Non-Interference or Non-Indifference

The Role of the African Union in the Development of Norms on Protecting Civilians and the Conflict in Darfur

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MA Thesis

International Relations in Historical Perspective

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Humanities

Utrecht University Department of History and Art History
August 2020

Abstract

The Battle of Mogadishu, the Rwandan genocide, the massacre in Srebrenica, and the consequent reaction against intervention in the 1990s, spurred to action those who wanted to protect civilians while respecting sovereignty. In 1999 African leaders decided to form the African Union, proactive in responding to threats to civilians, to prevent a recurrence of an atrocity akin to the Rwandan genocide. The organization had the power to intervene to protect civilians when atrocities loomed. Many Africans could not abide by the idea of the West and former colonial powers coming to their aid. The Union was an attempt to create an African solution to the problem of civilian protection. In 2005, all United Nations member states agreed to a norm on the responsibility to protect civilians, comparable to the African predecessor. Changing attitudes is not a straightforward task, and much work is required still to prioritize protecting civilians over safeguarding sovereignty. The role of the African Union in the development of norms on civilian protection is under-researched, and the goal of this thesis is to address this gap in knowledge with a historical account of norms about civilian protection based on primary sources from the Union itself. This thesis utilizes social-constructivist theories of norms to analyze the historical development of norms on protecting civilians from 1990-2005. The conflict in the Darfur region in Sudan in 2003-2004 provides a case study that concerns norm development in an African context permitting analysis of the African Union response. This thesis aims to connect research on norm development regarding civilian protection in the African Union with such study in a global context.

Acknowledgments

List of Tables and Figures

List of Abbreviations

AMIS	African Union Mission in Sudan
AU	The African Union
CFC	Ceasefire Commission
EC	Executive Council of the African Union
GA	United Nations General Assembly
G77	Group of 77
HMA	Humanitarian Ceasefire Agreement
ICISS	International Committee on Intervention and State Sovereignty
IRRI	International Refugee Rights Initiative
INR	Bureau of Intelligence and Research
JEM	Justice and Equality Movement
NGO	Non-Governmental Organization
OAU	Organization of African Unity
PSC	Peace and Security Council of the African Union
R2P	Responsibility to Protect
RO	Regional Organization
SC	United Nations Security Council
SG	United Nations Secretary-General
SLA	Sudan Liberation Army
SNA	Somali National Alliance
UN	United Nations

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1. Introduction

As the carnage of the Second World War ended, the victorious Allies decided it was vital to embark on a political project to prevent the scourge of war and a recurrence of the horrors of the two world wars. To this end, the United Nations (UN) was founded in 1945, designed to avoid the ignominious fate of its predecessor, the League of Nations.[1] During the Cold War, 1947-1991, the superpower rivalry between the Soviet Union and the United States (US) hamstrung the UN Security Council (SC) specifically, and the UN more generally. The conclusion of the Cold War resulted in a dramatic increase in SC-approved interventions in conflict areas and peacekeeping missions. From 1948-1978, 13 missions were established, compared with 20 in the years 1989-1994.[2] In 1993-1995, events transpired that reduced the Council's willingness to intervene to prevent or end conflicts. Among the most significant of these events were disastrous interventions, like Somalia in 1994 and general paralysis in the face of challenges like Rwanda in 1994. Debates on the legality of interventions were also constant.[3]

After a backlash against interventions, some attempted to establish new standards for interventions in humanitarian emergencies. UN Secretary-General (SG) Kofi Annan emerged as a leading figure of the campaign.[4] Before becoming SG, Annan worked in the United Nations Department of Peacekeeping Operations (DPKO) during the time of the Rwandan genocide, which influenced him profoundly. He concluded that no state should be allowed to carry out atrocities against its people with impunity.[5] Annan implored the international community to develop and embrace a norm on civilian protection. The response was the creation of Responsibility to Protect (R2P) in 2001 by the independent International Committee on Intervention and State Sovereignty (ICISS). The new norm was an attempt to establish a framework for the prevention of genocide,

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[1] M. Patrick Cottrell, *The League of Nations: Enduring Legacies of the First Experiment at World Organization* (Florence: Taylor & Francis Group, 2017), http://ebookcentral.proquest.com/lib/uunl/detail.action?docID=4913113.

[2] Muzaffer Ercan Yilmaz, "UN Peacekeeping in the Post-Cold War Era," *International Journal on World Peace* 22, no. 2 (2005): 13–28.

[3] Ramesh Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect*, 2nd ed. (Cambridge: Cambridge University Press, 2016), https://doi.org/10.1017/9781316819104.

[4] Charles Cater and David M. Malone, "The Origins and Evolution of Responsibility to Protect at the UN," *International Relations* 30, no. 3 (July 25, 2016): 278–97, https://doi.org/10.1177/0047117816659586.

[5] Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect*.

war crimes, ethnic cleansing, crimes against humanity, and other atrocities by the international community.[6]

Many regional organizations (ROs) share the UN's goals of promoting peace and preventing conflicts in a regional context. Among them is the African Union, which has developed standards for interventions to protect civilians. The founding document of the organization, the Constitutive Act, includes an article on intervention, 4(h), which states that it is "the right of the Union 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."[7] The AU has been mandated by the Security Council, as authorized by Chapters VI-VIII of the UN Charter,[8] to assume intervention and peacekeeping duties, as an example of the duties given to the AU.[9] The SC has increasingly placed the responsibility of such operations on regional organizations,[10] for example, the North-Atlantic Treaty Organization (NATO) in Libya[11] and the European Union (EU) in North Macedonia.[12]

This thesis examines how the African Union developed and implemented a framework for interventions to protect civilians through Article 4(h) of the Constitutive Act and how the AU has helped to advance R2P, while simultaneously looking at how the AU has shaped norms regarding interventions. This thesis will argue that the academic literature overlooks the African Union's role in creating and establishing norms regarding civilian protection. The objective is to connect the current academic literature on R2P and intervention with the role of the AU in creating a framework for and normalizing interventions, which is currently lacking. Bridging this gap in

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[6] International Commission on Intervention and State Sovereignty, *Responsibility to Protect: The Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, 2001), http://ebookcentral.proquest.com/lib/uunl/detail.action?docID=259235.

[7] Heads of State and Government of the Member States of the Organization of African Unity, "Constitutive Act of The African Union" (Organization of African Unity (OAU), May 26, 2001), https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf.

[8] Jennifer M. Welsh, *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004), http://ebookcentral.proquest.com/lib/uunl/detail.action?docID=3052222.

[9] "Resolution 1769 (2007)" (UN Security Council, July 31, 2007), https://undocs.org/S/RES/1769(2007).

[10] Oldrich Bures, "Regional Peacekeeping Operations: Complementing or Undermining the United Nations Cecurity Council?," *Global Change, Peace & Security* 18, no. 2 (June 2006): 83–99, https://doi.org/10.1080/14781150600687775.

[11] "Resolution 1973 (2011)" (UN Security Council, March 17, 2011), https://undocs.org/S/RES/1973(2011).

[12] "Resolution 1371 (2004)" (UN Security Council, September 26, 2001), https://undocs.org/S/RES/1371(2001).

knowledge is one of the objectives of the thesis. Additionally, the aim is to investigate a possible disconnect between the words and deeds of the Union. To this end, the conflict in the Darfur region in Sudan in 2003-2004, at the height of the violence,[13] is used as a case study to examine the AU response.

The structure of the thesis is as follows: Chapter 2 lays out the concept of R2P, contrasting it with the earlier ideas of humanitarian intervention. This chapter will trace the history of R2P, focusing on the period from the end of the Cold War to the 2005 World Summit in New York, where leaders of the then 191 UN member states signed the *World Summit Outcome Document*, which included provisions on R2P.[14] Chapter 3 focuses on the founding of the African Union to replace the Organization of African Unity (OAU) and the Peace and Security Council (PSC), the AU organ modeled after the Security Council. Furthermore, how leaders tried to ensure the AU had a more proactive stance on situations on the continent, as well as the development of intervention norms within the Union. Finally, in chapter 4, the response of the AU and SC to the situation in Darfur 2003-2004 is compared to evaluate the actions of the African Union in the region, to examine the implementation of norms on civilian protection. Darfur is a useful case study to analyze the impact of the AU's intervention framework as R2P was emerging as a norm. The conflict and humanitarian situation in Darfur, beginning in 2003 and still ongoing, is the first case of alleged genocide in the 21st century investigated by the International Criminal Court (ICC).[15]

1.1 Methodology

The work of social-constructivist scholars, Finnemore and Sikkink (1998), who define norms as "a standard of appropriate behavior for actors with a given identity,"[16] is utilized in this thesis. Social constructivism is defined by Finnemore and Sikkink (2001) as "an approach to social analysis that deals with the role of human consciousness in social life. It asserts that human interaction is

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[13] Julie Flint and Alex de Waal, *Darfur: A New History of a Long War* (London: Zed Books, 2008), http://ebookcentral.proquest.com/lib/uunl/detail.action?docID=368679.

[14] UN General Assembly, "2005 World Summit Outcome" (UN General Assembly, October 24, 2005), https://undocs.org/A/RES/60/1.

[15] "Darfur, Sudan," accessed August 11, 2020, https://www.icc-cpi.int/darfur.

[16] Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* 52, no. 4 (1998): 891, https://doi.org/10.1162/002081898550789.

shaped primarily by ideational factors, not simply material ones, and that the most important ideational factors are widely shared or "intersubjective" beliefs. They are not reducible to individuals; and these shared beliefs construct the interests of purposive actors."[17] Using social constructivism, Finnemore and Sikkink argue that studying norms and utilizing the academic language related to them allows researchers to explore institutions from the inside. The research of norms in constructivist scholarship has shown that as ideational standards of appropriate behavior, they can be used to explain the behavior of states and other actors on the international stage.[18] The constructivist approach is, therefore, well suited to gain an understanding of the role of regional organizations in the development, implementation, and diffusion of a norm,[19] in this case, R2P and Article 4(h) of the African Union's Constitutive Act.

Norms diffuse or 'travel' through the world, are taken out of their original context and employed in different scenarios. These various interactions contribute to the evolution of the norms and change their meaning in a normative sense and help to clarify norm continuity and normative change.[20] Normative change is the change in norms and, therefore, values.[21] Furthermore, this thesis will utilize Finnemore and Sikkink's (1998) theory of a norm life cycle of norms, which they argue evolve through a fixed process, to examine the development of R2P.[22] Björkdahl (2006) contends that a social constructivist approach is useful to understand how norms can play a role in humanitarian interventions. Likewise, she argues that using constructivism can help to understand such operations as conduits for norm diffusion and how they can help

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[17] Martha Finnemore and Kathryn Sikkink, "Taking Stock: The Constructivist Research Program in International Relations and Comparative Politics," *Annual Review of Political Science* 4, no. 1 (June 1, 2001): 391, https://doi.org/10.1146/annurev.polisci.4.1.391.

