Protecting Civilians or Preserving Interests? Explaining the UN Security Council’s Non-intervention in Darfur, 2003-06

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This thesis is presented for the degree of Doctor of Philosophy of Murdoch University

2009
Candidate’s Declaration

I, David Mickler, declare that all of this thesis is my own account of the research conducted by myself except where other sources are fully acknowledged by footnotes or referencing.

The extent to which the work of others has been used has been declared.

The thesis contains as its main content work which has not previously been submitted for a degree at any university.

Signed _________________________

David Mickler

Date __________________________
Abstract

The UN Security Council is the preeminent multilateral decision-making body and has the legal authority to initiate military interventions if it first determines a threat to international peace and security, including from civil wars or widespread state repression. While traditional norms of non-intervention and the politics of the Cold War curtailed the body’s ability to fulfil this role, evolving understandings and practices of sovereignty and security in the post-Cold War era have led to the apparent emergence of a new norm permitting ‘humanitarian intervention’ and an in-principle acceptance that the body has a ‘responsibility to protect’ vulnerable civilians residing inside the borders of their own state, including through military means.

In this context, the thesis argues that the situation in Darfur, western Sudan, has represented a quintessential case for the Council to fulfil its ‘responsibility to protect’. According to a number of authoritative investigations, since 2003 the Sudanese government and government-allied Arab militias have committed war crimes and crimes against humanity on a widespread and systematic basis against Darfur’s non-Arab population. As a result, over 200,000 people died either directly from violence or indirectly from conflict-induced disease and malnutrition, while a further two million fled from their homes and villages in fear. A number of non-military measures were attempted by the Council but failed to create adequate security on the ground.

As such, there was a compelling legal-institutional, normative and moral case for the Council to coercively deploy a military intervention in Sudan to protect vulnerable civilians in Darfur. However, during the 2003-06 period of study, no such intervention was deployed. The thesis argues that intervention by the Council was precluded by the national interests of its permanent members, including a lucrative economic relationship between China and Sudan, and because of valuable Sudanese intelligence cooperation in Western counter-terrorism operations in the region. The thesis concludes that the Council’s members chose to preserve these national interests at the expense of protecting civilians in Darfur.
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<tr>
<td>AFRICOM</td>
<td>United States Africa Command</td>
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<tr>
<td>AMIS</td>
<td>African Union Mission in the Sudan</td>
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<tr>
<td>ASG</td>
<td>UN Assistant-Secretary-General</td>
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<td>AU</td>
<td>African Union</td>
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<td>AU PSC</td>
<td>African Union Peace and Security Council</td>
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<td>CFC</td>
<td>Ceasefire Commission [Sudan]</td>
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<td>COI</td>
<td>International Commission of Inquiry on Darfur [2004-05]</td>
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<tr>
<td>CPA</td>
<td>Comprehensive Peace Agreement [2005, Sudan]</td>
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<tr>
<td>DPA</td>
<td>Darfur Peace Agreement [2006]</td>
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<tr>
<td>DPKO</td>
<td>UN Department of Peacekeeping Operations</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>GNU</td>
<td>Government of National Unity [Sudan]</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<td>ICG</td>
<td>International Crisis Group</td>
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<td>ICISS</td>
<td>International Commission on Intervention and State Sovereignty [2000-01]</td>
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<td>ICU</td>
<td>Islamic Courts Union [Somalia]</td>
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<tr>
<td>IR</td>
<td>Academic discipline of International Relations</td>
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<tr>
<td>JTF-HOA</td>
<td>United States Joint Task Force Horn of Africa</td>
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<tr>
<td>JEM</td>
<td>Justice and Equality Movement [Sudan]</td>
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<td>JIM</td>
<td>Joint Implementation Mechanism [UN/Sudan]</td>
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<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organisation</td>
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<td>NCP</td>
<td>National Congress Party [Sudan]</td>
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<td>NIF</td>
<td>National Islamic Front [Sudan]</td>
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<td>NRMD</td>
<td>National Movement for Reform and Democracy [Sudan]</td>
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<tr>
<td>OHCHR</td>
<td>Office of the UN High Commissioner for Human Rights</td>
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<td>OIC</td>
<td>Organization of the Islamic Conference</td>
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<td>P3</td>
<td>Western permanent members of the UN Security Council [US, UK, France]</td>
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<tr>
<td>P5</td>
<td>Permanent Five members of the UN Security Council [US, UK, France, China, Russia]</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNAMID</td>
<td>African Union-United Nations Hybrid Operation in Darfur</td>
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<td>UNAMIS</td>
<td>UN Advance Mission in Sudan</td>
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<td>UNHCR</td>
<td>UN High Commissioner for Refugees</td>
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<td>UNMIS</td>
<td>UN Mission in Sudan</td>
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<tr>
<td>UNOCHA</td>
<td>UN Office of the Coordinator of Humanitarian Affairs</td>
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<td>UNSC</td>
<td>UN Security Council</td>
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<tr>
<td>USG</td>
<td>UN Under-Secretary-General</td>
</tr>
<tr>
<td>USIP</td>
<td>United States Institute of Peace</td>
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<tr>
<td>SLM/A</td>
<td>Sudan Liberation Movement/Army</td>
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<tr>
<td>SPLM/A</td>
<td>Sudan People’s Liberation Movement/Army</td>
</tr>
<tr>
<td>SRSG</td>
<td>Special Representative of the UN Secretary-General</td>
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<tr>
<td>TSCTI</td>
<td>United States Trans-Saharan Counter-terrorism Initiative</td>
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<tr>
<td>WFP</td>
<td>World Food Program</td>
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Introduction

The brutal conflict, commission of atrocities, and ensuing humanitarian disaster in the western Sudanese region of Darfur has competed with the post-September 11, 2001, ‘War on Terror’ and the 2003 invasion of Iraq as preeminent issues on international security agenda of the early twenty-first century. Yet, while the latter have been highly contentious because the forms of coercive intervention constituting them have challenged international law and traditional norms of state sovereignty, the Darfur crisis has instead been characterised by a distinct lack of coercive international intervention. Subsequently, concern has been with how such non-intervention has perpetuated acute insecurity for the region’s population.

During the four-year period of study in this thesis, between 2003 and 2006, the United Nations (UN) estimated that at least 200,000 civilians in Darfur died either directly from violence or from conflict-induced disease and malnutrition. Out of a total of nearly four million people in the wider region affected by the conflict, over two million had fled their homes and villages in fear, creating a situation that senior UN officials described as the ‘world’s worst humanitarian crisis’. Moreover, a number of credible independent and official reports presented public evidence that

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1 As of late 2008, the conflict and humanitarian crisis in Darfur was ongoing with no decisive resolution in sight. For practical reasons, however, the analysis in this thesis is restricted to the period between 2003-06. Because of this, in order to accurately assess the positions of Council members during this period based on the publicly available information and the political environment of that time, any findings which have been presented post-2006 — such as the significant indictments by the International Criminal Court (ICC) of the Sudanese interior minister and a militia leader for war crimes and crimes against humanity in May 2007, and the ICC prosecutor’s charges of ten counts of genocide against Sudanese president Omar al-Bashir in July 2008 — have been omitted from analysis. Estimated death tolls and other UN humanitarian data also only pertain to the 2003-06 period.

2 See United Nations, “Darfur Humanitarian Profile No. 25 – Situation as of 01 October 2006”, Office of the Deputy Representative of the UN Secretary-General for Sudan, UN Resident and Humanitarian Co-ordinator, 2006; and UN News Centre, “Darfur: UN Envoy Heads to Sudan for Talks with Government, Rebels and Others”, January 5, 2007. Slight variations of the label ‘the world’s worst humanitarian crisis’ have been applied to Darfur by a number of UN officials, including former Secretary-General Kofi Annan.
the Sudanese government had orchestrated, and in league with allied local militias, directly committed, widespread crimes against humanity and war crimes against civilians in Darfur. The US government and a number of academics asserted that Khartoum was also responsible for genocide and ethnic cleansing.

In parallel to such atrocities and suffering in Darfur, the normative basis upon which international intervention inside sovereign states is contested has evolved. Most centrally, the doctrine of the ‘responsibility to protect’ — a result of post-Cold War debates over practices of ‘humanitarian’ intervention and a direct intellectual product of the 2001 report of the International Commission of Intervention and State Sovereignty (ICISS) — prescribes that the international community, acting through the legal structures of the UN Security Council (UNSC), has an obligation to intervene militarily to protect civilians from the types of ‘conscious shocking’ crimes that have been committed in Darfur by the Sudanese government and its proxy militias. In September 2005 and April 2006, respectively, the UN General Assembly and Security Council unanimously endorsed this doctrine and accepted its responsibilities, seemingly representing a normative breakthrough for the enforcement of human security in international society.²

Taking these parallel developments as a context, and examining the period between 2003 and 2006, this thesis investigates why the UN Security Council did not coercively and militarily intervene in the Darfur crisis in order to protect vulnerable civilians from further violence and to create the short-term conditions for security on the ground. In other words, it examines why, despite a persuasive moral, normative and legal-institutional case for doing so, the Council did not coercively deploy a

² The important differences between the original proposals in the 2001 ICISS report and the version of the ‘responsibility to protect’ doctrine subsequently formally endorsed by the UN General Assembly/Security Council are discussed in Chapters 1 and 2 of this thesis.
military intervention inside western Sudan in the face of staunch opposition by the Sudanese government and its claims to sovereign immunity.

The central argument of the thesis is that, despite a volume of rhetoric to the contrary, the Permanent Five (P5) and three non-permanent members of the Security Council actually perceived a coercive intervention in Sudan to protect Darfurians to be contrary to their national interests. Such national interests were primarily in the form of existing and valuable relationships that individual P5 members had established with the regime of President Omar al-Bashir in Khartoum, ties that the major powers did not want to disrupt or sever through the imposition of extremely coercive measures which would fundamentally undermine the sovereign authority of the Sudanese government. As a result, I argue that while many rhetorical threats were made against a recalcitrant and diplomatically-savvy Sudan, and while a number of ‘non-military’ measures were implemented with or without the cooperation of Khartoum, by not coercively deploying a military intervention in Darfur the Council’s members ultimately chose to preserve their national interests in Sudan over the protection of vulnerable Sudanese civilians.

**Thesis Structure**

To develop this argument, the thesis is structured by five substantive chapters divided into two parts: Part I establishes the context out of which the analysis in Part II emerges. This Introduction and a short Conclusion chapter provide the necessary bookends. The Introduction outlines the thesis structure, underlying theoretical framework, and research methods, while the Conclusion summarises the main findings of the thesis and discusses their broader significance for scholarly knowledge in the field of International Relations.
Chapter 1 outlines the mandate, structure and political dynamics within the UN Security Council and establishes that the Council is the most powerful multilateral security institution in post-WWII (and in practice, post-Cold War) international relations. The chapter discusses how the P5 established their own positions of privilege and power in the Council, most notably through their permanency and rights of veto, but also how these special rights implied a sense of responsibility for maintaining international peace and security as originally intended by the framers of the UN Charter. This notion of an international duty is central to a critique of the response of that body to the Darfur crisis, not least because the language and concept of ‘responsibility’ returned to prominence in international discourse through the influential report of the aforementioned ICISS. This provided a further challenge to narrowly-defined national interests as an exclusive basis for foreign policymaking, even if such interests were accommodated in the Council’s structure.

The second part of Chapter 1 then explores evolution and conceptual change in international norms of sovereignty and security, from traditionally rigid norms of non-intervention and practices privileging ‘national security’, through an emerging acceptance (if still contested) in the post-Cold War era of the argument that sovereign immunity should be suspended and external ‘humanitarian’ interventions enacted in situations of acute civilian insecurity. In exploring the concepts of ‘responsible sovereignty’ and ‘human security’, the chapter argues that these ideas culminated in the ‘responsibility to protect’ doctrine and its later formal endorsement by UN member states. Chapter 1 concludes with an analysis of how the Security Council itself has been both a driver of, and been influenced by, such normative
developments, and how it has responded to the changing nature of global conflict and insecurity after the Cold War.

After this general legal-institutional and normative context has been established, Chapter 2 then examines the particular conflict, crimes and crisis in Darfur since 2003 and argues that coercive military intervention by the Council to protect vulnerable civilians in the region was a morally necessary act and one that would have conformed to the legal and normative authority of the Council. The chapter first briefly outlines the origins of the conflict in Darfur between disaffected rebel groups, the Sudanese government, and government-sponsored Janjaweed militia. It identifies a history of regional marginalisation and underdevelopment, resource scarcity exacerbated by environmental deterioration, and the cynical manipulation of ethnic identities by various interests, including successive regimes in Khartoum, as being the underlying causes of the armed uprising by the Sudan Liberation Movement/Army and the Justice and Equality Movement in early 2003.

The chapter then examines in greater detail the particular counter-insurgency strategy that the Sudanese government pursued in response, characterising it as a campaign of violence — constituted by elements of war crimes, crimes against humanity, ethnic cleansing, and genocide — aimed directly at the murder and terrorisation of Darfurian groups identified as non-Arab, which were considered by Khartoum to be the kin of, and sympathetic to, the rebels. Citing the findings of a number of authoritative investigations, particularly the Council–mandated International Commission of Inquiry on Darfur (COI), the chapter highlights compelling evidence of direct Sudanese government involvement in orchestrating and then, through a combination of deploying the Sudan Armed Forces and
employing local allied militia, conducting brutal and criminal attacks on non-Arab towns and villages in Darfur.

The final section of Chapter 2 argues that the Darfur crisis was a quintessential ‘extreme’ case for the Council’s fulfilment of its posited ‘responsibility to protect’ because: (i) of the acute and pervasive insecurity in the region. As such, conditions in Darfur clearly met the ‘just cause’ criteria outlined by the ICISS and, importantly, the qualifying circumstances endorsed by UN member states to justify and prescribe coercive UN intervention; (ii) public evidence was presented of Sudanese government involvement in atrocities, demonstrating that Sudan had failed its primary sovereign responsibility to protect its own citizens. This made persuasive the argument that Khartoum should not have been enabled to retain control over security in Darfur, and that the Sudanese government’s sovereign immunity should have been suspended through UN intervention; and (iii) by mid-2006 at the latest, it was clear that various non-military measures had failed to create security for civilians and failed to end the conflict. Completing Part I of the thesis, this discussion concludes that there was a compelling moral, normative and legal-institutional case for Council-authorised military intervention in Darfur.

Emerging from this context, Part II of the thesis analyses how and why the Security Council did not coercively deploy a military intervention in Darfur during the 2003-06 period of study. Chapter 3 presents a chronological examination of the development of the Council’s response to the Darfur crisis from the eruption of conflict in April 2003 until the end of 2006. Through detailed empirical research, the role of this chapter is to give an authoritative account of how and through what measures the Council reacted to the crisis in Darfur. Central to this is observing how, given that no coercive intervention was actually deployed, the Council responded to
the increasingly evident necessity of UN intervention in Sudan to protect desperate civilians. As such, the chapter examines the numerous measures short of coercive military intervention taken by the Council, including the imposition of a limited sanctions regime and arms embargo, the establishment of the Commission of Inquiry to investigate allegations of atrocities against civilians, and the referral of the Darfur case to the prosecutor of the International Criminal Court. It also examines the August 2006 authorisation of a UN peacekeeping force with a robust civilian protection mandate, which, crucially, was not deployed in the face of opposition by the Sudanese government.

What is apparent from this examination is that despite these measures short of military intervention (or perhaps because of them), the Council failed to protect the vulnerable civilian population in Darfur from continued attacks by the Sudanese military and its allied militias. Moreover, the chapter demonstrates that the coercive deployment of a military intervention was not even a serious consideration of the Council, while a more consensual UN peacekeeping operation was not even on the table until early 2006, despite the clear inadequacy of non-military measures. In doing so, the Chapter reveals the voting records, various statements and deliberations of Council members on Sudan/Darfur inside the Council, which are central to explaining why the Council did not coercively intervene. This data provides an empirical basis that is then critically analysed in the proceeding two chapters to explain the various positions of individual Council members and determine why coercive intervention in Darfur was precluded.

Chapter 4, then, examines the individual and collective positions on Sudan/Darfur of the three Western permanent members of the Council (the ‘P3’) — the United States, the United Kingdom, and to a lesser extent, France. In light of their
voting patterns on Council resolutions and public rhetoric on Darfur identified in the previous chapter, Chapter 4 analyses the national interests and political calculations of these Western governments in their approach to dealing with the crisis in Darfur and in their relations with the Sudanese government. The chapter argues that the P3, while likely genuinely concerned about the plight of Darfuri civilians and their treatment by Khartoum and under domestic pressure to ‘do something’ about the crisis, in fact calculated that their national interests were contrary to actions that would too heavily punish or coerce the Sudanese government, such as through any non-consensual deployment of UN troops in the country.

I argue that, for the US in particular, the Sudanese government’s valuable post-9/11 intelligence cooperation in regional counter-terrorism operations, particularly in Iraq and Somalia, and an American commitment to achieving and then consolidating peace between President Bashir’s National Congress Party and rebels in south Sudan through the 2005 Comprehensive Peace Agreement, meant that Washington became reluctant to sever what had actually become an important and useful relationship with Khartoum. In addition, for Washington and London, the politically consuming and damaging 2003 invasion and occupation of Iraq had also significantly depreciated their international legitimacy and credibility in the debate over international intervention. Furthermore, due to the overstretch of their armed forces, Iraq also constrained their own abilities to project a convincing military threat or deterrent to Sudan. As a result, the Sudanese government was able to easily deflect or discount Western rhetorical threats of action or posturing over Darfur.

Following on from this analysis of the positions of the Western P3, and again based upon the voting patterns and public statements made by Council members detailed in Chapter 3, Chapter 5 turns to examine the national interests and political
calculations regarding Sudan/Darfur of the other two, non-Western permanent members, as well as of the three non-permanent members of the Council that consistently acted to obstruct more coercive action against Khartoum. The chapter argues that Russian and particularly Chinese economic relationships with the incumbent Sudanese regime further precluded the Council from coercively intervening in Darfur. The Chinese government is the largest foreign investor in the Sudanese oil industry and the African country’s largest oil importer. China was also a primary source of military equipment for Khartoum, trade in which Russia also participated and benefited. The desire of Beijing and Moscow to preserve these economic relationships contributed to the two veto-wielding countries’ general obstruction of punitive measures or coercive action against the Sudanese government inside the Council.

In addition, the chapter argues that China and Russia were concerned more generally about the precedent of military intervention for humanitarian purposes — particularly when that intervention is based on the protection of a minority or ethnic group from the state itself — because of their own problems with international attention on disaffected populations in Chechnya, Tibet and Xinjiang, in particular. As such, despite their formal endorsement of the ‘responsibility to protect’ doctrine, China and Russia have a continuing history of attempting to preserve the international norm of non-intervention and thus of limiting the political salience of ‘humanitarian’ interventions. The chapter concludes by analysing more briefly the positions of Pakistan, Qatar, and Algeria, the three non-permanent members consistently opposed to more coercive or punitive action on Sudan in the Council. It argues that inter-elite Arab and/or Islamic solidarity with the regime in Khartoum was their primary interest and motivation in acting to obstruct intervention in Sudan.
The thesis concludes by discussing what the response of the UN Security Council to the Darfur crisis between 2003 and 2006 can tell us about humanitarian intervention in contemporary international society. In particular, it demonstrates that despite the apparent evolution of international norms of sovereignty and security, and the prominence of progressive concepts such as ‘human security’ and ‘responsible sovereignty’ in international discourse, regimes continue to murder and terrorise their own citizens for cynical political purposes as a matter of state policy. Moreover, however, it provides further evidence that powerful states, with legitimate decision-making responsibility for international peace and security, continue to place their own narrowly-conceived national interests ahead of the direct provision of security for vulnerable civilians under circumstances in which the two policy outcomes clash.

**Theoretical Approach and Framework**

The thesis takes a self-consciously normative ethical and theoretical approach within the discipline of International Relations (IR). For Andrew Hurrell, normative approaches are concerned with the ‘historically created normative practices embedded within the institutions of international and global society.’[^4] Central of which, I argue, are our understandings and practices of sovereignty, security, and intervention, and the role played in their constitution or development by the most powerful contemporary international body, the UN Security Council. Moreover, while mainstream IR theorising and foreign policymaking during the Cold War were largely devoid of ethical content outside of prescribing what measures contributed to ‘national security’, Mark Hoffman argues that in the post-Cold War era, normative

issues have become a central feature of IR, as ‘[q]uestions about the moral standing of states and the nature and extent of our obligations and responsibilities within, between and beyond individual states have taken on a new immediacy.’ This is no more evident than in the practical and normative challenges that internal conflicts and crises such as Darfur have placed upon the anachronistic security framework of the UN Charter, which was primarily designed to mitigate interstate wars, and by the ethical challenges posed by the notion that powerful and privileged states have a responsibility to protect vulnerable populations from the extreme criminality or severe maladministration of their own governments.

Within ‘multifaceted’ normative IR theory, Hurrell distinguishes between three different research aims, all three of which, to different extents, this thesis shares: first, one can ‘engage in rational moral debate as to the nature of ethical conduct’; second, one can look at the ‘role that normative ideas play in the practice of politics’; and third, one can examine the ‘extent to which moral behaviour is heavily constrained by the dynamics of political life’. Regarding the first or ‘ethical’ form of normative theory, this thesis is self-consciously based upon a fundamental concern for the security of vulnerable civilians in Darfur. It is premised upon the liberal natural rights claim that, because of their common humanity, human beings have a set of basic universal rights regardless of where they reside, of which the most fundamental are the right to life and the right to physical security. Similarly, it supports a positive rights claim and the ethical social principle that those whom are

6 Hurrell, “Norms and Ethics”, 137.
able or powerful have a special obligation to help others in times of desperation and insecurity.

Because of these ethical foundations, the thesis argues (set out most explicitly in Chapter 2) that the protection of such basic rights for people in Darfur required UN military intervention because the Sudanese government was directly targeting the civilian population; as a result, it became morally unacceptable and politically cynical for the Council to allow Khartoum to retain control of security in the region. Yet, in advocating military intervention in this extreme case, the thesis also recognises the inherent ethical value of national self-determination and a pluralist international society of sovereign states in which diverse cultures can freely develop their own political and moral systems unhindered by external intervention and foreign interests. In this sense, ‘humanitarian’ interventions should only be justified in extreme cases, and must be conducted by legitimate multilateral bodies (particularly the UNSC) in order to distinguish them from forms of neo-colonial or imperial interventions, which are ethically unjustified on these terms. Darfur is one such exceptional case in which UN intervention would have been both necessary and justified ethical conduct, not least because expressions of pluralism and claims for more equitable social and cultural development by Darfurians were in fact the very forces that Khartoum was violently extinguishing.

The analytical objective of the thesis, on the other hand, incorporates Hurrell’s latter two aims of normative IR theory concerning the tension between the self-interested pursuit of political gain and narrowly defined national interests by states, and the ability of international norms to constrain, enable, or otherwise shape that behaviour. Because of these analytical aims, the thesis begins from the understanding, in contrast to the scepticism shown by mainstream neo-realist (and
some neo-liberal) theorists, that international norms do have the ability to influence the behaviour and even interests of states. The importance of norms in shaping international behaviour is evident in Chapter 1 of the thesis, which traces the post-Cold War evolution of international norms and practices of sovereignty and security, including the apparent development of a new norm permitting ‘humanitarian’ intervention in extreme cases and the formal endorsement of the ‘responsibility to protect’ by international society. In this context, however, the fact that the Security Council did not coercively deploy a military intervention in Darfur to protect civilians in conformity with the prescriptions of the ‘responsibility to protect’ poses a direct challenge to this more optimistic view of the power of international social norms.

Indeed, what the lack of prescribed intervention in Darfur suggests — turning to Hurrell’s final aim of normative IR theory — is that we need to examine the ways in which ‘political life’ impacts upon and constrains the pursuit of moral behaviour. As ‘moral behaviour’ is itself indeed inherently political in nature, it might be better to propose that we need to explore the ways in which the pursuit of self-interested behaviour (‘politics’, perhaps) constrains or conflicts with the pursuit of normative or altruistic objectives. In this thesis, then, the normative objective is the protection of Darfurian civilians from their own government and its allied militias, and this objective is also argued to be an ethically necessary and justifiable act. The central analytical question, addressed primarily in Chapters 4 and 5, is: what were the national interests or political calculations of the members of the UN Security Council that precluded the pursuit of this ethical and normative objective?

In using a normative analytical approach, and exploring this tension between the pursuit of national interests and of normative or altruistic behaviour, the thesis is
necessarily informed by elements of established International Relations theories. The
debate over the nature and relative merits of norms and national interests in
international relations is illustrated by the differing claims of International Society
(or English School\(^8\)) theorists and constructivists on one hand, and (neo)realists on
the other. Before discussing the particular application and utility of these theories to
this thesis, it first needs to be pointed out that, in its attempts to uncover the
underlying interests of powerful actors, and to deconstruct the means by which such
interests are pursued by juxtaposing the rhetoric and actions of Council members
with regards to Darfur, the thesis also takes a broadly critical approach in its analysis.

As a starting point for conceptualising international order, I am persuaded by
the central argument of International Society theorists that contemporary world
politics is best characterised as an ‘anarchical society’ of sovereign states. As Hedley
Bull has proposed, in an international environment lacking a central, overarching
authority:

\[
\text{A society of states (or international society) exists when a group of}
\]
\[
\text{states, conscious of certain common interests and common values,}
\]
\[
\text{form a society in the sense that they conceive themselves to be bound}
\]
\[
\text{by a common set of rules in their relations with one another, and share}
\]
\[
\text{in the working of common institutions.}^9
\]

According to Richard Little, proponents of this approach ‘consider
themselves to be occupying the middle ground that keeps theorists who focus on the
international system apart from theorists who are concerned with the creation of a

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In this sense, the International Society approach differs from neorealist theory in that it places greater emphasis on the ways in which the social nature of relations between states affects their behaviour, and it differs from cosmopolitanism in that it does not (yet) perceive international politics to have moved beyond its rigid pluralist basis consisting of states as sovereign political communities. This approach clearly allows for the tension between ‘politics’ and the pursuit of moral behaviour, as identified by Hurrell, to be played out. It accepts that states are still the primary actors in world politics and that they can and do pursue policies advancing self-interest, but that governments are also influenced by the prevailing norms of that society, including broader ethical and altruistic considerations. For International Society scholars, the question then becomes to what extent those norms can affect the behaviour of states in a society that is organised, at a fundamental level, on the sovereignty of those states (hence Bull’s ‘anarchical society’). The debate over coercive intervention in Darfur is a clear example of this social tension between sovereignty, ethical behaviour, and self-interests.

Even as the International Society approach bridges other theories of IR, there are interesting divisions within the approach itself. Primarily, this is between ‘pluralists’ and ‘solidarists’. The former view the social bonds between states as being essentially weak and limited to minimal institutions and rules that provide for orderly coexistence, such as sovereignty and the norm of non-intervention. They argue that the pluralist nature of the society prohibits any deeper commonalities between its members, and that any attempts to promote such ‘universal’ standards or ideas, such as intervention in the name of human security, could fundamentally

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threaten this fragile order. In this view, order is taken to be the most important objective of the society.\textsuperscript{12} This pluralist line of argument was advanced or implied by parties opposed to intervention in Darfur — such as China, Russia and Sudan itself — claiming that such an intervention would be counter to the norm of non-intervention and could have the potential to unravel the existing order based on a reciprocal respect for sovereignty.

Solidarists, instead, try to push the boundaries of the pluralist order. They argue that there exists more room for common ideas and norms to be promoted, and that ideas about justice (in the sense of protecting civilian victims in Darfur, for example) should take precedence over conservative notions of order. According to Bull, solidarism is based on the claim that there exists ‘solidarity, or potential solidarity, of the states comprising international society, with respect to the enforcement of the law.’\textsuperscript{13} The task for solidarists, then, is to persuade others how this should be done, and/or to provide evidence of how it is already being done. In this context, proponents of ‘humanitarian’ intervention and the ‘responsibility to protect’ represent an attempt to push the normative boundaries of international society to the point at which the protection of civilians wherever they reside (such as in Sudan) from atrocities would become an accepted obligation for powerful states, particularly those on the Security Council. Thus, as Wheeler and Dunne contend, the ‘reason for focusing on questions of intervention and human rights is that they pose the conflict between order and justice at its starkest.’\textsuperscript{14}

\begin{flushleft}
\textsuperscript{12} See for example, the argument made by Robert Jackson, \textit{The Global Covenant: Human Conduct in a World of States} (Oxford: Oxford University Press, 2003).
\textsuperscript{14} Wheeler and Dunne, ‘Hedley Bull’s Pluralism’, 92.
\end{flushleft}
Similarly, as Christian Reus-Smit argues, constructivist theorists view international relations as ‘deeply social, as a realm of action in which the identities and interests of states and other actors are discursively structured by intersubjective rules, norms and institutions.’\textsuperscript{15} According to Alex Bellamy, it has ‘become increasingly apparent that English School and constructivist writers [have] much in common, in particular their belief that states form an international society shaped by ideas, values, identities, and norms that are — to a greater or lesser extent — common to all.’\textsuperscript{16} For example, as Biersteker and Weber have argued, state sovereignty, a central concept used in this thesis, is itself a social construct and does not make sense without accepting its intersubjective nature. They argue that:

States’ claims to sovereignty construct a social environment in which they can interact as an international society of states, while at the same time the mutual recognition of claims to sovereignty is an important element in the construction of states themselves.\textsuperscript{17}

As discussed in Chapter 1, the potential transformation of sovereignty norms from implying absolute authority and immunity from external interference to meaning social and political responsibility is illustrative of this. Indeed, as Edward Newman argues, because states’ ‘behaviour, interests, and relationships are socially constructed [they] can therefore change.’\textsuperscript{18} The crucial insight from constructivist theory in terms of the argument presented in this thesis, then, is that governments have the agency to enact change through social interaction in international relations.

This directly opposes the claims made by neo-realist that the rigid anarchic structure of international relations predetermines the types of interactions that can take place, and the identities that can be possible (perceived as inherently competitive or conflictual). It counters the claim that states should privilege narrow self-interests (such as counter-terrorism and profitable trade relationships, for example) in order to survive in a posited ‘self-help’ and ‘zero-sum’ system. Constructivists suggest instead that there are alternatives to this logic, such as Alexander Wendt’s claim that ‘anarchy is what states make of it.’ To the extent that such critiques undermine arguments against intervention to protect Darfurians (for example, because such interventions might not be ‘in the national interest’) and contribute to support for such international protection, they are considered to be useful insights for this thesis.

While these International Society and constructivist insights are useful and indeed important to the argument in this thesis because they help to explain the apparent evolution in international norms, and the roles that norms play in shaping state behaviour and interests, and the agency of policymakers, they do not by themselves explain the Council’s failure to intervene in Darfur. Even if constructivists and others can persuasively discredit neorealist logic, in which states must pursue national interests as a means to survival in an anarchical world, it is still the case that, in practice, states do pursue narrowly defined national interests as a matter of foreign policy priority often in the face of prevailing norms, such as the ‘responsibility to protect’. Indeed, as Chapter 1 discusses, the structure of the Security Council, including the power of veto, was deliberately designed in such a way as to accommodate the national interests of the permanent members.

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This is not to suggest that states should not pursue national interests, as clearly it is one of the central roles of government to advance the security and prosperity of their nation and citizens. For example, the Chinese government pursues trade and investment in Sudanese oil for the purpose of economic growth. The United States engages in counter-terrorism cooperation with Khartoum with the aim of protecting America and its allies and other interests from potential terrorist attacks. Prima facie, these are legitimate functions and pursuits of government. However, when the pursuit of these interests comes at the direct expense of the interests (including physical security) of other nations or people, particularly vulnerable civilians, then a moral and political tension emerges between the pursuit of national interests and the pursuit of normative, altruistic or more broadly ethical foreign policy.

While the underlying ethical claim made in this thesis is that, in such circumstances, states should privilege the protection of civilians or at least pursue national interests in such a way as to not undermine the security of others, the politically and analytically interesting empirical question is: which prevails when the preservation of national interests clashes with the pursuit of normative or altruistic behaviour? In this regard, S. Neil MacFarlane claims that intervention ‘remains a fundamentally political form of behaviour’ and is sceptical of the ability of norms to exert more influence on foreign policymaking than national interests:

the displacement of raison d’état by international norms is more apparent than real. Intervention in the 1990s and at the beginning of the new century continues to be motivated substantially by considerations of state and alliance interest. Where such interest is not perceived to be present, intervention tends not to occur, whatever the prevailing humanitarian situation.21

This is an interesting observation in the context of the relationship between norms, interests and intervention. MacFarlane refers to two types of circumstances. The first are interventions that occur for self-interested reasons with questionable humanitarian motives (such as the 2003 US-led invasion of Iraq, perhaps), but this does not lend itself to an explanation of non-intervention in Darfur. The second type involves a lack of humanitarian intervention because of apathy or the absence of national interests by the major powers in the target theatre (such as Rwanda in 1994). This could potentially explain the lack of intervention by the major powers in Darfur, but the examination in this thesis suggests otherwise. In particular, as detailed in Chapters 4 and 5, the major powers all had considerable interests in Sudan during the period of study. Moreover, in contrast to the failure to intervene to stop the Rwandan Genocide a decade earlier, it would have been difficult for governments, particularly those in Washington, London and Paris, to remain apathetic (or claim ignorance) in the face of the highly vocal and visible international advocacy campaign to ‘save Darfur’ through UN intervention.

Additionally, Thomas Weiss explains the inconsistent nature of humanitarian intervention using the notion of the ‘humanitarian impulse’, which is the ‘understandable human desire to help those in life-threatening distress resulting from armed conflict.’ While this impulse was evident in the Council’s deliberations and responses to humanitarian crises and atrocities during the 1990s, illustrating a ‘fundamental increase in the relevance of humanitarian values in relationship to

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22 See Linda Melvern, “Rwanda and Darfur: The Media and the Security Council”, *International Relations* 20, no. 1 (2006): 93-104. The campaign was led by NGO’s such as the Save Darfur Coalition, Citizens for Global Solutions, Amnesty International, Human Rights Watch, Enough! Project, and the US Holocaust Memorial Museum, along with prominent intellectuals, journalists and actors.

narrowly defined vital interests’, it did not always lead to intervention.\textsuperscript{24} Weiss argues that although ‘[h]umanitarians often lament that national interests are obstacles to achieving their objectives’, the truth is that ‘calculations about vital interests by governmental decisionmakers explain intervention.’\textsuperscript{25} Weiss concludes that it is only when ‘humanitarian and strategic interests coincide [that] a window of opportunity opens for those seeking to act on the humanitarian impulse in the Security Council.’\textsuperscript{26} However, unlike the case of NATO member states’ intervention in Kosovo in 1999, for example, in Darfur there was no coincidence of humanitarian and strategic interests for the major powers. Rather, there was a clash between them, and as a result the ‘humanitarian impulse’ did not lead to a coercive military intervention.

Therefore, extending MacFarlane and Weiss’ logic concerning the privileging of national interests over international norms by policymakers, the findings in this thesis provide evidence for a fourth type of circumstance, namely that \emph{humanitarian interventions will likely not occur when they directly clash with the national interests of the major powers}. I do not propose that this is anything unexpected. However, it does convincingly explain why, despite the ‘humanitarian impulse’, despite the permissive and even prescriptive normative environment, and despite the persuasive moral and legal-institutional case for a UN intervention in Darfur, such an intervention was not even a serious consideration of the Council during 2003-06.

\begin{footnotes}
\footnote{26} Weiss, “The Humanitarian Impulse”, 37.
\end{footnotes}
Techniques of Analysis and Data Collection

The final task of this introduction is to briefly outline the techniques of analysis used in the thesis, including data collection. Because it examines norms, rules, institutions and other intersubjective aspects of international society, interpretive methods are the most useful techniques of analysis. According to Bevir and Rhodes, interpretive approaches ‘concentrate on meanings, beliefs, and discourses, as opposed to laws and rules, correlations between social categories, or deductive models.’

I employ interpretive techniques in this thesis because the underlying analytical aim is to understand why certain actors have formulated certain policies, and not others, in their response to the Darfur crisis. The thesis attempts to understand the normative context within which these actors are operating — how do shared understandings about international society having a ‘responsibility to protect’ civilians at risk from genocide or other crimes against humanity shape the identities and interests, and hence behaviour, of those actors? How do self or national interests shape the policies of governments? The types of phenomena with which this study is concerned — norms, ethics, and interests — cannot easily be examined using positivist predictive theories or mathematical formulas because of the inherently indeterminate nature of social life and because of the agency of actors under study to construct their own meanings.

The thesis uses a combination of primary sources, published academic works, and news-media items as data collected for analysis. The former largely consist of

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publicly available UN (and African Union) documents. These include reports and statistics from UN humanitarian agencies working on the ground in the wider Darfur region and reports of other UN bodies such as the Human Rights Council. They also include numerous documents of the UN Security Council itself, namely transcripts of Council meetings, texts of Council resolutions, presidential statements, communiqué, and reports by and to the Council by actors such as the UN Secretary-General and his Special Representatives, the International Commission of Inquiry on Darfur, and the prosecutor of the International Criminal Court.

The published scholarly sources are used primarily in Chapter 1, in the discussion of the structures and processes of the Security Council and of normative evolution in sovereignty, security and intervention; and in Chapter 2, where historical work is used in conjunction with contemporary academic analysis of the Sudanese polity and the conflict in Darfur. In addition, items from primarily electronic news-media, including the official UN News Centre, will also be used in Part II of the thesis in the examination of the Council’s response to Darfur as well as in the analysis of the various interests and political calculations of Council members.
Part I

Context

The Case for UN Military Intervention in Darfur
Chapter 1

The UN Security Council and its ‘Responsibility to Protect’

Introduction

This chapter establishes a relevant context against which the UN Security Council’s response to the Darfur crisis can be critically examined and explained. It identifies compelling legal-institutional and normative arguments for coercive Council intervention to protect abused or vulnerable civilians residing within nominally sovereign states. In doing so, it makes the case that Council intervention for human protection purposes in extreme circumstances has a firm basis in international law and the UN Charter, and that the doctrine of the ‘responsibility to protect’ is emerging as a prescribed behavioural norm in contemporary international society after its unanimous formal endorsement by UN member states.

To accomplish these tasks, this chapter is divided into two main parts. The first part outlines the formal structure and relevant functions and powers of the Security Council under the UN Charter. In doing so, it makes clear the Council’s pre-eminent position atop the post-WWII international legal and political framework in its role as the authoritative decision making body on matters of ‘international peace and security’. Of central relevance to this thesis is the Council’s legal authority and mandatory power to intervene in conflicts internal to a UN member state, although historically this has been (and remains) contested. In the context of the Council’s institutional framework, the chapter examines the central and privileged positions of the Permanent Five (‘P5’) members and, correspondingly, their implied responsibilities as ‘Great Powers’.
Crucially, building on the discussion in the thesis Introduction, it illustrates how Council deliberations and resolutions have the inherent potential to be — and often are — held hostage by the narrowly defined and self-interested political calculations of the P5, particularly through their powers of agenda-setting and veto. Indeed, according to Mark Imber, the ‘political significance of membership of the Security Council is startlingly clear: the opportunity to confer or to withhold approval of acts of violence, including one’s own and those of one’s allies’.’29 As such, the chapter highlights the political machinations and national interests that determine the extent and even existence of actual Council interventions within the established legal-institutional framework.

Second, the chapter discusses the continuing evolution of international norms pertaining to two crucial practices in international society, sovereignty and security; an evolution that has been particularly evident in the post-Cold War era. Here I identify how new ideas, critiques and conceptualisations of existing practices have gradually been incorporated into international theorising, discourse and, eventually (although inconsistently), into policymaking. In a basic sense, these normative debates have challenged traditional conceptions of the just and proper relationship between citizens, governments, and international society by questioning underlying notions of authority, responsibility, obligation, and ethical behaviour.

One crucial outcome of this process (and indeed a driver of it) is the notion of external, coercive, and military-based ‘humanitarian’ interventions by the Council to protect vulnerable or abused civilians living inside sovereign states (when certain criteria have been met). I discuss how this idea has been incorporated into the more recent discourse and doctrine of the ‘responsibility to protect’, which has gained

important formal endorsement in international society. It is against this emerging normative context that the Council’s response to the crisis in Darfur — characterised by a distinct lack of coercive military intervention — is examined and explained in Part II of the thesis.

Finally, in discussing international normative change, the chapter also illustrates how the Council itself has evolved in the post-Cold War era, particularly by (somewhat controversially) self-expanding its own mandate to less ambiguously include matters that hitherto were considered to be within the sole jurisdiction of individual UN member states — namely, their ‘domestic affairs’. As such, the chapter presents the argument that there is a compelling legal-institutional and normative case for coercive Council-authorised military intervention into sovereign states for civilian protection purposes. In this context, the question of why the Council did not coercively intervene in Darfur between 2003-06 needs to be explained.

The United Nations Security Council

Many of the central issues in the study of International Relations concern the nature, authority, and legitimacy of decision-making power in a highly pluralist and relatively decentralised international order that is organised politically into sovereign states. This is particularly evident when it comes to the sensitive questions surrounding the authorisation of war or military intervention — including those for civilian protection purposes — within the borders of a particular state. Before the advent of the modern sovereign state system, powerful actors made decisions about when they would go to war relatively unfettered by external legal or normative challenges to their authority or legitimacy. Over time, the institution of sovereignty
and its corollary norm of non-intervention were developed in Europe to reduce warfare, create order, and enhance security. In turn, international institutions comprised of sovereign states — such as the Concert of Europe and the League of Nations — were later designed to imbue any decisions about war and maintaining order with a more collective, and thus both more restrictive and legitimised, character.

Notions of legality, legitimacy and authority became increasingly important in both the pursuit of, and conduct in, war (including intervention) as new legal and normative regimes emerged bounding actors together in international society based on some degree of commonly accepted principles. Reflecting a desire to further centralise and control decision making on war and peace after the horrors of WWII, the post-war era saw the creation of a new and strengthened international collective security regime under the United Nations. Most importantly, the Security Council was placed atop this new framework as the most authoritative and powerful body mandated to ‘maintain international peace and security’.

For this reason, and because the UNSC continues to play this preeminent decision making role in the twenty-first century, its actions — as a collective as well as those of its individual members — are of most significance when analysing the international response to one of the most pressing contemporary ‘security’ issues: the Darfur crisis. Indeed, because of its legal-institutional role, when it comes to the responsibility for dealing with issues of war, peace and security, the Council ‘is the proper locus of authorising and legitimising the creation, deployment and use of

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31 While the thesis examines the response of the Security Council to Darfur, it also acknowledges the important and complimentary roles played by regional organisations, particularly the African Union, as well as by the UN Secretariat.
military force under international auspices. Moreover, the International Commission on Intervention and State Sovereignty (ICISS), a panel of experts examining the role of the Council in potential ‘humanitarian’ interventions, argued in 2001 that:

there is no better or more appropriate body than the Security Council to deal with military intervention issues for human protection purposes. It is the Security Council which should be making the hard decisions in the hard cases about overriding state sovereignty … The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work much better than it has.

The Security Council is thus a powerful and legitimate entity and yet, as noted by the ICISS above and elaborated below, an inherently problematic body. Before I return to this discussion, it is first necessary to establish the composition of the Council and its functions, powers and mandate under the UN Charter. In addition, the role of the Council’s privileged Permanent Five members and their national interests needs to be outlined. Understanding these important formal aspects is the sine qua non of explaining the Council’s non-intervention in Darfur.

*Formal structure, functions and powers*

Towards the end of WWII, a central aim of post-war planners was to bring together the major powers (initially just the victorious allies) under the multilateral legal regime of a strengthened international organisation — the UN — rather than to risk leaving them alone to pursue aggressive unilateral foreign policies. Further to this, the model proposed that any threats to the system would be deterred, and if

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deterrence failed, acted upon, by a powerful collective of other members of international society. Because of this, the Security Council, as the new organisation’s most powerful body in this collective security system, was designed around an ‘elite pact’ between the major allied powers. At the formation of the UN, the Council’s ‘main function appeared to be the institutionalisation of a concert of powers, legitimising the great power status of the P-5 and ensuring that the UN did not undertake a collision course with any one of them. Put differently, through the UN the international community ‘was determined to put in place an effective system for preventing and suppressing armed conflict that would rely on both legal principles and the power of the major Allied nations.

These underlying principles were elaborated and crafted into the UN Charter, which was ratified by the requisite number of member states on October 24, 1945, formally bringing the world body into existence. The UN was organised institutionally into six principle organs, the most powerful of which was the Security Council. Seeking to improve on the interwar institutional structure, the UNSC’s design was made similar yet different in important respects to its predecessor, the League Council, as the UN’s founders ‘reconstructed the League’s unworkable unanimity procedures around a more vigorous recognition and deference to the great

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38 The other five are the General Assembly, the Economic and Social Council, the Trusteeship Council, the Secretariat, and the International Court of Justice.
powers’ roles.’39 Thus, in designing the UN around the primacy of the Security Council, the allied powers ensured that their own positions of authority within the organisation — and in the post-war international legal and political framework more generally — would be secure.

Hence, as set out in the Charter,40 the UNSC is structured by 15 (of the current total of 192) UN members at any one time. Of the 15, five are permanent members: the United States, the United Kingdom, China, Russia and France. As their title suggests, these five have been ever-present (in one form or another) on the Council since 1945.41 The other 10 members of the Council are elected annually onto rotating seats by the General Assembly (five per year). These seats, distinguished as ‘non-permanent’, are for a term of two years and are staggered to ensure that some continuity outside of the P5 is maintained, while a serving member cannot apply for immediate re-election.42

The non-permanent seats are available for contestation by all other UN members but are distributed on a regional basis (conventionally, according to UN Regional Groups) to afford a measure of ‘equitable geographic representation’: five shared between Africa and Asian states, two to Latin America and the Caribbean, two to the Western European and Other State group, and the final seat to a state from Eastern Europe. In addition to equitable geographic representation, potential non-permanent members are nominally required to meet an ambiguously defined criterion based on their ‘contribution to international peace and security’. The result is that the

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40 The Security Council’s structure, functions and powers are set out in Chapter V of the UN Charter.
41 The Republic of China’s seat was controversially usurped by the People’s Republic of China in 1971. After the USSR dissolved, its seat was taken over by Russia, its rump successor state.
42 The original Charter established a Council of eleven seats with five permanent and six non-permanent. Since a rare 1965 Charter amendment, the Council has reflected the current expanded structure of fifteen members.
Council’s structure ‘confer[s] effective decision-making power on a small minority of the member-states, partly elected and partly self-selected.’


In addition to its structural composition, the formal functions and powers of the Council are also set out in Chapter V of the Charter. Most crucially, establishing its role as the preeminent UN decision making body and setting out its mandatory power, Article 25 states that all UN Members ‘agree to accept and carry out the decisions of the Security Council in accordance with the present Charter’, while Article 24(1) provides that:

In order to ensure the prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

Thus, in order for a state to join, or have joined, the UN, it must first have fully accepted the mandate and position of the Council and the inherent obligations

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44 The interaction in the Council between these members and the P5 in deliberations and decision-making on the Darfur crisis is examined in detail in Chapter 3.
this creates for its own actions, including certain legal restrictions on its freedom of
action. This is one of the few explicit restrictions that the Charter places upon the
sovereignty of its member states and it is a central component of the UN’s collective
security system.45 Delineating the powers of the UNSC, Article 24(2) states that in
discharging its duties the Council must act in accordance with the basic purposes and
principles of the United Nations as set out in Articles 1 and 2 of the Charter. Most
importantly, illustrated in Article 1(1), the primary purpose of the organisation is:

To maintain international peace and security, and to that end: to take
effective collective measures for the prevention and removal of threats
to the peace, and for the suppression of acts of aggression or other
breaches of the peace, and to bring about by peaceful means, and in
conformity with the principles of justice and international law,
adjustment or settlement of international disputes or situations which
might lead to a breach of the peace.

Of the seven primary principles or basic norms upon which the UN and its
member states must act, as set out in Article 2, the most significant for this analysis
are that the organisation is ‘based on the principle of the sovereign equality of its
Members’ (2(1)), which means in practice that member states are accorded equal
legal rights in the organisation regardless of size, population or GDP (the important
exception being the P5); that all members ‘shall refrain in their international relations
from the threat or use of force against the territorial integrity or political
independence of any state, or in any other manner inconsistent’ with the UN’s
purposes (2(4)); and finally, and most importantly, Article 2(7) states that:

Nothing contained in the present Charter shall authorize the United
Nations to intervene in matters which are essentially within the
domestic jurisdiction of any state or shall require the Members to
submit such matters to settlement under the present Charter; but this

45 Bennett and Oliver, International Organisations, 62.
principle shall not prejudice the application of enforcement measures under Chapter VII.

Article 2(7) is crucial to the debate over intervention generally, and Darfur particularly, because it grants the Council the authority to intervene within the ‘domestic jurisdiction’ of a state if it passes a resolution under Chapter VII of the Charter. Yet, due to its somewhat ambiguous wording, interpretation of Article 2(7) has been the subject of ‘considerable controversy about how far this permits the Council to authorise intervention to stop humanitarian emergencies taking place inside state borders’. Nevertheless, in his comprehensive legal analysis, Michael Matheson argues convincingly that, under Article 2(7):

if the Council determines that an internal situation (such as a conflict against domestic insurgents or internal ethnic violence) constitutes a threat to the peace, then the international community — through the Council — has the power to intervene dramatically and powerfully, if necessary, though sanctions or the use of force. In such a case, national sovereignty gives way to international authority in the most direct and forceful way.

Fundamental to this argument, however, are the questions of what constitutes a threat to or breach of the peace and what constitutes ‘international’, because they determine ‘to a large extent the boundary between national sovereignty and international jurisdiction under the Charter system’ The ways in which the Council has self-expanded the interpretation of its own mandate in the post-Cold War era — specifically, towards dealing with matters formally considered to be ‘internal’ to a sovereign state — has meant that Article 2(7) is now further weighted towards Council authority for internal intervention (see discussion below). As such, it gives

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47 Matheson, Council Unbound, 43.
48 Matheson, Council Unbound, 43.
the Council the authority to intervene, for example, in Sudan — within the borders of
the nominally sovereign Sudanese state — to protect civilians from acute violence. However, as will be examined in Part II of the thesis, while the Council did indeed authorise robust civilian protection in Darfur under Chapter VII in Resolution 1706, the deployment of that operation did not occur. This development is indeed crucial, because it demonstrates vividly that political — and not legal — obstacles were central to explaining the Council’s non-intervention.

While the Council must act in accordance with the broader principles and purposes of the UN, its more specific powers are delineated in Chapters VI, VII, VIII, and XII. Chapter VI, ‘Pacific Settlement of Disputes’, sets out the non-mandatory measures that the UNSC can take in response to a dispute. Under Article 33, the Council should in the first instance facilitate parties to a dispute to ‘seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice’. Under Article 34, the Council may ‘investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security’, and, under Article 36, may ‘recommend appropriate procedures or methods of adjustment.’

However, under Chapter VI resolutions, such recommendations are only advisory and require the consent of the parties involved in the dispute. Regarding Darfur, there were numerous instances over the period of study in which the Council passed resolutions or initiated actions that fell within the remit of Chapter VI, and the Council clearly attempted a variety a ‘non-military’ and cooperative measures to
resolve the conflict.\textsuperscript{49} Yet, despite the efforts of the Council and other international actors to find a peaceful solution to the crisis, such measures were unsuccessful and ultimately inadequate; this necessitated a more coercive approach.

Indeed, the aforementioned Chapter VII of the Charter, ‘Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression’, establishes the Council’s powers for dealing more coercively with issues when more peaceful means have failed or are deemed inappropriate. As has already been established, Chapter VII resolutions authorised by the UNSC are ‘binding on states and override other obligations.’\textsuperscript{50} Article 39 states that the Council ‘shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.’

