of the Western democracies that contributed to the June 11, 2004, debate made pointed remarks about the Darfur emergency and tacitly referred to the commission of crimes against humanity and war crimes, yet none cast doubts on Sudanese sovereignty. Germany, for instance, noted that peace in Sudan was indivisible and required “an end to the sweeping and widespread human rights violations” without suggesting how this might be achieved. Similarly, the United States pointed toward a litany of human rights abuses in Darfur but simply confirmed its support for AU initiatives.⁶⁸

This pattern was repeated on July 30, 2004, when the council met to pass Resolution 1556.⁶⁹ Three positions were put forward during the council’s deliberations, which saw the first injection of “responsibility to protect” language into the debate. The first view, put forward by the Philippines, was that Sudan had failed in its duty to protect its citizens and that international action was warranted. The reference to the ICISS could not have been clearer:

Sovereignty also entails the responsibility of a State to protect its people. If it is unable or unwilling to do so, the international community has the responsibility to help that State achieve such capacity and such will and, in extreme necessity, to assume such responsibility itself.⁷⁰

At the other end of the spectrum, China, Pakistan, and Sudan all rejected talk of intervention, while Brazil and Russia exhibited reluctance to even contemplate the question. China abstained in the vote, complaining that the resolution alluded to “mandatory measures” against the Sudanese government, while Pakistan argued that it “did not believe that the threat or imposition of sanctions against

... Sudan was advisable.”⁷¹ The Sudanese government itself made a classic “Trojan horse” argument, even referring to the Greek legend. The ambassador wondered,

if the Sudan would have been safe from the hammer of the Security Council even if there had been no crisis in Darfur, and whether the Darfur humanitarian crisis might not be a Trojan horse? Has this lofty humanitarian objective been adopted and embraced by other people who are advocating a hidden agenda?⁷²

The resolution’s sponsors and their supporters adopted a line between these two positions. The United States, the U.K., Germany, Chile, and Spain invoked the language of the “responsibility to protect” without suggesting that the responsibility ought to pass from the Sudanese government to the Security Council. They referred to the AU as bearing the primary responsibility for action should Sudan fail in its responsibilities. This tension between, on the one hand, a genuine concern for human suffering in Darfur and, on the other hand, a reluctance to press for action was most clearly expressed by the United States:

Many people who are concerned about Darfur would say that this resolution does not go far enough. Last week, the Congress of the United States passed resolutions referring to the atrocities in Darfur as genocide. Many people would want the Security Council to do the same. *Perhaps they are right.* But it is important that we not become bogged down over words. It is essential that the Security Council act quickly, decisively and with unity. We need to fix this humanitarian problem now.⁷³

⁶⁸ UNSC 4988th meeting, S/PV.4988, June 11, 2004, p. 4.

⁶⁹ Passed with thirteen affirmative votes and two abstentions (China and Pakistan).

⁷⁰ UNSC 5015th meeting, S/PV.5015, July 30, 2004, pp. 10–11.

⁷¹ *Ibid.*, p. 10.

⁷² *Ibid.*, p. 13.

⁷³ *Ibid.*, p. 4; emphasis added.

This debate produced an understandably Janus-faced resolution that invoked Chapter VII and condemned human rights abuses, but stopped short of sanctioning or even condemning the Sudanese government. Resolution 1556 gave the government thirty days to disarm the Janjaweed and punish human rights abusers, threatening economic sanctions if it failed to do so. For some, such as China and Pakistan, the resolution went too far; for others, it did not go far enough.⁷⁴

The initial international response to events in Darfur was therefore characterized by three contradictory trends. First, there was clear recognition on the part of Western journalists, human rights organizations, and some states of a responsibility to protect the people of Darfur. Second, however, there were significant doubts about which organization should bear that responsibility (the UN, AU, or Sudan?), and a deep reluctance on the part of key Western states to assume responsibility by arguing that the Sudanese government was either unable or unwilling to protect Darfurians. Third, many states expressed deep disquiet at any potential violation of Sudanese sovereignty.

FROM AMIS TO UNMIS

The intervention debate crystallized around the question of *who* had the responsibility to protect Darfurians. Embedded in this debate were concerns about the deployment of AMIS and its relationship with the UN, the question of whether sanctions should be imposed on Sudan, the prosecution of war criminals, and the composition and mandate of a UN force (UNMIS) to oversee the peace agreement in the south of Sudan.

This section is divided into two parts. The first focuses on the AU's involvement in Darfur. Against this backdrop, the sec-

ond returns to the Security Council debates about intervention.

