

## Getting the UN into Darfur

### I. OVERVIEW

The impasse over deploying a major UN peacekeeping force to Darfur results directly from the international community's three-year failure to apply effective diplomatic and economic pressure on Sudan's government and its senior officials. Unless concerted action is taken against the ruling National Congress Party (NCP), Khartoum will continue its military campaign, with deadly consequences for civilians, while paying only lip service to its many promises to disarm its Janjaweed militias and otherwise cooperate. No one can guarantee what will work with a regime as tough-minded and inscrutable as Sudan's, but patient diplomacy and trust in Khartoum's good faith has been a patent failure. The international community has accepted the responsibility to protect civilians from atrocity crimes when their own government is unable or unwilling to do so. This now requires tough new measures to concentrate minds and change policies in Khartoum.

UN Security Council Resolution 1706 (31 August 2006) extended to Darfur the mandate of the UN Mission in Sudan (UNMIS), which presently has 10,000 personnel in-country monitoring the North-South Comprehensive Peace Agreement: it "invited" the consent of the Sudanese government to the deployment of 20,600 UN peacekeepers. This expanded UN force was in effect to take over the African Union's overstretched African Mission in Sudan (AMIS), which – although threatened with expulsion in September – has now been extended to the end of December, with its numbers on the ground expected to grow to 11,000.

The NCP continues to strongly reject the proposed UN deployment. Its primary motive appears to be a fear that improved security would loosen its grip on the region. Officials responsible for orchestrating the conflict since 2003 also appear to fear that a major body of UN troops in Darfur itself might eventually enforce International Criminal Court (ICC) indictments, although it is not obvious why that risk should be decisively greater for them with an extended UNMIS deployment than it is with the present one.

In responding to this rejection, full-scale non-consensual military intervention by the international community is not at this stage a defensible or realistic option. But it

may be possible to persuade the NCP to alter its policies and consent to the UN mission in Darfur by moving now to targeted sanctions against regime leaders and their business interests – and immediately planning for the establishment and enforcement of a no-fly zone over Darfur that builds on the ineffective ban on offensive military flights the Security Council imposed in 2005. International support for the role of the ICC should be again clearly expressed, with the Court in turn declaring its intention to focus immediately on any war crimes or crimes against humanity committed during the current government offensive.

The alternatives to such action – radical by contrast with the limp offerings from the Security Council so far – would be additional months of trying to entice the NCP into a more forthcoming position, as some leaders are still trying to do, or total concentration on trying to extend and reinforce the existing African Union AMIS mission, as has increasingly been urged by various policymakers. Crisis Group's concern is that either of these approaches will be too little too late, given the way the security, human rights and humanitarian situation has steadily deteriorated since the Darfur Peace Agreement (DPA) was signed on 5 May 2006 in Abuja:

- ❑ The NCP launched a major offensive in August and offered the UN its own "security plan", involving sending more than 22,000 government troops to Darfur to secure a military victory.
- ❑ With support from Chad and Eritrea, elements of the rebel groups that did not sign the DPA have regrouped as the National Redemption Front (NRF) and since late June have launched a series of attacks.
- ❑ Violence against women surged, with more than 200 instances of sexual assault in five weeks around Kalma camp in South Darfur alone.
- ❑ The lone rebel signatory – the Sudan Liberation Army faction of Minni Minawi (SLA/MM) – increasingly acts as a paramilitary wing of the Sudanese army.
- ❑ It has become clearly apparent that, while a political solution ultimately is the only way to end the war and create the conditions allowing millions of displaced persons to go home, the DPA is all but dead: there is a desperate need for the African

Union (AU) and its partners to reconstitute a viable, inclusive peace process that builds on its foundations while addressing its flaws, but there is no sign of that happening.

Divisions have now emerged within the international community over whether to drop the UN mission proposal in favour of a strengthened AU-led mission. Unless these divisions are quickly reconciled, the NCP will exploit them to neutralise international pressure. It is an immediate priority to make AMIS as effective as it can be, but that mission, whose credibility in Darfur is decreasing, is not a substitute for the more robust UN force, which would be able to call upon greater physical and financial resources. The situation in Darfur demands the most effective response possible. That can only come through the full UN deployment, and efforts need to be concentrated to bring it about as rapidly as possible.

The NCP has skillfully used the confrontation with the international community to silence an increasingly defiant opposition and independent media and a rising chorus of critics from within its own ranks who are upset with the regime's corruption and moral decay. Changing policies in Darfur and allowing the transition to a UN mission would clearly be traumatic, with serious domestic political and security repercussions. The NCP will only do so if it calculates that the international repercussions for non-compliance outweigh the domestic costs of cooperation. History does offer grounds for belief, however, that it will respond if confronted with genuine pressure. But that requires a change of strategy for the international community, which, in contrast to its generally strong rhetoric, has only rarely brought meaningful pressure to bear on the Sudanese government. This has given Sudan's ruling elite the belief it can act with virtual impunity in Darfur.

The recent appointment of Andrew Natsios as U.S. Special Envoy for Sudan and tougher talk out of Washington is welcome, but it is likely that even more could be achieved by implementing and expanding the reach of some of the measures that have already been agreed in the Security Council and elsewhere. Accordingly, the U.S., UN, African Union and European Union, acting together to the greatest extent possible but as necessary in smaller constellations and even unilaterally, should now:

- apply targeted sanctions, such as asset freezes and travel bans, to key NCP leaders who have already been identified by UN-sponsored investigations as responsible for atrocities in Darfur and encourage divestment campaigns;
- authorise through the Security Council a forensic accounting firm or a panel of experts to investigate the offshore accounts of the NCP and NCP-affiliated

businesses so as to pave the way for economic sanctions against the regime's commercial entities, the main conduit for financing NCP-allied militias in Darfur;

- explore sanctions on aspects of Sudan's petroleum sector, the NCP's main source of revenue for waging war in Darfur, to include at least bans on investment and provision of technical equipment and expertise; and
- begin immediate planning for enforcing a no-fly zone over Darfur by French and U.S. assets in the region, with additional NATO support; obtaining consent of the Chad government to deploy a rapid-reaction force to that country's border with Sudan; and planning on a contingency basis for a non-consensual deployment to Darfur if political and diplomatic efforts fail to change government policies, and the situation on the ground worsens.

## II. THE DEADLOCK OVER A UN FORCE

UN Security Council Resolution 1706 authorised a UN mission of at least 20,600 troops and police to deploy to Darfur with a Chapter VII mandate allowing use of force to protect threatened civilians, UN personnel, humanitarian workers and the DPA.<sup>1</sup> The Sudanese government's consent is only "invited" to this deployment, not formally required,<sup>2</sup> and troop contributing countries are presently unwilling to take part in any deployment to which Khartoum does not agree. Two elements of the government of national unity (GNU) in Khartoum support UN deployment, at least verbally – the Sudan People's Liberation Movement (SPLM), which fought the twenty-year civil war concluded in 2005, and the Minni Minawi faction of the Sudan Liberation Army (SLA/MM), the Darfur rebels who signed the DPA. That leaves the NCP, the country's long-time

<sup>1</sup> It was passed on 31 August 2006 with China, Russia and Qatar abstaining. The force would include 17,300 military personnel, 3,300 civilian police and up to sixteen Formed Police Units.

<sup>2</sup> The relevant language of the resolution "Decides, without prejudice to its existing mandate and operations as provided for in resolution 1590 (2005) and in order to support the early and effective implementation of the Darfur Peace Agreement, that UNMIS' mandate shall be expanded [as specified in paragraphs 8, 9 and 12], that it shall deploy to Darfur, and therefore invites the consent of the Government of National Unity for this deployment, and *urges* Member States to provide the capability for an expeditious deployment". UN Security Council Resolution 1706, 31 August 2006.

ruling party which remains the dominant element in the GNU, in effect holding hostage the fate of Darfur.

The shortcomings of the existing AMIS mission became increasingly obvious by late 2005, resulting in the push for transition to a UN force.<sup>3</sup> AMIS lacked (and lacks) the troops, equipment and mandate to provide adequate civilian protection or enforce a ceasefire agreement that all sides violate. Donor fatigue was a further, contributing factor, as the U.S. and EU in particular – the main financial backers – sought to shift financial responsibility to the broader international community. On 12 January 2006, the AU Peace and Security Council (PSC) accepted the transition to a UN mission in principle and agreed to make a final decision before the end of March.<sup>4</sup>

The NCP resisted the notion of a transition to the UN, offering instead to partly finance the AU mission and proposing deployment of a tripartite force comprised of troops from its own army, the rebels and AMIS.<sup>5</sup> It softened its line in early 2006, saying a UN mission would be acceptable if deployed after consultations and subject to its consent.<sup>6</sup> International efforts initially focused on building support among donors and potential troop contributors, while taking eventual NCP consent for granted.

When a confidential list drawn up by the Security Council's Panel of Experts that was leaked to the press in February identified seventeen individuals deserving of sanctions for violations of Security Council Resolution 1591 (2005),<sup>7</sup>

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<sup>3</sup> For further discussion of AMIS strengths and weaknesses and the logic of deploying a larger and stronger international force to Darfur, see Crisis Group Africa Briefing N°28, *The AU's Mission in Darfur: Bridging the Gaps*, 6 July 2005; and Crisis Group Africa Report N°105, *To Save Darfur*, 17 March 2006.

<sup>4</sup> Some in the AU, including senior leadership, resisted the push for transition because they felt donors were using financial pressure to force the organisation to hand over control of the mission. Crisis Group interview, March 2006. The apparent division within the international community gave the NCP further confidence that it could resist the transition.

<sup>5</sup> See "Sudan offers to finance partly AU peacekeepers in Darfur", *Sudan Tribune*, 14 January 2006; and "Sudan proposes tripartite force for Darfur", Agence France-Presse/*Sudan Tribune*, 15 January 2006.

<sup>6</sup> "Sudan softens resistance to UN peacekeepers in Darfur", Reuters, 6 February 2006.