Thus, under Article 41, the Council ‘may decide what measures not involving the use of armed force are to be employed to give effect to its decisions’ and may call upon UN members to apply such measures. These may include ‘complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations’, commonly known as the sanctions provision. Sanctions, primarily economic and travel-related, and an arms embargo were also enacted by the Council in its efforts to compel belligerent parties to resolve the Darfur conflict, but, as Chapter 3 of the thesis details, these too proved to be an insufficient deterrent. Crucially, then, when sanctions fail or are ineffective, Article 42 goes one step further:

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it

\textsuperscript{49} As outlined in Chapter 2 and then detailed in Chapter 3 of this thesis.
\textsuperscript{50} Matheson, \textit{Council Unbound}, 39.
may take such action by air, sea or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

The ‘other operations’ provisions of Article 42 are clearly highly coercive in nature and may ultimately involve the use of military force and intervention to achieve the Council’s objectives. This thesis argues that due to the failure of less coercive methods to resolve the Darfur conflict and protect vulnerable civilians, and due to legal mandate of the Council under Article 42 to use military force in such circumstances where measures short of war have proven inadequate, a robust and coercive military intervention authorised by the Council under Chapter VII became the only measure that would have been effective in protecting Darfurian civilians. Yet, between 2003-06, when hundreds of thousands of civilians died, no such intervention occurred.

Indeed, rather than being confrontational, much of the Council’s deliberations on, and dialogue with, Sudan over Darfur emphasised cooperation and the consensual deployment of UN ‘peacekeeping’ forces. While not written into the Charter, the Council has developed a niche role for ‘peacekeeping’ forces, authorised under either Chapter VI or VII resolutions. ‘Traditional’ peacekeeping missions, authorised under Chapter VI, need the consent of belligerent parties, should be impartial, and should essentially monitor violations of a peace that had already been made. The deployment of 10,000 UN troops in south Sudan, which Khartoum accepted as part of the 2005 Comprehensive Peace Agreement with the SPLM/A, was an example of this type of consensual deployment of peacekeepers. Yet, it is important to make the distinction here between this traditional, impartial

peacekeeping, and coercive intervention (or ‘peace-enforcement’), which must be authorised under Chapter VII. It is the latter, I argue, which was required in Darfur, particularly after the Sudanese government’s role in the violence was revealed and indeed after it had rejected the consensual deployment of UN troops in Darfur.

Ultimately, however, whichever type of resolution is used to authorise the force, the ‘chief determinant of failure and success [of a Council peace operation] will be the quality of decisions made by member states in the UNSC, led by the P5.’ It is imperative to appreciate the political nature of Council decision making and the political calculations, national interests, and compromises that go into creating the mandate for a peacekeeping mission or more coercive intervention. Key here is the observation that although the Council has a legal-institutional capacity to authorise coercive force to protect civilians at risk, as a collective it continually decided against coercively deploying a robust military intervention in Darfur.

A final area of potential Council action relates to Chapter VIII of the Charter, which sets out the relationship between the Council and regional intergovernmental organisations. This is particularly relevant regarding Darfur because of the close cooperative relationship established between the Council and the African Union. Article 53 states that the Council ‘shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority’, but that no such enforcement action would be taken by a regional body without Council authorization (again reinforcing the Council’s preeminent status). The AU was authorised by the Council to establish a limited military observer mission in Darfur from mid-2004, although this operation was ultimately inadequately resourced,

52 Thakur, The United Nations, 43.
politically compromised, and thus largely ineffective in providing security on the ground. 53

*The Permanent Five: Great Powers, national interests, and the veto*

While the above discussion has delineated the membership structure of the UNSC, and its formal functions and powers under the UN Charter, more attention needs to be paid to the role of the P5, particularly to the ways in which they retain effective control over the Council’s agenda-setting and decision-making processes, as well as to their nominal responsibility as ‘Great Powers’ to manage issues of peace and security in international society. Because the Great Powers were given special privileges ‘in recognition of their special role and responsibility in underwriting world order and collective security,’ 54 an appreciation of the P5’s exceptional role in the Council is critical to understanding how the body acts, why it adopts or does not adopt resolutions, and which issues gain its greatest attention. These questions are indeed of primary relevance for this thesis because the Council’s lack of robust military intervention to protect vulnerable civilians in Darfur between 2003-06 can be explained by the pursuit of contrasting policies and national interests amongst the P5.

At the heart of P5 privilege is the voting arrangement in the Council, which comes in addition to their permanency. To comply with Article 27, for a substantive Council resolution to pass — such as Resolution 1706 (2006) on Darfur, for example — it must attract a majority of at least nine affirmative votes from its 15 voting

53 An additional area in which the Council can operate regards Chapter XII and the post-WWII international trusteeship system. However its work has been largely completed and it is no longer a relevant issue in terms of the Security Council’s powers (indeed, the Trusteeship Council is no longer a functioning body).

members. However, in addition to requiring nine affirmative votes, for a particular resolution to pass, each of the P5 governments must individually either support the resolution (by voting ‘yes’) or abstain from voting (which is not considered a negative vote). In this sense, if any of the P5 were to vote ‘no’, they would effectively block or ‘veto’ the passage of a UNSC resolution, ensuring that no decisions made by the Council will be contrary to the interests or preferences of any of the P5. Referring again to Resolution 1706, the successful resolution received 12 affirmative votes, zero negative votes, and three abstentions (China, Russia and Qatar). Conversely, to use an example from a different conflict in which a veto was actually cast, in November 2006 the Council failed to adopt a draft resolution ‘condemning Israeli military operations in Gaza’ because the United States voted against it (the resolution also received 10 affirmative votes, with four abstentions).

Why were five members of the UN granted permanent seats and exclusive voting privileges in the Council? While it may seem undemocratic and a violation of the ‘sovereign equality’ principle, as outlined above, the particular structures that were created reflect the nature of power relations at the end of World War II. As Paul Kennedy argues:

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55 Article 27(3) states that Council decisions on substantive resolutions ‘shall be made by an affirmative vote of nine members including the concurring votes of the permanent members’. According to Matheson (Council Unbound, 21), Council practice in its early years resolved the ambiguity in this voting formula: “the language requiring the ‘concurring votes’ of the permanent members for non-procedural decisions was treated by the Council as permitting a decision even if one of the permanent members abstained, declined to vote, or was absent. Although, in the abstract, this was an unusual interpretation of the phrase ‘concurring votes,’ it was nonetheless very useful, as a practical matter, since it permitted permanent members to register their objections clearly and conspicuously, but without having to assume the political onus of preventing a decision from being taken.”


to any reasonable person nowadays, it is outrageous that a mere 5 of
the 191 sovereign states that make up the United Nations have special
powers and privileges ... Upon what they do, or decide not to do, and
upon what they agree to, or veto, lies the fate of efforts to achieve
peace through international covenants. Even more amazing and
disturbing is that any single one of the Permanent Five, were its
national government determined upon it, can paralyse Security Council
action; moreover, it would be fully within its charter rights to do so.58

Yet, the veto power and privileges granted to the P5 ‘were designed to
remedy the main weakness of the first half of the twentieth century: the failure to
anchor the major powers in a collective security system and to ensure that no
decisions were taken that went against their interests’, 59 which is arguably a major
structural flaw in the international system that facilitated WWII. In a similar vein,
Kennedy argues that what ‘some critics saw as a terrible weakness in the system
could be viewed by realists as a redeeming feature, affirming in fact that it was better
to have the larger nations inside the UN system rather than on the outside.’60
According to Wallensteen and Johansson, the Council was therefore established in an
‘atmosphere of major power cooperation’ and its structure ‘assumed that the leading
actors in world affairs would have to cooperate with each other and, with the
introduction of the veto, even be inclined to do so.’61

In essence, according to this view, the major powers decided to enshrine their
own privileges in the new post-war institutional structure of global governance,
while a number of other states at the time reluctantly accepted this as the ‘lesser of
two evils’ and joined the UN themselves. Consequently, as Mahbubani notes, the
‘record since the UN’s founding in 1945 shows that the veto has accomplished the

60 Kennedy, The Parliament, 54.
Security Council: From the Cold War to the 21st Century, ed. D. Malone, 17-33 (Boulder & London:
Lynne Rienner, 2004), 17.
purpose of achieving great power commitment’ to the UN; none of the P5 have withdrawn from the world body because they recognise that their privileges give them ‘significant control over a powerful global institution.’ As such, it could be argued, according to this logic, that by not coercively intervening in Darfur in order to preserve the national interests of the P5, the Council was operating exactly as was planned by the framers of the Charter.

However, a key additional element to the granting of special privileges in international society is a corresponding responsibility nominally accepted by the major powers for preserving and defending that system and dealing with vital security issues that arise within it. As Hedley Bull has argued, Great Power management of both their own relations and of the international system more broadly is one of the fundamental institutions comprising international society. Similarly, Thakur argues that, in a general sense, powerful countries ‘claim and are granted the right to a determining role in issues of world peace and security; but also they are burdened by the corresponding duty to modify national policies in the light of international managerial responsibilities.’ More specifically, he contends that permanent seats on the Security Council:

consecrated the special position of the five major powers in the UN scheme of helping to shape and safeguard international peace. The veto clause conferred the further competence upon the great powers to protect international encroachments upon their own vital interests. In return, as part of the obligations towards a responsible management of international order, the great powers agreed to eschew unilateral resort to force in favour of concerted action through the UN system.

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63 Bull, The Anarchical Society, Ch. 9.
64 Thakur, The United Nations, 9.
Leaving aside the issue of reducing interstate war between the major powers, which nevertheless seems less likely in the present era, more relevant for the argument in this thesis is Bull’s claim that a Great Power ‘hoping to be accepted as a legitimate managerial power’ cannot ignore or contradict certain demands for justice from lesser powers or peoples around the world in the ways in which less-aspirational states can, because its “freedom of manoeuvre is circumscribed by ‘responsibility’.” As will be discussed below, due to evolving international norms this notion of ‘responsibility’, particularly for the P5, now arguably extends to protecting vulnerable civilians from abuse inside their own states.

Despite these arguments that P5 privileges were crucial to the early success of the UN and the stability of the immediate post-war era, or that the Great Powers are justifiably granted special powers and status because of their exceptional role as managers of the international system, there have been a variety of criticisms of such privilege, particularly of the veto power and the fact that it is still available today. Because of the ability to veto, it becomes apparent that the Council is to a large extent run according to either the individual national interests of P5 members or to the collective preferences of this exclusive clique. Although the fact that any resolution must gain the affirmative votes of at least nine members to pass (including no P5 vetoes) means that Council action still ‘requires substantial support across regional or political lines’, it is the problem of obstructing potential resolutions which is of more relevance to the body’s response to Darfur.

Moreover, the veto power means that the P5 ‘not only … have the ability to veto action: but that the simple existence of the veto, even if not formally exercised,

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66 Bull. The Anarchical Society, 222.
67 Matheson, Council Unbound, 22.
gives the permanent members the ability to control the Council’s agenda.’

In this sense, it is important to recognise the process that takes place in behind-the-scenes Council negotiations, where compromises are often made informally and privately, and draft resolutions are modified in order to prevent a permanent member having to formally (and somewhat embarrassingly) veto a draft resolution if they oppose it. Mahbubani notes that the P5 members, while reluctant to use their veto publicly, are ‘allowed to use their veto implicitly in many closed-door consultations.’ In terms of Council procedure and agenda-setting, the non-permanent members are therefore disadvantaged because standing rules of procedure and precedent in the Council are already established (primarily) by the permanent members, while elected members lack the ‘institutional memory’ that comes with an ever-present seat at the table. Such pre-vote negotiations and compromises amongst the P5 were indeed central to the Council avoiding a formal Chinese veto on any resolution concerning Sudan/Darfur, with the result that more coercive actions were precluded.

Building on the theoretical discussion in the thesis Introduction, it is apparent, therefore, that the Security Council has the inherent potential to be — and often is — held hostage by the particular national interests and political calculations of its permanent members. Rosemary Durward cites how the Council can ‘suffer from a malaise of disinterest or be immobilized by a veto or threatened veto because of vested interests.’ This has particularly significant ramifications for victims of brutal conflicts that require urgent Council intervention, such as in Darfur. On this

69 See, for example, BBC News, “UN Darfur Resolution Watered Down”, July 25, 2007. See also the observations of Chinmaya Gharekan in his The Horseshoe Table: An Inside View of the UN Security Council (UK: Longman, 2006).
point, the ICISS reported that during its global consultations on the role of the Council in responding to humanitarian crises, it encountered the attitude that the:

capricious use of the veto, or threat of its use [was] likely to be the principal obstacle to effective international action in cases where quick and decisive action is needed to stop or avert a significant humanitarian crisis … Of particular concern is the possibility that needed action will be held hostage to unrelated concerns of one or more of the permanent members — a situation that has too frequently occurred in the past.\textsuperscript{73}

Indeed, highlighting how the legal framework established by the UN Charter for the maintenance of international peace and security, with the Council at the centre, has all the authority to be effective, Matheson argues that ‘[n]onetheless, the system depends in the end on the ability of the Council to act promptly and decisively. The basic prerequisite for this ability has been and will always be the development of political consensus, particularly among the permanent members, on the course to be taken.’ To do so requires ‘both leadership and compromise by the United States and other major players.’\textsuperscript{74} The result, as Virgil Hawkins concludes in his study of the relative ‘silence’ of the Council on the conflicts and potential peace operations during the 1990s, is that the body:

has had a tendency to largely ignore most of the world’s major conflicts, dealing with only a small number of conflicts (often relatively minor ones), and authorising peace enforcement in only a few select cases. Where the Council did chose to authorise peace enforcement operations, the means and mandates adopted were often ill-suited for dealing with the situation on the ground. Political considerations, rather than humanitarian ones, were the prime factors behind both the decisions to (or not to) create peace enforcement operations and the mandates for operations on the ground.\textsuperscript{75}

\textsuperscript{73}ICISS, \textit{The Responsibility to Protect}, 51, para. 6.20.

\textsuperscript{74}Matheson, \textit{Council Unbound}, 39.

As this thesis demonstrates, despite the important role that the Council has played in recasting practices of sovereignty and security, such political machinations and individual national interests continue to shape Council decision making processes in the new millennium, and this is nowhere more evident that in the body’s response to the Darfur crisis. As may also be concluded, the subject of restructuring the Council along more democratic, representative and transparent lines in order to mitigate the narrow protection of national interests is a matter of ongoing, if not intractable, debate within UN fora.76

The Normative Evolution of Sovereignty and Security

As discussed above, International Society scholars argue that order is maintained in international relations through the observance and practice of basic shared norms. These norms are commonly agreed-upon standards of behaviour expected of particular actors — which in international relations remain primarily states — and form a set of fundamental rules and institutions that constitute the society itself.77 The most basic constitutive institution in international society has been state sovereignty and its corollary norm has traditionally been ‘non-intervention in the domestic affairs’ of those states. The initial aim of sovereignty was to create peace and order through a reciprocal respect for difference. Furthermore, it was thought that security would best be achieved by protecting the state from external attack (as well as by promoting a norm of non-intervention).

76 However, Council reform is not the focus of this thesis; see instead David Mickler. “Restructuring the UN Security Council: Enhancing Representation, Democracy, and Legitimacy”, Honours thesis (Perth: Murdoch University, 2004). The most notable recent failure to agree on such reforms occurred at the 2005 UN World Summit.
The acute norm-violations of WWII served to strengthen statist conceptions and practices of sovereignty and security in post-war international society. This was evident and codified in the UN Charter, was a product of the strong defence by newly sovereign former colonies of their nascent independence, and, despite actually leading to numerous interventions in the developing world, was further inspired by realist Cold War security logic, which centred upon survival and protecting the national interest. Yet, over time, challenges were posed to such traditional forms and norms of international society by critics who argued that such arrangements did not adequately provide peace or security for people across the globe. In fact, many critics argue that such conceptions privilege certain powerful actors and interests at the expense of — or often directly contradict — those that are marginalised or less powerful. I here demonstrate how, as international norms, sovereignty and security have been recast over time, most apparently after the end of the Cold War. One crucial outcome of such change that is central to the argument in this thesis is the emerging permissibility of limited ‘humanitarian’ interventions in international society, most notably through the formal endorsement by UN member states of a version of the ‘responsibility to protect’ doctrine, and including the Security Council’s own role in driving international normative change.

*Traditional forms of sovereignty and security*

In 1648, the Peace of Westphalia ‘constituted for the first time an international society in which the criss-crossing relations between diverse feudal conflict-units and the hierarchical claims of Empire and Papacy were, at least in
Europe, superseded by formal relations between modern sovereign states.\(^{78}\) Emerging from this crucial historical juncture (and transforming from dynastic to more modern democratic and secular forms\(^{79}\)), the concept of state sovereignty was understood to mean that a government of a state had both internal (or empirical) control over population, territory and resources as well as external (or juridical) recognition by other states of its territorial authority, invoking a reciprocated right of non-intervention.\(^{80}\) These two aspects of sovereignty pertain to different elements: the former focuses on the relationship *between the government and citizens* of the state, while the latter focuses on the relationship *between states* in international society. This is important because an emphasis on or ignorance of either of these aspects of sovereignty can have very different consequences for international society and for the citizens of states. For example, Dunne and Wheeler observe how the Peace of Westphalia established a normative regime in which:

> the domestic practices of governments were not a subject of international concern. According to the Westphalian conception of legitimacy, a government’s claim to be recognised as sovereign [by other members of international society] was not dependent upon how it behaved towards its own citizens.\(^{81}\)

By the time of the UN’s founding — the end of the horrific and unprecedentedly costly WWII — the primary aim of the new international organisation was to maintain international peace and security by preventing future

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wars between states.\textsuperscript{82} Based on the experiences of the first half of the twentieth century, the strategy for achieving this was to enshrine in the UN Charter sovereign state equality (Article 2(1)) and to outlaw the ‘threat or use of force against the territorial integrity or political independence’ (Article 2(4)) and intervention in the ‘domestic jurisdiction’ (Article 2(7)) of all states. Therefore, war and intervention were banned under international law (except as authorised by the Security Council, or in self-defence under Article 51) and the protection of juridical forms of state sovereignty and the promotion of the non-intervention norm were designed to be the cornerstones of a pluralist, rule-bound, and more peaceful international order.

Further strengthening the primacy of juridical aspects of sovereignty and the non-intervention norm was the process of former European colonies achieving self-determination, sovereign statehood and UN membership over the first two decades of the post-war era. With their historical experience of intervention, occupation and in most cases exploitation by external powers, these newly-independent states were understandably staunch defenders of the sovereign rights of states and in particular their right to be free from external interference. This was notably evidenced by the December 1960 ‘Declaration on the granting of independence to colonial countries and people’ (UN General Assembly Resolution 1514), which proclaimed that ‘all peoples’ have an ‘inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory’, and ‘the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development’. As such, the resolution declared that ‘[a]ny attempt aimed at the partial or total disruption of the national unity and the territorial integrity’ of a country would be ‘incompatible’ with

\textsuperscript{82} Bennett and Oliver, \textit{International Organizations}, Ch. 3; Human Security Centre, \textit{Human Security Report 2005}.
the UN Charter and asserted that henceforward international relations should based upon ‘equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.’

Over the next two decades, a number of additional (and unambiguously titled) General Assembly resolutions, although non-binding, reiterated or further strengthened non-intervention as a fundamental norm of international society and clearly illustrated that the emphasis of sovereignty during that era was on the peaceful relations between states rather than on the internal relationship between governments and their citizens. For example, the 1965 ‘Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty’ (UN General Assembly Resolution 2131) proclaimed that:

No State has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are condemned.

This normative prescription was reaffirmed by the 1970 ‘Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations’ (Resolution 2625); and the 1981 ‘Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States’ (Resolution 36/103). It was clear, then, that even though the Security Council was granted the authority under Article 2(7) to intervene in the domestic affairs of sovereign states in order to maintain

83 UN General Assembly Resolution 1514 (XV), 947th plenary meeting, December 14, 1960.
84 UN General Assembly Resolution 2131 (XX), 1408th plenary meeting, December 21, 1965.
85 UN General Assembly Resolution 2625 (XXV), 1883rd plenary meeting, October 24, 1970.
86 UN General Assembly Resolution 36/103, 91st plenary meeting, December 9, 1981.
international peace and security (an exception that was explicitly recognised in the latter three General Assembly resolutions above), in the emerging and expanding post-war international society this was not a practice that had widespread support among states. 87

What is so significant about this particular form of normative arrangement has been its impact upon the (in)security of millions of people: as a result of statist conceptions of sovereignty and non-intervention, certain governments remained largely unhindered in pursuing their own repressive internal measures as long as they refrained from pursuing aggressive foreign relations, the latter of which were considered to be of primary importance for international society. As Ramesh Thakur argues, through the process of decolonisation ‘many states emerged lacking the capacity to assure their citizens’ security or exert authority over the resources which were often then captured by predatory groups who used the principle of sovereignty and the norm of non-intervention to shield themselves from external pressure.’ 88 Mayall has similarly observed that the political and legal consequences of this arrangement were that ordinary people were excluded from democratic participation in national life and became subjects of new forms of oppression, while external actors remained unable to legitimately interfere:

What happened in many parts of the Third World once power was transferred is known: elections took place only once. Opposition was denounced as a luxury that governments involved in nation-building

87 See, for example, Wheeler, Saving Strangers. In his comparative Cold War/post-Cold War study of the legitimacy of humanitarian intervention as an exception to the norm of non-intervention in international society, Wheeler (p. 8) argues that ‘humanitarian claims were not accepted as a legitimate basis for the use of force in the 1970s…’ Similarly, Martha Finnemore argues in her study of the changing beliefs on the use of force in international society, The Purpose of Intervention: Changing Beliefs About the Use of Force (Ithaca & London: Cornell University Press, 2003), that ‘In contrast to cold war cases, no significant constituency was claiming that intervention in Rwanda for humanitarian purposes [in 1994] would have been illegitimate or an illegal breach of sovereignty’ (p. 79).

88 Thakur, The United Nations, 78.
and rapid economic development could not afford. One-party states emerged in many non-aligned as well as communist countries, and power was frequently concentrated in a president who was empowered for life. These developments, however, had no formal implications for international society because autocratic as well as democratic governments are formally protected from interference in their internal affairs by the UN Charter.89

Exacerbating this problem, most newly-independent governments inherited old colonial borders (under the principle of *uti possidetis juris*), which usually ignored and superseded diverse (and often conflictual) local ethnic and cultural geographical distributions, meaning that new states — including Sudan — were proclaimed with borders that often bore little resemblance to societal and political realities on the ground.90 Inevitably, this meant that the struggle for control of the new sovereign entity was often brutal and bloody and raised difficult questions about whether territorial integrity or self-determination (however defined) should take precedence.91 For this reason, and others, the strong emphasis on juridical sovereignty and non-intervention can be seen to be overly statist in conception and consequence. What is important for the analysis in this thesis is that such attitudes within international society afforded little concern for individuals or groups suffering acute abuse within the borders of their own state, and de-legitimised the argument that international society should intervene militarily to protect civilians when extreme cases of atrocities (similar in scale and nature to in Darfur, for example) were being committed.

In parallel to this particular focus on juridical sovereignty and the non-intervention norm, the concept of ‘security’ has traditionally been conceived as

pertaining to the protection of the state from direct military attack by other states. In this somewhat abstract sense, the state, or the sovereignty of the state, was the main referent for security, the primary object to be secured, and as such ‘international security’ has similarly been highly statist in orientation.\textsuperscript{92} As the Commission on Global Governance argued, international society since the Peace of Westphalia has been:

defined almost entirely in terms of national survival needs. Security has meant the protection of the state — its boundaries, people institutions, and values — from external attack. This concept is deeply embedded in international tradition. It is the reason the United Nations and other international institutions emphasised the inviolability of territorial boundaries and the prohibition of external interference in the internal affairs of sovereign states.\textsuperscript{93}

While liberal internationalists may have sought to prevent war and secure states through collective security systems, such as the UN Charter, the emergence of the Cold War between the United States-led Western bloc and the Soviet Union-led Eastern bloc followed (and perpetuated) realist diagnoses and prescriptions for international order. In both of these traditional IR theories the state has been central to the notion of security and of insecurity. In short, for realists, state sovereignty by definition excludes any higher form of control or authority over the state. Because of this, states are said to exist in a structure of anarchy, where the absence of an overarching authority results in the constant potential for war between states. In this sense, states can only rely on, and help, themselves, and the best way to do this is to


obtain relative power (primarily military power). Security is thus defined as ‘national security’, or the protection of the state from external military attack by other states.

One important manifestation of this view is that states are reified to the point at which civilians are considered to be secure if their state is secure, or at least the security of citizens living within states was not considered to be distinct from the security of their state from external attack. During the Cold War, then, the realist emphasis on ‘national security’ combined with the focus upon juridical aspects of sovereignty and the non-intervention norm to further reify ‘the state’. In practice, of course, the Cold War led to a number of violations of the non-intervention norm through ideologically- and materially-inspired interventions and wars. However, it is crucial that during this period such interventions were justified on the basis of aiding local allies (under various guises) and as such it was claimed that they did not violate state sovereignty or the norm of non-intervention.

Importantly, then, as a result of such traditional, state-centric conceptions and practices of security and sovereignty in international society, it was evident during the post-war/Cold War era that the Security Council’s role in protecting civilians:

was strongly circumscribed not only by division within it but also by the narrowness of their definition of threats to international peace and security. Intrusion into the jurisdiction of states by the council was limited to a number of cases of decolonisation … anomalies arising from the mandate and trusteeship system … and apartheid. None involved the use of force to promote the security of individuals or

groups within the states in question. There was little consideration of protection of civilians in mandates of peacekeeping forces.96

Towards ‘responsible sovereignty’ and ‘human security’

By the 1990s, however, the dominance of state-centric theories had been challenged by the end of the Cold War and by the arguments for more critical approaches to the study and practice of international relations and security. Interstate war was no longer the exclusive focus for IR, as the end of rigid bipolar Cold War alliance structures collapsed and created new forms of conflict while the rapid advancement of globalisation brought new types of threats and opportunities for cooperation. Attention turned to the developing world where state failure and repression became recognised as the primary causes of insecurity and human rights abuses.97 Paul Kennedy describes this post-Cold War security environment as a ‘sheer explosion of civil wars, ethnic and religious violence, massive violations of human rights, breakdowns of authority, and humanitarian emergencies.’98 Moreover, in characterising the shift in international security thinking after the Cold War and into the new millennium, the UN High-Level Panel on Threats, Challenges and Change argued in 2004 that while the UN was initially designed to prevent major wars between aggressive states:

Sixty years later, we know all too well that the biggest security threats we face now, and in the decades ahead, go far beyond States waging aggressive war. They extend to poverty, infectious disease and environmental degradation; war and violence within States; the spread and possible use of nuclear, radiological, chemical and biological weapons; terrorism; and transnational organised crime. The threats are

from non-State actors as well as States, and to human security as well as State security.\textsuperscript{99}

As such, central to attempts to create international normative change was a re-conceptualisation of sovereignty from its traditional, state-centric foundations. The recognition and defence of human rights over notions of state rights is crucial to this process, while one of the ‘key factors in making human rights acceptable to most governments as an inherent element of the Council’s outlook was the gradual abandonment — over a decade or so — of the absolutist approach to state sovereignty.’\textsuperscript{100} Similarly, Thakur has observed that, in the post-Cold War era, the ‘doctrine of national sovereignty in its absolute and unqualified form, which gave rulers protection against attack from without while engaged in the most brutal repression within, has gone with the wind.’\textsuperscript{101} This is inherently good, he claims, because sovereignty was originally developed as a means for providing security, but it is not an end in itself: ‘[i]f sovereignty becomes an obstacle to the realisation of freedom, then it can, should and must be discarded.’\textsuperscript{102}

Particularly after Cold War, then, there has been a reassertion of the earlier democratic notion that sovereignty should be \textit{popular}, that is, that the citizens of a state should hold sovereignty while governments only serve their people. This view is summarized in the report of the Commission on Global Governance, which argued that sovereignty ‘ultimately derives from the people. It is a power to be exercised by, for, and on behalf of the people of a state.’\textsuperscript{103} According to this argument,

\textsuperscript{101} Thakur, \textit{The United Nations}, 254.
\textsuperscript{102} Thakur, \textit{The United Nations}, 255.
\textsuperscript{103} Commission on Global Governance, \textit{Our Global Neighbourhood}, 69; see also Makinda, “Security and Sovereignty”.

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governments should not act contrary to the wishes of the majority of people living within their borders, as governments do not hold sovereignty at the expense of citizens. An important aspect of this idea was that the relationship between governments and citizens — empirical sovereignty — should be continually questioned rather than ignored, as the traditional emphasis on juridical sovereignty had the effect of doing. Governments not only had to have control over their people, territory and resources, but that control must be perceived as legitimate and not exploitative by the local population. It certainly should be questioned in cases where the government has claimed sovereignty for itself at the expense of its citizenry, often through employing violence, such as in Sudan. Indeed, clearly evident in the Sudanese government’s reaction to criticism of its actions in Darfur, repressive governments often attempt to reaffirm their sovereignty in the face of mounting international scrutiny:

Governments that are threatened by the erosion of narrow concepts of sovereignty and are defensively trying to reassert it use the argument of cultural relativity and characterise the universality concept as a Western ploy to interfere in the internal affairs of other countries. Yet others invoke the need for unity as a national priority. Others simply assert national sovereignty as their shield.\[104\]

As second strand of this argument is that sovereignty means not only control over territory, population and resources, but also responsibility for the lives of the people living within the borders of the state. According Francis Deng et al., the concept and practice of sovereignty has undergone a series of overlapping evolutions, culminating in the ‘contemporary pragmatic attempt at reconciling state sovereignty with responsibility.’\[105\] In this social-contract sense, governments rule on

\[104\] Deng et al., Sovereignty as Responsibility, 11.
\[105\] Deng et al., Sovereignty as Responsibility, 2.
behalf of the people and must do so in a responsible manner. Responsibility in this respect would mean ensuring the livelihoods and security of citizens, while it is antithetical to the notion of regimes abusing their citizens as a sovereign prerogative. In the face of emerging arguments for external intervention to protect at-risk civilians, then, Deng et al. argue that ‘[l]iving up to the responsibilities of sovereignty becomes in effect the best guarantee for sovereignty.’

In addition to this critique of traditional conceptions and practices of sovereignty, the notion of security has also undergone a series of challenges and re-conceptualisations away from its traditional state-centric and military/defence emphases. In international fora, the redefinition of security emerged simultaneously to the new post-Cold War political environment. As a prominent example of this, in 1992 while discussing the ‘responsibility of the Security Council in the maintenance of international peace and security’ at the first Summit Meeting of the Council, heads of state and government agreed that:

The absence of war and military conflicts amongst States does not itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security. The United Nations membership as a whole, working through the appropriate bodies, needs to give the highest priority to the solution of these matters.

In his direct response to the Summit deliberations, then Secretary-General Boutros Boutros-Ghali published his report An Agenda for Peace in June 1992, making reference to ‘new dimension[s] of insecurity’ brought about by changing geopolitical circumstances and technological change, alongside existing crises in poverty, disease famine, oppression, inequality and environmental depletion.

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106 Deng et al., Sovereignty as Responsibility, 15.
Recognising the potential for a reconstituted post-Cold War normative environment, Boutros-Ghali argued that ‘at this moment of renewed opportunity, the efforts of the [UN] to build peace, stability and security must encompass matters beyond military threats in order to break the fetters of strife and warfare that have characterised the past.’ As such, he asserted that each of the main organs of the UN, including the Security Council, had a ‘special and indispensable role to play in an integrated approach to human security.’

Elaborating on this theme, the UN Development Programme’s *Human Development Report 1994: New Dimensions of Human Security* argued that the ‘concept of security has for too long been interpreted narrowly: as security of territory from external aggression, or as protection of national interests in foreign policy or as global security from the threat of a nuclear holocaust. It has been related more to nation-states than to people.’ Because of this, the report argued that ‘[f]orgotten were the legitimate concerns of ordinary people who sought security in their daily lives. For many of them, security symbolised protection from the threat of disease, hunger, unemployment, crime, social conflict, political repression and environmental hazards.’ A year later, in 1995, the Commission on Global Governance explored the ‘changed nature of global security’ in its report, *Our Global Neighbourhood*. Noting the traditional state-centric formulation of the concept and practice of security, the Commission argued that:

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\text{in many countries the security of people has been violated on a horrendous scale without any external aggression or external threat to}
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111 Commission on Global Governance, *Our Global Neighbourhood*. 

territorial integrity or state sovereignty. To confine the concept of security exclusively to the protection of states is to ignore the interests of people who form the citizens of a state and in whose name sovereignty is exercised. It can produce situations in which regimes in power feel they have the unfettered freedom to abuse the right to security of their people… \(^{112}\)

The evolving more ‘critical’ approach to the concept and practice of security further developed this trend away from narrow traditional constructions of security, which reified the state and privileged national security at the expense of a deeper examination of the varying human experiences of insecurity. \(^{113}\) The critical approach thus sought to question or problematise key assumptions that were often left unchallenged, such as: Who or what is to be secured? Against what are they to be secured? And through what methods should security be provided? An important and central concept that emerged from this re-conceptualisation of security (after having been introduced by Boutros-Ghali), and one which also encompasses a critique of traditional practices of sovereignty, is that of ‘human security’.

According to Paul Evans, human security is ‘based on the idea that the individual or community must be at least one of the referent points in answering the eternal question of security for whom, from what, and by what means.’ \(^{114}\) For Evans, human security is based upon three fundamental assumptions: First, the individual or individual in a group or community is either one of, or the, referent point for security. Second, that insecurity can be caused to the individual or group from a variety of threats, including but not limited to external military aggression (which is usually not the greatest threat). And third, there is a potential ‘tension’ between the

\(^{112}\) Commission on Global Governance, *Our Global Neighbourhood*, 81.

\(^{113}\) See, for example, Keith Krause and Michael C. Williams, eds. *Critical Security Studies: Concepts and Cases* (UK: Routledge, 1997).

security of the individual and the security of the nation, state or regime. Evans argues that when positioned in this way, human security:

raises a challenge to traditional conceptions of national security by changing the referent point and introducing issues and means that extend beyond conventional security strategies. Philosophically, it raises fundamental issues related to conscience, obligations beyond borders, development, and domestic legitimacy. Politically, it raises questions about sovereignty, intervention, the role of regional and global institutions, and the relationship between state and citizen.

Similarly, Newman argues that human security ‘seeks to place the individual — or people collectively — as the referent for security, rather than although not necessarily in opposition to, institutions such as territory and state sovereignty.’ Newman argues that the ‘emergence of the concept of human security — as a broad, multifaceted, and evolving conception of security — reflects the impact of values and norms in international relations.’ A human rather than traditional approach to security is needed because, inter alia, for many people around the world “a greater threat may come from their own state itself, rather than from an ‘external’ adversary.” Indeed, the “fundamental components of human security — the security of people against threats to personal safety and life — can be put at risk by external aggression, but also by factors within a country, including ‘security’ forces.” This is in no location truer than in Darfur. Newman suggests that while states remain the most effective providers of security, they are not inherently so, and for this reason, we should not privilege the state over people.

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115 Evans, “Human Security”.
116 Evans, “Human Security”.
120 Thakur, The United Nations, 44.
For the Human Security Centre, human security evolved from a concern with the relationship between the security of states or regimes and the security of citizens living within the borders of states. Because it observes that the security of regimes and the security of citizens are not always in harmony, the primary goal of human security should be the ‘protection of civilians’.  

For Heinze, because (particularly developing) ‘states themselves are now increasingly becoming the major security threat to people’, and because today the ‘most deadly security threats to people come from within states, not from the military threats posed by rival states,’ the ‘movement of the referent object of security from states to individuals is not only justified on empirical grounds but is also desirable as a normative project that seeks to advance human values and needs.’  

In addition, citing the changing nature of international relations and conflict after the Cold War, McDonald argues that human security:

has been viewed as a potential response to the growing insecurity of security: a situation wherein the continued prioritisation of military concerns at the state level in traditional discourses and practices of security has served to further individual insecurity and failed to respond adequately to the most pressing threats to individuals throughout the world.  

McDonald claims that human security ‘can be seen to be central to questions of humanitarianism in the international system, providing a conceptualisation of security which allows for issues such as humanitarian intervention, human rights, refugee movements, structural economic inequality, and environmental change to be included in a new security rubric.’ He concludes that all proponents of human

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125 McDonald, “Human Security”, 278.
security ‘recognise the importance of orienting security away from the traditional and exclusive concern with armed conflict; thus all constitute an inherent critique of traditional, Realist conceptions and practices of security.’

More recently, reflecting the deepening critique of traditional security practices, the Commission on Human Security argued in its 2003 report *Human Security Now* that while ‘the state remains the fundamental purveyor of security…it often fails to fulfill its security obligations — and at times has even become a source of threat to its own people. That is why attention must now shift from the security of the state to the security of the people — to human security.’ Furthermore, the Commission argued that human security:

- complements state security, enhances human rights and strengthens human development. It seeks to protect people against a broad range of threats to individuals and communities and, further, to empower them to act on their own behalf. And it seeks to forge a global alliance to strengthen the institutional policies that link individuals and the state—and the state with a global world. Human security thus brings together the human elements of security, of rights, of development.

While such arguments provide an important and persuasive conceptual and political critique, what impact have they had on the practice of policymakers and governments? For Thakur, the challenge provided to traditional practices of security by critical approaches ‘has profound consequences for how we see the world, how we organise our political affairs, how we make choices in public and foreign policy, and how we relate to fellow human beings from many different countries and civilisations.’ For Paul Heinbecker, human security ‘is becoming a new central

organising principle of international relations.' 130 Indeed, the ICISS argued that the
‘growing recognition worldwide that concepts of security must include people as
well as states has marked an important shift in international thinking during the past
decade.’ 131

Speaking of the East Asian region in particular, although it could more
broadly be applied across the developing world, Evans argues that, as of 2004,
certain states as well as regional intergovernmental organisations ‘remain hesitant to
embrace human security, but the concept is affecting state practice and playing a
catalytic role in changing the normative framework related to state obligations and
the principles of sovereignty and non-interference.’ 132 According to Oberleitner,
human security ‘has become a catchphrase in the global debate on the changing
meaning of security. Over a period of ten years, the concept of human security has
begun visibly to influence, change, and challenge global politics, institutions and
governance.’ 133 Indeed, as a concrete and highly relevant example, the Canadian
government has argued that ‘when conditions warrant, vigorous action in defence of
human security objectives will be necessary. Ensuring human security can involve
the use of coercive measures, including sanctions and military force, as in Bosnia
and Kosovo.’ 134 Linking the concept of human security with such coercive measures
to provide it, for the Security Council, ‘[t]aking the human security approach
seriously will thus inevitably have an impact on the ongoing discussion to establish

131 ICISS, The Responsibility to Protect, 15, para. 2.21.
132 Evans, “Human Security and East Asia”.
principles for humanitarian interventions. Humanitarian intervention has already been described as the most extreme form of promoting human security'.

Towards ‘humanitarian’ intervention and the ‘responsibility to protect’

One of most important results of the normative evolution in sovereignty and security has been to challenge the assumptions upon which the practice of non-intervention has traditionally rested. In particular, this has come from supporters of the concept of ‘humanitarian’ intervention, which is the ‘threat or use of force across state borders by a state (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.’ According to DiPrizio, '[f]or an action to be considered an intervention, coercion must be involved; that is, the use or threatened use of force must accompany an action.' He suggests that ‘an intervention that either is driven largely by humanitarian concerns or consciously promotes humanitarian outcomes can be described as a humanitarian intervention.’

Discussing the context out of which humanitarian intervention has emerged, Thakur has argued that the “terrain on which the conceptual and policy contest over ‘humanitarian intervention’ has been fought is essentially normative. It takes the form of norm displacement, from the established norm of non-intervention to a

claimed emerging new norm of ‘humanitarian intervention’”. Similarly, the ICISS argued that the debate during the 1990s on humanitarian intervention ‘takes place in a historical, political and legal context of evolving international standards of conduct for states and individuals, including the development of new and stronger norms and mechanisms for the protection of human rights.’

Martha Finnemore and Kathryn Sikkink provide a useful constructivist model to explain how normative contestation and development occurs in international society, which can be applied to the practice of humanitarian intervention. Finnemore and Sikkink argue that there is a three-stage ‘life cycle’ that potential norms undergo if they are to become accepted as standards of behaviour for particular actors within a society. The first stage is ‘norm emergence’, in which norm ‘entrepreneurs’ (such as human rights activists) advocate a particular action (humanitarian intervention) and seek to recruit supporters to their cause. To get to the second stage, ‘norm cascade’, support for that particular action must reach a ‘tipping point’, at which enough critical actors (in this case governments) support it for it to rapidly advance among other potential supporters. If this is successful (which is an empirical question), that particular action will become a new norm, and at its greatest extent may become internalised by relevant actors. At this final stage, internalisation, the action may become so ‘normal’ as to not be fundamentally questioned — that is, until a new norm, beginning at stage one, is promoted to challenge it.

Indeed, as Nicholas Wheeler has argued convincingly, while during the Cold War intervention for human protection purposes was generally rejected by

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139 Thakur, The United Nations, 245.
140 ICISS, The Responsibility to Protect, 6.
international society as an illegitimate challenge to the norm of non-intervention, ‘a new norm of Security Council-authorised humanitarian intervention has developed at the beginning of the new century’. Similarly, Finnemore elsewhere contends that a lack of humanitarian intervention during the Cold War ‘suggests that sovereignty and self-determination norms trumped humanitarian claims … a relationship that no longer holds with consistency.’ She argues that after the Cold War ‘states have increasingly come under pressure to intervene militarily and, in fact, have intervened militarily to protect citizens other than their own from humanitarian disasters.’

For example, the international responses to the various political and humanitarian crises in the Balkans and Africa during the 1990s ‘illustrate the growing resolve of the international community to override sovereignty in support of international human rights and humanitarian intervention.’

Yet, the morality, utility, legitimacy and desirability of humanitarian interventions inside sovereign states have been highly contentious issues in international debate. Pluralists, such as Robert Jackson, have questioned whether the suspension of sovereign rights in certain cases would lead to a complete breakdown of fragile and hard-won international order. The arguments of other critics, such as Mohamed Ayoob and Mahmood Mamdani, reflect an influential view in the developing world that the motives of intervening powers were more self-interested and neo-colonial than humanitarian. In addition, according to the UN

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142 Wheeler, Saving Strangers, 16.
143 Finnemore, The Purpose of Intervention, 54.
144 Finnemore, The Purpose of Intervention, 52. Emphasis in original.
145 Deng et al., Sovereignty as Responsibility, p. 10.
High-level Panel, the UNSC itself ‘so far has been neither very consistent nor very effective in dealing with these cases, very often acting too late, too hesitantly or not at all.’

NATO’s intervention in Kosovo in 1999 without prior Security Council authorisation brought the issue to a head. This crisis in the international political and legal framework led then UN Secretary-General Kofi Annan to call upon the international community to find a conceptual and practical solution to the sovereignty-intervention dilemma. In front of the 1999 UN General Assembly plenary debate, Annan starkly posed the 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 affect every precept of our humanity?’

The Canadian government responded most proactively to Annan’s challenge by establishing the aforementioned International Commission on Intervention and State Sovereignty (ICISS) in 2000. The ICISS was co-chaired by former Australian Foreign Minister Gareth Evans and former Algerian diplomat and UN official Mohamed Sahnoun, along with ten other world notables, and delivered its report entitled *The Responsibility to Protect* in late 2001 after a series of global consultations with various sectors of international society. By its own admission, the ICISS aimed to take the messy, contentious and somewhat deadlocked debate

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over humanitarian intervention that had characterised the 1990s and make both a clear moral case for the need of international intervention in extreme cases of civilian abuse as well as to set out a number of criteria that would ensure that such interventions were accountable, would gain broad legitimacy, and would be operationally sound. Importantly, the ICISS also sought to transform the intervention discourse from the so-called ‘right’ of humanitarian intervention to language imbued with the concept of ‘responsibility’, which it argued would be much less contentious and would focus attention away from the prerogatives of the intervenors and towards the victims of abuses.\footnote{ICISS, \textit{The Responsibility to Protect}.}

Building on the notion of responsible sovereignty developed by Deng \textit{et al.}, the ICISS drew upon a number of other sources for its basic principles: First, it drew upon ‘obligations inherent in the concept of sovereignty’ Second, and as discussed above, it drew upon the responsibility of the UNSC for the maintenance of international peace and security under Article 24 of the UN Charter. Third, it drew upon ‘specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law and national law.’ And finally, it drew upon the ‘developing practice’ of states, regional organizations as well as the Security Council itself,\footnote{ICISS, \textit{The Responsibility to Protect}, XI.} such as those actions undertaken during the 1990s in response to various human security crises in the Balkans, Africa, and elsewhere. From such foundations in international law and custom, the ICISS advanced the following basic principles upon which the debate on intervention should rest:

\begin{enumerate}
  \item A. State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.
\end{enumerate}
B. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.\footnote{ICISS, \textit{The Responsibility to Protect}, XI.}

There are a number of important elements inherent in such a re-conceptualisation of sovereignty. First, sovereignty becomes conditional on upholding minimal levels of human security. In this sense, the emphasis is upon empirical/popular sovereignty or the relationship between governments and citizens within a state. Second, the non-intervention principle is still the general norm underpinning international order. It is only suspended in extreme exceptions of gross violations of human security. Third, states retain their sovereign rights until proven guilty. Part A of the ICISS basic principles, and the fact that it is part A and not B, clearly gives states the primary responsibility, or first opportunity, to protect their own citizens. If they do so — and do not abuse their citizens — then they should not be the subjects of any legitimate intervention.

Finally, the formulation gives the international community, acting primarily through the Security Council, the authority to provide secondary or ‘backup’ security for vulnerable civilians if their own government fails to do so. This gives further weight to the UNSC’s expanded role after the Cold War, and goes some way to clarifying the Council’s contested mandate under Article 2(7) of the UN Charter to intervene in the internal affairs of sovereign states if it finds a threat to peace and security (see below). According to this proposal, then, the Council does have a clear mandate to authorise such interventions. MacFarlane and Khong argue that the ICISS formulation ‘sought not to diminish sovereignty as a constitutive principle of international relations but to reconcile that principle with the solidarist imperative of
protecting human beings at risk in conflict.' Similarly, Thomas Weiss argues that state sovereignty, under the ICISS model, ‘is not challenged but reinforced’:

However, if a state is unwilling or unable to protect the rights of its own citizens, it temporarily forfeits a moral claim to be treated as legitimate. Its sovereignty, as well as its right to non-intervention, are suspended, and a residual responsibility necessitates vigorous action by outsiders to protect populations at risk. In brief, the three traditional characteristics of a state in the Westphalian system — territory, authority, and population — are supplemented by a fourth: respect for human rights.

Applied to the Darfur crisis, the ICISS logic would entail, first, that the government of Sudan is a sovereign entity. Recognition of Sudanese sovereignty by international society is contingent upon the government accepting and practicing certain responsibilities. In particular, the Sudanese government has the primary responsibility for protecting its civilians, whether in Khartoum, Juba, or El Fasher. As long as the government upholds this responsibility then it continues to be treated as an independent sovereign entity, with full rights of non-intervention. Any attempts to intervene in Sudan are considered to be illegitimate and illegal under international law. However, since 2003 the government of Sudan has been unwilling to protect its citizens living in the Darfur region, and has indeed been actively engaged in undermining the security of Darfurians through direct military attacks and sponsorship of murderous militias. Because of the Sudanese government’s ‘irresponsible’ actions, its rights to sovereignty and non-intervention should be suspended by the Council and Sudan could become the legitimate target of military intervention (after other less-coercive measures proved inadequate). Through military intervention the Council would assume the secondary or backup

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responsibility for protecting vulnerable civilians in Darfur.\textsuperscript{156} Despite this logic, however, this thesis makes clear that the Council did not assume this secondary responsibility as it did not coercively intervene in Sudan.

At the operational level, the ‘responsibility to protect’ doctrine involves three phases of action, from preventing a conflict or crisis, reacting to its outbreak, and then rebuilding the society after conflict has receded. Prevention is argued to be the most important of the phases, but the reaction phase is potentially the most controversial because it involves the possible use of external military force. Focusing on the reaction or intervention stage, which is the most relevant to the analysis in this thesis, the ICISS put forward a number of strict criteria that should be met if potential military intervention it to be accountable, gain broad legitimacy, and be operationally viable. These are, first, the ‘Just Cause Threshold’, in which large-scale loss of life or large-scale ethnic cleansing has occurred, or is likely to occur, including through genocides and other deliberate acts, or through state failure and anarchy. Second, the ‘Precautionary Principles’, including: right intention (the primary purpose of intervention must be to protect vulnerable civilians); last resort (every non-military option must have been explored, and reasonably considered to be inadequate); proportional means (scale, duration, and intensity of intervention must be minimum necessary to secure defined humanitarian objective); and reasonable prospects (the intervention must have reasonable chance of success, and must not cause more harm than good).\textsuperscript{157}

The third criterion is ‘Right Authority’: according to the proposal, the UNSC is the best body to authorise interventions and should always be consulted prior to

\textsuperscript{156} The argument that Darfur represented a quintessential case for the Council to fulfil its posited ‘responsibility to protect’ is elaborated in Chapter 2 of this thesis.

\textsuperscript{157} ICISS, \textit{The Responsibility to Protect}, XII.
actions, but it needs to work better. In this sense, the Council should act promptly in investigating crises and establishing any need for intervention, while, importantly, the veto should not be used in humanitarian cases. Furthermore, if the Council fails to act, the General Assembly should take up the issue under a ‘Uniting for Peace’ resolution, or a regional organisation should take up responsibility after gaining Council authorisation. Importantly, the ICISS warned the Council that its failure to act in the face of atrocities could affect its credibility and will lead actors to operate outside of its structures (although this did not happen in Darfur). The fourth criterion is ‘Operational Principles’: there must be clear objectives with a clear and unambiguous mandate, and any intervention should be properly resourced. A common military approach with unity of command, clear communications and chain of command is essential. Further, acceptance of limitations, and an incremental and gradual application of force is recommended, while the Rules of Engagement must fit the concept of operations, are precise, are proportional, and adhere to international humanitarian law. Troop contributors must accept that force protection cannot be the principle objective, and finally, there must be maximum possible coordination with humanitarian organisations.¹⁵⁸

Therefore, the reaction phase of the ‘responsibility to protect’ doctrine provides a comprehensive framework to guide potential humanitarian interventions in cases of extreme abuse of civilians within the borders of a nominally sovereign state. The ICISS report was the most rigorous and widely consultative attempt to reconceptualise and formulate principles to tackle the sovereignty-intervention problem. But how was it received by UN Member States? Is there evidence that suggests the ‘responsibility to protect’ will continue the post-Cold War trend of

¹⁵⁸ ICISS, The Responsibility to Protect, XII-XIII
recasting state-centric practices of sovereignty and security? Returning the Finnemore and Sikkink’s ‘norm life-cycle’ model, is there evidence that the ‘responsibility to protect’ doctrine has reached the cascade phase of development to emerge as a new international norm? Or has the doctrine been unable to escape earlier arguments about the inherent dangers of humanitarian intervention for international order, or about the dubious motives of potential intervening powers, or the self-interested politics of the Security Council?159

One immediate problem, discussed further in Chapter 4, was that the ICISS report was delivered only shortly after the extraordinary terrorist attacks on the United States on September 11, 2001 (9/11). As a result, the principal moral claim put forward by the ICISS — that states in international society should take responsibility for the security of vulnerable or victimised individuals living in other states — was relegated by a return in the West to more traditional concerns with national security and the protection of state borders from external attack, concerns which non-Western societies were more reluctant to recast in the first place.160 Reflecting the post-9/11 fears of advocates of the ‘responsibility to protect’, MacFarlane and Khong argue:

That further progress on the responsibility to protect remains stalled is a product in part of historical circumstance, notably the attacks of September 11, 2001, on the United States. It also reflects profound continuing resistance among states to the attenuation of sovereign rights. This should not be taken as evidence of failure. Changing ideas is a long a long and complex process.161

159 These questions are returned to in the thesis Conclusion.
Despite such concerns for the political salience of the responsibility to protect concept in a new century dominated initially by Western-led counter-terrorism operations and the perceived threats of weapons of mass destruction, in addition to the vigorous defence of hard-won sovereign rights in the developing world, it came as a surprise to many analysts that the ‘responsibility to protect’ began to build a solid coalition of supporters — both non-governmental, and, crucially, governmental — over a period of five years after the ICISS report was released. In 2004, the influential UN High-Level Panel on Threats, Challenges and Change ‘endorse[d] the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.’ Furthermore, in his comprehensive March 2005 blueprint for UN reform, Annan stated that he ‘strongly agree[d]’ with the ICISS approach to the sovereignty-intervention question that he had initially posed years earlier, arguing: ‘I believe that we must embrace the responsibility to protect, and, when necessary, we must act on it.’

