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School of Humanities and Social Sciences

**PROTECTION OF INTERNALLY DISPLACED PERSONS IN
DARFUR
A DILEMMA AND FAILURE OF RESPONSIBILITY TO PROTECT**

A Thesis Submitted to the

Department of Law

**in partial fulfillment of the requirements for the degree of
Master of Arts in International Human Rights Law**

By

Assad Khalid Salih

July 2008

The American University in Cairo
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The American University in Cairo
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ABSTRACT

One of the new emerging debatable topics is protection of Internally Displaced Persons [IDPs] from suppression of their governments. The topic has not been discussed extensively. Writings that discuss protection of IDPs are not extensive and discuss it rhetorically without defining protection mechanisms. This thesis adds to the ongoing discussion by defining and examining these protection mechanisms. It will include the emergence of new concepts like “human security” and “responsibility to protect” which have changed the conceptualization of state sovereignty. The thesis will use Darfur as a case study a place where many scholars contest that “responsibility to protect” has failed. The protection mechanisms include: international and regional human rights bodies, humanitarian assistance, advocacy, rule of law, external intervention and national efforts. The thesis argues that the lack of political will is the major obstacle to protection of IDPs. There are other obstacles identified within each mechanism, mainly because each one has its own internal deficiencies. Protection mechanisms provide efficient protection to IDPs only when the international community shows political will to provide protection. Sudan’s compliance with protection efforts has been crucial in determining their success. The thesis finds that these protection mechanisms vary in terms of providing protection. Some of these protection mechanisms like human rights bodies do not provide tangible protection, and some like advocacy have a negative effect. The conclusion of the thesis is that international community efforts can not replace the states’, and if the state does not take that responsibility then protection will not be adequate. This conclusion comes from the reality that the international community consists of states, which have different interests that states show more concern about than protection of IDPs in Darfur.

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Introduction:

In 2003 while hopes were rising in the Sudan that the ongoing peace process would end one of the longest civil wars in Africa, another conflict erupted, this time in Darfur.¹ Feelings of marginalization and inadequate early preventative interventions made the discontented non-Arab descendants in the region to revolt against the central government. The Sudanese government's response was the same military solution used during the war in the South by arming and allying with certain tribes, mainly Arabs, to fight as proxies. It created conditions which brought to peoples' minds the mass human rights violations perpetrated in Rwanda and former Yugoslavia. These heinous human rights violations committed in Darfur were described by human rights advocates as ethnic cleansing and genocide and caused a humanitarian crisis that was described at the time by the United Nations [UN] officials as the worst in the world.² Darfur challenged both international and regional institutions like the UN and the African Union [AU] to activate the new, yet to be tested, the concept of responsibility to protect, which basically puts responsibility on the international community to protect civilians from heinous human rights violations if their country of origin proves unable or unwilling to provide that protection. Accordingly, the international community and the AU extended efforts to provide protection for Internally Displaced Persons [IDPs] in Darfur, but still their protection proved to be problematic and in need of more efficient and adequate intervention.

¹ Geographically Darfur is located in Western Sudan bordering Libya, Chad and the Central African Republic. It covers an area of 196,404 miles, which is almost 1/5 of the Sudan. See Sudan's prime minister website at <http://www.sudan.gov.sd/ar/artopic.asp?artID=71&aCK=AL>, (last visited Aug. 11, 2007).

² See The UN Responds to the Crisis in Darfur: A Timeline, available at http://www.un.org/News/dh/dev/scripts/darfur_formatted.htm.

A literature review reveals the close connection between “responsibility to protect” and protection of IDPs for whom the concept was formulated.³ IDP protection has been defined as “all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law, i.e., human rights law, international humanitarian law and analogous refugee law.”⁴ Many of the reviewed writings discuss protection rhetorically and in general terms, without discussing in detail mechanisms of protection that need examination. This thesis will combine protection as it has been defined and activities carried out to provide it. These mechanisms have been defined as: international and regional conventions and agreements that were created to safeguard and protect human rights, humanitarian assistance, advocacy for IDPs’ rights and protection, rule of law activities, external intervention in terms of UN enforcement mechanisms and states actions out of the UN system and national efforts presented in peace process and human rights bodies.⁵

This thesis will combine theory and practice by looking at the general literature and previous experiences regarding how protection mechanisms have been applied to the situation in Darfur, which represents one of the most challenging internal displacement crises in the world today in which the international community has been focusing its efforts. The importance of examining the ongoing IDPs’ protection dilemma in Darfur is

³ The concept was initiated as a response to mass human rights violations committee in the 1990s, in which state sovereignty was used as a protection tool against external intervention. Situations initiated the creation of the concept were of an internal displacement nature like the ones in Northern Iraq, Bosnia and Herzegovina and Rwanda.

⁴ Inter-Agency Standing Committee, *Protection of Internally Displaced Persons* 4 (Dec. 1999), available at <http://www.reliefweb.int/idp/docs/references/iascpolicyprotectionpaper.pdf>.

⁵ Many writings about protection mechanisms are fragmented, discussing one or more aspects depending on the background of the writer, and rarely discuss the entire protection mechanisms in one document.

highly appreciated as it represents hope for Darfuri and IDPs elsewhere in the world, or dreadful failure with disappointing consequences that require reevaluation and questioning of the new developing concept of responsibility to protect.

This paper argues that in Darfur, even though the international community has applied different and all protection mechanisms, there is still a lack of adequate protection for IDPs, mainly because of the lack of political will to activate “responsibility to protect” efficiently by the Sudanese government or the international community. In addition, protection mechanisms face internal and external obstacles that make their protection inadequate to address the protection needs. Throughout the thesis, this point will be reiterated in the discussion of protection mechanisms. The mechanisms will be discussed individually to highlight their protection role and obstacles they face.

The thesis will not focus on the technical function of agencies, but on the protection role each mechanism plays, as well as their deficiencies. The thesis will be divided into nine chapters. The first is an introduction to familiarize the reader with background on Darfur and the main causes of the current conflict. It will highlight the fact that the Darfur conflict is not an ethnic one, but driven by other factors mainly marginalization.

The second chapter will introduce protection mechanisms. It will discuss the meaning of IDP protection and its relationship to the development of new the concept of “responsibility to protect.” This chapter will look at the Guiding Principles on Internal Displacement as a framework for protection of IDPs. It will examine situations which the international community and states consider intervention. It will show that lack of political will is the main obstacle to IDP protection in Darfur.

The third chapter will start with a protection mechanism, which is international, and regional human rights mechanisms. The focus of this chapter is on the activities of these mechanisms represented in the UN Council of Human Rights and the African Commission on People's and Human Rights. In addition, courts dealing with human rights issues, like the African Court and International Criminal Court will be part of the discussion. The main point is that this mechanism does not provide tangible protection for IDPs.

The fourth chapter will tackle humanitarian assistance as a tool of protection, discussing its direct and indirect impact on beneficiaries and their protection. This chapter will argue that humanitarian assistance manages to provide limited protection but fails to provide physical protection.

The fifth chapter will examine advocacy and its role in providing protection for IDPs. This chapter will examine the efforts of humanitarian agencies; and advocacy organizations' role and their reflection on protection. The main argument of this chapter is that international advocacy has managed to create awareness of the situation and protection needs, but it has misrepresented the situation in Darfur, which has reflected negatively on IDPs' protection.

The sixth chapter will look at a new concept used by the UN Development Program [UNDP] to restore rule of law in a conflict setting known as the rule of law. This chapter will examine protection provided by activities of the program. The conclusion of this chapter is that restoring rule of law has managed to provide individual, but not collective protection.

Chapter seven will look at humanitarian intervention, Security Council resolutions, UN peacekeeping missions and states actions outside the UN system. The main argument of this chapter is that even though there have been high expectations on military solution, still it has not managed to provide adequate protection.

The eighth chapter will look at national efforts to provide protection through examining the Darfur Peace Agreement, the ongoing peace process, civil society efforts and the governmental human rights bodies. The main argument of this chapter is that national efforts provide little protection.

The last chapter will review how protection has been efficient when the international community and the Sudanese government have show political will to provide protection and how Sudanese government cooperation has been vital to international efforts to provide protection.

I. Outbreak of the Current Conflict in Darfur:

This chapter will be an introduction to the main causes of the current conflict in Darfur. Many sources simplify the current conflict by portraying it as a conflict between Arab and African tribes, attributing the main cause of the current conflict to ethnicity.⁶ However, this chapter argues that various factors that have been interacting for decades caused the outbreak of the current conflict. The ethnic dimension is not denied as it has shaped certain aspects of the current status, but other factors, especially economic ones can not be ignored as main causes of the outbreak of the current conflict.

This chapter will be divided into two sections: the first will introduce Darfur's population. The second will focus on the main causes of the conflict, which have been identified as ecological changes, relationship between communities, marginalization, political instability, governmental policies and feeble international intervention.

A. Population of Darfur:

Darfur translated literally into Arabic means homeland of the Fur, which is the largest and oldest ethnic group in Darfur.⁷ According to the 1955 census there are around 25 tribes originally from Darfur,⁸ and the population is divided ethnically into Arabs and non-Arabs, despite the fact that ethnic boundaries in Darfur are fluid and flexible.⁹

The outbreak of the current conflict has had a massive impact on the population of Darfur. As of July, 2007, almost a third of the Darfur populations who are estimated at

⁶ *Breaking Darfur's stereotypes*, BBC World News (Oct. 13, 2004), <http://news.bbc.co.uk/2/hi/africa/3737566.stm> (last visited Dec., 30, 2007).

⁷ Fur people, Wikipedia, available at http://en.wikipedia.org/wiki/Fur_people.

⁸ James Morton, *A Darfur compendium: A review of the geographical, historical and economic background to the development in the region 17*, Sudan Open Archive (2005 edition), available at <http://sudanarchive.org/cgi-bin/sudan?e=-----1125-10-1-0&a=d&cl=&dl=Dunepd252.26&gpl=26&d=Dunepd252.2>.

⁹ Victor Tanner, *Rule of Lawlessness: Roots and Repercussions of the Darfur Crisis* 5, Sudan Open Archive (2005), available at <http://www.sudanarchive.net/cgi-bin/sudan?a=d&d=Dunepd257>.

6,220,000¹⁰ have been forcibly displaced. There are around 2.2 million IDPs in Darfur,¹¹ and there are more than 200,000 refugees in Chad.¹²

B. Main causes of the conflict:

1. Patterns of relationship:

This section will discuss the relationship between Arab and non-Arab communities, as well as historical events and incidents that have led to the marginalization of Darfuri communities.

Ecological borders are in many cases also ethnic cultural borders,¹³ which is the case in Darfur. Historically the sedentary Fur inhabited the central parts of Darfur, with the Arab nomadic cattle and camel herding groups, respectively, occupying the southern and northern parts.¹⁴

In the past, the relationship between the two ethnic and tribal groups used to be of a cooperative nature and they lived together under mutual economic benefits they got from each other.¹⁵ In most cases a symbiotic relationship existed between the pastoralists who are mainly Arabs and their farming neighbors mostly non-Arabs, based on the complementarity of the two production systems. African farmers allowed Arab

¹⁰ UN Sudan Information Gate, <http://www.unsudanig.org>, (last visited Aug. 11, 2007).

¹¹ United Nations Office for the Coordination of humanitarian Assistance 3, Darfur Humanitarian Profile No. 28 (2007), available at [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/38D1447E9BA6F779C125736000307A94/\\$file/DHP+ +28_narrative_1+July+2007%5B2%5D.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/38D1447E9BA6F779C125736000307A94/$file/DHP+ +28_narrative_1+July+2007%5B2%5D.pdf).

¹² United Nations High Commissioner for Refugees, Chad/Darfur emergency, available at <http://www.unhcr.org/cgi-bin/texis/vtx/chad?page=camps>.

¹³ Mohamed Suliman, *Ethnicity from Perception to Cause of Violent Conflicts: The Case of the Fur and Nuba Conflicts in Western Sudan* 7(1997), unpublished document received through an e-mail on Sep. 5, 2007.

¹⁴ Sara Pantuliano, *Strategic priorities and key challenge to address conflict and its consequences in Darfur* 6, a report prepared for UK' government Department of International Development (2004).

¹⁵ Alex De Waal, *Tragedy in Darfur on understanding and ending the horror*, Boston Review (Oct.-Nov. 2004), available at <http://www.bostonreview.net/BR29.5/dewaal.html>.

herders to graze their camels and goats on the land, and the livestock fertilized the soil.¹⁶ However, this situation changed when endemic drought and desertification came to Darfur in the early 1970's and mid-80's causing the death of thousands. It had a negative effect and changed patterns of relationship between these groups from cooperation and peaceful co-existence to competition and animosity.¹⁷ It is well documented that from 1935 to 1970 there had been only three tribal wars in the Darfur, while from 1975 to 2001 there were 37 tribal wars.¹⁸

Competition for scarce economic resources, resulting in disparities among different groups and the marginalization of some, has been a significant factor contributing to the civil strife hardship of displacement.¹⁹ And when ecological disturbance occurred it affected the realization of ethnicity, which was tactically manipulated within Darfur by the government of Sudan and political parties to gain achieve their political goals.²⁰ In addition, Muammar Al-Gaddafi, the leader of Libya, in his attempt to create an Arab belt in Africa had an effect on the Arabs sense of identity and superiority.²¹ Some Arabs started to see themselves as superior and deserve to gain more resources, and this is one of the reasons of attacking other communities. Both of these factors-competition for scarce resources and realization of identity-are found in Darfur and had an impact on the outbreak of the current conflict.

¹⁶ See Julian Borger, *Scorched*, The Guardian (Apr. 28, 2007), available at www.guardian.co.uk/environment/2007/apr/28/sudan.climatechange.

¹⁷ See *supra* note 8 at 14.

¹⁸ Yousif Takana, *Resources Based Conflicts North Darfur and Upper Nile*, Case 2, unpublished.

¹⁹ ROBERTA COHEN & FRANCIS DENG MASSES IN FLIGHT THE GLOBAL CRISIS OF INTERNAL DISPLACEMENT 5, Brookings Institution Press (1998).

²⁰ Helen young et al, *Darfur livelihood under siege* viii, Feinstein International Famine (2005).

²¹ Islamic Legion, Wikipedia, available at http://en.wikipedia.org/wiki/Islamic_Legion.

2. Marginalization:

Marginalization has been mentioned by rebels as the main cause of their rebellion. Like other peripheral areas in Sudan, Darfur witnessed constant marginalization and lack of development during the British colonial era and after independence. Policies of the British colonialism systematized marginalization in Darfur by granting tribal homeland known as *dars* to some tribes and giving their paramount chiefs jurisdiction over the civil affairs within their territory.²² Many of the Northern Arab nomads were not granted their own *dar*, which has made them feel marginalized since then. The central government used this historical sense of marginalization felt by small poor Northern Arab camel-herding tribes to mobilize them into the Janjaweed militia.²³ At the same time, the suffering of historical marginalization and governmental indifference to their needs and the government's siding with Arabs encouraged many non-Arabs to join or sympathize with the rebels.²⁴ Some Arabs who sided with the government in the current conflict took arms against it when they felt marginalized,²⁵ which indicates that marginalization is the main factor behind joining the armed movements and not ethnicity per se.

²² *Supra* note 14 at 9.

²³ See *id.* at 22.

²⁴ See *Some Arabs Join Rebels in Darfur Fight*, Associated press (Mar. 19, 2007), available at <http://asia.news.yahoo.com/070318/ap/d8nuoolo0.html>. In this report it was mention that some Arabs joined non-Arab rebels.

²⁵ Andrew McGregor, *Darfur's Arabs taking arms against Khartoum*, Aberfoyle International Security (2007), available at http://209.85.173.104/search?q=cache:AKmXI8hJAE0J:www.ciss.ca/Commentary_Darfur2.pdf+Arab+taking+arms+agains+Sudanese+government&hl=en&ct=clnk&cd=1&gl=us&client=firefox-a.

3. Ecological changes:

In addition to marginalization, the drought and famine of 1983-1984 that hit Darfur resulted in the death of 95,000 out of 3.1 million,²⁶ and shrinking of available resources which caused tensions between communities. In the aftermath of the drought and famine the areas of the Fur, Birgid, Berti and Daju who are non-Arab tribes became the source of a very high number of displaced groups from northern Darfur whose traditional pasture land was under strong ecological pressure and where famine was developing. This was especially true for nomads who were in search of pasture and water.²⁷ This ecological pressure in the form of desertification influenced negatively the relationship between Arab nomads and non-Arab farmers. Recognition of the impact of the ecological change on the outbreak of the current conflict was acknowledged by the UN. On June 16, 2007 in a statement given by the UN Secretary General Ban Ki-moon he proposed that the slaughter in Darfur was caused “at least in part from climate change and that it derives to some degree from man-made warming.”²⁸

4. Regional instability:

Darfur’s geographical location and border with Chad had an impact on the outbreak of the current conflict. Darfur’s instability is related to the ongoing conflict in neighboring Chad, which has gone through many wars and conflicts. The current Chadian president, Idriss Deby, then rebel leader was allowed by the Sudanese government to use Darfur as

²⁶ JULIE FLINT & ALEX DE WAAL, *DARFUR: A SHORT HISTORY OF A LONG WAR* 25, Zed Books (2006).

²⁷ *Supra* note 14 at 16.

²⁸ Ban Ki-moon, *A Climate Culprit in Darfur* A15, Washington Post (Jun. 15, 2007), available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/15/AR2007061501857.html>.

a base for his guerilla war.²⁹ The presence of armed Chadian rebels and untidy borders resulted in the proliferation of modern weapons that have had a major impact on security and conflict in Darfur. It gave arms to Arab nomads to launch their attacks, and also among non-Arab farmers to protect themselves.³⁰

5. Governmental policies:

Another factor which contributed to the outbreak of the current conflict is governmental policies. Darfur suffered from governmental policies that have had negative consequences that provoked Darfuris to take arms. For example, during Numeiri's regime the Land Act was introduced in 1970, which transferred to the government all land that had not been registered prior to its promulgation.³¹ The absence of a regulatory body resulted in sustained land grabbing in various parts of Darfur and intensified disputes between farmers and scheme owners and pastoralists.³² Also, the government created divisions between Darfur communities by reshaping administrative borders and local government mechanisms, undermining the legitimacy of native administration and its efficiency to settle local disputes and replacing it with under-resourced and ineffective police and judiciary.³³

The current government is the worst in terms of policies.³⁴ Policies of the government instigated rebel movements in Eastern Sudan, while war was already taking place in the South. Under pressure the government became involved in negotiations with armed

²⁹ Chadian-Libyan conflict, Wikipedia, available at http://en.wikipedia.org/wiki/Chadian-Libyan_conflict.

³⁰ *Supra* note 14 at 8.

³¹ *Id.* at 7.

³² *Id.* at 15.

³³ See *supra* note 14 at 18.

³⁴ The government of the National Islamic Front at that time in Sudan continued to ignore distribution of development, imposed Islamic identity and used military option as solution to the ongoing political disputes.

groups, sending a message that only strong and threatening armed groups would be partners in power sharing and decision-making.³⁵ This policy provoked Darfuris and stimulated them to create armed groups, represented by two main factions at the time Sudan Liberation Army/Movement [SLA/M] and Justice and Equality Movement [JEM].

5. Feeble International Intervention:

The Inaction of the international community is also one of the main causes of the current conflict in Darfur. Darfur received international attention during the famine of 1983-1984, which was mainly focused on providing humanitarian assistance. After this and until the outbreak of the current conflict in 2003, Darfur received less attention, and the presence of the international community was very weak.³⁶ After the succession of power in 1989 by the current government, many donors withheld assistance some of which was allocated for development in Darfur, which had suffered from devastating droughts and famine. Thus, donors have some responsibility for the outbreak of the current conflict.³⁷

Darfur was also ignored during the peace process of the North and the South, considering it as a part of the North. Early years of the conflict in 2003 was the same year as the negotiated peace process between Southern and Northern entities. The international community focused mainly on the peace process ignoring the ongoing conflict in Darfur. During the first half of 2004, the British-US-Norway troika that supported the conclusion

³⁵ See the interview at Al-Jazeera International, available at <http://youtube.com/watch?v=SyjpLofnhCo&feature=related>, (last visited Jun., 14, 2008). One of the SLA/M commanders in the interview stated that he learned about it from his commander during his service in the Sudanese army.

³⁶ Many UN document showed and indicated the weak presence in Darfur before the outbreak of the current conflict, like the OCHA Sudan office reports on three Darfur states, issued in June and July 2003

³⁷ *Supra* note 9 at the preface.

of the Comprehensive Peace Accord between the North and the South, left the Darfur conflict unresolved.³⁸ Preventative measures in Darfur could have been effective. In October of 2006, the Minority Rights Group published a critical report, which argued that the UN and the great powers could have prevented the deepening crisis in Darfur and that few lessons appear to have been drawn from their ineptitude during the Rwandan Genocide.³⁹

In conclusion, ethnicity was traditionally shaped around economic activities, and patterns of relationship between Arabs and non-Arabs which were cooperative in nature. Ethnicity was not the main factor in causing the outbreak of the current conflict. It was only when essential economic activities that both groups depended on for their survival were threatened that the relationships changed drastically. The central government, politicians and rebels used these tensions to raise ethnic differences, making the conflict sound like an ethnic one. However, it is likely that early and effective intervention by the government along with support from the international community could have prevented the outbreak of the current conflict.