<sup>7</sup> In accordance with paragraph 3 of Security Council Resolution 1591, the seventeen individuals the Panel identified were found to be impeding the peace process, constituting a threat to stability in Darfur and the region, committing violations of international humanitarian or human rights law or other atrocities, violating the arms embargo, and/or responsible for offensive military overflights. The list included senior NCP members responsible for government policy in Darfur, including the minister of interior, Prof. Elzubeir Bashir Taha, the national intelligence and security chief, Salah Abdallah "Gosh", and the minister of defence, Maj. Gen. Abdur

however, Khartoum's response was immediate. Asked by reporters on 23 February about his inclusion on the list, Prof. Elzubeir Bashir Taha, the interior minister, reacted with surprise and anger, accusing the U.S. and others of "neo-colonialism" and targeting Sudan so as to gain access to its natural resources.<sup>8</sup> On 26 February, President al-Bashir warned Darfur would "be a graveyard for any foreign troops entering".<sup>9</sup> The NCP organised large street protests in Khartoum, threatening violence and jihad against intervention in Darfur. In late June, it orchestrated a three-day march of the paramilitary Popular Defence Force to show willingness to fight a UN mission.

Though the NCP has at times sought to portray this position as principled rejection of foreign intervention, it has frequently accepted such a measure, at least rhetorically. A 10,000-strong UN force is already deployed in Sudan, mostly in the South, as provided for in the Comprehensive Peace Agreement (CPA) that ended the civil war with the SPLM in 2005.<sup>10</sup> Vice President Taha twice committed the government to accept the AMIS transition to the UN once a Darfur peace agreement was reached, commitments that were crucial to the diplomatic efforts that produced the DPA but have not been honoured.<sup>11</sup>

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Rahim Mohammed Hussein. Additionally it cited President Omer al-Bashir as a possible future target of sanctions. "Report of the Panel of Experts established pursuant to paragraph 3 of Resolution 1591 (2005) concerning the Sudan", S/2006/65, 30 January 2006, Articles 141-142. The list was originally leaked to the *Financial Times*. Mark Turner, "Middle East & Africa: Sudan ministers named in leaked UN Darfur list", *Financial Times*, 22 February 2006.

<sup>8</sup> Prof. Taha argued that U.S. President Bush belonged on the UN sanctions list instead. "Sudanese minister says Bush belongs on UN sanctions list", Reuters, 23 February 2006.

<sup>9</sup> "Darfur will be foreign troops' graveyard – Bashir", Agence France-Presse, 26 February 2006.

<sup>10</sup> The NCP has already agreed to a 10,000-strong UN force to monitor the Comprehensive Peace Agreement (CPA) in the South and centre of the country (UNMIS); and an international force under the AU has been in Darfur since 2004. The NCP uses nationalist, anti-Western language to mobilise popular opposition to UN deployment, mostly on religious lines. The push against the UN deployment is led by a small number of senior NCP figures: President al-Bashir; Nafie Ali Nafie, special adviser to the president; Dr. Ghazi Salahudeen Attabanni, the head of the NCP delegation in parliament; Dr Magzoub al-Khalifa, presidential adviser and lead negotiator in Abuja; Salah Abdallah "Gosh", head of the national intelligence and security services; Prof. Elzubeir Bashir Taha, minister of interior; and Maj. Gen. Abdur Rahim Mohammed Hussein, minister of defence. Crisis Group interview, 20 August 2006. Some observers include Mustafa Osman Ismael, presidential adviser and former minister of foreign affairs, on this list, though others consider that he has been a reasonable interlocutor with the UN.

<sup>11</sup> Taha committed to the transition during an 8-9 March 2006 meeting in Brussels with senior U.S., EU, UN and AU officials,

The NCP has repeatedly complied superficially with international demands, while pursuing its fundamental objectives in Darfur: to promote the tribalisation of the conflict and ultimately to defeat the rebellion through divide and rule tactics. A degree of cooperation with AMIS provides cover for this strategy, since AMIS is too weak to exert real military pressure on the ground.<sup>12</sup> However, the NCP has yet to implement any substantive provisions of the DPA and has largely turned the SLA/MM faction into another government-aligned militia. It is difficult not to conclude that the ruling party's position on a UN force is determined less by principle than by its assessment of regime security aims, as well as by the concern of key leaders (whether or not this is credible given the number of existing UNMIS personnel presently in country) that the presence of such a substantial body of international troops would make them more vulnerable to being held responsible by the ICC for atrocity crimes committed in Darfur.

Decisions about the UN force are made by the NCP leadership, not the cabinet or the institution of the presidency,<sup>13</sup> and a rift has emerged between President al-Bashir and Vice President Taha. The president and other rejectionists were angry at Taha's agreement to the transition in Brussels in March and his positive meeting with the Darfur rebel leaders, the SLA's Minni Minawi and Dr Khalil Ibrahim, chairman of the Justice and Equality Movement (JEM), in Tripoli on his return trip. Taha's extended "vacation" in Turkey in early July was widely read as indicating disagreement with other senior figures over the UN force, though he has followed the party line since his return. The NCP has also used confrontation with the UN to stifle the press and opposition parties that are increasingly demanding the democratic

freedoms promised in the new constitution, as well as dissent within the Islamist movement itself.<sup>14</sup>

NCP obstructionism was apparent immediately after the DPA was signed, when it refused to allow the UN to join the AU in a joint technical assessment mission to Darfur to assess a transition, relenting only after several visits from senior UN officials. In mid-August, the NCP submitted to the Security Council its own plan to "gain control over the security situation and achieve stability in Darfur". This calls for a three-phase deployment of more than 12,000 army troops by December, alongside 4,000 SLA/MM and 3,348 AMIS troops, with an additional 10,500 army troops to be deployed from January 2007.<sup>15</sup>

The government began deploying fresh troops to Darfur around the same time and launched an offensive in all three Darfur states against the National Redemption Front (NRF), the coalition of rebels who had not signed the DPA, in late August.<sup>16</sup> It continues to attack the rebels in North Darfur and eastern Jebel Marra, including extensive bombing by Antonovs and strafing by helicopter gunships. The NRF has inflicted at least two embarrassing defeats on the Sudanese army in the past several weeks, capturing in the process a number of fairly senior officers, perhaps several hundred soldiers, and considerable equipment. However, government forces appear to be responding as they did to setbacks in the early years of the conflict: by bringing up reinforcements, increasing their firepower,

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and again in the final weeks of the Abuja negotiations. Crisis Group interviews, EU, UN and AU officials, March-September 2006.

<sup>12</sup> The AU has not given AMIS a meaningful mechanism with which to penalise non-compliance. The existing Ceasefire Commission and Joint Commission have in effect been dead for more than a year. Through intimidation, the NCP has slowly been able to assert dominance over core elements of the AU mission, for example grounding AMIS air assets at night by imposing a curfew on Darfur airports.

<sup>13</sup> The SPLM publicly distanced itself from the NCP's rejectionist posture in late June 2006. SPLM Chairman and First Vice President Salva Kiir has since publicly expressed support for a UN mission to Darfur. See also: "Minawi to al-Hayat: disputes in the Presidency; Cabinet doesn't enjoy decision powers on decisive matters", *al-Hayat*, 22 September 2006, in Arabic. On 24 September, however, President al-Bashir asserted that the rejection of the UN force in Darfur was in fact a unanimous cabinet decision, "Darfur UN forces rejection is a Cabinet decision", *Sudan Tribune*, 25 September 2006.

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<sup>14</sup> Examples include Salah Gosh's threat that if and when the battle begins, the NCP would begin with "fifth columnists in Khartoum and internal agents of foreign powers who [meddle] with national and citizens' security". See "Sudan security chief rejects UN force, calls for martyrdom", *Sudan Tribune*, 29 June 2006. The regime has arrested senior members of the opposition Umma Party for their role in organising public protests against the rise in sugar and fuel prices.

<sup>15</sup> Crisis Group correspondence, 17 August 2006. "Plan of the Government of Sudan for the restoration of stability and protection and civilians in Darfur", S/2006/665, 17 August 2006. One Khartoum-based observer estimated that the Sudanese Armed Forces had between 30,000 and 40,000 troops in North Darfur for its current offensive. Crisis Group interview, UN official, 29 September 2006.

<sup>16</sup> The NRF was formed in Asmara on 30 June 2006, as a coalition between JEM, elements of the SLA under the G19, headed by former SLA Deputy Chairman Khamees Abdallah, and two leaders of the Sudan Federal Democratic Alliance, Sharif Harir and Ahmed Deraige. Abdel Wahid Mohammed el-Nur, leader of the non-signatory SLA faction in Abuja (SLA/AW), has not joined the NRF, though some of his field commanders have. A group of SLA/AW commanders chose to remove Abdel Wahid on 25 July 2006 and appointed Ahmed Abdelshaafie as his replacement. The NRF launched an offensive in late June and July, against first government installations in Hamrat el-Sheikh in Northern Kordofan and then SLA/MM positions in North Darfur.

and calling on allied militias and Chadian rebels, all of which bodes ill for civilians in their path.<sup>17</sup>

In the lead-up to passage of Resolution 1706, the NCP floated suggestions in the local media that it would ask AMIS to leave Darfur when its mandate expired at the end of September. Later, foreign ministry officials assured the AU it could remain if it extended that mandate.<sup>18</sup> The episode demonstrated the vulnerability of AMIS and Darfur civilians to NCP whims. International officials were left pleading with the ruling party to keep a largely ineffective peacekeeping force in place, while the issue of deploying a more muscular UN force was postponed. The NCP also tried to link extension of the AMIS mandate to a demand that the AU reject its commitment to a UN transition.<sup>19</sup>

The NCP tactics have convinced some in the international community to play by Khartoum's rules. The AU's Peace and Security Council (PSC), meeting in New York on 20 September 2006, extended the AMIS mandate through the end of the year. The official communiqué did not endorse the UN transition outright, though it did take note of Resolution 1706 and call for discussion with the government of Sudan.<sup>20</sup> On 28 September, the Special Representative of the Secretary-General (SRSG), Jan Pronk, publicly proposed that international strategy should shift to focus exclusively on AMIS, since the NCP was unlikely to agree to a UN mission.<sup>21</sup> The following day Deputy Secretary-General Mark Malloch Brown criticised the U.S. and UK approach to Darfur as ineffective "megaphone" diplomacy not backed by credible action and urged new efforts to build an international consensus.<sup>22</sup> During a visit to Khartoum, EU Commission President Jose Manuel Barroso called for flexibility in determining the formula for UN involvement in Darfur, thus implicitly according some legitimacy to the NCP's rejectionist posture.<sup>23</sup>

<sup>17</sup> Crisis Group interviews, observers in the region, October 2006.

<sup>18</sup> Crisis Group interviews, 4 September 2006.

<sup>19</sup> "Sudan says AU can stay in Darfur but not under UN", Reuters, 4 September 2006.

