THE SCRAMBLE FOR AFRICA
Darfur—Intervention and the USA

Steven Fake and Kevin Funk

As massive human suffering continues to engulf the Darfur region of Sudan, the crisis has garnered a rhetorical circus of saber-rattling and hand-wringing from Western politicians, media, and activists. Yet such bluster has not halted the violence.

In a careful, yet scathing, indictment of this constellation of holier-than-thou government leaders, corporate media outlets, and spoon-fed NGOs, Steven Fake and Kevin Funk reveal the myriad ways in which the West has failed Darfur.

Eschewing liberal fantasies of Western benevolence, Fake and Funk unmask the hard reality behind “humanitarian intervention” advocacy, painting a disturbing portrait of Washington’s past and present relations with some of the worst elements in power in Khartoum.

A devastating critique...well-researched, easy to read, and utterly convincing.
—Richard Falk, Princeton University

The authors avoid easy answers, and provide a quality analysis with compelling arguments. —Jan Pronk, Special Representative of the Secretary-General and Head of Mission for the United Nations Mission in Sudan, 2004-06

A commanding exposé of the duplicitous and damaging role played by U.S. leaders and others in a dark drama. Well-written, well focused, deeply informed. —Michael Parenti, author of Contrary Nations and Against Empire

Stands against the muck of neo-liberal ideology, taking us through the Darfur conflict, putting it into history and allowing us to think of a non-imperialist way to bring peace to a tormented region. —Vijay Prashad, The Darker Nations: A People's History of the Third World

STEVEN FAKE and KEVIN FUNK earned degrees in Journalism and Political Science from the University of Pittsburgh. They are activists and write frequently on U.S. foreign policy.

At a time when everyone from George Clooney to George Bush is an instant expert on Darfur, this book gives us what we so urgently need: A clear, sober assessment of the conflict and how it fits into the foreign policy of the United States.
—John Ghazvinian, author of Untapped: The Scramble for Africa’s Oil
“At a time when everyone from George Clooney to George Bush is an instant expert on Darfur, Kevin Funk and Steven Fake have given us what we so urgently need: a clear, sober assessment of the conflict and how it fits into the foreign policy of the United States. With neither fear nor favour, they take us back stage, show us our blind spots, and come up with some troubling conclusions. Explosive, masterful, and impeccably fair. Consider it the thinking person’s guide to Darfur.”
—John Ghazvinian, author of Untapped: The Scramble for Africa’s Oil

“Kevin Funk and Steven Fake have written a devastating critique of the ‘humanitarian’ response of the United States to the Darfur crisis, while offering a genuine humane alternative that would lessen the ordeal, if not bring it to an end. Well-researched, easy to read, and utterly convincing, a crucial book for anyone concerned about achieving a morally and politically acceptable U.S. foreign policy.”
—Richard Falk, Milbank Professor of Law Emeritus, Princeton University, and since 2002, Visiting Distinguished Professor, Global Studies, UCSB

“Sudan has been a nightmare for many. It still is. The outside world is responsible as well. This book shows why. The authors avoid easy answers, and provide a quality analysis with compelling arguments to revise Western policies.”
—Jan Pronk, Special Representative of the Secretary-General and Head of Mission for the United Nations Mission in Sudan, 2004-06

“A commanding exposé of the duplicitous and damaging role played by U.S. leaders and others in a dark drama. Well-written, well focused, deeply informed—an excellent corrective for the many who cannot tell the difference between humanitarian assistance and imperial aggrandizement.”
—Michael Parenti, author of Contrary Notions and Against Empire
“Elegantly written, erudite without being academic, and with a forceful yet sensible political argument, Scramble for Africa is a must read for anyone concerned with making sense of one of the most haunting crises of our time.”
—Stephen Eric Bronner, Professor of Political Science at Rutgers University and author of Peace Out of Reach: Middle Eastern Travels and the Search for Reconciliation

“The Scramble for Africa stands against the muck of neo-liberal ideology, taking us through the Darfur conflict, putting it into history and allowing us to think of a non-imperialist way to bring peace to a tormented region. Save Darfur, surely; but as much from Washington as Khartoum, as much from fantasies of humanitarian intervention as the brutalities of IMFundamentalism and Islamism.”
—Vijay Prashad, author, The Darker Nations: A People’s History of the Third World

“This extremely well-researched analysis reveals the real goals of U.S. foreign policy in one of the greatest horrors of our generation. The authors have produced an essential book for analysts and activists everywhere, together with a call to action which no-one should ignore.”
—Mark Curtis, author, Web of Deceit: Britain’s Real Role in the World

“One of the few works to tackle honestly the vexing question of what is to be done about Darfur. Cheerleaders for intervention and humanitarians who persist in rosy fantasies about the U.S. role in the world have had no trouble advocating ‘solutions,’ but for others on the left the question has been much more difficult. Not content, like so many, to simply wash their hands of the question, the authors have constructed a deeply informed and carefully reasoned argument that addresses seriously the possibilities for constructive humanitarian interventions in an imperfect world vitiated by great power interests and political posturing. For the cruise-missile left and the hard-core anti-interventionist left alike, Darfur is not about Darfur but about their own self-image; Fake and Funk rightly bring the focus back to what is best for the people on the ground.”
—Rahul Mahajan, activist and author of Full Spectrum Dominance: U.S. Power in Iraq and Beyond

“So much of what has been written on Darfur is either expression of humanitarian concern without awareness of the imperial context, or denunciation of Western perfidy without appreciation of the horrible human tragedy that has been unfolding. In this extremely well-documented study, Steve Fake and Kevin Funk combine deep compassion with a keen critical analysis to show how we might best support the suffering people of Darfur. This is a book for all those interested in working for a more just world.”
—Stephen R. Shalom, Professor of Political Science at William Paterson University in New Jersey and author of, among other works, Imperial Alibis: Rationalizing U.S. Intervention After the Cold War

“For those, like myself, who have long felt both revulsion and confusion by the humanitarian crisis in Darfur and wished to know more, this is the perfect handbook. …an objective, dispassionate, meticulously researched account of the conflict... The authors of Scramble for Africa… startle us with their
documentation of the little known but equally sordid role our own government has played in Sudan for the past thirty years - suggesting that our present official ‘humanitarian concerns’ are merely crocodile tears masking another agenda.”

—Timothy Kendall, Ph. D., Senior Research Scholar, Dept. of African-American Studies, Northeastern University and Director of Archaeological Mission, Jebel Barkal (Karima), Sudan, Sudan Dept. of Antiquities and Museums (NCAM), Khartoum, Sudan

“Scramble for Africa: Darfur-Intervention and the USA is the book we’ve all been waiting for. Clearly written, and scholarly without losing its skeptical edge, this new work takes on the U.S. Government and the Save Darfur coalition alike, offering a fresh analysis of Darfur in its larger geopolitical context. Scramble for Africa belongs on every Darfur activist’s bookshelf.”

—David Morse, Darfur activist and journalist

“This excellent book presents the basic information on the political and military aspects of the conflict, examines the options from a clear and transparent ethical position, and presents ways forward with a concern for broad international implications and concern for the hundreds of thousands of victims. It is exactly what is needed and I hope it is very widely read. I will recommend it to everyone.”

—Justin Podur, writer and activist

“The Darfur conflict has proven to be intractable, at terrible cost to the people of that region. There is a crying need for on-going international activism based on a thorough analysis of Sudan and the role of the U.S., China and other states. Scramble for Africa by Kevin Funk and Steven Fake is a well-researched, important and progressive contribution in this regard. It should be widely read, from the White House to the grassroots.”

—Laurie Nathan, research fellow at the London School of Economics and a member of the African Union mediation team for Darfur in 2005-06

“At last there is a book on Darfur that places the conflict in the context of the new ‘scramble for Africa,’ the contest between the old imperialism of England and its successors, the U.S. and China. Fake and Funk’s analysis unmasks the propagandistic deploying of powerful language alleging ‘genocide’ and the ‘world’s worst humanitarian crisis’ in Sudan for its political advantages to the U.S. and its neglect of the suffering of Darfur’s victims. When analyzing the politics of the ‘Save Darfur Coalition’ the journalists-authors work with a scalpel in a refreshing and penetrating analysis of why the Darfur conflict became the ‘cause célèbre,’ when it should have been the war in Iraq. Activists and astute observers of the contemporary global political scene will find this scrupulously researched volume a must read, virtually unique among available works on the subject.”

