

UNIVERSITY OF NAIROBI

INSTITUTE OF DIPLOMACY AND INTERNATIONAL STUDIES

**HUMANITARIAN INTERVENTION AND ITS RELATIONSHIP WITH
RESPONSIBILITY TO PROTECT IN EAST AFRICA**

BY

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DEGREE OF MASTER IN INTERNATIONAL CONFLICT MANAGEMENT.**

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DECLARATION

I declare that this dissertation is my original work and has not been submitted for the award of a degree in any other university.

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This project proposal has been submitted to the University for examination with my approval as University supervisor.

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DEDICATION

This research project is especially dedicated to my entire family members for their love, encouragement and support throughout my studies.

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ABSTRACT

Humanitarian intervention lies at the fault-line in international relations between the principles of international law and state sovereignty on the one hand, and morality and the protection of human rights on the other. Whereas the former international-society theory defines humanitarian intervention as a violation of the cardinal rules of order, it is being challenged by the latter view that seeks to strengthen the legitimacy of the international community by developing its commitment to justice. As a result, a solidarist international community is one in which states accept a moral responsibility to protect the security, not only of their own citizens, but of humanity everywhere.

This study explores the emergence of the doctrine of responsibility to protect (R2P) outlining the circumstances that warranted the emergence. It dissects the two R2Ps which are the International Commission on Intervention and State Sovereignty (ICISS) R2P and the United Nations (UN) secretary general Ban Ki-Moon. The first part of the study gives a background of the doctrine of responsibility to protect, giving its elements as outlined in the ICISS report. The legal framework humanitarian intervention and a further presentation of the demise of humanitarian intervention and the emergence of the doctrine of R2P are done in this part.

In the second part a presentation of interventions as an emerging norm is given, giving the normative status of the doctrine of R2P and humanitarian intervention. In the third part, the position of the international community on the doctrine of R2P is given, in the fourth part of the paper, a further exploration of the demise of humanitarian intervention and the emergence of the doctrine of R2P is outlined. The final bit of the study is an examination of international discourse on the doctrine of R2P where the divide on the opinions of the international community on the doctrine of R2P are presented.

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ABBREVIATIONS

| | |
|--------------|--|
| AU | African Union |
| CEG | Capability-Expectations Gap |
| CEG | Capability-Expectations Gap |
| EU | European Union |
| HRW | Human Rights Watch |
| ICG | International Crisis Group |
| ICISS | the International Commission on Intervention and State Sovereignty |
| NAM | Non-Aligned Movement |
| NGO | Non-Governmental Organisation |
| R2P | Responsibility to Protect |
| SC | Security Council |
| UK | United Kingdom |
| UN | United Nations |
| UNSC | United Nations Security Council |
| US | United States |
| WFM | World Federalist Movement |

CHAPTER ONE

INTRODUCTION TO THE STUDY

Background of the Study

The term “responsibility to protect” was introduced in the 2001 report of the Canadian-supported International Commission on Intervention and State Sovereignty (ICISS), entitled *The Responsibility to Protect*. In an initiative established in 2005, ICISS was formed to address the questions of when sovereignty must yield to protection against the most egregious violations against humanity and international law-genocide, ethnic cleansing, and massive human rights abuses. Former Secretary-General Kofi Annan presented this issue as follows: “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?”¹

Humanitarian responsibility to protect "refers to a state using military force against another state when the chief publicly declared aim of that military action is ending human rights violations being perpetrated by the state against which it is directed."² The other meaning of humanitarian responsibility to protect is the entry into a country of the armed forces of another country or international organization with the aim of protecting citizens from persecution or the violation of their human rights. The creation of safe havens in north and south Iraq following the Gulf War, and intervention in Somalia, Haiti, Liberia, Rwanda, Bosnia, Kosovo, Sierra Leone and lately in Libya, have seen military operations to protect certain groups in the population.

Humanitarian responsibility to protect raises some of the most interesting debates in international relations: it asks questions about the priorities of international justice and order, it

¹ Kofi Annan, *We the Peoples: The Role of the UN in the 21st Century*, United Nations Department of Public Information (2000), p. 48.

² Marjanovic, Marko, “Is Humanitarian War the Exception?”, *Ludwig von Mises Institute*, 4 April 2012.

inspires debate about the use of military force, and it has as its case studies some of the worst acts of human brutality in recent times. Yet much of the literature on humanitarian intervention is dominated by one of two things: either ethical debates surrounding its moral legitimacy and the conditions for legitimate humanitarian intervention, or the analysis of why states have or have not intervened in a particular case. What is missing is a holistic approach to humanitarian intervention which incorporates the theoretical debates with the practice of this type of intervention³.

Outlined in the ICISS are three elements of responsibility to protect they include responsibility to prevent, responsibility to react and responsibility to rebuild. Of all the elements, the commission holds that responsibility to prevent is the most important element. This is because this element first lies with the sovereign states and the local communities within those states. In this regard, the international community only intervene when need arises, just to offer support to the local efforts. Prevention helps to eliminate the need for intervention at a later stage.⁴ In order for prevention to be effective, the ICISS report site that knowledge for the fragility of the situation and the risks associated with it so called ‘early warning’ must be known. In addition, there has to be understanding of the policy measures available that are capable of making a difference,⁵ finally political will to apply the measures must be in existence.

The element of responsibility to react to situations of compelling need for human protection is implied in responsibility to protect. Put explicitly, it is about preventive measures; if they fail, coercive measures should be applied and in extreme cases, military action.⁶ The responsibility to rebuild is the third element of the responsibility to protect concept. It is essential

³ Straus, Scott, “Darfur and the Genocide Debate”, *Foreign Affairs*, Vol.84, No.1 (2005), pp.123-133

⁴ International Commission on Intervention and State Sovereignty report.

⁵Ibid

⁶ Finnemore, Martha, “Constructing Norms of Humanitarian Intervention” in: *The Culture of National Security: Norms and Identity in World Politics*, ed. Peter J. Katzenstein (1996).

because a big number of countries that come out of war relapse into war in first five years. In the ICISS, the responsibility to rebuild analyses the obligations of the international community after the intervention as well as the limits that have to be taken into account.⁷

This study gives a historical account of the evolution of the norm of humanitarian intervention. It will use current theories of norm dynamics to assess how a norm of humanitarian intervention has come about and why. The study will focus on three cases: intervention in Somalia in 1992, intervention in Rwanda in 1994, and ongoing international involvement in Darfur.⁸

Statement of the Research Problem

In a dangerous world marked by overwhelming inequalities of power and resources, sovereignty is for many states their best and sometimes seemingly their only line of defense. But sovereignty is more than just a functional principle of international relations. For many states and peoples, it is also recognition of their equal worth and dignity, a protection of their unique identities and their national freedom, and an affirmation of their right to shape and determine their own destiny. The research will therefore provide a comprehensive treatment of the legal issues and presents the case against the existence of a right of humanitarian responsibility to protect. The research will offer the justifications that states provide for their actions and finally, we will try and reconcile the two building blocks of today's international society: nonintervention and respect for the rights of individuals. Its holistic framework offers guidelines not only for responding to massive violations of human rights, but also for preventing such tragedies and for rebuilding conflict-ridden societies.

⁷Florini, Ann, "The Evolution of International Norms", *International Studies Quarterly*, Vol.40, No.3 (1996), pp.363-389

⁸ Ibid

The study will examine the legal questions surrounding humanitarian intervention and then broaden the discussion to include ethical dilemmas. It will also identify the challenges in designing criteria for a legitimate humanitarian intervention and conclude by discussing how the debate has been affected by the events of the international system.

Objective of the Study

The objectives of the study are to;

- i. Examine the norms regarding humanitarian responsibility to protect, with a view to
Creation of the Responsibility to Protect
- ii. Determine the influence of norms on behavior in the international arena
- iii. Investigate the effect of humanitarian responsibility to protect East African states.

Literature Review

Arguments in Favor of Forceful Humanitarian Responsibility to Protect

Andrew Mason and Nicholas Wheeler disagree with the arguments of the noninterventionists: are unable to show that a properly regulated and suitably constrained practice of humanitarian intervention would be morally impermissible, or create a worse world than the one we currently live in allowing humanitarian intervention in some cases would promote overall wellbeing. So far from forbidding humanitarian intervention, consequentialist reasoning will support it.⁹ Holzgrefe notes that international legal scholars who support humanitarian intervention by military force “advance three arguments aimed at reconciling humanitarian intervention with the UN’s *jus ad bellum* regime.”¹⁰

⁹ Andrew Mason and Nicholas Wheeler, “Realist Objections to Humanitarian Intervention,” in *The Ethical Dimensions of Global Change*, ed. Barry Holden (Basingstoke, UK: Macmillan Press, 1996), 106, by Holzgrefe, “The Humanitarian Intervention Debate,” 25

¹⁰ Holzgrefe, “The Humanitarian Intervention Debate,” 37.

Firstly, some legal scholars argue that article 2(4) of the UN Charter does not forbid the threat or use of force summarily. The Charter acts to prevent the use of force when directed against the territorial integrity or political independence of a state. Teson states that if a “genuine humanitarian intervention does not result in territorial conquest or political subjugation, it is a distortion to argue that [intervention] is prohibited by article 2(4).¹¹

Secondly, Holzgrefe suggests that legal realists have argued in favor of humanitarian intervention in their interpretation of Charter’s requirement that states not use force “in any other manner inconsistent with the purposes of the United Nations.” In their view, this statement “permits unauthorized humanitarian intervention where the Security Council fails to realize one of its chief purposes the protection of human rights.”¹² Furthermore, Holzgrefe notes that the security system of the UN premised on a consensus among the permanent members of the Security Council does not function as originally designed. Citing Reisman, she argues that as a result part of the systematic justification for the theory of Article 2(4) has disappeared.¹³ According to this standpoint, “if the Security Council fails to end massive human rights violations, states may do so without authorization.”¹⁴ It is important to note that Holzgrefe qualifies this statement by noting that “its legal status depends in large measure on the international community’s current attitude towards such interventions.

¹¹ Article 39, UN Charter, by Holzgrefe, “The Humanitarian Intervention Debate,”

¹² W. Michael Reisman, “Criteria for the Lawful Use of Force in International Law,” *Yale Journal of International Law* 10 (1985): 279-80, by Holzgrefe.

¹³ W. Michael Reisman, “Criteria for the Lawful Use of Force in International Law,” *Yale Journal of International Law* 10 (1985): 279-80, by Holzgrefe, “The Humanitarian Intervention Debate,” 39.

¹⁴ Holzgrefe, “The Humanitarian Intervention Debate,” 40.

Arguments against Forceful Humanitarian Responsibility to protect

Non-interventionists give three reasons against the use of military force for humanitarian intervention. Firstly, they emphasize that the rules of international society provide for order among states which have differing conceptions of justice. This view claims that intervention for humanitarian reasons will always be for the benefit of the intervening state's national interest. Thomas Franck and Nicholas Rodley argue that a doctrine of humanitarian intervention will become a weapon of abuse that the strong will force upon the weak, and that intervention under the guise of human rights should not be permitted as a further exception to Article 2 (4) of the UN Charter on the use of force.¹⁵

Secondly, non-interventionists point to a dilemma in selectivity. What criteria should states or international organizations use to decide if humanitarian intervention is warranted? Franck and Rodley argue that a problem exists when an agreed moral principle is raised in more than one situation, such as Bosnia and Rwanda, but national interests or public interests dictate two different responses.¹⁶ Similar atrocities have not always received equal attention even when occurring in the same part of the world. For example, UN sanctioned humanitarian relief missions were carried out in Somalia, yet not in Rwanda.

A third reason given as to why states should not intervene for humanitarian reasons is presented as a normative statement that nations have no need to risk the lives of their soldiers to save the lives of others. States including western nations are not under any duty to intervene even if they have the capability to prevent or mitigate human suffering. Parekh in "Rethinking Humanitarian Intervention" holds firm to his realist view and remarks that, "citizens are the exclusive responsibility of their state, and their state is entirely their own business. Citizens

¹⁵ Thomas Franck and Nigel Rodley, "After Bangladesh: The Law of Humanitarian Intervention by Military Force," *American Journal of International Law* 67, no. 2 (1973), 290, by Wheeler, *Saving Strangers*, 30

¹⁶ *Ibid.*, 288.

should be morally concerned only with the activities of their own state, and the latter is right to and for its citizens alone.”¹⁷

The literature in this field tends to focus on one of two things: the influence of norms on behavior in the international arena, or the evolution of norms. Although this research is firmly focused on the latter, it is worth briefly addressing the former in order to establish why and how norms influence actors to demonstrate that the study of norm dynamics is worthwhile. First, The most important thing to emphasize here is the notion of *appropriate* behavior. As Ann Florin points out, we have to distinguish norms from mere regular patterns of behavior; the „sense of ought“ imbued by a norm is what distinguishes it from other iterated actions.¹⁸ Although it is always hard accurately to discern an actor’s motives, patterns of behavior can be constituted as following a norm when actors believe that such behavior is considered to be legitimate by a given community, whether or not individual actors agree with the validity of those legitimacy claims; the essence of a norm is that it is a rule that ascribes moral legitimacy or superiority to certain types of behavior over others.

The emergence of responsibility to protect and burying the concept of humanitarian intervention

From inauspicious beginnings, the ‘responsibility to protect’ (R2P) has come a long way in a relatively short space of time. The principle was endorsed by the United Nations General Assembly in 2005 and unanimously reaffirmed by the Security Council in 2006 (Resolution 1674). Ban Ki-moon has identified the challenge of translating R2P ‘from words into deeds’ as one of the cornerstones of his Secretary-Generalship.² The principle has also become part of the

¹⁷ Bikhu Parekh, “Rethinking Humanitarian Intervention,” *International Political Science Review* 18, no. 1 (1997): PP 54.

¹⁸ *Ibid* 1997, 364-365

working language of international engagement with grave humanitarian crises: the head of the Human Rights Council's mission to Darfur, Jodie Williams, used it to evaluate the government of Sudan's performance, finding that it had 'manifestly failed' in its responsibility to protect its citizens.

Whenever there is a debate on sovereignty, a dilemma arises on whether sovereignty is a right or a responsibility: The traditional philosophy of "sovereignty as a right", that has held sway since the Peace of Westphalia in 1648, has been that a country's internal affairs are its own and that other states do not intervene unless it threatens them, or breaches a treaty, or triggers an obligation of alliance. At the conclusion of World War one for what would now be known as 'crime against humanity', an illustration of the traditional sovereignty is presented when the United States Secretary of State Robert Lansing who, when declining to take action against the leaders of Germany, Austria and Turkey said "the essence of sovereignty is the absence of responsibility".¹⁹ In so concluding, it can be inferred that then, sovereign leaders were immune from prosecution.

Nevertheless, responsible sovereignty requires that states provide the appropriate standard of political goods and services to ensure the protection and well-being of their citizens.²⁰ If states refuse assistance, there is a responsibility by the international community to react.

Humanitarian intervention and state sovereignty remained a dilemma for a long time till the year 2000 when the Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS) was set up to resolve the dilemma. When the ICISS published its report on

¹⁹ Nardin, Terry, "The Moral Basis of Humanitarian Intervention", *Ethics & International Affairs* (2002) Vol. 16, No. 1, p. 57-70.

²⁰Stuart Croft, "International Relations and Africa," *African affairs* 96, no. 385 (1997). PP 23

the Responsibility to Protect in December 2001, three pillars were developed: prevent, react, and rebuild.²¹

In the view of Gareth Evans, co-chair of ICISS, R2P has made four main contributions to the humanitarian intervention contest: first, turning the focus of the debate from humanitarian intervention to a responsibility to protect people trapped in conflict situations; secondly, developing a new understanding of sovereignty where the state does not control but primarily protects its citizens; thirdly, setting up clear criteria of what the R2P, in practice, should mean, clarifying that it consists of much more than just military intervention; and finally, mandating that if coercive action is seen as necessary, it must be legal and legitimate.²²

It was imperative for the proponents of R2P to sell their idea to the global south especially Africa which had suffered most conflicts.²³ In 2003, the Constitutive Act of the AU drastically altered Africa's efforts concerning conflict management.²⁴ In September 2005 Kofi Annan opened the largest gathering of world leaders in history at the UN headquarters in New York. By the end of the summit, the Outcome Document, which explicitly endorsed R2P in paragraphs 138 and 139, was adopted with the consent of all heads of states. However, the principle of R2P was restructured from the original ICISS proposal and was divided into two parts. First, the obligation of the state to protect those living within its own borders was stressed. The second part of R2P addressed the case in which a third-party state fails to protect its own

²¹International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa: IDRC, 2001).

²²Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Washington, DC: Brookings Institution Press, 2008), 41–43.

²³Jeremy Sarkin, "The Role of the United Nations, the African Union and Africa's Sub-Regional Organizations in Dealing with Africa's Human Rights Problems: Connecting Humanitarian Intervention and the Responsibility to Protect," *Journal of African Law* 53, no. 1 (2009)

²⁴Paul D. Williams, "From Non-Intervention to Non-Indifference: The Origins and Development of the African Union's Security Culture," *African Affairs* 106, no. 423 (2007).

citizens from the threat of mass atrocities within its borders or represents the cause of the threat itself.²⁵

The notion that human beings matter more than sovereignty radiated brightly, even though briefly, across the international political horizon of the 1990s. The wars on terrorism and in Iraq, the current obsession both in the United Nations and in the United States. Weiss, Crahan & Goering, suggest that the political will for humanitarian intervention evaporated at the outset of the new millennium.²⁶

In its 2001 report the International Commission on Intervention and State Sovereignty developed the concept of responsibility to protect with a central theme of an idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe- from mass murder and rape, from starvation- but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.²⁷ In other words, while the state has a primary responsibility, the international community has a secondary responsibility to protect civilians from genocide, war crimes, ethnic cleansing and crimes against humanity.

On December 2004, the context of a debate on United Nations reform started by pointing to international responses to the "successive humanitarian disasters, "the High-Level Panel on Threats, Challenges and Change stated in its report *A More Secure World: Our Shared Responsibility* that there is a growing acceptance that while sovereign Governments have the primary responsibility to protect their own citizens from such catastrophes, when they are unable or unwilling to do so that responsibility should be taken up by *the wider international community*

²⁵Aidan Hehir, *Humanitarian Intervention After Kosovo: Iraq, Darfur and the Record of Global Civil Society* (New York: Palgrave Macmillan, 2008)

²⁶Weiss, Thomas G., and Don Hubert. *The Responsibility to Protect: Research, Bibliography, Background*. International Commission on Intervention and State Sovereignty, 2001.

²⁷ICISS, the responsibility to protect, at VIII (2001).

with it spanning a continuum involving prevention, response to violence, if necessary, and rebuilding shattered societies.²⁸

The concept of responsibility to protect has risen quickly from an idea to allegedly legal norm raising some suspicions from a positivist perspective. Successful implementation of the principle of responsibility to protect is still elusive as certain issues remain unresolved: First, the concept of responsibility put forward is not one that entails liability. There are no mechanisms developed to hold governments, or individuals, liable for a failure to protect civilians at risk, and the document is thus silent on the fundamental question of how to deal with violations of the principle to protect. Second, there is the problem of duty allocation: who has to contribute how much to an intervention. Third, R2P is mainly concerned with the responsibility to intervene at the level of *ad bellum*; the responsibility to protect the civilian population at the level of *in bello* remains ambiguous in many respects

Theoretical framework

Just War Theory (JWT) saw its first expression in ancient Christian theology and during the medieval period. The moral theory was pioneered by Catholic bishops based on natural law and Christian theology.²⁹ However, scholarship on the JWT has evolved with time to meet with the changing vagaries of armed conflicts³⁰. From the protestant theologian Ramsey in the 1960s to Walzer and his classification of JWT under a set of ideas (“the theory of aggression” and “the war convention”), the theory spiraled in other contemporary writings on the justification for the use of armed force when and where necessary and to ensure its proper conduct. It has equally

²⁸A More Secure World: Our Shared Responsibility, Report of the High-Level Panel on Threats, Challenges and Change, UN Doc. A/59/565/2004.

²⁹ Bohman and Lutz-Bachman Introduction in *Perpetual Peace* (1997) MIT Press p.18.