³⁸ Infra note 123 at 1041.

³⁹ Darfur Peace and Development, <http://www.darfurpeaceanddevelopment.org/reports.php?ID=900>, (last visited Aug., 17, 2007).

II. IDP Protection:

This chapter will tackle various issues related to IDPs' protection. They vary from defining IDPs protection to state and international responsibility to protect. Also, a discussion of obstacles facing humanitarian agencies' protection role much be included.

The concept of responsibility to protect came to protect IDPs from mass human rights violations, yet its application in Darfur is insufficient to provide that protection, not because of lack of protection mechanisms, but due to the lack of adequate political will from Sudan and the international community. Protection has been effective only when the Sudanese government has complied with international efforts.

This chapter will be divided into four sections: the first tackles the definition of IDPs and causes of internal displacement, and the meaning of protection and its mechanisms. The second will examine the framework for protection of IDPs provided in the Guidelines Principles on Internal Displacement. The third section will discuss the new concept of responsibility to protect examining states' and international community's protection role, within the context of the case study. The last one will briefly discuss protection and the UN's humanitarian response.

A. IDP Definition and Protection:

1. IDP Definition and Causes of Displacement:

According to the Guiding Principles on Internal Displacement, hereinafter the Guiding Principles, IDPs and causes of their forced dislocation are defined as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or

human-made disasters, and who have not crossed an internationally recognized State border.’’⁴⁰ In some situations of internal displacement there is a link between internal displacement generated by natural disaster and human rights violations. For example, the current conflict in Darfur started earlier in the mid-1980’s as a natural disaster displacement, however, due to various factors discussed previously the situation evolved to generate IDPs driven this time by conflict and human rights violations.⁴¹

Refugee numbers continue to decrease around the world, while IDPs numbers continue to steadily rise.⁴² According to the Internal Displaced Monitoring Center as of December 2006, there are 24.5 million IDPs around the world,⁴³ compared to 8.4 million refugees.⁴⁴ IDPs increase is a result of human rights abuses occurring in countries where internal conflict is a precursor to a disintegrated state and where the rule of law has been lost.⁴⁵ This coincides with the phenomena of failed states and the increasing number of intra state conflicts of communal, religious and ethnic natures.⁴⁶ Also, it has resulted from changing priorities within the international humanitarian regime. The recent preoccupation with limiting refugee flows and avoiding long term settlement has resulted in a policy shift towards internalizing displacement.⁴⁷

⁴⁰ Guiding Principles on Internal Displacement (1998).

⁴¹ The scope and discussion of this thesis will concentrate on IDPs generated by conflict and human rights violations, and therefore IDPs driven by natural or man-made disasters will be excluded.

⁴² Kristen Zaat, *The protection of Internally Displaced Persons in the Sudan: applying international law in the field level 2* (2005), available at [http://www.reliefweb.int/rw/lib.nsf/db900sid/OCHA-6UCBEY/\\$file/JHA-Oct2006.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/OCHA-6UCBEY/$file/JHA-Oct2006.pdf?openelement).

⁴³ See Norwegian Refugee Council, *Internal Displacement Global Overview of Trends and Developments*, 6 (2007).

⁴⁴ UNHCR, *Refugees by Numbers 2006* edition, <http://www.unhcr.org/cgi-bin/texis/vtx/basics/opendoc.htm?tbl=BASICS&id=3b028097c>.

⁴⁵ Jon Bennett, *Forced Migration within national Borders: The IDPs agenda 4*, in *Forced Migration Review*, vol. 1 (1998).

⁴⁶ See Myron Weiner and Rainer Munz, *Migrants, Refugees and Foreign Policy: Prevention and intervention strategies* 25, *Third World Quarterly*, vol. 18, no.1 (1997).

⁴⁷ See *supra* note 45 at 6.

2. Meaning of IDP Protection:

As stated in a position paper on IDPs issued by the International Committee of the Red Cross [ICRC], there is no legally binding definition of IDP protection.⁴⁸ However, IDP protection was defined in a workshop organized by the ICRC as all “activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law, i.e., human rights, international humanitarian and analogy refugee law.”⁴⁹ This definition is broad enough to incorporate many direct and indirect activities to provide effective protection for IDPs.⁵⁰ However, as Liam Mahony stated “measuring protective impact is difficult, because the concept of *protection* has many definitions, and different missions have different emphases.”⁵¹ He added “at its most basic, it might simply mean keeping people alive and preventing attacks.”⁵² “But it can also include the upholding of variety of other human rights norms beyond the right to life. Protection can also have a more long-term political emphasis – thus advocacy or other influence over the political process can result in a more protected environment for civilians.”⁵³

3. Protection Mechanisms:

Protection mechanisms in this thesis are driven from the definition of protection and UN and national activities that substitute or assist states to take their role in responsibility. Accordingly, in this thesis protection mechanisms are identified as:

⁴⁸See ICRC *position paper on Internally Displaced Persons* 2(2006).

⁴⁹ *Supra* note 4 at introduction.

⁵⁰ CATHERINE PHUONG, *THE INTERNATIONAL PROTECTION OF INTERNALLY DISPLACED PERSONS* 39, Cambridge Studies in International and Comparative Law, Cambridge University Press (2004).

⁵¹ Liam Mahony, *Monitoring and Human Rights Field Presence: Civilian Protection and Conflict Prevention*, *Journal of Humanitarian Assistance* 2003, available at <http://www.jha.ac/articles/a122.htm>.

⁵² *Id.*

⁵³ *Id.*

international and regional human rights conventions, humanitarian assistance, advocacy, rule of law program, external pressure from the UN and national efforts. Some of these mechanisms have not been discussed extensively in literature as they are recently used as a mechanism of protection in ongoing conflict zones like the UNDP's rule of law program. It will be demonstrated later that even though all mechanisms have been implemented, there is still a concern over IDP protection.

B. The Guiding Principles on Internally Displaced and Protection of IDPs:

Imminent need to provide IDPs with assistance and protection necessitates the creation of a framework tailored to meet their peculiar status. In 1998, Francis Deng the UN Secretary-General Representative on IDPs presented the Guiding Principles as an important tool for protection of IDPs.⁵⁴ The Guiding Principles established the first international standards for internally displaced persons.⁵⁵ They bring together in one document provisions in human rights and humanitarian law relevant to the displaced.⁵⁶

As Roberta Cohen stated, although not a binding treaty, the Guiding Principles are based on binding international law and have acquired a great deal of standing and authority over the past years.⁵⁷ UN resolutions regularly refer to them as a standard and important tool and in 2005 during the world summit more than 100 heads of state, including Sudan, recognized them as an important international framework for the

⁵⁴ Roberta Cohen, *The Guiding Principles: how do they support IDP response strategies?*, presented at Response Strategies of the Internally Displaced: Changing the Humanitarian Lens, (2001), available at http://www.brookings.edu/speeches/2001/1109humanrights_cohen.aspx.

⁵⁵ *Id.*

⁵⁶ *Infra* note 67 at 1. For the record, being an IDP does not remove or limit any of the human rights to which these categories of a population are entitled. IDPs do not forfeit their inherent rights, because they are displaced; they can invoke human rights and humanitarian law to protect their rights. See *Supra* note 19 at 74.

⁵⁷ *Id.* at 1.

protection of IDPs.⁵⁸ She added that all of Africa's regional organizations have acknowledged them and some use them as a benchmark for evaluating conditions in member states.⁵⁹

There has been discussion over the establishment of a binding convention to protect IDPs instead of the Guiding Principles, which do not have a binding obligation as mentioned. However, many scholars argued against establishment of such a convention for various reasons.⁶⁰ Some like Walter Kalin argue that establishment of a new convention in the field of human rights takes time and needs a lot of negotiation and consultation, while the immense dilemma of IDPs require an instant framework for intervention.⁶¹ He added the argument that many conventions have proved themselves to be weak to stand up against breaches.⁶² Reality reveals application of international law to protect IDPs is problematic in armed conflict settings; human rights instruments are derogable and do not bind non-state actor unlike international humanitarian law.⁶³ Also, compliance with international humanitarian law has proved to be problematic as the case of Darfur shows.⁶⁴

Existing laws provide substantial coverage for IDP protection, but there are significant areas in which the law fails to provide sufficient protection.⁶⁵ Because of this, the Guiding Principles have tried to address specific aspects of internal displacement by

⁵⁸ *Id.* at 3.

⁵⁹ *Id.* at 2.

⁶⁰ Walter Kalin, *How hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework* 1, Presentation at Roundtable Meeting Ralph Bunche Institute for International Studies, CUNY Graduate Center (2001).

⁶¹ *Id.* at 1.

⁶² See *Id.* at 2-3.

⁶³ *Supra* note 19 at 74.

⁶⁴ The ongoing conflict in Darfur shows that many international humanitarian law provisions are not respected by different warring parties.

⁶⁵ *Supra* note 19 at 74.

adding provisions that were not mentioned explicitly in international humanitarian or human rights laws. For example, general norms guaranteeing freedom of movement exists, but neither explicitly mention of the right to find refuge in a safe part of the country as mentioned in principle 15(a), nor any express guarantees against the forcible return of internally displaced persons to dangerous areas within their own country as mentioned in principle 6(1).⁶⁶ The latter principle assimilates non- refoulement in refugee law that prohibits returning of refugees to countries where they are likely to be persecuted.

Since the early introduction of the Guiding Principles some countries like Sudan fear any possible impact on their sovereignty. Following their introduction into the UN in 1998, Sudan spent a number of years trying to obstruct them at UN meetings.⁶⁷ In 2000, for example, it teamed up with Egypt and Algeria at the UN Economic and Social Council to prevent that body from taking action on them.⁶⁸ It also successfully blocked references to the Principles in international documents on aging and children.

Domestically Sudan has a national policy on IDPs, which was revised in 2000 and is based on the Guiding Principles, although it obviously has yet to be implemented.⁶⁹ The Sudanese government's attitude towards the Guiding Principles has shown nothing but resistance.⁷⁰

⁶⁶ Robert K. Goldman, ICRC, *international Review of Red Cross*, no 324 (1998).

⁶⁷ Roberta Cohen, *Legal protection for the displaced people of Darfur and Chad 3*, panel on the displacement from Darfur: The legal and human implications, Harvard University committee on human rights studies (2007).

⁶⁸ *Id.*, at 3.

⁶⁹ *Id.*, at 3.

⁷⁰ The Sudanese government continued to violate human rights and humanitarian law provisions of the Guiding Principles. There are many reports and publications documenting these violations issued by many NGOs and UN agencies.

C. Responsibility to Protect:

Many scholars have found it appalling that policy makers have taken so many years to grasp the idea that “something is wrong about states killing or forcibly displacing large numbers of their own citizens, or stand by when other states do so.”⁷¹ As Gareth Evans argued “One of the early attempts to address this issue came with the drafting of the Charter of Nuremberg Tribunal in 1945 in which came the recognition in international law of the concept of “crimes against humanity” that could be committed by a government against its own people, and not necessarily just during wartime.”⁷² “But what captured the mood of the time more than any of these provisions was Article 2(7) of the UN Charter: Nothing should authorise intervention in matters essentially within the domestic jurisdiction of any State.”⁷³ To add more, sovereignty has been a cornerstone in international relations enshrined in the UN Charter, as in article 2(4) which entails that states should refrain from threat or usage of force against the territorial integrity or political independence of any state.⁷⁴

“With the arrival of the 1990s the prevailing complacent assumptions about non-intervention did at last come under, as never before.”⁷⁵ “The quintessential peace and security problem became not interstate war, but civil war and internal violence perpetrated on a massive scale.”⁷⁶ Massive human rights violations that amounted to genocide committed during interstate conflicts and wars demanded external military

⁷¹ Gareth Evans, *From Principle To Practice-Implementing The Responsibility to Protect*, International Crisis Group (Apr. 26, 2007), available at <http://www.crisisgroup.org/home/index.cfm?id=4802&l=1>.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ The Charter of the United Nations and Statute of the International Court of Justice, article 2(4).

⁷⁵ *Supra* note 71.

⁷⁶ *Id.*

intervention from the international community. Gareth Evans has stated that “external military intervention for human protection purposes has been controversial both when it has happened – as in Somalia, Bosnia and Kosovo – and when it has failed to happen, as in Rwanda.”⁷⁷ “For some the new activism has been a long overdue internationalization of the human conscience; for others it has been an alarming breach of an international state order dependent on the sovereignty of states and the inviolability of their territory.”⁷⁸ Humanitarian intervention accompanied with the development of new and stronger norms and mechanisms for the protection of human rights, they have become part of the mainstream of international law, and respect for human rights a central subject and responsibility of international relations.⁷⁹ Humanitarian intervention and human rights law development led to debate regarding protection of nationals within their sovereign state, and shifted conceptualization of states’ security and sovereignty.

During the 1990’s almost 80 percent of the victims of armed conflicts were civilians,⁸⁰ and they were targeted without adequate protection.⁸¹ “Human rights standards were not set out in the UN Charter as the principle of sovereignty, which raised tension between state security and the new developed concept of human security.”⁸² The meaning and scope of security have become much broader since the UN Charter was signed in 1945.⁸³

⁷⁷ The International Commission on Intervention and State Sovereignty, *The responsibility to protect* vii (2001).

⁷⁸ *Supra* note 71.

⁷⁹ *Supra* note 77 at para. 1.25.

⁸⁰ LLOYD AXWORTHY, *HUMAN SECURITY AND THE NEW DIPLOMACY PROTECTING PEOPLE PROMOTING PEACE* Introduction 4 (ROB MCRAE & DON HUBERT ed., McGill-Queen’s University Press (2001).

⁸¹ *Id.* at 4.

⁸² Gareth Evans, “*No more Rwandans or Darfurs: The International Responsibilities to Protect*”, International Crisis Group (Sep. 3, 2004), available at <http://www.crisisgroup.org/home/index.cfm?id=2965&l=1>.

⁸³ *Supra* note 77 at para. 2.21.

With the new human rights developments, security expanded not to mean state's but also citizens' security.⁸⁴ The concept was initiated by the UNDP,⁸⁵ which has a lot to do with conflict among other development related concerns. Human security means protecting people from critical and pervasive threats and situations, building on their strengths and aspirations.⁸⁶ It also means the security of people – their physical safety, their economic and social well-being, respect for their dignity and worth as human beings, and the protection of their human rights and fundamental freedoms.⁸⁷ The emerging concept of human security has created additional demands and expectations in relation to the way states treat their own people from impunity to accountability.⁸⁸ The new concept of human security is interrelated to the complex and controversial concept of sovereignty.

“In a dangerous world marked by overwhelming inequalities of power and resources, sovereignty is for many states their best – and sometimes seemingly their only – line of defence.”⁸⁹ And for many states “it is also recognition of their equal worth and dignity, a protection of their unique identities and their national freedom, and an affirmation of their right to shape and determine their own destiny”.⁹⁰ As mentioned previously the principle of the sovereignty of states is enshrined in the UN Charter.⁹¹ Governments have managed to keep the international community at bay by invoking their sovereignty and insisting on

⁸⁴ Commission on Human Security, Outline of the Report of the Commission on Human Security 1 (2003) available at <http://www.humansecurity-chs.org/finalreport/Outlines/outline.html>.

⁸⁵ *Supra* note 80 at 3.

⁸⁶ *Id.* at 1.

⁸⁷ *Supra* note 77 at para. 2.21.

⁸⁸ See *Infra* note 102 at 102.

⁸⁹ *Supra* note 77 at para. 1.32.

⁹⁰ *Id.* at para. 1.32.

⁹¹ Gareth Evans, *The Responsibility to Protect and the Use of Military Force*, Seminar on International Use of Force, World Legal Forum (Dec. 11, 2007), available at <http://www.crisisgroup.org/home/index.cfm?id=5209&l=1>.

noninterference in their internal affairs.⁹² However, the occurrence of heinous human rights atrocities in the 1990's in different parts of the world in which the international community took actions or fell short from acting, and military interventions by NATO in the former Yugoslavia without authorization of the Security Council, raised debate about humanitarian intervention and sovereignty.

Discussion of the right to humanitarian intervention was taken further by the International Commission on Intervention and State Sovereignty which was sponsored by the Canadian government.⁹³ It turned the debate from right to intervene to responsibility to protect.⁹⁴ The new concept of responsibility to protect means basically that the state has the primary responsibility to protect its people from genocide and other mass atrocities, ethnic cleansing, crimes against humanity and war crimes occurring within boundaries of that state.⁹⁵ But if the state in question is unable or unwilling to take the necessary action that shifts to the wider international community.⁹⁶ This shift matches the argument of human rights scholars who correlate the state's sovereignty to respect of human rights.⁹⁷ By the same token the former UN Secretary-General Kofi Annan in his reform report of 1997 made the argument that responsibility needs to be shifted to the international community when a state fails to protect and assist their citizens.⁹⁸ The new meaning matches the wider discussion which identifies the state authorities as being responsible for protecting the safety and lives of citizens and promotion of their

⁹² See *Supra* note 19 at 2.

⁹³ The commission was launched with a mandate to promote a comprehensive debate on the relationship between intervention and sovereignty, available at <http://www.iciss.ca/progress-en.asp>.

⁹⁴ *Supra* note 77 at para. 2.4.

⁹⁵ *Supra* note 91.

⁹⁶ *Id.*

⁹⁷ See Thomas G. Weiss, *Internal exiles: what next for internally displaced persons?* 432, *Third World Quarter* vol. 24, no. 3 (2003).

⁹⁸ Roberta Cohen, *Strengthening protection of IDPs the UN Role* 102, Law and ethics (2006).

welfare.⁹⁹ It also suggests that the national political authorities are responsible to the citizens internally and to the international community through the UN.¹⁰⁰ The new concept has meant transition from a culture of sovereign impunity to a culture of national and international accountability.¹⁰¹ It also implies a shift in thinking about the essence of sovereignty from control to responsibility.¹⁰² And, it implies that the primary responsibility rests with the state concerned, only if it is unable or unwilling to fulfill its responsibility to protect or is itself the perpetrator.¹⁰³

The responsibility to protect became a central theme in the recommendations of the UN High-Level panel, the UN Secretary General reports and the UN World Summit in 2005.¹⁰⁴ The concept was first seriously embraced in the doctrine of the newly emerging African Union created in 2002, which placed emphasis on not on non-intervention but on non-indifference when it comes to catastrophic internal human rights violations.¹⁰⁵ In Thematic Resolution 1674/2006 the Security Council reaffirmed parts raised in the World Summit that touch on the evolving concept of responsibility to protect.¹⁰⁶ The new concept was incorporated into some UN missions' core mandates like the protection of civilians in the UN mission in Sierra Leone¹⁰⁷ and Darfur.¹⁰⁸

⁹⁹ *Supra* note 77 at para. 2.15.

¹⁰⁰ *Id.* at para. 2.15.

¹⁰¹ *Id.* at para. 2.18, at 14.

¹⁰² Gareth Evans and Mohamed Sahnoun, *The Responsibility to Protect* 101, Foreign Affairs, vol. 81, no. 6(2002). Also on the shift from control to responsibility see also Graves at *supra* note 71.

¹⁰³ *Id.* at 101.

¹⁰⁴ International Crisis Group, <http://www.crisisgroup.org/home/index.cfm?id=4521>, (last visited May, 22, 2008).

¹⁰⁵ *Supra* note 82.

¹⁰⁶ *Supra* note 104.

¹⁰⁷ Alan Bones, *Peacekeeping in Sierra Leone*. Also see *supra* note 80 at 56.

¹⁰⁸ Paul D. Williams and Alex J. Bellamy, *The responsibility to protect and the crisis in Darfur* 27, Security Dialogue, vol. 36, no.1, International Peace Research Institute (2005).

As Gareth Evans stated “responsibility to protect has three integral and essential components: not just the responsibility to *react* to an actual or apprehended human catastrophe, responsibility to *prevent* it, and the responsibility to *rebuild* after the event.”¹⁰⁹ As he stated prevention means addressing both root causes and direct causes of internal conflict and other man-made crises putting populations at risk.¹¹⁰ To react means responding to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention.¹¹¹ To rebuild means to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.¹¹² As military intervention is the most controversial aspect of the international role in responsibility to protect, it has captured more attention and created a threshold for examining when military intervention represents an appropriate course of action.¹¹³

As scholars argued, for the military intervention to be legitimate there are five criteria to be met.¹¹⁴ First the cause must be a just one in which large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or failed state situation.¹¹⁵ Second, intention of intervention should be right, which means the primary purpose of the proposed military

¹⁰⁹ *Supra* note 91.

¹¹⁰ *Supra* note 82.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Don Hubert and Michael Bonser, *Humanitarian Military Intervention*, *supra* note 77 at 115.

¹¹⁴ *Supra* note 82.

¹¹⁵ *Id.*

action is to halt or avert the threat in question.¹¹⁶ Third, last resort, means non-military options have been explored and proven to be not successful.¹¹⁷ Fourth, proportionality means the duration and intensity of action will secure the defined human protection objective.¹¹⁸ The last one is the reasonable prospect that the military action is meeting the threat in question, and at the same time the military action is not going to be worse than the consequences of inaction.¹¹⁹ Some scholars have added consistency, multilateral and sustainability, which means the international community has the moral obligation to come to the assistance of people who are suffering as a consequence of mass violations of human rights, making it more internationally acceptable and requires being part of a long-term strategy.¹²⁰

Applying the “responsibility to protect” to the case of Darfur, it is well documented that the Sudanese government is responsible for heinous human rights violations in Darfur.¹²¹ Indifference to the new concepts of human security and responsibility to protect has allowed the Sudanese government to act freely in Darfur, using forced displacement and ethnic cleansing to achieve its military aims. It armed and supported Arab militias known as the Janjaweed to inflict collective punishment against the civilian population in Darfur accused of supporting the rebellion.¹²² The Sudanese government violated regional and international human and humanitarian laws and conventions. It

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Supra* note 82.

