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Indiana Journal of Global Legal
Studies

Volume 14 | Issue 1

Article 8

Winter 2007

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Recommended Citation

Welling, J. J. (2007) "Non-governmental Organizations, Prevention, and Intervention in Internal Conflicts: Though the Lens of Darfur," *Indiana Journal of Global Legal Studies*: Vol. 14: Iss. 1, Article 8.
Available at: <http://www.repository.law.indiana.edu/ijgls/vol14/iss1/8>

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Non-governmental Organizations, Prevention, and Intervention in Internal Conflict: Though the Lens of Darfur

J.J. WELLING*

ABSTRACT

This Note argues that cases like the humanitarian crisis and the conflict in Darfur, Sudan, present an intrastate collective action problem that has not been satisfactorily addressed by a traditional multilateral approach. Instead, the Darfur crisis demonstrates the need for an expanded view of modern international law in the face of intrastate conflict that includes systematic intervention procedures and preventive aid, as well as a multifaceted approach that recognizes and integrates NGOs and NGO alliances. This Note asserts that the Sudan crisis has posed a collective action problem requiring not only multilateral state collective action, but also multifaceted, coordinated action between states and the proliferation of nonstate actors that have emerged from globalization. Part I provides background on the genocide in Sudan and demonstrates that this conflict is one of a number of recent intrastate conflicts. It argues that intrastate conflicts and humanitarian crises are collective action problems. Part II argues that humanitarian crises and internal wars require new international law that encourages collective, preventive aid and systemized preemptive intervention procedures. Part III argues that these newer "collective actions" under international law should involve coordinated action between states and NGOs.

*J.D. 2006, Indiana University School of Law—Bloomington. Thank you to James K. Welling and Judith E. Welling for their constant support. Thanks also to Pam Fierst from the State Department, Professor Christiana Ochoa, Professor Fred Aman, Karen Levy, Gavin Rose, Elena Dicus, Sung-Won Kim, Alison Waske, Jamey Welling, Victor Rortvedt, Cheryn Drake, and Sir Michael Wood, ex-Senior Legal Advisor to the Foreign and Commonwealth Office for their important contributions.

INTRODUCTION

Some intrastate problems with international consequences—those issues that arise from within a particular country but significantly affect other countries—can be easily managed through unilateral or regional efforts. In a world in which globalization¹ plays an increasingly important role, however, many current intrastate problems are now so complex and destructive that they require the multilateral efforts of many states. These internal issues have become collective action problems—situations whereby individualized rational behavior by states leads to sub-optimal results for the states system, producing a need for collective action.² In other words, while many states would benefit if these problems were solved, the solution requires coordinated action between states because states acting alone lack the willpower or capacity to solve them.³ However, the problem of intrastate conflict is an atypical collective action problem in that multilateral state action often does not satisfactorily resolve such conflicts; though states have traditionally dealt with large-scale intrastate issues multilaterally—through a United Nations effort, for example—this remains a sub-optimal approach due to its inability to quickly resolve such issues of international concern. The genocide in Darfur, Sudan provides a lens through which to examine and evaluate the international processes that have evolved thus far to deal with internal warfare and humanitarian crises, two situations that often require broad intervention. Fortunately, certain innovations made possible by globalization, such as increasingly sophisticated coordination strategies developed by non-governmental organizations (NGOs) to deal with intrastate conflict and humanitarian crisis, may point to solutions to intrastate problems that are preferable to the traditional multilateral approach.⁴

1. Though many definitions have been provided in academic literature regarding the meaning of globalization, most academics would agree that globalization “implies, first and foremost, a *stretching* of social, political and economic activities across frontiers such that events, decisions and activities in one region of the world can come to have significance for individuals and communities in distant regions of the globe.” David Held, Anthony McGrew, David Goldblatt & Jonathon Peraton, *Rethinking Globalization*, in *THE GLOBAL TRANSFORMATIONS READER: AN INTRODUCTION TO THE GLOBALIZATION DEBATE* 67, 67 (David Held & Anthony McGrew eds., 2d ed. 2003) [hereinafter *GLOBAL TRANSFORMATIONS READER*].

2. See JEFFREY L. DUNOFF, STEVEN R. RATNER & DAVID WIPPMAN, *INTERNATIONAL LAW: NORMS, ACTORS, PROCESS* 640–41 (2002).

3. Collective action problems present a “tragedy of the commons” problem for the international system. Other states gain stake in widespread humanitarian problems when the problems begin to have significant consequences outside of their own borders or threaten regional stability.

4. With increasing exchanges across borders, one of the benefits of globalization is that the consequences of internal strife are internalized more quickly by the outside world.

This Note will argue that cases like the humanitarian crisis and the conflict in Darfur, Sudan present an intrastate collective action problem that has not been satisfactorily addressed by a traditional multilateral approach. Instead, the Darfur crisis demonstrates the need for an expanded view of modern international law in the face of intrastate conflict that includes systematic intervention procedures and preventive aid, as well as a *multifaceted* approach that recognizes and integrates NGOs and NGO alliances. This Note asserts that the Sudan crisis has posed a collective action problem requiring not only multilateral state collective action, but also multifaceted, coordinated action between states and the proliferation of nonstate actors that have emerged from globalization.

Part I of this Note provides background on the genocide in Sudan and demonstrates that this conflict is one of a number of recent intrastate conflicts. It argues that intrastate conflicts and humanitarian crises are collective action problems. Part II argues that humanitarian crises and internal wars require new international law that encourages collective, preventive aid and systemized preemptive intervention procedures. Part III argues that these newer “collective actions” under international law should involve coordinated action between states and NGOs.

I. SUDAN AS AN INTRASTATE COLLECTIVE ACTION PROBLEM REQUIRING MORE THAN MULTILATERAL STATE ACTION

A. *Background of the Sudanese Genocide*

The Darfur genocide has two complex components—internal conflict and humanitarian crisis—that are typical components of intrastate warfare. The Darfur crisis was brought about by cultural, political, and economic issues present in Sudan. Darfur’s ethnicities were politicized over a period of time,⁵ but this politicization began to have significant effects only recently. Darfur was an autonomous sultanate until the British absorbed it into Sudan in 1916.⁶ Until 1956, Sudan was governed by Britain and Egypt.⁷ During this time, the colonizing British favored the Arabs over

5. See LANSANA GBERIE, KOFI ANNAN INT’L PEACE KEEPING TRAINING CTR., *THE DARFUR CRISIS: A TEST CASE FOR HUMANITARIAN INTERVENTION* 3 (2004), available at <http://64.78.30.169/kaipct/The%20Darfur%20Crisis.pdf>.

6. Samantha Power, *Dying in Darfur: Can the Ethnic Cleansing in Sudan Be Stopped?*, NEW YORKER, Aug. 30, 2004, at 56, 60.

7. See Central Intelligence Agency, *The World Factbook 2005, Sudan* (2005), <https://www.cia.gov/cia/publications/factbook/geos/su.html> [hereinafter *The World Factbook 2005*]; History-World.net, *History of the Sudan*, <http://www.historyworld.net/wrldhis/PlainTextHistories.asp?historyid=aa86> (last visited Jan. 13, 2007).

the Africans,⁸ giving them greater economic and political power. The rulers who assumed power after Sudan gained independence in 1956, themselves Islamic-Arabian, continued governing the country with similar favoritism.⁹

The ethnic tensions in Sudan can also be traced to the recent twenty-one-year civil war that has been called the “world’s longest-running conflict.”¹⁰ The war was fought between the Arab-Islamic government in the north and the Sudanese People’s Liberation Army (SPLA) African militia in the south.¹¹ The SPLA was a secessionist group. During the civil war, the SPLA portrayed the war as a struggle between the marginalized African majority and the Arab minority government.¹² This publicized message, supported by statistics evidencing discrimination by the government against African-native citizens, spread animosity among Sudan’s African population in all regions, including Africans in the impoverished region of Darfur.¹³ This contributed to the rise of two rebellious political groups in the west—the Sudanese Liberation Army/Movement (SLA/M) and the Justice and Equality Movement (JEM).¹⁴ Unlike the Christian SPLA, these groups are African Muslim, and they are fighting the marginalization of African-native citizens in Sudan. The SLA/M and JEM in the western Darfur region are separate and distinct from the SPLA in the south, and these groups from separate regions have fought separate battles to obtain rights from the Sudanese government.

The SLA instigated the crisis by attacking Sudan’s government positions in February of 2003.¹⁵ Attacks by the JEM followed.¹⁶ On April 24 and 25, 2003 the SLA led an attack on the government airport in north Darfur.¹⁷ This act far surpassed the government’s expectations of the Darfur rebel groups’ capabilities, and caused an alarmist reaction within the government.¹⁸ It halted progress toward

8. See The World Factbook 2005, *supra* note 7.

9. *Id.*

10. *News Hour with Jim Lehrer: Killing Conflict* (PBS television broadcast Jan. 14, 2005), available at http://www.pbs.org/newshour/bb/africa/jan-june05/sudan_1-14.html [hereinafter *Killing Conflict*].

11. See *id.*

12. GBERIE, *supra* note 5, at 4.

13. See *id.* at 4–5.

14. See *id.* at 6. The SLA refers to the Sudanese Liberation Army, and the SLM refers to the Sudanese Liberation Movement. These may be used interchangeably.

15. Martin Plaut, *Who Are Sudan’s Darfur Rebels?*, BBC NEWS, May 5, 2006, <http://news.bbc.co.uk/1/hi/world/africa/3702242.stm>.

16. Nsongurua J. Udombana, *When Neutrality Is a Sin: The Darfur Crisis and the Crisis of Humanitarian Intervention in Sudan*, 27 HUM. RTS. Q. 1149, 1153 (2005).

17. *Id.*

18. See GBERIE, *supra* note 5, at 6.

the peace agreement in the south, though the SPLA and Sudanese Government had come so close to signing the agreement that President Bush had saved a seat for each side at his 2004 State of the Union Address.¹⁹

In order to deal with the western rebels, the Sudanese Government recruited guerrilla forces from Arab tribes.²⁰ These forces came to be called “Janjaweed” or “men on horseback,” and they eventually worked with the Sudanese military to raze Darfur’s African villages.²¹ On September 9, 2004, U.S. Secretary of State Colin Powell used the term “genocide” to describe the aggressive government backlash carried out by the Janjaweed.²² The attacks became a slaughter of innocent men, women, and children.