Most significantly and seemingly remarkable given the contentious nature of the humanitarian intervention issue, member states at the 2005 UN World Summit unanimously endorsed the responsibility to protect doctrine, albeit in a form modified

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from the initial proposals of the ICISS in 2001. As such, the Summit Outcome Document contained the following unprecedented agreement:

Each individual State has the responsibility to protect its populations 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, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help 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 organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations…

Through this landmark endorsement, the General Assembly had accepted the notion, in-principle at least, that states have the responsibility to protect their citizens, and moreover that the Security Council had the authority and responsibility to intervene militarily inside the borders of an ‘irresponsible’ sovereign state if any of the listed types of atrocities were found to have been committed. According to one analyst, while little else of substance was achieved, the ‘recognition by world leaders … of an international collective responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity was one of the significant

165 It is important to note the differences between the actual text of the World Summit endorsement and the original ‘responsibility to protect’ proposal contained in the 2001 ICISS report or other elaborations. The former is the basis of intergovernmental consensus. Most notably, the former does not emphasise post-conflict reconstruction (‘the responsibility to rebuild’ in the ICISS report) and only considers intervention a possibility with an explicit UNSC mandate (the ICISS favoured a Council mandate but countenanced other options in the event of Council inaction). ICISS co-chair Gareth Evans claims that the language in the Summit Outcome ‘differs a little … but it does not vary from core R2P principles in any significant way’ (Evans, The Responsibility to Protect, 47). However, Evans calls the failure of the General Assembly to adopt the ICISS’ criteria for the use of force as a ‘disappointing omission’.

achievements of the World Summit."\textsuperscript{167} Indeed, the adoption by consensus of the key responsibility to protect principles is even more remarkable given that the Summit was for the most part sharply divided — particularly on the issue of Security Council reform — along global north-south lines.\textsuperscript{168} According to Zifcak, this general lack of agreement between developed and developing blocs leading up to and at the Summit ‘related not just to the substance of changes being considered but also to much deeper cleavages of opinion between these protagonists as to the broader direction and affiliation of the world body itself.’\textsuperscript{169}

While James Traub’s insider’s account of pre-Summit negotiations reveals that consensus on the responsibility to protect was not easily achieved and involved a degree of political-trade-offs with less than supportive states,\textsuperscript{170} the fact that there was eventual consensus illustrates the potential of the responsibility to protect as an emerging international norm, and perhaps provides evidence of it ‘cascading’ through international society. Reflecting on this apparent acceptance, in-principle at least, as well as lamenting the apparent lack of priority generally afforded to the prevention of genocide and crimes against humanity on the crowded agendas of world leaders, ICISS co-chair Gareth Evans argued in 2006 that:

The good news is that the international community, after years of wrangling, has more or less agreed on basic principles. We have seen over the last five years the emergence of a new international norm — the ‘responsibility to protect’ — of really quite fundamental ethical importance and novelty in the international system, and which may ultimately become a new rule of customary international law … This formal embrace by the international community of the new concept of ‘the responsibility to protect’ — moving away from the incredibly

divisive contest between those for and against a ‘right of humanitarian intervention’ — has been a major breakthrough…\textsuperscript{171}

Moreover, further codifying this apparently nascent international norm,\textsuperscript{172} the Security Council itself unanimously adopted Resolution 1674 in April 2006 (on the protection of civilians in armed conflict), which reaffirmed the World Summit endorsement of the responsibility to protect and thus unambiguously adopted it as a basis for potential UNSC action in future instances of atrocities internal to a state.\textsuperscript{173} Reflecting its changing role and self-expanded mandate in the post-Cold War era, the Council’s endorsement of new understandings of sovereignty and security is potentially crucial, not least because it could now be reasonable to expect that the Council, when faced with cases such as those described above (including Darfur), would authorise an effective and adequate international response — including, if necessary, coercive military intervention — in order to assume its stated responsibility to protect vulnerable civilians. However, despite this emerging normative context prescribing humanitarian intervention in extreme cases, the investigation this thesis suggests instead that the national interests and political calculations of the permanent members of the Security Council continue to determine whether or not the body intervenes in such circumstances.

\textbf{The UN Security Council in the Post-Cold War Era}

The Security Council’s formal endorsement of the responsibility to protect concept is a significant example of how the Council has contributed to international normative change. But has the Council played a more general role in transforming

\textsuperscript{172} Grono, "Briefing", 622.
international politics in the post-Cold War era from a state- to human-centric conception of sovereignty and security? For MacFarlane and Khong, the UN organisation as a whole has ‘served as a forum where changing understandings of security could be articulated by states and, with the passage of time, by non-state actors as well. The evolving discussion of human rights in the UN system, for example, was significant in the questioning of the primacy of the state. The Security Council played an increasingly important role in this regard in the 1990s.’

Similarly, as Malone argues, ‘[m]uch has changed’ for the Council since the end of the Cold War:

Its decisions — largely improvised and inconsistent though they may be — have, for good and ill, profoundly affected international relations. Among other things, the Council’s decisions have eroded conceptions of state sovereignty firmly held during the Cold War years, altering the way in which many of us see the relationship between state and citizen the world over.

This was made possible in large part by the increased cooperation between former Cold War adversaries in the Council, most importantly within the P5 itself. Malone argues that such détente in the Council was visible from 1986 and was greatly enhanced (although somewhat exaggerated) by the successful Council cooperation to eject Saddam Hussein from Kuwait in 1990-91. According to Malone, this emerging period of greater P5 cooperation saw a reduction of the use of the veto as well as a more general assumption of control of the Council by the permanent members (particularly by the United States) at the expense of the elected ones. According another analysis, the Council’s voting record (in terms of total resolutions passed, Chapter VII resolutions, and vetoes) demonstrates that a ‘new’

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Council has emerged after the Cold War stalemate which is ‘more cooperative, it is making serious decisions, and it is more deeply involved in the issues on its agenda. This has enhanced the standing of the Security Council, reinventing it as the key organ of the UN on issues of peace and security.’\textsuperscript{177} Moreover, after the Cold War:

For perhaps the first time since the UN was established, there is now a genuine prospect of the Security Council fulfilling the role envisioned for it in the UN Charter. Despite some notable setbacks, the capacity for common action by the Security Council was shown during the 1990s to be real, with the authorization by the Council of nearly 40 peacekeeping or peace enforcement operations over the last decade.\textsuperscript{178}

Indeed, since the end of the Cold War the Council ‘proved highly innovative in shaping norms and stimulated legal developments … And the most severe and intense kind of intervention, the use of deadly force by outside militaries, constituted a most notable story of the 1990s.’\textsuperscript{179} On changing norms of sovereignty and security, MacFarlane and Khong argue that, after the Cold War there appeared to be a ‘substantial shift’ in the Council’s view of security towards the human security approach. They claim while it is not unusual that non-state actors have sought to push for such changes because ‘their position [is] not at stake’, it is significant that for a ‘body composed of states and dominated by the great powers to take this route, however hesitantly, suggests that many states themselves perceived a need to qualify sovereignty in matters of human security.’\textsuperscript{180} Similarly, Malone argues that:

\begin{quote}
The ebb and flow of Council business has tended to obscure the extent to which its decisions cumulatively since 1990 have undermined rigid conceptions of state sovereignty and eroded the position of governments claiming the sovereign right to conduct themselves at home free of international interference, even on matters that could
\end{quote}

\textsuperscript{178} ICISS, \textit{The Responsibility to Protect}, 7, para. 1.30.
\textsuperscript{179} Weiss, “The Humanitarian Impulse”, 39.
\textsuperscript{180} MacFarlane and Khong, \textit{Human Security}, 171.
undermine domestic security and the stability not only of the own countries but eventually of neighboring ones (for example, by massively abusing human rights or engaging in ethnic engineering or cleansing).  

On this central issue of interference and intervention into sovereign states, it is of fundamental significance that the Council has made a self-expanded interpretation of its mandate under Article 2(7) of the UN Charter. According to Matheson, in the post-Cold War era ‘the basis for international intervention under Chapter VII was vastly expanded, not only to encompass all sorts of ongoing internal armed conflicts, but also to deal with internal problems that could lead to such conflicts in the future, such as humanitarian disasters, internal repression, and threats to democracy.’ Reflecting on the dynamics at play between Council decisions and broader normative changes in international society, Matheson contends that it is:

not surprising that this question of the legitimate scope of the Council’s jurisdiction under Chapter VII, and in particular the extent of its right to treat an internal situation as a threat to the peace, has been an important element in defining the relationship between international and national authority in the post-Cold War period. This development has occurred at the same time that the international community has begun to take a much more restrictive view of the scope of matters that are reserved to the ‘domestic jurisdiction’ of states, as is evidenced by the very considerable increase in UN human rights activities aimed at scrutinizing and reforming the treatment by governments of their own nationals.

MacFarlane and Khong cite the Council’s (inconsistent) responses to crises in northern Iraq, Somalia, Bosnia and Rwanda as examples of how the Council has broadened its definition of ‘threats to international peace and security’, generally sought to find ways of protecting civilians in situations of armed conflict, and attempted to implement mechanisms for bringing perpetrators of such violence to

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182 Matheson, Council Unbound, 46-47.
183 Matheson, Council Unbound, 43-44.
justice. They conclude that the 1990s ‘show reasonably clear movement towards privileging the individual and his or her security over that of the state and its security.’\footnote{MacFarlane and Khong, \textit{Human Security}, 169.} The ICISS commissioners made similar observations. Noting that the term ‘international’ has traditionally been understood to mean ‘cross-border’, it became evident that the Council during the 1990s had started to deal with conflicts and other security issues that were primarily contained \textit{within} the borders of a single state. They argue that while the Council’s authority to intervene in domestic conflicts was ‘interpreted narrowly’ during the Cold War, in the 1990s the Council had ‘taken a very expansive view as to what constitutes ‘international peace and security’ for this purpose’, and the result was that ‘in practice an authorization by the Security Council has almost invariably been universally accepted as conferring international legality on an action.’\footnote{ICISS, \textit{The Responsibility to Protect}, 50, para. 6.16.}

Therefore, it is arguable that the Council has expanded its own mandate to cover certain ‘domestic issues’ and this had been accepted in international society as a legitimate function of the Council’s authority. Such acceptance is problematic, however, because ‘there is no provision for judicial review of Security Council decisions, and therefore no way that a dispute over Charter interpretation can be resolved [and thus it] appears that the Council will continue to have considerable latitude to define the scope of what constitutes a threat to international peace and security.’\footnote{ICISS, \textit{The Responsibility to Protect}, 50, para. 6.18.}

Returning to the central tension between norms, interests and intervention, Nasu argues that such evolution of international norms and the Council’s mandate have ‘arguably been fostering legitimate expectations that the Security Council will
take necessary action when it is expected to do so, and that it would be otherwise failing to discharge its responsibility.’ Yet despite this, the Council has only selectively used its mandate to authorise robust interventions under Chapter VII. For example, the Council ‘lost its impetus for vigorous Chapter VII action in Somalia after U.S. forces suffered significant casualties in Mogadishu. It intervened too late in Rwanda, and was painfully slow in using its Chapter VII authority in Sierra Leone, Liberia, the Congo, Burundi, and Sudan.’ For Voeten, this post-Cold War ‘spurt in activity does not simply reflect a newfound harmony in the preferences of the five veto powers.’ He notes that China and Russia often abstained from Council votes and ‘accompanied their abstentions with statements of discontent’, such that finding agreement often involved ‘difficult compromises that had a noticeable impact on the implementation of operations.’

An analysis of the Council’s response to the Darfur crisis between 2003-06 indeed reveals that the body was at once both more open to cooperation and humanitarian claims, but also remained hostage to the national interests and political calculations of the P5. As Matheson concludes, ‘[n]o source of legal authority is effective when there is no political will to use it, but the Council’s actions in Africa during the past decade show the scope of jurisdiction that the Council has available to it when that political will exists.’

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188 Matheson, Council Unbound, 57-58.
190 Matheson, Council Unbound, 57-58.
Conclusion

This chapter has established that the UN Security Council is the preeminent body mandated under international law to maintain international peace and security, which it can pursue through a variety of means ranging from mediation, to sanctions, to ultimately authorising coercive military force. If passed under Chapter VII, Council resolutions are mandatory for all UN members. Most significantly for this thesis, Article 2(7) of the Charter authorises the Council to override the general norm of non-intervention if it finds a threat to international peace and security, a definition of which the Council has self-expanded after the Cold War to more clearly enable it to intervene in the internal affairs of a sovereign state for human protection purposes. Yet, despite the extensive legal-institutional capacities of the Council, its resolutions are in large-part determined by the national interests of its privileged Permanent Five members, which can explain the extent or even existence of particular interventions.

Furthermore, the chapter has discussed how norms of sovereignty and security have evolved in important ways, most notably after the end of the Cold War. In particular, proponents of ‘responsible sovereignty’ and ‘human security’ have sought to recast the relationship between citizens, governments, and international society, arguing that individuals should be privileged over abstract entities such as the state, or over self-interested elites. As a result, the idea of Council-authorised humanitarian intervention into sovereign states has gained widespread in-principle acceptance in international society in extreme cases of civilian abuse, evidenced by the response to the various humanitarian and security crises during the 1990s and early twenty-first century. UN member states and the Council itself formally endorsed this idea — in the form of the ‘responsibility to protect’ doctrine — in September 2005 and April 2006 respectively, giving it the arguable status of an
It is against these compelling legal-institutional and normative contexts that the examination and explanation of the Council’s response to the Darfur crisis between 2003-06 is set, based upon the argument, elaborated in Chapter 2 below, that Darfur presented a quintessential case for the Council to fulfil its posited ‘responsibility to protect’ by coercively deploying a military intervention in Sudan to protect the vulnerable civilian population. The task of Part II of the thesis is to explain why the Council, with all of its evident legal-institutional and normative authority to act, did not deploy such an intervention in Sudan.
Chapter 2

Crisis in Darfur and the Case for UN Military Intervention

Introduction

The previous chapter argued that, in a generic sense, there has emerged in the post-Cold War era a compelling legal-institutional and normative case for Council-authorised ‘humanitarian interventions’ to protect civilian populations which are vulnerable to, or victims of, atrocities within their own state. Against this context, Chapter 2 here argues that, in a specific sense, the nature and scale of the conflict and crimes committed in Darfur between 2003-06 indeed clearly met both the ‘just cause threshold’ identified by the ICISS and constituted the types of atrocities identified by the UN General Assembly and Security Council itself to justify and prescribe the coercive deployment by the Council of a military intervention in Darfur. Moreover, compelling evidence presented by a number of authoritative sources revealing the Sudanese government’s role in orchestrating and directly participating in attacks against the civilian population of Darfur meant that it would be morally unacceptable and politically cynical for the Council to allow Khartoum to remain in control of security in the country’s western region. As such, in the face of claims of ‘sovereign immunity’ by the Sudanese government, there was a persuasive moral case for the Council to fulfil its own responsibility to protect the population of Darfur by coercively deploying a military intervention inside Sudan.

To make this case, the chapter is divided into three parts. For the important purpose of historical context, the first part briefly outlines Darfur’s relationship to the development of the modern Sudanese state. As such, it focuses upon how Darfur
forcibly annexed to colonial Sudan by Britain — has remained largely excluded from the benefits of economic development and has been marginalised from national political life by the retention of state power by a small clique of Arab tribes (including the incumbent regime of President Omar al-Bashir) from in and around the capital, Khartoum, a region which had also received the majority of public and private investment. This classic centre-periphery inequality, combined with environmental deterioration, acute natural resource scarcity, and manipulated ethnic tensions, fostered the armed uprising against the Sudanese state by disaffected Darfur rebels in early 2003.

In greater detail, the second part of the chapter then examines the particular response of the Sudanese government to this insurgency in Darfur. Using evidence from a number of authoritative official and independent reports and academic sources — as well as examples of victims’ testimonies — it is demonstrated that Khartoum’s counter-insurgency strategy was constituted by the deliberate targeting, killing and terrorisation of Darfur’s non-Arab civilian population. As such, it became public knowledge that the Sudanese government was responsible for war crimes, crimes against humanity and ethnic cleansing in Darfur, and other observers have argued that the government’s underlying motivations were genocide, regime survival, or both.

A central and brutally effective operational element of Khartoum’s strategy in Darfur was to arm, finance, train and direct local Arab militias — the Janjaweed — to attack non-Arab towns and villages as well as the Internally Displaced Persons (IDP) camps to which survivors of initial attacks fled. Moreover, in joint operations, the Sudan Armed Forces and government–sponsored militias targeted fellow Sudanese citizens en masse in land and air attacks with the objective of punishing
alleged rebel sympathisers (namely, the non-Arab population of Darfur), deterring any further support for the insurgency in Darfur or other regions of the country, decimating the rebels’ capacity to continue their uprising, as well as to decisively alter the local resource and population distribution in Darfur in favour of Arab-identifying groups.

The chapter concludes by summarising why the situation in Darfur from 2003 presented a quintessential case for the fulfilment of the ‘responsibility to protect’ by the Security Council, considering that authorising humanitarian intervention is within the Council’s legal authority and in conformity with emerging international norms. As such, a coercive UN military intervention to protect civilians in Darfur, specifically, was necessary and justified because of the following three reasons:

(i) Because of the impact upon the human security of Darfur’s population: as noted above, the UN estimated that during the four-year period of study in this thesis over 200,000 people died either directly from violence or from conflict-induced disease and malnutrition. Furthermore, of the four million people affected by the conflict in the region (two-thirds of Darfur’s pre-conflict population), over two million had fled from their homes in fear to arrive in refugee camps in neighbouring Chad, IDP camps elsewhere inside Darfur, or simply into the inhospitable wilderness — often to be subjected to follow up attacks. This is comparable in scale and severity to other modern conflicts and humanitarian crises that elicited some form of Council interventionary action. As such, circumstances in Darfur clearly met the ‘just cause threshold’ proposed by the ICISS and conformed to the types of crimes identified in 2005 by the UN General Assembly as potentially warranting external intervention.

(ii) Because of the central role played by the Sudanese state: credible evidence was presented of direct government involvement in the orchestration and
commission of attacks deliberately targeting the civilian population of Darfur. Khartoum thus clearly failed in its primary ‘responsibility to protect’ its own citizens — indeed, it was instead the primary cause of their insecurity — and therefore the government’s posited right to sovereign immunity should have been suspended by the Council and an intervention deployed to remove Khartoum’s control of security in the region.

(iii) Because the Council attempted — and failed — to implement a number of measures short of military intervention to create security on the ground (as outlined in Chapter 3). Indeed, more coercive measures were particularly necessary because, as reported by the UN Secretary-General and other observers, the Sudanese government continued to commit atrocities and obstruct international efforts to assist vulnerable civilians during the prolonged period of Council engagement with the crisis.

Darfur and the Sudanese state: from exclusion to rebellion

Darfur, meaning homeland of the Fur ethnic group, is a vast and mostly arid region comprising three states (North, South and West Darfur) in the western portion of the modern state of Sudan — Africa’s largest country by area. Reflecting its isolation and harsh environment, Darfur has been described as a ‘backwater, a prisoner of geography’\textsuperscript{191} and, until the recent crisis, as ‘one of the least known places in the world. Poor, remote, landlocked, and sparsely populated, it was obscure even to the rest of Sudan’.\textsuperscript{192} Yet, despite having been “grossly neglected in the


‘Nilocentric’ historiography’ of the country,¹⁹³ Darfur is home to an ethnically and culturally diverse population which emerged from centuries of migration, cohabitation, and intermarriage between black Africans, Arabs, and other groups: like a majority of Sudanese, most Darfurians adhere to Islam, while Arabic, indigenous languages and some English are all spoken.

In early 2003, members of the two most prominent of the newly organising rebel groups in Darfur — the secular Sudan Liberation Movement/Army (SLM/A) and the Islamist-leaning Justice and Equality Movement (JEM) — commenced armed attacks against local organs of the Sudanese state, including most notably the military garrison at El Fasher, capital of North Darfur, on 25 April. According to one account, the seven-hour attack left a number of government Antonov aircraft and helicopter gunships destroyed, saw 75 Sudanese military personnel killed and 32 captured, including the local commander, while the rebels suffered only nine casualties.¹⁹⁴ This brazen assault, although not the first in a series of smaller-scale uprisings and intermittent tribal violence in western Sudan over two decades, was certainly the most provocative to date and triggered the brutal counter-insurgency operation by the Sudanese government. While a direct challenge to the sovereign authority and legitimacy of the incumbent regime in Khartoum, the armed rebellion by the SLM/A and JEM was indeed a product of long-standing historical grievances over Darfur’s national political marginalisation and severe economic underdevelopment, combined with increasing resource scarcity, inter-ethnic tensions, and general insecurity in the region.

¹⁹⁴ Flint and de Waal, Darfur, 99.
Ruled by indigenous non-Arab tribes, Darfur emerged as an independent Islamic sultanate in the mid-17th century in parallel to the more central activities of the Cairo–Khartoum axis along the Nile Valley, although Islam and Arabic culture were earlier disseminated to the region by travelling traders, clerics, and Arab migrants. Darfur also largely avoided the early military incursions by Egypt, which brought much of the area of northern Sudan under Egyptian and later Ottoman rule, but all parties in the region, including Darfurians, did compete in the widespread trade of black African slaves, a practice that contributed to the conditions for later conflict between north and south Sudan. In 1874, the Darfur sultanate was eventually conquered by Arab slave raiders, however the Mahdist uprising soon after briefly curtailed Sudan’s foreign rule.195

Darfur was then forcibly annexed to the new Anglo-Egyptian Condominium in Sudan in 1916 after Britain recolonised the country in 1898, during which a system of ‘Native Administration’ was implemented granting local tribal leaders a degree of self-rule as long as they were largely compliant. According to Prunier, critics of this system argue that it was a ‘recipe for stagnation and for building a two-tiered society in which the natives, on the pretext of cultural integrity, were marginalized from the benefits of the modern world which the colonialists could monopolize for their own advantage’.196 As a result, Darfur was sorely neglected and underdeveloped during British rule, receiving little investment in health, education, infrastructure or agricultural production.

With Sudanese independence in 1956, Darfurians hoped to mitigate their centre-periphery marginalisation by playing a more prominent role in national

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195 For an excellent and detailed account of Darfur’s history, see Daly, Darfur’s Sorrow.
politics and achieving greater investment in regional economic and social development. However, this has been obstructed by successive post-independence regimes — both civilian and military — which have been dominated by a small group of Arab tribes from north of the capital, resulting in power and state resources remaining firmly within the control of an often corrupt clique. As such, development continued to focus on the Nile Valley region in and around Khartoum and thus Darfur and other outlying regions remained excluded.

In addition, various national governments attempted to redefine multiethnic and multicultural Sudanese identity in Arab and Islamic terms. Most visibly, much of the country’s post-independence history has involved the aforementioned bloody civil war between Khartoum and non-Arab and Christian/animist southern Sudan. Indeed, ethnic and religious conflict was exacerbated by the 1989 military coup led by (now President) Omar al-Bashir, which brought to power the National Islamic Front (NIF), a regime characterised by radical Islamism and Arab supremacist tendencies. The NIF created the loyalist paramilitary Popular Defence Forces and enlisted other Muslims, including from Darfur, to assist in Khartoum’s ‘jihad’ against dissenting Sudanese in the south, before turning its attention to those same — and now also disaffected — non-Arab Muslims in Darfur from 2003.

In Darfur, in addition to enduring national political marginalisation and economic underdevelopment, the radicalisation and manipulation of identity politics

198 Compare, for example, the social development data for Darfur relative to the areas around Khartoum. See Mika Vehnamaki, “Darfur Scorched: Looming Genocide in Western Sudan”, *Journal of Genocide Research* 8, no. 1 (2006): 51-82, 60-63; and Daly, *Darfur’s Sorrow*, 178-81.
199 The regime has since undergone a rebranding: from the NIF, to the National Congress Party (NCP) in the late 1990s, to the present Government of National Unity (GNU), the latter of which was formed after the signing of the Comprehensive Peace Agreement with the SPLM/A in south Sudan in 2005. However, despite these changes in name, President Bashir and his close allies have retained substantive power.
has combined with deteriorating environmental conditions to fuel inter-ethnic tension and competition over increasingly scarce natural resources. This has resulted in sporadic local conflict and fostered the more organised armed rebellion against the state by non-Arab groups. Ethnic identities in Darfur are complex; commonly, distinctions are made between ‘Arabs’ and ‘Africans’ (or non-Arabs), but most Darfurians are dark-skinned.\textsuperscript{200} Indigenous groups claiming black African heritage, such as the Fur, Massalit and Zaghawa, were joined in the region over time by migrating Arab groups, such as the Rizeigat and Juhayna, but centuries of intermarriage and cohabitation have blurred sharp differences. Compounding this ambiguity, ethnic affiliations are often determined by livelihood: indigenous African tribes are traditionally sedentary farmers, and Arab groups nomadic pastoralists, but there are many exceptions to this rule, including the practice of families ‘switching ethnicities’ when changing modes of work. As a result, ‘[r]ather than by skin colour or other physical traits, Darfurians, like other Sudanese, have always identified themselves in ethnocultural or tribal terms’.\textsuperscript{201}

Yet, part of the more recent ethnic conflict in Darfur stems from historical land ownership rights whereby Darfur sultans distributed allotments to certain groups but not others. Those that were sedentary farmers — generally non-Arabs — mostly received \textit{hawakir} (‘enclosures’, or land titles), obtaining ownership over specific areas within which their tribes could live and cultivate. Other groups, particularly Arab nomadic camel-herders (\textit{Abbala}) such as the northern Rizeigat, were often not

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\textsuperscript{200} Prunier, \textit{Darfur}, 4-5.
\end{flushright}
granted such land rights in part due to their transient lifestyles.\textsuperscript{202} This was less of a problem in the past as a traditional system of land sharing evolved in which nomadic herders were permitted to seasonally traverse cultivated property. Indeed, during these historical times, arable land and water were more abundant and thus owners were less protective. However, over time, climate change and desertification have resulted in the diminishing availability of natural resources, including the increasingly aridity of land and scarcity of water, creating tension between different types of land users.\textsuperscript{203} Fuelling and manipulating these tensions — which had hitherto been mediated largely amicably at the local judicial level — were radical ideological notions of inherently antagonistic ‘Arab’ and ‘African’ identities, particularly those promoted by Khartoum and its regional allies in order to shore up their own Arab constituencies. With the region also experiencing acute famine and an influx of cheap small arms, the result has been two decades of accelerating ethnic violence.

Indeed, according to Assal, Darfur ‘best represents a case of neglected and protracted conflict over resources, which took the form of identity conflict’, however ‘not all resource conflicts are based on a situation of resource scarcity, rather they are political in nature and have to do with the workings of the Sudanese state’.\textsuperscript{204} Similarly, in Darfur ethnic identities were generally not a salient cause of conflict; it is only relatively recently that Darfurians have been ‘polarised into Arab versus African identifications in response to deep political and ideological disputes in which state repression and economic under-development of the country’s marginal regions

have played a significant role”.\textsuperscript{205} In a post-independence national context, el-Battahani concludes that:

Successive regimes have manipulated administrative structures to undermine the control of local people and authorities over resources. Identity and ideology, particular Arab nationalism and political Islamism, have been used to mobilize support to compensate for the governance and development failings of state policies. Elites have mastered the divide-and-rule tactics inherited from the colonial era through their territorial organization of the modern Sudanese state. The result has been underdevelopment, exclusion, and violent conflict.\textsuperscript{206}

It is evident that the combination of these various grievances has fostered the armed rebellion against the Sudanese state by disaffected and increasingly insecure Darfurians. And, somewhat ironically, when Khartoum and the southern SPLM/A began negotiations over the eventual 2005 Comprehensive Peace Agreement (CPA) — which would give the south a share of representation in the cabinet, an equitable distribution of oil revenue, and a referendum on the region’s secession in 2011 — it appeared as if Darfur would again be excluded from the opportunity to improve its own circumstances in the Sudanese polity. The CPA deal, for which the south had fought violently since independence, suggested to Darfurians that the only way to achieve political change in Sudan was through armed rebellion.

While appreciating this historical context, this thesis does not seek to obfuscate or apologise for the actions of the Darfur rebels; indeed, although not conducted on a ‘systematic or widespread’ basis, a UN investigation found ‘credible evidence that rebel forces, namely members of the SLA and JEM … are responsible for serious violations of international human rights and humanitarian law which may amount to war crimes. In particular, these violations include cases of murder of

\textsuperscript{205} Mahmoud, “Inside Darfur”, 3.
civilians and pillage’. Instead, however, this chapter does argue the more important point that in response to this regional insurgency the Sudanese government enacted a counter-insurgency strategy that deliberately targeted the non-Arab civilian population of Darfur. In doing so, the government abrogated its primary sovereign responsibility to protect its citizens.

**Khartoum’s Counter-insurgency Strategy**

It is not uncommon for governments to defend themselves and state institutions militarily against armed rebellions or insurgencies, and this reaction may often be accepted as a necessary, legitimate, and legal exercise of national power, authority, and sovereignty; this is indeed the argument made by the Sudanese government to justify its violent actions in response to the Darfur rebellion since 2003. However, according to a number of authoritative accounts elaborated below, Khartoum’s counter-insurgency strategy went far beyond a defensive military operation; instead, Darfur’s non-Arab civilian population was the target of a regime of murder, rape and destruction orchestrated and implemented by their own state. As the UN-established International Commission of Inquiry on Darfur (COI) concluded in its January 2005 report, the ‘most significant element of the conflict has been the attacks on civilians, which has led to the destruction and burning of entire villages, and the displacement of large parts of the civilian population’.

The Sudanese government’s strategy for dealing with the Darfur rebellion involved instituting, as a first phase, a ‘campaign of repression’ in which a “state of emergency was declared as hundreds of alleged rebel sympathisers were arrested.

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208 United Nations, COI, 25.
The governors of Northern and Western Darfur were dismissed. President Bashir appointed a ‘special task force’ of loyalists and old Darfur hands.” Then, in a move ‘first viewed as conciliatory but in retrospect ominous of the reign of terror about to be unleashed’, the government abolished the special courts of summary justice in Darfur. 209 In addition, Khartoum created the ‘Darfur Security’ desk headed by Interior Minister Ahmed Harun as a powerful position to coordinate the regime’s plan of attack against the rebels and, importantly, against the ordinary citizens of Darfur. These initial bureaucratic measures were soon complimented by military and paramilitary operations.

As such, the second phase of Khartoum’s counter-insurgency strategy involved the employment, arming, financing and training of groups of nomadic Arab-identifying militias from across western Sudan and then directing them to attack the rebels and destroy the non-Arab towns and villages in Darfur which were alleged to be the bases of SLM/A and JEM support. These local militias — popularly referred to as Janjaweed (‘devil-horsemen’) — held sympathies towards Arabist Khartoum and had their own interests in local land and population redistribution, particularly those nomadic groups that remained outside the traditional land ownership system. 210 Others were simply concerned with their own enrichment and exhibited an unconscionable disregard for the lives of their fellow Sudanese. This was a deliberate and calculated move by Khartoum: because the government was militarily unprepared and initially incapable of meeting the rebel threat in Darfur with national forces, it ‘exploited the existing tensions between different tribes’ by employing local Arab militias to engage the rebels. 211

209 Daly, *Darfur’s Sorrow*, 282.
Describing this divide-and-rule strategy, Collins argues that as the ‘most unpopular regime in the history of independent Sudan’, al-Bashir’s government “was now able to weaken any potential opposition by exploiting ethnic divisions [and] branding the insurgency as an African attempt to rid Darfur of the ‘Arab race’, whose dominance was the very foundation of the Islamist government and its extremist groups.”

As a result, the conflict in Darfur quickly morphed from a centre-periphery rebellion to one imbued with the dangerous characteristics of ethnic violence that had been witnessed previously in other African countries and in the Balkans during the 1990s, for example. Indeed, the Janjaweed did not primarily engage the rebels; civilians were targeted in attacks aimed at the purging of Darfur’s non-Arab population:

the mounted Janjaweed commandos, usually comprised of one hundred warriors, would sweep down on a village just before dawn. The pattern of destruction was the same. The men were killed, often mutilated, the women raped, and the children sometimes abducted. The village was burnt, the livestock seized, the fields torched, and the infrastructure — wells, irrigation works, schools, clinics — methodologically destroyed in a systematic scheme to drive the African population from their ancestral holdings.

While it soon became evident to the international community that the militias were responsible for committing such atrocities on the ground in Darfur, it was not until much later that their direct relationship to the Sudanese government and to its broader counter-insurgency strategy in Darfur became widely acknowledged (although the Security Council resisted making direct linkages). This patron-client relationship alone was clear evidence of the Sudanese government sponsoring militias to commit violence against civilians on its behalf. However, providing

213 Collins, “Disaster in Darfur”, 11-12.
further weight to arguments for coercive international intervention, the COI found that Sudan’s National Security and Intelligence Service played a ‘central role and is responsible for the design, planning and implementation of policies associated with the conflict … its influence appears to reach the highest levels of authority.’

Indeed, and moreover, the third element of Sudan’s counter-insurgency strategy was to compliment the government’s concealed support for the Janjaweed with the deployment of the Sudanese military, paramilitary, and other ‘security’ services in direct attacks on civilians in Darfur. As such, the Sudan Armed Forces (SAF) and Janjaweed operated in a close and brutally effective operational partnership against Darfur’s non-Arab population:

Improvised bombs of “explosives and metallic debris” dumped out of the doors of Russian transport aircraft were followed closely by successive raids by attack helicopters and fighter-bombers. Janjaweed militia on camel and horseback, sometimes assisted by army units, swept in to finish the job, by burning villages, killing principally young men, and forcing survivors to flee. The displaced fled to areas sometimes protected by the Sudanese police. Janjaweed patrolled the perimeters, however, attacking women and girls who left.

This cooperative relationship between organs of the SAF and government-allied militias resulted in widespread and pervasive attacks on Darfur by land and by air. Reaching similar conclusions, the COI found that in Darfur ‘[s]everal of the attacks on villages were carried out with the support of Government of the Sudan including the air force, involving air bombardments and regular aerial surveillance.’

As such, there was ‘credible evidence of the use of Mi-8 helicopters, Mi-24 helicopters and Antonov aircraft during air attacks on villages. Ground attacks frequently were preceded by the presence of aircraft near or directly above the

214 United Nations, COI, 27.
villages, which would either bomb the village or surrounding areas, or circle over the village and then retreat’.  

According to another account by Reeves, ‘[f]ollowing early morning bombing attacks on targeted villages, attacks which dispersed the terrified inhabitants, the Janjaweed would sweep in, shooting all in their sight. Very often they would be accompanied by regular SAF forces in trucks, armoured personnel carriers, and other vehicles.’ Furthermore, after this, ‘[d]eadly helicopter gunships would also be deployed, killing fleeing civilians and any who might chose to resist’. Indeed, the improvised use of the national air force illustrates in vivid terms Khartoum’s indiscriminate killing of Sudanese civilians in Darfur:

Attacks on African villages typically began with aerial attacks by Antonov ‘bombers.’ In fact, the Antonov is not a bomber by design, but rather a retrofitted Russian cargo plane from which crude barrel bombs are simply rolled out the back cargo bay … Bombs dropped from Antonovs are far too imprecise to be used against military targets. To avoid ground fire, Antonovs typically fly at altitudes over 15,000 feet. But such bombs are exquisitely suited as instruments of civilian terror.

This type of campaign by powerful state institutions and their local proxies against unarmed civilians had clear and predictable results. Compellingly, the testimonies of victims and witnesses to such attacks reveal the nature and magnitude of experiences of violence and terror in Darfur. For example, in May 2004, Amnesty International interviewed a number of Darfurian refugees living in camps inside Chad. Describing one such joint assault by the Sudanese army and its allied militia, the following testimony was given by ‘N’, a 30-year-old Darfurian woman from Um Baru, living in the Konoungou camp:

218 Reeves, A Long Day’s Dying, 3.
“The attack took place at 8am on 29 February 2004 when soldiers arrived by car, camels and horses. The Janjawid were inside the houses and the soldiers outside. Some 15 women and girls who had not fled quickly enough were raped in different huts in the village. The Janjawid broke the limbs (arms or legs) of some women and girls to prevent them from escaping. The Janjawid remained in the village for six or seven days. After the rapes, the Janjawid looted the houses.”

Similarly, recounted in another Amnesty International interview in the Mile refugee camp in Chad, an unnamed 25-year-old Darfuri woman from Abu Jidad village, in the Abu Gamra region, explained how her village was attacked on 28 June 2003:

“men on horses and camels and in cars came in and surrounded the village at midday. The Janjawid were accompanied by soldiers of the government, the latter using cars. Two hours later, an Antonov plane and two helicopters flew over the village and shot rockets. The attackers came into the houses and shot my mother and grandfather, without any word. Most of the inhabitants had stayed in their houses. The attack lasted for two hours and everything was burnt down in the village.”

The Coalition for International Justice and the US State Department’s Atrocities Documentation Project collected further harrowing testimonies, including how a ‘Massalit woman in West Darfur (near El Geneina) in February 2004 saw [Sudanese government] soldiers catch sixteen women with babies. They broke the baby boys’ necks in front of the mothers and beat mothers with their own babies like whips until the babies died’. In another example:

In western Darfur (near Foro Borunga) in June 2003, a Fur man said his wife was raped by seven [Sudanese government] soldiers, and

219 Amnesty International USA, “Darfur in Crisis: Speaking Out on Violence Against Women in Darfur”.
220 Amnesty International USA, “From the Ground: Darfuri Refugees in Chad Speak Out”.
thirteen other women were also raped during the attack. He saw horsemen take a baby from a woman’s back, tear of its clothes and slice its stomach; another woman’s baby daughter was smashed against a tree and killed. He witnessed approximately twenty male and seven female babies being killed.222

As a result of evidence of attacks like these, the Commission of Inquiry concluded in its authoritative and revealing January 2005 report that both the Sudanese government and the Janjaweed were ‘responsible for serious violations of international human rights and humanitarian law amounting to crimes under international law.’223 More specifically, noting that the majority of victims of such violence were from the Fur, Zaghawa, Massalit, Jebel, Aranga and “other so-called ‘African’ tribes”, the COI found that Sudanese government forces and their allied militias conducted:

indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement, throughout Darfur. These acts were conducted on a widespread and systematic basis, and therefore may amount to crimes against humanity. The extensive destruction and displacement have resulted in a loss of livelihood and means of survival for countless women, men and children. In addition to the large scale attacks, many people have been arrested and detained, and many have been held incommunicado for prolonged periods and tortured.224

Such ‘indiscriminate attacks’, in which civilians are killed, are prohibited under the Fourth Geneva Convention, which requires belligerents to distinguish between combatants and non-combatants during armed conflict and to protect the latter group from harm. Yet, again adding further weight to calls for coercive Council intervention, earlier reports were confirmed by the COI that innocent Darfurian civilians were not merely ‘collateral damage’ or unintentional victims of

222 Cited in Askin, “Prosecuting Gender Crimes”, 146.
223 United Nations, COI, 3.
the conflict: while Sudanese government officials had protested to the COI that their use of force was for legitimate military purposes as part of what they claimed to be a necessary counter-insurgency campaign against the SLA and JEM rebels, the Commission of Inquiry instead made it clear that ‘most attacks were deliberately and indiscriminately directed against civilians.’225 As such, large-scale murder in Darfur it was a matter of government policy.

On this basis of such findings, and because of the evident ethnic dimension of the violence, a number of observers have persuasively argued that genocide was intended and committed in Darfur. For Erin Patrick, for example, the actions and intentions of the Janjaweed were genocidal in nature because the militias had done ‘everything possible not only to force civilians to flee their land and villages, but to prevent them from being able to come home any time soon and to rebuild their lives even upon return’.226 Because of this, ‘[n]ot only have villages been attacked, looted and burned to the ground, but the Janjaweed have thrown dead bodies into wells to poison them and systematically destroyed fields, seeds and agricultural implements — elements critical to the survival of a population dependent on farming for its livelihood. Men have been killed and women raped and branded to ostracise them from society.’227 Power similarly argues that both the Sudanese government and Janjaweed committed genocide by ‘systematically expelling Darfur’s non-Arab population, murdering tens of thousands and permitting widespread gang-rape — to make sure what they say will be lighter-skinned babies and ensure that the non-Arab tribes will be too degraded to return to their homes.’228 According to Reeves,

225 United Nations, COI, 3.
227 Patrick, “Intent to Destroy”, 413.
228 Samantha Power, “It’s Not Enough to Call it Genocide”, Time 164, no. 14 (October 4, 2004).
Khartoum’s ‘comprehensive destruction, clearly animated by a desire to destroy the Fur, Massaleit, and Zaghawa people as such, constituted genocide — as did the direct, ethnically-targeted murder of these people.’

These arguments were supported by an official finding by the US government. After a comprehensive US State Department investigation, then Secretary of State Colin Powell testified before the US Congress in September 2004 that: ‘we concluded — I concluded — that genocide has been committed in Darfur and that the government of Sudan and the Janjaweed bear responsibility and that genocide may still be occurring.’ Significantly, President Bush publicly endorsed the genocide charge; the first time a US president had done so while that particular crime was ongoing. While other governments were reluctant to characterise Sudan’s actions as genocide and the COI itself did not support the finding of genocide — because the ‘crucial element of genocidal intent appears to be missing, as least as far as the central Government authorities are concerned’ — it was also made clear by the COI that a non-determination of genocide ‘should not be taken in any way as detracting from the gravity of the crimes perpetrated in that region. International offenses such as the crimes against humanity and war crimes that have been committed in Darfur may be no less serious and heinous than genocide.’

In this context, Kasfir observes that the debate over characterising Khartoum’s motivations in Darfur has been over whether the Sudanese government

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229 Reeves, A Long Day’s Dying, 3.
232 Tellingly, despite this important rhetorical milestone, the Bush administration claimed that such a finding on its behalf did not legally compel the US government into taking any action to halt the atrocities, an assertion seemingly in contradiction of the spirit and letter of the 1948 Genocide Convention. See further discussion in Chapter 4.
233 United Nations, COI, 4.
234 United Nations, COI, 4.
has ‘adopted a policy of cultural annihilation [or] decided to crush a rebellion to protect its dominance’. However, I would argue that these categories are not mutually exclusive and, rather, elements of both are evident in the actions and intentions of the al-Bashir regime. The arguments supporting the finding of genocide to characterise the Sudanese government’s motivations are compelling in light of the available evidence. Yet, if the act of genocide in Darfur was based upon underlying elements of ethnic animosity, it was also highly political in nature, pertaining, fundamentally, to power and control over the state. In the context of this thesis, the nature and effects of such state-directed violence on the civilian population are far more important that the characterisation of those acts in terms of the argument that international intervention was necessary and justified (particularly as the Bush administration had rejected the legal obligation to act on an official finding of genocide).

In any case, Khartoum had a clear strategy to not only defeat the rebels in Darfur but to deter challenges to its sovereign authority from any other disaffected segments of the Sudanese population. Kasfir himself concludes that the government of Sudan ‘used its policy of Arabization in an effort to bolster or restore its hegemony’. In this sense, Khartoum attempted to ‘“drain the swamp” by driving civilians from their villages, thereby denying the rebels sanctuary in much of Darfur’. Similarly, according the UN Human Rights Council, ‘[v]illages have been razed, livestock stolen or killed, and crops destroyed, and whole populations forcefully displaced, in part in an attempt to deprive rebel groups of support and

236 Kasfir, “Sudan’s Darfur”, 199.
Furthermore, the COI proposed that Khartoum’s motives for attacking Darfurian civilians were based on strategic political interests: in a ‘vast majority of cases, victims of the attacks belonged to African tribes, in particular the Fur, Masaalit and Zaghawa tribes, who were systematically targeted on political grounds in the context of the counter-insurgency policy of the Government’, while ‘it would seem that those who planned and organized attacks on villages pursued the intent to drive the victims from their homes, primarily for purposes of counter-insurgency warfare’.

Khartoum, therefore, while supporting the interests of local Arab groups in the region — a key government constituency — pursued a campaign of violence against non-Arab civilians in Darfur to assert the control, and maintain the historical domination, of Arabist regimes in Sudan. This political objective of ‘regime security’ was achieved through the communicative act of instilling pervasive fear in a wider audience than just the immediate targets of the violence (in fact, a key constitutive element of ‘terrorism’). As such, while targeting non-Arab Darfurians directly, the broader psychological aim of such violence was to terrorise the general population in order to deter further support to the rebels and thus strengthen Khartoum’s control. The Sudanese government was aware of its tenuous claims to legitimacy and fragile hold on national power: “having only recently entered into power-sharing talks with its long–term enemy [the SPLM/A in south Sudan] and aware of the unrest brewing in many other of its so-called ‘peripheral’ areas”, Khartoum ‘feared that being anything less than harsh with the Darfur rebels would invite similar uprisings in

240 United Nations, COI, 4.
other restive regions.”242 Thus, in order to ‘prevent the emergence of simultaneous rebellions’, Khartoum was ‘sending a message to potential guerrillas everywhere that if they rebel, civilians in their region will face atrocities on a scale similar to those in Darfur.’243

A tactic of instilling fear was indeed central to the Sudanese government’s military strategy in Darfur. The ‘effect of the repeated attacks on villages and the manner in which they were carried out, including regular aerial surveillance at dawn, hovering of helicopter gun-ships and frequent bombing, was to terrorise civilians and force them to flee the villages’.244 In one sense, this ‘state terrorism’ was successful, as those people who were fortunate to survive the initial attacks and find refuge in camps ‘often refused to return to their villages out of fear of further attacks.’245 Overall, however, during the 2003-06 period of study the Sudanese government failed to militarily defeat the Darfur rebels. This suggests that, at great human cost to the citizens of Darfur, the Sudanese government’s brutal counter-insurgency had succeeded only in creating further foundations for Sudanese disaffection with their state and undermining the regime’s own claims to sovereign legitimacy, both inside and outside the country. Nevertheless, as Part II of the thesis demonstrates, the Sudanese government was indeed highly successful politically in obstructing coercive military intervention by the Security Council over its actions in Darfur.

242 Patrick, “Intent to Destroy”, 411.
244 United Nations, COI, 65.
245 United Nations, COI, 65.
Conclusion: The Case for UN Military Intervention in Darfur

In order to more persuasively assert that the situation in Darfur between 2003-06 presented a quintessential case for the Council to fulfil its posited ‘responsibility to protect’ it is necessary to juxtapose the nature and scale of the violence and its effects on the local civilian population, the identities of the perpetrators, and the actions short of military intervention already pursued by the Council in response, against the criteria first proposed by the ICISS and then modified into the specific endorsement of the UN World Summit in 2005 and explicit re-endorsement by the Security Council in 2006. The former is used to highlight how the Darfur case can be clearly situated within the conceptual framework of the ‘responsibility to protect’ as originally elaborated. The latter represent contemporary intergovernmental consensus on the politically acceptable form of the ‘responsibility protect’ doctrine.

The most primary of such criteria is the ‘just cause threshold’ contained in the original ICISS framework. The ICISS proposed that military humanitarian interventions — of the type here argued to have been required in Darfur — are ‘exceptional and extraordinary’ measures that could only be necessitated if there was ‘serious and irreparable harm occurring to human beings, or imminently likely to occur’, in either or both of the following ways. The first is ‘large scale loss of life’ that is ‘actual or apprehended, with genocidal intent or not, which is the product of deliberate state action, or state neglect or inability to act, or a failed state situation’. The second is “large scale ‘ethnic cleansing’, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.”

ICISS, The Responsibility to Protect (Ottawa: International Development Research Centre, 2001), XII.
The situation in Darfur clearly met both elements of the ICISS just cause threshold. First, there was a large-scale loss of life that was the product of a deliberate state action: as a result of the pervasive and widespread violence committed by the Sudanese government and government-allied militias, the UN estimated that during the period of study at least 200,000 people in Darfur — mostly civilians — died either from direct violence or from conflict-induced effects. Of the latter, the complete disruption of subsistence agriculture — already heavily constrained by resource scarcity — by violence, the destruction of property, and displacement has resulted in a chronic shortage of food and thus widespread malnutrition amongst the Darfurian population. In addition, due to the scale of the displacement, insecurity, and difficult logistical environment for humanitarian relief operations, disease in IDP and refugee camps has claimed the lives of many of the survivors of the initial violence.  

Second, because of the ethnic basis of the violence and because of the tactics of terrorisation that were evident in the counter-insurgency strategy of the Sudanese government and its allied militias, there was also large scale ethnic cleansing, actual and apprehended, that was carried out by killing, acts of terror, and, as detailed above in victims’ testimonies, rape. Indeed, the apprehension and terror amongst, primarily, the region’s non-Arab groups was evident is the massive displacement of that cohort of Darfur’s population since 2003: the UN calculates that of the four million people in the wider region affected by the conflict (out of Darfur’s pre-2003 population of about six million), over two million people fled from their homes in fear into IDP camps inside Darfur (the vast majority) or into refugee camps across

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the border in neighbouring Chad (about 250,000). As detailed above, because many of the non-Arab IDPs and refugees were too afraid to return to their homes and villages, it would be fair to conclude that the local population distribution had been substantially altered and that large areas of the region had thus been successfully ‘ethnically cleansed’ by the Janjaweed and Arabist Khartoum.

Both the ICISS proposal and the UN World Summit commitment also assert that governments of states are considered to have the first duty to protect their citizens from harm. For example, the ICISS proposes that ‘[s]tate sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.’ Similarly, the World Summit Outcome states that ‘[e]ach individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.’ In this sense, it is only because of Sudan’s obvious abrogation of its own sovereign responsibility that military intervention is even considered; thus, in accordance with the pluralist basis of international order, governments which fulfil their responsibility to protect should not be the subject of any legitimate external intervention.

However, the ICISS proposes that ‘[w]here a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it’ then a Council authorised military intervention can become justified. The World Summit accepted that Council military action is justified when ‘national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against

249 ICISS, The Responsibility to Protect, XI
humanity’. Again, from the evidence presented above it is clear that the population in Darfur was suffering serious harm as a result of repression by Khartoum, through the SAF and Janjaweed, and that this occurred in the context of an internal war in which elements of each of genocide, war crimes, ethnic cleansing and crimes against humanity had been committed against them.