—Carolyn Fluehr-Lobban, Professor of Anthropology, Rhode Island College, veteran Sudan researcher

“The existing ‘Save Darfur’ movement has tended to perpetuate the notion that a well-intentioned United States government has ‘not done enough’ to save the suffering people of Darfur, and should be pressured to intervene
more actively. This well-documented book should help dispel such illusions, by providing enlightening background information about the history of U.S. policy in Sudan which, as in most such cases, has tended to make bad matters worse. The authors suggest that progressive activists should try to influence the movement to adopt more practical and constructive strategies, which do not rely on getting Great Powers to use the situation to pursue their own ends."

—Diana Johnstone, author of Fools’ Crusade: Yugoslavia, NATO and Western Delusions

“Kevin Funk and Steven Fake provide a forensic and astute examination of the Bush administration’s politically cynical and opportunist exploitation of the people of Darfur’s terrible plight, using them as pawns to regain access to Sudan’s oil riches and to promote the self-serving imperialist concept of ‘humanitarian intervention’. Funk and Fake reveal the hypocrisy of Washington, which can in the same breath declare the Sudan regime’s slaughter of hundreds of thousands of Darfuris ‘genocide’ while—out the general public’s earshot—praise and collaborate the very same butchers as allies in its ‘war on terror’. The mainstream ‘Save Darfur’ movement’s leadership also comes in for a similar investigation for its willingness to allow the interests of the people of Darfur to play second fiddle to Washington’s foreign policy double standards.

However, unlike most of the U.S. left, Funk and Fake do not try to prettify the reactionary Sudanese regime and its crimes by placing a plus sign against it where U.S. imperialism places a minus sign. They do not engage in much of the U.S. left’s knee-jerk denial of the humanitarian and political crisis that is underway in Darfur, nor refuse to accept that it needs to be addressed. They offer the principled anti-imperialist left with a ‘manifesto for Darfur activism’ with which to campaign for the people of Darfur and challenge the pro-imperialist direction of mainstream ‘Save Darfur’ leadership and expose U.S. imperialism’s hypocrisy. Had the U.S. left adopted such an approach before now, the right-wing dominance of this movement may have been broken, the genuine activists in the U.S. would have been won to a leftwing perspective and much of the left itself would not—on this issue—now be seen as callous apologists of a tyrannical regime. Thankfully, there is still time.”

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Finally, Kevin would like to dedicate this book to his late mother Margaret, who passed away unexpectedly during the manuscript’s preparation.
Foreword

We commenced writing and researching this work in earnest in May 2006, at a time of relative hope for the Darfur region of Sudan.¹

By 2006, the major killings of the early years of the conflict had become more sporadic, and less systematic. Aid organizations were performing something close to a miracle in keeping countless Darfurians alive. Frequent media attention to the conflict, though often lacking in analysis and replete with vague, lofty rhetoric compelling supposedly benevolent Western nations to act to end the crisis, raised hopes that an enlivened citizenry would push their respective governments to come to the aid of a suffering people. The Darfur Peace Agreement (DPA), signed that same month, and flawed as it was, at least suggested the possibility of a negotiated settlement to the conflict.

Instead, the Darfur conflict has demonstrated remarkable staying power, its end now seeming further away then ever.¹ Such is its intractability that Abdel Wahed Mohamed el-Nur—leader of his own Sudan Liberation Army (SLA) faction, and frequently criticized for his hard-line positions and stringent preconditions for entering into peace talks—has remarked that, “If I had known what would happen, I would not have started this revolution.”²

What was once a relatively straightforward conflict between a marginalized and brutalized periphery and its mistreatment at the hands of a domineering, malevolent capital has transformed itself immeasurably since the outbreak of major hostilities in 2002.

¹ Though we attempt in the book to provide a concise overview of the Darfur conflict and its origins, our focus is on Western reactions to it, as well as potential ways forward. By design, our writing highlights Western, and particularly US machinations, while necessarily being unable to fully explore other issues, such as the roles of regional players (like Libya in the 1980s) in stoking conflict in Darfur. Were we writing as Chinese citizens for a Chinese audience, this book would logically have a very different emphasis. Nor is our work intended to be a detailed exploration of Khartoum’s many crimes.

² For a primer on Darfur that focuses more exclusively on the historical aspect and internal Sudanese dynamics, see Julie Flint and Alex de Waal’s A New History of a Long War. While the Darfur conflict has inspired a vast body of literature (and films), many of them vapid and shallow, this stands out as a seminal work. Director Taghreed Elsanhouri’s All About Darfur is also an invaluable documentary which gets out of the way and lets ordinary Sudanese and Darfurians speak about the conflict in their own words.
With Khartoum exploiting fissures between them, rebel groups which could previously make fair claim to seeking redress for the legitimate grievances of the people of Darfur have in many cases descended into banditry and sectarianism at the hands of power-hungry, Western-coddled leaders.

In part due to the failure of the ill-fated, US-backed DPA, the four rebel groups at the time of the DPA’s signing have now exploded into around 30, all impossibly “vying for the status of negotiating partner” with Khartoum. While rebels compete amongst themselves for power and prestige, the Sudanese government scores propaganda victories by showing up to peace talks, knowing that rebels either will not attend, or even if they do, will not move towards unified positions or compromise.

As long as the conflict’s many actors, from Khartoum to rebel groups, continue to view the act of negotiating as “little more than a breathing space before the next military campaign,” there cannot be much hope for a peaceful, comprehensive solution to the Darfur crisis.

In this vein, in May 2008 the Justice and Equality Movement (JEM) rebel group launched an attack on the Sudanese capital, shattering whatever façade existed of the Darfur conflict being confined to only that region. Though fairly easily repelled by government forces, the attempted JEM coup d’état struck fear into the heart of the Omar al-Bashir regime, which perhaps for the first time tasted its own mortality in such dramatic fashion.

Given the litany of abuses for which it is guilty, there would be little to mourn in Bashir’s overthrow, and such a move—depending, of course, on the actors involved, and its prospects for success—could be cautiously supported. However, the attack seems to have been mostly doomed from the start. JEM launched the assault on its own, its failure to coordinate with other rebel groups belying the fact that the rebels have in the past had more success in striking together. Further, the JEM itself is a somewhat dubious candidate to rescue Sudan from Bashir, since the rebel group has its roots in the same Islamist movement that brought him to power, and has often—though not in the case of this attack—acted as a proxy for the brutal Idriss Déby regime in neighboring Chad. Expert opinion indicates that the JEM, notably the strongest rebel group militarily though perhaps also the least popular, simply does not have the might to topple the government, at least not on its own.

With the increased balkanization of rebel groups, many have taken a page from government-allied forces and turned their efforts to robbing humanitarian convoys. The first six months of 2008 saw as many crimes
committed against humanitarian workers and organizations—from “hijackings, compound invasions, office invasions, attacks on humanitarians, [and] abduction of humanitarians”—than all of 2007 combined. In June 2008 the World Food Program (WFP) had to half its rations for millions of aid recipients due to the spate of attacks. Such is the extent of banditry that Oxfam has taken to moving provisions in beat-up trucks, taxis, and donkeys, in an effort to slip under the radar of potential thieves.

Coupled with the increasingly precarious climate for delivering humanitarian aid in Darfur, wealthy nations have stuck to the script of coupling their pious pronouncements of concern for Darfurians with inadequate financial contributions to ensure their survival. Perhaps most egregiously, the WFP announced in June that due to funding shortages it was being forced to scale back its humanitarian flights to Darfur, upon which thousands of relief workers rely. One notes to the point of boredom that the issue has drawn virtually zero attention from the Western political elite, and has provoked shockingly little protest, or advocacy, from Darfur activists.

Adding more fuel to the fire, the landmark peace deal signed between north and south Sudan in 2005 (Comprehensive Peace Agreement—CPA) has come under recent strain, with fighting between government and rebel forces in May displacing tens of thousands and destroying much of the contested, oil-rich town of Abyei. As an analyst with the International Crisis Group notes, “If the peace agreement [CPA] falls apart all hopes for peace in Darfur go out the window...There will be a much broader and more devastating civil war in Sudan with deadly consequences for the country and the region at large.”