<sup>20</sup> AU PSC Communiqué, PSC/MIN/Comm(LXIII), 20 September 2006.

<sup>21</sup> "UN chief in Sudan says U.N. peacekeeping mission to Darfur unlikely, calls for strategy change", Associated Press, 29 September 2006.

<sup>22</sup> "US and UK must end 'megaphone' diplomacy on Darfur", Reuters, 29 September 2006. He later praised the two countries, however. "Critical UN aide now lauds US, UK on Darfur", Reuters, 2 October 2006.

<sup>23</sup> Jonathan Steele, "EU chief tries a gentler approach to get the UN into Darfur", *The Guardian*, 2 October 2006; "EU's Barroso calls for flexibility in UN-Darfur row", Reuters, 1 October 2006. European Commission officials insist, however, that Barroso pushed hard for acceptance of a larger international presence in

All this suggests divisions which the NCP is all too willing to exploit for its own ends. An international consensus should be built around four points:

- ❑ First, civilian protection should be the highest priority in determining the contours of a peacekeeping force.
- ❑ Secondly, a UN force would be much better equipped to provide effective civilian protection than an AMIS force expanded with personnel drawn from Africa and perhaps Arab League states, since it could draw globally upon many more resources and greater experience and expertise.
- ❑ Thirdly, the NCP is unlikely to back down unless it faces repercussions for its broken promises and continued flouting of international will.
- ❑ Fourthly, retreat from the decision to deploy a UN mission would confirm for the NCP that the international community is toothless and encourage it to pursue its military agenda in Darfur, thus producing another – and avoidable – round of death, destruction and displacement.

### III. AN INTERNATIONAL ACTION PLAN

Despite the abuses committed by the NCP and its affiliates in Darfur, the international community has continued to pursue an incentive-based approach to encourage cooperation. During the lead-up to the UN General Assembly in September 2006, for example, the U.S. dangled the prospect of an invitation to meet with President George Bush as an enticement for al-Bashir to change his position. The U.S. has since stepped up its rhetoric but still has not taken concrete action.<sup>24</sup> History suggests that NCP policies and behaviour are more likely to be changed by the application of meaningful pressure than by either incentives or vague threats.

Darfur in his private discussions with President al-Bashir. Crisis Group interview, Brussels, October 2006.

<sup>24</sup> U.S. Secretary of State Condoleezza Rice stated at the end of September that if Sudan had to accept UN forces or face consequences: "This is the choice between cooperation and confrontation". The new U.S. special envoy for Sudan, Andrew Natsios, when asked what these consequences would be, stated that it was best if they were left vague. "U.S. tells Sudan: cooperate or expect confrontation", Reuters, 27 September 2006. It is possible, of course, that Natsios's disinclination to identify consequences reflects a desire to keep exchanges private since he has not yet travelled to the region with his new portfolio.

During the mid-1990s, the U.S. led efforts in the Security Council to apply diplomatic and aviation sanctions to Sudan for support of international terrorism. These, combined with unilateral U.S. sanctions enacted in 1997, led to Khartoum's decision to expel Osama bin Laden from the country, dismantle al-Qaeda's commercial infrastructure and terrorist training camps there and cut its ties to a number of terrorist organisations. After the events of 11 September 2001 and the U.S.-led invasion of Afghanistan brought hints from senior U.S. officials that Sudan might be attacked, the regime substantially increased its counter-terrorism cooperation with Washington and showed new flexibility in the peace talks with the SPLM, which eventually led to the CPA.

Its active diplomacy throughout the Darfur crisis demonstrates that the Sudanese government wishes to avoid international isolation. Unfortunately, it has been allowed simultaneously to pursue military objectives in Darfur and to take advantage of divisions that have prevented a coordinated or effective international response. For all the anguished rhetoric about Darfur, very little in the way of penalties has been applied to Sudan. Applying pressure is not ensured to change the regime's behaviour, but three years of tragedy and broken promises strongly suggest that gentler methods do not work.

Two central demands are made of the NCP: to honour commitments to disarm and neutralise its allied Janjaweed militias, repeated in six separate agreements including the DPA; and to consent to the UN force in Darfur, as agreed to by Vice President Taha and authorised in Resolution 1706. Action against the Janjaweed would be the most important step toward improved security and recovery in Darfur but the NCP weighs the domestic costs of moving on this against potential international repercussions for non-compliance.<sup>25</sup> Though chaos and impunity are likely to remain the norm until the NCP alters its policies of divide and rule and selective support and arming of the local tribal militias, it has faced no penalties from the AU, UN or the broader international community for failure to fulfil its commitments. Rebel factions have likewise violated commitments with impunity and, at times, the support of Chad and Eritrea.

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<sup>25</sup> A government official in El Fashir explained to Crisis Group in November 2004: "There are many in the government who are pleased with the work of Musa Hilal and other Janjaweed leaders, because they've protected the government interests in Darfur. Those who committed war crimes should be brought to justice but we are afraid of the backlash. Musa Hilal, for example, has 3,000 to 4,000 soldiers under him. If we arrest him, they will turn on us. The government has to weigh that against the outside pressure to take action, and possible repercussions from inaction". See Crisis Group Africa Report N°89, *Darfur: The Failure to Protect*, 8 March 2005.

The NCP has painted itself into a corner over the UN force, so backing down would have domestic political repercussions. President al-Bashir's direct involvement in the rejectionist stance is a complicating factor, though it might be possible to present consent to deployment as a gesture to build consensus within the government of national unity, not a concession to the international community.

A quick review of measures threatened by the Security Council but not pursued offers insight into why the NCP apparently believes it need not risk domestic trouble by changing its stance on UN deployment. Security Council Resolutions 1556 (2004), 1564 (2004), and 1591 (2005), as well as the January 2005 report of the International Commission of Inquiry on Darfur and the January and August 2006 reports of the subsequent Panel of Experts, have laid the basis for broad action against the government, including sanctions on individuals who impede the peace process.<sup>26</sup> Despite Khartoum's lack of compliance, however, there has been little follow up.

The January Panel of Experts' report, as noted, included a confidential list of seventeen individuals who have undermined peace in Darfur. A subsequent Panel of Experts report (31 August) included an additional confidential list of individuals identified for sanctions, including "top people in the government".<sup>27</sup> The report of the International Commission of Inquiry identified 51 persons responsible for serious violations of international human rights law, including crimes against humanity or war crimes.<sup>28</sup> Nevertheless, despite the ultimatums in Resolutions 1556 and 1564 and the activation on 29 April 2005 of authority to impose travel bans and assets freezes, sanctions have been applied only to one air force commander, one

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<sup>26</sup> Resolution 1556 "Demands that the Government of Sudan fulfil its commitments to disarm the Janjaweed militias and apprehend and bring to justice Janjaweed leaders and their associates...and expresses its intention to consider further actions, including measures as provided for in Article 41 of the Charter of the United Nations on the Government of Sudan, in the event of non-compliance". Resolution 1564 reiterates 1556 and in addition "Declares that the Council, in the event the Government of Sudan fails to comply fully with Resolution 1556 (2004) or this resolution...shall consider taking additional measures as contemplated in Article 41 of the Charter of the United Nations, such as actions to affect Sudan's petroleum sector and the Government of Sudan or individual members of the Government of Sudan".

<sup>27</sup> "UN experts seek sanctions against top Sudanese officials", Associated Press/*Sudan Tribune*, 29 September 2006.

<sup>28</sup> This list, in a confidential annex, contains the names of ten high-ranking central government officials, seventeen local government officials, fourteen members of the Janjaweed, seven members of rebel groups and three officers of a foreign army. Resolution 1593 (2005) formally referred the situation in Darfur since July 2002 to the International Criminal Court.

Janjaweed leader and two rebels.<sup>29</sup> And the continued insecurity in Darfur has blocked the ICC from investigating inside Darfur, where the bulk of the evidence lies. Much more pressure is needed, on multiple fronts.

### A. PUNITIVE SANCTIONS AGAINST THE NATIONAL CONGRESS PARTY

Every unfulfilled threat increases NCP confidence it can act with impunity and diminishes the international community's leverage. Four types of economic measures should be adopted at once:

- an assets freeze and travel ban on all seventeen individuals named in the confidential annex of the UN Panel of Experts' final report and the 51 individuals named by the International Commission of Inquiry;
- a detailed investigation by a forensic accounting firm authorised by the Security Council, or a panel of experts appointed by the Council, into the NCP's secret financial networks, leading to a freeze of the off-shore accounts that handle funds tied to the financing of paramilitary structures;<sup>30</sup>
- steps that target aspects of the petroleum sector, Sudan's main source of hard currency; and
- toughening existing national sanctions, such as those in the U.S., and encouraging campaigns in the U.S. and elsewhere for divestiture of investments in Sudan.

Punitive sanctions can be applied on various levels. Those through the UN would have the broadest effect but if the Security Council cannot reach consensus, the EU, the U.S. and others should act both individually and with as wide cooperation as possible. Unlike the use of military force, international law does not restrict the application of sanctions without Security Council authorisation, and there are numerous examples where such pressure has been applied to some effect.

### 1. Targeting named individuals

The Sanctions Committee has enough information for the Security Council to impose travel bans and asset freezes on many more individuals.<sup>31</sup> As noted, only three of the seventeen cited by the Panel of Experts have been subjected to punishment. Five more have been listed as under "consideration". The Security Council has passed the 51 names identified by the Commission of Inquiry to the ICC. Enforcing asset freezes on individuals, though, can be difficult. The Sanctions Committee needs to expand its monitoring and investigative capacities to deal with the fungible nature of financial assets, the speed at which money can be moved and the various ways targeted individuals can conceal ownership.

### 2. Targeting the NCP regime and leadership

The best way to hurt the NCP quickly would be by imposing targeted economic sanctions that freeze the assets of the regime and those of its officials most responsible for the atrocities in Darfur, as threatened by the Security Council in Resolutions 1556 (2004) and 1564 (2004).

