



**THE IMPUNITY OF GROSS HUMAN RIGHTS VIOLATIONS IN  
CONFLICT ZONES: A CASE FOR THE RESPONSIBILITY TO  
PROTECT IN DARFUR**

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## EXECUTIVE SUMMARY

This paper emphasizes the need for the responsibility to protect (R2P) in Darfur which has been an issue at the international scene for too long. Since 2003 when the rebels took up arms against the oppressive Sudanese government the degree and gravity of the human rights violations committed in Darfur are unthinkable, but surprisingly the violations persist with impunity.

Being a product of desk research, this paper addresses the central research question of whether the concept of R2P has been able to protect the civilian population in Darfur. In doing this, it looks at: the extent to which both national and international responses to the Darfur crisis helped to increase or decrease the impunity of these gross human rights violations in Darfur, how the notion of absolute state sovereignty shapes the international responses made to the Darfur crisis, the transformation of the meaning of sovereignty and the problem of selectivity of international intervention in crisis situations.

In finding the international community's failure to adequately protect the civilian population in Darfur, this paper argues that the failure has rendered the concept of R2P a mere rhetoric, especially as the violations and impunity persist. This paper revisits the highly debatable concepts of state sovereignty, humanitarian intervention and the R2P. It then makes a case for the responsible to protect in Darfur while covering and exposing Darfur, the conflict, the human rights violations, the impunity of these violations, the responses made by the international community to the Darfur conflict, and the need for the responsibility to protect in Darfur.

In considering the way forward in Darfur, this paper makes suggestions such as; a comprehensive and inclusive peace agreement, achieving justice via domestic and

international accountability, and the importance of a common understanding and support for the concept of R2P.

## LIST OF ABBREVIATIONS

AMIS	African Union Mission in Sudan
A.U	African Union
AUPSC	African Union Peace and Security Protocol
BBC	British Broadcasting Channel
CPA	Comprehensive Peace Agreement
DPA	Darfur Peace Agreement
ECOWAS	Economic Community of West African States
ESPAC	European Sudanese Public Affairs Council
E.U	European Union
GoS	Government of Sudan
ICC	International Criminal Court
ICG	International Crisis Group
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICTFY	International Criminal Tribunal for Former Yugoslavia
INC	Interim National Constitution
JEM	Justice and Equality Movement
NATO	North Atlantic Treaty Organisation
NCI	National Commission of Inquiry
NGO	Non-governmental Organization
NIF	National Islamic Front
OAU	Organization of African Unity
OHCHR	Office of the High Commissioner of Human Rights
PSC	Peace and Security Council
PTC	Pre-Trial Chamber
R2P	Responsibility to Protect
SAPGMA	Special Advisor on the Prevention of Genocide and Mass Atrocities
SCCED	Special Criminal Courts for the Events in Darfur
SPLM/A	Sudan's People's Liberation Movement/Army
SLA	Sudan Liberation Army
U.N	United Nations
UNCOI	United Nations Commission on Inquiry
UNGA	United Nations General Assembly
UNITAF	United Task Force
UNMIS	U.N Mission to Sudan
UNOSOM	U.N Operation in Somalia
UNPROFOR	U.N Protection Force
UNSC	U.N Security Council
U.K	United Kingdom
U.S	United States
WFM	World Federalist Movement.
WSOD	World Submit Outcome Document

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## INTRODUCTION

The Darfur crisis has been an issue of international concern for too long. Serious human rights violations have been committed with impunity and this calls for an international responsibility to protect. In February 2003, the Sudan Liberation Army (SLA) in Darfur took up arms against the Government of Sudan (GoS) with the aim of putting an end to the decades of oppression.<sup>1</sup> The government responded by using the *Janjaweed*<sup>2</sup> militia, which resulted in gross violations of international law. Despite the fact that the Darfur crisis has been termed the worst humanitarian crisis facing the world<sup>3</sup>, these violations still remain unpunished.

The specialized courts of Sudan were established in 2003. In 2004, the President of Sudan set up a National Commission of Inquiry (NCI) to investigate the human rights violations committed during the Darfur conflict. These courts are criticized for falling short of the international standards of substantive and procedural due process guarantees, mean while the NCI has a limited and selective mandate. The International Criminal Court (ICC) has also responded to this impunity by indicting and issuing a warrant of arrest to some of the key perpetrators of the human rights violations in Darfur. The Darfur crisis became more complex and problematic in March 2009 with the indictment and issuing of an arrest warrant by ICC to the President of Sudan, Al Bashir. Currently, none of the arrest warrants have been executed.<sup>4</sup>

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<sup>1</sup> Authors such as Douglas Johnson argue that the conflict actually began in 1999, during the Masaalit uprising that led to the death of 2000 civilians, displacing 100,000 with over 400,000 seeking refuge in Chad. (See Douglas Johnson, the "Root Causes of Sudan's Civil Wars" P.140-141)

<sup>2</sup> This is a militia that is composed mainly of Arab fighters. The term has been interpreted to mean devils on horse back.

<sup>3</sup> This was a statement by Ian Egeland, the UN Humanitarian Affairs and Emergency Relief Coordinator. Available at <http://www.un.org/apps/news/storyAr.asp?NewsID=9094&Cr=sudan&Cr1>

<sup>4</sup> That is, as of October 2009.

One does not need to be told that the United Nations (UN) has accepted that the Darfur crisis is a challenge since this can be seen from the numerous UN Security Council (UNSC) resolutions between 2004 and 2008 relating to issues such as: the mandate of the UN Mission to Sudan (UNMIS), considering the GoS as a threat to international Peace and Security, human rights monitoring, the mandate of the International Commission of Inquiry on Darfur and referring the Darfur case to the ICC. The current UN Secretary General (Ban Ki Moon) and the former (Kofi Annan) see the Darfur crisis as the recent test to the international community after the Rwanda and Srebrenica genocides.<sup>5</sup>

The African Union (AU) acknowledges the Darfur crisis as a threat to peace and stability in the region. AU Constitutive Act states in article 4(h) that the gravest threats to regional peace are genocides, war crimes and crimes against humanity. The European Union and most independent states have recognized the Darfur crisis as an international concern.<sup>6</sup> Humanitarian agencies operating in and out of Darfur accept that the conflict is not only a threat to their staff members but also to the vulnerable population<sup>7</sup>.

What remains to be understood is the fact that the civilian population keeps suffering from gross human rights violations in Darfur when the international community endorsed the concept of Responsibility to Protect (R2P) in the World Summit Outcome Document (WSOD) in 2005, which reaffirmed the pledge of the international community to protect

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<sup>5</sup> This is from the statement of the UN Secretary General during the 10<sup>th</sup> Anniversary of the Rwanda Genocide. Available at <http://www.un.org/apps/news/story.asp?NewsID=10075&Cr=rwanda&Cr1>

<sup>6</sup> See Asle Toje “The consensus expectation Gap: Explaining Europe’s ineffective foreign policy” *Security Violence*, Vol. 39, No 1, Feb 2008, P 135

<sup>7</sup> The GoS has deliberately targeted human rights defenders and other humanitarian agencies operating in Darfur and the Sudanese Humanitarian Aid Commission (HAC) said that the NGOs expulsion in Darfur after the issuance of an arrest warrant to Al Bashir will not be reconsidered. Organisations like Human Rights Watch, International Crisis Group and Sudan Watch have strongly criticized this action.



civilian population during conflict. The AU further domesticated this pledge with the adoption of the Ezulwini Consensus<sup>8</sup> of the R2P WSOD.

Since the R2P reconceptualizes the notion of sovereignty to include not only a right but also a responsibility, the GoS is responsible to protect the civilians in Darfur. Where it proved unable or unwilling to protect its citizens, especially as the impunity of the violations persists, the international community has a responsibility to assist and even use military force as a last resort acting via UNSC authorization.

Meanwhile, the Government of Sudan has failed in its responsibility to protect coupled with the humanitarian aid and the AU deployment of peacekeepers. The imposition of travel bans to some top officials of the Sudanese Government has not been helpful, let alone the inability of the UNSC referral of the Darfur case to the ICC to end the impunity of human rights violations committed in Darfur. Therefore, a case for the R2P in Darfur needs to be emphasized.

This paper proceeds with the assertion that the international community's failure to adequately protect the civilian population against the gross human rights violations in Darfur has rendered the concept of "responsibility to protect" a mere rhetoric, especially as the violations and impunity persist.

This thesis seeks to address the central research question of whether the concept of R2P has been able to adequately protect the civilian population in Darfur. By doing this it attempts answers to the following sub-research questions:

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<sup>8</sup> The African Union deliberated on the Report of the High-Level Panel on Threats, Challenges and Change, and adopted a Common African Position, called "The Ezulwini Consensus" in Swaziland.

- 1) To what extent have the responses made so far to the Darfur crisis helped in increasing or decreasing the impunity of gross human rights violations in Darfur?
- 2) Has the doctrine of State Sovereignty contributed in shaping the international responses to the Darfur Crisis?
- 3) In relation to the protection of gross human rights violations, has the principle of state sovereignty really taken a new approach with the shift from humanitarian intervention to the concept of responsibility to protect?
- 4) From the present experience in Darfur, can it be said that the international community is more concerned with protecting the occurrence of gross human rights violations on a selective basis, or the challenge is more at the level of implementation?

This research work is carried out because it is reasonable that the impunity of these undeniable human rights violations tend to encourage further human rights violations in Darfur. Also, there is a need to contribute to the long-standing debate on the core concepts<sup>9</sup> of this research that have been subjected to conflicting literature. I also aimed at throwing more clarity to the concept of R2P.

The scope of this research work is limited on desk research, and considering that it revisits theoretical norms such as humanitarian intervention, state sovereignty and responsibility to protect which have benefited from abundant research, it synthesizes these theories in a more concise way. One of the limitations of this work is that in looking at the responses made to the Darfur conflict, this paper is selective and will not cover all of the responses made. Also it cannot be said that Darfur has achieved stability, so as an

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<sup>9</sup> These are Humanitarian intervention, State Sovereignty, and Responsibility to Protect.

ongoing crisis that limits some of the arguments put forth in this research work to the current situation

The methodology adopted by this research is based on desk research and also benefited from discussion with some friends working in Sudan and Darfur as U.N Volunteer<sup>10</sup> even though their views are not used as authorities but simply helped in my personal reflection and analysis. This paper reviews and analyzes the available literature in the field. While others have argued for humanitarian intervention in Darfur and responsibility to protect in Darfur based on the understanding of R2P in the ICISS Report and because of the human rights violations committed, this paper argues for the responsibility to protect in Darfur because of the impunity of these gross human rights violations, while understanding R2P as what came up in the WSOD.

Considering that the Darfur crisis has been an issue of international concern for too long, this research area has benefit from enormous literature. The literature ranges from issues relating to state sovereignty, humanitarian intervention and R2P.

Nsongurua J. Udombana argues that the response of the Sudanese government and the government-backed ethnic militias by using military action to counter the insurgency by rebels in Darfur have committed grave international crimes: genocide, ethnic cleansing, war crimes, and crimes against humanity in Darfur that warrants humanitarian military intervention. Furthermore, he strongly denounces the neutrality position taken by the international community saying that it's advantageous to the perpetrators and not the victims.<sup>11</sup>

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<sup>10</sup> Zee Mafor Achu Samba, Human Rights Officer of the Capacity Building Section. (UNAMID-G21), and Nelson Kasigaire. Ugandan Diplomat working with the Ugandan Foreign Ministry in Sudan.

<sup>11</sup> See Nsongurua J. Udombana, "When Neutrality is a Sin: The Darfur Crisis and the Crisis of Humanitarian Intervention in Sudan", *Human Rights Quarterly*, vol.27 No.4, 2005, P. 1151

Alex Bellamy argues that the norms of humanitarian intervention have changed in two subtle ways: that while the norm maintains its strength, the credibility of the U.S and U.K as “norm carriers” have been significantly undermined. Further, the notion of responsibility to protect that has been adopted to enhance international activism has given room for anti interventionist arguments.<sup>12</sup>

To this regard, Alton Frye observes that the U.S approach to humanitarian intervention has not only been *ad hoc* but has also been inconsistent. U.S intervened in Kosovo and Somalia, and not Haiti, Rwanda, Sierra Leone, or Sudan. He argues that this is understandable because U.S cannot and should not stand ready to intervene to correct every wrong and that it will not succeed if it tries.<sup>13</sup>

Thomas Weiss combines the theory and practice of humanitarian intervention in his attempt to address the question of whether “we are at the dawn of a new normative era but of the bullish days of humanitarian intervention”.<sup>14</sup> Still in this light, Francis Kofi attempts to establish a legitimate basis for humanitarian intervention by examining how the doctrine and practice of humanitarian intervention have evolved and thrown light on future practice.

Also, William and Bellamy propose three main factors as reasons for the international community’s non-intervention to the crisis in Darfur.<sup>15</sup> While Darren Brunk recognized the current humanitarian and human rights crisis in Darfur, he examines how the Rwanda

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<sup>12</sup> See Alex J. Bellamy “Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq”, *ethics & international Affairs*, Vol. 19, issue 2, Carnegie Council on ethics & International affairs (CCEIA) 2005, P. 31-54.

<sup>13</sup> See Alton Frye, HUMANITARIAN INTERVENTION, CRAFTING A WORKABLE DOCTRINE, A Council Policy Initiative, *Council on Foreign Relations*, Inc, 2000, P. 1-2.

<sup>14</sup> Thomas Weiss “HUMANITARIAN INTERVENTION: IDEAS IN ACTION” Cambridge Polity Press, 2007. See the book review at *Journal of Military Ethics* Vol.7, No 1, P 76.

<sup>15</sup> See Asle Toje “The Consensus Expectation Gap: Explaining Europe’s Ineffective Foreign Policy” *Security Violence*, Vol. 39, No 1, Feb 2008 page 136.

genocide in 1994 must have influenced the international community's awareness and perception of the Darfur Crisis and how it has influenced the policy debate on the Darfur crisis in establishing the presence of genocide in Darfur.<sup>16</sup>

In addition, Emma McClean looks at the potentials of the doctrine of the Responsibility to Protect as it acquires backing from the UN member states at the 2005 World Summit. As a UN framework to deal with genocide, war crimes, ethnic cleansing and crimes against humanity, she argues that, for the doctrine to be properly applied, a number of the normative, institutional and operational challenges must be overcome, and human rights law has an indispensable role in strengthening the doctrine of responsibility to protect.<sup>17</sup>

Gareth Evans looks at the rapid initial emergence and acceptance of the concept of Responsibility to Protect and addresses some of the misunderstanding and misapprehension associated with the public debate on the issue.<sup>18</sup> Wiktor Osiatynski points out that the central question posed in the R2P document and which is also central to the 2005 WSOD of "what do we do?" and "who should lead such intervention" remains unanswered.<sup>19</sup>

On the other hand, Kenneth A. Rodman argues that international criminal justice cannot serve as a deterrent factor to violence during war because international tribunals cannot deter criminal violence when states and international institutions lack the volition to take actions against perpetrators. He thinks it is more feasible to end impunity in an ongoing

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<sup>16</sup> See Darren Brunk, "Dissecting Darfur: Anatomy of a Genocide Debate", *International Relations* Vol. 22, No 1, March 2008, P. 25-44.

<sup>17</sup> See Emma McClean "The Responsibility to Protect: The Role of International Human Rights Law" *Journal of Conflict Security Law*, Vol. 13, No 1, Spring 2008, P. 123-152.

<sup>18</sup> Gareth Evans, "The Responsibility to Protect: An Idea Whose Time Has Come...and Gone?" *International Relations*, 2008, 22; 283.

<sup>19</sup> See Wiktor Osiatynski "Human Rights and Their Limits" *Cambridge University Press*, 2009, P.54.

conflict by political strategies of diplomacy, coercion or force rather than by legal deterrence.<sup>20</sup> This paper does not agree with him completely because just initiating international criminal proceeding might equally have a deterrent effect to the commission of human rights violations during conflicts situations whether being successful or not.

This paper revisits the concepts of Humanitarian Intervention, State Sovereignty and Responsibility to Protect. Humanitarian intervention has been defined either broadly or narrowly. Holzgrefe defines it as “the threat or use of force across state borders by a states (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied.”<sup>21</sup> Adam Roberts says it is the coercive action by one or more states involving the use of force to prevent widespread suffering or death without the consent of the state that is subject to the intervention<sup>22</sup>. Ian Brownlie defines it more broadly as the “threat or use of armed force by state, a belligerent community or an international organisation for human rights protection purposes”.<sup>23</sup> For the sake of this paper, humanitarian intervention is understood more broadly.

While the concept of State Sovereignty can be said to be at the center of customarily international law and the U.N Charter, it is seen that there is little neutral ground when it

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<sup>20</sup> See Kenneth A Rodman “Darfur and The Limits of Legal Deterrence” *Human Rights Quarterly*, vol. 30, 2008, P. 529.

<sup>21</sup> See J.L Holzgrefe “ The Humanitarian Intervention Debate” (ed) J.L Holzgrefe and Robert O. Keohane, “ HUMANITARIAN INTERVENTION: ETHICAL, LEGAL, AND POLITICAL DILEMMAS” Cambridge university Press, 2003, P.18

<sup>22</sup> Adam Roberts, “The So-Called “Right” of Humanitarian Intervention,” in *Yearbook of International Humanitarian Law*, 2000 Vol.3.

<sup>23</sup> See Ian Brownlie “Humanitarian Intervention” in Moore ed., *LAW AND CIVIL WAR IN THE MODERN WORLD*, John Hopkins University Press, 1974, P. 217.

comes to defining it.<sup>24</sup> This can be seen in the enormous and contentious literature on the subject<sup>25</sup>. Bearing in mind the 1648 treaty of Westphalia and the core elements of state sovereignty,<sup>26</sup> the bottom line of sovereignty is the competence, independence and legal equality of states. The International Court of Justice (ICJ) once held that the whole of international law rests on the fundamental principle of state sovereignty.<sup>27</sup> However, there are some limitations to absolute sovereignty; Boutros Boutros-Ghali argues that the theory of absolute sovereignty has been out of touch with reality, so it is obsolete.<sup>28</sup> For the purpose of this research, state sovereignty is understood as not being absolute.