As the US occupation of Iraq batters its way towards its sixth anniversary, one cannot help but notice the chasm in the mainstream perceptions of the Iraq and Darfur crises, which have been ongoing for similar periods of time. While a majority of the US public has now turned against the US occupation of Iraq, media gatekeepers have largely ignored antiwar voices, and curiously the crisis of Western making in Iraq has not attracted

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*A* Abyei reportedly “sits on an estimated half a billion dollars of oil.” The town is to be ruled by a joint north-south government until 2011, when Sudan’s south is to decide whether to become independent, and Abyei is to hold a vote on whether to be a part of the north or south. See, *Al Jazeera*, “Arab nations ‘failing’ Sudan,” 3 June 2008, accessed 4 June 2008 <http://english.aljazeera.net/NR/exeres/2B6F251E-D072-43EB-B176-34F177A19CB6.htm>.
the same levels of critical attention from the media and political elite as the Darfur conflict, which not coincidentally is routinely blamed on useful enemies, in this case Muslim Arabs and their Chinese enablers. As the scholar Mahmood Mamdani observes about the attitudes of Westerners towards the two conflicts, “Iraq makes them feel guilty, but Darfur makes them feel good. Darfur is a feelgood [sic] place, a place of refuge from Iraq.” In this vein, according to the veteran Africa journalist Julie Flint, much of what passes for Darfur commentary in the US is:

…driven, very often, by activists who have never been there and who perceive the war as a simple morality tale in which the forces of “evil” can be defeated only by outside saviors. For them, Darfur is not a place with a complex history, but a moral high ground. Darfurians are no longer real human beings who laugh and love and care for their children; they are one-dimensional images of suffering.

Unsurprisingly then, Western commentators continue to push for a unilateral “humanitarian intervention” in Darfur (that is, an invasion), ignoring the likely catastrophic effects of such a move—amongst them, as we review in the book, Khartoum’s probable shutting down of the same humanitarian aid operations that provide subsistence to millions of Darfurians. There are no recent indications that the U.S. will heed the calls, though they are still far from harmless, empowering “Khartoum’s hardliners,” who see them “as evidence for how America ‘really thinks’ and as justification for their refusal to contemplate compromise.”

In late May, Barack Obama, Hillary Clinton, and John McCain signed onto a joint statement regarding the Darfur crisis, stressing that “there is no divide” between them when it comes to halting “more than five years of genocide,” as carried out in Darfur by the Khartoum regime. Though clearly an instance of hollow electoral pandering, and one dripping with vague, essentially meaningless pledges such as “to press for the steps needed to ensure that the United States honors, in practice and in deed, its commitment to the cause of peace and protection of Darfur’s innocent citizenry”—one may note that nothing is actually mentioned about what comprise the mysterious “steps needed”—the establishment-friendly advocacy group the Save Darfur Coalition nevertheless referred to the statement as “historic,” and “applaud[ed]” the candidates “for putting morality before ambition, compassion before competition, and peace before presidential politics.”
It is unsurprising terrain for a movement which praises the Bush administration for its “good work” in resolving the crisis in Darfur—evidence for which is not presented, as it does not exist—and fails to recognize that the next president is likely to continue with the Bush administration’s “good work,” meaning doing virtually nothing to end the Darfur crisis, saber-rattling notwithstanding. The millions of Darfurians who had their rations cut in half due to a lack of funds from wealthy donor nations may fail to recognize the Bush administration’s “good work,” though clearly they lack the global perspective afforded by running a corporate-backed, Washington-based advocacy organization.

True Western levels of concern for Darfur can also be accurately gauged by even a cursory examination of the trials of the joint AU-UN force (UNAMID) deployed to Darfur at the beginning of the year. Though UNAMID is to be 20,000 strong by the time of its full deployment, the dual blows of Khartoum’s bureaucratic obstacle-making and Western apathy cast doubt as to when, if ever, it will reach full strength. As the force commander, Gen. Martin Luther Agwai, comments, “I was told I was going to command the largest ever UN peacekeeping force on earth...Little did I know that it’s going to be on paper and not in reality.”

As it currently stands, UNAMID is basically a ‘re-hatted’ rendition of the African Union (AU) force which was deployed to Darfur in 2004. Sticking to established patterns, UNAMID is suffering under the same resource poverty imposed on the AU force by wealthy nations and which helped to undermine its potential effectiveness. Such is the carryover from the ever-maligned AU force that despite the ‘arrival’ of UNAMID, “Even the helmets are not new. Most soldiers had to paint their green helmets blue. Some resorted to tying on blue plastic bags with elastic.”

Most transparently egregious, UNAMID is still condemned to soldier on without the two dozen helicopters that it has been desperately seeking from UN member states since August 2007. As a result, the force is at times unable to defend even itself, let alone the Darfurians that it is being deployed to protect. In one attack in July, gunmen killed seven UNAMID peacekeepers, prompting Agwai to make the solemn observation that they might still be alive if the force had the requisite helicopters. In his apt phrasing, “we are sent to the boxing ring with our hands tied behind us.”

Turning to the all-important question of who is doing the ‘tying,’ a group of more than 50 NGOs recently released a report, appropriately titled “Grounded: the International Community’s Betrayal of UNAMID.” Instead of putting them to use in protecting civilians (not to mention...
peacekeepers) in Darfur, the report’s foreword—authored by the star-studded cast of the Archbishop Desmond Tutu, former president Jimmy Carter, the Mozambican activist (and Nelson Mandela’s wife) Graça Machel, and the retired UN envoy Lakhdar Brahimi—reveals that many helicopters “are gathering dust in hangars or flying in air shows” in Europe (those of the U.S. and Britain being unavailable, as they are needed for the endless, and endlessly brutal occupations of Iraq and Afghanistan). According to the report, NATO countries alone could contribute 104 helicopters, several times the number UNAMID is seeking. ¹⁷

Though the idea of a UN force in Darfur had been hyped by Western activists for years as a one-stop solution for the crisis, its real-life incarnation, UNAMID, is poised to become “the world’s latest broken promise” and “is tragically doomed to fail” if not given more support. ²⁸ Recognizing all too well how his requests have fallen on deaf ears, Agwai observed that, “We remain desperately under-manned and poorly equipped...Our long shopping list of missing equipment makes shameful reading.” ²⁹ Such is his frustration with the international community that at one point he thought of quitting, commenting that, “I thought the world did not care about us.” Fortunately for his emotional well-being, he since read the self-help book, How to Stop Worrying and Start Living, about which he said, “It helped me a lot. I am ready to continue.” ³⁰ Unwilling to provide helicopters, perhaps Western nations can pool together enough spare change to purchase Agwai a membership in a book-of-the-month club, thus ensuring him a constant stream of uplifting material to distract him from the harsh realities of Western apathy. ³¹

UNAMID has reportedly been able to help Darfurians in a few ways that the AU force did not, in that “It has resumed night patrols of the camps around El Geneina, arrested a handful of Janjawid raiders and now escorts women as they collect firewood—all activities that the morale-sapped AU force abandoned after becoming a target for rebels and government-backed militias alike.” ³² In other areas, UNAMID seems painfully reminiscent of the AU force, at times failing to step in to prevent violence against civilians. ³³

While a fully equipped UNAMID deployment with the requisite helicopters could surely make more of a positive difference in Darfur, Western activists and commentators have clearly over-hyped the potential benefits of the mission, setting Darfurians up for yet another disappointment. ³⁴ At best, UNAMID could help protect civilians while ushering in a period of relative calm that could open the door for peace talks, and in the end, what Darfur really needs: a comprehensive negotiated settle-
ment, which at this point none of the major actors involved seem overly interested in pursuing.\(^{35}\)

With the preceding relegated mostly to the background, what has garnered the most recent media attention about the Darfur conflict has been the news that International Criminal Court (ICC) Chief Prosecutor Luis Moreno-Ocampo has indicted Bashir\(^*\) for genocide, war crimes, and crimes against humanity. ICC judges are expected to take several months to decide whether to grant Moreno-Ocampo’s request to issue an arrest warrant for Bashir, based on a hearing of the evidence.\(^{36}\)

From presidents and major geopolitical groupings, down to newspaper columnists and activists, the move has ignited something of a firestorm, with countering claims as to whether the ICC’s first-ever instance of bringing charges against a current head of state represents an unprecedented victory in the global struggle for human rights, or a perilous, ill-conceived gamble by a brash prosecutor that will likely plunge Sudan into further chaos.\(^{†}\)

That Bashir is a major war criminal is beyond doubt, as is the fact that he should face trial for his substantial violations of international human rights law. Still, there are numerous complications inherent in turning this into reality, which serve to at least call into question whether Moreno-Ocampo’s indictment meets the minimum standard for pursuing a prosecution of this order: that it is in the interests of the victims.\(^{37}\)

What is at stake is not only the future of Darfur, but also potentially the fragile peace agreement in place between Khartoum and the country’s south which ended a civil war that claimed some two million lives.\(^{38}\) As Julie Flint and the Sudan specialist Alex de Waal pessimistically but not unrealistically observed before the indictment, “Bringing charges of this nature against the highest echelons of government, at this moment, would be gambling with the future of the entire Sudanese nation.”\(^{39}\)

In the wake of the ICC announcement, reactions within Sudan from the conflict’s primary actors were as expected, though somewhat muted. Darfur rebel groups voiced support for the indictment, as have, from

\(^*\) Moreno-Ocampo has also pledged to go after rebel commanders from factions that have attacked the AU deployment formerly in Darfur. See, *AFP*, “Justice must follow its course in Darfur: ICC prosecutor,” 17 July 2008, accessed 17 July 2008 <http://afp.google.com/article/ALeqM5hjqYGXmzu7C1BYUTTTW3X5JJrIBg>.

what little is known, many of the victims of the violence—though, as de Waal noted soon after Moreno-Ocampo’s move, “the main topic of conversation among ordinary Darfurians is the weather—it is raining.” The indictment is not, after all, expected to make any concrete, initial difference in their lives, and symbolic victories are ultimately less powerful than daily realities. Khartoum’s own initial response was especially low-key and short on the expected bombastic condemnations of the ICC and the West. Even though Khartoum has yet to respond as feared by retaliating against UNAMID and/or humanitarian agencies, there is continuing pertinence in Flint’s comment that the Sudanese government could act to hinder them “in a thousand ways…They can slow down permits. Make visas impossible to get. They can make an already difficult job impossible.”

