

More recently, however, the conflict has become politicized and has taken on distinct ethnic and racial undertones, with Darfur serving as a base for anti-government forces. In February 2003, rebel groups attacked Sudanese troops, accusing the government of at best neglecting and at worst exploiting the region. Their accusations are supported by many international observers and echo the complaints of other peripheral regions of the vast country, particularly the war-torn south. With the outbreak of hostilities, the government was accused of arming and inciting local, predominately Arab militias called the Janjaweed to attack villages belonging primarily to the Fur, Zaghawa and Massalit tribes. The government suspects these tribes of supporting the two major rebel groups in the region, the Sudanese Liberation Army (SLA) and the Justice and Equality Movement (JEM). Since April 2003, the Janjaweed have been systematically attacking, looting and destroying villages. The Sudanese government has also initiated offensives, including aerial bombing, against the populations in Darfur which it considers disloyal.

The violence and destruction has led to the deaths of untold numbers of civilians and caused massive displacement, including 200,000 refugees in Chad and estimates of more than one million internally displaced persons. The security and humanitarian situation is precarious for both groups. The UN High Commissioner for Refugees (UNHCR) is working to move the refugee camps deeper into Chad after reports of cross-border raids and has recently begun operating in a few accessible areas of Darfur. Despite this, however, and despite the government of Sudan's promises, international humanitarian and human rights agencies still complain of bureaucratic obstructionism and denial of access to major swathes of the region. The International Rescue Committee (IRC), one of the few NGOs operating in the region, estimates that only 30% of the displaced in Darfur are currently being reached by any assistance. Representatives of those agencies are extremely concerned about the extent of starvation and malnutrition, particularly among children, as well as continued violence, human rights violations, acute water shortages and disease. The US Agency for International Development (USAID) has estimated that without immediate, unobstructed and massive humanitarian relief, more than 350,000 people could die by the end of 2004. In all, 2.2 million people are at risk.

Both the extent, and the clear racial and ethnic undertones, of the suffering in Darfur have led many observers to publicly suggest that events there amount to – or are on a path to becoming – genocide. Evoking the term “genocide” carries enormous weight, both in terms of its historical implications as well as the obligations its declaration places on signatories to the Genocide Convention. Perhaps unsurprisingly, then, there has been little agreement as yet about what is actually occurring in Darfur – and even less agreement on the appropriate response of the international community.

Darfur first appeared on the international radar during commemorations of the tenth anniversary of the Rwandan genocide in early April 2004. It was at this time that many in the international community, including UN Secretary-General Kofi Annan, first began drawing the linkages with Rwanda and noting the potential for Darfur to descend into similar chaos. Since then, and unlike Rwanda, the situation in Darfur has received (and sustained) significant, early, high-level international attention.

But the attention and cries of “never again” have not, as yet, resulted in corresponding action. So while the region has received such visitors as Secretary-General Annan, the Head of the African Union Alpha Omar Konare, and US Secretary of State Colin Powell, it has yet to be the focus of a single UN Security Council Resolution. Dozens of international agencies and NGOs have shouted from the rooftops about their inability to gain reliable access to those suffering in Darfur, yet there seems to be little will on the part of those with the appropriate resources to put enough or effective pressure on the Sudanese government to allow complete and unobstructed access. Some are concerned that such action would infringe on Sudanese sovereignty and upset the tenuous peace process between the government of Sudan and the Sudanese People's Liberation Movement/Army (SPLM/A) in the south. In the meantime, however, most humanitarian experts agree that only swift and concerted action by the international community can save hundreds of thousands of lives.

This brief will attempt to lay out an effective international policy for Darfur—one that could secure access and protection for vulnerable populations and allow the millions of displaced Darfurians to return to their villages in security and dignity. It will examine the role of forced displacement and encampment in the concept of genocide and discuss the implications for and responsibilities of the international community in such situations. Lastly, it will delve into possible courses of action and suggest a way forward.

What Is Genocide?

“Genocide leaves a recognizable trail that if addressed early is reversible.” [US Ambassador for War Crimes Issues Pierre-Richard Prosper, 2004]

According to Article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, “genocide” means any of the following acts *committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such* (emphasis added):

- a). killing members of the group;
- b). causing serious bodily or mental harm to members of the group;

- c). deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d). imposing measures intended to prevent births within the group;
- e). forcibly transferring children of the group to another group.

To provide a context for the crisis in Darfur, several pieces of this definition merit further explanation. International legal and genocide experts such as UN Special Rapporteur on the Prevention of Discrimination and Protection of Minorities Benjamin Whitaker and the Preparatory Commission of the International Criminal Court (ICC) have expressed that “causing serious bodily or mental harm to members of the group” can include but is not limited to such actions as inflicting trauma through widespread rape, torture, sexual violence, forced drug use or mutilation. “Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” has been associated with the deliberate deprivation of resources indispensable to the group’s physical survival, such as clean water, food, clothing, shelter or medical services – that is, the deliberate deprivation of the means to sustain life. Such conditions can be imposed through the confiscation of harvests, blockade of food and relief supplies, detention in camps, forcible relocation or expulsion into deserts.¹ The ICC Preparatory Commission made clear that the term “killed” is interchangeable with the term “caused death” – in other words, genocide can be accomplished through deliberate actions or inaction as well as organized murder.

