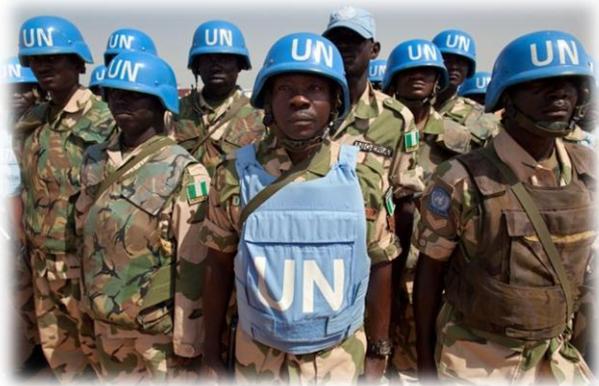


The 'Responsibility to Protect' in Darfur

An analysis of the implementation of the 'Responsibility to Protect' in practice in response to the conflict in Darfur



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Abbreviations

AMIS	African Union Mission in Sudan
AU	African Union
EU	European Union
G77	Group of 77
HLP	High-Level Panel
ICC	International Criminal Court
ICISS	International Commission on Intervention and State Sovereignty
IDP	Internally Displaced Persons
JEM	Justice and Equality Movement
LJM	Liberation and Justice Movement
NAM	Non-Alignment Movement
NATO	North-Atlantic Treaty Organisation
NGO	Non-Government Organisation
OAU	Organization for African Unity
RtoP	Responsibility to Protect
SAF	Sudanese Armed Forces
SDC	Save Darfur Coalition
SLA	Sudanese Liberation Army
SPLA	Sudan People's Liberation Army
UN	United Nations
UNAMID	United Nations – African Union Mission in Darfur
UNMIS	United Nations Mission in the Sudan
UNSC	United Nations Security Council
US	United States
WMD	Weapons of Mass Destruction

1. Introduction

Just as we have learnt that the world cannot stand aside when gross and systematic violations of human rights are taking place, we have also learnt that, if it is to enjoy the sustained support of the world's peoples, intervention must be based on legitimate and universal principles. We need to adapt our international system better to a world with new actors, new responsibilities, and new possibilities for peace and progress. – Kofi Annan.¹

In September 2006 George Clooney stood before the United Nations Security Council (UNSC) with the aim to exert pressure on the United Nations (UN) to take action in Darfur. His reason for turning to the United Nations was because he believed they had a responsibility to do so: “ But you are the U.N. and this is a task that you have been given. You have to decide what's most urgent. You have responsibility to protect. ”²

A year earlier in October 2005 the 191 member states of the United Nations signed the 2005 *World Summit Outcome Document* in which they committed to uphold the ‘Responsibility to Protect’ (RtoP). The fact that all members unanimously signed the document was considered by some as a major breakthrough.³ Only five years earlier Kofi Annan, the then present Secretary-General of the United Nations, had asked the member states of the UN “to unite in the pursuit of more effective policies to stop organized mass murder and egregious violations of human rights.”⁴ The 1990s had seen an increase of humanitarian intervention, with liberal democratic states in particular arguing that the use of force to alleviate human suffering was legitimate as sovereignty should not become a licence to kill. This moral and humanitarian justification for intervention was, however, disputed by Russia, China and members of the Non-Alignment Movement (NAM), who strongly upheld the traditional interpretation of sovereignty and with it, the principle of non-intervention.⁵

The dilemma of sovereignty versus humanitarian intervention became pressing after the unauthorized intervention in Kosovo by the North Atlantic Treaty Organisation (NATO). The members of the UN Security Council had been divided, leading to the NATO decision to intervene in Kosovo justified by the argument that the intervention was humanitarian and therefore had a moral legitimacy. NATO argued that the unauthorized intervention reflected an emerging international

¹ United Nations, *Secretary-General presents his Annual Report to General Assembly*, 20 September 1999, Press Release SG/SM/7136, available at: <http://www.un.org/press/en/1999/19990920.sgsm7136.html>, [accessed on 3 October 2014].

² George Clooney, ‘United Nations Security Council Address on Darfur’, delivered 14 September 2006, New York City, available at: <http://www.americanrhetoric.com/speeches/georgeclooneyunitednations.htm>, [accessed on 16 September 2014].

³ Alex Bellamy and Nicholas Wheeler, ‘Humanitarian intervention in world politics’, in: John Baylis, Steve Smith and Patricia Owens eds., *The globalization of world politics*, Oxford: Oxford University Press 2011, p.522.

⁴ Kofi Annan, *We the people. The role of the United Nations in the 21st century*, New York: United Nations 2000, p.47.

⁵ Alex Bellamy and Nicholas Wheeler, ‘Humanitarian intervention in world politics’, pp.512-516.

norm not yet accounted for in the UN Charter.⁶ NATO's humanitarian intervention in Kosovo was contested by Russia, China and the NAM. They argued that an unauthorized intervention was a breach of the UN Charter and international law and therefore not legitimate.⁷ It was in the light of these developments that Kofi Annan turned to the General Assembly of the UN with the question: "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violation of human rights that offend every precept of our common humanity?"⁸

In response to the dilemma raised by Kofi Annan the Government of Canada established the International Commission on Intervention and State Sovereignty (ICISS). In December 2001 the commission published its report under the title of *The Responsibility to Protect*.⁹ In the report the commission tried to shift the debate from the 'right to intervene' towards a 'responsibility to protect'. The commission argued that sovereign states have a responsibility to protect their own citizens. When states are unwilling or unable to do so the responsibility is transferred to the international community.¹⁰ The RtoP is therefore not just another word for humanitarian intervention, as often claimed, because central to the principle are the citizens in need of protection and not the rights of the intervening states.¹¹ The RtoP, as defined by the ICISS, consisted of three specific responsibilities: the 'responsibility to prevent', the 'responsibility to react' and the 'responsibility to rebuild'.¹²

The commission proclaimed the 'responsibility to prevent' as "the single most important dimension of the RtoP."¹³ The prevention options must always be exhausted before military intervention can become an option. In order to make it more difficult for the five permanent members of the UN Security Council to use their veto in cases when military intervention does become an option the commission defined a set of criteria that the international community could use to determine if military intervention with humanitarian justification would be legitimate. This set of criteria consists of four fundamentals (just cause threshold, precautionary principles, right authority and operational principles) that must be present for a military humanitarian intervention to be legitimate.¹⁴ The commission argued that these criteria would make it easier to build

⁶ David Chandler, 'The Responsibility to Protect? Imposing the Liberal Peace', *International Peacekeeping*, Volume 11 (2004), p.60.

⁷ Alex Bellamy and Nicholas Wheeler, 'Humanitarian intervention in world politics', p. 516.

⁸ Kofi Annan, *We the people. The role of the United Nations in the 21st century*, p.48.

⁹ International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect*, Ottawa: The International Development Research Centre 2001.

¹⁰ *Ibidem*, p.VIII.

¹¹ Alex Bellamy and Nicholas Wheeler, 'Humanitarian intervention in world politics', p.521.

¹² ICISS, *The Responsibility to Protect*, p.XI.

¹³ *Ibidem*, p.XI.

¹⁴ *Ibidem*, pp.XII-XIII.

consensus on how to respond to a humanitarian crisis. On the one hand, if all criteria were met, it would be more difficult for states like Russia and China to veto an intervention based on humanitarian justification because in principle they had committed themselves to the responsibility to protect people from grave human rights violations. On the other hand, it would make it more difficult for states to make a case for unjust humanitarian intervention when these criteria were not met.¹⁵

The ICISS report was highly criticized for being too theoretical. It was argued that this has led to a severe gap between the aspiration of the theory and the application of it in practice.¹⁶ Five years after the adoption of the RtoP by the UN, Alex Bellamy, Professor of International Security at the Griffith Asia Institute and Director of the Asia Pacific Centre for the Responsibility to Protect, considered it could be examined whether or not the RtoP was functioning in practice. He defined two chief functions of the RtoP.¹⁷

The first function of the RtoP he described as the “political commitment to prevent and halt genocide and mass atrocities accompanied by a policy agenda in need of implementation”.¹⁸ In the ICISS report this function is considered to be the most important one. It implies that the RtoP is universal and enduring, it applies to all UN member states at all times. For this function of the RtoP to be successful it would mean that no human rights violations committed by states take place anymore because they are prevented by the international society of states before they emerge. The problem with this function is that by the time the human rights violations become imminent, and therefore classified as RtoP situations, the option of prevention is no longer present.¹⁹

The second function of the RtoP is, as described by Bellamy, to “generate a speech act (that is, words and sentences that perform specific communicative functions, such as promises and warnings), which has the effect of elevating certain issues above normal politics as a catalyst for decisive international action.”²⁰ In other words, the RtoP is a label states can use to create political will and consensus in order to mobilize a decisive international response. Gareth Evans, co-chair of the ICISS and former Minister of Foreign Affairs of Australia, described this function of the RtoP as: “the whole point of embracing the new language of ‘the responsibility to protect’ is that it is capable of generating an effective, consensual response in extreme, conscience-shocking cases, in a way that

¹⁵ Alex Bellamy and Nicholas Wheeler, ‘Humanitarian intervention in world politics’, p.521.

¹⁶ Lou Pingeot and Wolfgang Obenland, *In whose Name? A critical view on the Responsibility to Protect*, Bonn: Global Policy Forum 2014, p.44 and Aidan Hehir, *Humanitarian Intervention: An Introduction*, Hampshire: Palgrave MacMillan 2010, pp.120-123.

¹⁷ Alex Bellamy, ‘The Responsibility to Protect – Five Years On’, *Ethics and International Affairs*, Volume 24 (2010), pp.158-160.

¹⁸ *Ibidem*, p.158.

¹⁹ *Ibidem*, pp.158-160.

²⁰ *Ibidem*, p.159.

'right to intervene' language simply was not."²¹ The ICISS argued that the RtoP is not only a label that can be used by governments to create will and consensus in the UNSC but that it is also a label that can be used by regional and sub-regional organisations, media and international NGOs to put pressure on national governments and the UNSC to take up their international responsibility.²² This is also emphasized by Evans:

It is also a matter of bottom-up mobilization: making the voices of ordinary concerned citizens heard in the corridors of power, using all resources and physical and moral energy of civil society organizations all round the world to force the attention of policymakers on what needs to be done, by whom, and when.²³

So when George Clooney, on behalf of the Save Darfur Coalition, a coalition of NGOs which pursued an international intervention in Darfur, gave his speech in front of the UN Security Council this was what he had in mind, mobilizing political will. On the one hand the Save Darfur Coalition tried to raise public awareness of the crisis in Darfur, while on the other hand they tried to influence policymakers to take action. They had taken up the responsibility, as described by Gareth Evans and the ICISS report, to protect the population of Darfur.²⁴

The conflict in Darfur started in 2003 when two rebel groups, the Justice and Equality Movement (JEM) and the Sudan Liberation Army (SLA), took up arms against the government accusing them of wilful neglect of the Darfur region. The Sudanese government mobilized the Janjaweed militia and together with the Sudanese Armed Forces (SAF) they responded to the attacks with a counter-insurgency campaign, forcing millions of people to flee their homes. Since the start of the conflict nearly two and a half million people have been displaced. The number of people killed in the conflict is hard to determine, the estimations of the mortality rate therefore lie between 10.000 and 300.000.²⁵

International response towards the situation in Darfur has been muted. Now, ten years later, the situation in Darfur remains unresolved. Most scholars, activists and civil society organisations agree that the international community has not fulfilled its political and humanitarian obligations in response to the conflict in Darfur.²⁶ In 2004 Jan Egeland, the United Nations under-Secretary General of humanitarian affairs and emergency relief Coordinator, declared the situation in Darfur as "one of

²¹ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, Washington D.C.: Brookings Institution Press 2008, p.65.

²² ICISS, *The Responsibility to Protect*, p.73.

²³ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, p.224.

²⁴ Save Darfur Coalition, 'Unity Statement', <http://savedarfur.org/about/history/unity-statement/>, accessed on 17 September 2014.

²⁵ Thompson Reuters Foundation, 'Darfur conflict', available at: <http://www.trust.org/spotlight/Darfur-conflict>, [accessed on 15 September 2014].

²⁶ Alex Bellamy and Nicholas Wheeler, 'Humanitarian intervention in world politics', p.520.

the most forgotten and neglected humanitarian crisis in the world".²⁷ Later that year Gareth Evans described the conflict in Darfur as "a real test-case for the 'Responsibility to Protect' principle".²⁸ Not everyone agrees that the conflict in Darfur is a relevant test-case for the RtoP. Edward Luck, Special Advisor to the Secretary-General on the Responsibility to Protect, rightly points out that the violence in Darfur started in 2003, two years before the RtoP was adopted by the UN. He argued: "It is a stretch to expect a principle to address successfully violence that raged long before it was accepted by member state governments, much less embodied in international policies and processes."²⁹ Luck is right when he says the conflict in Darfur is not a relevant case to examine whether or not the RtoP is effective in preventing human rights violations, the first function of the RtoP as described by Alex Bellamy. The conflict in Darfur is, however, a relevant case to examine whether or not the second function of the RtoP, to generate a speech act as a catalyst for decisive international action, has been invoked in regards to the conflict in Darfur. The central question to this thesis therefore will be: *To what extent has the responsibility to protect been put into practice to stop human rights violations in Darfur since the outbreak of the conflict in 2003?*

In order to answer the central question, this thesis starts with a literature review of the RtoP. The RtoP was developed to provide a solution to the problem of sovereignty versus human rights. First a description of the historical background of this problem will be given. Secondly the development of RtoP by the ICISS will be outlined after which the adoption of the RtoP by the UN will be set forth. In the conclusion of the literature review the solutions provided by the RtoP will be examined. The question that is central to this part the thesis is: *To what extent has the theory of the responsibility to protect provided a solution to the dilemma of sovereignty versus human rights?*

RtoP is designed to change human behaviour, Edward Luck has said, it can therefore only be evaluated by its influence on existing conflicts.³⁰ After the analysis of the theory this thesis, therefore, will examine to what extent the theory of the RtoP has been put into practice in actual conflict situations. The conflict central to this thesis is the conflict in Darfur. The second part of this thesis focuses on the role the RtoP has played as a 'speech act and catalyst for action' both in the UNSC as beyond. In the second part first a description of the conflict of Darfur will be given. After this responses by the UNSC will be analysed. UNSC meetings, official reports and resolutions will be examined to determine if the RtoP has changed responses to the conflict in Darfur by the UNSC . An

²⁷ Amanda Gryzeb, 'Introduction: The international response to Darfur', in: Amanda Gryzeb ed., *The world and Darfur*, Québec: McGill-Queen's University Press 2009, p.3.

²⁸ Gareth Evans, 'Darfur and the Responsibility to Protect', available at: <http://www.crisisgroup.org/en/regions/africa/horn-of-africa/sudan/op-eds/darfur-and-the-responsibility-to-protect.aspx>, [accessed on 14 September 2014].

²⁹ Edward Luck, 'The Responsibility to Protect: Growing Pains or Early Promise?', *Ethics and International Affairs*, Volume 24 (2010), p.351.

³⁰ Ibidem, pp.355-358.

answer will be given to the question: *To what extent has the responsibility to protect been invoked by the United Nations Security Council to stop human rights violations in Darfur?*

Hereafter responses to the conflict in Darfur outside the UNSC will be analysed. The focus of this part is whether or not the RtoP is used by regional and sub-regional organisations, media and international NGOs to pressure the UNSC into action to stop human rights violations in Darfur. The most relevant regional organisation with regards to the conflict in Darfur is the African Union (AU). The African Union has played an important role in response to the conflict in Darfur and in the second part of the thesis it will be examined to what extent the AU has invoked the RtoP to stop the human rights violations in Darfur. In addition it will be examined whether or not the RtoP has been invoked from the bottom-up. Responses to the conflict from international media, such as *The New York Times*, and international NGOs, like Amnesty International, will be analysed. Media campaigns, advocacy strategies and NGO operations will be examined to determine whether or not the RtoP has played a role in their responses to the conflict. In this part the central question will be: *To what extent have other international actors invoked the responsibility to protect to stop human rights violations in Darfur?*

In the conclusion a summary of the findings from each chapter will be given as well as the answer to the main research question: *To what extent has the responsibility to protect been put into practice to stop human rights violations in Darfur since the outbreak of the conflict in 2003?*

2. Literature review

2.1 Introduction

Sovereignty has been the corner stone for interstate relations and global order since the 17th century. It is considered an essential component to maintain international peace and security and to prevent domination of strong states over the weak. Sovereignty has been consolidated in the UN Charter and international law.³¹ Chapter 1 (2) of the UN Charter states that “The Organisation is based on the principle of the sovereign equality of all its Members”.³² The International Court of Justice anchored sovereignty in international law in 1949 by stating “respect for territorial sovereignty is an essential foundation of international relations”.³³ At the same time the UN Charter also sets limits to the sovereignty of states by acknowledging the existence of universal human rights in several human rights conventions. The UN Charter subscribes hereby to the idea that every individual ought to have certain fundamental freedoms by virtue of their humanity.³⁴ Sovereign states are expected to ensure that their citizens can enjoy these rights. When states commit human rights violations or when they are unwilling or unable to protect their citizens from human rights violation these humanitarian principles conflict with the principles of sovereignty and non-intervention.³⁵

In *The Responsibility to Protect* report published by the International Commission on Intervention and State Sovereignty (ICISS) this dilemma has been described as “one of the most controversial and difficult of all international relations questions”.³⁶ The aim of the ICISS was to come up with a solution to this dilemma, the outcome was the responsibility to protect. In this part of the thesis a literature review will be conducted to analyze the theory of the responsibility to protect. A description will be given of the historical background of the dilemma of sovereignty versus human rights and the international developments that led to the establishment of the ICISS. After this the ICISS report will be analyzed to determine to what extent the responsibility to protect has provided a solution to the dilemma of sovereignty versus human rights. Thereafter the criticism on the report prior the adaptation of the RtoP at the 2005 UN World Summit will be examined, as well as the criticism on the RtoP after the adaptation by the UN in order to determine the anticipated

³¹ Thomas Weiss, *Humanitarian Intervention*, Cambridge: Polity Press 2007, p.12.

³² United Nations, *Charter of the United Nations*, 24 October 1945, available at: <https://treaties.un.org/doc/publication/ctc/uncharter.pdf> [accessed on 25 October 2014].

³³ International Court of Justice, *The Corfu Channel Case (Merits Judgement)*, 9 April 1949, available at: <http://www.icj-cij.org/docket/files/1/1645.pdf>, [accessed on 25 October 2014], p.35.

³⁴ Tim Dunne, ‘Liberalism’, in: John Baylis, Steve Smith and Patricia Owens eds., *The globalization of world politics*, Oxford: Oxford University Press 2011, p.110.

³⁵ Thomas Weiss, *Humanitarian Intervention*, p.12.

³⁶ ICISS, *The Responsibility to Protect*, p.VII.

problems with the RtoP. A summary of this literature review will then be given, before this thesis moves on to focus on the functioning of the RtoP in practice.

2.2 The traditional interpretation of sovereignty

Sovereignty, in the traditional interpretation, means that states enjoy the rights of territorial integrity, political independence and non-intervention.³⁷ The consolidation of these principles is regularly ascribed to the Peace of Westphalia in 1648. The Peace of Westphalia put an end to the Thirty Years War that had raged in Europe in the beginning of the 17th century. Even though sovereignty was not literally mentioned in the treaty, the principles that underlie sovereignty are considered to be at the core of the peace treaty.³⁸

Before the Peace of Westphalia there had been no supreme authority within a territory. The Pope, kings, emperors and lords could all claim part of the authority over a territory.³⁹ The Peace of Westphalia tried to address this issue, the signatories of the treaty agreed to respect the principle of territorial integrity. The groundwork for this principle was laid by the Peace of Ausburg in 1555. The signatories of the Peace of Ausburg acknowledged the principle of *cuius regio, eius regio*, meaning “whose realm, his religion”. So the ruler of the territory determined the religion of the region. This principle was reaffirmed in the Peace of Westphalia. To secure peace and order in Europe and put an end to the possibility of a united Europe the foundations were laid for a system of equal, independent and territorially defined states, later described as the ‘Westphalian system’.⁴⁰ There were no longer multiple authorities within one territory but one authority specific to that territory with no external interference allowed. This led to a dual interpretation of sovereignty. On the one hand internal sovereignty meant the capacity of the state authority to rule inside the state borders. On the other hand external sovereignty meant the acknowledgment of other states of a state’s right to independence and non-intervention.⁴¹

Even though the Peace of Westphalia is regarded as the origin of sovereignty the principle has been repeatedly breached by powerful states. The number of states between 1648 and 1815 significantly declined because of the invasion and annexation of smaller states by stronger states.⁴² Furthermore until the second half of the 20th century the Westphalian system was not universally applied. There were so called “insiders” to the system, the European states, and “outsiders”, the

³⁷ Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, Cambridge: Polity Press 2009, p.8.