African Union Mission in Sudan

In July 2004, the AU began to discuss the possibility of deploying a small force to protect its civilian monitors in Darfur, who had been sent to El Fashir to monitor the cease-fire agreement of June 9, 2004. At the same time, the Sudanese government stated that it would "strongly resist all [UN Security Council] resolutions calling for dispatching international forces to Darfur" and threatened to use force against peacekeepers.⁷⁵ Initially, an AU force of approximately 3,000 troops drawn from nine states was envisaged.⁷⁶ In mid-August, Rwanda deployed an advance party of 154 troops, and President Kagame insisted that they would use force to protect civilians if necessary.⁷⁷ Although the AU indicated in a communiqué to the Security Council that its troops would indeed fulfill this role, some AU members expressed reservations. The Sudanese government itself rejected Kagame's interpretation of the mandate. Foreign affairs minister Abdelwahad Najeb insisted, "The mission for those forces is very clear: protection of the monitors. As

⁷⁴ Simon Tisdall described it as a "dark study in disillusion." Simon Tisdall, "Brave Talk but No Action: Darfur Gets a Familiar Response from the West," *Guardian*, August 3, 2004; available at www.guardian.co.uk/international/story/0,3604,1274670,00.html. I am grateful to Paul Williams for bringing this to my attention.

⁷⁵ "Australia May Join Darfur Mission," *Daily Telegraph*, July 28, 2004, p. 8. I am grateful to Sara Davies for bringing this to my attention.

⁷⁶ CBC News, "African Union Sending Military Force to Darfur," July 6, 2004; available at www.cbc.ca/stories/2004/07/05/world/janjaweed040705; and Reuters, "African Union to Send Troops to Darfur," July 5, 2004.

⁷⁷ Human Rights News, "Darfur: Rwandan Troops to Protect Civilians," Human Rights Watch, New York, August 17, 2004; available at hrw.org/english/docs/2004/08/17/darfur9241.htm.

far as the civilians, this is the clear responsibility of the government of Sudan.”⁷⁸ When Nigeria deployed the first 153 of an intended 1,500 troops, President Obasanjo of Nigeria insisted that his forces would only protect AU observers and operate with the consent of the Sudanese government.⁷⁹ With Sudan refusing to consent to a broad civilian protection mandate, a compromise was found whereby AMIS troops would only protect vulnerable civilians in their vicinity.⁸⁰ The compromise mandate, to which the government of Sudan consented, insisted that AMIS would “protect civilians whom it encounters under imminent threat and in the immediate vicinity, within resources and capability, it being understood that the protection of the civilian population is the responsibility of the [government of Sudan].”⁸¹

It soon became clear, however, that the AU lacked the necessary financial and logistical resources to deploy even the modest 3,000 peacekeepers originally intended. In late September 2004, with still only 300 troops deployed, Secretary-General Annan called for international assistance to expand AMIS, and President Obasanjo lamented that although the AU was willing to deploy more peacekeepers, it was unable to do so without international assistance.⁸² On the ground, AMIS was constrained by the Sudanese government, which, among other things, prevented AU helicopters from flying by denying them fuel as well as repeatedly insisting that AMIS troops were monitors, not peacekeepers.⁸³

On October 20, the AU’s Peace and Security Council announced its intention to increase the overall size of its mission to 3,320, including some 2,341 troops.⁸⁴ A week later, Rwandan and Nigerian reinforcements began arriving in Darfur, assisted by the U.S. Air Force. However, AMIS remained unable

to do much more than report cease-fire breaches. On December 20, Nigeria’s General Okonkwo reported that government forces had attacked villages using aircraft.⁸⁵ Days later, Secretary-General Annan complained that the world’s peacekeeping strategy in Darfur was “not working,” and that AMIS had failed to protect civilians or prevent the crisis from deteriorating because it “has not been able to put in as many (military) forces as we had hoped.”⁸⁶ The situation did not improve in 2005. In February, Jan Pronk, the secretary-general’s special representative for Sudan (who was appointed in June 2004), complained that AMIS was too small and its deployment too

⁷⁸ Quoted in Eric Reeves, “The Deployment of New African Union Forces to Darfur: What It Does and Doesn’t Mean,” October 25, 2004; available at www.sudantribune.com/article.php?id_article=6168.

⁷⁹ Human Rights News, “Darfur: African Union Must Insist on More Troops,” Human Rights Watch, New York, August 20, 2004; available at hrw.org/english/docs/2004/08/20/darfur9251.htm.

⁸⁰ Duncan Woodside, “Mandate Unclear as AU Troops Head for Darfur,” *Business Day* (South Africa), October 29, 2004, p. 12.