¹¹⁹ *Id.*

¹²⁰ *Supra* note 77 at 119.

¹²¹ Many human rights organizations documented these violations by human rights watch and Amnesty International. For example Human Rights Watch documented sexual violations, which is one of the most prevalent human rights violations in Darfur. For more visit <http://hrw.org/reports/2008/darfur0408/>.

¹²² Gareth Evans, *The world should be ready to intervene in Sudan*, in International Herald Tribune (May 14, 2004), available at <http://www.crisisgroup.org/home/index.cfm?id=2755&l=1>.

systematically violated rights of the IDPs in Darfur before and during their displacement. Sudan failed to play the role of the “main provider of protection and assistance to IDPs.”¹²³ In later stages, the government showed an inability to provide protection for IDPs, because it was incapable of disarming the militia it armed previously.¹²⁴ Hence, the government actions reflected the lack of ability and willingness to protect IDPs.

As the Sudanese government showed an inability and unwillingness to provide protection to IDPs, the concept of responsibility to protect requires the intervention of the international community. Usually, regional and international community responses is not only for humanitarian and human rights concerns, but also because the collective interest in regional stability and global peace and security.¹²⁵ In her discussion of IDP protection, Cecile Dubernet argued that protection of IDPs is provided to curb their movement to become refugees. She contents that many instances that were considered as humanitarian interventions were motivated by containment of IDP movement to prevent a mass influx of refugees.¹²⁶ According to Dubernet, assistance and protection is used as a tool to contain the movement of IDPs.¹²⁷

According to the concept of “responsibility to protect” the international community responsibility in Darfur necessitates taking actions in Chad, because movement of Darfuri

¹²³ UNOCHA, Internal Displacement Unit, *No Refuge: The Challenge of Internal Displacement*, at 10, Doc. OCHA/IDP/2003/1.

¹²⁴ See Alex De Waal, *Darfur and failure of responsibility to protect*, 1041, *International Affairs*, vol. 83, no.6 (2007).

¹²⁵ *Supra* note 19 at 1.

¹²⁶ Cecile Dubernet, *The international containment of displaced Persons: Humanitarian space without exit* 58, Aldershot Ashgate (2001).

¹²⁷ *Supra* note 42 at 2.

IDPs to Chad as refugees escalated the conflict and resulted in creating Chadian IDPs and refugees.¹²⁸

In the early stages of the conflict in Darfur, as a reactive response some commentators like Gareth Evans¹²⁹ have suggested that the Security Council must take hold of the situation. He suggested a resolution that contains five points. First, it must condemn violations of international humanitarian law and government support of the Janjaweed.¹³⁰ Second, the government must disarm the Janjaweed militia and allow unhindered access to Darfur by humanitarian agencies and international human rights monitors. The resolution should impose an arm embargo on warring parties with enforcement mechanisms. On the same point he suggested international facilitation of political negotiations between government and rebels in Darfur.¹³¹ The third, calls for the safe return of IDPs to their villages of origin, reversing the ethnic cleansing.¹³² Fourth, it

¹²⁸ As of 2006 more than 55,000 Chadians have been displaced by marauding Arab militias, known as "Janjaweed." As of 2006, there were 20,000 Chadian refugees in the Darfur region. Based on the responsibility the international community has a responsibility to prevent more forced displacement in Chad and the responsibility to react in Sudan to protect IDPs. The inaction of the international community risks the instability of Chad, which is likely to effect protection IDPs. The presence of IDPs and refugees on both sides of the border pressured for prioritizing protection of one group at the expense of the other, and Darfuri refugees and IDPs got more attention than their Chadian counterparts. When the Chadian president Idriss Debee called the international community to protect the 200,000 Darfuri refugees in Chad. the EU responded by sending forces to protect refugees from Darfur and humanitarian agencies. Latest reports show that many Darfuri refugee children as young as nine are trafficked to join the rebel groups in their fight in Darfur.¹²⁸ Even though issues related to refugees in Chad is not of a concern to this paper, it was mentioned to show an inability in unstable region to provide full protection for civilians. It also illustrates lack of adequate action from the international community regardless of state consent to intervention. See Raymond Thibodeaux, *Chadians Increasingly Feel Impact of Darfur Conflict*, Voice of America (Apr. 21, 2006), available at <http://www.voanews.com/english/archive/2006-04/2006-04-21-voa44.cfm?CFID=14229471&CFTOKEN=75853011>. see also UNHCR 2006 Statistical yearbook, Chapter II population levels and trends, available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?id=478ce0532&tbl=STATISTICS>. Also see *Chad's Leader Calls for Bigger International Role in Darfur*, Voice of America (Apr. 19,2006), available at <http://www.voanews.com/english/archive/2006-04/2006-04-19>

¹²⁹ *Supra* note 122.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

should authorize a high level team to investigate human rights violations committed in Darfur.¹³³ Finally, the Security Council should unambiguously threaten the Sudanese government with use force if the humanitarian crisis continues in Darfur.¹³⁴

In Resolution 1556/2004 the Security Council demanded the disarmament of the Janjaweed within 30 days, without defining either disarmament or Janjaweed.¹³⁵ Gareth described the resolution as being too little and late to respond to the crisis gripping the region.¹³⁶ In his article he described one of the main obstacles to facing responsibility to protect concept, which is the lack of political will and narrow self-interest.¹³⁷

Over the period of 2004 to 2007 the international community pursued a range of objectives for Darfur that ranged from improving security and humanitarian access to dispatching UN forces.¹³⁸ The international community's responses to the Darfur crisis have focused on humanitarian assistance, while in political terms the responses have been "slow, tepid and divided."¹³⁹

To elaborate on Gareth's statement in which he defined obstacles to responsibility to protect, examination of Security Council permanent members stand will be discussed. China and Russia have opposed sanctions on Sudan because of their economic interests. Fighter jet contractors in the case of Russia and oil concessions in the case of China are linked to their reluctance to take action.¹⁴⁰ China has an interest in arms selling to Sudan

¹³³ *Supra* note 122.

¹³⁴ *Id.*

¹³⁵ *Supra* note 124 at 1040.

¹³⁶ Gareth Evans, *Why nobody is doing enough for Darfur*, Financial times (Aug. 3, 2004).

¹³⁷ *Id.*

¹³⁸ *Supra* note 124 at 1043.

¹³⁹ *Supra* note 108 at 32.

¹⁴⁰ *Id.*

and from 2003 to 2006, China sold over \$55 million worth of small arms to Khartoum.¹⁴¹ China sold these even though a Security Council arms embargo—initially imposed in 2004 under resolution 1556 and expanded in 2005 under resolution 1591—prohibits weapons transfers to Darfur.¹⁴²

The other permanent member of the Security Council and the dominant super power, the United States, has different interests in dealing with Darfur. It condemned atrocities in Darfur,¹⁴³ labeled these atrocities as genocide, but went on to insist that no action is required on its part.¹⁴⁴ The US policies towards Darfur were driven by other factors than protection of IDPs. The American administration is concerned that pressure on the Sudanese government would jeopardize the Naivasha Agreement.¹⁴⁵ This peace agreement to end one of the longest civil wars in Africa is considered as a huge success for the American administration that waged a controversial war on Iraq to show it also can bring peace.

The European Union followed the US as it was keen to keep the peace process between the South and the North, instead of pressuring the Sudanese government to protect IDPs. It relied on political and humanitarian instruments to respond to the crisis in Darfur.¹⁴⁶ This is largely due to one of two reasons: the incapability of European states to

¹⁴¹ Human Rights First, *Investing in Tragedy: China's Money, Arms and Politics in Sudan*, executive summary ii (2008), available at <http://www.humanrightsfirst.info/pdf/080311-cah-investing-in-tragedy-report.pdf>.

¹⁴² *Id.* at ii.

¹⁴³ *Supra* note 122.

¹⁴⁴ *Supra* note 108 at 31.

¹⁴⁵ *Id.* at 38-39.

¹⁴⁶ *Id.* at 33.

conduct such an operation, or the most likely the EU leaders lack of political will to muster the necessary resources.¹⁴⁷

As the situation deteriorated many commentators argued for some sort of military action to halt atrocities.¹⁴⁸ Many advocates, who urged the deployment of forces, thought of it as the only solution to stop human rights atrocities.¹⁴⁹ As the previous explanation shows, strong influential political powers did not want to interfere militarily.¹⁵⁰ The reluctance of the UN, EU and USA to threaten military intervention in Darfur meant the AU assumed centre stage in the international response.¹⁵¹ Officials in the United States and Europe saw it as a way to avoid the risk that their military forces would become embroiled in another Mogadishu-like disaster.¹⁵² The AU refused to act without consent of the Sudanese government,¹⁵³ ignoring principle of no indifference when it comes to catastrophic internal human rights violations.¹⁵⁴

D. The UN Humanitarian Protection:

As mentioned previously, the international community-represented in the UN-response to Darfur has been mainly on providing humanitarian assistance. Within the UN's humanitarian responsive actions there are no well-established systems of international assistance or protection for IDPs.¹⁵⁵ Few organizations have the mandate,

¹⁴⁷ *Id.* at 34.

¹⁴⁸ *Supra* note 82.

¹⁴⁹ The coalition of SaveDarfur advocated in the US for military action.

¹⁵⁰ In chapter VII there will be a more detailed explanation of military intervention without authorization of the Security Council.

¹⁵¹ *Supra* note 108 at 35.

¹⁵² Human Rights Watch, African Action in Darfur (Jan. 2005), available at <http://www.hrw.org/wr2k5/darfur/5.htm>.

¹⁵³ *Supra* note 108 at 35.

¹⁵⁴ See *Supra* note 82.

¹⁵⁵ *Supra* note 98 at 101.

expertise or capability to address protection problem, especially physical protection.¹⁵⁶ Some of these humanitarian organizations focus on protection, while others on assistance.¹⁵⁷ The United Nations High Commissioner for Refugees [UNHCR] has been working looked at it as the best organization to provide IDPs with assistance and protection. The UNHCR has been involved with IDPs in situations that include both communities of refugees and IDPs.¹⁵⁸ Some arguments have called for expansion of the UNHCR mandate to take responsibility for IDPs.¹⁵⁹ However, the former High Commissioner, Ogata herself, raised reservations about expanding UNHCR's mandate, and called instead for more concerted political action to address the root causes of internal displacement.¹⁶⁰ The concern was that UNHCR involvement would change its character and distract it from its primary responsibility of protecting and assisting refugees.¹⁶¹ The Inter-Agency Standing Committee [IASC] which was created to facilitate coordinated response to IDPs has assigned the UNHCR under its new cluster approach, to take the lead in protection-along with United Nations Children's Fund [UNICEF] and Office for the Coordinator for Humanitarian Affairs [OCHA], and camp coordination.¹⁶² The reality shows that internal protection exceeds UNHCR

¹⁵⁶ *Supra* note 19 at 128. Organizations vary in their mandates and therefore on their focus on protection of IDPs.

¹⁵⁷ *Id.* at 128.

¹⁵⁸ *Id.* at 129.

¹⁵⁹ That idea was supported by then the US ambassador to the UN Richard Holbrooke during a visit to Angola, see <http://www.hrw.org/campaigns/refugees/section-3-3.htm>, (last visited 10, June, 2008).

¹⁶⁰ *Id.*

¹⁶¹ *Supra* note 19 at 130.

¹⁶² IASC, Protection cluster working group, available at <http://www.humanitarianinfo.org/iasc/content/cluster/protection/default.asp?bodyID=29&publish=0>.

capabilities.¹⁶³ In the former Yugoslavia assuming responsibility for IDPs tied up more than half of its \$ 1.5 billion budget.¹⁶⁴

In conclusion, IDPs who are increasing in numbers due to intrastate conflicts and the switch in states' policies towards refugees represent a challenge to the international community. IDP protection is a broad concept incorporating many activities, which shape protection mechanisms.

The new developing concept of responsibility to protect is a major shift in giving more attention to IDP protection. In the case of Darfur, the Sudanese government has shown an inability and unwillingness to protect its IDP population that has allowed the international community under the new concept to take the responsibility. Yet application to Darfur showed a lack of political will behind its weak application and it driven by states. Thus, lack of political will makes responsibility to protect empty of its intentions.

As mentioned previously, UN agencies, take protection responsibilities for IDPs on an *ad hoc* basis. Agencies vary in terms of focusing on protection and providing humanitarian assistance. The most prominent agency, which is the UNHCR, lacks the capacity to provide protection.

¹⁶³ *Supra* note 19 at 130.

¹⁶⁴ *Id.*

III. International and Regional Conventions:

This chapter will focus on international and regional human rights bodies. It will not examine provisions that have been violated, but actions taken by these human rights mechanisms.

Human rights conventions are the main sources of reference to examine human rights violations. Yet, human rights bodies whether international or regional, provide neither protection nor remedy to address IDP needs in Darfur.

This chapter will be divided into three sections. The first section will examine international human rights mechanisms and their role in protecting IDPs in Darfur. The second will examine African regional mechanisms and the third will discuss the role of the International Criminal Court [ICC].

A. International Human Rights mechanisms:

Human rights texts, such as the Universal Declaration of Human Rights [UDHR] and international conventions, mainly the International Convention on Civil and Political Rights and International Convention on Economic Social and Cultural Rights do not simply claim to be a moral guide for our time, but claim to the universality applicable to “all member of the human family.”¹⁶⁵ Accession to the UN Charter entails acceptance of the UDHR, and members at least nominally pledge themselves to respect and observe human rights and fundamental freedoms.¹⁶⁶ There is now near-universal consensus that all individuals are entitled to certain basic rights under any circumstances.¹⁶⁷ These

¹⁶⁵ SUSAN E. WALTZ, *HUMAN RIGHTS AND REFORM CHANGING THE FACE OF NORTHERN AFRICAN POLITICS* 16, University of California Press (1995).

¹⁶⁶ *Id.* at 16.

¹⁶⁷ Michelle Maiese, *Human Rights violations* 2003, available at http://www.beyondintractability.org/essay/human_rights_violations.

include certain civil liberties and political rights, the most fundamental of which is the right to life and physical safety.¹⁶⁸

The UN has taken a leading role on human rights issues generally, and contributed substantially to a developing body of international human rights law.¹⁶⁹ It has been active in the investigation and condemnation of human rights violations around the world.¹⁷⁰ However, it has been quite weak in the domain of protection and enforcement of human rights standards,¹⁷¹ especially in conflict situations that require more than just recognition of rights, but safety from violence. Regarding protection of IDPs, there are mainly three human rights mechanisms: the UN High Commissioner for Human Rights [UNHCHR], the Human Rights Council [HRC], and the Special Representative on Internally Displaced Persons.

First, the creation of the post of the UNHCHR in 1994 was an attempt to overcome obstacles and meet the challenges facing human rights. The Commissioner's priorities as set by the UN was to include early warning on emergency human rights situations, field missions by various rapporteurs, follow-up action of the high commissioner on recommendations made by special rapporteurs and working groups and implementation and provision of advisory services and technical assistance to member states.¹⁷² Special rapporteurs started to publish extensive reports on IDPs and made recommendations to governments to improve conditions.¹⁷³ UNHCHR protection of IDPs is decided into two

¹⁶⁸ *Id.*

¹⁶⁹ Rob MacRae, *Human Security in a Globalized World*, *supra* note 80 at 16.

¹⁷⁰ *Id.* at 16.

¹⁷¹ See *infra* note 187 at 121.

¹⁷² *Id.* at 121.

¹⁷³ *Supra* note 19 at 152.

activities: reporting on violations and providing advisory services and technical programs that strengthen national institutions and laws.¹⁷⁴

The second human rights mechanism providing protection to IDPs is the HRC. The General Assembly Resolution of March of 2006 establishing the HRC, member states are selected directly and individually by secret ballot by the majority of the members of the General Assembly, taking into account the contributions of the candidates to the promotion and protection of human rights and their voluntary pledges and commitments.¹⁷⁵ HRC, although laudable in its mission, rhetoric, and stated goals, fails to provide a meaningful mechanism by which to correct and punish the world's violators of human rights law.¹⁷⁶ The HRC has been heavily criticized by NGOs because states have not taken a major step to make the Council more authoritative in addressing human rights violations.¹⁷⁷ It favored "platitudes and politics over steps that could actually protect people" as stated by the Geneva Advocacy Director at Human Rights Watch [HRW].¹⁷⁸ She added "while the Council has bent over backwards to cooperate with states facing criticism, those states have unsurprisingly taken advantage of the council's timidity by continuing their abusive practices."¹⁷⁹ The HRC has been criticized for its dealings in

¹⁷⁴ *Id.* at 155.

¹⁷⁵ Miko Lempinen & Martin Scheinin, *The New Human Rights Council: The First Two Years* 2-3, Workshop organized by the European University Institute and the Institute for Human Rights (2007), available at http://www.iue.it/AEL/Projects/PDFs/HRC_Report.pdf.

¹⁷⁶ Eric K. Leonard, *The Human Rights Council: A Failure in Global Governance*, University of Denver, available at <http://www.du.edu/gsis/hrhw/roundtable/2008/panel-b/06-2008/leonard-2008a.html>.

¹⁷⁷ Amnesty Int'l, Press Release, IOR 41/059/2005, available at <http://www.amnesty.org/ar/library/asset/IO41/059/2005/en/dom-IO410592005en.html>.

¹⁷⁸ Human Rights Watch, press release, *UN: Rights Council Chooses Consensus Over Victims, Council Fails to Act on Tibet and Remains Timid on Darfur*, (Mar. 2008), available at <http://hrw.org/english/docs/2008/03/28/global18393.htm>.

¹⁷⁹ *Id.*

Darfur.¹⁸⁰ On some occasions, it has failed to condemn the Sudanese government.¹⁸¹

However, on other occasions it condemned security force attacks on civilians in South Darfur.¹⁸²

The third human rights mechanism to protect IDPs is the Secretary-General Special Representative on IDPs. The post was created by the Human Rights Commission when it requested the Secretary-General to designate a special representative on IDPs.¹⁸³ In 1992 the Sudanese former diplomat, Francis Deng, was appointed as the Representative of the Secretary-General on Internally Displaced Persons, with a core mandate to monitor displacement worldwide, undertake fact-finding missions, establish dialogue with governments, coordinate with humanitarian and human rights bodies, submit proposals for increased legal and institutional protection and publish reports for action by the Commission, the General Assembly, international organization and NGOs.¹⁸⁴ As mentioned previously, the representative formulated the Guiding Principles that became a framework norm for IDPs. Even though the representative's efforts to raise awareness of the plight of IDPs and engage in dialogue with governments,¹⁸⁵ was appreciated, his role has been limited, due to many factors such as the lack of resources, operational authority, and limited staff support.¹⁸⁶

In practice, states violate human rights conventions, which they have agreed to respect. Violations of human rights vary from one country to another in terms of violation

¹⁸⁰ *Id.*

¹⁸¹ *UN body fails to condemn Sudan*, BBC news (Apr. 21, 2005), available at <http://news.bbc.co.uk/2/hi/africa/4469249.stm>.

¹⁸² *UN rights body accuses Sudan of Darfur killings*, CBS news (Mar. 17, 2007), available at www.cbc.ca/world/story/2007/05/18/un-darfur.html.

¹⁸³ *Supra* note 19 at 152.

¹⁸⁴ *Id.* at 156.

¹⁸⁵ *Id.* at 156.

¹⁸⁶ *Id.* at 157.

and abused population, and whether as individuals or as a group. Most dreadful human rights violations like crimes against humanity, ethnic cleansing, and genocide are committed during conflicts. When dealing with serious human rights violations it is important to take into account not only the content of violated principles, but their influence on other states, as enforcement of compliance with international law may become counterproductive to the achievement of intended objectives.¹⁸⁷ In reality, states and the international community are selective about which human rights violations they interfere in due to their limited ability to change events in other states positively.¹⁸⁸ Often violating states are treated differently when they violate their obligations under international law not only for practical reasons, but due to subjectivity and double standards.¹⁸⁹ For example, in his study of IDP protection in Sudan, Zaat noted that even though there are many IDPs living in destitution on the outskirts of Khartoum, the focus was on IDPs in Darfur, as many agencies did not want to interfere to advocate for those IDPs fearing reprisal by the Sudanese government.¹⁹⁰

In the context of the case study, Sudan is a party to many international human rights conventions: International Covenant on Economic, Social and Cultural Rights ICESCR, International Covenant on Civil and Political Rights ICCPR, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Rights of the Child and the four Geneva Conventions.¹⁹¹ In 2006 Sudan ratified the 1977 additional

¹⁸⁷ RAEIN MULLERSON, *HUMAN RIGHTS DIPLOMACY* 120, Routledge (1997).

¹⁸⁸ *Id.* at 120.

¹⁸⁹ *Id.* at 121.

¹⁹⁰ *Supra* note 42.

