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Naming and Framing: Darfur, the Genocide Debate, and the Responsibility to Protect [1]

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Darfur, an impoverished region of Sudan about the size of France, became widely known after violent conflict escalated there in 2003. The atrocities committed in Darfur have been horrific. As such, Darfur has been viewed as a prominent test case for the United Nations (UN) agreement on the responsibility to protect (R2P). The crimes committed in Darfur are unquestionably defined as crimes against humanity, war crimes and ethnic cleansing, which are three of the four crimes covered by the R2P agreement. In the case of Darfur, the fourth R2P crime, genocide, has prompted extensive debate. The conflict in Darfur was interpreted via the analogy of the Rwandan genocide by the media and civil society, so it was thought that if Darfur was called genocide that would necessitate the international action that was absent during the Rwandan genocide. The US government defined the situation in Darfur as genocide, but said that this did not compel new actions. As such, viewing Darfur through the lens of Rwanda shaped the way the conflict was understood, and the genocide determination has shaped the way that genocide is understood. The international engagement with the case of Darfur highlights evolving implications for both R2P and debates on genocide.

The conflict in Darfur prompted the rise of the largest international advocacy movement in decades. Given the magnitude of the crimes committed in Darfur it would be easy to think that it was the sheer scale of the atrocities in Darfur that led directly to the size of the advocacy movement. Yet the scale of civil society interest in the case of Darfur has exceeded that of other recent cases which have seen more civilian deaths through mass violence. For example, the conflict in the Democratic Republic of the Congo (DRC) which began in 1998

has led to far more deaths through violent conflict than Darfur.[2] Yet it was Darfur, not the DRC, which has generated the larger advocacy movement. This presents us with a puzzle. Why did the crimes committed in Darfur gain more activism from civil society over other cases with more violence and civilian deaths?

This chapter examines the ways in which the conflict in Darfur was named and framed via the analogy of the Rwandan genocide and through the framework of the Responsibility to Protect. The conceptual link between the situation in Darfur and the Rwandan genocide had a significant impact on the media and activism over Darfur. The connection between these two cases was not inevitable and warrants further explanation. The first section of this chapter will explain how Darfur became conceptually linked to the Rwandan genocide and how the genocide debate shaped international activism over Darfur. Here I focus particularly on the Save Darfur network based in the United States (US) which has been a key actor in raising the profile of this issue. Not only has the case of Darfur shaped debates over the concept of genocide, it has also shaped evolving ideas on how best to respond to mass atrocity crimes under the R2P agreement. The second section of this chapter examines the connection between Darfur and R2P. Resolution 1706 on Darfur was the first resolution where the Security Council referred to R2P, following their general endorsement in April 2006. I argue, however, that Darfur does not make an appropriate test case for R2P as there was no international agreement on R2P during the escalation and height of the Darfur conflict. I will conclude by outlining some lessons learnt from the international response to Darfur.

Darfur and the Genocide Debate

This section will provide a brief overview of the conflict in Darfur.[3] Darfur is located in the west of Sudan. The three states which make up Darfur are located in a highly volatile region, with international borders joining Libya, Chad, the Central African Republic, and since 2011,

South Sudan. Darfur has been enmeshed in conflicts in Libya and Chad in particular and has been used as a base for foreign militaries with substantial flow of weapons into Darfur.[4] Darfur suffered serious drought and famine in 1984-85, followed by war between Fur and Arab tribes from 1987-89, and a war between Arab and Masalit tribes from 1995-99. These conflicts, environmental degradation and decreased resources for a growing population have degraded the local dispute resolution mechanisms and damaged the social fabric of the area. Meanwhile Darfur has suffered extreme marginalisation from the central government in Khartoum with serious depravation of social services, health care, education, economic development and infrastructure.[5] Indeed, key author on Darfur, Alex de Waal, has expressed surprise in hindsight that the conflict did not escalate sooner.[6]

Given these preconditions, it was not surprising when a Darfuri rebellion against the government began to develop through 2000-02 and two rebel movements, the Justice and Equality Movement (JEM) and the Sudan Liberation Army (SLA) announced their existence in early 2003. The conflict in Darfur escalated soon after when the JEM and SLA launched a joint attack on an airport in al Fashar in April 2003, in which they acquired weapons and vehicles. It was this attack that changed the Sudanese government's calculations, as it was the most damaging rebel attack they had experienced, and they responded with extreme violence.[7] The rebel groups were comprised mainly of people from so-called black African tribes and the government armed the predominantly Arab Janjaweed militia to suppress the rebellion.[8] Through 2003 a pattern of violence emerged where bombs were dropped on civilian villages in Darfur followed by ground attacks by Janjaweed militia, sometimes joined by the regular Sudanese Army. The attackers would kill, rape, loot and contaminate wells with corpses, destroying the very capacity for life in these areas.[9]

The height of the conflict in Darfur was during 2003 and 2004. This trajectory of the conflict is evident from studies on the rate of displacement in Darfur and from mortality figures.