As one of the emerging challenges to absolute state sovereignty, The Independent International Commission on Intervention and State Sovereignty (ICISS) in September 2001 entitled its final report “The Responsibility to Protect”.<sup>29</sup> The bottom line of this report is that sovereignty involves responsibility, and states have the primary responsibility to protect their population from gross human rights violation. When the state is unable and unwilling to protect, the responsibility then falls on the international community of states. As concerns this paper, R2P is understood as what came up in the

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<sup>24</sup> See Nico Schrijver, "The Changing Nature of State Sovereignty," *The British Year Book of International Law* 1999, Oxford: Clarendon Press, 2000, P. 69–70.

<sup>25</sup> According to Steinberger it is the “most glittering and controversial notion in the history, doctrine and practice of international law. Brownlie sees it as the basic constitutional doctrine of the law of nation, Lauterpach defines it as “a word which has an emotive quality lacking meaningful specific content meanwhile Verzijl suggests that any discussion on sovereignty may likely degenerate into a tower of Babel. Article 2(1) of the UN Charter holds that the world’s organisation is based on the principle of the sovereign equality of all member states.

<sup>26</sup> The 1648 treaties brought the equality of states and gives them the legal identity under international law, while the core element was codified in the Montevideo Convention on the Rights and Duties of States to be a permanent population, a defined territory, and a functional government.

<sup>27</sup> See the ICJ Reports of 1986, paragraph. 263

<sup>28</sup> Boutros Boutros-Ghali, *An Agenda for Peace*, New York: United Nations, 1992, paragraph. 17. There are several limits to state sovereignty such as under Chapter VII of UN Charter, and under customary and treaty obligation which states are legally bound etc.

<sup>29</sup> See Report of the International Commission on Intervention and State Sovereignty, Published by the International Development Research Centre, December 2001. <http://www.idrc.ca>.

2005 WSOD in paragraph 138 and 139<sup>30</sup> without undermining the potential of the ICISS report.

This thesis has Three Chapters. This excludes the general introduction and the last section on conclusion and recommendations.

It begins with a general introduction of the study. This gives a brief overview of the study, the seriousness of the problem based on the degree of attention that has been given to it, justification for dealing with the subject, the thesis statement, the central and sub-research questions, an explanation of the methodology, the limits of the scope of the research, a literature review, defining the theoretical framework, and the road map.

Chapter one explains the background of Darfur, the conflict, the human rights violations committed, and the impunity of these violations. By doing this, it attempts an answer to the first sub-research question by looking at the work of the Specialized Courts of Sudan and the ICC in curtailing the impunity of the gross human rights violation.

Chapter two simply looks at the responses of the international community to the Darfur conflict. That is the United Nation (Specifically the UNSC), A.U, E.U, and some

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<sup>30</sup> *Paragraph 138* states that “each individual state has the responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should as appropriate, encourage and help states to exercise this responsibility and support the United Nations in establishing an early warning capacity. *Paragraph 139* states that “The international community through the UN, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapter VI and VIII of the Charter of the United Nations, to help to protect populations from genocide, war crimes, ethnic, cleansing and crimes against humanity. In this context we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organisations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their population from genocide, war crime, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide... and its implication, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping states build capacity to protect their population from genocide... and to assisting those that are under stress before crises and conflicts break out.



independent states (U.S, Britain, France, China and Russia). It briefly explains the notion of state sovereignty, and touches on the first sub-research question while addressing the second sub-research question of whether the concept of state sovereignty helped in shaping these responses.

Chapter three addresses the third and fourth sub-research questions as it makes a case for the R2P in Darfur. It looks at the development of the concept of R2P from the ICISS through the 2004 High Level Panel Report and 2005 WSOD, and the references made to the R2P by the UNSC and the U.N Secretary General. It also looks into the divide within R2P, the shift from humanitarian intervention to the R2P; assesses the international community intervention in some cases of gross human rights violation and ends with the need for the R2P in Darfur.

The last section concludes with an observation that the concept of R2P has failed to adequately protect the civilian population in Darfur against gross human rights violations and therefore, renders the concept of R2P a mere rhetoric especially as the violations persist and remain unpunished. The conclusion is drawn from the arguments put forth. This section also makes some recommendations on the way forward.

## **CHAPTER ONE: UNDERSTANDING DARFUR, THE CONFLICT, AND THE IMPUNITY OF GROSS HUMAN RIGHTS VIOLATIONS.**

This chapter gives a general background of Darfur, looks at the causes, evolution, and human rights violations occurring in the Darfur conflict. It also looks at the role of the Special Courts of Sudan and the International Criminal Court in fighting the impunity of these human rights violations. It addresses the question of how these judicial organs have helped in reducing or increasing the impunity.

### **1.0.0 Geographical Background of Darfur.**

Darfur is located in Sudan, and Sudan is the largest country in Africa. Sudan is located in the great lakes region of Africa bordering the Red Sea, Eritrea, and Ethiopia in the east; Egypt in the north; Ugandan, Kenya and Democratic Republic of Congo in the south; and the Central Africa Republic, Chad and Libya in the west. With a population of 40,218,456<sup>31</sup>, Sudan covers a territory of about 2.5 million square kilometers.<sup>32</sup> Sudan has several regions and Darfur constitutes one of these regions.

Darfur is located on the western region of Sudan, constituting Sudan's largest region; it borders Libya, Chad and the Central Africa Republic. It occupies an area of about 250,000 square kilometers and a population of close to six million persons.<sup>33</sup> There are many tribes in Darfur such as the Fur, Zaghawa, Masaalit, Tungur, Tama and the Arab nomadic tribe. The Fur and the Masaalit are the dominant ethnic groups and they have often intermarried with Arabs and other Africans. Almost all of these tribes are Muslims,

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<sup>31</sup> See CIA Fact sheet, available at, [www.cia.gov/library/publications/the-world-factbook/geos/su.htm](http://www.cia.gov/library/publications/the-world-factbook/geos/su.htm). (Accessed on the 25th March 2009, and it is the estimate as of July 2008)

<sup>32</sup> Ibid.

<sup>33</sup> See Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Pursuant to Security Council Resolution 1564 of 18<sup>th</sup> Sept 2004, on 25<sup>th</sup> Jan.2005 P. 51.

but they are known for their constant clashes over resources, crops and land. Darfur is known to be a strong Sultanate for more than three centuries prior to 1917 when the British colonial government integrated it into the Republic of Sudan.<sup>34</sup> Since then, the major power shifted to a small number of elite groups strongly related to the Khartoum government.

This became problematic because subsequent governments have been blamed for constant marginalization of Darfur, keeping the region far from economic development, insignificant agricultural aid and educational facilities. These neglect and marginalization have contributed in pushing the Arabs and black Africans to engage in competition for land and water in the Darfur arid region.<sup>35</sup> It is thus reasonable that this frustration might explode.

### **1.1.0 The Evolution of the Darfur Conflict.**

One factor that remains undisputed is the fact that the periodic violence in Darfur is not a novelty. This is because the Khartoum government has favored the Arabs in Darfur for decades. This created frustration among the Fur leaders, which became well grounded when the EL Mahdi government (1986-1989) decided to start arming the Arab Baggara Militia from Darfur and Kordofan known as “*Muraheleen*”<sup>36</sup> and used them against the southern rebels. With the emergence of the National Islamic Front (NIF) through a coup in 1989, some of the members of the “*Muraheleen*” were incorporated into the Popular

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<sup>34</sup> See Burr Millard J, and Collins Robert, DAFUR: THE LONG ROAD TO DISASTER, Markus Weiner Publishers, Princeton, (2006) P. 233.

<sup>35</sup> See Human Rights Watch, 2004 P. 3, available at [www.hrw.org/english/docs/Darfur8536.htm](http://www.hrw.org/english/docs/Darfur8536.htm) (Accessed on 25<sup>th</sup> March 2009)

<sup>36</sup> See Human Rights Watch, “Darfur in Flames: Atrocities in Western Sudan, Vol.16, No. 5(A), April 2004. P. 3. Available at, [www.hrw.org/report/2004/Sudan0404/](http://www.hrw.org/report/2004/Sudan0404/). (Accessed on 25<sup>th</sup> March 2009)

Defense Forces and Paramilitaries that have been attacking the Fur community in Darfur.<sup>37</sup>

The current Darfur Crisis exploded in February 2003 as some of the rebel forces such as the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM), alleged that the Government of Sudan (GoS) have subjected them to neglect and has oppressed the black Africans in favor of Arabs, which gives an impetus to their resort to violence. In addition, they want the GoS to look into the political marginalization and the socio-economic depressing conditions that African Darfurians are subjected to by successive governments in Khartoum.<sup>38</sup> While the causes of the Darfur conflict remain multiple and complex, some authors posit that it is a strategy of the government of Khartoum to nationalize the oil resources since the people of Darfur want to regionalize it for regional development.<sup>39</sup>

Some writers observe that it is a proxy war supported by Idriss Derby of Chad and Mu"Ammar Quadhafi of Libya. Gerard Prunniere argues that it was a pay back time for Al Bashir for his involvement in both Chad and Central African Republic.<sup>40</sup> However, the government of Sudan sees it as an ethnic conflict between Arabs and black Darfuris.<sup>41</sup>

This notwithstanding, the conflict escalated as a result of the SLA attack on government military forces at El Fasher air base on 25 April 2003, which then becomes a conflict between the government and the rebels<sup>42</sup>. In addition, some authors believe that what fueled the most recent violence was the Naivasha peace process, which was aimed

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<sup>37</sup> Ibid, P. 7-8.

<sup>38</sup> *Supra Note* 11, P. 1153

<sup>39</sup> Flint Julie and Alex De Waal, *DARFUR: A SHORT HISTORY OF A LONG WAR*. Zed Books, 2005, P 53.

<sup>40</sup> See Gerald Prunier, *THE AMBIGUOUS GENOCIDE*. Cornell University Press, New York, P 80.

<sup>41</sup> *Supra note* 20, P 540.

<sup>42</sup> *Supra Note* 39 P. 99-100.

at ending the Sudanese civil war<sup>43</sup>. It is alleged that since the government of Sudan was not in possession of sufficient military support because most of its forces were still in the South, it sponsored the *Janjaweed* to respond to the rebellion<sup>44</sup>. This is then the beginning of the human rights violations in Darfur.

### 1.2.0 Human Rights Violations Committed in the Darfur Conflict

It can be noticed that the Darfur conflict is not complex simply because of its multiple alleged causes but also as a result of the multiple parties.<sup>45</sup> Bearing this in mind and acknowledging Udombana Nsongurua emphasis that “the Darfur crisis combines the worst of everything: armed conflict, extreme violence, sexual assault, great tides of desperate refugees without even the unleavened breath of a desperate escape, hunger and disease all uniting with an unforgiving desert climate. Evidence from numerous sources governmental, intergovernmental and non-governmental suggest a tragedy that in nature and scale follows in the example of the holocaust”<sup>46</sup> and this shows the degree of the human rights violations that have been committed in Darfur.

Furthermore, the degree of human rights violations committed in Darfur and might still continue to exist<sup>47</sup> in Darfur can be easily dictated. This is because the GoS has neither provided the civilians with adequate protection nor has it reduced the impunity of gross human rights violations, especially, if one should consider that the *Janjaweed*

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<sup>43</sup> *Supra* Note 20. P 540-541.

<sup>44</sup> *Supra* Note 11 P. 1153.

<sup>45</sup> The conflict comprises of, the Governmental of Sudan, Sudan Liberation army, Sudan Liberation Front, the Justice and equality movement and the smaller Darfuris Rebel Movement, emerging from the three failed peace talk held in Abuja, Arusha and Tripoli.

<sup>46</sup> *Supra* note 11 p. 1150

<sup>47</sup> Zee Mafor Achu Samba, Human Rights Officer of the Capacity Building Section. (UNAMID-G21), suggest that there might still be fighting going on in villages in Darfur. This is from our discussion on the 20<sup>th</sup> of November 2009.

counter insurgency was meant to attack the African population that gives support to the rebels. Gerard Prunnier has better demonstrated this by using Mao's famous metaphor: "to drain the pond in which the guerrillas swim".<sup>48</sup> In this light, Flint and De Waal assert that the underlining strategy of the *Janjaweed* was to "change the demography of Darfur and empty it of the African tribes".<sup>49</sup> It has also been known as "the milosevic model adjusted for Africa".<sup>50</sup>

Mindful of the above, it is germane to say that the UN coordinator in Sudan, Mukesh Kapillar's interview with the British Broadcasting Channel (BBC) accusing the Sudanese Government alongside the *Janjaweed* of a structured attempt to do away with a group of people, while relating it to the early face of the Rwandan genocide is not groundless.<sup>51</sup> Jan Egeland also testifies before the UNSC of the presence of ethnic cleansing in Darfur. Furthermore, Kofi Annan's speech to the UN Human Rights Commission and the report of the Office of the High Commissioner of Human Rights (OHCHR) all concern gross and criminal violation of human rights.<sup>52</sup> It is unarguable that countless authors, international organizations, non-governmental organizations<sup>53</sup> have argued that there is the presence of genocide, crimes against humanity and war crimes, let alone the violation of international humanitarian law occurring in Darfur, and the impunity still persist.

This paper holds no doubt that there is the presence of such grave violations of human rights in Darfur. It is worthy to look at the efforts taken so far to reduce the

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<sup>48</sup> *Supra note* 40 p. 541

<sup>49</sup> *Supra Note* 39 P. 103.

<sup>50</sup> *Ibid*, p. 97

<sup>51</sup> James Traub, *The Best Intentions: Kofi Annan and the UN in the Era of American World Power*. P. 219

<sup>52</sup> *Ibid*, P. 220-221.

<sup>53</sup> See Adam LeBor, *COMPLICITY WITH EVIL: THE UNITED NATION IN THE AGE OF MODERN GENOCIDE*. Yale University Press, 2006, P 195.

impunity of these violations and the extent to which they have helped to increase or reduce the impunity.

### **1.3.0: The Specialized Courts of Sudan.**

It has already been established that serious human rights violations have been committed and might still be present in Darfur. Basic common sense will tell us that the impunity of these violations constitutes one of the main factors contributing to the continuous violation of international human rights and humanitarian law in Darfur. This section looks at the role of the Sudanese special courts in curtailing or increasing the impunity of these human rights violations. In doing this, it looks specifically at the specialized courts operating in Darfur before and after the adoption of the Interim National Constitution (INC) of 6<sup>th</sup> July, 2005.

Prior to the INC, the chief justice of Sudan can establish special national courts where they are deemed necessary.<sup>54</sup> Based on this authority, the specialized courts were established in the states of West, North and South Darfur in 2003 with the aim of expediting the trial of certain cases.<sup>55</sup> These specialized courts replaced the special courts created due to the state of emergency in Darfur in 2001. These courts have been criticized for their falling short of the internationally recognized procedural and substantive due process guarantees.<sup>56</sup> In May 2004, the president of Sudan established a National Commission of Inquiry (NCI) alongside the specialized courts giving it the mandate to

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<sup>54</sup> See art 6(h) of the Criminal Procedure Act of 1991, which is available at [http://www.mpil.de/shared/data/pdf/national\\_criminal\\_procedure\\_act\\_1991.pdf](http://www.mpil.de/shared/data/pdf/national_criminal_procedure_act_1991.pdf) (accessed on 25 march 2009)

<sup>55</sup> See United Nations Commission on Inquiry in Darfur Report to the U.N Secretary General pursuant to Security Council Resolution 1564 of 18<sup>th</sup> Sept. 2005, Para 444.

<sup>56</sup> See Jakob Pichon, “The Principle of Complementarity in the Cases of the Sudanese Nationals, Ahmad Harun and Ali Kushayb Before the ICC”, *International Criminal Law Review* 8, 2008 P. 204.

investigate human rights violations committed in the Darfur conflict.<sup>57</sup> What remains problematic is the fact that the violations committed by government authorities or by the army are not within the NCI's mandate. Furthermore, it could not guarantee the publication of its findings nor guarantee the protection of witnesses.<sup>58</sup>

Also, these specialized courts and NCI could only prosecute and investigate ordinary crimes since the Sudanese criminal law has no adequate prohibition of international crimes such as crimes against humanity and war crimes.<sup>59</sup> In addition, the 1998 constitution grants immunity from criminal liability to the president of Sudan even though the national assembly can lift this immunity.<sup>60</sup> Likewise both security and intelligent service officers are immune for offences committed in the course of their duty by virtue of the National Security Act of 1991 that can only be lifted by the director of national security.<sup>61</sup>

Furthermore, under the Peoples Arm Forces Act of 1986, the arm forces have the same legal immunity enjoyed by all other internal security forces when providing internal security.<sup>62</sup> It is undisputable that there are no practical limits to the threshold of these immunities. This is because the immunities did not exclude the commission of international crimes. While the Sudanese authorities have guaranteed that these immunities are automatically lifted when it comes to international crimes, this paper endorses Pichon's argument that the statement is dubious since there have not been any

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<sup>57</sup> See United Nations Commission on Inquiry report (UNCOI), Para 456

<sup>58</sup> See the Press release of Amnesty International on Sudan, available at [www.amnesty.org/library/index/ENGAFR540492004?open&of=ENG-317](http://www.amnesty.org/library/index/ENGAFR540492004?open&of=ENG-317) (Access on the 26<sup>th</sup> March 2009)

<sup>59</sup> *Supra Note 57* Para 451.

<sup>60</sup> See Art 45 and 74 of the 1998 Constitution of Sudan.

<sup>61</sup> Art 33 of the National Security Act of 1991.

<sup>62</sup> Art 8 of the People's Armed Forces Act of 1986.



prosecution of international crime perpetrators in Darfur before 2005.<sup>63</sup> It is seen that, coupled with the immunity laws, the executive also has influence in criminal matters, such as the power of the minister of justice to stay criminal proceedings at any stage.<sup>64</sup> All these help to increase the rate of impunity prior to the INC.