¹⁹¹ U.N. Econ. & Soc. Council [ECOSOC], Commission on Human Rights, report Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, para. 10, E/CN.4/2006/71/Add.6 (Feb. 13, 2006).

protocols to the Geneva Convention of 1949.¹⁹² With regard to respect of these rights, Sudan violated its human rights obligations and committed heinous atrocities that required special attention from human rights mechanisms.

To address human rights violations in Darfur, the UNHCHR in its resolution 82/2005 created a mandate for a Special Rapporteur on the Situation of Human Rights in the Sudan.¹⁹³ In its fourth special session held on 13 December 2006, HRC issued resolution 4/8 to ensure the effective follow-up and implementation of the resolutions and recommendations on Darfur by a group of seven mandate holders.¹⁹⁴ This group covers all areas in which human rights have been violated in Darfur in an attempt to create a unified working group for better coordination and addressing of violations. The group held meetings with governmental officials who acknowledged violations and the seriousness of the situation in Darfur and agreed to recommendations without specifying how they would be implemented on the ground.¹⁹⁵ In a follow up report of September 2007 the expert group stated that there had been little actual or no implementation, depending on information provided by UN agencies working in Darfur. The United Nations Mission in Sudan [UNMIS]-Human Rights, is the main UN human rights body in

¹⁹² ICRC annual report 2006 at 133.

¹⁹³ UN Mission in Sudan, <http://www.unmis.org/English/2007Docs/HR-Samar-PC-aug02.pdf>, (last visited Nov., 18, 2007).

¹⁹⁴ UN Human Rights Council, 6th Sess., at 2, Doc. A/HRC/6/7 (Sep. 22, 2006). The mandate holders are The Special Rapporteur on the Situation of Human Rights in the Sudan, the Special Representative of the Secretary-General for Children and Armed Conflict, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the Special Representative of the Secretary-General on the Situation of Human Rights Defenders, the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, the Special Rapporteur on the Question of Torture and the Special Rapporteur on Violence against Women.

¹⁹⁵ Human Rights Council, *Implementation of general assembly resolution 60/251*, report no Human Rights Situation in Darfur, Doc. A/HRC/5/6 (Jun. 8, 2007).

Darfur, but rarely investigates alleged violation against Arabs,¹⁹⁶ which implies partiality in investigating human rights violations. Arabs are all perceived as violators and therefore not in need of protection, while non-Arabs are victims.

The government's attitude has shifted from denying the existence of atrocities to acknowledging the existence of violations. Still, it has taken a tough stand and blocked human rights investigation using different excuses. For example, HRC in its special fourth session held on the on 13 December 2006 created a High Level Mission [HLM] to assess the situation.¹⁹⁷ The HLM did not manage to conduct its visit to Sudan as the government did not grant them entry visas without giving reasonable explanations.¹⁹⁸ Secretary-General Ban Ki-moon had the opportunity to discuss the HLM with Sudanese president while meeting at the AU Summit in Addis Ababa on 29-30 January and received his personal commitment and assurance that the Sudan would fully cooperate with the mission as constituted.¹⁹⁹

Human rights mechanisms are unable to protect IDPs in Darfur. In a statement by the Special Rapporteur on the situation of Human Rights in Sudan, Sima Samar looked at positive indicators in Darfur as being government acknowledgement of existing problem in Darfur, the upcoming hybrid forces and the expected political process.²⁰⁰ She did not mention any of the human rights mechanisms, which could be explained as an inability to

¹⁹⁶ Interview with UNMIS-Human Rights officer working in Southern Darfur in October 2007.

¹⁹⁷ High-Level Mission, Implementation of General Assembly Resolution 60/251 of 15 March 2006, 2, Report of the High-Level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision S-4/101.

¹⁹⁸ Id, at 7 para. 8.

¹⁹⁹ Id, at 7 para. 9.

²⁰⁰ Press conference of the Special Repporter on the Situation of Human Rights in Sudan 1, UN Mission in Sudan UNMIS (2007), available at <http://www.unmis.org/English/2007Docs/HR-Samar-PC-aug02.pdf>.

find any tangible effect that the Human Rights Council had over protection of IDPs in Darfur.

B. Regional human Rights Mechanisms:

1. The African Commission on People's and Human Rights:

The African Charter on Human and Peoples' Rights [ACHPR] has played a role in providing protection for IDPs in Darfur, but it is weak. The ACHPR established the African Commission on Human and People's Rights [hereinafter the African Commission] to protect and safeguard human rights on the African continent. The Charter does not have provisions for derogation as is the case with other international human rights instruments.²⁰¹ However, it does have clawback clauses or restrictions on law and order, national security, the safety, health, ethics and the rights and freedoms of others.²⁰²

The African regional mechanism has been criticized for being ineffective, poorly funded, impartial and based on ambitious and unenforceable rights, and even neglected in the mainstream debate on human rights law.²⁰³ The case of Darfur reflects these criticisms. The African Commission had made very little attempts to do anything to protect IDPs.²⁰⁴ In dealing with human rights violations in Darfur it conducted a single

²⁰¹ Tom Bahame Nyanduga, *The Role of the African Commission on Human and Peoples' Rights in addressing Internal Displacement 5*, at the first regional conference on internal displacement in West African (Apr. 2006).

²⁰² Yemi Akinseye, *New trends in African human rights law: prospects of an African court of human rights 5*, University of Miami International and Comparative Law (2002).

²⁰³ Rachel Murray, *The African Charter on Human and Peoples' Rights 1987-2000: An overview of its progress and problems 1*, AHRLJ, Vol. 1, No.1 (2001).

²⁰⁴ The Sudan has ratified some of the African conventions like the African charter on Human and People's Rights, constitutive act of the African Union and AU Convention Governing the Specific Aspects of Refugee Problems in Africa African Commission on Human and Peoples' Rights official website, http://www.achpr.org/english/_info/index_ratifications_en.html, (last visited Jun.,14,2008).

fact finding mission to Darfur in the early years of the conflict in July 2004.²⁰⁵ The Mission investigated violations committed by both the government and rebel groups, and set recommendations mainly to the government to accept the setting of the International Commission of Enquiry into the role of Sudanese enforcement forces and militias in committing war crimes and crimes against humanity.²⁰⁶ In addition, it recommended the Sudanese government ensure no bombardment of civilians, disarm militias and meet its African human rights obligations among other recommendations.²⁰⁷ These recommendations did not have a follow-up like international counterpart mechanisms, nor enforcement mechanisms. The African Commission resorted to issuance of resolutions, which were very few in number. At the 38th Ordinary Session, the African Commission adopted a very important resolution calling on the government of Sudan to comply with its obligations under the African Charter on Human and Peoples' Rights.²⁰⁸ The Sudanese government neither responded to these recommendations, nor with international recommendations as previously mentioned.

In relation to the Human Rights Council, the African Commission's efforts were on an *ad hoc* basis. In the 41st Regular Session of the African Commission, Patrice Vahard who spoke on behalf of the UNHCHR welcomed the opportunity for the UN Group of Human Rights Experts on Darfur to work with the African Commission for the protection of the

²⁰⁵ The mission issued a report which is posted at

http://www.achpr.org/english/Mission_reports/Sudan/report_darfur%20region_eng.pdf

²⁰⁶ Fact Finding-Mission to the Republic of Sudan in the Darfur Region 29, Report to the African Commission on Human and Peoples' Rights, EX.CL/364 (XI) (2004).

²⁰⁷ *Id.* at 29-31.

²⁰⁸ Amnesty Int'l, *The African Commission: Amnesty International's oral statement on the human rights situation in Africa* (Nov. 15, 2006), available at <http://www.amnesty.org/ar/library/asset/AFR01/012/2006/en/dom-AFR010122006en.html>.

rights of the people of Darfur.²⁰⁹ This example showed the approach the UNHCHR was using, relying on the African Commission, assuming that the Sudanese government is more willing to listen to African voices.

2. African Court on Human Rights:

In June 1998, the Protocol to the African Charter on Human and Peoples' Rights establish the African Court on Human and Peoples' Rights, which entered into force in July 2004.²¹⁰ Although legal commentators have welcomed the creation of the African Court on Human and Peoples' Rights' generally they have been quite skeptical about its added value.²¹¹ The court with its establishment has limited accessibility for individuals.²¹² In the African Court, individuals and NGOs can only bring cases if they have been recognized as having observer status.²¹³ The court determines admissible cases, which are in violation and the states have to accept jurisdiction of the court to take it active. So far, only nineteen African states have ratified the Protocol and only one of them has been willing to accept the Court's jurisdiction in cases brought by private parties²¹⁴ Sudan did not ratify the African Court protocol,²¹⁵ therefore the African Court can not be considered as a protection tool for IDPs in Darfur. It is the ICC which is in charge of prosecuting cases related to crimes committed in Darfur.

²⁰⁹ African Commission on People and Human Rights, 41st Ordinary session (May 16-30, 2007), available at http://www.achpr.org/english/communiqués/communiqué41_en.html.

²¹⁰ N. Barney Pitaya, *Reflections on the African Court on Human and Peoples' Rights* 121, African Human Rights Law Journal, vol. 4, no.1 (2004).

²¹¹ AP Van Der Mei, *The advisory jurisdiction of the African Court on Human and Peoples' Rights* 28, African human Rights Law Journal, vol.5, no.1 (2005).

²¹² Id. at 29.

²¹³ Scott Lyons, *The African Court on Human and Peoples' Rights*, The American Society of International Law, vol. 10, issue 24(2006), available at <http://www.asil.org/insights/2006/09/insights060919.html>.

²¹⁴ Supra note 211 at 28-29.

²¹⁵ Coalition for an Effective African Court on Human and Peoples Rights, AU Begins Operationalisation of African Court 1, ACC Newsletter Fourth edition, Jan –March 2006.

C. International Criminal Court:

Many advocates for IDP protection in Darfur view the ICC as an important preventative protection tool. However, development of the conflict does not reflect that protection role as the coming discussion will reveal.

The ICC is the first permanent international institution established to investigate and prosecute genocide, crimes against humanity and war crimes.²¹⁶ Though it has a global mandate, so far the ICC's activities have been concentrated in Africa.²¹⁷ When national judicial systems fail to investigate or prosecute persons responsible for genocide, crimes against humanity, or war crimes, the ICC functions as a substitute to bring perpetrators to justice.²¹⁸ The former UN Secretary-General described it as “a gift of hope to future generation and a giant step forward in the march towards universal human rights and the rule of law.”²¹⁹ Some scholars have argued that success of the International Criminal Tribunal for former Yugoslavia [ICTY] and the International Criminal Tribunal for Rwanda [ICTR] gave impetus to the creation of the permanent ICC.²²⁰ The creation itself has instigated different opinions about the ICC. On one hand, some scholars argue in support of the ICC, stating that establishment of the ICC is a powerful illustration of the ability and willingness of the international community to work collectively to address a pressing human security need.²²¹ They argue that “Human security has long been threatened by shocking violations of humanitarian law and the pervasive culture of

²¹⁶ Nicholas Waddell & Phil Clark, *Peace, Justice and the ICC in Africa 2*, Royal African Society, available at http://transitionaljustice.ulster.ac.uk/pdfs/icc_in_africa_series_synopsis.pdf.

²¹⁷ *Id.* at 2.

²¹⁸ Darryl Robinson, *The International Criminal Court*, *supra* note 80, at 170.

²¹⁹ *Id.* at 174.

²²⁰ Darryl Robinson and Valerie Oosterveld, *International Humanitarian Law*, *supra* note 80 at 168.

²²¹ *Id.* at 170.

impunity which encourages such crimes.’’²²² The argument goes on to say that the ‘‘international community has reacted to such crimes with indifference or inaction, or words of condemnation backed only by hollow threats.’’²²³

One the other hand, there is criticism of the ICC concerning its role as an obstacle to future peace resolutions. For example, in Uganda the Lord Resistance Army [LRA] rebels said they would not sign a final peace agreement unless the ICC indictments were dropped.²²⁴ The counterargument is that the Court’s warrants have made a significant positive contribution to efforts to resolve the conflict by, for example, focusing international attention on the situation, restricting the LRA’s room for maneuver from Southern Sudan and pressuring the LRA to negotiate.²²⁵ The counterargument does not indentify the ICC as a human rights mechanism, but as a part of the political resolution for achieving justice for heinous human rights atrocities.²²⁶

In its report of January 2005 to the Secretary-General of the UN, the International Inquiry Commission which was established to investigate violations in Darfur recommended referral of the case by the Security Council to the ICC.²²⁷ The Security Council adopted resolution 1593/2005 in which it referred incidents in Darfur since July

²²² *Id.* at 170.

²²³ *Id.* at 170.

²²⁴ James Butty, *Uganda Says Peace Process on Course despite Rebels Protest over ICC Indictments*, VOA (Mar. 5, 2008), available at <http://www.voanews.com/english/archive/2008-03/2008-03-05-voa6.cfm?CFID=5877438&CFTOKEN=23780272>. The same argument was made in the case of Darfur by the US special envoy to Sudan, Andrew Natsios for more account see <http://www.sudantribune.com/spip.php?article27689>.

²²⁵ *Supra* note 225.

²²⁶ As it seems ICC has been politicized not to bring justice and remedy human rights violation, but to be a pressure tool for political purposes.

²²⁷ The International Commission of Inquiry on Darfur 5, report to the United Nations Secretary-General, available at [http://www.reliefweb.int/rw/RWFiles2005.nsf/FilesByRWDocUNIDFileName/EVIU-6AGKJW-ici-sud-25feb.pdf/\\$File/ici-sud-25feb.pdf](http://www.reliefweb.int/rw/RWFiles2005.nsf/FilesByRWDocUNIDFileName/EVIU-6AGKJW-ici-sud-25feb.pdf/$File/ici-sud-25feb.pdf).

2002 to the prosecutor of the ICC.²²⁸ On the 27 of April 2007 after investigation, the ICC issued a pre-trial warrant of arrest against two of the masterminds of the Darfur atrocities: Ahmed Haroun, former Minister of Interior and current Minister of Humanitarian Affairs²²⁹ and Ali Kushyab leader of the Janjaweed in West Darfur.²³⁰ The Sudanese reaction was negative rejecting the pre-trial warrants. In a statement by the Sudanese foreign minister Lam Akol, the Sudanese government rejected the warrant, claiming that Sudan is not a member to the statute.²³¹ Justice Minister Mohamed Ali Al-Mardi rejected the trial of nationals outside Sudan, whether being affiliated to the government or rebels.²³² The Sudanese government arrested one of them, Ali Kushyab in November 2006 in relation to violations occurring in Western Darfur, and was seen moving around under police custody.²³³ He was released recently for lack of evidence.²³⁴ The other suspect, Ahmed Haroun was given a governmental position as minister of humanitarian affairs, and recently visited Northern Darfur as part of the peace delegation.²³⁵

The Security Council as mentioned earlier referred Darfur to the ICC, but did not pressure the Sudan government to comply with the arrest warrant. On several occasions

²²⁸ UN news, Security Council refers situation in Darfur, Sudan to prosecutor of international criminal court, available at <http://www.un.org/News/Press/docs/2005/sc8351.doc.htm>.

²²⁹ International Criminal court, Situation in Darfur, Sudan in Case of the Prosecutor V. Ahmad Muhammad Harun and Ali Muhammad Al Abd-Al-Rahman AHMAN (Apr. 27, 2007), available at http://www.icc-cpi.int/library/cases/ICC-02-05-01-07-2_English.pdf.

²³⁰ *Id.*

²³¹ *Sudan 'will defy Darfur warrants'*, BBC News Africa (May 3, 2007), available at <http://news.bbc.co.uk/2/low/africa/6618527.stm>.

²³² Aziz El-Kaissouni, *Sudan rejects ICC jurisdiction, says one suspect held*, Reuters (Feb. 27, 2007), available at http://www.reuters.com/article/homepageCrisis/idUSL27385823.CH_2400.

²³³ Amnesty Int'l USA, *Arrest Now! Darfur, the Sudan: Ahmad Harun and Ali Kushayb* (Jul. 17, 2007).

²³⁴ Human Rights Watch, *UN: Demand Arrests of Darfur Suspects Security Council Should Urge Cooperation with the International Criminal Court*, (Dec. 4, 2007), available at <http://hrw.org/english/docs/2007/12/04/darfur17460.htm>.

²³⁵ In an interview on Jun., 19, 2008 at the Sudanese TV he appeared talking about peace in Darfur.

the Security Council urged the Sudanese government to cooperate with the ICC.²³⁶ The latest action taken in June of 2008 reflected a different stand. In the presidential statement, the Security Council formally took action on Sudan's failure to comply with the ICC arrest warrants of the two Sudanese suspects.²³⁷ There is much doubt that the Security Council, which has failed for so many years to pressure Sudan to comply with the ICC, will take a stronger stand other than resolutions and statements. Aware of that reality the ICC has tried to make the arrest of Ahmed Haroun one of the suspects in cooperation with unnamed states.²³⁸

It appears that the Security Council is compromising justice for political solution and referring the case to the ICC is a way of putting more pressure on the Sudanese government. The ICC is supposed to achieve justice however some states like the US have made many attempts to curb the ICC affect on its citizens. It withdrew its signature in 2003, issued an act that prohibits cooperation with the ICC, and entered into bilateral impunity agreements.²³⁹ Such actions question the competency of the ICC to protect human rights and provide justice. ICC does not have an actual protection role in Darfur. On the contrary, it has made the government determined to challenge the international community, which has reflected negatively on security and protection of IDPs. The chief

²³⁶ The UN Department of Public Relations, *Security Council urges sudan's government to fully cooperate with InternationalCriminal Court 'to put an end to impunity for the crimes committed in Darfur'* (Jun. 18, 2008), available at <http://www.un.org/News/Press/docs/2008/sc9359.doc.htm>.

²³⁷ HRW, *UN: Council Faults Sudan Inaction on War Crimes Suspects Tells Khartoum to Cooperate with International Criminal Court* (Jun 16, 2008), available at <http://hrw.org/english/docs/2008/06/16/sudan19132.htm>.

²³⁸ Wasil Ali, *ICC counsel condemns plans to divert plane carrying Darfur suspect*, Sudan Tribune (Jun., 16, 2008), available at <http://www.sudantribune.com/spip.php?article27534>.

²³⁹ Makau Mutua, *America and the International Criminal Court*, Global Policy Forum (Jan. 11, 2008), available at <http://www.globalpolicy.org/intljustice/icc/2004/0111america.htm>.

prosecutor of the ICC announced that he will present another case in July of 2008.²⁴⁰ He stated to the Security Council in June of 2008 that “The victims are being attacked by the Sudanese officials who have to protect them. If the international community is persuaded to look away and fails to recognize the situation for what it is - the execution of a massive criminal plan to destroy entire communities in Darfur - it would be a final blow to the victims.”²⁴¹ However, many IDPs expressed their preference for peace more than justice, because they have had enough of the war.²⁴²

In conclusion, human rights mechanisms do not have enforcement power to enforce compliance with human rights laws as the case of Darfur shows. The UNHCHR does not have the power to make the Sudanese government cooperate. The government’s attitude has showed change from denial of violations to recognition, but without actual change in policies. The HRC, which is a state representational body, has not reflected concern over human rights as much as states’ interest; thus there is a doubt of actual impact that condemnations of the Sudanese government violations will have.

The African Commission has shown limitations in taking actions to address human rights violations in Darfur as in other parts of Africa. African states still prefer to keep their friendly relationships and reserve of sovereignty. This can be explained by the avoidance of creating a precedent that might turn against these states in the future.

The ICC trial attempts of Darfur suspects does not reflect much on the changes the ICC can bring to protection of IDPs. The ICC role has been politicized as a tool of

²⁴⁰ The ICC, *ICC Prosecutor: Darfur is a huge crime scene* (Jun. 5, 2008), available at <http://www.icc-cpi.int/press/pressreleases/375.html>.

²⁴¹ *Id.*

²⁴² Personal communication with IDPs in Northern Darfur, during the field research from Jun.-Oct., 2007.

pressure, and it is not expected to be taken seriously by the Security Council to pressure Sudan to comply with the Courts warrant.

All of the above show how human rights mechanisms have not managed to provide protection for IDPs.

IV. Humanitarian Assistance:

This chapter will discuss the meaning of humanitarian assistance and responsibility to provide assistance. Also, it will tackle difficulties facing humanitarian assistance to provide protection. It will argue how humanitarian assistance provides limited protection in Darfur due to its limited role in providing physical protection.

This chapter will be divided into four sections. The first will define humanitarian assistance. The second will focus on two issues: state responsibility to provide humanitarian assistance and international responsibility represented in the UN humanitarian response. The third will focus on the humanitarian assistance role in providing protection. The fourth will examine the humanitarian assistance protection role in Darfur specifically.

A. Defining Humanitarian Assistance:

Humanitarian assistance has broad and different meanings and sometimes is mixed with humanitarian intervention, depending on the perspective used, which makes the concept open for misuse by states. For example, Japan under the broad meaning of humanitarian intervention invaded Manchuria in 1931 under the pretext of providing protection to Japanese settlers and so did Hitler to justify invasion of then Czechoslovakia.²⁴³ The other narrow definition used by the UN means simply involvement to improve poor human conditions.²⁴⁴ The latter meaning will be used through out this chapter, so humanitarian assistance will mean providing shelter, food and

²⁴³ See KIMBERLY A. MAYNARD, *HEALING COMMUNITIES IN CONFLICT: INTERNATIONAL ASSISTANCE IN COMPLEX EMERGENCIES* 10, Columbia University Press (1999).

²⁴⁴ *Id.* at 10.

medicine. Usage of the term war-affected communities in this chapter will be used interchangeably with IDPs.