Indeed, it was clear that in Darfur the national authorities were manifestly failing to protect the population and that Sudanese government was unwilling to avert it. In this sense, the Sudanese government not only failed to protect the population of Darfur, it was in fact the primary cause of insecurity in the region because of the particular counter-insurgency strategy that it chose to pursue. This is a crucial point; because the Sudanese government was actively involved in orchestrating and, in coordination with its allied militia, directly participating in the commission of atrocities, it would have been morally unacceptable and politically cynical of the Council to allow Khartoum to retain control of security in Darfur or to assume that local solutions to resolving the conflict or protecting civilians would have been appropriate. As a result, the only morally acceptable and practically adequate action — if effective civilian protection was the primary objective — was for the deployment of a robust UN peace operation. The necessity for it to be a coercive deployment developed because of strong opposition to such a move by the Sudanese government.

On these ‘just cause threshold’ and ‘sovereign irresponsibility’ grounds alone there is a persuasive case for external military intervention in Darfur. However, under a method and ethic of gradualism, with sensitive consideration for the fragile pluralist foundations of international order and in due recognition of the extraordinary nature of humanitarian intervention, both the ICISS and World Summit
Outcome make clear that peaceful or cooperative solutions aimed at resolving the underlying conflict or at protecting vulnerable civilians should be attempted before any coercive military options; indeed, the language and sequencing of Chapters VI and VII of the UN Charter are premised upon a similar logic. For the ICISS, as a ‘precautionary principle’, military intervention should only be considered as a ‘last resort’: it is ‘only justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded.’\textsuperscript{251} For the World Summit, a military intervention can only be enacted ‘should peaceful means be inadequate’.\textsuperscript{252}

In this context (as Chapter 3 of this thesis comprehensively examines), the development of the Council’s response to Darfur from 2003 was indeed constituted by attempts at a number of cooperative or ‘peaceful’ measures (or at least measures that were clearly short of military intervention): these included, for example, constant mediation and negotiation between the Council, the UN Secretariat, the AU and the Sudanese government; the facilitation of international funding to promote peace; the establishment of an in-principle ceasefire between the Darfur rebels and Khartoum and the endorsement of African Union Mission in Sudan [AMIS] military observers to monitor it; attempts to commit Khartoum on paper to control and disarm the \textit{Janjaweed} (through the Joint Communiqué); the attempted imposition of an arms embargo and limited sanctions regime to compel compliance; and the posited deterrent of the referral of the Darfur case to the International Criminal Court.

In addition, for two years the Council actively supported the formal Darfur peace process convening in Abuja, Nigeria, under direct AU mediation, which led to the signing of the Darfur Peace Agreement (DPA) in May 2006 by the Minni Minawi

\textsuperscript{251} ICISS, \textit{The Responsibility to Protect}, XII.
\textsuperscript{252} United Nations, “2005 World Summit Outcome”, para. 139.
faction of the SLM/A (the largest rebel faction) and the Sudanese government. The Agreement contained certain power and wealth-sharing provisions, security arrangements including the return of displaced persons, a regional inter-communal dialogue process, post-conflict reconstruction, and provided for a referendum on Darfur’s status within Sudan.

However, the Darfur Peace Agreement was a clear failure. According to the International Crisis Group (ICG), the ‘document has serious flaws’, while for others it was ‘stillborn’; fatally, both the Abdul Wahid faction of the SLM/A and the JEM refused to sign it, meaning that it was only a partial agreement. Additionally problematic, at Khartoum’s insistence the Agreement stipulated that the Sudanese government would retain responsibility for disarming the Janjaweed, while AMIS was only mandated to monitor such compliance. Yet, while this would in fact ‘require robust monitoring’, AMIS had ‘too few troops, with too little mobility and firepower and inadequate intelligence capabilities, to do it properly.’ Moreover, the ICG observed that Khartoum ‘continue[d] to arm and recruit militias and support their operations even in the weeks since the signing of the DPA’, while it had broken five previous commitments to disarm them, to say nothing of the direct participation of the SAF in attacking civilian targets. Furthermore, the post-DPA period:

witnessed a sharp deterioration in the security and humanitarian situation, and in AMIS’ ability to implement its mandate. Starting in August 2006, the [Sudanese government] amassed thousands of troops and weaponry in the region to mount a campaign against the DPA non-

signatories, including air attacks. [Khartoum] also continued to use *janjaweed* militias as proxies against rebel groups and to terrorise civilian populations. The surge in fighting created more IDPs and forced humanitarian agencies to withdraw from affected areas.\(^{257}\)

In the face of the deficiencies of the Agreement and the evidently impossible mandate it extended for AMIS, the DPA — also at Khartoum’s insistence — specifically did not provide for the transition from AMIS to a more adequate UN force, which was ‘daily becoming more necessary. Khartoum continues to obstruct and delay the planning process for that UN mission. If AMIS and then UN peacekeepers must ask the government’s permission at every step, they will not be able to create the confidence refugees and [IDPs] need to go home.’\(^{258}\) Indeed, Sudan remained hostile to any deployment of UN troops in Darfur and actually threatened to attack any external force imposed against the government’s will (see below).

Therefore, in the face of various ‘non-military’ measures attempted by the Council during the four-year period of study, the Sudanese government continued to orchestrate attacks its own citizens in Darfur, obstructed international efforts to alleviate the crisis and violated agreements (including a number of the Council’s own resolutions), and refused to accept the deployment of UN troops to provide necessary security to the vulnerable population in the region, particularly those that were displaced and living in camps. As such, by mid-2006, it was clear that such measures short of military intervention — including the flawed DPA — had failed to fundamentally resolve the conflict, and, more significantly, failed to provide adequate security for Darfur’s civilians. Because of this, I argue that by mid-2006 at the latest, the Council had ‘reasonable grounds for believing lesser measures would


\(^{258}\) ICG, “Darfur’s Fragile Peace Agreement”, 1.
not have succeeded’ in creating security on the ground, and thus the coercive deployment of a military intervention would have been a necessary and justified action by the body. The ICG made a similar argument in June 2006:

The Security Council should authorise deployment of a robust UN force, starting with a rapid reaction component, to take over from AMIS by 1 October 2006, with a clear Chapter VII mandate to use all necessary means to protect civilians and assist in the implementation of the DPA, including to act militarily as necessary to contain or neutralise Janjaweed, rebel and hard-line government spoilers.  

Despite this persuasive argument, such a deployment did not occur. The aim of the remainder of the thesis is to explain why it did not occur and to explain more broadly why coercive military intervention in Darfur was not even a serious consideration of the Council. In the context of the ‘responsibility to protect’ doctrine, however, there is one explanation for non-intervention which must first be accounted for; the only element of the ICISS proposal which in my view could possibly militate against the coercive deployment of UN troops is the final of the ‘precautionary principles’; namely, ‘reasonable prospects’. As such, the ICISS warned that ‘[t]here must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse that the consequences of inaction.’ Notably, as mentioned above and elaborated in Chapter 3, the Sudanese government openly threatened to attack any UN troops that were to be forcibly deployed by the Council in Darfur, a deployment which Khartoum vehemently opposed.

By definition, a coercive military intervention will certainly meet resistance in rhetoric; yet, it is not clear that such rhetoric necessarily translates into violent

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260 ICISS, The Responsibility to Protect, XII.
opposition on the ground, particularly when it is UN troops that are being deployed (due to their relatively strong international legitimacy and the deterrent of likely diplomatic and military consequences). Moreover, if it so decides, the Council has the ability to project overwhelming force and it is constituted by at least five of the world’s most powerful military forces. Therefore, if the potential UN peace operation was substantial in number, had superior firepower, and had a robust mandate for both force and civilian protection — as indeed Resolution 1706 did authorise for UNMIS in Darfur in August 2006 (although the Council fatally subjected its deployment to the consent of Khartoum) — then it less likely that Khartoum would have made the potentially costly decision to attack UN troops.

Nevertheless, this argument against intervention is most unpersuasive because it belies the failure of the Council to present a united front against Khartoum and thus to create substantive pressure on al-Bashir to submit to the Council’s demands. In this sense, a united and clear Council policy of deploying UN troops would have weakened Khartoum’s ability to exploit divergent positions in the Council to its own advantage and thus weaken its ability to oppose a UN deployment. In any case, it is difficult to imagine how the coercive deployment of an overwhelming UN force would have caused any further harm to the desperate civilian population of Darfur, which, by 2006, had suffered three years of widespread and pervasive attacks by their own state and marauding government-allied militias.

Because of these reasons, there was a compelling moral, normative and legal-institutional case for the UN Security Council to override the claims of ‘sovereign immunity’ made by the Sudanese government as well as Khartoum’s protestations against the presence of UN troops inside its western region. Because the Sudanese

261 See the argument along these lines made by the UN Secretary-General’s Special Representative for Sudan, Jan Pronk, in late 2004 (cited in Chapter 3 of this thesis).
government had clearly failed in its primary responsibility to protect its own citizens in Darfur, there was by 2006 a highly persuasive case for the coercive deployment of a UN military intervention to protect vulnerable civilians, an act which, if carried out effectively, would have seen the Security Council itself fulfil its ‘secondary’ responsibility to protect a severely at-risk population residing inside the borders of a nominally sovereign UN member state. This is a responsibility that the Council chose not to fulfil.
Part II

Analysis

Explaining Council Non-intervention in Darfur
Introduction

In the context of pervasive crimes committed by the Sudanese military and government-allied militia against Darfur’s non-Arab civilian population and the perpetuation of acute insecurity in the region, this chapter examines the chronological development between 2003-06 of the Security Council’s response to the Darfur crisis, including the Council’s deliberations, resolutions, statements, and interactions with external parties. The chapter details important ‘non-military’ actions that the Council undertook during the period of study; most notably, the imposition of a limited sanctions regime and arms embargo in Sudan, the establishment of the International Commission of Inquiry on Darfur to investigate atrocities, and the referral of the Darfur case to the prosecutor of the International Criminal Court. In addition, it reveals that the Council did authorise a peacekeeping force in Darfur with a robust civilian protection mandate in August 2006, however, fatally, the body made the actual deployment of this force subject to the consent of the Sudanese government, which was not forthcoming. As a result — despite a persuasive legal-institutional, normative, and moral case for doing so — the chapter illustrates that in the face of opposition by Khartoum the Council did not coercively deploy a military intervention in Darfur during this near four-year period.

Because there was no coercive military intervention, it is necessary to examine the development of the Council’s response to Darfur in order to draw conclusions about the political dynamics inside the body (which are then the subject
of critical analysis in the proceeding two chapters). First, this examination illustrates that the Council did become heavily engaged with the crisis in western Sudan, such that Darfur was eventually a recurrent, near-monthly item on the Council’s agenda. Second, and importantly, it illustrates that Council members were fully aware — certainly after the release of the COI’s report in early 2005 — of the nature and scale of the violence and terrorisation of civilians in the region, including of the role played by the Sudanese government, and that members would have appreciated the impact that such acute insecurity was having upon the civilian population of Darfur. Third, and most tellingly, despite this public knowledge, despite the evident failure of such relatively non-coercive measures enacted by the body to create security on the ground, and despite the Council’s explicit invocation of the ‘responsibility to protect’ doctrine in resolutions on Darfur, the chapter illustrates that a coercive military intervention was not even a serious consideration of the Council during the period of study.

Central to the development of the UNSC’s response to Darfur, and to understanding why the Council failed to deploy a coercive military intervention, are the positions and actions of the Council’s members, particularly of the P5. Because of this, the chapter details the various public statements of members during deliberations and debate on Darfur inside the Council, illustrating the arguments and rhetoric used to either support or obstruct punitive actions against the Sudanese government, and the crucial voting patterns of both permanent and non-permanent members on key Darfur resolutions. In doing so, the chapter paints a picture of how the UNSC interacted with, and responded to, the crisis in Darfur over the four-year period, and hence illustrates the political dynamics inside the Council that worked to preclude the deployment of a coercive military intervention to protect vulnerable
civilians. This present chapter, however, postpones critical analysis of why individual Council members made such decisions and took such actions and, moreover, did not enact more coercive actions. Instead, such analysis of national interests and political calculations — ‘explaining’ the Council’s non-intervention in Darfur — is addressed in Chapters 4 and 5.

2003-05: Coercive Intervention in Sudan Not Considered by Council

The chapter first examines the period between April 2003 and the end of 2005, when the Council’s response to Darfur evolved from inaction, to initial engagement, to the passage of a number of resolutions, and then returned to a period of relative inaction. During this time, the Council’s attention to Sudan was also focused upon resolving the north-south Sudan conflict and securing the Comprehensive Peace Agreement. In the context of this thesis, what is most notable about the UNSC during this initial three-year period is that the Council, as a collective body, did not seriously consider enacting its legal authority to threaten Sudan with a UN military intervention, let alone actually pursue the deployment of such a force to protect civilians in Darfur. It was not until early 2006 that a UN peace operation in Darfur was put on the table, and even then it was only in the form of a consensual deployment.

Council ignores eruption of conflict and humanitarian crisis in Darfur: 2003–early 2004

In addition to the privileged P5, the Council in 2003 was comprised of non-permanent members Angola, Bulgaria, Cameroon, Chile, Germany, Guinea, Mexico, Pakistan, Spain and Syria. After the eruption of violence in Darfur in early 2003, the early reporting of initial acts of displacement by a variety of UN agencies should
have alerted the Council to at least the scale of the unfolding humanitarian crisis in the region, if not of the nature of the conflict itself, including that civilians were targeted and terrorised. However, despite these reports, the Council did not place Darfur on its agenda nor make any official statement about the situation in western Sudan during 2003. In fact, the Council held only one open meeting on Sudan during the whole of the year, on 10 October, which ignored Darfur and focused instead on the separate north-south Sudan peace process,262 the latter in which the United States and Britain had invested significant political capital and were heavily involved.

By late 2003, the regional humanitarian crisis was undeniable to anyone following the statements of UN agencies and aid organisations on the ground. For example, the UN Office for the Coordination of Humanitarian Affairs reported that there were nearly 100,000 Darfurian refugees living in camps and in the desert in Chad, 25,000 of which had fled there in the month of December alone, and that a number of these camps had had to be moved deeper inside Chad away from Janjaweed raids along the border region.263 The World Food Program stated that it discovered during a recent assessment trip to South Darfur that 46 of the 62 villages it visited had been burned to the ground, while the remaining 16 had been looted. The UN High Commissioner for Refugees reported that new refugee arrivals in Chad “alleged that there has been aerial bombardment of villages and ‘ethnic cleansing’ by pro-government Arab militias“.264 Due to the number and similarity of such reports from UN agencies in the field, among others, it had become clear that by the end of 2003 there was a humanitarian catastrophe in Darfur and eastern Chad that had been

caused by brutal fighting and the targeting of civilians in the region: despite this, the Darfur case remained absent from the Council’s agenda.

In 2004, five new members — Algeria and Benin, Brazil, the Philippines, and Romania — assumed their elected non-permanent seats on the Council, replacing the outgoing Cameroon and Guinea, Mexico, Syria, and Bulgaria respectively. While the humanitarian crisis in Darfur deepened in the early months of 2004, and despite the increasing number of reports from experts and other observers about the scale and nature of the disaster in the region, including suggestions that the Sudanese government might be involved, the Council remained distinctly absent from efforts to address the conflict. For example, in March, UN Secretary-General Annan stated that he was ‘very disturbed by the events in Darfur where the continuing conflict is having a devastating impact on the lives and well-being of the people. Civilian casualties and serious human rights violations are routinely reported. This is unacceptable and must stop.’ Furthermore, a group of UN human rights rapporteurs released a statement on their recent fact-finding mission to the region expressing that they were ‘gravely concerned at the scale of reported human rights abuses and at the humanitarian crisis unfolding in Darfur’ and citing reports that the:

population in the Darfur region — mostly from the Fur ethnic communities of the Masalit, Dajo, Tunjur, Tama and Zaghawas — has been the victim of systematic human rights violations, committed mainly by Government-allied militias such as the Janjaweed, Muraheleen and the Popular Defence Forces. The Government is allegedly encouraging the actions of the militias in order to pursue a strategy of forced displacement of the non-Arab population of the region.

265 UN Secretary-General, “Secretary-General Says Devastating Conflict in Darfur, Sudan, Must Stop; Calls for Effective Humanitarian Ceasefire”, Press Release SG/SM/9238, AFR/877, March 31, 2004.
Council’s initial engagement with Darfur: April–June 2004

On 2 April, in its first serious engagement with Darfur, the Council was briefed on the crisis by Under-Secretary-General (USG) for Humanitarian Affairs, Jan Egeland, who, while declining to use the term ‘genocide’, claimed that ‘ethnic cleansing’ had been committed in the region through an ‘organized, forced depopulation of entire areas’ and that there were ‘daily reports of widespread atrocities and grave violations of human rights’. The USG explained to the Council that ‘most of the attacks … had targeted civilian populations. Entire villages had been looted and burned down, and large numbers of civilians had been raped, tortured and killed.’ Egeland concluded that Khartoum ‘could control and disarm the Janjaweed militia, which was responsible for most of the human rights violations’, and that while ‘there was no reason to believe that the Government was actively planning the attacks’, there ‘was reason to say that far too little was being done to stop it. It seemed that the violence was being condoned.’ Finally, Egeland pushed for Darfur to be placed permanently on the Council’s agenda. Importantly, this briefing illustrated that at least as early as April 2004 the Council was made directly aware of the scale and nature of violence and insecurity in Darfur.

Indeed, the Council, signalling that the situation in western Sudan was now on its agenda and representing its first official response to Darfur, issued a press statement following the briefing expressing its ‘deep concern about the massive humanitarian crisis’ and calling upon the belligerent parties to negotiate a ceasefire, find a political solution, facilitate humanitarian access, and to ‘ensure the protection’

of civilians.\textsuperscript{270} Not surprisingly, at this relatively early stage in its engagement with Darfur (although a year after conflict had erupted), coercive military intervention was not yet being considered by the Council. However, in this respect, the Secretary-General somewhat pre-empted the Council by arguing that if Khartoum obstructed a proposed UN high-level investigatory team from conducting its mission on the ground in Darfur, then the international community “must be prepared to take swift and appropriate action. By ‘action’ in such situations I mean a continuum of steps, which may include military action. But the latter should always be seen as an extreme measure, to be used only in extreme cases.”\textsuperscript{271} Yet, while this statement may have raised the idea of UN intervention, such action remained outside the calculations of Council members.

Providing further evidence that Council members had been made directly aware of the nature and scale of violence in Darfur — now including more authoritative claims about direct Sudanese government involvement in attacks on civilians — Acting UN High Commissioner for Human Rights, Bernard Ramcharan, briefed the Council in early May on the report of the recently-completed high-level UN investigation into human rights abuses in Darfur, which concluded that while the rebels had initiated the eruption of violent conflict in the region, it was the ‘manner of the response’ by Khartoum that had exacerbated the crisis:

the Government of Sudan appears to have sponsored a militia comprised of a loose collection of fighters of apparently Arab background, mainly from Darfur, known as the ‘Janjaweed’. In other words, and worryingly, what appears to have been an ethnically-based rebellion has been met with an ethnically-based response building in large part on long-standing, but largely hitherto contained, tribal

\textsuperscript{271} UN Secretary-General, “Secretary-General’s Address to the Commission on Human Rights”, Geneva, April 7, 2004.
rivalries. In certain areas of Darfur, the Janjaweed have supported the regular armed forces in attacking and targeting civilian populations suspected of supporting the rebellion, while in other locations it appears that the Janjaweed have played the primary role in such attacks with the military in support.272

Because of such reports of atrocities in Darfur, and under public pressure to respond effectively, the Council on 25 May issued its first Presidential Statement on Darfur, over a year since the conflict had erupted.273 Via the statement — representing the consensus view of the Council members, but non-binding — the body expressed its ‘grave concern over the deteriorating humanitarian and human rights situation’ in Darfur and noted that ‘hundreds of thousands have been killed and that hundreds of thousands of people are at risk of dying in the coming months’. Importantly, confirming its members’ acknowledgment of atrocities, the Council expressed ‘deep concern’ at continuing reports of:

large-scale violations of human rights and of international humanitarian law … including indiscriminate attacks on civilians, sexual violence, forced displacement and acts of violence, especially those with an ethnic dimension, and demands that those responsible be held accountable. The Council strongly condemns these acts which jeopardize a peaceful solution to the crisis, stresses that all parties to the N’Djamena humanitarian ceasefire agreement committed themselves to refraining from any act of violence or any other abuse against civilian populations, in particular women and children, and that the Government of Sudan also committed itself to neutralizing the armed Janjaweed militias, and urges all parties to take necessary steps to put an end to violations of human rights and international humanitarian law.274

At this time, however, the Council was focused upon supporting the African Union (AU)-mediated humanitarian ceasefire in Darfur, which was finalised by

272 UN Commission on Human Rights. “Report of the High Commissioner for Human Rights: Situation of Human Rights in the Darfur Region of the Sudan”, May 7, 2004. Khartoum had allowed the investigation to proceed, but it was not clear if this was due to Annan’s earlier threats.
Khartoum, the SLM/A and the JEM on 28 May after having being signed on 8 April in N’Djamena, Chad. The N’Djamena Agreement established the Ceasefire Commission (CFC) and an AU monitoring and observer mission — the African Mission in Sudan (AMIS) — which commenced deployment in El Fasher, North Darfur state, on 9 June.\(^{275}\) This was the first deployment of external troops inside Darfur, but the mandate of AMIS was far from the type of robust military operation that the actions of the Sudanese government suggest would have been necessary to protect civilians. Nevertheless, Council members appeared satisfied that a regional observer mission represented progress in resolving the conflict, while Khartoum’s willing consent to the deployment of AMIS avoided, at this point, any hostile confrontation regarding a violation of Sudanese sovereignty.

On 11 June, the Council unanimously passed Resolution 1547, which although primarily focused upon the continuing negotiations to end the north-south Sudan civil war and on establishing an advance UN mission in the south (to support a potential peacekeeping force pending a peace agreement), also referred, for the first time, to the crisis in Darfur.\(^{276}\) The draft resolution was sponsored by Britain and ‘reaffirmed’ the Council’s ‘commitment to the sovereignty, independence and unity of Sudan’, before calling upon Khartoum and the SPLM/A to ‘use their influence’ to end the conflict in Darfur. It also urged the Sudanese government and the Darfur rebels to find a political solution to their conflict, welcomed AU monitoring and mediation efforts, and promoted ‘constant engagement’ and ‘extensive funding’ to


support peace in the country.\textsuperscript{277} Even though no mandatory measures were imposed by Resolution 1547, statements made during the meeting, at which Sudan’s representative was invited to sit but not vote, provide an initial insight into Council members’ respective positions on how the body should respond to Darfur, including their attitudes towards the Sudanese government.

For example, the UK argued that while the UN’s role in facilitating the north-south peace deal was appropriate and welcome, it was also important to recognise the need to engage with other troubled areas in Sudan, particularly Darfur, to avert a humanitarian disaster there. Despite having been presented with reports of Khartoum’s involvement in atrocities against civilians, the UK stated: ‘it is right that, in adopting this resolution, we should look to see similar progress throughout the Sudan, we should reinforce again the efforts of the Government of that country, which is responsible throughout the country for the well-being of its citizens, and we should pay particular attention to the situation in Darfur and ensure that all of us and the humanitarian agencies play our part to avert any humanitarian catastrophe in that area.’\textsuperscript{278}

Non-permanent member Germany warned that ‘a lasting peaceful settlement for the whole of the Sudan will be possible only when all the conflicts in the country have been resolved. That includes an end to the sweeping and widespread human rights violations in the conflict regions in the Sudan.’\textsuperscript{279} The US drew the Council’s attention to the 10 June statement of the G8 — of which five Council members were a party — which, according to Washington, welcomed the ceasefire agreement but

\textsuperscript{279} UN Security Council, 4988\textsuperscript{th} meeting, S/PV.4988, June 11, 2004, 2-3.
expressed ‘grave concern over the humanitarian, human rights and political crisis in Darfur’ and noted ‘continuing reports of gross violations of human rights, many with an ethnic dimension’. Furthermore, the G8 had ‘called especially’ on Khartoum to ‘disarm the Janjaweed and other armed groups which are responsible for massive human rights violations’.  

Algeria argued that the ‘challenges in other regions’ of Sudan deserved a ‘comparable mobilization effort and the full attention of the international community and of the Sudanese parties involved.’ Finally, Pakistan noted that in Darfur there was a ‘humanitarian crisis initiated by an armed rebellion and escalated by the response. What is important now is for the international community to respond generously to this humanitarian crisis. This response has been disappointing so far. Therefore, we welcome the reference in the resolution to the need for extensive funding in support of peace in the Sudan.’ Pakistan also asserted that, in accordance with precedent, Sudan should have been given the right to address the Council. Interestingly, however, foreshadowing future Council engagement with Sudan over Darfur, particularly the potential for coercive military intervention, Pakistan made clear its position that Sudan ‘is an important member’ of the AU, Organisation of the Islamic Conference (OIC) and UN, and that as a UN member:

Sudan has all the rights and privileges incumbent under the United Nations Charter, including to sovereignty, political independence, unity and territorial integrity — the principles that form the basis of international relations. Long-term peace and stability and the unity of the Sudan are in the interests not only of its own people, but also of the international community. This should be the central objective of the Security Council.”

Pakistan suggested through its statement and tone that it was less than sympathetic to criticism of the Sudanese government, a position that would become more evident and be shared by a number of other members as Council debate on responding to Darfur intensified. Three Western members of the Council, in contrast, appeared to take a more active interest in using the UNSC to highlight the nature of the myriad problems inside Sudan, including the commission of human rights abuses in Darfur, even if their primary focus was on securing the north-south agreement. It was also evident that, despite a number of alarming reports and briefings, they did not at this stage publicly accuse the Sudanese government of having orchestrated or participated directly in attacks on Darfurian civilians, laying the blame instead on the Janjaweed. The positions of other Council members on Darfur, including those of permanent members France, Russia and China, had not yet been revealed.

**Council considers imposing sanctions on Khartoum: July 2004**

On 3 July, the UN and the Sudanese government signed a key ‘Joint Communiqué’, which would form the basis for the Council’s approach to Darfur for the remainder of 2004 and provide a benchmark against which the body could assess Khartoum’s actions. Under the terms of the Communiqué, Sudan ‘committed’ itself to a number of humanitarian, human rights, security and political measures, including a pledge to implement a moratorium on restricting humanitarian access; to undertake ‘concrete measures’ to end impunity for human rights violations, including by investigating reports of abuses, bringing perpetrators to justice, and allowing the deployment of monitors; to deploy a ‘strong, credible and respected’ police force in

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IDP camps and other vulnerable regions, to train police in human rights law, ensure that Janjaweed are disarmed and do not enter IDP zones, and to ensure that any displaced people can return home only voluntarily; and finally, Khartoum agreed to resume political talks with the Darfur rebels to find a ‘comprehensive solution’ to the conflict.

The Communiqué established a UN-Sudan Joint Implementation Mechanism (JIM) — headed by the Sudanese Minister for Foreign Affairs and Jan Pronk, the UN Secretary-General’s Special Representative (SRSG) in Sudan — to monitor and assess its implementation. While the Communiqué indicated UN engagement with Khartoum, the Council was coming under greater pressure to hold the Sudanese government to account, particularly after more reports of direct government support for the militias.284 Notably, in a 7 July briefing of the Council, USG Egeland explained that the stories of Darfur refugees and IDPs had been ‘very consistent’: ‘there had been helicopter gunships, very often aeroplanes, that had bombed their villages and then these Janjaweed militias come in to complete the job through a scorched earth technique, where their villages were burned down, their wells were polluted and their irrigation systems were destroyed’.285

Indeed, providing insight into the deliberations of the Council on Darfur at this juncture, the Romanian representative (as Council president) told the press after Egeland’s briefing that the body’s members ‘called for sustained pressure’ on Khartoum in order to ‘promote progress’ and to find a solution to the humanitarian crisis. He said that the Council was considering a draft resolution on Darfur circulated by the US, but that any action would depend upon the ‘performance’ of

284 See, for example, UN News Centre, “Sudan: Government Forces, Militias have Committed Atrocities – UN Rapporteur”, June 14, 2004.
Khartoum in complying with the commitments its had made. He concluded that the Council should be ready to ‘monitor evolutions’ and to consider the best ways in which it ‘can live up to its responsibilities’ regarding Darfur.\textsuperscript{286} The representatives of four Council members also revealed their governments’ positions on Sudan after the briefing, illustrating that the debate over Darfur in the Council was seemingly polarising as it intensified.

Pakistan, reiterating its existing position that was sympathetic to the Sudanese government, argued that rather than imposing harsher measures on Khartoum, such as sanctions, the Council should wait and evaluate the measures taken to conform to the recently signed Communiqué.\textsuperscript{287} Islamabad felt that there was a ‘general sense’ that Khartoum ‘is at this time aware of the seriousness of the views in the international community and therefore maybe willing to implement those commitments.’ Pakistan, its representative implied, would not be supportive of harsher measures in the Council and instead emphasised the need for the international community to more fully support the humanitarian relief effort.

In contrast, Germany cautioned that Sudan had in the past not honoured the commitments that it had made and it was thus important for the Council’s ‘credibility’ to keep pressure on Khartoum. Moreover, if Sudan did not comply with the Communiqué then Berlin would consider sanctions, including an arms embargo against the \textit{Janjaweed} and ‘Sudan as a whole’.\textsuperscript{288} Using similarly stern language, France stated that Khartoum must implement the Communiqué and that Council would judge the Sudanese government ‘by its action and performance’, while the

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content of the proposed new resolution would ‘depend very much on what will happen now on the ground’ in Sudan.\textsuperscript{289}

Continuing the position advanced by the two European members, the United States warned that it was important to examine what Khartoum actually did, not just what it had committed to in the Communiqué, and that the world was now ‘watching’ Sudan, which was ‘clearly on a short leash’.\textsuperscript{290} Making even stronger claims, the US representative proposed that much of the violence in Darfur was being committed by militias that were supported by the Sudanese government, and warned that Khartoum was not going to gain its desired normalised relations with the international community by destroying Darfur. The US told Khartoum that it had just ‘days’ to fulfil its commitments under the Communiqué and warned against any further tactical delays. Washington supported sanctions against the Janjaweed (which it had proposed in the draft resolution) and potentially against Khartoum if it did not demonstrate compliance within a 30-day period.

A pattern was now appearing in the UNSC in which Western members appeared to be actively pushing for scrutiny of, and pressure on, the Sudanese government over its role in the Darfur crisis, while Pakistan was publicly resisting such calls and had argued for a more balanced approach from the Council that was less confrontational with, and more sympathetic towards, Khartoum. The positions of other Council members on Sudan remained as yet unclear, including importantly, those of China and Russia. At this point, the approach taken by the Council in responding to the crisis in Darfur centred upon pressuring Khartoum to implement the provisions of the Communiqué. The Council was briefed on such progress the Council by SRSG Pronk on 21 July, who told reporters outside the Council chamber.

that while there had been important improvements in humanitarian access in Darfur, crucially, there had been ‘no progress whatsoever’ on the improvement of security for vulnerable people in the region, including the disarming of the Janjaweed, and the security and relocation of the IDPs.\textsuperscript{291} This clearly represented Khartoum’s failure to comply; yet it was clear that the Council was continuing to avoid accusing Khartoum of a direct role in atrocities against civilians.

After the briefing, the UK representative spoke of the Council’s ‘deep concern’ about the security situation, upon which it would ‘maintain the closest scrutiny’, and that ‘grave abuses have been taking place and may still be taking place’, while Khartoum should ‘immediately’ fulfil its obligations under the Communiqué.\textsuperscript{292} When prompted, the British representative stated that sanctions should only be considered to the extent that they would facilitate security and relief on the ground inside Darfur, not just for their own sake, and that at this stage the UK was persuaded more by the idea of an arms embargo than sanctions. Indeed, tellingly, in response to a reporter’s question, the UK revealed that while there was a strong desire by some members of the Council to create security on the ground, at this stage, armed intervention ‘isn’t something which is on the agenda’.\textsuperscript{293}

\textit{Council gives Khartoum timetable for compliance: Resolution 1556}

In its first resolution to deal primarily with the crisis in Sudan’s west, the UNSC passed Resolution 1556 on 30 July 2004,\textsuperscript{294} which also represented the Council’s first use of its mandatory powers under Chapter VII in responding to

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Darfur. The draft resolution was co-sponsored by Chile, France, Germany, Romania, Spain, the UK, and the US. Significantly, however, while all other members voted in favour, China and Pakistan both abstained from voting; yet, this still enabled successful thirteen to zero passage. Even though the resolution’s legal authority was binding, this lack of unanimity revealed divisions within the Council and resulted in a weakening of the its moral and political authority. Clearly demonstrating the Council’s appreciation of the types of atrocities being committed inside Darfur, but also omitting accusations of direct Sudanese government participation in them, Resolution 1556 ‘condemned’:

All acts of violence and violations of human rights and international humanitarian law by all parties to the crisis, in particular by the Janjaweed, including indiscriminate attacks on civilians, rapes, forced displacements, and acts of violence especially those with an ethnic dimension, and [expresses] its utmost concern at the consequences of the conflict in Darfur on the civilian population, including women, children, internally displaced persons, and refugees[.]

The language of the resolution reflected the Council’s method of engagement with Sudan, despite increasing and public evidence of atrocities, pervasive violence, and widespread humanitarian suffering. For example, while claiming that there will be ‘no impunity for violators’, the Council welcomed the ‘commitment by the Government of Sudan to investigate the atrocities and prosecute those responsible’, while also emphasising the ‘commitment of the Government of Sudan to mobilize the armed forces of Sudan immediately to disarm the Janjaweed militias’. Yet, the pressure for more coercive action by the Council was building and this was reflected in the mandatory measures that Resolution 1556 imposed upon Sudan, which were

enacted under Chapter VII after it was deemed that the crisis in Darfur ‘constitutes a threat to international peace and security and to stability in the region’.

*Inter alia*, the UNSC ‘called on’ Khartoum to ‘fulfil immediately’ its Communiqué commitments by facilitating international humanitarian relief, assisting with UN investigations into human rights abuses and violations of international humanitarian law, establishing ‘credible security conditions for the protection of the civilian population and humanitarian actors’, as well as resuming political talks with the rebels. The Council imposed an embargo on the ‘sale or supply’ of ‘arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts’ to ‘all non-governmental entities and individuals, including the Janjaweed’ operating in Darfur (but notably, not on the government of Sudan). Indeed, demonstrating the Council’s position at the time that the *Janjaweed* were primarily responsible for atrocities — and that Khartoum had merely failed to control or stop them — but also signalling a more coercive approach towards the Sudanese government, including the threat of sanctions, the resolution:

_Demands_ that the Government of Sudan fulfil its commitments to disarm the Janjaweed militias and apprehend and bring to justice Janjaweed leaders and their associates who have incited and carried out human rights and international humanitarian law violations and other atrocities, and _further requests_ the Secretary-General to report in 30 days, and monthly thereafter, to the Council on the progress or lack thereof by the Government of Sudan on this matter and _expresses its intention_ to consider further actions, including measures as provided for in Article 41 of the Charter of the United Nations on the Government of Sudan, in the event of non-compliance.296

During the Council meeting a number of members made statements on the resolution and explained their particular vote, revealing an intensification of the

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emerging political polarisation in which a majority of countries advocated that pressure be placed on Khartoum — with many Western members promoting the threat of sanctions — while Pakistan and now, crucially, permanent member China opposed harsher scrutiny or coercion of Sudan. Indeed, publicly revealing its position on Sudan for the first time in the Council, China claimed that Khartoum had ‘taken a number of measures aimed at honouring the commitment it made’ in the Communiqué and that this had ‘resulted in the improvement of the humanitarian situation’ in Darfur. Furthermore, Beijing ‘hoped and believed’ that Khartoum would ‘continue to actively honour its commitments, particularly its commitment to disarm the Janjaweed and other illegal groups, so as effectively and materially to improve the security situation’. For China, the Sudanese government ‘bears primary responsibility for resolving the Darfur situation’ and that the international community should assist Khartoum in this capacity.

China’s language and tone was revealing of its position of support for the Sudanese government: the Council ‘should listen attentively to the voice of the African Union, and its actions should be conducive to securing the cooperation of the Sudanese government, facilitating the resolution of the problem and contributing to the security and stability of the Sudan.’ Moreover, Beijing was against the ‘mandatory measures’ placed on the Sudanese government by the resolution, claiming that because ‘all the parties are speeding up diplomatic efforts, such measures cannot be helpful in resolving the situation in Darfur and may even further complicate it.’ Finally, in explaining its decision to abstain from voting on the draft resolution, China stated that, while some modifications to the draft had been made, it ‘had hoped that the sponsors of the draft resolution would have taken seriously into

consideration Beijing’s concerns and made the appropriate adjustments so as to arrive at a consensus’ in the Council, but ‘[r]egrettably, that proposal was not accommodated or responded to.’

Similarly, Pakistan, which had also abstained from voting, stated that it was ‘as concerned’ about the humanitarian crisis in Darfur as other members of the international community and ‘fully shares’ the humanitarian objectives of Resolution 1556. It also welcomed the Communiqué as the ‘best framework’ for resolving the crisis. However, Islamabad argued that the ‘cooperation’ of Khartoum was essential to resolving the crisis, and that the Council’s efforts should ‘encourage that cooperation, not complicate it.’ Moreover, Pakistan ‘did not believe that the threat or imposition of sanctions’ against Khartoum ‘was advisable under this resolution’ and it ‘trusts that the Security Council will not need to take such further measures’. Islamabad was looking forward to the Annan’s report in 30 days ‘which we hope will confirm that the Government of Sudan and the rebel groups are complying with their commitments and obligations.’ Finally, having called for a ‘more calibrated response’ by the Council and having argued against the ‘adoption of the entire resolution under Chapter VII’, Pakistan claimed that the ‘final text still lacks the delicate balance that this complex situation requires’ and therefore, because ‘no compromise was possible’, it could not support the resolution. Despite this, Islamabad had successfully insisted that the resolution include the ‘principle of preserving the territorial integrity of the Sudan. A solution to the Darfur crisis must be found within the unity and territorial integrity of the Sudan’, representing a direct challenge to any potential calls for coercive military intervention.

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Conversely, the UK argued that the resolution underlined the commitments Khartoum had made to the international community: ‘[t]hose commitments include the most basic of a Government’s obligations to its own people: the obligation to protect them’, something which Khartoum had ‘so far failed to do.’ While the rebels are partly to blame for the crisis and they to must meet their commitments, London agreed that the threat of sanctions was an option in the Council for further Sudanese non-compliance.  

Going further, the United States claimed that after years of hard diplomatic work to create peace and foster development and investment in Sudan, the ‘last thing we wanted to do was lay the groundwork for sanctions.’ Yet, Khartoum ‘has left us no choice. It has done the unthinkable. It has fostered an armed attack on its own civilian population. It has created a humanitarian disaster. So, the resolution just adopted is our necessary response if we are to help save the people of Darfur.’ Washington argued that because it had failed to meet the important security provisions of the Communiqué, Sudan should not have been given more time to comply before the resolution was adopted. The US argued that Resolution 1556 would now apply necessary pressure on Khartoum, including the threat of sanctions, and that it was ‘time to start the clock ticking’ on the Sudanese government. According to the US, the actions of Khartoum and its allied militias had ‘led to 30,000 deaths in Darfur since February 2003’ for which the Sudanese government bears direct responsibility:

To suppress a rebel uprising begun in early 2003, the Government commenced a campaign of terror against innocent civilians. Government aircraft bombed villages. Exploiting an ancient rivalry between Arab African herdsmen and groups of largely black Africans who are farmers, the Government armed the Janjaweed militias and unleashed them against black civilians. The Janjaweed followed the

Government aircraft, burning villages, destroying crops, murder

ring men and raping women…

France, argued that the primary goal of the resolution was to protect the people of Darfur and that the international community could ‘not remain on the sidelines’ while the crisis continued. Noting the commitments made by Khartoum, France warned that within thirty days, the Council would assess the implementation of such commitments. ‘Failing that implementation, the Council will have no other choice but to plan for other actions’, including sanctions. Meanwhile Russia, which similarly supported Resolution 1556, also revealed its position on the Council’s response to Darfur for the first time. Moscow expressed concern at the humanitarian and security crises in Darfur before noting that while responsibility for security in the region lay primarily with the Sudanese government, the rebels also played a role. For Russia, the AU was making an important contribution and should be supported by the Council, and a political solution should be negotiated by the AU and UN. It warned that the Council ‘cannot remain passive in the face of the Darfur crisis’ and that the resolution should send a ‘clear signal’ to Khartoum and the rebels that they must act upon their commitments, while the Council was going to monitor that progress ‘carefully’. As will be demonstrated, Russia’s initial support here for tough Council engagement with Sudan was later tempered and even reversed.

There was important support for the resolution from within Africa, too. Algeria — also speaking on behalf of Angola and Benin — stated that the three African countries were ‘satisfied’ with the adoption of the resolution inter alia because they believed that the international community, including African members,

‘cannot be passive and indifferent’ towards the crisis in Darfur and welcomed ‘concern at the horrendous crimes committed against the civilian population’.\(^{304}\) They were particular supportive of the AU’s leading role and because the resolution kept Khartoum ‘fully engaged’ in attempts to resolve the crisis. Algeria concluded that an assessment of whether the Council should ‘envisage other measures’ should only be made after progress on the ground had been measured.

Finally, Sudan was invited to respond to the passage of the resolution, stating that while it would inevitably comply, it vehemently rejected the allegations and claimed that those who had passed it, particularly the US, had ulterior political motives and were engaged in a conspiracy against Khartoum.\(^{305}\) Sudan claimed it had met its obligations under the Communiqué and was working hard to resolve any outstanding issues, rejecting calls for sanctions, and suggested that the resolution had been a foregone conclusion that was not actually based on any assessment of Sudanese compliance. Despite these protestations, through Resolution 1556 the Council had taken concrete action to place pressure on the Sudanese government to comply or face the prospect of sanctions. The questions now had become whether or not Khartoum could, and would, demonstrate such compliance within the 30-day timetable.

**Council threatens sanctions and establishes inquiry: Resolution 1564**

In a seminal briefing on 2 September, Sudan’s level of compliance was presented to the Council by SRSG Pronk,\(^{306}\) who had in August negotiated and


received the Sudanese government’s ‘Darfur Plan of Action’ in response to demands imposed by Resolution 1556.307 In his carefully worded briefing, upon which sanctions could be imposed, Pronk stated that while Sudan had met some of the commitments it had made under the Communiqué, crucially, it had not met others.308 Khartoum had made progress in improving security for some groups of IDPs, including stopping ‘all offensive military operations’ in those areas; had shown restraint and avoided retaliation; and had redeployed the army away from civilian zones. The AU had reported no incidents of Sudanese air force attacks since the signing of the Communiqué. The SRSG also noted approvingly that Sudan had started to ‘deploy additional police; to begin disarming the Popular Defence Forces; to lift all access restrictions for humanitarian relief; to announce a policy of voluntary returns only [and] to accept international human rights monitoring and establish national mechanisms to investigate abuses’, among other measures. On this progress, Pronk ‘commended’ Khartoum for such achievements within ‘this short period of the initial 30 days.’ However, most significantly, the SRSG then turned to highlight two ‘key’ areas in which the government had ‘not met its commitments’:

First, it has not been able to stop attacks by militias against civilians or to disarm those militias. Disarming part of the Popular Defence Forces in a laudable step, but it is not the same as disarming all militias, including the Janjaweed, which are under the influence of the Government. Secondly, no concrete steps have been taken to bring to justice or even identify any of the militia leaders or the perpetrators of these attacks, allowing violations of human rights to continue in a climate of impunity.309

In response to Pronk’s briefing, the Council on 18 September passed Resolution 1564, which was co-sponsored by Germany, Romania, Spain, the UK and

307 UN News Centre, “Top UN Envoy Visits South Darfur, Sudan to Talk to Local Officials, Aid Workers”, August 20, 2004.
the United States. It was passed eleven to zero, with abstentions again from China and Pakistan and now additionally from Algeria and Russia.\textsuperscript{310} In its operational paragraphs, the resolution expressed the Council’s ‘determination to do everything possible to end the suffering of the people of Darfur’ and again determined ‘that the situation in Sudan constitutes a threat to international peace and security and to stability in the region’. Acting under Chapter VII, the Council declared its ‘grave concern’ that Khartoum had ‘not fully met its obligations’ under Resolution 1556 and the Communiqué to ‘improve, as expected by the Council, the security of the civilian population of Darfur in the face of continued depredations’, while it also ‘deplored’ ceasefire violations, including ‘Government of Sudan helicopter assaults and Janjaweed attacks on Yassin, Hashaba and Gallab villages on 26 August’.\textsuperscript{311}

However, the resolution did not go as far as to accuse the Sudanese government of targeting civilians directly, maintaining the Council’s position that it was the militias that were engaged in atrocities (despite admitting that they were ‘under the influence’ of Khartoum). Indeed, via Resolution 1564 the Council ‘reiterated its call’ for Khartoum to ‘end the climate of impunity in Darfur by identifying and bringing to justice all those responsible, including members of popular defence forces and Janjaweed militias, for the widespread human rights abuses and violations of international humanitarian law’, and insisted that Khartoum ‘take all appropriate steps to stop all violence and atrocities’.\textsuperscript{312}

In addition to the numerous authoritative reports already presented to the Council on the nature and scale of violence in Darfur, Resolution 1564 also importantly authorised the Secretary-General to establish an ‘international

commission of inquiry’ to ‘investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties’, as well as to identify ‘whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable’.

Finally, reiterating its threat of sanctions should Khartoum ‘fail to comply fully’ with the resolution or with Resolution 1556, or fail to ‘cooperate fully’ with AMIS monitors, the Council would ‘consider taking additional measures as contemplated in Article 41 of the Charter of the United Nations, such as actions to affect Sudan’s petroleum sector and the Government of Sudan or individual members of the Government of Sudan, in order to take effective action to obtain such full compliance or full cooperation’. Yet, while the type of potential sanctions were here made more explicit relative to the conditions in Resolution 1556, in this case the timeframe for compliance was ambiguous, representing the Council’s retraction from a more coercive approach to the Sudanese government. Indeed, the more some Council members appeared to push for harsher measures against Sudan to compel compliance, the more resolute other members acted to defend Khartoum or deflect criticism from it.

For example, Russia explained that it had abstained from voting because it was ‘convinced that threatening sanctions is far from the best method of inducing Khartoum to fully implement its obligations to the United Nations. In order to do that, we should use approved diplomatic methods.’ Moscow felt that it was ‘counterproductive to link the possibility of introducing sanctions and the peace-
building efforts’ of the AU, which would have more appropriately been covered under Chapter VIII (regarding the relationship between the UN and regional organisations).

Fellow abstainer, China, argued that ‘[o]ver the past few months, the situation in Darfur has greatly improved and it is now moving in the right direction’. Beijing claimed that Khartoum had ‘shown its sincerity in trying to resolve the problem, and has adopted many measures accordingly. That objective reality cannot be denied.’ According to China, ‘[u]nder those circumstances, and given the complexity of the Darfur issue, the Security Council and the international community should focus on encouraging the Sudanese government to continue to cooperate, rather than doing the opposite.’ Beijing had abstained because the draft resolution would ‘not contribute to the solution of the problem’, but did not veto it only because it wanted to see the Council continue to support the work of the AU. Finally, the Chinese representative ‘noted that the sponsors have repeatedly stated that the threat of sanctions will not be automatically carried out. I wish to reiterate the fact that China’s position against sanctions remains unchanged. It has been our consistent view that, instead of helping to solve complicated problems, sanctions may make them even more complicated.’

Similarly, in explaining its own position and abstention, Algeria stated that it had interpreted Pronk’s assessment to mean that Sudan had shown progress towards meeting its commitments under Resolution 1556, and thus it had hoped that the Council would have emphasised this and urged Khartoum to further improve in the areas in which it had failed to comply. Algiers expected that the Council would have put more pressure on the rebels to find a political solution and be cantoned. Yet,

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317 For the statements of all Council members on Resolution 1564, see UN Security Council, 5040th Meeting, S/PV.5040, September 18, 2004.
it claimed, because neither Annan nor Pronk made such recommendations, and ‘because we believed that a dynamic of cooperation had replaced the spirit of confrontation, we did not expect the Security Council to threaten the Sudanese Government once again with recourse to sanctions.’ As the draft resolution had not been sufficiently modified, Algeria abstained because it ‘does not really do justice’ to Khartoum. Finally, according to Algeria, the resolution was problematic because it called for an international inquiry to determine if genocide had been committed, a measure which would only inhibit the resolution of the crisis.

The final abstainer, Pakistan, did not vote on the resolution because, it argued, the Sudanese government had immediately set about complying with the Council’s previous demands while acknowledging that the time frame would be too short to demonstrate effective compliance in some areas.\textsuperscript{318} Islamabad claimed that the new draft resolution was ‘not consistent’ with the UN’s own reports from the ground in Sudan, which allegedly showed that Khartoum was complying. Pakistan noted that it had been successful in pushing for a more balanced resolution, although the end result was not sufficiently so, and it could not ‘endorse the use, or the threat of use, of sanctions, which … would be unhelpful in this situation.’

Once again, in contrast to these stated positions, the US claimed that the Council was acting through the resolution because Khartoum had ‘failed to fully comply’ with Resolution 1556.\textsuperscript{319} It warned that the Sudanese government now must ‘meet in practice its verbal commitments’ to accept an expanded AU operation in Darfur, and that if it didn’t, the Council would be forced to consider sanctions. The US argued that the Sudanese government had only made commitments, and met some of them, due to the pressure placed upon it by the international community,

\textsuperscript{318} UN Security Council, 5040\textsuperscript{th} Meeting, S/PV.5040, September 18, 2004.
\textsuperscript{319} UN Security Council, 5040\textsuperscript{th} Meeting, S/PV.5040, September 18, 2004.
including through the threat of sanctions. Furthermore, the government met some of
the commitments ‘with great reluctance and after long delays that thwarted an early,
effective humanitarian response.’ Washington called the crisis in Darfur a man-made
one that was ‘fabricated’ by Khartoum, which was ‘intent on persecution, intent on
breaking the spirit of an entire people — as an over-reaction to a rebellion.’

The other members of the Council that supported Resolution 1564, including
Britain and France, generally emphasised the need to save lives and protect
vulnerable civilians in Darfur, and that the Sudanese government needed to
demonstrate progress toward that end. If it did not, then the Council should persuade
it to do so in a speedy fashion, they argued.\footnote{320} Finally, Sudan was also afforded the
opportunity to respond to the resolution, claiming that it was a blow to the peace
process as it would inevitably undermine local efforts to reach a political solution to
the conflict.\footnote{321} Khartoum argued that it had in fact honoured its commitments while
contending that it was working towards resolving outstanding problems. It claimed
that many parts of the resolution ‘represent the worst form of injustice and indignity’
and argued that sanctions would only exacerbate the root social and economic causes
of the Darfur crisis. Khartoum again labelled the resolution as a politically motivated
attempt to undermine the Sudanese government by its enemies in Washington and
elsewhere.

After two key resolutions addressing Darfur, the positions and voting patterns
in the Council had become clearer. The US led a majority block of European,
African, Asian and Latin American members which publicly supported harsher
measures against Khartoum while, crucially, China and now Russia demonstrated
that they were less supportive of more coercive action against the Sudanese
government and favoured a more conciliatory approach. In this position they were supported by non-permanent members Pakistan and Algeria. As a result, the moral and political authority and crisis-resolving potential of Resolution 1564 was compromised, despite its clear passage; the Council, particularly amongst the veto-wielding P5, appeared to be effectively split on how to respond to Darfur. Indeed, up to this point, the debate had only been over the imposition of ambiguously defined sanctions on Sudan. Despite clear evidence of Sudanese involvement in attacks on civilians in Darfur — a point which the Council had officially avoided making — and growing acceptance that Khartoum was acting to obstruct or subvert a number of less coercive initiatives to provide the region’s vulnerable population with security on the ground, any proposals for military intervention remained firmly off the Council’s agenda.