The short-term outcome of Moreno-Ocampo’s indictment has been to strengthen Bashir’s rule. Pushed by widespread doubts surrounding the “genocide” charge, as well as nationalistic sentiment, and the notion that the ICC referral could bring down the north-south peace deal, halt nascent steps towards democratization within Sudan, and perhaps send the country spiraling towards further catastrophe, all the main opposition parties have (at least for now) closed ranks around him. There has been nothing less than “a swift and radical reordering of the fractious political universe in Sudan,” as “one sworn political enemy after another” has lined up behind Bashir. Any inkling that this would be the spark for a coup against Bashir has disappeared for the moment.

Internationally, regional blocs such as the African Union and Arab League have condemned the indictment, out of a combination of apologetics for the Bashir regime, a desire of some member states to avoid prosecution for their own crimes, and legitimate concerns about instability in Sudan. Their call has been for the UN Security Council, which originally referred the Darfur conflict to the ICC, to exercise its power to defer the ICC’s handling of the case. The Security Council is able to do this in one-year increments, ad infinitum.

An important barometer of Western opinion on a possible deferral, a recent Security Council resolution renewing UNAMID’s mandate in Sudan included text indicating a willingness to potentially suspend the ICC’s case against Bashir. The British-drafted resolution passed by receiving 14 out of 15 votes, with the U.S. abstaining in protest over the language concerning a possible deferral. Washington’s sudden support for the ICC is curious in comparison to what Human Rights Watch labeled the “jihad against the court” that the U.S. had launched during
the first half of the Bush administration, though it has evidently since
realized that it can cherry-pick which ICC actions to back, confident
that the U.S. itself will never end up on the docket. This one-way appli-
cation of justice, in prosecuting the weak’s crimes but never the far more
vast ones of the powerful, is not lost on the have-not nations of the
world—thus seriously undermining the Court’s standing within large
swaths of global opinion, and accordingly its usefulness as an instru-
ment of international law.

For all the straightforward appeal in bringing Bashir to justice, the
potential issuance of an arrest warrant for Bashir, and Moreno-Ocam-
po’s peculiar way of going about the prosecution, raise several concerns,
some procedural, others conceptual.

From a legal perspective, Moreno-Ocampo’s decision to bring “geno-
cide” charges against Bashir is a risky one. As de Waal comments, for all
his human rights violations, the prosecutor “succeeded in accusing
Bashir of the crime for which he is not guilty. That is a remarkable feat.”
Further,

Moreno Ocampo’s political misjudgments have made life easier for Bashir and
commensurately more difficult for the ICC. By presenting his case in such
stark terms, the Prosecutor has made it easy for his critics to dismiss him as ill-
formed and driven by a desire for publicity, and has made it harder for the
advocates of justice in Darfur to pursue the challenge of calling to account
those responsible for crimes no less heinous than genocide.

The respected authority on international human rights law, William A.
Schabas, observes that Moreno-Ocampo’s indictment of Bashir for
genocide “will sell well on the American street. The Prosecutor will no
doubt be congratulated by neo-con journalists, the religious right and the
Israel lobby for daring to use the g-word.” Thus, mass murder is appreci-
ated for its political utility in distracting the public from the war in Iraq,
as well as the crimes of favored states. However, he argues that on legal
terms, the indictment is on shaky ground, and that “serious jurists fami-
liar with contemporary jurisprudence will expect genocide charges to
result in acquittals.” The net result is “frustration and anger for the vic-
tims.”

* For more on evaluating whether genocide has occurred in Darfur, see the section in chap-
   ter 2, But Is It Genocide?
† Schabas is a Professor of Human Rights Law at the National University of Ireland in Gal-
   way and Director of the Irish Centre for Human Rights.
Aside from the pursuance of “genocide” charges, there is also the practical question of why Moreno-Ocampo did not seek a sealed warrant for Bashir’s arrest, instead of indicting him publicly. Since the ICC itself has no enforcement body, and instead relies on member states to implement its rulings, Bashir as head of state could—and surely would—simply resist arrest by limiting his travels to friendly states that are unlikely to execute the warrant. A sealed warrant would have at least offered the possibility of catching him by surprise on an international visit.

Though Moreno-Campo’s public indictment allows virtually no prospect of actually being able to arrest Bashir during his tenure as Sudanese head of state, there are potential benefits, planned or not, to the announcement. While the main political actors in Khartoum have thus far stood behind Bashir, thus reassuring his hold on power, maintaining their loyalty could require him to make concessions to the opposition on issues such as Darfur. Reports indicate that such was the level of disquiet with the Sudanese government over the indictment that before pulling back, Khartoum appeared to have been on the verge of turning over to the Court two other government figures, against whom the ICC issued arrest warrants in April 2007. Such a possibility was unthinkable before Moreno-Ocampo’s announcement, which has forced the government to start conjuring ways to salvage Bashir’s hold on power. In the words of the Sudanese foreign minister, “Everything short of the presidency is on the table.” Given the US’ fiery rhetoric on Sudan, the ICC indictment has also served to back Washington into the corner of having to abandon its previous all-encompassing rejection of the Court, and at least lend some measure of verbal support to its legitimacy.

While an ICC indictment against a sitting head of state is an unprecedented occurrence, many commentators have opined on Moreno-Ocampo’s case by way of historical analogies. Though a first for the ICC, two recent leaders have faced legal action from other international courts: Liberia’s Charles Taylor (currently on trial) and Serbia’s Slobodan Milosevic (who died awaiting trial). Countless other architects of human rights abuses have also in the past been prosecuted for their crimes, whether in the form of international tribunals, local proceedings, or truth-and-reconciliation commissions.

There is a constant throughout their stories: with rare exception, they were brought to justice only after falling, or being deposed from power. Taylor’s apprehension came only after he resigned his position and signed a peace agreement which guaranteed him asylum (later reneged) in Nigeria; Milosevic was overthrown. They did not give themselves up willing-
ly, nor were they taken into custody while serving as heads of state—and almost surely the same will be true of Bashir. Yet knowing that a court date in The Hague awaits has the predictable effect of strengthening tyrants’ resolve to stay in power until the bitter end. Alex de Waal comments:

Those who advocate that peace and justice go together argue that it’s necessary to end impunity in order to deter future crimes. No well-meaning person could disagree with that principle. But despots are learning a different lesson: that it’s necessary to hang onto power at all costs, because the alternative won’t be a comfortable exile in oblivion but instead a prison cell. In 1991, Ethiopian dictator Mengistu Haile Mariam was offered the chance to flee to Zimbabwe. He took it and Addis Ababa was spared a bloody showdown. Robert Mugabe today has nowhere safe to flee except North Korea.

