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„The Responsibility to Protect
and the Case of Darfur:
An Inadequate Concept?“

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Johannes Langer

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*Für
Meine Familie*

Content

PERSÖNLICHE ERKLÄRUNG	3
ACKNOWLEDGEMENTS	4
ABBREVIATIONS	8
INDEX OF FIGURES	10
1. INTRODUCTION	11
1.1. SCOPE OF THE STUDY	12
1.2. RESEARCH QUESTIONS	12
1.3. HYPOTHESES	12
1.4. RELEVANCE OF THE TOPIC	13
1.5. METHODOLOGY	13
1.6. CHAPTER OUTLINE	15
2. HUMAN SECURITY	16
2.1. TRADITIONAL PERCEPTION OF SECURITY	16
2.2. THE DEVELOPMENT OF HUMAN SECURITY AS A CONCEPT	18
2.2.1. HUMAN SECURITY IN THE BROAD SENSE	22
2.2.2. HUMAN SECURITY IN A NARROW SENSE	24
2.2.3. EIGHT POINTS TO DEPICT HUMAN SECURITY	26
2.3. HUMAN SECURITY AS A THEORY	29
2.4. CRITICISM OF HUMAN SECURITY	32
2.5. HUMAN SECURITY IN AFRICA	34
2.6. CONCLUSIONS	34
3. THE DEVELOPMENT OF THE RESPONSIBILITY TO PROTECT	36
3.1. DEBATE ON HUMANITARIAN INTERVENTION	36
3.2. THE ICISS AND ITS 2001 REPORT	42
3.2.1. THE RESPONSIBILITY TO PREVENT	45
3.2.2. THE RESPONSIBILITY TO REACT	47
3.2.3. THE RESPONSIBILITY TO REBUILD	49
3.2.4. CRITICISM OF R2P	51
3.3. THE WORLD SUMMIT OUTCOME 2005	52
3.4. THE AFRICAN UNION'S STEP AHEAD?	56
3.5. R2P AS A CONCEPT IN INTERNATIONAL LAW	58
3.6. THE ROLE OF THE UN SECURITY COUNCIL IN R2P	59
4. THE DARFUR CONFLICT	63
4.1. INTRODUCTION TO DARFUR	63
4.2. HISTORY OF DARFUR	64
4.3. 'ARAB' VS. 'AFRICAN'	67
4.4. DARFUR'S GENOCIDAL CONFLICT IN 2003 - 2004	69
4.5. NEGOTIATIONS WITHOUT RESULT: 2005 - 2006	73
4.6. THE MAIN PARTIES OF THE CONFLICT	75
4.6.1. THE GOVERNMENT OF SUDAN	76
4.6.2. JANJAWEEED MILITIA	77
4.6.3. SUDAN LIBERATION MOVEMENT/ARMY (SLM/A)	78

4.6.4. JUSTICE AND EQUALITY MOVEMENT (JEM)	80
4.7. A DIFFICULT ROAD TO PEACE SINCE 2007	81
4.8. REACTIONS OF THE INTERNATIONAL COMMUNITY TO THE CONFLICT	84
4.8.1. EMERGENCE IN THE INTERNATIONAL CONSCIOUSNESS	85
4.8.2. AMIS	88
4.8.3. THE UN SECURITY COUNCIL AND DARFUR	89
4.9. CONCLUSION	93
 5. SHOULD R2P BE APPLIED IN DARFUR?	 94
 5.1. THE DEBATE ON GENOCIDE IN DARFUR	 94
5.1.1. WHAT IS ACTUALLY GENOCIDE?	95
5.1.2. THE FIGHT ABOUT NUMBERS IN DARFUR	97
5.1.3. NO GENOCIDE IN DARFUR?	99
5.2. UNAMID	101
5.3. THE FAILURE TO PROTECT	104
5.3.1. NEED FOR PROPER PEACE TALKS	104
5.3.2. MILITARY VS. POLITICAL SOLUTIONS	104
5.4. CONCLUSIONS	106
 6. SYSTEMATIC FAILURES OF R2P?	 107
 6.1. WHY R2P HAS NOT BEEN APPLIED IN DARFUR	 107
6.2. AN R2P CASE OR NOT?	108
6.2.1. WRONG CLAIMS OF R2P	108
6.2.2. UNREACHED R2P THRESHOLD	109
6.2.3. THE FAILURE TO REACT	110
6.2.4. ONE SUCCESSFUL EXAMPLE	111
6.3. INHERENT PROBLEMS OF R2P	111
6.3.1. DISCUSSION ON INTERVENTION REVISITED	112
6.3.2. WHY THE WEST WILL NOT INTERVENE IN DARFUR	113
6.3.3. ENFORCING INTERNATIONAL LAW	114
6.3.4. THE 'MORAL HAZARD' WITH REBELS	116
6.4. CONCLUSIONS	117
 7. CONCLUSION	 119
 BIBLIOGRAPHY	 122
 ABSTRACT (ENGLISH)	 132
ABSTRACT (DEUTSCH)	133
LEBENS LAUF	134

Abbreviations

AMIS	African Union Mission in Sudan
ASF	African Standby Force
AU	African Union
CHS	Commission on Human Security
CPA	Comprehensive Peace Agreement
CPPCG	Convention on the Prevention & Punishment of the Crime of Genocide
DDR	Disarmament, Demobilization and Reintegration Process
DLF	Darfur Liberation Army
DPA	Darfur Peace Agreement
DPKO	UN Department of Peacekeeping Operations
DRC	Democratic Republic of Congo
ECOMIL	ECOWAS Mission in Liberia
ECOWAS	Economic Community of West African States
EU	European Union
EUFOR	European Union Force
GoS	Government of Sudan
HLP	High Level Panel
HRW	Human Rights Watch
ICC	International Criminal Court
ICG	International Crisis Group
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally Displaced Person
IICK	Independent International Commission on Kosovo
IR	International Relations
JEM	Justice and Equality Movement
LTTE	Liberation Tigers of Tamil Eelam
MDGs	Millennium Development Goals
MINURCAT	United Nations Mission in the Central African Republic and Chad
MONUC	United Nations Mission in the Democratic Republic of Congo
MSF	Médecins sans Frontières
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organization

NCP	National Congress Party
NGO	Non-governmental Organization
NIF	National Islamic Front
NISS	Sudanese National Intelligence and Security Services
OAU	Organization of African Unity
P5	Five Permanent Members in the UN Security Council
PBC	Peacebuilding Commission
PDFs	Popular Defense Forces
R2P	Responsibility to Protect
SIPRI	Stockholm International Peace Research Institute
SLA/M	Sudan Liberation Army / Movement
SLA/MM	Sudan Liberation Army / Minni Minawi
SPI	Sudan People's Initiative
SPLA/M	Sudan People's Liberation Army / Movement
TFG	Transitional Federal Government
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
UNAMID	United Nations – African Union Mission in Darfur
UNAMIR	United Nations Assistance Mission for Rwanda
UNDP	United Nations Development Program
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner on Refugees
UNICEF	United Nations Children's Fund
UNITAF	Unified Task Force
UNMIS	United Nations Mission in Sudan
UNOSOM	United Nations Operation in Somalia
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
US	United States of America
WHO	World Health Organization
9/11	Terrorist Attacks of 11 September 2001

Index of Figures

Figure 1: Human Security vs. Traditional Security	p. 19
Figure 2: Map of Darfur	p. 62
Figure 3: UNSC Resolutions on Darfur until September 2007	p. 91
Figure 4: Estimated Number of Deaths in Darfur until Mid 2008	p. 98
Figure 5: UNAMID's Deployment in July 2009	p. 103
Figure 6: Moral Hazard of Humanitarian Intervention	p. 116

1. Introduction

This research paper is a discussion about when and how external actors should intervene in third countries to prevent mass violence or genocide. Massive human rights violations in the Balkans and Sub-Saharan Africa in the 1990s have prompted a lively debate about the legitimacy and desirability of the use of force by third parties to prevent mass atrocities. A fierce argument started between supporters of sovereignty and non-intervention on the one hand, and advocates of universal human rights, who want to have human rights guaranteed by military action as a last resort, on the other. Legal, political and moral grounds are framing the controversy about the right or even duty of the international community to protect endangered civilians faced with mass atrocities in violent conflicts.

The slogan ‘never again’ was often used after World War II to justify military action in reference to the Holocaust and a future prevention of genocide. Military interventions on humanitarian grounds have proven in the past to be half-hearted and were unsatisfying for all parties involved, not least for the civilians suffering from gross human rights abuses by abusive states. In 1999, the members of NATO responded to the crisis in Kosovo with a bombing campaign against the Federal Republic of Yugoslavia. The reasoning of the intervention was based on the moral right and duty to protect the Albanian population of Kosovo. This action was widely perceived as ‘legitimate but illegal.’¹ In 2000, the Canadian government took the lead in setting up an International Commission that worked on a concept labeled ‘Responsibility to Protect’ in order to prevent genocide, war crimes, crimes against humanity and ethnic cleansing in the future.

Still, some nine years after the 1994 Rwandan genocide, during which an estimated 800,000 people were slaughtered over the course of one hundred days without any external attempt from the international community to stop the violence – despite the presence of UN troops on the ground –, the crisis in Darfur began in 2003. The Western public did not take notice of the atrocities for approximately one year and even after it had had attracted the attention of the international community, the crisis was not approached adequately. The events in Darfur call into question the credibility of world leaders’ claims to prevent mass atrocities and stop crimes against humanity.

One of the main questions is, how severe a crisis needs to be in order for military action to be taken. Even with a majority of states in favor of a forceful intervention, it lies with the permanent five members (P5) of the United Nations Security Council (UNSC) to

¹ The former judge Richard Goldstone, a distinguished South African jurist, was head of the International Independent Commission of Inquiry on the Kosovo War and reviewed the 78 days of the NATO air strike.

pass or block a resolution that allows counter-action and stops the worst suffering. Not only the institutional set-up of the United Nations but also the commitment of the world powers to act and protect civilians remains a challenge. Only if these challenges are tackled in the 21st century, we may overcome the bloody century behind us.

1.1. Scope of the Study

To narrow the topic, a specific focus is given to the debate on the Responsibility to Protect, a concept set up in 2001. To understand the idea of the Responsibility to Protect (R2P), it is important to know its background which is based on the concept of human security. In comparison to traditional security concepts that focus on the state, human security puts the individual or the community in the center of attention. Darfur is used as an example in this research paper as it is one of the most obvious and prominent cases thus far in the 21st century, in which a state, in line with its auxiliaries, has acted against its own population. Important is the overall reaction of the international community on the Darfur conflict, in particular the response of the UN Security Council. The overall applicability of the R2P concept in its current shape will be discussed.

1.2. Research Questions

The central research question of this paper is threefold:

- 1) Has the humanitarian crisis in Darfur reached such an extent since 2003 as to consider it to be an R2P situation?
- 2) Why has there been no protection of civilians in Darfur by the international community?
- 3) Are there systematic problems inherent in the concept of R2P or is Darfur an exceptional case?

1.3. Hypotheses

Based on the research questions, this research paper's hypotheses are as follows:

- 1) The Darfur conflict has indeed been an R2P situation since the violent clashes in 2003. Although the humanitarian crisis had not yet been declared as genocide,² the committed crimes against humanity and the failure of the Government of Sudan to protect its citizens constituted an R2P situation.
- 2) Western advocacy for an intervention in Darfur, in particular on the part of the US, came too late and brought about a deadlock in the UN Security Council. Instead of focusing on realistic scenarios on how to protect civilians in Darfur, the debate dealt with terms like genocide and inhibited effective action on site.
- 3) As long as the UNSC is not reformed and proposals by the International Commission on Intervention and State Sovereignty (ICISS) are not integrated into the concept of R2P, civilians will not be protected in case of genocide or crimes against humanity, as the example of the Darfur conflict proves. Accordingly, international actors have not learned their lesson from the crimes committed in the 1990s.

1.4. Relevance of the Topic

The value of this study is underscored by intense debates since the introduction of R2P in 2001 on how to link intervention and sovereignty and to prohibit atrocities, like those that were committed in Bosnia or Rwanda, in the future. The endorsement of R2P at the World Summit Outcome in September 2005 introduced a new approach to preventing crimes against humanity, but it is still unclear whether it receives the broad support it needs to be accepted in international law and by powerful states.

This paper is relevant for the academic community and research institutions because R2P has induced the international community to face emerging humanitarian crises at the onset of a conflict. This work will exemplify the complexities that the international community faces in a conflict situation like Darfur. Further clarification or even remodeling the concept of R2P will be necessary to prevent mass atrocities in the future.

1.5. Methodology

The methodological basis of this work is analytical and qualitative research. The study uses an analytical approach because it suggests an intermediary level of analysis, where

² The International Commission of Inquiry on Darfur concluded in a report to UN Secretary-General Kofi Annan on 25 January 2005 that although the Government of Sudan pursued no genocidal intent, the crimes committed “may be no less serious and heinous than genocide.”

neither description or storytelling nor grand scale theorization will dominate. In this research paper, the problem of R2P's applicability and feasibility will be addressed critically. Finally, qualitative research is used to bring together empirical evidence and the complex theory of human security.

A case study collects empirical data to verify an abstract theory, requiring the detailed and extensive study of a case related to a person, community, organization, or event.³ According to John Mitchell, the aim of case studies is to "impart a sense of concreteness to an otherwise overwhelmingly abstract account,"⁴ for which reason case studies are also very popular in the social sciences. Moreover, case studies relate empirical findings to theory, because they must "demonstrate how events and actions are linked to one another in theoretically significant ways."⁵

There are different categories of case studies and they are applied depending on the purpose and type of case study. Two different types of case study apply to Darfur in this research paper: a *critical case study*, which illustrates whether a hypothesis is right or wrong; and an *exemplifying case study*, which provides an appropriate context in which to answer research questions.⁶ Critics argue that case studies are of limited significance because they lack a systematic handling of data, are too voluminous in their coverage and offer no basis for scientific generalization. Since behavioral patterns cannot be simulated for the investigator's eye, however, general circumstances can only be studied in a real-life context such as Darfur.

Additionally, the author carries out a qualitative content analysis following the methods proposed by Philipp Mayring. Through this systematic approach the gathered material, including a variety of texts as well as photos and films, can be assessed. It is important that the context of the documents used is systematically presented and classified. Parts of the texts have to be put into a broader context so that conclusions can be drawn,⁷ which was achieved through the use of both primary and secondary sources of written texts.⁸

The literature research for this thesis was conducted over the course of approximately one year, from autumn 2008 to autumn 2009. On the one hand, resolutions of the UN Security Council as well as documents from other UN bodies, including reports from the UN Secretary-General and the UN Development Program (UNDP), resolutions of the UN

³ Bryman Alan (2004), *Social Research Methods*. Second edition. New York: Oxford University Press, pp. 48-52.

⁴ Mitchell, John C. (1984): "Case studies", in: Ellen, R.F. (ed.): *Ethnographic Research: A Guide to General Conduct*. London: Academic Press, p. 237.

⁵ Mitchell 1984:240.

⁶ Bryman 2004:51; Mitchell 1984:238.

