

THE GAP BETWEEN NARRATIVES AND PRACTICES

DARFUR: THE RESPONSES FROM THE ARAB WORLD

5. UN RESPONSE TO THE DARFUR CRISIS

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A COLLECTION OF PAPERS TO PROMPT AN INTER-ARAB DIALOGUE ON POLICIES TOWARDS THE CONFLICT IN DARFUR

This paper is part of a collection of seven research papers published within the framework of the project '*The Gap between Narratives and Practices. Darfur: Responses from the Arab world*' undertaken by FRIDE from October 2008 to March 2010.

The project aims to develop an understanding of Arab states and society, as well as their attitudes and policies towards massive violations of human rights in their region. The research conducted for this purpose is manifold and aims at facilitating an inter-Arab dialogue; as well as the generation of ideas about how other actors may play a positive role to engage the Arab world in redressing the massive violations of human rights in the particular case of Darfur and beyond.

The project undertaken by FRIDE and funded by the Ford Foundation has gathered together a number of researchers and activists to develop background research, meet in an international conference in Tunis in October 2009 to discuss their findings and draw conclusions and recommendations in different thematic areas, including Arab perceptions of the crisis, Arab policies as individual states and within the framework of regional and international organisations, and other external responses related to or that influence what Arab actors could do regarding the Darfur conflict.

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Joanna Weschler has been since 2005 director of research at Security Council Report with responsibilities that include: overseeing research as well as providing editorial and production supervision for the organization's work. Was UN representative for Human Rights Watch (1994-2005). Previously, she was the Poland researcher for Helsinki Watch; Brazil researcher for Americas Watch; as well as director of HRW's Prison Project. She has conducted human rights investigations in countries on five continents and written numerous reports and articles on human rights. She has a master's degree in Spanish and Latin American Studies from the University of Warsaw and a master's in journalism from Columbia University. She is a native of Poland, where she was a reporter for the Solidarity Union press agency, in charge of covering most meetings between Union President Lech Walesa and the communist government, and meetings of the executive leadership of the union.

5.

UN RESPONSE TO THE DARFUR CRISIS

Joanna Weschler

This paper will take a look at United Nations policy towards the crisis in Darfur over recent years. It will focus primarily on the UN's political bodies, in particular the Security Council whose three Arab members in the period under review were Algeria (2004-2005), Qatar (2006-2007), and Libya (2008-2009) as the UN's most powerful organ and one able to take a range of specific steps on the ground in conflict situations. It will also take a particularly close look at early reactions to the Darfur tragedy, as these appear to have set the tone and determined further developments in subsequent years.

Initially, the UN attitude to the conflict in Darfur was marked by considerable reluctance to take action and a tendency towards half measures. More recently, it has been characterised by an air of impotence and resignation. Arab member states throughout this period have generally kept a low profile.

The association of Darfur with an ongoing humanitarian disaster was first voiced in the UN by humanitarian officials in conversations and meetings during the course of 2003. The first time the situation was formally brought to the attention of member states was most likely in December 2003 when, during an open debate of the Security Council on the protection of civilians in armed conflict, Jan Egeland, the UN's humanitarian chief, mentioned the 600,000 displaced people in Darfur and his serious concerns about a growing humanitarian disaster there.¹ However, it would be several months and many victims later before the Security Council agreed that Darfur was an issue which could no longer be ignored. Other UN bodies behaved even less laudably.

Reports first began emerging in different UN forums about the horrendous violence being carried out against civilians in Darfur by the government and its allied militia, the Janjaweed. At the same time, another internal Sudanese conflict, the one between the North and South of the country, had been going on for some twenty years, and for the first time, a political settlement appeared to be in sight. The international actors involved in efforts to settle that conflict, the United States and the UN Secretariat in particular, were loath to bring up any new grievances against the government, fearing that this might upset the very delicate negotiations which were close to concluding successfully. Arguments that a peace accord in one part of the country would have much less chance of holding if another part of the same country was being ravaged by bloody conflict were brushed aside. Five years later, with worries about the unravelling of the North-South agreement looming large, most observers agree that the approach was short-sighted and based on a fallacious reasoning. However, in 2004 this factor was one of the reasons for the very half-hearted and lukewarm initial response to the Darfur crisis on the part of many governments, even those with a track record generally supportive of human rights and humanitarian causes.