³⁰ Mona Fixdal and Dan Smith Humanitarian Intervention and Just War (1998) Mershon International Studies Review p. 283-284

been used by policy makers, and more recently reiterated by the US president Obama in his Nobel Peace Prize Speech to justify America's involvement and role in fighting terrorism and interventions to protect the rights of people around the world.³¹ Thus, the JWT is relevant to contemporary armed conflicts and has provided a moral criterion for humanitarian forceful intervention.

The development of JWT has been a complex one. Its variety of content from the different approaches, both Christian and secular, emphasizes the tension that its development has encountered. But as Turner observes, the just war approach to the ethics of the use of force necessitates the ongoing dialogue between the different approaches as a means of developing meaning out of the tradition for contemporary usage. The moral questions as to when and how to use force are reflective of contemporary positive international law on the use of force as enshrined in the UN Charter and the Geneva Conventions on war. The argument put forward by Turner, namely that just war principles should not be understood as if they were fixed for all time. Rather, by applying the wisdom they contain in a moral discourse of contemporary armed conflicts, one may contribute to the development and enhancement of the tradition. However, as some scholars observed, the just war tradition has seldom been expressly referred to in the discussion and evaluation of HI, even though most arguments in the intervention literature fit the framework of the Just War tradition.³² It is very important to consider the moral and strategic questions of HI hand in hand since they are interconnected, though the tendency has been for most scholars to separate them.

³¹ James Turner *Morality and Contemporary Warfare* (1999), New Haven and London: Yale University Press p.22.

³² Mona Fixdal and Dan Smith *Humanitarian Intervention and Just War* (1998) *Mershon International Studies Review* p. 283-284.

The UN involvement either directly or indirectly in attempting to prevent a breach of international peace and security in places like Iraq (1990-1991 and 2002-2003) and Bosnia (1995), ushered in a commitment by the international community to cooperate and put an end to violent conflicts and increase human rights protection. However, a purely humanitarian motive is absent in most interventions, and this has raised concerns about the UN's dwindling role, especially in the second US led invasion of Iraq. This coupled with the lack of a strong and distinct legal character of the concept of HI has raised salient questions about the body charged with authorizing such interventions. As observed by Walzer, it is difficult to find examples of pure so called HI – the humanitarian aspect it is often one among several motives.¹¹⁰ The causes, motives, and outcomes of such interventions have often been characterized by contradictions, falsehood and uncertainties. But I believe that if HI is to be effective, it should be rooted and guided by the principles of JWT, no matter how difficult this may seem

Research hypotheses

- i. The norm regarding responsibility to protect on humanitarian intervention in East Africa with a view of examining the norms regarding humanitarian responsibility to protect.
- ii. There is significant influence of humanitarian norms on behavior in the international arena, or the evolution of the norm in East Africa
- iii. There impact of humanitarian intervention and responsibility to protects is high in the region East Africa

Justification of the study

The relevance of this study is find out whether or not the Responsibility to Protect norm is just a hollow norm which is of importance for its application during a humanitarian crisis. And what the effect of power politics is in applying a legal norm in the case of a humanitarian crisis.

This research is relevant from a scientific perspective. There is a lot written about the Responsibility to Protect-norm, but there is not much written about the influence of the implication of the norm on paper and in practice. The research question will give an inside in the establishment of one of the most important humanitarian intervention principles and explain why this norm of Responsibility to Protect, it is so important for other cases in the future Not only at the international community but also at the national level. This study also examines various shortcomings of Responsibility to Protect and how the doctrine can be modified to enhance its protection capacity.

Although humanitarian intervention as a concept has been a subject of scholarly debate for many years, its status in international law is still a matter of great contention. The main reason for this state of affairs is that the current ‘world order’ theory is still substantially sustained by the law of nations and its attendant emphasis on state sovereignty, non-intervention and the non-use of force. Being inherently in contradiction of these normative values, humanitarian intervention is bound to raise (as it has) legal controversy. The legality of humanitarian intervention has received considerable attention and engendered even more intellectual debate but continues to defy conclusive determination. The controversy continues to take on greater proportion with the continuous shift of international affairs from the nation-state centered perspective to one in which the protection of human rights as a matter of international concern is increasingly emphasized. Notwithstanding the controversy, humanitarian intervention still has the potential to play an important and integral role in the alleviation of human suffering and the ending of human rights atrocities across the globe.

Furthermore, this study is also inspired by the changes taking place in the world today. The end of the Cold War in the last decade has focused attention on international law, especially

in areas that hitherto seemed to elude legal control. Momentous events of recent years, such as the war on terrorism, have shown the tremendous potential for developing and applying international law even in areas that have presented the greatest challenge, such as the use of force.

Research methodology

The research design used in this study was descriptive survey method.³³ The qualitative design chosen for this research is natural inquiry theory. Natural inquiry theory research unfolds and emerges empirically from the data and is more responsive to contextual values rather than researcher values. According to Cooper and Schindler, descriptive statistics discover and measure cause and effect relationships among variables. The study uses a descriptive design because it enables the researcher to collect in-depth information about the population being studied. According to Jankowicz, surveys are particularly useful when you want to contact relatively large numbers of people to obtain data on the same issue or issues, often by posing the same questions to all.

The research employed a qualitative approach, which seeks to cover the exploratory, descriptive and explanatory elements of the research process. The research is considered exploratory, as it seeks to apply the norm life cycle concept to a norm which, for all intents and purposes, is still to be considered developing, and which, as will be argued later, on whether it has progressed through all stages of the norm life cycle, and entered into the internalization phase.

Other attempts at delivering a comprehensive analysis of norm development have tended to be more historical. Researchers have to date focused on assessing norm development

³³ Cooper D. R. and P. S. Schindler 2000, *Research Methods* (7th ed. New York: Irwin/McGraw-Hill, 2000) p 112

retrospectively, making use of the advantages brought with historical hindsight. Thus, norm development research has focused on the rise of environmentalism³⁴, the development of anti-apartheid thinking³⁵, the abolition of the slave trade, the emergence of human rights, and the fortification of gender equality.³⁶ Yet very little work has been conducted on norms which are still in the development process, and where their application or strength has not been tested several times.

Whilst it is possible to understand norm development from a historical point of view, it is more difficult to be able to predict the development trajectory of a newly developed or still developing norm. Yet an enhanced understanding of norm development, and the factors which are most likely to impact on the development trajectory of a norm, are critical to generating an enhanced understanding of which normative frameworks are more, and which less, useful to contemporary international society. Such an understanding is critical to the creation and operationalisation of structures and systems which have meaning, and which are relevant to their intended purpose.

It is therefore not assumed that only the theory can inform the validity of the findings, or that the findings can inform the validity of the theoretical approach, but that both the theoretical approach and the findings generated through the application of this approach must inform one another.

Descriptively, each section of the research lays out a chronological sequence of events, paying attention to the manner in which each affects another, but going further by articulating a

³⁴Conca, K. 1995. "Environmental Protection, International Norms, and State Sovereignty: The Case of the Brazilian Amazon" in Lyons, G. M. and Mastanduno, M. (Eds.) *Beyond Westphalia? State Sovereignty and International Intervention*. Baltimore: Johns Hopkins University Press. pp. 147 – 169.

³⁵Klotz, A. 1995. "Norms Reconstituting Interests: Global Racial Equality and U.S. Sanctions Against South Africa". *International Organisation*. Volume 49. Number 3. Summer Edition. pp. 451 – 478.

³⁶Finnemore, M. and Sikkink, K. 1998. "International Norm Dynamics and Political Change". *International Organisation*. Volume 52. Number 4. Autumn Edition. 887 – 917.

cohesive structure for the analysis of these events by configuring them in a particular manner which emphasises aspects of importance for the purposes of the research. Finnemore, borrowing from John Ruggie (who in turn adapted it from the work of Charles Pierce) labeled this approach ‘abduction’. Abduction, as described by Finnemore, is neither a process of deduction nor of induction, but a dialectical combination of the two. In each case of analysis, deductively derived hypotheses that shape the initial design of the inquiry are presented, but these are quickly shown to be limited in their explanatory power of events. Consequently, deductive arguments are supplemented with inductively derived insights to create an understanding of events which is plausible to others conducting a similar analysis.³⁷ This approach contains considerable advantages to the research undertaken here, as, as also noted by Finnemore, no deductive arguments about the changing purpose of force are sufficiently well specified to test with dispositive results. On the other hand, the use merely of induction does not provide clear guidance as to where the process of inquiry should commence. Thus, combining both deduction and induction provides a good starting point for the research, but also allows the research design to be flexible enough to meaningfully evaluate the usefulness of findings in a reflexive manner.³⁸

Building on this approach, the research will also make use of discourse analysis as a primary means of investigation. Using the state international organisations and the bureaucratic officials of international organizations as the units of analysis, the research seeks, through a review of primary (official records, communiqués, statements, speeches, submissions and other forms of documentation) and secondary (academic research, analyses of primary materials, reports, media analyses and other forms of documentation) source material to apply discourse analysis to generate, compare and assess findings.

³⁷Finnemore, M. 2003. *The Purpose of Intervention Changing Beliefs about the Use of Force*. Cornell University Press : Ithaca.

³⁸Ibid

Chapter outline

Chapter 1: Introduction a brief background of the research opportunity and the proposed objectives of the study are presented here, the methodology of the research is also introduced in this chapter.

Chapter 2: Emerging Norms in justified Humanitarian Interventions A theoretical overview normative status of responsibility to protect where a definition of international norm, status of responsibility to protect as a norm and the norm of humanitarian intervention and its implication to responsibility to protect will be presented.

Chapter 3: A presentation of international perspective to responsibility to protect borrowing from the international community at the world summit and the 2009 general assembly will be highlighted in this chapter.

Chapter four will be dedicated to the examining the burying of the norm of Humanitarian intervention by the norm of R2P.

Chapter five will have a presentation of international discourse on the doctrine of R2P.

CHAPTER TWO

HUMANITARIAN RESPONSIBILITY TO PROTECT: A CHRONOLOGICAL SET OF INTERVENTIONS

Introduction

Human beings remain at the mercy of civil wars, insurgencies, state repression and state collapse. This is a stark and undeniable reality, and it is at the heart of all the issues with which this Commission has been wrestling. What is at stake here is not making the world safe for big powers, or trampling over the sovereign rights of small ones, but delivering practical protection for ordinary people, at risk of their lives, because their states are unwilling or unable to protect them.

External military intervention for human protection purposes has been controversial both when it has happened as in Somalia, Bosnia and Kosovo and when it has failed to happen, as in Rwanda. For some the new activism has been a long overdue internationalization of the human conscience; for others it has been an alarming breach of an international state order dependent on the sovereignty of states and the inviolability of their territory. For some, again, the only real issue is ensuring that coercive interventions are effective; for others, questions about legality, process and the possible misuse of precedent loom much larger. NATO's intervention in Kosovo in 1999 brought the controversy to its most intense head. Security Council members were divided; the legal justification for military action without new Security Council authority was asserted but largely not argued; the moral or humanitarian justification for the action, which on the face of it was much stronger, was clouded by allegations that the intervention generated more carnage than it averted; and there were many criticisms of the way in which the NATO allies conducted the operation.

At the United Nations General Assembly in 1999, and again in 2000, Secretary-General Kofi Annan made compelling pleas to the international community to try to find, once and for all, a new consensus on how to approach these issues, to “forge unity” around the basic questions of principle and process involved. He posed the central question starkly and directly 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 affect every precept of our common humanity. It was in response to this challenge that the Government of Canada, together with a group of major foundations, announced at the General Assembly in September 2000 the establishment of the International Commission on Intervention and State Sovereignty (ICISS). Our Commission was asked to wrestle with the whole range of questions – legal, moral, operational and political – rolled up in this debate, to consult with the widest possible range of opinion around the world, and to bring back a report that would help the Secretary-General and everyone else find some new common ground.

The changing nature of the international system since the end of the Cold War has witnessed a normative shift in international security with an entrenchment of human rights regimes and the emergence of a concern for human security. Scholars note the human security paradigm has broadened the scope of security by widening the threats and deepened it by extending the referents of security beyond the traditional state-centric view to the individual and onto supranational groups.³⁹Constructivists posit that this shift in the normative framework of security and the change in referent object emphasize a world of rising non-traditional actors, and non-conventional and transnational issues of concern. The emerging shift in the international norms of relationship between the power of the state and non-state actors in a globalizing world

³⁹Alexandra Amouyel, “What is Human Security?,” *Human Security Journal* no. 1 (2006): 17

“leaves a clear message: the state is no longer able to monopolize the concept and practice of security.”⁴⁰

Finnemore and Sikkink define the term norm as “a standard of appropriate behavior for actors with a given identity.”⁴¹ There are different types of norms, the most common distinction “is between regulative norms, which order and constrain behavior, and constitutive norms, which create new actors, interests, or categories of action.”

Humanitarian Responsibility to Protect in the East Africa

The need to build a more effective system for the protection of vulnerable populations in Africa could hardly be clearer or more urgent. The Project Ploughshares 2005 *Armed Conflicts Report* states that, of the 32 intra- and inter-state armed conflicts ongoing in 2004, 14, or close to 50 per cent, were in Africa. The East is among the most conflictive and insecure areas of the world. In East Africa, it is estimated that there are over 30 violent conflicts currently underway in the IGAD region, most of which are pastoral in nature, and four of which are designated as ‘severe’.⁴² The ongoing struggle to end the scourge of lawlessness and warlordism in Somalia, together with the still unfolding human tragedies both in Northern Uganda and the Darfur region of Sudan, are but the three most conspicuous examples of the pervasive threats faced by communities in the region. It has become a commonplace but all too horrifying observation that civilians, and particularly women and children, bear the overwhelming burden of suffering and loss associated with armed conflicts.⁴³ Conflicts in East Africa, continue to be characterized by

⁴⁰Gerd Oberleitner, “Human Security: A Challenge to International Law?,” *Global Governance* 11, no. 2 (2005): 190.

⁴¹Finnemore, M. and Sikkink, K. 1998. “*International Norm Dynamics and Political Change*”. International Organisation. Volume 52. Number 4. Autumn Edition. 887 – 917.

⁴² Kwakwa (1994) p.32

⁴³ Bohman and Lutz-Bachman Introduction in *Perpetual Peace* (1997) MIT Press p.18.

the recruitment and use of child soldiers, the indiscriminate use of landmines and small arms, the deliberate targeting of civilians, widespread and systematic abuses of international humanitarian law, and large-scale forced displacement. Indeed, the African Union reports that the continent is currently home to three million refugees, and at least 20 million displaced persons. The direct and indirect impact of armed conflict on people and communities in Africa, and particularly on the most vulnerable, could scarcely be exaggerated.

Although circumstances arising from organized armed conflict pose perhaps the greatest threat to the safety of people and their communities across the region, it would be a mistake to equate the protection of vulnerable populations solely with the need to prevent and respond to war and its attendant atrocities. The continent experienced 186 coups d'état between 1956 and 2001, half of which occurred in the 1980s and 1990s. In parts of the continent failed or failing states, economic collapse, corrupt or compromised judiciaries, serious human rights violations, and a persistent culture of impunity all contribute to situations where communities are faced by extreme and imminent peril, and where the state concerned is unwilling or simply unable to provide basic security, or is itself the perpetrator. In this eleventh anniversary year of the Rwandan genocide, the point hardly needs to be belabored that the response to such communities by both their African neighbors and the world at large has, in many cases, been woefully inadequate. Despite years of commitment to tackle 'root causes', many of the underlying conditions leading to the resort to violence, including economic and political marginalization, poor governance, and the easy availability of arms, have not been fundamentally reversed. In addition, massive new challenges to security and development, like environmental degradation and the spread of communicable disease, threaten to further destabilize large parts of the continent. Organized efforts to prevent the escalation of nascent conflict, including crisis

diplomacy and the imposition of sanctions, have often proven inadequate or ineffective. And once a crisis has escalated to the point of imminent or outright disaster, the impulse of many to intervene to stop the suffering has often been thwarted by the pre-eminent norm of ‘non-interference’ and a prevalent culture of apparent indifference in both African and international community.

Intervention in East Africa: challenges of principle and practice

In those extraordinary circumstances, as in Somalia, where forced intervention has occurred, results have been mixed. Intervention has often been as controversial as non-intervention. Some critics both on and off the continent have worried that military interventions weaken the fundamental restrictions on the use of force by states, undermining the principle of sovereign equality that is one of the few defenses of the weak against the powerful. This consideration is often raised particularly in light of the continent’s colonial past.⁴⁴

Others have pointed out that in the case of East Africa states, without effective control over the entirety of their territories and with their legitimacy challenged among significant elements of their populations, sovereignty is more legal fiction than practical reality. These critics have not been so alarmed by the prospects of neo-imperialism, and have tended to wonder why intervention has occurred in some cases, while not in others. Still others have asked, with good reason, why crises are allowed to escalate to disastrous proportions before serious political attention is paid, and why military responses often seem to be preferred to non-military ones. These latter concerns have fuelled latent suspicions that there exists a fundamental unwillingness to understand and confront the deeper structural causes of conflict. When they have occurred,

⁴⁴ Article 1(1) of the UN Charter

interventions for human protection purposes in Africa have also been plagued by a series of more practical problems. The time-consuming complexities of mandating and organizing a complex mission have often meant that help has arrived too late

Coordination between military and humanitarian actors has proven difficult and has raised troubling ethical and operational questions for both sides. Other civilian skills so necessary to complex protection operations, for example human rights monitors, have been difficult to integrate effectively. Financial challenges have also proven extremely difficult to overcome. Military interventions are necessarily costly endeavors, and the resources have seldom been available to implement the kind of long-term, post-conflict reconstruction programs necessary to prevent re-escalation and lay the groundwork for lasting peace and security.

It has also proven difficult to convince the larger military powers to commit troops and equipment to missions that are not perceived to touch upon vital national interests. This has left the lion's share of human resources to be provided by poorer countries which, despite the valour and professionalism of their troops, are less well equipped and often lack the infrastructure necessary for effective coordination and inter-operability. Training and configuration of forces have traditionally been oriented more toward classic 'Chapter VI'

UN Peacekeeping missions, or toward traditional war-fighting, than toward the dangerous and demanding roles required in complex emergencies. And even when the appropriate military capacity has been deployed, it has sometimes been hampered by political mandates that restrict the freedom of field commanders to take appropriate action to save lives. In recent years, many stakeholders in Africa and in the broader international community have recognized that these serious questions of principle and practice need to be confronted in a much more urgent and comprehensive way. At the international level, the International Commission on Intervention and

State Sovereignty was established to help shake the world out of its indifference and political paralysis. And within Africa, the new east African Union and the various sub-regional organizations are establishing a bold new peace and security architecture designed to take a more proactive and coordinated approach to preventing and responding to serious crises both within and between East African states.

ICISS and *the Responsibility to Protect*

In an address to the General Assembly in 1999, United Nations Secretary-General Kofi Annan laid out the terms of the longstanding controversy around the so-called ‘right of humanitarian intervention’, the seeming contradiction between the need to respect the external sovereignty of states, and the moral imperative to come to the aid of populations facing extraordinary peril. ⁴⁵Reflecting on the failure of the international community to prevent the human catastrophes of the 1990s in Rwanda, Bosnia, and elsewhere, the Secretary-General 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 affect every precept of our common humanity?” His response to this dilemma was unequivocal: “Surely no legal principle – not even sovereignty can ever shield crimes against humanity. The sovereignty of states must no longer be used as a shield for gross violations of human rights.” However, the Secretary-General’s assertion begged as many questions as it answered. Where is the line to be drawn between a legitimate defense of people’s rights and an unacceptable breach of internal affairs? Who is to carry out interventions, and on whose authority? To whom are interveners to be held accountable? How can interventions be managed in a way that efficiently and effectively responds to the needs of the most vulnerable

⁴⁵ Newman & Weissbrodt (1996) p. 223

populations? Annan challenged the international community to face all of these questions head-on and forge a new consensus on the central questions of principle and procedure around sovereignty and intervention. Canadian Prime Minister Jean Chrétien responded to this challenge in 2000 when he announced that Canada would partner with a number of major foundations to support the creation of the International Commission on Intervention and State Sovereignty. The Commission was co-chaired by Gareth Evans, former Foreign Minister of Australia, and Mohamed Sahnoun, Special Advisor to the UN Secretary-General. The 10 additional members of the Commission were distinguished people from diverse national and professional backgrounds, bringing a wide range of expertise and perspectives to the debate. The major conceptual shift inherent in the findings of the commission was to reconfigure debate not in terms of the purported 'right' of potential interveners but rather in terms of the 'responsibility' of the broader international community to people facing extraordinary crisis. This shift, argued the commissioners, was a result of looking at the issue from the perspective of those in danger, rather from that of the potential interveners. It rightly makes the vulnerable themselves the direct subject of the debate, rather than bit players in a high political drama over which they themselves have little to no control. The central theme of the report is "the responsibility to protect," or "the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states." Importantly, the Commission suggests that the 'responsibility to protect' implies a much broader commitment than the controversial 'right to intervene'. The Commission identified three distinct and inter-related dimensions of this responsibility, which were defined as follows: The responsibility to prevent: to address both the root causes and direct causes of internal conflict and

other man-made crises putting populations at risk. The responsibility to respond to situations of compelling human need, with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention. The responsibility to rebuild: to provide, particularly after a military intervention, full assistance with recovery, reconstruction, and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.⁴⁶

Africa has hosted some of the world's most brutal violent conflicts and civil wars. The continent is currently at a crossroads where policy makers, civil society and the international community all concede that the past atrocities such as in Rwanda or intra-state wars like Liberia, Sierra Leone, and Burundi must serve as a learning curve for preventing recurrence in the future.