The NCP party and its leaders have grown rich over the past seventeen years by exempting themselves from many state taxes and dues and using companies affiliated with the party to appropriate large sectors of the national economy. The corruption is so pervasive that a reform-minded Islamist has established an independent forum to press for transparent accounting of public monies that flow to such companies.<sup>32</sup> The Security Council should seek to untangle the web so that it could target companies involved in sustaining NCP-affiliated militias and paramilitary groups, such as the Janjaweed and Popular Defence Forces. The first set of companies through which NCP officials generate and move illicit income are those registered and run under the names of party loyalists in order to disguise actual ownership. A second category encompasses secret companies run by the National Security Agency and known in Sudan as "al-Sharikat al-Amniya" (security companies). A third category consists of companies affiliated with Islamic charities

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<sup>29</sup> Resolution 1672 (2006). Three of the four were included in the leaked list of seventeen. The name of the fourth – Janjaweed leader Musa Hilal – came from information provided by member states, the Secretary-General, the High Commissioner for Human Rights and other relevant sources.

<sup>30</sup> Given the likely lack of cooperation from Sudan, it will be challenging to produce meaningful and actionable information regardless of who does the investigating. Although Sudan would be reluctant to hand over banking information, many other states probably would be more cooperative.

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<sup>31</sup> Applying targeted sanctions to individuals apports responsibility without negatively impacting the broader population, as trade sanctions or embargoes may.

<sup>32</sup> Osman Mirghani, a widely read columnist in the independent *al-Sudani* newspaper, helped launch the "Sudan Forum" and has made accountability for public finances one of its leading issues through press articles and public rallies and demonstrations.

but controlled by the regime and serving its political and security agendas.<sup>33</sup>

The Security Council should commission a forensic accounting firm or other body of experts to undertake a comprehensive investigation into NCP commercial interests, domestic and offshore, so as to bring them into the public domain where they could be used as a source of pressure to be applied to the ruling party.<sup>34</sup> Initially, the investigation should focus on the persons included on the Panel of Experts and Commission of Inquiry lists, as there will be overlap. Once findings and recommendations are reported to the Security Council, the international community – preferably through the Security Council, but if not possible then through a coalition of willing countries – should impose sanctions, including travel bans and asset freezes, on key individuals and companies in order to maximise the pain for those individuals and the regime, while minimising the impact on the national economy and the population as a whole.

### 3. Targeting the petroleum sector

Petroleum is the largest single source of foreign revenue for the government<sup>35</sup> and thus another potentially effective leverage point for altering NCP actions. Resolution 1564 (2004) threatened “actions to affect Sudan’s petroleum sector”, if the government failed to disarm the Janjaweed, although a further resolution would be required to authorise specific action. The petroleum sector is entirely controlled by the NCP, despite CPA provisions designed to reform it and give the SPLM joint oversight. Though the Government of Southern Sudan (GoSS) receives roughly \$1 billion in oil revenue annually under the CPA – the vast majority of its budget – there is little transparency,

North-South boundaries remain undefined and the GoSS may well get considerably less than its due.<sup>36</sup>

UN sanctions on the petroleum sector could have an enormous impact on Sudan’s economy – and a global export ban on Sudan’s oil would have only a limited impact on the international price of oil, given the relatively small size of the country’s exports (only about 0.6 per cent of world supply, even after recent increases). But consensus in the Security Council on any such ban is extremely unlikely: at this point, China, the main importer of Sudan’s petroleum,<sup>37</sup> would certainly veto any such action. If a voluntary boycott were attempted, it would only take China’s and perhaps one or two other Asian countries’ non-participation to make a voluntary boycott meaningless. Two other major investors, Malaysia and India, while not members of the Security Council, would be only slightly less likely than China to oppose any kind of petroleum sanctions.

A more extreme method of shutting down the petroleum sector would be for a coalition of willing states to impose a naval blockade on oil shipments from Sudanese ports, and this is now being seriously proposed in a number of quarters.<sup>38</sup> Some see this as less likely to

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<sup>33</sup> These three categories of commercial interests operate across all segments of the economy but are dominant in the construction, oil and communication sectors. With money generated from these sources, the NCP is able to buy the loyalty of some tribal leaders, and use them in the recruitment of militias, including the Janjaweed.

<sup>34</sup> The “big four” international accounting firms – PricewaterhouseCoopers, Deloitte Touche Tohmatsu, Ernst and Young, and KPMG – all have specialised forensic accounting divisions. Both KPMG and Ernst and Young were involved in the investigation of the UN’s oil-for-food scandal in Iraq.

<sup>35</sup> Sudan exported nearly \$4.2 billion worth of oil in 2005, accounting for roughly 85 per cent of its export revenue, and will receive approximately \$7.6 billion in oil export revenue in 2006. “Country Report: Sudan”, The Economist Intelligence Unit, September 2006. Figures denoted in dollars (\$) in this report refer to U.S. dollars.

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<sup>36</sup> The GoSS is to receive 50 per cent of revenue from oil produced in southern Sudan. The National Petroleum Commission, a joint SPLM-NCP oversight body for the oil sector created in the CPA, is ineffective due to the unwillingness of the NCP leadership, in particular Energy Minister Awad al-Gaz, to divert power from the NCP-dominated ministry. For more on the petroleum sector, see Crisis Group Africa Report N°96, *The Khartoum-SPLM Agreement: Sudan’s Uncertain Peace*, 25 July 2005; and Crisis Group Africa Report N°106, *Sudan’s Comprehensive Peace Agreement: The Long Road Ahead*, 31 March 2006.

<sup>37</sup> The state-owned China National Petroleum Company (CNPC) is a 40 per cent stakeholder in the Greater Nile Petroleum Operating Company (GNPOC), the main oil-producing consortium in Sudan, along with Malaysia’s Petronas (30 per cent), India’s ONGC-Videsh (25 per cent), and state-run Sudapet (5 per cent). GNPOC operates oil Blocks 1, 2 and 4, which produce the majority of Sudan’s roughly 500,000 bpd. These blocks overlap the border of northern and southern Sudan and fall substantially into the Abyei territory, as defined by the Abyei Boundaries Commission. The demarcation of the North-South border, as envisaged by the CPA, has not yet taken place, primarily due to NCP intransigence. The CNPC has a 95 per cent share of Block 6, in Southern Kordofan and South Darfur. Blocks 3 and 7, which recently came online with the completion of a new oil pipeline, are 41 per cent owned by CNPC and, 6 per cent owned by the Chinese petroleum company Sinopec. China imports the majority of Sudan’s oil. Crisis Group correspondence, September 2006; Crisis Group interview, January 2006.

<sup>38</sup> See for example Susan E. Rice, Anthony Lake and Donald M. Payne, “We saved Europeans. Why not Africans?”, *The Washington Post*, 2 October 2006; Ian Davis, “Taking



result in outright combat and fatalities, and perhaps as less militarily resource intensive, than maintaining a no-fly zone. But obviously, in the absence of any supporting Security Council resolution, any such military blockade would be seen as an illegal act of war (and one harder to morally justify than a military intervention aimed directly, rather than as here very indirectly, at civilian protection)<sup>39</sup>. It would risk a very serious political confrontation with China, which – along with other oil importers from Sudan – would also at the least demand full economic compensation. And there is the further problem, common to all approaches aimed at shutting down Sudan's petroleum sector, that any serious impairment of it would have implications for the humanitarian situation in the country, as well as for the CPA and the GoSS: donors would need to provide a compensatory aid package to assist with institutional and economic development in the South.

Despite these difficulties confronting more extreme measures, Sudan does have some real vulnerabilities in this area which could be internationally targeted. EU and other European governments could enact legislation to ban companies based in their countries that are either still directly involved in the Sudanese petroleum sector or are in industries related to it (the U.S. has had comprehensive sanctions in place since 1997). For example, Sweden's Lundin Petroleum AB operates directly in Sudan.<sup>40</sup> European companies working in industries that assist the oil industry might also be forbidden by the EU or their governments to operate in Sudan. This would affect such entities as ABB of Switzerland, which invests in Sudan's power grid, and Siemens of Germany, which supplies telecommunications systems to the main oil-producing consortium (GNPOC) and is building one of the largest diesel-generating plants in Khartoum.<sup>41</sup> It was recently reported that Rolls-Royce Marine, based in Norway and part of UK Rolls Royce, fulfilled a large shipment of land-based diesel motors and pumps for the Chinese

company CNPC, which operates Block 6 – part of which is in Darfur itself.<sup>42</sup>

#### 4. Strengthening unilateral trade sanctions and divestment

The U.S. has had sanctions in place against Sudan since 1997, based on its links to Islamic terrorism.<sup>43</sup> In 1997 President Clinton issued Executive Order 13067 to block property and assets held by the government in the U.S. and prohibit most transactions with Sudan.<sup>44</sup> The U.S. could, however, remove the lucrative exception granted to gum Arabic imports and encourage other countries to implement similar sanctions regimes.

A campaign is underway, primarily in the U.S., that focuses on targeted divestment from Sudan and in companies operating there that contribute to government revenue, impart minimal benefit to the country's underprivileged and fail to demonstrate substantial corporate governance policy regarding Darfur. It has already made progress among state and city governments, pension funds, universities and other private shareholders.<sup>45</sup> The amount of money involved in divestment is not negligible – U.S.-based pension funds are estimated to have \$91.2 billion invested in holdings with ties to Sudan.<sup>46</sup> Among others the state of California,

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responsibility seriously", available at <http://www.guardian.co.uk>, 16 September 2006. Also Crisis Group interviews, Paris, 6 October 2006 and Brussels, 10 October 2006.

<sup>39</sup> Compare the discussion of the "humanitarian intervention" military option in Section IV below.

<sup>40</sup> Lundin AB Oil sold its stake in Block 5A in 2003 but announced it was restarting investment in Block 5B in 2006. It recently revealed plans to build infrastructure and drill exploration wells in Block 5B, where it holds a 24.5 per cent share. "Swedish Lundin to restart oil investment", *Sudan Tribune*, 21 June 2006.

<sup>41</sup> Crisis Group correspondence, September 2006; see also the European Coalition on Oil in Sudan website, available at <http://www.ecosonline.org/index.cfm?event=showcompanies&page=companies>.

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<sup>42</sup> Research into these sales was conducted by two Norwegian organisations, Norwatch and the Norwegian Council for Africa. "New, secret oil installations in Darfur", *Afrol News*, 14 September 2006. Of course CNPC could import European (and even American) equipment into China and ship it themselves, but this would at least add a cost to doing business.

<sup>43</sup> The U.S. listed Sudan as a state sponsor of terrorism in 1993, thus restricting government money from going to the regime.