There is converging evidence from a range of sources that the height of violent deaths in Darfur occurred from mid-2003 to early 2004.[10] During this stage of the conflict there was little international awareness or engagement with the situation in Darfur. This changed in 2004, and humanitarian assistance to Darfur is thought to have made a significant impact on mortality rates in Darfur.[11] Indeed, by 2005 mortality rates had fallen to below what are considered to be 'emergency levels'[12] and – although high – were comparable with mortality rates in Darfur prior to the war.[13] It is difficult to accurately assess the number of people who have died in the Darfur conflict and the exact numbers may never be known.[14] However, the most comprehensive analysis on mortality in Darfur estimated the number of excess deaths at almost 300,000 between February 2003 and December 2008.[15] The same study found that more than 80% of these excess deaths were caused by diseases fuelled by displacement (primarily diarrhoea) rather than by violence. The height of violent conflict also aligns with the period when the highest levels of displacement occurred. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) reported that almost one million people were newly displaced in Darfur in 2003, 850,000 newly displaced in 2004 and around 300,000 people newly displaced per year between 2006 and 2008.[16] The chronology of this is significant, as I will show that the period of significant international engagement with Darfur began *after* the height of the violence had passed.

The Khartoum government's violent suppression of the rebellion in Darfur cannot be fully understood in isolation from the concurrent civil war between the Sudanese government and the south of Sudan (now an independent state, South Sudan). There were decades of war between the northern government and the south of Sudan spanning 1955-72 and from 1983-2005.[17] The north-south civil war took a far greater toll on Sudan than the conflict in Darfur.[18] The escalation and height of the Darfur conflict coincided with a major international push to conclude peace negotiations between the north and south of Sudan. The first protocol

of the north-south peace agreement was signed in Machakos in June 2002, culminating in the Comprehensive Peace Agreement (CPA) in January 2005. The international focus on ending the north-south civil war was spearheaded by the US and was strongly connected with US domestic politics. The southern region of Sudan was predominantly Christian, with strong advocacy connections with the Christian Right in the US. Indeed, ending the civil war between north and south Sudan was a campaign issue for US President George W. Bush.[19] A sequential approach was adopted to the two conflicts: the north-south conflict was prioritized at the expense of Darfur.[20] The peace negotiations during this period had the perverse effect of giving Khartoum freedom in Darfur, while international attention was focused on the north-south negotiations, and giving Darfuri rebels an incentive to escalate the conflict in Darfur with the hope they would be included in the north-south peace talks.[21] The international focus on the north-south peace negotiations thereby overshadowed the escalation of conflict in Darfur.

The spark for international interest in Darfur came from a statement made by the UN's Resident and Humanitarian Coordinator for Sudan, Mukesh Kapila, on 19 March 2004, in which he described Darfur as 'the worst humanitarian situation in the world' and suggested it was comparable in character to the Rwandan genocide.[22] This statement on its own may not have made such a difference, were it not for its timing. Indeed, an earlier statement in December 2003 by Kapila's boss, Jan Egeland, stating that Darfur 'has quickly become one of the worst humanitarian crises in the world', attracted little media attention.[23] Kapila, however, invoked the memory of the Rwandan genocide just two weeks before its tenth anniversary. By framing Darfur via analogy to Rwanda, at a time when the media were reflecting on Rwanda, Kapila's statement generated media interest in a way that Egeland's earlier statement did not. To illustrate, in the 12 months prior to Kapila's statement there were less than 500 news articles worldwide with 'Darfur' in the headline, as evidenced via a

search of Factiva, an online news database. The 12 months following Kapila's statement shows almost 10,000 articles with 'Darfur' in the headline. This is particularly significant when we consider that the 12 months prior to Kapila's statement maps onto the height of violent deaths in Darfur, with little international attention. Kapila's statement thus triggered the beginning of what would become major media interest in the case of Darfur.[24] From the outset, therefore, media interest in Darfur was conceptually linked to the Rwandan genocide.