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However, implementing the doctrine of R2P is proving difficult. African States irrespective of their political configuration, wealth or stability adhere to the principle of sovereignty. For a long time this was a sacred understanding among African States. However, the conversion of the Organization for African Unity (OAU) to the African Union (AU) chipped away at the invincibility of the sovereignty principle. Though one of the AU's core objectives is to "Defend the sovereignty, territorial integrity and independence of its Member States", the organization in a attempt to redress the weakness of the OAU gives the Union the "right to intervene" in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity.

⁴⁶ *Uniting for Peace Resolution Res 377 (V)* of 3 November 1950

⁴⁷ Mortimer (1998) p. 120

The AU uses the phrase “right to intervene” and not “responsibility to protect”. However, there are similarities between the AU’s framework for collective security and R2P. Both call for intervention in severe cases of violations of human rights and widespread killings, e.g. genocide. The AU also includes war crimes and crimes against humanity, no doubt in response to the fresh memories of Rwanda, Liberia and Sierra Leone. The similarities also extend to the challenges shared in implementing the AU’s brand of collective security and R2P. These challenges are clearly visible as the AU and the international community has been unable to fully enforce the R2P doctrine in the ongoing crisis in Sudan’s Darfur region. These challenges have led to questions of the viability of the doctrine.

The international community has been handicapped by a variety of factors that kept it from intervening in Sudan. As good as R2P sounds, it seems that the international community is stuck in wrangling over competing national interests in the UN’s Security Council, worsened by the current political landscape of the so-called ‘war on terror’. The former US Secretary of State, Collin Powell called the situation genocide, but the US and its allies weakened by Iraq, are hesitant to take action against another Islamic State. The responsibility to respond was given to the United Nations, but the question of who was best suited to intervene in the crisis became the subject of regional and international debates.

At the continental level, the AU stopped short of calling the conflict genocide but there is consensus that the crisis is shocking to the conscience of humanity. Though the AU is a more acceptable intervening body to the Khartoum government than the UN, the experiences of the AU in Darfur have revealed the lack of capacity to embark on large-scale interventions. The experience also highlights the complex relationship between Africa and the international community. At the core of the relationship is the interaction between the AU and the UN⁶. This

interaction is one of the main hurdles associated with the implementation of R2P in Africa. At the global level, the UN remains the only body with the right to decide on interventions into a sovereign state. The UN Charter states that member states should refrain from using threat or the use of force against the territorial integrity or political independence of any state. However when the UN has been unwilling or unable to promptly respond to crises in Africa, the AU and Regional Economic Communities, listed in the UN Charter as regional and sub-regional organizations respectively, have in the past embarked on decisive interventions, in some cases without the prior permission of the UN - the pioneering example being the ECOWAS Cease Fire Monitoring Group's (ECOMOG) intervention in Liberia. This was the first intervention by a sub regional organization using its own troops, resources and logistics without the express permission of the UN⁷. However, the UN subsequently legitimized the intervention.⁴⁸

In the case of Sudan, the AU intervened without the requisite financing or manpower. The African Union Mission in Sudan (AMIS) at its largest was a 7,000 strong force. This force has been unable to protect all civilians under threat. The AU's logistical handicap became evident resulting in the AU agreeing to revert control back to the UN. However, the Khartoum government's refusal of a exclusive UN force has resulted in the creation of a hybrid UN-AU force, to which the government has agreed to "in principle". Some have said that the AU mission was a failure. This remains to be seen. AMIS proved that African leaders have the political will to intervene in conflict situations and are willing to implement the principle of collective security articulated in the AU Constitutive Act⁸.

⁴⁸ United Nations General Assembly Res. 2131 (XX) of 21 Dec. 1995

However, it is also evident that the AU needs substantial financial and logistical support to intervene in the conflicts on the continent. This support extends to implementing the three foundational responsibilities listed under R2P; Prevent, React and Rebuild.

Responsibility to prevent

Measures to disarm the Janjaweed militia said to be responsible for the majority of the killings and rapes in the Darfur region of the country. The Khartoum government largely ignored these communiqués and the atrocities have continued. In addition to this, member states have also been known to be responsible for conflicts in neighboring states for their own national interests which is often economical, e.g. Liberia in Sierra Leone, Cote d'Ivoire in Guinea and Rwanda, Uganda in DRC. The impact of this at regional and continental levels is that states profiting from conflicts act as spoilers to initiatives that aim to mitigate the situation⁴⁹.

In relation to prevention of genocides and war crimes, one key question asked on the continent is what is an extreme circumstance? The international community was slow to intervene in the Liberian conflict in 2003, though evidence of widespread killings by government and rebel forces was clear. The subjectivity in assessing extreme situations undermines the importance of implementing this new international norm. The argument that Iraq was an extreme case, while Liberia was not, raises skepticism that interventions under R2P will also be based on the geo-strategic value of countries requiring preventive intervention than on the need to protect civilians.

⁴⁹ Shaw (1991) p. 60

Responsibility to React

The responsibility to react under the R2P calls for collective reaction to situations of compelling need for human protection. The doctrine emphasizes that this action can only be taken after all preventive measures fail. These include what the literature calls political, social and judicial measures and where all of these fail, military action.

There have been varied reactions to the crises in Africa. Economic sanctions have been issued against several African states to compel them to comply with conditions imposed by the international community. In all instances, these sanctions have mainly impacted the already poor and oppressed and not their leaders who are usually the targets of the sanctions. Furthermore, experience has shown that sanctions further isolate so-called “pariah” states and are not effective. International sanctions on African states also have the effect of invigorating unity amongst African governments, who see each other as “brothers”. This unity affects the ability of states to embark on punitive collective action. A good example of this scenario is the current situation in Zimbabwe. Generally, African leaders do not support the antics of the Zimbabwean government. But the isolation and sanctions levied on the country by the international community persuaded most states to seek other forms of engaging the country.⁵⁰

Apart from economic sanctions, the AU Constitutive Act gives African Heads of State and Government the right to intervene in member states through the use of force. The African Standby Force (ASF) is another pillar of the AU’s Peace and Security Council and will serve as a rapid response force to keep and maintain peace. The ASF will comprise of standby brigades in

⁵⁰ *jus cogens* is a term usually used to denote a body of overriding or ‘peremptory’ norms of such paramount importance that they cannot be set aside by acquiescence or agreement of parties to a treaty. That treaty law cannot overthrow customary norms constituting *jus cogens* is enshrined in Article 53, 1969 Vienna Convention on the Law of Treaties.

each of the 5 regions on the continent, and will incorporate police and civilian expert capacity. The aim is to have the ASF operational by 2010. Most believe that this timeframe is too ambitious and may not be attained. As the ASF consolidates its capacity, the AU has used the structure to intervene in Burundi and Sudan. In the case of Darfur, AMIS personnel lacked training, operational capacity and political initiative to achieve its mandate¹². The challenges of such interventions highlight the need for the AU to embark on a realistic evaluation of its capacity to deploy a response force that can make a substantive impact on the situation.

Responsibility to Rebuild

The third component of the R2P is the responsibility to rebuild. This asserts that the responsibility to protect is not complete without a commitment to rebuilding societies in the aftermath of military interventions. Failure to adhere to this responsibility results in countries degenerating into deeper societal chaos post military interventions. This post conflict stage is where the R2P and the newly established UN Peace building Commission are linked. The UN Secretary General in his adoption of the Peace building Commission stated that countries emerging from war reverted back to violence within five years of signing peace agreements. This fact has been witnessed repeatedly in Africa, e.g. Liberia, Cote d'Ivoire and DRC.

Some of the weaknesses of post conflict peace-building in Africa include poor financing and absence of long-term commitment to reconstruction. UN missions have also prematurely withdrawn from countries without ensuring that functional state institutions are in place to govern. The PBC's main responsibility is to focus attention on the reconstruction and institution building efforts necessary for recovery from conflict and support initiatives that will usher in development. As with the R2P, Africa's serves as a test case to gauge the efficacy of the PBC, with Sierra Leone and Burundi being the first countries on the Commission's agenda.

In this regard it is important to note that both the rebuilding within the R2P and the PBC can-not be successful without the involvement of lo-cal actors. Rebuilding should not be prescriptive and the international community should not apply a “one size fits all” attitude to assisting countries in transiting from war to peace. Recent consultations in Sierra Leone have revealed that the PBC is welcome to the extent that it can re-energize post-conflict peace building in the country and address issues like poverty, unemployment, corruption, human rights violations and lack of social infrastructure¹³. It is also key that rebuilding processes are engendered to address the impact of crises on women and men¹⁴. Inter-national instruments like the UN Security Council Resolution 1325, and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa should serve as monitoring tools to gauge progress of integrating gender concerns into post conflict rebuilding. One of the pillars of the R2P doctrine is the responsibility to prevent. The principle argues that more effort should be put into prevention rather than intervention. The responsibility to prevent as with the responsibility to protect primarily lies with the State and its institutions. The ICISS re-port posits that factors like good governance and accountability provide a foundation for con-flict prevention. African governments also share this view. The New Partnership for African De-velopment (NEPAD), through the African Peer Review Mechanism (APRM), provides a frame-work through which states are assessed to gauge their performance in areas of good gov-ernance⁹. That a few states have acceded to be reviewed by the mechanism signals a positive step towards addressing endemic corruption and bad governance that have characterized many African states, and are at the root causes of conflicts. However, since the review process is vountary, severely oppressive states with poor governance systems will most likely not accede.

Conflict prevention is also high on the agenda of African governments. The continent has made significant progress in developing an effective conflict early warning and response system. At the continental level, the AU is in the process of developing a Continental Early Warning System (CEWS) as one of the pillars of the Peace and Security Council. The CEWS is tasked with providing the Chairperson of the Commission with information in a timely manner so that he/she can advise the Council on “potential conflicts and threats to peace and security” and “recommend best courses of action”¹⁰. It is expected that warning and response systems operating at the sub-regional level will feed into the AU’s system. However, there is a long way to go before this can be realized. Only the Economic Community of West African States (ECOWAS) in West Africa and Intergovernmental Authority on Development (IGAD) in East Africa and the Horn has functioning warning systems and both are more advanced than the AU’s.

Another conflict prevention mechanism in the Peace and Security Council is the Panel of the Wise. The protocol calls for this panel to consist of five highly respected African personalities from various segments of society who have made outstanding contribution to the cause of peace, security and development on the continent. This panel is expected to advise the Peace and Security Council and the Chairperson of the Commission on all issues pertaining to the promotion of peace and stability on the continent. The Panel is not fully operational but the AU can learn from the experiences of ECOWAS’ attempts to implement a similar structure. ECOWAS operates a Council of Elders system, which involves prominent elder statesmen and women playing mediatory roles in conflict situations on the region.⁵¹

⁵¹ United Nations General Assembly Res. 2131 (XX) of 21 Dec. 1995

The security architecture in Africa also provides space for civil society to act as partners with States to govern and prevent conflict. The AU's Constitutive Act established as one of the organs of the Union the Economic, Social and Cultural Council (ECOSOC). Structured like the UN's version, the ECOSOC has an advisory capacity and provides an avenue for a cross section of CSOs on the continent to input on peace, security and development issues. The ECOSOC meets annually and outcomes of the meetings are fed to the Heads of State summit. Regional configurations of the ECOSOC also exist. For example the West African Civil Society Forum (WACSOF), the involvement of CSOs signals progress in the recognition that collective responsibility to prevent crises and atrocities means including non-state actors in the governance process. This was typically absent in the OAU. However civil society's collective ability to engage in preventive initiatives is hampered by weak structures inherent in civil society, poor coordination and networking. Civil society in Africa has also been criticized for being unregulated and in many cases not accountable for their actions. Thus, there have been calls that civil society should be subjected to the same good governance standards that governments are called to adhere to¹¹.

There is no doubt that the AU is committed to trying to prevent violent conflicts and other atrocities. But its ability to prevent is often undermined by member states that do not abide by the ideals of the AU or respect the recommendations emanating from its security apparatus. For example, the Peace Security Council released several communiqués asking the Sudanese government.

Humanitarian Interventions During The Cold War

Due to the bipolarity of the Cold War, instances of humanitarian responsibility to protect from 1945 to 1989, though grounded in humanitarian intent, were primarily unilateral in

operation and best explained through the lens of security. Briefly investigating three responsibility to protect provides the basis for a comparative understanding and analysis of post- Cold War cases of responsibility to protect. Wheeler states that the “legitimizing reasons employed by governments are crucial because they enable and constrain actions.”⁵² In arguing that legitimacy is constitutive of state actions, Wheeler stresses that “state actions *will be constrained if they cannot be justified in terms of plausible legitimating reason.*”⁵³

The three primary cases of unilateral responsibility to protect with humanitarian bases during the Cold War are India’s use of armed force to stop the atrocities in East Pakistan in 1971; Vietnam’s defeat of the Pol Pot regime in Cambodia in 1979; and Tanzania’s overthrow of Idi Amin’s brutal regime in Uganda in 1979. This chapter will focus on one specific Cold War case of humanitarian intervention the case of Indian intervention in East Pakistan.

The infamous regime of the Khmer Rouge in Cambodia was one of the worst in the History of mankind. In less than three years of effective government, as much as one-sixth of Kampuchea’s six million people may have died at their hands. On 25 December 1978, after a series of border incidents between the two communist neighbors, Vietnamese forces invaded Kampuchea together with a small Kampuchean

Since the independence and partition of the Indian sub-continent in 1947, Pakistan had rebel faction, the National United Front for National Salvation. On 7 January 1979, the capital of Phnom Penh was captured. The Vietnamese forces soon established control over most of Kampuchea’s territory and installed a new government composed of United Front members. However, Vietnam never claimed that they had intervened to protect human rights in Kampuchea. They put forward a two wars.-theory, claiming that the incident had been

⁵² Ibid., 287.

⁵³ Wheeler, *Saving Strangers*, 287, emphasis in the original.

composed of the conflict between Vietnam and Kampuchea and a separate Kampuchean civil war. Regarding the former, they claimed self-defense, while the latter had been fought by the Kampuchean rebel forces, which by themselves had overthrown the Khmer Rouge regime. Many scholars dismiss the incident as a true humanitarian intervention for this reason. Neither Tésou, a supporter of the doctrine, nor Verwey mentions it at all. But as said earlier, I do not think that statements of motive should be taken for granted; if the facts indicate otherwise, they should be taken in consideration. And the Kampuchean case was no doubt .a perfect candidate for humanitarian intervention considering the scale of the human rights violations which has been divided into West and East Pakistan, both ruled from Islamabad. In March of 1971, political unrest, due to the lack of adequate representation and voice in the National Assembly, erupted in East Pakistan. Without warning “the West Pakistani army started killing unarmed civilians indiscriminately, raping women, burning homes, and looting or destroying property.”⁵⁴ At least one million people were killed and an estimated nine to ten million refugees fled across the border into West Bengal, India.

The strategic motives behind all these interventions and the origin of those whose rights were being defended threw into question the humanitarian character of the intervention. The lack of a prohibition on the use of force in international relations was an important reason to explain the existence of this practice. Therefore, it can be said that international lawyers discussed it within the framework of just wars. Partly due to the efforts to outlaw the use of force after World War I, there was a decline in the practice during the first half of the twentieth century. As to the question of whether this historical practice was offering enough precedents to establish itself as a doctrine of humanitarian intervention in customary international law, the majority of scholars tended to refuse it, especially in the absence of consistent state practice and opinion. Yet, Nordic

⁵⁴ Finnemore, *The Purpose of Intervention*, 75.

interpretation generally accepts that a traditional doctrine of humanitarian intervention was established during this period. The UN Charter introduced a new solution to the use of force in international relations by endeavoring to qualify the use of force in international society and imposing limits upon it. First, it extended the doctrine of non-intervention to all states and made it a universal norm for the first time in history. Second, it allowed the use of force only in case of self-defense or collective security measures under Chapter VII of the Charter. By doing so, it left the threat to international peace and security as the only possible justification for intervention in the domestic affairs of a state. Moreover, all acts of intervention were subject to authorization by the UN, acting as the representative of the international community.

Along with the emergence of non-intervention as a universal norm, a UN-initiated parallel development was in conflict with this principle: the development of human rights as a global issue. Article 1 of the Charter emphasizes promoting respect for human rights and justice as one of the fundamental missions of the organization. Article 55 states that the UN shall promote and respect the human rights and basic freedoms, and subsequent UN initiatives have strengthened these claims.

Humanitarian intervention, as the most assertive form of promoting human rights at a global level was clearly incompatible with norms such as non-intervention and state sovereignty.¹¹

As a result, with some restrictions, the UN Security Council has, since 1945, had the right to authorize the use of force to end human rights violations as well as to authorize non-forcible measures. Yet, practice throughout the Cold War period shows that, contrary to this expectation, the Security Council was hardly able to implement the UN Charter's provisions on collective security due to ideological competition and global confrontation between the two superpowers, the emergence of China as a global player, the emergence of Third World countries (especially

their valuation of sovereignty), North-South division and so on. Due to the impossibility of collective action endorsed by the UN, the issue of intervention became understood as forcible self-help by states to defend human rights in other countries. Hence, there were some unilateral interventions, which are given as recent examples of humanitarian intervention.

The well-known examples that could be said to emerge from humanitarian concerns are the Indian intervention in East Pakistan (later Bangladesh), the Tanzanian intervention in Uganda and the Vietnamese intervention in Kampuchea. Despite the existence of other motives, they may be labeled humanitarian intervention to the extent that they were responses to humanitarian crises.⁵⁵ But the striking point common to all these cases is that, in spite of the existing humanitarian catastrophe in all these cases and the possibility of justifying these interventions on humanitarian grounds, those intervening did not behave in this way. They rather relied on self defense as their legal justification. Furthermore, intervening states' "actions were generally condemned and in some

Wheeler, notes that "in the face of mass killing in East Pakistan, the overwhelming reaction of the society of states was to affirm Pakistan's right to sovereignty and the rule of non-responsibility to protect."⁵⁶ He further notes the Cold War bipolarity, with the U.S. and China aligned with Pakistan and the Soviet Union supporting India. This presence of two opposing camps within the UN Security Council prevented effective pressure being placed upon Pakistan to end the growing conflict.⁵⁷ Following what Finnemore describes as months of tension, border skirmishes, and increased pressure due to the vast flow of refugees and before the indecisive Security Council decided to act India deployed troops to East Pakistan. After just twelve days of

⁵⁵ Kwakwa (1994) p.32

⁵⁶ Wheeler, *Saving Strangers*, 58.

⁵⁷ *Ibid.*, 59.

fighting the Pakistani army surrendered at Dacca, and “thereby enabled the birth of an independent Bangladesh.”⁵⁸

Initially, the Indian delegation to the UN articulated humanitarian grounds for their justification of responsibility to protect to support the Bangladeshis.⁵⁹ This claim was rejected by a varied group of states including the United States, Argentina, Tunisia, China, and Saudi Arabia. These countries argued “that principles of sovereignty and non-interference should take precedence and that India had no right to meddle in what they all viewed as an internal matter.” In response, the Indian delegation retracted all statements to the effect of humanitarianism, and India “justified its action as lawful self-defense against the floods of refugees unleashed by Pakistan’s brutality.”⁶⁰

Ambassador Sen argued that Pakistan had committed a new crime of “refugee aggression.” and asserted that “the meaning of ‘aggression’ should also encompass the aggression that resulted from ten million people coming into India as refugees.”⁶¹ Wheeler quotes Ambassador Sen saying:

Now, was that not a kind of aggression? If aggression against another foreign country means that it strains its social structure, that it ruins its finances, that it has to give up its territory for sheltering the refugees, what is the difference between that kind of aggression and the other type, the more classical type, when someone declares war or something of that sort⁶².

