



# Sudan and the Implications for Responsibility to Protect

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## Introduction

Sudan is a country long torn asunder by turmoil, tragedy, and a long trail of tears. For years Sudan has been the worst humanitarian crisis in the world. Millions of innocents continue to suffer. The destruction, devastation, death, and deep despair relentlessly grind on, claiming more and more victims. Yet the international community's response has been anemic. Why?

What does this say about the emerging international norm of the "Responsibility to Protect" (R2P) that this human catastrophe continues? Innocent blood spilt upon Darfur's desert and in the jungles of Southern Sudan is a spreading stain upon our age.

On one level it is a terrible blot on our collective conscience. On another it is an enormous challenge to how collective action could be taken to end this crisis, but has not.

At the 2005 Millennium World Summit, world leaders including President George W. Bush agreed to protect their people from genocide, war crimes, ethnic cleansing and crimes against humanity, and to prevent their incitement.<sup>1</sup> They also agreed that the international community should assist countries in fulfilling their responsibility to protect and to respond in a "timely and decisive manner," consistent with the United Nations Charter rules and procedures, when national authorities are "manifestly failing" to meet their responsibility to protect and when peaceful means have proven "inadequate."<sup>2</sup> The Outcome Document was adopted unanimously by the General Assembly.<sup>3</sup> The R2P sections were also affirmed by the Security Council.<sup>4</sup>

Proponents of R2P have helped this emerging norm take root so it can gain greater legitimacy and contribute to concrete processes, procedures, and practices. Given the difficult history of colonization and the challenge R2P presents to sovereignty, many quarters are concerned by this emerging international norm. Therefore, many R2P advocates, understandably, seek to downplay the more controversial portions of this concept, such as the prescription to take "timely and decisive" action to stop the delineated atrocities, and to emphasize other aspects such as capacity building.

Furthermore, since the "genocide in slow motion" in Darfur began in 2003, before adoption of R2P, some officials and analysts suggest that the tragic events in Sudan are not a real test of R2P. Rather they point to the 2007-2008 post-election events in Kenya as the first real test of R2P, a test, they argue, in which R2P preventive actions proved salutary.

Fair enough. Unquestionably, though, concerns about the ongoing events in Sudan are informed by R2P, as are considerations of future courses of action. And the unfolding events in Sudan, along with the actions and inactions of the international community in dealing with these events, will impact, if not define the deliberations, debate, and destiny of this emerging norm.

## Roots of the Responsibility to Protect

Some proponents of R2P suggest the explicit platform for the discussion of this emerging norm began with work at the Brookings Institution and the 1996 publication of *Sovereignty as Responsibility: Conflict Management in Africa*.<sup>5</sup> In this book, Francis M. Deng and the other contributors suggested that just as governments had certain sovereign rights, they also had

various sovereign responsibilities to protect their citizens from calamities.

This concept was advanced when the African Union officially endorsed it. Article 4(h) of the 2002 “Constitutive Act of the African Union” stipulates “the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect to grave circumstances namely: war crimes, genocide, and crimes against humanity.”<sup>6</sup>

The same year, the Canadian government convened an International Commission on Intervention and State Sovereignty, cochaired by Australian Gareth Evans and Algerian Mohamed Sahnoun. The commission’s report enriched and broadened the discussion of R2P by articulating three aspects of the Responsibility to Protect: a responsibility to prevent, a responsibility to react, and a responsibility to rebuild.<sup>7</sup>

In 2004, UN Secretary General Kofi Annan formed a high-level panel on Threats, Challenges and Change which, among other things, endorsed a number of the Canadian Commission’s key R2P recommendations.<sup>8</sup> Annan’s subsequent report on UN reform, *In Larger Freedom: Towards Development, Security and Human Rights for All*, advanced the high-level panel’s R2P proposals.<sup>9</sup> In 2005, a Congressional Task Force on UN Reform, cochaired by former Speaker Newt Gingrich and former Senate Majority Leader George Mitchell, produced its comprehensive report, *American Interests and UN Reform: Report of the Task Force on the United Nations*, endorsing the Responsibility to Protect.<sup>10</sup> These events, culminating in the September 2005 World Summit, ensured that R2P was part of extensive preparatory deliberations and negotiations, and led to “the Heads of State and Government unanimously affirm[ing] at the Summit” the Responsibility to Protect. The UN General Assembly (UNGA) unanimously adopted the Summit Outcome Document<sup>11</sup> and the Security Council reaffirmed the R2P security provisions.<sup>12</sup>