⁸¹ African Union Peace and Security Council Communique PSC/PR/Comm. (XVII), Peace and Security Council, 17th meeting, October 20, 2004, Addis Ababa, Ethiopia, para. 6, p. 2; available at www.africaunion.org/News_Events/Communique%20C3%A9s/Communique%20Eng%2020%20oct%202004.pdf.

⁸² UN News Centre, “World is Responsible for Ending ‘Terrible Violence’ in Sudan, Annan Says,” New York, September 24, 2004; available at www.un.org/apps/news/storyAr.asp?NewsID=12044.

⁸³ “Thousands More Troops for Darfur,” BBC News U.K. Edition, October 1, 2004; available at news.bbc.co.uk/1/hi/world/africa/3706340.stm.

⁸⁴ S/2004/881, November 2, 2004, para. 57.

⁸⁵ Reuters, “Troops Attack in Darfur as a Deadline Passes,” December 20, 2004.

⁸⁶ Quoted in Thalif Deen, “UN Admits Sudan Policies Failing,” Inter Press Service, December 22, 2004; available at www.ipsnews.net/africa/interna.asp?idnews=26779. Also see Leslie Lefkowitz, “No Justice for Sudan,” *Guardian*, January 10, 2005; available at www.guardian.co.uk/sudan/story/0,,1387074,00.html.

slow to afford real protection to Darfur's civilians.⁸⁷ Others grumbled that the AMIS deployment was "chaotic," characterized by "poor logistical planning" and a "lack of trained personnel, funds and experience in intervening to protect civilians."⁸⁸

Return to the Council

Was AMIS merely "a fig leaf to cover the world's inaction," as one commentator lamented?⁸⁹ The key question for the remainder of this section is why the Security Council and supporters of the "responsibility to protect" agenda did not take measures either to coerce the Sudanese government into compliance or to improve the effectiveness of AMIS.

Resolution 1556 and the Question of Sanctions. Resolution 1556 had imposed a thirty-day deadline in July 2004 for the Sudanese government to comply with the Security Council's demands and had threatened sanctions if it failed to comply. In informal consultations immediately after its passage, the United States gauged potential support for sanctions, including an arms embargo and travel ban on government officials in the event of Sudanese noncompliance. During these consultations a consensus against sanctions began to emerge. Pakistan opposed sanctions in principle (because they violated Sudanese sovereignty), and the Arab League joined the chorus by issuing a statement opposing sanctions in any circumstances.⁹⁰ Other council members (most notably China and Russia) had mixed motives for opposing sanctions: a combination of principle and economic interests.⁹¹ Crucially, the U.K. also informally opposed sanctions. A senior Foreign Office official told reporters that the U.K. had two problems with sanctions. First, expressing concerns about undermining the Naivasha process, the U.K. was "wary of giving the

impression that the international community is beating up on the government of Sudan." Second, invoking the "responsibility to protect," the U.K. believed that "the best way to deliver security to the people of Darfur is to get those with primary responsibility for it to do it . . . the government of Sudan."⁹² British officials apparently worried that coercion could inflame the situation in Darfur and undermine the peace agreement without delivering security owing to the logistical difficulties that a Darfur deployment would entail.

On September 2, 2004, Pronk observed that the Sudanese government's compliance with Resolution 1556 was mixed. He claimed that the AU Ceasefire Commission had reported that government forces had not breached the cease-fire, a claim hotly disputed by the United States.⁹³ Pronk also

⁸⁷ Quoted in Deen, "New UN Force for Sudan Will Skirt Darfur Crisis."

⁸⁸ Waranya Moni, "The UN Report on Darfur: What Role for the AU?" Pambazuka News, February 10, 2005; available at www.pambazuka.org/index.php?id=26831.

⁸⁹ Eric Reeves, "Genocide by Attrition," *In These Times*, February 16, 2005; available at www.inthesetimes.com/site/main/article/1960.

⁹⁰ Amil Khan and Mohamed Abdellah, "Arab League Rejects Sudan Embargo," Reuters, August 9, 2004.

⁹¹ Russia had recently sold MiG aircraft to Sudan and feared that the government would use any potential sanctions as a justification for defaulting on its payments. China has important oil interests in Sudan. See Scott Peterson, "Sudan's Key Ties at the UN," *Christian Science Monitor*, August 31, 2004, p. 5.

⁹² Quoted in "Security Council Disagrees over Sudan Sanctions," *Sunday Standard* (Nairobi), August 22, 2004, p. 2.