⁵⁸ Thomas Franck, “Interpretation and Change in the Law of Humanitarian Intervention,” in *Humanitarian Intervention*, ed. Holzgrefe and Keohane, 216. PP 23

⁵⁹ UN SCOR (XXVI), 1608th mtg., December 6, 1971, by Franck, “Interpretation and Change in the Law of Humanitarian Intervention,” 216.

⁶⁰ Finnemore, *The Purpose of Intervention*, 76.

⁶¹ UN SCOR, 1606th Meeting, December, 15, by Wheeler, *Saving Strangers*, 61. 1971

⁶² See Roger Cohen, ‘African genocide averted’, *New York Times*, 3 March 2008.

From a humanitarian perspective, the most promising difference between the cases of intervention by India, Vietnam, and Tanzania and the post-Cold War cases discussed in the next section of this chapter is the emphasis on the requirement of humanitarian intervention to be considered legitimate by international society.

This is due primarily but not entirely to the removal of the threat of super-power war. In all the cases below, save Kosovo, UN Security Council authorization was granted. Before the end of the Cold War, Hedley Bull noted the era of increased attention to human rights and an increased focus on the UN was bound to see a resurgence of principles of humanitarian intervention⁶³. Bull⁶⁴ stated, “Ultimately, we have a rule of non-intervention because unilateral intervention threatens the harmony and concord of the society of sovereign states.” “if however, an intervention itself expresses the collective will of the society of states, it may be carried out without bringing that harmony and concord into jeopardy.”⁶⁵ Some might wonder if Bull had a U.S.-led and NATO-sponsored humanitarian operation such as Kosovo that did not receive a tacit UN Security Council authorization in mind.

Normative status of responsibility to protect

The conceptual core of the principle of responsibility to protect as drawn out in ICISS has two elements. It was first concerned with a shift in the understanding of sovereignty from “sovereignty as control” to “sovereignty as responsibility”.⁶⁶ In this regard, sovereignty is no longer to be understood as a right to perform whatever internal actions the state pleases. In this report, the reason for sovereignty, it is submitted, is at base the protection of the people’s most

⁶³ Wheeler, *Saving Strangers*, 64-65.

⁶⁴ Bull (1984a: 3, 1984b: 195). The important difference between ‘carried out by’ and ‘expresses the collective will of’, that is, process and substance, is briefly discussed in Shue (1998a: 60-84).

⁶⁵ *Ibid.*, 295.

⁶⁶ ICISS, *The Responsibility to Protect*, p. 14

fundamental rights from the most egregious acts of violence, and as such sovereigns have an inviolable responsibility to fulfill this protection. Secondly, it was concerned with an element that, while the state has primary responsibility for protecting its citizens, if the state should be unwilling or unable to fulfill that mandate, then the responsibility shifts to the international community.⁶⁷

The core principle of responsibility to protect is to fulfill what Ramesh Thakur calls “responsibility deficit” that arises when the state fails to fulfill its primary obligation.⁶⁸ This core is a broad vision of human protection and the assignation of responsibilities to ensure it. It imposes a responsibility on states to not harm and to pro-actively protect their populations; and imposes a responsibility on the wider community to engage in appropriately authorised and multilateral actions – including, if need be, using coercive force – to protect those populations if the state cannot or will not live up to its responsibility.

Properly describing responsibility to protect as a new rule of customary international law at this point is quite a challenge. The norm of the Responsibility to Protect has received increasing international attention in the last few years.⁶⁹ It widely depends on how the concept is implemented and applied in practice. However, given the weight behind it and the UN general assembly resolution adopted at the head of state and government level, the responsibility to protect can already be properly described as a new international norm: a new standard of behavior, and a new guide to behavior, for every state.⁷⁰ R2P is a concept that attempts to

⁶⁷ Ibid

⁶⁸ Ramesh Thakur, *Intervention, Sovereignty and the Responsibility to Protect: Experiences from ICISS*, Security Dialogue, 33, no. 3 (2002)

⁶⁹ Otto von Feigenblatt, *International Policymaking: The Case of the Norm of the Responsibility to Protect*, RCAPS Working Paper No. 09-6 (2009)

⁷⁰ Gareth Evans (Co-Chair International Commission on Intervention and state sovereignty), *The Responsibility to Protect: Consolidating the Norm*

redefine sovereignty from its traditional basis on rights to one based on duties and responsibilities.⁷¹

Although the UN authorized most of the post-Cold War interventions, the practice of intervention without the UN umbrella has not disappeared completely. The effects of this reality can be observed in theoretical discussions as well. At the beginning of the 1990s, the debate about humanitarian intervention was mainly focused on the question of whether violations of human rights constitute a threat to international peace and security, hence legitimize humanitarian intervention. But, later on the linkage between human rights and security was largely recognized and humanitarian intervention through UN authorization did not create so much controversy. By the end of the 1990s, especially with the NATO intervention in Kosovo, the debate has gained a new dimension raising the question whether such interventions need UN authorization

Bellamy notes that a more proximate origin of R2P norm can be traced back to the breakup of Yugoslavia after the end of the Cold.⁷²To provide a forum for discussing the related issues of intervention and its relationship to sovereignty, the International Commission on Intervention and International Sovereignty was established in Canada in 2001.⁷³ The final report recommended among other things to redefine sovereignty as responsibility rather than as a right. In addition, the report clearly stated that prevention and early warning should be used by the international community in addition to humanitarian intervention and post-conflict peace building.⁷⁴ The report set the criteria for intervention to be when a government is unable or

⁷¹Brunnee, J., &Toope, S. J. (2006). *Norms, Institutions and UN Reform: The Responsibility to Protect*.

⁷²Bellamy, A. J. (2009). *Realizing the Responsibility to Protect*. *International Studies Perspectives*, 10(2), Brunnee, J., &Toope, S. J. (2006). *Norms, Institutions and UN Reform: The Responsibility to Protect*. PP 34

⁷³Ibid

⁷⁴Ibid

unwilling to prevent a great loss of life in its population.⁷⁵ The report and the Secretary-General recommended the General Assembly and the Security Council to issue a declaration accepting the norm of R2D.⁷⁶

The 2005 negotiations resulted in a document which shifted emphasis away from international responsibility and towards the responsibility of individual states. International crimes were identified as the criteria to be used in order to determine the suitability of humanitarian intervention as a justifiable option. The 2005 document urged the establishment of the Human Rights Council but did not agree on its characteristics or jurisdiction and established the Peace building Commission with only a post-conflict role rather than also including prevention.⁷⁷

Determination of an international norm is not easy; however, some generalizations can be made in terms of the overall outcome of R2D. It weakened the concept of non-intervention in international law, sovereignty was redefined as responsibility rather than as a right, and it empowered the international community and related humanitarian and development organizations in terms of their justification to intervene in crises involving intrastate strife.⁷⁸ By weakening the norm of nonintervention and sovereignty, R2D has created a way to justify military intervention and forced regime change by the great powers. The US invasion in the Dominican Republic 28 April 1965 was allegedly grounded in humanitarian concerns, and some authors seem to view it as a genuine case. But it later became clear that the real motive was to hinder, in the words of President Johnson, the establishment of another communist government

⁷⁵Ibid

⁷⁶Council, S. (2006). *Resolution 1674*.

⁷⁷Brunnee, J., & Toope, S. J. (2006). *Norms, Institutions and UN Reform: The Responsibility to Protect*. PP 45

⁷⁸Mack, A. (Ed). (2005). *Human Security Report 2005: War and Peace in the 21st Century*. New York: Human Security Centre/ Oxford University Press. PP 56

in the Western hemisphere Moreover, the intervention was undertaken, at least in theory, with the *consent* of both the rival factions in the Dominican Republic.⁷⁹

The resources necessary to undertake a military intervention are concentrated in the developed global north; R2P therefore opens the way for the North to interfere in the internal affairs of weak countries in the South. It is important at this point to take cognisance of the fact that the governments of the great powers are not always guided by the same altruistic values as global civil society and its humanitarian and development organizations. Thus, the virulent concept of national interest can be cloaked in the language of R2P and humanitarianism to further neo-realist and institutional-liberal goals of powerful countries in the developed world.⁸⁰

Judging the outcome of R2P in terms of advantages and disadvantages proves to be an uphill task.⁸¹

Since 2005 world summit declaration, the emergence of responsibility to protect, of all the regional organizations capable of helping make R2P a reality, the twenty-seven-member EU brings by far the greatest potential strengths.⁸²

Less than a year after the 2005 UN World Summit Declaration and the General Assembly's landmark adoption of the principles of R2P—namely sovereignty as a responsibility the UN Security Council passed Resolution 1674, stating the UN “reaffirms the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes

⁷⁹ Saul, B. (2006). *The Dangers of the United Nations' 'New Security Agenda': 'Human Security' in the Asia-Pacific Region* *Asian Journal of Comparative Law*, 1(1), 1-35.

⁸⁰Feigenblatt, O. F. v. (2007b, October 4-5). *Japan and Human Security: 21st Century Official Development Policy Apologetics and Discursive Co-optation*. Paper presented at the International Development Studies Conference on Mainstreaming Human Security: The Asian Contribution, Bangkok.

⁸¹ The Williams Report, Report of the High-Level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision, 7 March 2007, PP 19–20.

⁸²Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Washington, DC: Brookings Institution Press, 2008)

against humanity.”⁸³ In essence, the Resolution commits the Security Council to action to protect civilians in armed conflict areas and at the same time “*express* its deep regret that civilians account for the vast majority of casualties in situations of armed conflict.”⁸⁴

Resolution 1674 has been used to promote the norm of R2P. In a subsequent UN Security Council open debate Ambassador Gerhard Pfanzelter of Austria, speaking on behalf of the EU, collectively identified the World Summit, R2P and UNSC 1674 in an effort to emphasize the need of the UN to protect civilians. He stated:

At the World Summit 2005 our Heads of State and Government underlined that of civilians in armed conflict is a concern of the international community. A number of important decisions and commitments have been taken. Most important was the historic agreement on the *responsibility to protect* populations from genocide, war crimes, ethnic cleansing and crimes against humanity, which has been reaffirmed by SC Resolution 1674.⁸⁵

The norm of R2P has had significant push by the UN member states, at the UN Security Council open debate on the protection of civilians in armed conflict on June 22, 2007, this was evident. In the discussion, the Belgium ambassador recapped the principles of R2P and pressed even further noting the “international community has the responsibility and even the duty to respond.”⁸⁶ These words were also reinforced by the British ambassador Karen Pierce in stating “While national Governments have the primary responsibility to protect their citizens, the international community also has responsibilities. We should live up to them.”⁸⁷

⁸³UNSCR 1674

⁸⁴Ibid

⁸⁵Statement by Ambassador G. Pfanzelter of Austria on behalf of the European Union, June 28, 2006.

⁸⁶Statement by Ambassador J. Verbeke of Belgium, June 22, 2007

⁸⁷Statement by Ambassador K. Pierce of Great Britain, June 22, 2007, emphasis added,

In support of the principle of R2P Africa is not left out either, the Nigerian ambassador Aminu Wali explicitly supported the norm of R2P in the discussions, he stated:

We believe that the time has come for the international community to reexamine when it is its *responsibility to protect* civilians, without prejudice to the sovereignty of Member States. The genocide in Rwanda, the ethnic cleansing in Bosnia and the crimes committed against unarmed civilians in areas of conflict, especially in Africa serves as a constant reminder that we have to search for a generally acceptable understanding when the international community exercises its responsibility to protect.⁸⁸

The norm of humanitarian intervention

The 21st century offers challenges in international relations, and thus presents international relations scholars with new problems to consider and address. The changing characteristics of violent conflicts require new approaches to their resolution; the use of force is no longer interpreted exclusively in terms of self-defense but also due to humanitarian necessity. International legitimacy is especially focused on by constructivists. This is contrary to the traditional assumption that international relations are largely governed by power relations. The two concepts are complementary since the inverse of the legitimacy of power is the ‘power of legitimacy.’⁸⁹ Legitimacy to Claude is important to power-holders because it makes them more secure. Wheeler provides an opinion closer to that of constructivist approach by arguing that ‘legitimacy is constitutive of international action.’⁹⁰ In Wheeler’s view, state actions will be constrained if they cannot be justified in terms of plausible legitimating reasons. Norms, once

⁸⁸Statement by Ambassador A. Wali of Nigeria, June 22, 2007.

⁸⁹ Claude, I., *Collective Legitimation as a Political Function of the United Nations*, International Organization, 20, 1966

⁹⁰ Nicholas Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford, UK: Oxford University Press, 2000), 42

established, will serve to constrain even the most powerful states in the international system, and, moreover, can pull the actions of states towards positive outcomes. On the other hand, there must first be found an agreed-upon source of legitimacy within international society to be able to set the criteria of legitimate intervention.

Changing the terminology from "intervention" to "protection" gets away from the language of "humanitarian intervention." The last term has always deeply concerned humanitarian relief organizations, which have loathed the connotation of "humanitarian" with military activity.⁹¹ Talking about the "responsibility to protect" rather than the "right to intervene" has three other big advantages. First, it implies evaluating the issues from the point of view of those needing support, rather than those who may be considering intervention. The beam is on the duty to protect communities from mass killing, women from systematic rape, and children from starvation. Second, this formulation implies that the primary responsibility rests with the state concerned. Only if that state is unable or unwilling to fulfill its responsibility to protect, or is itself the perpetrator, should the international community take the responsibility to act in its place. Third, the "responsibility to protect" is an umbrella concept, embracing not just the "responsibility to react" but the "responsibility to prevent" and the "responsibility to rebuild" as well. Both of these dimensions have been much neglected in the traditional humanitarian-intervention debate. Bringing them back to center stage should help make the concept of reaction itself more palatable.⁹²

Sovereignty as a concept remains widely accepted; however, even the strongest supporters of state sovereignty admit today that no state holds unlimited power to do what it wants to its own people. Impliedly, sovereignty has a dual responsibility; externally, to respect

⁹¹Gareth Evans and Mohamed Sahnoun, *The Responsibility to Protect*, Council of Foreign Affairs.

⁹²Gareth Evans and Mohamed Sahnoun, *The Responsibility to Protect*, Council of Foreign Affairs.

the sovereignty of other states, and internally, to respect the dignity and basic rights of all the people within the state.⁹³

Sovereignty as responsibility has become the minimum content of accepted international citizenship. Although this new principle cannot be said to be customary international law yet, it is sufficiently accepted in practice to be regarded as a de facto emerging norm: the responsibility to protect.⁹⁴

⁹³Ibid

⁹⁴Ibid

CHAPTER THREE

INTERNATIONAL PERSPECTIVE OF RESPONSIBILITY TO PROTECT

Introduction

In December 2004, the idea of responsibility to protect was taken up in the context of the debate on United Nations reform.⁹⁵ Pointing to international responses to the "successive humanitarian disasters in Somalia, Bosnia, Herzegovina, Rwanda, Kosovo and Darfur, Sudan," the High-Level Panel on Threats, Challenges and Change stated in its report *A More Secure World: Our Shared Responsibility* that

there is a growing acceptance that while sovereign Governments have the primary responsibility to protect their own citizens from such catastrophes, when they are unable or unwilling to do so that responsibility should be taken up by *the wider international community*-with it spanning a continuum involving prevention, response to violence, if necessary, and rebuilding shattered societies.⁹⁶

The UN high level panel went ahead to speak of an emerging norm of a collective international responsibility to protect encompassing not only "the 'right to intervene' of any State but the responsibility to protect of every state when it comes to people suffering from avoidable catastrophes"⁹⁷

A UN secretary general report entitled "In Larger Freedom: Towards Development, Security and Human Rights for All," endorsed the findings in march 2005 fostering the idea that

⁹⁵Carsten Stahn, notes and comments: responsibility to protect: political rhetoric or emerging legal norm?

⁹⁶A More Secure World: Our Shared Responsibility Report of the High-Level Panel on Threats, Challenges and Change, U N Doc. A/59/565, at 56-57, para.201 (2004), available at <<http://www.un.org/secureworld/report.pdf>>

⁹⁷ Ibid

the security of states and that of humanity are indivisible and that threats facing humanity can be solved only through collective action.⁹⁸

The concept of responsibility to protect was incorporated into the outcome document of the high level meeting of the General Assembly.⁹⁹ The document contains two paragraphs on the responsibility to protect. The assembled heads of states recognized the responsibility of each individual state to protect its populations from such crimes, and a corresponding responsibility of the international community.¹⁰⁰

The inclusion of the concept of responsibility to protect marks one of the important results of the 2005 World Summit, it is also a testimony to a broader systemic shift in international law, namely, a growing tendency to recognize that the principle of state sovereignty finds its limits in the protection of "human security."¹⁰¹ The concept of responsibility to protect holds that matters affecting the life of the citizens and subjects of a state are no longer exclusively subject to the discretion of the domestic ruler but are perceived as issues of concern to the broader international community (e.g., third states, multilateral institutions, and non-state actors). This development is part and parcel of a growing transformation of international law from a state and governing-elite-based system of rules into a normative framework designed to protect certain human and community interests.

The concept of responsibility to protect is treated differently in the four documents associated with its origin, namely, the report of the Commission on State Sovereignty and

⁹⁸In *Larger Freedom: Towards Development, Security and Human Rights for All*, Report of the Secretary-General, UN Doc. A/59/2005, paras.1 6-22 (2005), available at <<http://www.un.org/largerfreedom/contents.htm>

⁹⁹2005 World Summit Outcome, GA Res. 60/1, paras.1 38-39 (Oct. 24, 2005)

¹⁰⁰*Ibid*, para 139.

¹⁰¹*Alex J. Bellamy, Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit*, 20 ETHICS & INT'L AFF. 143 (2006), at <http://www.cceia.org/resources/journal/20_2/articles/5384.html

Intervention, the High-Level Panel Report, the Report of the Secretary-General, and the Outcome Document of the 2005 World Summit.

Norm of Humanitarian Intervention

Finnemore argues that, in regards to humanitarian intervention, the nature of international order after the Cold War is still emerging. During the Cold War the “spheres-of-influence system was underpinned as a *modus vivendi* in large part by a willingness of strong states to decouple certain aspects of the internal behavior of states from assessments of the external threat they posed.”³⁸ The dimension of internal governmental structures of states mattered little in a bipolar world of alliances. As alliances and spheres of influence were set between the two superpowers, “a relatively strong agreement [existed] that the way states treated their citizens was a domestic matter.”¹⁰² Furthermore, scholars emphasize that interference from other states was considered a significant violation of sovereignty.¹⁰³ Finnemore argues that this is no longer the case: “states that abuse citizens in massive systematic ways are now viewed as security threats both because the flows of refugees and social tensions that such policies create are destabilizing to neighbors and because aggressive behavior internally is seen as an indicator of the capacity to behave aggressively externally.”¹⁰⁴ It is not clear that trans boundary flows of refugees are requirements for humanitarian disasters to be termed threats to international peace and security. In the cases of intervention in Somalia and Rwanda, the UN Security Council Resolutions made reference to the “threat to international peace and security” but did not mention flows of refugees pouring across the borders of these two countries. For Somalia, the UN action was to support and protect food

¹⁰² Newman & Weissbrodt (1996) p. 223

¹⁰³ Article 7 of the UN Charter

¹⁰⁴ *Uniting for Peace Resolution* Res 377 (V) of 3 November 1950

relief supplies and aid workers. In Rwanda, the UN Security Council Resolution 929 of June 1994 (after nearly one million Tutsis and moderate Hutus had been massacred) was aimed at ending the acts of genocide and aiding the estimated one and a half million internally displaced persons within Rwanda. In both cases, one benefit of the UN actions was to create conditions for the repatriation of refugees and the return of the internally displaced persons. Holzgrefe states that “no impartial observer could conclude that the Security Council thought that it was only the transboundary effects of the Rwandan genocide, rather than the genocide itself, that permitted it to intervene.”¹⁰⁵ The same can be argued for the Somali case.