B. Responsibility to Assist and UN Humanitarian Response:

1. Responsibility to Assist:

As discussed in chapter two, states are the main actors and responsible for providing assistance and protection to IDPs as citizens. On many occasions states misused the concept of sovereignty to suppress human rights and disregard their responsibility. When states commit mass violations of human rights and prove unable or unwilling to provide assistance and protection to affected populations, then the international community has a responsibility to provide protection and assistance. In various situations the international community has taken almost the whole responsibility.²⁴⁵

2. The UN Humanitarian Assistance Response:

As mentioned previously, the international community-represented in the UN-takes the lead in providing humanitarian assistance because of the states' failure to meet their responsibilities, and the UN's decades of experience in responding to humanitarian crises. In order for the UN to adequately meet the increasing needs of war affected communities, it has created multidimensional coordination at the field level as well as headquarters. One the field level, coordinating humanitarian assistance is the responsibility of the humanitarian coordinator or in case of absence, then the resident

²⁴⁵ It can be tracked to money spent internationally on humanitarian assistance, which increased from 934 million in 1990 to 4.4 billion in 1999. Latest numbers of total assistance worldwide shows increase to 10 billion. See the Review of Evaluating International Humanitarian Action in Development in Practice, vol. 12, no 3/4, 551 (2002). See also KEVIN M. CAHILL, INTRODUCTION IN THE PULSE OF HUMANITARIAN ASSISTANCE 5, KEVIN M. CAHILL ed., The Center for International Humanitarian Cooperation (2007).

coordinator, or the lead agency.²⁴⁶ As country level coordination proved to be inadequate the General Assembly, in its landmark Resolution 46/182 of 1991, created the post of Emergency Relief Coordinator [ERC] to strengthen humanitarian coordination.²⁴⁷ In addition, the UN created an Inter-Agency Standing Committee [IASC] consisting of operational UN agencies, and provided for a secretariat to the ERC, which became the Department of Humanitarian Affairs DHA and later OCHA.²⁴⁸ In 2006 a cluster approach was introduced to improve the work and make the agencies more accountable and efficient, which led to unprecedented attention to IDPs at the headquarter level.²⁴⁹ Also, there are other coordination bodies established in recent years like the Global Humanitarian Platform [GHP], which consists of UN agencies, national and international NGOs and Red Cross and Red Crescent. Coordination of humanitarian assistance continues to be one of the biggest weaknesses of humanitarian action.²⁵⁰

Providing assistance is not the exclusive work of UN agencies. Many NGOs also provide protection and assistance to IDPs. Many commentators have described NGOs as being cost effective and flexible,²⁵¹ some of whose budgets exceed UNHCR's.²⁵² NGOs also have greater flexibility to enter and are often the only presence on the ground in conflicts where the UN or other INGOs have not gained access.²⁵³ For this reason major

²⁴⁶ *Supra* note 123 at 32.

²⁴⁷ *Strengthen of the Coordination of Humanitarian Emergency Assistance of the United Nations*, A/Res/46/182 (1991), available at http://www.reliefweb.int/OCHA_ol/about/resol/resol_e.html.

²⁴⁸ *Supra* note 123 at 21.

²⁴⁹ Consolidated appeals process Cluster 2006 - Appeal for Improving Humanitarian Response Capacity, available at <http://ochaonline.un.org/cap2005/webpage.asp?Page=1355>.

²⁵⁰ For more account on the issue, see REFLECTION ON HUMANITARIAN ACTION PRINCIPLES, ETHICS AND CONTRADICTIONS, Humanitarian Studies Unit ed., Pluto Press (2001).

²⁵¹ FMR, John Holmes, *Humanitarian action: a Western-dominated enterprise in need of change* 4, issue 29 (2007).

²⁵² *Id.*, Elizabeth Ferris, *The Global humanitarian platform: Opportunity for NGOs* 6.

²⁵³ *Id.*

donors such as the Humanitarian Aid Department of European Union and the United States Agency of International Development [USAID] give 60-70% of their money to NGOs.²⁵⁴

C. Humanitarian Assistance and Protection:

Humanitarian assistance current role changed from mere offering of assistance to more active involvement in protection of beneficiaries-IDPs. This shift has sparked debate among humanitarian agencies and aid workers about the relationship between humanitarian assistance and protection of IDPs, and whether it should pay more attention to protection and physical security, or focus solely on providing humanitarian assistance. On the one hand, some aid workers although aware of the protection concerns of the displaced, do not see themselves as having a role in advocating either openly or discreetly for a response from the government.²⁵⁵ They perceive humanitarian assistance as apolitical action and they try to preserve neutrality. Neutrality prevents action for populations in need of protection.²⁵⁶ In addition, there are more practical reasons for those who have argued against inclusion of protection.²⁵⁷

On the other hand, some humanitarian actors look at the importance of their role not only in providing humanitarian assistance, but also in advocating and denouncing human

²⁵⁴ *Id.*

²⁵⁵ The Brookings-SAIS Project on Internal Displacement and The UN Office for the Coordination of Humanitarian Affairs Inter-Agency Internal Displacement Division, *Protect or neglect* 40 (2004), available at

http://www.brookings.edu/~media/Files/rc/papers/2004/1123humanrights_bagshaw/protection_survey.pdf.

²⁵⁶ See SHERI FINK, *PROTECTION OF CIVILIANS IN ARMED CONFLICT: A DECADE OF PROMISES*, In *THE PULSE OF HUMANITARIAN ASSISTANCE*, KEVIN M. CAHILL ed., The Center for International Humanitarian Cooperation (2007).

²⁵⁷ Others side with this argument for fear of denial of access by the government in case they try to advocate or go in public denouncing atrocities. Also, this argument is related partially to concern over pressure of losing funds, as many donors require presence in the field.

rights violations.²⁵⁸ Some scholars that have argued on occasions of mass violations of human rights that neutrality of humanitarian assistance should not prevent denunciation of these violations in order to put public pressure on violators.²⁵⁹

The example of IDPs from South Sudan illustrates this point. In looking at IDPs who reside around the Sudanese capital, Khartoum,²⁶⁰ Zaat Kristen found humanitarian agencies staffed by a large number of humanitarian personnel either unaware of or unsupportive of their responsibility to engage in protection activities as part of their humanitarian responsibilities in accordance with international law.²⁶¹ Reasons for reluctance to protect and assist IDPs in Khartoum ranged from fears surrounding humanitarian access, to ignorance of fact and law, to a lack of donor funding, to a desire to not muddy “independent, neutral, and impartial” assistance by engaging in protection activities.²⁶²

As it appears, on some occasions humanitarian assistance protection role is inactive or inadequate to provide protection due to internal and external factors. Internally, there is a debate still going on regarding the expansion of humanitarian assistance role to include protection, or to keep it merely apolitical action. Externally, there are practical reasons related to fear of the government reprisal as a response to protection activities, and donors lack of commitment to provide adequate funding. Unlike, humanitarian assistance plays a crucial role in saving lives and protection, still there is criticism. In some settings,

²⁵⁸ Many aid workers see their important role in advocating as crucial to their humanitarian assistance.

²⁵⁹ *Supra* note 250 at 94.

²⁶⁰ There are hundred of thousands IDPs residing around the Sudanese capital, coming mainly from Southern Sudan. For more information about number see <http://www.reliefweb.int/rw/RWB.NSF/db900SID/VBOL-69TFM4?OpenDocument>, (last visited Jun. 28, 2008).

²⁶¹ *Supra* note 42 at 6.

²⁶² *Id.* at 6.

it has been accused of on doing more harm than good by exacerbating conflict rather than contributing to peace.²⁶³ In Darfur which was described as the worst humanitarian crisis,²⁶⁴ as the Darfur crisis progressed Jeff Crisp stated “it became difficult to escape the conclusion that the UN’s response to the emergency had been sorely lacking.”²⁶⁵ The most pointed criticism is generated from the fact that humanitarian assistance is an expression of failure to address the root causes of a conflict, and instead it is a simple and wrong answer to more complex issues.²⁶⁶

D. Humanitarian Assistance and Protection in Darfur:

In Darfur the humanitarian crisis has resulted in destruction of the livelihood of local communities, which resulted in the death of hundreds of thousands. According to Amnesty International around 200,000 have died due to hunger and disease, while 95,000 have died from direct attacks.²⁶⁷ Restrictions on civilians’ movement and insecurity have affected their ability to carry out their livelihood activities, keeping them dependent on humanitarian relief.²⁶⁸

As previous debate illustrated, it is the Sudanese responsibility to provide protection and assistance to IDPs, but the central government has provided little or no humanitarian assistance. In the early stages of the conflict, the government did not provide assistance as a denial of the existence of humanitarian needs. It was reluctant to allocate resources to

²⁶³ David R Smock, *Humanitarian Assistance and Conflict in Africa*, Journal of humanitarian Assistance (1997), available at <http://www.jha.ac/articles/a014.htm>.

²⁶⁴ Maren Milligan, *Darfur: Worst Humanitarian Crisis*, The Middle East Research and information (2004), available at http://www.merip.org/newspaper_opeds/oped082504.html.

²⁶⁵ Jeff Crisp, *Forced displacement in Africa: dimensions, difficulties and policy directions* 22, New Issues in Refugee Research Paper No. 126 (2006), available at <http://www.unhcr.org/cgi-bin/texis/vtx/research/opedoc.pdf?tbl=RESEARCH&id=44b7b758f>.

²⁶⁶ In Darfur as mentioned in chapter 2 international response was mainly humanitarian not political.

²⁶⁷ *Supra* note 251, Roberta Cohen, Darfur debate 55.

²⁶⁸ There is a study that illustrate effect of the conflict in Darfur on the livelihood, which was cited in *supra* note 20.

IDPs who it suspected of being affiliated with rebels as fighters or sympathizers.²⁶⁹ Also, Darfur was not a priority to the government, as the South-North peace process was the main focus. In instances in which the government tried to provide assistance IDPs perceived it with suspicion. For example, in July of 2006 three governmental employees working for Water and Environmental Sanitation were beaten to death when a rumor spread that they wanted to poison water resources.²⁷⁰

As the government showed inability or unwillingness to provide assistance and protect IDPs the international community took the main responsibility.²⁷¹ The Sudanese government tried to manipulate humanitarian assistance by limiting agencies access to the region in the early years of the conflict, trying to keep violations underreported and as inflicting collective punishment on IDPs. However, under international pressure the government complied with Security Council resolution 1556/2005 which requested granted access to humanitarian assistance.²⁷² With the Sudanese government permission for humanitarian agencies to work in Darfur, many agencies started pouring in Darfur to alleviate suffering of IDPs in a humanitarian crisis that been described as the worse humanitarian crisis. Currently, there are some 15,000 humanitarian workers working in three Darfur states.²⁷³ It is likely that by 2006 the international community had spent over half a billion dollars on Darfur without addressing a single long term cause of the

²⁶⁹ The Sudanese government tried to prevent assistance from reaching areas controlled by SLA/Abdul Wahid faction. See *Supra* note 14 at 30.

²⁷⁰ See Amnesty Int'l, *Darfur threats to humanitarian aid* (Dec. 2006).

²⁷¹ This has allowed the government to create a dependency on the international community. In an inter-agency meeting in Kutum in Northern Darfur that issue was discussed in Sep. 2007.

²⁷² *Supra* note 108 at 33.

²⁷³ Simon Crittle, *Darfur's human disaster*, Washington Post (Jun. 20, 2007), available at <http://www.washingtonpost.com/wp-dyn/content/discussion/2007/06/19/DI2007061901475.html>.

crisis.²⁷⁴ It is worth mentioning that many IDPs-before becoming so-were living in hardship before the outbreak of the conflict. The security situation was not fully stable with tribal wars between Arab and non-Arab communities, and some examples show that they do not want food rations that will subject them to assault rather physical protection is their main priority.²⁷⁵ Considering IDPs needs goes along with “responsibility to protect,” which as scholars have argued implies evaluating issues from the point of view of those needing support, rather than those who may consider intervention.²⁷⁶ Trying to meet protection needs, humanitarian assistance has faced considerable obstacles ranging from organizational to external constraints, which limit its ability to protect IDPs.

First, as illustrated in the second chapter, protection of IDPs is negatively affected by lack of an assigned agency for IDPs within the UN system. Needless to say coordination bodies mentioned in this chapter are attempts to assure better protection and assistance. However, UN response has been described as sorely lacking²⁷⁷ and inefficient and unsatisfactory and needing to be strengthened, and quality and monitoring of assistance is questionable.²⁷⁸ The OCHA coordination role has been described as being poor and its prerequisite of collaboration of effective leadership, communication and transparent has not been fulfilled.²⁷⁹ This is due partially to the fact that Darfur covers a huge area with little or no infrastructure that creates logistical challenges to humanitarian operations. The main assigned protection organization, the UNHCR, was driven by other considerations

²⁷⁴ *Supra* note 9 at 4.

²⁷⁵ Sara Pantuliano and Sorcha O’Callaghan, The ‘protection crisis’: A review of field-based strategies for humanitarian protection in Darfur 7, Humanitarian Discussion Group (2006).

²⁷⁶ *Supra* note 102 at 101.

²⁷⁷ *Supra* note 265 at 22.

²⁷⁸ *Supra* note 14 at 29.

²⁷⁹ *Id.* at 25.

than mere protection of IDPs. It had a presence in Southern and Western Sudan, and lately established an office in Northern Darfur in February of 2008.²⁸⁰ However, in its appeal for funding for 2008, the UNHCR stated that its focus will be on protection intervention and intended to assume a leading role in protection and camp coordination and camp management, i.e. filling its responsibility under the IASC cluster. A huge amount of the required funds is for protection, monitoring and management, as 15,614,184 \$ US dollars is required out of \$ US 35,641,801.²⁸¹

Second, in terms of external obstacles, humanitarian assistance has faced problems generated by governmental restrictions, deteriorated security situations and attacks on humanitarian personnel and donors' lack of serious commitment. Even though the Sudanese government granted access to humanitarian agencies, as mentioned previously, still it uses some tools to hinder their activities. For example, the government uses Humanitarian Aid Commission [HAC] not as a humanitarian coordination body as it claims, but as security tool to keep an eye on the humanitarian agencies. This body is responsible for granting security permissions and activities; failure to secure it means activity is considered illegal.²⁸² In addition, the government harasses aid agencies, refuses to give visas or even expel expatriate officers.²⁸³ To show its determination, it expelled the UN representative in Sudan to show that no one is immune from expulsion.²⁸⁴ In

²⁸⁰ Darfuri refugees in Chad who are might be potential IDPs in the future when they repatriate. In addition, Southern Sudanese IDPs are thousands in numbers in March 2008 UNHCR repatriated 8,000 for more in this issues visit <http://www.sudantribune.com/spip.php?article27356>.

²⁸¹See UNHCR, Supplementary appeal for Darfur 2008.

²⁸² HAC is semi-governmental body that is widely known among humanitarian agencies as a security body to monitor their activities. It has tough and more restrictions on NGOs comparing to UN agencies.

²⁸³ Many working NGOs faces higher turn over comparing to the UN, and this affects sustainability of their activities.

²⁸⁴ *UN envoy ordered to leave Sudan*, BBC World (Oct. 22, 2006), available at <http://news.bbc.co.uk/2/hi/africa/6074808.stm>.

another example, two aid workers were arrested in October of 2006 when they were taking photos of children for fund raising for their program in Al-Serif IDP camp in Nyala Southern Darfur under the pretext that their act was a threat to national security.²⁸⁵

Rebel and armed groups target humanitarian aid and personnel jeopardizing activities. The UN humanitarian coordinator, Ameera Haq; said that attacks against aid workers in western Sudan have reached unprecedented levels, jeopardizing vital relief operations in the war-wracked Darfur region.²⁸⁶ Also, insecurity and security situation affects delivery of assistance and presence of aid workers in the field, which is reflected on IDPs protection.²⁸⁷ In July of 2006 due to security situation aid was cut from 470,000 IDP.²⁸⁸

In addition to the above, funding is a major obstacle for agencies and has an enormous effect on their activities. In 2006 the WFP announced that it had to cut half its ration due to a drop in donor funding which raised an ethical issue of viability of food aid program.²⁸⁹ Overall, humanitarian assistance in Darfur has been used by the international community as a mechanism to address deep political issues. As mentioned in chapter two, the international community's response in Darfur has been more as humanitarian assistance than political and physical safety. As a former UNHCR High Commissioner stated before "there is no humanitarian solution to humanitarian problem."²⁹⁰ In addition, political rather than humanitarian considerations has been a main factor in

²⁸⁵ See *Supra* note 270.

²⁸⁶ UN News Center, Attacks on Darfur aid workers jeopardizing basic relief efforts, says UN official 28(Mar. 2008).

²⁸⁷ NGO;s normally take more leading role in areas that are declared no-go for UN agencies. Its only when security situation proved really bad that NGOs will cease operating.

²⁸⁸ UN Standing Committee on Nutrition, vol. 10 (Aug. 2006), available at <http://www.unsystem.org/SCN/archives/nics10/index.htm#Sudan>.

²⁸⁹ TheWeCc, available at http://www.thewe.cc/contents/more/archive/darfur_sudan.html.

²⁹⁰ See *supra* note 256 at 22.

shaping policies, and donors promoted return in the interest of political gains and perceived stability neglecting the ongoing humanitarian needs.²⁹¹

Even though, as mentioned previously humanitarian assistance faces organizational and external obstacles, it has managed to provide protection to IDPs in three folds. First, it managed to save and protect what is considered as the most fundamental human right, the right to life. As statistics show the number of deaths have decreased gradually and steadily. Humanitarian assistance provided in Darfur managed to reduce the number of deaths among IDPs, which is considered as a protection of a fundamental human right: the right to life. The World Food Program WFP of the UN stated in a regional forum in 2006 that the mortality rate fell from 0.72 per 10,000 per day to 0.46, while under 5 dropped from 1.03 per 10,000 per day to 0.70.²⁹² The presence of thousands of aid workers resulted in increased access and improved conditions in IDP camps.²⁹³

In addition, humanitarian assistance provided “protection by presence” which was accepted by the UN in 2004 as the concept underlying protection related activities by humanitarian organizations in Darfur.²⁹⁴ Nonetheless, there is significant evidence and analysis suggesting that both large and small scale missions, by both Inter-Governmental Organizations and NGOs have played an important part in preventing attacks against civilian populations in conflicts.²⁹⁵ The idea is simply that the presences of humanitarians have a deterrent effect on the behavior of belligerents towards endangered

²⁹¹ Supra note 251 at 29.

²⁹² Helen Young, *Food aid and livelihood support in Darfur region, Western Sudan*, Khartoum Food Aid Forum, (2006).

²⁹³ Interview with a camp coordinator in El-Fasher in Northern Darfur in October, 2007.

²⁹⁴ Rosa De Costa, *Beyond presence: Protection interventions on the ground*, supra note 251 at 64.

²⁹⁵ Liam Mahony, *Unarmed Monitoring and Human Rights Field Presence: Civilian Protection and Conflict Prevention*, Journal of Humanitarian Assistance (Mar. 14, 2002), available at <http://www.jha.ac/articles/a122.htm>.

communities.²⁹⁶ There are few examples that show the efficiency of this method, but that does not exclude its presence. For example, expatriate staff presence and advocacy in Orakuma in Wadi Salih in Western Darfur managed to save some lives.²⁹⁷

Also, humanitarian assistance protect other rights under ICESCR that are not considered as fundamental as the one discussed previously. Article 6(1) of the ICRSCR recognizes the right to work. Many of the working NGO and UN agencies hire a lot of IDPs which allow them to generate some sort of income.²⁹⁸

In conclusion, humanitarian assistance is the responsibility of the respective state, however; when it fails, it becomes the international community's responsibility to provide assistance. The UN humanitarian response in Darfur has been criticized for being weak and failing to address root causes of the conflict. In Darfur humanitarian assistance protects IDPs in three ways: saving lives by delivering humanitarian assistance, physical protection by its presence even if it is not the norm but exception, and protection of the IDPs right to work, even if in practice humanitarian assistance agencies violated some of these rights.

Overall evaluation of humanitarian assistance has managed to protect some rights to a certain degree, but in the long term has proven to be less than adequate to provide physical protection.

²⁹⁶ Supra note 251 at 64.

²⁹⁷ Supra note 275 at 17.

²⁹⁸ However, many of these work contracts are on voluntary bases to avoid employee' related expenses under the Sudanese labor laws, like entitlement to social security. There were cases in the court in Northern Darfur by Darfuri employees asking for their rights. These incidents were observed during the field research in Darfur from June-October 2007.

IV. Reporting and Advocating:

This chapter will tackle the general advocacy for human rights and its different approaches used by advocacy organizations. Also it will discuss advocacy for IDP protection in Darfur. The examination of the advocacy role will look at it through two activities. First, the one carried out in the field by humanitarian organizations and the other which is carried out by human rights organizations.

Even though advocacy for Darfur has managed to create awareness of the IDPs' needs and their protection, still, it has had a limited role in generating actions to provide protection. But the advocacy carried out by agencies working in the field has proved to be more constructive and efficient than the one carried out by international human rights organizations.

This chapter will be divided into three sections. Section one focuses on the general literature of advocacy for human rights. The second will examine different approaches of advocate organizations, and the third will focus on advocacy for IDPs protection in Darfur and will be divided into two parts: the first will examine advocacy carried out in the field and the second the advocacy of international human rights organizations. Also, it will discuss the relationship between the two advocating groups, and the impact of advocacy on protection.