⁷ Mayring, Philipp (2000), "Qualitative Content Analysis", *Forum: Qualitative Social Research*, Vol. 1(2).

⁸ Alemann, Ulrich v. (1995), *Grundlagen der Politikwissenschaft*. Opladen: Leske & Budrich.

General Assembly (UNGA), and the 2005 Millennium Summit were considered to be important. Further reports that had a major influence on R2P and human security, such as those from the International Commission on Intervention and State Sovereignty (ICISS) or the Commission on Human Security (CHS), are also covered. Finally, human rights reports and briefings that are issued on a regular basis by respected NGOs such as Human Rights Watch (HRW) or advocacy think tanks like the International Crisis Group (ICG) were taken into consideration to examine the Darfur conflict due to their valuable insights into the situation on the ground.

On the other hand, secondary literature like monographs, anthologies and, in particular, academic journal articles has also been used. The latter provided valuable material on human security, R2P and Darfur because they include up-to-date information where books do not keep pace with the latest development. Considering the highly divergent perspectives involved in an issue like the Darfur crisis, the author has made an effort to crosscheck the arguments and findings against information obtained from as many different sources as possible.

1.6. Chapter Outline

Following this introductory chapter, the theoretical aspect of this research paper, human security is introduced (Chapter 2). Chapter 3 presents the concept of Responsibility to Protect, its appearance, establishment and interpretation. In Chapter 4, the conflict in Darfur is outlined as this paper's case study. Chapter 5 discusses whether R2P should have been applied in Darfur. The question whether the concept of R2P has systematic and inherent deficits is covered in Chapter 6. Finally, the conclusions of this research paper will be presented in Chapter 7.

2. Human Security

To many, there is little doubt that (in and of itself) the traditional state-based security paradigm is failing in its primary objective - to protect people.⁹

Human security is an evolving paradigm that gained momentum after the end of the Cold War. This chapter will first give an overview of the origins of human security, followed by a discussion of the broad and narrow senses of human security as it has developed over the past fifteen years, and will lead to the introduction of human security as a theory. Finally, criticism of this concept will also be covered.

2.1. Traditional Perception of Security

Traditionally, the focus of international relations (IR) has been on the nation state. For a long time, it was held that IR should explain security relations among states, in particular among powerful actors. The nation state, according to Walter Lippman's classical definition by, has to be "secure to the extent to which it is not in danger of having to sacrifice core values if it wishes to avoid war and is able, if challenged, to maintain them by victory in such a war."¹⁰ This belief led to a realist point of view comprised of the following four main points: (1) states are preoccupied with physical safety; (2) states act autonomously; (3) national development is a means to foster state autonomy and safety; and (4) ruling state leaders have to be prepared to meet threats from external forces to maintain autonomy and safety.¹¹ Thus, national interest and sovereignty were important concepts for nation states.

After World War I, a liberalist perspective became more popular with the foundation of the League of Nations; ruling the state was not seen as a strict domestic matter anymore but rather in the context of the international system of states. With the economic turmoil of the 1930s and World War II, the positions changed again. During the time of bipolarity between the United States (US) and the Soviet Union, realism was prevailing IR. Definitions like Ian Bellamy's dominated the discourse: "Security itself is a relative

⁹ Owen, Taylor (2004b), "Human Security – Conflict, Critique and Consensus: Colloquium Remarks and a Proposal of a Threshold-Based Definition", *Security Dialogue* Vol. 35(3), p. 374.

¹⁰ Lippman, Walter (1943), *US Foreign Policy: Shield of the Republic*. Boston: Little Brown, p. 51.

¹¹ Morgan, Patrick (2007), "Security in International Politics: Traditional Approaches", in: Collins, Alan (ed), *Contemporary Security Studies*. New York: Oxford University Press, p. 16.

freedom from war, coupled with a relatively high expectation that defeat will not be a consequence of any war that should occur.”¹² The use of force, the nation state and military might stood at the center of attention. The Cold War led to a strong link between the academic community and policy makers in the United States, particularly during the 1950s and 1960s. Deterrence theory, focusing on the use of nuclear weapons and applied policies to make sure that the potential aggressor would refrain from assault, marked a ‘Golden Age’ of security studies.¹³ States were deemed to be rational entities led by national interest and the aim of maximization of power. The abstraction of deterrence, however, became too complex in the 1980s, and the internal logic was lost.¹⁴

While security studies continued to be attached to military academies, security theory became university-based. This turn to academia is important for contextualizing the further development and the broadening of security studies after the Cold War. In Europe, this development was imported from the US; research was closely connected to government-funded institutions, which were to influence state policies.¹⁵ In contrast to this development, a critical peace research evolved in Europe in the late 1960s, particularly in Germany, the Netherlands and Scandinavia. These research institutions centered their attention on peace and perceived security as a problem, not as the solution. In general, however, a realist view prevailed during the Cold War and traditional state-centered security studies reached its peak.¹⁶

The realist worldview has ironically hidden the threats that individuals have to face because these threats are typically not a matter of nuclear attacks but rather of proxy wars that have consequences like disease, hunger, poverty and violence. With the end of the Cold War and the beginning of the process of globalization,¹⁷ non-military security moved to the center of attention. A liberal internationalist approach became the dominant perspective in the practice of international relations not least because practical implications of traditional security concepts had failed to protect individuals or communities. As a consequence, security was extended horizontally and came to include ecological, economic, social and societal dimensions.¹⁸ International pressure for interventions in

¹² Bellamy, Ian (1981), “Towards a Theory of International Security”, *Political Studies* Vol. 29(1), p. 102.

¹³ Waever, Ole/Buzan, Barry (2007), “After the Return to Theory: The Past, Present and Future of Security Studies”, in: Collins, Alan (ed), *Contemporary Security Studies*. New York: Oxford University Press, p. 387.

¹⁴ Freedman, Lawrence (1988), “International Security: Changing Targets”, *Foreign Policy* Vol. 110(2).

¹⁵ Waever/Buzan 2007:391.

¹⁶ Owen, Taylor (2004a), “Challenges and Opportunities for Defining and Measuring Human Security”, *Human Rights, Human Security and Disarmament* 03/2004, p. 16.

¹⁷ Although some historians argue that globalization dates back as far as the 15th century, in fact only the post-Cold War period could reach out to the whole world. See: Wallerstein, Immanuel (1974), *The Modern World-System*, 3 vols., New York/London: Academic Press; Braudel, Ferdinand (1979), *Civilization and Capitalism, 15th–18th Centuries*, 3 vols., Berkeley/Los Angeles: University of California Press.

¹⁸ Debiel, Tobias/Werthes, Sascha (2005), “Human Security – Vom politischen Leitbild zum integralen Baustein eines neuen Sicherheitskonzepts?”, S + F, Vol. 23(1), p. 9.

states considered being threats to peace and security in the region increased. A human-centric focus emerged that later became institutionalized as ‘human security.’ Security studies moved away from inter-state relations to issues threatening people’s lives by broadening and deepening the understanding of security.

2.2. The Development of Human Security as a Concept

The ideas behind human security can be traced back to the 1980s. Fen Osler Hampson outlines three fields of origin for human security, all of which relate to the individual as the reference object: the rule of law, the safety of peoples and sustainable human development.¹⁹ Human security established itself as a new and independent concept in the post-Cold War world when traditional models of state security started to change as dissatisfaction with their application grew; the individual moved to the center of attention and the new security paradigm was sought to address the new global menaces. Thus, the new security paradigm could establish itself due to the end of the Cold War and the all-embracing influence of globalization.

The 1994 UNDP Human Development Report *New Dimensions of Human Security* used and shaped ‘human security’ for the first time and introduced the idea within a larger part of the international community. Since its first appearance, the term human security has changed in its understanding. Still, it “has begun visibly to influence, change, and challenge global politics, institutions, and governance”²⁰ – not least the academic community. Proponents of human security agree that the concept “challenges the traditional state-centric view that the state is and should be the primary object, or referent, of security.”²¹ Within human security, people are the reference object. Advocates of human security, however, disagree about what kind of threat should be tackled first. The following table outlines a brief history of the concept of human security.

The UNDP introduced the term human security with the following definition: “[H]uman security is the protection of the vital core of all human lives from critical and pervasive environmental, economic, food, health, personal and political threats.”²² Three different approaches have been used to categorize the threats: (1) temporal security from

¹⁹ Hampson, Fen Osler (2001), *Madness in Multitude: Human Security and World Disorder*. Oxford: Oxford University Press, pp. 17-18.

²⁰ Oberleitner, Gerd (2005), “Human Security: A Challenge to International Law?”, *Global Governance*, Vol. 11, p. 185.

²¹ Kerr, Pauline (2007), Human Security, in: Collins, Alan (ed), *Contemporary Security Studies*. New York: Oxford University Press, p. 94.

²² UNDP (1994). *Human Development Report 1994: New Dimensions of Human Security*. New York: Oxford University Press, p. 383.

both long-term and short-term threats; (2) debate about freedom from fear and freedom from want; and (3) potential threats to human security, outlined above in the definition of the UNDP.²³ It is seen as vital by Oberleitner that “the security of the individual [is] on the same level as the security of the state.”²⁴ A shift in the security construct thus took place from the state to the individual level. Ordinary people’s day-to-day concerns were to be in center stage. Instead of the Westphalian order and the principle of non-intervention, which has a strong state-centered approach, the people’s vulnerability is in the spotlight. Moreover, Hampson and Penny argue that the conception of human security represents a link between human rights and international security, as stated in the UN Charter.²⁵

Figure 1: Human Security vs. Traditional Security

	Human Security	Traditional Security
Actor	States, regional and international organizations, NGOs	The state
Scope	To protect individuals and communities	To protect the state from external aggression; deterrence
Referent	The individual is at the center	The state has priority

Source: Own illustration

Soon, however, a disagreement on the meaning of human security unfolded, concerning whether a broad or narrow approach was preferable. After the broader UNDP definition, the Commission on Global Governance, established in 1992, presented their 1995 report, which gave a stronger focus to military issues and added that “ways to safeguard people against domestic threats of brutalization and gross deprivation”²⁶ must be found. Furthermore, the integrity and viability of the life-support systems responsible for the set-up of communities had to be guaranteed. This report hinted on a substantive issue because the nature of war was changing. By the 1960s, most violent conflicts had already changed from inter-state to intra-state wars. The Cold War mindset had thus far inhibited a proper analysis of the phenomenon of intra-state conflicts, and many wars until 1991 were classified as proxy wars in the ideological confrontation of the bipolar world. According to the Uppsala Conflict Data Program, 121 conflicts have taken place in 81 locations since

²³ Owen, Taylor (2008), “Uncertain Future of Human Security in the UN”, *International Social Science Journal* Vol. 59(s1), p. 116.

²⁴ Oberleitner 2005:197.

²⁵ Hampson, Fen O./Penny, Christopher K. (2007), Human Security, in: Weiss, Thomas G./Daws, Sam (eds.), *The Oxford Handbook on the United Nations*. New York: Oxford University Press, p. 553.

²⁶ The Commission on Global Governance (1995), *Our Global Neighbourhood*. Oxford: Oxford University Press, p. 80.

the end of the Cold War. The highest number (51 active conflicts) was recorded in the years 1991 and 1992, but the post Cold War era witnessed a steep decline in the number of conflicts. In 2005, 31 ongoing armed conflicts were identified in 22 locations – but only five conflicts were classified as a war, which corresponds to at least 1,000 battle-related deaths within one year.²⁷ Although the number of armed conflicts has declined, millions of people around the world have to face insecurity on a daily basis because of violent conflict.

While the concept of human security has faced criticism in academia because it is not a coherent policy, it has been applied in practice. The UN in particular used human security as a policy tool, but some states also took the initiative in using it as a *leitmotif* in their foreign policy. ‘Middle powers’ like Canada realized this new approach was a chance to strengthen their own position in the international community although their military power was constricted.

Within the UN, human security has been cause for debate. In March 2000, UN Secretary-General (UNSG) Kofi Annan presented his thoughts to the UN member states about the future development of the UN with regard to the September 2000 Millennium Summit in the report *We the Peoples: The Role of the United Nations in the 21st Century*. In his report, the Secretary-General referred to two competing paradigms, both of which are strongly related to human security. On the one hand he spoke of the ‘freedom from want’ as a broader approach that encompasses a wide range of human development aspects as well as threats like HIV/AIDS and extreme poverty; Annan did not mention the term human security in this respect. On the other hand he referred to the ‘freedom from fear,’ which comprises a narrow security agenda that aims to attain “the protection of communities and individuals from internal violence.”²⁸

In September 2000, the Canadian Government took the initiative to establish the International Commission on Intervention and State Sovereignty, which in December 2001 released the report *The Responsibility to Protect*. Furthermore, the idea to establish a Commission on Human Security (CHS) was born at the Millennium Summit and came into being in April 2001 thanks to the initiative of the Government of Japan. Sadako Ogata, the former UN High Commissioner for Refugees, and Amartya Sen, a Nobel Laureate for Economics co-chaired the latter commission. The CHS report *Human Security Now: Protecting and Empowering People* supported a very broad conception of human security, focusing particularly on the personal empowerment and dignity of human beings. The CHS

²⁷ Harbom, Lotta (ed.) (2006), “States in Armed Conflicts 2005”, Department of Peace and Conflict Research, Uppsala University, Research Report no. 34.

²⁸ Annan, Kofi (2000), “‘We, the peoples’: The Role of the United Nations in the 21st Century”, Report of the UN Secretary-General, p. 43.

defined human security as protecting “the vital core of all human lives in ways that enhance human freedoms and human fulfillment.”²⁹ The CHS therefore went a step further in the debate by focusing on the specific needs for the living conditions of the individual. In the center of attention stood the idea of *vital freedoms*, which are to be understood as “inalienable fundamental rights and freedoms that are laid down in the Universal Declaration of Human Rights and other human rights instruments.”³⁰ A variety of other countries supported such a broad understanding of human security, among them South Africa.

The idea of human security became popular in UN institutions. In 2003, Annan established an Advisory Board on Human Security. In addition, the UN Office on Drugs and Crime in Vienna set up a Human Security Branch. The High-Level Panel (HLP) on Threats, Challenges and Change, which the Secretary-General later initiated in 2003, went back to a narrow approach to what the HLP called a “comprehensive system of collective security.”³¹ The HLP extended the concept of collective security to threats like HIV/AIDS, but did not take the step to the individual level. The state remained the main basis of security concerns – not surprisingly, human security is not mentioned in the report at all. Annan gave flexibility to the member states by allowing them to develop different approaches, which consequently fuelled equivocation.

The European Union (EU) also took part in the evolution of human security. The report *A Secure Europe in a Better World*, which was introduced by Javier Solana, the High Representative for the Common Foreign and Security Policy, and which the European Council adopted in December 2003, clearly demonstrated their participation.³² This step by the EU represented an interesting link between state security and human security, a sort of hybrid framework that brought the traditional military sphere together with socio-economic factors. Practical results of this report are the implementation of human security in regional EU co-operations such as the Euro-Med cooperation and the European Neighborhood Policy.

In his own report *In Larger Freedom: Towards Security, Development and Human Rights for All*, the UN Secretary-General surveyed the achievements of the Millennium Development Goals (MDGs) in March 2005. Human security is only mentioned once in the overall report due to the reservations some UN member states have regarding human

²⁹ Commission on Human Security (2003), *Human Security Now*. New York, p. 4.