⁹³ S/PV.5027, September 2, 2004, p. 2. U.S. ambassador John Danforth argued that Annan's report was wrong to suggest that there was no evidence of attacks by government forces and that the AU Ceasefire Commission had in fact reported two such incidents. Cited in UN News Centre, "Sudan: Annan Calls for Expanded International Presence to Stop Darfur Attacks," New York, September 3, 2004; available at www.un.org/apps/news/story.asp?NewsID=11840.

noted, however, that the government had failed to stop Janjaweed attacks or disarm and prosecute the militia's members. Nevertheless, he endorsed the emerging Security Council consensus that the Sudanese government had primary responsibility for ending the crisis. Indeed, he implied that the crisis had barely gone beyond the first level of responsibility identified by the ICISS (that is, of the host government) when he argued that "if the government is unable to fully protect its citizens by itself" it should "request and accept assistance from the international community."⁹⁴ This view was supported by the secretary-general's representative on internally displaced persons, Francis Deng—the author of the "sovereignty as responsibility" concept that preceded the "responsibility to protect."⁹⁵ Paradoxically, Deng argued that although the government "probably" lacked the will and capacity to disarm the Janjaweed, it retained primary responsibility for doing so. Moreover, Deng argued that the government had indicated its strong preference for cooperating with the AU and "was fearful of any direct international involvement" to such an extent that it "would probably resist it, either directly or through other means." He concluded that international intervention would "complicate and aggravate" the crisis by increasing the level of violence and causing the government to withdraw its cooperation.⁹⁶ The best way forward, he argued, was to encourage the AU to increase its presence in the region in collaboration with the government.

Resolution 1564 and the Failure of a Robust Approach. Although there was an emerging Security Council consensus that primary responsibility for alleviating the crisis lay with the Sudanese government in cooperation with the AU, the United States contin-

ued to push for stronger measures, propelled by its finding that the government and its allies were committing genocide in Darfur.⁹⁷ In mid-September 2004, it circulated a draft resolution finding Sudan to be in material breach of Resolution 1556 and calling for an expanded AU force, international overflights to monitor the situation, moves to prosecute those responsible for genocide, a no-fly zone for Sudanese military aircraft, and targeted sanctions (such as travel bans) against the ruling elite.⁹⁸ Resolution 1564 contained many of these measures but in a much-diluted form. It called for an expanded AU presence, reiterated earlier demands for respect for the cease-fire and for the government to disarm and prosecute the Janjaweed, invited the secretary-general to create a commission of inquiry to investigate reported crimes, and indicated its intention to "consider" further measures if the government failed to comply.⁹⁹ The resolution failed to find Sudan in breach of Resolution 1556, impose measures upon it, or even criticize the government. Once again, three positions were apparent.

First, many states expressed deep skepticism about the legitimacy of enforcement measures against Sudan. Explaining its

⁹⁴ UNSC 5027th meeting, S/PV.5027, September 2, 2004, p. 3.

⁹⁵ Francis M. Deng et al., *Sovereignty as Responsibility: Conflict Management in Africa* (Washington, D.C.: The Brookings Institution, 1996).

⁹⁶ E/CN.4/2005/8, September 27, 2004, paras. 22, 26, and 36.

⁹⁷ For an excellent account of why the United States has adopted an activist role in the Darfur debate, see Samantha Power, "Dying in Darfur: Can the Ethnic Cleansing in Sudan Be Stopped?" *New Yorker*, August 30, 2004, pp. 270–87.

⁹⁸ "Powell Declares Genocide in Sudan," BBC News U.K. Edition, September 9, 2004; available at news.bbc.co.uk/1/hi/world/africa/3641820.stm.

⁹⁹ UNSC Res. 1564, September 18, 2004, paras. 2, 3, 7, 9, 12, and 14.

abstention, Algeria argued that while “certain measures that might have been unacceptable assaults on Sudan’s sovereignty” (such as overflights) had been dropped from the original U.S. draft, the resolution was still problematic because it failed to recognize Sudan’s cooperation with the AU and UN. Russian, Chinese, and Pakistani opposition to sanctions were partly principled objections to sanctions, partly instrumental objections predicated on the view that the situation in Darfur was improving. Although it supported the resolution, Brazil expressed disquiet at what it described as the “excessive” use of Chapter VII, which, it feared, “runs the risk of misleading all parties concerned.”¹⁰⁰ These views were widely endorsed outside the council. For instance, a communiqué issued by an “African mini-summit” on Darfur led by Libya and Egypt reaffirmed a commitment to preserve Sudanese sovereignty and expressly rejected “any foreign intervention by any country, whatsoever in this pure African issue.”¹⁰¹

At the other end of the spectrum, two states spoke out in favor of a more robust approach. The Philippines reiterated its view that if a state is unable or unwilling to protect its citizens, “the Security Council has the moral and legal authority to enable that State to assume that responsibility.” Romania endorsed this view more pointedly, implying that the council had not yet fulfilled its responsibilities:

There should be no moral hesitation in the Council in taking up its responsibilities. While it may be true that it is not for the Council to make legal findings, it is certainly within its political, legal and moral obligations to ring the alarm bell and foster—and indeed, urge—proper consideration of such acts in the appropriate venues.¹⁰²

As before, the United States and the U.K. adopted a public position midway between

the other two. While the United States noted that progress had been made, it insisted that the Sudanese government remained in breach of Resolution 1556. Nevertheless, it stopped short of specifically criticizing the Sudanese government or calling for further measures. Likewise, the U.K. noted cease-fire violations by all parties to the conflict and reiterated its view that “ultimate responsibility lies with the Government of Sudan and the rebel groups.”¹⁰³

What is remarkable is not so much that the resolution was toned down to secure a Security Council consensus, but that the United States especially chose not to argue along the lines of Romania and the Philippines that the council should assume the “responsibility to protect.” This is most striking in the U.S. case, because its Congress and secretary of state had publicly declared a genocide in Darfur and because it had attempted to develop a more activist approach during the Security Council’s informal consultations. The United States found itself faced with two options. It could act as it had over Kosovo and Iraq and adopt a robustly activist line in the council. It could also declare itself willing to act outside the council if that body was unable to reach a consensus. Because of its military overstretch, however, the latter course would have been a politically infeasible strategy. The alternative was to pursue a consensus within the council. Council consensus remained very fragile owing to the deep skepticism expressed toward anything but AU interventionism by states including Rus-

¹⁰⁰ S/PV.5040, September 18, 2004, pp. 2–3, 5, 7, and 10.

¹⁰¹ By “foreign” the communiqué evidently meant non-African. “Final Communiqué: African Mini-Summit on Darfur,” Tripoli, Libya, October 17, 2004, p. 2.

¹⁰² S/PV.5040, September 18, 2004, p. 12.

¹⁰³ *Ibid.*, p. 10.

sia, China, Pakistan, and Algeria, as well as many key AU members and the League of Arab States. As such, American diplomats may have felt unable to take a more robust public stance for fear of undermining the council's fragile consensus.

Resolutions 1590, 1591, and 1593: Compromises on Darfur. The situation in Darfur deteriorated soon after Resolution 1564 was passed. As noted earlier, evidence grew of AMIS's inability to protect civilians. Human Rights Watch pointed to renewed clashes between rebels and government forces.¹⁰⁴ Jan Pronk reported that government compliance was going backward, telling the Security Council of "numerous" cease-fire breaches by all parties and militia attacks on civilians.¹⁰⁵ At the end of October 2004, the UN estimated that the number of people needing aid in Darfur had increased by as much as 10 percent in the previous month alone and reported that militia and government forces were harassing displaced persons and preventing the timely delivery of aid.¹⁰⁶ In his monthly report to the Security Council on Darfur, Secretary-General Annan noted a string of cease-fire breaches by all parties, very slow progress on disarmament, and almost no progress on apprehending Janjaweed militia. Tellingly, he advised that the "Security Council may wish to consider creative and prompt action" to ensure effective implementation of its demands.¹⁰⁷

The U.S. ambassador to the UN expressed doubts, however, about whether sanctions would ever be implemented, and suggested that "carrots" not "sticks" would be used to alleviate the problem.¹⁰⁸ As two observers persuasively put it, while the UN had "unsurprisingly . . . epitomized paralysis," the U.S. administration had also decided to "take a pass on Darfur," owing to military

overstretch and a "tarnished image in the Muslim world."¹⁰⁹ Following this analysis, the fact that the United States had been forced to seek a consensus—one it then failed to reach—on enforcement measures against Sudan could plausibly be attributed, at least in part, to a diminishing of its status as a humanitarian intervention norm carrier. Further weight is given to this explanation by the positions taken by Germany, the AU, and the League of Arab States described above. Lest there be any doubt, even the SPLM/A ruled out "foreign" (non-African) intervention, specifically pointing to the Iraq experience. A spokesman for a Sudanese opposition organization comprising the SPLM/A, Farouk Abu Eissa, insisted, "We are against foreign military intervention in Darfur. We have before us the case of Iraq. We do not want a similar situation to develop in Darfur, or Sudan."¹¹⁰

In early 2005, Pronk reported that increased violence in Darfur had "seeped into

¹⁰⁴ Human Rights News, "Darfur: Donors Must Address Atrocities Fueling Crisis," Human Rights Watch, New York, September 27, 2004; available at hrw.org/english/docs/2004/09/27/darfur9390.htm.