The connection between Rwanda and Darfur became crucial to the way the case of Darfur was interpreted and understood. When the Rwandan genocide began in April 1994 the international community not only failed to intervene to quell the violence, but also withdrew the UN peacekeeping force that was already there to monitor an earlier peace agreement. Lack of action on Rwanda by the UN Secretariat and the US government has been widely condemned.[25] When Kapila framed a connection between the Rwandan genocide and the situation in Darfur this was picked up in media reports on the anniversary of the Rwandan genocide with headlines such as 'Remember Rwanda, but Take Action in Sudan'[26] and 'Sudan is Another Rwanda in the Making'.[27] It was not just the media making the connection between these two cases, but also prominent diplomats. Speaking to mark the anniversary of the Rwandan genocide, then UN Secretary-General Kofi Annan discussed the dire situation in Darfur and raised the possibility of military action if the government of Sudan denied access to a team sent to assess protection needs.[28] US President Bush did not make a direct link between the two cases, but on the day he marked the tenth anniversary of the Rwandan genocide he also suggested that the US would not be able to normalize relations with Sudan while the conflict in Darfur was ongoing.[29] Brunk outlines the analogous connection between Darfur and Rwanda in some detail, with journalists seeking to highlight the plight of Darfur and by linking it to the anniversary of the Rwandan genocide, after the initial link was made by Kapila.[30] Hamilton too explains that there was some chance involved in these two cases

being linked: ‘Darfur in 2004 was nothing like Rwanda in 1994 … there was nothing inevitable about this coupling of the Rwandan commemorations with the situation in Darfur’, which could alternatively have been linked to other cases.[31] Yet once the link had been made between the two situations, within the media and within public consciousness, the spectre of the Rwandan genocide shaped the international engagement with Darfur.

By posing Rwanda as an analogy for Darfur the issue of determining whether Darfur was or was not genocide became a prominent part of the debate. During the Rwandan genocide there was a deep reluctance to name the situation genocide by the US government. At the time there was a belief within the US Administration that defining the situation in Rwanda as genocide would lead to obligations under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (hereafter Genocide Convention).[32] During the Rwandan genocide a paper prepared by the US Office of the Secretary of Defence stated that a determination of genocide might oblige the US government ‘to actually “do something”’.[33] Instead, the US government used the phrase ‘acts of genocide’ which they were advised would not trigger legal obligations.[34] The failure to take action during the Rwandan genocide became linked with the failure to name the situation genocide.[35] Indeed, in a speech in 1998, then President Bill Clinton reflected on the US response to Rwanda: ‘We did not act quickly enough after the killings began … we did not immediately call these crimes by their rightful name: genocide.’[36] A connection was drawn between lack of action and the reluctance to use the word genocide.

Strikingly, it was the media and members of the US Congress who advocated for the US Administration to name the situation in Darfur genocide, as the broad civil society movement did not yet exist in early 2004. Nicholas Kristof from the *New York Times* called the situation in Darfur genocide on 27 March 2004.[37] This sparked the genocide debate and Kristof became one of the most prominent people calling for the US government to name the

situation in Darfur genocide.[38] From March 2004 the media drew links between the situation in Darfur and genocide, but in early 2004 there was not yet a strong civil society movement on Darfur within the US.[39] There was however a pre-existing group in the US Congress who were involved with activism on the north-south civil war in Sudan, via advocacy from Christian constituents, who pushed for congressional resolutions on Darfur.[40] In July 2004 a concurrent resolution from the US House and Senate described the situation in Darfur as genocide and, echoing Clinton's earlier statement on Rwanda, asked the US Administration 'to call the atrocities being committed in Darfur, Sudan, by their rightful name: "genocide"'.[41] This resolution from the US Congress occurred prior to the conclusion of an investigation by the US Atrocities Documentation Project.