³⁰ Ogata, Sadako/Cels, Johan (2003), “Human Security – Protecting and Empowering the People”, *Global Governance* Vol. 9(3), p. 274.

³¹ CHS 2003.

³² Gropas, Ruby (2006), „What Role for Human Rights in the European Security Strategy?“, in: Debiel, Tobias/Werthes, Sascha (eds.), *Human Security on Foreign Policy Agendas: Changes, Concepts and Cases*, Institute for Development and Peace Report No. 80, p. 55.

security.³³ Still, he called on the member states “to perfect the triangle of development, freedom and peace.”³⁴ The World Summit took place later the same year; the resulting Outcome Document embraced the responsibility to protect and asked the UN General Assembly for further elaboration in regard to human security.

There have been many attempts to define human security, whereby two conceptual schools can be identified: an understanding in the broad and in the narrow sense. In the following, these two schools will be discussed. Finally, the author will offer an analytical framework comprised of seven points, upon which the concept of human security is built in this research paper.

2.2.1. Human Security in the Broad Sense

The UNDP definition of human security has created a very broad, holistic understanding of security. The authors of the UNDP report stated that “[w]ithout peace, there may be no development. But without development, peace may be threatened.”³⁵ This statement must be seen in the context of a traditional understanding of security, which, according to the critics, should be opened up. States and international organizations alike were interested in including their agenda in the evolving concept of human security in the second half of the 1990s, which led to a very broad meaning and a variety of definitions. In its broad conceptualization, human security not only includes freedom from fear but also freedom from want; underdevelopment and the infringement of human values are key issues that must be kept in mind as security threats. Secretary-General Annan described human security in the wider sense in a press release:

Human security in its broadest sense embraces far more than the absence of violent conflict. It encompasses human rights, good governance, access to education and health care and ensuring that each individual has opportunities and choices to fulfill his or her own potential.³⁶

Annan’s report *We the peoples* also makes use of this broad understanding. Hampson and Penny argue that in this regard, human security “provided a strong philosophical foundation for the MDGs”³⁷ that were agreed upon at the Millennium Summit in September 2000. Wolfgang Benedek provides an alternative but supportive definition of human security, stating that it “is understood to mean the security of people against threats

³³ Benedek, Wolfgang (2008), “Human Security and Human Rights Interaction”, in: Goucha, Moufida/Crowley, John (eds.), *Rethinking Human Security*, Malden, MA/Oxford: UNESCO, p. 10.

³⁴ Annan 2005: para. 12

³⁵ UNDP 1994:iii.

³⁶ UN (2000), “UNSG Salutes International Workshop on Human Security in Mongolia”, Press Release SG/SM/7382, 8 May 2000.

³⁷ Hampson/Penny 2007:554.

to human dignity.³⁸ This broad school was purposefully separating itself from the former security conceptions prevalent during the Cold War. On this basis, Taylor Owen further defends the broad school, arguing that

[a]lthough critics rightfully point to a potential ambiguity from grouping so many threats under one heading, clarity emerges if three key attributes of the broad conception are considered: its scope of coverage, its system-based approach to understanding causal relationships, and its focus on the vital core of the individual.³⁹

Supporters of a broad understanding take Owen's defense up and argue further that a holistic approach to human security helps to allow an integrated and interdisciplinary analysis and policy design. Supporters do not see a need in itself to prioritize certain issues in human security because there is not a single policy agenda and the actors are too multiple and heterogeneous. On such a basis, Ramesh Thakur argues that

human security is concerned with the protection of people from critical life-threatening dangers, regardless of whether the threats are rooted in anthropogenic activities or natural events, whether they lie within or outside states, and whether they are direct or structural.⁴⁰

Thakur defends his point of view by stating that there is value in inclusive definitions while admitting that the concept is analytically not that precise anymore. Like other proponents of a broad understanding, Thakur is aware of the inherent vagueness in such a conceptualization, but argues that the broad understanding is necessary to overcome and broaden the state security paradigm. Ferreira and Henk also believe that the new concept of human security should take precedence over other types of security and should

include all conditions necessary for the survival, livelihood, and dignity of individuals along with the protection of their fundamental freedoms and human rights, guaranteeing them the enjoyment of good governance, education, health care, and access to the opportunities necessary to fulfill human potential.⁴¹

Sabina Alkire goes even further by stating that the objective of human security is "to protect the vital core of all human lives in ways that advance human freedoms and human fulfillment."⁴² She thus includes social or psychological aspects of vulnerability as critical for reaching a long-term flourishing of human security when those issues can be successfully resolved. In addition, some scholars like Jorge Nef hint at the complexity that

³⁸ Benedek 2008:9.

³⁹ Owen 2004a:18.

⁴⁰ Thakur, Ramesh (2004), "A Political Worldview", *Security Dialogue* Vol. 35(3), p. 347.

⁴¹ Ferreira, Rialize/Henk, Dan (2009), "'Operationalizing' Human Security in South Africa", *Armed Forces & Society* Vol. 35(3), 501-525, p. 502.

⁴² Alkire, Sabina (2004), "A Vital Core that Must be Treated with the Same Gravitas as Traditional Security Threats", *Security Dialogue* Vol. 35(3), p. 360.

is behind violent conflict. Nef points out five interconnected sub-systems: culture, economy, ecosystem, polity and society. According to Nef, the complex interplay of these five systems makes it possible to capture all of the possible significant variables in violent conflict.⁴³ The list of possible threats faced by individuals is long. These threats include organized crime, natural disaster, human trafficking, health and poverty. The UN has tackled these threats through various resolutions such as UNSC resolution 1308 (2000) on HIV/Aids or climate change in UNGA resolution 63/281 (2009) on climate change. The traditional state-orientated definition of security would not have considered such issues as a threat to security.

It is important for a broad understanding of human security to be inclusive but clear. To remain clarity is an enormous task but can be accomplished if different types of security are pointed out, as the CHS does, to address causality and to find a certain threshold in order to separate human security from human development.⁴⁴

2.2.2. Human Security in a Narrow Sense

A broad understanding of human security prohibits a clarification of the concept and plays into the hands of critics who are anxious to dismiss the entire concept. Thus, a narrow approach to human security maintains ‘freedom from fear’ while excluding ‘freedom from want,’ as suggested by the UNDP in its report. The narrow approach is clearly separating itself from international development and from the broad sense of human security by focusing exclusively on violent threats. This shift to a narrow understanding of human security is reflected in the UN Secretary-General’s report *On the Protection of Civilians in Armed Conflict* to the UNSC in 1999.⁴⁵ Kofi Annan wrote about the multi-dimensional threats that civilians face in a war. He mentioned a range of threats, among them forced displacement and the denial of humanitarian assistance, which the Security Council must address to fulfill its duty to maintain peace and security.⁴⁶ This report indicated Annan’s initial support for a narrow, violence-based conceptualization of human security. These concerns had an impact on the UN Security Council, which passed resolutions 1265 (1999), 1738 (2006) and 1894 (2009)⁴⁷ to protect civilians in armed conflicts; resolution

⁴³ Nef, Jorge (2003), *Human Security and Mutual Vulnerability: The Global Political Economy of Development and Underdevelopment* (2nd edition). Ottawa: IDRC Books.

⁴⁴ Owen 2004a:19.

⁴⁵ Annan, Kofi (1999b), Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict. S/1999/957.

⁴⁶ Annan 1999b:2-4.

⁴⁷ UNSC resolution 1894 was adopted unanimously during Austria’s UNSC presidency in November 2009.

1314 (2000), 1612 (2005) and 1882 (2009) on children and armed conflicts; and resolution 1325 (2000), 1820 (2008) and 1888 (2009) on women, peace and security.

As mentioned above, the narrow interpretation of human security focuses on freedom from fear. Potential threats are limited to those directly related to violent conflicts like landmines or small arms. The Human Security Network, which includes countries like Austria, Ireland and Norway is in favor of this approach. Canada in particular takes a leading role and supports this kind of policy, as reflected in the 2001 ICISS report sponsored by the Canadian Government.⁴⁸

Proponents of a narrow definition argue that only a narrow understanding of human security is useful for academic and practical purposes. On the one hand, the narrow definition includes violence, which is not covered by traditional security concerns – violence either by the state against its own citizens or by non-state actors. On the other hand, the narrow definition excludes threats that undermine analytical clarity but closes the door to some threats. The focus of the academic debate on human security, however, would get lost when too many threats are included. In practice, human security has been successful in its narrow framework as exemplified by the Statute of Rome, which created the International Criminal Court (1998) or the Ottawa Treaty (1997), which completely banned all anti-personnel landmines. The international community pushed through the two agreements, which are, according to human security supporters, understood as part of the narrow concept of human security.

Andrew Mack, one of the main proponents of a narrow school, believes that political violence and war are the main threats to communities and individuals, who run a high risk of being jeopardized by states or political actors. Mack is convinced that issues such as poverty or underdevelopment are a challenge to mankind. He argues, however, that the lack of analytical clarity poses a problem. Mack states that

[t]here may be some advocacy value in expanding the human security threat agenda in such a manner, but it comes at a real analytic cost. If the term ‘insecurity’ embraces almost all forms of harm to individuals – from affronts to dignity to genocide – it loses any real descriptive power.⁴⁹

According to Mack, human security can be grounded on our common political and moral values and the concept can be broadened, but its use as an analytical tool then ultimately disappears.⁵⁰ It is thus better to focus on organized violence against individuals or communities.⁵¹ Sexual violence has become a very important issue among these threats, as

⁴⁸ International Commission on Intervention and State Sovereignty (2001), *The Responsibility to Protect*. Ottawa: IDRC.

⁴⁹ Mack, Andrew (2004), “A Signifier of Shared Values”, *Security Dialogue*, Vol. 35(3), 366-367, p.367.

⁵⁰ Mack 2004:367.

⁵¹ Mack, Andrew/Nielson Zoe (2005), *Human Security Report 2005: War and Peace in the Twenty-First Century*. New

it has become a central weapon in conflicts. The narrow understanding of the concept of human security therefore aims to guarantee freedom from fear, is closely linked up to traditional security, and places the emphasis on the individual.

Yet critics of this narrow understanding claim that people do not die mainly as a direct consequence of violence, but rather due to structural violence or distributive injustice, like a lack of clean water or medical care.⁵² Mary Anderson already noted in the mid 1990s, however, that humanitarian approaches were not sufficient to tackle conflicts in an appropriate way. “Good work” alone would be inadequate as

in the post-Cold War intra-societal conflicts [...] mark a number of societies, [such that] NGO interventions – even when they are effective in humanitarian, development, or human terms – very often exacerbate the local tensions and suspicions that underlie the violence of the societies they seek to help.⁵³

With this statement Anderson underlines that humanitarian organizations focusing on ‘freedom from want’ may have the opposite effect on civilians in violent conflicts.

While it may sometimes seem that the two different schools of thought on human security are polarized, they are in fact not. Often, it is not a question of the intensity of a certain threat but of agreeing on appropriate policy responses.⁵⁴

2.2.3. Eight Points to Depict Human Security

From its ambiguous understanding, the concept of human security is defined in various ways. One of the key issues for human security is to define the threats that humans are confronted with. Sabina Alkire divides the definitions of human security into three groups: (1) focus on the threat of war, internal conflict and domestic violence; (2) focus on the threats from preventable diseases and socio-economic hardship; and (3) combination of both of the former definitions.⁵⁵

The following presents a survey of the most important points human security should address as well as its limits. This limited scope of human security lines up with S. Neil MacFarlane’s idea of “conceptual added value and policy consequences”⁵⁶ for human security. At the same time, MacFarlane warns against a simple re-labeling of issues like

York/Oxford: Oxford University Press.

⁵² Bellamy, Alex J./McDonald Matt (2002), “‘The Utility of Human Security’: Which Humans? What Security? A Reply to Thomas and Tow”, *Security Dialogue* Vol. 33(3), p. 375.

⁵³ Anderson, Mary B. (1996), “Humanitarian NGOs in Conflict Intervention”, in: Crocker Chester A./Hampson, Fen Osler/Aall, Pamela (eds.), *Managing Global Chaos: Sources of and Responses to International Conflict*. Washington DC: US Institute of Peace Press.

⁵⁴ Owen 2004b:376.

⁵⁵ Alkire 2004:359.

⁵⁶ MacFarlane, S. Neil (2004), “A Useful Concept that Risks Losing Its Political Salience”, *Security Dialogue* Vol. 35(3), p. 368.

human development or human rights in order to gain increased attention.⁵⁷ Hence, eight points can be identified that help to clarify how human security shapes a new view on security and brings about a qualitative change.

First, the state has to serve its own population. As a source of legitimacy, the state's record of treating its own citizens is of importance. Consequently, states must maintain certain human rights standards and provide welfare to ensure a basis for their sovereignty and legitimacy. These standards apply to physical security, including the rule of law and an individual sense of security, as well as to material security, which includes the legitimacy of the public service or legitimate employment.⁵⁸ In case the state is not willing or able to maintain minimum standards of human rights, the use of military force authorized by the UNSC as a last resort may be considered for human protection – this is where R2P comes into play. This intervention will not weaken the state's sovereignty as long as its own population is treated in an appropriate way; on the contrary, after the Statute of Rome defined the minimal human rights standards, illegitimate interventions became foreclosed because they lack justification. R2P is also linked to articles 55 and 56 of the UN Charter, which assign a central role to the respect of universal human rights; the states have to fulfill their obligation to respect these rights. The peaceful solution of a conflict must always be given preference, not least because in many cases it is easier to solve and manage a conflict that way than a country destroyed by war.

Second, states do not have intrinsic moral authority.⁵⁹ States are only the means to an end, for political entities have been developed to guarantee the protection of individuals. Otfried Höffe writes about “the universal legal and political imperative [that] remains the task of contemporary society.”⁶⁰ This idea thus challenges the traditional understanding of sovereignty, because state-power itself can be seen as a potential threat for the individual in terms of repression – the Khmer Rouge in Cambodia or the current regime in North Korea are examples. The state has to look inward to its own people, who form the basis of its legitimacy.

Third, the individual is the center of attention and the object of reference. As Graham and Poku argue, security should not only be concerned with “individuals qua citizens” but

⁵⁷ MacFarlane 2004:369.

⁵⁸ Kaldor, Mary/Martin, Mary/Selchow, Sabine (2007), “Human Security: A New Strategic Narrative for Europe”, *International Affairs* Vol. 83(2), p. 284.

⁵⁹ Möstl, Markus/Kettemann, Matthias C. (2009), “Der Königsweg zur Verbindung von Menschenrechten und Sicherheit: Der Beitrag des Konzeptes menschlicher Sicherheit zur Friedenskultur”, in: Gruber, Bettina/Wintersteiner, Werner (Hg.), *Menschenrecht und Frieden. Jahrbuch Friedenskultur 2009*. Klagenfurt: Drava.