The main UN body for human rights, the now defunct Commission on Human Rights, was in its annual six-week session in the spring of 2004 as evidence of atrocities in Darfur began to emerge, resonating worldwide thanks to extensive media coverage, causing an impression on public opinion. For a short while, it seemed that the Commission would take the lead on the UN response to this new human rights tragedy.

It is important to take a closer look at some of the details from this time as several of these early developments set the tone for how events would unfold in the years to come, and yet they are barely recalled at all.

Then Secretary-General Kofi Annan chose April 7, the tenth anniversary of the beginning of the Rwandan genocide, to deliver his annual speech to the Commission, during which he talked about the international community's sins of omission with respect to Rwanda, and making an impassioned call for action on Darfur. The Office of the High Commissioner for Human Rights (OHCHR) had sent a fact-finding team to the country, and even though Khartoum denied it entry, the investigators managed to get to the Darfur border from Chad and gather first-hand evidence of events taking place there. They were set to present a report before the end of the session. The EU and the US had drafted a resolution that was to be voted on following the presentation of the report. Feeling mounting international pressure, Sudan looked for a way to delay the presentation of the report and the vote, suddenly offering to allow OHCHR entry to its territory if the report was withheld. Astonishingly, the OHCHR (which at the time did not have a High Commissioner) agreed. At the same time, Sudan succeeded in persuading the African members of the Commission to present a mildly worded draft in its place, with the support of all

¹ Security Council 4877th meeting, 9 December 2003, S/PV.4877

Arab members, expressing the Commission's "solidarity with the Sudan in overcoming the current situation" without any mention of the "Janjaweed".² In hindsight, this failure has been seen as one of the final nails in the coffin of the much criticised Commission.

Following the fiasco at the human rights forum, pressure mounted on the Security Council to address the situation. After intense lobbying by non-governmental organisations (NGOs) and briefings from Egeland and the NGOs, in late May the Council adopted a presidential statement (a formal document though one with less weight than a resolution) on Darfur. In the statement, the Council condemned the violence, expressed concerns at the Sudanese government's obstruction of humanitarian assistance, and called for deployment of monitors in Darfur.³ It also expressed support for the African Union's efforts to alleviate the situation, and called on the international community to support the AU in its activities. Over the next two months, the Council adopted two resolutions which, while condemning the violence and requesting regular reporting from the Secretary-General, refrained from taking steps likely to have a tangible impact on the ground (such as deploying UN human rights monitors or contemplating an operation in Darfur).

The efforts of the fledgling African Union (which had been set up less than two years earlier) soon became everyone's favourite excuse for washing their hands of Darfur. The West, while professing support for the safeguarding of civilian lives, was busy elsewhere (Iraq, Afghanistan, the Balkans); the UN Secretariat argued that it was overextended and could not contemplate another peacekeeping operation. Sudan itself quickly realised that allowing the AU in would remove the pressure from elsewhere, and in late May signed an agreement with the AU on the modalities for the establishment of an observer mission. Henceforth, in all of its resolutions, the Security Council would express its support for the AU and call on the international community to support its efforts there.

During this period, the General Assembly, the body composed of all UN members, made a feeble and wholly unsuccessful effort at addressing the Darfur crisis. In autumn 2004, a resolution on the human rights situation in Darfur was blocked from even being voted on by a procedural move known as "a no-action motion", a highly effective tactic which had previously been used in similar politically sensitive human rights cases. In addition to defeating the resolution, this tactic blocks any discussion of the substance of the matter. Arab states uniformly supported this motion. This scenario played itself out again in 2005. The fact that heads of states had enshrined the notion of the Responsibility to Protect (R2P) in the World Summit final document less than two months prior mattered little. After 2005, the General Assembly approach was dropped.