Following Resolution 1564, a period of relative stasis in the Council’s response to Darfur ensued. In the absence of decisive further Council action or the implementation of measures contained in Resolution 1564 — aside from establishing the International Commission of Inquiry on Darfur (COI)\textsuperscript{322} — the focus for the UN Secretariat became supporting the expansion of the AMIS observer force, and potentially diverting resources from the UN advance mission in southern Sudan to Darfur.\textsuperscript{323} Indeed, the Council appeared to be comfortable with the AU taking the

\textsuperscript{322} Annan named Italian professor and first judge of the International Criminal Tribunal in Yugoslavia, Antonio Cassese, as head of the mission. The other four members were Diego Garcia-Sayan, former Peru Foreign Affairs and Justice Minister; Egyptian Mohammed Fayek, a former minister and now Secretary-General of the NGO Arab Organization for Human Rights; Hina Jilani, a Pakistani lawyer and the SGSR on Human Rights Defenders; and Therese Striggner Scott of Ghana, a former High Court judge and now Chair of Ghana’s law Commission. The Commission was given three months to complete its work and would arrive in Sudan on November 8, 2004. UN News Centre, “Annan Appoints Five-member Panel to Probe Possible Genocide in Darfur, Sudan”, October 7, 2004.

\textsuperscript{323} See UN Security Council, 5050\textsuperscript{th} Meeting, S/PV.5050, October 5, 2004; and UN News Centre, “Annan Proposes Ways to Help African Union Expand its Mission in Darfur, Sudan”, October 4, 2004.
lead on Darfur, with AMIS troops being the only external forces considered for deployment in the region, not least of which because of Khartoum’s consent.

On 20 October the AU Peace and Security Council (PSC) decided that AMIS would have an initial mandate of one year to monitor and observe compliance with the ceasefire agreement, assist in the confidence-building process, to contribute to the security of humanitarian relief, the return of IDPs and refugees, while contributing to general security in Darfur. AMIS was to be boosted to 3,320 personnel, including 2,342 military of which 450 would be observers, 815 civilian police, and other civilian personnel. However, considering the size of Darfur and the nature and scale of violence and insecurity in the region, it was clear to everyone that AMIS would be inadequate in effectively providing security for Darfurians; moreover, its mandate did not include robust civilian protection.

In November, SRSG Pronk warned the Council that ‘in Darfur itself the situation has greatly deteriorated’ and that he was ‘afraid that the situation … may become unmanageable unless greater efforts are made both at the negotiating table and on the ground.’ The only official Council action in response was the issuing of a press statement by rotating president, the United States, noting that the Council was ‘deeply concerned’ about the ‘deterioration of the security and humanitarian situation’. More concerted action failed to occur despite the Council condemning ‘ongoing violations of human rights and humanitarian law such as attacks on civilians, sexual violence and hostage-taking that are being perpetrated in Darfur by all parties including the Government of the Sudan, rebel groups, and the Janjaweed

militias.’ In fact, this was the first time that the UNSC had accused the Sudanese government of attacks on its own civilian citizens in Darfur, but it did not provoke any new action on behalf of the Council; indeed, the threat of sanctions seemed to have been relegated in the Council’s approach, not even being mentioned in the statement.

On 18–19 November, the Council met in Nairobi, Kenya, to finalise the impending north-south Sudan peace agreement, although the crisis in Darfur was unavoidably a subject of discussion. During the meeting, Vice-President Taha addressed the Council, the highest-ranking Sudanese official to do so since the body became engaged with the Darfur crisis. Taha claimed, *inter alia*, that the conflict in Darfur was ‘instigated by local groups with the support of foreign parties’ and that his government was acting in good faith to reach a political agreement and to alleviate the humanitarian crisis. During the meeting, the Council unanimously passed Resolution 1574, which, while focused upon the north-south peace process, also referred to Darfur, although these references were primarily perfunctory restatements of existing demands or observations. Most notably, and not acting under Chapter VII, it stated that the Council, in ‘accordance with its previous resolutions on Sudan, *decides* to monitor compliance by the parties with their obligations … and, subject to a further decision of the Council, to take appropriate action against any party failing to fulfil its commitments’. This was further evidence of the body’s retraction from a more coercive response to Darfur.

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Indeed, reflecting on a year that had seen genuine Council engagement with the Darfur crisis but also the emergence of divisions within the body (particularly amongst the P5) on how it should respond further, SRSG Pronk in mid-December told the media that “it was time for more than ‘kind words and recommendations’ from the big powers. All the Sudanese parties needed to see a united front, particularly from the Security Council.”331 Furthermore, Pronk was quoted, Khartoum and the Darfur rebels ‘need to see that the [P5] are no longer divided on the way forward … If the Sudanese Government and the rebels were faced with a unified front, with the powerful nations in the world saying that they would not tolerate non compliance with the Council’s resolution, the parties would have no other choice but to come up with a negotiated political solution”.332

COI findings create new pressure for Council action: Early 2005

In 2005, Argentina, Denmark and Greece, Japan, and Tanzania replaced Chile Germany and Spain, Pakistan, and Angola, respectively, as non-permanent members of the Council. One of their first acts was to oversee on 9 January the signing of the Comprehensive Peace Agreement (CPA) by the Sudanese government and the SPLM/A in Nairobi, Kenya, formally ending the long-running civil war between north and south Sudan and establishing a political power-sharing arrangement, which the Council hoped would ‘mark a watershed in the history of the Sudan.’333 The rotating Council president, Argentina, urged the forthcoming Government of National Unity (GNU) in Sudan to ‘commit itself fully and actively

to ending the violence in Darfur, thereby extending the benefits of the [CPA] throughout the national territory.’ The agreement had two potentially important consequences for Darfur. First, the political compromises that had been enacted could lead to a change in Khartoum’s counter-insurgency strategy in Darfur. Second, now that north-south Sudan peace had been reached, the Council could focus on Darfur after a number of months of inaction. Indeed, in the face of continuing violence and crisis in Darfur and stalemate inside the Council, the US representative claimed in mid-January that ‘sanctions were clearly still on the table’, but it was clear that this position was not one shared by all Council members.

Nevertheless, pressure for the Council to take more coercive action against the Sudanese government was increased significantly by the release of the Council-mandated International Commission of Inquiry on Darfur on 1 February (see Chapter 2 for the report’s main findings). The Secretary-General supported Washington’s assertion that sanctions should have remained a consideration for the Council because the COI had found that the Sudanese government and the Janjaweed were ‘responsible for crimes under international law’ and that ‘attacks on villages, killing of civilians, rape, pillaging and forced displacement have continued even while it was conducting its inquiry.’ Annan said of the COI: ‘Its most important recommendation, to which I hope the Security Council will give immediate and very serious attention, is that ‘action must be taken urgently to end these violations’. It was evident that such findings would compel the Council into taking new forms of action on Darfur, but the extent to which Council members would be prepared to

take a more coercive approach to dealing with Khartoum over its role in atrocities was unclear.

Indeed, tellingly, before the UNSC was due to be officially briefed on the COI’s report in mid-February, a special session of the Council had been scheduled to celebrate the signing of the CPA and to discuss the proposed consensual deployment of a 10,000-strong UN peacekeeping operation in southern Sudan to support its implementation. The meeting was attended by AU and UN representatives, SPLM/A leader John Garang, and, crucially, Vice-President Taha, whose government had just been accused of atrocities by the COI — which he rejected — and who personally had just been ‘entrusted with the Darfur file’ by President Bashir.

While the focus of the meeting was on the CPA, Council president, Benin, stated that the body condemned ‘continuing ceasefire violations and acts of violence in Darfur’ and ‘deplored the continuing attacks on civilians’. The Council urged ‘Sudanese authorities at all levels and all the rebels’ to comply with the demands of existing resolutions on Darfur. Moreover, noting the COI’s finding, the Council’s members ‘condemned the serious crimes under international law which had been committed in Darfur’ and ‘stressed their determination to tackle impunity and to ensure that the perpetrators are brought to justice.’ Yet despite such condemnations, the Council’s cooperation with the Sudanese government on the CPA, as evidenced by its interactions with Taha, appeared to preclude a more coercive approach to dealing with the crisis and atrocities in Sudan’s west.

The Council was officially briefed on the COI report on 16 February by the Secretary-General and the UN High Commissioner for Human Rights (HCHR),

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Louise Arbour.\textsuperscript{338} Annan called the report ‘one of the most important documents in the recent history of the United Nations. It makes chilling reading, and it is an urgent call to action.’ He told the Council it ‘established that many people in Darfur have been the victims of atrocities perpetrated on a very large scale for which the Government of Sudan and the Janjaweed are responsible — including war crimes and, very likely, crimes against humanity’, while also noting that rebel groups were also implicated in possible war crimes. Annan said that it was ‘vital that these crimes not be left unpunished’, noting the COI’s recommendation that the situation in Darfur be referred to the International Criminal Court (ICC), and added that the report demonstrated ‘beyond all doubt, that the past two years have been little short of hell on earth for our fellow human beings in Darfur. And despite the attention the Council has paid to the crisis, that hell continues to this day.’ He argued that the ‘international community, led by the Council, must immediately find a way to halt the killing and protect the vulnerable. The full range of options should be on the table — including targeted sanctions, stronger peacekeeping efforts, new measures to protect civilians and increased pressure on both sides for a lasting political solution.’\textsuperscript{339}

HCHR Arbour stated that one way to ‘reduce the carnage’ in Darfur was to ‘remove from their positions those who orchestrate and execute it’ and that the Council’s establishment of the COI was a good step in that direction.\textsuperscript{340} She said that the COI’s findings represented a ‘blueprint for action’ rather than simply a measure to bring justice for past atrocities. Importantly, in direct contradiction of Taha’s previous statements to the Council rejecting external interference in Sudanese affairs

\textsuperscript{338} UN Security Council, 5125\textsuperscript{th} Meeting, S/PV.5125, February 16, 2005.
\textsuperscript{339} UN Security Council, 5125\textsuperscript{th} Meeting, S/PV.5125, February 16, 2005.
\textsuperscript{340} UN, 5125\textsuperscript{th} Meeting, S/PV.5125, February 16, 2005.
and claiming that Sudan’s judicial system could and should prosecute any crimes in Darfur, Arbour noted that the COI had ‘reviewed steps taken by the Sudanese Government and by judicial authorities to address those crimes, and it concluded that they were both unwilling and unable to act’, citing the weakness and perceived impartiality of the Sudanese justice system, the contravention of many human rights laws in Sudanese law, and the insufficient number and inadequate nature of prosecutions by the system to date regarding the Darfur conflict. Most crucially, however, Arbour proposed that:

In my view, any new initiative proposed by the Government of Sudan today to address these crimes could not be supported in the light of the Commission’s conclusion. In particular, the extent of involvement of Government officials — as documented by the Commission — would appear to foreclose such options.341

This argument should also have been applied to the provision of security in Darfur. As such, because the Sudanese government was directly responsible for exacerbating insecurity in Darfur, including by attacking the civilian population, it should have had its control of security in the region curtailed by the coercive deployment of an external force. Indeed, highlighting the urgency need for more effective Council action, on the ground in Darfur by mid-February 2005, according to the UN, ‘[m]ost estimates put at 70,000 the number of people killed since the conflict began … with another 1.65 million internally displaced and 200,000 more who fled over the border into Chad’.342 The release of the COI’s report and Arbour and Annan’s briefing of the Council were significant developments in the context in which the Darfur crisis would now be viewed. Moreover, increased pressure had

been placed upon the Council to respond, and it would need to at least be seen to be taking new action in light of the documented atrocities against civilians and direct involvement of the Sudanese government in them.

**Council re-engages with Darfur: March 2005**

Indeed, in March 2005, in the face of mounting pressure, the Council re-engaged with Darfur. For example, urging the Council to act more forcefully, Annan called an informal meeting of the body on 7 March to discuss new options to address the Darfur crisis, in which he attempted to ‘press for a beefed up international force on the ground’.\(^\text{343}\) Annan suggested either strengthening the 1,900 AMIS monitors already in Darfur or deploying a new UN force, with or without the AU troops included, claiming that ‘everyone agrees that a stronger international presence on the ground is crucial’.\(^\text{344}\) Additionally, SRSG Pronk concluded that recent attacks on aid convoys and other humanitarian workers, which ultimately diminish the relief of desperate civilians, would continue ‘unless a very robust protection force of at least 8,000 troops is deployed’ in Darfur to protect civilians and the humanitarian relief operation.\(^\text{345}\) In consideration was if and how UNAMIS in south Sudan could contribute to security in Darfur.\(^\text{346}\) Yet, crucial in this equation was the consent of the Sudanese government, and, absent such consent, how far members of the Council would be willing to act coercively.

\(^\text{344}\) UN Secretary-General, “‘We Are Not Moving Fast Enough’ to Deal with Appalling Situation in Darfur, says Secretary-General, After Meeting with Security Council”, Press Release SG/SM/9751 AFR/1120, March 7, 2005.
\(^\text{346}\) Such deliberation over the potential role of UNAMIS in Darfur was reflected in that mission’s short mandate extensions in March 2005. See UN Security Council, Resolution 1585 (2005), S/RES/1585 (2005), March 10, 2005; and UN Security Council, Resolution 1588 (2005), S/RES/1588 (2005), March 17, 2005.
In this context, Resolution 1590, which established for an initial six-months period in southern Sudan the United Nations Mission in Sudan (UNMIS), was passed unanimously by the Council on 24 March at the request of the parties to the CPA.\footnote{UN Security Council, Resolution 1590 (2005), S/RES/1590/2005, March 24, 2005.} Designed as a peacekeeping force to take over the existing UN advance mission, UNMIS, consisting of 10,000 UN troops and 715 civilian police, was mandated under Chapter VII to ‘take all necessary action, in the areas of deployment of its forces and as it deems within its capabilities’ to protect UN personnel and humanitarian workers, and ‘without prejudice to the responsibility of the Government of Sudan, to protect civilians under imminent threat of physical violence’. Yet, as it was aimed primarily at supporting and implementing the CPA, UNMIS was only authorised to ‘liaise’ with AMIS over the crisis in Darfur. As such, the resolution requested the Secretary-General within 30 days to provide ‘options for how UNMIS can reinforce the effort to foster peace in Darfur through appropriate assistance to AMIS’, although this was limited to logistical and technical support.

This passage of a Council resolution establishing a UN peacekeeping force in Sudan — including Chapter VII authority for civilian protection — was made possible by the signing of the CPA and moreover by the consent of the Sudanese government. Yet, despite Khartoum’s invitation to deploy external troops in southern Sudan, a similar force in Darfur would be precluded by the government’s rejection of any more robust measures by the Council in the country’s west. Tellingly, the Sudanese representative thanked the sponsors of Resolution 1590 for their ‘rational approach in defining the Mission’s mandate in a separate resolution. We fully appreciate the wisdom of the members of the Council and their cooperation aimed at ensuring the unanimous adoption of this resolution so very important and historic for
Sudan’, implying that the Council had deliberately detached the issue of supporting the CPA from dealing with crimes against humanity in Darfur. While this was good news for the people of southern Sudan, it perpetuated pervasive insecurity for the population of Darfur.

Nevertheless, five days later, on 29 March, the Council did return to address Darfur specifically and took a more coercive approach, passing Resolution 1591, its second on Sudan for the month. The successful draft resolution was introduced by the United States and supported by 12 members — Argentina, Benin, Brazil, Denmark, France, Greece, Japan, the Philippines, Romania, the UK, Tanzania and the US — with three abstentions, from China, Russia and Algeria. Passed entirely under Chapter VII, and determining that the ‘situation in Sudan continues to constitute a threat to international peace and security’, the resolution expressed how the Council ‘deplored’ that the Sudanese government and the rebels had not abided by previous Council resolutions on Darfur, the ceasefire agreement, or the Abuja peace process, and noted, inter alia, ‘air strikes by the Government of Sudan in December 2004 and January 2005’ and the ‘failure’ of Khartoum to ‘disarm Janjaweed militiamen and apprehend and bring to justice Janjaweed leaders and their associates who have carried out human rights and international law violations and other atrocities’.

Operationally, ‘in light of the failure of all parties to the conflict in Darfur to fulfil their commitments’, the Council established a ‘Committee of the Security Council’, consisting of all of its members and assisted by a four-member Panel of Experts, to conduct technical assessments of compliance and violations, to implement travel and financial sanctions against individuals yet-to-be-identified by

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the Committee who ‘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’, or who violate the existing arms embargo, the latter of which was extended to all parties to the N’Djamena ceasefire agreement (now including the Sudanese government). It also demanded that the Sudanese government ‘immediately cease conducting offensive military flights in and over the Darfur region’. The sanctions were to come into force 30 days after the passage of the resolution, while the Council would consider further sanctions if there were additional violations or non-compliance with existing commitments and resolutions.

During the Council session, the three members that abstained from voting made public statements, along with Tanzania, the US, and Sudan. Russia argued that while it was concerned about the lack of compliance by all parties in the Darfur conflict, it wanted to ensure that the Council, in ‘righting this negative situation’, did not damage implementation of the CPA. Moscow contended that the ‘potential of political and diplomatic measures to defuse the conflict … has by no means been exhausted.’ It claimed that imposing sanctions on the nascent Government of National Unity would not be conducive to a productive start, although ‘naturally, [this] does not negate the justification for targeted pressure on those who in fact are creating obstacles to normalizing the situation in Darfur.’ Russia did not support the resolution based on its position that sanctions in Sudan would be difficult for the Council to implement and that a more effective process was needed to get peace talks back on track.

China, similarly, stated that it did not support the draft because it had ‘serious reservations about the resolution’ and also warned that sanctions imposed on

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individuals relating to Darfur could complicate the CPA. Beijing argued that, while pressure should be maintained on the parties to resolve the conflict, ‘just maintaining pressure without regard for the complexity of the issue and the specific circumstances of the Darfur crisis could end up further complicating the situation and making it even more difficult to resolve.’ The Chinese claimed that the Council should play a constructive role, not a negative one — such as by imposing sanctions, which China ‘has always taken a cautious approach to’ — and that because Chinese concerns were not reflected in amendments to the draft, it did not support the resolution.

Non-permanent Algeria argued that, while it too was concerned about the plight of Darfurians and emphasised the role of the AU in attempting to resolve the crisis, the Council itself should ‘adopt a positive and balanced approach that takes account of the complexity of the situation in the Sudan and that respects that country’s sovereignty, unity and territorial integrity.’ Algiers also argued that sanctions could hinder the CPA, and it ‘regretted’ that unanimity on the draft resolution had not been secured as it believed that ‘there was consensus within the Council on the need to send a strong message to the parties to cause them to respect their commitments.’ The reasons for a lack of consensus, Algiers argued, was because the sponsors ‘made no efforts to iron out the disagreements’ and decided to leave the draft text unchanged, despite the efforts of those members that wanted some changes to achieve such consensus.

Sudan, which was given the opportunity to reply to the passage of the resolution, argued that the resolution and its threat of sanctions was irresponsible and would complicate matters in the country, including the resolution of the Darfur crisis. It argued that the rebels relied on the Council to threaten the Sudanese government
and for this reason the rebels had stalled political negotiations. Khartoum claimed that the draft resolution was a product of the US Congress, which had no understanding of or concern for different cultures, and indeed the AU position on the conflict had been ignored. Washington replied briefly that the US Congress did understand the conflict and culture in Sudan and indeed many members of Congress had travelled to Darfur to experience the situation there first-hand.

The voting on Resolution 1591 represented a continuation of existing trends in the Council on Darfur: permanent members China and Russia were again extremely reluctant to criticise Sudan and were not supportive of sanctions, and they were joined in abstaining from the vote by non-permanent member Algeria, which called for the Council to respect Sudanese sovereignty. As sponsor of the resolution, the United States again appeared to be leading the push for harsher measures against Sudan — supported by a majority of the body’s members — while engaging in diplomatic jibes with Khartoum over the countries’ respective political interests. Despite the continuation of divisions within the Council, particularly between its permanent membership, the Council had finally established a sanctions regime on Sudan, even if it was limited in scope and as yet unclear about which individuals would be subjected to it, and had extended the arms embargo to cover the operations of the Sudanese military in Darfur.

Two days later, on 31 March, in its third key action on Sudan for the month, the Council adopted Resolution 1593 by attracting 11 positive votes, although it also saw four abstentions from a seemingly unlikely coalition of China, the United States, Algeria, and Brazil.\(^351\) Sponsored by Britain, Resolution 1593 was relatively short but highly significant for the body’s response to the Darfur crisis specifically and for

international criminal justice more generally: the resolution’s referral of the situation in Darfur since 1 July 2002 to the prosecutor of the International Criminal Court was the first of its kind by the Council since the Court was established on that date. The Darfur referral was based upon the findings and recommendations of the COI report and the resolution was passed under Chapter VII.

In making the ICC referral, the Council ‘decided’ that that the Sudanese government and other parties to the conflict ‘shall cooperate fully with and provide any necessary assistance’ to the prosecutor’s investigation. Welcoming the passage of Resolution 1593, the Secretary-General stated that he commended the Council for ‘using its authority under the [ICC’s] Rome Statute to provide an appropriate mechanism to lift the veil of impunity that has allowed human rights crimes in Darfur to continue unchecked’ and congratulated it members for ‘overcoming their differences to allow the Council to act to ensure that those responsible for atrocities in Darfur are held to account.’\(^{352}\) Illustrating the significance and contentious nature of the resolution, as well as the intensification of the body’s deliberations on responding to the crimes and crisis in Darfur, all Council members plus Sudan made statements during the Council session.

Explaining its decision to abstain from voting, the US claimed that while it ‘strongly support[s] bringing to justice those responsible for the crimes and atrocities that have occurred in Darfur and ending the climate of impunity’, and that ‘justice must be served there’, it instead ‘believes that the better mechanism would have been a hybrid tribunal in Africa’.\(^{353}\) However, Washington did not veto the draft resolution because it was ‘important that the international community speak with one voice in

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\(^{352}\) UN Secretary-General, Office of the Spokesperson, “Statement Attributable to the Spokesman for the Secretary-General Following Adoption of Resolution 1593 on Sudan”, March 31, 2005.

\(^{353}\) UN Security Council, 5158\(^{th}\) Meeting, March 31, 2005.

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order to help promote effective accountability’ and because of the included provision that the ICC not be able to prosecute any US officials or military personnel in Sudan. As a non-party to the ICC, it was evident that Washington’s abstention pertained to its generic position — that it ‘continues to fundamentally object to the view that the ICC should be able to exercise jurisdiction over the nationals, including government officials, of States not party to the Rome Statute. That strikes at the essence of the nature of sovereignty’ — rather than any specific desire to preclude prosecution for crimes in Darfur.

Conversely, fellow abstainer Brazil — also at the time the Council president — stated that it was fully supportive of the ICC referral and yet did not support the resolution because of the very exemptions from prosecution it made for certain categories of individuals that the US insisted it include: ‘nationals, current or former officials or personnel from a contributing State outside Sudan which is not a party to the Rome Statute … shall be subject to the exclusive jurisdiction of the contributing State for all alleged acts or omissions arising out of or related to operations in Sudan established or authorised by the Council or the African Union’. In this sense, Brazil argued that the authority of the ICC should be strengthened, not weakened for the sake of negotiating a specific Council resolution, despite the importance of the Darfur referral in the context of that particular crisis.

Making a different argument, China stated that had also abstained on Resolution 1593 because ‘when trying to ensure justice, it is also necessary to make every effort to avoid any negative impact on the political negotiations on Darfur. When punishing the perpetrators, it is also necessary to promote national reconciliation. When trying to solve the question of Darfur, it is also necessary to

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sustain hard-won results in the North-South peace process. Beijing went on to state that ‘[b]ased on that position and out of respect for national judicial sovereignty, we would prefer to see perpetrators of gross violations of human rights stand trial in the Sudanese judicial system’. Indeed, China did not support the Darfur referral absent the consent of Khartoum, it said, and more generally opposed the ICC, an institution to which it was also not a party. For Algeria, the AU was the appropriate body to deal with the crisis in Darfur, including implementing measures to bring to justice perpetrators of crimes in the region, but because the Council had again ignored AU suggestions, Algiers had abstained from voting.

Of the group of 11 Council members that supported Resolution 1593, the UK argued that by passing this resolution, which it had sponsored, the Council had ‘acted to ensure accountability for the grave crimes committed in Darfur’, and hoped that it would ‘send a salutary warning to anyone intending to commit any further such atrocities.’ According to London, the Council’s referral to the ICC was the ‘most efficient and effective means available to deal with impunity and to ensure justice for the people of Darfur.’ France similarly argued that the Council was ‘duty bound to take action’ in regards to the reports of atrocities presented, such as by the COI. As such, Paris supported the ICC referral because it ‘sent a twofold and very forceful message not only to all those who have committed or might be tempted to commit atrocities in Darfur, but also to the victims: the international community will not allow those crimes to go unpunished.’ France claimed that this resolution demonstrated that the body would ‘remain vigilant to ensure that there is no impunity’ and that the ICC was the ‘symbol of such hope for the victims of atrocities.’ The final permanent member, Russia, also stated its support for the

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357 UN Security Council, 5158th Meeting, March 31, 2005.
resolution because ‘[a]ll who are guilty of gross violations of human rights in Darfur must be duly punished’, and as such the ICC referral would ‘contribute to an effective solution in the fight against impunity in Darfur in the context of providing for the normalization and stability of the situation in that region…’

Finally, the Council invited Sudan to respond to the passage of Resolution 1593, to which Khartoum reiterated its claims that the body was acting unwisely because its actions would ‘complicate’ the situation on the ground in Darfur, and argued that the Council was imposing double standards of justice in light of the exceptions made in the resolution over categories of persons that could not come under the court’s jurisdiction (a thinly-veiled critique of the US position). Sudan also claimed that African suggestions for resolving the crisis were again ignored and that Khartoum was in fact administering trials for those accused of crimes in Darfur. Finally, it claimed that major powers were practicing a new form of colonialism though their manipulation of the ICC and the Council to serve their own interests against the interest of former colonies and developing states, such as Sudan.

The voting pattern and statements pertaining to Resolution 1591 demonstrated that China continued to consistently abstain from resolutions that imposed restrictions on or punished the Sudanese government. Beijing’s position was again supported by Algeria. The US abstention in this case attested to its generic position on the ICC rather than any fundamental rejection of prosecution for crimes in Darfur, and, in the context of its general hostility towards the Court, Washington in fact made a significant concession by not vetoing the draft. Brazil’s abstention, conversely, was a reaction to the perceived degradation of the ICC and it claimed that the resolution did not go far enough in mitigating impunity in Darfur.

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358 UN Security Council, 5158th Meeting, March 31, 2005.
While 11 members supported Resolution 1593 and the potential role of the ICC, including three permanent members, divisions amongst the P5 again weakened the Council’s moral and political authority and its ability to pressure an obdurate and increasingly diplomatically successful and confident Khartoum. Moreover, while a limited and ambiguous sanctions regime, arms embargo, international investigation, and now ICC referral had been established by the Council in its response to the crimes and crisis in Darfur, such disunity suggested that, at this point, despite an increasingly persuasive case for doing so, there appeared little chance of the body coercively deploying a necessary military operation to protect Darfurian civilians from the own government and its allied militias.

Prolonged Council inaction on Darfur: Post-March 2005

After the flurry of activity including three resolutions on Sudan during March, the Council pushed Darfur down its agenda for a number of months. The next resolution on Darfur was not passed until September 2005, and indeed the crisis in western Sudan was not even on the Council’s agenda for the months of April and November, during which China and Russia respectively held the body’s rotating presidency, although on 5 April the Secretary-General submitted to the ICC prosecutor a sealed file containing the names of fifty-one suspects of war crimes in Darfur that were confidentially identified by the COI. The UN also reported that its offices in Khartoum were attacked by members of a crowd of tens of thousands of protesters angry at the ICC referral.\(^360\) Annan noted that in Darfur the Sudanese government ‘continues to pursue the military option on the ground with little

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\(^{360}\) UN News Centre, “Secretary-General Gives List of Darfur War Crimes Suspects to International Court”, April 5, 2005.
apparent regard for the commitments it has entered into’ and that ‘reports continue to be received that Government forces operate jointly with armed tribal militias’, while public statements had been made by the Sudanese government threatening international staff in Darfur if action was taken by the ICC.\footnote{361}

The Council’s actions were limited to endorsing the proposed expansion of AMIS to 6,171 military and 1,560 civilian police personnel and looking at ways in which UNMIS could provide support.\footnote{362} On 6 June the Council was briefed for the first time on the ICC’s Darfur case by the Court’s chief prosecutor, Luis Moreno-Ocampo, who stated that based on his preliminary investigations:

There is a significant amount of credible information disclosing the commission of grave crimes within the jurisdiction of the Court having taken place in Darfur. Those crimes include the killing of thousands of civilians and the widespread destruction and looting of villages, leading to the displacement of approximately 1.9 million civilians. The living conditions resulting from those crimes have led to the deaths of tens of thousands from disease and starvation, particularly affecting such vulnerable groups as children, the sick and the elderly. Information also highlights a pervasive pattern of rape and sexual violence.\footnote{363}

On 23 September the Council unanimously passed Resolution 1627, the first resolution on Sudan since March, although its purpose was simply to renew the mandate of UNMIS by a further six months until 24 March 2006.\footnote{364} Then on 13 October, the Council issued a Presidential Statement expressing its ‘grave concern’
at reports of increased violence in Darfur over the previous month, including attacks by the SLM/A and JEM on AMIS personnel, the Janjaweed attack on Aro Sharow IDP camp, killing 29, and the government forces attack on Tawilla. The Council warned that such attacks could be referred to the sanctions committee. Such meagre actions, however, appeared to reflect divisions in the Council over new and more coercive measures against Khartoum, and even over effectively enforcing the demands of previous resolutions. During this very period, UN member states had unanimously endorsed the ‘responsibility to protect’ doctrine at the UN World Summit (see Chapter 1).

Indeed, the lack of coercive Council action was underscored by continuing reports of atrocities in Sudan by the Secretary-General and his representatives in Sudan. In a 14 October report to the Council, Annan noted the ‘alarming deterioration in the security situation in all three Darfur states’ in which the ‘frequency and intensity of the violence committed by the Sudanese Armed Forces and the Popular Defence Forces, Government-aligned tribal militia and the armed movements … reached levels unseen since January 2005.’

On 21 December, the Council met on Darfur for the final time for the year, producing both Resolution 1561 and a Presidential Statement. The former, passed unanimously and under Chapter VII, extended the mandate of the sanctions committee’s Panel of Experts until 29 March 2006. In the latter, the Council welcomed and was encouraged by the level of support for the seventh round of Darfur peace talks, reiterated its call for all parties to respect their existing

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agreements, and called for the Sudanese government to disarm the militias and to bring to justice those accused of committing crimes. It also expressed its concern at the cross border attacks by militias supported by the governments in both Sudan and Chad.\footnote{UN Security Council, “Statement by the President of the Security Council”, S/PRST/2005/67, December 21, 2005.}

In his final report on Darfur to the Council for 2005, Annan concluded that over the past eighteen months, the ‘response of the Security Council to the crisis in Darfur has been consistent and forceful’ as it had requested ‘the cessation of all violence and attacks, the disarmament and control of the Janjaweed militia, an end to impunity, and a call for a political solution’, and that in March 2005 the Council had decided to ‘impose targeted measures’ and refer Darfur to the ICC. Yet, the ineffectiveness and inadequacy of the Council’s relatively non-coercive approach to Khartoum was clear:

Despite the breadth of these measures, adopted over an extended period, reports from the ground confirm the marked deterioration in the situation since September, including the proliferation of actors to the conflict, an increase in the number of inter-tribal clashes, the entry of destabilizing elements from Chad, and more instances of banditry. This is a deeply disturbing trend which has devastating effects on the civilian population. Large-scale attacks against civilians continue, women and girls are being raped by armed groups, yet more villages are being burned, and thousands more are being driven from their homes. As we approach the end of 2005, the second full year of conflict in Darfur, regrettably we have to acknowledge that the most urgent needs of millions affected by the war remain largely unmet, including their protection and safety. While countless lives have been saved thanks to a massive humanitarian relief effort led by the United Nations, those most exposed to violence and gross violations of human rights continue to live in fear and terror. This includes the large majority of internally displaced persons, as more camps for the displaced have been attacked in recent months, and violent armed groups are a constant threat in areas surrounding many camps. Even
more exposed are those who have managed to remain in their villages.\textsuperscript{369}

2006: UN Peace Operation Put on the Horseshoe Table

After almost three years of keeping the legal option of military intervention off its table, in 2006 the Council finally began to consider the deployment of a UN peace operation in Darfur to take over from the inadequate AMIS force, as conditions inside Sudan’s western region deteriorated and atrocities against civilians continued. However, it became clear that the Council was only willing to consider a consensual, rather than coercive, deployment, which would prove to be a crucial obstacle in the face of Sudanese government opposition. Moreover, the normative context in which Council-authorised military intervention was debated had evolved with the unanimous September 2005 UN World Summit endorsement of the ‘responsibility to protect’, an endorsement that the Council itself would specifically sanction in April 2006.

Initial discussions on a UN peace operation in Darfur: Early 2006

In 2006, five new non-permanent members joined the UNSC after their election by the General Assembly: Republic of Congo and Ghana, Peru, Qatar, and Slovakia replaced, respectively, Algeria and Benin, Brazil, the Philippines, and Romania. After months of inaction on Darfur, it was reported in early January that the Secretary-General and the Council had begun discussing the possibility of a UN force taking over the role of AMIS in Darfur and expanding the operation, as it was clear that the African Union mission was severely under-resourced, inadequate, and

likely unable to fulfil even its limited mandate beyond the coming March.\textsuperscript{370} Annan revealed that although the UN Department of Peacekeeping Operations (DPKO) could not logistically have a force deployed by that time, it had nevertheless commenced contingency planning to ensure that there was no gap in the international presence in the region. This was indeed the first instance in which the possibility of a UN force in Darfur was raised publicly, reflecting both the growing frustration by some members that the Council’s existing approach was compromised and ineffective in providing security on the ground in Darfur, and international political pressure for more coercive action against Sudan. The transition to a UN force in Darfur would be at the centre of the Council’s deliberations over Darfur for the remainder of 2006.

This theme was addressed more comprehensively by SRSG Pronk and AU Special Envoy for Sudan, Salim Ahmed Salim, in their 13 January briefing to the Council.\textsuperscript{371} Pronk noted that the parties had missed the stated 31 December 2005 deadline to reach a political agreement to end the conflict, and characterised the security environment in Darfur as ‘chaotic’. He argued that the ‘perpetrators of the 2003 and 2004 violence have attained their goal: many areas have been cleansed. They have free passage in the countryside. Millions of villagers sitting in camps are too afraid to leave. Terror continues. At least once a month groups of 500 to 1,000 militia, on camels and on horseback, attack villages, killing dozens of people and terrorizing others, who flee.’\textsuperscript{372} Importantly, in warning that the IDPs and other vulnerable people in the region ‘do not trust anybody anymore’ — referring to local

\footnotesize{\textsuperscript{370} UN News Centre, “UN Weighs Options for Sudan’s Darfur Region as Funds for African Union Force Run Low”, January 12, 2006. \\
\textsuperscript{371} See UN Security Council, 5344\textsuperscript{th} Meeting, S/PV.5344, January 13, 2006; and UN Security Council, “Official Communiqué of the 5345\textsuperscript{th} (closed) Meeting of the Security Council”, S/PV.5345, January 13, 2006. \\
\textsuperscript{372} UN Security Council, 5344\textsuperscript{th} Meeting, S/PV.5344, January 13, 2006, p. 4.}
governmental authorities — Pronk argued that ‘international guarantees’ were required. As such, the SRSG then outlined to the Council, in the clearest terms to date, the need for a robust UN force in Darfur:

The force which is necessary to provide such guarantees should be big — much bigger than the present [AMIS] one. It should not be on call but in place, present everywhere where people may be attacked. It should be strong, able to defend itself, able to deter attacks on civilians and able to disarm militias and the Janjaweed, which should have been disarmed by the Government in the first place. That has not been done, despite demands laid down in Security Council resolutions. The force should stay long enough to provide confidence — at least three to four years after the reaching of a peace agreement. Its financing should be guaranteed all along. It should have a broad mandate — broad enough to deter non-compliance. It should be an integral element of a unified approach towards Darfur, with humanitarian, political, police, legal, human rights, reconstruction and economic development instruments. It should be supported by sanctions — sanctions on troop movements which are not in accordance with the agreement; sanctions on arms deliveries; and sanctions against those who have caused atrocities, and in particular those who have instructed others to do so — not only foot soldiers, but commanders and those political leaders who were responsible for the carnage of 2003 and 2004 and who refuse to stop the atrocities of 2005.373

In addition, Salim focused upon the AU-led Abuja peace talks between Khartoum and the Darfur rebels, highlighting the problem of fragmentation and disunity amongst the rebel movements, and explaining that two of the key disagreements between the parties were over power sharing and security arrangements. The AU envoy also argued that the parties needed to be placed under more pressure to negotiate, and that, if they continued to cause delays, then the Council should ‘hold them responsible for prolonging the suffering of their people. In such an eventuality, the threat and application of carefully targeted sanctions

should be credible and evident and should enjoy the strong support of a united Security Council.  

Speaking to the press after the briefing, Tanzania, as Council president, confirmed that the Council was considering its options regarding the possible end of the AMIS operation in Darfur, including the potential for a UN force to be established, although consultations were ongoing and much would depend on the outcome of the Abuja peace talks. The Sudanese representative also spoke to the press after the briefing, rejecting the need for a UN force to take over from AMIS because, it was claimed, the African Union mission was effective. Indeed, it appeared as though Khartoum was finding itself under increasing pressure as proposals for a more robust international force in Darfur — one more likely to curtail the Sudanese government’s freedom of action in the western region of the country — gained salience inside the Council.

Publicising the idea of a UN force in Darfur, and further pre-empting the Council on this issue, the Secretary-General published an Op-Ed in the Washington Post on 25 January supporting such a move. Noting the expiration on 31 March 2006 of the mandate of AMIS, Annan claimed that the AU’s 12 January decision to give in-principle support to such a transition ‘puts the Security Council on the spot’ because it had not yet publicly endorsed such a move. Annan also highlighted the normative pressure placed on the Council to respond to Darfur by the General Assembly’s unanimous endorsement of the ‘responsibility to protect’ doctrine at the 2005 UN World Summit. According to Annan, the ‘transition from the A.U. force to a U.N. peace operation in Darfur is now inevitable. A firm decision by the Security

\[375\] See, media stakeout, UN Security Council, UN Webcast, January 13, 2005.
Council is needed, and soon, for an effective transition to take place.’ Providing further indication of the type of force that would be required in Darfur, Annan argued: “[b]ut let no one imagine that this crisis can be solved simply by giving the present A.U. mission a ‘U.N. hat.’ Any new mission will need a strong and clear mandate, allowing it to protect those under threat, by force if necessary, as well as the means to do so. That means it will need to be larger, more mobile and much better equipped than the current African Union mission. Those countries that have the required military assets must be ready to deploy them.” It was clear that such public support for a robust UN force from within the UN Secretariat and by the African Union placed the spotlight back on the Council, the preeminent body mandated to maintain international peace and security.\textsuperscript{377}

As a result, in early February the Council held closed door consultations and then a public meeting on the possibility of establishing a UN peace operation in Darfur, before issuing another Presidential Statement commending the work of AMIS, acknowledging the AU PSC’s in-principle support for a transition to a UN force, and inviting the AU Chairperson to initiate consultations with the Council to that end.\textsuperscript{378} Until such a transition could occur, the Council stressed that AMIS should continue to be actively supported and that a peace agreement needed to be quickly reached in Darfur. However, illustrating its continuing engagement with, rather than coercion of, the Sudanese government, the Council requested Annan to ‘initiate contingency planning without delay’ on potential options for a new UN force in Darfur in \textit{cooperation} with the GNU as well as with the Council, and the

AU: indeed, the Council appeared to under-appreciate the intensity of opposition to such a force by Khartoum and the difficulties that this would create for any deployment.

*Khartoum opposes transition to UN force in Darfur: February-April 2006*

The Council’s initial enthusiasm for the transition to a UN force — if only expressed in ambiguous terms — was soon tempered by the hostility to such a move by the Sudanese government, making it unlikely that there would be any cooperative deployment of blue helmets to provide security for vulnerable civilians in Sudan’s west. For example, in a 28 February press briefing, SRSG Pronk outlined how Khartoum was ‘very strongly opposed’ to UN troops in Darfur (even through it had recently agreed to 10,000 others in the south of the country) and had been lobbying other governments to support its position.379 Furthermore, Pronk noted that the AU appeared to be reconsidering its in-principle support for the transition because of Sudanese criticism. While voicing his own support for a new UN force, Pronk suggested that there would need to be a peace agreement in Darfur before it was likely that the P5 would authorise such a deployment. The SRSG also noted an increasingly ‘anti-UN’ feeling in Khartoum, with threats by government officials that Sudan would be another Iraq-style disaster for international troops if coercively deployed.

On 10 March the AU extended the mandate of AMIS for a further six months, providing assurance that at least some form of international force — albeit

an inadequate one — would remain in Darfur, but also effectively reducing the pressure for the speedy transition to and deployment of a UN force.\textsuperscript{380} However, the AU did also reaffirm its in-principle support for the transition, which was welcomed by then Council president, Argentina.\textsuperscript{381} On 21 March, the Council held private consultations with UNMIS troop-contributing members, Pronk, and Mark Kroeker, the UN Police Advisor in the DPKO.\textsuperscript{382} The SRSG was quoted as saying that ‘[w]e must mend our own shortcomings and provide a future UN operation in Darfur with a robust mandate and a strong force’, one that was ‘large enough to be everywhere needed, strong enough to deter any attack, with a mandate broad enough meet all possible threats, and with staying power, long enough to install confidence amongst all people in Darfur, including potential returnees’.\textsuperscript{383}

In response to such briefings, the Council met on 24 March and unanimously passed Resolution 1663, which, \textit{inter alia}, welcomed the AU’s in-principle support for the transition, its extension of AMIS until 30 September, and its intention ‘to pursue the conclusion of a peace agreement on Darfur by the end of April 2006’.\textsuperscript{384} For its part, the Council also extended the mandate of UNMIS until 24 September 2006, ‘with the intention to renew it for further periods’, and, importantly, requested that Annan, jointly with the AU, and in ‘consultation’ with the Council and Sudanese parties:

\textsuperscript{380} UN News Centre, “Annan Urges Aid to African Mission in Darfur While Transition to UN Force is Planned”, March 10, 2006.
\textsuperscript{384} UN Security Council, Resolution 1663 (2006), S/RES/1663 (2006), March 24, 2006; see also, UN Security Council, 5396\textsuperscript{th} Meeting, S/PV.5396, March 24, 2006.
expedite the necessary preparatory planning for transition of AMIS to a United Nations operation, including options for how UNMIS can reinforce the effort for peace in Darfur through additional appropriate logistics, mobility and communications, and that the Secretary-General present to the Council by 24 April 2006 for its consideration a range of options for a United Nations operation in Darfur.

Yet, in light of the contrasting positions of permanent members on dealing with Sudan over Darfur, the unanimous passage of Resolution 1663 belied a genuine commitment to the coercive transition and deployment of UN troops inside the Council. Rather, it suggested the ambiguity of such proposals and the anticipation of further attempts at bargaining with Khartoum over the matter. Similarly, five days later, on 29 March, the Council unanimously adopted Resolution 1665, which belatedly acknowledged the 9 December 2005 report of the Panel of Experts on compliance with and violations of agreements and resolutions, including the arms embargo imposed on Sudan. The report had outlined that weapons continued to enter the region illegally from neighbouring countries and from other parts of Sudan, and that the Sudanese government itself had been transferring military equipment into Darfur. Actively under Chapter VII and determining that the situation in Sudan continued to constitute a threat to international peace and security in the region, the Council extended the Panel’s mandate until 29 September 2006. But the fact that China and Russia now supported the extension of the Panel’s mandate — after originally claiming that sanctions would obstruct the peace process and having abstained from Resolution 1591, which established the sanctions regime in March

2005 — suggested that the sanctions regime was neither effectively coercive nor much of a concern for Khartoum and its allies on the Council.\textsuperscript{387}

On 11 April, under a Chinese presidency, the Council met to discuss Darfur and issued a Presidential Statement reiterating a number of previous assertions, including support for the AU-led Abuja peace process with its final deadline of 30 April, the need to protect the civilian population, and its commendation of AMIS and endorsement of the proposed transition.\textsuperscript{388} Illustrating of its continuing approach to Khartoum, however, the statement also ‘reiterated’ the Council’s ‘commitment to the sovereignty, unity, independence and territorial integrity of Sudan, which will be unaffected by the transition to a United Nations operation.’

A week later, the Council was again briefed by AU envoy Salim about Abuja peace talks. The envoy claimed that there had recently been ‘significant developments in the efforts to achieve a comprehensive peace agreement for Darfur. That agreement is clearly within our reach, despite the fact that a great deal of hard work still remains to be done.’ He added that AMIS ‘as presently constituted, is not optimally equipped to fulfil its mandate. That problem will become even more acute with the added responsibility that will come with a comprehensive ceasefire agreement.’ The AU envoy urged the Council ‘not to wait for the transition from AMIS to the United Nations force to take place before strengthening the implementation mechanisms of any agreement to be reached at Abuja.’\textsuperscript{389} Yet, it appeared as though the body was indeed intending to wait and hope that a peace agreement would be achieved in Darfur and that this would lead the Sudanese

\textsuperscript{387} Algeria had also abstained from Resolution 1591 but had finished its term on the Council at the end of 2005.
\textsuperscript{388} UN Security Council, “Statement by the President of the Security Council”, S/PRST/2006/16, April 11, 2006; see also: UN Security Council, 5409\textsuperscript{th} Meeting, S/PV.5409, April 11, 2006.
\textsuperscript{389} UN Security Council, 5413\textsuperscript{th} Meeting, S/PV.5413, April 18. 2006; see also UN Security Council, “Official Communiqué of the 5414\textsuperscript{th} (closed) Meeting of the Security Council”, S/PV.5414, April 18, 2006.
government to willingly accept a UN force, avoiding further confrontation with Khartoum and contention within the Council’s membership over a potentially coercive transition.

_Council imposes sanctions on four individuals: Resolution 1672_

In the meantime, on 19 April, the Panel of Experts released its second report on violations of and compliance with Resolution 1591, including the question of sanctions, covering the three-month period since its last report. It found numerous violations, including by the Sudanese government. For example, regarding the arms embargo, the Panel found that the flow of arms into Darfur from other parts of Sudan and neighbouring states ‘continued unabated’, and that the Arab militias appeared to be continuing to receive weapons and ammunition from Khartoum, among other sources. It also found that Khartoum had continued to ‘move armed troops and supplies’ into Darfur without the Sanctions Committee’s approval. In addition, on the monitoring of the implementation of sanctions, the Panel noted that no individual had yet been designated by the Sanctions Committee, attesting to the ineffectiveness of the sanctions regime.

Furthermore, the Panel also found that the SLA had violated the N’djamena ceasefire agreement while the Sudanese government had failed to disarm and neutralize the _Janjaweed_, and revealed that it possessed a confidential list of people accused of committing violations of international humanitarian law. Finally, the Panel said that while Khartoum had established some judicial procedures to investigate and bring people to justice in Darfur, at present they were inadequate to mitigate impunity, while the Sudanese government continued to use fixed- and

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rotary-wing aircraft for ‘aerial reconnaissance missions and for directing ground forces engaged in military operations.’ The Panel recommended, *inter alia*, that the Council establish a no-fly zone over Darfur for government aircraft; to speedily designate certain individuals for sanctions; to consider expanding the arms embargo regime; and include greater civilian protection monitoring in the Committee’s mandate.391 Such findings provided credible new evidence against Khartoum and further pressured the Council to take more coercive action over Darfur.

In response, the Council met on 25 April to address Sudan, Darfur, and the spillover of violence and humanitarian problems to neighbouring Chad. Two Presidential Statements were issued, the first reiterating the Council’s support for the Abuja peace process and its AU mediators,392 and the second noting the body’s concern about and condemnation of clashes along the Sudan-Chad border, including violence against Darfurian refugees.393 More significantly, the Council also passed Resolution 1672 with 12 affirmative votes and three abstentions, from China, Russia and Qatar.394 The resolution, sponsored by Argentina, Denmark, France, Japan, Peru, Slovakia, the UK and the US and passed under a Chapter VII mandate, imposed sanctions for the first time on four individuals as authorised by Resolution 1591 and suggested by the Panel of Experts: Major General Gaffar Mohamed Elhassan, Commander of the Western Military Region for the Sudanese Armed Forces; Sheikh Musa Hilal, Paramount Chief of the Jajul Tribe in North Darfur (*a Janjaweed* leader); Adam Yacub Shant, SLA Commander; and Gabril Abdul Kareem Badri, Field Commander for the National Movement for Reform and Development.

(NMRD, a third rebel faction). Speaking after the vote were the representatives of
the three abstaining members, plus the United States.395

Russia stated that it had abstained because it felt that applying sanctions to
the four individuals ‘might have a negative impact on the prospects for concluding a
peace agreement within the time period’, even though the ‘violation of international
norms, including international humanitarian law, should not go unpunished.’396
Instead, Moscow was ‘convinced that, within the Sudanese context and also in
broader terms, the implementation of sanctions should be closely linked with the task
of promoting the process of a political settlement of the conflict and ensuring
regional stability.’ Non-permanent Qatar asserted that it did not vote on the
resolution because it had not seen ‘clear and consistent evidence that would condemn
those individuals in the way required for imposing sanctions on them’ during the
Sanctions Committee process, and thus thought that the Council should leave such
matters to the ICC in order ‘not to influence and investigations being carried out’.397
Finally, Doha argued that, due to the positive progress report by Salim on the Darfur
peace talks, this would be a bad time to impose any sanctions, which should only
have been considered after the 30 April Abuja deadline.

Similarly, speaking in a national capacity (as it was also Council president),
the Chinese representative revealed that Beijing had abstained from voting because,
first, it had a general attitude of scepticism about the effectiveness of sanctions, and
second, more specifically, that the ‘timing for adopting such a resolution is not right’
due to the impending conclusion of the Abuja peace talks.398 China argued that
‘[d]uring this exceptionally important period’ the Council should ‘focus on the

overall political situation and remain on high alert. If it takes any course of action, it should focus on promoting and facilitating, rather than affecting and interfering in, the peace talks.’ It warned that the Council would be responsible if the sanctions caused the peace talks to fail. Finally, like Qatar, China was not convinced of the evidence presented against the individuals in the Sanctions Committee and more generally had problems with the processes of, and deliberations in, the committee itself.

The United States, conversely, argued that the passage of the resolution ‘constituted an important first step’ in the Council ‘fulfilling its responsibilities under the several resolutions respecting Darfur that it has adopted.’

According to Washington, Resolution 1672 demonstrated that the Council ‘is serious in its effort to restore peace and security in the region and that, far from interfering in the peace process in Abuja, it will strengthen that process.’ The voting pattern and statements again demonstrated the reluctance of China, Russia and OIC-affiliated non-permanent members to impose mandatory measures on Khartoum (even though only one Sudanese military commander was named) while instead favouring a more conciliatory and accommodative approach. The US again led a majority of Council members supporting individual sanctions as a measure to bring pressure on the parties to the Darfur conflict.