⁶⁰ Höffe, Otfried (2001), *A Subsidiary and Federal World Republic: Thoughts on Democracy in the Age of Globalization*, in: Rittberger, Volker (ed.), *Global Governance and the United Nations System*. Tokyo: United Nations University Press, p. 193.

with “individuals qua persons.”⁶¹ Communities as well as sub-national, national or other groups are also referents of security, but the individual takes priority. The emergence of global threats requires a shift from a national to an individual security framework.

Fourth, human security has the normative aim of protecting people against dangers that are critical and threaten their lives. Edward Newman addresses the problem that it is “possible to identify every thinkable threat” if the individual is the dependent variable.⁶² Although criticized by many proponents, human security should therefore limit itself to physical threats faced by civilians. Otherwise, the concept will become too weak from an analytical point of view to be applied.

Fifth, security is commonly viewed as the absence of physical violence, although human insecurity also encompasses human rights violations and the material consequences of conflicts. The most common reason for death is not directly related to the battlefield; instead, the indirect effects of war are the primary cause of death. Terror, ethnic cleansing or genocide deliberately target civilians, but hunger, disease and lack of health care and shelter are also threats.⁶³ Human security in this research paper therefore concentrates on ‘freedom from fear.’ The ‘freedom from want’ is not addressed, because it is impossible to have a situation in which human dignity is not harmed in some way; the ‘freedom from want’ potentially includes everything. Still, Roland Paris criticizes this point, stating that ‘fear’ cannot be defined either. Thus, policy makers often speak of a ‘climate of insecurity’ to tackle this criticism.

Sixth, the absence of violence is not the ultimate goal. Justice and sustainability are also included: these features must be kept in mind when constructing peace agreements or during crisis management.⁶⁴

Seventh, a bottom-up approach is necessary to grasp the local situation. Mediators must conduct intensive interviews to comprehend the roots of insecurity; knowledge and understanding of the particular context and circumstances of the local situation have to be kept in mind.⁶⁵ Hence, human security gives a voice to otherwise marginalized groups.⁶⁶

Finally, a variety of new threats have had to be faced since the end of the Cold War, or they have at least been newly recognized during the past two decades. A good example is the phenomenon of displaced persons, which is a typical aspect of today’s conflicts. To tackle these phenomena includes the protection of civilians as a principal goal of the

⁶¹ Graham, David T./Poku, Nana K. (2000), *Migration, Globalisation and Human Security*. London: Routledge, p. 17.

⁶² Newman 2004.

⁶³ Kaldor/Martin/Selchow 2007:279.

⁶⁴ Kaldor/Martin/Selchow 2007:279-280.

⁶⁵ Kaldor/Martin/Selchow 2007:285.

⁶⁶ Hampson, Fen Osler (2004), “A Concept in Need of a Global Policy Response”, *International Security* Vol. 35(3), p. 350.

international community; in addition further concepts have to be included such as conflict prevention, peace support operations, political accountability and public safety to solve conflicts and tackle the challenges faced.

On this basis, human security can prove to work in practice. In the fight against landmines, human security has been successful in mobilizing the key actors to come to an agreement. Debiel and Werthes speak about multinational policy clusters that define problems and are able to formulate solutions for them – such as the ICISS or the CHS.⁶⁷ Furthermore, it is vital to underscore that human rights and human security are two different concepts, although they are sometimes confused. While human rights depict the legal entitlements of individuals, the word ‘security’ in human security refers to a certain level of urgency that is linked to an imminent disaster.⁶⁸ Theorizing human security and actually putting it into practice must be differentiated; in other words, there is a gap between the concept or idea and the political practice of human security.⁶⁹

2.3. Human Security as a Theory

Classical international relations theories have traditionally been complex and puzzling. Theory in IR is comprised of a set of statements that try to explain a particular set of events. Sometimes these theories seem to be impervious because they try so hard to be coherent that in the end they are not able to explain reality. The long-standing traditions of realism, liberalism/idealism and radicalism had to carry an ideological burden, and made sure that IR and international security were comprehended according to their framework.⁷⁰

To better understand classical IR approaches, a useful distinction can be made through the application of two theoretical approaches, explanatory theory and normative theory. The first tries to comprehend why an event takes place and gives us an understanding of why unexpected incidents happen. Most explanatory theorists try to emulate the natural sciences and accordingly apply scientific methods. They even assume that it is possible to predict future developments, which is obviously proven by the unexpected end of the Cold War. The second category, normative theory, is based on moral assumptions about how things ought to be and how they might realistically change.⁷¹ Both theories are too limited in their perspective, because it is necessary to know what the world is like as well as what

⁶⁷ Debiel/Werthes 2005:8.

⁶⁸ Owen 2004a:22.

⁶⁹ Kaldor/Martin/Selchow 2007:274.

⁷⁰ Dannreuter, Roland (2007), *International Security: The Contemporary Agenda*. Cambridge: Polity Press, p. 46.

⁷¹ Dannreuter 2007:34.

it ought to be like. This research paper is, therefore, based, as suggested by Reus-Smit and Duncan, on both explanatory and normative theory in order to combine their strengths.⁷² Both have important dimensions in international relations: a hybrid form is applied here.

With the end of the Cold War, neo-realism lost its predominant position in IR. International security, a subfield of IR, moved from pessimism to optimistic, cosmopolitan conceptions; new paradigms like human security became more popular.⁷³ But key assumptions of realist IR like anarchy, sovereignty and the inevitability of war were also questioned in a constructivist turn in the early 1990s.⁷⁴ A general shift from realist perspectives toward either liberal ones like human security or toward radical ones like the critical security approach of the Copenhagen school took place.

Human security has been an influential re-conceptualization of security on a viable theoretical basis since the Cold War and has gained popularity in the academic community as well as in policy-making circles. The strength of human security lies in its normative framework, which can claim universality – the security and protection of the individual. At the same time, human security also relies on an explanatory conception because it is very closely linked to practice, as its application by various international actors proves.

From the beginning, UNDP's introduction of the term, human security has been used to deconstruct traditional national security discourses and to reshape the understanding to security. New parameters like the economy, the environment and health must be included in order to gain a holistic picture of security. The concept of security has to be broadened in order to deal with earlier marginalized factors that have an important impact on people's everyday lives. In the words of the UNDP, 'people-centered' perspective is needed.⁷⁵ The reference object is no longer the state as suggested by classical security studies, but includes all human lives, which makes the mandate of human security universal. Human security proponents vigorously underline this fact, because rogue states all too often have threatened their own populations rather than protecting them. This debate ties in with a longstanding debate about security's object of reference that dates back to Kant's idealist philosophies during the Enlightenment.

Mack argues that "in the last one hundred years, far more people have died at the hands of their own governments than have been killed by foreign armies."⁷⁶ For this reason

⁷² Reus-Smit, Christina/Snidal Duncan (2008), "Between Utopia and Reality: The Practical Discourses of International Relations", in: Reus-Smit, Christian/Snidal Duncan (eds.), *The Oxford Handbook of International Relations*. New York: Oxford University Press, p.6.

⁷³ Although a renaissance of neo-realism took place after 9/11, especially in the US.

⁷⁴ Wendt, Alexander (2002), "Anarchy is what states make of it: the social construction of power politics", *International Organization* Vol. 46(2).

⁷⁵ UNDP 1994:23.

⁷⁶ Mack 2004:366.

he rejects realism because he believes that the realist paradigm is simply not able to deal with the threat a state can pose to its own people. Realism had been developed to explain inter-state wars, of which there is only a small minority today. According to Mack, the origin of human security is liberalism, as its foundations are the Universal Human Rights Declaration, the Geneva Convention and the UN Charter.⁷⁷

In the theoretical discourse the debate about the definition of security is of importance. Ken Booth argues that security derives “from ways in which different political theories conceive the structures and processes of human security, the entities that make up social and political realities, the major threats to privileged values and groups, the agents who can change things, and so on.”⁷⁸ David Roberts expands on this thought further by stating that security does not lose all its meaning by including concepts such as human security. Security rather depends on “what security means to those defining it. [...] What constitutes security is as political a debate as any other”⁷⁹ and therefore suggests human *insecurity*. This point of view will hardly find mainstream acceptance as Roberts further argues that “[t]he epistemologies and ontologies of Neo-realism and Realism are not equipped to conceive of security beyond their own terms of reference.”⁸⁰ Nonetheless, human security is used as a viable IR theory in the field of international security.

Still, human security’s main task is to be accepted by overcoming the constraints in mainstream academia and by that finding solutions how to best protect people. Owen argues that these constraints result from the “sheer dominance of the traditional security paradigm,”⁸¹ but also because of the failure thus far to reach a consensus on whether human security should have a broad or a narrow conception. The more useful approach seems to be one that is narrow and manageable, to reduce the ‘laundry list’ of threats,⁸² as explained in the previous sub-chapter. It is necessary to follow certain criteria when applying human security; these will create a threshold of severity that defines the conditions for when to act. R2P, which was issued by the ICISS and is dealt with in chapter 3, provides a good example of when to monitor and identify situations in which a security infrastructure is needed to deal effectively with a threat. Human security can be seen as a ‘bridging concept’ that brings in line the need for stabilization in the short run and the need to improve the structural conditions in the long run.⁸³

⁷⁷ Mack 2004:366.

⁷⁸ Booth, Ken (2005), *Critical Security Studies and World Politics*. Boulder, CO: Lynne Rienner. p. 13.

⁷⁹ Roberts, David (2008), “The Intellectual Perils of Broad Human Security: Deepening the Critique of International Relations”, *Politics* Vol. 28(2), p. 125.

⁸⁰ Roberts 2008:126.

⁸¹ Owen 2008:113.

⁸² Ewan, Pauline (2007), “Deepening the Human Security Debate: Beyond the Politics of Conceptual Clarification”, *Politics* Vol. 27(3), p. 183.

⁸³ Kaldor/Martin/Selchow 2007:281.

2.4. Criticism of Human Security

The debate on human security has produced a wide range of literature. Unpopularity or ignorance certainly do not form obstacles for this evolving concept as multiple actors use it both in theory and in practice. The problem, however, is that nearly every threat humanity faces can easily be included under the umbrella of human security. In case the scope of the concept becomes very wide almost everything can be perceived as a security threat, and urgency and collective responsibility are therefore lost.⁸⁴ When issues like development, inequality or poverty are included, the substantive meaning is lost. All too often human security is fiercely criticized as having “no clear theoretical grounding”⁸⁵ and as not useful out of confusion.⁸⁶

Criticism has accompanied human security since the very beginning; in particular, its analytical ambiguity and political inappropriateness have been controversial. Edward Newman argues that human security is normatively attractive but analytically weak. In case the individual is the dependent variable, Newman criticizes that virtually everything is a security threat. Moreover, Newman sees as arbitrary, the inclusion of certain threats while leaving others out.⁸⁷ At the same time, the more harms that are labeled as security threats, the harder it is to gain any analytical value and to differentiate between the threats. This research paper has thus outlined seven points to conceptualize human security and to avoid a ‘shopping list’ of threats.

It is hard for human security to solve this chicken-and-egg dilemma. There remains doubt whether a proper theoretical grounding should be developed first or whether theory should be adjusted according to factual experience. Solving this question is important because Owen argues that real world application has been one realism’s great successes.⁸⁸ This research paper attempts to overcome this critique by limiting the threats according to R2P threshold of genocide, crimes against humanity, war crimes and ethnic cleansing in order to bridge the normative gap between theory and practice.

Critics further hold that although the political power constellation after the Cold War has changed, it would be wrong to claim that everything has changed. Inter-state wars are

⁸⁴ Paris, Roland (2001), “Human Security: Paradigm Shift or Hot Air?”, *International Security* Vol. 26(2), p. 93.

⁸⁵ Owen 2004b:374.

⁸⁶ Mearsheimer, John J. (1994), “The False Promise of International Institutions”, *International Security* Vol. 19(3), p. 15.

⁸⁷ Newman, Edward (2004), “A Normatively Attractive but Analytically Weak Concept”, *Security Dialogue* Vol. 35(3), p.358.

⁸⁸ Owen 2004b:376-377.

still a threat to security, some regions of the world still experience security dilemmas, and non-proliferation remains an important issue.⁸⁹ This line of critique is correct in that inter-state wars still take place, but all available statistical data prove their decline. Non-proliferation is indeed an issue, which may be misinterpreted within the framework of human security; for this purpose, a range of theories is at hand to explain the nuclear policy of states.

Moreover, human security may be used for humanitarian interventions that rest on a 'cosmopolitan' belief system.⁹⁰ Thomas and Tow argue, however, that such interventions are merely an ideological instrument of neo-imperialism that justify Western policy initiatives and interventions based on national interests.⁹¹ Understanding the state poses a further problem in human security. Human security must recognize the Janus-faced nature of the state in order to understand that it can be both the cause of insecurity as well as the 'protector.' It would be fatal for human security to look for a cosmopolitan alternative instead of reconstructing failed states.⁹² These idealist thoughts from the early 1990s were removed and are no longer on the human security agenda. Some others criticize that middle powers like Canada and Japan have put human security at the top of their foreign policy agendas in order to reinforce their position in the international community, because in traditional military terms they stood no chance. Here, normatively argued, an arm's race is no longer the only way to make one's voice heard in the international arena – a 'soft' security approach also receives attention. On the other side of the coin, human security may be viewed as a part of human development and human rights, it has only been re-labeled. Paula Liotta uses the term 'vulnerability' rather than threat when discussing human security, because the term can otherwise be broadened to include insecurities that are not linked to immediate violence.⁹³

Two main concerns are stressed. On the one hand it is seen as problematic that human security in a broad sense uses a holistic approach that undermines effective causal analysis. The combination of "elements as diverse as violent conflict, poverty and social well-being lacks the degree of analytical separation necessary for the analysis of dependent and independent variables."⁹⁴ On the other hand, human security is criticized by Bah as already

⁸⁹ Debiel/Werthes 2005:7.

⁹⁰ Farer, Tom J. (2005), "Cosmopolitan Humanitarian Intervention: A Five-part Test", *International Relations* Vol. 19(2).

⁹¹ Thomas, Nicholas/Tow, William T. (2002), "The Utility of Human Security: Sovereignty and Humanitarian Intervention", *Security Dialogue* Vol. 33(2).

⁹² Dannreuther 2007:49.

⁹³ Liotta, Paula (2002), "Boomerang Effect: The Convergence of National and Human Security", *Security Dialogue*, Vol. 33(4).

⁹⁴ Ewan 2007:184.

too broad a concept, which makes it extremely difficult for policymakers to know what to prioritize.⁹⁵

2.5. Human Security in Africa

For Africa, the new paradigm of human security is of significance. In the post-Cold War era, 70% of the people in violent conflicts in Africa have been civilians.⁹⁶ The UN Security Council took a step forward in August 2003 when it authorized the deployment of ECOWAS in Liberia (ECOMIL) through resolution 1497, to counteract the “effects on the humanitarian situation, including the tragic loss of countless innocent lives, in that country, and its destabilizing effect on the sub-region.” Shortly afterwards, UNSC resolution 1509 (2003) authorized the use of force by UN peacekeeping-missions to protect civilians, which has to be seen in light of human security realms. The UN had learnt its lesson from the infamous deployment of the UN Assistance Mission for Rwanda (UNAMIR), which had lacked the mandate and manpower to stop the disastrous events.⁹⁷

In contrast, conflicts like the one in Darfur still represent an enormous challenge to Africa and the African Union as well as to the international community and, in particular, the UN. First it is necessary to create a situation in which humanitarian organizations are able to access the area and to meet the basic needs of the people after they have been attacked and displaced. Organizations like the UNHCR are often accused of failing to provide aid in a transparent, effective way. In the case of Darfur, there is a lack of leadership; the Government of Sudan (GoS) successfully puts pressure on Western actors whose concern over displaced Darfuris is diminishing.⁹⁸ The international community is still not able to effectively deal with IDPs, and the camps remain ill equipped and insecure.