Another crucial element of the genocide definition is the question of *intent*: the intent to destroy a particular group “as such.” The 1985 UN “Report on the Question of the Prevention and Punishment of the Crime of Genocide” (the so-called Whitaker Report) noted that the words “as such” stipulate that “in order to be characterized as genocide, crimes against a number of individuals must be directed at the collectivity or at them in their collective character or capacity.” A group’s “character,” according to the Genocide Convention definition, supported by the findings of the ICC Preparatory Committee, can be defined by nationality, ethnicity, race or religious group. For the most part, all are fundamental and unchangeable characteristics.

Determining the intent of a perpetrator of any crime is rarely an easy task. The Whitaker Report suggests that intent can be inferred from “sufficient evidence,” which could include “actions or omissions of such a degree of criminal negligence or recklessness that the defendant must reasonably be assumed to have been aware of the consequences of its conduct...In certain cases, calculated negligence may be sufficient to destroy a designated group wholly or partially through, for instance, famine or disease.” The educational group Prevent Genocide International adds that intent can be “inferred from a systematic

pattern of coordinated acts.” Again, forced expulsion into hostile environments such as deserts and deliberate poisoning of scarce water supplies – while not systematic murder – fall under such an interpretation of genocide. The Whitaker Report also makes clear that *intent* is different from *motive*, and that the motivation (for instance, land expropriation or territorial or national integrity) of those committing genocide is irrelevant to determining responsibility.

Lastly, it is important to stress that the definition of genocide makes no requirement that a certain number of individuals be killed to be defined as such. Rather, the definition notes that destruction of a group can occur *in whole or in part* (emphasis added).

How can forced displacement & encampment be considered genocide?

Is genocide occurring in Darfur?

“And so [we say] ‘Well, it’s only 30,000 killed so far in Darfur and it’s a million people on the run. But well, they’re on the run and they’re still alive, right?’ And somehow that’s consoling and it doesn’t actually trigger the commitments that we’ve made in the wake of discovering the scale of the Rwandan tragedy in 1994.” [Harvard University lecturer Samantha Power, in an interview on “Talk of the Nation,” May 19, 2004]

The United Nations Commission on Human Rights (CHR) report of May 7, 2004 states unequivocally that the Sudanese government is supporting the Janjaweed militias, that the attacks are ethnically based, and that they target civilians. The report explains that “[i]t is the manner of response to this rebellion by the Government of the Sudan which has led to the current crisis in Darfur...It is clear that there is a reign of terror in Darfur...[T]he mission encountered a consistency of allegations that government and militia forces carried out indiscriminate attacks on civilians; rape and other serious forms of sexual violence; destruction of property and pillage; forced displacements; disappearances; and persecution and discrimination.” It goes on to stress that “*urgent* action is required by the Government of the Sudan, the United Nations system and NGOs to ensure that appropriate measures are taken *now* to ensure an increased, and uninterrupted delivery of assistance...” (emphasis added).

The report notes the “remarkable consistency” in witness descriptions of the Sudanese army’s Antonov bombers and helicopter gunships attacking villages just before the arrival – on horses and camels – of the well-armed Janjaweed. Often the attacks take place on a daily or weekly basis until all villagers have either been killed or have fled in terror, with all their

possessions stolen or destroyed in the process. Attacks have continued as villagers flee their homes and seek shelter in refugee camps near the border in Chad. Witnesses also speak of the targeting of population centers, bombing of markets, poisoning of wells and water supplies, theft or destruction of livestock, and the destruction of crops, seeds and agricultural implements. Satellite images show more than 400 villages (belonging primarily to the Fur, Zaghawa and Massalit tribes) completely destroyed, with nearby villages belonging to other tribes left untouched. Men and boys are particularly targeted for death. Women and girls have been subject to kidnapping, rape and branding, particularly if they leave the Janjaweed-encircled IDP camps to look for water or firewood. The few relief workers in the region have reported that many displaced Darfurians (including some in the refugee camps in Chad) refuse the little aid that *does* arrive for fear of being attacked again by Janjaweed seeking to steal food or other supplies.