With the adoption of the INC, the Darfur specialized courts were abolished as recommended by the United Nations Commission on Inquiry (UNCOI) report and replaced by the Special Criminal Courts for the Events in Darfur (SCCED). The Chief Justice's decree in June 2005 that is responsible for this change was based on Art 127 of the INC.<sup>65</sup> It is worthy to note that Art 5 of the decree creating the SCCED could be seen to have a great impact in curtailing impunity since it covers actions that falls under Sudanese Criminal Act and international humanitarian law. This then extends the threshold of prosecution to international crimes, not as the case before where it was limited to ordinary crimes. Comparing with the specialized courts, the SCCED increases the possibility to appeal, respect of fair trial rights and improve the situation with regard to due process rights.<sup>66</sup> The work of the SCCED has been endorsed by novel *ad-hoc* organs, which are the Judicial Investigation Committee<sup>67</sup> and the Special Prosecution Commissions.<sup>68</sup>

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<sup>63</sup> *Supra* note 56 p. 206. See also the UNCOI Report Para 625.

<sup>64</sup> See Art 37(1)(d) and 58(1) of the Sudanese Criminal Procedure Act of 1991.

<sup>65</sup> This Art allows for the establishment of other courts where they are deemed necessary. It now forms the basis for art 6(h) of the Criminal Procedure Act of 1991.

<sup>66</sup> *Supra* note 56 p. 207, 208.

<sup>67</sup> It has the mandate to investigate the incidents pointed out by the UNCOI and this committee was established on the 19<sup>th</sup> Jan 2005 by Presidential order.

<sup>68</sup> Established in Jan 2006 by the chief justice of Sudan, to investigate the post offences to the work of the International and National Commission of Inquiry.

This paper also alleges that the immunity laws that existed after the adoption of the INC, with regard to the president, members of the national assembly<sup>69</sup> and the president's extension of the immunity to the members of the Sudanese Peoples Arm Forces to cover every action in the course of their duties, strongly contributes and portrays the SCCED impunity. Even though it is seen that the Sudanese authorities provided the UN with a list of fifteen members of the police and the army who were tried in connection with the events in Darfur<sup>70</sup>, this number is of no consequence when measured to the atrocities committed.

Furthermore, the president of Sudan granted a blanket amnesty for Darfurians arm rebel groups that signed the Darfur Peace Agreement (DPA) without specifying the nature of the crimes it covers.<sup>71</sup> In pointing out the executive influence on the judiciary, Wasil Ali reveals that after the prosecutor Salah Abu Zeid announces that Harun<sup>72</sup> would be interrogated for crimes in the Darfur region, President Al Bashir states that he would not be subjected to a new investigation.<sup>73</sup> From an objective perspective, it is clear that the lack of an independent the SCCED, and further considering the number of cases it has tried, it's apparent that it contributed to impunity of gross human rights violation committed in Darfur. This can be seen in the case of Harun and Kushayb<sup>74</sup>. There is therefore need to examine whether this lacunae has been filled by the International Criminal Court, mindful of the principle of complementarity which this paper does not intend to address.

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<sup>69</sup> See Art 60(1) and 92 of the INC.

<sup>70</sup> See Human Rights Watch, "Lack of Conviction: The SCCED 1 (2006), 25, available at <http://hrw.org/backgrounders/ij/Sudan0606/Sudan0606.pdf> (accessed on 26th March 2009)

<sup>71</sup> United Nations Mission in Sudan media monitory Report, 13 June 2006.

<sup>72</sup> He is the Minister of State for Humanitarian Affairs.

<sup>73</sup> Wasil Ali, "Sudan Ban Media from reporting on Darfur war crimes cases", *Sudan Tribune*, 28 March 2007.

<sup>74</sup> These are the Minister of Humanitarian Affairs and the Leader of the Janjaweed Militia respectively.

#### 1.4.0: The ICC and the Darfur Conflict.

It is apparent that criminal justice for cases of gross human rights and humanitarian law violations during conflict situations is not an innovation of the International Criminal Court (ICC).<sup>75</sup> The main goal of the ICC is to deter the most serious crimes that have been of concern to the international community. This can be found in the preamble of the Rome Statute which empowers the ICC to put an end to impunity for perpetrators of such crimes and therefore contributing to the prevention of such crimes.<sup>76</sup> Some authors have argued that the ICC stands unique in its deterrent potential since it is a permanent court and that it is independent of the warring parties and cannot be controlled by the changing national interest of the states that created it.<sup>77</sup>

At this point it is common knowledge that such serious crimes have been committed in Darfur. Thus, it was worthy to examine whether the ICC has been capable to put an end to the impunity of these crimes in Darfur. Prior to March 2005 that the Darfur case was referred to the ICC, the UNSC established an International Commission of Inquiry to report on human right violation in Darfur headed by Antonio Cassese, former president of the International Criminal Tribunal for former Yugoslavia. In January 2005, this Commission recommended the referral of the Darfur case to the ICC.<sup>78</sup> On the 31<sup>st</sup> of

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<sup>75</sup> There have been the Nuremberg and Tokyo Tribunals even though they are referred to as ex post tribunals. There is also the ICTY and ICTR. The ICC was created in 2002 as a permanent tribunal to prosecute individuals for Genocide, Crimes against Humanity, War Crimes, and Crimes of Aggression. It entered into force on the 1<sup>st</sup> July 2002, the date the Rome statute entered into force.

<sup>76</sup> See the Preamble of the Rome Statute of the ICC, U.N Doc.A/conf.183/9, 1998.

<sup>77</sup> See Kenneth A. Rodman, "Darfur and the limits of legal deterrence" *Human rights quarterly*, volume 30, No.3, August 2008. P. 532

<sup>78</sup> See Hans-peter Kaul, "Construction Site for More Justice: The International Criminal Court after two years", *The American Journal of international Law* vol. 99, No 2, April, 2005 p. 380.

March 2005, the Darfur case was referred to the ICC via UNSC *Res. 1593*<sup>79</sup> pursuant to Art 13 (b) of the Rome Statute. The prosecutor was handed the list of 51 names that had been compiled by the commission of inquiry. Even though the list of 51 was undisclosed, it could be seen from the commission of inquiries report that some authorities of the Sudanese government are implicated as a result of a command authority.<sup>80</sup> It is also seen that the president of Sudan, Al Bashir had already testified that he would not surrender any Sudanese citizen to the court.<sup>81</sup>

The ICC prosecutor accepted the Darfur case and started a formal investigation.<sup>82</sup> In December 2005, the prosecutor took a number of alleged criminal incidents that occurred in Darfur for full criminal investigation. In June 2006, he informed the UNSC that its investigation would be carried outside Darfur due to the inability to provide witness protection and by December 2006, he announced that he has investigated on the majority of the war crimes committed in Darfur.<sup>83</sup>

In the ICC's attempt to put an end to the impunity of the serious crimes committed in Darfur, the Pre-Trial Chamber I (PTC) of the ICC issued an arrest warrant for Ahmad Muhammad Harun and Ali Kushayb<sup>84</sup> on the 27<sup>th</sup> of April, 2007 pursuant to Art 58(1)<sup>85</sup> of the Rome statute.<sup>86</sup> In realizing that the requirement under Art 58(7) of the same, which demands the voluntary appearance of A. Harun and A. Kushayb, has not been

<sup>79</sup> See Robert Cryer, "Sudan, Resolution 1593, and International Criminal Justice", *19 Leiden Journal of International Law*, Vol. 195, 2006 P. 222.

<sup>80</sup> See Eric Reeves, "Darfur and International Criminal Court", *Middle East Report Online*, April 28, 2005, also found at [www.merip.org/mero/mero042905.html](http://www.merip.org/mero/mero042905.html) (accessed on the 26th of March 2009). See also UNCOI on Darfur to the U.N. Secretary General following Security Council Resolution 1564 Para 647. Available at: [www.icc-int/library/cases/report\\_to\\_U.N\\_on\\_Darfur.pdf](http://www.icc-int/library/cases/report_to_U.N_on_Darfur.pdf) (accessed on 25th of March 2009).

<sup>81</sup> Ibid.

<sup>82</sup> See the first Report of Mr. Luis Moreno Ocampo, the Prosecutor of the ICC, to the Security Council Pursuant to UNSC Resolution, 2005 at p. 5.

<sup>83</sup> See [www.mirayafm.org/reports/reports/200811205459/](http://www.mirayafm.org/reports/reports/200811205459/)

<sup>84</sup> These are Minister of State for Humanitarian Affairs and leader of the Janjaweed militia respectively.

<sup>85</sup> Where the arrest warrant is to ensure the person's appearance at trial.

<sup>86</sup> See [www.icc.int/library/cases/ICC-02-05-01-07-1\\_English.pdf](http://www.icc.int/library/cases/ICC-02-05-01-07-1_English.pdf). (Accessed on 24th March 2009).

respected, the PTC I moved beyond the prosecutor's request for the issuance of two summonses for the appearance of Harun and Kushayb to the issuance of an arrest warrant.<sup>87</sup>

In addition, on the 14<sup>th</sup> of July, 2008, the prosecution filed an application under Art 58 requesting issuance of a warrant for the arrest of Omar Hassan Ahmad Al Bashir for genocide, crimes against humanity and war crimes.<sup>88</sup> The 4<sup>th</sup> of March 2009 gave rise to the attainment of the most polarized position by the international community as the ICC PTC I issued a warrant of arrest against the president of Sudan, Al Bashir<sup>89</sup> after ruling that "there are reasonable grounds to believe that Omar Al Bashir is criminally responsible under Art 25 (3)(a) of the Rome Statute as an indirect co-perpetrator for war crimes against humanity"<sup>90</sup>, and that his arrest falls under the ambit of art 58(1)(b) of the statute.

It is undeniable that the ICC has been very active in putting an end to the impunity of the Darfur conflict. At this point, this paper tends to establish the extent to which the ICC's involvement has either helped to reduce or increase the impunity of human rights violations committed in Darfur. Before addressing this question, this paper acknowledges that the ICC's case regarding the Darfur crisis has highlighted the appropriate meaning of the complementarity principle<sup>91</sup> under the Rome Statute, as regards the warrant of arrest against Harun and Kushayb. This paper strongly shares Christopher D. T. and Nicholas Tyler's argument that the ICC complementarity principle is not violated by the ICC in the Darfur case. To proceed, this paper takes into consideration the fact that the Darfur case

<sup>87</sup> See Prosecutor's application under art 58(7). Available at, [www.icc.cpi.int/library/cases/ICC-02-05-56\\_English.pdf](http://www.icc.cpi.int/library/cases/ICC-02-05-56_English.pdf) (Accessed on the 24<sup>th</sup> March 2009).

<sup>88</sup> See the situation in Darfur, Sudan, in the case of the Prosecutor v. Omar Hassan Ahmad Al Bashir. See ICC-02/05-01/09-1, 04-03-2009 p 3/8 SL PT.

<sup>89</sup> Ibid

<sup>90</sup> Ibid

<sup>91</sup> See Art 17 of the Rome Statute that gives the guideline to be respected by the court in its evaluation for admissibility when the national jurisdiction has undertaken concurrent or related proceedings.

has brought up several novel issues. It is the first time that; the ICC is hearing a case where the crimes are committed in a non-state party to the Rome Statute, the authorities of a sovereign states are involved let alone the fact that the president of Sudan is also implicated in the allege crimes and not like the other ICC cases involving individual private actors,<sup>92</sup> the UNSC has referred a case to the ICC as authorized under the Rome Statute,<sup>93</sup> and an ICC investigation has been carried out during an ongoing conflict.<sup>94</sup> At this point, the role of the ICC in ending impunity in Darfur still remains strongly debated.

Some NGOs have argued that the ICC is in the unique position to serve as a potential deterrent for future incidents against war crimes, crimes against humanity and genocide in Darfur. Coupled with the fact that it is a permanent court, an indictment or conviction from the ICC can clearly inform human right violators that their acts will not go unaccountable.<sup>95</sup>

On the contrary, it has also been argued that the work of *ex- ante* tribunals such as the ICC might create a scenario of conflicting pressure on the tribunals, the agencies and actors responsible for resolving the security problems.<sup>96</sup> Arsanjani H. further observes that this point was better explained in a statement by the Catholic Archdiocese Justice and Peace Commission of Gulu in the Northern Ugandan district that: “to start war crimes investigation for the sake of justice at a time when the war is not yet over, risk

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<sup>92</sup> See Christopher D. Totten and Nicholas Tyler, “arguing for an integrated approach to resolving the crisis in Darfur: The Challenges of complementarity enforcement, and related issues in the ICC”. *The Journal of Criminal Law and Criminology*, Vol. 98, No.3, North Western University School of Law, 2008 p. 1070.

<sup>93</sup> Art 13(b), where the court has Jurisdiction to cases referred to it by the UNSC.

<sup>94</sup> Available at, [www.icc-cpi.int/pressrelease\\_details?id=107&l=en.html](http://www.icc-cpi.int/pressrelease_details?id=107&l=en.html) . ICC press release on the 6<sup>th</sup> June 2005. (Accessed on the 24<sup>th</sup> of March 2009)

<sup>95</sup> See Citizens of Global Solutions, “Darfur and the ICC: Justice is the key to Recovery”. This can be found at [www.globalsolution.org/publications/publications\\_darfur\\_and\\_icc](http://www.globalsolution.org/publications/publications_darfur_and_icc). (Access on the 24<sup>th</sup> of March 2009)

<sup>96</sup>See Mahnoush H. Arsanjani and W. Micheal Reisman, “The Law-in-action of the International Criminal Court” *The American Journal of International law*, Vol.99, No2, April 2005, p.385.

having in the end neither justice nor peace delivered”.<sup>97</sup> This paper thinks that this argument clearly depict what might happened to the Darfur case before the ICC, mindful of all its novelties.

Furthermore, while advocating for a more aggressive prosecutorial strategies, Antonio Cassese and Louis Arbour submitted briefs to the PTC in 2006 questioning the prosecutor’s option of not pushing for an inside investigation in Darfur because of PTC inability to protect witnesses and victims. They argue that, an inside investigation is the most efficient way of curtailing violence and protecting present and prospective victims.<sup>98</sup> Cassese has also criticized the prosecutor’s strategy of initially focusing on midlevel perpetrators and he points that if senior officials are indicted, it will dramatize the ongoing conflict even if the arrest warrants remain unexecuted.<sup>99</sup> While the present situation of the Darfur case has been dramatized with the indictment of the president, it is still too far to determine whether the refusal to hand over the indictees will mobilize corporation within the UN as envisaged by Cassese. This is because China will definitely veto any resolution against the Sudanese government especially with the end of the 2008 Beijing Olympic which John Prendergast and Collin Thomas saw it as a trap to destroy China’s international reputation in case of any threat to veto any resolution against Sudan for the atrocities in Darfur<sup>100</sup>.

This paper shares Schabas view that the ICC could make a difference whether it is for genocide or crimes against humanity since the perpetrators have become conscious that

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<sup>97</sup> Ibid

<sup>98</sup> See Heikelina Verriijn Stuart, Arbour and Cassese criticize the ICC in Darfur, *International Justice tribunal*, N.55, 23 Oct 2006.

<sup>99</sup> Antonio Cassese, “is the ICC still having Teething Problem?” 4 *journals International Criminal Justice* 434, No. 439.

<sup>100</sup> John Prendergast and Colin Thomas-Jenson, “Blowing the Horn” 86, *Foreign Affair*, 2007, P 72-73.

they stand a reasonable chance of being prosecuted.<sup>101</sup> However, Rodman A's argument seems more realistic as he argues that the ICC referral has had no impact on saving lives in Darfur because of its Bosnian analogy.<sup>102</sup> Also worthy of note is the fact that Alex De Waal had cautioned against policies that Sudan may understand as a first step towards regime change<sup>103</sup> and I see the present warrant of arrest against the president of Sudan as one of such measures.

However, although one of the ICC's main objectives is to end impunity, the principles of non-interference and absolute sovereignty serve to a greater extent to shield perpetrators from accountability. In these cases, such as Darfur, ending impunity may demand overriding the sovereignty of guilty governments without regard to the UNSC authorization. This notwithstanding, the traditional principle of state sovereignty has strongly influenced the responses made so far by the international community to the Darfur crisis.

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<sup>101</sup> William A Schabas, "Darfur and the Odious Scourge": The Commission of Inquiry's finding on Genocide, 18 *Leiden, and Journal International Law*. 871, (2005) P.885

<sup>102</sup> Supra note 66, P. 547

<sup>103</sup> Ibid P.556.



## **CHAPTER TWO: THE EFFECT OF STATE SOVEREIGNTY ON THE RESPONSES TO THE GROSS HUMAN RIGHTS VIOLATIONS IN DARFUR.**

This Chapter addresses the significant effect of the notion of absolute state sovereignty and its contribution in shaping the responses made by the international community to the human rights violation committed in the Darfur conflict. It begins with an explanation of state sovereignty, followed by its influence on the response made by the United Nations, African Union, European Union, and some influential independent states to the Darfur crisis.

### **2.0.0: The Notion of State Sovereignty.**

While there is no reasonable ground to deny the occurrence of gross human rights violations in Darfur, the notion of state sovereignty has been very instrumental in shaping the international responses to the Darfur Crisis. State Sovereignty in modern international law is often rooted in the Treaty of Westphalia in 1648. This treaty establishes the equality and independence of states, alongside the “duty on the part of the states to refrain from intervention in the internal or external affairs of other states”.<sup>104</sup> In this context, intervention means, “armed intervention, and all other forms of interference or attempted threat against the personality of the state or against its political, economic, and cultural elements”.<sup>105</sup> Therefore, the Westphalian understanding of sovereignty<sup>106</sup> has been the major determinant of the responses made so far in Darfur. The Permanent Court of

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<sup>104</sup> Ian Brownlie, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW*, 5<sup>th</sup> Edition, Clarendon Press, 2003 p.293.

<sup>105</sup> See the declaration on the inadmissibility of intervention in the domestic affairs of states and the protection of their independence and sovereignty. G.A Res 2131(XX) U.N GAOR, Supp, No, 1425, U.N Doc. A/6014(1965).