Economic factors played a role in the onset of the Darfur conflict as well. Sudan’s three decades of drought, two of which occurred while Sudan was at civil war, diminished its resources. As food sources became scarcer, crop growth diminished and tensions between the sedentary African farmers and the nomadic Arab herders escalated.²³ Before the conflict, some nomadic Arab tribes had already pushed non-Arab farmers off their land so the tribes’ cattle would have grazing territory.²⁴ Between 1987 and 1989, substantial battles broke out between these groups, and almost 3,000 people were killed.²⁵ Additionally, after the forcible displacement of African farmers in the Darfur region began, the farmers were often too terrorized to plant new crops and were often forced to abandon their crops for refugee camps.²⁶ Farmers’ crops were also burned by the Janjaweed or military forces when the villages were demolished.²⁷ This contributed to the current food shortages.

19. Power, *supra* note 6.

20. See Amnesty Int’l, *Sudan: Intimidation and Denial: Attacks on Freedom of Expression in Darfur*, at 2, AI Index AFR 54/101/2004, Aug. 2004, available at [http://web.amnesty.org/library/pdf/AFR541012004ENGLISH/\\$File/AFR5410104.pdf](http://web.amnesty.org/library/pdf/AFR541012004ENGLISH/$File/AFR5410104.pdf).

21. Human Rights Watch, *Darfur Documents Confirm Government Policy of Militia Support*, at 2–3, July 19, 2004, available at <http://hrw.org/backgrounder/africa/072004darfur.pdf>.

22. *The Crisis in Darfur: Testimony Before the S. Comm. on Foreign Relations*, 108th Cong. (Sept. 9, 2004) (statement of Colin L. Powell, Sec’y of State of the United States) (transcript available at <http://www.state.gov/secretary/former/powell/remarks/36042.htm>).

23. See *id.*

24. Press Release, Security Council, Security Council Is Told Darfur Situation Deteriorating, Tension at Highest Level, Fighting More Widespread, U.N. Doc. SC/8236 (Nov. 4, 2004), available at <http://www.un.org/news/Press/docs/2004/sc8236.doc.htm>.

25. See Power, *supra* note 6, at 61.

26. See BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR AND THE BUREAU OF INTELLIGENCE AND RESEARCH, U.S. DEP’T OF STATE, PUBL’N NO. 11182, DOCUMENTING ATROCITIES IN DARFUR (2004), available at <http://www.state.gov/g/drl/rls/36028.htm> [hereinafter DOCUMENTING ATROCITIES].

27. Press Release, Physicians for Human Rights, New Report on Genocide in Darfur, Sudan, Documents Systematic Destruction of Livelihoods of Three Villages in Unprecedented Detail (Jan. 11, 2006), available at <http://www.physiciansforhumanrights.org/library/news-2006-01-11.html>.

B. Internal Warfare in the Twentieth Century

Sudan's internal conflict is not unique; instead, it represents a continuation of the rise in internal conflicts in the twentieth century. Internal wars are the newest, most destructive type of warfare.²⁸ From the end of World War II to the year 2000, over 16 million people were killed in internal wars, compared with 3.5 million who died in international wars.²⁹ In her well-known book, *A Problem from Hell: America and the Age of Genocide*, Samantha Power studies genocide, the most extreme form of intrastate conflict. She finds that "[d]espite broad public consensus that genocide should 'never again' be allowed ... the last decade of the twentieth century was one of the most deadly in the grimmest century on record."³⁰ Internal wars are taxing global resources in ways that in the past only world wars or major international conflicts have—not only in lives claimed but also in terms of social, economic, and physical destruction.

Internal wars are usually prolonged, with an average length of four and one-half years, and have consequences that extend significantly beyond their official conclusions.³¹ Internal wars shut down a government's perceived duty of responsibility toward a segment of its population, leading to humanitarian emergencies that require millions or billions of dollars in external aid. Moreover, difficulties arise when groups who have fought one another for a prolonged period return to the same towns or regions following a peace agreement. These difficulties can lead to the re-ignition of conflict or lawlessness and impunity that remain after the end of armed conflict.³²

Causes of these wars range from lack of natural resources, caused by drought or famine,³³ to political issues, such as boundary disputes³⁴ and unequal represen-

28. See DUNOFF, RATNER & WIPPMAN, *supra* note 2, at 548.

29. RODERIC ALLEY, *INTERNAL CONFLICT AND THE INTERNATIONAL COMMUNITY: WARS WITHOUT END?* 1 (2004).

30. SAMANTHA POWER, "A PROBLEM FROM HELL": AMERICA AND THE AGE OF GENOCIDE 503 (Harper Perennial 2003) (2002).

31. ALLEY, *supra* note 29.

32. *Id.* "The key root causes [of crisis in the Third World] are present in most African countries: economies subject to sudden acute pressure because of the collapse of commodity prices, a weakened state sector (particularly as pressures for democratization and human rights protection grow), ethnic segmentation, and a culture of violence that is on the increase." Howard Adelman, *Theory and Humanitarian Intervention*, in *INTERNATIONAL INTERVENTION: SOVEREIGNTY VERSUS RESPONSIBILITY* 3, 9 (Michael Keren & Donald A. Sylvan eds., 2002) [hereinafter *INTERNATIONAL INTERVENTION*].

33. See *supra* Part I.A.

34. Iraq is one example. See INT'L CRISIS GROUP, *IRAQ'S KURDS: TOWARD AN HISTORIC COMPROMISE?* 9 (2004), available at http://www.crisisgroup.org/library/documents/middle_east_north_africa/iraq_iran_gulf/26_iraq_kurds_toward_an_historic_compromise.pdf.

tation.³⁵ Changing external incentives at the core of globalization,³⁶ such as fluctuating commodity prices,³⁷ can also alter the power structures within a country; this is particularly true in developing countries. In Sudan, for example, many speculate that the market incentives of recent oil discovery and the exportability of that oil influenced the government's decision to persecute citizens in Darfur.³⁸

Globalization can also contribute to downward pressure that exacerbates pre-existing conditions in countries, whereby internal war becomes a means of self-expression and self-determination of cultures.³⁹ In many African nations, this type of pressure can be traced to colonization, the "old globalization" that imposed boundaries that continue to inspire struggles for self-definition among tribes, cultures, and political groups.⁴⁰ Many of these struggles for self-determination are present in Africa, where borders imposed in the days of colonialism arbitrarily divided kingdoms, ethnic groups, and "political cultures," and simultaneously demanded that the people within operate as a whole.⁴¹ It is not surprising that in countries like Sudan, which gained its independence only in 1956, ethnic and political groups are still struggling for equal representation and civil rights.⁴² Sudan's twenty-one-year civil war caused two million deaths⁴³ which, when compared to the 3.5 million people that have died in *all* international warfare since World War II, puts into stark perspective the destructiveness of war for political and cultural self-definition when left unchecked.

35. Rwanda is one example. "Beginning [in] 1959, with support of Belgian priests and colonial authorities, Hutus launched [a] series of attacks on Tutsis, whom both Church and colonial authorities had previously supported as [the] governing group." International Crisis Group, *Conflict History: Rwanda* (Sept. 22, 2004), http://www.crisisgroup.org/home/index.cfm?action=conflict_search&l=1&t=1&c_country=93.

36. "The exploitation of Indonesia's natural resources since the 1960s has brought economic benefits to the country, but it has often damaged the natural environment and society in resource-rich areas in a way that fosters social tensions and has led to violent conflict." INT'L CRISIS GROUP, *INDONESIA: NATURAL RESOURCES AND LAW ENFORCEMENT*, at i (2001), available at http://www.crisisgroup.org/library/documents/report_archive/A400517_20122001.pdf.

37. Adelman, *supra* note 32.

38. *Cf.* Power, *supra* note 6 (explaining that U.S. interest in oil in Sudan provided an incentive for the government to end civil strife in the south of Sudan).

39. ALLEY, *supra* note 29, at 3; *see* Adelman, *supra* note 32, at 8–9.

40. Steve Odero Ouma, *Reflections on the Causes of Conflict in Africa: Ethnicity or Failure of Leadership?*, ILSA Q., Sept. 2004, at 25, 25–26.

41. *Id.* at 25.

42. Power, *supra* note 6, at 59.

43. Samantha Power & John Prendergast, *Break Through to Darfur*, L.A. TIMES, June 2, 2004, at B13.

C. How States' National Interests are Affected by Internal Conflict Elsewhere

Governments have many rational and self-interested motives for intervening in internal warfare in other countries, particularly if the long-term perspective is considered. First, internal conflict spawns criminals and terrorists.⁴⁴ Both opium production⁴⁵ and terrorism flourished following Afghanistan's internal conflict.⁴⁶ Bosnia was infiltrated by al-Qaeda and used as a training base during the genocide.⁴⁷ Osama bin Laden lived in Sudan during its civil war and traveled to Afghanistan thereafter.⁴⁸

Second, internal conflict can, and often does, spread to surrounding countries.⁴⁹ When the Rwandan genocide was left uncontrolled, for example, it politically destabilized the Democratic Republic of Congo (DRC).⁵⁰ Civil war in the DRC expanded into five neighboring countries.⁵¹ The lack of a meaningful response to Saddam Hussein's gassing of Kurdish citizens emboldened his behavior, and the invasion of Kuwait followed.⁵²

Third, unchecked internal conflict undermines international efforts and creates an international culture of impunity. Allowing internal conflicts to continue signals to governing persons that the international community accepts governance through murder and ethnic hatred.⁵³ In *A Problem from Hell: America and the Age of Genocide*, Samantha Power writes:

44. Top intelligence officials have stated that "[c]onstant turmoil in Africa is undermining the fight against terrorism in a region that has become fertile ground for extremist recruitment." *U.S. Says Africa Turmoil Hurts War on Terrorism*, REUTERS, Feb. 16, 2005, http://www.dehai.org/archives/dehai_news_archive/feb05/0251.html [hereinafter *Africa Turmoil*]. Additionally, CIA Director Porter Goss said, "In Africa, chronic instability will continue to hamper counterterrorism efforts." *Id.*

45. Antonio Maria Costa, *Preface* to U.N. OFFICE ON DRUGS AND CRIME, *AFGHANISTAN OPIUM SURVEY 2004* (2004), http://www.unodc.org/pdf/afg/afghanistan_opium_survey_2004.pdf.