The next day, returning to the proposed transition to a UN force in Darfur, the Council was briefed by USG for Peacekeeping, Jean-Marie Guehenno, and Assistant Secretary-General for Peacekeeping (ASG), Hedi Annabi. They told the Council that it had two options, the first focusing on ground forces and the second on air


\[400\] UN News Centre, ‘Sudan: Government Opposes UN Force in Darfur at This Time, Council is Told’, April 26, 2006.
support. However, crucially, detailed logistical planning could not be conducted until the Sudanese government gave permission for the DPKO to make a proper assessment on the ground in Darfur. ASG Annabi was quoted as saying to the press after the briefing that the Sudanese government ‘has indicated that at this time they are not in favour of a transition to a UN operation, but that following an agreement in Abuja they will be prepared to discuss with the United Nations how the United Nations could help in implementing that agreement’. 401 It remained highly uncertain, however, whether or not the Sudanese government would actually agree to accept a UN force inside its borders even if a peace agreement was achieved. Also uncertain was the extent to which Council members were likely to pass measures to coerce Khartoum into accepting such a deployment given the clearly divergent approaches of the P5.

**Darfur Peace Agreement signed, Council responds: May 2006**

On 5 May the Darfur Peace Agreement (DPA) was eventually signed in Abuja between the Sudanese government and, problematically, only one of the Darfur rebel factions (SLA-Minni Minawi), reflecting the divisions that had emerged in the rebel movement as well as deficiencies in the agreement itself, including a failure to accommodate the concerns of all parties. 402 On 9 May the Council met at ministerial level to address the signing of the DPA, during which Annan first welcomed the DPA and updated the Council on planning for the transition of forces to a UN force, stating that ‘[h]elping to protect the people of Darfur and to implement the Abuja agreement will be one of the biggest tests [the UN] has ever

401 UN News Centre, “Sudan: Government Opposes UN Force in Darfur at This Time, Council is Told”, April 26, 2006.
402 See Chapter 2 of this thesis for a brief overview of the main provisions of the DPA.
faced — perhaps the biggest since those in Somalia, Rwanda and Bosnia in the early
1990s. But it is a challenge we cannot refuse and, having accepted it, we cannot
delay.’

Annan added that the next step was for a technical assistance mission to
deploy to Darfur to establish the requirements for a UN operation, but that Khartoum
had not yet approved: ‘[a]ccordingly, I have written to President Bashir to seek his
support for the assessment and I hope very soon to be able to discuss it with him
directly. His support for that vital mission is essential.’ The Sudanese government, it
appeared, was being given another chance to cooperate with the Council’s demands,
despite numerous violations of previous agreements, while Khartoum’s signature on
the DPA gave the government new leverage in its relations with the UN.

Ministers from Council members also made statements, further illustrating
the differing positions on Sudan by the permanent members, particularly regarding
the question of the transition to a UN force. For example, British Foreign Secretary,
Margaret Beckett, stated London’s support for the transition and said she looked
forward to Khartoum honouring a pledge it made to allow the technical mission in
after the DPA had been signed. French Minister for Foreign Affairs, Philippe
Doust-Blazy, similarly added that the Council ‘must absolutely take the necessary
measures as soon as possible to strengthen the African force in Darfur. [AMIS] has
played an essential role; it will be given new tasks as a result of the Abuja
agreement. It must also be ready to pass the baton to the United Nations. Indeed, it is
incumbent upon us — in particular the Security Council — to accelerate preparations

for a transition from AMIS to a [UN] peacekeeping operation, as the conditions for such an operation are now almost in place."405

Going further, US Secretary of State, Condoleezza Rice, stated that a UN transition was needed and that a US-sponsored draft resolution in circulation would take steps to put that into action. She also declared that ‘[i]f the idea of an international community is to mean anything, if the founding principles of the [UN] are to be more than just dreams and if the notion of the responsibility to protect the weakest and the most powerless among us is ever to be more than just an empty promise, then the [Council] must act. We must pass this draft resolution and we must seize this momentous opportunity to restore hope to the people of Darfur.’406

Placing a different emphasis, Russian Minister for Foreign Affairs, Sergei Lavrov, agreed that the deployment of a new UN force in Darfur ‘will require the cooperation and support of the Sudanese parties, especially that of the [GNU]. We are convinced that resolving that matter should be done through constructive dialogue.’407 He added that Russia would ‘continue to lend all types of assistance to help strengthen the political settlement in Darfur, in the interest of the unity and territorial integrity of the Sudan and of the strengthening of peace and security in the region.’

Similarly, the Minister for Foreign Affairs of China, Li Zhaoxing, stated that the transition from AMIS to the UN was a ‘decision in principle made by the AU, and the United Nations Secretariat has carried out relevant preparations for that purpose. China hopes and trusts that the Sudanese Government and the various factions in Darfur will seize, and make full use of, the current momentum and will

speed up consultations with the Secretariat so that the relevant preparations can be completed as early as possible. Most specifically, however, he stated that ‘I wish to take this opportunity to stress once again that the sole purpose of a United Nations operation in Darfur is to assist the Sudanese Government and the various factions in Darfur in implementing the Abuja agreement. Therefore, the consent and cooperation of the Sudanese government are prerequisites for the deployment of a United Nations operation.’

From these statements, it was clear that Moscow, and Beijing in particular, were not supportive of a coercive deployment of UN troops in the face of Sudanese non-consent. And, despite their strong public support for it, the extent to which the Western permanent members were prepared to push for the transition under such circumstances was unclear. At this point, however, the Council’s only action was to issue a Presidential Statement expressing that the body ‘strongly welcomed’ the DPA as a ‘basis for lasting peace in Darfur’, and urging the rebel factions that did not sign the agreement to do so immediately. The Council also pushed for the strengthening of AMIS, including financially, in order to support the implementation of the DPA in the interim before the transition to a UN force could be undertaken. On this note, the Secretary-General was required to continue preliminary planning for the UN transition, in consultation with the Sudanese government, and the body called for the GNU to ‘facilitate immediately the visit of a joint United Nations and African Union technical assessment mission to Darfur’, which until then had not been given permission. The Council added that any UN force in Darfur should have ‘strong African participation and character’.

Council initiates transition to UN force: Resolution 1679

After the signing of the DPA there was both optimism and pessimism inside the Council: an agreement had been signed between two belligerent parties in Darfur, but Khartoum continued to obstruct the transition to a UN force to support the DPA and to protect vulnerable civilians. In this political environment, the Council unanimously passed Resolution 1679 on 16 May,\textsuperscript{410} which, importantly, made reference for the first time in a case-specific resolution to the recent landmark Council endorsement of the ‘responsibility to protect’ doctrine in Resolution 1674 (28 April 2006).\textsuperscript{411} Because of this, the Council was apparently accepting that it had a responsibility to protect civilians in Darfur — because the Sudanese government had clearly failed to protect its own citizens, and had in fact targeted them — and that ultimately, according to the doctrine, this could mean the use of coercive military force by the body. However, in also reaffirming its ‘strong commitment to the sovereignty, unity, independence, and territorial integrity of the Sudan, which would be unaffected by transition to a United Nations operation’, Resolution 1679 appeared to preclude any coercive fulfilment by the Council of the stated responsibility in Darfur. This would have normative consequences for the doctrine, which appeared to have failed at its first hurdle.\textsuperscript{412}

Nevertheless, under Chapter VII, Resolution 1679 called upon all parties to the DPA to abide by its commitments, urged non-signatories to sign the agreement, and stated that the Council would consider, at the AU’s request, to impose further

\textsuperscript{412} See the Conclusion of this thesis for an elaboration of this key point.
sanctions on parties or individuals that violate or obstruct the DPA. The remainder of
the resolution addressed the proposed transition: it called upon the AU to agree on
requirements to ‘strengthen AMIS’s capacity to enforce the security arrangements’
of the DPA, ‘with a view to a follow-on United Nations operation in Darfur’; endorsed the AU PSC’s recent decision that ‘concrete steps should be taken to effect
the transition’ now that the DPA had been signed, and called upon all signatories to
the agreement to cooperate to ‘accelerate’ the transition, including that it called for
the deployment of the joint UN/AU technical assistance mission ‘within one week’;
stated that the Secretary-General should consult with the AU, the Council, and the
DPA parties, including the GNU, on ‘decisions concerning the transition’; and
finally, requested Annan ‘within one week’ of the return of the assessment mission to submit recommendations to the Council ‘on all relevant aspects of the mandate of the
United Nations operation in Darfur, including force structure, additional force
requirements, potential troop-contributing countries and a detailed financial
evaluation’.413

Again illustrating their positions of support for Khartoum in the face of the
proposed transition, the representatives of Russia, China and Qatar made what they
considered to be important qualifying statements in the Council after the passage of
the resolution, making clear that the body’s action could not advance beyond their
limited concessions.414 This also highlighted the intensifying resistance to increasing
pressure for more coercive action by the Council. Russia registered the argument that
the passage of this resolution under Chapter VII ‘neither alters the character of the
Security Council’s decisions on the Sudan nor predetermines the mandate of the
future United Nations peacekeeping presence in Darfur, to be established in the light

of all relevant factors and dynamics of the situation in that Sudanese province and in the Sudan as a whole.’ As such, Moscow argued that it was ‘important that further steps to establish a United Nations peacekeeping presence in Darfur be agreed with the Government of the Sudan.’

Similarly, China continued to have ‘reservations concerning the resolution’s invocation of Chapter VII’ because, in its view, the content of the resolution was ‘inconsistent’ with the purposes of this chapter. It argued, like Russia, that the use of Chapter VII here should not create a precedent for future Council resolutions on Sudan: ‘[a]t the appropriate time, there should be a specific agreement based on specific circumstances.’ Beijing reiterated its position that for any UN peacekeeping operation, including in Darfur, the ‘agreement and cooperation of the Sudanese government must be obtained.’ Qatar concurred that any transfer to a UN mission in Darfur must be coordinated with and have the prior approval of the Sudanese government.

At this point, it was clear that because of the Council’s particular approach to the crisis in Darfur, gaining Khartoum’s consent was now central to any transition to a more robust and more effective UN operation in the region. In this sense, despite the documented atrocities committed by the Sudanese government against its own population, and despite the Council’s explicit invocation of the ‘responsibility to protect’ in the context of Darfur, the Council persisted with a consensual rather than coercive approach to the deployment of UN troops. Furthermore, Sudan understood and exploited the apparent divisions within the permanent membership to reject even a consensual deployment.

For example, after first noting ‘continuing militia attacks on civilians and SAF attacks on Darfur villages, including through the use of helicopter gunships’ in
March and April, Annan reported a ‘troubling anti-United Nations campaign’ in Khartoum and other Sudanese cities which ‘focused largely on the envisaged transition’. On 25 May, after lobbying in Khartoum by UN envoy Lakhdar Brahimi and ASG Annabi, and also by Annan in direct contact with President Bashir, it was announced that the consent of the Sudanese government had finally been secured for the deployment of the joint assessment mission to Darfur. However, a week later, Annabi told the Council that while the assessment mission would leave shortly for the region (to be headed by USG Guehenno), he made clear that Khartoum had not actually approved the transfer to a UN force.

**Council delegation in Sudan to push for transition: June-July 2006**

In part an attempt to create further momentum for a cooperative transition, between 4–10 June a fifteen member Council delegation travelled to Sudan, Chad and AU headquarters in Addis Ababa, Ethiopia, for talks with the government and other regional parties. The briefing upon return by the delegation head, Britain, further illustrated both the attitude of Khartoum towards the transition, which Resolution 1679 suggested might have an enforceable Chapter VII mandate, and the relatively cooperative approach taken by the Council in response to Sudan’s position. For example, the UK claimed that it was ‘important that the mission began its work in Khartoum and emphasize its respect for the sovereignty and territorial integrity of

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the Sudan’ and stressed that the Council wanted to work in ‘partnership’ with the GNU.419

Moreover, although the Council delegation was in ‘full agreement’ with the AU that the transition should occur ‘at the earliest opportunity’, crucially, the mission had been unable to persuade the Sudanese government of the merits of that course of action. Furthermore, in Khartoum the delegation ‘found many hostile perceptions’ of a UN deployment, not least because of the adoption of Resolution 1679 under Chapter VII, which was ‘clearly a major irritant for the Government, the President and parliamentarians in Khartoum’, while President Bashir also ‘made it clear that he did not think external troops should be mandated to attack Sudanese.’ For this reason, the president had said that controlling the Janjaweed should be the GNU’s responsibility, to which the Council agreed and had called for all along, according to the UK. Similarly, Tanzania, as an African member of the Council and delegation, argued that the mission:

took place against the background of an uneasy relationship [between Khartoum and] the Security Council, as we adopted tougher resolutions to protect civilians, address impunity, facilitate humanitarian assistance in Darfur and push the peace negotiations in Abuja. The unanimous adoption, just before the mission took place, of Resolution 1679 … with its necessary but perhaps premature reference to Chapter VII, set a difficult stage for our mission. It provided an excuse for the Sudan Government to take a harder line on the proposed transition ... 420

Tanzania added that there was ‘open resistance to the transition, and negative public perceptions have been created among the general public regarding the intentions of the Security Council.’ The mission had attempted to explain to

Khartoum that the transition was ‘not an option, but an obligation. The invocation of Chapter VII is not against the Government of Sudan and its people, but is a necessary reserve option to implement the [DPA], especially in the disarmament of entities like the Janjaweed and rebel groups, to ensure the protection of civilians and to maintain unimpeded humanitarian access.’ Tanzania further argued that the AU had ‘gone well beyond endorsing in principle the transition … it is actually urging a more expeditious United Nations deployment. [AU Chairperson] Konare has even written to NATO to ask for logistical support to strengthen the African Union forces in Darfur without actual ground deployment of NATO, only as an intermediate step while waiting for an expeditious transition’ to a UN force.\footnote{421}

As such pressure mounted on Khartoum to accept the transition, President Bashir was quoted as making a number of statements vehemently opposing the move, indicating the difficulties that a consensual approach to deployment by the Council was facing. For example, regarding the deployment of UN troops Bashir stated that “This shall never take place … These are colonial forces and we will not accept colonial forces coming into our country … They want to colonize Africa, starting with the first sub-Saharan country to gain its independence. If they want to start colonization of Africa, let them choose a different place.”\footnote{422} In another example, Bashir declared that “We do not reject the United Nations, but in no way will we accept UN troops because … these troops have an imperial and colonial agenda. Changing [AMIS] to the United Nations will never happen, never ever happen.”\footnote{423}

\footnote{421}See UN Security Council, 5462\textsuperscript{nd} Meeting, S/PV.5462, June 15, 2006.  
\footnote{423}Originally quoted by \textit{Reuters}, June 20 2006; cited in Eric Reeves, “Khartoum Adamantly Refuses Urgently Required UN Forces in Darfur”, \textit{Sudan Tribune}, June 25, 2006.
Indeed, on 27 June USG Guehenno briefed the Council on the findings of the technical assistance mission that he had just headed in Sudan, suggesting that while ‘it would be wise’ to begin deployment of the UN force by 1 January 2007, the main obstacle remained the Sudanese government’s non-consent.\(^\text{424}\) In a follow up briefing on 12 July after further discussions with President Bashir, Guehenno said while he and Annan had still not been able to secure Khartoum’s consent for a transition to a UN force, they had made progress in dispelling the notion that the UN would effectively be a colonial, occupying force in Darfur.\(^\text{425}\) Annan later revealed that he ‘told President Bashir, very candidly, that the strengthening of AMIS in the short term, and a transition to a United Nations operation in Darfur in the medium term, are two fundamental tools available to the Sudanese people, to their Government, and to the international community.’\(^\text{426}\)

*Council extends UNMIS mandate to cover Darfur: Resolution 1706*

In the context of intensifying pressure for the transition to a UN force in Darfur by some Council members and UN and AU officials, and intensifying opposition to it by Khartoum, the Secretary-General issued a detailed report to the Council suggesting ways in which the UN could strengthen AMIS in the interim and, more importantly, incorporating the technical assessment mission’s recommendations, providing a comprehensive blueprint for the proposed UN ‘peace support operation’ in Darfur.\(^\text{427}\) As such, the ‘primary purpose’ of the UN military

\(^{426}\) UN Secretary-General, Office of the Spokesperson, “Secretary-General’s Address to the African Union Mission in Sudan Pledging Conference”, Brussels, Belgium, July 18, 2006.
operation in the region ‘should be to establish a stable and secure environment to protect civilians and support the implementation of the [DPA]. Initially, the focus of the security operations would be the provision of security to the vulnerable population.’

To this end, Annan recommended an ‘expansion’ of the mandate of UNMIS into the Darfur region from 1 January 2007; however, crucially, this was to be ‘subject to the consent of the Government of Sudan and in concurrence with other parties’ to the DPA. Indeed, while the proposed UN operation ‘would have as its abiding priority the protection of civilians’, it would ‘work closely with the Government of National Unity and other key actors to this end.’ Despite this obvious problem, according to the proposal the force should be mandated to ‘take all action necessary to protect civilians under imminent threat, within the capability of the United Nations presence, and to deter, including pre-emptively, potential spoilers through robust action’. Furthermore:

The mandate should allow the force full freedom of movement and authorize robust action when required. The force should therefore possess surveillance and reconnaissance capabilities; an assessment capability to steer operations; and air and ground reaction forces with sufficient military power to deter and defeat spoilers. Reserves would also be needed to deal with unfavourable developments in the security situation.428

The proposal presented the Council with three options for the composition of the UN force. The first option, the ‘optimal balance’, consisted of 17,300 troops with support staff and military observers, three fixed-wing reconnaissance aircraft, up to eight ‘tactical reconnaissance/armed deterrence’ helicopters, and eighteen ‘military utility’ helicopters; the second option, and the ‘most challenging to deploy and

sustain’ was constituted by 18,600 troops, but with a reduced air capability of only four reconnaissance and nine utility helicopters; while the final ‘rapid reaction’ option incorporated only 15,300 troops, but with six additional helicopters and other ‘high-mobility’ capabilities. Whichever option was chosen by the Council, the mission would also require the deployment of up to 3,300 police officers, and 16 formed police units.429

In the lead up to a contentious Council vote on the proposed transition, an intensive series of negotiations took place between the Secretary-General, the Council, and Khartoum. On 10 August, Annan sent a letter to the Council president citing how funding shortfalls meant that AMIS might not even be able to keep operating until the end of its 30 September 2006 mandate, and reiterated that President Bashir remained unwilling to authorise the transition.430 Moreover, on 17 August ASG Annabi briefed the Council that the Sudanese government appeared to be preparing for a major military offensive in Darfur while remaining opposed to a UN force there, and that President Bashir had stated his intent to attack any UN troops that entered the region without the government’s consent.431

That same day, the Council received another letter from Annan containing an annexed ‘national plan’ by the Sudanese government to ‘strengthen security and restore stability’ to Darfur.432 In the correspondence, President Bashir had stated that he wanted to ‘emphasize that the restoration of stability and the protection of civilians are central to the responsibilities of the Government of the Sudan’. The plan involved, inter alia, deploying a further 12,000-22,500 government troops into

Darfur along with 4,000 integrated SLA fighters under the DPA and an additional 3,348 AU troops and 7,050 notional police to areas around IDP camps. However, this plan was clearly at odds with the notion of an impartial UN peacekeeping force providing security.\textsuperscript{433}

Additionally, on 21 August, attempting to pre-empt an impending Council vote on deploying UN forces, the Sudanese president sent a further letter to the Council claiming that his government and other actors had been working to implement the DPA and had hoped that the UN would have accepted his submitted plan for the resolution of the Darfur crisis.\textsuperscript{434} As such, he stated that the ‘process of transferring the mandate of the African Union forces in Darfur to United Nations forces does not find acceptance among large sectors of the people of the Sudan. All its legislative, parliamentary and executive institutions at every level, including the Government of National Unity, have adopted unanimous resolutions categorically rejecting the process of transfer.’ On 28 August USG Egeland and ASG Annabi further briefed the Council, although, according to a communiqué, the invited Sudanese representative failed to attend.\textsuperscript{435} Egeland warned the Council that “‘a man-made catastrophe of an unprecedented scale’ looms within weeks unless the Security Council acts immediately to deal with the spiralling violence, looting and internal displacement.”\textsuperscript{436}

Then, on 31 August the Council met to adopt the highly-anticipated Resolution 1706, with 12 affirmative votes and three abstentions, again from China,
Russia, and Qatar. The resolution was co-sponsored by Argentina, Denmark, France, Ghana, Greece, Slovakia, the UK, Tanzania, and the US. In its preambular paragraphs, the resolution again cited the Council’s prior endorsement of the ‘responsibility to protect’ doctrine in Resolution 1674, but also again reaffirmed the Council’s ‘strong commitment to the sovereignty, unity, independence, and territorial integrity of the Sudan, which would be unaffected by transition to a United Nations operation in Darfur’. Largely following the recommendations of the Secretary-General, the Council, in the operative sections of Resolution 1706, decided that the mandate of UNMIS should be expanded and that it should deploy to Darfur.

However, accepting the crucial qualification made in Annan’s proposal, the Council stated that it ‘invites the consent of the Government of National Unity for this deployment’ (notably, the original draft resolution circulated on 17 August by the US and UK did not include such a caveat). In reality, this provision gave Khartoum an effective veto over any UN deployment and represented the achievement of a major concession to Sudan by its allies in the Council and a defeat for those pressing for a more coercive approach, even if the underlying aim of a more coercive approach, particularly by a united permanent membership, would have been to pressure the Sudanese government to accept UN troops.

Despite this extraordinary abdication of its legal authority, the Council went on to select the first troop configuration option (17,300 troops, 3,300 civilian police, and sixteen formed police units) and ‘decided’ that UN support to AMIS should begin to be deployed no later than 1 October 2006 and that the full transition to UNMIS would occur no later than no later than 31 December 2006. UNMIS was mandated to support the implementation of the DPA and the N’djamena ceasefire

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agreement in a variety of ways. In the context of civilian protection, the most important aspect of the mandate of UNMIS was its robust Chapter VII authority to ‘use all necessary means, in the areas of deployment of its forces and as it deems within its capabilities’:

to protect United Nations personnel, facilities, installations and equipment, to ensure the security and freedom of movement of United Nations personnel, humanitarian workers, assessment and evaluation commission personnel, to prevent disruption of the implementation of the Darfur Peace Agreement by armed groups, without prejudice to the responsibility of the Government of the Sudan, to protect civilians under threat of physical violence [and] in order to support early and effective implementation of the Darfur Peace Agreement, to prevent attacks and threats against civilians [and] to seize or collect, as appropriate, arms or related material whose presence in Darfur is in violation of the Agreements and the measures imposed by paragraphs 7 and 8 of resolution 1556, and to dispose of such arms and related material as appropriate.439

Due to the highly contentious nature of the resolution, it was not surprising that a number of Council members made statements in support of their positions, statements that were revealing of the political dynamics at play in the body. For example, the US called upon the Sudanese government to comply with the resolution: ‘[w]e expect its full and unconditional cooperation and support for the new United Nations peacekeeping force. Failure on the part of the Government of the Sudan to do so will significantly undermine the [DPA] and prolong the humanitarian crisis in Darfur.’440 France stated that while the UN had a ‘collective responsibility’ to ensure peace in Darfur, such an outcome would ‘require continued consultation with the Sudanese authorities, whose cooperation will be essential for the deployment of the operation in Darfur and for the fulfilment of its mission. Of

course, the United Nations has no other goal that to provide its assistance to one of its members, the Sudan.⁴⁴¹

The UK argued that that the ‘test before the Council today was whether it was prepared to act to mandate [UNMIS] and assume its responsibilities towards the people of Darfur. The adoption of the resolution shows that it is. The resolution gives the United Nations force in Darfur a clear Chapter VII mandate to use all necessary means to protect civilians’.⁴⁴² However, London also argued that even through the Council had rejected President Bashir’s own proposal to send further Sudanese forces in Darfur, this ‘does not mean that we do not attach importance to the consent and agreement of the Government of Sudan. It remains the case that the United Nations cannot deploy in Darfur until we have that agreement; that is not in dispute. We look forward hopefully to the Government of Sudan’s giving its acceptance soon. But in the vote today, the Council has sent a crystal clear message that it wants that agreement to be forthcoming quickly. Indeed, in the text of its resolution, it explicitly invites the Sudan to provide this.’⁴⁴³

China also made its position clear, stating that it was in favour of the transition, or more precisely the conditions under which it could occur: ‘[i]t is a good idea and realistic option, and it will help to improve the situation on the ground and serve the interests of all parties. We therefore support, with the consent of the Government of National Unity, the deployment of United Nations troops in Darfur as soon as feasible.’⁴⁴⁴ China elaborated that the transition ‘can be possible and the mission can be deployed only when the consent of the Government of National Unity is obtained. That is the understanding of the African Union, as well as the decision of

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the Security Council.’ These statements clearly reiterated traditional Chinese support for the norm of non-intervention. According to Beijing, the draft resolution was voted upon too soon and should have been delayed until after a proposed high-level meeting with all of the parties in early September. Because of this, and because, it claimed, there was not a clear enough statement requiring the consent of Khartoum for the UN deployment (such as included in the Secretary-General’s original proposal, perhaps), China had abstained from voting.

Russia concurred that it was ‘of fundamental importance that the resolution clearly states the overriding need for the consent of the Government of National Unity of the Sudan’ for the UN deployment, although such consent ‘has yet to be received. To obtain it, we must continue constructive dialogue with the Sudanese leadership.’ Moscow stated that ‘[p]ending the receipt of such consent, the Russian delegation decided to abstain in the vote … although we have no objections in principle to its content.’ Similarly, Qatar stated that it ‘would have preferred a different approach to this sensitive issue. Due regard should have been taken of the numerous aspects and underlying concrete principles of international practice before adopting a resolution that will have bearing on the sovereignty of Sudan … More efforts should have been made on the political front to prepare the ground for Sudan’s voluntary consent to expanding the mandate’ of UNMIS. It stated that ‘[a]s far as we know, consent is voluntary.’

Conversely, taking a more coercive approach, the current Council president, Ghana, speaking in a national capacity, stated that it had ‘reservations about the inclusion in the draft text of explicit language that implies that the Government of the

Sudan can take all the time it wants before allowing the United Nations to deploy in Darfur, or even refuse to do so, regardless of the cost in human lives.447

Voting and statements on Resolution 1706 thus continued the existing trend inside the Council: China, Russia and Qatar did not endorse actions that even suggested a challenge to Sudan’s sovereignty — despite the effective Sudanese veto over any UN deployment in Darfur. In turn, the three Western permanent members were reduced to voicing hope that Khartoum would accept the proposed transition, even though President Bashir’s numerous statements suggested otherwise, and were reluctant to openly criticise Sudan. Representing a more coercive approach, Ghana argued that the Council should not have transferred its decision-making authority over the deployment of UN peace operations to Khartoum, a government that the Council-mandated COI had found guilty of widespread atrocities against its own citizens.

**UN deployment obstructed by Sudan’s non-consent: Post-Resolution 1706:**

In the wake of the fatal concession made in Resolution 1706, the Council spent the remainder of the year trying to achieve Sudanese government consent over some form of deployment of UN forces in Darfur to provide essential security for vulnerable civilians. The first formal opportunity to do this came at a high-level meeting of the Council on 11 September, at which Annan and representatives of the Sudanese government, Arab League, OIC, and AU participated.448 Annan set the tone, arguing that it was ‘vital that we all speak candidly about what is happening

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447 UN Security Council, 5519th Meeting, S/PV.5519, August 31, 2006. The representatives of Japan, Greece, Slovakia, Tanzania, Argentina and Denmark also made statements during the Council session.

and about what it will take to bring to an end the suffering of so many millions of people.’ Citing recent reports of renewed fighting in Darfur, including aerial bombing by the SAF, in violation of the DPA, and that the displaced population was at 1.9 million out of nearly three million dependent on humanitarian aid, Annan asked: ‘[h]aving finally agreed — just one year ago — that there is an international responsibility to protect, can we contemplate failing another test? He argued that ‘current developments’ in Darfur ‘defy several of the Council’s resolutions and violate commitments that were made, including the non-deployment of additional Sudanese armed forces. Such action is legally and morally unacceptable.’ ‘But’, said Annan, ‘let us be clear: we all know that the Government of the Sudan still refuses to accept the transition, and the Council has recognized that without the Government’s consent the transition will not be possible.’ Finally, the Secretary-General warned that:

The consequences of the Government’s current attitude — yet more death and suffering, perhaps on a catastrophic scale — will be felt first and foremost by the people of Darfur. But the Government itself will also suffer if it fails in its sacred responsibility to protect its own people. It will suffer opprobrium and disgrace in the eyes of all Africa and the whole international community. Moreover, neither those who decide such policies nor those who carry them out should imagine that they will not be held accountable.449

In response, Sudan, which was under intense international pressure to consent to the deployment, argued that it had no problem working cooperatively with UNMIS in southern Sudan because the CPA was ‘governed by the principles of the Charter and respect for sovereignty.’450 In contrast, Khartoum claimed that the Council’s approach to Darfur had ‘proceeded down a different path characterized by

an imbalanced scale of justice and the lack of the criteria for credibility’ (despite having been granted an effective veto over the deployment of UNMIS in Darfur). Sudan also claimed that discussions leading to the passage of Resolution 1706 made ‘erroneous conclusions’, that the Council had taken ‘hasty measures’ with the resolution, and as a result ‘chose a confrontational approach’, whereas the Sudanese government was always open to peaceful dialogue.

In support of Khartoum, the Arab League stressed the ‘need to secure the consent’ of Sudan ‘before dispatching forces to Darfur so as to ensure that they are not rejected’, a position with which the OIC concurred. Moreover, China claimed that there was consensus in the Council on both the need to transition to UNMIS as well as the need to first obtain consent from Khartoum. Beijing hoped that the Sudanese government could be persuaded to accept this, but reiterated that ‘[a]t the same time, we consider that the Security Council should respect the views of the national Government in question and that no United Nations peacekeeping operation should be imposed.’ Russia stated that ‘[r]ecent events have shown that the Sudanese leadership has adopted a policy of independently seeking a solution to the problem of Darfur without the involvement of United Nations peacekeepers in that process. Let me be frank: we do not agree with that position.’ However, while supporting the transition to a UN force in principle, Moscow asserted that this ‘must be done on the basis of cooperation with the leadership of the Sudan’.

Conversely, the US claimed that Sudan had not addressed the key issue of how it was going to resolve the humanitarian crisis in Darfur nor committed to implementing Resolution 1706: instead of ‘assuming its responsibility’, Khartoum

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had ‘indicated that it will take a step backwards by forcing the expulsion of [AMIS troops] by the end of the month, leaving a vacuum in Darfur for the Government of National Unity to fill with its own troops.’ It called on Khartoum to cooperate with the Council ‘because the situation in Darfur cannot stand.’ According to Britain, the claim that Resolution 1706 ‘infringes national sovereignty, when UNMIS has been in the south working to consolidate the Comprehensive Peace Agreement, ring very hollow.’ The UK said that in the Council’s many consultations in Darfur ‘what has been consistent is the unwillingness of the President of the Sudan to actually agree that [UNMIS] should be deployed into Darfur.’ London proposed that the UN had ‘made it clear that it is ready to fulfil its part. The question is, is the Government of the Sudan prepared to fulfil its obligations to its own people?’

France added that the Sudanese government ‘must now accept’ the deployment of UNMIS in Darfur: ‘It owes that to its population, which — as has been noted today several times — it has the responsibility to protect, if necessary with the assistance of the international community.’ By now, however, it was clear that the Sudanese government was successfully able to deflect harsh Western rhetorical criticisms and that Khartoum, through its allies on the Council, was largely in control of the deployment or otherwise of UN troops.

In this context, the Council’s next action, on 22 September, and the first of a number of procedural measures, was to unanimously pass Resolution 1709, which temporarily extended the mandate of UNMIS until 8 October 2006 ‘with the intention to renew it for further periods’ pending the outcome of gaining Sudanese acceptance for the expansion in Darfur (the AU had extended the mandate of AMIS

until 31 December 2006 two days earlier). Then, on 29 September, the Council passed Resolution 1713, again unanimously, which was co-sponsored by Denmark, France, Ghana, Greece, Slovakia, the UK and the United States.\textsuperscript{458} The resolution, passed under Chapter VII, extended the mandate of the Panel of Experts until 29 September 2007 and requested that Annan appoint a further member to assist in its work.

Speaking before the vote, Qatar claimed that Panel was unprofessional and had not handled sensitively the types of allegations that it was making, particularly against officials of the Sudanese government.\textsuperscript{459} Nevertheless, Doha voted in favour of the resolution because it believed that the Panel could be reformed in order to work better. Additionally, on 29 September, Annan and AU Chairperson Konare sent a joint letter to President Bashir outlining the steps the UN would take to enhance AMIS in the interim period until the end of its mandate.\textsuperscript{460} Annan confirmed on 6 October that in reply, Bashir had agreed to the assistance package but, yet again, not to the eventual UN transition.\textsuperscript{461}

It was also evident by this stage that the variety of non-military or cooperative measures attempted by the Council over the past three years had failed to fundamentally deter Khartoum or bring adequate security to Darfur. For example, on 3 October the Panel of Experts transmitted its latest report to the Council citing, \textit{inter alia}, that the Sudanese government had been transporting military equipment into Darfur in contravention of Council resolutions, while the Panel revealed it had ‘credible information’ that Khartoum ‘continues to support the Janjaweed through

\textsuperscript{458} UN Security Council, Resolution 1713 (2006), S/RES/1713 (2006), September 29, 2006; See also UN Security Council, 5543\textsuperscript{rd} Meeting, S/PV.5543, September 29, 2006.

\textsuperscript{459} UN Security Council, 5543\textsuperscript{rd} Meeting, S/PV.5543, September 29, 2006.


\textsuperscript{461} See UN News Centre, “Annan Welcomes Sudan’s Acceptance of UN Help for African Union Mission in Darfur”, October 6, 2006.
the provision of weapons and vehicles. The Janjaweed/armed militias appear to have upgraded their modus operandi from horses, camels and AK-47s to land cruisers, pickup trucks and rocket-propelled grenades.\footnote{UN Security Council, “Letter Dated 2 October 2006 from the Chairman of the Security Council Committee Established Pursuant to Resolution 1591 (2005) Concerning the Sudan Addressed to the President of the Security Council”, S/2006/795, October 3, 2006.} The Panel also lamented that Khartoum had not implemented the financial sanctions imposed upon the four individuals designated by the Sanctions Committee and concluded that the government had ‘wilfully avoided implementing the resolution.’

On 6 October the Council again met and passed unanimously Resolution 1714, which was sponsored by the US, and which welcomed the decision of the AU PSC on 20 September to extend the mandate of AMIS until the end of the year, and itself extended the mandate of UNMIS until 30 April 2007,\footnote{UN Security Council, Resolution 1714 (2006), S/RES/1714 (2006), October 6, 2006; see also UN Security Council, 5545\textsuperscript{th} Meeting, S/PV.5545, October 6, 2006.} even though no consent for its deployment in Darfur had been granted by Khartoum. These measures, while procedurally important, belied the necessity of a coercive military intervention and illustrated the success that Khartoum had achieved in obstructing a more robust response by the Council to the atrocities and humanitarian crisis in Darfur.

\textit{Council resigned to three-phased hybrid operation: Late 2006}

Indeed, by late 2006 it had become obvious that the Sudanese government was not going to consent to a transition to UN troops in Darfur, as Resolution 1706 had provided it the opportunity to do. In mid-November, it also became clear that the Council members pushing for the transition had resigned themselves to reaching a further compromise with Khartoum over the UN deployment. As such, on 16 November the ‘High Level Consultation on the Situation in Darfur’ took place in
Addis Ababa, co-chaired by Annan and Konare and attended by representatives of the P5, Sudan, and other African countries. According to a ‘Conclusions’ statement, the aim of the summit was threefold: to re-energise the failing peace process, to establish a stronger ceasefire, and to examine ways to proceed with peacekeeping in the region.

Most notably, on the latter, the parties agreed to support a new three-phase approach instead of continuing to demand Khartoum’s consent to a complete transition from AMIS to a UN force. The new compromise involved, in phase one, a UN ‘light support package’ to AMIS, which was already underway with agreement of the GNU; phase two involved an enhanced ‘heavy support package’, which was to be negotiated by the Tripartite Mechanism of the UN, AU and GNU; and finally, phase three would be a extensive but ‘hybrid’ UN/AU peacekeeping operation, which was agreed in-principle with the GNU ‘pending clarification of the size of the force’. Tellingly, the Sudanese government was also granted time to ‘consult on the appointment of the SRSG and Force Commander’.

The aims of the peacekeeping force would be to ‘contribute to the restoration of security and protection of civilians through implementation of the security aspects of the DPA’, as well as to ‘ensure full humanitarian access’. The UN would ensure that the force was ‘logistically and financially sustainable’, while it was also agreed that the force would have a ‘predominantly African character’ and that ‘troops should, as far as possible, be sourced from African countries.’ Additionally, ‘[b]ackstopping and command and control structures’ would be provided by the UN.

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The size of the force would be 17,000 with 3,000 police and must ‘enjoy free and unhindered movement in Darfur’. Annan later claimed that Sudan’s in-principle acceptance of the hybrid operation at the meeting could be a ‘turning point’ in resolving the Darfur conflict, and that he was awaiting President Bashir’s response to the Conclusions reached in Addis.\(^\text{467}\) In reality, however, the Sudanese government had again succeeded at compromising, in advance, any potential UN presence on the ground in the country’s west.

In a further illustration of the derogation of Council authority on matters of peace enforcement, Annan (delivered by USG Guehenno) told an AU PSC meeting on 30 November that the Council was ‘now looking to this [AU meeting] for decisions that will facilitate the Addis agreement’s rapid implementation.’\(^\text{468}\) Annan added that if the first two phases of the peacekeeping plan fail to eventuate in the deployment of the hybrid force, then it would be ‘highly unlikely’ that the Security Council would authorise UN funding for Darfur peacekeeping: the Council ‘will not agree to commit what could amount to a billion and a half dollars a year without the minimal compromise conditions arrived at in Addis Ababa. This was made clear by Permanent members during our discussions in Addis Ababa and reiterated subsequently in New York’. During the meeting, the AU endorsed the 16 November Consultation’s ‘Conclusions’, with additional concessions to Khartoum that the Special Representative shall be jointly appointed by the AU Commissioner and the UN Secretary-General, and that the Force Commander, who should be African, shall

\(^{467}\) See UN News Centre, “Annan Describes Sudanese Agreement to Hybrid Force in Darfur as ‘Turning Point’”, November 21, 2006.

\(^{468}\) UN Secretary-General, Office of the Spokesperson, “Secretary-General’s Message to Summit Meeting of the African Union Peace and Security Council [delivered by Mr. Jean-Marie Guehenno, Under-Secretary-General for Peacekeeping Operations]”, Abuja, Nigeria, November 30, 2006.
be appointed by the AU Chairperson ‘in consultation with’ Annan. The PSC also extended the mandate of AMIS for six months from 1 January 2007.469

The failures of the Council’s relatively non-coercive approach to addressing the crisis in Darfur were reflected in the December 2006 report of the Secretary-General, who argued that the ‘continued rejection, made under claims of sovereignty, of the deployment of United Nations troops in support of the AMIS operation results in the perpetuation of the attacks and abuses, which can no longer be tolerated.’ On 19 December the Council issued a Presidential Statement in which it ‘endorsed the conclusions’ of the High-Level Consultation, and welcomed the AU’s earlier decision to support it and GNU’s stated commitment to it. 470 As such, the Council called upon all parties to facilitate the immediate deployment of the three phase peacekeeping operation in Darfur. Then, in its final action on Darfur for the year (and study period), the Council on 27 December issued a press statement welcoming President Bashir’s recent letter ‘in which he reconfirmed his commitment to the Addis Ababa and Abuja Agreements, in particular to bring about a cessation of hostilities, to revitalise the political process and to allow the immediate implementation of the United Nations three-phased support plan to the African Union, culminating in the deployment of a hybrid United Nations–African Union force in Darfur.’472

Waiting again for Sudan’s agreement was illustrative of the Council’s underlying non-coercive approach to civilian protection in Darfur [indeed, indicative

of the failure of this approach to place substantive pressure on Khartoum — and thus prolonging violence, insecurity and suffering for the population of Darfur — Bashir did not actually formally consent the deployment of the hybrid force until June 2007, after which the Council ‘re-authorised’ in Resolution 1769 on 31 July 2007 the African Union-United Nations Hybrid Operation in Darfur (UNAMID), although it did not actually deploy to Darfur until 1 January 2008].

**Conclusion**

This examination of the chronological development of the Security Council’s response to the Darfur crisis between 2003-06 has presented a wealth of important empirical data. First, after an initially inactive response the Council became increasingly engaged with Darfur, such that from mid-2004 the crisis in western Sudan featured at least once a month (with a couple of exceptions) on the body’s agenda for the rest of the study period.

Second, due to numerous official and independent reports throughout the period of study — most notably by the COI — it is clear that the Council was fully aware of the nature and scale of atrocities being committed against the civilian population in Darfur, including the orchestration and direct commission of such crimes by the Sudanese government. This added weight to the argument that a military intervention was necessary and increased pressure on the Council to act more coercively, not least because Council members could not claim a lack of credible information coming from on the ground (as some had attempted to do during the Rwandan genocide in 1994473).

Third, the Council did initiate a number of actions short of coercive military intervention, including establishing the COI, referring the case to the ICC, and creating a limited sanctions regime and arms embargo. In cooperation with the AU, the Council also supported the deployment of AMIS military observers, although with an inadequate mandate and capacity to protect civilians, and facilitated the largely ineffective Darfur Peace Agreement. Most significantly, the Council authorised the transition from AMIS to a full UN peacekeeping mission with a robust civilian protection mandate in August 2006, but the deployment of this operation was crucially precluded by the Council’s self-imposed caveat of requiring prior Sudanese government consent — which was predictably withheld.

Illustrating the political dynamics inside Council deliberations on Sudan, and exposing key elements of the body’s decision-making processes, the voting patterns, positions and statements of individual Council members were also revealed. Western members, including the P3, publicly supported more coercive measures against the Sudanese government because of its actions in Darfur. The US, UK and France co-sponsored a number of resolutions and other initiatives that aimed at generating pressure on Khartoum to change its brutal counter-insurgency policies, and at creating direct security or a measure of justice to the people of Darfur. This included the push for sanctions, the establishment of investigatory and judicial proceedings (although the US resisted the ICC referral), and the ultimately failed attempts to transform AMIS into a more robust UN peacekeeping force.

Yet, despite these initiatives, there was little evidence to suggest that Western members were seriously contemplating coercive military intervention after the failure of non-military measures to bring about change and in the face of continuing Sudanese government obstructionism. While Western members explicitly used the
discourse of the ‘responsibility to protect’ in their public statements in the Council, illustrating the influence of the emergent normative doctrine, this rhetoric was not supported by credible threats of coercive action.

Conversely, China and Russia, as the other two, non-Western permanent members, were publicly less supportive of any measures that they deemed too harsh, or which placed mandatory pressure, on the Sudanese government. China in particular demonstrated its lack of support for such measures by consistently abstaining on Council resolutions that proposed punitive or coercive action against Khartoum. In this position, China was consistently supported by non-permanent members Algeria, Pakistan, and Qatar (during their respective terms), and although Russia did support the ICC referral and the initial, vague threat of sanctions, it too generally showed little inclination towards generating pressure on Sudan. In their public statements in the Council, these members continued their historical practice of employing the pluralist argument that the Council should not violate the sovereignty of Sudan by interfering in its domestic affairs, or otherwise suggested — despite a wealth of evidence to the contrary — that Khartoum had in fact been demonstrating compliance with the body’s demands and should be commended.

Because of divergent positions and approaches amongst the permanent membership, the Council was unable to project a united front and as a result its moral and political authority was compromised, a situation which the Sudanese government ably exploited. It was apparent that, under the threat of a likely Chinese veto, other members of the body decided against pursuing more coercive, and thus divisive, action through the Council’s channels, preferring instead to achieve enough compromise in pre-vote negotiations to satisfy Chinese (and Sudanese) demands. Ultimately, the result of this political dynamic was that the Council failed to
coercively deploy a UN military intervention in Darfur to protect vulnerable civilians between 2003-06, despite a persuasive legal-institutional, normative and moral case for doing so. The task of Chapters 4 and 5 is to critically examine the political interests and calculations behind the positions and votes of individual Council members in order to explain why a necessary coercive military intervention in Darfur was precluded.
Chapter 4

Explaining Council Non-intervention in Darfur:
The Western P3

Introduction

Despite a persuasive moral, normative and legal-institutional case for the coercive deployment in Darfur of a UN Security Council-authorised peace enforcement operation with a robust civilian protection mandate, such a force was not deployed during the 2003-06 period of study. Moreover, the Council ‘failed to even seriously contemplate military intervention’\textsuperscript{474} in the face of both continuing security and humanitarian crises in western Sudan and credible, publicly-available evidence that the Sudanese government had orchestrated and committed widespread crimes against humanity and war crimes against its own citizens.

While the previous chapter has detailed the chronological development of the Council’s response to the Darfur crisis — including most significantly the body’s ‘authorisation’ of a robust peacekeeping operation in Resolution 1706 of August 2006 — critical analysis reveals that opposition to it from the Sudanese government and the subsequent political calculations of Council members precluded the actual deployment of that force: indeed, a disunited and thus weak Council was unable even to generate sufficient coercive pressure on Khartoum to bring about a substantive change in Sudanese counter-insurgency policy in Darfur over the four year period of study. As a result, the Security Council, as the preeminent global body mandated to

maintain peace and security, clearly failed in its posited ‘responsibility to protect’ vulnerable civilians in Darfur.\textsuperscript{475}

The reasons for the hostility of the Sudanese government to external interference or intervention in its ‘domestic affairs’ are self-evident and particularly transparent given the regime’s complicity in a number of international crimes. What is not so clear, however, is why, despite this predictable opposition, the Security Council did not coercively intervene in Darfur. Explaining this lack of intervention is the task of the remainder of this thesis. As such, the following two chapters will illustrate how conflicting policies or competing national interests within the Council, particularly amongst the P5, precluded such a coercive deployment, or, as one analysis of Resolution 1706 concludes, ‘effectively conditioned deployment upon the consent of Khartoum.’\textsuperscript{476} They will substantiate the key theoretical claim that humanitarian interventions will likely not occur when they directly clash with the national interests of the major powers. To do this, both this chapter and then Chapter 5 will examine the policy decisions regarding Darfur of individual Council members and the national interests behind such positions emanating from their respective capitals.\textsuperscript{477}

In the context of the Council’s response to Darfur, then, this chapter examines the interests and politics of the Western permanent members — the United States, United Kingdom and France — who, as purported defenders of human rights and preachers of liberal values, were under domestic pressure to ‘save Darfur’, and who, rhetorically at least, were the most engaged in generating pressure on Sudan in

\textsuperscript{477} Chapter 5 will examine the positions of China, Russia and the three non-permanent members who demonstrated support for or solidarity with Khartoum.
the Council. In spite of these apparent catalysts for intervention, it is argued that the powerful Western P3, in particular the United States, had conflicting policy priorities and certain capacity constraints when it came to coercing Khartoum, of which three sources will be examined: first, the perceived strategic imperatives of the post-September 11, 2001, ‘War on Terror’; second, a commitment to the successful conclusion of the north-south Sudan peace process; and third, the deprivation of legitimacy and resources that resulted from the highly-contentious 2003 invasion of Iraq. As a result, the interests of the Western permanent members in maintaining a working relationship with the incumbent regime in Khartoum militated against enforcing civilian security in Darfur.

The Western Permanent Members and Sudan

As Chapter 3 has illustrated, a relatively superficial review of the Council’s public debate and voting on matters pertaining to Darfur would give the clear impression that the Western permanent members were highly active in attempting to resolve the conflict, enhance civilian security, and alleviate the acute humanitarian crisis in the region.\(^{478}\) It would also give the impression that the American, British and French governments were the driving force behind attempts in the Council to generate sufficient political pressure on Khartoum for it to consider changing its brutal counter-insurgency strategy in Darfur. As that pressure proved ineffectual, it appeared as though the Western P3 were then the instigators of proposals to deploy a UN peacekeeping force to the region in the face of Sudanese government opposition. Such impressions are only partially correct: as preachers of liberal-democratic values, Western governments were forced to respond to domestic and global public

\(^ {478}\) See Chapter 3 of this thesis for a detailed examination of these debates and voting records.
pressure to ‘do something’ about Darfur and likely felt a genuine desire (and perhaps responsibility) to protect the victims of what the US government had indeed characterised as ‘genocide’ and the EU as ‘tantamount to genocide’. Yet, as the previous chapter has also identified, in addition to such harsh rhetorical admonitions of Khartoum, ‘doing something’ was limited to the initiation, financing, or facilitation of a variety of important — but ultimately inadequate — measures short of military intervention.

As Piiparinen has observed more critically, the ‘(in)action of the international community in Darfur has been widely regarded as epitomizing the discrepancy between the bold statements and actual deeds of Western governments.’ For him, this is because despite having ‘actively promoted’ the responsibility to protect principle and its application to Darfur, Western policymakers have ‘lacked the commitment and resolve to launch an effective humanitarian intervention’ in Sudan. Similarly, Flint and de Waal contend that despite their harsh public rhetoric, Western governments’ ‘catalogue of actions to stop the slaughter in Darfur is unimpressive’, while Grono argues that even though the US ‘has called Darfur a genocide, it has yet to put real pressure on the Sudanese regime.’ Regard the Western P3’s response to Darfur, Prunier concludes that the ‘French only cared about protecting Idris Deby’s regime in Chad from possible destabilization; the British blindly followed Washington’s lead, only finding this somewhat difficult since Washington was not very clear about which direction it wanted to take’.

483 Prunier, *Darfur*, 140.
Indeed, a deeper examination of decision-making in the respective capitals — particularly Washington and London, the seats of the two Western governments most engaged with Darfur — reveals that this ambiguous response and lack of resolve was actually a product of competing policy priorities with regards to Sudan and ‘hard’ and ‘soft’ power capacity constraints, both of which militated against the coercive deployment of UN troops. Put simply, the US and UK had progressively established what they considered to be valuable cooperative relationships with Khartoum, and, despite their public criticisms of Sudan, Washington and London calculated that neither their interests nor their abilities favoured substantively altering the terms of those relationships in the face of atrocities in Darfur.

As will be elaborated below, the two most important of these competing policy priorities were valuable Sudanese cooperation in regional counterterrorism and a desire to ensure that Khartoum signed and then remained committed to the Comprehensive Peace Agreement with the SPLM/A. In addition to the global ‘War on Terror’, the international political context that conditioned and constrained the Western response to Darfur was the highly contentious 2003 US and UK-led invasion and subsequent occupation of Iraq (particularly as the initial act of war did not achieve a prior Council mandate). Iraq consumed a majority of attention and political capital in Washington and London, and, added to deployments in Afghanistan and elsewhere, overstretched American and British military capacities. Each of these elements will be examined in terms of its respective impact on the Western response to Darfur, and in particular on the body’s failure to coercively deploy a military intervention in Sudan.

France played a less active and more supportive role in the Western member’s response to Darfur and increasingly focused its attention on the spillover of the conflict and crisis into neighbouring Chad, a former French colony. This chapter thus focuses primarily on the interests and actions of the UK and particularly the US.
Competing policy priority (i): Perceived strategic counter-terrorism imperatives

After the September 11, 2001, terrorist attacks on New York and Washington the Bush administration launched a self-proclaimed ‘War on Terror’ ostensibly aimed at the identification and preventive elimination of certain militant groups or networks — and governments which harboured or supported them — which were perceived to threaten the security or interests of America and its allies. Most overtly, the Taliban regime was overthrown by a US-led invasion of Afghanistan in late 2001 for its hosting of the leadership of the al Qaeda terrorist network. A number of other measures — primarily targeting Islamist militant groups and their sympathisers — were implemented globally over subsequent years, including, inter alia, the freezing of suspect groups’ financial assets, overhauling border and travel security procedures, establishing enhanced intelligence and internal monitoring capabilities, and threatening further military operations against states considered to be present or potential terrorism ‘risks’. As a defining feature of early twenty-first century international politics, the ‘War on Terror’ has been extensively documented elsewhere and does not need further introduction here. What is highly relevant for the analysis in this thesis, however, is the cooperative counter-terrorism relationship developed between Khartoum and Washington — one that has had a remarkable about-face.