<sup>106</sup> I refer to it as Westphalian Sovereignty in order to distinguish this from different interpretations that have been given to the concept, such as its distinction from domestic, interdependence, and international legal sovereignty pointed out by Krasner.

International Justice also held in the “*Wimbledon case*”<sup>107</sup> that with sovereignty a “state is subject to no other state and has full and exclusive power within its jurisdiction without prejudice to the limits set by applicable law”.<sup>108</sup>

Considering that member states of the UN are equal sovereign or as Samuel John points out over 200years ago that “in sovereignty there are no gradations”,<sup>109</sup> gives this concept a high potential in controlling the intervention by a third party state. With regard to Sudan, one could argue that state sovereignty has been interpreted to mean freedom from unsolicited external interference in the domestic affairs of Sudan, especially if the interference is considered coercive and requires the use of force. It can be seen that this notion finds its justification both in customary international law and under the UN charter.

In the *Nicaragua case*,<sup>110</sup> the ICJ upheld the right of every sovereign state to conduct its affairs freely from outside interference as constituting a part and parcel of customary international law. Moreover, Art 2(4) of the UN Charter prohibits the use of force except in cases of self-defense or collective security. This has been emphasized and unanimously adopted by the UNGA in the 1970 Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Amongst States in accordance with the Charter of the UN.<sup>111</sup> This declaration proscribes states from intervening in matters that fall within the domestic jurisdiction of any state in accordance with the UN Charter.<sup>112</sup>

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<sup>107</sup> Wimbledon, 1923 P.C.I.J. (ser. A) No. 1, available at [http://www.kentlaw.edu/faculty/bbrown/classes/IntlLawFall2007/CourseDocs/CASE\\_OF\\_THE\\_SS\\_WIMBLEDON.doc](http://www.kentlaw.edu/faculty/bbrown/classes/IntlLawFall2007/CourseDocs/CASE_OF_THE_SS_WIMBLEDON.doc).

<sup>108</sup> J.L Holzgrefe and Robert O. Keohane, HUMANITARIAN INTERVENTION: ETHICAL, LEGAL, AND POLITICAL DILEMMAS, Cambridge university Press, 2003, P.282

<sup>109</sup> Ibid

<sup>110</sup> See Military and Paramilitary Activities in and against Nicaragua, 1986. ICJ Rep 14(June 27)

<sup>111</sup> See G.A Resolution 2625(XXV), UN GAOR, 25th Sess, Supp.No 28, U.N DOC, A/8028/1970.

<sup>112</sup> See G.A Resolution 42/22, UN GAOR, 42nd Sess, Supp. No 49, UN DOC.A/RES/42/22/1987.

However, as the conflict in Darfur persists, the notion of sovereignty continues to protect Sudan from external interference to stop gross human rights violations. It also provides a justifications for independent states that find no interest to intervene in Darfur since sovereignty also mean the right of a state not to risk its own citizens in order to protect foreign populations as observed by Cronin.<sup>113</sup> Therefore, it is worthy to look at the effects of sovereignty on the responses made so far to the Darfur crisis.

### **2.1.0: Responses by the UN to the Darfur Crisis**

The UN is the primary body that the international community has principally relied on and is still counting on to address the Darfur crisis. However, the responses made so far by the UN and some of its agencies cannot be said to be completely out of the reach of the principle of state sovereignty, since Sudan is a sovereign state. This has also contributed somehow in either increasing or reducing the impunity of gross human rights violations in Darfur.

The UN itself is precluded from interfering in matters that fall within the domestic jurisdiction of any state.<sup>114</sup> This is subject only to the application of enforcement measures under chapter VII of the UN Charter. While this paper is of the opinion that the UN organs and agencies have made numerous responses to the Darfur conflict,<sup>115</sup> this section will simply examine some of the responses made by the United Nations Security Council (UNSC). This is because it is the organ mandated to determine the existence of a

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<sup>113</sup> Bruce Cronin, "The Tension between Sovereignty and Intervention in the Prevention of Genocide" *Human Rights Review*, July 2007, P.295-296.

<sup>114</sup> Art 2(7) of the U.N Charter.

<sup>115</sup> For example the former UN Secretary General, Kofi Annan had visited Khartoum in June 2003 mainly for the Darfur crisis, and Ban Ki-Moon has been very concerned with the Darfur crisis. The UNHCHR, UNHCR, ICRC, just to name a few, have all reacted to the Darfur crisis.

threat to peace, breach of peace or act of aggression, and to take measures to maintain or restore international peace and security including the use of force<sup>116</sup>. Assessing some of the UNSC resolutions pertaining to the Darfur situation will do this.

Prior to the adoption of the UNSC *Res. 1547* on the 11<sup>th</sup> of June, 2004 that makes an insignificant reference to Darfur<sup>117</sup> by simply calling on the parties to take steps to halt the fighting in Darfur, were the two presidential statements<sup>118</sup> on the 24<sup>th</sup> of April and 25<sup>th</sup> May, 2004. On the 30<sup>th</sup> of July, 2004, UNSC *Res. 1556* was the first to focus on Darfur. This resolution was drafted by the US and co-sponsored by six other countries<sup>119</sup>, and it called on the GoS to disarm the *Janjaweed* within thirty days and hold the leaders accountable.

Alex Bellamy shows the weakness of this resolution by criticizing it for invoking Chapter VII of the UN Charter, which requires enforcement but the resolution neither criticized the Khartoum government nor referred to the specific sanctions that would be imposed should the government fail to comply.<sup>120</sup> Furthermore, the resolution did not extend the arm embargo to the government but limited it to all non-governmental entities meanwhile the government was arming the *Janjaweed*. In revealing some of the reasons for this weak enforcement provision - despite the fact that the US advocated for express threat of sanctions, - Kenneth A. Rodman finds that “Sudan was very skilful in

<sup>116</sup> See Chapter VII of the U.N Charter.

<sup>117</sup> UN Doc.S/RES/1547(2004). This was to do with the Peace Process to end the civil war in southern Sudan between GoS and the Sudan’s People’s Liberation Movement/Army. (SPLM/A).

<sup>118</sup> These are statements by the President of the Security, expressing concern to the Darfur massive humanitarian crisis, by requesting for access for humanitarian agencies, and also calling on GoS to disarm the Janjaweed.

<sup>119</sup> Britain, France, Germany, Chile, Spain and Romania.

<sup>120</sup> See Alex J. Bellamy “Responsibility to Protect or Trojan Horse? The crisis in Darfur and Humanitarian intervention after Iraq”, *ethics & international Affairs*, Vol. 19, issue 2, Carnegie Council on ethics & International affairs (CCEIA) 2005, P 43.

countering this by characterizing the US positions as a form of new colonial interference and by analogizing it to some of the rationales the Bush administration put forth to justify the war in Iraq”.<sup>121</sup> It is further observed that, this argument is very appealing to the Arab League, which lack trust in humanitarian arguments and consider it an encroachment on national sovereignty.<sup>122</sup> Coupled with the economic self-interest, countries like China and Russia did oppose sanctions on Sudan partly on sovereignty grounds.

On the 18<sup>th</sup> of September 2004 the UNSC adopted *Res.1564*. Despite the continuous pressure from the US and some activist groups, this resolution still falls short of any forceful sanctions in case of non-compliance. Flint and De Waal have best summarized the scenario as “Khartoum crossed the UNSC red line, nothing happened”.<sup>123</sup> This paper sees the principle of state sovereignty as being responsible for the weak enforcement provisions of these UNSC’s resolutions. On the 24<sup>th</sup> of March 2005, the UNSC adopted *Res. 1590* to set up the UN Mission in Sudan (UNMIS) for an initial period of six months. Its main aim was to support the implementation of the Comprehensive Peace Agreement (CPA).

Five days later, the UNSC adopted *Res. 1591* that imposes smart sanctions on all the parties that “impede the peace process, constitute a threat to stability in Darfur and the region, commit violations of international humanitarian or human rights law or other atrocities....”<sup>124</sup> Some of these actions include: travel bans on perpetrators, freezing of funds and financial assets belonging to such persons.<sup>125</sup> UNSC also referred the Darfur

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<sup>121</sup> *Supra* note 20, P.543

<sup>122</sup> *Supra* note 12 P. 41

<sup>123</sup> *Supra* note 39, P.128

<sup>124</sup> See Resolution 1590, Para 3(c), (d) and (e)

<sup>125</sup> *Ibid*, Para 3(d) and 3(e)

case to the ICC with the adoption of *Res. 1593*. On the 31<sup>st</sup> of August 2006, UNSC adopted *Res. 1706* that increases the number of UN forces to 2600 to augment the AU force with a stronger mandate for civilian protection. This paper suggests that UNSC measures adopted so far fall short of the use of force under Art 42 of the UN Charter principally because of the influence of the principle of absolute state sovereignty. This influence is not only seen in the respond of the UNSC, but also on other responses.

### **2.2.0: Response by the African Union.**

It remains undisputed that not only the U.N and some of its agencies have shown concerned to the Darfur crisis. African Intergovernmental institutions<sup>126</sup> have also reacted to this mayhem. This section focuses on the response made by the African Union to the Darfur crisis and the influence of State Sovereignty to these responses.

It is important to note that as part of the conventional international law in Africa, the AU Act and the African Union Peace and Security Council (AUPSC) Protocol strongly defend and protect State Sovereignty. The AU Act prohibits the use of force in article 4(f), and proscribes interference in the domestic affairs of other States in article 4(g). This has remained the central principles in intergovernmental relations ever since the inception of the Organisation of African Unity (OAU). Furthermore, the 2002 AUPSC Protocol encourages peaceful settlement of disputes. Article 4(a) prohibits the interference by another state into the internal affairs of another state.

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<sup>126</sup> For example, the African Commission on Human Rights adopted a resolution on the situation of Human Rights in Darfur. Available at [www.fidh.org/IMG/pdf/resolutions35CADHPA.pdf](http://www.fidh.org/IMG/pdf/resolutions35CADHPA.pdf). (accessed on the 27th of March 2009)

In July 2004, the African Union Assembly adopted its decision on Darfur. While condemning the humanitarian crisis, it urges for an immediate address of the crisis to prevent an escalation.<sup>127</sup> The AUPSC has emphasized the urgency for humanitarian assistance to the civilian victims in Darfur.<sup>128</sup> Udombana N. suggests that such humanitarian assistance may refer to foodstuff, clothing and other basic needs, which are necessary but not sufficient.<sup>129</sup> While he further alleges that the AU assembly might not have a defined position on the Darfur crisis, this paper holds that the Westphalian interpretation of the sovereign nature of Sudan is the principal cause for this position. This reasoning could be deduced from the AUPSC communiqué, which considers that the protection of civilians in Darfur is the responsibility of the GoS<sup>130</sup> without regards to the criticisms of the GoS in relation to the violence against civilians in Darfur. It could be said that the AU is more skeptical in attributing the ethnic cleansing and numerous continuing violation of human rights in Darfur to the GoS. It is even seen that the AU welcomes the actions taken by the GoS to protect civilians, and disarming the *Janjaweed* militia and other armed groups.<sup>131</sup>

However, it is baseless to avoid giving credits to the AU for its numerous peace broker between the GoS, SLA, and JEM aimed at searching for a peaceful solution to the conflict in Darfur. These resulted to the adoption of two protocols signed in Abuja, Nigeria on November 9<sup>th</sup>, 2004. Most significantly, the AU and the AUPSC established African Union Mission in Sudan (AMIS) to monitor the compliance of the ceasefire

<sup>127</sup> See Decision on Darfur. A.U Ass. 3<sup>rd</sup> Sess, Addis Ababa, Ethiopia. 6-8PSC/PR/Comm. (XIV), P.2. Available at [www.Africa.Union.org](http://www.Africa.Union.org). (Accessed on the 27<sup>th</sup> March 2009).

<sup>128</sup> See Communiqué of the 14<sup>th</sup> meeting of the PSC, 9 Aug. 2004, P.6

<sup>129</sup> Supra note 8, P. 1186.

<sup>130</sup> PSC Communiqué on the 20<sup>th</sup> Oct 2004, at its 17<sup>th</sup> meeting.

<sup>131</sup> See Decision on Darfur, AU. Assembly 3<sup>rd</sup> Ordinary Session, Addis Ababa, Ethiopia, 6-8 July 2004. P.3

agreements signed in April 2004 in the Chadian capital N'djamena by the GoS, SLA, and JEM. The influence of sovereignty on this response could be deduced from the fact that AU failed to rely on the recommendation from its assessment team to provide a protection role in Darfur but instead gave the troops a mandate to monitor a ceasefire, which is the position the GoS insisted upon.<sup>132</sup>

However, this mandate was extended in October 2004 to enable the protection of civilians who are found under the imminent and in the immediate vicinity based on the available resources and capabilities. This was also because Sudan refuses an extension of the African Union role in Sudan. Furthermore, considering that prior to the AU Act and the AUPSC Protocol, several soft law legal frameworks<sup>133</sup> holds the same position to this regard, the AU recently adopted a Non-Aggression and Common Defense Pact,<sup>134</sup> which is grounded on the principle of sovereignty. The AU has also established an African Union High Level Panel on Darfur headed by Thabo Mbeki to seek means of achieving and securing sustainable peace in Darfur. However, the Westphalian interpretation of sovereignty did not only affect the response made by the AU but also the response by the European Union.

### **2.3.0: Response by the European Union.**

The European Union (EU) has not stayed out of the international concerns and reactions to the Darfur crisis. It is unarguable that the EU has criticized the atrocities

<sup>132</sup> See Kamal O. Salih, "The Internationalization of the Communal Conflict in Darfur and its Regional and Domestic ramifications", 2001-2007, *Arab Studies Quarterly* Volume 30, N.3, 2008, P.16.

<sup>133</sup> An example of this is the declaration on the code of conduct for Inter-African Relations adopted in 1994, and the Algiers Declaration adopted in 1999.

<sup>134</sup> This is available at African Union Website. [www.africa-union.org](http://www.africa-union.org).



taking place in Darfur, but it remains questionable if its failure to intervene forcefully to put an end to the atrocities can be justified solely by the consensus-expectation gap<sup>135</sup> as argued by Toje Asle.<sup>136</sup> He further claims that following the European Security Strategy of 2003, the Darfur situation would seem exactly to fall under the ambit of the European Security and Defense Policy. With the reasoning that the member states of EU have agreed that in such situations the use of force can be necessary<sup>137</sup> and the crisis will not benefit any single member state, erases any claim that using the Common Foreign Security Policy will serve the national interest of member states.

While this paper agrees with the above claim, it believes that this is not the sole reason to justify the EU response. This author sees the respect of the Westphalian notion of sovereignty playing a greater role in shaping the EU response to the Darfur crisis. This point has been buttressed by Pieter Feith<sup>138</sup> as he reveals that due to the lack of the political will to send a significant military force coupled with the lack of an invitation to do so, the EU was left only with the option of cooperation with the GoS. However, this position has been strongly condemned by the EU parliament.<sup>139</sup>

This notwithstanding, the EU stands as the largest donor to Darfur since it has mobilized over one billion Euros to provide for humanitarian assistance especially on refugees' assistance in neighboring Chad. EU has called for the end of the impunity in Darfur, supported the efforts to ensure compliance with UNSC resolutions and also

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<sup>135</sup> This means lack of decision-making procedure capable of overcoming dissent.

<sup>136</sup> See Asle Toje "The consensus expectation Gap: Explaining Europe's ineffective foreign policy" *Security Violence*, Vol. 39, No 1, Feb 2008 page 135

<sup>137</sup> Ibid

<sup>138</sup> This is the adviser to Javier Solana who is the European Union Foreign Policy Chief.

<sup>139</sup> See the motion of the European Parliament for a resolution on the humanitarian situation in Sudan, Doc.B5-0065/2004; available at [www.europa-eu-un.org/articles/en/article\\_3810\\_en.htm](http://www.europa-eu-un.org/articles/en/article_3810_en.htm).

supported the peace broker.<sup>140</sup> The EU stands outstanding in its support to the AMIS efforts in addressing the Darfur crisis since 2004.

This support ranges from the provision of equipment and assets, planning, and technical assistance, military observers, training African troops, let alone the support to the Abuja peace talk process and ceasefire commission. Also, the outgoing special representative for Sudan, Mr. Pikka Haavisto and the incoming, Mr. Torben Brylle has maintained a coherent coordination of the EU support to AMIS.<sup>141</sup>

This author further believes that if it is possible to achieve this political consensus, then, there are still possibilities to take greater and tougher measures to put an end to the atrocities in Darfur by the EU, that is, if the notion of state sovereignty is not limited to absolute sovereignty. It is therefore necessary to look at some of the key independent states that have responded to the Darfur crisis and how the notion of sovereignty has guided their responses.

#### **2.4.0: Response by some Independent States.**

This section looks at the responses made by some independent states that I believe possess the potential to stop the atrocities in Darfur. This author also claims that their responses have not been void of the influences of the notion of absolute state sovereignty. This paper does not claim to provide a complete detail of the responses made by the subsequent selected countries, but simply to highlight the role of sovereignty on some of

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<sup>140</sup>See E.U Fact Sheet, July 2006, European Union Response to the Darfur Crisis.

<sup>141</sup> Ibid

these responses. It will then look at the following countries: United States of American, Great Britain, France and China.