Through July 2004 the US led the Atrocities Documentation Project to consider whether the situation in Darfur constituted genocide. Speaking before the US Committee on Foreign Relations US in September 2004, Secretary of State Colin Powell said '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.'[42] Powell called on the United Nations to undertake an investigation of the situation in Darfur under the Genocide Convention. Given the earlier reluctance to use the term genocide during the Rwandan genocide, this could have been taken to suggest that the US were prepared to take stronger action in Darfur, however Powell continued: 'some seem to have been waiting for this determination of genocide to take action. In fact, however, no new action is dictated by this determination.'[43] Unlike the earlier debates on Rwanda, here the US government made it clear that it did not presume any obligations based on the determination of genocide, beyond referring the situation in Darfur to the UN Security Council under the Genocide Convention. Darfur was already on the agenda of the UN Security Council by this time however, so this

referral did not make a meaningful difference. Interestingly, the legal advice given to the US government following their investigation was that it could be argued to be genocide or to not be genocide. Ultimately, the decision to call it genocide reportedly came from Powell alone.[44] The expectation after the Rwandan genocide was that naming a situation genocide would enable greater action to end the violence, however the US showed that this was not the case on Darfur.

Although the height of the violence in Darfur had passed by mid-2004, the advocacy movement began to gain momentum at this time, particularly within the US. The Save Darfur network evolved out of a meeting between the United States Holocaust Memorial Museum and the American Jewish World Service in July 2004.[45] Additionally, there was already a sizable advocacy movement within the Christian Right in the US on the north-south conflict and these pre-existing groups became engaged with Darfur, alongside university student groups.[46] The size and strength of the civil society movement was prompted in part by the genocide determination by the US government.[47] The advocacy movement on Darfur grew into what is commonly characterized as the largest US civil society movement since the anti-apartheid movement.[48] Through 2005-07 activists advocated on the basis that 'things are getting worse' on the ground in Darfur, even though the figures from this time show that the situation had improved from the height of the conflict in 2003 and early 2004.[49] For example, a report from early 2005 includes multiple sources which show a decrease in mortality rates from the height of the conflict.[50] Due to this gap between facts and rhetoric there was a disconnect between the advocacy of the Save Darfur network and the situation on the ground in Darfur.

While the US government determined that genocide was occurring in Darfur the United Nations investigation determined that it did not constitute genocide. In September 2004 the

UN Security Council requested that the UN Secretary-General establish an International Commission of Inquiry on Darfur (ICI). One of the tasks of the ICI was to determine whether acts of genocide had occurred in Darfur. The Genocide Convention defines a set of criteria on what legally constitutes genocide. First, that the acts set out in Article Two of the Genocide Convention have occurred, including killing and causing serious bodily harm, and that these acts were targeted against members of a particular national, ethnical, racial or religious group.[51] Second, to constitute genocide these actions must also be carried out with the intent to destroy the whole group or part of the group.[52] After investigating the situation in Darfur, the ICI determined that acts pertaining to genocide had been committed and that the acts targeted a recognizable group. However, they determined that genocide had not occurred in Darfur because these criminal acts were not undertaken with the requisite intent to destroy the group/s.[53] Instead the ICI determined that war crimes and crimes against humanity had been committed in Darfur, which it said 'may be no less serious and heinous than genocide.'.[54] Although the report condemned the government of Sudan, the determination that the crimes did not constitute genocide was advantageous for the government with news headlines like 'UN Report Finds No Genocide in Sudan'.[55] It has been argued, however, that the ICI report may help shift legal understandings towards a less sharp distinction between the concepts of genocide and crimes against humanity.[56] Crimes committed by the government of Sudan were horrific and this was substantiated by the ICI, even though they decided it did not constitute genocide.

The ICI also recommended that the UN Security Council refer the situation in Darfur to the International Criminal Court (ICC) to prosecute individuals responsible for crimes in Darfur. After extensive negotiations[57] the Security Council referred the situation in Darfur to the ICC in March 2005. The ICC's findings were different again to the ICI's, with charges issued on genocide. Where the ICI was addressing the question of whether acts of genocide had

occurred in Darfur, the ICC prosecutes individuals who are individually criminally responsible for crimes. The different verdicts on the question of genocide have contributed to the intense debates on whether or not crimes committed in Darfur constituted genocide or not.