¹⁰⁵ UN News Centre, "Sudan Has Failed to Disarm Militias or Prevent More Attacks in Darfur—UN Envoy," New York, October 5, 2004; available at www.un.org/apps/news/storyAr.asp?NewsID=12134.

¹⁰⁶ UN News Centre, "Sudan: UN Reports 10 Percent Jump in Number of People in Darfur Who Need Aid," New York, October 22, 2004; available at www.un.org/apps/news/storyAr.asp?NewsID=12314; and UN News Centre, "Humanitarian Aid in Sudan Limited by Insecurity, Road Closures, Says UN Mission," New York, October 27, 2004; available at www.un.org/apps/news/story.asp?NewsID=12360.

¹⁰⁷ S/2004/881, November 2, 2004, paras. 5 and 16.

¹⁰⁸ Cited in "Prompt Action Needed in Darfur," BBC News World Edition, November 4, 2004.

¹⁰⁹ Christian W. D. Bock and Leland R. Miller, "Darfur: Where is Europe?" *Washington Post*, December 9, 2004, p. A33.

¹¹⁰ Quoted in Gamal Nkrumah, "Darfur in Flames," *Al-Ahram* (Cairo), April 29–May 5, 2004; available at weekly.ahram.org.eg/2004/688/fr3.htm.

the [internally displaced persons] camps themselves.” December, he noted, had seen an arms buildup, numerous attacks by all sides, including government aircraft, the spread of violence into West Kordofan, and the emergence of new rebel groups.¹¹¹ The only way to improve the situation, Pronk argued, was to deploy more international personnel into the region. This recommendation represented an important policy change for Pronk, who had previously endorsed AU primacy. Now, Pronk tacitly recognized the AU’s inability to protect civilians in Darfur and suggested that other agencies be deployed.

From this point onward, the sanctions debate was complicated by two further inter-related debates. First, there was a debate about whether to refer the case of Darfur to the ICC. Second, the conclusion of the peace agreement for the south of Sudan initiated a debate about whether the UN force created to police the peace agreement would be a Chapter VI or Chapter VII mission, and whether it would also deploy in Darfur. Importantly, in both debates the United States attempted to further its case for stronger measures to protect Darfurians. In the first, it eventually succumbed to European pressure and agreed to refer the case of Darfur to the ICC despite its continuing grave concerns about the court. In the second, it led an informal push to give the new UN mission a role in Darfur.

On January 25, 2005, the UN Commission of Inquiry concluded that while the Sudanese government did not have a policy of genocide, it was implicated in numerous war crimes and crimes against humanity. Moreover, the commissioners wrote, “In some instances individuals, including government officials, may commit acts with genocidal intent.”¹¹² However, it judged that only a competent court would be able to determine whether specific crimes were

genocidal. The report sparked a heated debate about the appropriate venue in which to prosecute accused war criminals. EU states, including the U.K., argued that the Security Council should refer the matter to the ICC. The British ambassador to the UN insisted that the ICC referral was “non-negotiable.” The United States argued that the Security Council should create a special tribunal in Arusha to indict and prosecute war criminals. Nigeria offered a compromise in the form of an AU tribunal. The EU states rejected the Nigerian proposal, fearing that any compromise on the ICC would fatally undermine the court.¹¹³ For more than two months, the debate hamstrung efforts to create a UN force, as the Europeans insisted on the ICC referral being part of any authorizing resolution.

The deadlock was broken in late March when the two issues were decoupled. On March 31, the council passed Resolution 1593, referring the case of Darfur to the ICC. Explaining its decision to abstain in the vote, the United States reaffirmed its fundamental objection to the ICC, which, it claimed, “strikes at the essence of the nature of sovereignty,” but noted the importance of a unified response to Darfur and the need to end impunity in the region.¹¹⁴ The United States had very few options in Darfur, and was ultimately forced to accept the ICC referral as the only alternative to inaction or unilateralism.

¹¹¹ S/PV.5109, January 11, 2005, pp. 2–3.

¹¹² “Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General,” Geneva, January 25 2005, p. 4; available at www.reliefweb.int/library/documents/2005/ici-sud-25feb.pdf.

¹¹³ See Peter Heinlein, “UN Security Council Deadlocked over Darfur,” Voice of America News, March 18, 2005; available at www.voanews.com/english/2005-03-18-voa10.cfm.

¹¹⁴ UNSC 5158th meeting, S/PV.5158, March 31, 2005, p. 3.