[18] Jason Ralph, "What Should Be Done? Pragmatic Constructivist Ethics and the Responsibility to Protect," *International Organization* 72, no. 1 (2018): 173–203, https://doi.org/10.1017/S0020818317000455.

[19] Susan Park, "Theorizing Norm Diffusion Within International Organizations," *International Politics* 43, no. 3 (July 1, 2006): 342–61, https://doi.org/10.1057/palgrave.ip.8800149.

[20] Carla Winston, "Norm Structure, Diffusion, and Evolution: A Conceptual Approach," *European Journal of International Relations* 24, no. 3 (July 31, 2017): 638–61, https://doi.org/10.1177/1354066117720794.

[21] Douglas Porpora, "The Great Normative Changes of the Twentieth Century," in *Morphogenesis and the Crisis of Normativity*, ed. Margaret S. Archer (Cham: Springer International Publishing, 2016), 31–47, https://doi.org/10.1007/978-3-319-28439-2_2.
An example of normative change is the change in attitudes in some countries towards human rights and the LGBTQI+ (Lesbian, Gay, Bisexual, Transgender/Transexual, Queer/Questioning, Intersex) movement.

[22] Finnemore and Sikkink, "International Norm Dynamics and Political Change."

established norms to endure or to bring about normative change.[23] This thesis builds on social constructivist research to analyze how discussions within the African Union from 1999 to 2004 shaped the role of the African Union in Darfur in 2003-2004. This approach helps to draw a clear picture of the development of norms on the protection of civilians.

As for sources from the perspective of the African Union, the focus is on those from the security organ of the AU, the Peace and Security Council, and Executive Council material. Relying on public sources on matters of diplomacy can be problematic; the documents do not tell the story of behind the scenes developments. As long as such sources are not available, the focus must be on those made accessible to the public, augmented with secondary sources. The 1998 article by prominent international relations scholars Martha Finnemore and Kathryn Sikkink, *International Norm Dynamics and Political Change,* provides the theoretical framework for the analysis of norms. Some material utilized in this thesis is by people closely related to the creation of R2P. When using sources perhaps biased due to proximity to the subject, it is vital to be conscious of those biases and counteract them, as is done in the following pages by using secondary material by researchers without direct involvement. This work concerns Africa, and the work of scholars from the continent is employed as secondary material as it helps give a regional perspective. The book *Darfur: A New History of a Long War* by journalist Julie Flint and Alex De Waal, who has advised the African Union on Darfur, provides an overview of the conflict and its historical background for the case study in chapter four.

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[23] Annika Björkdahl, "Promoting Norms Through Peacekeeping: UNPREDEP and Conflict Prevention," *International Peacekeeping* 13, no. 2 (June 1, 2006): 214–28, https://doi.org/10.1080/13533310500437613.

2. Responsibility to Protect

A complete overview of all events influencing the development of norms regarding the responsibility to protect civilians is beyond the scope of this thesis. The purpose of this chapter was to connect scholarship on norm development within the African Union and the international community. In this chapter, three events vital to these developments provide examples of an intervention that ultimately failed, a failure to intervene, and an inconsistent intervention by the UN, the Security Council, and the global community writ large. In 1993, a UN intervention in Somalia failed to aid the civilian population suffering from famine and civil war. The following year, the world community mostly stood by as a genocide of around a million people took place in Rwanda.[24] Finally, the 1995 massacre of Bosnian Muslim men and boys by Serb forces in and around the town of Srebrenica during the Bosnian War. The massacre took place in an UN-designated safe zone on the watch of underfunded and ill-equipped Dutch peacekeepers, operating with a Security Council mandate.[25] According to the International Criminal Tribunal for the former Yugoslavia (ICTY), Serbian forces executed around eight thousand men and boys later declared an act of genocide by the ICTY.[26]

One of the tenets of Westphalian sovereignty is the right of states to manage affairs within their borders with no outside interference. This right can mean that if governments commit mass atrocities within their borders, other countries are not able to intervene legally.[27] There have been exceptions to this rule of non-interference; for instance, the interventions of European states in the Ottoman Empire in the name of protecting Christian minorities in the late 18th century. One such example was when Britain, France, and other European nations dispatched troops to Lebanon in 1860 during the Mount Lebanon Civil War.[28] Before the advent of Article 4(h) and R2P,

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[24] Omar Shahabudin McDoom, "Contested Counting: Toward a Rigorous Estimate of the Death Toll in the Rwandan Genocide," *Journal of Genocide Research* 22, no. 1 (January 2, 2020): 83–93, https://doi.org/10.1080/14623528.2019.1703252.

[25] Adam LeBor, *Complicity with Evil* (Yale: Yale University Press, 2006), www.jstor.org/stable/j.ctt1npvrk.

[26] "The Conflicts | International Criminal Tribunal for the Former Yugoslavia," accessed August 7, 2020, https://www.icty.org/sid/322.

[27] Gerry J. Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge: Cambridge University Press, 2004), http://www.dawsonera.com/depp/reader/protected/external/AbstractView/S9780511327308.

[28] Berdal Aral, "The Idea of Human Rights as Perceived in the Ottoman Empire," *Human Rights Quarterly* 26, no. 2 (2004): 454–82.

such interventions were justified, morally if not legally, by the need to provide humanitarian assistance to suffering populations. Differing definitions exist on what constitutes a humanitarian, from "coercive interference in the internal affairs of the state, involving the use of armed force, with the purposes of addressing massive human rights violations or preventing widespread human suffering",[29] to "coercive action by one or more states involving the use of armed force in another state without the consent of its authorities, and with the purpose of preventing widespread suffering or death among the inhabitants."[30]

Some critics contend that humanitarian concerns were only a pretext for intervening, ultimately for political or military purposes. Another critique was inconsistency; deciding when and where interventions should take place was not based on any legal criteria, nor was there clear legal precedent for such actions. The idea of states policing the world, perhaps intervening in countries recently freed from the yoke of colonialism, did not appeal to many, especially in the South. Some argued that humanitarian interventions would lead to situations where former colonial powers intervened in their former colonies to protect civilians.[31] Similar concerns resurfaced in the lead up to the World Summit in 2005. They influenced the decision of African leaders to create a framework for intervention for the African Union, to prevent outside interference in Africa under the guise of humanitarianism, as discussed later in this chapter.

2.1 Historical Background of R2P

Crucial for the development of norms on protecting civilians and R2P is the failure of an UN-mandated, US-led intervention in Somalia in 1993 to alleviate the suffering of the Somali population following a famine and years of civil war.[32] The Somalian operation exemplifies a failed intervention. On 3 October, US forces sought to capture two high-ranking members of the Somali National Alliance (SNA), the main resistance force against the foreign military presence in the country, in the capital Mogadishu. After a US helicopter was shot down by SNA fighters, a long

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[29] Welsh, *Humanitarian Intervention and International Relations*, 3.

[30] Thomas G. Weiss, *Humanitarian Intervention: Ideas in Action* (Cambridge: Cambridge University Press, 2007), 5, http://catdir.loc.gov/catdir/enhancements/fy0805/2007299855-t.html.

[31] Ramesh Thakur and William Maley, "Introduction: Theorising Global Responsibilities," in *Theorising the Responsibility to Protect*, ed. Ramesh Thakur and William Maley (Cambridge: Cambridge University Press, 2015), 3–15, https://doi.org/10.1017/CBO9781139644518.001.

[32] "Resolution 794 (1992)" (UN Security Council, December 3, 1992), https://undocs.org/S/RES/794(1992).

battle ensued. US forces eventually prevailed, winning a Pyrrhic victory. In total, 19 American servicemen, one Malaysian, and one Pakistani peacekeeper died in combat, and the SNA lost hundreds of fighters according to some estimates. Bodies of American soldiers appeared on TV, causing outrage at home and abroad.[33] The clash became known as the Battle of Mogadishu and led to the withdrawal of US troops from Somalia by then-President Bill Clinton.[34] The battle discouraged those who argued for more robust humanitarian responses to crises around the world, and an anti-interventionist mindset took hold in many capitals, especially in the West.[35] After the withdrawal of the US and UN-forces, the situation in Somalia went from being" a humanitarian crisis to general chaos."[36] Almost three decades later, Somalia is still a failed state. It is crucial to see the international response to the Rwandan genocide in the context of the Battle of Mogadishu. The lack of interest in intervening in Africa during the Rwandan genocide was a reaction to the failed intervention in Somalia.[37]

During four months in 1994, members of the Hutu ethnic group in Rwanda massacred around a million people from the Tutsi and Twa ethnic groups, along with many moderate Hutus.[38] Many, including Grünfeld and Huijboom (2007), contend that the international community failed the Rwandan people and single out the UN for its alleged failures, as it had received warning of the genocide and failed to react accordingly.[39] A weak UN peacekeeping force was in Rwanda that lacked the human resources, materiel, and mandate to intervene.[40] The lack of response by the UN, the Security Council, and the world community with regards to Rwanda has been described as, at best, evidence of "the absence of compelling national interests in Rwanda, and at worst,

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[33] Rick Atkinson, "Night of a Thousand Casualties," *Washington Post*, January 31, 1994, https://www.washingtonpost.com/archive/politics/1994/01/31/night-of-a-thousand-casualties/1f0c97b1-1605-46e5-9466-ba3599120c25/.

[34] Douglas Delaney, "Cutting, Running, or Otherwise? The US Decision to Withdraw From Somalia," *Small Wars & Insurgencies* 15, no. 3 (November 1, 2004): 28–46, https://doi.org/10.1080/0959231042000275551.

[35] Cater and Malone, "The Origins and Evolution of Responsibility to Protect at the UN."

[36] Norrie MacQueen, *Humanitarian Intervention and the United Nations* (Edinburgh: Edinburgh University Press, 2011), 55, http://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=370787&site=ehost-live.

[37] Fred Grünfeld and Anke Huijboom, *Failure to Prevent Genocide in Rwanda: The Role of Bystanders* (Leiden: Brill, 2007), http://ebookcentral.proquest.com/lib/uunl/detail.action?docID=489346.

[38] McDoom, "Contested Counting: Toward a Rigorous Estimate of the Death Toll in the Rwandan Genocide."

[39] Grünfeld and Huijboom, *Failure to Prevent Genocide in Rwanda: The Role of Bystanders*.