However, I would suggest that the modern moral imperative of R2P goes back at least to the ashes of World War II. In response to the horrors of the Holocaust, the United States was the driving force behind the Nuremberg Court that brought a number of Nazis to justice after World War II.<sup>13</sup> It was a recognition that in order to mend torn societies and close the book on the dark chapters in which atrocities had been committed so that a liberal

future and stability could emerge, a measure of justice is required. Perpetrators of the worst war crimes had to be held accountable. Sovereign immunity did not protect those who committed crimes against humanity. The principle Nazi leaders were put on trial at Nuremberg while similar proceedings were conducted in Tokyo against Japanese war criminals.<sup>14</sup>

Furthermore, the Holocaust compelled the world community to pledge “Never Again!” Tragically, the community of nations has not put an end to genocide. Brutal regimes have continued to inflict death, injury, and injustice on innocent people. As the twentieth century drew to a close, the pace of these horrors seemed to quicken and their scope expand across Cambodia’s killing fields, Rwanda, Bosnia, Kosovo, and now Darfur. What happened to “Never Again”? These sentiments have animated the discussions of the Responsibility to Protect and should inform efforts to bring reality to this consequential emerging norm.

In July 2009, the UN General Assembly had an “Informed Interactive Dialogue on the Responsibility to Protect.” The exercise was expected to deepen the roots of this emerging norm. Instead, it generated a fair amount of rancor and led some to question the validity of R2P.

Reverend Miguel d’Escoto Brockman of Nicaragua, President of the General Assembly, tried to frame the dialogue with a “concept paper” that argued that R2P was just colonialism in a new package. D’Escoto wrote that the correct way to eliminate genocide and other mass atrocities was to reform the world financial system, redistribute wealth, and reform the UN Security Council. He said in the UNGA dialogue, that “Recent and painful memories related to the legacy of colonialism, give developing countries strong reasons to fear that laudable motives can end up being misused, once more, to justify arbitrary and selective intervention against the weakest states. ...We must take into account the prevailing lack of trust from most of the developing countries when it comes to the use of force for humanitarian reasons.”<sup>15</sup>

And while his critique may represent one extreme, the controversy swirling around R2P has a number of countries concerned that R2P is merely a justification for interference by developed countries in the affairs of developing nations.

Secretary General Ban Ki-moon placed the deliberations on R2P in a different light. He said to the General Assembly, “[T]his week’s debate is not about history. It is about the character of this institution and the future of humankind.” He urged member states to look forward, to avoid relitigating the past or descending into unproductive political posturing. “The question before us is not whether, but how....” He then urged the members to “resist those who try to change the subject or turn our common effort to curb the worst atrocities in human history into a struggle over ideology, geography or economics. What do they offer to the victims of mass violence? Rancor instead of substance, rhetoric instead of policy, despair instead of hope. We can, and must do better.”<sup>16</sup>

Unfortunately, the Secretary General’s admonition went unheeded. A number of delegates raised questions about the legal merits of R2P and the importance of not violating the principles of sovereignty and nonintervention.<sup>17</sup> Typical of many interventions was the speech by Chinese Ambassador Liu Zhenmin, who said that implementation of R2P should not contravene the principle of a state sovereignty. He said, “The international community can provide assistance but the protection of its citizens ultimately depends on the government of the state. This is in keeping with the principle of state sovereignty. Although the world has undergone profound and complex changes, the basic status of the purposes and principles of the UN Charter remains unchanged. There must not be any wavering of the principles of respecting state sovereignty and noninterference of internal affairs.”<sup>18</sup> Pakistan Ambassador Abdullah Hussain Haroon concurred, wondering, “How to address the trust-deficit in the background of historical injustices including foreign occupation? How to agree on the level of threshold requiring R2P?”<sup>19</sup> Indian Ambassador Hardeep Singh Puri noted that while “the World Summit Outcome document...on the issue of responsibility to protect there was a cautious go-ahead,” that “creation of new norms should at the same time completely safeguard against their misuse. In this context, responsibility to protect should in no way provide a pretext for humanitarian intervention of unilateral action.” Ambassador Puri went on to shoehorn into R2P the prerequisite of Security Council reform, India’s perennial quest.<sup>20</sup>

In contrast, Edward Luck, special advisor to the secretary general on R2P, implored the General Assembly, “What we do not need at this point, however, are efforts to turn back the clock, to divide the membership, or to divert attention from our central task. The world is changing. Our thinking needs to evolve with it.”<sup>21</sup> Dr. Luck’s views were reinforced by Gareth Evans, former Australian foreign minister and a leading R2P proponent. He said, “The task now...is not to revisit or renegotiate the 2005 consensus, but to ensure that the responsibility to protect concept is properly and effectively implemented in practice.”<sup>22</sup>

The Interactive Dialogue on R2P ended in a muddle. Despite many expressions of concern for the victims of atrocities and the shared commitment of the proponents of R2P, they remain hesitant to advance it.<sup>23</sup> Some see this as evidence that R2P is stillborn; others take heart that progress is being made on helping build states’ capacities to avoid the R2P prescribed atrocities. In any case, the serious discussion of “early warning systems” continues.