Another case is Idriss Deby of Chad. With the rebels at the gates of the presidential palace in N’djamena in February this year, the French offered him a plane to escape. He reportedly replied that he would rather die fighting and didn’t want a neighbourhood of the Chadian capital to be named after him, “Idriss Deby has fled.” The reference is to a quarter called “Hisséne Habré has fled.” Habré fled rather than die and now sits in a Senegalese jail facing more than one hundred counts of murder.\(^53\)

In the case of one of Sudan’s neighbors to the south, Uganda, ICC arrest warrants for leaders of the rebel Lord’s Resistance Army (LRA) are cited by many—including some victims of LRA atrocities—as a detri-ment to the peace process.\(^59\) According to the UN, LRA leader Joseph Kony has expressed that he “is ready to sign the peace deal” with the government, but only if the ICC indictments are withdrawn. Should he sign, the Ugandan government, of course no friend of the rebels, has indicated that it will try to get the ICC to drop the charges, and instead will pursue “a mixture of local justice and traditional reconciliation.”\(^60\)

Accordingly, if an arrest warrant is issued for Bashir, he has no incentive to strike a deal and step down; by doing so, he would be virtually consigning himself to living out the rest of his days, à la Milosevic, in a jail cell. Faced with that prospect, one can expect him to cling to power at all costs, violently if need be. Unsatisfying as it may be in the case of a man responsible for such tremendous carnage, offering immunity from potential ICC prosecution to Bashir as part of a deal may be the only way to shepherd him out peacefully.\(^61\)

Fortunately, at the time of writing, the world does not—at least not yet—face such a choice. With Moreno-Ocampo’s indictment of Bashir a
done deed, and several months between the mid-July indictment and when the Court is to decide whether to actually issue an arrest warrant, the international community should utilize the leverage of the looming ICC decision to pressure Khartoum—though leading nations have done nothing visible thus far in this regard, indicating it will likely pass by as yet another missed opportunity to actually do something to help resolve the conflict. Should interest unexpectedly arise in doing so in world capitals, powerful nations ought to offer the carrot of potentially deferring—perhaps indefinitely—the indictment if Bashir and company can be persuaded to make substantive progress towards:

- serious peace negotiations (though whether the same can be done with the fractious rebel groups is another problem area that needs addressing);
- ending attacks on Darfur and collaboration with Janjaweed militia;
- fulfilling the terms of the north-south peace agreement and proclaimed moves towards democracy, and;
- removing the harassing bureaucratic measures designed to hamper UNAMID’s efforts and full deployment (solving part of the problem, though not Western apathy towards fully equipping the force), as well as the invaluable work of aid agencies.

While Bashir’s is a criminal regime, and has a deplorable track record in living up to past pledges on Darfur, the West must engage with it. The last great conflict in Sudan, a 22-year north-south civil war in which some two million civilians were killed, was brought to a close in 2005 only after years of internationally brokered peace talks. Though still shaky, the agreement has thus far held, allowing the south increased political representation and the chance to vote to become independent in an upcoming referendum in 2011. Washington would do well to help keep the Darfur conflict from stretching on for a similar period of time by prioritizing a participatory, negotiated settlement, and ending its ‘good cop, bad cop’ routine of making occasional threatening gestures towards Khartoum which shore up internal support for hardliners, while secretly scheming for ways to get a hold of Sudanese oil reserves and collaborating in intelligence-sharing with some of the regime’s worst human rights abusers as part of the comically mistitled “War on Terror.”

The Darfur conflict has already lasted longer than World War II, but without fundamental changes in the world’s response to it, it could go on much longer.

Steven Fake and Kevin Funk, August 2008
http://www.scrambleforafrica.org/
Notes


3 Of particular note, Flint and de Waal comment that Abdel Wahid is now “ensconced in Paris and lionized by activists there.” He has become increasingly authoritarian within his own movement, having members of his SLA faction arrested, according to Amnesty International, “because they supported the unity of different factions of the SLA.” Flint and de Waal note about the arrested individuals that “their colleagues in the SLA said they belonged to the movement’s ‘peace camp’ and wanted the new talks that Abdel Wahid not only refused, but refused even to discuss.” In another telling incident,

The Magdum of Nyala, Ahmed Adam Rijal, who had been dismissed by Khartoum in 2005 for his principled stand on behalf of his people, flew to Paris but was spurned by Abdel Wahid, who refused even to meet him. Back in Nyala, the Magdum bitterly commented on Abdel Wahid’s readiness to spend many hours with French activists who had never been to Darfur but his failure to meet with one of the most senior tribal leaders of Darfur.

Flint and de Waal, pp. 255-56.


    Also, AFP, “Darfur rebels are no saints, says UN-AU military chief,” 12 Aug. 2008, accessed 13 Aug. 2008 <http://afp.google.com/article/ALeqM5ic_U4H9PXaSSgPDSDe4fvVx34ZQ >. As reported,

The military commander of the UN-African Union mission in Darfur on Tuesday urged the world community to put as much pressure on the fragmented insurgency in the war-torn Sudanese region as it does on the Khartoum government.

    Martin Luther Agwai, force commander of the joint mission known as
UNAMID, told reporters that while it is popular to “bash” the Sudanese government, the reluctance of Darfur rebels to negotiate was often forgotten. “It takes two to tango,” Agwai noted. “Sometimes we forget about them (the rebels). Every day, they say they are fighting for the poor people of Darfur and yet what have they done to show even interest to go to the conference table?

“I am not in any way saying that the (Khartoum) government is clean. But what I am saying is that also the other side cannot be said to be saints. So my appeal is that the pressure should be exerted on both sides.”

He said there were now around 30 different rebel groups involved in the conflict, compared to four when the Darfur Peace Agreement was signed in 2006.

Agwai called on Darfur insurgents to unite and come to the negotiating table, which he said was the only way to achieve peace.

“They will have to end on a negotiation table because militarily it’s clear no side can win the war in Darfur,” he said. “But if you have 15, 20 parties wanting to go to conference table to talk, nothing will come out of it.”


6 De Waal goes on to observe that “the leading actors have not exhausted their military options, or do not believe they have done so, which means that the battlefield is the primary theatre for engagement, and any peace talks are strictly ancillary to that.” See his, “Whither the Darfur Mediation? (I),” Making Sense of Darfur (blog), 26 Mar. 2008, accessed 12 May 2008 <http://www.ssrc.org/blogs/darfur/2008/03/26/whither-the-darfur-mediation-i/>.


Darfurian rebels staged a bold attack on Saturday, advancing to within a few miles of the center of Sudan’s capital, Khartoum.

By nightfall, it seemed that government forces had beaten them back, but only after declaring a citywide curfew, deploying attack helicopters and hundreds of troops and essentially shutting down the city....

The official said that there were credible reports that Sudan had arrested several mid-level military officers, most of them originally from Darfur, and that officials were “scared to death” about the prospect of a coup.

The JEM has pledged to attempt to another coup, with its leader Khalil Ibrahim commenting that, “This is just the start of a process and the end is the termination of this regime.” BBC, “Sudan’s Islamist leader released,” 12 May 2008, accessed 12 May 2008 <http://news.bbc.co.uk/2/hi/africa/7397087.stm>.

For useful and informed background on the calculations leading to the

8 The journalist Julie Flint comments that:

The trouble with the march on Omdurman [Khartoum’s twin city] is that it was uncoordinated. Khalil flew solo, and the attack collapsed before anyone could rise up (if they were inclined to, with JEM, rebellious child of the [de facto governing group] NIF [National Islamic Front], in the driving seat). The most successful blows the Darfur rebels have struck to date have been **combined** blows: the spectacular attack against El Fasher air base in April 2003 (SLA and JEM); the defeat of SAF in Um Sidir and Kariari in 2006 (G19, SLA Unity, JEM) etc. JEM acting alone failed.


Ibrahim’s prior involvement with the Bashir regime (though he had long sought to reform it from within, he did not fully break from it until the late 1990s) and current quest for power have lead one Western diplomat to label him “Trotsky to Bashir’s Stalin.” See McCrummen, Stephanie, “Despite bravado, rebel attack shakes Sudan,” Washington Post, 24 May 2008, accessed 25 May 2008 <http://www.chicagotribune.com/news/nationworld/chi-wash-post-52409-sudan-rebel,0,7819777.story>.

For more background, see de Waal, Alex, “Making Sense of Khalil’s Putsch.”

The JEM has a rather narrow ethnic base, with its main focus being on a subgroup of the Zaghawa called the Kobe. It is also, in the words of de Waal, “the personal fiefdom of Khalil Ibrahim.”


Flint observes the following concerning the Chadian regime:

Imagine that a dictator fixes three elections in a row, imprisons the civilian opposition, plunges his country almost to the bottom of the Transparency International’s corruption rankings, and spends its revenue on guns to attack
his neighbor while teachers and nurses go unpaid and development projects stagnate. Imagine that he is kept in power by special forces from his former colonial master (France) and that his cash comes from a foreign oil company (ExxonMobil). Shouldn’t activists be up in arms? Shouldn’t they be exposing his crimes, calling for an end to impunity, boycotting the oil company? Shouldn’t they be condemning his proxy?

They should, but they are not. The target, come what may, is the Sudanese government. Chad and JEM, which has repeatedly put civilians in harm’s way by provoking the government, almost always escape censure.