2.6. Conclusions

With the end of the Cold War the world has changed. The field of security has undergone a dramatic shift. New concepts like human security rest on the core principle that the center

⁹⁵ MacFarlane, S. Neil/Khong, Y.F. (2006), *Human Security and the UN: A Critical History*. Bloomington/Indianapolis, ID: Indiana University Press, p. 239.

⁹⁶ Bah, Alhaji M. S. (2005), “The Intervention Dilemma: They Dynamics of the Post-Cold War Era”, in: Aboagye, Festus/Bah, Alhaji M. S. (eds.), *A Tortuous Road to Peace: The Dynamics of Regional, UN and International Humanitarian Interventions in Liberia*. Pretoria: Institute for Security Studies South Africa, p. 21.

⁹⁷ Bah 2005:27.

⁹⁸ Turton, Daniel (2005), “Darfur Dilemmas: The Need for Leadership”, *Forced Migration Review*, IDP Supplement, p. 31.

of attention should no longer be on the state but rather on the individual. Thousands of people still die every year because of the violent threats with which they are confronted. These deaths, however, are not because of inter-state wars but rather results from intra-state or civil war and the resulting diseases or famines. It is important to note that not all threats should and can be included in human security because thousands of potential risks are possible. Individuals and communities must be rescued from the most serious harms they face, in particular physical violence and its direct consequences.

The initial broad focus of human security has to be seen in the context of the break-up of the traditional state-based security view that dominated during the Cold War period. Until now, a broad understanding of human security is pushing its agenda although the analytical clarity is missing and easily human security and human development can get confused. A narrow concept proves to be more useful for conceptualizing and applying human security. In case an abusive state is not able or willing to protect the citizens on its territory or even supports measures against them, the international community is required to act. The ICISS has framed this idea as the 'Responsibility to Protect,' which will be dealt with in the next chapter.

3. The Development of the Responsibility to Protect

As human security gained in importance during the 1990s, the debate on averting mass atrocities, crimes against humanity, ethnic cleansing, and genocide also gained relevance. This chapter first discusses the roots of R2P and humanitarian intervention. Then, the work of the ICISS and its 2001 report is shown and interpreted. Thirdly, the World Summit Outcome of 2005 is presented, in which all UN member states endorsed R2P. Fourthly, the status of R2P in international law – whether it is a concept, norm, or principle – will be discussed. Finally, the author will outline R2P's relation to the UN Security Council.

3.1. Debate on Humanitarian Intervention

Humanitarian intervention has become a key cause of controversy in international relations. The issues involved in humanitarian intervention, like sovereignty, human rights, justice, or power, create a very broad scope for dispute. For some, the suffering of those who cannot protect themselves should be stopped, while others point to the fact that some form of self-interest will always play a role in humanitarian intervention, and therefore making it unjust and fallacious.

The idea of humanitarian intervention has deep roots and has always been controversial in some way. When the European sea powers started to colonize the world, the question of taking military action for the safety of alien people grew important. The Spanish tried to justify their conquest of Latin America; Francisco de Vitoria (1492-1546), known as one of the 'fathers of international law,'⁹⁹ pointed out that an intervention was necessary to save indigenous people. The right authority must remain in the state but in case a state commits grave offences against its people, the stage to war is justified.¹⁰⁰ According to Alex Bellamy, this "natural law approach to the Just War tradition [...] remain[s] intact in one form or another."¹⁰¹ In the 16th century, the English also argued that they had to intervene in the Netherlands to save the Dutch from Spanish tyranny. Hugo Grotius (1583-1645), the famous Dutch jurist and philosopher, expanded on de Vitoria's ideas. He maintained that in fact an intervention is possible albeit he did not call it that way. It is justifiable, according to Grotius, to resort to war when a state is maltreating its

⁹⁹ Woods, Thomas (2005), *How the Catholic Church Built Western Civilization*. Washington DC: Regenery, pp. 5-6.

¹⁰⁰ Hehir, Aidan (2008), *Humanitarian Intervention After Kosovo: Iraq, Darfur and the Record of Global Civil Society*. New York: Palgrave Macmillan, p. 20.

¹⁰¹ Bellamy, Alex J. (2007), *Just Wars: From Cicero to Iraq*. London: Polity, p. 50.

own subjects. This idea became a legal principle known as *liberum ius ad bellum*, an acceptable justification to engage in a war and was further developed by contract theorists like John Locke.

Sovereign states in the modern sense started to emerge with the Peace of Westphalia in 1648. The Westphalian system brought an end to the religious wars in Europe, states were placed on an equal footing with each other, and sovereignty was linked to political rulers, who were above the law. Significantly, states were no longer supposed to intervene in each other's internal affairs. Often, however, sovereignty meant immunity from any outside inquiries or sanctions. Political rulers were able to perpetrate crimes against their own population and were garnered indifference from the outside.

Only from the 19th century on did states begin to question the strict prohibition of intervention, mainly due to the events surrounding the French Revolution. Important landmarks were the foundation of the Red Cross by Henri Dunant and the first Geneva Convention in 1864, which provided the protection of civilians to a certain extent during the time of war. Recognized 'humanitarian interventions' did indeed take place in the 19th century although they were all driven by strategic interest and were characterized by the defense of Christians in the Ottoman Empire through European powers.¹⁰²

With the dawn of the 20th century, the first massacres and atrocities became apparent which accompanied this bloody century in its entirety. The British started with the set-up of the first concentration camps during the Boer War in 1901. The Germans followed with the brutal repression of the Herero rebellion in South West Africa, which is also known as the first genocide of the 20th century.¹⁰³ The first huge massacre was Turkish killing of Armenians in 1915. Stalin, Chiang Kai-shek and Mao Zedong killed millions of innocent civilians directly or indirectly. Nothing has been more absurd, though, than the Shoah by the Nazis, annihilating some six million Jews in a systematic state-sponsored and well-organized manner. In addition, they murdered Slavs, Roma and Sinti, homosexuals and other so-called 'subhuman people.' All of these crimes mentioned have one thing in common. The world was sufficiently provided with information about the cruelties but political leaders kept indifferent towards the fact that civilians were being slaughtered in some countries in the world. Rather, they tended to look on their own economic and security interests.

¹⁰² The 'humanitarian interventions' against the Ottoman Empire were conducted as a military incursion of England, France and Russia in Greece 1827, a French incursion in Syria in 1860 and military action of European powers in Crete 1866-1868, the Balkans 1875-1878 and in Macedonia 1903-1908.

¹⁰³ Levi, Neil/Rothberg, Michael (2003), *The Holocaust: Theoretical Readings*. New Brunswick, NJ: Rutgers University Press, p. 465.

In 1929, the Kellogg-Briand Pact outlawed war as an instrument for state policy with the exception of self-defense or the sanction of the League of Nations. This principle was also taken up in the UN Charter. The foundation of the United Nations in 1945 rested on the experience of the horrors in World War II and the desire to avert them in the future.¹⁰⁴ On this basis, the UN Charter was set up to guarantee international peace and security. The preamble of the Charter reaffirms the “faith in fundamental human rights, in the dignity and worth of the human person [and] in the equal rights of men and women.”¹⁰⁵ The UN member states were guaranteed territorial integrity in article 2.4 and political independence within the domestic jurisdiction in article 2.7 of the Charter. Sovereignty remained mostly untouched by external constraints. It is, however, the responsibility of the UN Security Council to protect people from gross and systematic human rights violations and to halt genocide, which basically enables the UNSC to overrule the principle of non-intervention within the provisions of Chapter VII of the Charter.¹⁰⁶ The character of the Cold War with its system of bipolarity and the institutional set-up of the Security Council, which allowed the five permanent members¹⁰⁷ to veto any UNSC resolution, has often resulted in a blockade of the most powerful institution in the UN family. Furthermore, the UN grew from 51 members in 1945 to 159 at the end of the Cold War because of decolonization. The newly created states feared that powerful states, or even worse, their own former colonial masters, would undermine their authority and thus enforced a traditional view of sovereignty. In addition, they were proud of their newly gained sovereignty and cautious concerning their fragile status as henceforth independent states in the world community. As a consequence, the interests of states and not those of people were at the center of the narrowly read interpretation of the UN Charter.

During the Cold War a couple of ‘humanitarian interventions’ could be observed, although they were interestingly not based on humanitarian grounds.¹⁰⁸ India intervened in 1971 unilaterally in East Pakistan on the grounds of self-defense. The army of West Pakistan committed mass murder in what is today known as Bangladesh, but India was mainly interested in weakening West Pakistan.¹⁰⁹ On the same basis, Vietnam invaded Cambodia in 1978. Despite the fact that the horrors of the Pol Pot regime, which

¹⁰⁴ It is estimated that 55 million people were killed, among them 20-30 million civilians.

¹⁰⁵ Charter of the United Nations (1945), Preamble, para. 2.

¹⁰⁶ Brownlie, Ian (1998), *Principles of Public International Law*. New York: Oxford University Press, p. 293.

¹⁰⁷ The five permanent members are: People’s Republic of China (until 1963: China – Taiwan), France, Russian Federation (until 1991: Soviet Union), United Kingdom of Great Britain and Northern Ireland, United States of America

¹⁰⁸ Evans, Gareth (2008), *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*. Washington DC: Brookings, p. 23.

¹⁰⁹ Ganguly, Sumit (2002), *Conflict Unending: India-Pakistan Tensions since 1947*, Columbia University Press.

annihilated some 1.7 million Cambodians in only four years,¹¹⁰ were widely known, Western countries condemned the intervention. At the same time the West did not oppose against Tanzania's overthrow of Uganda's dictator Idi Amin in 1979, although many similarities to the case of Cambodia can be seen.¹¹¹ In the same year France initiated a coup d'état in the Central African Empire of Jean-Bédél Bokassa after a massacre against school children to reestablish a republic and bring the former president David Dacko back to power.¹¹² In all four cases, the respective governments acted against their own populations and were involved in serious human rights violations. The intervening countries mostly had (geo)strategic and national interests in mind, nonetheless they argued with self-defense.

Many observers believed that with the end of the Cold War, the UN could fulfill the role it was designated for its Charter. With the intervention in Iraq to free Kuwait in 1991, a new chapter of humanitarian interventions was opened. US-President George H. W. Bush announced a "New World Order [...] where the United Nations, freed from cold war stalemate, is poised to fulfill the historic vision of its founders. A world in which freedom and respect for human rights find a home among all nations."¹¹³ In a way this hope expressed by Bush was achieved, because the strict and narrow understanding of state sovereignty of the Cold War years was over, the importance of human rights increased enormously. In another way this is doubtful because of a change in the nature of war from an inter-state to an intra-state level. Being confronted with 'new wars,' earlier understandings of conflict were confused. Actors have become active on both the global as well as the local level; the public and private sphere got mixed up. Massive human rights violations are used to strengthen the own agenda, organized crime profits from continued violence.¹¹⁴

Since 1990, humanitarian interventions took place in 20 states with deployment of troops to protect civilians, although other motives were involved as well.¹¹⁵ The 1990s saw efforts to establish consent on how to tackle humanitarian crisis. Bernard Kouchner, the

¹¹⁰ Kiernan, Ben (2002), *The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975-79*, Second Edition. New Haven/London: Yale University Press.

¹¹¹ Hassan, Farooq (1981), "Realpolitik in International Law: After the Tanzanian-Ugandan Conflict – Humanitarian Intervention Reexamined", *Willamette Law Review* Vol. 17(4), p. 893.

¹¹² Weiss, Thomas 2007:50.

¹¹³ Quoted in Mayall, James (1991), "Non-Intervention, Self-Determination and the 'New World Order'", *International Affairs* Vol. 67(3), p. 427.

¹¹⁴ Kaldor, Mary (1999), *New and Old Wars: Organised Violence in a Global Era*. Cambridge: Polity Press.

¹¹⁵ The following nine interventions in the 1990s are addressed: Afghanistan, Albania, Bosnia, Burundi, Central African Republic, Croatia, Democratic Republic of Congo, East Timor, Georgia, Haiti, Iraq (Kurdistan-1991), Ivory Coast, Kosovo, Liberia, Macedonia, Rwanda, Sierra Leone, Somalia, Sudan and Tajikistan. In some countries, troops were deployed on multiple occasions. Moreover, there were at least 16 other peacekeeping or monitoring missions that typically lack the authorization to protect civilians: Cambodia, Chad, Comoros, El Salvador, Eritrea, Ethiopia, Guatemala, Guinea Bissau, Kuwait, Libya, Moldova, Mozambique, Papua New Guinea, Peru, Solomon Islands, West Sahara (Kuperman 2008:52).

co-founder of Médecins sans Frontières (MSF), in particular, vindicated ‘the right to intervene’ to protect endangered individuals but he met a lot of suspicion by UN member states. Under extreme circumstances coercive policies might be indispensable. In case diplomatic efforts fail and violence is on its way, the moral and political need arises for the international community at large to act and save the threatened population.¹¹⁶

Although a ‘humanitarian intervention’ might have an honorable basis, many fear out of their own history a *mission civilisatrice*¹¹⁷ out of their own history and therefore an unjust interference into internal affairs by powerful states. Throughout the 1990s a fierce argument had raged about humanitarian intervention. In particular the ‘right’ to intervene was questioned by arguing that it is by definition arbitrary. Controversy is generated by the fact that rescue missions lie in the reach of power of the interveners and not of those who are ‘rescued.’ An asymmetric power structure by the potential intervener is easily formed. Those who are going to be protected probably have never asked for help or protection – but will be dependent on the intervening power. As Deutscher has put it, “[u]nilateral action will always be seen as self-interested and suspect.”¹¹⁸ In other words, it is easy to doubt the purity of the interveners’ motives and to denounce their intents as self-serving agendas hiding behind the pretense of humanitarianism.¹¹⁹ Therefore, James Pattison argues that Security Council authorization is needed to make an intervention legal because a humanitarian intervention will be most likely be illegal.¹²⁰ In contrast, Fernando Tesón brings up the argument that there is a legal right to intervene in customary international law, both authorized and not authorized. Examples given are from ECOWAS and its interventions in Liberia (1990) and Sierra Leone (1997).¹²¹ Pattison dissents Tesón with what he calls the ‘Trojan Horse,’ that humanitarian intervention is used all too easily as an abusive intervention guided by self-interest.¹²² The UN-approved intervention in Haiti in 1994 caused debate about that. Although it was seen as a threat to international peace and security by the UNSC, the magnitude of the threat was minimal. In fact, the only problem was the non-democratic regime and the president that was ousted in 1991 with a military coup d’état. Other countries with a similar situation, however, were not considered such a

¹¹⁶ Belloni, Roberto (2006), “The Tragedy of Darfur and the Limits of the ‘Responsibility to Protect’”, *Ethnopolitics* Vol. 5(4), pp. 328-329.