³⁸ Daniel Philpott, *Revolutions in Sovereignty*, Princeton: Princeton University Press 2001, p.83.

³⁹ *Ibidem*, pp.77-79.

⁴⁰ Aidan Hehir, *Humanitarian Intervention: An Introduction*, Hampshire: Palgrave MacMillan 2010, p.45.

⁴¹ *Ibidem*.

⁴² *Ibidem*.

over sea colonies dominated by the European states.⁴³ This changed after the Second World War. Together with colonial independence the Westphalian system expanded the principles of state sovereignty globally.⁴⁴

With the globalization of the Westphalian system the principle of non-intervention became the corner stone of international relations. Consolidated in the UN Charter 2 (7) “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter”.⁴⁵ Especially the former colonies attached great importance to their hard fought sovereignty and with it the right of non-intervention in their domestic affairs by western states. In the face of pressure from more powerful states they would be able to rely on their equality in legal status that comes with sovereignty. Sovereignty therefore is the constitutional safeguard for international relations.⁴⁶

The fact that almost every person now lives in a sovereign state, however, does not mean that sovereignty has become a sacrosanct principle. The consolidation of state sovereignty in the UN Charter and in international law is contradicted by a growing number of international conventions and agreements that allow for violations of the principles of sovereignty.⁴⁷

2.3 The limits of sovereignty

There are two widely accepted limits to state sovereignty in international law. The first limitation of sovereignty is any intervention that falls under Chapter VII of the UN Charter. The use of force by states is prohibited except in two clearly defined circumstances and only in accordance with UN Security Council authorization. The first exception is the use of force in the case of self-defence. Article 51 of Chapter VII states that “Nothing in the present Charter shall impair the inherent right of individual or collective self- defence if an armed attack occurs against a Member of the United Nations.”⁴⁸ The right of self-defence is only permitted “until the Security Council has taken measures necessary to maintain international peace and security”.⁴⁹ The other case when force is permitted is described in Article 39: “The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what

⁴³ Thomas Weiss, *Humanitarian Intervention*, p.15.

⁴⁴ Daniel Philpott, *Revolutions in Sovereignty*, p.155.

⁴⁵ United Nations, *Charter of the United Nations*.

⁴⁶ International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect: Research, Bibliography, Background*, Ottawa: The International Development Research Centre 2001, p.7.

⁴⁷ Lloyd Axworthy, ‘RtoP and the Evolution of State Sovereignty’, in: Jared Genser and Irwin Cotler eds., *The Responsibility to Protect: The promise of stopping mass atrocities in our time*, Oxford: Oxford University Press 2012, p.5.

⁴⁸ United Nations, *Charter of the United Nations*.

⁴⁹ *Ibidem*.

measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security”.⁵⁰ Article 41 provides the UN Security Council with the power to take non-military measures in the face of a threat to the international peace and security. Article 42 comes into effect when the measures taken under Article 41 prove to be inadequate. The UN Security Council then may take more stringent actions “as may be necessary to maintain or restore international peace and security”.⁵¹ So in response to a threat to international peace the principles of sovereignty and non-intervention succumb to the demands of international security. The above mentioned article 2 (7) of the UN Charter, in which the principle of non-intervention is disclosed, solidifies this by stating that the principle of non-intervention “shall not prejudice the application of enforcement measures under Chapter VII.”⁵²

The second limitation of sovereignty is international treaty obligations and customary law. By signing international treaties states accept the obligations that come with it. They are legally responsible to follow up on the international agreements they have made, they cannot use sovereignty as an excuse for not honouring these agreements.⁵³ This is also consolidated in the UN Charter. Chapter 1 (2) states that “All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.”⁵⁴ Since the signing of the Charter in 1945 there has been a growing number of international agreements and conventions, especially in the field of human rights. These impose obligations on states to protect their citizens from human right violations. Sovereignty can therefore not provide a shield for internal violations of human rights by states that contradict international agreements.⁵⁵

2.4 Challenges to the traditional interpretation of sovereignty

The UN Charter was drafted following the Second World War. The aim was to establish an organisation that could prevent the catastrophic violence that had characterized the first half of the twentieth century. The participating nations accepted limits on their own sovereignty with the overriding goal of attaining international peace and security, and international economic and social cooperation. In order to benefit from a collective response in the face of a threat they agreed to the limits on their own right to the use of force.⁵⁶

⁵⁰ Ibidem.

⁵¹ Ibidem.

⁵² Ibidem.

⁵³ Thomas Weiss, *Humanitarian Intervention*, p.16.

⁵⁴ United Nations, *Charter of the United Nations*.

⁵⁵ ICISS, *The Responsibility to Protect: Research, Bibliography, Background*, p.8.

⁵⁶ Lloyd Axworthy, ‘RtoP and the Evolution of State Sovereignty’, p.5.

After the UN Charter had been signed, the UN focused on the promotion of human rights. Several treaties and conventions were signed to ensure the protection of civilians from human rights violations, war crimes and genocide. The first treaty signed was the Universal Declaration of Human Rights in 1948, in which the basic rights of human kind were defined. In the same year the Convention on the Prevention and Punishment of the Crime of Genocide was signed by 137 nations, acknowledging that the horrors of the Holocaust should never happen again.⁵⁷ However the Cold War had a paralyzing effect on the United Nations. The tension between the Soviet-Union and the United States of America caused a deadlock in the UN Security Council, causing sovereignty to prevail over human rights agreements.⁵⁸

The end of the Cold War marked a turning point in international politics. Intra-state conflicts became a greater threat to international peace and security than the interstate conflicts the UN Charter was based on.⁵⁹ During the Cold War existing borders had been static and self-determination was exclusively associated with the process of decolonization. This changed after the Cold War when the Soviet-Union broke up into fifteen smaller states and shortly after Yugoslavia disintegrated into six new states.⁶⁰ New conflicts arose around the disintegration of these states followed by conflicts over state control by opposing groups.⁶¹ The UN Commission on Global Governance therefore noted in 1994 that “war between states is not extinct, [but] in the years ahead the world is likely to be troubled primarily by eruptions of violence within countries”.⁶² A characteristic of these wars is that they occur in either collapsing states or states with a poorly performing economy therefore state control is limited. As a result the traditional distinction between soldier and civilian becomes blurred. Opposing groups start fighting each other to gain control of the state, with the consequence being severe suffering of the civilian population and major distortion of economic and social welfare.⁶³ The UN Charter was not properly equipped to deal with this form of war because the Charter was predicated on the purpose to prevent interstate conflicts like the First and Second World War.⁶⁴

In order to deal with these civil conflicts the definition of what counted as a “threat to international peace and security” was broadened. The 1990s, for that reason, is sometimes referred

⁵⁷ Ibidem, p.6.

⁵⁸ Aidan Hehir, *Humanitarian Intervention: An Introduction*, p.51.

⁵⁹ Aidan Hehir, *Humanitarian Intervention After Kosovo*, Hampshire: Palgrave MacMillan 2008, p.14.

⁶⁰ ICISS, *The Responsibility to Protect: Research, Bibliography, Background*, pp.8-9.

⁶¹ Michael Sheehan, ‘The Changing Character of War’, in: John Baylis, Steve Smith and Patricia Owens eds., *The globalization of world politics*, Oxford: Oxford University Press 2011, p.224.

⁶² The Commission on Global Governance, *Our Global Neighbourhood*, Oxford: Oxford University Press 1995.

⁶³ Michael Sheehan, ‘The Changing Character of War’, in: John Baylis, Steve Smith and Patricia Owens eds., *The globalization of world politics*, Oxford: Oxford University Press 2011, p.224.

⁶⁴ Lloyd Axworthy, ‘RtoP and the Evolution of State Sovereignty’, pp.9-11.

to as the 'golden era' of humanitarian intervention.⁶⁵ Twice as many resolutions were passed by the UN Security Council in the period from 1990 to 1994 than since the establishment of the UN.⁶⁶ The UN Security Council passed resolutions to interfere with humanitarian justification in the beginning of the 1990s in inter alia Northern Iraq and Somalia, implying that human suffering should be seen as a threat to international peace.⁶⁷ The 1994 genocide in Rwanda proved to be a case in point. In a mere hundred days 800.000 Rwandans were killed. The United Nations failed to act sufficiently to prevent or halt this humanitarian catastrophe. In hindsight it was acknowledged that an early intervention could have successfully averted the genocide in Rwanda.⁶⁸ Moreover the refugees proved to be a destabilizing factor for the whole region. Rwandan Hutu forces fled to the Democratic Republic of Congo (then named Zaire) to reorganize and launch attacks on the Tutsi-led government. This led to a new war including multiple African states and armed groups disturbing the peace and security in the whole region. The conflict caused thousands of civilian casualties. The case of Rwanda made clear that a broader view of what should be classified as a threat to "international peace and security" was necessary. Internal conflicts could have a devastating regional or international spillover effect.⁶⁹

Where the intervention in Rwanda often is described as too little too late, the intervention in Kosovo is sometimes referred to as too much too soon.⁷⁰ The conflict in Kosovo proved to be a catalyst for the discussion on whether or not interventions with a humanitarian justification should be legitimate. In 1999 NATO decided to intervene in the conflict in Kosovo without UN Security Council authorization on the grounds that Serbian actions had breached international agreements and caused a severe humanitarian emergency because crimes against humanity were being conducted.⁷¹ Whilst there was a strong belief that an intervention was necessary to protect the people from human rights violations there was also fierce criticism on NATO's intervention because it breached the UN Charter and international law.⁷² Western states justified the intervention in Kosovo by claiming that NATO was acting in accordance with a new emerging norm of armed humanitarian intervention not yet accounted for in the UN Charter. The UN Security Council did not authorize the intervention but did not condemn it either. This raised the question of how the international community should react when a state or a group of states decides to intervene to

⁶⁵ Alex Bellamy and Nicholas Wheeler, 'Humanitarian intervention in world politics', p.515.

⁶⁶ Lloyd Axworthy, 'RtoP and the Evolution of State Sovereignty', p.7.

⁶⁷ Alex Bellamy and Nicholas Wheeler, 'Humanitarian intervention in world politics', pp.515-516.

⁶⁸ Lloyd Axworthy, 'RtoP and the Evolution of State Sovereignty', p.9.

⁶⁹ John Baylis, 'International and Global Security', in: John Baylis, Steve Smith and Patricia Owens eds., *The globalization of world politics*, Oxford: Oxford University Press 2011, p.241.

⁷⁰ Alex Bellamy and Nicholas Wheeler, 'Humanitarian intervention in world politics', p.516.

⁷¹ Alex Bellamy and Nicholas Wheeler, 'Humanitarian intervention in world politics', p.516.

⁷² Lloyd Axworthy, 'RtoP and the Evolution of State Sovereignty', p.10.

alleviate human suffering without the authorization from the UN Security Council.⁷³ The UN Charter proved not to be clear enough on how to deal with the newly emerged humanitarian conflicts of the post-Cold War era. This led to an outcry of Kofi Annan to the General Assembly in 1999 to come up with a new approach to the dilemma of sovereignty versus human rights: “Just as we have learnt that the world cannot stand aside when gross and systematic violations of human rights are taking place, we have also learnt that, if it is to enjoy the sustained support of the world's peoples, intervention must be based on legitimate and universal principles. We need to adapt our international system better to a world with new actors, new responsibilities, and new possibilities for peace and progress.”⁷⁴

2.5 Sovereignty as Responsibility

After the heavily criticized intervention in Kosovo, Kofi Annan took the lead in the debate around the legitimacy of intervention on humanitarian grounds. In an article in *The Economist* Kofi Annan argued that sovereignty should not be seen as a contradiction to human rights but as reinforcement of them by introducing the idea two concepts of sovereignty.⁷⁵ He explained:

State sovereignty, in its most basic sense, is being redefined—not least by the forces of globalisation and international co-operation. States are now widely understood to be instruments at the service of their peoples, and not vice versa. At the same time individual sovereignty—by which I mean the fundamental freedom of each individual, enshrined in the charter of the UN and subsequent international treaties—has been enhanced by a renewed and spreading consciousness of individual rights. When we read the charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them.⁷⁶

Annan argued that the state was the servant of the people and that the individual sovereignty of the people was strengthened by international agreements on human rights. The role of the state in this case should be to protect the individual sovereignty of its citizen's. The role of the UN should be to assist the individual states with the protection of their citizens sovereignty.⁷⁷ Sovereignty thus stayed at the core of international relations, however, not in the traditional meaning of sovereignty but in the meaning of individual sovereignty.⁷⁸

Annan built on the idea raised by Francis Deng a couple years earlier of the responsibility to protect. Francis Deng, the Representative of the UN Secretary General on Internally Displaced

⁷³ Alex Bellamy and Nicholas Wheeler, ‘Humanitarian intervention in world politics’, p.516.

⁷⁴ United Nations, *Secretary-General presents his Annual Report to General Assembly*, 20 September 1999, Press Release SG/SM/7136, available at: <http://www.un.org/press/en/1999/19990920.sgsm7136.html>, [accessed on 3 October 2014].

⁷⁵ Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, p.31 and Kofi Annan, ‘Two concepts of sovereignty’, *The Economist*, 16 September 1999, available at: <http://www.economist.com/node/324795>, [accessed on 25 October 2014].

⁷⁶ Kofi Annan, ‘Two concepts of sovereignty’.

⁷⁷ Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, p.31.

⁷⁸ Thomas Weiss, *Humanitarian Intervention*, p.22.

Persons (IDP) from 1992 to 2004, had elaborated this concept in several books and articles most predominantly in *Sovereignty as Responsibility: Conflict Management in Africa (1996)*.⁷⁹ Deng encountered reluctance from international officials to deal with the problem of IDP's because it was considered as a domestic affair, not an international one. By arguing that sovereignty encompasses certain responsibilities Deng tried to persuade international officials that the problem of IDP's was an international problem.⁸⁰ Deng claimed that states could be held accountable, first by their national constituencies and second by the international community, when they did not abide by these responsibilities. When a state does not abide by these responsibilities, its sovereignty should be temporarily suspended. However, this also entails that "by effectively discharging its responsibilities for good governance, a state can legitimately claim protection for its national sovereignty".⁸¹

The redefinition of sovereignty by both Deng and Annan implied that sovereignty and human rights were not contradicting but could be reinforcing each other. Deng did not fully developed the concept, however, with the introduction of the dual concepts of sovereignty Kofi Annan also reinvigorated his idea of 'sovereignty as responsibility'.⁸²

2.6 The International Commission on Intervention and State Sovereignty

In response to Kofi Annan's challenge the Prime Minister of Canada, Jean Chrétien, announced the establishment of the independent International Commission on Intervention and State Sovereignty at the United Nations Millennium Assembly in September 2000. The mandate of the ICISS was "to promote a comprehensive debate on the issues and to foster global political consensus on how to move from polemics, and often paralysis, towards action within the international system, particularly through the UN."⁸³ In other words, the commission needed to reconcile the principles of sovereignty and non-intervention. The Commission was co-chaired by the former Australian Foreign Minister and President of the International Crisis Group Gareth Evans and Mohamed Sahnoun, Special Advisor to the UN Secretary-General and former Special Representative for Somalia and the Great Lakes in Africa. Together with the Canadian government they appointed ten additional Commissioners whereby great attention was given to the fact that these Commissioners should be representing all regions of the world. In addition an Advisory Board and an international research

⁷⁹ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, p.36.

⁸⁰ Ibidem.

⁸¹ Francis Deng, *Sovereignty as Responsibility: Conflict Management in Africa*, Washington D.C.: The Brooklyn Institute 1996, p.1.

⁸² Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, pp.36-38.

⁸³ ICISS, *The Responsibility to Protect: Research, Bibliography, Background*, p.341.

team were created to support the work of the ICISS and to ensure the ICISS report was grounded in current political realities.⁸⁴

The Commission met five times and eleven regional roundtables were held in different regions to ensure the ICISS would take into account a wide range of views and opinions and to stimulate debate about the subject matter. The first roundtable was held in Ottawa in January 2001. At this roundtable three problems were exposed regarding the term 'humanitarian intervention'.⁸⁵ The first problem was that the term was widely detested, in particular by humanitarian aid workers and organisations. They argued that it was wrong to pair the phrase 'humanitarian', a term associated with aid activities aimed at saving human lives, with the term 'intervention', referring to the coercive use of military force.⁸⁶ The second problem was that the term was exclusively associated with military force in response to human rights violations.⁸⁷ The ICISS wanted to propose a solution that would provide a long-term commitment to peacebuilding. The ICISS therefore wanted the new approach to incorporate prevention and rebuilding measures, since humanitarian intervention was correlated only with military force this would not be a suitable term to use.⁸⁸ Lastly, the terminology of humanitarian intervention was associated, mainly by developing countries, with colonialism. The interference of stronger states in the affairs of the weak with a moral justification was linked to colonial conquest.⁸⁹ If the ICISS wanted to come up with a solution that would provide other options than military intervention and that would reach consensus within a wide variety of organisations and governments it needed to distinguish itself from the term 'humanitarian intervention'.⁹⁰

In order to do this the ICISS had to find a new way to address the problem. Gareth Evans then raised the idea of the 'responsibility to protect'.⁹¹ This change in terminology would not only solve the problems associated with the term 'humanitarian intervention' but it also enabled the ICISS to shift the debate away from the 'right to intervene' towards a 'responsibility to protect'.⁹² The RtoP implied that the principle of sovereignty entails the responsibility to protect the state's population from human rights violations. The state is the primary authority responsible for the protection of its citizens and only when a state is unable or unwilling to protect its citizens from

⁸⁴ Lou Pingeot and Wolfgang Obenland, *In whose Name? A critical view on the Responsibility to Protect*, p.11.

⁸⁵ ICISS, *The Responsibility to Protect: Research, Bibliography, Background*, pp.349-353.

⁸⁶ Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, p.42.

⁸⁷ ICISS, *The Responsibility to Protect: Research, Bibliography, Background*, pp.349-353.

⁸⁸ Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, pp.48-49.

⁸⁹ ICISS, *The Responsibility to Protect: Research, Bibliography, Background*, p.355.

⁹⁰ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, pp.39-41.

⁹¹ Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, p.43.

⁹² ICISS, *The Responsibility to Protect*, pp.XI-XII.

these violations the responsibility shifts to the international community.⁹³ With this perception the principles of sovereignty and non-intervention reinforce each other and are no longer opposites. The ICISS claimed that:

States should only qualify as legitimate if they meet certain basic standards of common humanity. [...] If by its actions and, indeed, crimes, a state destroys the lives and rights of its citizens, it forfeits temporarily its moral claim to be treated as legitimate. Its sovereignty, as well as its right to non intervention, is suspended. [...] In brief, the three traditional characteristics of a state in the Westphalian system (territory, authority, and population) have been supplemented by a fourth, respect for human rights.⁹⁴

The state was acknowledged as the most legitimate actor in response to human rights violations, however, in cases where the state would not take up this responsibility the state would lose its legitimacy and would not be the only legitimate authority to protect the state's population. Furthermore, by reframing the debate the ICISS intended to centralize the victims perspective in the debate rather than the rights of the intervening states.⁹⁵ The idea of a 'responsibility to protect' rather than a 'right to intervene' was broadly welcomed during the roundtables, however, there were still eminent issues that needed to be addressed.⁹⁶

2.7 Main challenges raised during the roundtables

In order to avoid situations, like in Kosovo, where division paralyzed the UN Security Council the ICISS raised the idea of establishing a set of criteria that would guide decision-making about intervention. There are two ways of explaining the deadlock in the UNSC with regards to the conflict in Kosovo. The first one is that China and Russia made unreasonable threats to use their veto against intervention in Kosovo, in this case it should be made harder for the permanent members of the UNSC to use their veto. The second explanation is that China and Russia had genuine concerns whether the situation was as dire as presented by the other permanent members. In this case it should be made harder for states to use humanitarian justification for an intervention primarily motivated by their own national interest. The ICISS believed that establishing a set of criteria could solve both these problems. On the one hand the criteria would make it easier to reach consensus in the case of a humanitarian emergency because in principle the states would have agreed to take action in such a situation, making it difficult for the permanent members of the UNSC to use their

⁹³Ibidem, pp.XI-XIII.

⁹⁴ ICISS, *The Responsibility to Protect: Research, Bibliography, Background*, p.136.

⁹⁵ Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, p.45.