486 I am indebted to William Clapton for this notion of risk.
During the 1990s, the Clinton administration became increasingly concerned about Sudan’s links to militant Islamist organisations which had the potential to commit or foster transnational acts of terrorism. Under Hassan al-Turabi’s radical influence, the National Islamic Front regime, which came to power in a strategic partnership with Omar al-Bashir via his 1989 military coup, actively sought to make Sudan an Islamic state under Sharia law and opened the country’s borders to like-minded fundamentalists from across the region, including Osama bin Laden and his nascent al Qaeda network, which operated out of Sudan between 1991-96 (after bin Laden was ejected from Saudi Arabia).\(^{488}\) It was alleged that terrorist training camps were established in the country as militant Islamist groups gathered in, and allied with, Khartoum. According to one respected analysis, the current Sudanese government has a ‘long history of harbouring terrorist organizations and radical Islamic groups. It is the only sub-Saharan African government on the U.S. State Sponsors of Terrorism List and the only one that has officially provided support and safe haven for terrorist organizations.’\(^{489}\)

Illustrating the antagonistic relationship between the West and Khartoum during this period, in 1997, after the Sudanese government was implicated in a failed assassination attempt against Egyptian president Hosni Mubarak in Addis Ababa two years earlier, the US imposed unilateral trade sanctions, an asset freeze, and a ban on American military support for Sudan,\(^{490}\) while the Security Council also imposed

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\(^{490}\) United States, Department of State, “US-Sudan Relations”, Embassy of the United States, Khartoum.
sanctions. Then, after the 1998 terrorist bombings of US embassies in Nairobi and Dar es Salaam, the US controversially launched a one-off cruise missile strike on the Al-Shifa pharmaceutical factory in North Khartoum, which it alleged was a terrorist facility, while at the same time it ‘broadened counterterror cooperation’ with Kenya, Tanzania, Ethiopia, and Uganda. Full military intervention to mitigate terrorism, of the form proposed in the post-9/11 Bush Doctrine, however, was not considered a viable policy option at the time. Instead, by the late 1990s, the US had managed to successfully isolate the ‘pariah state’ of Sudan through diplomatic and military pressure, while there were signs that the radical Islamist project in the country was failing. Later, there were even signs of a change in policy on Sudan, when in early 2000, the United States ‘opened a dialogue’ with Khartoum.

In part, President Bashir himself had become concerned at the deep association of his government with terrorist groups and other radicals. In addition to ejecting bin Laden and his associates from the country in 1996 (from where they moved to Afghanistan), Bashir further paved the way for future counter-terrorism cooperation with the West when he moved to distance his regime from the most hardline Islamists that were previously involved in his coup. This included, most notably, dismissing and then imprisoning NIF leader al-Turabi in 1999. When Sudan began to export oil in the late 1990s, Khartoum ‘became keener to cooperate with US demands. It proceeded to round up terrorist suspects and to share intelligence’ with the Americans. Then, after the 9/11 attacks, the Sudanese government ‘accelerated

496 Williams and Bellamy, “The Responsibility”, 34.
the moderation of its foreign policy and distancing from terrorist organizations’. 497 These were the foundations of a dramatic about-face in the counter-terrorism relationship between the United States and Sudan.

Indeed, with the attacks of 9/11 and a new US government implementing and threatening further ‘regime change’, 498 President Bashir calculated that it would be in his regime’s best interests to be ‘with rather than against’ the United States in its emerging global ‘War on Terror’. According one view, after the US-led invasions of Afghanistan and Iraq, Bashir increasingly ‘took the Bush administration’s pressure seriously’. 499 More specifically, when the invasion of Afghanistan ‘brought hints from senior U.S. officials that Sudan might be attacked, the regime substantially increased its counter-terrorism cooperation with Washington’. 500 And this was a justifiably paranoid reaction: in Sudan, the US was still openly ‘concerned about the possible presence … of terrorist training camps and, accordingly, [had] worked to secure the cooperation of the Sudanese government in fighting terrorism’. Rather than face military intervention, Khartoum complied and proved that it was willing to ‘secure American aims’, for which it was instead ‘rewarded with stronger ties’ with Washington. 501

As a result, and after the establishment of a regional counter-terrorism base in Djibouti, the US ‘increased its engagement’ with Khartoum: in May 2003, for the first time in a decade, a US military aircraft landed in Sudan as Secretary of State Colin Powell met with Sudanese Foreign Minister Mustafa Osman Ismail to ‘discuss

498 See Phyllis Bennis, Before and After: US Foreign Policy and the War on Terrorism (Gloucestershire, UK: Arris Books, 2003).
500 ICG, “Getting the UN Into Darfur”.
cooperation on the war on terrorism’. Sudan offered the Bush administration its services in counter-terrorism cooperation and ‘invited an intelligence-sharing relationship’, in which it had a comparative advantage due to its strategic geographic location and membership of the wider Arab and Islamic communities. However, this new cooperative relationship was ‘sensitive and previously veiled’ as public knowledge of the relationship would clearly be politically damaging for both sides. According to Silverstein, in exchange for this ‘largely unpublicized’ cooperation, Khartoum wanted to be both removed from the list of state sponsors of terrorism and have Washington lift the economic sanctions that had prohibited bilateral trade since 1997. And for the US, Sudan’s role in counter-terrorism operations was more valuable that was originally estimated:

Initially, the collaboration focused on information Sudan could provide about Al Qaeda’s activities before Bin Laden left for Afghanistan in 1996, including Al Qaeda’s pursuit of chemical, biological or nuclear weapons and its many business fronts and associates there. Since then, Sudan has moved beyond sharing historical information on Al Qaeda into taking part in ongoing counter-terrorism operations, focusing on areas where assistance is likely to be most appreciated.

In particular, Sudan has been able to provide the US with significant intelligence on foreign radicals and insurgents in Iraq, both by tracking those who have passed through Sudan on route to the Middle East and by inserting covert Sudanese operatives into Iraqi resistance circles. In addition, Sudan’s Mukhabarat intelligence service has ‘detained Al Qaeda suspects for interrogation by U.S.

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502 Prendergast and Roessler, “Can A Leopard’, 13. This was notably just after the SLM/A and JEM attacks on El Fasher.
505 Silverstein, “Official Pariah”.
agents’, and had ‘seized and turned over to the FBI evidence recovered in raids on suspected terrorists’ homes, including fake passports’, while the Sudanese government had ‘expelled extremists, putting them into the hands of Arab intelligence agencies working closely with the CIA’ and is ‘credited with foiling attacks against American targets by, among other things, detaining foreign militants moving through Sudan on their way to join forces with Iraqi insurgents.’

A 2005 article in *The Guardian* newspaper quoted a former US intelligence official as revealing that in the Middle East, Sudanese agents have ‘penetrated networks that would not normally be accessible to America … Some of that cooperation has spilled over into the war in Iraq: Sudan is credited with detaining foreign militants on their way to join anti-American fighters there.’ The former official added that the ‘intelligence relationship is the strongest thread between Washington and Khartoum … Khartoum is probably the only government in the Arab League that has contributed in a major way to the protection of US forces and citizens in Iraq.’ Another analysis similarly concludes that since 9/11 Sudan has been ‘increasingly valuable’ to US counter-terrorism efforts because:

> the Sunni Arab nation is a crossroads for Islamic militants making their way to Iraq and Pakistan. That steady flow of foreign fighters has provided cover for Sudan’s Mukhaberat intelligence service to insert spies into Iraq … As a result, Sudan’s spies have often been in a better position than the CIA to gather information on al-Qaeda’s presence in Iraq, as well as the activities of other insurgent groups.

In addition to Iraq, counter-terrorism cooperation between the US and Sudan has also extended to the Horn of Africa, a region that since the 9/11 attacks has

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507 Silverstein, “Official Pariah”.
509 Goldenberg, “Sudan Becomes US Ally”.
510 Miller and Meyer, “U.S. Relies on Sudan”.
‘come under increased scrutiny as a strategic focal point in the war against terrorism.’ As such, after 9/11 the US established the Trans-Saharan Counterterrorism Initiative (TSCTI), which, according to Cohen, focuses on ‘counterinsurgency’ in the Sahelian subregion. In addition, the US set up the Joint Task Force Horn of Africa (JTF-HOA) military facility in Djibouti, housing US special forces and other personnel and mandated with ‘regional counterterrorist surveillance … intelligence collection and exchanges, and training of African units.’ The facility forms the core of the Horn of Africa Counterterrorism Initiative, which provides counterinsurgency training to the region’s militaries. Later, in October 2007, the US established a new Africa Command (AFRICOM) to coordinate US military and counter-terrorist operations on the continent. Yet, despite these initiatives, the US still had a lack of reliable first-hand intelligence sources on the ground, as ‘U.S. intelligence capacities decayed precipitously during the 1990s, following the end of the Cold War. Critical uncovered gaps arose in northern Nigeria and Somalia.’ This point was highlighted by a 2004 United States Institute of Peace report, which concluded that an ‘effective U.S. response’ to the threat of terrorism in the Horn must indeed include, inter alia, ‘improved regional intelligence capabilities’. As a result, Sudanese cooperation and intelligence sharing became critical to the US counter-terrorism capacity in the region.

Indeed, a primary target of US counter-terrorism efforts in the Horn of Africa is the ‘failed state’ of Somalia, a suspected host for radicals groups and alleged

516 USIP, Terrorism in the Horn of Africa, 1-2.
terrorists due to the largely anarchic conditions inside the country since the early 1990s. According to Ken Menkhaus, Somalia ‘remains high on the list of potential terrorist safe havens’, while the country has been a particularly important transit zone for foreign terrorists — including members of al-Qaeda — to enter Africa from the Middle East and elsewhere, especially when moving through Somalia into Kenya.

The US became increasingly concerned about Somalia after the rise of the Islamic Courts Union (ICU), which took control of large parts of the country’s south in mid-2006. Certain members of the ICU as well as the militant Al-Ittihad Al-Islami are allegedly associated with al-Qaeda and linked to the 1998 US embassy bombings in East Africa. The Bush administration has thus been ‘concentrating most of its energies on capturing or killing three foreign Al Qaeda fugitives and a dozen or so of their Somali associates,’ including launching air strikes on suspected Al Qaeda targets. More generally, the US has commenced counter-terrorist air and naval surveillance of Somalia and envisages its military presence in neighbouring Djibouti to be a potential ‘rapid reaction force’ to counter any terrorist activities in the region.

However, the US ‘strategy of backing warlords against Islamists in Somalia failed as the Islamists increasingly gained control of greater territory, while at the same time continuing to shield al-Qaeda suspects.’ Moreover, in Somalia, “[f]undamental human rights and the international ‘responsibility to protect’

principle have been sacrificed on the altar of counter-terrorism, but in so doing, U.S. engagement in Somalia is actually fostering the rise of Islamist radicalism across the region and playing into the hands of extremists.”\(^{523}\) Because of this failure of US policy, Khartoum has been able ‘exploit [its regional influence] to strengthen counter-terrorism links with Washington’, not least because Sudan’s national security and intelligence chief, Major General Salah Abdallah Gosh, has links to influential Somali Islamists,\(^{524}\) while more generally Sudanese agents have also cooperated with the CIA to ‘monitor’ such groups.\(^{525}\)

The emerging US ties with Sudanese intelligence were symbolised most vividly by the April 2005 hosting of Major General Gosh by the CIA at its headquarters in Virginia, after the Agency had flown him to the United States on a private jet. Post-9/11, Gosh became the al-Bashir regime’s internal security and intelligence chief and has cooperated extensively with the US on counter-terrorism in Sudan and the region, ‘detaining terrorism suspects and turning them over to the United States; expelling Islamic extremists; and raiding suspected terrorists’ homes and handing evidence to the FBI.’\(^{526}\) Furthermore, cited in a media report, Marc Laverne, former head of the UN expert’s group on Sudan, claimed that the Bush administration ‘regularly discusses terrorism with top Sudanese intelligence and security officials who happen to also be architects of the Darfur campaign.’ Laverne named Gosh and presidential advisor Nafie Ali Nafie as being ‘well known in certain Washington circles’: ‘These people regularly visit Washington and they are in permanent contact with the United States which considers them special partners.’ Lavergne argued that ‘[b]y agreeing to divulge everything it has about bin Laden, Al-

\(^{523}\) Prendergast, “15 Years After”, 3.
\(^{524}\) Prendergast, “So How Come”.
\(^{525}\) Goldenberg, “Sudan Becomes US Ally”.
\(^{526}\) Prendergast, “So How Come”.
 Qaeda, the Palestinians, Algerian Islamists and a bunch of other troublemakers in the world, the Sudanese government is providing an enormous service to the US government and is irreplaceable.\(^{527}\)

Another US official told the *Los Angeles Times* that the CIA’s ‘view was that the Sudanese are helping us on terrorism and it was proud to bring him over. They didn’t care about the political implications.’\(^{528}\) But others did: as Gosh was also accused of being responsible for atrocities in Darfur, his trip to the US caused outrage in some quarters of the US public and within the bureaucracy.\(^{529}\) This outrage clearly illustrates the competing political priorities and interests in Washington (and other Western allies in the ‘War on Terror’). As Thomas-Jensen argues, the US has been ‘conflicted’ over its Sudan policy: ‘On the one hand, there’s sincere concern in the White House, certainly a lot of pressure from the US Congress to deal with the atrocities in Darfur, but the overriding strategic objective of the US in the Horn of Africa is fighting terrorism and so these two issues are now clashing.’\(^{530}\)

Indeed, Belloni has observed that American policy on Sudan ‘shows how the war on terror might trump human rights concerns, and lead the US government to ally itself with repressive regimes which support its counter-terrorist policies.’\(^{531}\) More broadly, discussing expanding US intelligence and military cooperation with ‘key’ states in Africa, a Council on Foreign Relations task force argued that while such relationships ‘have resulted in several highly valuable programs that warrant continued support to ensure they remain robust and effective’, greater governmental

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\(^{528}\) As cited by Prendergast, “So How Come”.

\(^{529}\) Independent Task Force, “More Than Humanitarianism”, 59

\(^{530}\) Cited in Ettaba, “As Darfur Bleeds”.

\(^{531}\) Belloni, “The Tragedy of Darfur”, 339.
oversight was required to ensure that such initiatives did not do more harm than good:

Counterterror initiatives are frequently undertaken with inadequate consideration of whether these operations will build durable partnerships and create true capacities within partner governments, as well as how they might have an impact on civil liberties, democratic governance, and popular perceptions of U.S. intentions. Also, initiatives fail to consider how to mitigate the risk that host governments will be tempted to use the relationship that develops from an emerging security alliance with the United States as an excuse for egregious misrule.\textsuperscript{532}

In a similar vein, Stohl contends that the relationship between US policies in the ‘War on Terror’ and repression in states cooperating in US counter-terrorism operations ‘has not been examined closely’, in part because scholars generally omit state violence from analyses of terrorism: ‘they do not consider how the choices in the Bush administration’s counterterrorism strategy enable, acquiesce to or ignore the violence of the recruited states and this has deleterious effects not only for the populations that are repressed but also the counterterrorism efforts of the United States.’\textsuperscript{533} Such effects are vividly illustrated by the post-9/11 US-Sudan relationship.

It is clear that the United States and its European allies — who positioned counter-terrorism as key policy priorities after the 9/11 attacks on the US and subsequent attacks in Madrid and London — saw Sudanese counter-terrorism cooperation as invaluable and a relationship that they did not want to sever by pressuring Khartoum too hard over Darfur. Indeed, according to Prendergast the evolving counter-intelligence relationship between Khartoum and Washington ‘blunted any U.S. response to the state-sponsored violence that exploded in Darfur in

\textsuperscript{532} Independent Task Force, “More Than Humanitarianism”, 58.
\textsuperscript{533} Michael Stohl, “The Global War on Terror and State Terrorism”, Perspectives on Terrorism, Special Issue: Under-Investigated Topics in Terrorism Research (2008): 4-10, 5.
2003 and 2004.’ He claims that US officials have told him that ‘access to Gosh’s
information would be jeopardized if the Bush administration confronted Khartoum
on Darfur.’\textsuperscript{534} For this reason, despite their public criticism of Sudan and despite the
wealth of evidence of atrocities on the ground, it appeared as though the US-led
Western P3 prioritised counter-terrorism cooperation over a coercive military
intervention in Sudan as the former would likely have been severed by the latter.

\textit{Competing policy priority (ii): Securing the north-south Sudan peace
process}

In addition to counter-terrorism cooperation, Western permanent members
had a strong interest — and had invested significant political capital and resources —
in ensuring that the Sudanese government and the SPLM/A signed and then
remained committed to the Comprehensive Peace Agreement to end the civil war
between Khartoum and south Sudan, which had been a destructive feature of the
country’s post-independence history.\textsuperscript{535} The CPA, which was eventually signed in
January 2005, contained power- and wealth-sharing provisions which, if
implemented, would lead to the decentralisation and democratic ‘transformation of
governance’ in the country, while it also held the promise of a referendum in 2011
over south Sudan’s potential secession from the republic.\textsuperscript{536}

The US and Britain, as the two permanent Council members most actively
engaged with the north-south Sudan peace process in Naivasha, Kenya, were from
the early years in the new century heavily invested in brokering a deal between the

\textsuperscript{534} Prendergast, “So How Come”.
\textsuperscript{535} See Chapter 2 of this thesis for a brief historical overview of the north-south Sudan civil war.
\textsuperscript{536} Adam Azzain Mohamed, “The Comprehensive Peace Agreement and Darfur”, In \textit{War in Darfur
University Global Equity Initiative, 2007).
warring parties. While this Western engagement (including Norway) was a positive and commendable step, when Darfur erupted in early 2003 it created the unfortunate political dilemma of trying to resolve two concurrent civil wars in different parts of Sudan, and moreover, essentially having to praise Khartoum for its restraint in one and condemn it for its atrocities and escalation in the other. As a result, securing the CPA by keeping Khartoum onside came at the expense of a coercive intervention in Darfur.

As it happened, from 2003 the political dilemma over resolving the concurrent civil wars eventuated in the international community following, initially, a ‘sequencing’ strategy for resolving conflicts in Sudan — deal with the CPA first and then move onto the crisis in Darfur second.537 This sequencing strategy was illustrated in Chapter 3, in which it became clear that that the Security Council did not place Darfur on its formal agenda until April 2004 — a full year after the initial eruption of conflict there — when it had its first briefing on the conflict and crisis in Western Sudan by Under-Secretary-General for Humanitarian Affairs Jan Egeland. According to Slim, this was because the Council ‘feared that international confrontation with Khartoum over Darfur could unravel the precious Naivasha process, achieved only after a long struggle.’ He argues that the ‘enormous importance of these talks both distracted and inhibited the international community, until they were able to make a strong linkage between the two under US leadership from May 2004 onwards.’538

This ‘linkage’ strategy represented a forced change from the initial approach, however, as it became clear that Darfur could not wait for the CPA’s conclusion.

Despite this, as detailed in Chapter 3, the two civil wars were in fact explicitly decoupled both in late 2004 when the Council met in an extraordinary session in Nairobi, attended by Sudanese Vice-President Ali Othman Taha, to push through the remaining issues ahead of the impending signing of the CPA, and again in early 2005 after the signing of the CPA and the release of the damning COI report. In both cases the Council deliberately avoided direct criticism of Khartoum over its actions in Darfur. In this context, Slim suggests that even the linkage strategy risked unravelling the hard-won cooperation of President Bashir on the CPA, and thus ‘required the international community to avoid outright confrontation with Khartoum, whose leaders it needed both to keep at one table in Naivasha and also to get a new one in N’Djamena.’

For Traub, ‘by separating the north-south problem from Darfur’, US Ambassador to the UN John Danforth ‘achieved his long-sought goal of ending the civil war. But this also meant allowing Darfur to fester.’ As such, a central element and product of this approach was to preclude coercive military intervention in Darfur.

Indeed, Williams and Bellamy argue that Western concerns about jeopardising the Naivasha agreement were ‘pivotal’ in obstructing a more coercive approach to Darfur. They observe that the crisis in Darfur initially ‘was considered secondary’ to securing the north-south deal and other conflicts in Sudan. Yet, such concerns were not completely unfounded: Western states were ‘concerned that an intervention in Darfur could trigger a domino effect wherein other Sudanese groups, disgruntled at their marginalization from the [CPA] process…would pursue the SLA/JEM route of armed insurgency just as the process was starting to make real

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539 Slim, “Dithering”, 822.
Similarly, there were concerns for the viability of the CPA model after Darfur rebel groups ‘called for the application of the North-South principles to Darfur, which would have awarded near total control of Darfur to them.’

According to Flint and de Waal, however, the potential of rebel groups to undermine the CPA was not the only problem; the Sudanese government’s ‘calculation must have been that it could get away with murder. It had an ace in its hand: to make, or break, peace in the South. All through 2004, Sudanese officials hinted that they would stall the peace process to end Africa’s longest war if the world got tough on Darfur.’ Indeed, as the Naivasha talks ‘dragged on inconclusively, it became clear that the [Sudanese] government was exploiting the West’s eagerness for a settlement of the civil war in order to give it a free hand in Darfur.’ Prunier similarly concludes that Khartoum ‘kept playing Darfur against Naivasha in order to win at both levels or, if a choice had to be made, at least to keep Darfur out of the military reach of the international community.’

Despite this, the American and British governments — the non-African international drivers of the CPA process — still ‘muted their criticism of Khartoum’s genocide for much of 2003-2004 in the interest of securing a north/south Sudanese peace agreement’. Similarly, Flint and de Waal argue that ‘Darfur was the problem no-one wanted to acknowledge. The war hit the headlines just as the Naivasha negotiations were entering their critical phase’; the US and UK ‘did not want their attention diverted’, while France was preoccupied with keeping stable Sudan’s

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543 Flint and de Waal, Darfur, 128.
545 Prunier, Darfur, 141.
neighbouring former French colony Chad, which was threatened by substantial refugee flows out of Darfur and increasingly aggressive cross border militia raids and attempted coups emanating from Sudan.

Within the US government at least, there was a degree of contestation over Sudan policy between competing departmental and factional blocs. Prunier argues that Washington ‘was embarrassed by the Darfur crisis, not least because it did not fit well within the two main camps in the State Department and on Capitol Hill, the ‘realists’ and the ‘Garang lobby’. The latter, comprised of the Congressional Black Caucus, evangelical and Jewish groups and their Congressional representatives, and USAID, among others, referred to those who were supportive of the SPLM/A leader John Garang and who thus pushed for strong support for legislation that put pressure on Khartoum, including urging the US government to facilitate a peace deal with the South to stop the war. Alternatively, according to Prunier:

The ‘realists’ were found mostly in the State Department, the CIA and the DIA. They argued that, given the useful role that Khartoum was playing in the war on terrorism by supplying information on erstwhile friends, the [Sudanese government] should at least be helped even if perhaps not fully supported, especially if it showed any signs of cooperation at Naivasha.

As such, and responding particularly to increasing pressure from US evangelical lobby groups — a key Republican political demographic — who were concerned at the treatment of southern Sudanese Christians by largely Arabist and Islamist Khartoum, the Bush administration via special envoy (and later UN Ambassador) Danforth became actively involved in mediation and offering to grant

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547 Fint and de Waal, Darfur, 127.
548 Prunier, Darfur, 138-139.
549 Prunier, Darfur, 139.
incentives to Khartoum if it made peace with the SPLM/A.\textsuperscript{550} Other pressure for peace came from US oil firms and interests — which had been barred from the country since the 1997 imposition of trade sanctions — as they wanted the opportunity to be part of the rapidly developing Sudanese petroleum industry that was currently being exploited by Chinese companies (see Chapter 5). As a result, the US government ‘strongly backed the CPA negotiations, indicating that once the deal had been signed, the US would move rapidly towards normalizing relations with Sudan, including lifting long-standing bilateral sanctions, providing development assistance, and probably also bringing a US major oil company to Sudan and facilitating debt relief’; however, when Darfur erupted these promises proved problematic.\textsuperscript{551}

This was difficult because the interests of many of the aforementioned influential lobbies within US politics eventually coalesced around support for the CPA, even if this meant doing business with President Bashir. For the Darfur lobby, however, this was unacceptable in the face of the evidence of Sudanese government orchestrated atrocities in Darfur presented by the COI and the US State Department’s own investigation (culminating in the administration’s characterisation of ‘genocide’). Calls by human rights activists and others for military intervention in Sudan to protect vulnerable Darfurian civilians became an argument that would be politically costly for the Bush administration to ignore. Yet, the developing US-Sudan relationships on counter-terrorism and the CPA were considered too significant to disrupt even in the face of the crisis in Sudan’s west, and as a result:


\textsuperscript{551} de Waal, “Dilemmas of Multiple Priorities”.

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since the ‘realists’ in the intelligence community kept insisting that Khartoum was too important to be harshly treated, these contradictory pressures led the White House to compromise on all fronts — supporting the Naivasha negotiations, not putting too much practical pressure on Khartoum but nevertheless passing legislation which could be used as a sword of Damocles in case of non-compliance; be vocal on Darfur; put a fair amount of money on its humanitarian aspect; and do nothing at the military level.552

In March 2005, the Sudanese government consented to the deployment of 10,000 UN peacekeepers in the country to help with and monitor the implementation of the CPA (as authorised by the Council in Resolution 1590). This new UNMIS force was given a robust civilian protection mandate.553 Yet, Khartoum remained vehemently opposed to any international force in Darfur on the grounds that it would be a Western ‘imperialist invasion’ of Sudan.554 The reasons for this apparent contradiction in Sudanese policy were due in part to the consequences of the cooperative relationships that Western permanent members had established with the al-Bashir regime through the Naivasha process, achievements that Washington and London were, ultimately, not willing to sacrifice by coercively deploying a UN military intervention to protect civilians in Darfur. Khartoum clearly understood this and was thus able to effectively ignore the harsh rhetoric over its actions in Darfur — and continue its counter-insurgency campaign there — because it knew that the West was in a compromised and thus weakened position.

552 Prunier, Darfur, 139-140.
554 See Chapter 3 for President Bashir’s public statements against the deployment of UN troops in Darfur.
While Western permanent members had developed important relationships with Khartoum in the early years of the twenty-first century in counter-terrorism cooperation and the Naivasha peace process, the broader international political context that overshadowed this cooperation and constrained the response to Darfur of Western members — again, primarily the US and UK — was the Iraq War. Beginning with the contentious debate over the war during 2002, through the divisive invasion of March 2003, to the subsequent and problematic occupation of the country largely by British and American forces, attention and political capital in Washington and London was consumed with executing the war and occupation effectively as well as attempting to justify to critics across the globe (including, in this case, the French government) the decision to launch an allegedly pre-emptive (or more persuasively, preventive) war without a prior explicit mandate by the Security Council to do so.

In addition to being the central foreign policy priority during the period of study in this thesis (and thus overshadowing acute humanitarian and security crises in places like Darfur), ‘Operation Iraqi Freedom’ imposed a number of constraints upon the ability of the American and British governments to respond effectively to Darfur — in terms of both ‘hard’ and ‘soft’ relative power capacities. Of course, as discussed above, Washington and London’s existing cooperative relationships with Sudan likely precluded the coercive deployment of military force regardless of these

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555 Hard power refers to the capacity for physical (especially military) coercion or to project the threat of such, with a deterrent effect. On ‘soft power’, see Joseph S. Nye Jr., *Soft Power: The Means to Success in World Politics* (New York: PublicAffairs, 2004). Nye (p. 6) defines soft power as ‘getting others to want the outcomes that you want’. 237
constraints. What is important here, however, is that because of their Iraq War-induced weakened international positions, these Western governments were unable to generate sufficient pressure to change the political calculations of Khartoum in its counter-insurgency strategy in Darfur or in its position regarding external interference in its ‘domestic affairs’. Moreover, weakened Western governments were unable to persuade China and Russia to co-present a unified Council position on Darfur to the Sudanese government, which would likely have affected Sudanese perceptions of the body’s resolve to end the Darfur crisis and protect vulnerable civilians. As a result, the combination of weak Western governments with their existing relationships with Khartoum served to further preclude a coercive UN military intervention in Darfur.

On Iraq, the international legitimacy of the American and British governments was severely undermined by their failure to make a convincing case for forcibly removing from power Saddam Hussein and his Ba’athist regime, and then, when their arguments failed to convince their critics or fellow Security Council members, initiated the invasion without an explicit Council mandate (indeed fellow Western P5 member France, along with Russia, had threatened to veto any draft resolution authorising the war\textsuperscript{556}). A number of international lawyers, governments, and protesting populations around the world supported Secretary-General Annan’s later contention that the war was ‘illegal’.\textsuperscript{557} According to Rampton and Stauber, ‘American military power easily overwhelmed Iraq’s army, but in the crucial battle


for worldwide hearts and minds, America lost badly.\footnote{Sheldon Rampton and John Stauber, \textit{Weapons of Mass Deception: The Uses of Propaganda in Bush\'s War on Iraq} (Sydney: Hodder, 2003), 6. The authors cite a March 18, 2003, Pew Research Centre world opinion survey illustrating declining percentages of populations with a \textquote{favourable view} of the United States in France, Italy, Russia, Turkey and the UK.} While it is not the place or intention of this thesis to debate the Iraq War\'s legality or prosecution, what is crucial here is the ways in which Operation Iraqi Freedom undermined the international legitimacy of the US and Britain and constrained their ability to generate pressure on Sudan over Darfur.

In particular, by retrospectively attempting to justify the Iraq War as a \textquote{humanitarian intervention}\footnote{See Kenneth Roth, \textquote{War in Iraq: Not a Humanitarian Intervention}, In \textit{Human Rights Watch World Report 2004: Human Rights and Armed Conflict}, 13-35 (New York: Human Rights Watch, 2004).} after their central public argument for going to war — that Iraq had weapons of mass destruction and links to al-Qaeda — proved to be unpersuasive and misleading, the US and UK undermined a weak but emerging international consensus on the \textquote{responsibility to protect} doctrine in genuine cases of widespread atrocities against civilians, such as Darfur.\footnote{Roberta Cohen, \textquote{The International Response to Darfur}, \textit{Forced Migration Review} 23 (2005): 7-9, 8; Williams and Bellamy, \textquote{The Responsibility}, 36-37; and Alex J. Bellamy, \textquote{Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention After Iraq}, \textit{Ethics & International Affairs} 19, no. 2 (2005): 31-53. This discussion is elaborated upon in a more general context in the Conclusion of this thesis.} One of the arguments made by critics of this new doctrine was that it could be a pretext for imperial-minded powers to intervene in sovereign states for their own interests while cloaking such motives behind humanitarian rhetoric,\footnote{See, for example, Mohammed Ayoob, \textquote{Humanitarian Intervention and State Sovereignty}, \textit{International Journal of Human Rights} 6, no. 1 (2002): 81-102.} a point not lost on critics of the Iraq war.

Because of the perceived cynicism of Western interventionist motives and justifications for war in Iraq, any argument for \textquote{humanitarian} intervention to protect civilians in Darfur was thus able to be easily dismissed by Sudan and its allies as \textquote{another Iraq}, despite the legitimacy of such an argument in the context of Darfur.\footnote{See Chapter 3 for examples of President Bashir and other senior Sudanese officials using this line of argument to reject external intervention in Sudan.}
Furthermore, as Slim has observed, after Iraq ‘US expressions of concern about Darfur have … been met with much scepticism in the Arab and Muslim worlds and encouraged speculation that the US was preparing to invade another Islamic state.’

Indeed, despite the fact that both victims and aggressors in the Darfur conflict have mostly been Muslims, Khartoum has ‘adroitly manipulated public opinion — and not only in Sudan — so that any Western engagement in Darfur would be seen as another campaign in the Christian crusade against Islam.’ Going further, one analyst concludes that:

> What makes Sudan a particularly unattractive target for intervention is the fact that Western governments have become wary of conducting military ventures in Islamic countries. They are aware that such actions may enhance anti-Western sentiment in the Islamic world and thus play into the hands of terrorists.

In addition to their legitimacy crisis, the US and UK governments were also suffering from a capacity deficit or a loss of projectable ‘hard’ power. Due to their deployments in Afghanistan, Iraq, and elsewhere, the American and British militaries were reportedly overstretched and unable to consider new operations, such as in Darfur. As Piiparinen concludes, the ‘war on terror in Iraq and Afghanistan has drained the military and political capacities of those same states that had previously advocated the responsibility to protect vulnerable civilians, thereby producing a reluctance to engage in further military operations in Darfur or anywhere else.’ If an effective and coercive military intervention was to be undertaken in Sudan, it would require to a large degree the capabilities and strength of these two militaries,

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much as the Kosovo operation did in 1999. But, because of the Iraq and Afghanistan deployments, this would not have been possible after 2003. Similarly, discussing potential military intervention in Darfur in February 2005, UN Under-Secretary-General for Peacekeeping Jean-Marie Guehenno reportedly claimed that ‘In Europe, there are only two countries which have the capacity to mount this kind of operation — the U.K. and France. The U.K. has its hands full in Iraq right now, and France might not like the idea of this mission.’

Indeed, in an environment of strategic political calculations, Sudan clearly understood this lack of capacity or motivation for a Western-led military intervention. Combined with the successful development of its ‘reputation’ as a reliable counter-terrorism partner and its position as a central player in the Naivasha peace process, Sudan was able to ‘call the West’s bluff’ in the face of harsh rhetoric and pursue its brutal counter-insurgency strategy in Darfur relatively unencumbered by the fear of Western intervention. As a result, Jan Pronk, Special Representative of the Secretary-General for Sudan, characterised the situation in which the threats of the Security Council were not taken seriously by Sudan as one at which ‘they’re laughing at us in Khartoum’.

Conclusion

As preachers of liberal-democratic values and purported defenders of human rights, the three Western permanent members of the Security Council faced domestic

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568 Quoted in Traub, The Best Intentions, 309.
570 Cited in Traub, The Best Intentions, 309.
and global public pressure to ‘do something’ about the Darfur crisis, including calls for coercive Western-led military intervention in Sudan to protect vulnerable civilians. While there was likely a genuine concern for the victims of the conflict and humanitarian crisis within the ranks of Western governments, competing policy priorities in counter-terrorism cooperation and north-south Sudan peace negotiations militated against a more coercive approach to Khartoum, which had successfully marketed itself as a crucial partner in both the ‘War on Terror’ and the Naivasha process. While the US and UK attempted to operate between these competing policy priorities by rhetorically (and somewhat materially) pressuring Sudan over Darfur, they were also constrained by their relative weakness in international legitimacy and military capacity as a result of the contentious Iraq war and difficult occupation, a situation appreciated and ably exploited by Khartoum and its allies. France, while a critic of Operation Iraqi Freedom, was relatively less engaged with events in Sudan itself and more concerned about neighbouring Francophone Chad.

The United States in particular, as the most powerful of the Western P3, was clearly conflicted — and thus ultimately ineffectual — in its policy towards Sudan over Darfur. As one analysis concludes, ‘U.S. support for the CPA, its intelligence-sharing relationship with Khartoum, and the mutual desire to move towards the normalization of economic and political relations between the two countries were policy priorities that were considered to have undermined a more robust U.S. response on Darfur.’ More generally, Bellamy and Williams argue that despite the deterioration of conditions in Darfur, and illustrative of the political deadlock over how to respond to the crisis, the Council:

\[\text{Africa Action, “A Tale of Two Genocides”, 7-8.}\]
was reluctant to intervene and interventionist states like the US, UK and France were reluctant to force the issue for a variety of reasons. In particular, Western allies were reluctant to push [Khartoum] too hard as it had become an important source of intelligence relating to the US-led war on terror, they were concerned that a more robust line over Darfur could jeopardise the prospects of achieving peace between [Khartoum] and the SPLM/A, and the US and UK in particular were already stretched militarily and suffering from a post-Iraq international credibility crisis.572

The combination of these three elements meant that the coercive deployment of a UN military intervention to protect civilians in Darfur was either not considered, or not considered possible, without strong and genuine Western leadership, support, and commensurate commitment of resources. As such, instead of preparing for military intervention, the Western response to Darfur was characterised, in the words of Prendergast, as merely ‘walking loudly and carrying a toothpick.’573 In this sense, the centrally important strategic counter-terrorism interests of Western governments in Sudan in particular demonstrate vividly that humanitarian interventions will likely not occur when they directly clash with the national interests of the major powers.

Yet, the Western P3’s positions and interests are only part of the story: a more comprehensive and persuasive explanation of why the Security Council did not coercively intervention in Sudan over its actions Darfur requires an analysis of the politics and interests of other key members of the Council, particularly non-Western permanent members China and Russia — whom more explicitly opposed the coercion of Sudan — as well as the non-permanent members whom demonstrated solidarity with Khartoum. Chapter 5 now turns to examine these members.

573 Prendergast, “So How Come”. 

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Chapter 5

Explaining Council Non-intervention in Darfur: 
China, Russia, and Sudan’s Non-permanent Allies

Introduction

This chapter constitutes the second part of the critical analysis of the Security Council’s response to the Darfur crisis and the explanation of why the body did not coercively deploy a military intervention in the region between 2003-06 to protect vulnerable civilians in the face a persuasive legal-institutional, normative, and moral case for doing so. To achieve this, it first examines the politics and national interests behind the positions on Sudan/Darfur of China and Russia, the Council’s other two, non-Western, permanent members. As the empirical data in Chapter 3 revealed clearly, these two ‘Eastern’ powers were largely opposed to the body passing mandatory and punitive measures against Khartoum or even generating substantive pressure on President Bashir to desist from his brutal campaign against his own citizens in Darfur.

This opposition was registered publicly by Chinese and Russian abstentions from key votes on politically-significant draft resolutions on Darfur, with the exception of Russian acquiescence in the vague threat of sanctions in July 2004 if the Janjaweed were not disarmed and in the March 2005 ICC referral. Indeed, the fact that neither China nor Russia formally cast any vetoes during the period of study is a product of pre-voting compromises that were made between the permanent members, rather than any indication that Moscow and particularly Beijing weren’t genuinely
committed to protecting the regime in Khartoum from unwanted external interference.

To further substantiate the claim that *humanitarian interventions will likely not occur when they directly clash with the national interests of the major powers*, the chapter examines two sets of Chinese and Russian interests in obstructing attempts in the Council to pressure or intervene in Sudan over the crisis and atrocities in Darfur. First, it will examine the historical and publicly-advanced Chinese and Russian positions of hostility to the emerging norm and practice of international intervention into the domestic affairs of sovereign states — absent host government consent — for human rights or humanitarian purposes. Although there is merit in a number of these general objections and warnings raised by China and Russia (and others) in this regard, these criticisms do not obviate the argument for the Council to effectively and, if needed, forcefully protect vulnerable civilians from violence inside their own states (as argued in Chapter 1). Indeed, the eventual doctrinal formulation of the ‘responsibility to protect’ and set of operational guidelines developed by the ICISS in 2001 present a persuasive refutation or accommodation of many such concerns about humanitarian intervention. Moreover, because of the clear necessity for external intervention in Darfur, and because of extensive Chinese and Russian oversight over any potential UN-authorised military operation (as permanent members), the argument suggesting that such an intervention would be a threat to international order is not compelling in the context of the Darfur case.

This chapter thus takes a more critical view of the interests behind China and Russia’s implicit claims to be opposing coercive measures against Sudan because they are defending, through their privileged positions on the Council, the principles of a pluralist international order against reckless Western interventionism. Instead, it
demonstrates that such arguments actually serve Beijing and Moscow’s national interests well: problems with international scrutiny of disaffected minorities, secessionist claims, and state repression inside their own borders mean that China and Russia would directly benefit from halting the further erosion of traditional state-centric conceptions of sovereignty and from obstructing the further emergence of a norm compelling UN military intervention to protect vulnerable civilians abused inside, or by, their own state. In this sense, by acting inside the Council to protect Sudan’s sovereign right to repress, terrorise, or kill its own citizens, China and Russia were simultaneously protecting their own rights to do so free from international interference.

Congruently, and more specifically, the second set of Chinese and Russian interests in obstructing coercive Council action on Sudan examined in this chapter pertains to the substantial and lucrative trade and investment relationships between both powers and Khartoum. Attesting to the evidently self-interested nature of such relationships in the face of Sudanese atrocities against its own citizens, their economic ties to Sudan do not feature at all in China and Russia’s public justifications of opposition to international intervention in Darfur (just as Western counter-terrorism cooperation with Sudan was not mentioned). The chapter thus demonstrates how the diplomatic protection of Khartoum in the Council by Moscow and particularly Beijing under the guise of defending state sovereignty, and, implicitly, a pluralist international order, has been a deliberate strategy aimed not only at shielding Chinese and Russian abuses of segments of their own population, but also at the preservation of valuable trade and investment relationships.

The chapter finally and more briefly examines the positions and interests of Algeria, Pakistan and Qatar, the three non-permanent members that demonstrated
consistent support for Khartoum through their statements in the Council and by their
own abstentions from key resolutions. The explanation of these positions lies in the
politics and interests of inter-elite Islamic and/or Arab solidarity between these three
governments and the al-Bashir regime, despite the fact that the majority of innocent
Darfurian victims also practiced Islam (although the majority were not of Arab
lineage). The chapter also assesses the extent to which these dissenting non-
permanent members — despite being without individual veto — had a collective
impact on the ability of the Council to generate pressure on Sudan over Darfur. In
particular, it is argued that this minority non-permanent opposition had a perceptible
effect on the perceived legitimacy of any potentially coercive Council action, which,
when combined with overt Chinese and Russian opposition and the compromised
positions of Western members, precluded the coercive deployment of a UN military
intervention in Darfur between 2003-06.

**China, Russia, and the Sudan**

While there was a crucial divergence within Western permanent members’
policy priorities over Darfur, and a disconnect between their harsh public criticism of
Sudan and their relatively unpublicised cooperation with President Bashir on
regional counter-terrorism, as well as on the CPA, the positions of China and Russia
were more internally consistent as different elements of national interest converged.
However, this was unfortunate for the victims of violence and displacement in
western Sudan because the interests of China and Russia were indeed largely against
any significant changes to the status quo in Khartoum and they henceforth acted to
protect Sudan from potentially harsh mandatory measures in the Council. In doing
so, China and Russia mollified any threat of UN-authorised military intervention in
Darfur; this was a political dynamic in the Council that the Sudanese government ably exploited to its own advantage.

Indeed, China and Russia’s consistently-advanced public rhetoric on Sudan regarding the Darfur crisis — emphasising that the Council’s measures should not impinge upon the sovereignty of the Sudanese state, despite the atrocities — was conducive to their own political interests in keeping the plight of disaffected minorities as an internal matter of state, and to their own economic interests in maintaining the power of their trade partners in Khartoum. As a result, these two permanent members could simultaneously argue publicly against sanctions and any potentially coercive military action under the implicit guise of a principled defence of the pluralist international order from irresponsible Western interventionism, and protect their own, less principled, trade relationships with the incumbent government in Sudan and their own dubious domestic human rights records. As Grono has observed, because the Council is a ‘creature of its members’, an effective response to Darfur has therefore been obstructed by national interests: ‘you have China, the largest importer of oil from Sudan, ready to block any overly intrusive UN measures. And both Russia and China are leery of UN intervention into civil conflicts, fearing it may lead one day to intervention in Chechnya or Tibet or Xinjiang.’

Concurring, Udombana notes that regarding Darfur, the ‘[i]ndividual interests of member states continue to hinder the Security Council … Both China and Russia continue to oppose sanctions against Sudan, largely because of their own economic and political interests. Russia is a major supplier of weapons to Sudan, and China is a

major consumer of oil from the country.'" Similarly, according to Prendergast and Sullivan, inside the Council China has ‘used its veto wielding position to block strong action against Khartoum, while Russia has largely followed suit.' Belloni adds that, in general, the Council has ‘shown little will to support armed intervention, and not only because of Western apathy. China and Russia, in particular, wanting to maintain their privileged access to Sudanese oil reserves, have made known their decision to veto any proposal for military action.' As a result, Russia and particularly China’s policy of defending Sudanese — and by extension, their own — interests in the Security Council precluded the deployment of a coercive UN military intervention in Darfur.

**Chinese and Russian anti-interventionism**

The first set of Chinese and Russian interests that this chapter examines pertain to their implicit defence of pluralist international order from posited reckless and fundamentally dangerous Western interventionism. As discussed in Chapter 1, the pluralist international order which emerged after the Second World War was a product of both the desire to contain inter-state war and the decolonisation movement, with its increasingly accepted right of national self-determination. Under the 1945 UN Charter, the process of achieving self-determination and national sovereignty would result in the ‘sovereign equality’ of nascent independent states when joining the organisation and subject them to the general norm of non-intervention that was emerging in international relations. In addition to seeking to


mitigate wars of aggression, the aim of such self-determination was to celebrate and accommodate a plurality of cultures, nations, and forms of government into post-war international society. Under this pluralistic arrangement, interventions (under whatever rationale) were (and are) deemed to be anti-pluralist, neo-colonial, and an affront to the newly acquired independence and sovereignty of states in the developing world.\textsuperscript{578}

With the end of the Cold War, liberal activists and non-governmental organisations pressured Western states to enhance their scrutiny and condemnation of abuses of human rights and human security in other parts of the world, including in China (particularly after the Tiananmen Square incident) and post-Soviet Russia. In parts of the developing world, a number of egregious violations of human rights, including genocide, ethnic cleansing and violent secessionist attempts, raised the question of if and how external actors should intervene to protect civilian victims. Yet, such interventions would inevitably challenge the pluralist nature of international society. While Western states have usually been at the forefront of such arguments for international intervention (largely due to pressure from their own domestic constituents), China and Russia have continually resisted (or reluctantly acquiesced in) the claim that there is a ‘right of humanitarian intervention’ or that powerful states have a ‘responsibility to protect’ victims of such atrocities through military intervention. As a result, there has historically been a clear divide between those predominantly in the West pushing for effective humanitarian interventions in extreme cases of civilian suffering, and those primarily outside the West, including in Russia and China, resisting such attempts.

\textsuperscript{578} Ramesh Thakur, \textit{The United Nations, Peace and Security} (Cambridge: Cambridge University Press, 2006), 265-266.
The most vivid illustration of the Chinese position on humanitarian intervention came at the Beijing roundtable consultations undertaken in June 2001 by the ICISS commissioners in order to inform their final report. According to Ramesh Thakur, an ICISS commissioner, of all of the regional perspectives canvassed by the ICISS, the Chinese participants in Beijing presented the ‘hardest line against intervention and in defence of sovereignty’.\(^{579}\) Thakur concluded that for the Chinese, “humanitarianism is good, interventionism is bad, and ‘humanitarian intervention’ is ‘tantamount to marrying evil to good’. In such a shotgun marriage, far from humanitarianism burnishing meddlesome interventions, it will itself be tarnished by interventionism.”\(^{580}\) Indeed, the rapporteur’s report of the Beijing roundtable summarised the Chinese position as: ‘[t]heoretically, the conceptualization of humanitarian intervention is a total fallacy. Practically, actions of humanitarian intervention posed grave problems for international laws and international relations.’\(^{581}\) The Chinese participants argued that such interventions were dangerous and undesirable because they lacked any legal basis in the UN Charter, gave rebel groups incentives to disengage with peace mediation, were conducted highly selectivity by Western powers according to political interests, and were based upon a Western-centric philosophy of the relationship between individual, group and state rights.\(^{582}\) More specifically, and illuminating the later position advanced by the Chinese government in Council deliberations on Darfur, the Chinese participants argued that while the international community should promote non-coercive

\(^{579}\) Thakur, *The United Nations*, 268. Notably, there was no Chinese representative included in the 12 ICISS commissioners, although Russia was represented by Vladimir Lukin.


\(^{582}\) ICISS, “Regional Roundtables”, 392.
In practice, one can differentiate humanitarian actions from humanitarian intervention according to some key principles, the core one being respect for sovereignty. Sovereignty is enshrined in the UN and remains the most important pillar in today’s international order; humanitarian actions must conform to this basic principle. Derived directly from the principle of respecting sovereignty are several other guiding norms that are concerned with the legitimacy of humanitarian actions.\textsuperscript{583}

The first of these derivative requirements, and a ‘logical reflection of respecting sovereignty’, was that the ‘[c]onsent of conflicting parties’ was a ‘precondition’ for external involvement or intervention in an internal conflict. In cases where consent (most centrally that of the host state) was not provided, ‘international society should reaffirm Article 2(4) of the UN Charter and the principles of non-encroachment upon state sovereignty and non-interference in internal affairs’. Regarding Darfur, this position was most evident in China’s successful insistence that Resolution 1706 include the crucial caveat that the Council ‘invites the consent of the government of Sudan’ to the deployment of a UN peace operation in the country that was mandated to address the conflict and humanitarian crisis in Darfur and to protect the region’s vulnerable civilian population.

The second principle derived from respecting state sovereignty, according to the Chinese, was that any military intervention must achieve prior authorisation by the Security Council for it to be considered legal and legitimate. The immediate aim of this position was to prevent further action outside of the Council, as NATO had done in Kosovo in 1999, but it also reflected China’s desire for the P5 to retain veto-wielding power over such operations, which of course China enjoyed. Finally, the

\textsuperscript{583} ICISS, “Regional Roundtables”, 393.
Chinese participants argued that the ‘nonuse of force except in self-defence is the trademark of a peacekeeping operation whose central objective is to ensure a cessation of violence’, and thus UN peacekeepers should ‘remain strictly neutral’ and ‘not support or oppose either side.’\textsuperscript{584} While this is widely accepted for traditional peacekeeping operations, such a statement would appear to challenge and even preclude more robust mandates for UN peace operations, particularly those which aim to physically protect civilians from belligerent parties in civil conflicts (including military and paramilitary wings of the state). This Chinese position had direct implications for the Council’s potential measures to protect vulnerable civilians in Darfur.

Russia’s traditional position on humanitarian intervention was most clearly set out in Moscow’s June 2000 Foreign Policy Concept of the Russian Federation. In a general sense, the Russian government claimed that it would ‘respect human rights and freedoms’ but also that ‘[a]ttempts to belittle the role of a sovereign state as the fundamental element of international relations generate a threat of arbitrary interference in internal affairs.’ Similar to Chinese criticism of Western actions outside of the Security Council’s authorisation, Moscow, in a veiled reference NATO’s Operation Allied Force in Kosovo, reiterated that ‘only the U.N. Security Council has the authority to sanction use of force for the purpose of achieving peace’.\textsuperscript{585} In this context, the document illustrates Moscow’s skepticism towards liberal arguments in support of external intervention to protect civilians from atrocities:

\textsuperscript{584} ICISS, “Regional Roundtables”, 393.
\textsuperscript{585} Russian Federation, “Foreign Policy Concept of the Russian Federation”, June 28, 2000. Indeed, the argument presented in Part I of this thesis is that the Council should have authorised the coercive deployment of a military intervention in Darfur. Moreover, by obstructing attempts at a legitimate and necessary intervention to protect vulnerable civilians in Darfur, Russia and China were encouraging actions outside of the Security Council, thus further weakening its authority.
Russia proceeds from the premise that the use of force in violation of the U.N. Charter is unlawful and poses a threat to the stabilization of the entire system of international relations. Attempts to introduce into the international parlance such concepts as "humanitarian intervention" and "limited sovereignty" in order to justify unilateral power actions bypassing the U.N. Security Council are not acceptable. Being prepared for a constructive dialogue on upgrading the legal aspects of employing force in international relations in conditions of globalization, the Russian Federation proceeds from the fact that the search for concrete forms of response on the part of the international community in different acute situations, including humanitarian crises, must be conducted collectively on the basis of strict observance of the norms of international law and the U.N. Charter.