¹¹⁷ Paris, Roland (2002), “International Peacebuilding and the “mission civilisatrice”, *Review of International Studies*, Vol. 28(4).

¹¹⁸ Deutscher, Matt (2005), “The Responsibility to Protect”, *Medicine, Conflict and Survival* Vol. 21(1), p. 31.

¹¹⁹ Arbour, Louise (2008), “The Responsibility to Protect as a Duty of Care in International Law and Practice”, *Review of International Studies* Vol. 34(3), p. 447.

¹²⁰ Pattison, James (2007), “Humanitarian Intervention and International Intervener’s Legal Status”, *Review of International Social and Political Philosophy* Vol. 10(3), p. 304.

¹²¹ Tesón, Fernando R. (2005), *Humanitarian Intervention: An Inquiry into Law and Morality*. Third edition. New York: Transnational Publishers.

¹²² Pattison 2007:308.

grave threat by the UNSC.¹²³ Simon Chesterman has called this behavior of the UNSC as deciding upon “ambiguous resolutions and conflicting interpretations”¹²⁴ of definitions like the threat of international peace and security. Therefore, also UNSC resolutions are politicized and action under Chapter VII depend on the national interest of great powers instead of a coherent reading of the Charta.

During the 1990s, the UN Security Council authorized military actions in Somalia, Haiti, Rwanda and former Yugoslavia. All those missions were characterized by the failure to protect the local population. In Somalia, the US-led intervention in 1992 had almost a purely humanitarian basis. Since the shocking incident that 18 US soldiers were dragged to death through the Somali capital Mogadishu in October 1993, no US soldier has been sent to a UN mission in Africa. This trauma strongly influenced the events in Rwanda. Although the White House was aware about pre-genocidal incidents of Hutus against Tutsis, no action was taken or concern raised in the UNSC. Rwanda itself was ironically a non-permanent member of the UNSC while approximately 800,000 Tutsis and moderate Hutus were slaughtered in only 100 days in early summer 1994. The Canadian general Romeo Dallaire who was in charge of the UN forces during that time in Rwanda estimated that 5,000 troops would have been enough to intervene and avert the killings.¹²⁵ A year later the UN failed again to protect civilians in the Bosnian town Srebrenica. Although the UN declared the town a ‘safe area,’ Serbian units massacred more than 8,000 Bosniaks in July 1995. These two events smudged the reputation of the United Nations around the world; the organization was discredited for ‘collective failure.’ UN action in the 1990s was consequently being perceived “as too little too late, misconceived, poorly resourced, poorly executed, or all of the above.”¹²⁶

This view did not change with the controversial debate on the humanitarian intervention in Kosovo. In the light of allegedly gross violations of human rights, many actors in the West together with Kofi Annan claimed that another Rwanda or Srebrenica must not be allowed to take place. Nonetheless no agreement in the UNSC was found because Russia threatened to play the veto card. Therefore, NATO started to operate against Yugoslavia with bombings on humanitarian grounds to avoid mass killings by the Yugoslav army against Kosovar Albanians. The Independent International Commission on Kosovo (IICK) declared the NATO bombings of 1999 ‘illegal but legitimate,’ arguing that it would be necessary to establish a set of criteria defining a threshold for using force so

¹²³ Hehir 2008:19.

¹²⁴ Chesterman, Simon (2002), *Just War or Just Peace?*. Oxford: Oxford University Press, p. 5.

¹²⁵ Dallaire, Romeo (2003), *Shake Hands With the Devil: The Failure of Humanity in Rwanda*. London: Random House.

¹²⁶ Evans, Gareth/Sahnoun, Mohamed (2002), “The Responsibility to Protect”, *Foreign Affairs* Vol. 81(6), p. 100.

that, in case the Security Council is blocked in extreme emergencies, an intervention will be legitimate despite lacking UNSC authorization.¹²⁷

Adam Roberts has summed up the debate on intervention:

Legal prohibitions on forcible military intervention in the territory of sovereign states have a long history and are one of the key foundations of the system of sovereign states. The undoubted fact that their effect was limited does not negate their fundamental importance. They helped to establish the principle that non-intervention was the norm; and when interventions did occur, those responsible generally felt it necessary to produce detailed justifications based on the special and pressing circumstances of the case at hand.¹²⁸

The debate on humanitarian intervention is therefore closely linked to international law, the UN system and its Charter. In the decade after the Cold War, optimism concerning human rights enforcement was predominant. The human security agenda strongly influenced UN organizations, humanitarian organizations and NGOs that pressured powerful states to act in case of humanitarian emergencies. Until today, a narrow reading of international law that has been predominant that although there might be a *moral duty* to intervene even militarily but there is no *right* to conduct an intervention on the ground of humanitarian concerns. Humanitarian interventions can be both, a threat and a blessing to citizens and states. NATO's intervention in Kosovo in 1999 re-opened the debate on humanitarian intervention and the century-long debate on sovereignty, justice and human rights and dignity continued.

3.2. The ICISS and its 2001 Report

Conscience-shocking atrocities shattered the world throughout the 1990s. With the 'humanitarian intervention' in Kosovo in 1999 it became obvious that new strategies are necessary to tackle the obstacles the post-Cold War world was confronted with. The response of UN Secretary-General Kofi Annan to NATO's intervention in Kosovo was an article in the influential weekly *The Economist* to solve the ambiguities the international community faced. Annan claimed that

[s]tate sovereignty, in its most basic sense, is being redefined – not least by the forces of globalization and international cooperation. [...] When we read the Charter today, we are more than ever conspicuous that its aim is to protect individual human beings, not to protect those who abuse them.¹²⁹

¹²⁷ Independent International Commission on Kosovo (2000), *Kosovo Report: Conflict, International Response, Lessons Learned*. Oxford: Oxford University Press.

¹²⁸ Roberts, Adam (2007), "Beyond Dictatorial Interference", in: Bain, William (ed.), *The Empire of Security and the Safety of the People*. London: Routledge, p. 163.

¹²⁹ Annan, Kofi (1999a), "Two Concepts of Sovereignty", *The Economist*, 18 September 1999.

The Secretary-General argued for an individual sovereignty that states have to serve their citizens and each individual has its own sovereignty enshrined in the UN Charter. Furthermore, Annan called for a framework that should redefine and clarify the problem of internal humanitarian crisis, including also the use of force. This article of Annan did not have much impact on the controversy about Kosovo; yet it outlined the debate ahead in the following years of the dilemma between inaction in Rwanda 1994 and unilateral action in Kosovo 1999.

In response to the dilemma of intervention, the Canadian Foreign Minister Lloyd Axworthy initiated an international commission on behalf of the Canadian Government to bridge the concepts of state sovereignty and intervention. The International Commission on Intervention and State Sovereignty¹³⁰ was introduced in September 2000 and had twelve months of research and debating at its disposal before it would present its practical findings. Former Australian foreign minister Gareth Evans and Algerian diplomat Mohamed Sahnoun chaired the commission,¹³¹ which was set up outside the UN for political reasons and was sponsored by Canada.¹³² Annan stated three concerns that should be tackled: 1) humanitarian intervention should be not an arbitrary smoke screen for interference in sovereignty; 2) it should not encourage secessionists; and 3) the selection criteria which will be applied in cases of humanitarian emergency.¹³³ The Secretary-General asserted that “armed intervention must always remain the option of last resort.”¹³⁴

In the 1980s the Brundtland Commission developed the term ‘sustainable development’ to amalgamate economic development and environmental protection. Foreign Minister Axworthy expressed the hope that the same would happen with the concepts of intervention and sovereignty.¹³⁵ Indeed, Evans soon coined the term ‘Responsibility to Protect’ in November 2000 to create a positive connection between the two terms in a deliberate way.¹³⁶ R2P was received favorably at the Commissions’ roundtables, because it shifted the focus from military intervention to the victim’s perspective.¹³⁷ Altogether, the ICISS was convened five times and a series of eleven

¹³⁰ Originally, Axworthy proposed the name “Commission on Humanitarian Intervention” but the concerns about this controversial language changed the name (Bellamy, Alex J. (2009), *Responsibility to Protect: The Global Effort to End Mass Atrocities*. Malden, MA/Cambridge: Polity, p. 36).

¹³¹ Additionally, ten further members were in the Commission: Gisele Côté-Harper (Canada), Lee Hamilton (United States), Michael Ignatieff (Canada), Vladimir Lukin (Russia), Klaus Neumann (Germany), Cyril Ramaphosa (South Africa), Fidel V. Ramos (Philippines), Cornelio Sommaruga (Switzerland), Eduardo Stein (Guatemala), Ramesh Thakur (India). Among the twelve commissioners was only one woman - consequently the Commission was criticized to have a gender bias (Bond/Sherret 2006).

¹³² Bellamy 2009:35.

¹³³ Bellamy 2009:35.

¹³⁴ Annan 2000:48.

¹³⁵ Canadian Ministry of Foreign Affairs (2004), “Axworthy”, in: Thakur, Ramesh/Cooper, Andrew F./English, John (eds.), *International Commissions and the Power of Ideas*. Tokyo: United Nations University Press.

¹³⁶ At first hand, the short form was RtP, but soon it changed to R2P (Evans 2008:5).

¹³⁷ Bellamy 2009:45.

regional roundtables in all parts of the world was organized. In addition to the meetings, also other workshops were organized to involve influential actors around the globe, to reach out and achieve a broad consensus. According to Bellamy, mainly Evans, Ignatieff and Thakur were those who actually wrote the final report.¹³⁸

Evans himself points out that the ICISS made four main contributions to the debate. Firstly and most important the Commission was able to turn the debate from ‘humanitarian intervention’ to a responsibility that protects endangered people. Secondly, and linked to the first, is a new understanding of sovereignty. Instead of controlling its own people, a state has primarily a responsibility to protect individuals. Thirdly, Evans is convinced that the Commission set out clear criteria what the R2P in practice should mean and that it would be much more than military intervention. Finally, in case coercive action is necessary, it has to be legal *and* legitimate.¹³⁹ However, in the course of the debates the Commission did not succeed in getting through criteria to guide the Security Council how to deal with interventions. This point was seen as important because it restored the hope that the tarnished accountability of the UNSC would improve. Moreover, the primacy of the Security Council was doubted and it was suggested that also regional organizations should legitimately get the possibility to intervene – even without the consent of the UNSC. A successful example was the intervention of ECOWAS in Liberia, which later was endorsed retroactively by the Security Council.

In mid-August 2001 the report of the ICISS was completed. A month later the report should have been presented but the release was delayed by 9/11 until December 2001. It was clearly stated that R2P should not be related in any way to the ‘war against terrorism’ because these two approaches rest on two completely different belief systems; the first grounds on human security while the latter is based on traditional concerns of state security and *realpolitik*.¹⁴⁰ Annan appreciated the report as “the most comprehensive and carefully thought-out response we have seen to date” about intervention and state sovereignty.¹⁴¹ In contrast to humanitarian intervention which non-Western countries associate with strong, powerful countries imposing their will on the weak, R2P considers “the point of view of those seeking or needing support and acknowledges that the primary responsibility to protect rests with the state concerned.”¹⁴² Hence, the new concept was able to bridge the division between intervention and sovereignty, the report underlined. In the future, the

¹³⁸ Bellamy 2009:38.

¹³⁹ Evans 2008:41-43.

¹⁴⁰ Chandler, David (2004), “The Responsibility to Protect? Imposing the ‘Liberal Peace’”, *International Peacekeeping* Vol. 11(1), p. 61.

¹⁴¹ Annan, Kofi (2002), “The Responsibility to Protect”, UN Press Release SG/SM/8125 on 15 February 2002.

¹⁴² Thakur, Ramesh (2007), “Humanitarian Intervention”, in: Weiss, Thomas G./Daws, Sam (eds.), *The Oxford Handbook on the United Nations*. New York: Oxford University Press, p. 397.

relationship between the two concepts would be complementary and not contradictory anymore. A dual responsibility was set up, also called ‘sovereignty as responsibility.’ The host state is responsible for the protection of its citizens internally but in addition external actors, too, carry a responsibility to observe the situation and intervene in case of humanitarian emergencies.¹⁴³ The individual should be guaranteed the most basic human right, the right to live.

The state has the duty to act as a moral agent and cannot rely on *realpolitik* anymore. Overall, the report strongly reflected the concept of human security as the individual has been brought into focus, the dignity of communities to live without insecurity as well as the international community’s responsibility to protect individuals and communities that would not be able to defend themselves. Moreover, article 24 of the Charter was put to the center, as the UN Security Council should maintain international peace and security.

The report of the ICISS was a step ahead because not only intervention but also prevention and rebuilding were added to a continuum of steps. This conception has been described as an agreement, which rests on three pillars, although it is not identical to the ICISS concept.¹⁴⁴ Thus, three dimensions of R2P were developed, which the international community is morally obliged to carry: to prevent, to react and to rebuild. The three pillars of R2P have to be seen as a whole set of strategies in order to tackle humanitarian emergencies like genocide, war crimes, ethnic cleansing and crimes against humanity. It is important to state that the primary responsibility rests within the state; only if the host state “manifestly fails” to protect its vulnerable population, the international community is required to conduct measures.

3.2.1. The Responsibility to Prevent

The first pillar of R2P, the responsibility to prevent, is the most important one according to the ICISS.¹⁴⁵ The overall goals are to save lives and prevent atrocities because military reaction from the outside to massive human rights violations within a state will imply additional harm for individuals. Therefore, the responsibility to prevent dedicates its commitment to the root causes of a conflict in order to avoid direct prevention efforts in the future. Moreover, the point is brought up that prevention is saving money. It is far cheaper to respond in a preventive way with than coercive action or post-conflict

¹⁴³ Molier, Gelijn (2006), “Humanitarian Intervention and the Responsibility to Protect After 9/11”, *Netherlands International Law Review* Vol. 53, p. 47.

¹⁴⁴ Strauss, Ekkehard (2009), *The Emperor’s New Clothes? The United Nations and the Implementation of the Responsibility to Protect*. Baden-Baden: Nomos, p. 25-26.

¹⁴⁵ ICISS 2001:xi.

reconstruction. In particular, neighboring states have an interest in prevention, as Evans and Sahnoun argue, because the consequences of internal conflicts in the neighborhood easily generate a refugee problem and a destabilization of the whole region, which is not in the national interest.¹⁴⁶

The problem is, however, that the potential root causes for violent conflicts are enormously multifarious. Thomas Weiss argues that the responsibility to prevent “is a superficially attractive but highly unrealistic way” to add an additional layer of prevention to humanitarian intervention; on the contrary, prevention “obscures the essence of the most urgent part,” which is intervention.¹⁴⁷ Evans on the other hand argues that the world’s worst cases of genocide were widely known but the signs were not taken seriously enough to take the necessary steps.¹⁴⁸ The ICISS identified four key dimensions of the responsibility to prevent: a political, an economic, a legal and a military dimension.¹⁴⁹

The emphasis of the responsibility to prevent is on non-military means. Such measures include 1) positive economic incentives like human rights observers, trade missions, development cooperation or cultural exchange; 2) negative sanctions in the military sector like arms embargoes or ending military co-operation; 3) negative sanctions in the economic sector as financial sanctions, restrictions on access to resources like oil or diamonds; and 4) diplomatic and political measures such as suspension from regional or international bodies.¹⁵⁰

It seems to be possible to predict with certain accuracy both *that* and *where* mass atrocities might occur. Although it is hard if not impossible to say exactly *when* it will happen, the chronic danger of mass killings remains.¹⁵¹ Bearing that in mind, it remains critical that a mechanism is developed to enable R2P to identify the probability of genocide and to react in the earliest possible stage.