Many take some comfort that in commentaries, at the 2005 World Summit and, rhetorically, at the United Nations, the Responsibility to Protect has gained some traction. Nonetheless, it remains more an aspiration than an accepted assignment. As Pulitzer Prize-winning journalist Samantha Power has written:

In a remarkably short time, influential UN member states went from ignoring mass atrocities altogether to setting up international tribunals to punish them, to accepting that they have a responsibility to prevent or stop them. But despite the fanfare surrounding both events and the sense of promise they engendered, the stark reality is that little has been done to stop the slaughter in Darfur.<sup>24</sup>

### **The Obama Administration and Sudan**

Many people who are concerned about Sudan and feel compassion for the countless victims of unspeakable violence had reason to be encouraged by the election of Barack Obama. The president-elect and many of the key foreign policy leaders in his new administration were very familiar with the issue and had demanded more robust US action to end the carnage in Darfur and to ensure full implementation of the Comprehensive Peace Agreement (CPA).

As Senators, Obama, Joe Biden, and Hillary Clinton had denounced the atrocities in Darfur as genocide and each had supported a no-fly zone in Darfur. Senator Biden, in the vice presidential debate, famously said, “I don’t have the stomach for genocide,” and pledged action in an Obama-Biden administration. As presidential candidates, Obama and Clinton took the unprecedented step of joining with Republican candidate John McCain in issuing a tough statement on Sudan. It read in part:

We stand united and demand that the genocide and violence in Darfur be brought to an end...Today, we wish to make clear to the Sudanese government that on this moral issue of tremendous importance, there is no divide between us. ...It would be a huge mistake for the Khartoum regime to think that it will benefit by running out the clock on the Bush administration. If peace and security for the people of Sudan are not in place when one of us is inaugurated as president on January 20, 2009, we pledge that the next administration will pursue these goals with unstinting resolve.”<sup>25</sup>

Candidate Obama’s senior foreign policy advisor Susan Rice had been the senior Africa person on the Clinton National Security Council (NSC) during the Rwanda genocide. She had gone even further, attacking the Bush administration’s Sudan diplomacy as “feckless,” and calling for military action to stop the Darfur atrocities.<sup>26</sup>

So there was reason to assume that with Barack Obama’s election, the United States would keep the heat on Khartoum, or even raise the temperature, to try to get some meaningful progress in Sudan. I believed that there were good reasons to believe, if robust engagement and real pressure were applied, progress could be made.

In May 2008, the Justice and Equality Movement (JEM) rebel movement made an assault that reached all the way to Omdurman, just across the Nile River from Khartoum. This was the first time since the regime came to power in 1989 that fighting had reached the outskirts of the capital. Quite properly, this alarmed the regime, forcing a reassessment of its vulnerability.

In May 2008, a violent flare-up in Abyei within the contested border areas had been unplanned

and, for a time, unmanageable. This brought home how tenuous the situation is between the North and South.

On July 14, 2008, Chief Prosecutor Luis Moreno Ocampo made a referral to the Pre-Trial Chamber seeking an International Criminal Court (ICC) arrest warrant against Sudan’s President Omar al-Bashir on 10 counts of crimes against humanity, war crimes, and genocide. A decision by the Pre-Trial Chamber was anticipated for early 2009.

The fourth development to focus the regime’s thinking in Khartoum was the election of Barack Obama. The new team, unlike its predecessors, was not exhausted from having waged a seven-year war on terrorism in Afghanistan and Iraq. It had new energy, fresh eyes and, at least rhetorically, it seemed to have an appetite for more muscular and dramatic punitive steps against Khartoum. Unquestionably, the Sudanese regime was concerned about what might come next.

Unfortunately, the Obama administration has squandered its opportunity. Its actions have inadvertently made Khartoum stronger, weakened the principle of no impunity, and mistaken dialogue for progress. Engagement is a tactic, not a strategy.

The day after Scott Gration’s appointment as President Obama’s special envoy to Sudan, on March 4, the International Criminal Court issued a seven-count arrest warrant for Sudan President Omar al-Bashir for war crimes related to Darfur and crimes against humanity including murder, extermination, and rape.<sup>27</sup> The Obama administration was strangely silent. As many had predicted, within days al-Bashir retaliated by announcing the expulsion from Darfur of 13 international humanitarian NGOs that provided the bulk of the assistance that was keeping more than a million internally displaced persons (IDPs) alive. This horrendous act that would put innocent people at even greater risk, increase their suffering, and violate humanitarian practices around the world drew only a mild condemnation from the administration.