During 2004 and 2005, the Security Council received monthly reports about violence on the ground (involving the burning of villages, massacres of civilians including women and children, rape, and forced displacement) and adopted several resolutions condemning the violence, calling for negotiations, commending the efforts of the African Union, and urging member states to provide the AU with resources, but largely stopped short of becoming directly engaged on the ground.

There were two notable exceptions to this pattern, however. One was the establishment in September 2004 of an international commission of inquiry to determine whether genocide and crimes against humanity were being committed in Darfur, a step that would set off the chain of events leading to the Security Council's referral of Sudan to the International Criminal Court in March 2005, and the subsequent indictment by the ICC of several Sudanese leaders, including, in March 2009, of its president. The other, with little practical impact but with some symbolic meaning, was the imposition of sanctions.

As always, the inner-dynamics of the Security Council were no simple matter. Members were largely in agreement that atrocities in Darfur were unacceptable. Most were willing to express this sentiment in statements and resolutions. But as far as taking measures went, significant differences quickly surfaced. China had invested in Sudan over recent years and maintained a lot of business interests in the country, especially as a purchaser of Sudanese oil, so it was no surprise that she quickly emerged as the strongest advocate of a softly-softly approach. Russia was

² See Commission on Human Rights, report of the 60th session, 15 March – 23 April, 2004; E/2004/23, p. 337 and pages 383-388.

³ PRST/2004/18 of 25 May 2004.

also largely reluctant to take strong measures against Sudan. Islamic members at the time, Algeria — and Pakistan, in 2004 only — tended to show solidarity with Khartoum. Thus, these countries abstained on resolutions which packed more of a punch, such as the establishment of the investigation into Darfur atrocities, sanctions and the eventual referral of Sudan to the ICC (on this last resolution, Russia voted in favour, while the US abstained due to the Bush administration's strong aversion towards the international court). Algeria was initially reluctant to acknowledge a problem in Darfur (among the speakers in the debate during which the Council adopted its very first Darfur resolution in June 2004, Algeria was the only country that didn't so much as utter the word).⁴ During its remaining time on the Security Council, Algeria tended to abstain on resolutions introducing specific measures, and was probably the Council member which was most vocal in supporting the view that Darfur was an African issue, backing the African Union first and foremost, as well as respecting the views of the Sudanese government.

The political narrative began to change after a few months. Initially, the situation in Darfur was largely seen as a campaign by the government and its allies against the civilian population of the region in which the rebel movement played only a marginal role. Gradually, however, developments in Darfur started being seen more as a classic, symmetrical conflict for which mediation would be the most appropriate tool, and a peace agreement the ultimate goal, with accountability becoming a much less central issue.

The North-South agreement was signed in early 2005 and a few months later a UN peacekeeping operation in Sudan known as UNMIS was established to facilitate implementation. With atrocities continuing in Darfur, and with the AU's Darfur mission proving manifestly unable to provide the desired levels of protection, by late 2005 some Council members (mostly Western, with some African support), began suggesting a transition from the AU to a UN operation and the creation of a single UN mission that would cover all of Sudan, including Darfur.⁵ The Security Council proceeded to request the UN Secretariat to start contingency planning and to present it with options for this process. In the next several months, such requests were included both in presidential statements and in resolutions. The UN Secretariat, reluctant to deploy another operation, argued for the need for a peace agreement prior to any deployment. A succession of joint assessment missions with the AU followed as the peace negotiations in Abuja dragged on without results; waiting for results from the next assessment mission and from the peace talks became an almost permanent feature of Security Council discussions on Darfur at the time.