Mindful of the Pre-Darfur U.S./Sudan relationship and without any claim of associating or disassociating the U.S.'s response to its prior relationship with Sudan, the U.S has been advocating for more serious actions against Sudan. The U.S called for explicit threat of sanctions against Sudan following the adoption of UNSC *Res. 1556* in case the GoS fails to comply. The U.S former Secretary of State, Colin Powell alleges that genocide maybe accruing in Darfur.<sup>142</sup> Bellamy has indicated that the U.S distributed a draft *Res. 1556*, which requested for the extension of the AMIS, imposed target sanctions and commence investigation to enable accountability.<sup>143</sup> It has also been argued that the U.S was able to persuade the AUPSC in adopting the resolution that called for the partnership between UN and AU, and also called for a NATO led U.N. intervention in Darfur. The GoS and Dr David Holle, the Director of European Sudanese Public Affairs Council (ESPAC) have both criticized this action because of the likely hood of another Iraq in Darfur.<sup>144</sup> In proving the influence of the notion of state sovereignty on the U.S. response, it is seen that the U.S. administration has carried out several attempts to persuade the GoS to accept the deployment of international forces to the Darfur region.<sup>145</sup>

It is also worthy to consider the response by Great Britain since it colonized Sudan for almost sixty years. When the Darfur conflict started, the British Government is known for its pressure on Khartoum to stop the atrocities. Salih Kamel claims that the former

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<sup>142</sup> Statement by Colins Powell at the 108<sup>th</sup> Congress (2004) on the current situation in Sudan and the prospect for Peace

<sup>143</sup> *Supra* note 12, P.46

<sup>144</sup> *Supra* note 132, P.13

<sup>145</sup> *Ibid.*

British Prime Minister (Toni Blair) threatened to send British troops to the Darfur region to protect the innocent civilians, even though the British Government subsequently denied such a threat following the Foreign Secretary, Jack Straw's statements during an official visit to Darfur in 2004, when he said that Britain was ready to give the GoS more time instead of pressing for sanctions by UNSC.<sup>146</sup>

Kenneth A. Rodman observes that Great Britain thought a confrontational policy to the Darfur crisis might jeopardize the Naivasha Peace Process<sup>147</sup> and was therefore strongly behind the referral to the ICC. However, when the GoS refused to accept U.N. troops in Darfur, Britain advocated more serious punishments including a declaration of Darfur as a no-fly zone. What remains unanswered is the fact that these countries acknowledge the presents of gross human rights violations in Darfur. So, what stopped them from intervening directly to put an end to the crisis if not of the respect of Westphalian interpretation of the notion of state sovereignty?

It is noticed that a country like France with a lot of interest in neighboring countries to Darfur has been very silent from the start of the Darfur conflict. This silence was broken when the conflict started having spill-over effect. However, the former French President, Jacques Chirac has also sent some threats of sanction to Darfur in case the commission of crimes against humanity continue.<sup>148</sup>

China is one of the countries that have played an instrumental role in shaping the responses made so far by the UNSC to the Darfur crisis. It is undisputable that China

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<sup>146</sup> Ibid, P.14

<sup>147</sup> *Supra* note 20 p. 543

<sup>148</sup> See [www.sudan.net/news/posted/14300.html](http://www.sudan.net/news/posted/14300.html).

remains the main investor and importer of Sudan's oil.<sup>149</sup> So, it is apparent that this is the main reason behind China's readiness to frustrate every attempt by the UNSC to impose sanctions on Sudan, especially on its petroleum sector. China has been strongly criticized by most western states on its stance on the Darfur crisis. To defend itself, Salih points out that the Chinese Government is keeping away from any interference in another nation's internal affairs as once explained by Qin Gang, the spokesman of the Chinese Foreign Ministry<sup>150</sup> in these words "When we are dealing with this issue, we have to respect the territorial integrity and sovereignty of Sudan". It is seen that, China has not only used the right of sovereignty to defend its own inaction, but it also used it as a ground to block sanctions by the UNSC on Sudan for the human rights atrocities occurring in Darfur.

At this point, this author sees an indispensable need for a means to bypass the absolute and Westphalian sovereign right if this sovereign right cannot protect innocence citizens from gross human rights violations. Therefore, there is a need for the responsibility to protect in Darfur.

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<sup>149</sup> See Cheryl Igiri & Princeton N Lyman, "Giving Meaning to 'Never Again': Seeking An Effective Response to the Crisis in Darfur and beyond." [www.cfr.org/publication/7402/giving\\_meaning\\_to\\_never\\_again.html](http://www.cfr.org/publication/7402/giving_meaning_to_never_again.html).

<sup>150</sup> *Supra* note 132, P.16.

## **CHAPTER THREE: THE NEED FOR THE RESPONSIBILITY TO PROTECT IN DARFUR.**

This Chapter shows the need for the Responsibility to Protect (herein after R2P) in Darfur and starts by looking at the development process of the concept of R2P, how the concept turned out to be a divided concept with different people, organisations and institutions giving it different interpretations and meanings. It later on highlights the shift from the doctrine of humanitarian intervention to the R2P followed by an assessment of some of the interventions by the international community in cases of human rights violations and ends with an analysis of the R2P in the Darfur context.

### **3.0.0: The Development of the concept of Responsibility to Protect.**

The concept of R2P can be seen as a subject of an ongoing development. This development could be traced from different documents and declarations that have been involved in advancing the R2P doctrine. This section looks at the different documents, statements and resolutions that have helped to develop and confirm the concept of R2P. Among these are; the International Commission on Intervention and State Sovereignty (ICISS), the 2004 High Level Panel Report, the 2005 World Summit Outcome Document, UNSC references to the R2P and the work of the U.N Secretary General.

### 3.0.1: *The International Commission on Intervention and State Sovereignty (ICISS).*

In addressing the United Nations General Assembly (UNGA) in 1999, and bearing in mind a decade of mass atrocities that could have possibly been avoided through external intervention, Kofi Annan challenged UN member states with this question: “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 offend every precept of our common humanity?”<sup>151</sup>

As a reaction to this question, the Canadian foreign minister, Lloyd Axworthy set up the ICISS.<sup>152</sup> ICISS membership was carefully chosen to reflect various political, geographical and professional backgrounds. The ICISS produced its final report in 2001 entitled “The Responsibility to Protect”. At the center of this report is the assertion that sovereignty does not give states absolute authority, but creates responsibility for the well being of its people.<sup>153</sup> Therefore, the sovereign state has the primary responsibility to protect its people, but where the state is either “unable or unwilling to protect”, this responsibility yields towards the responsibility of the international community as a whole. It can be deduced from this that when the state is the perpetrator of atrocities within its territory, it is obvious that the international community will be called upon.<sup>154</sup>

<sup>151</sup> See ICISS report, *The Responsibility to Protect*, 2001

<sup>152</sup> The ICISS was comprised of 12 independent members and co-chaired Gareth Evans and Mohamed Sahnoun

<sup>153</sup> See Thakur R (ed), *THE UNITED NATIONS, PEACE AND SECURITY: FROM COLLECTIVE SECURITY TO THE RESPONSIBILITY TO PROTECT*. Cambridge: Cambridge University Press, 2006, p. 251.

<sup>154</sup> See Alvarez, J. “The Schizophrenias of R2P” in *HUMAN RIGHTS, INTERVENTION AND THE USE OF FORCE*. Philip Alston and Euan MacDonald (eds) OXFORD UNIVERSITY PRESS 2008. P 275-284.

So, the R2P prevails over the international law principle of non-intervention in such cases.

The three principal aspects of the R2P in the ICISS report are: The responsibility to prevent, responsibility to react and responsibility to rebuild with serious emphasis on prevention rather than reaction which entails maintaining early warnings, dealing with root causes and diplomatic efforts. If prevention fails, the responsibility to react may involve military action as a last resort. However, this military action must conform to certain criteria: The just cause threshold criterion<sup>155</sup> demands for an actual or apprehended large-scale loss of life, or actual or apprehended large scale ethnic cleansing.<sup>156</sup> The must also be the “right intention” which obliges the intervention to aim solely at halting or averting human suffering. In addition, military intervention must be the last resort, which must be proportional and have reasonable prospect.<sup>157</sup>

Also, the UNSC is the “right authority” to authorize military intervention, but where it rejects a proposal within a reasonable time, the report recommends that the UNGA under the “uniting for peace”<sup>158</sup> procedure can consider the matter or regional organisations should take actions within their jurisdiction and seek the subsequent authorization from the UNSC.<sup>159</sup> Furthermore, it also requires the permanent five (P5) members of the UNSC to abstain from using their veto in case where their vital state

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<sup>155</sup> Alvarez has questioned the just cause threshold by relating it to the pre-charter just war doctrine since the U.S referred to the same doctrine to justify pre-emptive attack.

<sup>156</sup> See Weiss T. G., *MILITARY-CIVILIAN INTERACTIONS, HUMANITARIAN CRISES AND THE RESPONSIBILITY TO PROTECT*. Rowman & Littlefield Publisher Inc, 2005, p. 119. He criticizes the ICISS for identifying only these two threshold cases.

<sup>157</sup> I see this point to be some how ambiguous since it remains unclear how probable the success must be to constitute a reasonable chance, and also what is considered to be success. It is limited to the short run or a future occurrence of the same conflict or different conflict after the intervention forfeits the success of the previous intervention?

<sup>158</sup> The Uniting for Peace resolution was adopted in 1950 to overcome the blockage of the Security Council.

<sup>159</sup> This looks very much as a contradiction to article 53 of the U.N Charter.



interest is not at issue. It is obvious that from the present state of things and alliances in international politics, it will be very difficult to find a situation where one of the P5 would not claim that their national interest is at issue.

The ICISS report also emphasizes on the need to rebuild, which involves strategies that address refugee protection, reconstruction, development, demobilization, disarmament, reintegration and justice, which ought to be carried out in collaboration with indigenous people and the availability of adequate resources. The development of the R2P continues in 2004 at the High level Panel Report.

### ***3.0.2: The 2004 High Level Panel Report***

In 2004, the concept of R2P was incorporated into the U.N reform agenda. However, as it develop at the UN there is a noticeable shift from the ICISS version<sup>160</sup> The U.N High Level Panel on Threats, Challenges and Change<sup>161</sup> declares in paragraph 201 of its report “ A More Secure World: Our Shared Responsibilities” that there is a growing acceptance that the international community must take up responsibility in cases where the sovereign state fails to protect their own citizens from avoidable catastrophe”<sup>162</sup> While paragraph 202 refers to this international collective responsibility as an emerging norm, paragraph 203 explicitly endorses this emerging norm exercise by the UNSC authorizing military action as a last resort.

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<sup>160</sup> When you compare the ICISS Version and the version of the UN documents.

<sup>161</sup> The former UN Secretary General, Kofi Anna set up the high level panel of 16 members from all over the world to come up with new ideas on how to resolve the world emerging issues.

<sup>162</sup> Some of the examples given for avoidable catastrophe are, ethnic cleansing by forcible expulsion and terror, deliberate starvation and exposure to disease, rape, and mass murder.

### 3.0.3: *The 2005 World Summit Outcome Document (WSOD).*

In 2005, the UN endorsed the R2P in the WSOD in its paragraph 138 and 139.<sup>163</sup> This document explicitly emphasized on the responsibility of each sovereign state to protect its population from genocide, war crimes, ethnic cleansing, and crime against humanity alongside the UN responsibility to protect population by taking measures under Chapter VI and VII of the UN Charter. It stresses the need for the UNGA to continue considerations of the R2P. It is seen that some of the proposition of the ICISS document are not in the final version of the 2005 WSOD despite their presence in the draft document.<sup>164</sup> Among some of these changes, the change of language is being noted. While the draft states that the responsibility to protect lies primarily with each sovereign state, the WSOD states that each individual state has the responsibility to protect. Although it is clear that the change is just on language, it turns to give the primary importance to the state rather than the responsibility.

Furthermore, Paragraph 138 of the WSOD states that the international community should encourage and help states to exercise their responsibility, which further shows an emphasis on the individual state. Paragraph 139 requires the international community to use means via the U.N. in accordance with chapter VI and VII of the UN Charter, meanwhile the draft document provides for means “including those” under chapter VI

<sup>163</sup> Resolution adopted by the U.N General Assembly, *2005 World Summit Outcome Document*, 24 October 2005, A/RES/60/1. *Supra* note 3o to see Paragraph 138 and 139.

<sup>164</sup> See the High-level Plenary Meeting of the General Assembly 14-16 September 2005, *Draft outcome document*, 22July 2005, Para. 113-114

and VII of the UN Charter, which clearly leave room for other means. This WSOD also fails to mention the obligation to rebuild, alongside the eventual use of military intervention by the international community.

#### ***3.0.4: Security Council References to the R2P.***

It is seen that within a period of five years, the UNSC has reaffirmed the concept of R2P as if it is a very old principle.<sup>165</sup> It has referred to the protection of civilians in several resolutions, and this constitutes the very essence of the R2P concept. In *Res. 1265*, the UNSC shows its commitment towards civilian protection from 1999.<sup>166</sup> In its preamble, it highlighted the primary responsibility of states to ensure civilian safety and recommended appropriate preventive measures to resolve conflicts, while showing its willingness to respond to situation of armed conflicts in cases where civilians are being attacked or when there is a deliberate denial of humanitarian assistance to civilians. It explicitly mentioned the concept of R2P in its *Res.1674*<sup>167</sup> by reaffirming its responsibility to protect population from genocide, war crimes, ethnic cleansing and crimes against humanity while citing paragraph 138 and 139 of the WSOD. It further holds that targeting civilians may constitute a threat to international peace and security and shows its readiness to adopt appropriate steps. *Res. 1706*<sup>168</sup> demands for the deployment of UN peacekeepers to Darfur and reaffirmed the WSOD. *Res.1738*<sup>169</sup>

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<sup>165</sup> This is seen from the numerous references it has made to the concept in its Resolutions.

<sup>166</sup> The UNSC adopted this Res. at its 4046<sup>th</sup> meeting, on 17 September 1999, S/RES/1265 (1999).

<sup>167</sup> Security Council Resolution 1674 (2006), adopted by the SC at its 5430<sup>th</sup> meeting, on 28 April 2006, S/RES/1674 (2006)

<sup>168</sup> Adopted on the 13 of august 2006

<sup>169</sup> Security Council resolution 1738 (2006) adopted by the SC at its 5613<sup>th</sup> meeting, on 23 December 2006

upholds the need to adopt conflict prevention strategies and *Res. 1812*<sup>170</sup> on 30<sup>th</sup> April 2008 refers to the WSOD. Also, the UN Secretary General has helped in the development of the concept of R2P.

### **3.0.5: *The U.N Secretary General.***

The U.N Secretary General discussed at length on the challenges of the changing world in his report “In Larger Freedom”. He talks of the freedom of want, fear and to live in dignity as freedom meant for every one to enjoy. He emphasized that the R2P lies first and foremost with each individual state and only shifts to the international community where states are unable or unwilling to protect their citizens and as a last resort, the UNSC may authorize enforcement measures under Chapter VII of the UN Charter.<sup>171</sup> Mindful of the sensitivity of the issue, paragraph 135 of the report says that “we must embrace the R2P and when necessary we must act upon it”.<sup>172</sup>

In addition, both Kofi Annan and Ban ki Moon have expressly shown their support of the concept of R2P in most of their speeches.<sup>173</sup> Also, in February 2008, the UN Secretary General appointed Edward Luck as his special adviser on the R2P as part of his measure to buttress the office of the Special Adviser on the Prevention of Genocide and Mass Atrocities (SAPGMA). Later on, he was forced to change this name, however, it shows his support of the concept of R2P.

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S/RES/1738 (2006)

<sup>170</sup> Security Council Resolution 1812 (2008), adopted by the SC at its 5882<sup>nd</sup> meeting, on 30 April 2008, S/RES/1812 (2008) on Sudan

<sup>171</sup> UN General Assembly, *In Larger Freedom: Towards Development, Security and Human Rights for all, Report of the Secretary-General*, 21 March 2005, A/59/2005, Paragraph 135

<sup>172</sup> Ibid.

<sup>173</sup> See Secretary General’s statements, report at <http://www.un.org/sg/>.

In tracing the development of the Concept of R2P, it is apparent that the concept has not been able to gather a unified support. It has remained a concept of visible divide.

### **3.1.0: Responsibility to Protect as a divided Concept.**

From the present level of its development, there is a clear divide within the meaning of R2P and the support it has gained so far. There is actually no consensus or clarity as to what is the exact meaning of the concept of R2P since it has not only been put in varied concrete forms but its interpretation and understanding has also varied within people and institutions to mean different things.

#### ***3.1.1: Divide in the Interpretation of R2P by Institution***

Elizabeth Griffin has better analyzed the divide within this concept.<sup>174</sup> The version of ICISS, International Crisis Group (ICG) and World Federalist Movement (WFM) of the R2P concept clearly identify the three responsibilities to be conflict prevention, reaction, and rebuilding. The ICISS version is unique for its focus on armed military intervention for humanitarian purposes and does not legitimize the UNSC as the sole body to grant authority. Closest to this is the African Union interpretation that seeks to legitimize arm intervention by regional organisation in case of failure of the UNSC to act.<sup>175</sup> For the African Commission it is more of a responsibility to strengthen peacekeeping.

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<sup>174</sup> Professor of International Law at the U.N Mandated University for Peace in Costa Rica, in her “Discussion Paper on Responsibility to Protect” at <http://responsibility2protect.wikispace.com>.

<sup>175</sup> Ibid

Nevertheless, within the UN system, R2P is not about military humanitarian intervention outside the UNSC authorization. Therefore, it is still in line with the existing collective security system and limiting rather than encouraging the use of force.

Looking at the WSOD, it strongly insists on the responsibility of individual states<sup>176</sup> and shift greatly from the UN and ICISS version. It is minimally concerned with reforming the UN, especially as regards making the UNSC actions and decisions more efficient. It denounces the five criteria set up by ICISS regulating intervention that appeared in previous UN version and even the request to the P5 not to use their veto power when it concerns genocide and mass atrocities. It also fails to include the responsibility to rebuild. Griffins points out that the WSOD phrased the international responsibility in the form of a more general appeal<sup>177</sup> with more cautiousness than the previous UN version with respect to the R2P by the international community. It lays greater emphasis on alternative means over armed intervention such as diplomatic, humanitarian and other peaceful measures. Also, without making it an imperative obligation upon the UNSC to act in the face of mass atrocities, it affirms the willingness to take action on a case-by-case basis.

The High Level Panel Report referred to the concept of R2P as an “emerging norm”, therefore, giving it more weight among states that consider the concept as being unclear, has no legal basis and requires further elaboration. The WSOD expects the UNGA to continue to consider the concept of R2P despite the divide in the interpretation given to it.

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<sup>176</sup> This is the view of some UN member states that contend that R2P is more about the state protecting its population rather than the international community.

<sup>177</sup> That the international community should as appropriate encourages and helps states to exercise this responsibility.