A. Advocacy for Human Rights:

Linguistically speaking, advocacy means “the act of pleading a cause.”²⁹⁹ As some human rights activists have defined it, human rights advocacy means using legitimate

²⁹⁹ <http://www.english-test.net/sat/vocabulary/meanings/419/sat-words.php#advocacy>, (last visited Apr. 23, 2007).

means to defend human rights.³⁰⁰ As discussed in chapter three, human rights and humanitarian laws and conventions have not provided protection, but have provided means for identifying violations. Advocacy employing human rights mechanisms try to find ways to remedy and address violations.

Nowadays many people and human rights advocates are concerned with human rights violations regardless of their geographic location. With progress in information technology, the media has become a crucial tool in highlighting human rights violations and creating awareness about plights people are facing around the world.³⁰¹ Also, it has an influence in presenting the situation and therefore has a role in advocacy work.³⁰² For example, the representation of human rights violations in Darfur in the media and labeling them as genocide has aided advocacy work as will be discussed later.

To safeguard protection of human rights many conventions and treaties have been adopted. However, as reality reveals, many of these treaties are breached by states, varying in degree of violation. As discussed in chapter two human rights mechanisms and states are selective in addressing violations. On one hand, states tend to keep their interest and friendly relationship with their counterparts overlooking or ignoring human rights violations.³⁰³ On the other hand, states denounce human rights situations in countries with whom they have a bad relationship. This means that human rights advocacy by states does not have credibility as it is related to interests. That can explain the reason behind

³⁰⁰ A group of human rights activists in the Middle East defined it in an informal discussion in May 2007

³⁰¹ There are increases in numbers international human rights organizations all over the world that advocate for different human rights.

³⁰² Many images of human rights violations and suffering of affected population, especially in conflict settings had an effect on accelerating advocacy and mobilizing support.

³⁰³ That pattern was followed during the cold war and now in the campaign to combat terrorism. However, that does not refute that reality that some allies and friends will not be criticized for political reasons, which implies the fact that states politicize human rights advocacy.

the trust in civil societies represented by advocacy organizations. Amnesty International [AI] and Human Rights Watch [HRW] that became famous internationally for advocating for human rights causes, gaining more credibility than states have. Human rights organizations try to shame and name state's violations and that explains obstacles and harassment inflicted by states, especially in the third world.³⁰⁴

B. Advocacy Approaches:

Human rights advocacy techniques and approaches vary according to the severity of the violation, the context in which it occurred, and the focus of the advocating body. The most difficult cases to advocate for are those in conflict zones and where mass violence is followed by denial of basic human rights.³⁰⁵ In this setting advocacy has to be carried out in an insecure atmosphere and involving direct contacts with armed groups. Major human rights organizations who are not working in conflict settings have different methods of advocacy. HRW depends on documenting and publishing information about human rights violations, mainly to shame and name to put pressure on violators.³⁰⁶ On the other hand, AI depends on the strategy of mobilization of its member to put public pressure through mass demonstrations, vigils and direct lobbying as well as online and offline campaigning.³⁰⁷

In the field, many working agencies have started to play an advocacy role, which has become an important part of their work. This is true of Oxfam when it started advocacy

³⁰⁴ See challenges, Amnesty International, available at <http://www.amnesty.org/en/human-rights-defenders/issues/challenges>.

³⁰⁵ See Jennifer Leaning, *Human Rights and conflict, Health and Human Rights* 151, Vol. 6, No. 2, Violence, Health, and Human Rights (2003).

³⁰⁶ About Human Right Watch, available at <http://www.hrw.org/about/faq/#5>.

³⁰⁷ About Amnesty international, available at <http://www.amnesty.org/en/who-we-are/about-amnesty-international>.

in the 1990's.³⁰⁸ The advocacy role played by humanitarian and development agencies have proved to provide some protection. In Rwanda ICRC engagement in dialogue and intervention helped to save some lives.³⁰⁹

ICRC advocacy has been criticized and labeled as negative, because it does not report on violations, trying to keep its neutrality. As a guarantee of access to IDPs and war affected communities, it is important from ICRC's perspective not to denounce witnessed human rights violations.³¹⁰ On the other hand, some organizations choose to go public about the violations, which subject them to governments' reprisal. Médecins Sans Frontières-Holland [MSF] was harassed: among others by the Sudanese government when it went public to denounce atrocities in Darfur.³¹¹

C. Advocacy and Protection of IDPs in Darfur:

At first glance it appears that advocacy for Darfur has been active and managed to attract international attention, mainly for three reasons. First, the bad human rights record of the Sudanese government has made the argument of violations much easier. Second, the labeling human rights violations in Darfur as genocide has generated attention. Third, portraying Arabs as violators has had an effect, especially with the notorious image of Arabs in the Western media.

Advocacy for Darfur have been carried out by organizations working in humanitarian assistance and human rights advocacy. Many humanitarian organizations as mentioned previously started pouring in to Darfur after the Sudanese government allowed them

³⁰⁸ Supra note 251 at 26.

³⁰⁹ Id. at 28.

³¹⁰ ICRC do not go on public when human rights violations are witnessed to keep its neutrality, which grants its humanitarian access and protection activities.

³¹¹ See *Sudan expels head of MSF from South Darfur*, Sudan Tribune (Jun. 26, 2008), available at <http://www.sudantribune.com/spip.php?article27649>.

access to the region. With the increase in humanitarian presence more information about violations committed in Darfur has become known to the public. And in response, two types of advocacy emerged: one carried by humanitarian organizations working in the field in Darfur and another one carried by international human organizations. Some were established specifically to advocate for Darfur like SaveDarfur Coalition in addition to international organizations like HRW and AI.

1. Humanitarian assistance organizations:

Many humanitarian workers view involvement in any advocacy and protection activities aside from mere delivery of humanitarian assistance as jeopardizing their neutrality and impartiality. “Aid workers find themselves under pressure from donors to join calls for military and political action, even when such public statements can compromise the principles of neutrality they use to gain access to civilians in highly politicized war zones.”³¹² Involvement in protection activities stems from the fact that feeding IDPs without protecting them is useless, bearing in mind the “well-fed dead.”³¹³

In practice some organizations that started reporting and denouncing human rights violations have put themselves into trouble with the Sudanese government. The level of government intimidation which persists in Sudan is a highly effective tactic which serves to silence many.³¹⁴ Fearing of the expulsion by the government and losing donors’ funds has had an effect on advocacy on the ground.

On the other hand, many organizations engage in behind the scenes advocacy by engaging in dialogue and carrying out different activities with government officials as

³¹² *Infra* note 322.

³¹³ This terminology was used during the war in Bosnia and Herzegovina. It means providing humanitarian assistance without paying sufficient attention to physical protection which is more imminent and fatal.

³¹⁴ *Supra* note 42 at 6.

well as rebels to provide protection for IDPs. This approach has been used by ICRC in many parts of the world, including Darfur, while trying to keep its neutrality. It has provided training for enforcement forces and rebels on human rights and humanitarian law as a way of interacting with authorities to provide protection for IDPs in Darfur. The approach of advocates represents a very crucial impact on responding to and therefore protection of IDPs.³¹⁵ In some cases advocacy and dialogue have proven to be efficient and have resulted in a positive response which was reflected in IDPs' protection, especially on the rebels' side.³¹⁶ The government officials' response varies from Khartoum level to localities and towns in Darfur. Some have been more cooperative than others, and some have not been cooperative at all, due to their suspiciousness towards of humanitarian agencies.

2. Human Rights Organizations:

On the level of human rights organizations, some NGOs have been established to advocate for action in Darfur. Chief among them is the SaveDarfur Coalition which was established mainly to urge the US government to interfere and take action. They also have considerably emphasized pressuring the Chinese government, because it has a huge investment in Sudan and is the Sudanese governments' main weapons supplier.³¹⁷ Many commentators have criticized the SaveDarfur Coalition for not spending its multi-million

³¹⁵ Many governmental officials refused to cooperate with advocacy efforts when they felt it was given to them as orders and when atmosphere of mistrust is prevailing. Many officials expressed their preferred entity is ICRC because it involves them in more respectful manner. Interview with the judge in Kutum town in Northern Darfur in October of 2007.

³¹⁶ Interview with former ICRC interpreter (Oct. 27, 2007). The interviewee indicated the positive changes ICRC advocacy played in dialogue with officials and rebels.

³¹⁷ There are more about the coalition available at <http://www.savedarfur.org/content?splash=yes>.

dollar budget on direct aid to IDPs.³¹⁸ Others have criticized its simplification of the conflict fearing loss of donors' funds.³¹⁹ This raises the controversial issue of the benefit and aim of advocacy. The Coalition has been using this fund to generate campaigning activities. The advocacy campaign itself has become an aim not a mechanism for protection of IDPs. In addition, its misrepresentation of the situation has led to solutions that do not address the fundamental evolving protection need of IDPs.

Other human rights advocacy organizations like HRW work on reporting incidents using their different methods mentioned earlier, urging all active players to take action. They have given Darfur special attention and issued a number of reports documenting the latest incidents, beside thematic reports focusing on rape or other issues. Human rights organizations have used every opportunity to urge leaders to take action on Darfur. For example, during the Sudanese president's visit to Turkey, HRW sent a letter urging the Turkish Prime Minister to interfere, and did the same during the Islamic Leaders Summit meeting.³²⁰ AI urged the Security Council to take action to make Sudan comply with ICC arrest warrants.³²¹ As violations continue and Sudanese government and rebels continue to violate human rights and humanitarian law, there is no indication of the role of advocacy role played of human rights organizations on protecting of IDPs, but that can be

³¹⁸ Mahmood Mamdani on Darfur: "The Politics of Naming: Genocide, Civil War, Insurgency", Democracy Now, available at

http://www.democracynow.org/2007/6/4/mahmood_mamdani_on_darfur_the_politics.

³¹⁹ Nina Brenjo, *Simplifying Darfur in order to save it*, available at

<http://www.alertnet.org/db/blogs/1265/2007/09/12-143133-1.htm>.

³²⁰ Turkey: Urge Visiting Sudanese Leader to End Atrocities, HRW, available at

<http://hrw.org/english/docs/2008/01/18/sudan17834.htm>.

³²¹, Amnesty International, Public Statement, AI Index: AFR 54/028/2008, available at

<https://www.amnesty.org/en/library/asset/AFR54/028/2008/en/5736ad21-33ae-11dd-a097-6931d72158b2/af540282008eng.html>.

understood in their focus on reporting and announcing atrocities and urging stakeholders to take action.

There is a relationship and close connection between agencies working in the field and human rights organizations. Humanitarian aid agencies working in the field, whether UN or NGOs share information with human rights advocates, becoming sources of information due to their presence in the field where access is hard or not easy. However, many humanitarian workers in the field perceive human rights organizations negatively.³²² Aid agencies in the field say the actions of the advocacy groups have triggered internal policy rifts and external resentments that have created significant operational complications.³²³ As mentioned in the second chapter, many advocates have called for deployment of UN forces or even called for military intervention in Darfur, which has been controversial for humanitarian organizations' advocacy role. As Sorcha O'Callaghan, who is a prominent researcher on Darfur put it, "calling for more peacekeepers - even if the government doesn't want them - or sanctions amounts to political and military demands that are beyond the remit of humanitarians."³²⁴ International advocacy has made the Sudanese government suspicious of the humanitarian organizations and easier for it to manipulate the situation to its advantage.³²⁵ Advocacy has a negative impact on national non-governmental efforts to provide protection for IDPs. Thus, in some instances, advocacy can bring more harm than

³²² Ruth Gidley, *Has advocacy on Darfur gone too far?*, available at <http://www.alertnet.org/db/blogs/1264/2007/09/19-164911-1.htm>.

³²³ *Id.*

³²⁴ *Id.*

³²⁵ This suspicion is shared by a wide range of Sudanese, as the government portrayed the international activities as part of the new hegemony and attacks against Islam, citing Iraq, Palestine and Afghanistan.

good to the cause, as the main focus is denouncing without due consideration to consequences.

International advocacy has managed to create international awareness about the plight and protection needs of IDPs. Advocates point to a decrease in attacks by Khartoum-backed militias, the deployment of African Union peacekeepers, and an agreement on a hybrid U.N.-AU peacekeeping force as indication of their success.³²⁶ However, reality reveals this success did not provide full protection for IDPs. States respond to advocacy when there is an interest. Therefore, political will from the Sudanese government and the international community is the key in responding to advocacy not the campaigns themselves.

In Darfur, field advocacy has proven to be more effective and its impact more tangible, and has managed to achieve some sort of protection for IDPs. For example, Form 8, which is required by rape victims to file complaints at police stations were abolished by the Sudanese Ministry of Justice, which has made it easier for victims to receive medical attention. Pressure from the Sexual and Gender Based Violence [SGBV] Working Groups in each state, and in Khartoum through the UN Human Rights Office and the SGBV Committee has led to the Minister of Justice issuing a decree suspending the use of Form 8.³²⁷ Also, different organizations' engagement in dialogue with government officials and armed groups has managed to secure training which has had an impact on preventive protection for IDPs.³²⁸

³²⁶ *Supra* note 322.

³²⁷ Interview with human rights activist in El Fasher in Northern Darfur (Jun., 28, 2008).

³²⁸ Almost all organizations in Darfur are involved in training activities.

In conclusion, advocacy to defend people's human rights has become more of an international concern than national, especially with the evolution of the media's role. As states are perceived suspiciously in dealing with human rights advocacy, civil society plays a more neutral and trusted role. In Darfur many humanitarian organizations are under pressure to denounce human rights violations, which has put them in an antagonistic position vis-à-vis the government and jeopardizes their activities. On the other hand, some of the working agencies have chosen communication and dialogue with the government as an approach to advocate for IDPs' protection. Advocacy in the field has proven to be more efficient in providing protection for the IDPs, depending on governmental reaction.

International organizations that were established to advocate for Darfur like SaveDarfur Coalition does not focus on the impact of their advocacy as much as generating and creating more funding for their campaigns, which is reflected in the negative role advocacy can play. Big advocacy organizations like HRW and AI do not take a tough stand, as they advocate for more general human rights around the world.

VI. Rule of Law:

This chapter will examine the meaning of the rule of law and its relationship with democracy and human rights. Also, it will tackle the rule of law function in conflict zones. The rule of law program in Darfur has managed to secure limited protection for IDPs as individuals, but not as a community due to its limited role and capacity.

This chapter will be divided into three sections. The first will tackle the meaning of the term rule of law; the second on rule of law in conflict zones and the third on protection provided to IDPs by rule of law program that is run by the UNDP and IRC.

A. Rule of Law and Human Rights:

In its basic form, rule of law means that no one is above the law,³²⁹ meaning that all citizens are equal and shall be punished if they committ crimes regardless of their occupation. Jeremy Waldron sees rule of law as celebrating features of a well-functioning system of government such as publicity and transparency in public administration, the generality and prospectively of norms that are enforced in society, the predictability of the social environment that these norms help to shape, the procedural fairness involved in their administration, the independence and incorruptibility of the judiciary, and so on.s³³⁰ Political philosophers perceive it as a political ideal that defines free societies in the modern world.³³¹

After the end of the Cold War, rule of law gained much attention from the UN as part of its strategy to assist newly developed democracies and defining democracy as a central

³²⁹ Rule of Law, Wikipedia, available at http://en.wikipedia.org/wiki/Rule_of_law.

³³⁰ Jeremy Waldron, The concept and Rule of Law 2, available at [http://www.law.nyu.edu/clppt/program2006/readings/concept%20and%20rule%20of%20law%20waldron.p](http://www.law.nyu.edu/clppt/program2006/readings/concept%20and%20rule%20of%20law%20waldron.pdf)
[df](http://www.law.nyu.edu/clppt/program2006/readings/concept%20and%20rule%20of%20law%20waldron.p).

³³¹ *Id.* at 2.

objective of the UN.³³² In its resolution 48/132 the General Assembly recognized that “the rule of law is an essential factor in the protection of human rights.”³³³

As discussed in chapter two, with association of rule of law with democracy, good governance and human rights, it has gained more attention and has become a centre of attention as a guarantor of stability and security. Even though, rule of law has gained much respect and it is well-established in the developed countries, this is not shared in the Sudan and many other third world countries. The concept of “no one above the law” and accountability are lacking in many third world countries. The situation is more complex in settings of conflicts, with collapse of a state’s ability to apply and enforce rule of law.

B. Rule of Law in Conflict Zones:

Rule of law needs a functional and effective government and enforcement bodies bound by laws and regulations. In many conflicts in which state authority is decreasing other actors step in to fill the vacuum and apply their own laws, which are in many cases violations of human rights. Conflict zones have been thought of, for many years, as areas in which law is suspended or is not functional or in the best cases is semi-functional. Lately it has been looked at differently as the UN has tried to establish the rule of law programs in unstable or ongoing conflict zones. Usually, it considers strengthening the rule of law in situations after the settling of conflicts or as a preventative mechanism.³³⁴

In his report the Secretary General stated the need for a specific rule of law for each

³³² ANGES HURWITZ, CIVIL WAR AND RULE OF LAW: TOWARDS SECURITY, DEVELOPMENT AND HUMAN RIGHTS IN CIVIL WAR AND THE RULE OF LAW 7, AGNES HURWITZ ed., International Peace Academy (2008).

³³³ The UN General Assembly, 85th plenary meeting, A/RES/48/132 (1993), available at <http://www.un.org/documents/ga/res/48/a48r132.htm>.

³³⁴ See The Secretary-General Security Council, Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies to the Security Council, S/2004/616 (Aug. 23, 2004).

context, but also acknowledged the international community has not always provided rule of law assistance that is appropriate to the country context.³³⁵ In recent years, the UNDP has established some rule of law programs in unstable and conflict zones like in Iraq, Afghanistan, Somalia and Darfur. Needless to say in most conflict zones where states authorities are not functioning and chaos is dominant, rule of law does not function adequately. Application of rule of law in these settings is not about amending laws as much about introducing rule of law and creating a new culture that can build trust in the legal system and eventually respect rule of law and human rights.

C. Rule of Law and Protection Role in Darfur:

In September of 2004 in partnership with the IRC, the UNDP established a rule of law program in three Darfur states. The program was a “response to the protection crisis, culture of impunity and disregard for the international (and regional) human rights regime, as well as recognition that stakeholders were either unaware of their rights or of their duties.”³³⁶ It was initiated to “address the protection of targeted populations, restore confidence and engages law-enforcement and judiciary officials in shouldering their responsibilities under domestic and international law.”³³⁷ Its main objectives are to “raise awareness of basic human rights amongst the different stakeholder to engage in human rights capacity building activities, build confidence between communities of internally displaced persons and local authorities and enhance compliance through monitoring and mentoring.”³³⁸

³³⁵*Id.*, at para. 15.

³³⁶ The UNDP, *Rule of Law and Protection in Conflict: The Case of Darfur, Sudan 1*, Bureau for Crisis Prevention and Recovery Justice and Security Sector Reform (2006).

³³⁷ *Id.* at 4.

³³⁸ See *Id.* at 4.

The programs managed to provide some protection through its responsive and preventative actions. First, in response to providing protection to IDPs, UNDP entered into organizational agreements with national NGOs to present cases at courts in Darfur.³³⁹ Lawyers' legal representation of IDPs safeguard some of their human rights and guarantee protection of their rights under some provisions of the ICCPR like article (14) which tackles fair trials. The cases represented by lawyers have varied from criminal to family and constitutional. In one case in Kababya in Northern Darfur a case of a minor who was sentenced to death for murdering another boy by accident was released from that sentence after the lawyer's intervention. Also, in terms of women's rights, in the past many women did not get their alimony after divorce. Due to lawyers' representation, many women manage to get their rights.³⁴⁰ However, there are shortcomings. In many rape cases in which perpetrators are not identified by victims there have been no remedies.

In relation to the response action, the rule of law program created what is known as Justice and Confidence Centers [JCCs] in different IDP camps³⁴¹ which are run by IRC to collect cases to be taken to the legal system. Cases are recorded by paralegals who are IDPs themselves, chosen after human rights training and nominated by community leaders. Paralegals play a crucial role as mediators between the legal system and IDPs. One of their activities is carrying out information campaigns to raise awareness about human rights and the legal system to which IDPs, whose rights have been violated, can bring cases to court. Also, they play an important role in advocating for IDPs' rights by

³³⁹ Observation during field research which was carried out from Jun.-Oct., 2007.

³⁴⁰ *Id.*

³⁴¹ There are seven JCCs, three of which in Northern and two in Southern and Western Darfur.

raising concerns to different stakeholders. For example, in Kassab camp in Northern Darfur issues like the grenades found near the camp and other community concerns have been raised.

Second, preventative activities have managed to secure protection for IDPs. The preemptive component of this program lies heavily in human rights training targeted at all involved parties, from civil to military personnel whether working for police or the army. Some of the early trainings targeted armed groups whether affiliated to the government or rebels.³⁴² Training in this respect is provided by Sudanese trainers who are encouraged by the UNDP to establish NGOs as a way to provide them with an umbrella of protection to carry out their activities easily. It is very hard with the ongoing violence to measure the impact of human rights training, and this has been acknowledged by some of the program officers. However, some incidents indicate that training has had an effect on changing attitudes. For example, in El-Fasher city in Northern Darfur a group of military personnel thought of following legal procedures when a member was beaten by a civilian in the city.³⁴³ Even though these military personnel did not mention any of the human rights training, there is a high likelihood of a connection between their awareness of human rights and the rule of law and that attitude. This conclusion is drawn from the observation in Sudan, in general, where many military personnel misuse their power and disrespect laws, which is even worse in areas that are accustomed to weak law enforcement.