The AU's reaction to the transition proposal was curious. In March 2006, it agreed "in principle",⁶ but soon started showing signs of a change of heart. In June the AU transmitted a report to the Council from an assessment mission in which it stressed the need to strengthen the AU mission, AMIS, saying that many actors on the ground objected to the transfer, and warning that there could be negative consequences stemming from the deployment of a UN force in Darfur.⁷ All of this was obviously due in part to vigorous diplomatic activity by Sudan within the AU and strong voices against the proposal from some Arab Group members. (As a member of the AU, Sudan had ample opportunity to shape the outcome due to the body's consensus rule.) But in addition, several AU politicians and diplomats, after two years of maintaining the very difficult operation on the ground when no other actor had been ready to step in, were not necessarily keen to relinquish control, just because the West now appeared to be willing to take on the responsibility. Some AU politicians probably saw it as a useful entry point into a new type of a relationship with the UN.

The situation in Darfur during this period deteriorated considerably. Showing clear signs of frustration with the constant delays, and notwithstanding the AU's demurrals, in late August the Council adopted resolution 1706 in which it decided to expand the existing operation in Sudan, UNMIS, into Darfur, and to deploy by October 1, 2006. This resolution, however, was subject to Sudan's consent, something which was never given, and as a result the resolution was never implemented. Sudan's adamant resistance was supported by Arab governments. (Qatar, the Arab member of the Security Council at the time, was not very active in public, but consistently advocated the African solution to Darfur, even by Sudan itself, and abstained on resolution 1706.) Some AU members were

⁴ Security Council 4988th meeting, 11 June 2004, S/PV.4988.

⁵ The first time this was probably suggested in a public debate was during Security Council 5331st meeting on 19 December 2005, S/PV.5331.

⁶ African Union Peace and Security Council, 45th meeting Communique, 12 January 2006, PSC/PR/Comm.(XLV).

⁷ Letter dated 28 June 2006 from the Permanent Representative of the Congo to the United Nations addressed to the President of the Security Council, S/2006/461.

openly disgruntled with the plan and contributed to the lack of action, along with considerable reluctance on the part of the UN Secretariat. Soon, it was as if resolution 1706 never happened; contrary to normal practice, by mid 2007, it even stopped being mentioned when preceding resolutions and decision taken on Sudan were listed.

At the AU's insistence, by November, an entirely new concept of peacekeeping operation for Darfur emerged: in the immediate short term, the UN would considerably strengthen the existing AU mission prior to the transition to a "hybrid" mission that would be run jointly by the UN and the AU. This plan presupposed the tacit consent of Khartoum, but in actual fact it would take another several months of exhausting negotiations for an eventual agreement to be worked out and a resolution authorising the UN-AU Mission in Darfur (UNAMID) to be adopted in late July 2007. One of the final sticking points in the process was Khartoum's insistence that the mission should be designed with a "predominantly African character". After much wrangling, the resolution was adopted, including the latter provision, but new difficulties soon emerged. Sudan began stalling on the deployment of UN-AMID by means of an array of bureaucratic tactics, blocking equipment at customs for months on end, and above all refusing entry to entire national contingents using the "African character" clause as an excuse. Coming up with troops for any UN peacekeeping operation has recently become very difficult owing to demand around the globe, especially since the beginning of the wars in Afghanistan and Iraq; with the additional constraints thrown the UN's way by Khartoum, finding troops for UNAMID became nearly impossible.

The implications in creating this hybrid operation go way beyond Darfur, and will probably have an impact on future UN peacekeeping and its handling of security issues. For the first time, the UN has created an operation for which it assumed full responsibility financially but over which it did not retain full command. It also agreed to fill all key positions jointly, i.e. after an extensive and often very lengthy consultation process with the AU. This in itself is a serious challenge for peacekeeping. When at the end of the summer 2009 the head of UNAMID departed, the post remained vacant for many weeks. Furthermore, UNAMID is an anomaly of sorts: Sudan is the only country with two separate UN missions active at the same time, creating a set of unique logistical and operational challenges.