⁹⁶Ibidem, pp.43-45.

veto. On the other hand it would make it difficult for states to make a compelling case for intervention in situations where the criteria were not met.⁹⁷

The suggestion of establishing a set of criteria caused fierce debate at the roundtables. The supporters for the criteria, mainly from developing countries, argued that the criteria could create an objective way to judge whether or not intervention was legitimate. Therefore it would reduce the risk of counterfeit humanitarian justification. The opponents of the creation of the criteria argued that they could not influence political decision-making. In practice the criteria would be highly disputed and they could be interpreted differently, not solving the problem of division in the UNSC.⁹⁸ In addition the criteria could provide grounds for unilateral intervention if the UNSC was deadlocked. If a country could prove the criteria were present in a situation they could make a legitimate case for unilateral intervention.⁹⁹

The question of authority was also fiercely debated at the roundtables. There was broad consensus that the UNSC should be the primary authority to authorize intervention for protection purposes. The disputed issue was whether or not the UNSC should be the sole source of authority. At most roundtables it was acknowledged that this was not a black-and-white problem. On the one hand people were hesitant to approve interventions not authorized by the UNSC, making intervention like NATO's in Kosovo the norm, on the other hand the necessity to have another option in case of a deadlock in the UNSC was also acknowledged. A solution was suggested by Hubert Védrine, the French Minister of Foreign Affairs, at the roundtable in Paris. Védrine suggested rather than to focus on possible authorities outside the UNSC, the UNSC should be reformed so deadlock would become nearly impossible. He proposed a 'Code of Conduct' for the use of veto by the permanent members of the UNSC. This would enable the UNSC to react more quickly in case of a humanitarian emergency. The code of conduct entailed that the five permanent members would not use their veto in cases where a Council majority was in favour of intervention and no vital security risks were at stake.¹⁰⁰

2.8 The ICISS Report

All these points of discussion were taken into account by the Commission and resulted in the publication of *The Responsibility to Protect* in December 2001.¹⁰¹ The report presented the idea of the RtoP:

⁹⁷Alex Bellamy and Nicholas Wheeler, 'Humanitarian intervention in world politics', p.521.

⁹⁸Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, p.46.

⁹⁹Ibidem, p.45.

¹⁰⁰ICISS, *The Responsibility to Protect: Research, Bibliography, Background*, p.379.

¹⁰¹ICISS, *The Responsibility to Protect*.

State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.

Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.¹⁰²

The RtoP, as defined by the ICISS, consisted of three specific responsibilities: the ‘responsibility to prevent’, the ‘responsibility to react’ and the ‘responsibility to rebuild’.¹⁰³

The ‘responsibility to prevent’ is described by the ICISS as the “single most important dimension of the responsibility to protect”.¹⁰⁴ The ICISS defined three areas on which prevention should focus, creating an effective early warning system, tackling root causes and direct prevention. Four areas were defined in which preventive intervention would be legitimate, namely political, economical, legal and military. In each dimension advice was given on how to tackle those problems.¹⁰⁵ With regards to the early warning system the ICISS argued that the UN is not lacking in acquiring basic data about emerging conflicts but the analysis and timely response to this data is inadequate. The Commission therefore argued that the UN should develop a more sufficient way to analyse the information and identify opportunities for third-party engagement at an early stage.¹⁰⁶

The ‘responsibility to react’ is described in the report as a means “to respond 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.”¹⁰⁷ The Commission concedes that in extreme cases intervention from outsiders is legitimate. In order to make sure these interventions are limited to only the extreme cases the ICISS defined a set of criteria to be used by the UNSC to evaluate whether or not an intervention with humanitarian justification would be legitimate. These criteria comprised ‘just cause thresholds’. There must be, actual or apprehended, large scale loss of life or ethnic cleansing in order for an intervention to be legitimate. In addition precautionary principles must be taken into account. The precautionary principles consist of right intention, last resort, proportional means and reasonable prospects. Furthermore the intervention must be authorized by the right authority. It had already become clear during the roundtables that the question of authority was a thorny one. The ICISS therefore proposed that in all cases authorization from the UN Security Council should be sought prior to any military intervention.¹⁰⁸ The ICISS, however, also acknowledged that in case of a deadlock in the UNSC other options for legitimate intervention should be possible. The first option for possible

¹⁰² Ibidem, p.XI.

¹⁰³ Ibidem.

¹⁰⁴ Ibidem.

¹⁰⁵ Ibidem, pp.22-27.

¹⁰⁶ Ibidem 2001, pp.21-22.

¹⁰⁷ Ibidem, p.XI.

¹⁰⁸ Ibidem, p.XII.

interveners should be to seek a mandate from the UN General Assembly or if that fails they should turn to regional organisations or even a coalition of the willing.¹⁰⁹ To improve the chances of consensus in the UNSC the Commission adopted the code of conduct proposed by Védérine at the Paris roundtable. The permanent members of the UNSC therefore would not be able to use their veto to obstruct a humanitarian intervention. Lastly, an intervention should take operational principles into account, including clear objectives, common approach, limited force, appropriate rules of engagement and coordination with humanitarian agencies.¹¹⁰

In order to avoid situations, like in Rwanda, where it was obvious that the 'just cause thresholds' were breached but a lack of political will prevented the international society from intervening the ICISS argued that the RtoP would create expectations with the domestic population of countries. In case of severe human rights violations, governments would be put under pressure by its own citizens to fulfil its international responsibility.¹¹¹ The ICISS report suggest that political will can be created, either by key political individuals or by organisations. The report states: "Political leaders are crucial in this respect, but they are not the only actors: they are, for the most part, acutely responsive to the demands and pressures placed upon them by their various political constituencies, and the domestic media, and they are much influenced by what is put to them by their own bureaucracies".¹¹² Instead of lamenting on the lack of political will the commission therefore suggested that civil society should create political will by pressuring their government into action. NGOs especially are primed organisations to do this: "NGOs have a crucial and ever increasing role, in turn, in contributing information, arguments and energy to influencing the decision-making process, addressing themselves both directly to policy makers and indirectly to those who, in turn, influence them."¹¹³ Moreover the legitimacy of the UNSC would be damaged: "following the failure of the Council to act, a military intervention is undertaken by an ad hoc coalition or individual state which does not fully observe and respect all the criteria we have identified, and if that intervention is carried through successfully – and is seen by world public opinion to have been carried through successfully – then this may have enduringly serious consequences for the stature and credibility of the UN itself."¹¹⁴

Lastly the ICISS presented the 'responsibility to rebuild'. During the roundtables it became clear that there was great consensus on the fact that people would like to see a long-term commitment of the interveners to the rebuilding of the conflicted areas. The ICISS proposed that

¹⁰⁹ Ibidem, p.XIII.

¹¹⁰ Ibidem, pp.XII-XIII.

¹¹¹ Ibidem, pp.70-73.

¹¹² Ibidem, p.71.

¹¹³ Ibidem.

¹¹⁴ Ibidem, p.55.

interveners should have a strategic plan on how to rebuild the post-conflict society. The interveners should provide security in the region but in order for economic growth the responsibility should be returned to local leadership as soon as possible.¹¹⁵

2.9 Critical views on the report

The report of the ICISS was seen as an important step in building consensus, however, it did also get a great deal of criticism. Alex Bellamy has divided the critics into three categories, namely those who argue that RtoP is doing too much, those who argue it is doing too little and those who argue the RtoP is too vague.¹¹⁶ The following section depicts the main objections with the RtoP proposed by the ICISS.

The first group of critics that is analysed argued that the RtoP is doing too much. Three main arguments can be distinguished that are cited by this group against the RtoP. The first argument is that the RtoP provides mainly Western states the right to intervene. David Chandler, Director of the Centre for the Study of Democracy and Professor of International Relations, Department of Politics and International Relations, University of Westminster, argued that the proposed shift by the ICISS from a 'right to intervene' towards the 'responsibility to protect' is merely a language shift not one in philosophy. The RtoP gives individuals who suffer from human rights violations the 'right to protection'. Consequently 'rights' are brought back into the debate but under a different name. This provides the intervening states, according to Chandler, with a legitimate justification for intervention. So even though the ICISS claims not to provide intervening states with a 'right to intervene', Chandler suggests that this is exactly what the ICISS did.¹¹⁷ Mohammed Ayoob, University Distinguished Professor Emeritus of International Relations at Michigan State University, pursues this argument further by stating that the RtoP "raises the spectre of a return to colonial habits and practices on the part of the major Western powers".¹¹⁸ Sovereignty is the only barrier to intervention from Western states. During the colonial conquest the European powers divided the world into 'civilized' states and 'uncivilized' states, the European powers had the right to intervene in the 'uncivilized' states because they believed they would bring them civilization. Ayoob argues that the RtoP brings back this 19th century idea of the 'standard of civilization' and is therefore providing the Western states with too much power to intervene in the affairs of developing states.¹¹⁹

¹¹⁵ Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, p.59.

¹¹⁶ Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, p.59.

¹¹⁷ David Chandler, 'The Responsibility to Protect? Imposing the Liberal Peace', p.64.

¹¹⁸ Mohammed Ayoob, 'Humanitarian Intervention and State Sovereignty', *The International Journal of Human Rights*, Volume 6 (2002), p.85.

¹¹⁹ *Ibidem*.

The fact that most Western states are proponents of the RtoP is, considered by these critics, as convincing evidence for this argument.¹²⁰

The second argument by the opponents of the RtoP is that it is a “fundamental downgrading”¹²¹ of state sovereignty. The fact that states are not only accountable to their own population but also to an external source, in this case the society of states, is by them considered as a serious limitation of their sovereignty.¹²²

The third argument, made by David Chandler, is that by putting military intervention within a wider continuum of measures the ICISS makes military intervention more acceptable. Chandler argues that the ‘responsibility to prevent’ and the ‘responsibility to rebuild’ are merely additions to make the ‘responsibility to react’ seem more legitimate. Thomas Weiss, research Director of the ICISS Professor of Political Science at The Graduate Center of The City University of New York, also finds the focus on prevention a false pretence of the ICISS report: “The mumbling and stammering about prevention is a superficially attractive but highly unrealistic way to try and pretend we can finesse the hard issues of what essentially amounts to humanitarian intervention.”¹²³ The change in terminology by the ICISS, the critics claim, has therefore made military intervention become more acceptable, even though, the concept has not changed.¹²⁴

The second group believed that the RtoP did not go far enough. They argued that, due to the need to find consensus, the ICISS was overly conservative. They claim there are two points on which the commission was too conservative. First of all, Alex Bellamy states that the ‘just cause thresholds’ are too narrow. The definition of ‘large scale loss of life’ and ‘large scale ethnic cleansing’ is, according to Bellamy, narrower than the actual practice of the UNSC has been in the past. The interventions in Haiti in 1994 and Sierra Leone 1997 would have not fallen under the RtoP, if it had existed in the 1990s. The intervention in Haiti was conducted to restore the elected government of Bertrand Aristide after it was overthrown by a military regime. For the same reason ECOWAS, with UNSC authorization, intervened in Sierra Leone. These interventions to restore democratically elected governments would not qualify as an emergency of ‘large scale loss of life’ or ‘large scale ethnic cleansing’.¹²⁵ Second of all, the ICISS report argued that the host state has the primary responsibility to protect its citizens, according to Alex Bellamy, this could facilitate inaction by Western states. He believes that the responsibility will not forge consensus, the term will be used to support intervention as well as to oppose intervention. He claims that during the 1990s, even though

¹²⁰ Aidan Hehir, *Humanitarian Intervention: An Introduction*, p.121.

¹²¹ David Chandler, ‘The Responsibility to Protect? Imposing the Liberal Peace’, p.66.

¹²² Ibidem, p.65.

¹²³ Thomas Weiss, *Humanitarian Intervention*, p.104.

¹²⁴ David Chandler, ‘The Responsibility to Protect? Imposing the Liberal Peace’, pp.66-67.

¹²⁵ Thomas Weiss, ‘The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era’, *Security Dialogue*, Volume 35 (2004), pp.138-139.

interventions could not be legitimately justified there was at least no plausible arguments against them. Instead of providing a legal framework for the proponents of intervention, Bellamy argues, that the ICISS report provides the opponents of intervention with a legal framework.¹²⁶ The “responsibility to protect language has now enabled anti-interventionists to legitimize arguments against action by claiming the primary responsibility in certain contested cases still lies with the state and not (yet) with an international body”.¹²⁷

The last group of critics argued that the RtoP is not clearly defined and therefore in practice will not result in consensus. They claim *The Responsibility to Protect* report left important questions unanswered which will lead to intense discussions between supporters and opponents in the face of a humanitarian emergency.¹²⁸ In particular the responsibility to prevent and the responsibility to rebuild are seen as neglected principles in the report.¹²⁹ Furthermore the ICISS is highly criticized for the lack of providing clear definitions of terms. Both threshold criteria use the qualitative term ‘large scale’, though there is no explanation defining what this means. The critics claim that rather than providing a guideline to decision-making in practice this will lead to intense discussions because it is not clear what ‘large scale’ actually comprises. In case of an emergency the case therefore can be made both for and against intervention.¹³⁰ The complaint of vague descriptions can be applied to numerous aspects of the RtoP: when is a state ‘unable or unwilling’ to protect their citizens, how can you determine whether the intervention is a state’s ‘primary purpose’, when is the use of force truly the ‘last resort’ or how do you determine whether an intervention has a ‘reasonable chance on success’? The critics therefore argued that the ICISS report raises more questions than it provides answers.¹³¹

In addition these critics claim that the ICISS report does not create a duty to undertake action. The ICISS report does not describe clearly when a state loses its primary authority over its territory and when the international community needs to take up its responsibility. Aidan Hehir, Director of the Security and International Relations Programme at the University of Westminster, argued therefore that the international society of states can always shirk its duty to the host state.¹³² The ICISS report stated that governments and the UN Security Council can be shamed into action. The responsibility to protect will transfer from theory to practice because pressure from civil society will persuade governments to take up their international responsibility. Critics of the report,

¹²⁶ Alex Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’, *Ethics and International Affairs*, Volume 19 (2006), p.33.

¹²⁷ Ibidem.

¹²⁸ Alex Bellamy and Nicholas Wheeler, ‘Humanitarian intervention in world politics’, p.522.

¹²⁹ Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, p.62.

¹³⁰ Aidan Hehir, *Humanitarian Intervention: An Introduction*, p.120.

¹³¹ Ibidem and Alex Bellamy and Nicholas Wheeler, ‘Humanitarian intervention in world politics’, p.522.

¹³² Aidan Hehir, *Humanitarian Intervention: An Introduction*, p.123.

however, are not convinced by the arguments provided for this in the report. They argue because the criteria are so vague, governments can always make a compelling case not to intervene, they can use information in such a way that it seems better that they would not intervene. The pressure from civil society, they argue, will never be strong enough to change this.¹³³

In addition there is debate about the legal implications of the RtoP. There is no consensus on what the legal status is of the RtoP. It has been referred to as a concept, an emerging norm or as an emerging principle of customary international law.¹³⁴ It is clear that at the 2005 World Summit it was widely accepted by the UN member states that they have a responsibility to protect their own citizens and that this principle was firmly grounded in existing international law. The 2005 *World Summit Outcome Document*, however, remains unclear on the legal implications RtoP has on the responsibility to protect of the international community. This becomes clear in a letter from US Ambassador at the World Summit, John Bolton, to the President of the UN General Assembly. In the letter John Bolton recognizes the responsibility to protect that comes with sovereignty but opposed any language in the *Outcome Document* that might imply legal obligations for the international community to intervene:

We agree in a more general and moral sense that the international community has a responsibility to act when the host state allows such atrocities. But the responsibility of the other countries in the international community is not of the same character as the responsibility of the host, and we thus want to avoid formulations that suggest that the other countries are inheriting the same responsibility that the host state has. [...] We do not accept that either the United Nations as a whole, or the Security Council, or individual states, have an obligation to intervene under international law. [We should] avoid language that focuses on the obligation or responsibility of the international community and instead assert that we are prepared to take action.¹³⁵

John Bolton's demand has been honoured in the final *Outcome Document*. In the *Outcome Document* there is no explicit mention of an obligation of the international community to intervene. Instead the *Outcome Document* states that the international community is "prepared to take collective action [...] on a case-to-case basis."¹³⁶ As a result the legal implications remain controversial. Anne Peters, Professor of Public International Law and Dean of Research of the Law Faculty at the University of Basil, argued that the RtoP adopted in the 2005 World Summit is a "hard

¹³³ Alex Bellamy and Nicholas Wheeler, 'Humanitarian intervention in world politics', p.522.

¹³⁴ Mehrdad Payandeh, 'With Great Power Comes Great Responsibility? The Concept of the Responsibility To Protect Within the Process of International Lawmaking', *The Yale Journal of International Law*, Volume 35 (2010), pp.480-481.

¹³⁵ John Bolton, 'Letter from John R. Bolton, Representative of the United States of America to the UN, to Jean Ping, President of the UN General Assembly', 30 August 2005, available at: [http://www.responsibilitytoprotect.org/files/US_Boltonletter_R2P_30Aug05\[1\].pdf](http://www.responsibilitytoprotect.org/files/US_Boltonletter_R2P_30Aug05[1].pdf), [accessed 18 November 2014].

¹³⁶ United Nations General-Assembly, *2005 World Summit Outcome Document*, 24 October 2005, A/Res/60/1, available at: <http://www.un.org/womenwatch/ods/A-RES-60-1-E.pdf>, [accessed on 14 October 2014].

legal obligation of the international community”.¹³⁷ The UNSC, she argued, has accepted the responsibility to protect, the UNSC therefore can be held accountable for not taking action in RtoP situations meaning the UNSC has the obligation to protect. Inadequate response or no action at all means, according to Peters, that international law is breached and therefore it would be illegal. This view is, however, contradicted by several others.¹³⁸ Carsten Stahn, associate Legal Officer at the ICC, argued that the language used in the *Outcome Document* shows “a voluntary, rather than a mandatory, engagement.”¹³⁹ Stahn claimed that the *Outcome Document* does not legally bind the UNSC to take action but provides the opportunity for the UNSC to take action if they are willing to do so.¹⁴⁰ The legal implications of the *Outcome Document* therefore can only be judged by the way the UNSC will put the RtoP in practice.

2.10 From ICISS report to the 2005 World Summit

Despite the academic attention the ICISS report received little attention for the first two years after it was published. One of the reasons for this was that the world was occupied with the aftermath of the 9/11 terrorist attack on the United States of America. The RtoP “almost suffocated at birth”, Gareth Evans said, because international attention was focused on terrorism rather than international human rights emergencies.¹⁴¹ Furthermore, most governments were sceptical about the implications of the report, even though, the responses differed hugely per country and region. The US was unenthusiastic about the report. They declared that, under no circumstances, they were willing to bind themselves to the use of force should the thresholds be breached. They wanted to maintain the right to decide when and where they were willing to commit troops.¹⁴² The Chinese were also opposed to the ICISS report, mainly because the Chinese government denounced any kind of intervention that was not authorized by the Security Council.¹⁴³ Russia agreed with the Chinese and stated that the UN was already equipped to deal with humanitarian intervention and by suggesting that interventions not authorized by the UNSC could be legitimate the RtoP risked undermining the UN Charter.¹⁴⁴ The United Kingdom and France supported the RtoP but argued that

¹³⁷ Anne Peters, ‘Humanity as the A and Ω of Sovereignty’, *The European Journal of International Law*, Volume 20 (2009), p.539.

¹³⁸ Carsten Stahn, ‘Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?’, *The American Journal of International Law*, Volume 101 (2007), pp. 99-120 and Mehrdad Payandeh, ‘With Great Power Comes Great Responsibility? The Concept of the Responsibility To Protect Within the Process of International Lawmaking’, pp.470-516.

¹³⁹ Carsten Stahn, ‘Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?’, p.109.

¹⁴⁰ *Ibidem*, pp.109-110.

¹⁴¹ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, p.44.

¹⁴² Neil MacFarlane, Carolin Thielking and Thomas Weiss, ‘The Responsibility to Protect: is anyone interested in humanitarian intervention?’, *Third World Quarterly*, Volume 25 (2005), p.983.

¹⁴³ Aidan Hehir, *Humanitarian Intervention: An Introduction*, p.117.

¹⁴⁴ Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, p.67.

unauthorized interventions should not be principally rejected, believing that in certain circumstances it was legitimate. They also expressed concern about the creation of a set of criteria, they did not believe this would lead to consensus or generate political will in the face of a humanitarian emergency.¹⁴⁵ Overall the five permanent members of the Security Council were not enthusiastic about the ICISS report.