Two main problems have been identified by the Commission: one relates to states that will resist external interference by arguing that it is intervention and the other involves the legitimization of rebels by a third-party intervention. To solve this problem ICISS has recommended international actors to be sensitive and cautious. Bellamy additionally points out that it is not clear how signs of an early warning system would translate into a commitment of states and what the actual reaction would be like.¹⁵² Moreover, Bellamy is

¹⁴⁶ Evans/Sahnoun 2002:109.

¹⁴⁷ Weiss, Thomas G. (2007), *Humanitarian Intervention: Ideas in Action*. Cambridge: Polity, p. 104.

¹⁴⁸ Evans 2008:79.

¹⁴⁹ ICISS 2001:23.

¹⁵⁰ Arya, Neil (2007), “Is Military Action Ever Justified? A Physician Defends the ‘Responsibility to Protect’”, *Medicine, Conflict and Survival* Vol. 23(3), p. 181.

¹⁵¹ Feinstein, Lee (2007), *Darfur and Beyond: What Is Needed to Prevent Mass Atrocities*. New York: Council on Foreign Relations, p. 4.

¹⁵² Bellamy 2009:54.

skeptical that the ICISS dedicated only nine of its 85 pages to prevention while the majority, 32 pages, is devoted to intervention.¹⁵³

3.2.2. The Responsibility to React

The second pillar of R2P is the responsibility to react, it therefore relates to the question when to intervene. The ICISS struggled hard to come to terms about this issue and the report sets a “high threshold” that should limit interventions only to “extreme cases,”¹⁵⁴ which basically means large-scale loss of life and ethnic cleansing, underway or anticipated. In the future, situations like in Rwanda 1994 but also in Kosovo 1999 should be obviated. In the first case the UNSC had not reacted at all, while in the latter Russia and China threatened with a veto. Such situations hopefully will not occur again in the future with the suggestions of the ICISS. In the first place the responsibility for individuals lies within the sovereign state. The second layer of responsibility is the domestic authorities and in case the first two are failing the responsibility is referred to the international community.¹⁵⁵ The ICISS has come to the conclusion that if the Security Council fails to act, the UN General Assembly should be addressed. If that fails too, regional organizations bear the responsibility to act; otherwise coalitions of the willing may also be created to protect the threatened people.¹⁵⁶ Interestingly, Evans and other supporters of R2P have never referred to the possibility of a coalition of the willing after the war in Iraq in 2003. It became obvious that such an approach would undermine the concept of R2P. Nonetheless, the international community should not only have the right but also the duty to intervene even militarily and stop the mass atrocities or genocide in case the responsibility to prevent fails. This would finally fulfill the duty which is already stated in the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) that genocide, which is “never invoked, even in the clearest of cases”¹⁵⁷ has to be prevented. Now, the ICISS was able to shift the focus of the debate from the outside intervention towards the people suffering from violence.¹⁵⁸

However, a consensus on how the responsibility to react should look like has by far not been reached. The crucial question has been who would be supposed to act and how. China was throughout the course of the ICISS discussions against any kind of force that

¹⁵³ Bellamy, Alex J. (2008), “The Responsibility to Protect and the Problem of Military Intervention”, *International Affairs* Vol. 84(4), pp. 620-621.

¹⁵⁴ ICISS 2001:32.

¹⁵⁵ ICISS 2001:49.

¹⁵⁶ ICISS 2001:53-55.

¹⁵⁷ Mills, Kurt (2008), “Which Responsibility in Darfur?”, *Peace Review* Vol. 20(2), p. 175.

¹⁵⁸ Weiss, Thomas G. (2004) “The Sunset of Humanitarian Intervention? The Responsibility to Protect in a Unipolar Era”, *Security Dialogue* Vol. 35(2), p. 138.

would be beyond the scope of the UNSC. Russia supported R2P but it was in favor of China's stance that no action should be taken without UNSC approval because it would otherwise subvert the Charter.¹⁵⁹ This comes unsurprisingly because the P5 and other major powers will not accept a military intervention although all criteria of R2P might be met. In contrast, Deutscher argues that R2P is a pro-sovereignty doctrine.¹⁶⁰

With the pressure from important UN member states, R2P was watered down in crucial areas by the Canadian Government and Ramesh Thakur to reach a consensus. Bellamy points out three important areas where R2P was weakened in substance: 1) an unauthorized intervention would not be possible; 2) a just cause threshold and precautionary principles were put aside; and 3) a limited use of the veto by the P5 was dropped.¹⁶¹ These three points in the area of the responsibility to react are missing in the use of R2P today. Enormous possibilities to deal with violent conflicts and halt mass atrocities would have presented themselves in case these three points had been implemented.

Still, the report presented additional 'operational principles' to guide decision makers by means of six principles that should be followed. The ICISS has insisted that 'right intention' and 'just cause' justify military action only when the primary motive is to avert or halt human suffering. It was planned to add "serious violations of humanitarian law" as a just cause, which had to be dropped later because of the pressure of critics.¹⁶² Additionally, the 'right authority' according to international law has to approve action – a clear link back to the UNSC. This is the most controversial principle because in the Kosovo crisis the Council was blocked and therefore the ICISS was also looking for alternatives. In the end, the UNSC was the only legitimate authority to decide on peace and war.¹⁶³ Moreover, it should be the 'last resort,' all other options must have been explored beforehand without success to declare military action necessary. The overall objective has to be humanitarian and apply 'proportional means' in scale, duration and intensity. Finally, the chance of success of an operation has to be within 'reasonable prospects' because otherwise the consequences might be even worse than inaction.¹⁶⁴

¹⁵⁹ Bellamy, Alex J. (2006), "Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit", *Ethics and International Affairs* Vol. 20(2), pp. 151-152.

¹⁶⁰ Deutscher 2005:30.

¹⁶¹ Bellamy 2006:154.

¹⁶² Bellamy 2006:156.

¹⁶³ Evans/Sahnoun 2002:106-107.

¹⁶⁴ MacFarlane, Neil/Thielking, Carolin/Weiss, Thomas (2004), "The Responsibility to Protect: Is Anyone Interested in Humanitarian Intervention?", *Third World Quarterly* Vol. 25(5), pp. 979-980.

3.2.3. The Responsibility to Rebuild

The idea of the responsibility to rebuild is a long-term commitment by the potential interveners. The ICISS has put a focus on three areas: 1) security; 2) justice and reconciliation; and 3) development.¹⁶⁵ After the end of the Cold War, ‘nation-building’ has become a normal component in peacekeeping missions or in, as they are also called, ‘peacekeeping plus.’ The question has remained open, however, which practical guidance interveners should apply to rebuild post-conflict societies.¹⁶⁶

The effects of mass violence usually continue when a conflict is officially declared over by the parties involved. Coordination between the international actors is necessary for the commitment for mid-term and long-term goals and to avoid shortsighted thinking. Yet, international organizations on site work against each other and fight for influence and attention, as the example of Kosovo proves, instead of cooperating with each other efficiently. The World Summit in 2005 achieved an agreement on creating a Peacebuilding Commission (PBC) to avoid mistakes from the 1990s and to improve the coordination between the different actors – but there is hardly any improvement to be seen during the last years. Skepticism, however, towards the installation of the PBC has turned into cautious optimism in 2008 according to Evans.¹⁶⁷

In the following, the most important issues for rebuilding are discussed. An important task at the outset of a post-conflict situation is to guarantee the re-establishment of law and order, which is often summed up as ‘security sector reform.’ This is a police rather than a military task and crucial to lead a war-torn society back to normality. Refugees and IDPs have to be guaranteed a return to their homes. Former combatants have to go through a disarmament, demobilization and reintegration (DDR) process. Often, however, disarmament is more symbolic than real. The reintegration into society is the most sensitive and difficult part of DDR because victims and perpetrators may have to live next to each other and work together.

Without justice, post-war society will face difficulties in the long run. Nevertheless, it is often placed more weight on reconciliation than on demanding accountability. After conflicts, states often seem fragile and justice is not in the center of attention; on the contrary, it is even seen as a danger in terms of undermining peace agreements because some of those who led the peace negotiations usually are war criminals themselves.¹⁶⁸ Instead of a lustration process, the installation of truth commissions or the payment of reparations, often postponement is applied as a strategy to deal with the crimes committed

¹⁶⁵ ICISS 2001:40.

¹⁶⁶ Bellamy 2009:59.

¹⁶⁷ Evans 2008:173.

¹⁶⁸ Evans 2008:153.

during the conflict. Sometimes, also traditional justice approaches are a viable alternative although the International Crisis Group (ICG) has identified risks of such approaches in Liberia and Sierra Leone, where international actors implemented traditional justice in the post-conflict period.¹⁶⁹ Karen Brounéus, too, is skeptical and writes about risks of retraumatization for women in truth and reconciliation processes at traditional *Gacaca* courts in Rwanda.¹⁷⁰ Whichever approach in a post-conflict situation is taken, individuals responsible for large-scale war crimes have to fear a warrant with the advent of the International Criminal Court (ICC).

Other key words in rebuilding are ‘good governance’ and ‘local ownership’ which are responsible for immediate restoration of government services. Conflicting positions can be observed when it comes to elections that should legitimate governments in the post-conflict stage. Richard Haass observed that “electocracy is not to be confused with democracy”¹⁷¹ and Timothy Garton Ash further states that while “[f]ull liberal democracy contributes to peace; partial half-baked democratization can increase the danger of war.”¹⁷² Democratization may be a successful tool to stabilize and legitimize governments although political culture, a bottom-up approach and grass roots movements are necessary to make them work. From the beginning on, it is important that peacebuilding is not exclusively externally driven but includes also local actors, which is often a challenge as the examples of Afghanistan or Iraq have proven recently.

The concept of rebuilding is also criticized as ‘quasi-imperialism’ of the UN like in Bosnia or Kosovo as Roland Paris argued.¹⁷³ New UN missions were consequently remodeled to tackle the criticism of neo-colonialism and support a ‘light footprint’ approach that in brief can be summed up as “external support for indigenous efforts.”¹⁷⁴ The local capacity should be supported as much as possible and the presence of international staff should be limited at the same time. Yet the problem remains that as the cases of Afghanistan and the DRC show that spoilers gain legitimacy and the light footprint may be an excuse for donors to reduce their level of engagement so that the local staff ends up as chronically under-financed.¹⁷⁵

¹⁶⁹ ICG (2004), “Liberia and Sierra Leone: Rebuilding Failed States”, *Africa Report* No. 87, p. 24.

¹⁷⁰ Brounéus, Karen (2008), “Truth-Telling as Talking Cure? Insecurity and Retraumatization in the Rwandan *Gacaca* Courts”, *Security Dialogue* Vol. 39(1).

¹⁷¹ Haass, Richard N. (2005), *The Opportunity: America’s Moment to Alter History’s Course*. New York: PublicAffairs, p. 73.

¹⁷² Garton Ash, Timothy (2006), “A Little Democracy Is a Dangerous Thing – So Let’s Have More of It”, *The Guardian*, 3 August 2006.

¹⁷³ Paris, Roland (2004), *At War’s End: Building Peace After Civil Conflict*. Cambridge: Cambridge University.

¹⁷⁴ Bellamy 2009:179.

¹⁷⁵ Bellamy 2009:180.

In comparison to the first two dimensions of R2P, prevention and reaction, the responsibility to rebuild has the advantage that donor countries are more willing to commit themselves – at least in the first years after a conflict. Yet, rebuilding will always remain a long and costly endeavor.

3.2.4. Criticism of R2P

The report of the ICISS was widely recognized as a new guideline of the debate on intervention. At the same time it faced huge criticism out of different reasons. From the beginning, it has been foreseeable that not all political or academic actors would endorse R2P. It was obvious that a compromise of different positions would have to be reached in the international arena and that therefore some actors would have had to give up some of their positions and beliefs. In this subchapter, criticism from the academic community will be covered on the one hand; on the other hand criticism from governments and international organizations will be considered.

Louise Arbour argues that policy makers might be easily tempted to believe in a rigid progression of the three pillars. In reality, a mix of tools is required because otherwise dangerous loopholes will arise. She brings up the example that during a violent conflict, too, capacity building for human rights is necessary.¹⁷⁶ One of the critics was Adam Roberts who pointed out that the operational recommendations of the responsibility to prevent were too vague – the same problem remains with the actualization of the responsibility to rebuild.¹⁷⁷ David Chandler brought up keen criticism by denouncing R2P as diminution of sovereignty, or a “fundamental downgrading” as he calls it. According to Chandler only the terminology has changed while the idea of coercive international interference remains.¹⁷⁸

Indeed, a widespread hostility towards humanitarian intervention by skeptical governments has become apparent, in particular by countries in the Non-Aligned Movement (NAM). The mere association of R2P with ‘humanitarian intervention’ built up barriers that were hard to remove for R2P supporters. The main task remained to adopt the report by the international community.

¹⁷⁶ Arbour 2008:456.

¹⁷⁷ Roberts, Adam (2003), “Intervention: One step forward in the Search for the Impossible”, *International Journal of Human Rights* Vol. 7(3), p. 149.

¹⁷⁸ Chandler, David (2005), “The Responsibility to Protect: Imposing the Liberal Peace”, in: Bellamy, Alex J./Williams, Paul D. (eds), *Peace Operations and Global Order*. London: Routledge.

3.3. *The World Summit Outcome 2005*

After the presentation of the report it seemed to be not very likely that UN bodies would incorporate R2P. From the P5, only France and the UK were in support of the Responsibility to Protect. China and Russia were unconvinced, while the US did not want to have any criteria that would dictate when and where to use force.¹⁷⁹ The US-led invasion of Iraq in 2003 prompted the UK and also the US to argue that this would be a case for R2P. Evans rejected that claim, bitterly calling them “false friends” of R2P. Criticism towards R2P was only fuelled by such debates, and opposition was rising. At the same time the Canadian Government was taking initiatives to mobilize the civil society for the cause of R2P, to create political will within governments and focus on operational questions. Importantly, R2P was not sold as an entire new thing but rather as a combination of pre-existing policies.¹⁸⁰

In November 2003, Kofi Annan announced, despite all criticism and influenced by the lobbying of the Canadian Government, the establishment of the High-Level Panel on Threats, Challenges and Change to find practical measures for effective collective action to face threats to peace and security. The High-Level Panel (HLP) presented its report *A More Secure World: Our Shared Responsibility* in December 2004, which went much further than the ICISS and proposed 101 recommendations for a serious reform of the UN, in particular to reshape the UN Security Council. The HLP also referred to R2P:

The panel endorses the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of humanitarian law which sovereign governments have proved powerless or unwilling to prevent.¹⁸¹

The HLP therefore turned the debate on the concept of R2P towards an institutional reform of the UN. R2P was understood as a means to strengthen the security system under the UN Charter.¹⁸² Clearly, the report focused also on the use of force. It did not want to find alternatives to the UN Security Council but it wanted to reform the Council and set up guidelines. Besides, the P5 were asked to refrain from their veto power in cases of genocide or mass atrocities.¹⁸³

¹⁷⁹ Bellamy 2009:67.