Soon thereafter, Special Envoy Gration made his first official trip to Sudan. When he got off the plane in Khartoum he said, “I love Sudan.”<sup>28</sup> On his return from his first trip to Darfur IDP camps he said that the conditions were not as bad as he

had expected to see and that the situation on the ground was not genocide.<sup>29</sup> After a meeting at the headquarters of al-Bashir's National Congress Party in Khartoum, Gration announced, "We have come up with a solution to the humanitarian situation in Darfur. ...And I'm very encouraged to have a new friend...we can do something new and get something better."<sup>30</sup> To anyone who knows Sudan and has worked on its intractable conflicts, the special envoy sounded quite naïve.

Al-Bashir defied the ICC arrest warrant and traveled to Qatar, Ethiopia, Zimbabwe, Libya, and elsewhere in open contempt of the International Criminal Court. There is no public evidence that the United States has attempted to dissuade countries from receiving al-Bashir. In a recent interview al-Bashir announced that the ICC "is a tool to terrorize countries that the West thinks are disobedient"; regarding his travel post-ICC arrest warrant, he stated, "I have not felt (any) restrictions on movement...I have traveled all necessary travels."<sup>31</sup>

In recent months, there have been aerial bombings in Darfur, something only the Sudan Armed Forces have the capacity to inflict. There are indications of Khartoum inciting ethnic violence in Southern Sudan. Parts of the North/South border remain contested, and the humanitarian situation in Darfur remains grave. It is not in Khartoum's interest to have massive starvation and disease killing thousands or tens of thousands of Darfur IDPs. It would create greater unrest in the camps, greater instability in Darfur, and ignite a strong international response. So, of course, after kicking out troublesome humanitarian NGOs and coldly using endangered Darfuris as political pawns, Khartoum let some NGOs back in. That always was going to happen. But, nonetheless, conditions for IDPs are more desperate today than they were when President Obama took office. Less aid is flowing to the victims in Darfur and the humanitarian assistance is more tightly under Khartoum's control. Furthermore, the precedent has been set to allow the Sudan government to use humanitarian aid as a bargaining chip in its game of power politics. When I ponder this crisis, I recall the words of one old Sudan hand who said, "You ask me how Khartoum can do these terrible things to their own people. These are not 'their people.'"

Alarmed by these developments, on June 29, 2009, Senator Russ Feingold, chairman of the

Subcommittee on African Affairs, and six other senators sent a letter to President Obama expressing their deep concerns about the administration's early steps on Sudan. It reads in part:

We write to express concern with what appear to be several of the core underpinnings of your administration's approach... While we are not opposed to exploring (of national engagement with the government of Sudan) in return for concrete progress by the government on a number of fronts, it is critical to recall that Khartoum has proven repeatedly to be an untrustworthy negotiating partner. Any attempt at engagement, we believe, must be combined with clear benchmarks and a timeline to hold the government accountable. We cannot afford to allow Khartoum's historic foot-dragging and manipulation to continue. As it does millions continue to suffer terribly. Nor should we abandon the principle of no impunity for alleged genocidal crimes. We believe that any renewed diplomatic efforts should be backed by concerted pressure and demonstrated US readiness to adopt punitive actions.<sup>32</sup>

## Why Has the World's Response Been Anemic?

After many years of severe suffering, international public outrage, and governments' expressions of concern, the tragic events in Sudan continue. Why? Why hasn't the international community accepted a Responsibility to Protect and acted to end what is arguably the world's most tragic humanitarian crisis?

1. The problems in Sudan are complex. Its ethnic and religious diversity, the history of marginalization, the patterns of power and privilege, and the habits of violence all contribute to the cauldron of conflict. There are a multitude of bad actors on all sides of every dispute. Atrocities in Darfur are being committed against innocent Darfuris and humanitarian workers. In Sudan, there is neither a history, heritage, nor habit of adjudicating disputes peacefully under the rule of law. A Sudan expert said to me not long ago, "We might consider what's going on in Sudan ethnic cleansing or worse; but Khartoum considers the current situation as peace. This is as good as it gets." So the underlying causes are complex, the consequences bewildering, the

cruelty unimaginable, and the tolerance for such a terrible terrain incomprehensible. Despite all the attention to Darfur's "genocide in slow motion" and the broad citizen movement to save Darfur, in a very real sense, the conflicts of Sudan remain in a land far away and little understood.