Outside the p5 the responses to the ICISS report were not much more supportive. The Non-Alignment Movement (NAM) rejected the RtoP on the basis that the UN was already sufficiently empowered to deal with humanitarian emergencies. The NAM argued that the RtoP was nothing more than a reincarnation of humanitarian intervention, for which there was no basis in the UN Charter or international law.¹⁴⁶ The Group of 77 (G77) did not take a joint position in the debate, however, the G77 did suggest the report should put more emphasis on the principles of sovereignty and territorial integrity.¹⁴⁷

The responses to the ICISS report became even more negative after the US-led intervention in Iraq. In 2003 the US decided to invade Iraq without UN Security Council authorization. Although the main justification for the intervention was security issues, the existence of Weapons of Mass Destruction (WMD) and the alleged link of Saddam Hussein's regime with Al-Qaeda terrorist responsible for 9/11, several academics have claimed that the intervention in Iraq has impeached the credibility of the RtoP. Gareth Evans argued that even though for President Bush the security issues were the main justification for the intervention, UK President Tony Blair along with these arguments explained the necessity for a military intervention on the claim to liberate the Iraqi people from the "brutal and ugly Saddam regime".¹⁴⁸ When the justifications based on WMD and self-defence floundered, the humanitarian justification for the intervention was frequently cited, Alex Bellamy and Paul Williams argued.¹⁴⁹ Thomas Weiss also argued that the humanitarian claim only came *ex post facto*.¹⁵⁰ All of these academics use the argument that the humanitarian justification only came afterwards as an argument that RtoP had nothing to do with the invasion in Iraq. Nonetheless, the connotation made between humanitarian justification and the intervention in Iraq, even though it was not the primary justification, raised the concern by many governments that the RtoP would be abused to pursue national interest under the pretences of "protecting

¹⁴⁵ Ibidem, pp.67-68.

¹⁴⁶ International Coalition for the Responsibility to Protect, 'State-by-State Positions on the Responsibility to Protect', available at: http://www.responsibilitytoprotect.org/files/Chart_R2P_11August.pdf, [accessed on 15 October 2014].

¹⁴⁷ Ibidem.

¹⁴⁸ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, p.69.

¹⁴⁹ Paul Williams and Alex Bellamy, 'The Responsibility To Protect and the Crisis in Darfur', *Security Dialogue*, Volume 36 (2005), p.37.

¹⁵⁰ Thomas Weiss, *Humanitarian Intervention*, p.126.

civilians”.¹⁵¹ The argument made by Ramesh Thakur, ICISS Commissioner and one of the principal authors of *The Responsibility to Protect*, that the establishment of criteria would make it more difficult for states to improperly justify self-interested interventions on humanitarian grounds lost its credibility due to the invasion in Iraq.¹⁵² The ICISS report was tarnished further when one of the ICISS Commissioners, Michael Ignatieff, initially supported the humanitarian grounds on which the Iraq invasion was based.¹⁵³ After the first two years it therefore seemed unlikely that the RtoP would be adopted by the United Nations in a resolution or declaration.

There were two factors that changed the negative responses towards the RtoP. Firstly, the responsibility to protect was adopted by the Secretary-General’s High-Level Panel (HLP) and had a prominent place in Kofi Annan’s report, *In Larger Freedom*. In this report he set the agenda for the September 2005 High Level Plenary meeting of the UN General Assembly of September which was held to discuss the renewal of the UN.¹⁵⁴ In September 2003 Kofi Annan had instructed the HLP to examine the challenges to international peace and security and provide recommendations on how the UN could best address these challenges. In December 2004 the High-Level Panel published their findings in *A more secure world: Our shared responsibility*.¹⁵⁵ The HLP argued that there was “a growing acceptance” for the RtoP and stated that they endorsed “the emerging norm that there is a responsibility to protect”.¹⁵⁶ The HLP concluded that the RtoP was exercisable by the Security Council, the task ahead, the HLP recommended, was not to focus on the dilemma of UNSC deadlock but to make the Security Council function better. In order to do this the HLP determined that the UNSC should adopt the just cause thresholds and precautionary principles proposed by the ICISS with minor revisions.¹⁵⁷ Annan accepted most recommendations from the High-Level Panel. Annan also endorsed the idea of establishing a set of criteria to improve the decision-making process in the Security Council and, just as the HLP report had done, Annan proclaimed that the UNSC should be the only authority to authorize interventions. The adoption of the RtoP by the High-Level Panel and the Secretary-General has played a major role in putting the RtoP on the agenda for the 2005 World Summit. Until then the Canadian government had been the principal advocate of the RtoP though

¹⁵¹ Thomas Weiss, *Humanitarian Intervention*, p.126 and Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, p.69 and Paul Williams and Alex Bellamy, ‘The Responsibility To Protect and the Crisis in Darfur’, p.37.

¹⁵² Thomas Weiss, *Humanitarian Intervention*, p.125.

¹⁵³ Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, p.68.

¹⁵⁴ United Nations Secretary-General, *In Larger Freedom*, 21 March 2005, A/59/2005, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/59/2005, [accessed on 16 October 2014].

¹⁵⁵ United Nations, Report of the High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, 30 November 2004, available at: http://www.un.org/en/peacebuilding/pdf/historical/hlp_more_secure_world.pdf, [accessed on 15 October 2014].

¹⁵⁶ *Ibidem*, pp.65.

¹⁵⁷ Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, pp.75-76.

Canada's advocacy alone was unlikely to be enough to put the RtoP on the agenda.¹⁵⁸ The recommendations from the HLP and Annan were, however, not the only factor that put the RtoP on the 2005 World Summit agenda.

The second factor was the adaptation of the RtoP by the African Union (AU). The AU formally replaced the Organisation for African Unity (OAU) in 2003. In the Constitutive Act of the African Union African leaders reaffirmed, in Article 4(g), the principle of non-intervention by individual states, however, the African leaders awarded the Union, in article 4(h), with the right "to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity;".¹⁵⁹ The AU was determined to be proactive in preventing and resolving conflicts on the African continent, they therefore tried to move away from the OAU's non-intervention position towards an attitude of non-indifference. After the publication of the Secretary-General's report in March 2005 the Executive Council of the AU met to discuss the joint African position on RtoP. In the so-called 'Ezulwini consensus' the AU concluded that even though they had the primary authority on the African continent, interventions should be approved by the UN Security Council "although in certain situations, such approval could be granted "after the fact"". ¹⁶⁰ The 'Ezulwini consensus' did not approve the RtoP as proposed by the ICISS or the Secretary-General's report but it did help in creating global consensus on the RtoP. The fact that African countries had accepted the RtoP by the African Union within their own continent contradicted the claim that RtoP was a mainly Western idea supported only by Western countries. It helped tipping the balance in the global debate towards consensus on the responsibility to protect.¹⁶¹

2.11 The 2005 Outcome Document

In September 2005 representatives of the 191 member states of the United Nations gathered in New York to discuss the proposed UN reform of Kofi Annan's *In Larger Freedom*. The RtoP was a significant part of Annan's reform agenda. The discussion on RtoP expected to be a controversial one considering its implications on the principles of state sovereignty and non-intervention. The RtoP did make it to the *2005 World Summit Outcome Document*. In paragraphs 138 and 139 the 191

¹⁵⁸ Ibidem, pp.71-76.

¹⁵⁹ African Union, *Constitutive Act of the African Union*, 11 July 2000, available at: http://www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf, [accessed on 16 October 2014], p.5.

¹⁶⁰ African Union, The common African position on the proposed reform of the United Nations, *The Ezulwini Consensus*, Ext/EX.CL/2 (VII) (8 March 2005), available at: http://www.responsibilitytoprotect.org/AU_Ezulwini%20Consensus.pdf, [accessed on 15 October 2014], p.6.

¹⁶¹ Centre for Conflict Resolution, *Africa's Responsibility to Protect*, Policy Advisory Group Seminar Report, 23 and 24 April 2007, available at: http://www.responsibilitytoprotect.org/files/Vol-19_R2P_Report.pdf, [accessed on 15 October 2014], p.20.

members of the United Nations formally recognize that they have “the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”¹⁶²

The *Outcome Document* differs from the ICISS report on three major aspects. The first difference is that the *Outcome Document* only legitimises intervention with Security Council authorisation. The persistence of the UK and France to not rule out unauthorized intervention had therefore subsequently failed. The majority of the states believed that if RtoP was to constrain self-interested interventions under humanitarian pretences the Security Council should hold absolute primacy. For this same reason the proposed restrictions on the veto-power of the p5 under ‘Code of Conduct’ by the ICISS was rejected and left out of the *Outcome Document*.¹⁶³ Secondly, the just cause thresholds included in the *Outcome Document* were narrower than the thresholds proposed by the ICISS. The threshold criteria consolidated in the *Outcome Document* were restricted to ‘genocide, war crimes, ethnic cleansing and crimes against humanity’. This was a severe limitation in comparison with the proposed ‘large scale loss of life’ and ‘large scale ethnic cleansing’ proposed by the ICISS.¹⁶⁴ In addition in the ICISS report responsibility transfers from the host state towards the international community in case the state is ‘unwilling or unable’ to protect its citizens. In the *Outcome Document* this is changed to when ‘national authorities manifestly fail to protect their populations’.¹⁶⁵ Merely a change in language but certainly a change that raises the thresholds for an intervention.¹⁶⁶ Thirdly, due to strong opposition from the United States, China and Russia there were no criteria included to govern the use of force. The US did not want to restrict its freedom with regards to the use of force and China and Russia believed the establishment of criteria could be abused and legitimize unauthorized interventions.¹⁶⁷

The inclusion of the RtoP in the final 2005 *Outcome Document* evoked a wide range of responses. Some people considered it a major breakthrough where others thought it was a huge disappointment. Compared to the ICISS report and the concept Kofi Annan had recommended in his *In Larger Freedom* the version finally adopted in the *Outcome Document* can be considered a weakened version. Fundamental principles of the RtoP as proposed by the ICISS, including the ‘Code of Conduct’, the set of criteria, and other authorities than the UN Security Council, were taken out. The recommendations from the ICISS, Secretary-General Kofi Annan and the High-Level Panel to focus on reforming the UN Security Council in order to improve its functionality and prevent deadlock were not complied. Based on these revisions the version of RtoP adopted in the 2005

¹⁶² United Nations General-Assembly, *2005 World Summit Outcome Document*.

¹⁶³ Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, pp.83-84.

¹⁶⁴ Aidan Hehir, *Humanitarian Intervention: An Introduction*, pp.118-119.

¹⁶⁵ United Nations General-Assembly, *2005 World Summit Outcome*.

¹⁶⁶ Aidan Hehir, *Humanitarian Intervention: An Introduction*, p.119.

¹⁶⁷ Alex Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities*, p.84.

Outcome Document is also referred to as 'RtoP lite'.¹⁶⁸ The formulation of the RtoP in the *Outcome Document* must be seen as a result of political compromise. Some governments would have agreed to more stringent measures with regards to interventions; while others would have liked to see less intrusive measures than the ones agreed upon.¹⁶⁹

2.12 The development of the responsibility to protect after the 2005 World Summit

After the adaptation of the RtoP at the 2005 World Summit, the UN secretariat focused on the question of how to implement the RtoP into policy. In January 2007 Ban Ki-Moon replaced Kofi Annan as Secretary-General of the United Nations. Just as his predecessor Ban Ki-Moon was a staunch supporter of the responsibility to protect. Shortly after he assumed office Ban Ki-Moon appointed Edward Luck as Special Advisor on the Responsibility to Protect, the mandate for this newly created position was to "lead the conceptual, political, institutional and operational development of the Responsibility to Protect."¹⁷⁰ In 2009 the Secretary-General published the report *Implementing the Responsibility to Protect*.¹⁷¹ In the report Ban Ki-Moon stated that the principle consists of three equally weighted and non-sequential pillars, namely the protection responsibilities of the state, international assistance and capacity building and timely and decisive response.¹⁷² In his recommendation for implementation Ban Ki-Moon outlined a range of measures that states could use to implement this agenda; including among others, the advise for states to become part of relevant international human rights instruments or the International Criminal Court (ICC), strengthening the capacity of the UN and regional organisations to utilize diplomacy to prevent conflicts from escalating, making better use of targeted sanctions and building international society's capacity to give early warning for genocide and mass atrocities.¹⁷³ Since the *Implementing the Responsibility to Protect* report Ban Ki-Moon has published a report every year regarding the implementation of the RtoP. Due to these yearly reports the debate on the RtoP remains vivid in the United Nations.

After the 2005 World Summit some countries expressed their doubt about the RtoP. Commitment to the RtoP declined in Asia and sub-Sahara Africa, and Middle-Eastern and Latin

¹⁶⁸ Thomas Weiss, 'R2P after 9/11 and the World Summit', *Wisconsin International Law Journal*, Volume 24 (2006), p.750.

¹⁶⁹ Lou Pingeot and Wolfgang Obenland, *In whose Name? A critical view on the Responsibility to Protect*, p.17.

¹⁷⁰ United Nations, Office of the Special Advisor on the Prevention of Genocide, *Mission Statement*, available at: <http://www.un.org/en/preventgenocide/adviser/>, [accessed on 24 October 2014].

¹⁷¹ United Nations Secretary-General, *Implementing the Responsibility to Protect*, 12 January 2007, A/63/677, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/63/677, [accessed on 24 October 2014].

¹⁷² *Ibidem*.

¹⁷³ *Ibidem* and Alex Bellamy and Nicholas Wheeler, 'Humanitarian intervention in world politics', p.523.

American scepticism increased.¹⁷⁴ The dedication of Ban Ki-Moon helped the development of the RtoP towards becoming a norm. Edward Luck noted that resistance against RtoP from UN member states is declining. In an article in *Ethnic & International Affairs* Luck said:

Of course, resistance to operationalizing RtoP remains, but it appears to be a receding impulse, judging by the 2009 debate and 2010 dialogue in the General Assembly. Relatively few delegations voiced doubts about the way forward outlined in the secretary-general's comprehensive 2009 report, and even fewer questioned the proposals on early warning and assessment—traditionally controversial issues around the UN—in his 2010 report on those matters.¹⁷⁵

Luck, thus, concludes that the support for the RtoP is growing within the UN. Thomas Weiss also argued the RtoP is a fast growing norm: “With the possible exception of the prevention of genocide after World War II, no idea has moved faster or farther in the international normative arena than The Responsibility to Protect”.¹⁷⁶ Others have expressed more caution. Patricia O’Brien, under-Secretary-General for Legal Affairs at the UN, argued the RtoP is “relatively new and, despite its endorsement at the 2005 World Summit and subsequent reaffirmation by the Security Council, it is still fragile”.¹⁷⁷ The question as to whether or not the RtoP can be described as an established norm is important because it has great implications for the translation of the RtoP from theory to practice. The *Oxford English Dictionary* describes a norm as “A standard or pattern of social behaviour that is accepted in or expected of a group”.¹⁷⁸ If the RtoP is accepted as a norm this would mean the theory would translate into practice because it is expected social behaviour. If however the RtoP is not accepted as a norm the action by the international society of states is not insured.¹⁷⁹ Alex Bellamy rightly points out that the RtoP is not a singular norm but a collection of shared expectations. This is best understood by using the three-pillar system outlined by Ban Ki-Moon. The first pillar, Bellamy argued, is the consolidation of an already embedded norm. It is, legally and morally, expected of states that they do not intentionally kill civilians. This is enshrined in international law and human rights treaties and predates the RtoP. Pillar two and three are, according to Bellamy, less established norms. These pillars expect states to assist other states in the fulfilment of their RtoP (pillar two) and to take timely and decisive action in cases where a state has manifestly failed in its RtoP (pillar

¹⁷⁴ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, p.53.

¹⁷⁵ Edward Luck, ‘The Responsibility to Protect: Growing Pains or Early Promise?’, p.355.

¹⁷⁶ Thomas Weiss, ‘R2P after 9/11 and the World Summit’, p.743.

¹⁷⁷ Patricia O’Brien, ‘The Responsibility to Protect’, *International Journal of Refugee Law*, Volume 20 (2008), p.710.

¹⁷⁸ Oxford English Dictionary, *Online dictionary*, definition two.

¹⁷⁹ Jeremy Sarkin, ‘Why the Responsibility to Protect (R2P) as a Doctrine or (Emerging) Norm to Prevent Genocide and Other Massive Human Rights Violations is on the Decline’, *Genocide Prevention*, Volume 47 (2009), p.52

three).¹⁸⁰ Whether pillar two and three can be considered as emerging or established norms must be examined in practice.

2.13 Summary

The highly contested humanitarian interventions of the 1990s set in motion a fundamental rethinking of the role and responsibility of the United Nations. On the one hand the United Nations had made the promise, through various human rights declarations, to prevent genocide and other human rights violations. On the other hand the United Nations ensured state sovereignty and with it the principle of non-intervention. The responsibility to protect, proposed by the ICISS, provided a solution to the deadlock of the debate about humanitarian interventions. It solves the dilemma of sovereignty versus human rights by arguing that sovereignty entails certain responsibilities. The state has the responsibility to ensure that its citizen can enjoy fundamental human rights. When a state fails to protect its citizens it loses temporarily its sovereignty and with it its right to non-intervention from external actors. The responsibility then shifts towards the international society of states. The United Nations Security Council has the authority to decide if a state has failed to abide by its responsibility and whether or not external intervention is legitimate. The RtoP was adopted by the UN at the 2005 World Summit and should therefore since then be respected by all signatories. So in theory the responsibility to protect has provided a solution to the dilemma of sovereignty versus human rights.

In practice, however, the RtoP has yet to prove itself. Many problems are envisioned by critics of the principle. The main problem, they believe, is that the 2005 *Outcome Document* does not provide a clear description on what the RtoP entails. In addition intended reform of the UNSC by the original ICISS report and also recommended by Secretary-General Kofi Annan and the High-Level Panel is not complied in the 2005 *Outcome Document*. Disagreement or deadlock within the UNSC therefore remains a great possibility. The theoretical solution to this problem, provided by the ICISS, is that states as well as the UNSC can be pressured into action and to take up their international responsibility by external actors, including the Secretary-General, UN members, regional or sub-regional organisations, media or NGOs. In theory this is a good solution, however, it is highly questionable whether this will work in practice. As Edward Luck noted the RtoP is designed to change human behaviour. It therefore can only be judged by its appearance in practice. In the next part of this thesis the question whether or not the theory of the responsibility to protect has changed state behaviour in practice will therefore be central. The next part of the thesis will focus on the conflict in Darfur and whether or not the RtoP has been invoked as 'a speech act and catalyst for action'. It will be examined whether the anticipated problems by the critics of the RtoP, set forth

¹⁸⁰ Alex Bellamy, 'The Responsibility to Protect – Five Years On', pp.160-162.

in this literature review, indeed proved to be problematic in practice with regards to the conflict in Darfur.

3. Case Study Darfur



Source: BBC News

3.1 Introduction

3.1.1 A historical background of the conflict in Darfur

The current conflict in Darfur, a region roughly the size of France in the West of Sudan, started in February 2003 when the Sudanese Liberation Army (SLA) started attacking government military installations. Shortly after this the Justice and Equality Movement (JEM) joined the SLA in attacking the national army. The violence had both local and national root causes. On a local level the conflict started in the mid-1980s after severe droughts afflicted the country. This caused desertification of large areas of the country, forcing nomadic herders to move into traditional farm land in search of pasture and water sources. This caused conflict between the two most dominant groups within Darfur namely, the sedentary Fur (Darfur means 'the homeland of the Fur') and the cattle- and camel- herding Arab tribes.¹⁸¹ The Arab tribes were supported by other Arab tribes in the region, mainly Chad, to seize the land of the sedentary African tribes. The Arab tribes in the region had been strongly linked since the establishment of the Arab Gathering, an organisation supported by Colonel Ghaddafi who wanted to create an 'Arab belt' across Africa. Ghaddafi never established the 'Arab belt' but his ideology of Arab supremacy lived on. These Arab militias, in search for land and water, started to attack local villages where primarily Fur, Masalit and Zaghawa lived. The Government of Sudan did little to stop them. Instead they used the tactic of divide-and-rule by distributing arms to one side to suppress the other, usually in favour of the Arab tribes.¹⁸²

On a national level the conflict in Darfur stems from the decade-long neglect of the region by the central Government of Sudan. The underdevelopment of the Darfur region started after the independent Darfur Sultanate was incorporated into Sudan in 1916 and power was replaced by British-Egyptian colonial rule. The British pursued a policy of non-interference and little was done to develop the region of Darfur. After independence was regained by Sudan in 1956 the central government did not do much to improve the development of the impoverished regions of the country including Darfur. As a result Sudan is one of the most unequal countries in the world. Half the nation's income and assets are in the capital Khartoum, where only twenty percent of the population lives. The middle-income capital and immediate surrounding have a vibrant economy whilst the rest of the population lives in poverty. The economic dominance of Khartoum has had far-reaching political, social and cultural implications. This unequal distribution of wealth and power

¹⁸¹ Alex de Waal, *War in Darfur and the search for peace*, Harvard: Global Equity Initiative 2007, p.70 and Mahmood Mamdani, *Saviours and Survivors: Darfur, politics and the war on terror*, Cape Town: HRSC Press 2009, p.4.