### ***3.1.2: Divide in the Interpretation of R2P by Selected Organizations and Individuals.***

The various interpretations as seen above have contributed in shaping peoples perception and description of the R2P concept. The High Level Panel Report, Global Center for the R2P, and the High Commissioner for Human Rights referred to the R2P as an “emerging norm”, the WFM as a “norm”, Gareth Evans and ICG as a “Principle”, Human Rights Watch as an “Emerging Principle”, and the UN Secretary General as a “concept”.<sup>178</sup>

Individuals like Jose Alvarez holds that it has been used as justification for different things including the protection of national artifacts, R2P people from terrorism and to legalize pre-emptive military action. He thinks the popularity of the concept is directly related to its possible varied interpretations.<sup>179</sup>

Griffins also points out that majority of Amnesty International Staff that have been interviewed have linked the concept primarily to humanitarian intervention, which is the common interpretation given by people who are not up to date with the concept<sup>180</sup>. Those that are actually advocating the concept, such as Global Center for R2P know that it is something more than that and relates to other measures, even though there is still no consensus as to what these other measures are.

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<sup>178</sup> *Supra* note 174.

<sup>179</sup> Alvarez, J “The Schizophrenias of R2P”, Panel Presentation at the 2007 Hague Joint Conference on Contemporary Issues of International Law, 30 June 2007.

<sup>180</sup> *Supra* Note 174.

### ***3.1.3: Divide in the Support of the Concept of R2P.***

This divide has also been seen from the support the concept has received through out its development from various stakeholders.<sup>181</sup> As concerns states, it is certain that the concept has mainly received support from Western and African States. Meanwhile, Eastern, Asian or Latin American states have either remained silent or refused to support the concept.<sup>182</sup> Some states have considered it to be a neo-liberal intervention strategy and anticipatory military action by western states<sup>183</sup> and others have refused to support it because of the lack of consensus or because it is extremely contentious.<sup>184</sup>

Considering Institutions, African institutions have given more support to the concept. This could be seen from the “Ezulwini Consensus”<sup>185</sup> where the AU endorses R2P and the right to use force for humanitarian purposes and recognized subsequent UNSC authorization in urgent cases. In 2007, the African Commission on Human and Peoples Rights adopted a Resolution that strengthened the R2P in Africa by recalling the ICISS, WSOD, and Ezulwini consensus in its preamble. While the Organisation for Security and Cooperation in Europe (OSCE) and the High Commission for National Minorities have supported the concept, the Association of South East Asian States (ASEAN), Organisation of American States (OAS) and Arab League have failed to endorse the Concept<sup>186</sup>.

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<sup>181</sup> That is principally States, Civil Societies and Organisations.

<sup>182</sup> States like Australia, Belgium, Botswana, Cyprus, Canada, Iceland, Ireland, Denmark, Liechtenstein, Mauritius, Ghana, Mexico, Monaco, Norway, Nigeria, South Africa, Switzerland, UK, USA, Slovenia, Sweden, France just to name a few have either spoken in favor of the concept before the UNGA, UNSC or World Submit.

<sup>183</sup> States like Venezuela and Cuba

<sup>184</sup> States like Cuba, Venezuela, Nicaragua, Egypt, Morocco, Sudan, Iran and Bangladesh, have argued that the concept has no meaning and the outcome of the WSOD merely refers the issue for further consideration

<sup>185</sup> The Common African Position for the proposed U.N reforms.

<sup>186</sup> *Supra* note 174.



Concerning the civil society, the WFM has been mobilizing support for the concept from international, regional and national NGOs.<sup>187</sup> The support for the concept of R2P has mostly come from NGOs based in the West and in Africa with very minimal support from Asia, Central and Latin America and the Middle East. The Center for R2P was launched in 2008 and it received pledges from a number of countries<sup>188</sup> and support from some renowned individuals<sup>189</sup>.

Despite this visible divide that exists within the concept of R2P, it is also noticed that the debate on humanitarian intervention is giving way to a R2P debate that might help to reconstruct the Westphalian meaning of state sovereignty.

### **3.2.0: A Shift from Humanitarian Intervention to the R2P.**

To better understand the R2P, it is important to distinguish it from the principle of humanitarian intervention. This section makes that distinction and tries to assess whether the notion of state sovereignty has changed with the move from humanitarian intervention to the R2P. Traditionally, it might be said that humanitarian intervention is more about using coercive military force for humanitarian purposes<sup>190</sup>, but R2P goes far beyond that and also looks as a concept that has the potential appeal to resolve the long time debate about humanitarian intervention in a more realistic way.

The ICISS holds that the current humanitarian intervention debate is unhelpful since it rather emphasizes on the rights of the intervening state rather than on the urgent need of

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<sup>187</sup> It has listed over 250 NGOs on its website as supporters for the concept. [www.responsibilitytoprotect.org](http://www.responsibilitytoprotect.org). Accessed on 2<sup>nd</sup> October 2009.

<sup>188</sup> Such as Norway, France, UK, Rwanda, Australia and

<sup>189</sup> Personalities such as Desmond Tutu, Javier Solana, Bill Clinton and UN Secretary General.

<sup>190</sup> Gareth Evans, "The Responsibility to Protect: An Idea Whose Time Has Come... and Gone?" *International Relations*, Vol. 22, 2008, P. 290.

the population at risk<sup>191</sup>. The ICISS also claims that by focusing primarily on the act of intervention, it fails to consider the need for prior preventive measures or later follow up assistance and that at first sight, the language itself seems to trump sovereignty with intervention.<sup>192</sup> The ICISS thinks that a shift from humanitarian intervention to R2P brings with it a change in the perception that is deeply rooted in humanitarian intervention by introducing different perceptions such as: an implied evaluation of the questions from the point of view of individuals in need of support and not from those giving support, and also acknowledged the state primary responsibility to protect while also serving as a linking concept that bridges the unquestionable gap between intervention and sovereignty.<sup>193</sup>

It is apparent that the language of the right to intervene at first reading sounds very confrontational more than the R2P that entails prevention and rebuilding.<sup>194</sup> It has been said that if one considers the tension that exists between state sovereignty and intervention, this shift reconceptualizes the dilemma involved with the conditions that give rise to a right to intervention to a R2P.<sup>195</sup> Some optimists have viewed to date the ICISS R2P as the most comprehensive attempt to address the sovereignty against intervention struggle.<sup>196</sup> The ICISS report is seen to have better dealt with the contradictory political, moral and legal arguments relating to humanitarian intervention than the report of the Danish and Dutch Government in 1999 and the 2000 Report

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<sup>191</sup> See the ICISS Report on shifting the terms of the debate. P. 16

<sup>192</sup> Ibid.

<sup>193</sup> Ibid. P. 17.

<sup>194</sup> Ibid P.17.

<sup>195</sup> ) See Bruce Cronin, "The Tension Between Sovereignty and Intervention in the Prevention of Genocide." *Human Rights Review*, July 2007.P.300

<sup>196</sup> Thomas G Weiss, *HUMANITARIAN INTERVENTION: IDEAS IN ACTION*. Cambridge, Polity Press, 2007 P. 89

(sponsored by the Swedish Government) of the Independent International Commission on Kosovo.<sup>197</sup>

It is important to note that some critics of the R2P have also accepted that conditioning sovereignty on human rights and R2P have a “considerable moral force”.<sup>198</sup> As a member of the High Level Panel, Gareth Evans stresses the importance of moving from the divisive humanitarian intervention to the R2P, while the 2004 UN High Level Panel confirmed that the issue is rather the responsibility of every state to protect their people from atrocities, and assist other states to do the same and not a right to intervene.<sup>199</sup>

Actually, a focused study on the ICISS report through to the WSOD in 2005 makes it clear that R2P is different and much more than humanitarian intervention. This is because it is more about taking efficient and sufficient preventive measures at the earlier stages and the need for required assistance to be given to struggling states. This assistance is to prevent the situation of struggling states from getting worst and reach the stage of genocide or other atrocities if there is reasonable foresight that this might happen in case something is not done with or without outside support<sup>200</sup>. Some of this support or action can be political, economic, diplomatic, legal or in the security sector, without coercive action.<sup>201</sup> A better example to explain how the R2P operates is the case of

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<sup>197</sup> See Edward Newman, ‘Humanitarian Intervention, legality and legitimacy,’ *International Journal of Human Rights* 6, no. 4 (2002): P.102-20; Independent International Commission on Kosovo, *The Kosovo Report: conflict, international response, lessons learned* (Oxford: Oxford University Press, 2000).

<sup>198</sup> Mohammed Ayoob, “Humanitarian Intervention and International Society”, *International Journal of Human Rights*, Vol.6 no. 1 (2002) P.84

<sup>199</sup> *Supra* note 196, P.117.

<sup>200</sup> *Supra* Note 190. P, 290

<sup>201</sup> *Ibid.* P. 291.

Macedonia in 1995 where there was a preventive deployment of troops and the case of Burundi.<sup>202</sup>

Nevertheless, failure to prevent does not mean that the concept of R2P has failed. There is the need for reaction that needs not necessarily be military and could either take any of the forms highlighted above. However, military action still remains a possibility in case it is the only option to stop large scale killing and other forms of atrocious killings as was in Rwanda and Srebrenica. This paper also shares the view that the R2P has more potential in mobilizing response in extreme and conscience shocking cases to a degree that the right to intervene cannot.

It is worth mentioning that ever since the conceptualization of the R2P concept, some governments think it is a more sophisticated way of putting and legitimizing humanitarian intervention.<sup>203</sup> Since the WSOD, it has been argued that it authorizes non-consensual intervention without the sanction of the UNSC.<sup>204</sup> One cannot also deny that some governments have used R2P to gain support for coercive intervention as France attempted in 2008 to use R2P to persuade the UNSC to authorize the use of force for humanitarian assistance regarding the cyclone Nargis.<sup>205</sup>

That notwithstanding, the ICISS regional round table and consultation with NGOs after its report in 2001 shows a greater consensus against the right to intervene, especially, when it is unilateral. However, this did not concern the cases of prevention of genocide, mass atrocities, and protecting vulnerable population, which is the principal

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<sup>202</sup> In a case like Burundi, numerous international players such as Nelson Mandela, Peace keeping troops, international crisis group have been working hard tirelessly to protect its fragile situation from deteriorating, considering that it has a history of atrocious crimes and a persisting ethnic tension.

<sup>203</sup> See Alex J. Bellamy, "The Responsibility to Protect and the Problem of Military Intervention" *International Affairs* 84:4, 2008 P. 616

<sup>204</sup> See Alicia L. Bannon, "The R2P: the U.N World summit and the question of unilateralism", *Yale Law Journal* 115:5, 2006, P. 1156-65.

<sup>205</sup> See the New York Times, "World fears for plight of Myanmar cyclone victims" 13 May 2008

focus of R2P.<sup>206</sup> In addition, Kofi Annan once said that even though military intervention may be undertaken for humanitarian purposes, we should keep away from using the term “humanitarian”<sup>207</sup> to describe military operations.<sup>208</sup>

So, one can see that with the shift from humanitarian intervention to the R2P, a broader concept of sovereignty is emerging which now covers both rights and responsibilities. Therefore, the shift to R2P has strengthened the notion of state sovereignty and has not challenged it *per se*. Since it is only when a state is either unable or unwilling to exercise its responsibility to protect the rights of its population that its sovereignty and the right of non-intervention is suspended, thus giving rise to an international responsibility to protect population at risk.<sup>209</sup>

In addition, important personalities such as Kofi Annan have said that sovereignty is still very important in international affairs, but it is now the people’s sovereignty rather than the sovereign’s sovereignty.<sup>210</sup> Gareth Evans has summarized the importance of sovereignty to states that resulted from decolonisation by saying that “sovereignty hard won and proudly enjoyed, is sovereignty not easily relinquished or compromised”.<sup>211</sup>

There is good reason to think that after the ICISS report, the real world situation might not changed as it was during the Westphalian period. This can be deduced from the

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<sup>206</sup> See the World Federalist Movements and the International Policy Group, *Civil Society Perspective on the responsibility to Protect*, final report 30<sup>th</sup> April 2003

<sup>207</sup> Actually one can see that it has been very difficult to have a definition of the word “humanitarian” in international law. The ICJ had the opportunity in the *Nicaragua Case* but simply refer to it as what Red Cross do.

<sup>208</sup> See at Kofi Annan, “Opening Remarks,” Humanitarian Action: A Symposium, 20 Nov.2000, in *International Peace Academy Conference Report* at New York: International Peace Academy, 2001

<sup>209</sup> Supra note 196 P.111.

<sup>210</sup> Kofi Annan, “Two Concepts of Sovereignty”, *the Economist* 352,18 Sept 1999: 49-50

<sup>211</sup> Gareth Evans, “Foreword,” in Ramesh Thakur, *THE UNITED NATIONS, PEACE AND SECURITY: FROM COLLECTIVE SECURITY TO THE RESPONSIBILITY TO PROTECT* (Cambridge: Cambridge University Press, 2006).

remarks of Abdelaziz Bouteflika<sup>212</sup> that no one can deny the right and duty of the UN to help suffering humanity, but states are extremely sensitive to anything that touches sovereignty, especially as sovereignty is not only their last defense against the rules of an unequal world, but they are also absent from the decision making process of the UNSC.<sup>213</sup>

While it is apparent that the concept of humanitarian intervention has been a subject of great debate and there is also an emerging concept as R2P, the international community has previously responded to address situation of gross human rights violations under the heading of humanitarian intervention. This paper now assesses some of these responses in order to determine if one can say that the international responses to human rights crises is being done in a selective way.

### **3.3.0: Assessing the Humanitarian Interventions by the International Community in Cases of Gross Human Rights Violation.**

This section analyses some of the interventions carried out by the international community in cases of human rights violations, so as to assess the Darfur situation and determine whether one could say that intervention to protect population against human rights violations are done on a selective basis or the difficulty is at the level of implementation.

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<sup>212</sup> The Algerian President.

<sup>213</sup> *Supra* Note 196 P 221.

It cannot be denied that intervention for humanitarian purposes is not new in international legal literature.<sup>214</sup> Most interventions have been subjects of controversy since many people have considered and continued to look at humanitarian intervention with much distrust.<sup>215</sup> However, critics have not only argued that humanitarian justification hides the economic, political and strategic interests associated with intervention, but a famous legal mind once concluded that only the Syrian intervention in 1860 and 1861 constitutes a genuine case of humanitarian intervention.<sup>216</sup> It is apparent that humanitarian intervention evolved prior to the emergence of international institutions, however, the UN Charter regime has been very instrumental in the legal interpretation of intervention as it came up with the permissible grounds and at the same time, replacing the word “intervention” with the use or threat of force.

During the cold war period, the International Court of Justice (ICJ) in the *Corfu Channel case (United Kingdom of Great Britain and Northern Ireland v Albania)* concerning the U.K and *Nicaragua Case (Nicaragua v. United States)* concerning the US emphasized on non-intervention and denounces intervention that impedes states and affects their sovereignty. In the *Nicaragua case*, it rejected intervention to protect human rights “where human rights are protected by international conventions...” since the use of force could not be the appropriate means of monitoring or ensuring such respects.<sup>217</sup> It is

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<sup>214</sup> This is because as far back as 1827 England, France, and Russia intervened in Greece to stop Turkish massacres and the ill treatment of the population linked with the insurgents. Also France intervened in Syria in 1860 to protect Maronite Christian, Austria, Italy, Russia, Prussia, and France protection of Christian population in Crete from 1866-1868, in 1875 –1878 Russia intervened in the Balkans to support insurrectionist Christian and the intervention by some European powers protect Christian Macedonian Community from 1903 to 1890

<sup>215</sup> See Dino Kritsiotis, “Reappraising Policy Objections to Humanitarian Intervention”, *Michigan Journal of international Law*, 19, 1998 P. 1005

<sup>216</sup> See Ian Brownlie, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW*. 5ed Clarendon Press, 2003 P. 340

<sup>217</sup> See ICJ, *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. U.S)* 27 June 1986, Paragraphs 267-8 and 243

worthy to note that authors, such as Weiss, have helped to clarify this by pointing out that such interpretation should be done with caution and is not definitive, especially if one looks at subsequent events, and bear in mind that the protection of human rights assumes a peaceful and stable system that ensure the respect of human rights<sup>218</sup>.

After evaluating some of the cases of humanitarian intervention during the cold war period, the research directorate of the ICISS came to the conclusion that UN's cold war period is one that the rhetoric of humanitarian intervention had been cited most strongly in cases that lacks convincing humanitarian motives.<sup>219</sup> On the other hand, interventions that turn out to produce outstanding humanitarian benefits were based on self-defense and not humanitarianism.<sup>220</sup> I think that these interventions could as well be justified on humanitarian grounds since eminent scholars, such as Lauterpacht, argued in 1946 that intervention is legally permissible when a state is guilty of cruelties against its nationals to a degree that deny them of their fundamental human rights and shock the conscience of mankind.<sup>221</sup>

With the end of the cold war, post 1990 cases of humanitarian intervention could be seen as justification for international action since most of them look more legitimate because of their multilateralism unlike the cold war humanitarian interventions. International responses to crisis situations in the 1990s that involved the authorization of military intervention ranges from authorization under chapter VII with a

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<sup>218</sup> *Supra* Note 196, P. 36.

<sup>219</sup> The U.S put forth Humanitarian grounds to help the contras in Nicaragua, and also Moscow in its support of the comrades in Budapest and Prague in 1968. See *Supra* Note 151 P 37.