<sup>44</sup> Executive Order 13067 prohibits U.S. citizens from engaging in the import or export of most goods to or from Sudan, with an exception for humanitarian goods, and prohibits loans or credits to the government of Sudan; "Sudan: Economic Sanctions", Congressional Research Service, updated 11 October 2005. However, a significant exception to these sanctions is the exemption for gum arabic, one of Sudan's primary exports. This exemption was created in 2000 as a result of significant pressure from U.S. importers. Gum arabic is a key ingredient in soft drinks, candy, ink and pharmaceuticals.

<sup>45</sup> The Sudan Divestment Task Force, an advocacy organisation, recommends that: "Companies which, either directly or through an affiliated instrumentality, provide services clearly dedicated to social development for the whole country shall be excluded from divestment". "The Targeted Divestment Model", Sudan Divestment Task Force, available at <http://www.sudandivestment.org/position.asp#model>. For more information on the divestment campaign in the U.S. and companies that are suggested for divestment, see <http://www.sudaninvestment.org>.

<sup>46</sup> As reported by the office of William Payne, a New Jersey state legislator and the Genocide Intervention Fund, "Doing

the city of Philadelphia and various educational institutions such as American University have adopted targeted Sudan divestment. Legislation is pending in a number of states. TIAA-CREF, the largest U.S. private pension fund, is also involved in the divestment campaign. This campaign should be encouraged, including by naming and shaming companies, and copied in other countries. Potential European trade sanctions and divestment would be even more significant were they to be broadly implemented. Divestment, like sanctions, should, however, be subject to exceptions on humanitarian grounds.

## B. MILITARY OPTIONS

The international community has military alternatives, short of the non-consensual deployment of ground troops, that could both cause the NCP to re-evaluate its policies and immediately increase security for the people of Darfur.<sup>47</sup>

### 1. Build AMIS capacity

Until UN deployment is a reality, Darfur residents will depend on AMIS for protection. However, that force is under-resourced and ill-equipped to handle the security challenges and political responsibilities. With the rebel groups that have not signed the DPA mobilising their fighters and raiding, the government pursuing a major offensive and humanitarian agencies withdrawing from unstable areas, civilians are increasingly vulnerable. AMIS also has been unable to fulfil its new role of overseeing implementation of the DPA.

NATO, EU and UN aid has not been sufficiently generous, only in part due to Sudanese resistance and the AU's reluctance to relinquish command and control. Secretary-General Kofi Annan, in his report of 28 July 2006, outlined how the UN could improve AMIS's capacities.<sup>48</sup> Security Council Resolution 1706 authorised the UN to move forward, including by "provision of air assets,

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good by voting with your dollars", *International Herald Tribune*, 23 April 2006.

<sup>47</sup> A further military option, already discussed – critically – in Section III.A.3 above, would be a naval blockade on oil shipments from Sudanese ports.

<sup>48</sup> "Report of the Secretary-General on Darfur", S/2006/591, 28 July 2006. Kofi Annan's special representative (SRSG) in Sudan, Jan Pronk, recently said: "I don't expect the government to accept a UN transition any time soon. The international community should instead push for the African Union's mission to be prolonged and reinforced". Associated Press, 29 September 2006. Pronk is correct about the importance of strengthening AMIS but it would be a mistake to back off efforts to deploy the larger and more robust UN force which is needed as quickly as possible to undertake tasks that even an improved AMIS would be unable to perform.

ground mobility package[s], training, engineering and logistics, mobile communications capacity and broad public information assistance".<sup>49</sup> Nevertheless, the AU and UN have thus far agreed on only limited UN support to AMIS, in part because the AU fears losing control of the mission.<sup>50</sup>

The AU announced on 25 September that it would expand AMIS from 7,000 to 11,000. If significant air assets, surveillance capacity and ground-to-air communications are made available by NATO or other countries, they could greatly assist the mission to stabilise Darfur<sup>51</sup> but many of its difficulties result from AU political weakness and unwillingness to penalise either the government or the rebels for repeated violations. To become as effective as possible, the AU should immediately:

- bring AMIS up to its new manpower ceiling, per the Concept of Operations (CONOPS) approved by the AU Military Staff Committee but left unresolved at the PSC meetings of 27 June and 20 September.<sup>52</sup> The CONOPS sets out the expansion as envisioned in the DPA, including through deployment of several thousand additional troops and establishment of an attack helicopter squadron;
- reinstate the DPA non-signatories to the Ceasefire Commission (CFC) and the Joint Commission (JC) so that the CFC can effectively investigate violations and non-signatories will no longer treat AMIS as aligned with Khartoum;<sup>53</sup> and

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<sup>49</sup> Security Council Resolution 1706, 31 August 2006.

<sup>50</sup> The AU accepted a package of UN aid, which includes deployment of 105 military, 48 civilian staff and 33 UN police, who will be operationally under AMIS command, but not the support authorised by Resolution 1706 nor some of the other robust elements recommended in the Secretary-General's report. Crisis Group interviews, September 2006.

<sup>51</sup> For further discussion on specific steps needed to improve AMIS capacities, see Crisis Group Report, *To Save Darfur*, op. cit.

<sup>52</sup> The CONOPS document, however, should not be formally adopted as it commits AMIS troops to fighting against DPA non-signatories. The PSC Communiqué of 20 September 2006 requests that AMIS be enhanced on the basis of the CONOPS, but stops short of actually approving the CONOPS.

<sup>53</sup> In August 2006 the AU, at the request of the government, expelled the representatives of JEM and SLA/AW from all levels of the CFC and JC. The non-signatories have protested fiercely, with some factions threatening AMIS on the ground. While Ambassador Konare, the chairperson of the AU Commission, stated in his September report to the PSC that "a CFC composed solely of them [the signatories] does not achieve the objective of the Commission", the AU PSC Communiqué does not call for the reinstatement of the non-signatories. Meanwhile, the JEM and SLA/AW CFC representatives who were members of the Military Observer teams are still waiting in El Fasher for a final decision. The CFC is unable to function

- with UN help and by taking punitive measures as discussed above, pressure the government to remove restrictions and stop the delays that are greatly lessening AMIS effectiveness.<sup>54</sup>

An expanded and more effective AMIS would be a critical step towards improved civilian protection in Darfur but not a suitable long-term replacement for a larger UN mission – notwithstanding the recent suggestion by SRSG Pronk. AMIS still operates with a limited mandate that does not explicitly authorise the use of force to protect civilians. The AU relies exclusively on external support for its mission, inhibiting its ability to do effective long-term planning, and continues to face considerable challenges in command and control and troop training.<sup>55</sup> Though organisationally it has already expanded its peacekeeping capacity considerably through the Darfur mission, it still lacks the expert personnel that the UN would bring in. The AU accepted the transition to the UN in January 2006 in partial recognition of its own limitations. As laudable a goal as building AU peacekeeping capacity is, Darfur requires a more effective international response as soon as possible, which can best be provided through the UN force authorised in Resolution 1706.

## 2. Create and enforce a no-fly zone

One of the most straightforward, and still limited, military options would be to create and enforce a no-fly zone (NFZ) over Darfur, building on the ineffective ban of offensive military flights mandated by the Security Council in Resolution 1591 (2005).<sup>56</sup> Despite that Chapter VII

resolution and Khartoum's additional commitment in the DPA to cease hostile military flights, no effective system of surveillance or airport monitoring has been put in place, and aerial attacks have continued, presently involving Antonovs and helicopter gunships that carry out strikes in North Darfur and eastern Jebel Marra. The Ceasefire Commission (CFC) established under the DPA has been unable even to comment on these most recent attacks, as it has been paralysed since the expulsion of the non-signatories.

The Security Council should authorise immediate planning for an NFZ. If there is not an early change in Khartoum's policy, the Council should then request NATO to lead in implementing the NFZ.<sup>57</sup> As the UN Panel of Experts recommended in its April 2006 report, the NFZ should include an enforced ban on all government flights, not solely those deemed "offensive".<sup>58</sup> If the Security Council is unable to agree on a new resolution, capable member states should be prepared to act in its stead to build on the decision that was taken in Resolution 1591. France and the U.S., with their assets in Chad and Djibouti respectively, are well-placed to provide the foundation for such a mission but would require help from other NATO members.<sup>59</sup>

Contingency planning is needed for this alternative scenario even as an attempt is made through the Security Council, but Paris and Washington also need to reconcile their policy differences on Sudan to facilitate cooperation. France is deeply concerned about the stability of the entire region and safeguarding both Chad and the Central African Republic against the destabilising effect

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properly, with a backlog of 90 violations that have gone uninvestigated because the DPA signatories refuse to discuss at CFC meetings any violations reported by non-signatories. Crisis Group interviews, August-September 2006. "Report of the Chairperson of the Commission on the Situation in Darfur", PSC/MIN/2(LMXIII), 18 September 2006.

<sup>54</sup> These include the night curfew, denial of AMIS personnel access to the El Fasher airport after six pm, and the non-release of communications equipment from customs. Ibid.

<sup>55</sup> See Crisis Group Briefing, *The AU's Mission in Darfur*, op. cit.; and Crisis Group Report, *To Save Darfur*, op. cit.

<sup>56</sup> Resolution 1591 "demands" that the government "immediately cease conducting offensive military flights in and over the Darfur region, and invites the African Union Ceasefire Commission to share pertinent information as appropriate in this regard with the Secretary-General...or the Panel of Experts". According to the Panel of Experts, "offensive" military overflights include: 1) "Overflight in pursuit of a specific military objective which is undertaken for purposes other than defending the aircraft from a clear and imminent threat"; 2) "Use of the aircraft to achieve military advantage disproportionate to that required to neutralise a clear and imminent threat"; 3) "Unprovoked attack with aircraft, such as strafing or bombing a village"; 4) "Use of aircraft in support of offensive ground operations"; 5) "Retaliatory attack, i.e., action in response to a prior attack"; 6) "Flights that deposit

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troops participating in an imminent offensive operation"; and 7) "Operation of the aircraft in a manner to intimidate or harass, for example flying mock attack runs, frightening children and animals, destroying buildings with rotor wash, sonic booms, etc.". "Report of the Panel of Experts established pursuant to paragraph 3 of Resolution 1591 (2005) concerning the Sudan", S/2006/65, 30 January 2006, para. 264.

<sup>57</sup> There is concern that if an NFZ were enforced, Khartoum might respond by escalating its actions on the ground against civilians, not unlike what happened in the initial days of NATO's actions in Kosovo in 1999. Crisis Group interviews, September and October 2006. That is a risk that would need to be carefully weighed but the international community must not allow itself to be blackmailed if it decides to enforce a decision that the Security Council took a year ago.

