

# Darfur debated

by Roberta Cohen

**Bruising debates within the human rights and humanitarian communities have centered on the numbers who have died in Darfur, the use of the term genocide, the efficacy of military versus political solutions and the extent to which human rights advocacy can undermine humanitarian programmes on the ground.**

Essential to effective planning in an emergency is knowing the scope of the disaster, the number of civilians who died, and from what cause.

Yet in the Darfur emergency it has proved particularly difficult to affirm with any certainty the number of people who have perished and in what way. The principal obstacle has been the government of Sudan. Itself directly involved in ethnic cleansing, it has prevented compilation of credible mortality statistics. While the loss of life from the Israeli-Hizbollah conflict of 2006 was precisely determined, thus allowing families and communities to mourn, there has been a systematic effort by the regime of Omar Hassan al-Bashir to cover up the death toll in Darfur. The government of Sudan has claimed that only 9,000 have died. The UN, however, says that more than 200,000 have perished whereas Amnesty International estimates 300,000 (95,000 killed and more than 200,000 dead from conflict-related hunger or disease) and the Save Darfur Coalition, an umbrella group of NGOs,<sup>1</sup> places the total at 400,000.

This wide range of estimates has generated intense disputes about how the statistics have been developed, time frames used and whether all causes of death (killings as well as starvation and disease) have been included. Deliberately underestimating the numbers can contribute to international inaction but, on the other hand, exaggerating death tolls in order to raise the alarm can undermine credibility and put into doubt all statistics. It can also make constructive dialogue more difficult and lead the Sudanese regime to put further obstacles in the way of aid deliveries since it makes no distinction between advocacy groups and relief suppliers.

The debate over numbers points up the absence both of standardised data collection and of an authoritative international body with the mandate and authority to collect and disseminate mortality and morbidity data in emergencies. Without such a body, different actors, whether governments, UN agencies, NGOs or experts will continue to make their own ad hoc estimates of mortality in emergencies, with the result that nobody really knows the scope of the crisis.

In 2007, a Health and Nutrition Tracking System was set up at the World Health Organisation (WHO) with the participation of UN agencies, NGOs, donors and experts in an effort to establish standardised mortality and nutrition indicators. However, establishing an authoritative body within the UN is problematic. WHO has been pressured by governments, particularly Sudan, about its mortality studies and has also been criticised for not including violent deaths and malnutrition-related deaths in its Darfur estimates and for failing to make guesstimates for areas to which it has been denied access. The international community urgently needs an independent centre free from political influence that would collaborate with the UN and build on the work done by SMART (Standardized Monitoring and Assessment of Relief and Transitions),<sup>2</sup> which has been formed by a network of humanitarian actors to bring consistency to the methodology used to collect data on mortality.

## Genocide

Not unlike the dispute over statistics, whether or not genocide was committed in Darfur will be

debated for a long time to come. Those who remain unpersuaded that Sudan has committed genocide against its African tribes generally focus on the legal issue of whether it was Sudan's 'intent' to destroy in whole or in part a particular ethnic or racial group, as required by the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>3</sup> They note that the UN International Commission of Inquiry on Darfur<sup>4</sup> did not find that Sudan committed genocide (although the commission did not rule it out and emphasised that the war crimes and crimes against humanity committed "may be no less serious and heinous than genocide"). Nor has the International Criminal Court (ICC) accused any Sudanese to date of genocide although it has charged two with war crimes and crimes against humanity.<sup>5</sup> Amnesty International and Human Rights Watch have generally refrained from using the term genocide. The complexity of the legal issues surrounding the term constitutes the main obstacle for many international lawyers. They point to the International Court of Justice's tortuous 2007 ruling that Serbia did not commit genocide in Bosnia because there was insufficient proof that Bosnia's Serbs acted under Serbia's direction and that the murder of 8,000 men and boys at Srebrenica was planned by Serbia. As a result, Serbia did not have to pay damages, although it was found guilty of not preventing genocide or punishing those who committed it.

For many NGOs and experts, particularly in the US, there is little doubt that the government of Sudan and the Janjaweed have committed genocide by means of deliberate killings, deportations, rapes and destruction of livelihood. Physicians for Human Rights has found "direct evidence of genocidal intent" and "strong circumstantial evidence upon which genocidal intent may be inferred."<sup>6</sup> The US government concluded in 2004 that genocide had been committed while the Parliament of the European

Union has called what happened “tantamount to genocide.”

For many American groups, the use of the term genocide has proved an effective mobilisation tool. Indeed, NGO coalitions and student groups have found their voice by focusing on genocide, and many of the steps taken by the US government have been the result of their pressure. But the term continues to be contested, most recently by the argument that it no longer captures the reality on the ground, which more closely resembles anarchy than genocide. The conflict, it is argued, is no longer solely between Sudanese military and the Janjaweed on the one hand and African rebel groups

on the other. Fragmented rebel groups as well as Arab tribes and militias are now fighting amongst themselves, with alliances constantly shifting, banditry spreading and violence spilling over into Chad (although others counter that Sudan is promoting the chaos).

The use of the term genocide has also been called a political liability, with relief groups criticising human rights advocates for undermining humanitarian operations on the ground. The term has been said to make the rebels, as well as the Sudanese government and the Arab militias, more intransigent. In fact, sometimes to facilitate negotiations with the government

of Sudan, UN officials have downplayed the ethnic component of the conflict, emphasising instead its environmental roots – desertification, ecological degradation and water scarcity.