³⁴² Informal meeting with one of the human rights trainers in Khartoum in Feb.,5, 2007.

³⁴³ Personal observation during a visit to Darfur in the first week of February, 2007.

Part of the preventative response is the creation of legal information centers in collaboration with El-Fasher University, Nyala and Zalengi in Northern, Southern and Western Darfur respectively. These centers also run seminars and discussion on issues related to human rights and Darfur. In one of these seminars, which was held in Northern Darfur, a group of IDPs expressed their gratitude in meeting governmental officers describing the seminar as a good chance for dialogue. While there has been no examination of impact of these seminars and legal information centers on protection of IDPs, they do present a venue for discussion with stakeholders.

Overall, a rule of law program does provide protection to IDPs and training is a possibility for providing preventative protection by creating realization of Rule of Law and human rights. One of the Rule of Law program activities is financing and organizing with other interested donors training for AU forces. Many of them needed training, because they were not ready to take on the responsibility or did not have adequate training to carry out their responsibilities. For example, in El-Fasher in Northern Darfur many of the female police desk officers who were responsible for dealing with SGBV had no idea on how to deal with such cases.

With all activities mentioned previously, the program has shortcomings. One of the main shortcomings of the program is limited areas covered, as it is mainly camps surrounding urban centers. Lately, the rule of law in Northern Darfur has expanded activities to remote areas that have functioning courts like Kutum and Malliet. Other areas that do not have courts system are not covered by the program activities, save general human rights training carried on the early stages of the program. In addition, the

program rarely carries activities in rebel controlled areas, but that is related partially to lack of capacity.

The government cooperation determines to a great extent many of the program activities, but also the judiciary and judges also play a crucial role. This program is unique as it includes judicial bodies that in some instances have proved to be neutral and more cooperative at protecting IDPs. Good examples can be illustrated by the cooperation of judges in Kutum in Northern Darfur which have facilitated communication with other governmental officials and facilitated human rights training. That does not ignore that fact that in some cases national security did not commit human rights violations; in these cases the judges have served as a balancing power.

In conclusion, rule of law is associated with democracy and judicial competency which is not yet achieved in many countries like Sudan. With the development of human rights norms, rule of law have gained more attention. In Darfur, the rule of law program was established to sensitize stakeholders to take their responsibility and to create a culture of respect for human rights. The program managed to secure limited protection to IDPs as individuals and not as a community. The program managed to secure protection in two aspects, first responsive protection mainly by lawyers' legal representation to IDPs; and preventative protection by providing human rights training which secured protection and created awareness among stakeholders, as well as IDPs. Involvement of judiciary bodies represented in judges made protection of this mechanism more efficient due to its assumed neutral role.

Shortcomings of the program are limited geographical coverage, as the program is located around urban major cities in Darfur. Recently, there has been expansion to remote

areas in Northern Darfur, but only to localities where there are functional courts. In part, lack of adequate coverage is due to capacity.

VII. External Intervention:

This chapter will tackle in more detail some of the issues that were not discussed extensively like military intervention, and UN enforcement mechanisms. It will set a threshold to examine the role of this UN peacekeeping missions' role in providing protection. Part of the discussion will be states actions taken individually out of the UN system.

While some scholars and protection mechanisms discussed previously have emphasized the role of military intervention to protect IDPs it is not enough to provide adequate protection. Protection of IDPs in Darfur has proved to be in need of more than just a military presence. Besides, the UN missions have many problems that hinder their protection role.

The first section will look at the meaning of humanitarian intervention and related issues such as the concept of "responsibility to protect." The second will look at UN enforcement actions, mainly embargo and military deployment and at the same time will set the threshold to examine success of this mechanism. Also, it will examine the role of UNMIS in Darfur as a non-military mission. The third will examine the terminated African Mission in Sudan [AMIS], and the fourth will examine the role played by United Nations African Mission in Darfur [UNAMID]. The protection role of both missions will be examined using the threshold, which will be created in the second section of this chapter.

A. Military Intervention:

In this chapter military intervention will be discussed in more detail. Discussion in this chapter will exclude humanitarian assistance as it was discussed in a separate chapter. As

a starting point it is important to define the meaning of humanitarian intervention and its different forms. John Vincent defines intervention as an “activity undertaken by a state, a group within a state, a group of states or an international organization which interferes coercively in the domestic affairs of another states.”³⁴⁴ Another definition of humanitarian intervention is that it is “the violation of a nation-state’s sovereignty for the purpose of protecting human life from government repression of famine or civil breakdown.”³⁴⁵

Humanitarian intervention is not a not a new phenomena. It has been used by states to justify their political interest. A classic example is the 19th century humanitarian intervention of Britain and France who interfered, respectively, in Greece in 1830 and Syria and Lebanon in 1860 to rescue persecuted Christians in the Ottoman Empire.³⁴⁶ During the Cold War there were some interventions that have been cited as humanitarian in nature, but in reality they were driven by political considerations.³⁴⁷ After the collapse of the Soviet Union, humanitarian intervention continued in Northern Iraq in 1991, the US and UN intervention in Somalia in 1992, the appalling lack of intervention in Rwanda in 1994, and the UN and NATO’s interventions in Bosnia in 1995 and in Kosovo and Serbia in 1999.³⁴⁸ However, reality reveals that Western leaders had enough of then

³⁴⁴ Adam Roberts, *Humanitarian War: Military Intervention and Human Rights* 431, International Affairs, Vol. 69, No. 3(Jul. 1993).

³⁴⁵ Alex de Waal and Rakiya Omaar, *Can Military Intervention Be "Humanitarian"* 3, Middle East Report, No. 187/188, Intervention and North-South Politics in the 90's (1994).

³⁴⁶ *Id.* at 4.

³⁴⁷ For example, India in then East Pakistan, Bangladesh in 1971, Vietnam in Cambodia in 1979 and Tanzania in Uganda in 1979. See HUGO SLIM, *Military Intervention to Protect Human Rights: The Humanitarian Agency Perspective*, Background Paper for the International Council on Human Rights’ Meeting on Humanitarian Intervention: Responses and Dilemmas for Human Rights Organisations (2001).

³⁴⁸ Kosovo has been cited as a good example of intervention for one purpose to protect the Kosovo Albanians, the former British Prime Minister Tony Blair stated "our fellow human beings" who "now have

Yugoslavia President Slobodan Milosevic and his policies and wanted to raise internal opinion against him.

As discussed earlier in chapter two, humanitarian intervention in the 1990's has led to the creation of the concept of "responsibility to protect" leaving aside the term of military intervention. Military intervention under the new concept required meeting a threshold which was set as: the cause must be a just one in which there is large scale loss of life Second, intention of intervention should halt or avert the threat in question. It should be the last resort action which will secure the defined human protection objective and the military action to meet the threat in question.³⁴⁹

Applying military intervention in the case of Darfur many advocates called for intervention like in what happened in Kosovo.³⁵⁰ Darfur is a case in which large of loss of life, and many thought of intervention as the most appropriate action to protect IDPs. The Sudanese government showed an inability and unwillingness to provide protection, and dialogue with it is considered as useless. Force was looked at as the last resort to secure protection and meet the threat. However, this advocacy did not find political will among the intervening entities as discussed earlier. On the contrary, they preferred intervention within the UN for many practical reasons. First, as mentioned previously the fragile peace process and later agreement between the South and the North was the main focus. There was a concern over collapse of peace if any military action was taken. Second, the US and NATO had already raised feelings of discontent among Muslims around the

no rights, no justice, no protection". See UK Blair: 'The right thing to do', BBC News (Mar. 26, 1999), available at http://news.bbc.co.uk/2/hi/uk_news/304871.stm.

³⁴⁹ The threshold was mentioned in chapter two in page 30-31.

³⁵⁰ In an in formal meeting with a SAVEDARFUR advocate in the US in May 2007, he mentioned NATO should interfere to protect IDP without Security Council approval.

world with atrocities committed in Afghanistan and Iraq, and it was likely that it would increase these feelings, which the Sudanese government managed to manipulate to mobilize Sudanese against such intervention.³⁵¹ Third, Darfur represents a real challenge with its huge areas with poor infrastructure, and uncontrolled border that can be easily penetrated by Muslims insurgents.³⁵² Regardless of IDP protection needs at the end practical and self-interest prevailed over protection.

B. UN Enforcement Actions:

1. Embargo and Sanctions:

In terms of the UN policies regarding intervention, there are two main mechanisms: sanctions and embargoes, and dispatching of peacekeepers. Sanctions and embargoes were imposed on many countries like Iraq, Serbia and Haiti to pressure governments, but they caused immense hardship for ordinary people. During the long sanction on Iraq which were imposed after the invasion of Kuwait, UNICEF reported that there were one million who suffered malnutrition.³⁵³ In some cases sanctions were imposed not only on states, but also rebel movements as the case of UNITA in Angola.³⁵⁴ Many commentators doubt the efficiency of sanctions on achieving their stated goals,³⁵⁵ or states compliance

³⁵¹ That was apparent during UN-anti demonstrations against Security Council resolution 1556. See *supra* note 108 at 38.

³⁵² It is likely that would have been viable, especially with the government constant manipulation with Islamic slogans and previous hosting of Al-Qaida leader Osama Ben Laden.

³⁵³ *Iraqi children starving under sanctions*, BBC world (Nov. 27, 1997), available at <http://news.bbc.co.uk/2/hi/35065.stm>.

³⁵⁴ Robert Fowler and David Angell, see *Supra* note 80 at 190.

³⁵⁵ Mark Thornton, *Adverse Consequences of UN Sanctions*, available at <http://www.lewrockwell.com/orig/thornton5.html>.

with Security Council resolutions. Also, there have been doubts about the Security Council's commitment to enforce its resolutions.³⁵⁶

In Darfur, the Security Council has issued many resolutions. An arms embargo was imposed with resolution 1556/2004, which called on the government to disarm the Jajaweed militia.³⁵⁷ Also, it called on the government to ease and grant access to humanitarian workers.³⁵⁸ The arm embargo was extended to include all the parties to the N'djamena Ceasefire Agreement³⁵⁹ and any other belligerents in all of the Darfur states. It also established a Committee to monitor the measures and to designate those individuals subject to the assets freeze and travel ban imposed by the resolution. In another resolution 1679/2006 the Security Council expressed its intention to consider taking strong and effective measures, such as a travel ban and assets freeze, against any individual or group that violates or attempts to block the implementation of the Darfur Peace Agreement.³⁶⁰ Many of these resolutions had little effect on protection of IDPs on the ground, as the Sudanese government continued to attack IDPs forcing them to move. The Security Council has not worked hard enough to impose the arms embargo as weapons are still flooding in to the region by Sudan's major weapon supplier, China, which is one of the permanent members of the Security Council. Rebels are receiving weapons that assist them to launch attacks.

³⁵⁶ China continued to supply arms to Sudan; which was known to be used in Darfur, even there was an arms embargo to send weapons.

³⁵⁷ The UN News, *Security Council demands Sudan disarm militias in Darfur*, press release, available at <http://www.un.org/News/Press/docs/2004/sc8160.doc.htm>.

³⁵⁸ The Sudanese government reaction was responsive in humanitarian aspect, but not in disarming the Janjaweed militia.

³⁵⁹ The agreement was signed in 2004 by the main rebel factions at that time SLM/A-unified at that time-, JEM and the Sudanese government. For more information on the agreement see <http://www.issafira.org/AF/profiles/sudan/darfur/cfc/agreement.pdf>.

³⁶⁰ See Security Council, S/RES/1679 (2006), available at <http://www.issafira.org/AF/profiles/sudan/darfur/unres1679.pdf>.

Apart from the UN, some states like the US and the EU have imposed or threaten to impose their own sanctions. For example, the US imposed sanctions on Sudan in May 2007 preventing 31 companies and three people from doing business in the United States or with US companies.³⁶¹ The Treasury Department issued a statement immediately after Bush's announcement and blocked the assets of the three Sudanese officials.³⁶² The EU had imposed the arms embargo in response to the Security Council resolutions, and additionally threatened in June of 2008 to impose sanctions against individuals in the government for not cooperating with the ICC.³⁶³ On the other hand, China and Russia have objected to sanctions against Sudan, due to their economic interests. Recently, China reiterated its stand and objected to increased sanctions.³⁶⁴

2. UN Missions:

In order for the UN to preserve its role in maintaining peace and security, it established peacekeeping missions, which became an integral part of its missions and existence. The UN missions started back in June of 1948 with the UN Truce Supervision Organization as a response to the Arab-Israeli war, and the latest UN African Mission in Darfur UNAMID, which started in January of 2008. Traditional peacekeeping follows a cease-fire prior to final peace agreements.³⁶⁵ The UN strategic context for UN peacekeeping dramatically changed, prompting the Organization to shift and expand its field operations from (traditional) missions involving strictly military tasks, to

³⁶¹ *U.S. imposes new sanctions against Sudan*, CNN, available at <http://www.cnn.com/2007/POLITICS/05/29/bush.sudan/index.html>.

³⁶² *Id.*

³⁶³ *EU sanctions threat against Sudanese who protect Darfur culprits*, Yahoo news, available at http://news.yahoo.com/s/afp/20080616/wl_africa_afp/eusudandarfurcourt.

³⁶⁴ Qiang Pen, *China opposed more Sudan sanctions*, Chinadaily, available at http://www.chinadaily.com.cn/china/2007-05/30/content_882954.htm.

³⁶⁵ *Id.* at 286.

complex(multidimensional) enterprises designed to ensure the implementation of comprehensive peace agreements and assist in laying the foundations for sustainable peace.³⁶⁶ Today's peacekeepers undertake a wide variety of complex tasks, from helping to build sustainable institutions of governance, to human rights monitoring, to security sector reform, to the disarmament, demobilization and reintegration of former combatants.³⁶⁷ After the end of the Cold War there was an increase in numbers and forms of UN operations into ongoing conflicts.³⁶⁸ In terms of response, the UN has been described as a reactive organization,³⁶⁹ and many commentators described UN intervention as occurring only after a conflict crosses the crisis threshold.³⁷⁰

In the early 1990's, the Security Council did not anticipate peacekeeper involvement in protecting civilians nor did they see a role for peacekeepers to monitor or assess human rights observance.³⁷¹ However, after failure in the early and mid-1990s the Security Council and the General Assembly embarked on a series of reports and studies to examine the relationship between and changing nature of the modern conflict and protection of civilians.³⁷² In a landmark resolution in April 2000, the Security Council stated that it was "gravely concerned at the harmful and widespread impact of armed

³⁶⁶ Quoted at the United Nations Peacekeeping website, available at <http://www.un.org/Depts/dpko/dpko/>.

³⁶⁷ *Id.*

³⁶⁸ Paul F. Diehl et al, *United Nations intervention and recurring conflict* 683, international organization 50(1996).

³⁶⁹ *Id.*, at 687.

³⁷⁰ Many commentators describe the UN intervention as more of reactive than preventative action.

³⁷¹ William G. O'Neill, *A New Challenge for Peacekeepers: The Internally Displaced* 5, Occasional Paper (Apr. 2004), Brookings, University of John Hopkins, available at http://www.brookings.edu/~media/Files/rc/papers/2004/0422humanrights_fixauthorname/20040422oneill.pdf.

³⁷² See *Id.* at 7.

conflict on civilians, including the particular impact armed conflict has on women, children and other vulnerable groups.”³⁷³

Military deployment was not the only form of peacekeeping, as there were unarmed missions that were deployed to reduce violent conflict and human rights abuse.³⁷⁴ Their efficacies are hard to prove because they are less dramatic and headline-grabbing than military efforts. They go against widely-held stereotypes that violence can only be faced with violence.³⁷⁵ Nevertheless, such unarmed monitoring missions have become an important tool in conflict management and human rights protection.³⁷⁶ An example of one type of this mission was UNMIS in Darfur. UNMIS was deployed in South Sudan after the signature of the peace agreement, but due to the ongoing conflict in Darfur its mandate was expanded to include Darfur.³⁷⁷ Expansion of UNMIS to cover Darfur shows the international community’s involvement in actions that will not appease the Sudanese government. At the time it will give it a chance to have more information on violation of human rights.

UN peacekeeping missions are facing obstacles that will be used in this chapter as a threshold to examine the protection role of UN missions. These obstacles are: mandate of the mission; raising expectations; maintaining neutrality; perception of warring parties and lack of political will. As mentioned previously protection of civilians in arm conflicts became a concern of the UN and many UN missions have started to have a mandate of protection of IDPs like UNAMID in Darfur. The main issue with such mandates is

³⁷³ See S.C. Res. 1674, U.N. Doc. S/RES/1674 (Apr. 28, 2006)

³⁷⁴ *Supra* note 51.

³⁷⁵ *Id.*

³⁷⁶ *Id.*

³⁷⁷ Security Council resolution 8821/2006 expanded the mandate to include Darfur, available at <http://www.un.org/News/Press/docs/2006/sc8821.doc.htm>.

putting the UN on the side of one party to a conflict. This does not reject the importance of siding with the abused, but it has raised some concerns over impartiality of the mission. As Liam Mahony stated “impartiality is a must, and the extent to which this message is deemed to be credible by the parties may be decisive.”³⁷⁸ He added that “resistance to access is also affected by institutional stereotypes or misunderstandings. Thus, important players inside the state may be concerned that any involvement of the UN will open them up to public scrutiny by all member states.”³⁷⁹ He continued to argue that the actual process of gaining access involves a complex array of incentives, diplomatic pressures, and potential sanctions in order to convince the parties that they have less to lose and more to gain by allowing the international field presence than by resisting it. Other regional players, envoys, and behind-the-scenes diplomacy can play a significant role.³⁸⁰

As Liam Mahony stated an international field mission must not create false expectations of security in the population, which might encourage people to take undue risks.³⁸¹ He stated that missions need to have some contact and relationship with the host government, even if the government is perceived to be the primary abuser of human rights. Such contact is essential both for the protection of the mission, and also in order to effectively communicate pressure for protection.³⁸² Close relationships with local civil society can also be crucial, both for building local trust in the mission, and for developing access to critical information about what is going on.

³⁷⁸ *Supra* note 51.

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ *Id.*

³⁸² *Supra* note 51.

Many armed parties and warring factions feel the impunity and they are not accountable to justice mechanisms. The armed actors' sense of impunity in particular is a major factor reflected on IDPs protection, as they will be less sensitive to an international presence if they feel it will bring no negative consequences to their actions. If, however, they perceive the mission to be organically connected to sectors of the international community who can positively or negatively affect their prospects, they will be more sensitive, even in a context of escalation.³⁸³

Political will plays a crucial role in determining success or failure of a mission to protect IDPs.³⁸⁴ Scholars attributed failure of UN missions to a shortage of resources, whether human or financial on failure of UN missions.³⁸⁵ Usually shortage of resources is implicitly understood as lack of political will to provide these resources. The reality proves that lack of commitment more negatively impacts protection of IDPs, than availability of resources. In Rwanda while the genocide was taking place, very little effective willingness from the UN mission personnel made a difference and managed to provide protection to IDPs.

C. The African Union and Darfur:

The Organization of African Unity [OAU], the predecessor of the AU, is notorious for refusing to interfere in what were deemed to be the “internal affairs” of other member states.³⁸⁶ The AU seems to have adopted a different attitude, as expressed in

³⁸³ *Id.*

³⁸⁴ Sophia Tesfamariam, *UN Mission to Eritrea and Ethiopia-Another Failed UN Peacekeeping Mission*, available at <http://www.shabait.com/cgi-bin/staging/exec/view.cgi?archive=17&num=7879>.

³⁸⁵ *Id.*

³⁸⁶ William G. O'Neill & Violette Cassis, *Protecting Two Million Internally Displaced: The Successes and Shortcomings of the African Union in Darfur* 1, The Brookings Institution—University of Bern Project on Internal Displacement (Nov. 2005).

its founding charter which provides for intervention in member states when the government is unwilling or unable to protect its people.³⁸⁷ Darfur represents one of these cases in which the state is unable and unwilling to protect IDPs.

African Mission In Sudan [AMIS] started with the signature of the N'djamena Ceasefire Agreement signed by the Sudanese government, the SLA and JEM in April of 2004.³⁸⁸ According to the agreement a Ceasefire Commission was established to monitor implementation.³⁸⁹ In May of 2004, African Heads of State and Governments authorized the deployment of AMIS to monitor, verify, investigate and report on violations of the ceasefire.³⁹⁰ The first sixty AU military observers were deployed in the next month in Northern Darfur. They were followed by a three hundred strong protection force to provide security and to safeguard the unarmed observers.³⁹¹ As violations continued, the Peace and Security Council [PSC] ³⁹² approved in October of 2004 the expansion of the mission to 3,320 soldiers and police.³⁹³ The mandate was expanded to include protection of civilians under imminent threat and in the immediate vicinity, within resources and capability.³⁹⁴ In April of 2005 number of troops was expanded to 7,731 soldiers, civil police, military observers and international staff of various kinds.³⁹⁵ Needless to say, deployment of these forces faced a lot of problems involved logistical, financial and

³⁸⁷ *Id.*, at 1.