[40] For more on the UN and Rwanda response, see Fred Grünfeld and Anke Huijboom, *Failure to Prevent Genocide in Rwanda: The Role of Bystanders.*

possibly, by complicity with the genocidal regime or at least unwarranted complacency toward it."[41]

The disintegration of Yugoslavia at the end of the Cold War caused a myriad of conflicts. Unlike the Rwandan genocide, debate on the Balkan wars was intense in the Security Council. The SC passed a total of 47 resolutions on the wars, and 42 presidential statements were issued. Most concerned the situation in Bosnia-Herzegovina. To protect the civilian population there, the SC approved the establishment of safe areas, including around the town of Srebenica. Despite the presence of a small Dutch peacekeeping force, Serb forces entered the safe area in and around Srebrenica and consequently massacred around eight thousand Bosnian Muslim men and boys.[42] Cater and Malone (2015) argue that these events "by accretion eroded absolute conceptions of sovereignty and demonstrated that the UNSC and the wider international community could, in the post–Cold War era, innovate in addressing conflict and distress of various kinds, often overriding local actors claiming to uphold national sovereignty."[43] On the 10th anniversary of the Srebrenica massacre, then UN Secretary-General Kofi Annan admitted to "serious errors of judgment rooted in a philosophy of impartiality and non-violence which, however admirable, was unsuited to the conflict in Bosnia."[44] Annan would go on to champion the need for a new norm for intervention, expounded in the following subchapter.

2.2 The Campaign for a Norm of Intervention

Kofi Annan sought in 1999 to find a solution to the dilemma of intervention by encouraging the creation of a framework to prevent atrocities while respecting state sovereignty. In a speech to the United Nations General Assembly (GA) on 20 September 1999, Annan stated that the "developing norm in favor of intervention to protect civilians from wholesale slaughter" should

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[41] MacQueen, *Humanitarian Intervention and the United Nations*, 282.
[42] "Report of the Secretary-General Pursuant to General Assembly Resolution 53/35: The Fall of Srebrenica" (New York: UN Security Council, November 15, 1999), https://undocs.org/A/54/549.
[43] Cater and Malone, "The Origins and Evolution of Responsibility to Protect at the UN.", 279.
[44] "Secretary-General's Message to Ceremony Marking the 10th Anniversary of the Srebrenica Massacre (Delivered by Mark Malloch Brown, Chef de Cabinet)," United Nations Secretary-General, July 11, 2005, https://www.un.org/sg/en/content/sg/statement/2005-07-11/secretary-generals-message-ceremony-marking-10th-anniversary.

be embraced by delegates and their governments.[45] The Group of 77 developing countries known as the G77 did not respond well to the speech.[46] Earlier that same year, foreign ministers of the G77 rejected the idea of a right to humanitarian intervention. In the view of the ministers, humanitarian interventions had no basis in the UN Charter.[47] Heads of state of G77 nations reiterated this position in April 2000. In their view, no interventions should take place without the consent of the host state and stressing the importance of respecting the sovereignty, territorial integrity, and independence of the host.[48] According to Bellamy (2009), the G77's reluctance towards interventions stemmed in large part from concerns about the challenge states' authority to manage their affairs.[49] Presumably, most humanitarian interventions would take place in the developing world, and the leaders of the G77 were mindful of the colonial past when Westerners intervened in many member states under the banner of humanitarianism.[50]

In a report on the protection of civilians in combat, presented to the SC on 8 September 1999, Secretary-General Annan lamented that despite the many international human rights and humanitarian law conventions agreed to in previous decades, "hardly a day goes by" without news of human rights violations somewhere on the planet. Among his recommendations to prevent such violations was that the SC worked to promote the ratification of international humanitarian accords, urging member states to adhere to such agreements. Most relevant is his third recommendation that the SC be more willing to use its powers according to Chapter VII of the UN Charter to force non-compliant states to adhere to international conventions.[51]

Kofi Annan reasoned in an article in *The Economist* that the state should work for the people and not the other way around, contrasting the ideas of Westphalian state sovereignty and

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[45] "Secretary-General Presents His Annual Report to General Assembly," accessed July 19, 2020, https://www.un.org/press/en/1999/19990920.sgsm7136.html.

[46] Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect*.

[47] Group of 77, "Ministerial Declaration (XXXIII)," August 24, 1999, http://www.g77.org/doc/Decl1999.html.

[48] Group of 77, "Declaration of the South Summit," April 2000, http://www.g77.org/summit/Declaration_G77Summit.htm.

[49] Alex J. Bellamy, "Realizing the Responsibility to Protect," *International Studies Perspectives* 10, no. 2 (2009): 111–28.

[50] Fidèle Ingiyimbere, "Humanitarian Intervention as Neocolonialism," in *Domesticating Human Rights: A Reappraisal of Their Cultural-Political Critiques and Their Imperialistic Use,* ed. Fidèle Ingiyimbere (Cham: Springer International Publishing, 2017), 57–121, https://doi.org/10.1007/978-3-319-57621-3_3.

[51] "Report of the Secretary-General to The Security Council on the Protection of Civilians in Armed Conflict" (New York: UN Security Council, September 8, 2020), https://undocs.org/S/1999/957.

individual sovereignty stemming from international human rights law. Furthermore, he asked if it was "legitimate a regional organization to use force without a UN mandate," or if it was "permissible to let gross and systematic violations of human rights, with grave humanitarian consequences, continue unchecked?"[52] At a meeting of the SC on 17 September 1999, Resolution 1265 passed where the SC stressed the importance of conflict prevention as the primary way to protect civilians. The resolution emphasized the role of the UN and other mechanisms to resolve conflicts as well as the use "of preventive military and civilian deployments, under the relevant provisions of the Charter of the United Nations, resolutions of the Security Council and relevant international instruments."[53]

Leaders of 53 member states of the Organization of African Unity met to review its charter in September 1999 in Sirte, Libya. A regional organization founded in 1963, OAU, was often criticized for indifference to the suffering of people in conflict zones on the continent.[54] The Sirte meeting was the first step in the creation of the AU, formally founded in 2001. As previously mentioned, the Group of 77, of which many African states were members, took a dim view of Kofi Annan's speech before the GA in September 1999. At the same time, African leaders were laying the groundwork for the replacement of the non-interventionist OAU with the AU, the right to intervene enshrined in its founding document. The most significant innovation of the new organization, both in an African and global context, was Article 4(h) of the African Union's Constitutive Act, asserting the right of the organization to intervene in a member state if an emergency arose without its consent.[55] A framework for intervention is not in the laws of any international or regional organization besides the AU's. Chapter 3 explores the history of the African Union in more detail.

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[52] Kofi Annan, "Two Concepts of Sovereignty," *The Economist*, September 16, 1999, https://www.economist.com/international/1999/09/16/two-concepts-of-sovereignty.
[53] "Resolution 1265 (1999)" (UN Security Council, September 17, 1999), 3, https://undocs.org/S/RES/1265(1999).
[54] Abdulqawi A. Yusuf and Fatsah Ouguergouz, *The African Union : Legal and Institutional Framework* (Leiden, 2012), http://ebookcentral.proquest.com/lib/uunl/detail.action?docID=848682.
[55] Heads of State and Government of the Member States of the Organization of African Unity, "Constitutive Act of The African Union."

2.3 R2P and the 2005 World Summit

In his Millennium report from March 2000 entitled *"We the Peoples - The Role of the United Nations in the 21st Century"*, Annan asked, "if humanitarian intervention is indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity?"[56] In September 2000, the United Nations Millennium Summit regarding the role of the UN in the 21st century took place in New York. At the Summit, heads of state and high-ranking officials from all member states unanimously adopted the *Millennium Declaration*.[57] The declaration contained 60 goals regarding a myriad of issues, among them, strengthening cooperation with regional organizations and making the UN more effective in maintaining peace and security.[58] In response to the efforts of Secretary-General Annan, Canadian Foreign Minister Axworthy came forth with the idea of creating the independent International Commission on Intervention and State Sovereignty (ICISS), which the Canadian government did in September 2000. The ICISS, staffed by experts from around the world, began conceptualizing the answer to Annan's challenge for a norm for civilian protection.[59] In a 2001 report, the ICISS presented the concept of the Responsibility to Protect. The report emphasized that military force was the last recourse after all other options were exhausted.[60] One of the steps taken by the commission was to separate the prefix humanitarian from intervention. This separation was not merely semantic, argue Badescu and Weiss (2010). Instead, it signaled a departure from the right of outsiders to intervene to the right of civilians to receive help, with it the implication that it was the responsibility of others to do so.[61] Removing the word reduced some of the colonial connotations of the humanitarian prefix, discussed in the preceding chapter.

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[56] Annan, Kofi A., ""We the Peoples - The Role of the United Nations in the 21st Century"" (New York: United Nations, March 2000), 48, https://www.un.org/en/events/pastevents/pdfs/We_The_Peoples.pdf.

[57] "United Nations Conferences, Meetings and Events," accessed August 7, 2020, https://www.un.org/en/events/pastevents/millennium_summit.shtml.

[58] UN General Assembly, "United Nations Millennium Declaration" (UN General Assembly, September 18, 2000), https://undocs.org/A/RES/55/2.

[59] Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect*.

[60] International Commission on Intervention and State Sovereignty, *Responsibility to Protect*.

[61] Cristina G. Badescu and Thomas G. Weiss, "Misrepresenting R2P and Advancing Norms: An Alternative Spiral?," *International Studies Perspectives* 11, no. 4 (November 1, 2010): 354–74, https://doi.org/10.1111/j.1528-3585.2010.00412.x.

The concept of Responsibility to Protect as put forth in the ICISS report rests on the principle that state sovereignty entails a responsibility to protect from atrocities and violations of human rights those within a state's borders. The right of sovereign nations to non-intervention in domestic affairs, therefore, yields to the Responsibility to Protect when a population is suffering serious harm, and the state is either reluctant or unable to intervene. The foundations of R2P are, according to the ICISS report, the obligations of sovereignty, the Security Council's responsibility to maintain peace and security, the responsibilities as defined by human rights treaties, and the developing practice of states, regional organizations, and the SC.[62] According to Iyi (2016), a reinterpretation of sovereignty, from a right to intervene to a responsibility to protect, meant that the ICISS accomplished two normative goals with the R2P norm. They were a reinterpretation of sovereignty and an expanded meaning of responsibility "to include prevention, reaction, and rebuilding, as well as the agents who bear this responsibility."[63] Thakur and Weiss (2009) contend that the ICISS report resulted in an outcome with a "decided UN flavor"; because of the effort of Annan to highlight the issue on a global scale and the role of the UN if R2P became an internationally accepted norm. The UN would be the only viable framework for creating an international consensus on the issue.[64] It bears pointing out that Thakur was a member of the International Commission on Intervention and State Sovereignty.[65]

Following the release of the ICISS report in 2001, the commission and advocates lobbied to get states to endorse and adopt R2P at the United Nations 2005 World Summit, a follow-up to the Millennium Summit.[66] These efforts were successful as the Summit marks the codification of R2P by the international community. Delegations of all UN member states agreed to the *World Summit Outcome Document,* which included three articles on R2P. At the Summit, the AU approached the negotiations from a perspective of regional emancipation., arguing that regional

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[62] International Commission on Intervention and State Sovereignty, *Responsibility to Protect.*
[63] John-Mark Iyi, *Humanitarian Intervention and the AU-ECOWAS Intervention Treaties under International Law: Towards a Theory of Regional Responsibility to Protect* (Cham: Springer, 2016), 15, http://public.ebookcentral.proquest.com/choice/publicfullrecord.aspx?p=4354991.
[64] Ramesh Thakur and Thomas Weiss, "R2P: From Idea to Norm—and Action?," *Global Responsibility to Protect* 1, no. 1 (2009), https://brill.com/view/journals/gr2p/1/1/article-p22_4.xml. 24.
[65] International Commission on Intervention and State Sovereignty, *Responsibility to Protect.*
[66] Alex J. Bellamy, "Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit," *Ethics & International Affairs* 20, no. 2 (2006): 143–69, https://doi.org/10.1111/j.1747-7093.2006.00012.x.

arrangements and ROs should be given priority in handling affairs in its region, the military intervention included.[67] According to de Witte (2019), regional emancipation is seen by the African Union as "emancipation from colonial rule and into autonomous political communities."[68] The Union wanted to prevent foreign interference in Africa by prioritizing the role of RO's such as itself.[69] Signatory states to the *Outcome Document* recognized their obligation to defend their populations from four different categories of mass atrocities: genocide, war crimes, ethnic cleansing, and crimes against humanity under Articles 138-140. The document also highlighted the envisioned role of regional organizations in implementing R2P,[70] the main focus of African Union lobbying efforts at the Summit.