2. Since the Sudan situation is complex and there are so many bad actors, there is no simple solution. In this sense, Sudan's conflicts are not unique. However, with the lack of an easily identifiable path forward there is great uncertainty and the costs of action are higher. Therefore, there is a temptation to pontificate instead of perform. Sadly, this is a temptation to which governments have too readily succumbed.
3. To some extent the world is defined by the tragedy of the 9/11 attacks and the struggle between open societies and Islamic extremism. Conflicts continue in Iraq and Afghanistan. The simultaneous efforts to reach out to the Muslim mainstream and to crowd out extremism have created a deep reluctance to take decisive steps against an Islamic regime in Khartoum.
4. While America and our close friends and allies have a genuine humanitarian concern for the suffering Sudanese, the West does not see a vital strategic stake in Sudan. The country does have minerals, some oil, and, in the south, rich farmland. But neither the United States nor Europe depends upon Sudan's resources nor envision becoming reliant upon them. Sudan was host to Osama bin Laden in the 1990s and a state sponsor of terror. The conflicts in Sudan bleed into its nine neighbors and exacerbate regional instability. Sudan's turmoil could degenerate into the creation of a failed state. These are concerns but, at least at this time, they are not considered serious enough in Western capitals to constitute making the Sudan situation a vital interest. So, unfortunately, we remain concerned about the humanitarian plight, but not concerned enough to take meaningful action.
5. The government of Sudan is smart, patient, and believes that time is on its side. The regime came to power in a 1989 coup d'état. It has survived for a long time in a tough neighborhood and takes advantage of the international community's preference for engagement over confrontation. So it talks, has dialogues, welcomes envoys. It buys time, recognizing that foreigners' attention span is short, that crises elsewhere in the world will crowd the agenda, and attention will wander. Engagement, dialogue, talks, and negotiations are a process not a product, but for international diplomats who have been trained to be diplomatic, that too often is enough. Khartoum understands and exploits this inclination, playing feckless envoys like a violin while ruthlessly pursuing what is required to retain its position, privilege, and power.
6. Khartoum's international interlocutors, including the litany of US envoys, are constantly passing through a revolving door. Each new official needs time to ramp up substantially and procedurally. With each envoy, Khartoum can restart its diplomatic minuet, recycle old tricks, and gain space and buy time for itself as the agony of the innocent continues.
7. In global diplomacy and especially within the United Nations, including on the UN Security Council, there is a tendency for group solidarity, whether the group is defined by geography (i.e. European Union, the African Union) or ideological identity (i.e. the Non-Aligned Movement, the Organization of Islamic States). This provides countries a larger base from which to protect their interests and assert their power. Naturally, the less rich, less powerful, and less consequential a country is the more they value such allegiance. The United States, for example, views NATO as an essential alliance even if it requires recalibration or even submergence of certain preferences. Others, especially the less strong, act similarly. The government of Sudan exploits the gravitational pull of the African Union, the Organization of Islamic States, and other bodies to protect it and increase the cost of action against it. This can prove, and in the case of Darfur has proven, a major impediment to action by the international community.
8. China, and to a lesser extent Russia, have proven relatively reliable defenders of Sudan in the UN Security Council. China receives 6 percent of its imported oil from Sudan. Russia sells arms to the Sudan government. Both have resisted UNSC robust action on Sudan. This is consistent with my own experience with the United Nations, going back more than 25 years to my first ambassadorship. If any of the

five veto-wielding permanent members of the UN Security Council have a deep bilateral interest in a conflict for whatever reason, it is difficult, if not impossible, for the Security Council to take strong action. This is a well-recognized dynamic that has bedeviled champions of UN reform and will continue to do so.