<sup>58</sup> "The Security Council should consider establishment of an air exclusion zone (no-fly zone) over the entire Darfur region for all Government of the Sudan aircraft". Second Report of the Panel of Experts established pursuant to paragraph 3 of Resolution 1591 (2005) concerning the Sudan, S/2006/250, 19 April 2006, Article 177.

<sup>59</sup> France currently has limited air capacity in Chad, including four Mirage F1 fighter planes, two Transall C160 logistics and in-flight refueling planes, and a non-permanent KC 135 supply plane. Crisis Group correspondence, September 2006.

of the Darfur crisis, while the U.S. is focused more narrowly on ending the violence in Darfur.

Effective, 24-hour monitoring of government aircraft, including helicopters, would require at least four to six Airborne Warning and Control Systems (AWACS)<sup>60</sup> and Joint Surveillance Target Attack Radar System (JSTARS) planes.<sup>61</sup> These could potentially be deployed from the U.S. airfield in Djibouti, supported by in-flight refuelling tankers from Chad. Enforcing the NFZ would require a squadron of twelve to eighteen Harrier fighter aircraft,<sup>62</sup> with a forward operating base in Chad at the French airfield in Abeche, that could force aircraft to land, shoot them down or disable their runways. Support planes for supply and in-flight refuelling and substantial personnel for maintenance, logistics, security and intelligence would also be needed.<sup>63</sup> The airstrip and hangers in Abeche and the N'Djamena airport would require upgrades that likely only the U.S. military has the capacity to do rapidly. Intelligence coordination with AMIS in Darfur and the UN force assisting implementation of the CPA in southern Sudan (UNMIS) would also be needed.

### 3. Deployment of a Rapid Reaction Force to Eastern Chad

A rapid-reaction force of 3,000-5,000 deployed to eastern Chad with that government's consent could complement the NFZ operation, help limit cross-border attacks and worry Khartoum that it might become the core of a larger ground force tasked with a mission of non-consensual deployment.<sup>64</sup> It might be drawn initially from existing French assets and would build on Resolution 1706, which calls for UNMIS to establish a presence in "key locations" in Chad. That resolution tasks UNMIS "to monitor trans-border activities of armed groups along the Sudanese borders with Chad and the Central African Republic in particular through regular ground and aerial reconnaissance activities".<sup>65</sup>

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<sup>60</sup> NATO (U.S., UK and French) AWACS planes are E-3 or modified 707/C-135's.

<sup>61</sup> AWACS monitor air movement to a distance of 400 km, while JSTARS, which give radar coverage for ground movements, could monitor Darfur's airports and helicopters attacks.

<sup>62</sup> Harriers, used by the French military and U.S. Marines, are ideally suited to operate from eastern Chad because they can take off and land on a relatively short airstrip, such as the one in Abeche.

<sup>63</sup> Crisis Group interviews, Western military experts, September 2006.

<sup>64</sup> UN Security Council Resolution 1706, 31 August 2006, Article 8(e).

<sup>65</sup> Resolution 1706 calls for UNMIS "to monitor transborder activities of armed groups along the Sudanese borders with

Given adequate satellite imagery and strike-capabilities, such a force could secure the Chad-Sudan border and, if there were political will, provide the capacity to respond in real time to attacks against civilians in Darfur beyond the possibilities of AMIS to deal with. It could also serve as a forward force for eventual full UN deployment.<sup>66</sup> President Idriss Deby has expressed willingness to accept a border force in the past and might also be amenable to an NFZ operation.<sup>67</sup>

A force in Chad, however, could be expected to restrict the movement of Darfur rebels who have been using that country as a rear-base. Without a balancing deployment in Darfur affecting the Sudanese army's movement, it might tip the military balance further in favour of Khartoum. It would also have implications for Chadian politics, strengthening Deby against rebel groups with whom he has refused to negotiate.<sup>68</sup> Moreover, the window for the force's deployment may be rapidly closing. Those Chadian rebels are increasing their activity in the east of the country; a successful coup would likely usher in a government supportive of and partly engineered by the NCP.

### C. REVIVING THE POLITICAL PROCESS

The DPA was to have brought peace to Darfur but its process was deeply flawed. The international community imposed a format not conducive to serious negotiation, with an array of bystanders who lent an atmosphere to proceedings more that of a townhall meeting than a serious conflict resolution forum. The rebels, courted by

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Chad and the Central African Republic in particular through regular ground and aerial reconnaissance activities".

<sup>66</sup> Resolution 1706 gives the expanded UNMIS force responsibilities in Chad and envisages a multi-dimensional presence there. Discussion is ongoing among the Security Council, the Secretariat, UN agencies and the Chad government about how to secure the volatile eastern border area. The UN High Commissioner for Refugees (UNHCR) is negotiating a protocol with Chad to hire an additional 75 gendarmes for protection of humanitarian agencies, particularly in the Goz Beida and Guereda areas. A plan for internationals to monitor and train Chad gendarmes in and around the camps was under discussion but recently stalled. Crisis Group interviews, Chad, August 2006; Crisis Group correspondence, July-August 2006.

<sup>67</sup> Crisis Group interview, Chad, June 2006.

<sup>68</sup> In June 2006, under international pressure, Deby agreed to a national dialogue to resolve internal political dissension. He refused, however, to allow the armed opposition to take part, and two main political opposition groups, the Coordination of Political Parties for the Defence of the Constitution (CPDC) and the Federation Action for the Republic (FAR), pulled out before it opened in July, effectively ending the exercise. "Opposition snubs Deby's long-awaited national dialogue", IRIN, 28 July 2006.

the multitude of observers, advisers and facilitators, felt no need to negotiate seriously, preferring that, as more than one said, “the international community soften the government for us”. Khartoum also was not displeased to see proceedings drag out. When the head of the AU mediation, Salim Ahmed Salim, sought to substitute more effective procedures, the rebels threatened to walk. The international representatives, themselves a disparate, uncoordinated group, failed to back him up, only to demand at the eleventh hour an agreement, almost any agreement, “now, immediately”. The result was a document too long, complicated and ambitious – and with too little support among either the insurgent groups or the general population of Darfur.<sup>69</sup>

That DPA is now all but dead. The appointment of Minni Minawi as Special Assistant to the President (al-Bashir) on 27 August has been overshadowed by ongoing fighting and lack of implementation in virtually every other area. There has been a total failure to establish any effective monitoring or compliance with the DPA by the AU and its international partners, beyond the monthly “DPA Monitor” published by UNMIS. Violations by the parties are not surprising – they have violated every agreement signed in Darfur, and the DPA was accepted by only one of the three main rebel groups.<sup>70</sup> More surprising is the collapse of international efforts to find a political solution to the conflict. The international partners in the Abuja negotiations tried for a month after signature to convince the others to join but enticed only a few individual leaders from the SLA/AW and JEM factions to sign a “declaration of support for the DPA”.<sup>71</sup>

Since then, the AU and the broader international community have essentially ignored the political process. The situation is complicated by splits and regrouping among the non-signatories<sup>72</sup> and the NCP’s refusal to consider re-

opening the DPA. The NCP declared those who did not accept that agreement “terrorists” and forced the AU to remove them from the Ceasefire Commission (CFC) and Joint Commission (JC). By complying, the AU further alienated the non-signatories and reinforced their view it is not an honest broker. Aside from calls by Jan Pronk, Kofi Annan’s special representative, for new talks on the DPA, there has been a political vacuum.<sup>73</sup>

International efforts have more recently focused exclusively on security and gaining NCP consent for a UN mission. However, a sustainable solution also requires a political dialogue that gains the buy-in of all parties. The DPA has failed to achieve this, in part because of rebel divisions during the negotiation, in part because essential actors such as traditional leaders, the displaced and women were largely excluded from the talks, and in part because the AU mediation and its international partners in Abuja were more interested in brokering a deal than addressing the conflict’s root causes.

The AU and broader international community should re-engage immediately with the parties to the Abuja negotiations and other key stakeholders in Darfur to establish a new political forum. Without a political alternative, the parties will continue to pursue a military solution. A good first step to facilitate future negotiation would be for the international community to support consolidation of the SLM, the largest rebel movement.<sup>74</sup> The AU should also send an envoy to re-establish formal contacts with the non-signatory groups and reverse its decision to expel them from the CFC and JC. It must remain engaged with these groups – alienating them would simply lead to more war. Finally, the AU should

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<sup>69</sup> The above summary is based on Crisis Group’s own on-the-ground observations at Abuja, described in Crisis Group Africa Briefing N°39, *Darfur’s Fragile Peace Agreement*, 20 June 2006, supplemented by a recent communication to Crisis Group from a senior international organisation diplomatic adviser, 9 October 2006.

<sup>70</sup> See Crisis Group Briefing, *Darfur’s Fragile Peace*, op. cit.

<sup>71</sup> It commits Abdel Rahman Musa Abbakar, Ibrahim Madebo, Commander Adam Salih Abbakar of the SLA/AW, Secretary General of JEM in South Darfur Adam Abdel Rahim Abu Risha, and their followers, to accept the DPA in letter and spirit and implement obligations under the Comprehensive Ceasefire Agreement and related security arrangements.

<sup>72</sup> It is not clear whether the NRF will become a cohesive political force or remain a solely military coalition. In North Darfur, it is fighting under a unified JEM/G-19 command and successfully repelled government forces from Kulkul and Um Sidr in mid-September. A leadership conference has failed to materialise, partly as a result of the recent Chad-Sudan

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rapprochement, while rifts between JEM and G-19 political leadership have been growing. Abdel Wahid’s control over his SLA faction has deteriorated, with some of his troops accepting Ahmed Abdelshafie as chairman. The G-19 and Abdelshafie’s faction want, and Abdel Wahid resists, an SLA workshop and conference to unite leadership before an NRF conference. Crisis Group interviews, NRF leaders, August-September 2006.

<sup>73</sup> Though behind schedule, the AU has recently taken some tentative steps to launch the Darfur-Darfur Dialogue and Consultation (DDD-C), which was envisioned as the second stage of the peace process that would facilitate broader buy-in of the DPA and deal with core unresolved issues such as land ownership and grazing rights. However, such efforts cannot succeed in the current context in Darfur, where there is no trust between the parties, no evidence of implementation of the DPA or good faith by the government, and increased insecurity. If they are rushed for the sake of demonstrating implementation, the result will be yet another counter-productive NCP-orchestrated “tribal reconciliation conference” that has no impact on the ground.