As noted, Déby did not back this JEM attack. For background, see, de Waal, Alex, “Making Sense of Khalil’s Putsch.” He writes that:

For two years, Deby armed JEM extensively and provided it with sophisticated heavy weaponry. But in recent months, Deby has scaled back his support and opposed Khalil’s attack on Omdurman. According to one well-placed source, Deby actually summoned Khalil to N’Djamena when he learned of the plan, at which point JEM jumped the lights and accelerated its assault. Deby is angry with Khalil for what he sees as a reckless attack that jeopardizes his own political balancing act. However, JEM has obtained support from other figures in the Chadian regime.

10 McCrummen, Stephanie, “Despite bravado, rebel attack shakes Sudan.”

As the *Associated Press* reported,

[Alex de Waal] said Khalil may want to keep up the pressure on the regime, but is unlikely to be able to withstand the response.

“I think it was a miscalculation,” he said. “the majority of Darfur rebels don’t share that ambition ... they want peace for their places rather than wanting power in Khartoum for themselves.”


To Ibrahim’s credit, he apparently does not share liberal Western naivety concerning the US (and not just Chinese) role in impeding meaningful international action on Darfur. Evidently referring to the two countries respectively, he commented in an interview that:

“Unfortunately the international community is not serious in pressurizing Khartoum. Some of the world major players have security interests in Sudan while others have oil interests. All of them actually prioritize their interests to the interest and the rights of the marginalized people in Darfur and elsewhere in the Sudan.”


In seeking to explain why the West has not stepped up to the plate and done more to aid Darfurians, hawkish commentator and invasion advocate Eric Reeves bizarrely argues that:

…the issue foremost here is clearly the invocation of “national sovereignty,” which has been precisely the response of Khartoum’s génocidaires to international efforts to provide humanitarian assistance, security, and justice to the people of Darfur. And such assertion of national sovereignty by the regime has been relentlessly and all too effectively made for over five years. If we wish to understand why several hundred thousands human beings have died in this time, why 2.7 million human beings have been internally displaced or turned into refugees, or why the UN estimates that the conflict-affected population in Darfur has reached a staggering 4.3 million human beings, then we must look first to the consequences of international acquiescence before Khartoum’s relentless claims of “national sovereignty.”

Surely anyone who has heard of the war in Iraq will be bemused to learn that major powers such as the U.S. evidently bow at the altar of “national sovereignty,” indeed basing their foreign policies on this very principle. There is of course no pretension of caring about, or even bothering to recognize “national sovereignty” in the case of enemy states, such as pre-invasion Iraq. Rather, global powers simply do not care much about the plight of Darfurians, especially in comparison to their substantial interests in Sudan for economic and geopolitical reasons. Any invocation of “national sovereignty” by these nations to explain their inaction is merely fodder for the chattering classes.

For Reeves’ argument, see his, “Pursuing Peace and Justice in Darfur: The Role


Further beyond the pale, from a source from which nothing less can be expected, is recent commentary from Martin Peretz, editor in chief of The New Republic. Scraping new depths in his chest-thumping search for self-sanc-
tification, Peretz writes the following:

I am proud of how TNR has been obsessed with Darfur. I am proud of the fact that we realized early on that the only just solution for Darfur would come from a launching of helicopters and light fighters and carrier planes, a deployment of armed troops and armored vehicles not only to defend the victims but to repel and defeat their killers. The absence of such a mobilization will only tell the pharaoh [Bashir] to continue with his killing.

Since literally everything in Peretz’s off-kilter universe can be linked somehow to Israel, he also comments that he “cannot fail to notice that the international alliance against Israel is no more fully replicated than in the international alliance against Darfur.” Aside from the bizarre conflation of opposition to occupation with support for ethnic cleansing, the supposed alliances are dis-
tinct. Virtually the entire world, excepting the U.S., opposes the Israeli occupation (as can be seen from a glance at the votes on UN resolutions), while Sudan’s most important allies are not the Arab states, which Peretz is surely
invoking, but China and Russia (though for their part, the Arab governments have unsurprisingly failed to distinguish themselves in handling Darfur with anything other than the usual cynicism of statecraft). Combining Peretz’s strange comparison with something approaching a total ignorance of Sudanese history, culture, and racial/ethnic categorizations, he notes that:

Let’s face facts: the war in the Sudan is a war of its Arabs against its blacks. “A black face begins a black day,” says an Arab proverb. And the Arabs of the country do not want to see any blacks. In this, they are fully supported by the Arab states and (although most Sudanese blacks are Muslims and not Christians) by most of the non-black Muslim states. The uniformity here is dazzling, and it comports with how these two blocs view the Jews and Zionism.


20 De Waal, Alex, “Whither the Darfur Mediation? (II).”
23 Grasping wildly for signs of ‘success’ in its peculiar form of advocacy, the Save Darfur Coalition comments approvingly that Khartoum “lashed out” at the signatories shortly after releasing the statement. This reaction is curiously interpreted as a sign that they “are making a difference,” raising the question of whether they are more interested in helping Darfurians or antagonizing Khartoum. Email communication from Colleen Connors, “We cannot let up,” Save Darfur, 29 June 2008.
24 AFP, “Darfur rebels are no saints.”

The AFP reports another flashback to the days of the AU force, as for UNAMID, “even basic communication is a problem. In El Geneina, there are enough local translators only for the day shift. In Nyala, translators were so short on Friday morning that a freelance journalist stood in as interpreter.” See, AFP, “Darfur expectations fade,” 25 June 2008, accessed 25 June 2008.
Both government forces and rebel groups have evidently been responsible for attacks on UNAMID, though in this case the identity of the perpetrators still seems to be unclear. For an attack reportedly committed by Khartoum-backed forces, see, Polgreen, Lydia, “Darfur Peacekeepers Robbed in Ambush,” New York Times, 24 May 2008, accessed 24 May 2008 <http://www.nytimes.com/2008/05/24/world/africa/24sudan.html?_r=1&ref=africa&oref=slogin>. She reports that: “Militiamen in Sudanese Army uniforms ambushed a convoy of Nigerian peacekeepers in Darfur, robbing them of cash and weapons, United Nations officials said Friday…The militiamen wore military uniforms, but peacekeeping officials said they were most likely janjaweed…” On the other side see, afrol News, “New Darfur mediator appointed,” 1 July 2008, accessed 2 July 2008 <http://www.afrol.com/articles/29631>. The article notes that:

26 *AFP*, “Darfur rebels are no saints.”


30 Bloomfield, “A Thin Coat of Blue.”

31 The journalist Steve Bloomfield comments appropriately that “Leaders in the United States, Britain and France rarely miss an opportunity to talk about the plight of Darfur, but so far, all three countries have failed to provide Unamid with the equipment it so desperately needs.” See his, “A Thin Coat of Blue.”

33 See, for example, Bloomfield, “A Thin Coat of Blue.” As Bloomfield reports:

Unamid now finds itself stationed in the middle of a war zone, and with no additional forces or equipment, it has been reluctant to step in. As Janjaweed roamed through a camp in Tawila last month, burning down the market and looting homes, peacekeepers watched. Those living in the camp ran into the Unamid compound, but peacekeepers in the compound decided not to run into the camp. “Unamid is not the problem,” insisted Henry Anyidoho, the deputy political head of the mission. “The problem is the failure of the international community to give Unamid the equipment it needs to do its job. They expect too much, too quickly, even though they are not providing the means.”

Citing the aforementioned report, the BBC also noted that it refers to “several instances when Unamid soldiers observed violence against civilians without acting against it, and said commanders were inconsistent in interpreting the mission’s mandate.” BBC, “Darfur force ‘failing civilians,’” 28 July 2008, accessed 28 July 2008 <http://news.bbc.co.uk/2/hi/africa/7528050.stm>.

34 Flint and de Waal succinctly frame the issue: “The sad reality was that UNAMID was designed to satisfy western public demand for military intervention. The vision of the mission was based on images of Darfur from the bloodbath years of 2003-04, rather than the complex conflict that had since emerged.” Flint and de Waal, p. 270.

Elsewhere, de Waal notes that “Unamid has been given a task that would stretch a force 10 times as big and 10 times as well-equipped.” See, Bloomfield, “Troops die on ground in Darfur.”

35 Alex de Waal has written perceptively on this point:

“Send them helicopters!” we are told. But helicopters will not stop this war.... UN patrols around the displaced camps could stop many of these killings and monitors following army operations can deter others. I am all for this.

But let us not pretend that they would stop the war.