9. France has a deep interest in Sudan's neighbor Chad, a former French colony with some oil and an ally that has vast areas of uninhabited desert land. France conducts many of its large scale military training exercises in Chad. There is no question that French foreign policy has a humanitarian impulse and its government has an expressed policy of helping the suffering Darfuris. But as the Darfur conflict has bled into Chad and destabilized its government, France's interests and policies are two tracked and sometimes in conflict. As the president's special envoy to Sudan, I found my French compatriots to be intelligent, dedicated, and reliable. Nonetheless, their conflicting priorities were evident from time to time.
10. The media's and the public's attention span is short. The Sudan North/South conflict began over 50 years ago and the CPA was signed in 2005. The latest Darfur conflict began in 2003. Time has passed. The story has been told. Events there seem less urgent as the humanitarian crisis continues. Lacking new dramatic twists or turns, unfortunately, the media lose interest. And while there is a broad, committed activist community focused on Sudan, and especially Darfur, the broader support among the general public has waned as its attention is drawn to the economic crisis and other pressing matters at home. It's a pity. I believe the broader community could be reengaged and reenergized by a skillful political leader such as President Obama but, alas, so far an inclination for such renewed activism seems absent.
11. There is no charismatic leader to rally either Southern Sudan or the movements in Darfur. After years of fighting, political wheeling and dealing, and other intrigue, John Garang emerged as the leader of the rebels of Southern Sudan. Garang had a big personality, a large vision, and a drive to lead. He proved a valuable rallying point for the southerners, an effective interlocutor with the international community and Khartoum, and a compelling symbol of a better future. Tragically, not long after the CPA signing, Garang died in a helicopter crash. His vice president Salva Kiir took his place. I learned to like and respect Salva. He is shrewd, clever, and deeply committed to a better future for his people. I've seen him take courageous steps, putting his own political interests at risk to do what he believed was right for his people—a rare quality for any politician, especially those in perilous situations such as Sudan. But, unfortunately, Salva does not have a big, charismatic personality. Although there are some clever leaders amongst the rebel movements and some smart and decent voices in civil society, none have emerged as transcendent figures to unify others and to speak authoritatively for their people. This makes it difficult to negotiate, hard to maintain international interest, and challenging to gain compromise. In Darfur, trying to talk with the rebel movements can be like herding cats.
12. Humanitarian intervention has a troubling past. Whether it is the failure to act in Rwanda or the use of force in Bosnia or Kosovo, there is a deep division about the morality, efficacy, and consequences of humanitarian intervention. Some in the humanitarian community ask whether intervention unavoidably means taking sides in a dispute, is therefore political, and contrary to the necessity of humanitarian neutrality. Realists worry about using armed forces as international social workers. Meanwhile skeptics and realists ask if, despite presumptions against intervention, ethnic cleansing and genocide offend our collective conscience sufficiently to compel action. And having intervened, can the cure be worse than the disease? Interventions are complicated, messy and, invariably have unforeseen consequences. Moreover, the likely post-intervention requirement for some degree of nation building is costly, difficult, time-consuming, and very controversial. Despite the best of intentions from Bosnia to Kosovo, and Iraq to Afghanistan, the recent record of nation building is incomplete and troubling.
13. Rallying the international community around difficult problems requires strong, sustained, steady American leadership. The United States remains the sole global power able to mobilize

other countries to act. The ongoing challenges in Iraq and in Afghanistan/Pakistan have pre-occupied the United States. These two conflicts are stretching American resources, taxing Americans' patience, and crowding out the capacity to fully engage other legitimate claimants on America's attention, leadership, and resources.

14. The situation in Sudan is dire. Those who dismiss it or downplay the humanitarian crisis, especially in Darfur, as "less than expected" are simply wrong. The consequences of opening the Gates of Hell continue to exact a horrifying price. The genocide in slow motion grinds on, but it is less acute than it has been. I see little reason to attribute the current situation less to any change of heart than to fewer targets of opportunity. Nonetheless, with a less acute situation some argue that the moral imperative for decisive action is gone. The moment has passed. Oops, we never got around to stopping these atrocities but the crisis is running out of steam. Better luck next time.
15. The international community, some argue, did not turn its eyes from the Darfur genocide as it did in Rwanda. The international community did support the African Union (AU) peacekeepers deployed to Darfur beginning in 2004, especially the most generous donor, the United States, which spent over \$400 million to build camps for the AU forces in Darfur. In 2007, the UNSC authorized African Union/United Nations Mission in Darfur (UNAMID), a joint UN/African Union peacekeeping force 27,000 strong for Darfur. The UN Security Council authorizing resolution even referred to the "responsibility to protect." True, but this was hardly dispositive of the international community's responsibilities. The African Union peacekeeping force was small and authorized to observe and report on atrocities, not to try stopping them. UNAMID itself has been plagued by a plethora of problems, among which are its hybrid nature, too much power ceded to Khartoum, slow deployment, and the enormous size of Darfur. Nonetheless, these peacekeeping missions are merely a fig leaf for those wishing to point to their concern and their actions, but who lack the will or the means to stop Darfur's genocide in slow motion.

16. The Responsibility to Protect is an impulse, an abstract aspiration, not a requirement. Of course, the list of complications and challenges to progress goes on. But these are the major impediments, and many of them are illustrative of the kinds of issues that will challenge R2P implementation elsewhere going forward.

### The Way Forward

Yes, engage, but negotiate from strength, not feckless weakness. Lean forward with backbone and resolve; don't offer a compliant capitulation that accommodates the architects of the death, destruction, and deep despair. Be prepared to take action if necessary. There are steps to take, short of American boots on the ground as advocated by some Obama advisors during the campaign. Dialogue is a tactic, not a destination.