46. See International Crisis Group, *Afghanistan*, <http://www.crisisgroup.org/home/cfm?id=1266&l=1> (last visited Jan. 18, 2007). Afghanistan's long history of internal conflicts has traditionally been supported by external influences. See International Crisis Group, *Conflict History: Afghanistan* (Mar. 2006), http://www.crisisgroup.org/home/index.cfm?action=conflict_search&l=1&t=1&c_country=1.

47. POWER, *supra* note 30, at 513.

48. Mansoor Ijaz, *Clinton Let Bin Laden Slip Away and Metastasize*, L.A. TIMES, Dec. 5, 2001, at A13.

49. ALLEY, *supra* note 29.

50. ROBERT F. GORMAN, *GREAT DEBATES AT THE UNITED NATIONS: AN ENCYCLOPEDIA OF FIFTY KEY ISSUES 1945-2000*, at 362 (2001).

51. Robert O. Keohane & Joseph S. Nye Jr., *Globalization: What's New? What's Not? (And So What?)*, in *GLOBAL TRANSFORMATIONS READER*, *supra* note 1, at 75, 81.

52. See POWER, *supra* note 30, at 236, 506-07.

53. *Id.* at 507.

If anything testifies to the U.S. capacity for influence, it is the extent to which the perpetrators kept an eye trained on Washington and other Western capitals as they decided how to proceed. . . . Hitler was emboldened by the fact that absolutely nobody ‘remembered the Armenians.’ Saddam Hussein, noting the international community’s relaxed response to his chemical weapons attacks against Iran . . . rightly assumed he would not be punished for using poison gases against his own people.⁵⁴

Numerous other examples exist to show that in many cases of intrastate conflict, the willingness of the international community to intervene influences the level of violence state actors will risk and contributes to more serious foreign policy issues.⁵⁵

Fourth, the world community, but primarily developed nations, pays for the humanitarian disasters that result from intrastate conflict.⁵⁶ The humanitarian costs of the Darfur conflict estimated in the United Nations’ “2005 Work Plan for Sudan” were 7.8 billion dollars and growing.⁵⁷ These costs do not include the social and ethical costs of the more than 300,000 lives that have been lost.⁵⁸

Fifth, humanitarian disasters manifest in many forms, including the need to house and care for numerous displaced refugees, food scarcity, massive unemployment, and destroyed infrastructure.⁵⁹ The actions required for reconstruction following devastation are more complex and varied than those required for pre-

54. *Id.* at 506–07.

55. See, e.g., POWER, *supra* note 30, at 507 (“Rwandan gunmen deliberately targeted Belgian peacekeepers at the start of their genocide because they knew from the U.S. reaction to the deaths of eighteen U.S. soldiers in Somalia that the murder of Western troops would likely precipitate their withdrawal. The Bosnian Serbs publicly celebrated the Mogadishu casualties, knowing that they would never have to do battle with U.S. ground forces.”).

56. CIA Director Porter Goss addressed this problem when speaking to the Senate Intelligence Committee in 2005, stating, “In Africa, chronic instability will . . . pose heavy humanitarian and peacekeeping burdens.” *Africa Turmoil*, *supra* note 44.

57. U.N. Office for the Coordination of Humanitarian Affairs, *Sudan: International Donors Pledge Billions for Reconstruction*, IRIN NEWS, Apr. 12, 2005, <http://www.irinnews.org/print.asp?ReportID=46599>.

58. Nsongurua J. Udombana, *When Neutrality is a Sin: The Darfur Crisis and the Crisis of Humanitarian Intervention in Sudan*, 27 HUM. RTS. Q. 1149, at 1155 (2005).

59. All of these have resulted from both the Darfur conflict and Sudanese civil war. E.g., Asafa Jalata, *State Terrorism and Globalization: The Cases of Ethiopia and Sudan*, 46 INT’L J. COMP. SOC. 79, 93 (2005); Christiane Amanpour, *Sudan’s Hellish Humanitarian Crisis*, CNN, May 12, 2004, <http://www.cnn.com/2004/WORLD/africa/05/12/sudan.crisis>.

vention or intervention. Taken together, the costs of internal wars should induce the international community to seek urgently preventive solutions and speedier intervention, rather than allow intrastate conflicts to fester unchecked.

D. The Toll of the Humanitarian Crisis in Darfur

The Darfur conflict has created a massive humanitarian crisis, which is not uncommon in intrastate conflict situations. The humanitarian crisis in Darfur is multidimensional. The forced displacement, burned and bombed villages, and terrorization of non-Arabs in Darfur led to the flight of refugees to western Darfur and Chad.⁶⁰ Those victims of forced displacement who were not killed in the ethnic cleansing escaped to refugee camps, where they encountered problems of malnutrition, disease, and unsanitary conditions.⁶¹ In the summer of 2004, the death rate in Darfur had grown to three times the emergency threshold.⁶² In November 2004, one in three child refugees in Chad settlements suffered from acute malnutrition, infectious diseases spread throughout the camps, and 72 out of 154 camps in Darfur still had not received food aid as a result of such conditions.⁶³ Those who stayed behind in the villages had to survive on intentionally demolished water sources and scarce food sources.⁶⁴

Government actors continue to commit widespread rape and gang rape against women and girls during the forced displacement attacks and in the refugee camps.⁶⁵ Torture, abduction, and arbitrary killings occurred on both sides of the conflict, though the majority of these crimes were targeted against Darfur's African-native civilians.⁶⁶ By November 2004, more than seventy thousand Suda-

60. See Amnesty International USA, Sudan: Civilians Still Under Threat in Darfur, <http://www.amnestyusa.org/regions/africa/document.do?id=E2E3D9827394BAA680256F240052A49A> (last visited Jan. 18, 2007).

61. DOCUMENTING ATROCITIES, *supra* note 26.

62. Press Release, World Health Organization, Survey Concludes Deaths in Darfur Exceed the Emergency Threshold: Humanitarian Efforts in Darfur to Date Have Prevented Even Higher Death Rates (Sept. 13, 2004), available at <http://www.who.int/mediacentre/news/release/2004/pr63/en>. The emergency threshold for a humanitarian crisis is one death per 10,000 people per day. *Id.*

63. DOCUMENTING ATROCITIES, *supra* note 26, at 1–2.

64. See Sudan: Peace, But at What Price: Hearing Before the S. Comm. on Foreign Relations, 108th Cong. 11 (2004) (statement of Charles R. Snyder, Acting Assistant Secretary of State, Bureau for African Affairs); Power, *supra* note 6, at 68.

65. See Amnesty Int'l, Sudan, Darfur: Rape as a Weapon of War, at 11, AI Index AFR 54/076/2004, July 2004, available at [http://web.amnesty.org/library/pdf/AFR540762004ENGLISH/\\$File/AFR5407604.pdf](http://web.amnesty.org/library/pdf/AFR540762004ENGLISH/$File/AFR5407604.pdf).

66. See *id.* at 12; *The Tragedy of Sudan*, TIME, Oct. 4, 2004, at 44, 56–58.

nese had been killed overall.⁶⁷ In Chad, 61 percent of people interviewed in the camps by the U.S. Department of Labor had lost a relative.⁶⁸ These are a few of the reasons why, in October 2004, the United Nations labeled Darfur the “worst humanitarian disaster in the world.”⁶⁹

E. Shortcomings of Traditional Multilateral State Action

The destruction caused by internal warfare and the costs of humanitarian aid illustrate that Sudan-like situations have ramifications for the states system that extend beyond moral guilt. While states have many incentives for intervening in these situations, history has shown that, whether acting unilaterally or through the United Nations, states usually intervene late or not at all. In Rwanda, the death toll reached 800,000 before effective action was taken by the United Nations.⁷⁰

An examination of how the U.S. government invokes human rights law in foreign policy helps to explain why states, acting alone or multilaterally, are unable to satisfactorily react to situations like Darfur. In *Bait and Switch: Human Rights and U.S. Foreign Policy*, Julie Mertus, codirector of the Ethics, Peace and Global Affairs Program at American University, studied the legacy of human rights enforcement throughout the United States’ post-Cold War presidencies. Her goal was to examine how U.S. human rights policy has been executed during the period of the United States’ dominance in the world.⁷¹ She discovered a lack of institutionalization⁷² of human rights: Despite the fact that the United States provides a great number of domestic civil liberties, and its administrations frequently espouse human rights discourse in foreign policy discussions, the amount of attention human rights receive in U.S. foreign policy is ultimately dependent on the political actors, administrations’ agendas, and other state interests at that time.⁷³

Mertus found that in U.S. foreign policy, “[h]uman rights have to some ex-

67. *Sudan: An Agreement, Sort of*, ECONOMIST (London), Nov. 13, 2004, at 68 [hereinafter *Sudan: An Agreement*].

68. DOCUMENTING ATROCITIES, *supra* note 26.

69. *The Tragedy of Sudan*, *supra* note 66, at 56.

70. POWER, *supra* note 30, at 386.

71. JULIE A. MERTUS, BAIT AND SWITCH: HUMAN RIGHTS AND U.S. FOREIGN POLICY 25 (Richard Falk, Lester Ruiz & R.B.J. Walker eds., 2004).

72. “Institutionalize” means “to incorporate into system of organized and often highly formalized belief, practice, or acceptance.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1172 (Philip Babcock Gove ed., 1981). Mertus uses “institutionalization” to refer to the formal incorporation of human rights policy into foreign policy. See MERTUS, *supra* note 71, at 73.

73. MERTUS, *supra* note 71, at 73.

tent become institutionalized, but they do not have an automatic influence over identities, interests, and expectations."⁷⁴ On the topic of genocide, policymakers often "wanted to avoid engagement in conflicts that posed little threat to American interests, narrowly defined."⁷⁵ Mertus states that "the story of human rights in U.S. foreign policy is one of perpetual tension and resistance, of interpretation and reinterpretation."⁷⁶ In fact, all U.S. administrations thus far have had significantly inconsistent human rights records within their own policymaking.⁷⁷

Three innate characteristics of government present obstacles for inclusion of human rights interests in the foreign policy of every state government. First, governments protect their primary interests,⁷⁸ which include political power, security, and economic wealth. Second, the human rights agenda, when it exists, must compete with a number of state interests, and often these competing interests are more closely aligned with the state's primary objectives.⁷⁹ Third, human rights norms are usually not institutionalized within domestic administrations, but differ remarkably from administration to administration in approach, definition, and policy interpretation.⁸⁰ Different governmental administrations have defined, implemented, and enforced human rights differently. It is a mistake to believe that human rights norms, as agreed to and understood by the international community, are fully institutionalized or enforced by domestic systems.