The Sudanese government has claimed that its actions (and/or those of the Janjaweed; the government has not been consistent on this matter) are aimed at stopping the SLA and JEM rebel groups, and therefore target those villages suspected of hosting rebels. However, few civilians with whom the CHR team met were aware of any rebel presence in their villages, and said they did not personally know any individuals involved in SLA or JEM activities. The report therefore states that “[w]hile the Government of the Sudan maintained that it was making a concerted effort to re-establish law and order and effective accountability in the region but that it was being undermined in these efforts by the actions of the rebels, this was not, in the opinion of the mission, borne out by the realities on the ground...In virtually every interview it was alleged that the local authorities were of no assistance...Near-universal witness testimony...paints a picture in which the state did nothing to prevent attacks on civilians by the Janjaweed.”

The grim picture painted by the CHR is mirrored by numerous reports by Human Rights Watch, the International Crisis Group and others, as well as media reports and eyewitness accounts by the few international NGOs operating in the territory. It is compounded by the continued obstruction of aid workers and relief assistance by the Sudanese government. Though the government has stated that it eased restrictions as a result of international pressure in late spring, NGOs, UN and US government officials on the ground have found many obstacles still in place – including delayed visas, travel permits backdated so as to be expired before they arrive, medical supplies diverted for “testing” by the government, satellite phones, transportation equipment and other technology confiscated at the border, work permits denied to non-Sudanese support staff, and a host of other complications. Several relief workers have noted that when one restriction is eased, another is put in its place. Médecins Sans Frontières Darfur Coordinator Ton Koene noted in an interview that it takes two months “from the moment you intend to fly [in] a doctor or nurse till the person

is treating people in the clinic.” The CHR report says unequivocally that “humanitarian assistance to IDPs has been severely restricted.” Few can claim to be surprised, as this has been the pattern of the Sudanese government throughout its territory for many years.

Beyond the slaughter of an estimated 30,000 civilians, the wider humanitarian crisis in Darfur is a direct result of the displacement forced by the Janjaweed militias and the obstruction of relief assistance by the Sudanese government. As has been seen far too many times, there are basically two types of famines: “drought famine” (a lack of food resulting from natural phenomena) and “war famine” (the systematic denial of food to suffering populations as a result or as a deliberate strategy of conflict). According to the international relief NGO CARE, mortality rates during war famines have generally been much higher than those during drought famines. The context of conflict and displacement overwhelms the traditional coping mechanisms of people used to living in precarious environments such as deserts. As journalist and scholar Samantha Power has noted, “it’s not death by machete, it’s death or flight by virtue of starvation.”² Furthermore, overcrowded, makeshift camp environments are breeding grounds for diseases that ravage already-malnourished people, especially children and the elderly. They can also become magnets for violence. In such situations, refugees and displaced persons who have fled to camps seeking protection may find themselves in even more dangerous circumstances, particularly when freedom of movement is denied.

It is the combination of these factors that led USAID to estimate that 350,000 people are likely die without immediate assistance. Because such assistance is continually obstructed by the government, and because the victims of the displacement and subsequent famine and disease are exclusively of particular ethnic or racial groups, it clearly constitutes the “deliberate infliction of conditions of life calculated to bring about a group’s physical destruction in whole or in part” outlined in the Genocide Convention.

That said, does it matter what such inhumanity is called?

“Get Beyond the Semantics”

“These turn out to be almost legal matters of definition...all I know is that there are at least a million people who are desperately in need, and many of them will die if we can’t get the international community mobilized and if we can’t get the Sudanese to cooperate with the international community. And it won’t make a whole lot of difference after the fact what you’ve called it.”[US Secretary of State Colin Powell, in an interview with Mark Lacey of the *New York Times*, June 11, 2004]

“Get beyond the semantics; it should be a 10-second exercise. Because the important reaction of the government is how do we respond to these mass killings, pillage, rapes? And we can leave for another day, frankly, precisely how it’s described...Governments have to react to the reality on the ground.”[Prof. David Scheffer, Former US Ambassador at Large for War Crimes, in an interview on National Public Radio’s “Talk of the Nation,” May 19, 2004]

The reality of the situation is that, regardless of whether or not the UN or its member states publicly call the events in Darfur genocide – or ethnic cleansing, or a war famine, or an ethnically-based conflict, or anything else, for that matter – tens of thousands of civilians have already been killed and hundreds of thousands more, including countless children, are at immediate risk. The Genocide Convention requires states to *prevent* genocide, not to deliberate for months until events on the ground become so clear it is impossible to deny. Sadly, denial is precisely what occurred in Rwanda in 1994 – as Samantha Power noted, “more energy was spent deciding how to use the term, when to use the term, or...to get the US government to use the term than was actually devoted to trying to save lives...There is no consensus over when the sort of genocide threshold has been crossed, my feeling is once you’re having this debate...you’re already [too late].”³

The inaction of the UN and member governments in Rwanda is lamented to this day – including by the current Secretary-General, who was himself the head of UN peacekeeping operations during the Rwandan genocide. In reference to Darfur, Secretary-General Annan has stressed that “[t]he most sacred responsibility of any government is to protect its people against the kind of crimes that have been committed in Darfur. If the Sudanese government doesn’t have the capacity to protect its population, the international community must be prepared to assist, and the Sudanese government should seek such assistance. We need to act, we don’t need a label to propel us to act.”⁴

Lessons from the Past: Rwanda

In April 2004, as the international community was fully aware of the events in Darfur, the United Nations and member governments commemorated the “International Day of Reflection on the 1994 Genocide in Rwanda.” The commemoration was intended as a “recommitment” of the international community to the fight against genocide throughout the world and to “ensur[e] there is no repetition of events of the kind which occurred in Rwanda in 1994.”