Be pragmatic, practical, and persistent, but not so patient that the merchants of murder and misery feel no urgency to transform the tragic terrain of terror. Recognize that justice and accountability are vital to mend societies that have been traumatized by atrocities, violence, and ethnic exploitation.<sup>33</sup>

The implications of the situation in Southern Sudan and Darfur's genocide in slow motion can give no comfort either to those who believe in the consequential emerging R2P norm or to those who are dedicated to human rights. It would be wrong to dismiss Sudan's problems as of little relevance to R2P because the conflicts began before the 2005 World Summit or because Sudan is so complex and seemingly intractable. The international community's chronic failure to meet any Responsibility to Protect in Sudan undermines the R2P framework and challenges its efficacy going forward. International support for, and contributions to, "capacity building" to avoid genocide, war crimes, ethnic cleansing, and crimes against humanity can be very important. But that aspect of R2P is less consequential than accepting and acting upon the responsibility to respond in a "timely and decisive manner," to actually protect innocents where national authorities are "manifestly failing" to protect—and may be the architects of the terror. If R2P is principally just another development program from donor countries to recipients, it may prove somewhat worthwhile, but it will be little comfort to voice-



less victims, lack moral clarity and commitment, and certainly fail to imbue our collective pledge of “Never Again!” with any meaning.

Our ongoing failures in Sudan should be a wake-up call for advocates of R2P and deeply discouraging to those committed to human rights. In Sudan the moral bell has been rung, the emerging R2P aspiration has been rhetorically embraced, but the agony goes on.

## Endnotes

<sup>1</sup> A/60/6, September 20, 2005; para. 138.

<sup>2</sup> Ibid., paras. 138 and 139.

<sup>3</sup> A/RES/60/1, October 24, 2005.

<sup>4</sup> S/RES/1674, April 28, 2006, para. 4.

<sup>5</sup> Francis M. Deng, et al., *Sovereignty as Responsibility: Conflict Management in Africa* (Washington, D.C.; The Brookings Institute; 1996).

<sup>6</sup> See, generally, Kwesi Aning and Samuel Atuobi, “Responsibility to Protect in Africa: An Analysis of the African Union’s Peace and Security Architecture,” *Global Responsibility to Protect*, Volume 1 (2009), 90-113,

While this article reviews the African Union’s provisions that allow AU intervention to prevent crime against humanity in the AU’s Constitutive Act (2000) and the Ezulwini Consensus (2005) (“The Common African Position on the Proposed Reform of the United Nations,” AU document Ext/EX.CL/2 (VIII)) it also declares: “However, the AU’s response to current security challenges in Darfur in Sudan, Somalia and Zimbabwe, and especially its reaction to the ICC’s application for an arrest warrant to be issued against President Al Bashir, does not reflect a clear commitment to the responsibility to protect in practice.” (p. 92)

<sup>7</sup> International Commission on Intervention and State Sovereignty by the high-level panel on Threats, Challenges and Change, *The R2P* (2001), text available at <http://www.iciss-ciise.gc.ca/>.

<sup>8</sup> Secretary-General’s High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, UN

Doc. A/59/565, text available at <http://www.un.org/secureworld>.

<sup>9</sup> UN Secretary-General, *In Larger Freedom: Towards Security, Development and Human Rights for All*, UN Doc. A/59/2005, text available at <http://www.un.org/largerfreedom/>.

<sup>10</sup> Congressional Task Force on the United Nations.

<sup>11</sup> UNGA/Res 60/1/2005.

<sup>12</sup> UNSC/Res 1674 (2006).

<sup>13</sup> See, generally, Joseph E. Persico, *Nuremberg: Infamy on Trial* (New York: Random House, 1994).

<sup>14</sup> See, generally, Timothy P. Maga, *Judgment at Tokyo: The Japanese War Crimes Trials* (Lexington, KY: University Press of Kentucky; 2001), and Arnold C. Brackman, *The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials* (New York: Morrow; 1987).

<sup>15</sup> President of the 63rd Session, UN General Assembly, Rev. Miquel D’Escoto Brockman, Remarks at the Opening of the Thematic Dialogue of the General Assembly on the Responsibility to Protect, UN Headquarters, New York, July 23, 2009. Note: a number took exception to this approach. For example, “William Pace, executive director of the World Federalist Movement’s Institute for Global Policy said D’Escoto’s views are a ‘political misuse of the GA presidency’ since they contradicted the General Assembly’s 2005 endorsement of the responsibility to protect doctrine. ‘It is not a synonym for military intervention,’ Pace added.” John Heilprin, “UN Debate on Genocide Asks: Protect or Intervene?” *Associated Press*, July 21, 2009.

<sup>16</sup> Secretary General Ban Ki moon, Remarks to the General Assembly on the Responsibility to Protect, UN General Assembly, UN Headquarters, New York, July 21, 2009.

<sup>17</sup> See generally, “Delegates Weigh Legal Merits of Responsibility To Protect Concept as General Assembly Concludes Debate,” GA/10850, July 28, 2009.