It logically follows that if a state as powerful and as professedly committed to human rights as the United States finds the task of human rights enforcement difficult, other nations surely face similar or greater obstacles. This conclusion is supported by the twentieth century's record of states' failures to effectively halt intrastate conflict and genocide.⁸¹ Though human rights policy may be applied with more consistency in other state governments than in the United States, these fundamental problems are ones every state must confront in legislating human rights in foreign policy. Therefore, policymakers should anticipate that states, whether sitting as members of the U.N. Security Council, acting within a re-

74. *Id.*

75. POWER, *supra* note 30, at 508.

76. MERTUS, *supra* note 71, at 26.

77. *See id.* at 73.

78. *See id.*; POWER, *supra* note 30, at 506.

79. *See generally* MERTUS, *supra* note 71, 33–73 (explaining the political pressures that have impacted the human rights policies of the G.H.W. Bush, Clinton, and G.W. Bush administrations).

80. *See generally id.* (comparing the human rights agendas of the G. H. W. Bush, Clinton, and G. W. Bush administrations).

81. *See generally*, POWER, *supra* note 30 (reviewing the situations in various states facing such ongoing conditions).

gional organization, or acting unilaterally, will be constrained by their narrow self-interest and thus find it difficult to fulfill the human rights needs of other countries in situations that are complex, demanding of resources, or that weigh heavily against other state interests. They should also recognize that in some governments, as in the United States, the success of human rights pursuits is also contingent on political cooperation among government branches.⁸²

F. *The Shortcomings of Regional and International Organizations*

Though regional organizations like the European Union (EU), the African Union (AU), and the North Atlantic Treaty Organization (NATO) are involved in Sudan, they have not resolved the Darfur conflict in a speedy fashion. The European Union has given millions of Euros to Darfur,⁸³ and the African Union has provided troops.⁸⁴ However, until January 2005, the number of AU troops in Sudan was restricted to less than one thousand,⁸⁵ while the area of land they needed to monitor in Darfur was the size of France.⁸⁶ This was partly due to the fact that Security Council members desired to limit the troops' mandate and to refrain from giving the troops permission to protect civilians.⁸⁷

Even at the end of 2004, the African Union lacked the most basic supplies, such as tents or transportation, which the African Union could not afford and other states were unwilling to provide.⁸⁸ The few donated supplies were disappointing as well. For example, while Germany provided the AU troops with computers for technical support, the instructions for their use were in German.⁸⁹ Frances Deng, a Sudanese diplomat, urged on January 14, 2005, that what Darfur needed was support for the African Union to meet its challenge,⁹⁰ but that only U.N. Member States outside of the African Union could provide the type of support needed.

82. Periods in Bill Clinton's presidency demonstrated this problem. See MERTUS, *supra* note 71, at 47–49.

83. European Commission Humanitarian Aid (ECHO), Crisis in Darfur: The European Commission's Response, http://ec.europa.eu/echo/field/sudan/darfur/echo_en.htm (last visited Jan. 18, 2007).

84. *More African Troops Go to Darfur*, BBC News Online, Dec. 16, 2004, <http://news.bbc.co.uk/2/hi/africa/4102613.stm>.

85. *Killing Conflict*, *supra* note 10.

86. John Corzine and Richard Holbrooke, Editorial, *Help the African Union*, WASH. POST, Sept. 9, 2004, at A27.

87. See *Killing Conflict*, *supra* note 10.

88. *Sudan: An Agreement*, *supra* note 67.

89. *Id.*

90. *Killing Conflict*, *supra* note 10.

The responses of the United Nations' branches and committees were timelier and occurred on more fronts than in past conflicts; however, procedural obstacles within this international organization still loomed large. The threat of a veto from China or Russia deterred the U.N. Security Council from acting with greater swiftness or applying sanctions. China and Russia repeatedly threatened to use their individual vetoes to block all U.N. Security Council efforts to place sanctions on the Sudanese government, in order to protect their private economic interests.⁹¹ As a result, the international community allowed the atrocities to persist for more than two years without placing any sanctions on the government, the main perpetrator. Russia blocked the vote because it is an arms supplier for the Sudanese government, and China blocked these votes initially to protect its oil interest.⁹² Additionally, in January 2005, a specially appointed U.N. commission to the Security Council voted that the Darfur atrocities should not be called genocide, though it claimed the acts were "no less serious and heinous than genocide."⁹³ Identifying genocide has, since its acceptance into international law, been a difficult hurdle for governments to clear, because declaring genocide comes with increased pressure, if not a legal responsibility to work toward its end.⁹⁴ Such difficulties at the U.N. limited the mandate of the AU troops who were not given political permission to carry out adequate peacekeeping or peace enforcement. As a result, AU troops served merely monitoring and rescue functions. With proper backing and permission granted through a U.N. Chapter VII mandate,⁹⁵ however, they could have defended civilians.

These realities indicate that the U.N. system remains a system governed primarily by states and individual state interests, so that states acting through international or regional systems cannot yet satisfactorily preempt intrastate conflict or react to situations like that in Sudan. Roderic Alley claims that international enforcement in the traditional sense will not allow for adequate and timely resolution of intrastate conflict that has reached the level of human rights abuse.⁹⁶ He

91. Global Policy Forum, Sudan, <http://www.globalpolicy.org/security/issues/sudanindex.htm> (last visited Jan. 18, 2007); Human Rights Watch, *The United Nations and Darfur* (Jan. 2005), <http://hrw.org/wr2k5/darfur/3.htm>.

92. Human Rights Watch, *supra* note 91.

93. Warren Hoge, *U.N. Finds Crimes, Not Genocide in Darfur*, N.Y. TIMES, Feb. 1, 2005, at A3 (quoting a U.N. commission report on the violence in the Darfur region of Sudan).

94. See Samantha Power, *It's Not Enough to Call It Genocide*, TIME, Oct. 4, 2004, at 63; Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter Genocide Convention].

95. See *Killing Conflict*, *supra* note 10.

96. See ALLEY, *supra* note 29, at 96.

writes that “external responses to rights violations . . . incurred [by] internal conflict continue[] to exhibit delay, equivocation and ambiguity,”⁹⁷ though improvements in the past decade have led to greater human rights awareness. Alley concludes that the “state-based international order . . . is inadequately equipped to deal with the moral, political and diplomatic dilemmas generated by the violation of rights during internal conflict.”⁹⁸

II. GOVERNMENTS NEED A DEFINED AND EFFICIENT INTERVENTION PROCEDURE AND AN APPROACH THAT INVOLVES PREVENTIVE AID

Preventive action or intervention in intrastate conflict situations like Darfur would be less costly than reconstruction. Preventive action, which is preferable to intervention, would be most effective in two forms: preventive aid and a pre-conceived plan of action for military and humanitarian intervention once crises have begun. Governments should seek to optimize the resources they give to resolving internal warfare and repairing its effects by strengthening preventive aid programs and institutionalizing into international law the possibility of humanitarian intervention when certain criteria have been met.⁹⁹

A. Preventive Aid

According to a noted economist, “75 per cent of aid sent to places such as Africa never translates into real development assistance; it is spent on emergencies rather than on solving the basic problems.”¹⁰⁰ Jeffrey Sachs, renowned economist from Columbia University and leader of the United Nations Millennium Project (Millennium Project), argues that Africa desperately needs a dedicated preventive aid program in order to become a self-sustaining place of growth.¹⁰¹ In 2004, Sachs co-authored a Brookings Paper on Economic Activity entitled *Ending Africa's Poverty*

97. *Id.*

98. *Id.*

99. For a discussion of such criteria, see *infra* Part II.B.

100. CANADIAN INT'L DEV. AGENCY, REPORT ON INTERNATIONAL COOPERATION DAYS (ICD) 2004: THE MILLENNIUM DEVELOPMENT GOALS: MOVING FROM CONSENSUS TO MOMENTUM 6 (2004), available at [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/International%20Cooperation/\\$file/ICD-Final-Report-e.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUIImages/International%20Cooperation/$file/ICD-Final-Report-e.pdf).

101. See generally Jeffrey D. Sachs et al., *Ending Africa's Poverty Trap*, in 1 BROOKINGS PAPERS ON ECONOMIC ACTIVITY 117 (William C. Brainard & George L. Perry eds., 2004) (discussing Africa's development crisis). Sachs was recently named “World's Best Economist” by Time Magazine.

Trap in which he described the dire economic situation of Africa's sub-Saharan countries and their perpetual cycle of poverty. He concluded that this part of Africa would not be able to pull itself out of this poverty trap without a significant amount of external aid invested methodically,¹⁰² with close monitoring and direction.¹⁰³

Research undertaken by the Millennium Project and others shows that internal conflict is significantly linked to poverty.¹⁰⁴ The overview report of the Millennium Development Goals (MDGs) states, "[o]n average a negative economic growth shock of 5 percentage points increases civil war risks by about 50 percent. And the risk of violent civil conflict declines steadily as national incomes increase. While violent conflicts surely result from a combination of factors, poverty creates conditions for igniting and sustaining conflict."¹⁰⁵ Michael Brown, Director of the Project on Internal Conflict at the Center for Science and International Affairs (CSIA) at the John F. Kennedy School of Government, has stated that, "[t]he importance of the economic roots of internal conflict cannot be underestimated: if international actors are serious about preventing internal conflict and civil war, . . . they have to address the economic sources of conflict in troubled societies."¹⁰⁶

As previously mentioned, a significant contributor to the Sudan conflict is the economic and agricultural situation that exists there.¹⁰⁷ In 1999, the United Nations found that sixty countries in sub-Saharan Africa were economically worse off than they were in 1980.¹⁰⁸ Sudan experienced a decline in food production in those years, which is partly attributable to the drought but also to the lack of basic farming requirements such as agriculture, fertilizer, and roads in sub-Saharan Africa.¹⁰⁹ Furthermore, Sudan is one of thirty-three sub-Saharan African countries in which the population-weighted average income is around seventy-four cents per day.¹¹⁰

Many now believe that armed conflicts must be viewed in the context of their root

102. *Id.* at 121–23.

103. *See id.* at 149.

104. U.N. Millennium Project, *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals: Overview*, 8 (2005), available at <http://www.unmillenniumproject.org/documents/overviewEng1-23LowRes.pdf> [hereinafter *Overview*].