Tod Lindberg, a senior fellow at the Hudson Institute, hailed the inclusion of R2P in the *Outcome Document* as "a revolution in consciousness in international affairs" in an article in the *Washington Times* shortly after the World Summit. The revolution was twofold; making people, not the state, central in international relations, and de-territorializing the enforcement and protection of human rights.[71] In 2007 British historian Sir Martin Gilbert labeled R2P the "the most significant adjustment to national sovereignty in 360 years".[72] The new norm represented "one of the most significant normative shifts in international relations since the creation of the UN in 1945", stated professor of international law Anne Orford in 2011. In her view, R2P challenged ideas of state sovereignty, equality of sovereign nations, self-determination, and non-intervention in domestic affairs - all founding principles of the UN.[73] Some disagreed; legal scholar Michael Byers asserted that the three articles on R2P amounted to a dilution of the concept and

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[67] C. S. R. Murthy and Gerrit Kurtz, "International Responsibility as Solidarity: The Impact of the World Summit Negotiations on the R2P Trajectory," *Global Society* 30, no. 1 (2016): 38–53, https://doi.org/10.1080/13600826.2015.1094451.

[68] Floris de Witte, "Integrating the Subject: Narratives of Emancipation in Regionalism," *European Journal of International Law* 30, no. 1 (May 24, 2019): 258, https://doi.org/10.1093/ejil/chz005.

[69] Murthy and Kurtz, "International Responsibility as Solidarity: The Impact of the World Summit Negotiations on the R2P Trajectory."

[70] UN General Assembly, "2005 World Summit Outcome."

[71] Tod Lindberg, "Protect the People," *The Washington Times*, September 26, 2005, https://www.washingtontimes.com/news/2005/sep/26/20050926-092835-2083r/.

[72] Martin Gilbert, "'The Terrible 20th Century,'" January 31, 2007, https://www.theglobeandmail.com/opinion/the-terrible-20th-century/article17990016/.

[73] Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge: Cambridge University Press, 2011), 41, https://doi.org/10.1017/CBO9780511973574.

commitment to civilian protection, possibly restricting the SC's capacity to react.[74] In 2006, Bellamy argued that the inclusion of R2P in the outcome document would not prevent new genocides, as the compromises made to get it into the document signified a weakening of the core principles of R2P. This compromise has also been highlighted by several NGOs and civil society groups, expressing concerns about how to respond if the SC does not act in times of crisis.[75]

2.4 R2P as a Norm

International norms, for example, women's suffrage, emerged in the domestic sphere and consequently moved to the international arena.[76] Unlike those, R2P was an attempt to create a new international norm, developing discussions on the regional and global level rather than domestic. Finnemore and Sikkink (1998) argue that even though a norm is international, it must always make their way through domestic structures and norms where they are subject to different approaches to the fulfillment and understanding of the norm.[77] R2P relates to domestic concerns, the responsibility of states to protect those living within its borders. Nevertheless, it is hard to rationalize describing R2P as a domestic norm, as it primarily concerns the responsibility of the international community.

Applying the model of the norm life cycle to R2P, the publishing of the ICISS report in 2001 marked the first step in the cycle, norm emergence. Here, so-called norm entrepreneurs play a pivotal role, such as Kofi Annan's efforts regarding R2P and African leaders in 1999 with Article 4(h). The African Union would also function later as a norm entrepreneur for intervention. The goal of norm entrepreneurs is to persuade others, such as individual states, regional and international organizations, to adopt new norms. For the norm to move to the second stage of the life cycle, Murthy and Kurtz (2016) argue that "it must be institutionalized in specific sets of

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[74] Michael Byer, "High Ground Lost on UN's Responsibility to Protect," *Winnipeg Free Press*, September 18, 2005.

[75] Bellamy, "Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit." 145-146.

[76] Francisco O. Ramirez, Yasemin Soysal, and Suzanne Shanahan, "The Changing Logic of Political Citizenship: Cross-National Acquisition of Women's Suffrage Rights, 1890 to 1990," *American Sociological Review* 62, no. 5 (1997): 735–45, https://doi.org/10.2307/2657357.

[77] Finnemore and Sikkink, "International Norm Dynamics and Political Change."

international rules and institutions."[78] After a critical mass of actors embraces the norm due to the efforts of norm entrepreneurs, the norm reaches a tipping point. Then, other actors are more willing to follow suit. Finnemore and Sikking present two hypotheses on what constitutes a critical mass; previous research of international norms indicates that at least one-third of states must adopt a norm for it to reach a tipping point. Secondly, not states are created equal. The support of Britain and France, then the world's leading powers, when the first Geneva Convention was adopted was crucial to its success. Therefore, it matters not only how many countries, but rather which countries support the norm. [79]

Following the tipping point is the norm cascade when a growing number of actors adopt a norm without significant domestic pressure. Before the cascade, domestic pressure is crucial to gaining acceptance of the norm. The third and final step in the cycle is internalization when norms have gained such a wide contend that adoption takes place because of interconnected factors. Actors want to increase their legitimacy on the world stage, and leaders look to improve their self-esteem, an assertion based on extensive research into the psychological importance to individuals of conformity and self-esteem.[80] Leaders are no different from other people in that regard. Unlike many other international norms, for example, the ban on landmines and child soldiers, R2P rushed through the norm life cycle. Gareth Evans, one of the principal authors of the 2001 ICISS report, wrote in 2008 that R2P became widely accepted (internalized) in "a blink of the eye in the history of ideas."[81] Table 1 shows the norm life cycle.

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[78] Finnemore and Sikkink, 900.

[79] Murthy and Kurtz, "International Responsibility as Solidarity: The Impact of the World Summit Negotiations on the R2P Trajectory."

[80] Finnemore and Sikkink, "International Norm Dynamics and Political Change."

[81] Gareth J. Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All* (Washington, D.C.: Brookings Institution Press, 2008), 28, http://www.dawsonera.com/depp/reader/protected/external/AbstractView/S97808157018040.

Tipping Point		
Stage 1 **Norm Emergence**	**Stage 2** **Norm Cascade**	**Stage 3** **Internalization**
Actors Norm entrepreneurs with organizational platforms	States, international organizations, networks	Law, professions, bureaucracy
Motives Altruism, empathy, ideational commitment	Legitimacy, reputation, esteem	Conformity
Dominant mechanism Persuasion	Socialization, institutionalization, demonstration	Habit, institutionalization

Table 1. The norm life cycle. Source: Finnemore and Sikkink (1998), 898.

The norms of Article 4(h) and R2P were both a response to the same dilemma, how to respond when states fail to uphold their responsibility to protect those within its borders, while simultaneously preserving the Westphalian system of sovereignty. The norms were also an endeavor to create a legal framework to harness the power of the regional organizations and the international community to protect civilians. The two innovations, Article 4(h) and R2P, are closely interrelated but are unfortunately often viewed as separate. Grono (2006) argues that its embrace of intervention helped considerably to ensure the inclusion of R2P in the World Summit Outcome Document.[82] Before the establishment of the AU, the Organization of African Unity, which lacked the means or willingness to intervene, protected African governments from consequences for atrocities, as discussed in chapter 3. Irrespective of whether Article 4(h) has had a demonstrable impact on saving lives, examined in chapter 4, the decision of African leaders to include a section on intervention in the Constitutive Act was significant.

Academic attention to the role of African states in the African Union as a norm entrepreneur for R2P is lacking. The role of the African Union and African leaders in laying the groundwork for R2P and in advancing norms regarding civilian protection and intervention is often overlooked. Arguing for more recognition of the role of the African Union in developing R2P is not to diminish the work of Kofi Annan and others. Recently, the literature has given more recognition to African

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[82] Nick Grono, "Briefing: Darfur: The International Community's Failure to Protect," *African Affairs* 105, no. 421 (2006): 621–31.

leadership in the development of norms in the protection of civilians.[83] For example, South Africa, a leading regional power and influential within the AU, embraced the idea of R2P following the ICISS report, ever since a staunch supporter of the norm.[84] The development and codification of R2P was a collaborative effort by people, organizations, and institutions around the world, culminating in the World Summit.

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[83] Cecilia Jacob, Martin Mennecke, and Martin Mennecke, eds., *Implementing the Responsibility to Protect: A Future Agenda* (Routledge, 2019), https://doi.org/10.4324/9780429293795.

[84] John-Mark Iyi, "Emerging Powers and the Operationalisation of R2P in Africa: The Role of South Africa in the UNSC," *African Journal of Legal Studies* 7, no. 1 (May 7, 2014): 149–76, https://doi.org/10.1163/17087384-12342044.

3. From the Organization of African Unity to the African Union

The African Union was an attempt to construct an organization not constrained by ideas of sovereignty like its predecessor, the Organization of African Unity. This chapter will show how the Union was well-equipped to tackle conflict situations and be proactive, and chapter 4 will present an example of an AU response to such a situation. The main criticism of the OAU was a lack of means or willingness to intervene in conflicts.[85] The Charter of the OAU mainly concerned protecting state sovereignty, not protecting people, therefore reflecting the dominant concerns of many African leaders at the time, as new states emerged during decolonization.[86] Self-determination, in the context of decolonization and racial discrimination, was the leading human rights issue.[87] In 1963 many African nations were recently independent or on their way to independence, leading to concerns about the prioritization of state sovereignty, non-interference in domestic affairs, and sovereign equality. Mathews (1977) describes the OAU as "an institution of the African heads of state, by the heads of state and for the heads of state."[88] After a long period without OAU interference in domestic issues, the AU was to solve this problem regionally, the right to intervene the solution - at least on paper. The principal aim of AU lobbying efforts before the World Summit was the primacy of ROs in tackling issues in its respective region, military intervention included.[89] These efforts were closely related to Article 4(h). The African Union established its norm for intervention before the advent of R2P, and at the World Summit wanted to ensure that it would be the primary actor in matters of civilian protection in Africa.