Like emergency food rations, this sort of protection is a stop-gap measure that saves lives until a political solution can be found.


Having more troops and armoured vehicles and helicopters will help but it will not address the fundamental problem that UNAMID cannot sustain a ceasefire which the parties are determined to violate and cannot provide overall security for a civilian population spread across such a large area....

What UNAMID can do is limited proactive civilian protection, in conformity with its mandate, although well short of the hopes that it would be a
pioneering case of the Responsibility to Protect. For example it can conduct perimeter patrols around IDP camps and maintain a visible presence in areas where it is feared that conflict may erupt. Doing this will need additional equipment and well-functioning civil affairs and political affairs departments.

This would represent an important step forward. Currently there are approximately 100 civilian fatalities across Darfur each month, sometimes more, and many of these could be prevented by stepped-up civilian protection activities. However the limits of this activity should be recognized. It is akin to a humanitarian operation, i.e. it consists in saving lives in the middle of an ongoing conflict without actually hastening the resolution of that conflict. In the same way that humanitarian aid can actually become sucked into a war economy and end up prolonging or complicating a conflict, there is a danger that UNAMID may also end up failing to advance the peacemaking effort.


38 De Waal, Flint, and the Sudan researcher Sara Pantuliano write that:

Sudan stands on the threshold of another catastrophic war as the ruling National Congress Party and the Sudan People’s Liberation Movement mobilise around Abyei. Attempts to deploy UNAMID in Darfur are at a critical point. At this sensitive time, to lay charges against senior government officials and to criminalise the entire government, will derail attempts to pull Sudan back from the brink and could provoke retaliation against humanitarian bodies and the two UN peacekeeping missions in the country.


Flint and de Waal also pose the rhetorical questions:

But Sudan’s leaders believe the United Nations in Sudan is the police officer of the ICC, just waiting to enforce arrest warrants, and they have a history of
responding to humiliation with rage. If the Khartoum government is indeed the beast that Ocampo depicts, is it wise to confront it in this manner, while it still exercises powers of life and death? Does this not invite retaliation, including against humanitarian agencies? If the entire Sudanese government is a criminal enterprise, how can international organizations and embassies work with it—even in the interests of peace?


For his part, Sudan’s UN ambassador warned that, “If you indict our head of state, the symbol of our country, the symbol of our dignity, then the sky’s the limit for our reactions.” *Associated Press*, “Charges in Darfur atrocities expected to be brought against Sudanese leaders,” 11 July 2008, accessed 12 July 2008 <http://www.iht.com/articles/ap/2008/07/11/news/UN-UN-International-Court-Darfur.php>.

39 Flint and de Waal, “Justice Off Course in Darfur.” The International Crisis Group comments on the possible aftershocks of issuing an arrest warrant for Bashir:

Hard-liners on all sides may be reinforced, with the governing regime and other actors reacting to today’s application, and any subsequent warrant, in ways that seriously undermine the fragile North-South peace process, bring an end to any chance of political negotiations in Darfur, make impossible the effective deployment of UNAMID, put at risk the humanitarian relief operations presently keeping alive over 2 million people in Darfur, and lead to inflammation of wider regional tensions. These are significant risks, particularly given that the likelihood of actually executing any warrant issued against Bashir is remote, at least in the short term.


Some, such as Sara Darehshori of Human Rights Watch, who traveled to Chad to interview Darfuri refugees, criticize de Waal and Flint’s line of reasoning. She writes that critics:

…contend that should the prosecution of top officials—however terrible their crimes—go forward, it will interfere with prospects for peace and security.
Sudan’s history makes a strong case for the opposite conclusion: The persistent lack of accountability has instead undermined the prospects for peace and stability. There has been little peace to keep.

No legitimately concerned individual is against “accountability” for the Sudanese leadership. Yet whether said lack of accountability (in the absence of a viable plan for bringing it about) has enabled and/or empowered Bashir’s regime to commit abuses is another story. Until such time as the ICC is able to dispense justice widely around the world and without deference to the leading powers, accountability will be severely lacking. The greatest threat to the deterrence effect is not a judicious consideration of the impact of prosecutions on peace but the politically motivated lack of accountability for US-backed tyrants, whose cases do not appear on the ICC docket—not to mention the free pass given to world powers themselves.


But Hussein Abu-Sharati, the spokesperson of Darfur displaced and refugees at the Kalma camp in South Darfur, with some 90,000 residents, said “there is no alternative to prosecuting the Darfur criminals before any peace settlement. All of the displaced and refugees support punishment of the criminals”.

Asked about possible retaliation from government following the naming new Darfur suspects he said “the Sudanese government routinely carries out retaliation against us. We fear no one but god”.

See Crilly, Rob, “With a jig President al-Bashir plays peacemaker in Darfur,” Times [London], 24 July 2008, accessed 24 July 2008 <http://www.timesonline.co.uk/tol/news/world/africa/article4387238.ece>; also, Tran, Mark, “African leaders call for withdrawal of Darfur genocide charges,” Guardian, 21 July 2008, accessed 21 July 2008 <http://www.guardian.co.uk/world/2008/jul/21/sudan.humanrights>. The Guardian reports that “Street protests against the court have been held almost daily in Sudan, but they have been small and without the heavy government
backing evident at some past demonstrations. A ‘million man march’ planned for today was cancelled.”


Speaking on the heels of the indictment, Sudanese presidential advisor Bona Malwal remarked that, “There is no way we can accept that an international force that we don’t command stays in Darfur with a warrant of arrest on our president... We will not give visas, we may even withdraw visas. If we say Darfur has become a contested territory between us and the ICC, we can only look after the security of the territory and not the security of international personnel.” Malwal’s remarks were later disowned by Khartoum, which reaffirmed to the UN its commitments to the deployment. See, respectively, Miriri, Duncan, “Sudan says Darfur aid workers at risk over ICC,” Reuters, 22 July 2008, accessed 22 July 2008 <http://africa.reuters.com/wire/news/usnL221009408.html>; and, Sudan Tribune, “Sudan officially reiterates its commitment to Darfur peacekeepers,” 28 July 2008, accessed 29 July 2008 <http://www.sudantribune.com/spip.php?article28047>.


43 For highly insightful background, see de Waal, Alex, “All Quiet in Sudan?” He writes:

During the five days before the announcement, each of the main political parties conducted internal discussions. The outcome was a remarkable unanimity that the ICC should not derail the CPA and the progress towards democracy. In fact, the adoption of the electoral law was timed for July 14, with great fanfare, to make the point that Sudan is on the road to democracy.

One key figure was al Sadiq al Mahdi, leader of the Umma Party and the strongest supporter of the ICC within Khartoum. He commented that ‘justice and stability are at loggerheads.’ And he concluded that stability should win out. Other mainstream Northern parties broadly shared his views, from the Communists to Turabi’s Popular Congress.

The SPLM leadership held an intense internal discussion in Juba. Rumors abounded that the party was considering this the moment to withdraw from the Government of National Unity... In the event, however, the SPLM's decision was to strongly support the CPA and the President. When this decision was announced at a cabinet meeting on Sunday, the sense of relief in the NCP [the governing National Congress Party, which Bashir heads] was almost tangible....
When Moreno Ocampo made his announcement on Monday, the extreme nature of the charges (genocide against Fur, Masalit and Zaghawa) and the allegation that President Bashir was personally in total command of the state apparatus, made it much easier for the NCP to convincingly present the charges as politically-motivated. Nobody in Sudan, even the regime’s harshest critic, believes that Bashir was in total command of the organs of state, which bent to his every instruction. The Chief Prosecutor’s statement on Monday had the effect of making him look like any other polemicist speaking about Sudan without understanding the nature of the Sudanese state and society.


A number of nightmare scenarios - including the implosion of the regime, which might bring Al Qaeda back into Sudan or embolden various rebel groups to try to topple the government—forced political elites in Sudan to choose sides. Most have chosen to stick with Bashir for now.

“These are frail and critical moments in our history,” said James Morgan, a spokesman for the Sudan People’s Liberation Movement, which signed the Comprehensive Peace Agreement ending the north-south war. Bashir, he said, should be given “ample time to implement these agreements.

The international court’s announcement also came amid signs that Sudan’s military-dominated political system was about to go democratic. The National Assembly had just passed a new electoral law, which would create the first freely elected government in more than 20 years. The law would also set aside seats for women and other underrepresented groups.