Many scholars posit that within the emerging norm of humanitarian intervention the “legality of intervention for humanitarian purposes currently rests upon the condition of the Security Council authorization.” The importance of multilateralism in the use of force has increased since the end of the Cold War. Referring to multilateralism, the International Committee on Intervention and State Sovereignty (ICISS) report of 2001 stated that there is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes. The task is not to define alternatives to the Security Council as a source of authority, but to make the Council work better than it has.¹⁰⁶ Within the UN parameters, a declaration of threat to international peace and security coupled with multilateralism has attained a degree of legitimacy within international society, as exemplified by the clear case of territorial invasion by Iraq into Kuwait in 1991. Here the United States aggressively sought a multilateral response, through the UN, to the blatant violation of

¹⁰⁵ Shaw (1991) pp. 59-60; Wallace (1992) pp.3-4

¹⁰⁶ The Continental Shelf Cases, ICJ Report 3 (1969) In Para. 22, the Court (ICJ) stressed that although the length of time during which a custom has been in existence may not be relevant, generality of practice is ‘an indispensable’ requirement

international law by Iraq. Finnemore argues that “even in such a clear case of aggression when provocations were apparent and violations uncontested, ”Washington’s efforts to build a multilateral force in conjunction with the UN“ points to an even greater importance for multilateralism norms¹⁰⁷ Mandle states that the difficulty of intervention “can sometimes be mitigated when the use of military force is authorized by what is seen to be a legitimate body (such as the UN Security Council) or a traditional ally, but it is exacerbated when the use of force is from a traditional adversary or when the intentions of the foreign power are questionable.”¹⁰⁸ However, not all scholars recognize the legitimacy of multilateralism and the UN Security Council. Henry Shue emphasizes that the Security Council is far from ideal as a legitimate body to determine the legal use of force apart from self defense. Shue argues that the UN Security Council is: outrageously undemocratic with vetoes in the hands of an odd assortment of five countries, all major powers fifty years ago but similar now mainly in being admitted nuclear powers, including a gargantuan dictatorship with pre-modern delusions about state sovereignty and two faded imperial powers with small populations and insignificant economies.

Influence of Norms on Behavior in International Arena

The changing nature of the international system since the end of the Cold War has witnessed a normative shift in international security with an entrenchment of human rights regimes and the emergence of a concern for human security. Scholars note the human security paradigm has broadened the scope of security by widening the threats and deepened it by extending the referents of security beyond the traditional state-centric view to the individual and

¹⁰⁷ Wheeler (2000) generally

¹⁰⁸ Brownlie (1998) p.6

onto supranational groups. Constructivists argue that this shift in the normative framework of security and the change in referent object emphasize a world of rising non-traditional actors, and non-conventional and transnational issues of concern. The emerging shift in the international norms of relationship between the power of the state and non-state actors in a globalizing world “leaves a clear message: the state is no longer able to monopolize the concept and practice of security.” The term “norm” is defined by Finnemore and Sikkink as “a standard of appropriate behavior for actors with a given identity.”¹⁰⁹ Scholars recognize different types of norms. The most common distinction “is between regulative norms, which order and constrain behavior, and constitutive norms, which create new actors, interests, or categories of action.”⁸⁰ Finnemore and Sikkink note that it is the prescriptive quality of “oughtness” that sets norms apart from other kinds of rules and Annika Bjorkdahl emphasizes that an “element of repetitive action is often stressed as crucial to the formation of an international norm.”¹¹⁰ While neorealism and neoliberalism have increasingly come to acknowledge the role of norms in the international system, neither theory gives much importance to their emergence, development and institutionalization. The realist paradigm suggests that norms are little more than opportune justifications for rational action in maximizing a state’s national interests. To neoliberals, the importance of norms includes the ability to make a state’s behavior more transparent and predictable in the international system. Jeffrey Checkel states, “neoliberal and regime theorists do accord a role to norms, it is limited: they facilitate cooperation among self-interested actors.”¹¹¹ However, for constructivists, norms are social constructs within the international

¹⁰⁹ Zacklin (2001) p. 939

¹¹⁰ Wheeler (2000) p.34

¹¹¹ International Independent Commission on Kosovo (2000) p.193

system, and unlike neorealist's and neoliberals, constructivists hold the view that norms structure and shape the perception of what constitutes a state's national interest. Neorealism and neoliberalism continue to emphasize state-centric approaches, for example the shifting global balance of power, the development of the growing importance of international organizations, or the promotion of the spread of democracy. However, "such approaches prove inadequate in generating sufficient insight into the normative structure of the international system."

Norm researchers, such as Finnemore and Sikkink, have made advances specifically because other paradigms have been unable or unwilling to provide satisfactory explanations for dilemmas in international relations. From a constructivist perspective, "the structure of the international system is determined by the international distribution of ideas, and shared ideas, expectations and beliefs about appropriate behavior are what gives the world structure, order and stability."⁸⁶ Norms enable or constrain state behavior and therefore become integral to state calculations of interest and action.¹¹² Scholars have demonstrated that the development of norms in the international system has come to affect state behavior. For example, Finnemore argues that norms have shaped behavior globally, regionally and domestically in regard to such issues as slavery, colonialism, women's suffrage, poverty, and humanitarian intervention.⁸⁸ Therefore, it is reasonable to argue that norms matter in the international system..

Impact of Humanitarian Responsibility to Protect States

Finnemore's *The Purpose of Intervention*, emphasizes the incremental changes in international intervention since the nineteenth century. Her analysis begins with examples of Western European states intervening to collect debts rather than to support human rights. The norm in international society of collecting debt by force changed over time. Her emphasis on the

¹¹² Prunier (1995)

change in the norm for the collection of debts is important to this study of the emergence of the contemporary norm of humanitarian intervention. In a very similar fashion to the changing norm of collecting foreign debt by force, Finnemore illustrates three cases of the use of force for humanitarian purposes by European powers in the nineteenth century. In each of the cases, European states used force to relieve fellow Christians suffering under persecution, primarily by the Muslim Ottoman Empire. Her study includes the Russian Empire coming to the aid of the Greeks fellow Orthodox Christians in their struggle for independence from Ottoman rule in the 1820s. Finnemore continues with the French expedition in 1860 to aid Maronite Christians in Lebanon and Syria. In 1877, the Russians again came to the aid of their fellow Orthodox Christians and used human rights abuses as justification for their use of force. Lastly, Finnemore discusses a case of non-intervention. For more than twenty years between 1894 and 1917—the Armenians suffered severe persecution from the Ottomans. Yet, “no European state used force on their behalf. Armenians were Christians, but as Monophysites, they were not in communion with any European churches, including the Russian Orthodox.”¹¹² This thesis will continue by addressing one specific pre-Cold War case of humanitarian intervention the case of Russian intervention in Greece. Each of the nineteenth century cases of intervention added momentum to the emergence of the norm of humanitarian intervention. In considering Russian assistance to the Greeks in the 1820s, Finnemore makes three observations about humanitarian intervention norms. First, the case illustrates the “circumscribed definition of who was ‘human’ in the nineteenth-century conception.”¹¹³ Specifically, she notes the atrocities committed by both the Greeks and the Ottomans. However, atrocities committed against Christians were considered by the European powers to be a humanitarian disaster while massacring Muslims was not. Second, though the intervention primarily came from Russia, other countries provided assistance

suggesting a need for multilateralism. But the multilateral intervention is noted to have been for geostrategic reasons specifically, to restrain any Russian temptation from moving past the humanitarian intentions of the intervention. However, as subsequent cases will show “multilateralism as a characteristic of legitimate intervention becomes increasingly important” although for different reasons. Third, as was expected in the norm entrepreneur and norm cascade cycles of the norm life cycle . Finnemore stresses that public reaction and public opinion mattered. She states: Not only did public opinion influence policy making in a diffuse way, but publics were organized transnationally in ways that strongly foreshadow humanitarian activity by nongovernmental organizations (NGOs) in the late twentieth century. Gary Bass emphasizes that the London Greek Committee was determined to do more than just rally public opinion. This organization wanted to defend the Greeks by armed intervention and “unlike Human Rights Watch or Amnesty International, this was an organization with an active military subcommittee.”¹¹³ Bass describes the London Greek Committee as radical, as “to them Ottoman sovereignty scarcely mattered, any more than Serbian sovereignty would matter to liberals as Milosevic scourged Kosovo in 1999.”¹¹⁴ The identification of nineteenth century efforts by European powers to stop incredible atrocities by intervening with military force is instrumental to this study’s understanding of the roots of the norm of humanitarian intervention in the twenty-first century. The four interventions discussed by Finnemore illustrate the emergence of the norm albeit with a dose of geostrategic emphasis as well of humanitarian intervention to save the lives of fellow Christians. Finnemore’s work continues to demonstrate the evolution of the norm of

¹¹³ For a detailed analysis of the historical perspective and events leading to the Rwandan genocide see Mugaboniweza (2005); Mara (2005)

¹¹⁴ Stearns (1994) pp. 32-35

intervention, and the fact that by the “end of the twentieth century, most of the protected populations were non-white, non-Christian groups.

The High-Level Panel Report

The high level panel report on the debate about the responsibility to protect was directly related to institutional reform of the United Nations. The high-level panel saw the idea of responsibility to protect as a means to strengthen the collective security system under the Charter. The report from UN Secretary-General Ban Ki-Moon on implementation of the Responsibility to protect has been released ahead of a high-level General Assembly debate on the rule of law, scheduled to take place in two weeks, towards the start of the new session. All told, the Secretary-General's report doesn't provide a major shift on the discourse on R2P, but has enough interesting points to be worth adding to the discussion¹¹⁵.

The report devotes a lengthy portion of its text towards the beginning in stressing that the way the United Nations views the process in which implementation occurs. The three pillars of R2P are often seen as being clearly divided between prevention mechanisms and response mechanisms, along with being sequential in the order in which they are invoked, escalating from first to third. Instead, the Secretary-General stresses that the three pillars aren't viewed by the UN as being activated one after another, but mutually reinforcing to an extent. Obviously Pillar Three's response mechanism is seen as a last resort, should the first two fail to end the atrocities or incitement of atrocities as laid out by R2P, but the concept of response and prevention intertwine throughout all three¹¹⁶.

¹¹⁵ FRANCIS M. DENG ET AL., SOVEREIGNTY AS RESPONSIBILITY: CONFLICT MANAGEMENT IN AFRICA (1996); *see also* INT'L COMM'N ON INTERVENTION AND STATE SOVEREIGNTY, *supra* note 16.

¹¹⁶ INT'L COMM'N ON INTERVENTION AND STATE SOVEREIGNTY, *supra* note 16, 2.7.

The majority of debate surrounding implementation, and general international squirming, has come from the third pillar's seeming endorsement of the use of force to topple regimes. Following the use of force as sanctioned by the UN Security Council in Libya and the ongoing crisis in Syria, there's been concern for the prospects of the survival of the doctrine, should it come to be viewed solely as a device for regime change of unfavorable governments by the militarily strong. Fears of that nature were reinforced by discussion on whether Libya indicated a new view of sovereignty or, as later described by US UN Ambassador Susan Rice, "a data point, not a trend".

This report seems to fall into the latter camp with regards to implementation, appearing to follow the standards decided upon by the initial Report of the International Commission on Intervention and State Sovereignty. The World Summit Outcome of 2005, which reinforced the ideas in that report and was the first UN endorsement of R2P, is cited several times by the Secretary-General. No deviation from those points can be seen in this report, insofar as using the United Nations as a tool for regime change or supplanting states¹¹⁷.

The concept was treated in two parts by the panel, in introduction, the link between sovereignty and responsibility is mentioned. Subsequently the delineations of the concept in the context of the "use of force, "in a section entitled "Chapter VII of the Charter of the United Nations, internal threats and the responsibility to protect"" is developed.¹¹⁸

The report highlighted collective responsibility to protect of every state when it comes to people suffering from avoidable catastrophes mass murder and rape, ethnic cleansing by forcible

¹¹⁷ The Secretary-General, *Report of the High-level Panel on Threats, Challenges and Change, A More Secure World: Our Shared Responsibility*, ¶ 203, delivered to the General Assembly, U.N. Doc. A/59/565 (Dec. 2, 2004)

¹¹⁸High-Level Panel Report

expulsion and terror.¹¹⁹ Responsibility for ‘every state’ provides room for different interpretations, at the same time, the primer also does allow for a broader reading that endorsed a wider concept of "responsibility" under which the responsibility of the host state shifts to every other state in cases where the former is unable or unwilling to act.¹²⁰

A significant aspect of the High-Level Panel Report is the linkage of the panel’s vision of shared responsibility directly to the UN. The panel associated the concept of Collective responsibility in particular with action by the Security Council. The Security Council has not only the authority, but also a certain responsibility to take action to combat humanitarian crises. The report stated that the Security Council and the wider international community have come to accept that, under Chapter VII and in pursuit of the emerging norm of a collective responsibility to protect, the Council "can always authorize military action to redress catastrophic internal wrongs if it is prepared to declare that the situation is a 'threat to international peace and security'".¹²¹ The panel combined this appeal to responsibility with a plea for a more transparent and responsible use of the right of veto by the five permanent members of the Security Council. The permanent members were urged by the panel to pledge themselves from the use of veto in humanitarian intervention in cases of genocide and large-scale human rights abuses.¹²²

In the statements, the panel’s intention to make the Council both a vehicle for, and an addressee of, the concept of responsibility to protect is evident. The panel took the position that UN members must resort to the collective security system in all cases of military intervention,

¹¹⁹Ibid

¹²⁰<<http://www.responsibilitytoprotect.org/index.php/pages/2>>

¹²¹High-Level Panel Report

¹²²Ibid

including operations carried out by regional Unions block like NATO Humanitarian intervention in Yugoslavia.¹²³

The panel's treatment of collective security culminated in the identification of "five basic criteria of legitimacy" for the use of force. "¹²⁴

The secretary general's report

The secretary general stressed his awareness of the sensitivity of the emergence of the norm of collective responsibility to protect.¹²⁵ "Responsibility while protecting" calls for vigilance and sober judgment in identifying where threats of magnitude exist and are growing. Evidence of incitement, dehumanizing rhetoric and the mobilization of portions of the population against others is of particular concern, as these may be indications of intent to commit atrocities. "Responsibility while protecting" requires early identification, engagement, and preventive action, as described in my 2010 report (A/64/864). Waiting for situations to deteriorate and for the pattern of atrocities to escalate before acting is irresponsible and counterproductive.

The essence of "responsibility while protecting" is doing the right thing, in the right place, at the right time and for the right reasons. Timely and decisive action puts a premium on assessment, on understanding what is happening, why it is happening, and how the international community can help keep a difficult situation from becoming worse. An early and flexible response strategy requires dynamic assessments, focusing on trends and developments, not just the latest headlines¹²⁶.

¹²³Ibid

¹²⁴Ibid

¹²⁵Report of the Secretary-General

¹²⁶ The Secretary-General, Report of the Secretary General, In Larger Freedom: Towards

Responsibility to protect was no longer exclusively viewed as a substitute for humanitarian intervention but as a strategy to promote the commitment of all nations to the rule of law and human security.¹²⁷

The Report of the Secretary-General did not expressly rule out the possibility of unilateral action in any circumstances, where the veto is used to block action in a case of genocide).¹²⁸ What the Report unfortunately glosses over is that the majority of the efforts and tools that Secretary-General Ban lists fall under the purview of the Security Council. Chapters VI, VII, and VIII, all specifically cited as ways to bring R2P to bear, all are listed in the Charter's section on the Security Council. No other sections of the Charter are specifically given to justify any other method of implementation - save the ability of the General Assembly or Secretary-General to recommend situations to be discussed by the Security Council. The power of the Security Council remains firmly in the hands of the states that compose it, many of whom aren't exactly eager to listen to the Sec-Gen on matters involving the use of force, specifically their forces. Even Chapter VIII, which allows the Security Council to deputize regional organizations in carrying out its mandates via force, is subject to the political will of the Council. As with so much at the United Nations, no matter how the Secretary-General may plan, much is dependent on the whims and interests of the Great Powers that sit on the Security Council.¹²⁹

Ban Ki-moon and a new interpretation of R2P

In the report titled *Implementing the responsibility to protect*, Ban Ki-moon made it clear that 2005 World Summit was indeed not the finishing point in the R2P discussion. ICISS report

Development, Security and Human Rights for All, delivered to the General Assembly, U.N. Doc. A/59/2005 (Mar. 21, 2005) [hereinafter *In Larger Freedom*],

¹²⁷Ibid

¹²⁸Supra note 1

¹²⁹Ibid

tried to bridge the gap between intervention and state sovereignty. Sovereignty was redefined as the responsibility to protect people from abuses of human rights.¹³⁰ The report devotes a lengthy portion of its text towards the beginning in stressing that the way the United Nations views the process in which implementation occurs. The three pillars of R2P are often seen as being clearly divided between prevention mechanisms and response mechanisms, along with being sequential in the order in which they are invoked, escalating from first to third. Instead, the Secretary-General stresses that the three pillars aren't viewed by the UN as being activated one after another, but mutually reinforcing to an extent. Obviously Pillar Three's response mechanism is seen as a last resort, should the first two fail to end the atrocities or incitement of atrocities as laid out by R2P, but the concept of response and prevention intertwine throughout all three..¹³¹

Pillar one: The protection responsibilities of the State

In the Summit Outcome it is clear that each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This is the root of the first pillar which Ban Ki-moon translates into: 'Pillar one is the enduring responsibility of the State to protect its populations, whether nationals or not, from genocide, war crimes, ethnic cleansing and crimes against humanity, and from their incitement.'¹³²

In the statements, it is apparent that Ban Ki-moon mentions the Responsibility to protect non-nationals and paying attention to the incitement of atrocities. In so doing, the obligation of the states is not only derived from the R2P principle but 'are firmly embedded in pre-existing,

¹³⁰Chandler, D. (2010). 'R2P or Not R2P' *More Statebuilding, Less Responsibility*'. *Global Responsibility to Protect*, (2) (2010)161-166

¹³¹Ibid

¹³²SG Report (Ban Ki-moon) (2009). *Implementing the responsibility to protect*, Report of the Secretary- General, retrieved from <[http://daccess-dds-ny.un.org/doc/UNDOC/ GEN/N09/206/10/PDF/N0920610.pdf](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/206/10/PDF/N0920610.pdf)>

treaty bases and customary international law'. From this point we realize that the responsibility of the state backed with the international criminal court and different UN tribunals.

Pillar two: International assistance and capacity building

The second pillar commits the international community to assist the state in meeting its obligations should the state fail in its protection responsibility.¹³³ Pillar two is based on the part of the Summit Outcome mentioning that 'the international community should, as appropriate, encourage and help States to exercise this responsibility'. This international assistance can take one of four forms: Encourage the state to meet its responsibility under pillar one; Helping the State to exercise this responsibility; Helping the State to build up their capacity to protect and lastly assisting the State 'under stress before crises and conflicts break out'.¹³⁴

Pillar three: Timely and decisive response

If the elements of the first two pillars fail, the third pillar elements can be used to back them up. Ban Ki-moon wrote: 'Paragraph 139 of the Summit Outcome reflects the hard truth that no strategy for fulfilling the responsibility to protect would be complete without the possibility of collective enforcement measures, including through sanctions or coercive military action in extreme cases'.¹³⁵ This enforcement measure is described in the third pillar: 'Pillar three is the responsibility of Member States to respond collectively in a timely and decisive manner when a State is manifestly failing to provide such protection. A reasoned, calibrated and timely response could involve any of the broad range of tools available to the United Nations and its partners'. It

¹³³Ibid

¹³⁴ Ibid

¹³⁵Ibid

is obvious that the threshold for action under pillar two is much lower than under pillar three. Making clear that the ‘more robust the response, the higher the standard for authorization’.¹³⁶

If a state refuses international assistance (pillar two), the international community is responsible according to the Summit Outcome paragraph 139 to undertake coercive measures.