Challenges, both political and operational, grew even more when the ICC prosecutor, following a referral from the Security Council, announced his intention to indict the Sudanese president in the middle of 2008. Some governments, in particular the African and Arab states, argued that the Court was undermining the peace process and that the Security Council should ask the ICC to suspend work on any Sudanese cases. At the time of writing, the Security Council has refrained from taking such a step, but the ICC March 2009 indictment of the Sudanese president nevertheless has had a serious impact both on the dynamics within the Council, and on the situation on the ground. In retaliation, Khartoum expelled more than a dozen international NGOs which collectively provided the bulk of humanitarian assistance to the population of Darfur, leading to fears of a humanitarian disaster. That this did not fully materialise is probably to the credit of the international community, which reacted swiftly and decisively and, for once, in unison. The overwhelmingly negative international reaction probably caught Khartoum by surprise. The UN Secretariat, in particular its humanitarian machinery, played a critical role by immediately engaging in tough negotiations with the government which resulted in arrangements which filled the vacuum left by the expulsions to some extent.

Libya, the Arab member of the Security Council in 2008 and 2009, had actively engaged with the issue outside the Council context for several years, in particular undertaking mediation efforts. Within the Security Council, Libya made mediation one of the issues on which it focused most of its earlier declarations on Sudan. Following the announcement of a possible ICC indictment of the Sudanese president, Libya took the lead in arguing that the Security Council request suspension of the Court's work on Sudan.

The ICC indictment was a key moment for the engagement of Arab states with Darfur. Until then, except for voting usually in support of the Khartoum government, Arab states were barely visible in the Darfur discussions at the UN. Furthermore, the League of Arab States was not among the supporters of the African Union operation in Darfur, AMIS. This dynamic changed with the announcement of the indictment. But in 2008, the African Union and the League of Arab States undertook a decision to jointly press for the suspension of the work of the court. Libya, as member of both organisations, became the spokesman of this initiative within the Security Council and played a key role in facilitating an informal meeting between the Council and the two regional bodies in Febru-

ary 2009. During the renewal of the mandate of the hybrid operation in Darfur, carried out on an annual basis, Libya insisted on the inclusion of the opposing views of the African Union on the indictment in both 2008 and 2009 (succeeding in 2008, a move that prompted the United States to abstain in protest) and failing in 2009.

Meanwhile, there have been continuing efforts on the crisis in Darfur through the UN Human Rights Council, the political body which succeeded the Commission, though these have been fairly anaemic, a result of limited resolve on the part of pro-human rights governments and strong solidarity with the government of Sudan on the part of most African and Muslim countries. Since late 2004, the High Commissioner for Human Rights (Louise Arbour until 2008, and Navi Pillay since) has provided on-going human rights monitoring, and with the UN operation established in Sudan, specialised personnel for the mission and support for a number of projects undertaken by human rights organisations on the ground.

At the time of writing, in November 2009, the two-year-old UNAMID is still far from being fully deployed and has spent much of its energy and resources on establishing itself and avoiding the various stumbling blocks thrown in its way by the government. UN officials have publicly expressed the hope that by end of 2009 the mission will have reached 90 percent of deployment, and will be able to focus more on carrying out operations on the ground, in particular protection work, and less on the challenges inherent in its own logistics.⁸ As of autumn 2009, about 75 percent of military and a similar percentage of the originally envisaged police total had been deployed.

More than five years have gone by since the first Security Council statement on Darfur, in which the Council expressed serious concerns about, among other things, the logistical impediments imposed by the Sudanese government on international actors, such as visa delays; yet the most recent Council resolution in July 2009 referred to pretty much the same issues, specifically calling on Khartoum to expedite visa processing and UNAMID's equipment clearance at customs. In late October, badly needed equipment was still being held up for weeks at customs and visas were frequently withheld for UNAMID personnel.

In Darfur, meanwhile, at least half a million civilians have died from the conflict and its related causes, and over two million continue to suffer displacement.

⁸ See the statement by the Under-Secretary-General for Peacekeeping Operations Alain LeRoy during Security Council 6170th meeting on 24 July 2009, S/PV.6170.

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FRIDE is an independent think-tank based in Madrid, focused on issues related to democracy and human rights; peace and security; and humanitarian action and development. FRIDE attempts to influence policy-making and inform public opinion, through its research in these areas.