Extreme caution must be used in asserting parallels between the current situation in Darfur and that of Rwanda in 1994. There are similarities, but there are also important differences – and it is important to avoid downplaying the significance of the unique traits of Darfur merely because they do not “fit” the model of the Rwandan genocide. The international community can and should, however, clearly understand its failures in Rwanda and strive to avoid similar pitfalls in Darfur – most particularly in terms of warning signs and the possibility of preventing even greater catastrophe.

A Special Rapporteur for the UN Commission on Human Rights visited Rwanda in April 1993, exactly one year before the genocide, to investigate reports of targeted and mass killings of Tutsi civilians and the alleged involvement of government officials in the killings. The Special Rapporteur, Mr. B.W. Ndiaye, was asked by Rwandan human rights organizations to take part in an international commission of inquiry into violations of human rights there, which he declined to do because “since there was a state system in Rwanda, it was for the authorities of that country to conduct inquiries and report on measures taken.” Even without the participation of the Special Rapporteur, the International Commission of Inquiry documented the scale of the violations of human rights in Rwanda, and identified the perpetrators and their mechanisms.

The report prompted an acknowledgement by the Rwandan government of the responsibility of certain Rwandan authorities for the massacres of civilian populations, but the government dismissed the problem as, in part, a result of the “‘uncontrolled behavior’ [of] undisciplined members of the armed forces.” The Special Rapporteur went on to state that “massacres of civilian populations have been perpetrated either by the Rwandese security forces or by certain sectors of the population...It has been shown time and again that government officials were involved, either directly by encouraging, planning, directing or participating in the violence, or indirectly through incompetence, negligence, or deliberate inaction...members of [the] militias have been backed by plain-clothed members of the FAR [the Rwandan army] and by representatives of the local authorities...such militias have been able to commit their misdeeds and impose their reign of terror with complete impunity...the absence of the rule of law seems to be deliberate. In fact, there is a striking contrast between, on the one hand, the close control exercised over the population and...the absence of any structure for the protection of vulnerable populations.”

The report also found that “the situation has become particularly explosive with the distribution of weapons to civilians by the authorities, officially to combat the forces of” the RPF [then the rebel forces]. The Special Rapporteur expressed his concern that the mass displacements from arable land constituted a “catastrophic situation” that could lead to famine.

What did the UN decide to do after reading the report in August 1993? “Remain seized of the matter.” Less than nine months later, in April 1994, 800,000 people were killed. On paper and in speeches, at least, it seems that the UN and major government officials are indeed aware of what went wrong in 1994 and wish to do better in the future, whether in Darfur or anywhere else. But the grand words have been linked to few concrete actions.

The Role of the International Community

“[L]et us not wait until the worst has happened, or is already happening. Let us not wait until the only alternatives to military action are futile hand-wringing or callous indifference.” [UN Secretary-General Kofi Annan, in a 2004 speech commemorating the tenth anniversary of the Rwandan genocide]

However bold, particularly in light of the tenth anniversary commemorations of Rwanda, the statements of UN and other international officials, national and regional governments are worth less and less the more often they are repeated without action or consequence. What follows is an examination of how such a credibility gap seems to have emerged, and for what reasons.

The Politics:

“...too often respect for state sovereignty, domestic and territorial integrity can, and does, take precedence over the concern for protection against genocide.” [Whitaker Report]

Several current members of the UN Security Council – most notably China, Russia, Pakistan and Algeria – have been particularly reluctant to publicly criticize the actions of the Sudanese government and have opposed attempts to put Darfur on the Security Council agenda. Opinions vary as to the reasons for their reluctance.

China has traditionally been reluctant to challenge the concept of state sovereignty, and has in the past opposed Security Council resolutions that it viewed as doing so. The Chinese government also has business interests in Sudan, however, particularly in the oil industry, and may be concerned about protecting those interests. Russia has been hesitant to criticize the Sudanese government, accepting (at least initially) the government’s position that Darfur is a purely internal matter – though it may also fear setting a precedent that could result in international involvement in Chechnya.

Many analysts have implied that Pakistan’s and Algeria’s silence on Darfur stems from their unwillingness to go along with the condemnation of an “Islamic” government, particularly in the wake of the wars in Iraq and Afghanistan. Islamic solidarity is a questionable motive in this case, however, considering that both victims and victimizers are Muslim. Analysts have further questioned whether the reluctance of some states to support the deployment of a CHR team in Darfur is for fear of turning a mirror on their own less-than-stellar human rights policies.