3.1 Changing with the Times

Leaders on the continent were not discouraged in their attempt to create a more responsive organization of African states by previous failures to bolster regional cooperation. After decades

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[85] Jeremy Sarkin, "The Responsibility to Protect and Humanitarian Intervention in Africa," *Global Responsibility to Protect* 2, no. 4 (January 1, 2010): 371–87, https://doi.org/10.1163/187598410X519543.

[86] "Charter of the Organization of African Unity" (Organization of African Unity (OAU), May 25, 1963), https://au.int/sites/default/files/treaties/7759-file-oau_charter_1963.pdf.

[87] Rachel Murray, *Human Rights in Africa: From the OAU to the African Union* (Cambridge: Cambridge University Press, 2004), https://doi.org/10.1017/CBO9780511494031.

[88] K. Mathews, "The Organization of African Unity," *India Quarterly* 33, no. 3 (July 1, 1977): 79, https://doi.org/10.1177/097492847703300304.

[89] Murthy and Kurtz, "International Responsibility as Solidarity: The Impact of the World Summit Negotiations on the R2P Trajectory."

of the Organization of African Unity protecting the state rather than people, African leaders were willing to establish the African Union, headquartered in Addis Ababa, Ethiopia, with provisions on intervention. Those provisions entailed surrendering a part of the sovereignty of African states. Three factors contributed to this readiness to surrender sovereignty, according to Herbst (2007). Firstly, a selfish motive. African leaders were motivated to strengthen regional cooperation because it consolidated their domestic position, not to improve the living standards of ordinary people or increase economic integration. Leaders were willing to use regional mechanisms to enhance their legitimacy in the eyes of their citizens and help fortify their positions. In the view of Herbst, legitimacy is fundamental in a region where coups and civil conflict are all too frequent. The precarious position of leaders encourages them to seek regional understandings. There is also a more altruistic motive. Leaders were willing to accept the partial surrender of sovereignty Article 4(h) entailed, in the hopes that such a surrender could help prevent atrocities like the Rwandan genocide. Thirdly, human rights were a growing concern for many Africans, no longer only in the context of self-determination.[90]

The founding of the AU and the inclusion of Article 4(h) were an attempt to create a regional organization, legally and militarily able to prevent events like the Rwandan genocide, after which many Africans felt alienated towards the UN and the international community.[91] Emerging in many ways as a response to the genocide of Africans by Africans as the rest of the world watched, an organization replacing the OUA without including principles of intervention would have been of little use to anyone.[92] Former African Union Peace and Security Commissioner Said Djinnit characterized the supposedly different values of the OAU as non-interference and of the AU as non-indifference.[93] Sarkin (2010) describes the AU as having given priority to human rights

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[90] Jeffrey Herbst, "Crafting Regional Cooperation in Africa," in *Crafting Cooperation: Regional International Institutions in Comparative Perspective*, ed. Alastair Iain Johnston and Amitav Acharya (Cambridge: Cambridge University Press, 2007), 129–44, https://doi.org/10.1017/CBO9780511491436.004.

[91] S. Gumedze, "The African Union and The Responsibility to Protect," *African Human Rights Law Journal* 10, no. 1 (2010): 135–60.

[92] Tiyanjana Maluwa, "Reimagining African Unity: Some Preliminary Reflections on the Constitutive Act of the African Union," *African Yearbook of International Law Online/Annuaire Africain de Droit International Online* 9, no. 1 (2001): 1–38, https://doi.org/10.1163/221161701X00018.

[93] Abou Jeng, *Peacebuilding in the African Union: Law, Philosophy and Practice* (Cambridge: Cambridge University Press, 2012), https://doi.org/10.1017/CBO9781139057783.

concerns over adherence to the idea of complete control of states in their domestic affairs with Article 4(h).[94]

3.2 From Non-Interference to Non-Indifference

Debates on Article 4(h) at the 7th session of the Executive Council of the African Union (EC) in 2005 were an example of norm processing through a regional structure. The EC consists of ministers chosen by member states. Discussions on the need to reiterate the commitment of member states to protect their citizens led to the so-called Ezulwini Consensus document. Mostly concerning Security Council and UN reform, the Consensus also elaborates on R2P and the relationship between Article 4(h) of the Constitutive Act and Article 51 of the UN charter concerning the right to self-defense. With the Ezulwini Consensus, the AU formally accepted the supremacy of the SC in matters of international peace and security. Member states agreed to formally ban the use of force unless justified by Article 51 or Article 4(h), then only in cases of self-defense or in cases of war crimes, genocide, and crimes against humanity. The Ezulwini Consensus contains the first mention of R2P in any AU legal document, and the ascendant norm is said to be an essential step in protecting civilians.[95]

The Executive Council, at its 7th session, created a loophole regarding the role of the Security Council in matters of peace and security. Because of the distance of the GA and the SC from events in Africa, it was imperative in the eyes of the Executive Council for regional organizations to be able to respond quickly to conflicts in their region. Due to this perceived problem of distance, the Executive Council decided that it was willing to sanction interventions even without seeking SC approval beforehand. If the SC consented to an intervention approved by the Executive Council after the fact, the Consensus declares that the UN should fund the intervention. In cases where the AU intervenes, and the SC does not approve, the AU assumes all financial obligations incurred by the intervention[96]

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[94] Sarkin, "The Responsibility to Protect and Humanitarian Intervention in Africa."
[95] African Union Executive Council, "The Common African Position on the Proposed Reform of the UN: 'The Ezulwini Consensus,'" March 8, 2005, https://www.un.org/en/africa/osaa/pdf/au/cap_screform_2005.pdf.
[96] African Union Executive Council.

In a report by UN Secretary-General Ban Ki-Moon from 2011 titled *The Role of Regional and Subregional Arrangements in Implementing the Responsibility to Protect*, he pays tribute to the leadership of the AU in the advancement of R2P by laying the groundwork with Article 4(h). The report contains a number of the SG's suggestions to further implementation of R2P. Among them was to increase UN collaboration with ROs on R2P to clarify the concept and its application. According to the report, the AU has the legal authority to intervene in line with Article 4(h) when atrocities are imminent.[97] A 2017 report by the NGO International Refugee Rights Initiative (IRRI) on the AU and R2P, *From Non-Intervention to Non-Indifference,* states that the AU and the international community have a shared understanding of R2P. This shared understanding creates three levels of accountability: the state, the regional, and international, going on to say that the AU and members states are committed to upholding R2P.[98] The report states that "[b]oth the legal and the institutional framework are positive developments from the inaction of the OAU towards an AU norm and machinery to implement the international principle of responsibility to protect."[99]

In contrast to the IRRI report, Cilliers et al. (2009) argue that there have been differences in opinion between the West and Africa regarding the conditions and implementation of the norm. Under the banner of African Solutions to African Problems, Africans have resisted attempts by others to impose on them an understanding of R2P and its application. This resistance has, in some cases, devolved to African Solutions to African Problems only when it suits those in power. In their opinion, reinforcing R2P to combat the culture of impunity with regards to ruling elites is necessary. Clarity on what an R2P intervention would look like and how extensive it would be, and on the criteria for intervention would, in their view, go a long way to strengthen R2P.[100] The next chapter will examine the validity of claims of the supposedly different approaches by the

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[97] "Report of the Secretary-General on the Role of Regional and Subregional Arrangements in Implementing the Responsibility to Protect" (UN General Assembly, June 28, 2011), https://undocs.org/A/65/877.

[98] Marina Sharpe, "From to Non-Intervention to Non-Indifference: The African Union and Responsibility to Protect" (New York: International Refugee Rights Initiative, September 2017), https://reliefweb.int/sites/reliefweb.int/files/resources/AU%20R2P%20-%20final.pdf.

[99] Sharpe, 32.

[100] Jakkie Cilliers, Sabelo Gumedze, and Thembani Mbadlanyana, "Africa and the 'Responsibility to Protect': What Role for the ICC?," *Irish Studies in International Affairs* 20 (2009): 55–67.

OAU on the one hand, and the AU on the other regarding interventions, using the case of Darfur in 2003-2004.

3.3 The Peace and Security Council

A vital organ of the African Union is the Peace and Security Council (PSC), established in 2001 under Article 5(2) of the Constitutive Act.[101] The Council has 15 members, chosen by a vote in the African Union Assembly. The PSC is, in many respects, similar to the United Nations Security Council. Unlike the SC, however, no member of the PSC has a permanent seat or wields veto power. The Assembly elects ten members to a term of two years and five to a term of three years. The duties of the Peace and Security Council are supervising peacemaking, peacekeeping, and peacebuilding. According to Article 16 of the Protocol Relating to the Establishment of the Peace and Security Council as adopted in 2002, the PSC bears "primary responsibility for promoting peace, security, and stability in Africa."[102] The Peace and Security Council evaluates potential calamities and sends representatives to assess the situation on the ground. If it so decides, it can intervene in these situations in the name of the AU.[103] According to Article 7(e) of the Protocol, the PSC can propose to the Assembly of the Union intervention in a member state "in respect of grave circumstances, namely war crimes, genocide and crimes against humanity, as defined in relevant international conventions and instruments."[104] The establishment of the Peace and Security Council, the first organ in the history of regional organizations in Africa with the authority to authorize intervention, was a significant moment in African politics.[105]

The Ezulwini Consensus did not clarify the nature of the relationship between the AU and the Security Council regarding whether the PSC has the right to sanction intervention without SC

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[101] Heads of State and Government of the Member States of the Organization of African Unity, "Constitutive Act of The African Union."

[102] African Union, "Protocol Relating to the Establishment of the Peace and Security Council of the African Union" (2003), 23, https://au.int/sites/default/files/treaties/37293-treaty-0024_-_protocol_relating_to_the_establishment_of_the_peace_and_security_council_of_the_african_union_e.pdf.

[103] African Union, "African Union Handbook 2020" (African Union, 2020), https://au.int/sites/default/files/documents/31829-doc-au_handbook_2020_english_web.pdf.

[104] African Union, Protocol Relating to the Establishment of the Peace and Security Council of the African Union.