105. *Id.*

106. Michael E. Brown, *Internal Conflict and International Action*, in *THE INTERNATIONAL DIMENSIONS OF INTERNAL CONFLICT* 603, 610 (Michael E. Brown ed., 1996).

107. *See supra* Part I.A.

108. HENRY J. STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* 12–13 (2d ed. 2000) (quoting Judith Miller, *Globalization Widens Rich-Poor Gap*, *U.N. Report Says*, N.Y. TIMES, July 13, 1999, at A8).

109. Sachs et al., *supra* note 101, at 132–33.

110. *Id.* at 118. This equals an average annual income of \$271. *Id.* This level falls within the definition of "extreme poverty" (income of less than a dollar a day), which is the most desperate level

causes, such as poverty, political representation, and uneven distribution of resources.¹¹¹ Such thinking led to the creation of the Millennium Project, a systems-building approach undertaken by the U.N. General Assembly in 2002 to reduce drastically the amount of extreme poverty in the world by 2015.¹¹² While the focus of the project is on extreme poverty worldwide, African countries are heavily targeted because of their need.¹¹³ Every member state of the general assembly has approved the effort.¹¹⁴ Under the MDGs, aid is to be distributed to Africa according to a researched distribution plan in carefully timed installments. A highly educated task force, which included more than 250 experts,¹¹⁵ came together to create this plan. Currently, the key goal of many groups is to solicit increased investment in the MDGs from developed countries, with the target contribution being 0.7 percent annual GDP per country.¹¹⁶

In recognition of the contribution that extreme poverty often makes to intrastate conflict,¹¹⁷ state leaders are viewing and construing development aid as a form of conflict prevention. At the G-8 Summit in Gleneagles, Scotland in July 2005, heads of state forgave the International Monetary Fund debt of fourteen African countries and pledged \$25 billion in aid to Africa by the year 2010.¹¹⁸ The leaders described these pledges as both humanitarian and antiterrorist—antiterrorist because they believed the aid would help prevent the rise of terrorist groups in impoverished nations.

B. Humanitarian Intervention

Not all intrastate conflicts can be prevented. For this reason, when such conflicts occur, states should continue to support humanitarian intervention taken

of poverty found in the world. See JEFFREY D. SACHS, *THE END OF POVERTY: ECONOMIC POSSIBILITIES FOR OUR TIME* 20 (2005).

111. INT'L COMM'N ON INTERVENTION & STATE SOVEREIGNTY, *THE RESPONSIBILITY TO PROTECT* 22, ¶ 3.19 (2001), available at <http://www.idrc.ca/openebooks/960-7> [hereinafter *THE RESPONSIBILITY TO PROTECT*].

112. U.N. Millennium Project, *About the U.N. Millennium Project*, <http://www.unmillenniumproject.org/who/index.htm> (last visited Jan. 19, 2007) [hereinafter *About the U.N. Millennium Project*].

113. See *Overview*, *supra* note 104, at 14–16.

114. See U.N. Millennium Project, *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals*, 2–3 (2005), available at <http://www.unmillenniumproject.org/documents/MainReportComplete-lowres.pdf> [hereinafter *Investing in Development*].

115. *About the U.N. Millennium Project*, *supra* note 112.

116. SACHS, *supra* note 110, at 302–07.

117. See *Investing in Development*, *supra* note 114, at 9.

118. See Jim VandeHei & Paul Blustein, *African Aid is Doubled by G-8: Anti-Terror Solidarity Helps Blair Win Deal*, WASH. POST, July 9, 2005, at A1.

with the approval of the U.N. Security Council, when certain conditions are met. Humanitarian intervention generally refers to “[t]he threat or use of force by a state or states abroad, for the sole purpose of preventing or putting a halt to a serious violation of fundamental human rights.”¹¹⁹

Currently, the U.N. Charter allows exceptions to its prohibition on the use of force for individual or collective self-defense (Chapter VII, Article 51) or when authorized by the Security Council after it has determined an existence of a threat to the peace, breach of the peace, or act of aggression (Chapter VII).¹²⁰ The U.N. Security Council usually justifies humanitarian intervention under Chapter VII of the U.N. Charter, which states that the Security Council may take action to “maintain or restore international peace and security”¹²¹ when there are threats or “breach[es] of the peace.”¹²²

1. The Drawbacks of Humanitarian Intervention

While states have justified humanitarian intervention in the past under the U.N. Charter, and humanitarian intervention has proved effective, governments still show a strong presumption against it¹²³ for a number of legal and policy-based reasons.¹²⁴ One commonly cited concern is that allowing an exception to the principle of state sovereignty under international law for forcible humanitarian intervention opens the door to abuse and would be used to justify interventions undertaken for selfish political reasons, rather than out of a genuine motivation to suppress human rights violations.¹²⁵ This could lead to intervening states behaving as occupiers instead of protectors. Others worry that allowing intervention

119. OLIVER RAMSBOTHAM & TOM WOODHOUSE, HUMANITARIAN INTERVENTION IN CONTEMPORARY CONFLICT 3 (1996) (citing W. Verwey, *Legality of Humanitarian Intervention After the Cold War*, in THE CHALLENGE TO INTERVENE: A NEW ROLE FOR THE UNITED NATIONS? 113 (Elizabeth Ferris ed., 1992)).

120. Wayne Sandholtz, *Humanitarian Intervention: Global Enforcement of Human Rights?*, in GLOBALIZATION AND HUMAN RIGHTS 201, 206 (Alison Brysk ed., 2002).

121. U.N. Charter art. 39.

122. *Id.*

123. “[G]overnments are wary of creating a general right . . . of collective humanitarian intervention. Sandholtz, *supra* note 120, at 208.

124. While I intend to outline some of the arguments for and against a doctrine of humanitarian intervention, I do not attempt here to provide a comprehensive list of all of the policy and legal arguments relating to the topic.

125. See Press Release, General Assembly, General Debate Surveyed Pros and Cons of Humanitarian Intervention, Globalization, Poverty, U.N. Reform, Observes Assembly President, U.N. Doc. GA/SM/105 (Oct. 2, 1999), available at <http://www.un.org/News/Press/docs/1999/19991002.gasm105.doc.html>; Gunnar Burge, Chairman, Norwegian Nobel Comm., Nobel Peace Prize Pre-

would lead to regional or international conflicts by causing an escalation in violence.¹²⁶ Another concern is that once exceptions to state sovereignty are created, a slippery slope may result, making intervention the norm.¹²⁷

There is also the fear of a “Black Hawk Down” scenario.¹²⁸ This concern recognizes that interventions can become unpredictable, more complex than originally estimated, and may lead to unintended consequences and casualties. Eighteen U.S. soldiers were killed in the U.S. intervention in Somalia in 1993 when a mission seeking to capture a few of General Mohamed Aidid’s advisors went drastically awry.¹²⁹ Twenty-four Pakistani peacekeepers were also killed in the midst of this humanitarian intervention.¹³⁰ When President Clinton was asked about U.S. intervention in Rwanda, he analogized it to Somalia, saying “don’t go into one of these things and say, as the U.S. said . . . in Somalia, ‘Maybe we’ll be done in a month because it’s a humanitarian crisis.’ . . . Because there are almost always political problems and sometimes military conflicts, which bring about these crises.”¹³¹ Other states’ representatives made similar statements following the U.N.-approved interventions in Somalia.¹³²

Intervention is also expensive and can demand the installation of a temporary or permanent rule of law.¹³³ In July 1997, Secretary-General Kofi Annan declared that the United Nations lacked “the institutional capacity to conduct military enforcement measures.”¹³⁴ When the United Nations undertook direct administration of both Kosovo and East Timor in 1999,¹³⁵ the mission became complicated

sensation Speech at the Oslo City Hall (Dec. 10, 2001) (transcript available at http://nobelprize.org/nobel_prizes/peace/laureates/2001/presentation-speech.html).

126. POWER, *supra* note 30, at 317; See Hans Corell, Under-Secretary-General for Legal Affairs, Legal Counsel of the U.N., Keynote Address at the Conference on the Future of Humanitarian Intervention: To Intervene or Not (Apr. 19, 2001), *available at* <http://www.un.org/law/counsel/english/duke01.pdf>.

127. See, e.g., BRIAN D. LEPARD, *RETHINKING HUMANITARIAN INTERVENTION* 137–39 (2002).

128. The film *Black Hawk Down* portrays the capture and murder of the eighteen U.S. soldiers in the Special Forces Unit that attempted to intervene militarily in Somalia in 1993. *BLACK HAWK DOWN* (Revolution Studios 2001).

129. POWER, *supra* note 30, at 316–17; LEPARD, *supra* note 127, at 14.

130. LEPARD, *supra* note 127, at 13.

131. POWER, *supra* note 30, at 374–375 (quoting *Nightline* (ABC television broadcast May 4, 1994)); see also Rüdiger Wolfrum, *The U.N. Experience in Modern Intervention, in* INTERNATIONAL INTERVENTION, *supra* note 32, at 95, 97 (noting the U.S. reduction in commitment to military intervention following Somalia, unless it has control of the operation).

132. See, for example, LEPARD, *supra* note 127, at 233, for a Brazilian representative’s point of view.

133. See Corell, *supra* note 126, at 9–11.

134. LEPARD, *supra* note 127, at 234.

135. DUNOFF, RATNER & WIPPMAN, *supra* note 2, at 245–46.

and expensive.¹³⁶ It is debatable whether the United Nations is equipped to fund such efforts on its own.¹³⁷

The ambiguity of the relevant legal criteria for the exception of humanitarian intervention is another problem. Many proposed criteria have a “know it when you see it” aspect that some find disconcerting when dealing with such a serious issue as the circumvention of state sovereignty,¹³⁸ and most invoke unquantifiable terms such as “a consistent pattern of gross human rights violations.”¹³⁹

2. *Why Humanitarian Intervention is Necessary and Feasible*

As compelling as the concerns or arguments against humanitarian intervention may be, the arguments on the other side are ultimately weightier. Kofi Annan raised the moral issue at the U.N. General Assembly in 1999 and 2000, when he asked the international community to find consensus on how states should respond to “a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that affect every precept of our common humanity[.]”¹⁴⁰ Economic arguments that humanitarian intervention is significantly cheaper than post-conflict repair can also be persuasive. Though intervention can be unpredictable and expensive, evidence shows that in multiple cases it was a less costly alternative to allowing intrastate conflict to continue. The estimated cost of placing a U.S. peacekeeping force in Rwanda during the genocide, for example, was \$30 million.¹⁴¹ The United States instead spent \$237 million on humanitarian relief alone to repair the country following the genocide.¹⁴² When NATO countries circumvented the U.N. Security Council’s rulings by bombing Serbia in 1999, they ended a three-and-a-half year war in ten

136. The U.N. budget for Kosovo was \$64 million, a quarter of which was spent the first day of the bombing. Three weeks’ worth of bombing occurred in total. *POWER*, *supra* note 30, at 393, 465.