¹⁸² Alex de Waal, 'Darfur's deep grievances defy all hopes for an easy solution', *The Observer*, 25 July 2004, available at: <http://www.theguardian.com/society/2004/jul/25/internationalaidanddevelopment.voluntarysector>, [accessed on 27 November 2014].

between the centre and periphery has led to great discontent among the population in the periphery.¹⁸³ In 1983 this resulted in the call for a restructuring of the Sudanese state by John Garang de Mabior. He argued that the minorities of Sudan together formed a majority and therefore should rule. He founded the Sudan People's Liberation Army (SPLA) to end historical injustice and lay the foundations for a new Sudan based on justice and equality. Garang fought against the dominance of the national government on behalf of the southern Sudanese region and did not intend to fight this war for other neglected regions of Sudan. His agenda did, however, inspire other regions to fight for the same cause, including the region of Darfur.¹⁸⁴ Darfurian political activists were attracted by the vision of the SPLA and founded their own rebel movements against the Sudanese government, the main ones being the SLA and the JEM which mainly draw their support from the Fur, Masalit and Zaghawa ethnic tribes.¹⁸⁵

When the conflict in Darfur started in February 2003 peace negotiation between the central government of Sudan and the SPLA had just come to a close, after 20 years of fighting. It has been argued that the rebels in Darfur launched the attacks in order to try and achieve the same as their southern counterparts.¹⁸⁶ The Sudanese Liberation Army started the attacks on the Government of Sudan with the aim of achieving a more equal distribution of power and wealth in Sudan just as the SPLA had done in the South. Nevertheless, the root causes of the conflict in Darfur are complex; geography, history, economics, politics and culture all played a part in the onset of the conflict.¹⁸⁷ During the peace talks in South-Sudan it was debated whether or not the stabilisation of the conflict in Darfur would be included in the negotiations. The SPLA as well as the international representatives, however, decided that they did not want to stall the peace agreements over the conflict in Darfur. Therefore the two wars were dealt with separately.¹⁸⁸

The rebels achieved initial success with their attacks in 2003. This alarmed the government in Khartoum, afraid of losing control in Darfur they mobilized militia from the local Arab population, then better known as the Janjaweed. The national government made a deal with Janjaweed militia, in return for oppressing the rebellion they were allowed to pursue their own agenda with impunity.¹⁸⁹ In order to disrupt the base of operation of the rebels the Janjaweed and Sudanese military decided to not only attack the rebel movements who had started the attacks but also their

¹⁸³ Alex de Waal, *War in Darfur and the search for peace*, pp.8-10.

¹⁸⁴ Mansour Khalid, 'Darfur: A problem within a wider problem', in: Salah Hassan and Carina Ray eds., *Darfur and the crisis of governance in Sudan*, New York: Cornell University Press 2009, p.38.

¹⁸⁵ Max Matthews, Tracking the emergence of a new international norm: the responsibility to protect and the crisis in Darfur', *Boston College International & Comparative Law Review*, Volume 31 (2008), p.144.

¹⁸⁶ Alex de Waal, 'Darfur's deep grievances defy all hopes for an easy solution'.

¹⁸⁷ Alex de Waal, 'Darfur and the failure of the responsibility to protect', *International Affairs*, Volume 83 (2007), pp.1040-1041.

¹⁸⁸ Ibidem.

¹⁸⁹ Ibidem, p.1040.

families and villages. They used a wide range of tactics against civilians including aerial bombing, heavy shelling, ground attacks, burning of villages, kidnapping, torture and rape.¹⁹⁰ The government turned a blind-eye to the region, as agreed, so the Janjaweed acted with impunity. The rebel forces also committed atrocities against the government and the Janjaweed, however their atrocities never reached the scale or organisation of the Janjaweed attacks. The Janjaweed systematically destroyed rebel villages and infrastructure, they killed young men who might join the insurgency, raped their women and abducted their children. The frequency of attacks, both by the Janjaweed and the rebel movements, reached its highest point between September 2003 and April 2004. Hereafter mortality rates caused by violence have reduced. The main causes of death in Darfur since 2005 are diarrheal disease, malaria, dehydration and malnutrition induced by the mass population displacement. Since the start of 2013 the level of violence is rising again. Nearly 400,000 civilians were displaced in the first half of 2014 alone. In total 2.3 million civilians are displaced because of the conflict in Darfur, many people have been displaced several times. Most internally displaced people (IDP) live in camps in Darfur or neighbouring Chad.¹⁹¹ In 2014 the UN stated that 3.5 million people in Darfur, half the population, is in need of humanitarian aid. 3.1 million of those rely on food aid to survive. Aid workers have restricted access to these civilians in need, often prevented from visiting the regions in need and face harassment and attacks by militia, police and rebels. Aid workers accuse the Government of Sudan of administrative obstruction which makes their work impossible. As result the number of aid workers has halved since 2009.¹⁹²

The conflict in Darfur has been described as one of the first test-cases of the RtoP. The second part of this thesis will therefore examine whether or not the RtoP has been put into practice to stop the human rights violations in Darfur. First the response from the United Nations Security Council will be examined. Reports, meetings and resolutions will be analyzed to determine whether or not the UN used to RtoP as 'a speech act and catalyst for action' to stop the human rights violations in Darfur. An answer will be given to the question: *to what extent has the responsibility to protect been invoked by the United Nations Security Council to stop human rights violations in Darfur?*

Besides the UN the ICISS report determines three other international actors who are relevant to invoke the RtoP in order to stop human rights violations, namely regional and sub-

¹⁹⁰ Max Matthews, Tracking the emergence of a new international norm: the responsibility to protect and the crisis in Darfur', p.144.

¹⁹¹ Andrew Natsios and Zachary Scott, 'Darfur, Sudan', in: Jared Genser and Irwin Cotler eds., *The Responsibility to Protect: The promise of stopping mass atrocities in our time*, Oxford: Oxford University Press 2012, pp.240-242.

¹⁹² Thompson Reuters Foundation, 'Darfur conflict'.

regional organisations, media and international NGOs.¹⁹³ After the response from the UN is analyzed these three international actors will be examined. The most relevant regional organisation in the conflict in Darfur is the African Union. The role of the AU will be partly discussed in relation to the response of the UN, following this a more in-depth analysis will be undertaken to determine the extent of the RtoP's influence on the AU's response to the conflict in Darfur. In the ICISS report it is acknowledged that not only the UN or individual governments can invoke the RtoP but that international media and NGOs have the power to make RtoP happen from the bottom-up. The ICISS report stated that the media and NGOs can "elicit a broad public reaction, even calling for concerted and urgent action."¹⁹⁴ In this part of the thesis it will be examined whether or not international media and NGOs have tried to invoke the RtoP in order to stop human rights violations. The Darfur conflict has had great media attention, newspapers such as *The New York Times* attributed more attention to Darfur than other similar conflicts in Africa.¹⁹⁵ The international media's response to the conflict will be examined as well as whether or not the reporting on the conflict reflects the presence of the RtoP. Furthermore, campaigns and strategies used by NGOs and advocacy groups will be analyzed to determine whether or not they invoked the RtoP to stop human rights violations in Darfur. An answer will be given to the question: *To what extent have other international actors invoked the responsibility to protect to stop human rights violations in Darfur?*

¹⁹³ ICISS, *The Responsibility to Protect*, p.73.

¹⁹⁴ ICISS, *The Responsibility to Protect: Research, Bibliography, Background*, p.212.

¹⁹⁵ Abdel Sidhamed and Walter Soderlund, *Responsibility to Protect in Darfur: the role of the mass media*, Maryland: Lexington Books 2010, p.95.

3.2 UN response to the conflict in Darfur

3.2.1 International political response to the conflict in Darfur

International political response to the conflict in Darfur was slow. From early 2003 till mid-2004, the period when the attacks were at the highest frequency, political attention was mainly focussed on the negotiations in Naivasha, Kenya, to end the North-South war in Sudan. It was hoped that a settlement of the North-South civil war would change the overall political situations, which might be a reason why initially the responses to the early warning signs in Darfur were dismissed by the UN.¹⁹⁶

In April 2004 Security-General Kofi Annan used the tenth anniversary of the Rwandan genocide as platform to acquire international attention for the conflict in Darfur. He stated:

Whatever terms it uses to describe the situation, the international community cannot stand idle. [...] the international community must be prepared to take swift and appropriate action. By "action" in such situations I mean a continuum of steps, which may include military action. But the latter should always be seen as an extreme measure, to be used only in extreme cases.¹⁹⁷

In response the UN Human Rights Commission sent a fact-finding mission to Darfur in order to investigate the situation in the region. In May 2004 the Human Rights Commission published their report in which they concluded that: "a disturbing pattern of disregard for basic principles of human rights and humanitarian law, which is taking place in Darfur for which the armed forces of the Sudan and the Janjaweed are responsible."¹⁹⁸ In June the UN Security Council mentioned the conflict in Darfur for the first time in a resolution. In Resolution 1547, concerning the establishment of a UN mission in Sudan to monitor the implementation of the Naivasha Peace Agreement, the UNSC expressed concern about the situation in Darfur and called upon all members to "to use their influence to bring an immediate halt to the fighting in the Darfur region."¹⁹⁹ The resolution did not mention sanctions or called for further action; no parties were blamed or held responsible for the humanitarian crisis.

¹⁹⁶ Michael Clough, 'Darfur: Whose Responsibility to Protect?', *Human Rights Watch*, available at: <http://www.hrw.org/legacy/wr2k5/darfur/darfur.pdf>, [accessed on 27 November 2014].

¹⁹⁷ United Nations, *Risk of genocide remains frighteningly real, Secretary-General tells Human Rights Commission as he launches action plan to prevent genocide*, Press Release SG/SM/9245, 7 April 2004, available at: <http://www.un.org/press/en/2004/sgsm9245.doc.htm>, [accessed on 25 November 2014].

¹⁹⁸ United Nations Commission on Human Rights, *Report of the situation of human rights in the Darfur region of the Sudan*, 7 May 2004, E/CN.4/2005/3, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/142/21/PDF/G0414221.pdf?OpenElement>, [accessed on 16 November 2014], p.3.

¹⁹⁹ United Nations Security Council, *Press Release on the 4988th meeting*, 11 June 2004, SC/8120, available at: <http://www.un.org/press/en/2004/sc8120.doc.htm>, [accessed on 16 November 2014].

3.2.2 Resolution 1556

One month later in July 2004 the UNSC authorized Resolution 1556. Acting under Chapter VII of the UN Charter the Council demanded that the Government of Sudan would disarm the Janjaweed militias within 30 days and bring to justice those responsible for the human rights violations in the region. The Council also imposed an arms embargo on the region, supported the deployment of an AU Protection Force and threatened further action if the Sudanese government failed to take action. During the negotiations on the resolution the presence of RtoP language was clearly evident. The representative from the Philippines, Lauro Baja, used almost the exact same phrasing as the ICISS report, he stated:

Sovereignty also entails the responsibility of a State to protect its people. If it is unable or unwilling to do so, the international community has the responsibility to help that State achieve such capacity and such will and, in extreme necessity, to assume such responsibility itself.²⁰⁰

Baja believed that the Government of Sudan had lost its right of sovereignty because of its position in the conflict and that the UN had the responsibility to take action because Sudan had failed to protect its citizens. Other UNSC members also invoked RtoP in their language, however, they believed the responsibility to protect the population of Darfur still lay with the Government of Sudan and had not yet transferred to the international society of states. They stressed the importance that the Sudanese government takes its responsibility of “the most basic of a Government’s obligations to its own people: the obligation to protect them.”²⁰¹ Thirteen members voted in favour of the resolution. China and Pakistan abstained from voting because they did not agree that further action or sanctions should be imposed on the Government of Sudan if it would fail to act upon the resolution. They emphasised the rights of sovereignty and territorial integrity of Sudan and their belief that the UN should not sanction the Government of Sudan but support them to stop the atrocities in Darfur.²⁰²

The final draft of the resolution affirmed Sudanese sovereignty and lay the responsibility of the protection of the people in Darfur primarily with the Sudanese government:

Recalling in this regard that the Government of Sudan bears the primary responsibility to respect human rights while maintaining law and order and protecting its population within its territory and that all parties are obliged to respect international humanitarian law.²⁰³

Great emphasize was put on the sovereignty of the Sudanese government and the responsibility they ought to have towards their own population to protect them. Analysing the statements made

²⁰⁰ United Nations Security Council, *Meeting records of the 5015th meeting*, 30 July 2004, S/pv.5015, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.5015, [accessed on 17 November 2014].

²⁰¹ Ibidem.

²⁰² Ibidem.

²⁰³ United Nations Security Council, *Resolution 1556*, 30 July 2004, S/Res/1556, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/446/02/PDF/N0444602.pdf?OpenElement>, [accessed on 17 November 2014].

by the UNSC members and the resolution itself it is clear that most states acknowledged the conflict as a dire situation that needed international attention.²⁰⁴ It also became clear that the majority of the UNSC believed Sudan had the primary responsibility to ensure the safety of its population. It was acknowledged that the international society of states should provide support wherever necessary. The adoption of this resolution underlines the commitment of the Security Council to ensure that all governments fulfil their most basic obligation – the duty to protect their own citizens.²⁰⁵ However, besides the Philippines no other member state yet believed that the responsibility to protect had transferred to the international community. Even though some did acknowledge that the Government of Sudan had played a major part in the conflict. The US argued:

The responsibility for this disaster lies squarely with the Government of Sudan. To suppress a rebel uprising begun in early 2003, the Government commenced a campaign of terror against innocent civilians. Government aircraft bombed villages. Exploiting an ancient rivalry between Arab African herdsmen and groups of largely black Africans who are farmers, the Government armed the Janjaweed militias and unleashed them against black civilians.²⁰⁶

Resolution 1556 therefore proves that the RtoP language had made its appearance in the UN debate before it was adopted in the 2005 World Summit. It is also clear to see that the international community had already accepted the idea that a state has a responsibility to protect its citizens and that the international society of states was an important actor, supporting governments that were unable or unwilling to do this. The third-pillar, as it later would be described by Ban Ki-Moon, was not yet accepted before the adaptation of RtoP in the 2005 World Summit. The debate whether or not sanctions should be imposed on the Government of Sudan, if it would fail to comply with Resolution 1556, proved that several states, including two permanent UNSC members with veto-power, China and Russia, objected to sanctions in principle because they believed it would violate the Sudanese sovereignty. So even though RtoP language was used during these negotiations it was not embraced as a norm by the UNSC.²⁰⁷

3.2.3 Resolution 1564

The Sudanese government did not comply with resolution 1556. Immediately after the resolution was passed by the UNSC the government did relax visa controls on foreign aid workers but besides those measures the Government of Sudan did little to stop the atrocities or disarm the Janjaweed militia.²⁰⁸ In September 2004 the UN announced that “Khartoum has not disarmed the Janjaweed

²⁰⁴ Alex Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’, p.43.

²⁰⁵ United Nations Security Council, *Meeting records of the 5015th meeting*.

²⁰⁶ Ibidem.

²⁰⁷ Alex Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’, p.45.

²⁰⁸ Paul Williams and Alex Bellamy, ‘The Responsibility To Protect and the Crisis in Darfur’, p.33.

nor stopped their attacks” and “ that some of the core commitments have not been met by Khartoum.”²⁰⁹ At the same time the US government pushed the Security Council to take stronger measures, driven by their belief that genocide was being committed in Darfur. The then US Secretary of State Colin Powell, speaking before the US Senate Foreign Relations Committee, called the conflict in Darfur genocide. It was for the first time that a member of the US executive branch had called an ongoing conflict genocide.²¹⁰ The US therefore wanted the UNSC to take further actions to stop the conflict in Darfur. They argued for an expansion of the AU mission, measures to prosecute those responsible for the genocide and targeted sanctions against the ruling elite of Sudan including travel bans.²¹¹ In Resolution 1564 the Security Council followed the US in “Expressing grave concern at the lack of progress with regard to security and the protection of civilians, disarmament of the Janjaweed militias and identification and bringing to justice of the Janjaweed leaders responsible for human rights and international humanitarian law violations in Darfur.”²¹² Nevertheless, no sanctions were imposed on the Government of Sudan, the UNSC stated in the resolution it might consider taking further measures if the Government of Sudan would not comply with this resolution. Again was emphasised that “the Sudanese Government bears the primary responsibility to protect its population within its territory, to respect human rights, and to maintain law and order, and that all parties are obliged to respect international humanitarian law.”²¹³

During the negotiations prior to adaptation of the resolution similar statements were made with reference to the RtoP. Pakistan called the measures imposed by the US “unacceptable assaults on Sudan’s sovereignty”.²¹⁴ Algeria, Russia and China also expressed great concern about the imposition of sanctions on the Government of Sudan. They argued that the Security Council should focus on supporting the Sudanese government to cooperate, sanctions would only have a contradictive effect. These countries expressed concern about the legitimacy of the UNSC to impose sanctions on the Sudanese government. It became clear they were not willing to put any restrictions

²⁰⁹ United Nations News Centre, *UN-Sudanese body to meet on keeping Khartoum's commitments on Darfur*, 13 September 2004, available at: <http://www.un.org/apps/news/story.asp?NewsID=11907&#.VHtGuPmG WR>, [accessed on 18 November 2014].

²¹⁰ Rebecca Hamilton, ‘Inside Colin Powell's Decision to Declare Genocide in Darfur’, *The Atlantic*, available at: <http://www.theatlantic.com/international/archive/2011/08/inside-colin-powells-decision-to-declare-genocide-in-darfur/243560/2/>, [accessed on 18 November 2014].

²¹¹ Alex Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’, p.17.

²¹² United Nations Security Council, *Resolution 1564*, 18 September 2004, S/Res/1564, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/515/47/PDF/N0451547.pdf?OpenElement>, [accessed on 18 November 2014].

²¹³ Ibidem.

²¹⁴ United Nations Security Council, *Meeting records of the 5040th meeting*, 30 July 2004, S/pv.5040, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.5040, [accessed on 18 November 2014], p.3.

on the sovereignty of the Government of Sudan. Romania on the other hand clearly referred to RtoP ideas by saying that the UNSC had a responsibility to act and that this resolution proves “an important act of the Security Council in the discharge of its responsibilities under the United Nations Charter.”²¹⁵ The US, UK and Germany again expressed their belief that the responsibility of the protection of citizens still lay with the Government of Sudan. The US did not argue that the responsibility of the protection of the population had transferred from the Sudanese government to the UNSC even though it had called the atrocities committed by the Sudanese government genocide. Alex Bellamy has argued that in order to reach consensus in the Security Council the US might take a moderate stance to avoid undermining the fragile consensus within the UNSC.²¹⁶

The US calling the conflict in Darfur genocide resulted in the establishment of an International Commission of Inquiry on Darfur which had to investigate whether or not the Government of Sudan had committed genocide in Darfur. In January 2005 the Commission published its findings stating that: “the Government of the Sudan and the Janjaweed are responsible for serious violations of international human rights and humanitarian law amounting to crimes under international law.”²¹⁷ In regard to genocide the Commission argued that “the Government of the Sudan has not pursued a policy of genocide”, nevertheless, the Commission concluded that the crimes committed by the Janjaweed and government “may be no less serious and heinous than genocide”.²¹⁸ In addition the Commission noted that some individuals, including government officials, might be committing atrocities with genocidal intent. The Commission argued that only a competent court would be able to judge whether or not this was the case in Darfur. This sparked the debate in the UN on how to prosecute the accused war criminals. The EU states argued that the matter should be referred to the International Criminal Court (ICC). The US, a staunch opponent of the ICC, did not agree with this. Instead the US argued for a special tribunal in Arusha, Tanzania, to prosecute the war criminals. The EU states rejected this because it would seriously undermine the ICC. In Resolution 1593 the US conceded with EU arguments and agreed with the referral of war criminals to the ICC.²¹⁹ The US explained their abstention from voting by declaring that it was important the “international community speak with one voice in order to help promote effective

²¹⁵ United Nations Security Council, *Resolution 1564*.

²¹⁶ Alex Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’, p.48.

²¹⁷ International Commission of Inquiry on Darfur, *Report to the UN Security Council*, 25 January 2005, available at: http://www.un.org/news/dh/sudan/com_inq_darfur.pdf, [accessed on 18 November 2014], p.3.

²¹⁸ *Ibidem*, p.4.