<sup>74</sup> See Crisis Group Africa Briefing N°32, *Unifying Darfur’s Rebels: A Prerequisite for Peace*, 6 October 2006.

reconvene the parties to the Abuja talks and other critical actors to review implementation problems and provide a forum in which the non-signatories and previously excluded stakeholders can discuss their objections to the DPA and seek to resolve them. To build broad support for a revised agreement, a renewed peace process will require extensive, ongoing consultation with and dissemination of information to the general population.

#### D. SUPPORTING THE INTERNATIONAL CRIMINAL COURT INVESTIGATION

The ICC investigation, authorised by the Security Council in Resolution 1593 (2005), is a contributory reason why the NCP is wary of UN deployment in Darfur. It worries that the troops would create a more stable environment for the Office of the Prosecutor (OTP) to work in and that a part of their mission would be, or would become, to arrest those against whom indictments were handed down.<sup>75</sup> Though some 10,000 UN troops are already in-country to assist in implementing the CPA (UNMIS) – which on the face of it undercuts Khartoum’s new anti-UN position – the fear seems to be that the presence of an additional 20,600 in Darfur itself could also make more resources available to assist the investigation.

Since its initial public denunciation of the ICC,<sup>76</sup> Khartoum has become more subtle in its lack of cooperation, dragging out responses to requests for documents and access to witnesses but avoiding public confrontation with the Court.<sup>77</sup> Darfur’s insecurity has worked in the NCP’s favour: the lack of effective security infrastructure to protect witnesses and ICC staff has meant that no one from the Court has been able to visit possible sites of

mass graves or gather testimony from many potential witnesses. The government has been setting up its own special courts so it can claim it is already dealing appropriately with the crimes, though these have been ineffective and no one of substance has been arrested. It is also holding reconciliation conferences between affected communities in an attempt to show that previously warring groups are now settled and at peace.<sup>78</sup>

A recurring issue in the case of ongoing conflicts such as Darfur, as distinct from concluded ones, is whether prosecutions of even major perpetrators of atrocity crimes should be suspended or abandoned, or amnesties granted,<sup>79</sup> in the interests not of justice but of peace – in particular to avoid major further loss of life. Nigeria’s initial grant of asylum to Liberia’s murderous Charles Taylor in 2003 is a good, if controversial, example of such reasoning; the current debate over whether the equally barbarous Joseph Kony and other senior LRA leaders in Northern Uganda should be given immunity from ICC prosecution to encourage their emergence from the bush is another, but where the case for immunity seems much less strong.<sup>80</sup> The downside risk of these situations is that the more the ICC’s work is perceived as “negotiable”, the more its role as a deterrent of atrocity crimes is undermined, along with the important principle that those with greatest responsibility for such atrocities should be held accountable.

Certainly this means that serious consideration should be given to discontinuing investigations under way or granting formal amnesties only in the most exceptional cases, where the evidence really is clear that very major peace benefits are involved. And it also means that if decisions to give primacy to peace over justice do have to be made in certain hard cases, those decisions are best made not by the Court or its prosecutor but by those with appropriate political responsibility: with regard to the ICC, the Security Council has that power, if it chooses to use Article 16 of the Rome Statute enabling it to suspend prosecutions for renewable periods of twelve months.<sup>81</sup>

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<sup>75</sup> In a statement released after the vote on Resolution 1706, the UK representative, Karen Pierce, acknowledged that the Security Council had drafted the resolution to be as acceptable to the Sudan as possible, including no reference to the ICC.

<sup>76</sup> Sudan immediately rejected Security Council Resolution 1593, which referred the Darfur file to the ICC; President al-Bashir stated that Sudanese nationals would never be tried by an international court. “Darfur war-criminals suspects won’t go to ICC, government says”, IRIN, 4 April 2005.

<sup>77</sup> The OTP has conducted four missions to the Sudan since the referral, including in August 2006, when two senior government officials are reported to have been interviewed. In addition, the prosecutor has reportedly transmitted a detailed set of requests to the government for access to documents and further interviews of military and civilian officials. However, the responses appear to have been minimal and slow. It is the review of the government’s reaction to these requests that will be used by the Security Council to assess the extent of cooperation in the next report by the prosecutor to the Council, in December 2006. Crisis Group correspondence and interviews, September 2006.

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<sup>78</sup> See “Lack of conviction: The Special Criminal Court on Events in Darfur”, Human Rights Watch Report, 8 June 2006.

<sup>79</sup> Amnesties granted by a state are not binding on the ICC but may have the practical effect of ensuring that it cannot arrest those against whom it has issued arrest warrants while they are under the jurisdiction of that state.

<sup>80</sup> Crisis Group Africa Briefing N°41, *Peace in Northern Uganda*, 13 September 2006.

<sup>81</sup> See “Justice, Peace and the International Criminal Court”, presentation by Crisis Group President Gareth Evans to the Second Public Hearing of the Office of the Prosecutor, The Hague, 25 September 2006, available at <http://www.crisisgroup.org/home/index.cfm?d=44318d=1>; also, Nick Grono, “Confronting the Atrocities in Darfur”, AllAfrica.com, 26 July 2006.

In the case of Darfur, some may be tempted to argue that senior NCP and government officials should be promised amnesties in return for cooperation. But this is not a situation where it is easy to see a direct and major benefit to peace in return for the trading away of justice. Khartoum's record of broken promises is cause for great scepticism about any cooperation promised in the future, and it is strongly arguable that the current ICC investigation, difficult though it has been to pursue, and the possibility of prosecutions ultimately flowing from it, help build pressure on the NCP to recalculate the costs of defying the international community. What is more, accountability for atrocities in Darfur will continue to be a necessary cornerstone for any sustainable peace agreement in the region.

In this context, the international community should avoid any inclination to halt the legal process and should instead increase cooperation with the Court: the U.S., UK and others, for example, should provide intelligence, while the AU and UN should expand their assistance on witness protection as well as information sharing.<sup>82</sup> The OTP itself needs to take a harder line with the government, formally requesting relevant documents, insisting that the government provide access to sites and security of witnesses and otherwise becoming more assertive about the roadblocks in the way of its investigation,<sup>83</sup> as well as reporting failures to assist to the Security Council.<sup>84</sup>

All that said, it may be wise for the OTP, given the practical difficulties it will no doubt continue to face on the ground in pursuing past alleged crimes, to place particular emphasis on the future, warning Khartoum – with the strongest possible support from the international community – that it will be held accountable for any further atrocities, and for the Prosecutor to state clearly that crimes

committed during the current offensive will be unequivocally subject to ICC prosecution. The worst thing to happen would be for the impression to catch on in Khartoum that the international community was simply not serious about eliminating impunity for the most senior perpetrators of the most serious war crimes and crimes against humanity.

#### IV. NON-CONSENSUAL MILITARY INTERVENTION

World leaders at the UN Summit in October 2005 recognised the international community's "responsibility to protect" populations from genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>85</sup> Each sovereign state has the primary duty to protect its own citizens; when it refuses or is otherwise unable to do so, the international community is required to act. While the responsibility to protect is often loosely discussed solely in terms of military intervention to end conflict, the doctrine covers a much wider spectrum of responses – both non-coercive and coercive – over the whole continuum of conflict response, from prevention to reaction to rebuilding.

What Darfur has suffered for three years, and the record established by Khartoum in that period, clearly justify invocation of the doctrine. Indeed, Darfur is a test-case of whether the international community is prepared to translate its political commitment into effective action.<sup>86</sup> The response to date has been extremely disappointing. Little was done to prevent the war and most reactions have been weakened by lack of consensus<sup>87</sup> or negated

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Repeated suspensions of a prosecution would amount to a de facto amnesty, which over time might encounter objections from some Security Council members.

<sup>82</sup> Failure to mention the ICC in Resolution 1706 and the signals of division and equivocation on the issue among Security Council members have not been helpful to the Court.

<sup>83</sup> These documents include those that "might appear relevant to the commission of crimes", such as minutes from local and state-level Security Committee meetings from each of the three Darfur regions, flight records and orders of the central military authorities. Antonio Cassese, "Observations on issues concerning the protection of victims and the preservation of evidence in the proceedings on Darfur pending before the ICC", ICC-02/05, 25 August 2006, p. 10.

<sup>84</sup> For details on the challenges faced by the OTP in conducting the Darfur investigation and its response, see "Response of Prosecutor to Cassese's Observations on Issues Concerning the Protection of Victims and the Preservation of Evidence in the Proceedings on Darfur Pending before the ICC", 11 September 2006, available at <http://www.icc-cpi.int/organs/otp>.

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<sup>85</sup> This doctrine was the culmination of policy deliberation undertaken at the request of the Secretary-General by the International Commission on Intervention and State Sovereignty (ICISS) and subsequently by the UN High Level Panel on Threats, Challenges and Change. The responsibility-to-protect doctrine was included in the World Summit Outcome document and endorsed by the Security Council. See General Assembly Resolution 60/1, "2005 World Summit Outcome", 24 October 2005; Security Council Resolution 1674, 28 April 2006; "The Responsibility to Protect", International Commission on Intervention and State Sovereignty, Ottawa, 2001; and "A More Secure World: Our shared responsibility", UN High Level Panel on Threats, Challenges and Change, A/59/565, New York, 2004.

<sup>86</sup> Resolution 1706 (31 August 2006) specifically cited paragraphs 138-139 of the World Summit document dealing with responsibility to protect and indeed was the first country-specific resolution of the Security Council to invoke the doctrine.

<sup>87</sup> For example, Khartoum certainly derived encouragement from the fact that Security Council Resolution 1706 was not unanimous: two permanent members, China and Russia, abstained, as did Qatar.

by the NCP. Now the situation is again deteriorating dramatically and the Sudanese government is unwilling to act in the best interests of its citizens, continuing to resist a peaceful UN deployment. All the measures discussed above fall within the range of possible steps to be taken in fulfilment of the responsibility to protect. Most are wholly non-military in nature; and those involving some form of military presence are either premised on the consent of the Sudanese government, or – as in the case of a properly established no-fly zone – involve only very limited potential incursions on Sudanese sovereignty.

The question needs to be addressed, however, whether at this stage the situation is so grave as to justify, if Khartoum's resistance continues, the most extreme exercise of the international community's responsibility to protect – namely, a major military “humanitarian intervention”, involving here the deployment, against Khartoum's will, of the significant international force envisaged by Resolution 1706.<sup>88</sup> If such a case is to be made to the Security Council, there are five criteria of legitimacy which need to be satisfied.<sup>89</sup> How do those criteria apply to the current situation in Darfur?