137. See *LEPARD*, *supra* note 127, at 234; Corell, *supra* note 126, at 9.

138. See generally Corell, *supra* note 126, at 8 (suggesting that arguments for humanitarian intervention be analyzed similarly to the legal doctrine of “necessity”); Michael Noonan, *The Question of Humanitarian Intervention: A Conference Report*, FOREIGN POLY RES. INST. WIRE, June 2001, <http://www.fpri.org/fpriwire/0905.200106.noonan.conference.html> (discussing the view that the term “genocide” has been so watered down that it has lost its “legitimacy and serious connotations”).

139. Bruce Cronin, *Multilateral Intervention and the International Community*, in INTERNATIONAL INTERVENTION, *supra* note 32, at 147, 158 (quoting U.N. Economic and Social Council Resolution 1503 (XLVIII), ¶ 2, 48 U.N. ESCOR, 48th Sess., Supp. No. 1A, at 8, U.N. Doc. E/4832/Add.1 (1970)).

140. THE RESPONSIBILITY TO PROTECT, *supra* note 111, at VII.

141. *POWER*, *supra* note 30, at 381.

142. *Id.*

weeks, freeing 1.7 million Albanians in the process.¹⁴³ Ivo Daalder has noted that “even those who deplored the absence of a more forceful U.S. stance in conflicts such as Bosnia have often proposed alternative courses of action that minimized attendant costs.”¹⁴⁴ Such examples suggest that preemptive intervention, taken at the beginning of the conflicts, would have been less costly financially and in terms of the loss of human life.

Proponents of humanitarian intervention also argue that it is fully within the spirit of the U.N. Charter, even if it is not expressly provided for in the text.¹⁴⁵ Article 1(3) of the Charter states, for example, that one of the main purposes of the United Nations is “[t]o achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction.”¹⁴⁶ These persons also point to legal norms that have developed since the Charter was created. These norms include human rights, humanitarian law, and international criminal law.¹⁴⁷ International humanitarian and criminal law includes the four 1949 Geneva Conventions and the Genocide Convention, as well as general principles of warfare conduct that derive from the Geneva Conventions.¹⁴⁸ Article 3 of each of the Geneva Conventions mandates humane treatment of noncombatant civilians and prohibits a variety of acts, such as torture or murder, from being inflicted on these persons.¹⁴⁹ States are required to penalize anyone carrying out or ordering actions that amount to “grave

143. *Id.* at 507.

144. Ivo H. Daalder, *The United States and Military Intervention in Internal Conflict*, in *THE INTERNATIONAL DIMENSIONS OF INTERNAL CONFLICT*, *supra* note 106, at 461, 485. Daalder also observes that “[a]t times, it may be necessary to limit the costs of inaction by intervening directly in internal conflict” and that “[t]he costs of inaction, including costs to humanitarian and other important U.S. interests, tend to be ignored or downplayed” in discussions concerning military intervention. *Id.*

145. See Corell, *supra* note 126, at 3–4.

146. U.N. Charter art. 1, para. 3.

147. See generally LEPARD, *supra* note 127, at 119–36 (tracing the development of human rights norms).

148. *Id.* at 130; see Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 32; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 86; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 136; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 288 [hereinafter Geneva Convention IV]; Genocide Convention, *supra* note 94.

149. LEPARD, *supra* note 127, at 130.

breaches” of the Geneva Conventions.¹⁵⁰ These international human rights, humanitarian law, and criminal law norms suggest that the U.N. Charter permits humanitarian intervention.¹⁵¹

3. *The Responsibility to Protect*

The Canadian government and a number of major foundations responded to Kofi Annan’s challenge to find consensus on humanitarian issues in light of the concerns that had been raised with regard to humanitarian intervention. In September of 2000, they created the International Commission on Intervention and State Sovereignty (ICISS), which would “wrestle with the . . . range of questions—legal, moral, operational and political—rolled up in this debate.”¹⁵² The ICISS conducted meetings around the world to discover the opinions of leaders in governments, intergovernmental organizations, NGOs, universities, think tanks, and civil society with regard to the challenge of humanitarian intervention.¹⁵³ A few notable members of the ICISS from the United States included Michael Ignatieff and Lee Hamilton.¹⁵⁴

The ICISS indeed discovered a common consensus with regard to humanitarian interventions and proposed significant changes in the international community’s approach to humanitarian intervention. The report that emerged from the ICISS, which held the commission’s formal findings, was the “Responsibility to Protect.”¹⁵⁵ The report was so named for its two foundational principles. The first principle formally recognized that state sovereignty implies primary responsibility on behalf of the state to secure the protection of its own people.¹⁵⁶ Where such responsibility is not met, however, the general rule of nonintervention under international law “yields to the international responsibility to protect.”¹⁵⁷ This international “responsibility to protect” is the second principle established by the report.¹⁵⁸

The Responsibility to Protect laid out certain precautionary principles that states should take and be responsible to when undertaking humanitarian inter-

150. See, e.g., Geneva Convention IV, *supra* note 148, art. 147.

151. See LEPARD, *supra* note 127, at 119; Corell, *supra* note 126, at 4–5.

152. THE RESPONSIBILITY TO PROTECT, *supra* note 111, at VII.

153. See *id.* at XI.

154. *Id.* at III.

155. *Id.*

156. *Id.* at XI.

157. *Id.* at XI.

158. *Id.*

vention. These principles include undertaking no more than the minimal necessary military action to secure human protection.¹⁵⁹ The commission determined that the U.N. Security Council is the most appropriate body to sanction humanitarian intervention and proposed improvements to the Security Council's authorization of intervention, such as creating a mutual agreement among veto-power states that they would not exercise their power in cases requiring intervention when "vital state interests" were not involved.¹⁶⁰ Finally, the ICISS proposed certain operational principles to guide the execution of humanitarian interventions, including the "[m]aximum possible coordination with humanitarian organizations" (emphasis added).¹⁶¹

The Secretary-General urged the General Assembly to adopt the Responsibility to Protect in his Report, "In Larger Freedom" in 2005.¹⁶² The central tenets of the Responsibility to Protect, along with specific intervention criteria were officially endorsed in part by a High-level Panel convened by the Secretary-General on December 2, 2004.¹⁶³ The Responsibility to Protect was adopted by the General Assembly in part in the 2005 World Summit Outcome Document. The General Assembly found that "each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity."¹⁶⁴ It also stated:

[W]e are prepared to take *collective action*, in a *timely and decisive manner*, through the Security Council, in accordance with the [U.N.] Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations . . . should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. . . . *We also intend to commit ourselves, as necessary and appropriate, to help states build capacity to protect their populations from genocide, war crimes,*

159. *Id.* at XII.

160. *Id.* at XII–XIII.

161. *Id.* at XIII.

162. The Secretary-General, *The Report of the Secretary-General: In Larger Freedom: Towards Development, Security and Human Rights For All*, ¶ 135, delivered to the General Assembly, U.N. Doc. A/59/2005 (Mar. 21, 2005).

163. U.N. Secretary General's High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, ¶¶ 199–203, U.N. Doc. A/59/565 (Dec. 2, 2004).

164. 2005 World Summit Outcome, G.A. Res. 60/1, ¶ 139, U.N. Doc. A/RES/60/1 (Oct. 24, 2005).

ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out (emphasis added).¹⁶⁵

The Security Council reaffirmed these provisions in April 2006.¹⁶⁶ This formal adoption of the central principles of the Responsibility to Protect represents a significant step in the United Nations' approach to humanitarian intervention, and indicates that states perceive the link between preventive action and internal conflict. However, it remains to be seen how it will be interpreted and the degree to which the report will influence future action. It is unclear, for example, whether these statements create a legal obligation to intervene.¹⁶⁷ Additionally, the statement affirms that action will still be determined on a case-by-case basis; it does not delineate specific criteria to guide speedier, systematic action, and the procedure it outlines remains susceptible to many of the traditional obstacles inherent in U.N. interventions.

III. GLOBALIZATION AND THE CHANGING NATURE OF NGO BEHAVIOR

NGOs have been involved in the Darfur crisis in large numbers. Some examples of these diverse groups are France's Action Against Hunger, Ireland's GOAL, the United States' Coalition for International Justice, and Respond, a European consortium of companies and university groups working to provide accurate and up-to-date maps for the efficient distribution of aid.¹⁶⁸ International NGOs such as Oxfam and Amnesty International, among others, have also provided aid.¹⁶⁹

165. *Id.*

166. S.C. Res. 1674, ¶ 4, UN DOC S/RES/1674 (Apr. 28, 2006).

167. Sir Michael Woods, Hersch Lauterpacht Memorial Lecture at the Lauterpacht Center for International Law, University of Cambridge (Nov. 9, 2006) (notes available at http://www.lcil.cam.ac.uk/Media/lectures/pdf/2006_hersch_lecture_1.pdf), see ¶'s 47-52.

168. For more information on such programs, see, for example, Action Against Hunger, Innovative Programs in the Fight Against Hunger, Sudan Profile, <http://www.aah-usa.org/programs/sudan.html> (last visited Jan. 19, 2007); Clark Boyd, *Satellite Mapping Aids Darfur Relief*, BBC NEWS, Dec. 25, 2004, <http://news.bbc.co.uk/2/hi/technology/4121083.stm>; The Hague Justice Portal, Coalition for International Justice, <http://www.frompeacetojustice.nl/eCache/DEF/3/663.html> (last visited Jan. 19, 2007); USAID, The Humanitarian Situation in Sudan, http://www.usaid.gov/locations/sub-saharan_africa/sudan/index.html (last visited Jan. 19, 2007).