²¹⁹ Alex Bellamy, ‘Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq’, p.49.

accountability.”²²⁰ This was a remarkable action taken by the US considering they still opposed to the ICC in principle because they believe it “strikes at the essence of the nature of sovereignty.”²²¹

3.2.4 No-motion action of the General Assembly

The actions by the General Assembly in regards to the conflict in Darfur reinforced the belief that the majority of the UN member states agreed the UNSC was the only legitimate body to deal with RtoP situations. In autumn 2004 a resolution was drafted in response to the human rights situation in Darfur. When this resolution was presented in the General Assembly the issue was, however, blocked from voting, better known as a “no-action” motion. This strategy had been used before in cases of politically sensitive human rights situations.²²² The 2005 World Summit and the adaptation of the RtoP did nothing to change this view. Two months after the 2005 World Summit the European Union again tried to address the humanitarian catastrophe of the Darfur region in the General Assembly and again a ‘no-action’ motion was invoked. It were mainly African and Arab countries that were against the dealing of the General Assembly with the conflict in Darfur. The representative of South Africa explained he voted in favour of a no-action motion because South Africa believed that if the General Assembly would deal with the conflict in Darfur this was an “undermining of [...] international structure”.²²³ This resembled the belief argued by the majority of UN member states at the 2005 World Summit that the UNSC was the only international body that could authorize an intervention if a government would fail to act. The South African representative did not deny that human rights violation were committed in Darfur but he stated that these atrocities should not be dealt with by the General Assembly via country-specific resolutions.²²⁴ So in regards to the conflict in Darfur the RtoP did not ensure that General Assembly was perceived as a legitimate actor to deal with RtoP situations.

3.2.5 The African Union Mission in Sudan

Immediately after the onset of the violence in Darfur neighbouring country Chad had initiated peace talks between the Government of Sudan and the SLA because the President, Idriss Deby, was afraid of a spill-over effect of the conflict into Chad. In September 2003 both parties agreed to a 45 day

²²⁰ United Nations Security Council, *Meeting records of the 5158th meeting*, 31 March 2005, S/pv.5158, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.5158, [accessed on 20 November 2014], p.3.

²²¹ Ibidem, p.3.

²²² Joanna Weschler, ‘UN response to the Darfur crisis’, in: Birambaux ed., *The Gap between Narratives and Practices. Darfur: Responses from the Arab world*, Madrid: FRIDE 2009, pp.6-11.

²²³ United Nations General Assembly, *Press Release*, 24 November 2004, GA/SHC/3811, available at: <http://www.un.org/press/en/2004/gashc3811.doc.htm>, [accessed on 20 November 2014].

²²⁴ Ibidem.

ceasefire and to start comprehensive political talks to resolve the socioeconomic problems underlying the conflict within fifteen days. Both sides violated the ceasefire. In March 2004 a new round of talks was initiated by the president of Chad, now with support from the African Union, in the capitol of Chad, N'Djamena. The Government of Sudan agreed with the presence of the AU but refused any other international/Western attendance. The Sudanese government also refused to have face-to-face meetings with the SLA and JEM leaders. Nevertheless, on April 8 the N'djamena Ceasefire Agreement on Darfur was signed by both parties. The agreement included a 45 day ceasefire, automatically renewable unless it was opposed by one of the parties, the delivery of humanitarian aid and the creation of conditions conducive to emergency relief, and the creation of a team of military observers for the ceasefire, protected by an armed force jointly called the African Union Mission in Sudan (AMIS).²²⁵ In Resolution 1556 this mission had already been authorized by the UNSC. The Sudanese government had stated that they would not allow an international peacekeeping mission into the country. Therefore an AU mission was prepared to monitor the ceasefire agreement between the Sudanese government and the rebels.²²⁶

The AMIS troops entered Sudan in August 2004. The African Union initially only deployed 300 troops, instead of the intended 3000. The mandate of the AU mission caused a discussion between AU members. The president of Rwanda, Kagame, insisted that the troops would be allowed to use force to protect civilians when deemed necessary. Several other members expressed reservation about this mandate and the Government of Sudan rejected it altogether. A compromise was reached whereby the AMIS troops would only protect civilians in their vicinity. So the main task of the AMIS troops was to provide protection for the experts monitoring the ceasefire.²²⁷ The mandate of the AU mission proves that the responsibility of the protection of civilians is still placed by the Sudanese government, besides their involvement in the conflict. The AMIS troops were to: "Protect civilians whom it encounters under imminent threat and in the immediate vicinity, within resources and capability, it being understood that the protection of the civilian population is the responsibility of the GoS;"²²⁸

It soon became clear that the AU did not have the capacity, experience or financial and logistical resources to manage an operation of this scale and complexity. On the ground AMIS troops were constrained by the Sudanese government. Constrains were also put on AU helicopters

²²⁵ Alex de Waal, *War in Darfur and the search for peace*, pp. 215-217.

²²⁶ Alex Bellamy, 'Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq', pp.42-43.

²²⁷ Samuel Totten, 'Saving lives in Darfur, 2003-2006?: Lots of talk, little to no action', , in: Amanda Gryzeb ed., *The world and Darfur*, Québec: McGill-Queen's University Press 2009, p.183.

²²⁸ African Union Peace and Security Council, Communiqué of the 17th meeting of the Peace and Security Council, 20 October 2004, PSC/PR/Comm.XVII, available at: <http://www.peaceau.org/uploads/communiqueng-17th.pdf>, [accessed on 20 November 2014].

prevented from flying by fuel being denied by the Sudanese government. The AMIS troops could only report about the constant breach of the ceasefire by both parties. In December 2004 Kofi Annan stated that the AU mission in Darfur had failed: “The situation (in Darfur) is deteriorating, the internally displaced persons are suffering and the African Union (AU) has not been able to put in as many (military) forces as we had hoped, and they need desperate help.”²²⁹ However, not much was done by the UNSC to improve the effectiveness of the AMIS in 2005.

3.2.6 After the 2005 World Summit

In 2005 seven resolutions were passed by the UNSC concerning Darfur. All strongly condemned the Sudanese government, however, the resolutions lacked significant punitive measures. The resolutions extended the mandate of AMIS and established a ‘Panel of Experts’ to oversee and report on the conflict.²³⁰ In January 2006 the UNSC started to talk publically about the deployment of UN Peacekeeping troops to replace AMIS. The UN wanted to expand the United Nation Mission in the Sudan (UNMIS) into Darfur. UNMIS was deployed in South-Sudan to monitor the implementation of the North-South Peace Agreement. The Government of Sudan persisted it would not allow UN troops into Darfur.²³¹

In April 2006 the UNSC agreed on targeted sanctions against four individuals. In August 2006 the UNSC adopted Resolution 1706 in which it invited the Government of Sudan to consent with a UN take-over of the AMIS troops deployed in Darfur. For the first time since the adoption of the 2005 World Summit the UNSC explicitly referred to paragraph 138 and 139 of the Outcome Document with regard to the conflict in Darfur. This clear reference to the RtoP was constrained by the UNSC’s strong commitment to the sovereignty of Sudan. In the resolution the UNSC stated:

Reaffirming its strong commitment to the sovereignty, unity, independence, and territorial integrity of the Sudan, which would be unaffected by transition to a United Nations operation in Darfur, and to the cause of peace, expressing its determination to work with the Government of National Unity, in full respect of its sovereignty, to assist in tackling the various problems confronting the Sudan and that a United Nations operation in Darfur shall have, to the extent possible, a strong African participation and character.²³²

The UNSC proved to be unwilling to deploy UN peacekeeping troops in Darfur without the consent of the Sudanese government. Advocates of the RtoP have criticized the UNSC for seeking consent from the Government of Sudan arguing that the RtoP clearly entails that when a state has ‘manifestly

²²⁹ Inter Press Service, *UN admits Sudan policies are failing*, 22 December 2004, available at: <http://www.ipsnews.net/2004/12/politics-un-admits-sudan-policies-failing/>, [accessed on 20 November 2014].

²³⁰ Aidan Hehir, *Humanitarian Intervention: An Introduction*, p.245.

²³¹ Samuel Totten, ‘Saving lives in Darfur, 2003-2006?: Lots of talk, little to no action’, p. 194.

²³² United Nations Security Council, *Resolution 1706*, 31 August 2006, S/Res/1706, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/484/64/PDF/N0648464.pdf?OpenElement>, [accessed on 25 November 2014].

failed' to protect its citizens the international community can intervene without the consent of the host state because it has lost its claim on sovereignty due to its failure to protect its citizens.²³³ Contrarily, it can be argued that seeking consent of the Sudanese government is more in line with the RtoP than intervening without consent. Since the second pillar of RtoP states that the international community should do everything to support the host state in fulfilling its responsibility towards its citizens. Cooperation between the Sudanese government and the UN to stop the violence in Darfur should therefore be in favour of an international intervention obstructed by Sudan. It will also increase the prospects of success for the mission if consent to the mission is given by the Government of Sudan.²³⁴

The representative from Ghana, UNSC president at the time, expressed concern about the limitation on the RtoP provided in the resolution. He stated: "we have reservations about the inclusion in the draft text of explicit language that implies that the Government of the Sudan can take all the time it wants before allowing the United Nations to deploy in Darfur, or even refuse to do so, regardless of the cost in human lives."²³⁵ The resolution contains a dual message, on the one hand the responsibility of the Council to act is repeatedly stressed. Argentina argued in this line "that one of the main obligations of the United Nations is to protect civilian populations. In that context, we believe that the Security Council cannot shirk its responsibility to protect, in particular, vulnerable groups — women and children — since they are defenceless."²³⁶ On the other hand, among others, the UK argued that the responsibility still primary lay with the Government of Sudan: "It has always been, and it remains, the primary responsibility of the Government of the Sudan to ensure the security of its own citizens."²³⁷ China, Qatar and Russia abstained from voting, not because they disagreed with the content of the resolution but because they believed consent of the Sudanese government should have been permitted before the adaptation of the resolution. The negotiations on Resolution 1706 prove that there was no consensus in the UNSC when the responsibility to protect transferred from the host state towards the international society of states. Several countries believed the UNSC had the responsibility to protect the population of Darfur and therefore was a legitimate actor to conduct an intervention without the consent of the Sudanese government. Other countries claimed that the responsibility to protect the population of Darfur still lay with the Government of Sudan and consequently the UNSC was only to support the Sudanese government to fulfil this responsibility. A week after the resolution was adopted by the UNSC the

²³³ Max Matthews, 'Tracking the emergence of a new international norm: the responsibility to protect and the crisis in Darfur', pp.150-151.

²³⁴ Ibidem.

²³⁵ United Nations Security Council, *Meeting records of the 5519th meeting*, 31 August 2006, S/pv.5519, available at: <http://www.ilsa.org/jessup/jessup09/basicmats/rsc1706.pdf>, [accessed on 25 November 2014].

²³⁶ Ibidem.

²³⁷ Ibidem.

President of Sudan, Omar al Bashir, rejected Resolution 1706 and as a result the resolution was never implemented.²³⁸

3.2.7 Resolution 1769

In response to the rejection of Resolution 1706 by the Sudanese government the AU suggested the UN would strengthen the existing AU mission in Darfur leading to a hybrid mission run jointly by the UN and the AU. This would result into an entirely new concept of peacekeeping, never implemented before by the UN.²³⁹ After eight months of tough negotiations the Sudanese government agreed with the deployment of the UN-African Union Mission in Darfur (UNAMID). UN authorization for UNAMID was provided in Resolution 1769 in July 2007. The resolution was adopted unanimously, which is in great contrast with the previous resolutions which were always tainted by abstention from China, Russia or members of the Arab League. In order to get the approval of Sudan and China for the resolution important sentences with threats of sanctions and the condemnation of the Government of Sudan for the obstruction of humanitarian aid workers to do their jobs had to be removed.²⁴⁰ Nevertheless, UN Secretary-General, Ban Ki-Moon, called it an “historic and unprecedented resolution”.²⁴¹

Resolution 1769, unlike Resolution 1706, did not refer directly to paragraph 138 and 139 of the 2005 World Summit Outcome Document.²⁴² The resolution did, however, reaffirmed Resolution 1674 on the protection of civilians in armed conflict. Resolution 1674 was adopted in April 2006 and reaffirmed paragraph 138 and 139 of the 2005 World Summit Outcome Document.²⁴³ So again the UNSC called for action in Darfur with reference to the RtoP. The resolution authorized the UNAMID to take “the necessary action” to prevent armed attacks and protect humanitarian aid workers. The UNAMID was also to protect the civilian population but “without prejudice to the responsibility of the Government of Sudan”. So Resolution 1769 did not acknowledge that the responsibility to protect civilians had transferred to the international society of states because the peacekeeping mission is only allowed to support the Government of Sudan on this matter. In the resolution it is

²³⁸ Joanna Weschler, ‘UN response to the Darfur crisis’, pp.p.8-9.

²³⁹ Ibidem, p.9.

²⁴⁰ Refugee International, ‘UN Security Council Resolution 1769 for Darfur: An Important but Insufficient First Step Towards Protecting Civilians’, available at: <http://www.refintl.org/policy/field-report/un-resolution-darfur-important-insufficient-first-step-towards-protecting-civili>, [accessed on 25 November 2014].

²⁴¹ United Nations Security Council, *Meeting records of the 5727th meeting*, 31 July 2007, S/pv.5727, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.5727, [accessed on 25 November 2014].

²⁴² Mia Farrow, ‘Understanding UN Darfur Resolution 1769’, *Huffington Post*, 25 May 2011, available at: http://www.huffingtonpost.com/mia-farrow/understanding-un-darfur-r_b_59204.html, [accessed on 16 November 2014].

²⁴³ United Nations Security Council, *Resolution 1674*, 28 April 2006, S/Res/1674, available at: <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Civilians%20SRES1674.pdf>, [accessed on 18 November 2014].

not explicitly mentioned that the Government of Sudan has to give their consent, nevertheless, the resolution did not become final before the Government of Sudan had agreed with the final text.²⁴⁴

The resolution emphasizes the peacekeeping character of the mission by stating that there can be “no military solution to the conflict in Darfur”.²⁴⁵ The UNSC has been firm throughout the whole process that military intervention would not be an option even though a lot of advocacy groups argued that the UN should intervene. This becomes clear in the statements made after the resolution was adopted. Several countries argued that a sustainable solution to the conflict in Darfur can only be reached by political means, the representative of Russia stated:

We are convinced that a settlement can be achieved exclusively through political means. The peace process must become genuinely comprehensive, with full respect for the sovereignty and territorial integrity of the Sudan and with the constructive cooperation of the international community with the Sudanese leadership in the political and peacekeeping spheres.²⁴⁶

Similar statements were made by China and Qatar but also the European states were convinced military measures were not the solution to the problems in Darfur. The representative of Belgium argued “the Security Council has added a crucial instrument, both for protecting the civilian population at risk and for seeking a solution to the present crisis, which can happen only if all actors in a political process take responsibility.”²⁴⁷

The resolution was seen as a start to solve the problems in Darfur. The Italian representative stated: “This resolution represents not the conclusion, but rather the beginning, of the international community’s new commitment.”²⁴⁸ So the resolution was seen as a political new commitment to the Government of Sudan by the international society of states to solve the problem in Darfur. It was repeatedly mentioned that not only the violence should be stopped in the region but that the socio-economic problems that caused of the conflict should be tackled.²⁴⁹ The resolution also emphasizes the need to think about the rebuilding of Darfur when peace would be established, the responsibility to rebuild. It is not referred to as the responsibility to rebuild but the language is similar to that of the ICISS report. The resolution states that: “preparations for reconstruction and development, return of IDPs to their villages, compensation and appropriate security arrangements” needs to be finalized.²⁵⁰

²⁴⁴ Max Matthews, *Tracking the emergence of a new international norm: the responsibility to protect and the crisis in Darfur*, p.149.

²⁴⁵ United Nations Security Council, *Resolution 1769*, 31 July 2007, S/Res/1769, available at: [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1769\(2007\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1769(2007)) , [accessed on 18 November 2014].

²⁴⁶ Ibidem.

²⁴⁷ United Nations Security Council, *Meeting records of the 5727th meeting*.

²⁴⁸ Ibidem.

²⁴⁹ United Nations Security Council, *Resolution 1769*.

²⁵⁰ Ibidem.

3.2.8 UNAMID

UNAMID became operable in January 2008. Its core mandate is the protection of civilians but the UNAMID troops are also authorized to contribute to the security of humanitarian aid organisations, monitor and verify implementation of peace agreements, contribute to the promotion of human rights and the rule of law, and monitor and report on the situation in the region.²⁵¹ In addition to the peacekeeping mission the African Union has mediated peace talks between the rebel forces and the Sudanese Government. In 2011 the Doha Document for Peace in Darfur was signed by the government and the Liberation and Justice Movement (LJM), an umbrella organisation of small rebel groups. The JEM and SLA did not sign the peace agreement. Peace talks have been extremely difficult because the rebel forces are not cooperating with each other but are all aspiring to their own agenda. In 2010 JEM claimed to be the sole representative of the population in Darfur and threatened to back out the peace negotiations if the Government of Sudan would also sign peace negotiations with other rebel movements. As a result there is still no peace in Darfur.²⁵²

Since their deployment in 2008 the operations of UNAMID have been repeatedly obstructed by the Sudanese government and the rebel forces. The mission has failed to secure safety in the region resulting in civilians still being attacked and humanitarian aid workers are still obstructed from doing their work. Many areas within Darfur are off limits for relief workers; their cars, Toyota land-cruisers which are popular with the rebels, are being hijacked and as a result certain routes are considered too dangerous to be taken.²⁵³ In March 2009, after an arrest warrant was issued by the ICC for the Sudanese President Omar Hassan el-Bashir for war crimes and crimes against humanity, the Sudanese government expelled thirteen international humanitarian aid organisations and three local ones from the region of Darfur. In 2010 a second arrest warrant was issued by the court with the charges of genocide. The government refuses to allow access to the UNAMID to certain regions in Darfur therefore several IDP camps are not protected by the UNAMID with the consequence that rape, kidnapping and murder still occurs in the camps.²⁵⁴ In July 2014 reports were published, by several NGOs, including Human Rights Watch, about the failure of the UNAMID in Darfur. With the violence rising in the region it is clear that the conflict in Darfur is still far from being solved.

²⁵¹ UNAMID, 'Protecting civilians, facilitating humanitarian aid and helping political process in Darfur', available at: <http://www.un.org/en/peacekeeping/missions/unamid/>, [accessed on 25 November 2014].

²⁵² Thompson Reuters Foundation, 'Darfur conflict'.

²⁵³ Eric Reeves, 'UNAMID's failure and the issue of security in Darfur', *Sudan Tribune*, 31 July 2014, available at: <http://www.sudantribune.com/spip.php?article51869>, [accessed on: 26 November 2014].

²⁵⁴ Ibidem.

3.3 Response to the conflict in Darfur by the AU

3.3.1 The establishment of the African Union (AU)

The AU formally replaced the Organisation for African Unity (OAU) in 2003. In general the OAU, founded in 1963, had not focused on the protection of human rights on the continent but was mainly concerned with securing the newly regained sovereignty of the African states from colonial rule. In 2002 the African states decided to replace the OAU with a new institution that would be more proactive in resolving conflicts and protecting human rights on the continent. As already mentioned in the literature review of this thesis the Constitutive Act of the African Union articulates a commitment to the responsibility to protect. In Article 4(h) the AU member states declare that the protection of fundamental human rights is not a purely domestic concern and awards the AU with the right to intervene in AU member states in grave circumstances such as war crimes, genocide and crimes against humanity.²⁵⁵ The AU wanted to establish an effective mechanism to deal with the numerous conflicts that were afflicting the continent. One of the founding principles of the AU therefore was 'African solutions for Africa's problems'. The AU did not want to rely on foreign/western aid and support in order to deal with the problems of the continent. The emerging Darfur crisis was therefore not only seen as a test-case for the RtoP but also a test for the AU to prove its commitment to the principle of non-indifference.²⁵⁶

In March 2004 the AU, on invitation by the President of Chad, was present at the inter-Sudanese peace talks in N'djamena. The Government of Sudan had objected the presence of any western representative but allowed AU Chairperson Konaré to join the peace talks. The N'djamena Ceasefire Agreement was signed in April 2004 and agreed was that AU observers would monitor and report on the implementation of the agreement. The Sudanese government insistently reiterated that it would not allow western troops into Darfur and that the security of the region was primarily the responsibility of the Government of Sudan. Eventually the government agreed with the deployment of an AU mission into Darfur, AMIS, in order to monitor the ceasefire.²⁵⁷ The AU started to prepare the deployment of 3000 AMIS troops with a strong mandate to protect the people in Darfur. The attitude of the Sudanese government towards the AU, however, turned out to be ambivalent. The Government of Sudan only allowed 300 of the intended 3000 troops into Darfur and rejected the initially proposed mandate for AMIS by the AU. Several AU members wanted the AMIS

²⁵⁵ Adam Keith, 'The African Union in Darfur: an African solution to a global problem?', available at: <https://www.princeton.edu/jpia/past-issues-1/2007/7.pdf>, [accessed on 27 November 2014], p.154.