<sup>220</sup> These includes India's Intervention in East Pakistan in 1971 and the creation of Bangladesh, Vietnam in Kampuchea in 1978 which later became Cambodia and ended the Khmer Rouge, and the Tanzania intervention in Uganda in 1979 that overthrow the dictator Idi Amin Dada

<sup>221</sup> See Hersch Lauterpacht, "The Grotian tradition in International Law", *British year book of International Law* 23, 1946.1



UN mission and with delegation of authority as in the case of former Yugoslavia in 1992, Somalia in 1992-93, Rwanda in 1994-96, Sierra Leone in 1997 with no initial UNSC authorization, East Timor with UN Mission and delegation of authority, and Kosovo with no initial UN authorization and delegation to Kosovo Force (KFOR), Liberia with no UNSC authorization, Iraq in 1991 where the coalition forces acted with no initial UNSC authorization and later with delegation of authority.<sup>222</sup>

In assessing some of the UNSC responses to some of the cases that warranted intervention from the 1990s, the UNSC adopted *Res.688*<sup>223</sup> to protect the Kurds through establishment of no-fly zones and Kurdish enclaves. The UNSC reiterates the linkage between respect for human rights and the maintenance of international peace and security. In Somalia, *Res.751* creates UN Operation in Somalia (UNOSOM) to monitor the cease-fire and escort delivery of humanitarian supplies. It also authorized the use of “all necessary means” to secure the environment for humanitarian relief operation that provided the grounds for the US led deployment of the United Task Force (UNITAF) under UNSC *Res.794*. UNSC *Res. 814* authorized the use of force to restore law and order and to deal with the bandits.<sup>224</sup>

Looking at the case of former Yugoslavia, UNSC *Res. 743* set up UN Protection Force (UNPROFOR) and mandated it to create the conditions for peace and security required for the negotiation of an overall settlement of the Yugoslavia crisis, while UNSC *Res.770* demanded states and regional organisations to take “all measures necessary”

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<sup>222</sup> *Supra* Note 196 P 43.

<sup>223</sup> U.N. Doc.S/RES/688(1991) The Resolution was passed by 10 votes to 3(Cuba, Yemen, and Zimbabwe) with two abstentions (China and India).

<sup>224</sup> See Francis Kofi Abiew. THE EVOLUTION OF THE DOCTRINE AND PRACTICE OF HUMANITARIAN INTERVENTION. Kluwer Law International, 1998, P.148.

which would therefore include the use of force to protect humanitarian convoys in Bosnia.

As concerns the Rwandan situation, the UN mandate was limited to monitor the implementation of the Arusha Accord before the genocide. UNSC *Res. 918* extended the mandate to the protection of refugees with the creation of safe humanitarian zones. UNSC *Res. 929* authorizes member states to use “all necessary means” to fulfill humanitarian operations. In addition, *Res. 788* recognized the ECOWAS effort to find a sustainable peace to the conflict since the ECOWAS forces intervened to bring the civil strife to an end, restore law and order, with the prevention of further killings.

In Haiti, while UNSC *Res. 841* provides a wide range of sanctions on the military authorities, UNSC *Res. 940* called on member states to set up a multinational force and to use “all necessary means” to return Jean Bertrand Aristide<sup>225</sup> to power. The UN Mission to Haiti was eventually deployed to replace US forces.

It is pretty clear from the above resolutions that the UN has been willing to find gross human rights violations to be a threat to or breach of international security and thus ready to take actions including armed military intervention to stop such violations.<sup>226</sup> Mindful of this, the UN has also used coerced economic sanction and international criminal prosecutions<sup>227</sup>. So, looking at the Darfur crisis, is it possible for one to say that the international responses to humanitarian crisis are selective? Or the problem is more at the level of implementation?

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<sup>225</sup> The former President of Haiti in 1991 prior to the September military coup, and he became president again in 1994–1996, and later again from 2001 to 2004 when he was ousted again through a military coup.

<sup>226</sup> *Supra* note 205.

<sup>227</sup> For example, the economic sanction of Haiti, the establishment of the ICTY, ICTR and the ICC to prosecute perpetrators of serious crimes.

UNSC *Res. 1564* set up the International Commission on Inquiry on Darfur, which concluded that the GoS has not pursued any genocidal policy, nevertheless recognized the possibility that some individuals including government officials may have committed acts with genocidal intent.<sup>228</sup> At this point, it is good to recall that one of the basic changes in the use of the UNSC power is that civil wars have been considered as threats to international peace and security, which therefore warrants UN Charter Chapter VII application. Still in this light, the International Criminal Tribunal for Former Yugoslavia (ICTY) holds that purely internal armed conflict may constitute a “threat to peace”<sup>229</sup> which one can say that this has been generally accepted by the UNSC and the UNGA. Furthermore, massive flow of forced migrants has been considered to be a threat to international peace and security<sup>230</sup> coupled with serious and systematic violation of international humanitarian law and the need for democracy.<sup>231</sup>

Bearing all these in mind, it is worth borrowing Weiss words that “the collective yawn since 2003 in the face of Darfur’s disaster could be more destructive to the fabric of international law than the 800,000 deaths in Rwanda.”<sup>232</sup> The issue of selectivity of international humanitarian intervention can be further highlighted because the U.S. unanimously condemned Darfur in a vote of 422 to 0 in July 2004 that Khartoum is committing genocide<sup>233</sup> with corroboration from groups such as Physicians for Human

<sup>228</sup> See Report of the international Inquiry on Darfur to the United Nations Secretary-General, Geneva, 25 January.2005

<sup>229</sup> See *Prosecutor V.Tadic*, (Oct 1995), paragraph 30.

<sup>230</sup> The UNSC used this in Iraq, Balkans and Rwanda to justify Chapter VII actions to create safe areas, and havens.

<sup>231</sup> See the ECOWAS intervention in Sierra Leone, and Operation Restore Democracy in Haiti where it authorized force for the replacement of an unwanted regime

<sup>232</sup> *Supra* note 196 P.54.

<sup>233</sup> U.N OCHA, “Sudan: U.S Congress Unanimously Defines Darfur Violence as ‘Genocide’,” 23 July 2004, available at <http://www.globalsecurity.org/military/library/news/2004/07/mil-040723-irin03.htm>.

Rights<sup>234</sup> and with the European Union Parliamentarians requesting Sudan to stop the actions that could be construed as amounting to genocide.<sup>235</sup>

It is possible that selectivity can result from lack of resources or political will or as a result of the changing priorities of strategic concerns which has led to the exclusion of humanitarian concerns especially in a post 9/11 situation coupled with the military overused on the part of influential states such as the US. Weiss also argues that after the so-called declared victory in the war in Iraq, “the obsession with Afghanistan, Iraq, and terrorism means that strategic consideration would trump humanitarian concerns which has caused sunset in humanitarian intervention”.<sup>236</sup>

Based on this, it can be suggested that the selectivity is greatly related to the fact the priorities are assigned to different interests at a particular time. While the debate remains open, it is reasonable that when one looks at the Darfur, Uganda and Democratic Republic of Congo (DRC) crises, an argument that international humanitarian intervention is selective looks very appealing. Without an authoritative denial of such a view, this paper however thinks that the problem is more at the level of implementation since the most crucial challenges of humanitarian intervention are more operational than normative.

Since humanitarian intervention has brought up the question of selectivity and a shift from humanitarian intervention to R2P has already been established above, it is worth looking at the R2P in the Darfur context.

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<sup>234</sup> Physicians for Human Rights, ‘call for Intervention to save lives in the Sudan: Field Team Compiles Indicators of Genocide,’ 23 June 2004, available

[http://www.phrusa.org/research/sudan/pdf/sudan\\_genocide\\_report.pdf](http://www.phrusa.org/research/sudan/pdf/sudan_genocide_report.pdf).

<sup>235</sup> Agence France Presse, “EU lawmakers call Darfur ‘Crisis Genocide’,” 16 sept. 2004, available at [www.middle-east-online.com/english/sudan/?id=II287](http://www.middle-east-online.com/english/sudan/?id=II287)

<sup>236</sup> *Supra* 196 P.55

### 3.4.0: R2P in the Darfur Context.

This section looks at the R2P in the Darfur context. While it makes a case for the international community to adequately protect the civilians in Darfur, it equally addresses the main research question of whether the R2P concept has been able to adequately protect civilian population in Darfur.

Actually, Darfur crisis represents the most appropriate and contemporary situation for the R2P. It is pretty clear that ever since 2003 when over 200,000 civilians died as a result of violence or diseases, malnutrition that directly relates to the war, humanitarian relief efforts confronting a lot of hurdles, over two million internally displaced and the conflict having a spilling over effect to the neighboring countries, the just cause threshold criterion of the ICISS report was met.

The head of the Human Rights Council's mission to Darfur, Jodie Williams evaluated the performance of the GoS and found that it has "manifestly failed" in its responsibility to protect its citizens in Darfur.<sup>237</sup> As the Darfur crisis is concerned, governments more or less have a consensus on the gravity of the threat, but disagree about the most appropriate and efficient course of action and the responsibility of the Sudanese government.<sup>238</sup> This disagreement has helped in shaping the misunderstanding of the concept of R2P, especially on the debate on how the international community should react leading to a polarized position of direct military intervention without recognizing the many way

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<sup>237</sup> See the William Report, *Report of the High -Level Mission on the situation of human rights in Darfur, pursuant to Human Rights Council Decision S4/101, A/HRC/4/80*, 7 March, paragraph 19-20.

<sup>238</sup> Alex J. Bellamy, "A responsibility to protect or a Trojan horse? The Crisis in Darfur and Humanitarian Intervention After Iraq" *ethics & International Affairs*, Vol. 19 Issue 2, 2005, P. 31-54.

stations in between.<sup>239</sup> Gareth Evans argues that even advocates of the R2P disagreed on whether armed military intervention can be justified based on the just cause threshold and precautionary principles of the ICISS report.<sup>240</sup>

Bearing in mind that the WSOD reaffirmed the primary role of states to protect their own citizens and further encourages the international community to assist weak states in exercising this responsibility, it equally calls for international intervention when countries fail to protect their citizens from genocide. There is an unarguable acceptance of collective international responsibility to protect by the international community, and that, where peaceful means are unsuccessful, outside intervention including military force that preferable carries UNSC authorization is a possible option and a last resort. Nevertheless, the threshold for military intervention is high since the crime must be a crime of mass nature such as genocide, war crime, crimes against humanity, or ethnic cleansing and not just the presence of substantial human rights violations.

It is also important not to overlook some of the significant interpretation for any military intervention in Darfur and its potential resulting effect. David Reiff rightly points out that in Europe or in the U.S, deploying NATO forces to Darfur may seem like complying with the global moral responsibility to protect, but in most of the Muslim world, it would likely be interpreted as one more invasion of an Islamic territory by Christian forces.<sup>241</sup> It might also have negative effect on the general humanitarian relief effort and even on the peace agreement between the North and the South of Sudan considering that the peace agreement is not yet stable.

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<sup>239</sup> See Lee Feinstein, *"Darfur and Beyond: What is needed to Prevent Mass Atrocities"*, (New York: Council of Foreign Relation, 2007), P.48, available at [www.cfr.org](http://www.cfr.org)

<sup>240</sup> See International Crisis Group "Getting the U.N into Darfur, Africa Briefing 43, 12 Oct 2006, P.15-17, however authors such as Eric Reeves and Samantha Power have disagreed with this argument.

<sup>241</sup> David Reiff, "A Nation of Pre-emptors," *New York Times Magazine*, 15 Jan 2006, P 12.

At this point, it is important to note that the Darfur crisis still remains and constitutes an R2P situation. For those who have understood the R2P concept, no one can reasonably deny that the responsibility to react has shifted to the international community since the GoS has manifestly abdicated its sovereign responsibility. This paper agrees with Gareth Evans' point that the failure to use coercive military measures in Darfur does not make the Darfur case a R2P failure but calls on the international community to take up their responsibility in different forms such as ceaseless diplomatic, economic and legal pressure.<sup>242</sup>

While agreeing with the above, it gives room for more questions with debatable answers. For how long will the diplomatic, economic and legal pressure last in order for the concept of R2P not to be a failure in the Darfur situation? Even though one cannot deny the fact that there have been sustained diplomatic and serious legal pressure such as the ICC indictment of the President of Sudan, the bottom line is that the R2P concept is all about protecting civilian population by the sovereign state and, unless the state is unable or unwilling, that this protection falls onto the international community. While one cannot say that the R2P concept has been a complete failure in the Darfur situation since the international community has taken several diplomatic moves and some bold legal measures against the GoS, it remains unarguable that the R2P concept has not been able to adequately protect the civilian population in Darfur. Therefore, this failure has rendered the concept a mere rhetoric, especially, as the violations and impunity persists. Therefore, more still need to be done.

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<sup>242</sup> Gareth Evans, "Responsibility to Protect: An Idea whose Time Has Come and Gone?" *International Relations* 2008, P.293.

## CONCLUSION AND RECOMMENDATIONS

### Conclusion.

Upon the struggle to put an end to the long lasting civil war in Sudan<sup>243</sup>, came the Darfur conflict in 2003. The SLA and the JEM rebels confronted the oppressive GoS by taking up arms because of the long period of economic, social and political marginalization of the Darfur region. The GoS responded with an unprecedented use of force by arming the *Janjaweed* militia to crush down this rebellion. The end result was serious violations of international human rights and humanitarian law by the parties to the conflict, especially the *Janjaweed* militia that targets the black African population in Darfur<sup>244</sup>. These gross violations of international law remain unpunished despite the presence and efforts of the domestic and international tribunals to put an end to the impunity, let alone the numerous responses made by the international community to bring the conflict to an end. It is surprising that despite the commitment of the international community since 2005 when states endorsed the concept of R2P in the WSOD, the innocent civilian population in Darfur could not be provided with adequate protection.

It has become common knowledge that there have been gross human rights and international humanitarian law violations in Darfur<sup>245</sup>. The Specialized Courts that were established in Darfur before the INC and the SCCED that was established after the INC

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<sup>243</sup> That is the conflict between Northern and Southern Sudan.

<sup>244</sup> See Touko P, "the lessons of Darfur for the future of humanitarian Intervention", *Global Governance*, Vol 13. 2007, P 366. He argues that in cooperation with the GoS forces, the Janjaweed unleashed a campaign of terror, burning the villages of non-Arab communities, looting property, rape and abduction, destroying their livestock, water points, mills and other village assets.

<sup>245</sup> Countless authors, non-governmental organisations, international organisations, have alleged and argued that there is the presence of genocide, crimes against humanity and war crimes occurred in Darfur. The ICC even found that there are good reasons to belief that the President of Sudan has committed crimes against humanity and war crimes as an indirect perpetrator under command authority.



could not help in reducing the impunity of these grave international law violations. Despite the ICC's main goal of deterring the most serious crimes and put an end to impunity for perpetrators of such grave international crimes, its issuance of an arrest warrants to some officials of the Sudanese Governments, including the president of Sudan Al-Bashir for international crimes committed in Darfur, remain unexecuted.<sup>246</sup> While an arrest warrant to the president must have sent a message to other perpetrators of such crimes, and might deter them from further violations, the arrest warrant equally led to the evacuation of some humanitarian relief organisations from Darfur.<sup>247</sup> The principle of non-interference and absolute sovereignty have served to a greater extent to shield perpetrators from accountability, therefore influencing the ICC's potential to reduce the impunity of the gross human rights violations that occurred in the Darfur crisis.

The doctrine of absolute sovereignty has not only affected the ICC but has also helped to shape the responses made by the international community to the Darfur conflict. This is seen from the UNSC resolutions, actions adopted by the AU, EU, and some independent states like US, Britain, France and China. With the shift from humanitarian intervention to the R2P, it is seen that a broader concept of sovereignty is emerging which covers both rights and responsibilities. It can be said that the shift from humanitarian intervention to the R2P has helped to buttress the notion of state sovereignty since it is only when a state is unable to exercise its responsibility that its sovereignty and right to non-interference is suspended.

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<sup>246</sup> As of the 24<sup>th</sup> of November 2009.

<sup>247</sup> See the action of the Sudan's Humanitarian Assistance Commission (HAC). Available at Sudan Watch, <http://sudanwatch.blogspot.com/2009/03/sudans-hac-says-expulsion-of-ngos-from.html>,

The responses and intervention by the international community in cases of gross human rights violations is strongly debated as to whether the interventions are selective or the problem lies with the implementation. Without underminding or overlooking the strength behind an argument of selectivity when one looks at the case of Darfur, Uganda, Democratic Republic of Congo and Rwanda, this paper thinks the problem is more at the level of implementation since the main obstacles to humanitarian intervention are at the operational level and not normative.

The Darfur conflict still remains a R2P situation and the failure of the international community to adequately protect the civilian populations in Darfur has rendered the concept of R2P a mere rhetoric especially as the violations and impunity persists<sup>248</sup>. There is the need to make a case for the R2P in Darfur. I am arguing for the R2P in Darfur because of the impunity of the gross human rights violations and I understand R2P as a product of the WSOD, meanwhile others have argued for humanitarian intervention in Darfur because of the commission of gross human rights violations<sup>249</sup> and others have interpreted R2P based on ICISS report.

My claim that the international community has failed to adequately protect civilian population in Darfur actually ties with the claim put forth recently by Wiktor Osiatynski

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<sup>248</sup> See the Report of the UN Secretary-General on the deployment of the African Union-United Nations Hybrid Operation in Darfur, June 9, 2009, S/2009/297. He says that as talks continue in Qatar in May 2009, the JEM and pro-government armed groups clashed repeatedly in North Darfur, which has caused civilians to flee while some were killed in crossfire between government soldiers and police. Also UNAMID reported incidents of sexual and gender-based violence against 34 victims by persons dressed in military uniforms. Furthermore, the Special Rapporteur on human rights in Sudan reported in her June 1, 2009 report to the Human Rights Council that over 200 Darfuris arrested after the JEM attacks in May 2008 by the National Security Services in Khartoum remain unaccounted for.

<sup>249</sup> Authors like Nsongurua J. Udombana in "When Neutrality is a sin: The Darfur crisis and the crisis of humanitarian intervention in Sudan", *Human Rights Quarterly*, vol.27 No.4, 2005, Nirina Kiplagat in "Darfur and the case for Intervention, the *ploughshare monitor*, Vol 26 no.1.

in 2009 that the two questions of “what do we do” and “who should take the lead” which are central to R2P document and the 2005 WSOD are still unanswered<sup>250</sup>.

It is apparent and undisputable that, to properly apply the R2P concept to the Darfur crisis and to achieve a stable and durable peace more still need to be done. This paper now makes some suggestions for the way forward since the Darfur situation remains a challenge to; the concept of R2P, the development of international human rights law and humanitarian laws, the international community, especially the UN, AU, EU, and other great powers.