The Security Council is, according to Article 41 and 42 of the UN Charter, the right actor to authorize these measures. If the Council fails in its responsibility the General Assembly can authorize coercive measures, by making state on the Uniting for Peace-procedure. But in effect such an authorization is not legally binding.¹³⁷ Regional organizations or arrangements can only use coercive measures if they are prior authorized by the Security Council.¹³⁸

¹³⁶Ibid

¹³⁷Ibid

¹³⁸Ibid

CHAPTER FOUR

CRITICAL ANALYSIS OF HUMANITARIAN INTERVENTION AND ITS RELATIONSHIP WITH RESPONSIBILITY TO PROTECT IN EAST AFRICA

Introduction

The notion of the responsibility to protect emerged at the beginning of the new millennium out of a fierce debate on the seemingly apparent contradiction between the concepts of humanitarian intervention and state sovereignty. It followed a decade after the conclusion of the Cold War, during which intra-state conflicts increased and became a key security issue in international relations. Furthermore United Nations (UN) had proven ill-equipped and unable to respond effectively, as the events in Somalia, Rwanda and the Balkans deteriorated into human catastrophes and further still is worth recalling this. Indeed, the UN was born into an international system fundamentally influenced by two horrific World Wars, in which a primary preoccupation with conflicts between states seemed self-evident. From the very outset, it outlawed any use of force in interstate discords, except in cases of self defense or with authorization of the Security Council, while also upholding the notion of non-interference into state's domestic affairs. Thus, the UN established an international system in 1945 which has since been mainly based on the principles of state sovereignty and non-interference.

In light of the above mentioned atrocities and especially the 'Capability-Expectations Gap'(CEG) on behalf of the UN to deal with such crises effectively, it was then UN Secretary-General Kofi Annan, who at the 2000 General Assembly challenged member states by posing to them a question: "If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica, to gross and systematic violations of

human rights?”.¹³⁹ Reacting to Annan’s call upon the international community to seek a path of reconciling the two concepts, then Canadian Prime Minister Jean Chrétien announced the establishment of the International Commission on Intervention and State Sovereignty (ICISS), “with a mandate to promote a comprehensive debate on their relationship and a view to fostering a global political consensus on how to move from polemics towards action within the international system” (ICISS, 2001b, “The Establishment and Progress of the Commission” sec., Para. 3); the report of which ultimately led to the coining of the term responsibility to protect¹⁴⁰.

In line with the UN secretary general’s call, the ICISS’s account deals with the “‘right of humanitarian intervention’: the question of when, if ever, it is appropriate for states to take coercive – and in particular military - action, against another state for the purpose of protecting people at risk in that other state” .¹⁴¹ It concludes that the perception of state sovereignty has shifted from of a Westphalia notion of *sovereignty as control* to a conception of *sovereignty as responsibility*, corresponding to the persistently mounting authority of international norms on human rights and the concept of human security in a globalised world.¹⁴² The interpretation as both an internal and external connotation, in that authorities are responsible for the protection of citizens and the promotion of their welfare towards the people themselves as well as the wider international community through the United Nations. This implies that when “a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect”¹⁴³

¹³⁹Annan, 2000

¹⁴⁰G.A. Res. 60/1, U.N. Doc. A/RES/60/1 (Oct. 24, 2005).

¹⁴¹ICISS, 2001a, p. vii

¹⁴²Carlo Focarelli, *The Responsibility to Protect and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine*, 2008

¹⁴³Supra note 2

Intervention in East Africa

Intervention in Somalia in 1992-1994

In January 1991 Siad Barrels government was overthrown and Somalia descended into civil war and clan-based violence. The humanitarian situation rapidly worsened, with drought compounding the effects of war, leaving the country facing a devastating famine. It is estimated that over 300,000 people starved to death in 1992.¹⁴⁴ Humanitarian agencies struggled to distribute food aid as the security situation was so poor, and warlords increasingly looted supplies, using food and the threat of starvation as a weapon and means of power. It was against this backdrop that the UN became involved in the country. The height of this involvement was a US-led military intervention that initially aimed to ensure the secure distribution of food aid, but went on to try to capture General Mohamed Farah Aideed, one of the leading warlords controlling much of Mogadishu. On 3 October 1993, 18 US Rangers were killed and 84 injured in a 16 hour battle on the streets of Mogadishu which also killed around 500 Somalian civilians, in a failed attempt to raid a meeting of General Aideed and his senior advisors. The body of one of the dead Rangers was dragged through the streets of Mogadishu, footage of which reached American televisions within hours. Amid growing domestic criticism of the intervention, US troops began withdrawing from the country in early 1994 and the UN completely withdrew by February 1995, leaving the failed state to a lawless anarchy which persists to the present day.

The disastrous outcome in Somalia has been attributed to several factors, among others, the inability of the UN, with its bureaucratic inadequacies, to fulfill its peacekeeping role in civil conflicts, the misguided notion of short, sharp military intervention to solve a complex

¹⁴⁴ The impact of the failure in Somalia on the norm of humanitarian intervention will be discussed in the following section in relation to the Rwanda case.

humanitarian disaster, and the mission creep that occurred with the transition from the Bush to the Clinton administrations. However, it is not the outcome, albeit tragic, that this part of this paper is concerned with.⁶² the focus here is the norm of humanitarian intervention and its evolution. By analyzing the decision to intervene, the degree to which the norm had emerged can be assessed and norm entrepreneurs – crucial in the early stages of norm evolution – can be identified. The analysis is split into two: the UN Security Council decision to authorize the use of force in Somalia, and the US decision to offer to lead the intervention.

The situation in Somalia had been on the UN Security Council agenda since 1991 as it gradually descended into a major humanitarian disaster, but of interest here is particularly Resolution 794 passed on 3 December 1992, which authorized the use of force under Chapter VII of the UN Charter. The resolution itself can give us several indications about the status of the emerging norm of humanitarian intervention. Of particular note is the part of the preamble of the resolution which reads, „Recognizing the *unique* character of the present situation in Somalia and mindful of its deteriorating, complex and *extraordinary* nature, requiring an immediate and *exceptional* response...”¹⁴⁵ What emerges is a picture of a Security Council very wary of establishing any sort of precedent for forceful intervention in response to humanitarian crises; the „unique“ and „extraordinary“ situation in Somalia demanded an „exceptional response“. The post-Cold War norm of humanitarian intervention was very much in its infancy, in this case a response to a new challenge facing international policy-makers, a challenge which they had yet to realise would rear its head many more times in the post-Cold War era. But was the belief that Somalia was truly exceptional really behind the language of the resolution? Peacekeeping had begun to dominate the UN agenda since the 1980s, and many members must have been aware

¹⁴⁵ UN Security Council Resolution 794, 3 December 1992, emphasis added

that dealing with internal strife in countries emerging from colonialism and the Soviet bloc would continue to become a more frequent part of their work. The very wariness of the Security Council in avoiding setting a precedent for humanitarian intervention was surely a manifestation of the acute awareness that Somalia was in fact unlikely to be exceptional many members wanted to avoid any permanent erosion of the norm of state sovereignty protected by the UN Charter. In negotiating the resolution, China was particularly adamant that Somalia be referred to as a unique situation,¹⁴⁶ reiterating in a press conference after the resolution had been passed that Somalia was an „exceptional case“.65 One of the most significant ways in which the situation in Somalia was claimed to be unique was the fact that there was no functioning government in the country. India, another country quick to stress that Resolution 794 did not create a precedent for humanitarian intervention, said after the meeting that the resolution had been passed in the context of an „extraordinary situation, with no government in control“.66 Although India and China were not alone in guarding sovereignty against the potential threat of a new norm of humanitarian intervention, not all states were quite so wary of creating scope for similar action by the UN in the future. The Zimbabwean ambassador, while acknowledging that Somalia was „a unique situation that warrants a unique approach“, ¹⁴⁷said that the response „adopted creates of necessity a precedent against which future, similar situations will be measured“.67 While those clearly against a norm of humanitarian intervention were quick to affirm the dominance of sovereignty, by agreeing to Resolution 794 they were unwittingly contributing to the tentative emergence of the norm by creating a benchmark against which future action (or inaction) would be judged. By authorizing the use of force in response to an internal humanitarian crisis,

¹⁴⁶ Mats Berdal, „Review: The United Nations in International Relations“, *Review of International Studies*, Vol.22, No.1 (1996), p.105

¹⁴⁷UN Security Council Resolution 794

humanitarian intervention had become a new policy option which could be considered in future cases – it was no longer unthinkable for the UN to overlook state sovereignty in addressing such humanitarian disasters. Security and which had explicitly said that Security Council intervention to stop human rights abuses in Iraq would not be legal, argued in the case of Somalia that the Security Council could not remain impassive in the face of human tragedy and that it had „ineluctable responsibilities to save the Somali people“. Significantly, Russia, which had also opposed armed intervention to protect the Kurds, said that it was the „international community’s obligation to put an end to the human tragedy“ in Somalia, requiring „the use of international armed forces under the auspices of the Security Council“. The comparison with the case of intervention in Iraq and the rhetoric used by states in authorizing Resolution 794 makes the humanitarian aspect of the intervention in Somalia indisputable.

Negotiations in the Security Council and the adoption of Resolution 794 give us evidence of the (albeit tentative) emergence of a norm of humanitarian intervention. As Finnemore and Sikkink argue, new challenges in the international environment often lead to the emergence of a new norm, and indeed in the case of humanitarian intervention, the new challenge of an imploding state and the humanitarian fallout can broadly explain the emergence of the norm at this point. However, the United Nations had been engaged with the crisis in Somalia quite some time before Resolution 794 was adopted and the use of force was considered. What factors contributed to the emergence of the norm at this *precise* time? Undoubtedly the ongoing humanitarian disaster and the failure of UN non-forceful peacekeeping contributed to the Security Council turnaround, but Resolution 794 would not have been possible had the US not offered troops. This highlights the dependence of the norm of humanitarian intervention on the *capability* of states to carry it out. A commitment to humanitarian intervention in theory would

be relatively meaningless without the ability of states to enact the norm the norm would not have got off the ground had the US not been willing to contribute the 30,000 troops it offered. Indeed, President Bush acknowledged this fact in his address to the nation announcing the deployment of US troops in Somalia:

Perhaps, though, it is possible to say that in the case of Somalia the US was a significant norm entrepreneur, advancing the norm in the Security Council. The evidence, however, suggests to the contrary. The US had not consistently lobbied for intervention at the UN and the US decision to contribute troops was in fact a rapid turnaround from its policy of opposing the use of force in Somalia for much of 1992. The situation in Somalia was desperate throughout 1992. If Bush's humanitarian impulses had been decisive surely he would have decided to use force at an earlier date when the humanitarian situation was just as catastrophic. Instead, Jon Western argues that advocacy in the US put sufficient pressure on Bush and his senior military advisers for them to consider military involvement in Somalia after months of dismissing it as an option.¹⁴⁸ As both NGOs and liberal humanitarians in Washington began to collect more of their own information about the situation on the ground in Somalia in mid-1992, they began to lobby for the US to support military UN involvement in the country. For instance, a group of congressmen, led by senators Nancy Kassebaum and Paul Simon, went on a fact-finding mission to Somalia in June 1992 and returned to urge their colleagues to support a more forceful solution to the humanitarian disaster. Relief agencies used grassroots campaigns as well as direct meetings with the administration to lobby the President. Norm entrepreneurship was not limited to domestic pressure in the US. For instance, the Irish President Mary Robinson conducted a high-profile visit to the country highlighting the plight of hundreds of thousands of Somalis. All

¹⁴⁸ Western, „Sources of Humanitarian Intervention“, pp.124-136

of these norm entrepreneurs, in one way or another, were appealing to existing values held by the US in their calls for the US to act. Through their advocacy, they made it untenable for the US, a country founded on liberal values and respect for human rights, to turn a blind eye to the severe and widespread suffering in Somalia. Indeed, writing in a *Guardian* article shortly after the US troops were deployed, Henry Kissinger declared: „The new approach [in Somalia] claims an extension in the reach of morality... “Humanitarian intervention” asserts that moral and humane concerns are so much a part of American life that not only treasure but *lives* must be risked to vindicate them; in their absence, American life would have lost some meaning.”¹⁴⁹

Genocide in Rwanda in 1994

The genocide in Rwanda in 1994 has gone down in history not only for the horrific killing of 800,000 Tutsis and moderate Hutus in just 100 days, but also for the equally unbelievable response of the international community to the unfolding disaster. A civil war had been fought between the Tutsi Rwandese Patriotic Front (RPF) and the Hutu government since 1990. In August 1993 the Arusha Accords were signed, establishing a ceasefire and setting out plans for the formation of a broad-based transitional government. Two months later the Security Council authorized the United Nations Assistance Mission for Rwanda (UNAMIR) to monitor the ceasefire.¹⁵⁰ Several months passed as the parties failed to establish the transitional government, punctuated by bouts of violence by both sides. However, in January 1994, the force commander of UNAMIR, Lieutenant General Roméo Dallaire, was given evidence of a more sinister development. An informant from the Interahamwe, the government militia protecting the president and the capital Kigali from the advancing RPF forces, told Dallaire that the militia was

¹⁴⁹ Henry Kissinger cited in Wheeler, *Saving Strangers*, p.202

¹⁵⁰ UN Security Council Resolution 892, 5 October 1993

being organised and trained for the methodical killing of all Tutsis. As well as lists of Tutsis and weapons caches, the informant revealed the Interahamw's plan to kill Belgian peacekeepers in order to provoke a UN withdrawal. This information was a chilling prediction of what was about to unfold. On 6 April, a plane carrying the moderate Hutu President Juvénal Habyarimana was shot down as it is was about to land in Kigali. Within an hour roadblocks had been set up around the city and the systematic killing of Tutsis and moderate Hutus began. The following day ten Belgian peacekeepers were captured as they tried to protect the prime minister designate and were brutally tortured and killed. In 100 days 800,000 people had been killed, a rate of killing that reached 10,000 per day at its peak,¹⁵¹ yet the response of the Security Council was initially the reduction of UNAMIR, the dithering over whether to label the situation a genocide, and ultimately the authorization of an ill-equipped and under-mandated military which did not arrive until after the RPF had declared victory and stopped the killings itself.

This chapter will not go over every aspect of the international community's failure to react to the killing, but will rather focus on why the norm of humanitarian intervention did not prevail in the response to the crisis. There are four significant factors that can help to explain the failure of the norm: the willingness and capability of states to risk soldiers' lives; competing norms of traditional, non-forceful peacekeeping; the role of potential norm entrepreneurs, particularly the UN Secretary-General and the US; and the organizational culture at the UN. As will be demonstrated, all of these factors were profoundly affected by the events in Somalia. Each will be discussed in turn to give a better understanding of the status of the evolution of the norm of humanitarian intervention and the reasons for its limited success. The final part of this

¹⁵¹ Michael Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda*, (Ithaca, Cornell University Press, 2002), p.131

section will analyze the eventual decision by the Security Council to intervene (led by France), in order to assess the implications of this change in policy on the analysis of the norm.

Just as Rwanda rose to prominence on the Security Council agenda, things started to go dramatically wrong in Somalia. Indeed, Resolution 892 authorizing UNAMIR was agreed to only two days after the 18 US Rangers were killed in Somalia. As Barnett observed, the unfolding failure in Somalia colored every aspect of the UN's approach to peacekeeping and intervention: It is virtually impossible to exaggerate the impact of Somalia on the UN. *Somalia* could mean the need for the UN to get back to basics, to deploy peacekeepers only when there was a peace to keep and to decline the invitation to halt civil wars. What would later be dubbed the "shadow of Somalia" was omnipresent, casting a dark cloud across the [UN] headquarters, limiting the sight lines, and directing its future practices. We can identify various separate but connected aspects of the way in which Somalia affected the norm of humanitarian intervention.

Firstly, the loss of peacekeepers' lives in a humanitarian mission intended to be straightforward and low-risk contributed to a risk-averse international community when Rwanda came on the agenda. Evidence for this can be found in the private discussions at the council about what should be done with UNAMIR after the killings had begun in April 1994. For example, the British ambassador, Sir David Hannay, opposed the reinforcement of UNAMIR, asking members to „think back to Somalia and think about what you would ask these troops to do“.¹⁵² This reveals two things about the norm of humanitarian intervention. Firstly, like many norms, its evolution is highly sensitive to world events. Secondly, it highlights the fact that the norm is not only dependent on states' acceptance of the principles at issue, but is also contingent on the willingness and ability of states to risk soldiers' lives. The capability to contribute troops

¹⁵² UN Resolution for Darfur: An Important But Sufficient First Step Towards Protecting Civilians

and materials will be discussed later in this section, but the fear of „another Somalia“ in Rwanda shows that in the case of humanitarian intervention there is a distinct difference between widespread acceptance of the norm and the enactment of the norm. According to Finnemore and Sikkink“s norm life cycle, this might represent the difference between the cascade of a norm and its internalization, as the consistent application of the norm will not occur until it has been truly internalized and enacting it becomes habitualised.

However, I would argue that something different is at play here. The fact that many states were unwilling to risk their soldiers“ lives in a repeat performance of Somalia, I suggest, does not tell us a great deal about their acceptance of the norm. Of course, genuine acceptance of the norm of humanitarian intervention involves states“ awareness that the norm involves the use of military force in the name of human rights, and therefore an awareness of the inherent risks to soldiers, but in an individual case of potential intervention, states might decide that the risks involved in that particular operation are unacceptably high. Therefore there are (among others) two factors determining whether states support a particular humanitarian intervention: whether they accept the norm or not, and whether they think the risk to their troops“ lives is acceptable. In other words, it is possible for states to accept the norm of humanitarian intervention whilst not accepting the risks to their soldiers’ lives in a particular case. And in such a situation there may be a threshold, which would of course be hard to measure, as to what would count as acceptable risk. But as Somalia demonstrates such a threshold would likely be very sensitive to the prevailing international mood about the loss of life in combat Reminds us that humanitarian intervention is a foreign policy option. Widespread and genuine acceptance of the norm may never eliminate the high level of discussion and debate that always accompanies foreign policy decisions. This raises questions about whether the norm of humanitarian intervention can ever

become internalized in the way Finnemore and Sikkink envisage, a point to which I will return in the concluding section.¹⁵³

The second but related way in which Somalia affected the norm of humanitarian intervention was the realization that intervening in humanitarian disasters is a complex undertaking. Although this might seem an obvious observation, the decision by the US to intervene in Somalia was predicated on the fact that it could be a short, sharp (as well as low-risk) intervention. As things began to go dramatically wrong in Somalia, policymakers realized that advocacy for humanitarian intervention would involve the acceptance of a norm entailing an obligation to become involved in complicated and long-term military operations. This confirms the theory on the clarity of norms. As the decision to intervene in Somalia was made by Bush, the norm of humanitarian intervention was still very much emergent and vaguely defined, and the US administration was able to interpret it to suit its military agenda; humanitarian intervention could mean the brief deployment of military force to ensure the distribution of humanitarian assistance. What the disastrous outcome of Somalia showed the US and the wider international community was that humanitarian intervention was unlikely to succeed unless it addressed the root causes of severe human rights abuses, and unless states were prepared to endure complex and time-consuming operations. With its first application in the post-Cold War era, the norm was shown to be less straightforward than the US had interpreted it and its application suddenly seemed distinctly less likely,¹⁵⁴ as Rwanda demonstrated.

¹⁵³ *Reuters* 2007a; *BBC News* 2007a; *LA Times* 2007a

¹⁵⁴ *Inter Press Service* 2006a; *Reuters* 2007b; *BBC News* 2006d

The third way in which Somalia had an impact on the norm of humanitarian intervention was that it provoked a return to more traditional interpretations of UN peacekeeping. The disaster in Somalia prompted both the UN Secretariat and member states to re-evaluate the conditions of peacekeeping, and their conclusions were unanimously that peacekeeping should be „neutral“, „impartial“ and „based on consent“ The former head of the Department of Humanitarian Affairs summarized the findings of a commission of inquiry into the deaths of UN peacekeepers in Somalia by saying that the UN must „adhere strictly to the guiding principles of humanity, neutrality, and impartiality. Once these principles are compromised, our legitimacy and utility are at risk.“ In the wake of the deaths of peacekeepers in Somalia, the Security Council had been discussing a possible framework for future UN peacekeeping missions, to give the council clearer and more uniform guidelines for when to authorize peacekeeping.

The overwhelming impression given by the Rwanda case, and the half-hearted and after-the-fact intervention, is that the norm of humanitarian intervention was not sufficiently evolved and established to prompt timely action in response to the genocide in Rwanda. Capability was crucial, as those states supporting the norm were unable to put their words into action without the support of more powerful and well-resourced states. However, capability is not the end of the story. *Willingness* to contribute troops and resources was in fact the root cause of international inaction in Rwanda. Some governments, including the US, had the capability to rapidly deploy a force sufficient to halt the genocide, but none of these were willing to do so. This can lead us to the conclusion that *which* states support the norm is crucial to its success, not necessarily the number, as Finnemore and Sikkink suggest in their theory of tipping points. What is hard to determine in this case, however, is whether the support of the norm by a state able and willing to commit enough troops would have led to the widespread acceptance of the norm by other states.