The role of the ICC on Darfur was ground-breaking. This was the first time the UN Security Council had referred a situation to the ICC for investigation. The US vehemently opposed the ICC but allowed this referral to occur.[58] In 2009 a warrant was issued for the arrest of Sudanese President Omar Hassan al-Bashir, which was the first time a current head of state was charged with war crimes and crimes against humanity.[59] This was taken a step further in 2010, when the ICC issued a second arrest warrant charging al-Bashir with genocide.[60] In response to the first arrest warrant, President al-Bashir ordered the expulsion of 13 humanitarian aid agencies, severely limiting the access to aid for people in Darfur.[61] Unsurprisingly given this retaliation, there has been a major debate on how to sequence peace and justice in the case of Darfur.[62]

Much of the early international focus on Darfur became a question of what to call the crisis. Indeed, naming the situation genocide was seen as tantamount to taking action: as an end-goal in itself.[63] The different investigations on genocide and their different findings kept this debate alive and prominent in media reports on Darfur. Naming, investigating and debating the question of genocide was given a strong international priority, often at the expense of actions to protect civilians.[64] Indeed, some Non-Governmental Organizations (NGOs) were focused on answering the question of genocide rather than building latrines at a time when the biggest killers in Darfur were diarrhoea and malaria.[65] As highlighted above, after the Rwandan genocide it was thought that if the situation had been named genocide while it was occurring that this would have galvanized international action. On Darfur however, the US government was explicit that the designation of genocide did not require new actions.

Instead, calling Darfur genocide had the unintended effect of galvanising the emerging civil society movement on Darfur into action.[66] Debates over what to call the situation in Darfur took attention from debates over what meaningful action could be taken for displaced civilians in Darfur.

The conflict in Darfur was widely read through the analogy of Rwanda and via the trope of genocide.[67] This framing had effects which may not have occurred without this linkage. First, the situation in Darfur was elevated above other crises in public and political consciousness. For example, Darfur received far greater US aid than the DRC, even though the DRC had more prolonged violence and higher rates of mortality.[68] Darfur also received a significant share of attention from the United Nations Security Council with almost ten percent of Security Council resolutions in 2006 relating to Darfur[69] at a time when mortality rates had fallen to pre-war levels.[70] Second, the frame of 'genocide' glossed over much of the complexity of the situation on the ground in Darfur. By simplifying the conflict to Arabs committing genocide against Africans the political and regional dimensions of the conflict were marginalized.[71] As such the situation in Darfur was oversimplified to fit the frame of Rwanda. Darfur was read as a moral crisis rather than a political crisis which led to a reluctance to adapt to changing realities within Darfur.[72] These things were not inevitable. The rise in international attention on Darfur was connected to Kapila's statement which likened the crisis there to the Rwandan genocide. Powell's subsequent determination that events in Darfur constituted an ongoing genocide solidified this connection and fuelled the civil society movement on Darfur. As such, much of the international engagement with Darfur is connected to the failure to intervene in the Rwandan genocide.

Darfur and the Responsibility to Protect

While the applicability of the label genocide to Darfur was being debated, another framework was being applied to Darfur in parallel. Darfur has been considered a test case for the responsibility to protect, by both academics and NGOs.[73] 'The Responsibility to Protect' was the name of a report by the International Commission on Intervention and State Sovereignty (ICISS) which aimed to find a way to reconcile the tensions between the norm of non-intervention and responding to mass atrocity crimes.[74] In 2005, after considerable advocacy by then UN Secretary-General Kofi Annan and members of the ICISS, a political agreement was formed on the responsibility to protect, or R2P as it is known, as part of the World Summit outcome document.[75] R2P is a political agreement in which states agreed that they have the responsibility to protect their own populations from mass atrocity crimes; and the international community said that they have a responsibility to prevent and respond to mass atrocity crimes. R2P was defined as applying to four crimes: genocide, war crimes, ethnic cleansing and crimes against humanity, including the prevention of these crimes.[76] As such, the debates over the application of R2P to Darfur intersect with the debates over the applicability of genocide to Darfur, but R2P is broader and encompasses more than the crime of genocide. While there has been intense debate over whether Darfur met the strict legal criteria of genocide, there has been little question over whether Darfur met the broader categories of crimes against humanity, war crimes and ethnic cleansing. For R2P then, the debate over Darfur has been less about whether the concept is applicable to the case, but on what actions it proscribes for whom.[77] As such, both R2P and the genocide debate converged on the impetus to do something about the situation in Darfur.