[105] Tim Murithi, "The African Union's Evolving Role in Peace Operations: The African Union Mission in Burundi, The African Union Mission in Sudan and The African Union Mission in Somalia," *African Security Review* 17, no. 1 (March 1, 2008): 69–82, https://doi.org/10.1080/10246029.2008.9627460.

approval.[106] The Constitutive Act indicates that it is the Union's prerogative to resort to force. The Protocol adds to the confusion about the relationship. According to Article 16, the PSC is responsible for peace in Africa, in direct contradiction with Article 24 of the UN Charter, which states that the SC bears primary responsibility for maintaining peace and security, by the power vested in it by the member states.[107] The following article states that to promote peace and to keep it, the PSC will work closely with the SC, making the relationship no more transparent. It goes on to say that if needed, UN assistance will be requested, in line with Chapter VIII of the UN Charter regarding regional organizations and their role in keeping the peace.[108] The Ezulwini Consensus does, however, clarify who pays for what in an intervention. If the AU intervenes under Article 4(h) and the SC disapproves, the AU bears the cost, and if the SC gives its blessing, the UN has to finance it.[109]

The African Union marked the beginning of a supposedly new era in the history of African regional organizations and cooperation. An answer to calls for a more proactive stance to protect civilians, after decades placing the security of the state above that of people, the AU was a considerable addition to the group of regional organizations. Article 4(h) remains the only article in the laws of any RO that allows for intervention to protect civilians. The Ezulwini Consensus allowed the AU and PSC to intervene on the continent without Security Council approval, and the Peace and Security Council, an African version of the Security Council, was an innovative organ focusing on peace rather than security. The African Union was legally and organizationally equipped to act and respond when civilian lives were at risk and the state unwilling or unable to help them. In the case of Darfur, when the call came, the AU did not respond and use its powers.

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[106] African Union Executive Council, "The Common African Position on the Proposed Reform of the UN: 'The Ezulwini Consensus.'"

[107] "Charter of the United Nations" (United Nations, June 24, 1945), https://www.un.org/en/sections/un-charter/un-charter-full-text/.

[108] African Union, Protocol Relating to the Establishment of the Peace and Security Council of the African Union.

[109] African Union Executive Council, "The Common African Position on the Proposed Reform of the UN: 'The Ezulwini Consensus.'"

4. The Darfur Conflict 2003-2004

Using the case of the conflict in the Darfur region in Sudan in 2003-2004, this chapter examines whether the African Union utilized norms to prevent atrocities in the region and protect civilians. This chapter depicts how the AU reverted to back to the indifferent ways of the OAU, not making use of Article 4(h) of the Constitutive Act to intervene in Darfur as civilians suffered. Despite arguing for regional solutions, placing great importance on the role of ROs before the 2005 World Summit, the Union failed in Darfur to fulfill its mission of protecting civilians. Figure 1 shows the location of Darfur within Sudan.

Figure 1. Map showing the location of Darfur (dark green) in Sudan. Source: Wikipedia Commons.

4.1 A Revolt and a Response

Perhaps the most egregious example of atrocities in Africa since the AU's founding is the genocide in Darfur. In February 2003, the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM) rose against the central government in Khartoum, which they accused of oppressing the non-Arab inhabitants of the region. [110] Darfur, with its majority black and animist population, since Sudan's independence from Britain in 1956, often oppressed by the Arab

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[110] Flint and de Waal, *Darfur: A New History of a Long War*.

dominated government in Khartoum. Religious differences between the black, Christian, and Muslim Arab population in Darfur also played a part in decades of tension and internecine conflict in Darfur, contributing to the uprising in 2003.[111]

The government response to the rebellion was a counterinsurgency operation to reduce rebel support from the local population.[112] In the wake of the government's counterinsurgency campaign, a second began, explicitly aimed at destroying the non-Arab inhabitants of Darfur. Muslim Arab *Janjaweed* militias, mostly composed of the nomadic population of the area, provided support for the government's operation.[113] What followed was the most intense period of the conflict in Darfur, beginning in mid-2003 and lasting approximately a year.[114] During that period, at a minimum, 395 mostly black-majority villages were demolished. In total, the conflict displaced 1.2 million people, and more than 120 thousand lost their lives, according to the Centre for Research on the Epidemiology of Disasters (CRED) at the University of Louvain in Belgium.[115] Based to a March 2005 estimate by the US State Department's Bureau of Intelligence and Research (INR), 32-68,000 excess deaths (an average of 5,200-11,400 a month) occurred in Darfur and refugee camps in Chad from October 2003 through March 2004 compared with other years, as seen in figure 2. According to the INR, "the cleansing of primarily non-Arab populations from large sections of Darfur was already completed—when the international community realized the scope of the crisis in Darfur in the spring of 2004."[116]

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[111] Scott Straus, "Darfur and the Genocide Debate," *Foreign Affairs* 84, no. 1 (2005): 123–33, https://doi.org/10.2307/20034212.
For a historical background to the conflicts in Darfur, see Anders Hastrup, *The War in Darfur* (2013).
[112] David Lanz, *The Responsibility to Protect in Darfur: From Forgotten Conflict to Global Cause and Back* (London: Routledge, 2020), https://doi.org/10.4324/9780429061172.
[113] Isiaka A. Badmus, *The African Union's Role in Peacekeeping* (London: Palgrave Macmillan UK, 2015), https://doi.org/10.1057/9781137426611.
[114] Flint and de Waal, *Darfur: A New History of a Long War*.
[115] Debarati Guha-Sapir, Olivier Degomme, and Mike Phelan, "Darfur: Counting the Deaths" (Brussels: Centre for Research on the Epidemiology of Disasters, May 26, 2005),
http://www.cred.be/sites/default/files/DarfurCountingtheDeaths.pdf.
[116] Bureau of Public Affairs Department Of State. The Office of Electronic Information, "Sudan: Death Toll in Darfur" (Department Of State. The Office of Electronic Information, Bureau of Public Affairs.), accessed July 15, 2020, http://2001-2009.state.gov/s/inr/rls/fs/2005/45105.htm.
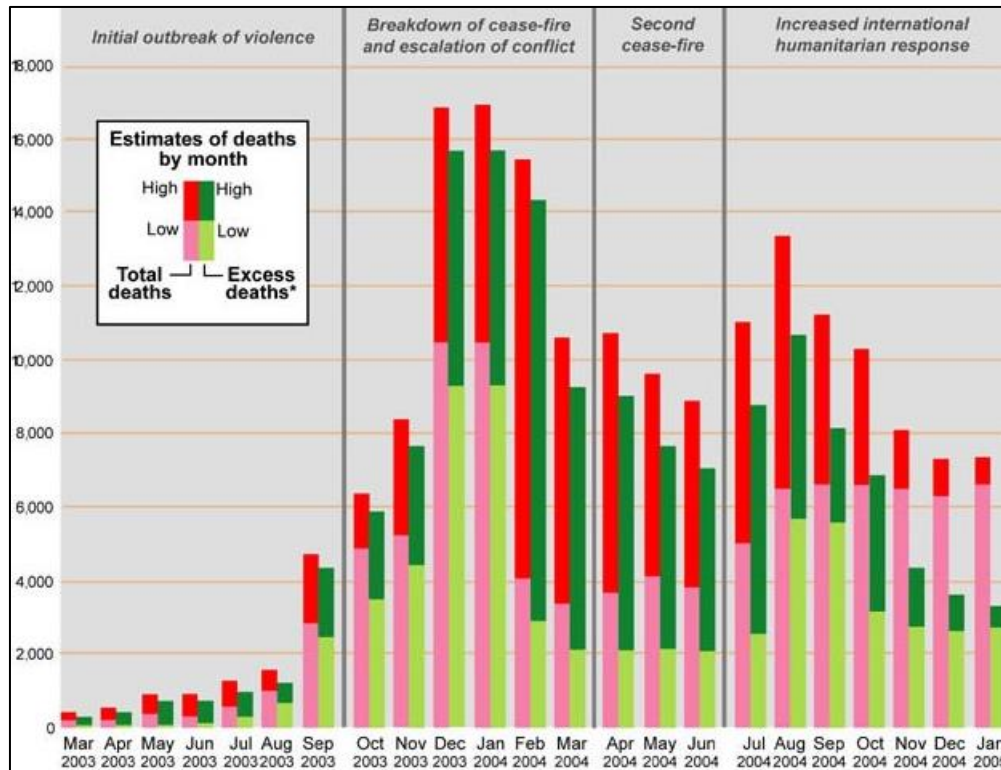
Figure 2. Total and excess deaths* in Darfur and refugee camps in Chad. High and low estimates, March 2003 - January 2005.*Deaths owing to violence, disease, and malnutrition attributable to conflict. Source: Bureau of Intelligence and Research (2005).

The plight of civilians in Darfur caught the attention of parts of the international community and the public, principally due to extensive lobbying and public relations efforts by Darfuris and NGOs as well as some UN involvement.[117] The situation then made its way into the global consciousness and became a news item around the world, leading to public pressure for action. Even though campaigners on behalf of Darfur drew up a dark picture of the situation there, few argued for military intervention without Sudan's consent. Such was Western interest in Darfur that some commented that the West was more concerned with the issue than Africans themselves.[118] According to Lanz (2020), activists decided to "marry their normative commitment to R2P and their moral outrage over Darfur with political realism and an understanding of the measures that were politically feasible,"[119] The problem of who should shoulder the responsibility of protecting

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[117] For more on the efforts to raise global conciousness about the situation in Darfur, see *The Responsibility to Protect in Darfur: from Forgotten Conflict to Global Cause and Back* by David Lanz.

[118] Catherine Guicherd, "The AU in Sudan: Lessons for the African Standby Force" (New York: International Peace Academy, March 2007), https://www.ipinst.org/wp-content/uploads/publications/au_in_sudan_eng2.pdf.

[119] Lanz, *The Responsibility to Protect in Darfur: From Forgotten Conflict to Global Cause and Back*, 80.

civilians in Darfur remained. As previously discussed, one of the reasons for establishing the AU was to end the culture of impunity for African governments and solve African problems with African solutions. In the case of Darfur during the height of the violence, the solutions offered by the AU were severely lacking, as discussed later.

The events in Darfur have been labeled a genocide by governments, NGO's, academics, and others around the world.[120] On 19 February 2004, the International Association of Genocide Scholars declared that genocide was taking place in Darfur.[121] Four months later, the Committee on Conscience at the US Holocaust Memorial Museum declared a Darfur a genocide emergency.[122] On 22 June 2004, the US House and Senate unanimously approved House Concurrent Resolution 467, declaring the actions of the *Janjaweed* a state-sponsored genocide.[123] Some organizations did not go so far; for example, Human Rights Watch declared in May 2004 that the Sudanese government was responsible for "ethnic cleansing" and crimes against humanity in Darfur.[124] A study by Médecins Sans Frontières from October 2004 concluded that genocide was not taking place in the region.[125] The UN and AU maintain their position that no genocide took place.