All the factors discussed above, including the nervousness of states and UN bureaucrats after Somalia, and the lack of norm entrepreneurship from the Secretary-General, prevent us from determining whether the reluctance to create a permanent norm of humanitarian intervention expressed by states when dealing with Somalia would have persisted; there were too many other factors working against the norm.

However, as much as Rwanda marked a low-point for the norm of humanitarian intervention, the very failure of the international community to stop the twentieth-century's second holocaust arguably led to the norm's revival. As Somalia had created international skepticism of humanitarian intervention, so Rwanda prompted the realization that the international community needed to create the normative framework necessary to prevent a similar tragedy. In the years following Rwanda, humanitarian intervention has been heavily debated, both among academics and by policymakers. Rwanda also contributed to the normative shift led by the International Commission on Intervention and State Sovereignty, transforming a notion of humanitarian intervention into one of a responsibility to protect. It was into this normative environment that an ethnic conflict of a different nature in Darfur came onto the international agenda.

The international response to the crisis in Darfur

The civil war in the Darfur region of Sudan has been raging since 2003. In April 2008 two UN officials placed the death toll at 300,000, but others suggest this number of people had been killed by 2005. Although not characterized by the level of inaction that defined the international response to Rwanda, the increased support for the norm of humanitarian intervention after 1994 has not materialized in the policies adopted by states towards the ethnic cleansing, or genocide (as some have labeled it), in Darfur. Currently, the UN-AU Mission in

Darfur (UNAMID) „is doing all in its power and with limited resources to provide protection to civilians in Darfur, facilitate the humanitarian aid operation, and help provide an environment in which peace can take root“. ¹⁵⁵Crucially, however, UNAMID was not agreed to by the Security Council until consent had been elicited from the Sudanese government (a protracted process that caused significant delays): UNAMID is not a humanitarian intervention, although it is authorized to use all means necessary to protect its own personnel and civilians. This chapter will address why the norm of humanitarian intervention, despite apparently universal support for it in principle, indicated by the unanimous acceptance of the UN World Summit Outcome document in 2005, which made an explicit reference to the responsibility to protect, proved to have little impact on international approaches to the conflict in Darfur. A number of issues arise, each of which will be addressed in turn: the ongoing dominance of the sovereignty norm, indicated by the need to get Sudan's consent for the deployment of not only UNAMID, but also its predecessor, the African Union Mission in Sudan (AMIS); the effect of the change in the language of the norm, brought about by the responsibility to protect doctrine; the prevailing international circumstances, which led key actors to priorities other factors, including the fragile North/South peace process and the global war on terror; the perceived legitimacy of Western norm entrepreneurs; and finally, the capability of states, both Western and African, to enact the norm.

The international community's emphasis on the need for consent from Sudan and the cautious respect for its sovereignty can be found in almost all official deliberations on peacekeeping in Darfur. The preambles to all the Security Council resolutions on Darfur include a standard reaffirmation of the council's „commitment to the sovereignty, unity, independence

¹⁵⁵ *Inter Press Service* 2006a; *Reuters* 2007b; *BBC News* 2006d

and territorial integrity of Sudan".¹¹⁵ Not only have states like China and Russia expressed the „overriding need“ for the consent of the government of Sudan, but strong advocates of the norm of humanitarian intervention like the UK have stressed the importance of the consent of the Sudanese government to the deployment of a UN peacekeeping force to Darfur.¹¹⁶ Even the African Union, which has one of the most explicit provisions for humanitarian intervention of all regional organizations, in Article 4(h) of the Constitutive Act of the AU,¹⁵⁶ refused to act without the consent of the government in Khartoum. Evidence for this can be found in a communiqué from an AU „mini-summit“ in October 2004, in which members reaffirmed their commitment to Sudan’s sovereignty and rejected the possibility of „any foreign intervention by any country, whatsoever“. ¹¹⁸ In its statement following the adoption of Security Council Resolution 1706 authorizing the expansion of the United Nations Mission in Sudan (UNMIS – at the time already operating in southern Sudan) to include peacekeeping activities in

Clearly, the situation in the Sudan merits some form of international engagement that is timely, meaningful, well-coordinated and effective. It is for those reasons that we have reservations about the inclusion in the draft text of explicit language that the Government of the Sudan can take all the time it wants before allowing the United Nations to deploy in Darfur, or even to refuse to do so, regardless of the cost in human lives.¹⁵⁷

Nevertheless, Ghana was alone in highlighting the apparent lack of willingness among other Security Council members to contemplate humanitarian intervention, even in the event of Sudanese refusal to UN peacekeeping in Darfur.

¹⁵⁶ United Press International 2006a

¹⁵⁷ United Press International 2006a

What emerges is a picture of an ever-dominant norm of state sovereignty, which seemed to take unconditional precedence over humanitarian concerns in the international response to the crisis in Darfur. I would contend, therefore, that the unanimous acceptance of the humanitarian intervention norm in the World Summit Outcome Document (in the form of the responsibility to protect doctrine) may not, in fact, represent norm cascade, the second stage on Finnemore and Sikkink's framework for norm evolution. The norm of humanitarian intervention was still very much competing with the established norms of sovereignty and non-interference during the Darfur deliberations. This exposes a point not found in the existing literature on norm evolution – that adoption or acceptance of the norm, even in the formal institutional context of the UN, will not always translate into the automatic enactment of the norm. Within the context of the Darfur case, it is worth considering why, despite all the international pontificating about sovereignty and responsibility, did the pledged support for the responsibility to protect fail to manifest itself during the Darfur deliberations, to be trumped by the sovereignty norm? Clearly part of the explanation lies in the fact that state sovereignty is one of the most well-established and closely guarded international norms, so humanitarian intervention is competing against a tough opposition in its bid for a place in the current international normative framework. However, Alex Bellamy argues that the rhetorical shift from humanitarian intervention to a responsibility to protect also played a role. Despite apparently encouraging an improved consensus on the norm of humanitarian intervention, Bellamy argues that the responsibility to protect, in its emphasis on the primary responsibility of states to protect their own citizens, gave states an excuse for inaction. The sovereignty of Sudan came high up in discussions because the responsibility to protect advocates an approach which uses state sovereignty as a starting point, perhaps one of the reasons why such an approach found more approval than traditional notions of humanitarian

intervention had. However, by reinforcing the fact that Sudan holds the primary responsibility for the welfare of its citizens, the responsibility to protect doctrine in fact lent normative weight to arguments against intervention. For instance, the UK, despite being a key norm advocate, tried to justify its rejection of the possibility of forceful intervention with reference to the ICISS responsibility to protect framework: „the best way to deliver security to the people of Darfur is to get those with primary responsibility for it to do it...the government of Sudan.“¹²⁰ It was not only states who endorsed the view that Sudan held the primary responsibility to halt the atrocities in Darfur: high-profile UN special representatives in Sudan, Jan Pronk and Francis Deng also voiced their support for this view. As Bellamy notes, „Paradoxically, Deng argues that although the government “probably” lacked the will and capacity to disarm the Janjaweed, it retained the primary responsibility for doing so He concluded that international intervention would “complicate and aggravate” the crisis by increasing the level of violence and causing the government to withdraw its cooperation.“¹⁵⁸

However, as Deng’s view suggests, there was considerable evidence that Sudan was not showing the willingness or ability to protect its own citizens, the point referred to in the ICISS report at which the international community should assume the responsibility to protect, meaning any calls for humanitarian intervention would have been legitimate. Indeed, there was considerable evidence publicly available indicating Khartoum’s complicity in the mass atrocities being committed in Darfur. This suggests then, that arguments stating that the responsibility to protect rested primarily with the Sudanese government were in fact used to legitimate a decision against humanitarian intervention that was made for other reasons.

¹⁵⁸ UN Resolution for Darfur: An Important But Sufficient First Step Towards Protecting Civilians

In looking at alternative explanations for the international community's reluctance to embrace the possibility of humanitarian intervention, it is hard to avoid the conclusion that the immediate historical context – both within Sudan and internationally – was a factor in the failure of the norm. Firstly, the international community, particularly the US, UK and Norway (all significant norm advocates), had been engaged in the delicate peace process unfolding in the south of Sudan, a process that was finally providing an end in sight for Africa's longest running civil war. Paul Williams, among others, has argued that the decision to prioritize the Comprehensive Peace Agreement between the government of Sudan and the Sudanese People's Liberation Movement/Army (SPLM/A) in the south of the country can in part explain the „limp response“ by the US to the crisis in Darfur.¹⁵⁹ For instance, US Secretary of State Colin Powell said, „There is a concern that we don't want to put so much pressure on the Sudanese government that causes internal problems that might make the situation [in the south] worse.“ Others, including some of the most ardent advocates of humanitarian intervention, such as Ramesh Thakur, one of the ICISS commissioners, argued that advocating humanitarian intervention, let alone carrying it out, would have seriously undermined the delicate diplomacy involved in the North/South peace process. This tells us two important things about the norm. Firstly, the principles underlying the norm, namely the protection of fundamental human rights, may not always be best served by the norm. Even if the norm enjoyed unbridled success and was universally (and genuinely) accepted, it would not necessarily be appropriate to use it to stop every case of mass human rights violations. Humanitarian intervention comes at the extreme end of a continuum of peacekeeping and conflict resolution policies, and as such will not always be resorted to, regardless of the stage of evolution the norm has reached. Secondly, the fact that

¹⁵⁹ UN Resolution for Darfur: An Important But Sufficient First Step Towards Protecting Civilians

exercising the norm in Darfur was constrained by the North/South peace process supports Florini's argument that „environmental factors“ affect the successful evolution of a new norm. Darfur is a highly complex conflict and the reasons for the reluctance of the international community to invoke the norm of humanitarian intervention in response to it are equally complex. There was some advocacy for humanitarian intervention during Security Council discussions by the Philippines, Romania and, as mentioned above, Ghana. However, the demands of these states, unable as they were to lead any intervention themselves, were drowned out by calls - both by traditional advocates and by sceptics of the norm - to reject its application in the case of Darfur. The sceptics of the norm, if they had endorsed the responsibility to protect framework when it was presented to the UN in the World Summit Outcome document in 2005, may have done so only because it reinforced their view of the primacy of sovereignty and of the notion that each state should retain its responsibility for the welfare of its own citizens. Certainly this view, and their unfailing support for the sovereignty norm, meant that humanitarian intervention skeptics were not about to agree to the application of the norm in light of the atrocities in Darfur. For their part, the advocates of the norm were hamstrung by their existing military commitments and by their reduced ability to advocate a norm that they had arguably abused in order to justify intervention in Iraq. The events of 11 September 2001 undoubtedly changed the international environment in many significant ways, and the lasting effects on the norm of humanitarian intervention are still uncertain. However, Darfur, in its role as a test case for the norm, supposedly strengthened after the universal recognition of international failure in Rwanda, shows that the short-term effects of the post-9/11 environment on the norm were considerable. Bellamy argues that „the level of consensus about humanitarian intervention has not perceptively shifted“ in the post-9/11 era, and therefore what emerges from the international

response to Darfur is the fact that such a consensus does not guarantee enactment of the norm. However, this does not necessarily mean that the norm is still at square one in its evolution. The widespread support for the responsibility to protect *has* had a positive impact on state behavior.

Intervention as an assault to sovereignty

The question that arises following Koffi Annan's statement is whether intervention to prevent atrocities is indeed an unacceptable assault on sovereignty. At the face value it seems that such an intervention is in conflict with the notion of sovereignty because it contradicts the non-intervention principle that has often been seen as the essential feature of sovereignty. But is this is not the whole story.

There exist at least four anomalies which indicate that this relationship is more complex although the concepts of sovereignty and non-intervention are closely related. The anomalies are; first, in recent history the concept of sovereignty has not been a barrier to intervention. If for instance the interventions of Vietnam in Cambodia and Tanzania in Uganda, inspect it is seen that both interventions were justified, but Realpolitik eventually determined the international response to both interventions.¹⁶⁰ Second, there are people who claim sovereignty in the name of human rights. Such a claim is based on the idea that sovereignty is founded on the rights of people to choose their own form of government, grounded in the right to liberty.¹⁶¹ Third, to see sovereignty as some kind of absolutism means that sovereign states can act however as they want. In reality this vision never won any support in the society of states, because it was recognized that sovereign states have responsibilities, to each other and to their own people,¹⁶² and lastly, the question whether sovereignty and non-intervention are two sides of the same coin.

¹⁶⁰Alex J. Bellamy, *Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit*, 20 ETHICS & INT'L AFF. 143 (2006), at <http://www.cceia.org/resources/journal/20_2/articles/5384.html

¹⁶¹Ibid, p,12

¹⁶²Ibid, p,12

Before the UN charter was ratified, sovereigns had the legal right to wage war, so nonintervention is not a corollary of sovereignty per se.¹⁶³

How to make R2P effective in the International community

In the previous sections, the study has seen how R2P came into being, entailing the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states'.¹⁶⁴ In the ICISS report, the responsibility to protect is divided into the responsibility to prevent, to react and to rebuild.

The responsibilities to prevent and to rebuild have minor influence on the concept of sovereignty, because they are based on mutual consent. Answering the circumstances, under which military intervention is allowed, the responsibility to react changes the existing relations between states. This intervention is defined by the ICISS report as 'the kind of intervention with which we are concerned in this report is action taken against a state or its leaders, without its or their consent, for purposes which are claimed to be humanitarian or protective'¹⁶⁵ the existing order is changed when the question of when such intervention is allowed as touches the essence of sovereignty.

The same question is asked whether the Ban Ki-moon also tries to change the existing order. The Ban Ki-moon R2P and the ICISS R2P are incomparable because of their constructions. The ICISS report describes the R2P principle in terms of 'prevention', 'reaction' and 'rebuilding', whereas the Ban Ki-moon report describes the R2P in the form of three pillars.

¹⁶³Ibid, p, 13

¹⁶⁴Supra note 2

¹⁶⁵ Ibid p, 8

These pillars are: ‘the protection responsibilities of the state’, ‘international assistance and capacity-building’, and ‘timely and decisive response’. Evans compares the two approaches using a cake analogy, ‘Think of a cake with three layers labeled respectively, from the bottom up, ‘prevention’, ‘reaction’ and ‘rebuilding’ – which is then sliced vertically into three big wedges, labeled respectively Pillars One, Two and Three’.¹⁶⁶ Because every pillar has elements of the three responsibilities, states cannot partly agree with the R2P principle but need to agree with it in total. Evans further posits that the international community made it clear from the moment of publication of the ICISS report that it wanted ‘the whole cake on the table before it will even contemplate digesting the one small bite of it that is involved in reaction by way of coercive international military intervention’.¹⁶⁷ Proponents of the ICISS R2P can support a much stronger position because military intervention is only situated in the ‘responsibility to react’. If the international community does not accept the idea of military intervention then it only affects the responsibility to react, without changing the other two responsibilities.

R2P and humanitarian intervention

The possible remedies, including military intervention, to avoid or to put an end to massive violations of human rights committed by a state towards its own citizens or in situations where state authorities critically lack effectiveness has been extensively debated since the issuance in 2001 of the report of the International Commission on Intervention and State Sovereignty (ICISS) on the responsibility to protect¹⁶⁸. After a succinct and critical review of the ICISS’ report and the subsequent international instruments dealing with the responsibility to

¹⁶⁶ Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Washington, DC: Brookings Institution Press, 2010)

¹⁶⁷ Ibid

¹⁶⁸ Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 260A(III), U.N. GAOR, 3d Sess., 179th plen. mtg., U.N. Doc. A/810 (1948), *entered into force* Jan. 12, 1951

protect, this contribution focuses on the positions adopted by states, especially over the last three years at the General Assembly and at the Security Council of the United Nations on humanitarian intervention as a ‘corollary’ of the responsibility to protect doctrine. It appears that humanitarian intervention aimed at implementing the responsibility to protect is not only feared as imperialistic by several weak states, but it also significantly fails to find an unconditioned support even amongst the most powerful states. Given its extreme and multifaceted ambiguity, which is discussed in the last section of this contribution, the innovative content of the purported ‘emerging norm’ on the responsibility to protect.¹⁶⁹

It can be said that the two R2P’s are in line with the pluralist and solidarist ideas of intervention on humanitarian grounds. Precisely, the Ban R2P is in line with pluralism, and the ICISS R2P is in line with solidarism. The criteria of ‘right intention’ are in the ICISS and centered on the responsibilities for states to stop human suffering. The ICISS interpretation of the criteria of ‘last resort’ is concentrating on the fact that before a military intervention of any kind, all other options should be exhausted.

The Ban interpretation of principles for military intervention is closely related to the pluralist ideas of just humanitarian intervention. The interpretation of the criteria ‘just cause’ is not formulated in a more restricted way in the Ban R2P¹⁷⁰. But the four options that Ban describes that could legitimate intervention (genocide, war crimes, ethnic cleansing and crimes against humanity) can easily be described in terms of protection of the international order, and humanitarianism. Secondly, the criterion of ‘competent authority’ is in the Ban interpretation based on the SC which is the only authority that can authorize intervention. This is a much

¹⁶⁹ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, 7th Sess., U.N. Doc. A/6316 (1966), *entered into force* Mar. 23, 1976,

¹⁷⁰ Social and Cultural Rights, G.A. Res. 2200A, 21 U.N. GAOR Supp. (No. 16) at 49, 7th Sess., U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976,

tighter interpretation of ‘competent authority’ than the ICISS interpretation. The third criteria: ‘right intention’ is in the Ban formulation and it concentrates on the position of the state. Intervention is not concentrated on protecting individuals, but has to do with helping states to meet their internal obligations which will result in stable international society. According to the Ban criterion, of ‘last resort’ means that the use of force is heavily restricted. This is because the use of force in the UN charter is justified in case of self-defense¹⁷¹.

Who has the mandate to implement R2P

The ICISS report acknowledges the Security Council as the main authority under the UN Charter that holds the primary responsibility to maintain international peace and security, but also states that there is no better or more appropriate body than the Security Council to deal with military interventions for humanitarian purposes.¹⁷² It is the Council that has the authority to authorize interventions for the purpose of the protection of human security, and such authorization must always be sought for before an intervention. It has also suggested that they should not exercise their veto powers unless their vital interests are threatened. On authority issue, the report states that:

The United Nations Security Council to authorize military intervention for human protection purposes. The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it has.

Security Council authorization should in all cases be sought prior to any military intervention action being carried out. Those calling for an intervention should formally request

¹⁷¹ See Kofi Annan, *Two Concepts of Sovereignty*, ECONOMIST, Sept. 18, 1999, at 49.

¹⁷² International Commission on Intervention and State Sovereignty, *The Responsibility to Protect. Report of the International Commission on Intervention and State Sovereignty*, International Research Centre, Ottawa, 2001, p 49.

such authorization, or have the Council raise the matter on its own initiative, or have the Secretary-General raise it under Article 99 of the UN Charter.

The Security Council should deal promptly with any request for authority to intervene where there are allegations of large scale loss of human life or ethnic cleansing. It should in this context seek adequate verification of facts or conditions on the ground that might support a military intervention.

The Permanent Five members of the Security Council should agree not to apply their veto power, in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support.¹⁷³

In the supplementary volume, it is mentioned that the Security Council practice of the 1990s as a watershed in which the Security Council became active in humanitarian aspects of conflicts, and that there appear to be no theoretical limits to the ever-widening interpretation of a ‘threat to the peace’ under Article 39 of the UN Charter.¹⁷⁴

An endorsement with respect to the external R2P by military means was made at the World Summit of 2005, the primary responsibility of the Security Council for the maintenance of international peace and security. No other alternative actor was explicitly mentioned to hold a subsidiary right or role to use such force. Regional organizations were mentioned but in connection with appropriate co-operation with the Security Council in paragraph 139. The issue of a reformed veto application was also omitted from the Outcome Document.

¹⁷³ICISS, *The Responsibility to Protect*, pp. XII-XIII.

¹⁷⁴International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*. Research, Bibliography, Background. Supplementary Volume to the Report of the International Commission on Intervention and State Sovereignty, International Development Research Centre, Ottawa, 2001, pp. 158-159.