The debate about the role and nature of UNMIS was similarly long-winded. States were divided on the mission's rules of engagement and its zone of operations. In February 2005, the secretary-general recommended a traditional peacekeeping force under Chapter VI of the Charter. However, the UN's Department of Peacekeeping Operations found few states willing to contribute troops. Though a group of liberal states that had come together to form a Multi-National Stand-By High Readiness Brigade expressed a willingness to contribute forces, most wanted a Chapter VII resolution giving them authority to use force to protect themselves and endangered civilians.¹¹⁵ After protracted negotiation, the council agreed to authorize a Chapter VII operation.

The council remained divided, however, on the question of whether UNMIS could be "rerouted" to Darfur. The United States wanted a clear statement authorizing UNMIS to deploy in Darfur, but this was informally opposed by Russia, China, and Algeria. In the end, Resolution 1590 authorized a Chapter VII peace operation mandated to observe the cease-fire and protect civilians, using force if necessary. The resolution avoided pronouncing on whether UNMIS would be deployed to Darfur, and invited the secretary-general to investigate the types of assistance that UNMIS could offer to AMIS, identifying "technical and logistical" assistance as two potential areas.¹¹⁶

No consensus emerged on the question of sanctions, however. In mid-February 2005, the United States circulated a draft resolution coupling UNMIS and oil sanctions.¹¹⁷ After a protracted round of informal consultations, the United States dropped the oil embargo in favor of the imposition of travel bans and asset freezing on suspected war criminals. Russia and China, however, rejected both the asset freezing and the link-

age between sanctions and UNMIS. The United States revised its draft further, and on March 29 the Security Council passed Resolution 1591, imposing a travel ban on suspected war criminals. Russia, China, and Algeria abstained—Algeria because it believed that the draft failed to recognize the significant progress that the Sudanese government had made, and Russia and China because they remained opposed to sanctions. Tanzania argued that while it supported Resolution 1591, it believed that the post-peace agreement government in Khartoum "should not be subjected to a sanctions regime less than three months from now."¹¹⁸

At the time of writing, the UN was preparing to deploy UNMIS to the south of Sudan, ICC prosecutors were investigating crimes in Darfur, and the AU was continuing to expand its presence in Darfur. On the other hand, the Sudanese government remained in breach of Resolution 1556 but had avoided enforcement measures, violence in Darfur continued, and the numbers of dead and displaced continued to rise.

MINOR SETBACKS FOR THE HUMANITARIAN INTERVENTION NORM

The Darfur experience suggests that the claims that either the "sun has set" on humanitarian intervention or that, after September 11, the West is likely to be more interventionist are both misplaced. The first

¹¹⁵ "Sudan Peace Agreement Signed 9 January Historic Opportunity, Security Council Told," UN Press Release, SC/8306, February 8, 2005.

¹¹⁶ UNSC Res. 1590, March 24, 2005, paras. 4 and 5.

¹¹⁷ Reuters, "US Resolution Calls for UN Peacekeeping Mission in Sudan," February 15, 2005; available at globalpolicy.igc.org/security/issues/sudan/2005/0215draftuse.htm.

¹¹⁸ UNSC 5153th meeting, S/PV.5153, March 29, 2005, pp. 2–5.

overestimates the strength of the humanitarian intervention norm prior to the September 11 attacks and the subsequent wars in Afghanistan and Iraq—as well as those wars' impact on the norm in general.

If we accept the view that prior to the Iraq war there was a partial consensus that the Security Council has a right to authorize humanitarian intervention and a moral consensus among liberal states that unauthorized intervention may be a legitimate response to supreme humanitarian emergencies, the world's response to Darfur suggests that neither of these consensuses has been eroded. This was evidenced by the widespread political support offered to AMIS and by the fact that in the West, at least, there was little suggestion that an AU intervention required either an authorizing Security Council resolution or the Sudanese government's consent. Although AMIS subsequently received Sudanese government consent for its limited civilian protection role, it is significant that when Rwanda unilaterally gave its peacekeepers a civilian protection role prior to the revised AMIS mandate, liberal states did not criticize it for doing so.

The second view overestimates the link between humanitarian crises and security concerns, such as WMD and international terrorism. Although there was clear linkage in the Afghanistan case, there was no such link with respect to Darfur. What the Darfur case suggests, then, is that changes to the norm of humanitarian intervention after the Iraq war have been more subtle and complex. Two changes in particular can be identified.