About the possibility of a coup, de Waal writes:

Twice since independence, Sudanese civil society has led a non-violent popular uprising that has brought down a military dictatorship, once in 1964 and the second time in 1985. Sudanese activists long for a third intifada that will bring democracy and justice to Sudan. However, most agree that the prospects for this are remote. On seizing power in 1989, one of the first acts of Pres. Bashir and the National Islamic Front was a campaign of repression and terror aimed at civil society groups. It was sadly effective. But perhaps even more effective at dismantling the capability of Sudanese civil society to mobilize has been the commercialization of the voluntary sector. Long gone are the days when professionals, students and ordinary citizens mobilized in a spirit of voluntarism—today most in the NGO sector are concerned with writing their grant
proposals. Once a vibrant force, Sudanese civil society is today a shadow of its former self.


46 The BBC reports:

The charges against President Bashir put African countries in an acutely difficult position, says the BBC’s Liz Blunt in Addis Ababa.

They supply almost all the troops for the joint AU/UN peacekeeping force in Darfur, and are also the countries most likely to be called upon to carry out any arrest warrant, she says.


The AU also warned that the issuance of a warrant for Bashir could provoke “a military coup and widespread anarchy.” Allen, Karen, “Defiance and confidence in Sudan.”


48 See, Pleming, Sue, “U.S. takes more pragmatic view of world court,” Reuters, 7 May 2008, accessed 8 May 2008 <http://www.reuters.com/article/home-pageCrisis/idUSN07354908_2400>. She reports that, “In a speech last month marking the 10th anniversary of the ICC, State Department legal adviser John Bellinger said while Washington still had strong concerns about the court, it would work with the ICC on issues such as holding people accountable for atrocities committed in Sudan’s Darfur region.” The “strong concerns” about the ICC are that it might become a serious instrument for justice, and will thus turn to investigating US crimes. The U.S. is willing to admit that it can be a useful stick to wield against adversaries, but will not be submitting to it itself.

49 The BBC observes:

But the problem for the ICC is the perception that it is a political beast motivated by rich Western interests, honing in on “easy” targets.

All four investigations of the ICC to date have focused on Africa. There may be good administrative reasons for that, but it pushes African nations onto the defensive and makes the ICC look like a playground bully - rather than a beacon of justice.

Allen, Karen, “Defiance and confidence in Sudan.”

Rwandan President Paul Kagame on Thursday dismissed the International
Criminal Court (ICC) as a new form of imperialism created by the West to control the world's poorest countries.

The court “has been put in place only for African countries, only for poor countries,” Kagame told reporters in his monthly briefing.

“Every year that passes, I am proved right,” he added. “Rwanda cannot be part of that colonialism, slavery and imperialism.”


As cynical as these words are, given the source, one can find little factual basis for arguing with a Sudanese presidential advisor, who commented that, “We did not see that the court looked into what superpowers did in Iraq, Palestine or Afghanistan.” Sudan Tribune, “Sudan express (sic) reservations on the Arab League’s ICC plan,” 17 Aug. 2008, accessed 18 Aug. 2008 <http://www.sudantribune.com/spip.php?article28318>.

50 De Waal, “Moreno Ocampo’s Coup de Theatre.”
52 Though as noted, a sealed warrant would have made Bashir’s actual apprehension more likely, the surprise arrest of a sitting leader could of course be a highly destabilizing move. In any case, Moreno-Ocampo curiously and unsatisfactorily justified his actions by declaring “that the victims have the right to the truth” (de Waal’s paraphrase). See, de Waal, “Moreno Ocampo’s Coup de Theatre.” Moreno-Ocampo is not entirely responsible for his predicament, of course, as the Darfur crisis was referred to the ICC by the UN. Accordingly, he is put in the impossible position of supposedly having to not only follow the evidence wherever it may lead, but also be sensitive to complex political realities which may speak against pursuing the cases assigned to him.

Crucially, since the Darfur conflict was referred to the ICC by the UN Security Council, even countries that are not ICC members would still apparently be legally obligated to arrest Bashir. See, Cassese, Antonio, “The decision on Darfur has been tactically mishandled,” Daily Star [Beirut], 18 July 2008, accessed 1 Aug. 2008 <http://www.dailystar.com.lb/article.asp?edition_id=10&categ_id=5&article_id=94248>. Cassese, a legal scholar who served as the first president of the international tribunal in Yugoslavia and as chair of the United Nations’ International Commission of Inquiry on Darfur, cites that:

The court’s jurisdiction over the crimes in Darfur has been established pursuant to a binding decision of the United Nations Security Council, which means that even states that are not parties to the ICC statute must execute the court’s orders and warrants. Having instead made the request for a warrant public, Bashir - assuming the judges uphold the request - can simply refrain from traveling abroad and thus avoid arrest.
53 De Waal, Alex, “All Quiet in Sudan?” He writes that:

While the GoNU [Government of National Unity] is stronger, the NCP is weakened by the ICC’s step. The NCP is more reliant than before on its established partnership with the SPLM and its new alliance with the Umma Party, and it will need to make concessions to Darfur and in the CPA in order to maintain this political momentum.

54 The Sudan Tribune reports:

The Sudanese government considered turning over two suspects accused of war crimes in Darfur to the International Criminal Court (ICC), a senior Sudanese official told Sudan Tribune today.

The official who requested anonymity because of the sensitivity of the matter said that the leadership of the National Congress Party (NCP) “is getting very nervous over the upcoming announcement by the ICC of new suspects”....

According to the official, Karti made a presentation to the NCP leadership in which he outlined the “difficult position” the government will be in if senior officials are charged by the world court of war crimes.

Karti recommended that Haroun and Kushayb being extradited to the Hague “as a protection from further indictments” the official said.

Al-Bashir appeared to be in agreement with the proposal, the official said, as well as others who were present but that Vice President Taha staunchly opposed it “on the grounds of preserving Sudan’s sovereignty”.


When the issue of putting aside the indictment against Bashir if Haroun and Kushayb are turned over to the ICC was put to Moreno-Ocampo, he left the possibility open, saying “ask the judges.” See, Besheer, Margaret, “ICC Prosecutor Says He Will Next Go After Darfur Rebels,” VOA, 17 July 2008, accessed 18 July 2008 <http://www.voanews.com/english/2008-07-17-voa49.cfm>.

55 Polgreen, Lydia and Jeffrey Gettleman, “International warrant tightens Sudanese leader’s hold on power.” They write that “The Sudanese government seems to be in a high stakes, high wire act, trying to determine exactly how much it needs to concede to survive.”

Similarly, due to foreign pressure Khartoum has announced that it will try those responsible for the violence in Darfur in the country’s own courts, though there is no reason to think that such trials would be anything but window dressing for the international community. See, Johnston, Cynthia, “Sudan agrees to try Darfur rights violators at home,” Reuters, 22 July 2008, accessed 22 July 2008 <http://africa.reuters.com/wire/news/usnL221012497.html>.

56 De Waal, for example, comments that, “If Ocampo’s strategy is to put the U.S. in a position in which it is compelled to support the ICC, he has chosen his moment well.” See his, “Ocampo’s Gauntlet to the UN Security Council.” At least initially, Moreno-Ocampo has little to lose from his indictment and
indeed much to gain. De Waal wonders:

...could the Chief Prosecutor be engaging in a game of high-stakes brinkmanship? Could the message implicit in his statement to the UN Security Council be a ploy to pressure Khartoum to hand over Haroun? If so, then Luis Moreno Ocampo has a very strong hand. The best exercise in brinkmanship is conducted by the one who has no fear of going over the brink. And in Ocampo’s case, he will win either way. If he gets Haroun and Kushayb in custody, he has a victory. If he goes through with indicting a very senior government official then he has made history and forced the hand of his chief critic in the international system, namely the U.S.


58 De Waal, “Ocampo’s Gauntlet to the UN Security Council.”
63 Though Khartoum is quite eager to normalize ties with Washington and welcome U.S. investments in the country, particularly in the oil sector, the US government has thus far not complied, despite some signs of a willingness to play ball. It initially appeared that the end of the north/south civil war in 2005 would prompt Khartoum and Washington to formally reconcile. The strife in Darfur interrupted that plan, likely because of both activist pressure and the fact that Washington saw in the violence an opportunity to create a showcase for the evil Arab/Muslim and the amoral Chinese government, while losing little in the meantime as the opportunities for resource exploitation are considerably limited by the unstable investment climate created by the conflict.

Indications are that once relative calm is achieved in Sudan, Washington will move to normalize relations, without concern for Khartoum’s human rights qualifications.

What the U.S. seeks in Sudan is a loyal ally in a strategically invaluable location (bordering Egypt, with control of the Nile, and access to the Red Sea), and to control Sudan’s oil reserves—currently one of the few major energy sources independent of Western control—so as to maintain leverage over China’s rising power.