States thus agreed at the 2005 World Summit that they may take collective action through the Security Council, in accordance with the UN Charter including Chapter VII, and in co-operation with regional organisations, on a case-by-case basis in order to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity – should peaceful means be inadequate and the state itself manifestly fails to protect its population.

The world Summit Outcome Document states quite clearly in that R2P action should be channeled through the United Nations, and in particular the Security Council, albeit in co-operation with relevant regional organisations when appropriate. The Document points out the primary right authority to be the Security Council, but also mentions regional organisations as possible co-actors in the area of R2P.

The R2P limit for military intervention

The original proposal by the ICISS that the ‘just cause threshold’ (large-scale loss of life or large-scale ethnic cleansing) must be met for the responsibility to protect to be carried out by the Council appears to limit the authority and powers of the Council in its determination of what constitutes a ‘threat to the peace’ under Article 39 of the UN Charter. The Council to execute its responsibility to protect when the R2P threshold or criteria are met, arguably does not conform with *lex lata* and neither could it develop into such a legal duty.¹⁷⁵

There are many situations in the world where such crimes occur, and it would be neither politically nor militarily feasible to take enforcement action or even peace-enforcement action in all such cases, particularly in the territory of a permanent member state, but also in states where major powers have political, military or economic interests. This problem of ‘selectivity’ with

¹⁷⁵The Security Council has a primary responsibility for the maintenance of international peace and security in accordance with Article 24 of the UN Charter, but it seems this responsibility has its political and military limitations.

the R2P was also acknowledged and discussed in the ICISS report. Council authorization must be on a case-by-case basis, as stated in the Outcome Document.

The Outcome Document's criteria for R2P, comprising any of the grave crimes (war crimes, genocide, crimes against humanity or ethnic cleansing), with the state concerned manifestly failing to protect its population from those crimes, also set up a threshold, or qualifier, that would appear to limit the Council in its deliberations for future humanitarian interventions.

A dilemma on whether the R2P doctrine on military intervention changes the Council's action in humanitarian crises, or if it is more or less the same thing as humanitarian intervention exists. Would it be necessary to distinguish future Council practice authorizing humanitarian interventions for the protection of human rights from military 'R2P authorizations', depending on whether the R2P criteria are present or not.¹⁷⁶ May the Council authorize humanitarian interventions in situations where the R2P criteria are not present?¹⁷⁷ The recent decline in authorized humanitarian interventions does not point to a broadening of the conception. Were they to occur, then 'R2P interventions' could arguably constitute a specific or qualified form of 'humanitarian intervention.'

Nevertheless, if the Security Council trend of including civilian protection mandates in its peace support operations, using a legal basis under Chapter VII and host state consent, becomes a permanent model for the future, the traditional cases of authorized humanitarian interventions that we characteristic in the first half of the 1990s may not appear on the scene again. With such an institutionalization of the protection of human security, there might be need to reformulate the concept of humanitarian intervention or find a new category for describing enforcement action with protection mandates including consent, possibly dropping the 'intervention' element in the

¹⁷⁶ICISS, *The Responsibility to Protect*, p. 33

¹⁷⁷*Ibid*

terminology. Future consensual UN authorized peace-enforcement measures with a dominant humanitarian purpose and extensive civilian protection mandates would not operate under the principles of humanitarian intervention. It is possible that in such a case, only unauthorized humanitarian interventions will be referred to as ‘humanitarian interventions’.

It could be argued that the external R2P for the Security Council is thus subsumed under a double qualifier due to the Chapter VII requirements for military enforcement action. The situations do not only have to fulfill the R2P criteria, but also other factors will and must be taken into account. The R2P criteria for military intervention are only necessary but not sufficient criteria for the Security Council to take on its external responsibility to protect when military means are necessary. The question is whether the R2P criteria therefore in fact limit or inhibit Council action for the protection of human security, instead of enabling or triggering such action?

The Security Council’s post-Cold War humanitarian interventionism and R2P

The practice of the Security Council of authorized humanitarian intervention in a series of cases in the 1990s shows that the Council has established that flagrant and grave violations of human rights and international humanitarian law within a state may constitute threats to peace. The relevant cases are the authorized interventions in Bosnia (1992-1993), Somalia (1992), Rwanda (1994), and East Timor (1999). Not only has the Council extended the interpretation of what constitutes a ‘threat to the peace’ under Article 39 of the UN Charter, but has also shown in these cases that military enforcement measures may be necessary to address a humanitarian crisis. In recent years, almost all writers and governments have accepted humanitarian intervention if authorized by the Security Council.¹⁷⁸

¹⁷⁸Boyle, Alan, Chinkin, Christine, *The Making of International Law*, Oxford University Press, Oxford, 2007, p. 111.

The Council decided to authorize military interventions to address humanitarian crises of a different but similar kind in these cases. In all of them, the humanitarian crises emanated from internal armed conflicts, but not solely, with the possible exception of the mixed armed conflicts in the case of Bosnia. The humanitarian crises in the different cases have their own particular circumstances of origin such as the genocide in Rwanda, the policy of ethnic cleansing in Bosnia, the drought, food shortages, widespread malnutrition and starvation in Somalia, the colonial background in the Indonesian persecution and harassment of the seceding East Timorese, and the ethnic and/or environmental and resource related conflict in Darfur. All of the humanitarian crises also had international repercussions that were considered to threaten the security and stability of other states or regional stability, Somalia being the only exception. Thus a legal right of the Security Council to authorize humanitarian interventions in such humanitarian crises is confirmed by this practice.¹⁷⁹

Legitimacy of the Security Council responsibility to protect with military means

Is an external R2P norm developing, or does the Security Council already have such a legal right to protect by military means under the UN Charter and international law? Could the practice of authorized humanitarian intervention in the 1990s amount to evolutionary interpretation developing a legal right for the Council to protect human security by military means the right have similarities with the external R2P formulated in paragraph 139 of the United Nations Charter.

Borrowing from the above studies, it can be said that the Council's extensive interpretation of Article 39 of the UN Charter through its practice also included the grave crimes of genocide, crimes against humanity, war crimes or ethnic cleansing. The extended

¹⁷⁹Teson, Fernando R., *Humanitarian Intervention: An Inquiry into Law and Morality*, 3rd edition, Transnational Publishers, Inc., Ardsley, 2005, pp. 188-189.

interpretation of a ‘threat to the peace’¹⁸⁰ would thus arguably also cover part of the R2P criteria as set out in paragraph 139 of the Outcome Document, so that any of these grave crimes may be determined to constitute a threat to the peace under Article 39.

The practice of the Council in the post-Cold War period by which it has authorized UN forces, member states and regional organizations to conduct forceful humanitarian interventions, shows that it perceives itself to have not only a legal right but also a moral and political responsibility to protect people in need from genocide, ethnic cleansing, crimes against humanity and war crimes committed within a state under certain circumstances.

R2P as a restored colonialism

Perhaps the central critique leveled at R2P, and the main impediment to action on its behalf, is the view that R2P is a “Trojan horse” – a rhetorical vehicle for increased self-interested invasions by powerful international actors.¹⁸¹In its strongest form, some member states (and the President of the UN General Assembly) recently charged that R2P was a vehicle for, effectively, “redecorated colonialism”.¹⁸²Proponents of R2P in response have emphasized its multilateralism, in particular the way R2P2005 authorizes action only with UN SC imprimatur.¹⁸³

As might be expected, this “Trojan Horse” challenge assumed a central role after the US-led war in Iraq.¹⁸⁴ (This is not the only problem for R2P opened by the invasion of Iraq; the treatment of Iraq can be offered as an exemplar – when counterpoised with the treatment of

¹⁸⁰The R2P criteria: any of the grave crimes against international law and the state manifestly failing to protect. The assessment as to whether or not peaceful means are found inadequate is a political decision that the Council may make with respect to Articles 41 and 42, and it does not affect the interpretation of Article 39.

¹⁸¹Bellamy, “Trojan Horse?” esp. pp. 38-42 here Bellamy notes the explicit use of the Greek legend itself by the government of Sudan in relation to Darfur; Bellamy, “Whither the Responsibility to Protect?”

¹⁸²ICRtoP, Report on the GA Plenary Debate, pp. 3, 7.

¹⁸³Stahn, “Political Rhetoric or Emerging Legal Norm?” p. 106.

¹⁸⁴Cottey, “The New Politics”, pp. 429-430. Bellamy, “Trojan Horse?” esp. pp. 47-51; Bellamy and Williams, “The Crisis in Darfur”, pp. 36-7, 40-44.

Israel, say – of the selectivity of and inconsistency in geopolitical actions.¹⁸⁵) When justifications in terms of Weapons of Mass Destruction were found to be fraught, the US and UK laid increasing emphasis upon humanitarian justifications.¹⁸⁶ This made it possible for a conceptual link to be drawn between US-style pre-emption and R2P.

More generally, R2P proponents have emphasized the current limitations on R2P (such as its scope¹⁸⁷) or potential limitations (such as use of set criteria or thresholds) on SC action regarding military intervention for humanitarian purposes¹⁸⁸) that would serve to cabin its capacity to be used for neo-colonialist purposes. Peters has also argued as a general matter that the current geo-political situation offers very little incentive for colonialist ventures by liberal democracies like the US: “The era of globalization is post-imperial.”¹⁸⁹

Other issues in regard to sovereignty have also arisen, even outside military interventions. With the shift in emphasis towards Pillar Two duties rather than Pillar Three interventions, sovereignty concerns have been raised regarding early warning and information gathering.¹⁹⁰

¹⁸⁵ Ayoob, *Third World Perspectives*, pp. 110-113; this worry with selectivity vis-à-vis Iraq and Israel stretches back to the 1991 war: Ian Clark, "Legitimacy and Norms", in *Legitimacy in International Society* (Oxford: Oxford University Press, 2007)

¹⁸⁶ Evans, *From Humanitarian Intervention to the Responsibility to Protect*, p. 717

¹⁸⁷ Luck, *The United Nations and the Responsibility to Protect*, p. 5.

¹⁸⁸ Thakur, *In Defence of the Responsibility to Protect*, pp. 174-5

¹⁸⁹ Peters, *Humanity as the A and Ω of Sovereignty*, p. 532

¹⁹⁰ Bellamy, 148

CHAPTER FIVE

SUMMARY OF FINDING AND CONCLUSION

Summary of Finding

The study examined humanitarian intervention and its relationship with responsibility to protect in East Africa where it looked critically on the three hypotheses.

The norm regarding responsibility to protect on humanitarian intervention in East Africa with a view of examining the norms regarding humanitarian responsibility to protect the study found that the international community has clearly come a long way in developing more robust guidelines on how to respond to humanitarian crises. Firstly, the improved linguistics has proven to be an invaluable aspect in encouraging States to react even when crises occur in strategically unimportant regions. This has led to a significant decrease of the previous ‘pick and choose’ policy. Secondly, States current refusal to engage in a unilateral humanitarian intervention in Syria shows a striking difference in State behavior as compared the Kosovo intervention in the 1990s. Today, the focus is not on finding alternative grounds for intervention, but on improving the collective security system so that when actions are taken they are in conformity with international law.

A continued positive normative evolution of R2P is not however, set in stone. The misuse of R2P in controversial areas has been seen to threaten the credibility of the concept. The uncomfortable threats posed by international terrorism and WMD must not tempt policy makers into a rash extension of R2P. Utilizing R2P to cover proactive use of force should not be allowed as it would not only constitute a clear misapplication of R2P, but also dilute and damage its reputation. In order to protect a continued evolution of R2P, States should only invoke it in areas that have been internationally agreed upon.

The study also justified the second hypothesis that there is significant influence of humanitarian norms on behavior in the international arena, or the evolution of the norm in East Africa. Outside the Security Council, the Non-Aligned Movement (NAM), consisting of currently 118 members and thus arguably constituting the most representative group aside from the UN.²² has noted “similarities between the new expression ‘responsibility to protect’ and ‘humanitarian intervention’”, a right which it explicitly rejects. More equivocally, the Group of 77, when jointly commenting on the Secretary-General’s report “In Larger Freedom”, did not address the issue of a responsibility to protect.¹⁹¹ Still, a continued preoccupation with the principles of state sovereignty and non-interference is visible particularly in East Asia.¹⁹² Finally, the majority of African states refrained from making any individual comments on the responsibility to protect at the 2005 World Summit. A favorable response to the R2P came, by contrast, from the Americas. Ultimately, it was mainly states from Latin-America, the Western hemisphere, and sub-Saharan Africa on whose support the proponents of R2P could count at the UN World Summit in 2005. Outside the Security Council, the Non-Aligned Movement (NAM), consisting of currently 118 members and thus arguably constituting the most representative group aside from the UN.²² has noted “similarities between the new expression ‘responsibility to protect’ and ‘humanitarian intervention’”, a right which it explicitly rejects. More equivocally, the Group of 77, when jointly commenting on the Secretary-General’s report “In Larger Freedom”, did not address the issue of a responsibility to protect.¹⁹³ Still, a continued preoccupation with the principles of state sovereignty and non-interference is visible particularly in East Asia.

¹⁹¹Group of 77 and China, Statement on the Report of the Secretary-General entitled “In Larger Freedom: Towards Development, Security and Human Rights For All” (A/59/2005), delivered by H.E. Ambassador Stafford Neil, Permanent Representative of Jamaica to the United Nations and Chairman of the Group of 77 (6 April 2005), online: Group of 77 <<http://www.g77.org/Speeches/040605.htm>>

¹⁹²MacFarlane, Thielking & Weiss, *supra* note 35 at 982-983.

¹⁹³Group of 77 and China, Statement on the Report of the Secretary-General entitled “

It was clear that there is impact of humanitarian intervention and responsibility to protect is high in the region East Africa where after the UN endorsed its version of R2P at the 2005 World Summit, several commentators hailed this achievement as strengthening the legal basis for possible unilateral humanitarian intervention, and claimed that the Summit had essentially succeeded in establishing a new norm that legalized humanitarian intervention.

The articulation of R2P has had the positive effect of making States more willing to address humanitarian crises. The relatively early stage of R2P's normative evolution makes it no less influential. The immense impact that R2P already has had on State behavior confirms that its persuasiveness is not dependent on it becoming a binding rule of international law. States are nonetheless expected to give it attention, as it is a well-recognized concept within international relations. The analysis of the dynamics between international norms and State behavior affirmed that, as States are continuously influenced by considerations other than R2P, their reactions may not always appear satisfactory. The divide of opinions has become apparent both in the international community at large and within the Security Council. The permanent members of the Council reacted predominantly with skepticism. China had voiced its rejection of the concept of humanitarian intervention already during the consultation process of the ICISS, when the commission held its roundtable consultation in Beijing in June 2001, and consistently appeared to disapprove of the outcome document as well.' Given this opposition at the outset, it has been regarded as a "significant breakthrough for the growing acceptance of the norm" when China later endorsed the responsibility to protect in an official paper on UN reforms. Similarly, the US had, from the inception, opposed the idea of criteria proposed by the ICISS, out of fear that it would be compelled to engage military forces in situations where its national interests were not

In Larger Freedom: Towards Development, Security and Human Rights For All" (A/59/2005), delivered by H.E. Ambassador Stafford Neil, Permanent Representative of Jamaica to the United Nations and Chairman of the Group of 77 (6 April 2005), online: Group of 77 <<http://www.g77.org/Speeches/040605.htm>>

at stake, while, conversely, being constrained to intervene in situations that it deemed appropriate cases for action.¹⁹⁴ The US government's initial reactions thus gave little reason to believe that it would subscribe to the substance of the report or even support its further development.

Nevertheless, R2P has subsequently been acknowledged by a task force that had been commissioned by the US Congress in December 2004.¹⁹⁵ The Russian response to the ICISS report, for comparison, has been described as "lukewarm". Indifferent or hostile reactions emanating from the country have been ascribed to "the feeling that Moscow will not be in a position to influence significantly the humanitarian intervention agenda anyway", or the concern that a pro-interventionist rule could be used to justify action over the humanitarian situation in Chechnya. At least the rhetoric of the report has, however, found the support of the Russian government, coupled with a reiteration of the Security Council as the only legitimate body for authorizing intervention. The most favorable, while not unqualified, responses to R2P in the Security Council came from France and the UK, who were still concerned, however, that the establishment of criteria for humanitarian intervention would not necessarily produce the required political will.

Conclusion

The study finding shows that there is a humanitarian intervention and its relationship with responsibility to protect in East Africa. The study examined two intervention cases shows that states' responses to humanitarian crises have not dramatically changed before and after R2P was adopted. Although the adoption of R2P represents significant progress of the liberal school, the realist critique of R2P should be seriously considered to avoid intervention based on national interests of great powers. The study further concludes that it is the powerful who decide when

¹⁹⁴Bellamy, "Whither the Responsibility to Protect"

¹⁹⁵American Interests and UN Reform: Report of the Task Force on the United Nations (Washington, DC: United States Institute of Peace, 2005), online: United States Institute of Peace

interventions should take place and what form they should take. Moral sensibility is also less important than national interests for such intervening states. Thus, realists would conclude that states' responses to humanitarian crises would not change even after the adoption of R2P that calls for the international community's moral duty to save civilians in mass atrocities. Considering the fact that the intervention in East Africa was undertaken to preserve national interests of some of NATO member states, the selectivity of intervention is likely to occur in the future, meaning that states would not intervene in humanitarian crises if their national interests are not at stake. In other words, realism continues to enjoy greater explanatory power for humanitarian intervention than liberalism. The intervention in East Africa resulted in making it difficult for the Security Council to authorize future intervention because the mandate stipulated in Resolution 1973 was stretched to serve one of the Western states' interests, which was regime change. The abuse of the mandate made developing states suspicious about motivations of intervening states. This will inevitably prevent R2P from developing as a more solid and influential norm, and states' reference to R2P in future humanitarian crises will be contested.

The study also conclude by reconceptualize the debate over humanitarian intervention as one over a responsibility to protect has led to an increased consensus about the legitimacy of humanitarian intervention. It has undermined support for it⁷ and, at the very least, indicated the extent to which this practice remains very much contested in international society. The study is supported by the theory of neoclassical realism by Hans J. Morgenthau argues, all human beings inherently seek to increase their power. The power-seeking human nature creates a situation where statesmen struggle for power over other states¹⁹⁶. Morgenthau argues, "Politics is a

¹⁹⁶ Morgenthau, Hans. "To Intervene or Not to Intervene." *Foreign Affairs*, 1967, 92-103.

struggle for power over men...the modes of acquiring, maintaining, and demonstrating it determine the technique of political action.” In international politics, states are always concerned about national interests such as security and wealth. To preserve their interests, intervention could be an option. Morgenthau argues: “Intervene we must where our national interest requires it and where our power gives us a chance to succeed. The choice of these occasions will be determined...by a careful calculation of the interests involved and the power available.” To summarize, classical neorealism focuses on power-seeking human nature, whereas neorealism focuses on an anarchic international system. Despite their different focuses, both strands shed light on states’ national interests and their desire to increase power.

Finally, the majority of African states refrained from making any individual comments on the responsibility to protect at the 2005 World Summit. A favorable response to the R2P came, by contrast, from the Americas. Ultimately, it was mainly states from Latin-America, the Western hemisphere, and sub-Saharan Africa on whose support the proponents of R2P could count at the UN World Summit in 2005¹⁹⁷.

Recommendation

The initial responsibility of the state to ensure the safety of its people, the Security Council references the entirety of humanitarian interventions and responsibility to protect, though it makes no further claim about the responsibility of other states to become involved. There is a recommendation that member states assist foreign nationals who wish to leave and a request that “all Member States, working together and acting in cooperation with the Secretary General facilitate and support the return of humanitarian agencies and make available humanitarian and related assistance.

¹⁹⁷MacFarlane, Thielking & Weiss, supra note 35 at 982-983.

Responsibility to protect seeks to establish a clearer code of conduct for humanitarian interventions and also advocates a greater reliance on non-military measures. The report recommends and attempts to change the discourse and terminology surrounding the issue of humanitarian intervention. It argues that the notion of a 'right to intervene' is problematic and should be replaced with the 'responsibility to protect'. Under Responsibility to Protect doctrine, rather than having a right to intervene in the conduct of other states, states are said to have a responsibility to intervene and protect the citizens of another state where that other state has failed in its obligation to protect its own citizens.

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