First, debates about how to respond to the crisis in Darfur lend weight to the thesis that the credibility of the United States and the U.K. as humanitarian intervention norm carriers has significantly diminished as a result of the Iraq war. Throughout discussions on

Darfur, some states and organizations expressly rejected American- and British-led activism in the Security Council, while endorsing the AU intervention and calling for its expansion. This view was expressed by AU members, the League of Arab States, the Organization of the Islamic Conference, and several Security Council members (such as Pakistan and Algeria). There were also signs that in a context where they were unable to act outside the Security Council because of their military overstretch problems, the United States and the U.K. appeared to recognize that their diminished credibility as norm carriers would make it harder for them to take a lead in building a council consensus on action. By autumn 2004, U.K. officials were informally expressing the view that it would be imprudent for Britain to push the sanctions issue. Although the United States continued in its attempts to bring pressure to bear on the Sudanese government, and U.S. officials frequently expressed their frustration at being unable to do so, it refrained from taking a robust line in the council's public deliberations (as the Philippines and Romania did), and the possibility of unauthorized action was never seriously raised, even after Congress and Colin Powell described Darfur as genocide. It is too early to offer definitive insights about precisely why the United States adopted this position. Given military overstretch, however, unauthorized military action was probably considered infeasible, leaving a consensus-based approach through the Security Council as the only viable alternative. The problem here was that America's and Britain's likely diminished status as norm carriers meant that an aggressive diplomatic push for coercive measures would probably have been counterproductive.

Second, the Darfur case supports Thakur's argument that the "responsibility

to protect” criteria could constrain as well as enable intervention. It casts serious doubt, however, on Thakur’s presumption that this furthers the cause of global humanitarianism. “Responsibility to protect” language was used by both advocates and opponents of intervention. It enabled opponents of intervention to legitimate their actions by reference to the prevailing normative order. In effect, it allowed traditional opponents of intervention to replace largely discredited “sovereignty-as-absolute”-type arguments against intervention in supreme humanitarian emergencies with arguments about who had the primary responsibility to protect Darfur’s civilians. The Sudanese government, the AU, the League of Arab States, UN officials on occasion, and in at least one instance the U.K. argued that the Sudanese government had primary responsibility, though for different reasons.¹¹⁹ In the context of the ongoing debate, this argument was used to reject external involvement other than that endorsed by the government of Sudan. Occasionally, AU members and UN officials suggested that the government had proven itself either unable or unwilling to protect Darfur’s citizens and that international organizations, particularly the AU, should assist it. Only the Philippines and Romania argued that the Security Council should accept primary responsibility for protecting Darfurians, and that argument enjoyed very little support.

According to the ICISS report, the transfer of the “responsibility to protect” from the host state to the Security Council should be guided by what it portrays as a simple empirical test: when the host state is unable or unwilling to protect its citizens. In practice, this threshold was hotly disputed. Few states publicly reject the idea that the Security Council should act to halt genocide or mass murder, but it has proven difficult to

forge a consensus on when the threshold is crossed. With Darfur, as with Kosovo, opponents of intervention argued that military action would probably worsen the situation. Repeatedly, they argued that the situation in Darfur was improving and had not reached the threshold necessary to validate intervention.

The point here is that while Thakur was correct to argue that “responsibility to protect” language could reduce the likelihood of humanitarian justifications being abused, his line of reasoning reveals a deeper problem with the ICISS agenda: changing the language of humanitarian intervention (from sovereignty vs. human rights to levels of responsibility) has not changed its underlying political dynamics. As such, “responsibility to protect” language may also be used to inhibit the emergence of consensus about action in genuine humanitarian emergencies. As was the case with Kosovo, the debate over Darfur boils down to the question of whether enough states can be persuaded to act. The key difference is that in the Kosovo case many liberal states were prepared to act outside the Security Council if necessary.

In the Kosovo case, the existence of this alternative route enabled advocates of intervention to take a more robust diplomatic line in the Security Council, forcing traditional opponents of intervention to acknowledge the humanitarian catastrophe in Kosovo when the council identified Serbian ethnic cleansing as a threat to international peace and security and imposed economic and other sanctions on the Belgrade regime.¹²⁰ Sadly, due to a combina-

¹¹⁹ As noted earlier, the U.K.’s position was influenced by a mixture of prudential considerations and dependence on Security Council consensus.

¹²⁰ For a discussion, see Bellamy, *Kosovo and International Society*, p. 68.

tion of military overstretch and the United States' and the U.K.'s diminished credibility as norm carriers, that alternative was not available in the Darfur case. As a result, little such pressure has been brought to bear on traditional opponents of intervention, who, in turn, have been able to legitimate their opposition to intervention in terms of the responsibility to protect. While the ICISS

was right to be concerned about reducing the danger that states might abuse humanitarian justifications to legitimate unjust wars, it evidently should have paid more attention to the danger that responsibility to protect language could itself be abused by states keen to avoid assuming any responsibility for saving some of the world's most vulnerable people.