³⁸⁸ See Peter Kagwanja & Patrick Mutahi, *Protection of civilians in African peace missions The case of the African Union Mission in Sudan Darfur* 5, Institute for Security Studies, paper 139 (2007).

³⁸⁹ See *id.* at 5.

³⁹⁰ *Id.* at 6.

³⁹¹ *Id.* at 6.

³⁹² The PSC came into force in December 2003, which represents a collective security and early warning arrangement to facilitate timely and efficient response to conflict and crisis situations

³⁹³ See *supra* note 200 at 5 and 7.

³⁹⁴ *Supra* note 197 at 14.

³⁹⁵ *Supra* note 200 at 7.

resistance and disengagement of the government. The mission itself was disorganized in most of its deployment, which raised donors concern over the expenditure.³⁹⁶

Among IDPs there was a high expectation that AMIS would protect them. Some AMIS troops expressed their willingness to interfere, as they were not going to stand still.³⁹⁷ However, there was a concern that AMIS would be part of the conflict, which affected its protection role. IDPs perceived AMIS negatively, which made many organizations unwilling to cooperate and work with AMIS.³⁹⁸ Also, rebels perceived the mission with suspicion, as an extension of the Sudanese government. And this can explain attacking AMIS forces in Hasskanita as an indication of its perception as being an extension of the Sudanese government.³⁹⁹ The negative perception had a negative impact on its protection role and the safety of the missions' personnel.

The AMIS mission showed a lack of political will driven by internal-within the African system-and external factors. There was disorganization and disconnection in terms of communication on different levels. Besides, many AMIS personnel did not have experience to deal with their assigned tasks.⁴⁰⁰ African states showed an impeded lack of political will by sending personnel who did not have experience to handle their assignments.⁴⁰¹ Donors did not want to secure money for a mission they deemed a failure, and they preferred a "strong UN mission."⁴⁰² Internal and external factors diverted AMIS' attention from its protection mandate to focus more on other issues that have not

³⁹⁶ Interview with one of the EU consultants working in Northern Darfur in Oct., 24, 2007.

³⁹⁷ *Supra* note 197 at 17.

³⁹⁸ *Supra* note 91.

³⁹⁹ *Sudan says rebel JEM responsible for Haskanita attack*, Sudan Tribune, available at <http://www.sudantribune.com/spip.php?article24079>.

⁴⁰⁰ Interview with an EU consultant in El-Fasher in Northern Darfur in Sep. 15, 2007.

⁴⁰¹ *Id.*

⁴⁰² *Id.*

given it the time to work for IDP protection. In addition, warring parties did not show political will to make the AMIS mandate of protection practical.

Despite the above facts, AMIS managed to secure a sort of protection for IDPs. For example, AMIS firewood patrols for women searching for wood have managed to protect them from militia attacks; however, these patrols were carried out only in certain days and locations, and were not regular occurring.⁴⁰³

D. UNAMID and Darfur:

Realizing its limitations, the AU wanted to transfer responsibility of protection in Darfur to the wider international community, which Sudan rejected stating that AU does not have the right to do so, only Sudan's consent would allow for such transformation. As Sudan resisted deployment of international forces in Darfur, the UN thought of a way to overcome this obstacle by creating a hybrid mission that Sudan agreed to.⁴⁰⁴ The Security Council resolution 1769/2007 created United Nations African Mission In Darfur UNAMID which started its deployment in January of 2008.⁴⁰⁵ AMIS personnel shifted status from being personnel of a regional mission to international. Many IDPs expressed confusion, questioning the difference that new mission would make. Many thought that changing the helmets from green to blue would not mean that protection was coming soon as the personnel remained the same.⁴⁰⁶ As mentioned in the resolution 1796, UNAMID would provide protection to its personnel, humanitarian and civilians who are

⁴⁰³ Many of the EU advisors who are working closely with Civil Police [CIVPOL] have shown their frustration as in many cases, soldiers do not accompany CIVPOL who can not work without force protection as they are unarmed.

⁴⁰⁴ Mark Mallan, *Sudan: Seven months and counting for the Darfur hybrid force*, Refugees international (Nov. 11, 2007), available at <http://www.refugeesinternational.org/content/article/detail/10035>.

⁴⁰⁵ See UN Missions and UNAMID website <http://www.un.org/depts/dpko/missions/unamid/>.

⁴⁰⁶ Many IDPs though that changing the helmets from green to blue does not mean protection will come soon as these personnel are the same.

under imminent threat of physical violence and prevent attacks against civilians, within its capability and areas of deployment.

The Sudanese government placed many obstacles to hinder UNAMID functioning on the ground. However, some of the obstacles that have hindered its protection role have nothing to do with the government. The Sudanese government still contents sends that it has the same policies and UNAMID did not make a difference at least in the short term by bombarding civilians and carrying out attacks.⁴⁰⁷

Protection of UNAMID seems to be also affected by logistical obstacles as many of the needed helicopters which are essential to facilitate its function are not provided yet. Political will still seems to be absent and does not exist.

The UNAMID core mandate is protection of IDPs, and that is likely to make some warring parties in conflict with UNAMID. Since its deployment, UNAMID has been attacked many times. For example, a UNAMID supply convoy was attacked in January of 2008 on its way from Umm Baru to Tine in Western Darfur, in which UNAMID did not return fire.⁴⁰⁸ Also, to show UNAMID helplessness to provide protection and to raise frustration and feeling of contempt among IDPs, civilians were attacked in February of 2008 by the Sudanese government.⁴⁰⁹

In conclusion, humanitarian intervention outside of Security Council approval is not a new phenomenon, and events occurring in the 1990s have led to the invention of new

⁴⁰⁷ See Human Rights Watch report "They Shot at Us as We Fled" Government Attacks on Civilians in West Darfur, available at <http://hrw.org/reports/2008/darfur0508/darfur0508web.pdf>.

⁴⁰⁸ *UNAMID Convoy Ambushed in West Darfur*, UNAMID, available at <http://unamid.unmissions.org/Default.aspx?tabid=55&ctl=Details&mid=376&ItemID=43>.

⁴⁰⁹ See *Attacks on civilians in Sudan's West Darfur Region violated international law, says UN report*, UNAMID, available at <http://unamid.unmissions.org/Default.aspx?tabid=55&ctl=Details&mid=376&ItemID=103>.

concepts like the responsibility to protect. That option was not visible in Darfur, because the intervening states do not have the political will, and eventually they preferred an approved authorization from the Security Council and the Sudanese government. Legal military intervention by the UN has two forms: embargo and sanctions and deployment of peacekeepers. In Darfur, an arms embargo which was imposed by Security Council resolution did not have a real impact on the protection of IDPs because arms are still supplied by China that opposite additional sanctions on Sudan. Other states and groups like the US and EU have imposed sanctions on Sudan, with the US as tougher and including economic implications. Security Council resolutions that have threatened the imposing of sanctions actually have had a positive effect on protection of IDPs, as Sudan allowed access to humanitarian assistance following that threat.

The UN missions which were deployed in the past to separate warring parties have expanded to include many other missions and responsibilities to meet the evolving IDP protection needs as in the case of Darfur. These missions commonly face many obstacles of neutrality, unintentional raising of expectations and the warring parties sense of impunity.

In Darfur, it was the AU that took the mission of supplying armed forces, but with obstacles faced internally and externally, the AMIS did not provide sufficient protection for IDPs. A call for a stronger UN mission created for the first time a UN and AU hybrid mission, which has proven to be, so far, inefficient in providing protection for IDPs for claimed logistical obstacles. In the cases in which it was confronted with attacks, it did not respond back, failing to protect IDPs on some occasions.

VIII. National Protection of IDPs:

This chapter will tackle national efforts to provide protection for IDPs. In this chapter, the Darfur Peace Agreement [DPA], Darfur peace process, efforts of civil society and governmental human rights bodies will be examined to evaluate their efforts to provide protection to IDPs. This chapter will not discuss the general literature, because the previous literature review covered all aspects of protection. Also, discussion in this chapter will not include national laws as they have been violated by the same body that is supposed to respect them.

The main argument of this chapter is that national efforts have not managed to provide adequate protection to IDPs due to government resistance and the negligence of the international community.

This chapter will be divided into four sections. The first section will look at the DPA and its effect on protection of IDPs. The second examines the ongoing peace process, which tries to include other groups that did not sign the peace agreement. The third will examine the role of national NGOs, and the last will examine efforts of governmental human rights bodies to protect IDPs.

A. Darfur Peace Agreement:

Many efforts have been trying to bring warring factions in Darfur to sign peace agreements. In May of 2006 a faction of the Sudanese Liberation Movement/Army SLM/A lead by Minni Arku Minawi and the Sudanese government signed the DPA in the Nigerian capital Abuja to end the conflict in Darfur. IDPs received this agreement with

anger and many demonstrate against it.⁴¹⁰ The agreement includes many human rights and humanitarian provisions and Article 21 of the Agreement focuses on IDPs and their needs and protection.⁴¹¹ A transitional authority was established to implement the agreement and many functional bodies were created like the one responsible for compensating IDPs in Darfur.⁴¹²

The Agreement was signed to bring peace and protect IDPs. On the contrary, it has caused more concern over protection. Signatories to the agreement did not stop engagement in armed clashes.⁴¹³ In areas controlled by the main faction that signed the agreement-SLA/Manni Minawi human rights violations are practiced on different levels.⁴¹⁴ The agreement caused the break up of the SLA into two factions: Abdul Wahid rejected it as did the other major rebel group of the JEM.⁴¹⁵ As it has been described by Roberta Cohen, it is like Sudan's national IDP policy on IDPs is not in force.⁴¹⁶ The International Crisis Group that been advocating for IDPs protection described the agreement as “fragile.”⁴¹⁷

⁴¹⁰ The AU garrison in Kalma camp was attacked by IDPs and an interpreter was killed. Interview with UNDP-Rule of Law officer in El-Fasher in Northern Darfur in Jul., 14, 2007.

⁴¹¹ See Darfur Peace Agreement, available at <http://allafrica.com/peaceafrica/resources/view/00010926.pdf>.

⁴¹² Alex De Waal, *The Transitional Darfur Regional Authority*, available at <http://allafrica.com/stories/200607140751.html>.

⁴¹³ *Clashes between allies in Darfur*, BBCWorld (Oct. 9, 2007), available at <http://news.bbc.co.uk/2/hi/africa/7035528.stm>.

⁴¹⁴ For example it established its own judicial system which does not comply with any of the Sudanese or human rights law. Judges for these courts are chosen according to their political affiliation and they do not have a legal background or appropriate training, which resulted in many violations of human rights related to trials. Individuals reported to fill complain to the government controlled areas are harassed or do not have the right to fill complain in front of these courts if they lose their case in governmental courts.

⁴¹⁵ The outbreak of the factions caused fighting among themselves which was reflected negatively on protection of IDPs.

⁴¹⁶ *Supra* not 67 at 3.

⁴¹⁷ For more account on the report see <http://www.crisisgroup.org/home/index.cfm?id=4179>.

B. Darfur Peace Process:

The DPA was not signed by all rebels and many factions rejected it. Many rebels, IDPs and aid workers perceive the government with suspicion.⁴¹⁸ Therefore, it is not expected that without a neutral mediator peace between the government and armed groups will go on, as mistrust between them is prevailing.⁴¹⁹ An inclusive peace will reflect positively on protection of IDPs. Acknowledging this fact, the UN and AU gave it considerable attention, and assigned special representatives to bring warring factions together.⁴²⁰ So far efforts to bring peace to Darfur have proven inadequate because there is a lack of adequate political will from different parties-warring parties and major states. Bringing peace to Darfur is the most important step to protect IDPs because the main of protection concern is the ongoing conflict. The government and other parties do not show a will to sign a peace agreement, and misunderstandings of the essence of the conflict has an impact on the international response as well as researching solutions.

The central government has signed peace agreements with the main Southern rebel faction as it did with the Eastern rebels. Any new peace agreement is likely to raise discontent among the ruling party because it will entail more power sharing that the government views as diminishing its power. Among governments officials there is a hidden internal conflict between politicians, security and militants. On the one hand, politicians want to compromise and have an open relationship with the outside world. On

⁴¹⁸ These comments are sounding in Darfur among Darfuri and aid workers. And among Sudanese in general this negative perception of the government peaceful intentions are lacking. Mistrust is not prevailing only not among rebels, but also Arabs who are recruited previously as part of the government campaign to suppress armed groups.

⁴¹⁹ Signature of Darfur Peace Agreement even was not efficient in providing protection is an indication that peace can be reached if the political will exists.

⁴²⁰ The UN assigned Jan Ellasson and the AU Ahmed Ali Salim. The UN envoy Jan Ellasson resigned in June of 2008 and both mediators were replaced by a full time envoy Burkina Faso Foreign Minister Djibril Bassole.

the other hand, militants and hardliners seize every opportunity to hinder Sudan's relationship with the West. These hardliners who are anti-Western belong mainly to national security, intelligence services and the ministry of interior. Many of these personnel are the same ones who have masterminded and participated in the atrocities in Darfur.⁴²¹

At the same time, some of the rebel leaders are not willing to negotiate and enter into a peace process with the government. After seeing what happened to Meni Menawi.⁴²² Some rebel leaders like Abdul Wahid, the head of SLA/AW, align themselves with the peace process as a means of gaining popularity among IDPs. As previously discussed, the deployment of a UN mission has delayed the peace process as it has encouraged some rebel leaders to enter into peace negotiation. The attack on the Sudanese capital in May 2008 by the JEM could be explained as an attempt to put pressure on the government to get a greater share of power in the future.⁴²³

The third part in the equation of the peace process is the Arab militia which is known as the Janjaweed.⁴²⁴ It is true that they have been counted as part of the government efforts, but the latest developments indicate that they have started their own rebellion against the government developing their own demands. Some of these Arab rebels

⁴²¹Jonah Fisher, *Sudan leaders court Western rage*, BBCworld (Dec 2, 2007), available at <http://news.bbc.co.uk/2/hi/africa/7122007.stm>.

⁴²² Menni Mennawi who signed the peace agreement in Darfur, who became helpless and lost some credibility among IDPs as he has been perceived as someone who betrayed the cause and who did not provide them with protection they needed.

⁴²³ This statement does not refute the reality that rebels are standing for their people.

⁴²⁴ These Arab militias started to take more independent stand vis-à-vis the government.

provided protection to IDPs, but this is exceptional and dependent on the circumstances of their relationship with the government.⁴²⁵

Misunderstanding internationally of the latest developments due to some advocacy simplification of the conflict creates confusion and generates policies that do not match the evolving reality. For example, peace efforts focused on rebels and the government, ignoring the Arab militias considering them as part of the government, which was the case in the past but not now.⁴²⁶ The main international focus has been on deployment of the UN mission as the sole and ultimate solution to IDP protection needs. Needless to say, such focus has been unhelpful in providing adequate protection for IDPs.

The UN and AU peace envoys have not managed to get the warring parties to sit and negotiate peace rather than focusing on the protection mechanisms discussed previously. The focus has been on help and protection for IDPs from the outside and not from the inside. Needless to say, all protection concerns are due to lack of peace in the region and bringing peace in which all parties are included is the ultimate protection for IDPs in the region.

C. Civil Society and NGOs:

The civil society in the Sudan has been affected negatively by the government policies, which kept it inactive in matters related to protection of IDPs in Darfur. Since 1999 Sudan has been under emergency law that has affected negatively human rights and

⁴²⁵ It appears in a report prepared by Nima Elbagir, channel 4, http://www.channel4.com/news/articles/ontv/unreported_world/sudan+meet+the+janjaweed/1813247?intcmp=rss_news_unreported_world. To see the video visit <http://youtube.com/watch?v=zTEX-55uxpQ&feature=related>.

⁴²⁶ The reason why of Darfur Peace Agreement failure was its exclusion nature and any peace process in the future that does not include all warring parties, including Arab militias is not going to provide grounds for solid protection for IDPs.

the civil society, as their activities have come under scrutiny, especially those working with international agencies whether UN or NGOs.⁴²⁷ And national efforts have been dealt with firmly by the government. For example, the participation of some journalists in training organized by the ICC in the Hague was criticized by the government controlled journalists' union.⁴²⁸ Writers were summoned when they wrote about surrendering Ahmed Haroun to the ICC.⁴²⁹

Some NGOs like the Sudanese Organization for Human Rights [SOHR] and Sudanese Organization Against Torture [SOAT] both operate from abroad issuing reports on the human rights situation in Sudan, including Darfur. National NGOs operating in Darfur and working in activities related to protection of IDPs face governmental harassment. And some of these organizations are working in collaboration with the UNDP in its rule of law program, and therefore their activities provide some protection to IDPs.

D. Advisory Council on Human Rights ACHR:

The government established some human rights bodies like the ACHR, but they are not active and do not remedy human rights violations. It was first created in 1994 and evolved to become the department of Human Rights and Humanitarian Law.⁴³⁰ As stated, it gives the opportunity to bring violations of human rights to the attention of the

⁴²⁷ In informal meeting with human rights activists in Darfur they reiterated harassment they face by the national security. The government managed so far to manipulate the ongoing conflict in Darfur, portraying different levels of the international intervention as a new colonialism using image to Iraq and Afghanistan to prove its argument. Its efforts had gained credibility among a lot of Sudanese, and that put any advocacy for IDPs protection in Darfur by local NGOs a matter of putting themselves against the government.

⁴²⁸ The Sudanese Human Rights Quarterly 11, Sudan Human Rights Organization, , Issue No. 26, 11 (2008).Issue No. 26 (2008).

⁴²⁹ *Id.* at 11.

⁴³⁰ Advisory Council on Human Rights of the Government of Sudan, <http://www.dcregistry.com/homepages/suahrc.html>, (late visited Jun., 25, 2008).

Advisory Council so that it can try to take action to end or prevent the violations.⁴³¹ However, in reality it has not impacted on protecting IDPs in Darfur. The Sudanese government continues to violate national laws and its constitution, and international human rights and humanitarian law; still the ACHR does nothing. This can be explained by the position of the ACHR as a governmental body that was set up to aid in understanding human rights and humanitarian law but not to respect them. Of course such an attitude will not encourage international human rights entities to get involved with such bodies.

In conclusion, the Darfur peace agreement which was signed to bring peace and protection to IDPs has failed to do so. On the contrary, as it was not inclusive in nature it has fragmented created fragmented rebel movements causing more fighting reflected negatively on IDP protection. The peace process that was to have brought an end to the conflict has not managed to because the different warring parties have interests that do not reflect concern over IDPs' protection, but rather their own interest. International efforts have not given adequate attention, focusing on other protection mechanisms.

National NGOs working in Darfur have managed to provide the protection mentioned previously in the rule of law chapter. Other national NGOs have not made tangible efforts to protect IDPs in Darfur mainly because of government threats and its ability to mobilize public opinion against international efforts. Governmental human rights bodies like the Advisory Council on Human Rights did not involve itself in addressing human rights violations in Darfur, even though it stated that addressing human rights violations or preventing them were its major concern.

⁴³¹ *Id.*

IX. Conclusion:

This paper examines international mechanisms that are designated to provide protection to IDPs in cases where their states show an inability or unwillingness to provide adequate protection. As the thesis showed these mechanisms vary in their ability and scope of protection. Some of the protection mechanisms like humanitarian assistance are implemented to remedy situations that are more complex than mere assistance. International conventions which are the basis for examining human rights violations are the weakest in providing protection of IDPs, while emphasis put on other protection mechanisms like the deployment of the UN peacekeepers to provide protection by force. However; with the deployment of hybrid peacekeepers nothing really seems to have changed on the ground. These peacekeepers find themselves in need of protection themselves as well as protecting IDPs.

It is obvious that the Sudanese government's inability and unwillingness to provide protection is the main obstacle to providing adequate protection. All the above protection tools have deficiencies and have been criticized for their inability to protect. However, close examination reveals that it is state consent which is lacking and which renders protection efforts inadequate and useless. Protection mechanisms have only proved adequate when they are secured with the government's consent.

The case of Darfur represents a failure of the international community to provide protection to IDPs. It raises many questions on how to make these mechanisms more efficient in the future to avoid similar situations like Darfur. What is lacking as has been discussed is the responsible state's willingness to remedy and protect. The ongoing peace process to end the conflict has not gained much attention and many of

the peace negotiations have not reached the level that can bridge gaps and end the conflict. All of the preceding protection mechanisms discussed did not adequately address as a more complex of a situation as was thought. Adequate and sincere state involvement can lead to adequate intervention, as the international community is selective and subjective in choosing cases for intervention.

National movements for IDP protection within Sudan are addressed, and show very little means of providing protection to IDPs. The government has managed to manipulate the situation to gain national support, using incidents of violations committed by the US in what has been labeled as the “Muslim World.” The governmental propaganda machine managed to use that situation to violate human rights in Darfur. It created the perception among common people that those who are working for the UN or denouncing human rights atrocities in Darfur are affiliated with the West. The peace process in Southern Sudan has also had an effect on the situation in Darfur. While the international community was focusing on the peace process between the South and the North, it did not pay much attention to Darfur. When more attention was paid to address IDPs situation in Darfur, IDPs from South Sudan residing on the outskirts of Khartoum and living in destitution were ignored.

The dilemma to protect IDPs in Darfur might be recreated in the future in Darfur if another IDP “crisis” emerges and the presence of UNAMID is considered sufficient enough to provide protection. Unless a political solution is reached IDP protection will remain unaddressed and continue indefinitely to be threatened.