Indeed, according to Baranovsky, Moscow has generally taken a negative view of all kinds of international interventions because of its own historical experiences, while it did not consider its own military actions abroad to be ‘interventions’. Over time, as the Soviet Union sought international legitimacy and became integrated into international society, Moscow began to speak in defence of the norm of state sovereignty and non-intervention. Accordingly, the ‘importance attributed to international law’ by the Kremlin ‘was not mere propaganda and genuinely reflected substantive interests of the country in the international arena.’

This was because:

Acts of intervention ignored, circumvented or undermined the sovereignty of states, which principle was considered the cornerstone of the international system. Since Moscow aimed at consolidating its own position in the system rather than destroying it, an insistence on respecting the principle of sovereignty was imperative.

As outlined by Baranovsky, there are a number of other reasons for Russian skepticism towards the notion of humanitarian intervention. First, similar to Chinese

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587 Baranovsky, “Humanitarian Intervention”.

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political philosophy, the rights of the individual have been subordinated to the necessities of the state throughout most of Russian and Soviet history. Second, the human rights discourse that is employed by liberals to argue in favour of humanitarian intervention is often associated by Russians with similar critiques of Soviet policy during the Cold War. Third, in the post-Soviet era much of Russian policy has been focused upon domestic economic and political restructuring rather than with problems in foreign lands. Similarly, the social and humanitarian crises in and around Russia’s borders take priority over like-problems further afield and more removed from the Russian public’s view. Finally, the psychology of capitalist-induced individualism has eroded Russian public concern for solidarity with the victims of abuses in other parts of the world.  

Chinese and Russian officials thus publicly imply, inside and outside the Council, to be acting as the sentinels of global security by defending state sovereignty and the pluralist international order from reckless and dangerous liberal ideas about individual rights, and from self-serving and selective Western interventions largely in the developing world. *Prima facie*, these arguments have merit and should not be discounted in debates over the legality and legitimacy of any humanitarian intervention. However, in the context of the highly visible conflict and humanitarian crisis in Darfur, and in light of credible evidence presented to the Security Council that the Sudanese government was responsible for orchestrating and committing atrocities against its own civilians, the arguments of the Chinese and Russian governments that humanitarian intervention would be, to use Kofi Annan’s phrase, ‘an unacceptable assault on sovereignty’ and international order, are not

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588 Baranovsky, ‘Humanitarian intervention’.
589 As noted above, see Chapter 1 for the argument that the ICISS doctrine of the ‘responsibility to protect’ and its operational criteria persuasively accommodate or refute most of the criticisms advanced by the Chinese and Russian positions.
compelling in this case. This is particularly so because Beijing and Moscow, as influential permanent members, would have direct oversight and control over any potential Council-authorised military intervention in Sudan, the very type of multilateral regulation that both countries argue to be the *sine qua non* of any external intervention if that intervention is to be considered legitimate and in order for it to do the least damage to the fragile norms of a pluralist international order.

Therefore, a more critical analysis suggests that while claiming to be acting on principle, Chinese and Russian arguments against humanitarian intervention simultaneously advance their own national interests because of their concerns about international scrutiny of (and potential sanctions against) the plight of disaffected minorities, secessionist movements, and state repression inside their own borders. For Russia, continuing secessionist conflict in the Caucasus and brutal Russian reprisals against Chechen and other claims for independence would become an increasingly unavoidable topic of discussion in global fora if the norm of intervention for human security purposes was strengthened through the coercive deployment of a UN military operation in Darfur. Moreover, the double standard that would be apparent if Russia had agreed to the Council authorising such coercive intervention in Sudan while obstructing any discussion of Chechnya would be politically difficult for Moscow. As Cohen argues:

One reason the international community finds the Darfur problem difficult to address is that state reliance on excessive force is not unique to Sudan. Other governments bent on maintaining the dominance of a particular ethnic group have also waged brutal wars against their own populations. The Russian Federation, for example, has conducted a scorched earth campaign against the Chechens. A veto-wielding permanent member of the Security Council, Russia has
opposed diplomatic pressure or sanctions against the Sudanese government for fear of setting a precedent.\textsuperscript{590}

China, perhaps even more than Russia, is concerned about maintaining its own international legitimacy and domestic control as it emerges as an unstable superpower. Beijing’s desire to maintain its fragile global legitimacy was particularly evident in the extents to which the Chinese government went in the lead up to the Beijing Olympics in 2008 to conceal from international media scrutiny uprisings in Tibet and in portraying the Muslim Uighur separatist movement in Xinjiang province as ‘terrorists’. For the Chinese government, deflecting international attention from such domestic discontent inside China is usefully served by obstructing any emerging norm permitting humanitarian intervention in cases of brutal government repression of ethnic minorities. In arguing that the Security Council should always respect Sudanese sovereignty in the body’s deliberations on the Darfur crisis (in the face of Khartoum’s orchestration and commission of atrocities), China and Russia were able to simultaneously obstruct the further emergence of the international norm of the ‘responsibility to protect’ and thereby weaken claims for further scrutiny of, and perhaps punitive action on, human rights abuses inside their own borders. Hence, defending Khartoum’s interests served their own interests well.

In light of the traditional Chinese and Russian hostility towards humanitarian intervention, the endorsement by both countries, as members of the UN General Assembly, of the 2005 UN World Summit Outcome appeared to be an in-principle concession by Beijing and Moscow to the proposals of the ICISS and its advocates. The Summit Outcome stated, \textit{inter alia}, that UN member states supported the notion that the international community had a ‘responsibility to protect’ the victims of

\textsuperscript{590} Roberta Cohen, “The International Response to Darfur”, \textit{Forced Migration Review} 23 (2005): 7-9, 7.
genocide, war crimes, ethnic cleansing and crimes against humanity, and committed themselves through the Security Council to take Chapter VII action ‘should peaceful means be inadequate and national authorities are manifestly failing to protect their populations’ (see Chapter 1). Moreover, as permanent members of the Security Council, both China and Russia again explicitly endorsed the Summit Outcome in Resolution 1674 in April 2006, which codified the endorsement as a basis for future Council action. This suggested that China and Russia were coming to accept that it was necessary for the members of the Council to act forcefully in such cases to properly reflect the recasting of the concept of ‘security’ in the Council’s title.

Crucial to this endorsement, however, and of China and Russia’s acceptance of it, appears to be the clause in the Summit Outcome that Council interventionary action would be determined ‘on a case-by-case basis’, meaning that, despite any posited responsibility as Great Powers, Beijing or Moscow (or any of the P5) could obstruct the deployment of any Council military operation aimed at the protection of civilians if they deemed that particular action to be contrary to their national interests. Indeed, the protection of narrower national interests — in the form of lucrative trade and investment relationships with the incumbent regime in Khartoum — is the other context in which Chinese and Russian obstruction of coercive Council-authorised military intervention in Darfur should be viewed.

China-Sudan and Russia-Sudan bilateral trade and investment

In addition to the ‘non-intervention norm’ explanation of Chinese and Russian positions on Darfur, there is an even more direct link between the national interests of Beijing and Moscow and the interests of the al-Bashir regime in Khartoum. This pertains to the extensive and lucrative bilateral trade and investment
relationships between China and Sudan and between Russia and Sudan. Because Russia and particularly China have emerged as rising world powers in the new millennium (after a period of relative latency, and in Russia’s case, reform, in the first post-Cold War decade), their rapid economic growth has demanded new resources and markets for development and enabled them to have greater influence on important political dynamics and relationships in international society (including increasing assertiveness in the Security Council). The proceeding discussion examines how China and Russia’s interests in protecting their extensive bilateral trade and investment relationships with Sudan produced a strategy of protecting Khartoum diplomatically in the Council in the face of pressure for punitive action or coercive intervention against it over Darfur. Because it is of most financial significance, and because China has acted most proactively to protect Khartoum from external interference over Darfur, the China-Sudan economic relationship will be the primary focus of the analysis.

Chinese economic interests in Sudan are centred upon the extensive importation of Sudanese oil and investment in Sudan’s relatively nascent petroleum industry, while China and Russia have both profited from significant exports of arms to Khartoum (with some of this trade being in violation of the Council’s own arms embargo on the country). For Beijing and Moscow, this has been particularly lucrative and uncompetitive business in the absence of American companies from Sudan since Washington imposed unilateral economic sanctions and its own arms embargo in 1997. Despite concern by human rights groups at the role played by China and Russia in materially supporting Khartoum in its civil war against the SPLM/A (of which control over oil resources and revenues became and increasingly central issue), until the Darfur conflict erupted in early 2003 such business was
conducted relatively free from international scrutiny. Since then, however, attention has turned to the material and now crucial diplomatic support afforded to President Bashir and his regime by Beijing and Moscow.

The National Petroleum Commission (NPC) was established by the Sudanese government in October 1995 to facilitate greater development of the country’s oil sector. The NPC allocates new oil contracts and, since the signing of the CPA, regulates the equitable sharing of oil revenues between Khartoum and south Sudan and is responsible for resolving issues arising from duplicate contracts.\textsuperscript{591}

Commencing wholesale in 1999, mass oil production in Sudan was initiated by the construction of a pipeline from the country’s central oil fields to its Red Sea transport hub of Port Sudan, jumping from a few thousand barrels per day in the late 1990s to over 400,000 barrels per day by 2006.\textsuperscript{592} As this oil production has vastly outpaced domestic consumption, Sudan was able to export 320,000 barrels per day in that same year.\textsuperscript{593} According to the U.S. Energy Information Administration, in January 2007 Sudan sat on five billion barrels of proven oil reserves, up from an estimated 563 million barrels in 2006 and placing it fifth in total proven oil reserves out of African states (behind Libya, Nigeria, Algeria and Angola, respectively).\textsuperscript{594}

In Sudan, national oil exploration and production is organised by the Sudan National Petroleum Corporation (Sudapet), but due to the Corporation’s limited financial and technical capacities, it engages in key partnerships with foreign oil companies.\textsuperscript{595} These foreign companies form the majority Sudan’s main oil-producing consortium, the Greater Nile Petroleum Operating Company (GNPOC).

\begin{itemize}
  \item \textsuperscript{591} United States, Energy Information Administration (EIA), “Sudan: Oil”.
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  \item \textsuperscript{595} EIA, “Sudan: Oil”.
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Importantly, the Chinese state-owned China National Petroleum Company (CNPC) holds a 40 per cent stake in GNPOC, while Malaysia’s Petronas (with 30 per cent) and India’s ONGC-Videsh (25 per cent) also have a share, alongside Sudapet (five per cent). Geographically, GNPOC operates oil Blocks 1, 2 and 4, which produce the majority of Sudan’s daily oil output and split the border of North and South Sudan (and cover the disputed Abyei territory). The CNPC also has a 95 per cent share of Block 6 in Southern Kordofan/South Darfur. In addition, CPNC (41 per cent) and a second Chinese petroleum company, Sinopec (six per cent), own shares of Blocks 3 and 7, which recently commenced production when a new pipeline was installed.

Chinese investment in the Sudanese petroleum industry is a product of the rapid economic growth of the east Asian power and the resulting high demand for energy. According to 2005 EIA forecasts, China’s oil consumption would increase by almost half a million barrels per day in 2006, accounting for 38 percent of total growth in world oil demand, such that China is now the world’s second largest oil consumer behind the US. Despite being the world’s sixth largest oil producer, China is now the third largest net importer of oil behind the US and Japan. In 2006, China’s domestic oil production was 3.8 million barrels per day, but its consumption was 7.4 million barrels per day, meaning that it needed to import 3.6 million barrels per day, or just under half of its required oil needs. This is the gap that China has sought to cover with foreign sources of oil. According to EIA, CNPC has obtained interests in foreign oil exploration and production in 21 countries around the world and in 2005 announced a further US$18 billion in foreign oil and gas assets up to 2020.

597 ICG, ‘Getting the UN Into Darfur’.
598 EIA, “Sudan: Oil”.
Much of China’s new sources have come from Africa, representing part of a forging trade relationship between China and the continent which has challenged traditional economic patterns in the region. In 2006, Angola took over from Saudi Arabia as China’s top source of oil imports, ahead of Iran, Russia, Oman, Equatorial Guinea, and Yemen.\footnote{EIA, “Sudan: Oil”.} Goodman argues that as part of China’s wider efforts to promote its own trade and development across Africa, its relationship with Sudan also ‘demonstrates the intensity of China’s quest for energy security and its willingness to do business wherever it must to lock up oil.’\footnote{Peter S. Goodman, “China Invests Heavily in Sudan’s Oil Industry: Beijing Supplies Arms Used on Villagers”, \textit{The Washington Post}, December 23, 2004.} Indeed, CNPC has invested more than US$8 billion in the Sudanese oil industry including the initial construction of the 900-mile pipeline to the Red Sea.\footnote{EIA, “Sudan: Oil”.} Furthermore, China now imports the majority of Sudan’s oil.\footnote{ICG, “Getting the UN Into Darfur”.} According to UN Comtrade data, during the four-year period of study in this thesis, China imported $7.5 billion worth of oil from Sudan. This was broken down as $1.87 billion in 2006, $2.57 billion in 2005, $1.66 billion in 2004, and $1.4 billion in 2003.\footnote{United Nations, Comtrade database, \textit{DESA/UNSD}.} Chinese business in Sudan is successful in part because oil companies from other countries have been put off investing in Sudan due to the ongoing civil wars and because of Sudan’s pariah status, according to Goodman.\footnote{Goodman, “China Invests Heavily”.} Thus, while US firms have been prohibited from investing in or doing business inside Sudan since the 1997 unilateral sanctions, around the same time China has taken the opportunity to invest in the infrastructure to extract and export Sudanese oil, in addition to purchasing that oil itself.\footnote{Goodman, “China Invests Heavily”.} Going further, Reeves argues that Beijing ‘is cynically
satisfied with low-level, ongoing conflict that destabilizes its most promising source of offshore oil production and thereby makes competitive entry of Western oil companies unlikely, ensuring it retains a controlling interest in the Sudanese oil industry. In light of its extensive trade and investment relationship with Sudan, the argument that China has acted to shield Sudan from international intervention or sanctions and thus protect its own investments, sources of energy, and reliable trading partner becomes persuasive.

Indeed, voting patterns detailed in Chapter 3 revealed that China had abstained from key draft Council resolutions which attempted to impose mandatory demands on Khartoum and which harshly criticised the Sudanese government for its role in orchestrating, or obstructing the resolution of, the Darfur crisis. In an influential 2007 Council on Foreign Relations special report, Lee Feinstein argued that the UN had ‘failed to take strong action [on Darfur] in the first instance because China has adopted the role of Sudan’s protector on the Security Council.’ According to another analysis, China has ‘abstained on resolutions threatening actions against Sudan, in particular against its petroleum sector, and threatened to use its veto against resolutions if they were too strong’ because it is the primary foreign investor in the Sudanese oil industry. Because of this, China has been labelled as Sudan’s ‘chief diplomatic ally’ in the Council. Similarly, Reeves concludes that China, with its threats to veto sanctions measures, is the ‘primary obstacle’ to more effective Council action on Darfur. He argues that while Russia and Pakistan are notable Chinese allies in the Council regarding Darfur:

609 Goodman, “China Invests Heavily”.

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it is China’s perceived national interest that dominates the political calculus at the UN. The Chinese economy has a voracious appetite for offshore petroleum, and consumption of imported oil has more than doubled in the last five years. China has the dominant stake in Sudan’s two oil producing consortia and views Sudan policy almost exclusively through the lens of petroleum needs.  

The International Crisis Group has reached the same conclusions, observing that while targeted sanctions against the Sudanese petroleum sector were a potential measure short of military intervention to compel Sudanese compliance over Darfur, ‘consensus in the Security Council on any such ban is extremely unlikely: at this point, China, the main importer of Sudan’s petroleum, would certainly veto any such action.’ Moreover, regarding potential Western sanctions against the Sudanese oil industry, Reeves suggests that “[g]lib talk in Washington and European capitals of an ‘oil embargo’ is pointless: China could easily purchase every barrel of oil that Sudan produces for export.” This certainly goes some way to explaining the weakness of the sanctions regime imposed on Sudan by the Council. In turn, for Sudan, China represents a ‘lucrative partnership that delivers billions of dollars in investment, oil revenue and weapons — as well as diplomatic protection’.

Indeed, in addition to the petroleum sector, a May 2007 Amnesty International report examined the international arms trade with Sudan (which was in violation of the UN Security Council’s own arms embargo on the country), claiming that the ‘bulk’ of arms traded to Sudan were ‘transferred from China and Russia, two Permanent Members of the UN Security Council.’ The report argues that the ‘governments of these supplier countries have been, or should have been, aware …

611 ICG, “Getting the UN Into Darfur”.
612 Reeves, “Genocide by Attrition”, 21.
613 Goodman, “China Invests Heavily”.
that several types of military equipment including aircraft have been deployed by the Sudanese armed forces and militia for direct attacks on civilians and indiscriminate attacks in Darfur, as well as for logistical support for these attacks.\textsuperscript{615} This was supported by a 2008 \textit{BBC} investigation, which provided primary evidence of Chinese-made Dong Feng military lorries in use in Darfur and claimed that China had been training Sudanese pilots for Chinese-made A5 Fantan fighter jets, which it had sold to Khartoum.\textsuperscript{616} The dubious legality of such deals aside, the trade has been highly lucrative for Sudan and its exporters. According to Goodman, Sudan has made around US$500 million a year in profit since 1999, largely from Chinese investment. Of this, eighty percent has been used on the Sudanese military such that its military budget had doubled between 1998-2002. In addition to fighting the SPLM/A in the past, this money has also been used to protect the oil fields themselves from sabotage by the rebels, and to remove communities from locations in which future oil exploration might be successful.\textsuperscript{617}

The Amnesty report cites 2005 trade figures showing that Sudan imported ‘$24 million worth of arms and ammunition … as well as nearly $57 million worth of parts and aircraft equipment and $2 million worth of parts of helicopters and aeroplanes’ from China. In addition, the Chinese company AviChina Industry and Technology ‘recently delivered six K-8 military training/attack aircraft to the Sudanese air force and a further six will follow’, while other Chinese companies also developed, produced, and delivered flight simulators for Sudanese K-8S jets.\textsuperscript{618} Indeed, According UN Comtrade data, during the four-year period of study in this thesis, Sudan imported around $79 million worth of military equipment, arms and

\textsuperscript{617} Goodman, “China Invests Heavily”.
ammunition from China. This was broken down as over $20.6 million in 2006, almost $36 million in 2005, $18.5 million in 2004, and $3.7 million in 2003.

In addition to China, Russian arms trade with Sudan has been similarly lucrative. According to Williams and Bellamy, while Russia’s ‘opposition to intervention [in Darfur] is arguably connected to concerns about Chechnya … the country also has substantial commercial interests in the region, especially since it has sold around $150 million worth of military equipment to Sudan, [although] in 2002 a $200 million oil deal with the Sudanese government fell through.’ Citing a Moscow-based defence analyst, they suggest that Russia is concerned about the Sudanese government defaulting on its payments if an intervention was to occur.\footnote{Paul D. Williams and Alex J. Bellamy, “The Responsibility to Protect and the Crisis in Darfur”, \textit{Security Dialogue} 36, no. 1 (2005): 27-24, 33.} Similarly, Africa Action claims in a 2006 report that it is ‘well established that Russia is a major supplier of arms to Khartoum’, citing how in 2004 the Sudanese government bought 12 MiG-29 jet fighters from Russia worth between $120–370 million.\footnote{Africa Action, “Leveraging New International Action”, 4.} According to the report, in 2006 the Sudanese defence minister met with Russian officials to negotiate a $1 billion arms loan for military aircraft, and that a Russian company secured a new deal to construct a Sudanese oil pipeline in 2004.\footnote{AfricAction, “Leveraging New International Action”, 4.} Citing 2005 trade figures, the aforementioned Amnesty International report revealed that Russia ‘exported to Sudan $21 million worth of aircraft and associated equipment including spare parts and $13.7 million of helicopters, adding to its substantial arms deliveries in recent years.’\footnote{Amnesty International, “Sudan: Arms”, 6.}

Thus, an intimate relationship between Beijing, Moscow, Khartoum, oil and weapons developed in the early 21\textsuperscript{st} century. Illustrating this nexus, Goodman,
describing how Chinese workers had been constructing oil infrastructure in Sudan in the face of threats by southern Sudanese rebels, observed: ‘But the Chinese laborers are protected: They work under the vigilant gaze of Sudanese government troops armed largely with Chinese-made weapons — a partnership of the world's fastest-growing oil consumer with a pariah state accused of fostering genocide in its western Darfur region.’ According to Goodman, Sudan is China’s ‘largest overseas oil project’, while China is Sudan’s largest supplier of arms. ‘Chinese-made tanks, fighter planes, bombers, helicopters, machine guns and rocket-propelled grenades’ have been used by the Sudanese government in its civil war with the southern rebels, and, according to Amnesty International, now also in Darfur. Regarding this lucrative and politically convenient relationship, Africa Action concluded that:

At the core of China’s support for Sudan is a profitable economic relationship centred on Sudan’s oil wealth … Beyond oil, China is Sudan’s largest trade partner more broadly. Traditionally, China also opposes the principle of external intervention in the affairs of a sovereign state on human rights concerns. At the same time, it is selling military aircraft and parts, as well as guns and ammunition, to Khartoum.

It is clear, therefore, that China and Russia have significant economic investment in and trade with Sudan, ties which Beijing and Moscow have a strong national interest in protecting from external interference. China, in particular, has ‘paralysed the UN Security Council, ensuring that no effective actions have been taken against a regime that has allowed Chinese oil companies to become dominant in Sudan’s burgeoning petroleum industry’. To protect against internal interference, the two powers have sold weapons to Khartoum, which the Sudanese

623 Goodman, “China Invests Heavily”.
624 Goodman, “China Invests Heavily”.
government has then used to brutally attack rebel groups and civilians allegedly sympathetic to their causes while also physically protecting its oil infrastructure. For Sudan, Chinese and Russian investment and weapons enable the regime to profit, become powerful relative to internal rebel movements and regional enemies, and to operate free from international intervention into Sudanese affairs (or at least negotiate its foreign relations on stronger terms). For the vulnerable civilians in Darfur, however, this congruence of Sudanese, Chinese and Russian national interests precluded the deployment of a coercive UN military intervention to protect them from their own state.

**Sudan’s Allied Non-permanent Members: Pakistan, Algeria, and Qatar**

While the powerful permanent members played the most important roles in shaping the Council’s response to Darfur — culminating in the body’s failure to coercively deploy a UN military intervention with a robust civilian protection mandate — the non-permanent, non-veto-wielding members also exerted influence on the body’s deliberations and actions. While individually they could not prevent a resolution from being passed, as a bloc they held the balance of power in determining if a Council motion would be successful. More important in the context of the body’s response to Darfur, however, was the perceived legitimacy that the non-permanent members could add to or detract from Council motions, which were otherwise largely driven by the P5’s interests and political calculations.

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627 As explained in Chapter 1, a successful Council resolution requires a minimum of nine affirmative votes and must not receive a negative vote by any of the P5.
The detailing in Chapter 3 of Council voting patterns and the public statements of its members revealed that a majority of the non-permanent membership increasingly supported more coercive action on Sudan over Darfur, as the crimes of the Sudanese government were revealed, the humanitarian crisis deepened, and the conflict became entrenched — including the proposed conditional transition from AMIS to a UN force with a robust civilian protection mandate (as authorised in Resolution 1706). This included non-permanent members from Europe, Asia, Africa and the Americas and gave the draft resolutions the requisite number of votes to be passed (although after being watered-down to accommodate Chinese and Russian positions and thus avoid their veto).

Importantly, although Africa has no permanent member on the Council, African non-permanent members (except Maghreb Algeria) tended to support more coercive measures on Sudan (perhaps in solidarity with Darfur’s black African population), although their arguments initially focused upon enabling the African Union to try to resolve the conflict. When it became clear that AMIS had neither the capacity nor mandate to effectively protect civilians (as it was set up as a military observer mission to monitor the 2004 N’djamena ceasefire agreement), sub-Saharan African non-permanent members increasingly became supporters of more robust UN intervention, as did the African Union Peace and Security Council itself.

However, contrary to this African and broader support, three non-permanent members chose to abstain from voting on substantive draft Council resolutions on Darfur: Pakistan (on two resolutions), Algeria (on three), and Qatar (on two). The most persuasive explanation of the positions of these three countries is that they are all, along with Sudan, members of the pan-Islamic Organisation of the Islamic Conference (OIC), while Algeria and Qatar are also fellow members of the Arab
League. The governments of Pakistan, Algeria and Qatar thus practiced identity-driven inter-elite solidarity with Khartoum by opposing coercive or mandatory action in the Council against Sudan, while they couched their arguments against such intervention, as did China and Russia, in the language of protecting state sovereignty, implying a defence of pluralist international order from self-interested and neo-colonial Western interventionism. Indeed, the al-Bashir regime has ‘regularly solicited [the Arab League’s] political support in the face in the face of international pressure on Darfur.’

According to one observation, Algeria and Pakistan, ‘which have close political ties to Arab and Islamic governments, have worked to delay and weaken international action on Darfur,’ while another view is that the ‘absence of significant multilateral support for the international response [to Darfur] from either the [OIC] or the Arab League was depressing.’ In March 2006, a coalition of international and Arab human rights organisations argued that the Arab League ‘has rightly condemned attacks on civilians across the region, but it has remained silent about Sudan’s atrocities in Darfur.’ They called upon Arab leaders, meeting for a 2006 summit in Khartoum, to ‘put the interests of Sudan’s people first and support the transition to a U.N. force in Darfur.’ Similarly, the International Crisis Group’s Nadim Hasbani has observed that the Arab League has ‘expressed concern over the violence in Sudan's Darfur, but, like individual Arab member states, it has failed to support international action to protect the Sudanese citizens of Darfur.’

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to another analysis, many Arab League members and officials were ‘xenophobically opposed to a Western-led intervention in North Africa, and strongly protective of one of [their] own’, Sudan.\textsuperscript{633} In the Council, Qatar has “consistently aligned itself with the Sudanese government, with whom it declares a ‘fraternal’ relationship, and it has stood in solidarity with Khartoum in opposing the deployment of a UN force to Darfur.”\textsuperscript{634} Indeed, the evidence demonstrates that:

At the UN, Arab countries have been active, though all their activity seems to be directed at obstructing Security Council resolutions that could have helped end the suffering of Sudan's Darfur population. Since 2004, the last two Arab non-permanent members at the Security Council — Algeria and Qatar — speaking and voting in the name of all Arab countries, either toned down resolutions in Khartoum's favour or abstained from voting in a clear message of non-support for the civilian victims. The current Arab representative on the Security Council, Qatar, abstained from voting on an August 2006 resolution (1706) calling for the deployment of UN troops in Darfur. Arab countries said that more efforts should have been made to secure Sudan's ‘consent’.\textsuperscript{635}

The contentious US-led invasions of Afghanistan and Iraq in 2001 and 2003 respectively — both Muslim-majority countries like Sudan — clearly enhanced the credibility of the arguments made against intervention in Darfur by representatives of the Arab and Islamic worlds (as discussed in Chapter 4). Yet the Darfur crisis was different. Not only was there clear evidence that the Sudanese government had orchestrated and committed atrocities against its own civilians, but those Darfurian victims were also primarily Muslims. As Hasbani argues, Arab governments’ ‘reference to Sudan as a "fraternal" neighbour is fair, but it is hard to understand why Arab solidarity should extend as far as defending a regime in its campaign of mass

\begin{itemize}
\item \textsuperscript{633} Grono, “Briefing — Darfur”, 628.
\item \textsuperscript{634} Africa Action, “Leveraging New International Action”, 5.
\item \textsuperscript{635} Hasbani, “About the Arab Stance”.
\end{itemize}
killing against its own citizens. In addition, by sitting on the Council during this period the three dissenting non-permanent members had some capacity to oversee and shape the character of any Council-authorised intervention in Sudan if they were to first accept that such an intervention was necessary to protect Darfurian civilians and support a resolution authorising a coercive deployment. Illustrating the contradictions of such inter-elite Arab solidarity, Slim has observed how the Arab League’s ‘strong criticism of US military action in Falluja and of Israeli military action in the Palestinian occupied territories in 2003 and early 2004 made a stark contrast to its silence over the violations in Darfur.’ Indeed, the ‘Arab world's acceptance of Khartoum's double standard does not do service to their well-placed critique of U.S. double standards in the Middle East.’

The above analysis suggests that the governments in Islamabad, Algiers, and Doha were more interested in supporting fellow elites (Islamic and/or Arab) than ordinary Muslim civilians in Darfur. In addition to this inter-elite solidarity, this is likely because these governments, similar to Russia and China, were concerned about being the targets of criticism for their own repressive domestic governance or human rights abuses and thus had an interest in resisting an emerging norm of humanitarian intervention and upholding traditional principles of non-intervention and state-centric forms of sovereignty. As Mustafa Kamel al-Sayed, director of the Centre for Developing Country Studies in Cairo, argues, “Some Arab governments have minority problems of their own, so they don't want international intervention”. As a result, despite the fact that a majority of non-permanent members supported more coercive actions against the Sudanese government, and

636 Hasbani, “About the Arab Stance”.
637 Slim, “Dithering”, 824.
638 Hasbani, “About the Arab Stance”.
supported the transition to a more robust UN force, the abstinence of Qatar, Algeria, and Pakistan on important resolutions, when coupled with similar non-votes from China and Russia, furthered the appearance and reality of a divided and thus weakened Council. Because of this division, the arguments of those supporting more coercive measures against Khartoum lost moral and political authority, and the result was that Khartoum, and those seeking to protect it and their own interests in Sudan, gained a measure of legitimacy. This was a ‘position that comforts the Sudanese regime and helps it deflect international pressure for a more robust force that could more effectively protect civilian populations.’

Again, for Council members — including non-permanent members — preserving their national interests was prioritised over the protection of vulnerable civilians in Darfur.

Conclusion

This chapter has examined the positions and interests of the two non-Western permanent members and the three non-permanent members whom consistently acted to protect Sudan in the Security Council from any pressure over its actions in Darfur, including by obstructing attempts to coerce Khartoum into changing its behaviour through the threat of UN military intervention. Writing in 2005 after the peak of violence in Darfur, Erin Patrick argued that ‘[b]y now the divisions within the UN Security Council on the issue of Darfur are apparent to anyone following the crisis. China, Russia, Algeria and Pakistan have abstained from voting on most of the Darfur-related Security Council resolutions … More importantly, however, the reluctance of these countries to support any measures seen as punishing or even

640 Hasbani, “About the Arab Stance”.
directly threatening the government of Sudan has resulted in weak resolutions." This trend continued through the end of the study period in 2006, resulting in a continuing lack of adequate protection for vulnerable civilians on the ground in Darfur and a prolonging of both the conflict and humanitarian crisis.

It has been demonstrated that extensive oil and arms trade between Sudan and China and Russia, and significant investment by China in the Sudanese economy, has resulted in the two non-Western permanent members acting to protect their own national economic interests by protecting Sudan diplomatically in the Council. In addition, because of their own domestic problems with disaffected minorities and secessionist movements, concerns in Beijing and Moscow about setting precedents or strengthening emerging norms for international intervention to protect abused minorities inside the borders of sovereign states has enabled them to protect their own political interests through arguing in the Council that the body should at all times respect Sudan’s sovereignty, despite Khartoum’s widespread commission of atrocities against its own civilians.

Because of the Chinese and Russian positions on Darfur, the permanent membership of the Council was disunited, even if Western permanent members did not want to push Sudan too hard either because of their own interests in the country, and their lack of capacity to do so. The result was that Council resolutions were watered down in order to accommodate the interests of Khartoum, and by direct extension Beijing and Moscow. Most evidently, this led to the inclusion of the ‘invites the consent of the government of Sudan’ clause in Resolution 1706, which effectively blocked the deployment of a robust UN peacekeeping force in Darfur and highlighted the non-coercive nature of the Council’s approach. Even more clearly

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than was apparent for Western members of the Council, the protection by China and Russia of their national interests directly precluded coercive military intervention in Sudan.

Adding political support and legitimacy to the positions of China and Russia were three non-permanent members who also acted to obstruct and delegitimise any attempts to pressure Sudan over Darfur or any movements toward coercive military intervention. Demonstrating inter-elite support for a fellow Islamic (or Arab) regime, the governments of Pakistan, Algeria and Qatar acted consistently in the Council to preclude the provision of adequate protection of fellow Muslims in Darfur by abstaining from key resolutions and by emphasising strict observance of the posited sovereign rights of the Sudanese government. While these non-permanent members could not individually obstruct a Council resolution, their political support was important in enhancing the legitimacy of the pro-Khartoum bloc within the body and lending some regional credibility to the self-interested positions of China and Russia.

As a result of these various positions on Darfur/Sudan, the political dynamics inside the Council worked against the body coercively deploying a military intervention to protect civilians. While Western states and other members concerned about the plight of Darfurians pushed for greater pressure (but not too great) on Sudan, the China/Russia/Arab/Islamic bloc obstructed an effective and united position by the body, which Sudan understood well and used to its own advantage. The threats of Chinese veto meant that Western permanent members had to decide if it was worth forcing the issue and thus drawing a negative vote, a practice that was considered to be unwelcome in the post-Cold War environment of apparently greater P5 consensus. Besides, Western permanent members were wary that forcing in public view a contentious vote — and thus veto — over Darfur, rather than first
reaching minimal consensus in private consultations, could come back to haunt them when the Council deliberated in future over other issues that the Western P3 might oppose. Nevertheless, it is clear that the US and UK in particular were not sufficiently committed to coercing Sudanese compliance over Darfur to necessitate forcing the Chinese to veto any tougher-worded draft resolutions.

Because of these political dynamics, in the context of a persuasive legal-institutional, normative and moral case for coercive Council-authorised military intervention to protect civilians from atrocities and massive human rights abuses when their own government fails to do so, the body mandated to maintain international peace and security did not deploy a military intervention in Darfur between 2003-06. Despite belatedly authorising the transition from AMIS to a UN operation with a more robust civilian protection mandate in August 2006, Chinese and other insistence that deployment of the force require Sudanese government consent (which was predictably not forthcoming) meant that hundreds of thousands of vulnerable civilians on the ground in Darfur were not provided with adequate protection from marauding Janjaweed militias and the Sudanese military. Like the Sudanese government, the UN Security Council consequently failed in its ‘responsibility to protect’ Darfurians. Indeed, as this chapter has reaffirmed, ‘perceived strategic interests mitigated against an interventionist position’ on Darfur.642 Put differently, it is evident that powerful states in the Council privileged the preservation of their own national interests over the protection of vulnerable civilians. As such, this evidence further substantiates the claim that humanitarian interventions will likely not occur when they directly clash with the national interests of the major powers.

Conclusion

Protecting Civilians or Preserving Interests?

This thesis has examined the response of the United Nations Security Council to the brutal state-directed violence and ensuing humanitarian crisis in Darfur, western Sudan, between 2003 and 2006. This response was set against the context of a compelling moral, normative and legal-institutional case for coercive Council-authorised military intervention in Sudan to protect vulnerable civilians. The thesis addressed the central analytical question of why no such intervention took place in the face of continuing government atrocities against the population of Darfur during the period of study. It sought an answer to why, absent the prior consent of the Sudanese government, the world’s most powerful multilateral security body ‘chose not to assume responsibility for alleviating human suffering in Darfur by authorising humanitarian intervention.’643 Most centrally, the thesis has demonstrated that the pursuit or preservation of various national interests in Sudan by permanent members of the Council — particularly in their desire to maintain cooperative relationships with Khartoum — precluded coercive UN intervention.

The context for the analysis in the thesis was established by two key developments. As Chapter 1 detailed, the first of these was an apparent normative evolution in conceptions and practices of sovereignty and security. It was demonstrated that the increasing salience of concepts such as ‘responsible sovereignty’ and ‘human security’ in international society have started to recast ideas

about international order. In particular, it has become apparent that the protection of states — and often just of regimes — can no longer legitimately come at the expense of the sovereignty of the population or of the security of individuals or groups residing within states. With a number of civil wars and other internal crises capturing the post-Cold War security agenda, the UNSC found itself having to adapt (inconsistently) to new circumstances using tired normative frameworks and outdated ideas. I have thus established the legality and legitimacy of ‘humanitarian’ intervention as a coercive method of dealing with internal state violence, while noting its normative contestation by defenders of a fragile pluralist international order and by those sceptical of Western interventionary motives.

The debate was distilled by the 2001 report of the ICISS, which pushed the doctrine of the ‘responsibility to protect’ onto the international agenda. The General Assembly and Security Council’s endorsements of (a version of) this newly codified international obligation in 2005 and 2006, respectively, seemed to signal that the protection of civilians in armed conflict, including protection from their own state without that government’s consent, was emerging as a new international norm with the prescriptive power to induce the Security Council — the appropriate body under the UN Charter and international law to authorise (and direct) military interventions for human protection purposes — to intervene when the enabling criteria had been met.

As such, the second development that established a context for the analysis in the thesis was the nature and scale of violence and terrorisation in the Darfur region since early 2003. I have argued that situation clearly met the enabling criteria of the ‘responsibility to protect’. In Chapter 2, the thesis outlined how in April 2003, Darfurian rebel groups attacked a Sudanese military installation sparking a conflict
with the state. The rebels were disaffected with their region’s continuing marginalisation and underdevelopment by the central Sudanese government in Khartoum and by the manipulation of ethnic identities in an environment of extreme resource scarcity and intertribal tensions. The chapter then detailed how the Sudanese government’s response to this uprising involved the orchestration of a campaign of brutal violence and widespread intimidation of Darfur’s non-Arab civilian population, using both the Sudanese Armed Forces and government-allied militias in the region.

According to UN estimates, the human cost of this counter-insurgency campaign was over 200,000 killed from direct violence or from the ensuing disease and malnutrition that characterised the resulting humanitarian crisis. Furthermore, the displacement of over two million civilians from their homes and villages into vast IDP and refugee camps reflected the pervasive fear and insecurity in Darfur, while it was calculated that a total of over four million people in the wider region were in some way significantly affected by the conflict.

It has therefore been argued that the crisis in Darfur represented a quintessential case for enacting the ‘responsibility to protect’ doctrine because it comprehensively met the criteria advocated by the ICISS, and moreover because the situation was consistent with the endorsed versions of that doctrine of the General Assembly and Security Council itself. Due to the scale and nature of the violence, insecurity and suffering, Darfur clearly exceeded the ‘just cause threshold’. It was argued that, because of the direct involvement of the Sudanese government in the orchestration and commission of atrocities in Darfur and the scale and nature of violence, insecurity, and suffering, it would have been morally unacceptable and politically cynical for the Council to allow Khartoum — which had clearly failed to
protect its own citizens — to remain in control of Darfur’s security. In combination with these reasons, I argued that because a variety of non-military measures were first tried and had clearly failed, by 2006 a coercive UN military intervention became a necessary and justifiable action.

These developments on the ground in Sudan and in international norms regarding sovereignty, security, and international responsibility were used as a context for the argument that there was a compelling legal-institutional, normative, and moral case for the Security Council to fulfil its own posited responsibility to protect by coercively deploying a military intervention in Darfur. Yet, despite this compelling case, no such coercive intervention took place during the 2003-06 period of study. The analytical aim of the thesis was then to explain this non-event in light of what was arguably the expected normative behaviour of the Council.

To do so, Chapter 3 examined the chronological development of the Council’s response to the Darfur crisis between 2003 and 2006. A number of important non-military measures that the Council took were highlighted, including the imposition of a limited sanctions regime and arms embargo, the establishment of the COI, the referral of Darfur to the ICC, and in league with the African Union, the deployment of AU military observers and the facilitation of the ultimately ineffective Darfur Peace Agreement. It was also explained that while the Council did authorise a UN peacekeeping operation in Darfur with a robust civilian protection mandate (Resolution 1706 of August 2006), that force did not actually arrive on the ground because the Council subjected its deployment to the prior consent of the Sudanese government, which was not forthcoming. This empirical study revealed that, in fact, a coercive UN intervention was not even seriously considered by the Council’s members.
Because of this, it was necessary to examine closely the political dynamics that existed inside the powerful body and to expose the voting patterns and public statements on Darfur of individual Council members. A prima facie review of these voting patterns and statements revealed that China, Russia and non-permanent members Algeria, Pakistan and Qatar generally opposed harsh recriminations of Sudan in the Council or any substantive form of punitive action against Khartoum. This was evident in their consistent abstentions on key resolutions on Darfur, weakening the moral and political authority of the Council. I have also demonstrated that Western permanent members and a majority of non-permanent members appeared instead to support the imposition of sanctions and other punitive measures on Sudan and were often sharply condemnatory of Khartoum in their public statements. A number of these members also rhetorically advocated the application of the ‘responsibility to protect’ doctrine to Darfur. Yet, coercive military intervention was not publicly advocated by Western members in the face of Sudan’s open opposition to it.

In order to critically analyse the response of the Council to Darfur between 2003 and 2006 and to explain why coercive military intervention was not undertaken, Chapters 4 and 5 probed the national interests and political calculations behind the positions of individual Council members, focusing on the P5. It was argued that despite their harsh public criticism, the US-led Western P3 actually had conflicting policy priorities and vested national interests when it came to Sudan and Darfur. Sudanese government intelligence cooperation in Western regional counter-terrorism operations meant that the Bush administration was reluctant to sever its ties with al-Bashir’s regime, a result that a coercive military intervention in Darfur would likely have achieved. In addition, extensive American and British political
investment in the CPA process meant keeping the NCP onside for fear of reigniting the north-south Sudan civil war. More generally, US and UK capacity for military action were also both severely constrained by the wars in Afghanistan and particularly Iraq, and this meant an inability to project a realistic deterrent for the Sudanese government during the Council’s efforts to bring about change in Sudan’s counter-insurgency policy. Moreover, the contentious Iraq war and its post-invasion alternative rationales significantly depreciated the arguments by proponents of the ‘responsibility to protect’ doctrine for genuine humanitarian intervention in places like Darfur. As a result, I have argued that while Western permanent members did attempt to bring pressure on the Sudanese regime, coercive military intervention was not an option ultimately considered or desired by the P3, nor taken seriously by Khartoum.

In addition to this, it was argued that China and Russia more explicitly obstructed coercive military intervention in Darfur because Beijing and Moscow did not want to sever their own, economic, relationships with the incumbent regime in Khartoum. For China in particular, as Sudan’s largest foreign investor and primary importer of oil, this meant objecting to any Council measure that it deemed too harsh on its client, including abstaining from or watering down any toughly worded resolutions. In line with historical policy, because of their own minority ‘problems’ in Tibet, Xinjiang and Chechnya, in particular, China and Russia were also more generally wary of setting a precent for coercive intervention in a sovereign state to protect an ethnic minority from an authoritarian central government.

In this obstructionism and diplomatic protection of Sudan, China and Russia were joined by non-permanent members Pakistan, Algeria and Qatar, all of whom shared membership with Sudan of the Organisation of the Islamic Conference and, in
the case of the latter two, the Arab League. I have argued that, in the name of inter-
elite Arab or Islamic solidarity, these three non-permanent members used their
positions on the Council to shield Sudan from criticism and ultimately contributed to
a weakening of the Council’s moral and political authority. The resultant political
dynamics inside the Council were such that there was little appetite amongst the
major powers for a coercive military intervention in Sudan, and as a result the
Council proved to be weak, divided, and easily manipulated by the Sudanese
government.

In analysing a variety of primary data and secondary sources, the thesis has
concluded that despite a persuasive moral, normative, and legal-institutional case for
coercive UN Security Council-authorised military intervention to protect vulnerable
civilians in Darfur, the deployment of such a force was precluded by the conflicting
individual national interests of the Council’s permanent members. Returning to the
broader theoretical significance of such findings, the thesis suggests that the Security
Council’s response to Darfur between 2003 and 2006 can tell us something
interesting about the nature of norms, interests and humanitarian intervention in
contemporary international society, particularly the apparent tension between the
pursuit of national interests and the pursuit of normative or more altruistic objectives
by states in their foreign relations.

In the thesis Introduction, the work of S. Neil MacFarlane and Thomas Weiss
was used to assert that national interests have been historically and contemporarily
the most important drivers of intervention, including humanitarian intervention, in
international society. Citing other cases, I used this argument to explain, first,
intervention for self-interested reasons cloaked as humanitarian ones (such as in Iraq,
2003), second, a lack of intervention to protect vulnerable civilians due to an absence
of strategic interests in or political apathy towards the target theatre (such as in Rwanda, 1994), and third, the deployment of intervention when strategic and normative interests coincide (such as for NATO in Kosovo, 1999).

Yet, while accepting that national interests are in large part determinative of the extent or even existence of humanitarian interventions, I have demonstrated in this thesis that none of these circumstances were present in Darfur between 2003 and 2006. For example, the first and third sets of circumstances are not applicable to Darfur because no intervention occurred, strategic or otherwise. The second set of circumstances are potentially more relevant, but are unpersuasive due to the evident national interests in Sudan of the major powers and, due to the vocal activist movement, the not-insignificant political costs of appearing apathetic towards the crisis and crimes in Darfur (as least for Western governments).

Instead, extending further this argument about the privileging of national interests over humanitarian objectives in foreign policymaking, the evidence and findings in this thesis substantiate the central theoretical claim made in the Introduction that humanitarian interventions will likely not occur when they directly clash with the national interests of the major powers. Moreover, as Chapter 1 has demonstrated, what makes humanitarian intervention most unlikely in these circumstances is the particular structure and voting arrangement within the Security Council. Due to the P5 members’ individual powers of veto, the national interests versus expected normative behaviour equation must be favourable concurrently for five of the world’s major powers if any humanitarian intervention is to proceed. While this may not be unexpected, is the unfortunate reality of the Security Council’s response to Darfur and the most persuasive explanation of non-intervention in this case.
This pessimistic conclusion may be taken by realists to substantiate their own arguments about how, on the final count, acting in the national interest will always trump altruistic or normative objectives when the two policy objectives clash. However, realist logic claiming that states must act in their own self-interest to ensure their survival in an anarchical system loaded with the inherent potential for conflict is unpersuasive in light of the pervasive constructivist critiques proposing instead the agency of governments to enact peaceful change in their interrelations. A more critical reading of such interests suggests that states do not always pursue national interests in a defensive sense, in order to just survive in international anarchy, but also because pursuing certain national interests leads to aggrandizement and self-enhancement for state elites and other interested parties.

A more subtle version of this critique, however, would observe that states do pursue national interests and would accept that these are not inherently overly selfish or illegitimate pursuits for governments. For example, the Chinese government seeking new sources of oil to fund a booming modern economy and to create jobs for its massive workforce is not inherently unethical (except perhaps in an environmental sustainability sense). Similarly, there is nothing inherently illegitimate about Western governments seeking to gather intelligence data on suspected terrorist networks that potentially threaten the security of citizens in Western and other countries.

The ethical problem occurs when the pursuit of narrow national interests leads to the creation or perpetuation of acute insecurity for ordinary people in other countries. This is where the claims by proponents of human security are persuasive. Hence, in this case, the pursuit by the P5 of trade, investment and counter-terrorism relationships with Khartoum precluded a more coercive approach to the Council
acting upon Sudan’s atrocities against Darfurian civilians and thus prolonged and even enabled their insecurity and suffering. A more ethical pursuit of national interests that does not come at the expense of the interests — including the lives — of people in other parts of the world should therefore ensure that humanitarian interventions are undertaken in a consistent manner whenever extreme circumstances warrant, and in such a way that the protection of civilians is the priority objective.

However, the other interesting theoretical finding presented in this thesis is that we are seeing evidence of more ethical foreign policy pursuits, including civilian protection, in international society, even if intervention did not occur in Darfur during this period of study. As such, while intervention didn’t occur in Darfur, this doesn’t mean that international society is not increasingly accepting that civilian protection inside state borders is a responsibility of others’. As demonstrated in Chapter 1, it is clear that contemporary international society is further evolving and transforming itself. The end of the Cold War, accompanied by critical challenges to traditional conceptions and practices of sovereignty and security, have fostered the erosion of Westphalian and post-WWII norms regarding international order, justice, and the relationships between citizens, their governments, and international society more broadly. There have been reassessments of ethical obligations, notions of responsibility, and the proper location and hierarchy of rights. As such, from a previously strict adherence to the non-intervention norm via an emphasis on juridical aspects of sovereignty has emerged a formal acceptance that a government’s sovereignty is imbued with responsibility for the security and well-being of the citizens of that state, meaning that matters previously veiled by the ‘domestic jurisdiction’ exemption have now become matters of legitimate scrutiny by external observers.
This expanded and two-phased notion of responsibility also extends to powerful actors within the society, meaning that — post-2005 UN World Summit — the UN Security Council is now expected to provide a residual level of scrutiny and action if national governments are failing in their basic duties to their citizens. Taken to its logical conclusion, the result is that military intervention for human protection purposes, authorised by the UNSC, has become an accepted exception to the general norm of non-intervention; yet non-intervention remains the norm in all circumstances in which massive violations of human security are not occurring, thereby reinforcing the exceptional nature of humanitarian interventions. From the unanimous endorsement of this normative evolution by states at the UN World Summit in September 2005 and in the Security Council in April 2006, it its clear that the ‘responsibility to protect’ has gained sufficient support to be characterised as an emerging behavioural and ethical norm in 21st century international society. In this sense, it can be said that humanitarian intervention, when enacted under the accepted circumstances and conditions, has become a legitimate practice in contemporary international relations. In other words, we have seen a shift from humanitarian intervention being a proscribed act during the Cold War, to an increasingly (if ambiguously) permissible act after the Cold War, to becoming a prescribed act under extreme circumstances after the respective endorsements by UN member states.

In terms of IR theory, this adds weight to the arguments of constructivists and International Society scholars who contend that social norms are constitutive of the behaviour, interests and even identities of actors interacting within that society. As new norms are promoted, actors (states) are influenced and affected by new expectations of their behaviour and can modify their interests and identities accordingly. This illustrates the process of social construction of those actors.
Applied to protecting civilians, we can see that new norms requiring states to protect their own citizens, or to intervene (through the UNSC) to protect acutely insecure people living inside other states, have influenced states to either deny their own involvement in atrocities, speak out against atrocities in other states, or to speak in the language of the ‘responsibility to protect’ because they understand that doing so will have certain effects upon the rest of the society. In a number of cases, states (inside or outside the Council) have intervened in other states in conformity with new norms, even if not coercively so in Darfur.

Therefore, taking a longer view, rather than accepting that the pursuit of narrowly defined national interests will always be privileged over the pursuit of humanitarian objectives in foreign policymaking, as the lack of intervention in Darfur suggests, it is also plausible to argue that the ‘responsibility to protect’ has not yet reached sufficient strength to compel consistent behaviour in conformity with it (according to the logic of Finnemore and Sikkink’ norm life-cycle model presented in Chapter 1). Whether it will reach such a level of ‘norm internalisation’ is an empirical question that must be regarded with some concern in light of the aforementioned consequences of the US-led ‘War on Terror’, invasions of Iraq and Afghanistan, and the continuing hostility to humanitarian intervention from China, Russia, and other developing countries. Yet, the potential for it to do so is evident.

Finally, we can observe that the Security Council’s response to Darfur and to the question of humanitarian intervention more broadly reinforces the reality that, for the time being at least, the UN remains an ‘organisation of states’ and thus favours states’ interests. Despite the important roles that the UN generally and the Council itself have played in helping to recast conceptions of sovereignty and security — particularly in the post-Cold War era — and despite the fact that much of the work
done by UN agencies and the focus of many UN fora is on human security and development, it is likely that the UN, and particularly the Security Council, will continue to reflect the historical dominance of states as the primary actors in international relations. As such, it is unclear the extent to which the alteration of state identities along more altruistic lines, the pursuit of national interests in such a way as to not oppress others in doing so, and the privileging of humanitarian interventions over rigid forms of non-intervention will develop in what remains a relatively conservative anarchical society of states.


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