- <sup>18</sup> “Chinese Diplomat: Implementing ‘Responsibility to Protect’ Must Not Contravene State Sovereignty,” *Xinhuanet*, July 24, 2009.
- <sup>19</sup> Ambassador Abdullah Hussain Haroon, Permanent Representative of Pakistan, statement on Responsibility to Protect Populations from Genocide, War Crimes, Ethnic Cleansing and Crimes Against Humanity, UN Headquarters, New York, July 24, 2009.
- <sup>20</sup> Ambassador Hardeep Singh Puri, Permanent Representative of India, Statement at the General Assembly Plenary Meeting on Implementing the Responsibility to Protect, UN Headquarters, New York, July 24, 2009.
- <sup>21</sup> Edward C. Luck, Special Advisor to the Secretary General Remarks to the General Assembly on the Responsibility to Protect, UN Headquarters, New York, July 23, 2009.
- <sup>22</sup> Honorable Gareth Evans, Statement to UNGA Informal Interactive Dialogue on the Responsibility to Protect, UN Headquarters, New York, July 23, 2009.
- <sup>23</sup> See, for example, Neil MacFarquhar, “When to Step In To Stop War Crimes Causes Fissures,” *New York Times*, July 23, 2009; and Joe Lauria, “U.S. Backs Implementing U.N. Doctrine Against Genocide,” *Wall Street Journal*, July 30, 2009.
- <sup>24</sup> Samantha Power, Forward, in Richard H. Cooper and Juliette Voinov Kohler, eds. *Responsibility to Protect: The Global Moral Compact for the 21st Century* (New York: Palgrave Macmillan; 2009), p. viii.
- <sup>25</sup> The Save Darfur Coalition paid for an advertisement reprinting the entire statement in *The New York Times* on May 28, 2008. The idea for the joint statement had been mine. As President Bush’s special envoy to Sudan I was concerned Khartoum would not negotiate for humanitarian relief and peace in Darfur because soon President Bush would be out of office. All three campaigns readily agreed to the proposition and the final language quickly was brokered and the statement issued.
- <sup>26</sup> See, Susan E. Rice, statement, “Dithering on Darfur: U.S. Inaction in the Face of Genocide,” Before the Foreign Relations Committee, United States Senate, Washington, D.C., April 11, 2007, and Susan E. Rice, statement, “The Escalating Crisis in Darfur,” Before the Foreign Affairs Committee, US Congress, Washington, D.C., February 8, 2007, see also, Susan E. Rice, Anthony Lake and Donald M. Payne, “We Saved Europeans, Why Not Africans?” *Washington Post*, October 2, 2006. Also, note Ambassador Rice’s quite moving, personal, and powerful remarks about the Rwandan genocide and the need to prevent future mass killings. She said in part, “In the early days of this new century, we must work together to apply the lessons of the last century’s bitter succession of genocides. We must work together to mete out justice to the perpetrators. We must work together to build up the capacity of every nation of the world to respond surely and swiftly to mass slaughter. We must develop a collective will to respond when tragedies occur. And we must work together to prevent conflict before an ember becomes a blaze.” Ambassador Susan Rice, Remarks, Remembering the Rwandan Genocide, at the UN Genocide Remembrance, April 7, 2009.
- <sup>27</sup> See, International Criminal Court, “ICC Issues a Warrant of Arrest for Omar al-Bashir, President of Sudan,” March 4, 2009.
- <sup>28</sup> Scott Gration, Special Envoy to Sudan, Remarks After the First Meeting With the Government of Sudan In Khartoum at the Sudanese Ministry of Foreign Affairs, Khartoum, Sudan, April 2, 2009. Available at US Department of State, <http://state.gov/s/Sudan/rem/123642.htm>.
- <sup>29</sup> Colum Lynch, “Sudan’s ‘Coordinated’ Genocide in Darfur Is Over, U.S. Envoy Says,” *Washington Post*, June 18, 2009. However, on July 11, 2009, in a speech to the Ghanaian Parliament at the Accra International Conference Center in Accra, Ghana, President Obama said, “when there’s a genocide in Darfur or terrorists in Somalia, these are not simply African problems—they are global security challenges, and they demand a global response.”

- <sup>30</sup> The US Special Envoy to Sudan General Scott Gration's Remarks after meeting at the Headquarters of the National Congress Party in Khartoum, Sudan, April 8, 2009, Embassy of the United States of America, Khartoum, Sudan.
- <sup>31</sup> Sam Dealey, "Omar al-Bashir: Sudan's Wanted Man," *Time Magazine*, August 13, 2009.
- <sup>32</sup> In addition to Senator Feingold, other signatories of the letter to President Obama included Senators Harry Reid, Joe Lieberman, Bill Nelson, John McCain, Johnny Isakson, and Sam Brownback.
- <sup>33</sup> See an excellent new publication, *Selling Justice Short—Why Accountability Matters for Peace*, Human Rights Watch, July, 2009. See also, Eric Reeves, "Darfur and International Justice," *Dissent*, Summer, 2009.

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