The R2P agreement set out in the 2005 UN General Assembly World Summit outcome document has three different components. Known as the three pillars of R2P these are: that governments bear the primary responsibility for protecting the people within their territory from the four crimes; that the international community will assist states to meet their

responsibilities, including improving early warning mechanisms; and that the international community can take actions using diplomatic or coercive measures when states are manifestly failing to protect their populations from the four crimes.[78] These pillars are of equal importance for R2P.[79] By September 2005, when the R2P agreement was formed, the government of Sudan had already manifestly failed to protect its population from mass atrocity crimes, as the findings from the ICI demonstrated in January 2005.[80] Due to this chronology, I argue that while R2P applies to Darfur, Darfur does not make a good test case for R2P: there was no international agreement on R2P until September 2005, by which time the height of the violence in Darfur had passed. Here I will outline the inclusion of R2P in UN Security Council resolutions on Darfur before returning to the discussion on Darfur as a test case for R2P.

After the UN General Assembly defined R2P in September 2005, the UN Security Council endorsed it in thematic resolution 1674 in April 2006.[81] Following this general endorsement by the UN Security Council, the UK in particular, thought it was important to apply the concept to a specific case to demonstrate that the Security Council was serious about R2P.[82] The UK advocated for a reference to R2P to be included in a resolution on Darfur. The negotiations towards resolution 1706 – where the Security Council reaffirmed R2P in relation to Darfur – were highly contentious, however, and R2P was one of the most contentious parts of the resolution.

Resolution 1706 reaffirmed R2P and authorized the transition from the African Union Mission in Sudan (AMIS) in Darfur to a United Nations peacekeeping force in August 2006.[83] AMIS, a contingent of AU peacekeepers deployed to monitor a ceasefire in early 2004, was struggling to provide civilian protection, and indeed even to protect itself, and donors were unwilling to continue funding the mission.[84] The UK and the US co-drafted resolution 1706 during six months of negotiations in the Security Council on UN

peacekeeping for Darfur. At the time, the United Nations Mission in Sudan (UNMIS) was in operation in the south of Sudan, monitoring the north-south peace agreement, and resolution 1706 authorized extending UNMIS into Darfur. Although the government of Sudan had consented to UNMIS operating in the south, they were fiercely opposed to UN peacekeeping in Darfur through 2006, with Khartoum categorical in their opposition. For example, in February 2006 it said 'We are strongly opposed to any foreign intervention in Sudan and Darfur will be a graveyard for any foreign troops venturing to enter'[85]; and only weeks before resolution 1706 was authorized Khartoum said on Darfur that Sudan would 'defeat any forces entering the country'.[86] The negotiations towards resolution 1706 then hinged on two key issues: the question of consent, which was not forthcoming from Khartoum, and the issue of R2P.

It is standard practice for the UN Security Council to obtain consent from the host state for a peacekeeping operation prior to issuing a mandate, however resolution 1706 was different in this regard. In 2006 there were overlapping political pressures for a transition to UN peacekeeping in Darfur, as donors were unwilling to continue funding AMIS and the Save Darfur network were pushing strongly for UN peacekeeping.[87] This set the context for resolution 1706 where continuing to fund AMIS was politically untenable, yet transitioning to UN peacekeeping without consent was logistically impractical. The US advocated that the UN Security Council authorize UN peacekeeping in Darfur – without consent – and then find a way to obtain consent and implement it. Somewhat reluctantly, the UK went along with this proposal.[88] China did not want to authorize the resolution without consent from the government of Sudan and they also did not want R2P to be included in the resolution. The UK suggested a horse-trade to China, whereby the resolution would include language on consent to satisfy China and it would also include the provision on R2P that the UK wanted.[89] Three days before the resolution passed, China's UN mission were waiting on instructions

from Beijing to see if they could accept this trade.[90] We can infer from the final text that Beijing accepted this trade, as the resolution contained both language on consent and R2P.

The issue of consent left the Security Council hamstrung after resolution 1706 was authorized, as the resolution could not be implemented. Unsurprisingly, given Khartoum's earlier statements, the government of Sudan did not consent to UN peacekeeping in Darfur at this time, which prompted prominent Security Council commentator, Colum Lynch, to declare it one of the worst Security Council resolutions produced.[91] Instead, Security Council members looked for alternative ways of transitioning to UN peacekeeping in Darfur. A compromise was found in the form of a hybrid peacekeeping operation between the United Nations and the African Union but it took almost another year to authorize the transfer.