Other Security Council members appear to have diverse motivations. The United Kingdom has also spoken softly on the matter of Darfur. Prime Minister Tony Blair has said that his “conscience is clear” with regard to the UK’s actions in Darfur, claiming that the government is “doing [its] best...we are doing all that we can.”⁵ Mr. Blair’s Special Envoy to Sudan, Alan Gouly, has all but ruled out the possibility of military intervention in Darfur, noting that “it would be very expensive, fraught with difficulties and hard to set up in a hurry.” His alternative? “Patience.”⁶ Rather confusingly, however, Mr. Gouly does not support the idea of sanctions either – again noting that “threats of sanctions don’t seem likely to produce immediate action and immediate action is what is needed.” Given that the repertory of responses to crisis situations such as Darfur is not vast, it is often easier to rule out responses than to come up with others that may have a better chance of being effective. Many believe that the UK’s reluctance to get involved in Darfur stems from its desire to see the southern peace process through. The government has, however, donated \$66 million in humanitarian aid to Darfur since September 2003, including \$3.6 million in support of the African Union’s eventual full team of ceasefire monitors in Darfur.

The European Union has contributed significantly to the cost of the AU mission through its newly established African Peace Facility and has provided funding for relief activities through ECHO, the EU Humanitarian Aid Office. As far as active involvement, however, the EU has so far limited its efforts to a team of “several” observers that will be deployed to assist the AU ceasefire monitors in their work.

United States government:

“The United States is committed to working with the international community to ensure that every state fulfills its obligations to guard against those who would exterminate liberty and innocent life. [We] believe it is our duty to engage early with diplomatic and humanitarian action. We must maximize the use of diplomatic and humanitarian tools to prevent genocide from ever occurring, rather than simply trying to stop it in its course.” [US Ambassador for War Crimes Issues Pierre-Richard Prosper, 2004]

The US government has been particularly vocal in its warnings to the government of Sudan. Colin Powell traveled to Khartoum and Darfur on June 30, 2004 – the first such trip by a US Secretary of State in nearly 30 years. Great hopes are riding on the outcome of his meetings with the Sudanese government and Secretary-General Annan, particularly since months of statements by all levels of US officials have been met with little response on the part of the Sudanese government.

The State Department's Special Advisor for Sudan Policy, Ambassador Michael Ranneberger, has noted that "the government of Sudan understands pressure and pressure is needed. They have not been cooperating and we need to intensify the pressure until they do."⁷ The strong statements by President George W. Bush, Secretary Powell, National Security Adviser Condoleezza Rice and others, however, have given little indication of consequences should the Sudanese government fail to take the actions requested. The result, therefore, has been the repetition – for months – of "requests," or "pushing," or "putting pressure," or "expecting," with little or no concrete action on the part of either government as a result.

Reading the transcripts of State Department briefings beginning in February 2004 is an exercise in semantics. In an illustrative example, on June 4, 2004 Deputy Spokesperson Adam Ereli noted that "...the situation in Darfur is something that we remain very concerned about...we have called on the government of Sudan to take steps to facilitate access...and to take actions against the government-supported militias." In response to a question about the progress of the pressure on Khartoum, Mr. Ereli said "I guess progress isn't quite the word I would use. What I would say is there are some notable developments." Later in the same briefing he noted that "violence and obstacles to access continue to hamper relief efforts, and that's something that we remain concerned about." In a briefing five days later, State Department spokesman Richard Boucher repeated three separate times that the US government was "pushing very hard" on Khartoum and again noted that Secretary Powell was "very, very concerned." When asked, however, Mr. Boucher was unable to provide information on what was hampering the delivery of relief supplies in the region.

The United Nations:

The first public UN Security Council mention of Darfur came with the Press Statement of April 2, 2004, which noted that Security Council members "have expressed their deep concern" and "called on the parties to cooperate." A Security Council Presidential Statement was issued on May 25, and said much the same things, with no reference to any consequences should the government fail to act. Most surprisingly, however, and to the great dismay of many in the international community, as of early July 2004 there has yet to be a single Security Council Resolution focused on Darfur. Such complete inaction on the

part of the Security Council in the midst of crisis is unusual: for example, between April 6, 1992 (the beginning of the war in Bosnia) and October 5, 1993 (nearly the same amount of time as has elapsed since the outbreak of hostilities in Darfur until July 2004), 47 Security Council Resolutions and 42 Presidential Statements were issued on the conflict in Bosnia.