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[120] Murithi, "The African Union's Evolving Role in Peace Operations: The African Union Mission in Burundi, The African Union Mission in Sudan and The African Union Mission in Somalia."

[121] "ISG & IAGS -- Institute for the Study of Genocide, International Association of Genocide Scholars," accessed July 15, 2020, https://web.archive.org/web/20050308030633/http://www.isg-iags.org/actionalerts/20050219.html.

[122] "In Sudan, Staring Genocide in the Face," United States Holocaust Memorial Museum, accessed July 15, 2020, https://www.ushmm.org/genocide-prevention/countries/sudan/in-sudan-staring-genocide-in-the-face.

[123] Donald M. Payne, "H.Con.Res.467 - 108th Congress (2003-2004): Declaring Genocide in Darfur, Sudan.," webpage, September 7, 2004, 2003/2004, https://www.congress.gov/bill/108th-congress/house-concurrent-resolution/467.

[124] "Darfur Destroyed," Human Rights Watch, May 6, 2004, https://www.hrw.org/report/2004/05/06/darfur-destroyed/ethnic-cleansing-government-and-militia-forces-western-sudan.

[125] "Violence and Mortality in West Darfur, Sudan (2003-04): Excerpts from the Four MSF Surveys | MSF," Médecins Sans Frontières (MSF) International, accessed July 15, 2020, https://www.msf.org/violence-and-mortality-west-darfur-sudan-2003-04-excerpts-four-msf-surveys.

Figure 3. Cartoon satirizing the UN and AU response in Darfur. Source: Zimbabwe Independent (2004).

Bellamy (2005) argues that Darfur in 2003-2004 represented the perfect example of a situation where intervention is the only viable option to prevent further bloodshed.[126] Intervention would have most likely been American-led due to their considerable military power and involvement in a third Muslim country, after the invasions of Afghanistan in 2001 and Iraq in 2003, was not politically appealing.[127] On 9 September 2004, then US Secretary of State Colin Powell declared the conflict in Darfur a genocide before the Senate Foreign Relations Committee.[128] Powell and the Bush government were no doubt aware of their lack of credibility on the issue and that no one would suggest the US intervened and invaded a third Muslim country in as many years. Whether this played a part in the Bush administration's willingness to declare Darfur genocide, as

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[126] Alex J. Bellamy, "Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention after Iraq," *Ethics & International Affairs* 19, no. 2 (October 2005): 31.

[127] Lanz, *The Responsibility to Protect in Darfur: From Forgotten Conflict to Global Cause and Back*.

[128] Bureau of Public Affairs Department Of State. The Office of Electronic Information, "The Crisis in Darfur" (Department Of State. The Office of Electronic Information, Bureau of Public Affairs.), accessed July 15, 2020, https://2001-2009.state.gov/secretary/former/powell/remarks/36042.htm.

such a declaration did not place any burden on them to intervene, it is impossible to answer with the sources currently available. The United States, the world's only superpower, was not willing or able to intervene. Protection of civilians was one of the AU's raison d'etre, and all the instruments for a response, as explained in chapter 3, were in place when the conflict broke out in Darfur. Chapter 4.2 examines the response of the Union

4.2 The African Union Responds

On 8 April 2004, negotiations organized by Sudan's neighbor Chad culminated in the signing of the Humanitarian Ceasefire Agreement (HMA) between the two rebel factions, JEM and SLA, the Sudanese government, Chad, and the African Union. The HMA came into effect three days later.[129] The AU's Commission on the Situation in Sudan (Darfur) reported its findings to the PSC later month. The report concerns mostly the poor implementation of the HMA, imploring all parties to adhere to the agreement and work towards ending the conflict. Expressing concern for the humanitarian situation, the commission urged the three signatories to lessen the suffering of civilians in Darfur, with no mention of further action or possibly an intervention should the situation not improve.

On 28 May 2004, all parties to the HMA signed the Agreement on the Modalities for the Establishment of a Ceasefire Commission (CFC) and the Deployment of Military Observers in the Darfur Region. The agreement included provisions on the establishment of an AU Observer Mission in Darfur. The following month the first observers arrived in Darfur. The mission consisted of 132 observers, 60 from AU member states, 36 from Sudanese parties, and 18 international observers from the European Union and the United States, guarded by 270 soldiers and operating with a budget of 27 million dollars. [130] The mission became known as AMIS (African Union Mission in Sudan).[131] On 11 June 2004, the Security Council unanimously adopted resolution 1547, the first on Sudan and the situation in Darfur. There, the SC expressed its hopes for peacemaking efforts,

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[129] "Humanitarian Ceasefire Agreement on the Conflict in Darfur," April 8, 2004, https://peacemaker.un.org/sites/peacemaker.un.org/files/SD_040408_Humanitarian%20Ceasefire%20Agreement%20on%20the%20Conflict%20in%20Darfur.pdf.
[130] "Report of the Chairperson of the Commission on the Situation in the Sudan (Crisis in Darfur)" (Addis Ababa: African Union, April 13, 2004), http://www.peaceau.org/uploads/reportdarfur-12th.pdf.
[131] Guicherd, "The AU in Sudan: Lessons for the African Standby Force."

which Secretary-General Kofi Annan outlined in a report to the SC published on 7 June. The resolution condemned "acts of violence and violations of human rights…by all parties".[132]

The Assembly of the African Union deliberated Darfur at its 3rd session from 6-8 July 2004 in Addis Ababa. Following the session, the Assembly released a "Decision on Darfur" expressing concerns about the "[h]umanitarian crisis and the continued reports of violations of human rights, including attacks against civilians committed by the *Janjaweed* militia and other non-regular armed groups, and reiterates the need to bring to justice all those responsible for human rights violations in Darfur."[133] The document stated that the situation in Darfur did not meet the criteria of crimes of the Rome Statute of the International Criminal Court, war crimes, genocide, and crimes against humanity.[134]

Therefore, the option of invoking Article 4(h) and R2P and intervening to stop the Darfur conflict was taken off the table, at least momentarily. Section four of the Assembly's decision stresses the primacy of the union in handling conflict resolution and peacemaking efforts in Darfur, with continued backing from the international community. The Assembly was arguing for the AU assuming primary responsibility to respond to situations in its respective region, as the Union would before the 2005 World Summit.[135] As for action, the Assembly decided to increase the number of AU observers and deploy a protection force to the region, with contributions from member states. The document does not contain mentions of a more involved AU response or who should take responsibility for preventing violations of human rights and protecting civilians, the PSC, or the SC.[136]

On 27 July 2004, the Peace and Security Council's 13th meeting took place in Addis Ababa. Following the meeting, a communiqué on the crisis in Darfur was issued, striking a similar tone to the Assembly's decision. The resolution emphasized the AU's leadership role in helping Darfur

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[132] "Resolution 1547 (2004)," June 11, 2004, https://undocs.org/S/RES/1547(2004).

[133] Assembly of the African Union, "Decision on Darfur" (African Union, July 8, 2004), 1, https://au.int/sites/default/files/decisions/9550-assembly_en_30_31_january_2005_auc_third_ordinary_session.pdf.

[134] Assembly of the African Union, "Decision on Darfur."

[135] Murthy and Kurtz, "International Responsibility as Solidarity: The Impact of the World Summit Negotiations on the R2P Trajectory."

[136] Assembly of the African Union, "Decision on Darfur"; Assembly of the African Union.

and thanked the international community, including the Security Council, for its support. The PSC requested that the chairman of the Ceasefire Commission created a plan on making the observer mission in Darfur more active to ensure that the HMA was respected, civilians protected, and humanitarian assistance delivered. Especially troubling in the eyes of the PSC was the lack of action by the Sudanese government to disarm the *Janjaweed* militias wreaking havoc on the non-Arab population of Darfur, and its failure to prosecute alleged perpetrators of human rights abuses. The communiqué urged rebel groups to uphold their end of the Humanitarian Ceasefire Agreement, not venturing beyond areas stipulated as rebel areas in the agreement. All parties were called upon to respect the agreement and cooperate fully with the CFC.[137]

4.3 A Promise Unfulfilled

Darfur remained high on the Security Council's agenda in 2004. On 30 July, Resolution 1556 passed lauding the leadership role of the African Union on the Darfur issue and including a commitment to support the organization's efforts fully. Voicing unease about the humanitarian situation, the SC thanked the AU and the Peace and Security Council for its efforts to resolve the Darfur crisis. Furthermore, the resolution made references to previous ones on the protection of civilians in armed conflict, for example, 1265 and 1296, both vital in the development of R2P.[138] The SC found that the situation in Darfur was of such scale as to constitute a threat to peace and security of the world and stability in the region, allowing it to use the powers invested in it by Chapter VII of the UN Charter. The Security Council called on the Sudanese government to protect civilians and assist in investigating alleged human rights violations. Finally, the SC declared its support for the deployment of the AU monitoring mission, urging the international community to support the efforts through any available means.[139]

On 18 September, the Security Council passed resolution 1564 on Darfur. Once Again, the SC praised the AU for its efforts and lent its support to an expansion of AMIS. In the eyes of the SC, the Sudanese Government had not fulfilled the commitments placed on it in the previous

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[137] AU Peace and Security Council, "13th Meeting Communiqué," July 27, 2004, http://www.peaceau.org/uploads/13th-psc-communiquy-eng.pdf.
[138] Ramesh Thakur, "The Development and Evolution of R2P as International Policy," *Global Policy* 6, no. 3 (2015): 190–200, https://doi.org/10.1111/1758-5899.12258.
[139] "Resolution 1556 (2004)," July 30, 2004, https://undocs.org/S/RES/1556(2004).

resolution nor taken steps to prevent atrocities of the *Janjaweed* militias as the sovereign government; it bears the primary responsibility for the protection of civilians. The patience of the SC with the Sudanese Government was wearing thin. The Council alluded to the possibility of sanctions against the country's oil industry, the most critical sector of Sudan's economy and accounting for a vast majority of its exports, and against the government as a whole or individual members, in case of unsatisfactory cooperation with AMIS by the government of Sudan. The SC made clear that any such decisions would only be taken in consultation with the AU.[140]

At the 17th meeting of the Peace and Security Council on 20 October 2004, The Commission on the Situation in Sudan (Darfur) delivered its second report. The commission painted a grim picture of the situation in Darfur, where violence did not decrease after the HMA was signed, recommending a significant enhancement of AMIS. In a communiqué issued following the meeting, the Peace and Council announced an expansion of AMIS. The length of the mission was one year, and its mandate was to monitor compliance with the HMA, support confidence-building measures, and "contribute to a secure environment for the delivery of humanitarian relief and, beyond that, the return of IDPs and refugees to their homes."[141] The mission now consisted of 3,320 personnel, of which 2,341 were military and a new component of 10 civilian police personnel. Of the military staff, 450 were observers tasked with the monitoring and verification of cessation of hostilities. A representative was also nominated to coordinate activities and ensure clear lines of communications with Sudanese parties and the UN.[142]

According to Article 6 of the PSC's communiqué, the African Union Mission in Sudan was to "[p]rotect 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 [Government of Sudan]." The PSC urged the Sudanese government to enact measures to prevent attacks against civilians by *Janjaweed* militias and SLM and JEM to

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[140]"Resolution 1564 (2004)," September 18, 2004, https://undocs.org/s/RES/1564(2004).)