The debate over genocide has detracted from the most salient issue – the need to protect people when atrocities are committed, whatever their legal categorisation. It has enabled Sudan and its supporters to make it appear that the crimes committed are not so serious since genocide has not been officially determined. Francis Deng, Special Representative to the UN Secretary-General for the Prevention of Genocide and Mass Atrocities,

*A refugee from Darfur seeks shelter from a sandstorm near the Chadian border town of Tine.*



persuasively argues that when a situation involves massive suffering and death like Darfur, attention should not be focused on labels and legalities but rather on what should be done to stop or prevent this.

The disarray over the use of the term genocide suggests the need to explore whether it is feasible to set up an expert body under the Convention on the Prevention and Punishment of the Crime of Genocide to help with determinations on whether or not genocide is occurring. The mandate of the Special Representative does not allow him to make such determinations and, unlike other international human rights treaties, the 1948 Genocide Convention contains no implementation machinery. The ICC can find individuals guilty of genocide after the fact but a body of recognised experts, aided by satellite technology, could be tasked with making speedy determinations of what is occurring, monitoring the state's actions and providing guidance on the obligations of other states under the convention. To be sure, adding a protocol to the convention or reopening the text would come with considerable risks. But the experiences of Cambodia, Bosnia, Kosovo, Rwanda and Darfur, with the debate and uncertainty over the use of the term and the steps states should take in response, point to the need for establishing an authoritative mechanism.

### **Military vs. political solutions**

Many commentators, politicians and humanitarians have called for military action. They point out that over the past four years Sudan has broken every pledge to halt the violence and understands only one language – the credible threat or use of force. Without armed intervention, they argue, lives will continue to be lost in Darfur, while Khartoum, awash with oil revenue and arms, will continue on its criminal path. Former Clinton Administration officials – mindful of their failure to prevent the 1994 Rwanda genocide – are at times at the forefront of those urging the US to take military action.

Opponents of military action often point out that due to its tainted international reputation the Bush Administration could not credibly

introduce no-fly zones, air strikes and non-consensual NATO forces into Darfur without significant political fallout in the Islamic world and elsewhere. In any case, they argue, military operations can achieve only limited results when the problem is primarily political. For many relief organisations, coercive intervention could provoke a backlash and expulsion of humanitarian workers, resulting in large-scale deaths. Proponents of more robust action concede that a more proactive approach might incite retaliation but maintain that it would improve security in the long term. Acquiescence by relief groups to government-imposed conditions is already risking lives; the Sudanese government has been regularly impeding relief deliveries and tolerating or inciting increased attacks on aid workers.

Whatever the merits of the case, it has become clear that neither the UN nor a coalition of willing states is likely to undertake coercive military action in Darfur to oblige the government of Sudan to disarm the Janjaweed and halt its own military operations. Darfur is not a national security priority for any Western state. The US military is overstretched in Iraq, NATO is engaged in Afghanistan, and Sudan can rely upon China, Russia and the Arab League to shield it from robust international action.

### **A more realistic option**

Far better than debating military action would be to mount a broad-based diplomatic offensive to secure the implementation of Security Council Resolution 1769. Unanimously adopted at the end of July 2007, SCR1769 provides for a 26,000 strong African Union-UN force (the African Union/UN Hybrid Operation in Darfur – UNAMID), to protect IDPs, civilians and humanitarian workers.<sup>7</sup> Although not the robust international force originally called for, UNAMID's Chapter VII mandate<sup>8</sup> should – if countries pledge sufficient military personnel and funding – be an improvement over the current small AU force of 7,000 with its weak protection mandate. The lack of resources available to the current African Union Mission in Sudan (AMIS)<sup>9</sup> was tragically evidenced

in September by the death of ten AMIS soldiers whose base at Haskanita in South Darfur was overrun by unidentified militias.

The time frame for deploying UNAMID needs to be speeded up, equipment and training provided, and flexibility introduced with regard to Sudan and the AU's insistence on predominantly African troops and police. Since the resolution includes no sanctions in the event Sudan should obstruct deployment, a coalition of governments, including African and Arab states and regional bodies, is needed to systematically prod Sudan with both sanctions and incentives to allow in the force and, most importantly, to reach a political agreement with the rebels, as called for in the resolution. China will need to be encouraged to use its leverage with Sudan, while rebel groups will need to be pressed to negotiate and compromise as well. After all, the much-touted responsibility to protect (R2P) means not only military action but also a series of diplomatic, humanitarian, political and economic steps to take prior to coercive action. One small step forward would be to strengthen the offices of the soon-to-be-appointed Special Adviser to the UN Secretary-General on the Responsibility to Protect and the Special Representative for the Prevention of Genocide and Mass Atrocities. Both need staff, resources and political support, from outside and inside the UN, in order to map out and raise awareness of the steps needed for prevention and to operationalise R2P both for Darfur and other serious situations.

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1. [www.savedarfur.org](http://www.savedarfur.org)

2. [www.smartindicators.org](http://www.smartindicators.org)

3. [www.unhcr.ch/html/menu3/b/p\\_genoci.htm](http://www.unhcr.ch/html/menu3/b/p_genoci.htm)

4. [www.un.org/News/dh/sudan/com\\_inq\\_darfur.pdf](http://www.un.org/News/dh/sudan/com_inq_darfur.pdf)

5. [www.icc-cpi.int/cases/Darfur.html](http://www.icc-cpi.int/cases/Darfur.html)

6. <http://physiciansforhumanrights.org/sudan>

7. <http://daccess-ods.un.org/TMP/3806701.html>

8. The section of the UN Charter setting out the Security Council's powers to authorise the use of military force to maintain peace.

9. [www.amis-sudan.org/index.html](http://www.amis-sudan.org/index.html)