A Security Council resolution preparing for the eventual deployment of peacekeepers in southern Sudan was issued on June 11, 2004. After much debate, a brief reference to the situation in Darfur was included, though there was no "condemnation" of the violence or similarly strong statement. Rather, the resolution "call[ed] upon the parties to use their influence to bring an immediate end to the fighting in the Darfur region...urg[ed] the parties to the N'Djamena Ceasefire Agreement of 8 April 2004 to conclude a political agreement without delay, welcom[ed] African Union efforts to that end, and call[ed] on the international community to be prepared for constant engagement." Again, there was no mention of consequences should the parties fail to "bring an immediate end" to the conflict. Months later, the fighting continues, and the Security Council is silent.

Secretary-General Annan used the occasion of his speech to the CHR on the International Day of Reflection on the 1994 Genocide in Rwanda (April 7, 2004) to launch an "Action Plan to Prevent Genocide." It is worth quoting at length:

"Wherever we fail to prevent conflict, one of our highest priorities must be to protect civilians...Whenever civilians are deliberately targeted because they belong to a particular community, we are in the presence of potential, if not actual, genocide.

"...One of the reasons for our failure in Rwanda was that beforehand we did not face the fact that genocide was a real possibility. And once it started, for too long we could not bring ourselves to recognize it, or call it by name. If we are serious about preventing or stopping genocide in the future, we must not be held back by legalistic arguments about whether a particular atrocity meets the definition of genocide or not. By the time we are certain, it may often be too late to act. We must recognize the signs of approaching or possible genocide, so that we can act in time to avert it...Too often, even when there is abundant warning, we lack the political will to act.

"If there is one legacy I would most wish to leave my successors, it is an Organization both better equipped to prevent genocide, and able

to act decisively to stop it when prevention fails.”

Referring to Darfur, the Secretary-General noted that reports of UN humanitarian and human rights officials such as Emergency Relief Coordinator Jan Egeland left him with a “deep sense of foreboding. Whatever term it uses to describe this situation, the international community cannot stand idle....It is vital that international humanitarian workers and human rights experts be given full access to the region, and to the victims, without further delay. If that is denied, the international community must be prepared to take swift and appropriate action...which may include military action.”

Secretary-General Annan’s speech is notable for its clear statement that the international community must take action – including military action if necessary – *before* the massacres rise to the level of genocide. However, more than two months after his speech, with violence in Darfur continuing despite the token ceasefire and estimates that more than 350,000 persons could soon perish, Mr. Annan told reporters “I cannot call the killing a genocide even though there have been massive violations of international humanitarian law.”

What is notable is what the Secretary-General failed to say next. He missed an important opportunity to put real pressure on both the government of Sudan and the international community. Rather than shying away from the term “genocide,” he could have added that the massive violations of human rights and humanitarian law and the targeted killing and displacement of millions of civilians *does* necessitate the immediate involvement of the international community. He could have pledged that the United Nations will take the lead, by all necessary means, in ensuring the protection and assistance of civilians in need, as outlined in the April 7 Action Plan to Prevent Genocide. Instead, Mr. Annan said that the UN has “asked the Sudanese government to take steps to contain the Janjaweed,” adding that while it is the responsibility of the Sudanese government to protect its civilian population, the international community must “encourage” it and, perhaps, “assist the Sudanese government to do that.”⁸ Of course, assistance is precisely what the various UN relief agencies and NGOs have been attempting to provide for many months – and precisely what they have been obstructed from doing by the Sudanese government.

“Even the most perfect system of early warning will be useless unless States are able and willing to take action when warning is received.” [UN Secretary-General Kofi Annan, in a 2004 address to the Stockholm International Forum]

The result of the rather contentious UN Security Council situation and economic and other imperatives, so far, has been a

lot of talk and not much action – all of which raises the question: at what point do the international community’s threats stop being threatening? The various governments and the UN have repeatedly asked Khartoum to allow unobstructed humanitarian assistance, to stop the violence, to rein in the Janjaweed – all to no avail (despite the occasional claims to the contrary by the government). When should the international community move beyond what Samantha Power has called “bilateral diplomatic consultation and occasional denunciations”? At what point is it appropriate to stop saying “If you don’t change your behavior, we’re really going to do something about it” and actually *do something about it*? The Secretary-General and Secretary Powell must use the occasion of and follow-up to their July 2004 visit to Khartoum and Darfur to not only press for an end to the violence and real, unobstructed humanitarian access, but also to spell out the precise consequences of inaction.

What Can Be Done?

In the end, the responsibility of the international community is not just to a particular Convention, but to humanity. It must do all that it can to help those who cannot help themselves and who cannot count on the protection of their own governments.

“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 that affect every precept of our common humanity?” [UN Secretary-General Kofi Annan, in a 1999 Address to the UN General Assembly]

A variety of actors have put forth reasons for limited engagement by the UN or some other configuration of the international community in Darfur. But if 350,000 people were to perish, none of these reasons would stand up as justification for inaction.