[141] AU Peace and Security Council, "17th Meeting Communiqué," October 20, 2004, 1, http://www.peaceau.org/en/article/communique-of-the-peace-adn-security-council-darfur-2.

[142] Henri Boshoff, "The African Union Mission in Sudan: Technical and Operational Dimensions," *African Security Review* 14, no. 3 (January 1, 2005): 57–60, https://doi.org/10.1080/10246029.2005.9627371.

fulfill their end of the bargain.[143] The communiqué contains no mention of an intervention should signatories uphold their part of the agreement and not fulfill the demands of the PSC. Article 6 exemplifies the use of the language of R2P while not upholding the norms. By inserting safeguards, for example, "within resources and capabilities," the AU made sure to limit the scope of the AMIS intervention, to prevent a full-scale intervention as allowed under Article 4(h) of the Constitutive Act. These safeguards were one of the reasons AMIS was unable to execute the tasks assigned to it by the PSC in a satisfactory manner.[144]

A through-line in the communiqués, reports, and resolutions mentioned above is the lack of action on behalf of the Sudanese government to protect civilians and rein in the *Janjaweed* militias. The International Criminal Court and many human rights organizations accused the government of supporting the militias.[145] Hastrup has gone further in his analysis of the relationship between the *Janjaweed* and the Sudanese state, saying that the *Janjaweed* were, and are still, a de facto part of the Sudanese army and the state.[146] The position of the PSC and SC is clear with regards to who is the responsibility it is to protect civilians in Darfur – The Sudanese Government. The AU nevertheless chose not to intervene in 2003-2004 as the government demonstrably failed to fulfill its responsibility to protect civilians, therefore failing to uphold one of the tenets of R2P, sovereignty with responsibility. As a member of the African Union, Sudanese leaders had committed to the ideals of the Constitutive Act, including Article 4(h), and signed the World Summit Outcome Document, committing to the principles of R2P.

The African Union's response to the situation in Darfur in 2003-2004 is dismaying, highlighting the reluctance of the Union and African leaders to assume the responsibility to protect. Early in the conflict, evidence was clear on Sudanese government involvement in atrocities as well as on the scope of the violence.[147] Around the world, people came together to campaign for Darfur, while the AU argued about whether the situation was critical enough to warrant a forceful

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[143] AU Peace and Security Council, "17th Meeting Communiqué," 2.

[144] Cristina G. Badescu and Linnea Bergholm, "The Responsibility To Protect and the Conflict in Darfur: The Big Let-Down," *Security Dialogue* 40, no. 3 (June 1, 2009): 287–309, https://doi.org/10.1177/0967010609336198.

[145] Armin Taslaman, "Case Information Sheet - The Prosecutor v. Ali Muhammad Ali Abd-Al Rahman," n.d., 2.

[146] Anders Hastrup, *The War in Darfur: Reclaiming Sudanese History* (London: Taylor & Francis Group, 2012), http://ebookcentral.proquest.com/lib/uunl/detail.action?docID=1114655.

[147] Flint and de Waal, *Darfur: A New History of a Long War*.

response. The promise of the African Union, an end to indifference and prioritizing civilian protection over the protection of the state, was not fulfilled. The role of the AU in the creation of a norm of civilian protection was significant, but when it came time to implement it, the Union came up short.

5. Conclusion

The norms of R2P and Article 4(h) interventions amount to a considerable challenge to the modern state system, deeply rooted in notions of sovereignty, sovereign equality, and non-interference in domestic affairs. Finding a solution to the dilemma of civilian protection was a Herculean task, as this thesis has shown with a historical account of the history of R2P and interventions under Article 4(h) of the African Union's Constitutive Act. The norms of R2P and Article 4(h) interventions amount to a considerable challenge to the modern state system, deeply rooted in notions of sovereignty, sovereign equality, and non-interference in domestic affairs.

The successor to the Organization of African Unity, the African Union, was an endeavor to provide a regional solution to prevent a recurrence of the Rwandan genocide,[148] where the OAU and the international community were unwilling to act.[149] Article 4(h) and the African Union were African solutions to the problem of the responsibility to protect civilians, to ensure that a genocide would not occur again on the continent. The United Nations and the Security Council have championed the role of regional organizations in maintaining peace and security, and the Secretary-General has thanked the AU especially for its role in advancing the R2P norm.[150] The AU has since the 2005 Ezulwini Consensus recognized that the SC is the leading authority on the use of force, while still reserving the right to respond quickly to potential or ongoing conflicts on the continent.[151] The relationship between the AU and SC remains unclear when it comes to issues of civilian protection, as the case of Darfur in 2003-2004 illustrates. Despite reserving the right to intervene before securing SC approval, the AU failed to respond adequately to a crisis in its region. As demonstrated in chapter 4, using documents from different AU organs, the organization dragged its feet in responding to the Darfur crisis in 2003-2004. The suffering of the black and sedentary inhabitants of Darfur, systematically attacked by nomadic Arab *Janjaweed* militias with

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[148] Abdulqawi A. Yusuf and Fatsah Ouguergouz, *The African Union: Legal and Institutional Framework* (Leiden: Brill, 2012), http://ebookcentral.proquest.com/lib/uunl/detail.action?docID=848682.

[149] Grünfeld and Huijboom, *Failure to Prevent Genocide in Rwanda: The Role of Bystanders*.

[150] "Report of the Secretary-General on the Role of Regional and Subregional Arrangements in Implementing the Responsibility to Protect."

[151] African Union Executive Council, "The Common African Position on the Proposed Reform of the UN: 'The Ezulwini Consensus.'"

the knowledge and involvement of the Sudanese government and army,[152] did not spur the Union into action.

In contrast to the promise of the Constitutive Act and the intended transition from a non-interfering Organization of African Unity to a purportedly non-indifferent AU, the situation Darfur became a global issue primarily through advocacy and pressure from outside of African halls of power. For instance, Sudan's neighbor Chad, not the Union, facilitated negotiations between the rebel groups and the government.[153] Following the signing of the agreement, the AU became more involved in the issue of Darfur but made no significant attempts to stop the conflict. The Union expressed concern that the parties did not adhere to the agreement with little effort made by the Union to ensure its implementation.[154] Documents show that the African Union's Peace and Security Council did little to respond to the situation in Darfur while repeatedly declaring its concern about the plight of civilians, appearing like the PSC had no power to influence events in Darfur. Instead of upholding the principles of the Constitutive Act, PSC communiqués were cautiously worded when describing events in Darfur, to ensure that pressure was not put on the AU to invoke Article 4(h) and respond.

As the violence in Darfur continued, the African Union began to increase its involvement, and the UN also became engaged. Nevertheless, the bloodshed did not end and continues in Darfur. After functioning as norm entrepreneurs in the development of norms related to the protection of civilians, African leaders and the AU failed to maintain them as state-sanctioned and sponsored violence tore through Darfur in 2003-2004. Despite leadership in advancing norms of civilian protection and the innovation of Article 4(h) of the Constitutive Act and, the African Union did not respond adequately to the suffering of the inhabitants of Darfur. With its inaction in Darfur, it abrogated its role as a regional organization, as chapter 4 shows. The AU reverted to the ways of the OAU, then championing the role of ROs at the 2005 World Summit and arguing for more responsibility for ROs in implementing norms on the responsibility to protect.[155]

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[152] Flint and de Waal, *Darfur: A New History of a Long War*.
[153] "Humanitarian Ceasefire Agreement on the Conflict in Darfur."
[154] "Report of the Chairperson of the Commission on the Situation in the Sudan (Crisis in Darfur)."
[155] Murthy and Kurtz, "International Responsibility as Solidarity: The Impact of the World Summit Negotiations on the R2P Trajectory."

Using only sources in English to research the topics of this thesis, especially the conflict in Darfur, limits the number of available materials. The ability to use sources in native languages is always beneficial, as it helps to give a more balanced and non-Western view. The African Union publishes documents online in English and French, although finding them can be difficult. It would be advantageous for scholars to have better access to them to enable more research on the role of the African Union in the development of norms of civilian protection and their application by the Union. Writings by people closely connected to the creation and campaign for R2P, for example, ICISS members Thakur and Evans, are used as secondary sources throughout this thesis. Using secondary material by those who have a clear bias towards promoting R2P requires being conscious of those biases and counteracting them with sources with less of a connection to the subject matter as done in this thesis. Writing about African issues critically can be problematic for Western and European researchers when unconscious bias and perhaps even prevent proper academic analysis.[156] There must a conscious effort made to ensure as unbiased analysis as possible, for example, using African academic sources to provide a regional perspective of the issues examined, counterweighing the biases of the writer. This work utilizes many African scholarly sources to minimize Western bias as much as possible.

The academic contribution of this work is to further the understanding of the African response to the challenge of protecting civilians while maintaining state sovereignty. Events behind the scenes during African Union debates on a response to Darfur require further inquiry. Public sources, as used in this thesis, can give limited insight into the diplomatic efforts behind them. Interviews, archival study, and other methods of research would help to understand the motivations of AU member states regarding Darfur, where the conflict is still ongoing. Examining it from as many viewpoints as possible can help to end or prevent similar events in the future. Being cognizant of the reasons for the reluctance of the African Union to intervene can benefit those who campaign for invoking R2P, as well as future researchers on norms of the responsibility to protect civilians.

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[156] Alex Young, "Western Theory, Global World: Western Bias in International Theory," *Harvard International Review* 36, no. 1 (2014): 29–31.

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PLAGIARISM RULES AWARENESS STATEMENT

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Scientific integrity is the foundation of academic life. Utrecht University considers any form of scientific deception to be an extremely serious infraction. Utrecht University therefore expects every student to be aware of, and to abide by, the norms and values regarding scientific integrity.

The most important forms of deception that affect this integrity are fraud and plagiarism. Plagiarism is the copying of another person's work without proper acknowledgement, and it is a form of fraud. The following is a detailed explanation of what is considered to be fraud and plagiarism, with a few concrete examples. Please note that this is not a comprehensive list!

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Plagiarism is the copying of another person's documents, ideas or lines of thought and presenting it as one's own work. You must always accurately indicate from whom you obtained ideas and insights, and you must constantly be aware of the difference between citing, paraphrasing and plagiarising. Students and staff must be very careful in citing sources; this concerns not only printed sources, but also information obtained from the Internet.

The following issues will always be considered to be plagiarism:
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