²⁵⁶ Ibidem.

²⁵⁷ Frank Chalk and Danielle Kelton, 'Mass-atrocity crimes in Darfur and the response of Government of Sudan Media to international pressure', in: Amanda Gryzeb ed., *The world and Darfur*, Québec: McGill-Queen's University Press 2009, pp.127-128.

mandate to include the protection of the population of Darfur. The Government of Sudan claimed that the protection of civilians was the primary responsibility of Sudan and that AMIS troops were restricted to protect only the ceasefire monitors.²⁵⁸ The AU did not want to take action in Darfur without the consent of the Sudanese government and settled for a mandate wherein AMIS troops were allowed to protect civilians in their vicinity but acknowledged that the primary responsibility for the protection of the population of Darfur lay with the Government of Sudan.²⁵⁹ AMIS troops carried out some limited initiatives to protect the civilians in Darfur like market days and water and firewood patrol. In a few occasions AMIS troops were able to prevent attacks on villages. Their main task was, however, to monitor the ceasefire and the Government of Sudan obstructed any other measures AMIS troops tried to undertake to stop the atrocities.²⁶⁰

The UNSC had authorized the AU mission into Darfur in Resolution 1556. The AU was only founded two years earlier and was unable to provide the financial and logistic resources necessary for a mission the size of AMIS. Considering the Government of Sudan was not willing to allow a UN peacekeeping mission into Darfur and the UNSC was not willing to deploy troops without the consent of Sudan an AU-led mission was considered the only solution. The international society of states perceived the AU as a legitimate actor to lead the mission in Darfur and were willing to provide support where necessary. In 2006 funding and support for AMIS started to weaken. AMIS was described as a failure and the UN started the talks of a UN takeover. The Government of Sudan still opposed to a UN peacekeeping mission was put under pressure. The Sudanese government, however, continued its claim on sovereignty. Both the UN and the AU were unwilling to take any measures without the consent of the Sudanese government. This implies both institutions believed Sudan's claim on sovereignty was legitimate. Nevertheless, with Resolution 1769 the Sudanese government did consent with a hybrid AU-UN mission on the condition that the mission would have a predominantly African character, a condition requested by the Government of Sudan as well as the AU.²⁶¹

The AU did not invoke the RtoP as it was defined in the Constitutive Act of the African Union Article 4(h) to protect the population of Darfur. The AU was willing to spend military, diplomatic and economic resources to protect the population of Darfur but the AU was not willing to do this without the consent of the Sudanese government. The Government of Sudan repeatedly referred to their

²⁵⁸ Alex Bellamy, 'Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq', p.43.

²⁵⁹ African Union Peace and Security Council, Communiqué of the 17th meeting of the Peace and Security Council.

²⁶⁰ Christina Badescu and Linnea Bergholm, 'The Responsibility to Protect and the conflict in Darfur: the Big Led-Down', *Security Dialogue*, Volume 40 (2009), p.298.

²⁶¹ *Ibidem*, p.300.

right on sovereignty and the AU did not want to intervene in Sudan implying they also believe that would be a violation of Sudan's sovereignty. The AU did not impose sanctions or other measures to pressure the Government of Sudan to protect the Darfuri population, instead the AU tried to cooperate with the Government of Sudan and they regarded the Sudanese government as the primary authority who was responsible for the protection of the population of Darfur. When the mandate for the AMIS troops was discussed the AU did try to invoke the RtoP and include the protection of the civilians into the mandate but when the Sudanese Government rejected this mandate the AU was not willing to enforce this mandate without the consent of Sudan.

3.4 Media on the conflict in Darfur

When the violence in Darfur started international media, just like the international politics, was concentrated on the North-South peace negotiation in Naivasha, therefore little attention was given to the emerging conflict in Darfur. It was considered by the international media as just another instance of tribal conflict, like there were so many, in Africa. So for the majority of 2003 the conflict in Darfur received little media attention. It were advocacy NGOs that started to call for action in Darfur. Amnesty International was one of the first NGOs to pick up on the conflict in Darfur as well as the International Crisis Group.²⁶² Although they strongly recommended for the international society of states to support the Sudanese government with the protection of the population in Darfur, during the beginning of the conflict they mainly tried to put pressure on the Government of Sudan to take the responsibility to protect their citizens. So called Amnesty International for: "The Sudan government to protect the people of Darfur."²⁶³

The media attention increased extensively after the UN Human Rights Coordinator for Sudan, Mukesh Kapila, turned to the media to draw attention to the Darfur conflict in March 2004.²⁶⁴ In an interview he declared: "This is ethnic cleansing, this is the world's greatest humanitarian crisis, and I don't know why the world isn't doing more about it."²⁶⁵ Newspapers picked up on the interview and started writing about the conflict. *The New York Times* started writing about the 'genocide' that was being conducted in Darfur.²⁶⁶ Nicholas Kristhoff, columnist for *The New York Times* who has won a Pulitzer Prize for his writing on Darfur, described the conflict in one of his first columns as an ethnic conflict where "Arab militias are killing and driving out darker-skinned African tribespeople".²⁶⁷ The conflict was no longer portrayed as just another African conflict but it became an Arab versus African conflict. Even though most media reports acknowledged the complexity of the conflict the Arab versus African narrative predominated. The complex political and historical root causes for the conflict were overshadowed by the ethnic label that was put on Darfur.²⁶⁸ In addition the media assigned polarized identities to the Arabs and African tribes. The Arab tribes were described as the perpetrators who need to be punished whilst the African tribes

²⁶² Gérard Prunier, *Darfur: the Ambiguous Genocide*, New York: Cornell University Press 2007, pp.125-127.

²⁶³ Amnesty International, *Sudan: looming crisis in Darfur*, July 2003, available at: <http://www.amnesty.org/en/library/asset/AFR54/041/2003/en/4dc587da-d6d2-11dd-ab95-a13b602c0642/afr540412003en.pdf>, [accessed on 23 November 2014], p.2.

²⁶⁴ Gérard Prunier, *Darfur: the Ambiguous Genocide*, p.127.

²⁶⁵ BBC News, 'Mass rape atrocity in West-Sudan', 19 March 2004, available at: <http://news.bbc.co.uk/2/hi/africa/3549325.stm>, [accessed on 23 November 2014].

²⁶⁶ Gérard Prunier, *Darfur: the Ambiguous Genocide*, p.127.

²⁶⁷ Nicholas Kristhoff, 'Starved for Safety', *The New York Times*, 27 March 2004, p.15.

²⁶⁸ Alex de Waal, *War in Darfur and the search for peace*, p.314

were portrayed as victims in desperate need of help. As a result the reverse narrative, Africans being the perpetrators and Arabs being the victims, was overlooked.²⁶⁹

The mainstream narrative provided by the media has been highly criticized by, among others, Alex de Waal. Describing the conflict as Arab versus African “obscures the reality”, he argued.²⁷⁰ Not all Arab tribes contributed men to the Janjaweed, some Arab tribes even choose the African side and protected the animals and villages of the Fur and Masalit. The reference to the Africans as ‘the Blacks’ only adds to the confusion considering most Arabs in Sudan are also black.²⁷¹ This narrative was even further exaggerated because journalists had trouble to get access to Darfur. The majority of the information therefore came from NGOs or the refugee camps in neighbouring Chad. The media coverage therefore contained a lot of tragic personal stories of women who had been raped, children who were starving in the camps, and all pointed to the Janjaweed and government militia as the perpetrators. The stories from the other side were rarely told leading to the impression that the violence was one-sided.²⁷²

In 2004 the majority of the media focused on the conflict in Darfur as a humanitarian emergency. This is mainly because humanitarian aid organisations deliberately sought out media attention to maintain profile and for fundraising purposes. The majority of humanitarian aid organisation were not allowed into Darfur by the Government of Sudan. Many of the humanitarian aid organisations and NGOs therefore used celebrities, such as George Clooney, and high-profile events to raise the public awareness on the conflict in Darfur.²⁷³ They believed international attention to the conflict could persuade the Sudanese government to change its behaviour. The Government of Sudan was held responsible for the conflict in Darfur because they conducted attacks and were arming the Janjaweed militia. However, in the beginning of 2004, the Sudanese government was also perceived as capable of stopping the atrocities, if they were willing to do so, by disarming the Janjaweed. The international media therefore tried to raise public awareness and put pressure on the UN to take diplomatic actions to protect the population of Darfur.²⁷⁴ They did not call for an international military intervention so did Nicholas Kristoff wrote in his column “I’m not arguing that we should invade Sudan. But one of the lessons of history is that very modest efforts can save large numbers of lives. Nothing is so effective in curbing ethnic cleansing as calling

²⁶⁹ David Lanz, ‘Save Darfur: A Movements and its Discontent’, *African Affairs*, Volume 108 (2009), p.675.

²⁷⁰ Alex de Waal, ‘Darfur’s deep grievances defy all hopes for an easy solution’.

²⁷¹ Ibidem.

²⁷² Abdel Sidhamed and Walter Soderlund, *Responsibility to Protect in Darfur: the role of the mass media*, p.94.

²⁷³ Sara Pantuliano and Sorcha O’Callaghan, ‘The ‘protection crisis’: A review of field-based strategies for humanitarian protection in Darfur’, *Humanitarian Policy Group*, discussion papers, December 2006, p.22.

²⁷⁴ Alex de Waal, *War in Darfur and the search for peace*, pp. 316-318.

attention to it.”²⁷⁵ In order to strengthen their argument many references were made to the Rwanda genocide in 1994. The inadequate reaction to the genocide in Rwanda was used, by the media, to pressure the UN to take action in Darfur. *The New York Times* called upon the UN Security Council to take action: “This is not just a moral test of whether the world will tolerate another genocide. It's also a practical test of the ability of African and Western governments alike to respond to incipient civil wars while they can still be suppressed.”²⁷⁶

The focus on raising public awareness and diplomatic pressure on the Government of Sudan changed after the Sudanese government did not comply with UN Resolution 1556. There was a growing realization, in the media, that the Sudanese government would not be willing to disarm the Janjaweed and stop the violence in Darfur even when be putting under diplomatic pressure. The UN got highly criticized for not taking further actions now the Sudanese government had not complied with the resolution.²⁷⁷ Even though the mainstream media did not yet advocate an international military intervention to save the people in Darfur it was often claimed that the situation would get worse if something was not done.²⁷⁸ Public opinion, especially in the US, was therefore favourable for an international military intervention in Darfur. The misrepresentation of the conflict in the media had led to the impression that both the problem, the Janjaweed and government counter-insurgency, as the solution, an international military intervention to protect the population in Darfur, were relatively simple. In a survey conducted in June 2007 by Pew Research Centre 49 percent off the Americans said they believed the US had the responsibility to stop the genocide in Darfur.²⁷⁹ The negative side-effects an international military intervention could have on the ground, restrictions on humanitarian access to Darfur or obstruction to the North-South peace negotiations, were not taken into account by the public.²⁸⁰

Remarkably the international media did not mention the RtoP in regards to the conflict in Darfur. In their book *Responsibility to Protect in Darfur: the role of the mass media* Adel Sidahmed and Walter Soderlund conducted an in-depth analysis of the media coverage on Darfur and concluded that the RtoP was not invoked by the international media with regards to the conflict in Darfur. Even when the RtoP was adopted by the UN at the 2005 World Summit the international media did not use the RtoP to lend weight to their call for international intervention in Darfur. So the

²⁷⁵ Nicholas Kristhoff, ‘Images just won’t go away’, *The New York Times*, 31 March 2004, p.23.

²⁷⁶ Nicholas Kristhoff, ‘Starved for Safety’, p.15.

²⁷⁷ Alex de Waal, *War in Darfur and the search for peace*, pp. 324-325.

²⁷⁸ Abdel Sidhamed and Walter Soderlund, *Responsibility to Protect in Darfur: the role of the mass media*, p.95.

²⁷⁹ Pew Research Centre, ‘Public Wants to Know More about Darfur and Many Favor U.S. Involvement’, 7 June 2007, available at: <http://www.pewresearch.org/2007/06/07/public-wants-to-know-more-about-darfur-and-many-favor-us-involvement/>, [accessed on 27 November 2014].

²⁸⁰ David Lanz, ‘Save Darfur: A Movements and its Discontent’, p.675.

RtoP was not invoked by the international media to legally endorse their campaign, not even after 2005 when reporting became increasingly more pro-interventionist.²⁸¹

²⁸¹ Abdel Sidhamed and Walter Soderlund, *Responsibility to Protect in Darfur: the role of the mass media*, p. 102.

3.5 Responses from international NGOs and advocacy groups

The media successfully raised public attention to the conflict in Darfur. International NGOs, advocacy groups and Darfur activist organisations used this public awareness to pressure the UN to take action in Darfur.²⁸² Initially they were concerned with addressing the humanitarian dimension of the conflict, they called for the UN to pressure the Sudanese government to provide access for humanitarian aid organisations and to ease of the effects of the violence. From 2004 on, however, NGOs such as Amnesty International, the International Crisis Group and Human Rights Watch started to publish reports on the complexity of the conflict and the need to address the historical and political root causes in order to reach a positive humanitarian outcome.²⁸³ Rebecca Hamilton, writer of the book *Fighting for Darfur: Public Action and the Struggle to Stop Genocide*, has conducted extensive research into the influence citizen advocacy movements on Darfur had on policymakers. She concluded that the RtoP “gained following among the Darfur advocates”.²⁸⁴ Numerous NGOs and advocacy groups considered RtoP as a way to pressure the UN and individual governments to take action Darfur:

The leaders of the growing citizens movement believed that R2P heralded the beginning of a fundamental shift in the way the international community thought about countries behind the shield of sovereignty. They hoped that in the new century countries would assume the responsibility to intervene in situations like Darfur, rather than turn a blind eye to the massacre of another country's citizens. [...] They believed that it was within the power of regular citizens to ensure their political leaders undertook such interventions.²⁸⁵

Several civil society movements therefore referred to the RtoP to invoke action in Darfur.

3.5.1 The Safe Darfur Coalition

One of the most visible civil society movements which has used the RtoP to invoke action is the Save Darfur Coalition (SDC). The SDC was founded in the summer of 2004 at the ‘Darfur Emergency Summit’ in New York. The United States Holocaust Museum and the American Jewish World Service invited NGOs and advocacy organisations to discuss and coordinate their efforts to stop the conflict in Darfur. The result was a ‘Unity Statement’ in which the organisations declared to “raise public awareness and to mobilize North Americans and members of the international community to

²⁸² Amanda Gryzeb, ‘Media Coverage, Activism, and Creating Public Will’, in: Amanda Gryzeb ed., *The world and Darfur*, Québec: McGill-Queen’s University Press 2009, p.83.

²⁸³ Darren Brunk, ‘Dissecting Darfur: Anatomy of A Genocide Debate’, *International Relations*, Volume 22 (2008), p.29.

²⁸⁴ Rebecca Hamilton, *Fighting for Darfur: Public Action and the Struggle to Stop Genocide*, New York: Palgrave MacMillan 2011, p.56.

²⁸⁵ *Ibidem*, p.49.

respond to and help end the atrocities that threaten the lives of two million people in the region.”²⁸⁶ Since then it has grown into an alliance of more than 190 religious, political and human rights organisations.²⁸⁷ The strategy the SDC has used is underlined with an assumption of RtoP. Firstly the focus of the SDC has been solely on external intervention in Darfur. In their ‘Unity Statement’ they called upon the UN, US and other governments to end the conflict Darfur, they did not specifically call upon the Government of Sudan to end the atrocities.²⁸⁸ With their campaigns they have created an image of the Darfuri population as victims that are in desperate need to be saved by an external force, hence the name ‘Save Darfur’. This reflects the idea of the RtoP because SDC does not acknowledge the Government of Sudan as the right authority to stop the violence. They believe international actors, like the UN, should step in and take action because the conflict has reached a certain level of violence and the population of Darfur has the right to be “saved” by an external force.²⁸⁹

The SDC ‘Unity Statement’ was based on the assumption that there was a RtoP, even though it had not been adopted by the UN in 2004. After the adaptation of the RtoP at the 2005 World Summit the SDC started to refer to the RtoP to hold the UN accountable for not taking action in Darfur. Not only the SDC used to RtoP to invoke action in the conflict in Darfur. In the book *Not On Our Watch: A Mission to End Genocide in Darfur and Beyond* co-authors John Prendergast, senior advisor the International Crisis Group, and Don Cheadle, actor and Darfur activist, actively call upon the UN to take action in Darfur because they believe the UN has the responsibility to do so: “R2P states that when a government is unable or unwilling, as is the case with Sudan, to protect its citizens from mass atrocities, the international community must take that responsibility. We believe that this doctrine, [...] commits us all, as individuals and nations, to do our part to fulfil that responsibility.”²⁹⁰

3.5.2 Diplomacy versus military measures

So the presence of RtoP is clearly evident in the strategy the NGOs and advocacy groups for Darfur have used. The majority of NGOs and advocacy groups, however, did not emphasise the diplomacy tools provided by the RtoP but were mainly in favour of military measures, this included the established of a no-fly zone in Darfur as well as calls for a non-consensual military intervention in Darfur. International NGOs and advocacy groups used the link that was made in the international media with the genocide in Rwanda to strengthen their argument for an international military

²⁸⁶ Save Darfur Coalition, ‘Unity Statement’.

²⁸⁷ Alex de Waal, *War in Darfur and the search for peace*, pp. 343-344.

²⁸⁸ Save Darfur Coalition, ‘Unity Statement’.

²⁸⁹ David Lanz, ‘Save Darfur: A Movements and its Discontent’, p.673.

²⁹⁰ Don Cheadle and John Prendergast, *Not On Our Watch*, Dunboyne: Maverick House 2007.

intervention. Darfur was called 'Rwanda in slow-motion'. They focused on the "failure" of the international community to respond effectively to the genocide in Rwanda and emphasized the idea that the international community now could prove they had learned the lessons from Rwanda and that 'never again' would be finally put into practice.²⁹¹

The advocacy NGOs have been criticized for their insistence on an international military intervention. It has been argued that their focus on an external intervention has distorted the expectations of the rebels in Darfur. Peace talks have been extremely disappointing in the case of Darfur. One reason for this is the fragmentation between rebel movement and the lack of will from all parties involved to bring the conflict to an end. Due to disagreements within the SLA the rebel movement had split into two factions, one led by the original leader Minni Arkoy Minawi, the other faction led by Abdel Wahid al-Nur. Alex de Waal, who was invited by the AU to be present at the peace talks on Darfur, wrote about the progress of the peace talks. The SLA faction led by Abdel Wahid al-Nur took a hard stance in the peace talks claiming he would not sign the peace agreement unless an international military intervention was negotiated in the deal.²⁹² The prospect of an international military intervention made the rebel movement believe there was a lot to gain from the peace talks, so instead of working on a political settlement they took a hard stance in the peace talks to get the maximum out of it. If that would not work they felt backed by the idea that an international military intervention would help them to achieve their goals.²⁹³

3.5.3 Confrontational attitude of the NGOs, advocacy groups and Darfur activist

The strategy the SDC used to achieve an international intervention was to pressure the US government who would then put pressure on the UNSC to take action in Darfur. In 2007, when it became clear the UNSC was not going to succumb under pressure from the US alone, the SDC started to target China. Since the onset of the conflict in Darfur China had abstained from voting on the majority of resolutions concerning Darfur and repeatedly threatened to use their veto when bold measures were proposed to stop the conflict. When China abstained from voting on Resolution 1706 it became clear for the SDC that China was a pivotal actor in the UNSC whose behaviour had to change in order for the UNSC to take action in Darfur.²⁹⁴ The SDC saw the Beijing Summer Olympics of 2008 as the perfect opportunity to pressure China into action on Darfur. China wanted to use the Olympics to create a positive image of itself. In the media the Olympics were referred to as the "coming-out party" of the new superpower. The official slogan of the Olympics was 'One World, One

²⁹¹ Darren Brunk, 'Dissecting Darfur: Anatomy of A Genocide Debate', *International Relations*, Volume 22 (2008), p.29.

²⁹² Alex de Waal, 'I will not sign', *London Review of Books*, Volume 28 (2006), pp.17-20.

²⁹³ David Lanz, 'Save Darfur: A Movements and its Discontent', *African Affairs*, Volume 108 (2009), p.676.

²⁹⁴ Rebecca Hamilton, *Fighting for Darfur: Public Action and the Struggle to Stop Genocide*, pp.137-138.