169. See, e.g., Amnesty Int'l, *U.N. Resolution to End Impunity in Darfur*, WIRE, May 2005, <http://web.amnesty.org/wire/May2005/Sudan>; Oxfam.org, Sudan, Crisis in Darfur, http://www.oxfam.org.uk/what_we_do/where_we_work/sudan/emergency/ (last visited Jan. 19, 2007).

A new process created by NGOs and used in Sudan is “alliance formation,” involving coordinated efforts in which NGOs complement each other’s work and increase impact. For example, the Mine Advisory Group from Britain educates persons on landmines and detection.¹⁷⁰ This organization collaborated with the Mine Clearing Group of South Africa, which specializes in mine removal, and they joined the Sudan Mine Action Service. Together, the alliance removes mines in Sudan and teaches the surrounding public to identify and avoid potential landmine-ridden areas.¹⁷¹ This is crucial in Sudan because refugees cannot safely return home across landmine areas. Other examples of alliances come from numerous International Committee of the Red Cross (ICRC) country divisions, which have come to Sudan to provide relief. They coordinate their actions through a Memorandum of Understanding so as to assure that their efforts do not overlap and to maximize their resources.¹⁷² Sometimes these organizations take their cooperation even further—the Spanish Red Cross, for example, which provides food security, primary health care, water, and sanitation, paired with the German Red Cross, which has an emergency response unit that can care for almost two thousand persons per week, to provide relief within Sudan.¹⁷³

Another strategy NGOs utilize is “external-internal pairing,” a process in which NGOs external to Sudan pair with NGOs and organizations within Sudan to provide technical guidance and aid distribution. In Sudan, the ICRC has joined with the Sudanese Red Crescent Society (SRCS).¹⁷⁴ While the ICRC provides support and education for the otherwise overwhelmed intrastate organization, the SRCS supplies the ICRC with a network of volunteers who can physically spread aid.¹⁷⁵ One ICRC delegate described this partnership in a recent report:

They [the SRCS] are vital in the distribution of Red Cross messages and in tracing activities on behalf of members of families separated by the conflict. [In return, the] ICRC continues to sup-

170. See Mine Advisory Group, About MAG, What Is MAG?, <http://www.mag.org.uk/page.php?p=606&s=4> (last visited Jan. 19, 2007).

171. See Mine Advisory Group, About MAG, MAG’s Country Programmes, Sudan, <http://www.mag.org.uk/page.php?s=4&p=693> (last visited Jan. 19, 2007).

172. Int’l Comm. of the Red Cross, Sudan Bulletin No. 19, Focus on the Red Cross and Red Crescent Movement’s Activities in Sudan (Nov. 9, 2004), <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/66knas?opendocument> [hereinafter Sudan Bulletin No. 19].

173. *Id.*

174. See Int’l Comm. of the Red Cross, Crisis in Darfur: ICRC Action in Facts and Figures (Nov. 9, 2004), http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/674H7P?OpenDocument&style=custo_print.

175. Sudan Bulletin No. 19, *supra* note 172.

port the capacity building of the SRCS, enhancing its ability to mobilize effectively during crises.¹⁷⁶

The ICRC also brings the SRCS aid, international connections, and organizational expertise.¹⁷⁷

External-internal pairing is practiced between the ICRC and its official partners in other countries, as well as between autonomous aid societies. This coordination among the various elements of the ICRC was formalized in the Agreement on the Organization of the International Activities of the Components of the International Red Cross and Red Crescent Movement in 1997.¹⁷⁸ The ICRC deputy head of subdelegation further explains the importance of such symbiotic alliances:

An organization cannot function in Darfur without a good network of contacts and logistics. On the other hand, the complexity and challenges of the operation in Sudan call for qualified and experienced personnel, who can be operational within a few days. This is something the National Societies have to offer along with financial support for other activities.¹⁷⁹

These NGOs and NGO alliances can be viewed as outgrowths of globalization, and fit well within Robert Keohane and Joseph Nye's discussion of the three qualitative changes that have developed out of globalization.¹⁸⁰ These identified changes are (1) increased network density, (2) increased "institutional velocity," and (3) increased transnational participation.¹⁸¹ In other words, the authors argue that globalization is increasing the number of connections within networks, the speed at which institutions and their components change and evolve, and the number of channels between different societies and actors on the international level.¹⁸²

176. *Id.*

177. *See id.*

178. *See* Int'l Comm. of the Red Cross, Significant Dates in the History of International Humanitarian Law and the Red Cross and Red Crescent Movement, http://www.icrc.org/Web/Eng/siteeng0.nsf/html/section_movement_history (last visited Jan. 15, 2006).; The ICRC is also supporting the Red Cross of Chad. Chad is a neighboring country to Sudan, which has been strongly affected by the Darfur conflict. Sudan Bulletin No. 19, *supra* note 172.

179. *Id.*

180. Keohane & Nye, *supra* note 51, at 78.

181. *Id.*

182. Keohane and Nye also argue that the effects of these changes are qualitative. *See id.* at 79. The authors use the phrase "network density" to refer to the "thickening" of systemic relationships

Globalization appears to have similar effects on the way NGOs operate. First, the amount of communication among NGOs is increasing.¹⁸³ Second, NGO activity is expanding due to the increased volume and affordability of communication in the last ten years.¹⁸⁴ For example, the nonprofit group Association for Progressive Communications now “provides 50,000 NGOs in 133 countries access to the tens of millions of Internet users for the price of a local call.”¹⁸⁵ Third, NGOs are part of the “complex interdependence” described by Keohane and Nye that is occurring across borders. Multiple new channels are forming between societies and both state and nonstate actors.¹⁸⁶

The result of these changes is that more actors and organizations are participating in world politics at greater distances. The fact that the international community is increasingly wired has also changed the nature of the public’s relationship with NGOs. Internet users can now electronically receive newsletters, make donations, and receive up-to-the-minute information concerning almost any cause of their choosing. Keohane and Nye note that the “vast expansion of transnational channels of contact . . . generated by the media and a profusion of NGOs, has helped expand . . . the multiple issues connecting societies.”¹⁸⁷ They conclude that “NGOs can now raise their voices as never before.”¹⁸⁸ NGOs can now draw on and influence an interest base that spans the world.¹⁸⁹

among networks. *Id.* For example, increased trade expansion between developed and developing countries often stimulates increased industrial activity within the developing country. This, in turn, can bring a greater awareness of the human rights conditions within the developed country, and the resulting human rights dialogue between the countries signals a change in the nature of their relationship. *Id.* Another example Keohane and Nye use to demonstrate the qualitative effects of network density is the Asian financial crisis of 1997. *Id.* Fluctuations in the Asian financial market threatened markets halfway around the world in a new way due to the greater interconnectedness between regional economic systems. *Id.*

183. See *supra* notes 175–180 and accompanying text (providing evidence through discussion on “NGO alliances” and “external-internal pairing”).

184. In fact, the current number of NGOs is unknown, due to their quick expansion. Jessica T. Mathews, *Power Shift*, FOREIGN AFF., Jan.–Feb. 1997, at 50, 52–53.

185. *Id.* at 54.

186. See Keohane & Nye, *supra* note 51, at 81–82. While this appears to be a quantitative change, Keohane and Nye argue that a qualitative change has also occurred because the information flow is an increase in volume as well as speed; technology has expanded the modes and methods in which communication is passed. See *id.*

187. *Id.* at 82.

188. *Id.* Furthermore, the authors place the number of international NGOs at 26,000 in the late 1990s. *Id.*

189. Keohane and Nye also observe, though, that such “complex interdependence” is “far from universal.” *Id.* at 81.

Jessica Mathews further examines the growing strength of NGO activity in her article "Power Shift," in which she asserts that national governments are not only losing autonomy in a world of globalization, but are increasingly sharing powers—including security roles—with international organizations and NGOs.¹⁹⁰ Mathews finds that "nonstate actors have never before approached their current strength."¹⁹¹ She quotes the former head of the U.N. Center for Human Rights, Ibrahim Fall, as saying "[w]e have less money and fewer resources than Amnesty International, and we are the arm of the U.N. for human rights."¹⁹² Mathews further states, "NGOs deliver more official development assistance than the entire U.N. system."¹⁹³ Mathews finds that NGOs may be strengthening the nation-state system by solving particular problems states find difficult, and she suggests that nation-states may not be the natural problem-solving unit for certain issues.¹⁹⁴

IV. NGOS, PREVENTIVE AID, AND INTERVENTION

NGOs can be advantageous supplements to states in the development of preventive aid and rapid-response intervention plans. First, NGOs specialize in particular issues and geographic regions to a greater degree than any state-based international organization. Second, each NGO's primary interest is effectiveness in its areas of expertise, which makes NGOs less vulnerable to corruption than other organizations. Third, bureaucracy is limited on account of this singular goal, and NGOs do not have competing branches that might create a deadlock. Finally, NGOs' objectives are less likely to fluctuate according to political influence or support. Though some argue that U.N. branches and committees can behave like NGOs because of their specific focuses, they are still less focused than NGOs and more reliant on the declarations and bureaucracy of the United Nations.

A. How NGOs Can Make Preventive Aid More Efficient

NGOs can contribute to the provision of preventive aid in a number of ways. First, they can effectively allocate goods up front, since many have an expertise in the local culture of a country that comes from a longstanding presence there.¹⁹⁵ Second,

190. Mathews, *supra* note 184, at 50.

191. *Id.* at 52.

192. *Id.* at 53.

193. This excludes the World Bank and the IMF. *Id.*

194. *Id.* at 65.

195. See Press Release, U.N. Dep't of Pub. Info., Role of Civil Society in Humanitarian Intervention Subject of DPI/NGO Conference Panel Discussion, U.N. Doc. NGO/378 PI/1277 (Aug. 29, 2000),

they can use their particular specialties to fill gaps in aid distribution. If a project involves systems building, as the MDGs do, NGOs and NGO alliances can bring expertise to solving certain problems, particularly if those problems are specific to a region.¹⁹⁶ Third, because NGOs are often less vulnerable to corruption than the governments of the countries targeted for aid, they can be the favored recipients of aid, holding the resources in trust for the public. Fourth, when such governments are corrupt or unfriendly to the United Nations or other state organizations, NGOs are important aid distributors.¹⁹⁷ Fifth, the expanding networks among NGOs themselves allow NGOs to contribute important information and planning resources to other groups, such as state actors or the United Nations, seeking to distribute aid effectively.