Security Council members learnt shared lessons from the failure of resolution 1706 and they took a different approach to negotiating the next Darfur resolution. Where most of resolution 1706 was negotiated in New York between Security Council members, much of the subsequent resolution on Darfur was negotiated directly with the government of Sudan to achieve and maintain its consent. Security Council members met with the government of Sudan in Addis Ababa in November 2006 to present the proposal of hybrid peacekeeping for Darfur. China put diplomatic pressure on Sudan over this proposal and their diplomacy is credited with gaining Khartoum's consent by knowledgeable insiders, such as former UN Under-Secretary-General for Peacekeeping Operations, Jean-Marie Guéhenno[92], and former US Special Envoy to Sudan, Andrew Natsios.[93] The conciliatory nature of these negotiations and the efforts to maintain Khartoum's consent meant that reference to R2P, which appeared in an early draft of resolution 1769, was removed during negotiations.[94] Resolution 1769 did not refer to R2P and also eschewed any reference to resolution 1706, even though it is standard practice to refer to previous resolutions on the same topic.

Although Darfur was the first situation where the UN Security Council referred to R2P in a resolution, following its general endorsement of R2P, it does not represent a good test case for R2P. As the chronology above shows, the height of the conflict in Darfur was through 2003 and early 2004, at a time when there was no international agreement on R2P. During this time period, the ICISS version of R2P existed, but at this time it was simply a report from a commission without international backing from states. It was not until September 2005 that the international community formed an agreement on what R2P means and agreed to act accordingly.[95] This chronology means that the early warning and preventative components of the R2P agreement were not tested in the case of Darfur. As highlighted above, by 2005, when the UN General Assembly formed the R2P agreement, mortality rates in Darfur were similar to the levels before the war began.[96] This is the same conclusion reached by Edward Luck: 'fighting broke out in Darfur some three years before the World Summit adopted R2P, making this an inappropriate test case for a doctrine that did not yet exist.'[97] The significance of this point is that many of those who consider Darfur as the test case of R2P then conclude from this that R2P is a failure.[98] The international community could certainly have done more to protect civilians in Darfur, particularly during the height of the violence in 2003-04, but this does not equate to the failure of an agreement on R2P which did not then exist. As such, while framing Darfur in relation to Rwanda changed the way that Darfur was understood, framing Darfur as a test case for R2P has shaped the way that R2P has been understood.

Conclusion

The preceding analysis demonstrates that there are some important lessons to be learnt from the international engagement with Darfur. First, the case of Darfur has shown that naming the conflict genocide did not necessitate robust intervention. In fact, recurring investigations on whether the situation was or was not genocide deflected resources that could otherwise have been directed towards humanitarian assistance for civilians in Darfur. It was believed that a

determination of genocide would lead to a stronger political and military response, but consistent reports that war crimes and crimes against humanity were being committed in Darfur should have been sufficient to demonstrate the need for international action. Second, the chronology of conflict in Darfur highlights that there remain some key gaps in international early warning. The height of violent conflict in Darfur occurred at a time when there was little outside awareness about conflict in Darfur, although this was changing by 2004. The sequential approach taken to the two conflicts in Sudan exacerbated this, as once the conflict was known it was side-lined to address the concurrent north-south civil war. The 2005 agreement on R2P highlights the importance of improving the capacities for early warning and there is more to be done in this area. These are important lessons for the international community in responding to situations of mass atrocity crimes.

Naming and framing the conflict in Darfur in relation to genocide and R2P has had both positive and negative effects on the international response to the conflict. Linking Darfur to Rwanda raised the profile of the crisis in Darfur and led to greater international involvement in Darfur. The substantial provision of humanitarian aid has been credited with saving many lives during the conflict. Yet the debate over genocide and documenting atrocities at times distracted attention from assisting the people who had been displaced and traumatized by the conflict. Viewing the situation in Darfur via the analogy of the Rwandan genocide created a simplistic image of the conflict that was not well suited to adapt to changing circumstances. While Darfur is not a good test case for R2P, the frame of R2P was used to focus Security Council debates on Darfur, particularly by the UK. The Security Council has been engaged with Darfur since 2004 and have issued sanctions, referred the situation to the ICC and mandated peacekeeping. The international community was slow in responding to the situation in Darfur. Once they did however, Darfur became a regular focus for the Security Council, with more political attention and humanitarian aid than other conflicts at the time. The case of

Darfur highlights the importance of the international community engaging with conflicts in ways that allow for the complexity of local circumstances and changing situations on the ground, and the need to improve early warning.

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