Dream' to highlight the respect and trust that the international community had given China to organize these Olympics.²⁹⁵ The Olympics would receive worldwide media attention with months of lead-up stories. China had a vulnerable position considering they wanted the Olympics to go well and create a positive image of China. Human rights advocacy groups had already started to provide an opposing image of China as violator of human rights. The SDC decided to join these advocacy groups and tried to change China's behaviour in regards to the conflict in Darfur by targeting China as the host of the 'Genocide Olympics'.²⁹⁶

With this strategy the SDC opted for a confrontational strategy laying the responsibility for the conflict solely with the Sudanese government. In order to raise the costs of its policies the SDC not only started to put pressure on the Government of Sudan but also on its allies, especially China. Pointing at the Government of Sudan as sole perpetrator neglects the responsibility other actors have had in the conflict, such as the rebel movements, colonial powers and neighbouring countries.²⁹⁷ Advocacy NGOs targeted external actors who they thought could have influence on the Government of Sudan to stop the conflict. Several Darfur activists started the 'Dream for Darfur' campaign to draw attention to China's support for the Sudanese government. Hugo Slim, in his analysis of international response to Darfur, argued that at some point China was put under more pressure than the perpetrators of the violence:

There is a paradox in the blame game around any discussion of international responsibility for and response to massive human rights violations. This is, quite simply, that the moment international public and NGO attention turns to the question of international response to massive violations by a state or non-state actor, the potential responders can often find themselves under heavier fire than the original violators. In the forceful political discourse that tries to engage and then evaluate international response, a strange inversion of responsibility can take place which tends to transfer primary moral responsibility from perpetrators to responders. States are castigated and lobbied about their failures to respond effectively—often with little real attention to what is actually possible.²⁹⁸

Advocacy NGOs held China responsible for the ongoing violence in Darfur. The 'Dream for Darfur' campaign did not only held China accountable but also targeted everyone who was connected to China and the Olympics. 'Dream for Darfur' started attacking indirect targets such as the International Olympic Committee, corporate sponsors, the media, athletes and Steven Spielberg.²⁹⁹ Spielberg had been asked by the Chinese government to be the artistic director of the opening and closing ceremony of the Olympics. Soon after this announcement in the media, Spielberg himself became a target for the NGOs. Mia Farrow, co-founder of the 'Dream for Darfur' campaign, in a

²⁹⁵ Alexandra Budabin, 'Genocide Olympics: The Campaign to Pressure China over the Darfur Conflict', *CEU Political Science Journal*, Volume 4 (2009), pp.537-538.

²⁹⁶ Ibidem, pp.538-539.

²⁹⁷ David Lanz, 'Save Darfur: A Movements and its Discontent', p.675.

²⁹⁸ Hugo Slim, 'Dithering over Darfur? A preliminary review of the international response', *International Affairs*, Volume 80 (2004), p.827.

²⁹⁹ Alexandra Budabin, 'Genocide Olympics: The Campaign to Pressure China over the Darfur Conflict', p.541.

speech compared Spielberg with Leni Riefenstahl, who made a Nazi propaganda of the German Olympics of 1936. Spielberg responded to this by writing to the Chinese President urging him to do more to stop the violence in Darfur.³⁰⁰ When Spielberg did not get any answer on these letters he resigned as artistic director stating that:

My conscience will not allow me to continue with business as usual. Sudan's government bears the bulk of the responsibility for these ongoing crimes but the international community, and particularly China, should be doing more to end the continuing human suffering there. China's economic, military and diplomatic ties to the government of Sudan continue to provide it with the opportunity and obligation to press for change.³⁰¹

A spokesman from the Chinese Embassy in Washington responded to this by saying: "as the Darfur issue is neither an internal issue of China nor is it caused by China, it is completely unreasonable, irresponsible and unfair to link the two as one."³⁰²

3.5.4 The appeal to Western culpability

In the several campaigns set up by the SDC a different strategy was used. In the 'How will history judge us' and the 'Be a Witness' campaigns the SDC tried to address western culpability. The campaigns tried to create a feeling of shame with their audience and together with that a feeling of responsibility by the western public. In the campaigns the public is asked to put pressure on their national government to take action in Darfur, implying that if enough people respond to this call their national government and then the UN will take action in Darfur.³⁰³ The 'Million Voices' campaign made maximum use of the strategy to appeal to western responsibility. With this campaign the SDC asked US citizens to send a million postcards to President Bush and urge him to support "a stronger multinational force to protect the civilians of Darfur".³⁰⁴ The SDC was not the only organisation that used this strategy. In Amnesty International's 'Instant Karma: the Amnesty International campaign to Save Darfur' the organisation tried to mobilize Darfur activism by selling music and urge the buyers to sign a petition. Songs by John Lennon were sold on CD to "inspire a new generation of activists to stand up for human rights".³⁰⁵ The Amnesty International executive director said about the campaign:

³⁰⁰ Ibidem, p.544.

³⁰¹ Helene Cooper, 'Spielberg Drops Out as Adviser to Beijing Olympics in Dispute Over Darfur Conflict', *The New York Times*, 13 February 2008, available at: http://www.nytimes.com/2008/02/13/world/asia/13china.html?_r=1&, [accessed on 28 November 2014].

³⁰² Ibidem.

³⁰³ Amanda Gryzeb, 'Media Coverage, Activism, and Creating Public Will', pp.84-85.

³⁰⁴ Rebecca Hamilton, *Fighting for Darfur: Public Action and the Struggle to Stop Genocide*, p.81.

³⁰⁵ David Clark, 'Instant Karma: the Amnesty International campaign to Save Darfur', 30 April 2007, available at: <http://davidclarkcause.com/wp-content/themes/twentyeleven/images/press/instantkarma/4.30.07%20Instant%20Karma,%20Campaign%20to%20Save%20Darfur.pdf>, [accessed on 28 November 2014].

We know music's power to unite and inspire people. With hundreds of thousands dead, millions driven from their burned out villages and rape being used as a tactic in the Darfur conflict, the world needs a mass mobilization demanding action and justice. The 'Instant Karma' campaign combines John Lennon's passionate desire for us to imagine a more peaceful world with Amnesty International's expertise in achieving justice. 'Instant Karma' allows ordinary people to lend their hand in saving lives.³⁰⁶

These campaigns were not blaming the western public if they would not take action but tried to address a the moral responsibility of the public. All these campaigns imply the idea that the RtoP is not just an issue for the UN but that civil societies can influence their national governments and therefore bear part of the responsibility if their governments fail to act.³⁰⁷

³⁰⁶ Ibidem.

³⁰⁷ Amanda Gryzeb, 'Media Coverage, Activism, and Creating Public Will', pp.84-85.

3.6 Summary

The international political response to the conflict in Darfur suggests that in regard to the conflict in Darfur the UN was reluctant to invoke its responsibility to protect. The UNSC recognized that something needed to be done to protect the population of Darfur but were not willing to take measures without the consent of the Sudanese government. Sudanese officials were aware of this and repeatedly reminded the UN that they considered the conflict in Darfur an internal conflict and therefore had the right to refuse foreign interference because it would be a violation of their sovereignty. Paragraph 139 of the 2005 World Summit Outcome Document states that when “national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity [...], we are prepared to take collective action”.³⁰⁸ However, in practice the issue when it would be legitimate for the UNSC to take measures without the consent of the Government of Sudan, in other words when the responsibility would shift from the host state towards the international society of states, caused problems in the UNSC with regards to the conflict in Darfur. Where some UN members believed the RtoP had transferred to the international society of states because the Government of Sudan did not do enough to protect its citizens others seemed to believe the primary responsibility still lay with the Sudanese government. Ultimately no consensus was reached on this matter within the UNSC. Nevertheless, the RtoP language was invoked to pressure the Government of Sudan to take up its responsibility to protect its population. The UNSC referred to paragraph 138 and 139 of the 2005 *World Summit Outcome Document* to urge the Sudanese government that they did have a responsibility to protect their citizens. In addition the UNSC was willing to support the Government of Sudan in their efforts to protect its citizens. Therefore the conclusion can be drawn that pillar one and two of the RtoP are accepted and invoked by the UN in order to protect civilians. The third pillar of the RtoP, however, was not accepted and its legal status within international law remains controversial even after the adaptation of the RtoP in the 2005 World Summit.

Besides the UN other actors are capable of invoking RtoP to mobilize action to stop human rights violations. In regard to the Darfur conflict the RtoP was not invoked by the African Union. The newly founded organisation was not willing to take action in Darfur without the consent of the Government of Sudan. The Sudanese government repeatedly invoked their right on sovereignty and argued that the protection of the population in Darfur was primarily the responsibility of the Government of Sudan. The AU did not invoke the third pillar of the RtoP to intervene in the conflict, implying that they did not perceive themselves legitimate to take action in Darfur without the

³⁰⁸ United Nations General-Assembly, 2005 *World Summit Outcome Document*..

consent of the Sudanese government. The international media did also not invoke the RtoP in regards to the conflict in Darfur, even though it did call for the UN and national governments to 'do something'.

The international NGOs and advocacy groups, on the other hand, did invoke the RtoP to pressure the UN and national governments to take action in Darfur. Their actions are underlined with the idea of the RtoP. The NGOs and advocacy groups focused mainly on external intervention, they did not perceive the Sudanese government as the legitimate authority to stop the violations in Darfur. Their confrontational strategy to pressure the UNSC and their individual members implies that they not only believed these actors had the legitimacy to take action but also that they had the responsibility to do so. At some point the external actors were under greater attack, for not responding effectively, then the actual perpetrators of the violence. The NGOs and advocacy groups also tried to address the western public to take action. They believe the public can pressure national governments and the UNSC to take action as result they also have the responsibility to react in conflicts such as Darfur. Therefore the conclusion can be drawn that the NGOs and advocacy groups have accepted the RtoP and have invoked the RtoP in regards to the Darfur conflict to mobilize action. The main focus of the NGOs and advocacy groups have been on pillar two and three of the RtoP, the responsibility of the international society of states to support the host state and if that fails the responsibility to intervene. The NGOs and advocacy groups did focus on pillar one in the beginning but were soon convinced only external intervention could provide protection for the population of Darfur.

4. Conclusion

The 'Responsibility to Protect' has been developed at the beginning of this century by the ICISS in response to the challenge imposed on the international society of states by UN Secretary-General Kofi Annan on how to respond to grave human rights violations if humanitarian interventions were an unacceptable assault on sovereignty. The ICISS tried to solve the dilemma of sovereignty versus human rights by arguing that sovereignty entails certain responsibilities. A sovereign state therefore has the responsibility to protect its citizens from genocide, war crimes, ethnic cleansing and crimes against humanities. With the adaptation of the RtoP in the 2005 World Summit the UN member states accepted that protection of human rights was an inherent part of sovereignty. Furthermore, the UN member states accepted not only that every state had this responsibility towards their own population but when a state fails to protect its citizens from these four crimes the state temporarily loses its right on sovereignty and the responsibility to protect shifts towards the international society of states.

After the adaptation of the RtoP in the 2005 World Summit, the UN Security-General Ban Ki-Moon, then developed the RtoP further by dividing it into three equally weighted and non-sequential pillars. Pillar one: the responsibility of the state to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity and from their incitement; pillar two: the international community's responsibility to assist the state to fulfil its responsibility to protect; and pillar three: in situations where a state has manifestly failed to protect its population from the four crimes, the international community's responsibility to take timely and decisive action.

Even though the RtoP provided a theoretical solution to the dilemma of sovereignty versus human rights many complications were envisioned by critics on how the RtoP would function in practice. The first complication they determined was the problem of consensus in the UNSC. The 2005 *Outcome Document* assigned the UNSC as the only authority that could legitimize international intervention when a state would fail to uphold the responsibility to protect. The *Outcome Document*, however, did not include a clear description on when a state has 'manifestly failed' to protect its population, causing the responsibility to protect to shift from the host state to the international society of states. The proposed set of criteria by the ICISS were not adopted in the *Outcome Document*. Neither were the suggestions for UNSC reform, recommended by Secretary-General Kofi Annan, the High-Level Panel and the ICISS, taken into account. Disagreement or deadlock within the UNSC therefore remained a great possibility.

The second complication identified by the critics was the problem of legal implications. At the 2005 World Summit it was acknowledged that the first pillar, as it later would be described by Ban Ki-Moon, was already enshrined in international law. The four crimes are prohibited in several

human rights conventions. The legal implications for the second and third pillar, however, remained controversial. The language in the 2005 *World Summit Outcome Document* was carefully chosen to avoid any legal obligation to take action. The final document therefore stated that the UN members states were *prepared* to take action on a *case-by-case* basis. It is therefore not clear whether or not the international society of states or the UN can be held accountable for not taking action in RtoP situations.

The third complication envisioned by the critics was the solution provided by the ICISS in cases when the UNSC was not taking action in a RtoP situation. The RtoP entails that other international actors, including the Secretary-General, UN members, regional and sub-regional organizations, media and NGOs, could pressure the UNSC to take action. The critics were however not convinced that other international actors would be able to pressure the UN or individual states into action when these were not willing to do so. Furthermore, the vague description and understanding of the RtoP would allow the UNSC to always make a compelling case not to take action. Whether or not the critics were right, and these complications would occur in practice, was analysed in the second part of this thesis.

The case study of the RtoP in Darfur proved that the UNSC was reluctant to invoke RtoP in Darfur without the consent of the Sudanese government. It was repeatedly emphasized, in meetings and resolutions, that the protection of the population of Darfur was the primary responsibility of the Government of Sudan. The UNSC was willing to support the Government of Sudan with the protection of its population but only with consent of Sudan. During meetings and negotiations on resolutions several UNSC members initiated discussions to invoke more stringent measures on the Government of Sudan. Time and again these more stringent measures were blocked by, among others, China and the Government of Sudan on the ground of the right of sovereignty of the Sudanese government. It was acknowledged in the UNSC that the situation in Darfur was a grave humanitarian crisis, the US even called it genocide, and that the Government of Sudan bore great responsibility for it. Yet there was no agreement on whether or not the Sudanese government had 'manifestly failed' to protect its citizens, with the implication that the responsibility would shift towards the international society of states. It was argued by the opponents of stringent measures against the Government of Sudan that supporting the Sudanese government in the protection of civilians would achieve more than putting sanctions on them or intervening military. This same line of argumentation was used by the African Union. The AU did not invoke the RtoP with regard to the conflict in Darfur but only acted with the consent of the Sudanese government.

It can therefore be concluded that pillar one and two, as described by Secretary-General Ban Ki-Moon, are accepted responsibilities by the UN. It has been acknowledged that the Government of

Sudan had the responsibility to protect the population of Darfur and that the international society of states should support the Sudanese government with this responsibility. The third pillar, the responsibility of the international society of states to intervene when a state 'manifestly failed' to protect its citizens, however remains contested. Several states, including the US, wanted to take more stringent measures to protect the population in Darfur, such as sanctions on the Sudanese government, others, including China, believed this would be a violation of the sovereignty of Sudan. As a result no consensus was reached within the UNSC on whether or not it would be legitimate to intervene in Darfur therefore the third pillar of the RtoP was not invoked in the conflict in Darfur.

The ICISS had argued that if the UNSC would fail to act in RtoP situations other actors besides the UN could invoke the RtoP, including regional and sub-regional organizations, media and NGOs. As already mentioned before the AU, the most relevant regional organization with regards to the Darfur conflict, did not invoke the RtoP. The AU, like the UN, did not reach consensus on whether or not the RtoP would be a violation of the sovereignty of Sudan. Some countries, like Ghana, tried to invoke the RtoP and include the protection of citizens in the mandate of the AU mission in Darfur but were overruled by the majority of AU members that did not believe the protection of civilians should be part of the AU mission. They argued that the responsibility to protect was the primarily responsibility of the Government of Sudan and adding the protection of civilians to the mandate of the AU mission would be a violation of the sovereignty of Sudan.

The international media did call upon the UNSC to take more stringent measures in Sudan, and in the course of the conflict became more pro-interventionist. Nevertheless, the media did not refer to the RtoP to strengthen their argument. Further research is needed to examine why the media did not invoke the RtoP in cases where they were calling for international action.

International NGOs and advocacy groups did invoke the RtoP. NGOs focused mainly on external intervention to solve the problem in Darfur. NGOs first tried to pressure the Sudanese government to stop the atrocities in Darfur but when the Government of Sudan did not do enough, in their eyes, to stop the conflict they focused on other international actors to protect the population of Darfur. They argued the Government of Sudan had 'manifestly failed' to protect the citizens in Darfur and the international society of states now had the responsibility to step in and provide protection for the Darfuri population. They used a confrontational strategy to pressure those actors they deemed capable of stopping the Government of Sudan to take action. The strategy used by NGOs and advocacy groups therefore implies they believe the international society of states has the obligation to take action when human rights are violated like in the case of Darfur. Even though the NGOs and advocacy groups, together with the media, succeeded in raising awareness of

the conflict in Darfur they were not able to change the behaviour of the UNSC to take action in Darfur without the consent of the Sudanese government.

The main research question can therefore now be answered: *To what extent has the responsibility to protect been put into practice to stop human rights violations in Darfur since the outbreak of the conflict in 2003?* The answer is that the RtoP, with regards to the conflict in Darfur, has failed to act as catalyst for international action to stop human rights violations. The insufficient definition of the RtoP in the 2005 *World Summit Outcome Document* has led to an inadequate conceptualization of what the RtoP could achieve in the case of Darfur. I argue this on two grounds.

Firstly, the vague description of the RtoP in the *Outcome Document* provided both proponents as opponents with arguments as to whether or not to intervene. Opponents of international intervention argued that the responsibility to protect the population of Darfur was the primarily responsibility of the Government of Sudan and the international society of states could only support the Sudanese government in this task. Proponents of international intervention on the other hand argued that the Government of Sudan had 'manifestly failed' to protect its citizens and therefore the responsibility had shifted towards the international society of states. Both parties used the language in the ICISS report and the *Outcome Document* to strengthen their argument. The RtoP therefore failed, with regards to the conflict in Darfur, to achieve consensus within the UNSC. For that reason the RtoP did not change the behaviour of the UNSC member states to stop human rights violation.

Secondly, the different actors had different perceptions on what the RtoP entails and how it could protect the population in Darfur. The proponents of the RtoP within the UNSC invoked the RtoP to take political measures to pressure the Government of Sudan to stop the atrocities in Darfur. They did not believe military intervention would solve the problem due to the historical roots of the conflict, the size of Darfur, and the complexity of a mission without the consent of the Sudanese government. An intervention without the consent of Sudan would be likely to have increased the violence in the region, hindered the work of humanitarian aid workers and added further complications to political negotiations to end the conflict. The proponents within the UNSC therefore never invoked the RtoP with the aim of a military intervention. NGOs and advocacy groups, however, did invoke the RtoP to pressure the UNSC to take military actions. They invoked the third pillar of the RtoP and held governments and other indirect targets accountable for the conflict in Darfur. The oversimplified perception of the conflict provided by the international media reinforced their argument that an international military intervention could solve the conflict in Darfur relatively quick and without far-reaching consequences on the ground. The moral obligation to protect was more important than the implications such an intervention would have on the

ground. NGOs and advocacy groups argued that the UNSC not only had a moral responsibility to protect but also had the legal obligation to take action in Darfur because they had signed the 2005 *World Summit Outcome Document*. NGOs and advocacy groups, however, were not successful in pressuring the UNSC to take action in Darfur without the consent of the Government of Sudan. The argument made by the ICISS, that the RtoP could be invoked from the bottom-up, proved not applicable in the case of Darfur.

The RtoP has failed to act as catalyst for action to protect the citizens of Darfur. This, however, does not mean the RtoP has failed overall. This thesis has analysed one case study, the conflict in Darfur, but the RtoP could be successful in other cases, some will argue the RtoP has been successfully implemented in Libya in 2011. Furthermore, this thesis only examined whether or not the second function of the RtoP, to generate a speech act as a catalyst for decisive international action, as described by Alex Bellamy, has been put into practice. The first function, the prevention of human rights violations, has not been taken into account in this thesis. Further research into other conflicts where the RtoP would be applicable is needed to determine whether or not the RtoP has failed or whether it can be invoked successfully. The conflict in Darfur is complex and the RtoP proved to be insufficiently developed to work in practice in such a complex situation. If the RtoP is to work in future conflicts the UN needs to develop the RtoP further and identify clearly when and where the RtoP could be successfully invoked. The UN needs to develop a clear definition of what the RtoP entails and when the responsibility shifts from the host state towards the international society of states. In the future the RtoP might then be able to protect civilians from genocide, war crimes, ethnic cleansing and crimes against humanity.

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