**Seriousness of Threat: Is the threatened harm to state or human security of a kind, and sufficiently clear and serious, to justify prima facie the use of military force? In the case of internal threats, does it involve genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law, actual or imminently apprehended?** In the early stages of the Darfur conflict this criterion was unquestionably satisfied;<sup>90</sup> it is probably met again now and certainly would be if the African Union force were to leave and no UN force replace it. The security and humanitarian situations have worsened dramatically over the past year, especially after the DPA was signed. Humanitarian

access is the lowest since 2004.<sup>91</sup> Attacks against civilians, UN and NGO staff have increased dramatically, with violent deaths in 2006 up nearly 400 per cent over the same period in 2005.<sup>92</sup> Both the non-signatory rebel groups and the government seek to resolve the crisis through military action.<sup>93</sup> Janjaweed fighters are being incorporated into military convoys.<sup>94</sup> Aerial bombardment of villages by the government, a hallmark of earlier campaigns against the population, has resumed.<sup>95</sup> And there are disturbing echoes of Srebrenica, as the NCP flirts with expelling AU forces while building up its troop presence.

**Proper Purpose: Is it clear that the primary purpose of the proposed military action is to halt or avert the threat in question, whatever other purposes or motives may be involved?** The short answer is “yes”. International interest in Darfur, a region bereft of natural resources or obvious strategic value, is undoubtedly primarily humanitarian. Though the initial international reaction was slow and can be criticised on many levels, awareness of the ethnic cleansing campaign in 2003-2004 eventually triggered a humanitarian operation that saved hundreds of thousands of displaced civilians. The NCP consistently seeks to alter the terms of debate. With tight local media restrictions in place for the first two years, it argued domestically and in the Arab world that international interest was a Western or Zionist plot against Islam. With the UN and AU it argued the conflict was primarily tribal and minimised its own role in the death and destruction. Nevertheless, UN and AU responses have acknowledged the situation's gravity and the NCP's central responsibility for it. The Arab League offer to fund AMIS can also be interpreted as implicit recognition an international peacekeeping presence is needed.

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<sup>88</sup> Calls for such action, with or without Security Council approval, are becoming louder: see for example Susan E. Rice, Anthony Lake and Donald M. Payne, “We saved Europeans. Why not Africans?”, *The Washington Post*, 2 October 2006; Ian Davis, “Taking responsibility seriously”, *www.guardian.co.uk*, 16 September 2006.

<sup>89</sup> These criteria were established by the ICISS, (“The Responsibility to Protect”, op. cit.) and endorsed by the UN High Level Panel on Threats, Challenges and Change (“A More Secure World: Our Shared Responsibility”, op. cit.) and by the Secretary-General in his own report to the 2005 World Summit (“In Larger Freedom: Towards Development, Security and Human Rights for All”, A/59/2005, 21 March 2005).

<sup>90</sup> The International Commission of Inquiry on Darfur determined in January 2005 that massive crimes against humanity had taken place in Darfur; in September 2004 the U.S. State Department, in its report “Documenting Atrocities in Darfur”, concluded that the events there constituted “genocide”.

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<sup>91</sup> “Humanitarian efforts in Darfur jeopardised by aid workers' deaths”, UN Office for the Coordination of Humanitarian Affairs (OCHA), press release, 7 August 2006. The World Food Programme reported that violence was preventing food aid from reaching over 350,000 people in North Darfur; “Annan again seeks Darfur intervention”, *The Washington Post*, 11 September 2006.

<sup>92</sup> “Summary of Insecurity Incidents February-July 2006 versus February-July 2005”, UN OCHA, 1 August 2006.

<sup>93</sup> Crisis Group interviews, Chad, August 2006. Craig Timberg, “Sudan's offensive comes at key time”, *The Washington Post*, 5 September 2006.

<sup>94</sup> Crisis Group interviews, Chad, August 2006. Crisis group interview, AMIS, September 2006. NRF rebel commanders reported large movements of Janjaweed, on horseback and in vehicles, in August 2006 between Tine and Kornoi, in the lead-up to the army's offensive. During that offensive, Janjaweed were reportedly incorporated into army columns and used heavy weapons.

<sup>95</sup> During the week of 28 August 2006, the villages of Abu Sidak, Turra, Kulkul and Sayeh were bombed. Several civilians died in these attacks and thousands fled to camps for displaced persons. “Stop bombing North Darfur villages – former rebels”, IRIN, 7 September 2006; Crisis Group interview, AMIS, September 2006.



**Last Resort: Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing other measures will not succeed?**

At this stage the answer has to be “no”. Much more still can and should be done by the international community before non-consensual military intervention is considered. Most of the diplomatic activity to date has involved little more than issuing statements without concrete follow-up. It is not surprising the NCP doubts international resolve. As described in the preceding section, a number of options still exist which, if applied resolutely, could well persuade the NCP to consent to the necessary UN deployment.

**Proportional Means: Are the scale, duration and intensity of the proposed military action the minimum necessary to meet the threat in question?**

The short answer is “yes”. Any military intervention would be narrowly concentrated on protecting civilians and halting lawlessness and impunity in Darfur, not imposing regime change, and would, therefore, be relatively limited in scope. While there has been no public discussion of what would be required, the general consensus among experts is that somewhere between 40,000 and 50,000 troops would be needed to take and hold Darfur against anticipated resistance – at least double the number of personnel required if their presence was consensual.<sup>96</sup>

**Balance of Consequences: Is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction?**

This is by far the hardest criterion to satisfy in the particular circumstances of Darfur. (That it may not be able to be satisfied, now or in the future, does not mean that the “responsibility to protect” concept would be rendered irrelevant: just that it might have to be implemented here by means falling short of full-scale coercive military intervention.<sup>97</sup>) A non-consensual deployment would be desperately difficult for a number of reasons, and the overall security situation for civilians in the region could well worsen.

First, it would be logistically extremely challenging for a non-consensual force to operate in Darfur, which is landlocked and has poor air infrastructure. Supply would be expensive and arduous.<sup>98</sup> Secondly, there would be a

big risk to civilians ahead of the arrival of any large international protective force, with basically a hostage population of more than two million sitting defenceless in large concentrations. Thirdly, there would be the risk to civilians from the inevitable collapse of humanitarian relief operations if a non-consensual intervention occurred. Fourthly, the existing UNMIS force and implementation of the CPA would unquestionably be jeopardised: the implementation of the North-South peace agreement, bringing to a conclusion a decades-long conflict which killed and displaced many more people than even Darfur, is fragile at best.<sup>99</sup> Fifthly, a persistent insurgency campaign is possible, not least in circumstances where a UN mission takes place as a primarily Western-backed enterprise probably needing to have a significant number of white, non-Muslim personnel.<sup>100</sup>

Even if all five stated criteria were satisfied, and the Security Council persuaded to authorise a non-consensual military intervention, the further question would arise as to where the necessary personnel would be found. The resources of the NATO countries and their allies are stretched thin by commitments in Afghanistan, Lebanon and Iraq, while any such deployment would, as just stated, play directly into the NCP’s anti-Western and anti-imperialist rhetoric. Some traditional UN troop contributors such as Bangladesh, Pakistan and India have been lukewarm about the responsibility-to-protect doctrine. And both African Union and Arab League states could be expected to be reluctant about sending troops against Sudan’s express opposition.

## V. CONCLUSION

Diplomatic efforts to persuade Khartoum to accept the UN deployment should continue to be pursued – not least by African Union and Arab League countries – but unfortunately there can be few grounds left for optimism that they will succeed. Given the difficulties involved in contemplating full-scale non-consensual military intervention

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available. The only other option would be southern Sudan. This would be expensive and likely produce a break between the SPLM and NCP.

<sup>99</sup> A senior NCP official, Amin Hassan Omer, threatened that the ruling party would cancel the CPA if there was a military confrontation with the UN in Darfur. “SPLM accuses the ruling party of violating peace deal”, *Sudan Tribune*, 27 September 2006.

<sup>100</sup> On 23 April 2006 an audiotape attributed to al-Qaeda leader Osama bin Laden urged fighters to prepare to struggle against Western forces in Darfur. It also rejected the CPA and denounced the government of Sudan (NCP) for failing to implement Islamic Sharia law and losing southern Sudan. A translated text is at [http://dehai.org/archives/dehai\\_news\\_archive/mar-apr06/0519.html](http://dehai.org/archives/dehai_news_archive/mar-apr06/0519.html).

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<sup>96</sup> See Crisis Group Briefing, *The AU’s Mission in Darfur*, op. cit.

<sup>97</sup> This and related points are further developed in Gareth Evans, “A Rule-Based International Order: Illusory or Achievable?”, 2006 CUNY Rustow Memorial Lecture, 19 September 2006, available at <http://www.crisisgroup.org/home/index.cfm?id=4389&l=1>.

<sup>98</sup> Most supplies for Darfur presently arrive by sea via Port Sudan, which would presumably not be available for a non-consensual intervention. Large-scale supply through Chad (another land-locked country) would be very difficult. Given Libya’s position on Darfur, it would not likely make its ports

if Khartoum continues to refuse the expanded UN mission in Darfur, the international community has little choice but to pursue an action plan based primarily on economic, legal and more limited military measures in order to change the NCP's calculation of costs and benefits with regard to cooperation.

Tough personal and business sanctions targeted at the NCP, in combination with relatively limited but cautionary military actions, including the establishment and enforcement of a no-fly zone as a logical extension of the ban on offensive military overflights that the Security Council established in 2005 but failed to follow up on, are called for, as well as steps to make the ICC investigation more effective. The international community must also correct its grave error in not continuing to pursue efforts to

secure an all-inclusive peace agreement. The DPA has been a failure, and the AU, with U.S., EU and UN support, must now actively resume consultations with all sides, including stakeholders that were not part of the Abuja negotiations, to correct its shortcomings.

However, if the situation continues to deteriorate – if there is further major displacement, humanitarian access is cut off, the government offensive continues and the NCP still refuses to accept a UN peacekeeping mission – the balance of argument in favour of non-consensual deployment, in terms of the relevant criteria of legitimacy, may change. Planning for that contingency should begin.

**Nairobi/Brussels, 12 October 2006**

## APPENDIX A

### MAP OF SUDAN





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