While distributing preventive aid, as Jeffrey Sachs suggests,¹⁹⁸ NGOs help to allocate resources efficiently up front by pinpointing where they will be most effective. Sachs also recommends that NGOs be utilized to help monitor aid distribution and use.¹⁹⁹ NGOs have the added ability to distribute aid in regions of conflict because hostile governments find NGOs less threatening than United Nations-affiliated bodies or state actors.²⁰⁰ By mentoring intrastate organizations through external-internal pairing, NGOs can facilitate systems-development in regions such as sub-Saharan Africa. The Responsibility to Protect Report further notes that NGOs help to galvanize domestic and foreign public opinion in support of prevention measures.

B. How NGOs Can Make Humanitarian Intervention Less Invasive and More Palatable for States

At the fifty-third annual Department of Public Information/Non-Governmental Organization Conference, a panel discussed the role of civil society in humanitarian intervention.²⁰¹ The panel suggested a number of contributions NGOs could uniquely make to humanitarian interventions if encouraged to participate more directly in the interventions. Among the potential payoffs were increased transparency, more accurate predictions, increased oversight, the provision of timely information, and improved legitimacy.²⁰² NGOs have much to offer in these regards.

<http://www.un.org/News/Press/docs/2000/20000829.ngo378.doc.html> [hereinafter Role of Civil Society].

196. *See id.*

197. Sachs, *supra* note 101, at 174–75.

198. *See id.* at 174.

199. *Id.* at 145, 174–75.

200. *See id.*

201. Role of Civil Society, *supra* note 195.

202. *Id.*

In deciding to approve humanitarian intervention, states are confronted with the risks that interventions will be disproportionate to the conflict at hand or used inappropriately. It follows that if the mandatory involvement of NGOs can be secured in the decision-making, implementation, and follow-up of humanitarian interventions, the risks confronted by states will be much lowered.²⁰³

The benefits NGOs can lend to humanitarian intervention if incorporated in the process are great. Before intrastate conflicts escalate, NGOs can help predict the escalation of violence and where it may occur. For example, a handful of NGOs are currently studying how early-warning systems can be established to predict internal warfare likely to reach the level of genocide. Three of these pioneers are the Center for the Prevention of Genocide,²⁰⁴ the International Campaign to End Genocide, and the International Crisis Group.²⁰⁵ Before the Center for the Prevention of Genocide ceased activity, it used “satellite imaging, on the ground resources, and a network of NGO, governmental and international organizations to compile and publish evidence [of genocide onset].”²⁰⁶ The International Campaign to End Genocide is a coalition of NGOs that have come together across state lines to brainstorm and lobby for preemptive methods.²⁰⁷ While these NGOs already monitor at-risk areas and have their own channels through which they broadcast warnings, they are all working toward the creation of a stronger organizational body with government contacts for greater political clout.²⁰⁸ The purpose of such systems is to get major actors moving earlier so that any type of intervention, whether diplomatic, military, or economic, can be expedited.²⁰⁹ The Responsibility to Protect Report noted the “increasingly significant role played by NGOs, particularly in the context of early warning efforts.”²¹⁰ It further encouraged the international community to support the U.N. in the establishment of an early warning capability.²¹¹

Before intervention, NGOs can provide “adequate, timely and accurate infor-

203. *Id.*

204. The Center for the Prevention of Genocide ceased activity on March 31, 2004. Prevent Genocide International, Links for Genocide Research and Education, <http://www.preventgenocide.org/edu/links> (last visited Jan. 19, 2007).⁻

205. International Crisis Group Home Page, <http://www.crisisgroup.org> (last visited Jan. 19, 2007).

206. Volunteer Match, Organization Detail, Center for the Prevention of Genocide, <http://www.volunteermatch.org/orgs/org30777.html> (last visited Jan. 19, 2007).

207. *See* Genocide Watch, The International Campaign to End Genocide, <http://www.genocidewatch.org/internationalcampaign.htm> (last visited Jan. 19, 2007).

208. *See* THE RESPONSIBILITY TO PROTECT, *supra* note 111, at 21, ¶ 3.13.

209. *See id.*

210. *Id.* at 20, ¶ 3.6.

211. *Id.* at 22, ¶¶ 3.15–3.16.

mation” concerning the realities of the situation on the ground.²¹² National NGOs are probably best situated to do this, since they “deal directly with the target populations.”²¹³ NGOs can also help accurately judge the effectiveness and timeliness of intervention, as well as plan and prioritize division of responsibilities between actors at the earliest stages. States gain legitimacy in their undertakings by giving reputable NGOs a louder voice before and during interventions to provide support that justifies intervention for the purpose of upholding human rights. Furthermore, NGOs can provide a stern, motivating voice to states in the General Assembly or Security Council by continually advocating for the civil society on the ground. This voice might help states look past individual concerns regarding humanitarian intervention and focus on the urgency of the matter at hand. For example, the pressure toward humanitarian intervention in Bosnia and Kosovo has been attributed to the information revolution, which informed the international civil society at the time of the events that transpired.²¹⁴ Certainly, NGOs played a large role in the dissemination of such information then, and play an even larger role today.²¹⁵

During intervention, NGO knowledge can be used to save civilian lives through institutionalized lines of communication established by the U.N. NGOs who have been on the ground at the time of conflict can provide a well-informed opinion on the effectiveness of state action. They can help educate peacekeeping or military troops about human rights and the culture into which they are being placed. NGOs can increase transparency by regularly reporting on the situation as it unfolds. NGO networks can help illuminate what is actually occurring in countries experiencing intrastate conflict, especially since the outsider perspective often becomes blurred in countries with few communications resources.²¹⁶ Finally, in the follow-up to post-conflict devastation, NGOs and alliances can offer unique services, such as those demonstrated by the landmine coalition.²¹⁷

Requiring NGO approval, cooperation, and leadership, and providing certain reputable organizations with a meaningful line of communication to the U.N. from the onset of serious internal conflict, may encourage the Security Council to be more receptive to the possibility of humanitarian intervention at an earlier stage. Routes of potential action could be considered and proposed to the

212. Role of Civil Society, *supra* note 195.

213. *Id.*

214. Keohane & Nye, *supra* note 51, at 81.

215. For a discussion on the expansion of NGOs, see *supra* Part III.

216. See, e.g., Judy Aita, *U.N. Prosecutor Gathering Evidence of Darfur Crimes*, U.S. DEP'T OF STATE, Dec. 13, 2005, <http://usinfo.state.gov/af/Archive/2005/Dec/13-177712.html>.

217. See *supra* Part III.

Security Council by NGOs from the first sign of massive human rights violations. Once states volunteer to undertake a course of intervention with significant backing from NGOs, the proposed course of action should be more appealing to the Security Council as a whole than proposals offered by states alone. Measures such as demanding that intervening states work closely with NGOs, that NGOs monitor the intervention, and that NGOs submit regular updates independent of state reports to the Security Council throughout an intervention could lessen some of the concerns states have in permitting humanitarian intervention.

CONCLUSION

For more than three years since the inception of the conflict, genocidal acts in Darfur continued relatively unaffected by external political influences. Refugees languished in camps, fearful and unable to return home; the fighting between the government and smaller African rebel groups continued; and the killing, raping, mutilation, and bombing of innocent civilians and children by state-sponsored forces was pervasive. Salih Booker, executive director of Africa Action, explained in early 2005 that the government felt free to continue its genocidal slaughter because “the [Sudanese] government believes the international community is not going to intervene.”²¹⁸

States can more efficiently begin to tackle intrastate conflicts and humanitarian crises like that in Sudan with three steps. First, states should recognize that intrastate conflicts and humanitarian crises are collective action problems, and acknowledge that preventive aid systems and a pre-established, coordinated process of intervention, such as that proposed by *The Responsibility to Protect*,²¹⁹ would be less costly and more effective than current, multilateral strategies. Second, minimal conditions for intervention should be decided upon without pressure on states to become immediately bound. Third, states should invite NGOs to help them plan and execute both procedures. Heavier inclusion of NGOs in intervention processes should make the concept of humanitarian intervention less threatening to states.

It is apparent that internal conflicts and humanitarian disasters like those in Sudan demand a global, multifaceted response. States should strive to utilize to the fullest degree the most recent and effective outgrowths of globalization—the NGOs and their organizational methods. An NGO-incorporated model would improve

218. *Killing Conflict*, *supra* note 10.

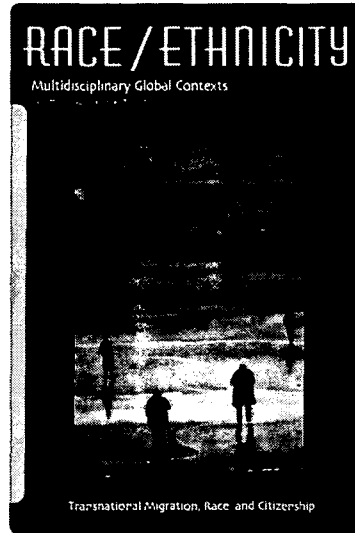
219. See *THE RESPONSIBILITY TO PROTECT*, *supra* note 111, at XI–XIII.

preventive aid efforts by institutionalizing measures that can anticipate conflict or crisis and quicken reaction time, and by creating a coordinated, multifaceted process that can meet the complexities of internal conflict and humanitarian crisis on the many dimensions on which it occurs. This cooperation would not transform NGOs into government actors; instead, it would include them in a scripted and prescriptive response to intrastate conflict and humanitarian crisis. Most importantly, such integration would improve the international community's response to intrastate warfare such as that which has languished for over three years in Darfur. NGOs' innovative responses and broadening capacities, viewed in concert with the state system's failure to prevent or efficiently preempt internal wars of great magnitude, suggest new possibilities for the prevention of internal conflict.

RACE/ETHNICITY

Multidisciplinary Global Contexts

*A peer-reviewed
journal jointly
produced through
The Kirwin Institute
for the Study of Race
and Ethnicity and the
Office of Minority
Affairs at The Ohio
State University*



Edited by John A. Powell and Mac A. Stewart

ISSN 1935-8644

Race/Ethnicity: Multidisciplinary Global Contexts offers a critical intervention into contemporary thinking on race and ethnicity by recognizing and responding to these shared challenges. Through a truly multidisciplinary approach, a concern with race and ethnicity on the global scale, and a willingness simultaneously to engage theory, practice, and other forms of knowledge, the journal offers new ways for scholars, activists, and practitioners to exchange vital information, perspectives, and insights with each other.

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