First and foremost, some actors raise the concerns that more active involvement of the international community in Darfur could compromise the tenuous peace framework signed on May 26, 2004 by the government of Sudan and the SPLM/A. Treating the two conflicts as entirely unrelated, however, is a dangerous oversimplification. Both conflicts involve rebel groups culled from minority populations that lie outside of the central government’s development zone. Nearly all of Sudan’s ethnically and religiously diverse peripheries have at one point or another expressed dismay at their marginalization by Khartoum. Many, including the south and now Darfur, have faced the government’s wrath for doing so. Many commentators have suggested that the government has been particularly harsh toward the population of Darfur precisely because it agreed to

give up some of its power in the south, and does not want to send a message of weakness to other restive regions.

Further, some SPLM/A officials have already expressed their solidarity with the Darfurians: Abdel Aziz Adim, a senior SPLA commander, told BBC News recently that he would not be “party to a government that will crush the people of Darfur. They have a just cause.”⁹ Given this scenario, it is unlikely a peace process in the south could be sustained in the midst of ongoing conflict and massive death and devastation in the west. In the long run, peace is more likely to come about in Sudan if the international community engages in an expanded and comprehensive peace process involving both the south *and* Darfur, rather than ignoring the plight of millions of civilians for the sake of a possibly untenable peace in another region.

Furthermore, concerns about upsetting the peace process in the south must also be weighed against the very real possibility that, if ignored, the crisis in Darfur could become a regional conflict. Recent military action in the Chadian capital, N’Djamena, was thought by some to be an attempted coup against Chadian President Idriss Déby, himself a Zaghawa, but with close ties to Khartoum. There are continuing reports of cross-border raids by the Janjaweed, and the CHR and the IRC have both noted that the displacement is causing great strain for already-impooverished host communities in both Darfur and Chad. The United States in particular has been active in Chad in recent years, working with authorities to stem any potential for terrorist outposts near the remote desert border with Libya. The US should therefore be wary of the possibility that Chad, too, could descend into conflict and chaos.

The second major argument against international involvement in Sudan – particularly in terms of the possibility of humanitarian intervention – involves concerns about state sovereignty. The government of Sudan claims that the situation in Darfur is a purely internal matter, and that the international community is “meddling” or trying to exert control over Sudan. These claims, however, must be weighed against the facts on the ground. They must also be considered against the backdrop of the government’s own clearly false statements – for instance, President Omar el-Bashir’s suggestion that “the government has never put a single obstacle on the path of the humanitarian organizations”¹⁰ or that the situation in Darfur is calm and that refugees are happily and voluntarily returning home. Governments have an obligation to protect their citizens. If they cannot or will not, that responsibility then legally falls to the United Nations – tasked by its Charter to “save succeeding generations from the scourge of war, reaffirm faith in fundamental human rights, the worth and dignity of the human person, and to maintain international peace and security.”

Most states have traditionally been wary of the concept of humanitarian intervention (such as that outlined in Chapter VII of the UN Charter) for fear of setting a precedent that will

ultimately weaken the concept of sovereignty. More recent scholarship, however, has suggested that concerns about a so-called “right to humanitarian intervention” may in fact be misplaced. The International Commission on Intervention and State Sovereignty was tasked with examining this issue in 2001, and found that the crux of the matter is not whether or not states have a “right to intervene” in sovereign states, but rather that they have a “responsibility to protect” civilians in great danger. Putting it a slightly different way, setting a precedent of *not* intervening – of *allowing* the death of hundreds of thousands and displacement of millions of civilians in Darfur – could itself set a precedent that would encourage such behavior by other states in the future. In light of Rwanda, this idea is not as farfetched as it might seem.

Recommendations:

“In the past, consideration of how to prevent genocide and mass atrocities has often been presented as a stark choice between forcible intervention – the commitment of troops – or standing aside in hope that it will stop. This is not acceptable. If we are facing this dilemma, it is already too late.” [US Ambassador for War Crimes Issues Pierre-Richard Prosper, 2004]

If the international community – be it the UN or a coalition of individual governments – truly wants to stop genocide in Darfur, then it must force the Sudanese government to immediately stop the current violence, atrocities and forced displacement, to rein in and disarm the Janjaweed militias, and to allow immediate and unobstructed humanitarian access. The best, and possibly only, ways to achieve this goal are to:

- **Exert high-level diplomatic pressure.** Secretary-General Kofi Annan and US Secretary of State Colin Powell’s visit to Khartoum and Darfur on June 30-July 2 was a welcome step, one that has brought focused international attention to the crisis in Darfur. But the pressure of the international community on the government of Sudan must be unwavering. The UN Security Council should pass a resolution allowing the imposition of targeted sanctions and invoke the possibility of a Chapter VII intervention in Sudan should humanitarian access continue to be obstructed. The African Union should use the unparalleled opportunity of its July summit to condemn the actions of the Sudanese government and the militias and make clear that such behavior will not be tolerated. The AU’s response to the crisis in Darfur can mark a crucial turning point in the development of one of the world’s newest – and potentially most important – international bodies. The Arab League – so far loudly silent about the atrocities being committed against the population of Darfur – could also play an important

role in pressing the Sudanese government to allow access.