### **Recommendations**

Mindful of the fact that the failure of the international community to adequately protect the civilian population in Darfur has rendered the concept of R2P a mere rhetoric, it is undeniable that something has to be done. The following suggestions are put forth as the way forward for a stronger R2P in Darfur. Currently,<sup>251</sup> it is seen that the violence in Darfur has reduced remarkable, but this does not mean that Darfur has achieved durable or sustainable peace, or that the impunity of the gross human rights violations have been addressed. Darfur crisis is still known to be a great challenge to the international community.

It is not too optimistic to share the view of other optimists that, all human conflicts have solutions regardless of whether the conflicts are economic, political, social, or cultural.<sup>252</sup> There is need for a comprehensive but inclusive peace agreement in Darfur.

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<sup>250</sup> *Supra* note 13.

<sup>251</sup> That is as of November 2009 when this thesis is concluded.

<sup>252</sup> See David D Chand “Sudan’s Civil War: Is A Negotiated Solution Possible? *Indiana University Press Journals*, found in *Africa Today*. Vol 36, No.3/4, 1989, P.55.

This agreement has to fully cover all the stakeholders and not only the parties to the conflict. This is because a durable peace in Darfur will require addressing the root causes and escalators of conflicts such as the continued marginalization and the abuse of majority of the population in Darfur. The up coming national election in Sudan scheduled for early 2010 presents an opportunity and a challenge at the same time. The National Elections Commission has to make sure that the election is free and fair.

The government of Sudan has an obligation under international law to compensate for the loss and redress for other physical and mental injuries caused as reparation for the serious violation of international human rights and humanitarian law.<sup>253</sup> Due to the importance of reconciliation and healing, truth commissions that will benefit from international experts on truth commissions will be able to play an important role in Sudan in the nearest future<sup>254</sup> but they should not serve as an alternative to prosecutions of the most serious crimes.

As said earlier, it is basic common sense that if the impunity of these gross human rights violations is not addressed, the perpetrators will keep on committed them. So there is an urgent need to suppress such impunity and obtain justice if the Darfur crisis is to be adequately addressed. Due to the lack of accountability at both the domestic and international level, the GoS has to reform its legislations so as to do away with the broad immunities for members of the security forces, and allow for prosecution of individuals on the basis of command responsibility. This can only happen if the GoS establish or strengthen national justice systems to make sure they are independent, impartial, and

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<sup>253</sup> See the UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the UNGA Res. 60/147 on 16 December 2005.

<sup>254</sup> This is because the current situation does not provide for an environment for the establishment of truth commission, since the government and rebel forces continue to fight even though in a occasional manner.

effective. The GoS should also initiate serious and full investigations for crimes committed in Darfur and guarantee domestic prosecution. Most importantly, while the issuing of an arrest warrant to Al Bashir by the ICC is reasonable and has received support from some fractions in Sudan and internationally, a deferral of the arrest warrant is also reasonable for achieving peace without exonerating him from the international crimes he is charges with. Therefore cooperation with the ICC is required from all the parties to the conflict especially as regards the safety of citizens to give evidence to the ICC.

In order to have a genuine R2P in Darfur and future crisis situations in any part of the world, there is need for an urgent, proper understanding and consensus on what the concept of R2P actually mean. This is because the divide as to the interpretation, meaning and support giving to the concept of R2P negatively affect the strong appeal within it to resolve the long lasting debate on humanitarian intervention and to reconceptualize the notion of absolute state sovereignty. I think it will be good for the R2P from the WSOD to include some elements from the ICISS such as the elements of the responsibility to rebuild. However, the political will of states is imperative in obtaining the consensus that is required to make the concept of R2P to mean what it actually meant in 2005 when states endorsed it.

## BIBLIOGRAPHY

### Text Books.

Abiew, Francis Kofi. THE EVOLUTION OF THE DOCTRINE AND PRACTICE OF HUMANITARIAN INTERVENTION. Kluwer Law International, 1998.

Brownlie, Ian. PRINCIPLES OF PUBLIC INTERNATIONAL LAW, 5<sup>th</sup> Edition, Clarendon Press, 2003

Frye, Alton. HUMANITARIAN INTERVENTION, CRAFTING A WORKABLE DOCTRINE. A Council Policy Initiative: Council on Foreign Relations, Inc. 2000.

Holzgrefe J.L, and Keohane, Robert O. HUMANITARIAN INTERVENTION: ETHICAL, LEGAL, AND POLITICAL DILEMMAS. Cambridge University Press, 2003.

Johnson, Douglas. THE ROOT CAUSES OF THE SUDAN'S CIVIL WARS. Bloomington, Indiana University Press, 2003.

Julie, Flint, and De Waal, Alex. DARFUR: A SHORT HISTORY OF A LONG WAR. Zed Books, 2005.

Lebor, Adams. COMPLICITY WITH EVIL: THE UNITED NATION IN THE AGE OF MODERN GENOCIDE. Yale University Press, 2006.

Millard, Burr J, and Robert, Collins. DARFUR: THE LONG ROAD TO DISASTER. Princeton, Markus Weiner Publishers, 2006.

Moore, John Norton. (ed) LAW AND CIVIL WAR IN THE MODERN WORLD. John Hopkins University Press, 1974.

Osiatynski, Wiktor. HUMAN RIGHTS AND THEIR LIMITS. Cambridge University Press, 2009.

Philip, Alston and Euan, MacDonald. (eds) HUMAN RIGHTS, INTERVENTION AND THE USE OF FORCE. Oxford: Oxford University Press, 2008.

Prunier, Gerard. Darfur: THE AMBIGUOUS GENOCIDE. New York: Cornell University Press, 2005.

Ramesh, Thakur. (ed) THE UNITED NATIONS, PEACE AND SECURITY: FROM COLLECTIVE SECURITY TO THE RESPONSIBILITY TO PROTECT. Cambridge: Cambridge University Press, 2006.

Weiss, Thomas George. (2ed) MILITARY-CIVILIAN INTERACTIONS, HUMANITARIAN CRISES AND THE RESPONSIBILITY TO PROTECT. Rowman & Littlefield Publisher, Inc, 2005.

Weiss, Thomas George. HUMANITARIAN INTERVENTION: IDEAS IN ACTION. Cambridge, Polity Press, 2007.

### **Articles and Papers.**

Alvarez, Jose E “The Schizophrenias of R2P”, Panel Presentation at the 2007 Hague Joint Conference on Contemporary Issues of International Law, 30 June 2007

Alvarez, Jose E. “ The Schizophrenias of R2P” in HUMAN RIGHTS, INTERVENTION, AND THE USE OF FORCE, Philip, Alston and Euan, MacDonald (eds), Oxford, Oxford University Press, 2008 at 275-284.

Arsanjani, Mahnoush H, and Reisman, Michael. "The Law-in-Action of the International Court." *The American Journal of International Law*, Vol 99, No 2, 2005 at 385.

Ayoob, Mohammed. "Humanitarian Intervention and International Society". *International Journal of Human Rights*, Vol 6, No.1, 2002 at 84.

Bannon, Alicia L. "The R2P: The U.N World Summit and the Question of Unilateralism", *Yale Law Journal* Vol. 115, No 5, 2006 at 1156-65.

Bellamy, Alex J. "Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq", *ethics & International Affairs*, Vol. 19, Issue 2, 2005 at 31-54.

Bellamy, Alex J. "The Responsibility to Protect and the Problem of Military Intervention", *International Affairs*, Vol 84 No 4, 2008 at 616.

Brownlie, Ian. "Humanitarian Intervention" in Moore (ed), *LAW AND CIVIL WAR IN THE MODERN WORLD*, John Hopkins University Press, 1974, at 217.

Brunk, Darren. "Dissecting Darfur: Anatomy of a Genocide Debate", *International Relations* Vol. 22, No 1, 2008, at 25-44.

Cassese, Antonio. "Is the ICC Still Having Teething Problems? *Journal of International Criminal Justice*, Vol.4, Issue 3, 2006 at 434-441.

Chand, David D. "Sudan's Civil War: Is A Negotiated Solution Possible? *Indiana University Press Journals*, found in *Africa Today*. Vol 36, No.3/4, 1989, P.55.

Cronin, Bruce. "The Tension Between Sovereignty and Intervention in the Prevention of Genocide" *Human Rights Review*, Vol.8, No 4, 2007, at 295-296



Cryer, Robert. "Sudan, Resolution 1593, and the International Criminal Justice", *Leiden Journal of International Law*, Vol. 195, 2006 at 222

Evans, Gareth, "The Responsibility to Protect: An Idea Whose Time Has Come...And Gone?" *International Relations*, Vol.22, No 3, 2008 at 283-298

Evans, Gareth. "Foreword" in THE UNITED NATIONS, PEACE AND SECURITY: FROM COLLECTIVE SECURITY TO THE RESPONSIBILITY TO PROTECT. Ramesh Thakur (ed) Cambridge: Cambridge University Press, 2006.

Feinstein, Lee. "Darfur and Beyond: What is needed to Prevent Mass Atrocities", *Council of Foreign Relation*, 2007, at 48.

Griffin, Elizabeth. (Unpublished) Discussion Paper on the "Responsibility to Protect". 2008 (Prof. In International Law in UN Mandated University for Peace, Costa Rica.) Available at <http://responsibilitytoprotect.wikispaces.com>.

Holzgrefe J.L, " The Humanitarian Intervention Debate" in HUMANITARIAN INTERVENTION: ETHICAL, LEGAL, AND POLITICAL DILEMMAS, Holzgrefe, J.L, and Keohane, Robert O. (eds), Cambridge University Press, 2003 at 18.

Igiri, Cheryl O, and Lyman, Princeton N. "Giving Meaning to 'Never Again': Seeking an Effective Response to the Crisis in Darfur and Beyond" *Council on Foreign Relations*, CSR No.5, 2004.

Kaul, Hans-Peter, "Construction Site for More Justice: The International Criminal Court After Two Years", *The American Journal of International Law*, Vol.99, No.2, 2005 at 380.

Kritsiotis, Dino. "Reappraising Policy Objections to Humanitarian Intervention", *Michigan Journal of International Law*, Vol.19, 1998 at 1005

Lauterpacht, Hersch. "The Grotian Tradition in International Law" in *British Year Book of International Law*, Vol.23, 1946, at 1.

Mcclean, Emma. "The Responsibility to Protect: The Role of International Human Rights Law" *Journal of Conflict Security Law*, Vol.13, No 1, 2008 at 123-152.

Newman, Edward. "Humanitarian Intervention, Legality and Legitimacy," *International Journal of Human Rights*, Vol 6, No 4, 2002 at 102-120.

Pichon, Jakob. "The Principle of Complementarity in the Cases of the Sudanese Nationals Ahmad Harun and Ali Kushayb before the International Criminal Court," *International Criminal Law Review*, Vol.8, No 1-2, 2008 at 185-228.

Reiff, David. "A Nation of Pre-emptor", *New York Times Magazine*, 15 Jan 2006 at 12.

Roberts, Adams. "The So-called "Right" of Humanitarian Intervention," in *Yearbook of International Humanitarian Law*, 2000 Vol.3.

Rodman, Kenneth A. "Darfur and the Limits of Legal Deterrence", *Human Rights Quarterly*, Vol 30, 2008 at 529-560.

Salih, Kamal O. "The Internationalization of the Communal Conflict in Darfur and its Regional and Domestic Ramifications" *Arab Studies Quarterly*, Vol. 30, No 3, 2008 at 16.

Schabas, William A, "Darfur and the Odious Scourge": The Commission of Inquiry's finding on Genocide, *Leiden Journal of International Law* Vol.18, (2005) at 871-885.

Schrijver, Nico. "The Changing Nature of State Sovereignty," *The British Year Book of International Law* 1999, Oxford: Clarendon Press, 2000, at 69.

Toje, Asle. “The Consensus Expectation Gap: Explaining Europe’s Ineffective Foreign Policy” *Security Violence*, Vol. 39, No 1, 2008 at 136

Totten, Christopher D, and Tyler, Nicholas. “Arguing for an Integrated Approach to Resolving the Crisis in Darfur: Challenges of Complementary Enforcement, and Related Issues in the ICC”. *The Journal of Criminal Law and Criminology*, Vol. 98, No. 3, 2008 at 1070.

Udombana, Nsongurua J. “When Neutrality is a sin: The Darfur Crisis and the Crisis of Humanitarian Intervention in Sudan”, *Human Rights Quarterly*, Vol.27, No 4, 2005 at 1151.

### **Reports, Cases and Legal Documents.**

Boutros Boutros-Ghali. *An Agenda for Peace*, New York: United Nations, 1992.  
Communiqué of the 14<sup>th</sup> Meeting of the African Peace and Security Council, August 2004.

Constitution of Sudan 1<sup>st</sup> July 1998.

ICJ, Military and Paramilitary Activities in and Against Nicaragua, (*Nicaragua v U.S*), 27 June 1986.

Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned*; Oxford University Press, 2000.

International Commission on Intervention and State Sovereignty Report: *The Responsibility to Protect*, 2001. Published by the International Development Research Centre, December 2001. <http://www.idrc.ca>.

International Crisis Group Report on “Getting the U.N into Darfur, African Briefing, 43, 12, 2006 at 15-17.

Kofi Annan, “Two Concepts of Sovereignty” in the *Economist*, Vol. 352, 18 Sept 1999 at 49.

Kofi Annan, “Opening Remarks”, Humanitarian Action: A Symposium, 20 November 2000, in *International Peace Academy Conference Report* at New York. International Peace Academy, 2001.

Prosecutor v. Omar Hassan Ahmad Al Bashir (ICC-02/05-01/09-1, 04-03-2009)

*Prosecutor v. Tadic*, (IT-94-1-A), Decision of 2<sup>nd</sup> October 1995.

Report of Mr. Luis Moreno Ocampo, the Prosecutor of the ICC, to the Security Council Pursuant to U.N Security Council Resolution, 2005

Report of the U.N Secretary-General, In Larger Freedom: *Towards Development, Security and Human Rights for All*, U.N General Assembly, 21 March 2005. A/59/2005.

Report of the United Nations Commission on Inquiry in Darfur to the U.N Secretary General pursuant to Security Council Resolution 1564 of 18<sup>th</sup> Sept. 2004,

Statute of the International Criminal Court.

Sudan’s Interim National Constitution of 6<sup>th</sup> July 2005.

Sudanese Criminal Procedure Act of 1991.

The Report of the U.N High Level Panel on Threats, Challenges and Change declares in “*A More Secure World: Our Shared Responsibilities*. 2004.

The world federalist movements and the International Policy Group, *Civil Society Perspective on the responsibility to Protect*, final report 30<sup>th</sup> April 2003

*United Kingdom of Great Britain and Northern Ireland v. Albania* (Corfu Channel Case)

United Nations Charter.

United Nations General Assembly, *World Summit Outcome Document*, 24 October 2005.A/RES/60/1.

United Nations Mission in Sudan Media Monitory Report, 13 June 2006

Wasil Ali “Sudan Ban Media from Reporting on Darfur War Crimes Cases”. *Sudan Tribune*, 28 March 2007

William Report, *Report of the High -Level Mission on the situation of human rights in* G.A Resolution 2625(XXV), UN GAOR, 25th Sess, Supp.No 28, U.N DOC, A/8028/1970.

*Wimbledon Case*. (Wimbledon, 1923 P.C.I.J, (Ser A) No.1)

### **Websites and Internet Sources.**

African Union, [www.Africa.Union.org](http://www.Africa.Union.org).  
[www.africa-union.org/www.icc.cpi.int/library/cases/ICC-02-05-56\\_English.pdf](http://www.africa-union.org/www.icc.cpi.int/library/cases/ICC-02-05-56_English.pdf)

Agence France Presse, “EU lawmakers call Darfur ‘Crisis Genocide’,”16 sept.2004, available at [www.middle-east-online.com/english/sudan/?id=II287](http://www.middle-east-online.com/english/sudan/?id=II287)

Amnesty International on Sudan, available at [www.amnesty.org/library/index/ENGAFR540492004?open&of=ENG-317](http://www.amnesty.org/library/index/ENGAFR540492004?open&of=ENG-317)

Citizens of Global Solutions, Darfur and the ICC: Justice is the key to recovery. This can be found at [www.globalsolution.org/publications/publications\\_darfur\\_and\\_icc](http://www.globalsolution.org/publications/publications_darfur_and_icc).

[www.europa-eu-un.org/articles/en/article\\_3810\\_en.htm](http://www.europa-eu-un.org/articles/en/article_3810_en.htm)

CIA Fact sheet, available at, [www.cia.gov/library/publications/the-world-factbook/geos/su.htm](http://www.cia.gov/library/publications/the-world-factbook/geos/su.htm)

Human Rights Watch, 2004 P. 3, available at [www.hrw.org/english/docs/Darfur8536.htm](http://www.hrw.org/english/docs/Darfur8536.htm)

Human Rights Watch, “Darfur in Flames: Atrocities in Western Sudan, Vol.16, No. 5(A), April 2004, P. 3 Available at, [www.hrw.org/report/2004/Sudan0404/](http://www.hrw.org/report/2004/Sudan0404/).

Human Rights Watch, “ Lack of Conviction: The SCCED” 1 (2006), 25, available at <http://hrw.org/backgroundunder/ij/Sudan0606/Sudan0606.pdf>

International Court of Justice, [www.icc-cpi.int/pressrelease\\_details&id=107&l=en.html](http://www.icc-cpi.int/pressrelease_details&id=107&l=en.html) .

ICC press release on the 6<sup>th</sup> June 2005.  
[www.icc.int/library/cases/ICC-02-05-01-07-1\\_English.pdf](http://www.icc.int/library/cases/ICC-02-05-01-07-1_English.pdf).

Physicians for Human Rights, ‘call for Intervention to save lives in the Sudan: Field Team Compiles Indicators of Genocide,’23 June 2004, available [http://www.phrusa.org/research/sudan/pdf/sudan\\_genocide\\_report.pdf](http://www.phrusa.org/research/sudan/pdf/sudan_genocide_report.pdf).