In the same vein, individual governments such as the United States and those of the European Union can and should freeze the foreign assets and ban the international travel of individual Sudanese government officials responsible for the atrocities in Darfur. Strong unilateral actions on the part of these and other states should send a clear message that responsible governments cannot dodge responsibility for the actions of militias they have created and armed.

- **Institute and monitor a no-fly zone** over all of Darfur, with clear penalties for violations. A no-fly zone would make it much more difficult for the Sudanese army to assist the Janjaweed in their depopulation and destruction of villages. Furthermore, stopping the attacks and terror caused by Sudanese government helicopters and warplanes will be an important first step in ensuring that Darfurians feel secure.
- **Begin real preparations for possible military intervention.** If the international community is serious about protecting the 2.2 million civilians caught up in the conflict in Darfur, humanitarian intervention must not only be threatened, but a force must be put together and mobilized. There are various options for the composition of such a force, but it is clear that it must be international. Ideally, it would be led by peacekeepers from the African Union, relying on the logistical backbone of European Union, US or NATO forces. Such a force would be more acceptable to the Sudanese government and other Arab or African states. Moreover, it would have the additional benefit of increasing the legitimacy of the African Union's new Peace and Security Council, set a clear precedent for the future development of the African Union, including in terms of its deterrence capability, and enhance the partnership between the AU and the industrialized world in the continuing war on terror.
- **Ensure that the force involved is large enough and has a strong enough mandate to be effective and beneficial.** The international community has repeatedly witnessed the failure of weak and under-mandated forces – most tragically in Rwanda and Srebrenica. Under-equipped international forces, which among other things are often more vulnerable to hostage-taking and attacks – can make already dangerous situations even more so. Secretary-General Annan has noted that UN peacekeepers are no longer restricted to using force only in self-defense, but have been empowered to do so in defense of a

mandate that explicitly includes the protection of civilians threatened with imminent violence. It is vital that any force mobilized for Darfur enjoy a similar mandate.

Additionally, a clear mandate can help to win over states that may be skeptical of humanitarian intervention: the clearer the mandate, including its limitations and grounding in international law, the easier it may be to accept.

- **Extend protection beyond *just* the camps and relief convoys.** Refugee and IDP camps too often become magnets for violence, looting and other criminality. Years of experience have shown that military escorts of relief convoys, while important, do not work when they are not supported by a more systematic protection mandate. Further, keeping civilians herded into camps – though it might be necessary in the short term – entrenches the results of ethnic cleansing and denies the population self-sufficiency.
- **Provide food and other relief supplies for the long term.** Aid will be needed for many months, if not longer. Darfur's civilians have missed this year's planting season and have lost most, if not all, of their livestock and possessions. Even if they were able to return to their villages immediately (an impossibility by most estimates), they would continue to require emergency and reconstruction assistance as well as help in rebuilding their economic structures – including replacement of seeds, agricultural tools, etc.. Donors will need to use a combination of creative incentives and continued, unwavering pressure to achieve and maintain the cooperation of the Sudanese government over the long term.
- **Reverse the ethnic cleansing.** A concerted effort to return the displaced to their home villages will send a strong signal that not only will ethnic cleansing not be tolerated, it cannot succeed. Such returns, however, must be voluntary, and the security of the returnees must be ensured. This will require both a large and robust international security force and a quick and thorough demobilization of the Janjaweed forces. This is admittedly an intimidating task, but the alternatives – the death of hundreds of thousands of civilians, a re-descent into violence and possible re-ignition of the war in the south, instability in neighboring Chad, and yet another ten-year commemoration of “what went wrong” – must be considered unacceptable.
- **Address the root causes of conflict.** The conflict in Darfur is in many ways symptomatic of the problems

plaguing regions and populations that have been marginalized and exploited by Khartoum's development plans. In the longer term, therefore, a process for addressing the issues at the heart of the conflict in Darfur – power sharing, land allocation, equal distribution of resources, and others – must be initiated. As the negotiations between the government and the SPLM/A have shown, such a process will not be quick or easy, but with strong international commitment, it can succeed. The people of Darfur deserve no less.

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Endnotes

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Author's Note:

The title of this policy brief is taken from a question posed to Pulitzer Prize-winning journalist and author Samantha Power by a caller to National Public Radio's "Talk of the Nation" on May 19th, 2004.

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The Migration Policy Institute (MPI) is an independent, non-partisan, non-profit think-tank dedicated to the study of the movement of people worldwide. The institute provides analysis, development, and evaluation of migration and refugee policies at the local, national and international levels. It aims to meet the rising demand for pragmatic responses to the challenges and opportunities that migration presents in an ever more integrated world. MPI produces the Migration Information Source Web site at www.migrationinformation.org.

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