¹⁸⁰ Bellamy 2009:72.

¹⁸¹ High-Level Panel on Threats, Challenges, and Change (2004), *A More Secure World: Our Shared Responsibility*. United Nations A/59/565 of 17 November 2004, para. 203.

¹⁸² Strahn, Carsten (2007), “Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?”, *The American Journal of International Law* Vol. 101(1), p. 105.

¹⁸³ HLP 2004: para. 256.

Also the Secretary-General reflected on tensions that R2P causes for many states. In March 2005, Kofi Annan published his report *In Larger Freedom* and wrote, “while I am well aware of the sensibilities involved in this issue [...] I believe that we must embrace the responsibility to protect, and, when necessary, we must act on it.”¹⁸⁴ At the same time Annan tried to bring the debate on R2P away from intervention towards a commitment of all states to human security and the rule of law. Although the Secretary-General embraced R2P in the context of promoting human rights, he refrained from calling it a norm or concept.¹⁸⁵ Annan’s move provoked criticism by states supporting R2P. It demonstrated how difficult the negotiations about the World Summit Outcome would become half a year later, where R2P advocates wanted to include the responsibility to protect in the final document.

Many conceptions of the notion of R2P were on the table during the drafting process of the Outcome Document of the 2005 World Summit. Kofi Annan opened the largest gathering of world leaders in history at the UN headquarter in New York City on 14 September 2005. One of the central concerns for the Secretary-General was an agreement about the Responsibility to Protect: “at the end of his tenure, he wanted to witness the transition from principle to operational action.”¹⁸⁶ At the beginning in 2005, the final draft on R2P was perceived as an interest of the European Union, Canada and Japan.

According to Strauss, it was US Ambassador John Bolton who changed the dynamics by last-minute demands as other countries like China or Russia raised objections again.¹⁸⁷ One of the big debates about R2P included phrases like the unwillingness or inability of states to protect their own people because nobody was able to define that on a legal basis. Others stressed that mass atrocities had already been dealt with in the UN Charter and no new principle had to be introduced.¹⁸⁸ In the end, two paragraphs about R2P were incorporated in the World Summit Outcome:

138. Each individual state has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter of the United Nations, to help protect populations from war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII,

¹⁸⁴ Annan, Kofi (2005), *In Larger Freedom: Toward Development, Security and Human Rights for All*. UN, A/59/2005.

¹⁸⁵ Strauss 2009:24.

¹⁸⁶ Strauss 2009:11.

¹⁸⁷ Strauss 2009:14-15.

¹⁸⁸ Strauss 2009:16.

on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

The Outcome Document was adopted without voting, but all heads of states in fact agreed on the version adopted. The wording of the two paragraphs shows how much compromise was involved in the production of the text. In paragraph 138 the responsibility on a national level is dealt with, while paragraph 139 addresses the responsibility of the international community. Both stress the need of non-military means, as many states were afraid of undermining their sovereignty. The focus, however, had changed in comparison to the ICISS report. R2P was now divided in two parts. First, the state's obligation to protect those living within its own borders is stressed. Proponents of R2P strongly underline this point because in the first place it is the state itself that is supposed to deal with potential problems. The second part of R2P part addresses the rest of the world in case a state fails to master the risk of mass atrocities within its own borders or represents the cause of the threat itself. The adopted version used the word 'responsibility' of the international community through the UN instead of an obligation to act and the UNSC should be 'prepared' and not take a "shared responsibility to take collective action" as the draft document has stated. Therefore, there are claims to call the Outcome Document an '*à la carte* interventionism' because equivocation will continue to be possible.¹⁸⁹

The World Summit made clear that the Genocide Convention, the Statute of Rome and the ICC define the range of influence of R2P; this means that R2P attained a rather precise legal meaning.¹⁹⁰ Originally, one important point of R2P was the criterion of legitimacy to make the Security Council more responsive concerning mass atrocities by removing the veto of P5 members and introduce an obligation to act in case of a humanitarian emergency. Thus, the risk of 'coalition of the willing' being formed would have been reduced – but in the course of negotiations it was excluded.¹⁹¹

The overall outcome of the Outcome Document on R2P was therefore a "mixture of political and legal considerations, which reflects the continuing division and confusion about the meaning of the concept."¹⁹² The text of the two paragraphs try to include the different positions but the compromise led to a rather lame and confusing phrasing or as Stahn has put it, "[i]t almost seems to suggest that the drafters of the Outcome Document had some doubts whether their own proposal was consistent with international law and the

¹⁸⁹ Hehir 2008:72.

¹⁹⁰ Bellamy 2008:623.

¹⁹¹ Hehir 2008:72-73.

¹⁹² Stahn 2007:109.

Charter.”¹⁹³ Some proponents of R2P were quite disappointed with the outcome of the summit and labeled the new principle ‘R2P lite.’¹⁹⁴ Bellamy argued that it were not humanitarian principles that had guided the World Summit but forces interested in weakening the tenets of the ICISS recommendations and consequently weakening the overall concept of R2P.¹⁹⁵ Other supporters like Evans were happy that the concept of R2P was endorsed at all.

Kofi Annan wrote in *The Wall Street Journal* that the Summit Outcome Document was indeed disappointing in parts but for him was the acceptance of a collective R2P of all member states “most precious” and he expressed his hope that “it will be acted upon when put to the test.”¹⁹⁶ At the World Summit all in all 21 member states used the term R2P whereby the different statements reflected the continuing differences about how to understand it. The main opponents are, according to Strauss, the Russian Federation, India, Pakistan and Cuba.¹⁹⁷ One year later, at the 61st session of the UNGA, only 13 countries addressed R2P, among them eight countries¹⁹⁸ that pledged the international community to take responsibility for Darfur. In 2006 two UNSC resolutions made reference to R2P. Resolution 1674 called for the protection of civilians in armed conflicts and the UNSC endorsed the approach of the Outcome Document. In the same year the Council referred in resolution 1706 to the situation in Darfur and called on the GoS to protect its civilians, citing R2P.

At the 62nd session of the UNGA in September 2007, only eight member states made reference to R2P. In particular Australia stressed the need for R2P and also for the development of a plan of action concerning the situation in Darfur.¹⁹⁹ In October 2007 the UN Secretary-General informed the UNGA about his decision to appoint a Special Adviser for the Responsibility to Protect at the level of an Assistant Secretary-General in the UN system in order to operationalize the concept. Consequently Ban Ki-moon appointed Edward Luck as a Special Adviser “who will focus on the responsibility to protect”.²⁰⁰ The Fifth Committee of the General Assembly, that is responsible for issues like R2P, dismissed the appointment in a resolution about the budget in February 2008, because some countries insisted that such a step would be premature. The Secretariat yielded and

¹⁹³ Stahn 2007:110.

¹⁹⁴ Weiss 2007:117.

¹⁹⁵ Bellamy 2006:167.

¹⁹⁶ Annan, Kofi (2005b). “A Glass at Least Half Full”, *The Wall Street Journal*, 19 September 2005.

¹⁹⁷ Strauss 2009:41.

¹⁹⁸ Australia, Canada, Denmark, Liechtenstein, Palau, Slovenia, Slovakia, and Sweden.

¹⁹⁹ Hill, Robert (2007), *The United Nations: Taking Action*. Speech on 2 October 2007 at the 62nd UN General Assembly in New York by the Australian Ambassador, p. 3-4.

²⁰⁰ UN (2008a), “UNSG Appoints Edward C. Luck of United States Special Adviser”, Press Release SG/A/1120, BIO/3963, 21 February 2008.

appointed a Special Adviser on a temporary pro-bono basis to appease critical member states.²⁰¹ The constraints were so strong that although Luck got the position, the phrase R2P had to be removed from his title. One of the main opponents remained China but also delegates from Latin America, Africa and the Arab region claimed that R2P was rejected in 2005. Linked to that, also Francis Deng from Sudan was limited to the title ‘Special Advisor for the Prevention of Genocide’ to the UNSG and had to remove the additional phrase ‘and Mass Atrocities.’ Consequently, Deng has been limited in his scope of action because of the narrow interpretation of his authority as the definition of genocide is not entirely clear.²⁰²

In early 2009, UNSG Ban Ki-Moon, after having “instructed the Organization to begin to take the initial steps to ensure that the system has the flexibility and capacity to help Member States meet their commitments”²⁰³ and proposed himself an implementation strategy for R2P, suggesting its realization. The concept's scrutiny in the UNGA with a resolution has been the most recent comprehensive appraisal by the international community in July 2009.²⁰⁴

3.4. The African Union’s Step Ahead?

The Constitutive Act of 2002 created a newly form of cooperation between African states, the African Union (AU), in 2003. Thereby it replaced the Organization of African Unity (OAU), which had been established during the period of decolonialization in 1960. The OAU was often criticized for its inactivity towards political leaders who took care primarily for themselves, their families or clans and therefore for money but at the same time sacrificed the lives of tens of thousands through violence or famine. The principle of sovereignty, non-intervention and the fixedness of borders were the framework of the OAU in order to assure their own imperial powers. In reality, nearly every African state was used by either the United States or the Soviet Union, most often by both, to act in the national interest of the two super powers.

The change to a new institution was motivated by the belief that the OAU had not been able to tackle problems in Africa appropriately. The whole continent was dependent on external forces during the time of the OAU; therefore African leaders wanted to take their

²⁰¹ Strauss 2009:42-43.

²⁰² Evans 2008:287.

²⁰³ UN (2008b), “Report of the Secretary-General on the work of the Organization”, A/63/1, 12 August 2008, para. 74.

²⁰⁴ UN (2009c), “Interactive Thematic Dialogue of the UNGA on the Responsibility to Protect”, 23 July 2009. Online: <http://www.un.org/ga/president/63/interactive/responsibilitytoprotect.shtml> [accessed 27 January 2010].

problems into their own hands in a more efficient way in order to show and prove that Africa was mature enough to deal with the challenges at hand. Thus, the AU approved the establishment of an African Standby Force (ASF), which should consist of nearly 20,000 troops by 2010, and should be deployed on the authority of the AU African Assembly or the AU Peace and Security Council.²⁰⁵ The Bush administration tried, like Clinton did, to improve the peacekeeping capabilities around the world and in particular in Africa. In 2005, about 14,000 African troops were trained, including personnel for AMIS. Also France and the UK run initiatives to support pan-African conflict prevention through regional peacekeeping efforts. Still, a critical mass of specialized and combat-ready troops for the AU is missing although this would be a requirement to stop death squads. It is important to stress that the AU has changed its policy towards its members and suspended Mauritania and Togo in 2005 after attempts to overthrow democratically elected governments.

In addition, state leaders were influenced by the work of Francis Deng and the report of the ICISS, which made most African states change their mind.²⁰⁶ The Constitutive Act of the AU is therefore interesting for this paper because it represents a drastic change in Africa's efforts concerning conflict management. Although the principle of non-intervention was reaffirmed in article 4(g) of the Declaration of African Heads of States and Governments, the AU at the same time was given the right to decide about humanitarian interventions in grave circumstances like genocide or crimes against humanity. Article 4(h) and article 4(j) formalize the request of AU member states for intervention. Clearly, article 4 is in its sub-clauses contradictory and has caused a lot of debate, but viewed in a positive light unilateral action is rejected while collective action of the AU is favored.²⁰⁷

From a Western perspective, however, where many actors, in particular the US, claimed that genocide is going on in Darfur, the declaration has not changed much. The AU members even rejected the findings of UN officials on the situation in Darfur. Obviously there is still a different understanding of the classification of events in Darfur and a traditional understanding of sovereignty remains, although the institutional possibilities have broadened. While some proponents of R2P have argued that the African Union was with its Declaration a regional forerunner of R2P, Bellamy makes clear that the AU's understanding of R2P, which is also called 'Ezulwini Consensus,' cannot be

²⁰⁵ Feinstein 2007:34.

²⁰⁶ Williams, Paul D. (2007), "From Non-Intervention to Non-Indifference: The Origins and Development of the African Union's Security Culture", *African Affairs* Vol. 106(423), p. 275.

²⁰⁷ Bellamy 2006:157-158.

compared with the one of the ICISS or the HLP. The AU insists on priority on the regional level in contrast to the global level on which the UNSC acts. As a consequence the work of the Security Council should be limited in the eyes of AU member states to prohibit interference into “internal” African affairs by great powers.²⁰⁸ Viewed in this light, the AU’s step forward has to be questioned. This issue will be discussed in chapter 6.

3.5. R2P as a Concept in International Law

Although the UN General Assembly adopted the resolution of the World Summit Outcome, it is not binding for the member states and does not create new rules of customary international law. Often, however, resolutions of the UNGA have the function of a starting point in the development of international law.

R2P is often referred to as an “emerging norm of international law.” This wording was rejected during the negotiations for the World Summit Outcome. Thus the legal effect of R2P is not clearly indicated and is still disputed in the UN. Moreover, the International Court of Justice (ICJ) makes clear in its statute that only international treaties, custom and general principles of law are sources of international law.²⁰⁹ Consequently, from a normative point of view, R2P cannot be seen as a legal norm yet because there are too many different understandings between the actors and the actual propositions on the concept.²¹⁰

Overall, R2P can be divided into a concept, a principle or a norm as Bellamy points out.²¹¹ R2P is referred to, most of the time, as a concept – by critics and supporters of the concept alike. It is therefore still an idea that requires further development in order to be operationalized. On the other hand, the World Summit Outcome Document did not call R2P a concept and did not ask the UNGA to take further decisions on a clarification of R2P. Moreover, the UN and regional organizations have put R2P already into practice. Others have referred to R2P as a principle, like the ICISS or the HLP. In comparison to a concept, a principle implies a common understanding and consensus. Typically, principles in international law are not challenged or violated – like sovereignty. R2P, however, is still not generally accepted and the principle of sovereignty will not be given up by many states, among them China and a lot of NAM countries. A third possibility is to refer to R2P as a norm, which raised an intensive debate in the academic community. Scholars of

²⁰⁸ Bellamy 2006: 160-161.

²⁰⁹ ICJ (1945). Statute of the International Court of Justice, art. 38.

²¹⁰ Stahn 2007:120.

²¹¹ Bellamy 2009:5-8.

international law argue that it was impossible to implement a norm four years after its emergence in 2001. It seems certain that the drafters of the Outcome Document tried to give some legal meaning to R2P, the result, however, is still uncertain.

It is commonly accepted that genocide, war crimes, ethnic cleansing and crimes against humanity are entrenched in international law and respected legal standards. Furthermore, it is argued for example by Louise Arbour that R2P appends the obligation to protect civilians from such crimes. Thus, all states would have the duty to take action in the advent of genocide. R2P has the chance to fill the gap between legality and legitimacy in case it will be established as a norm of customary international law.²¹² That would imply that R2P would really have to be taken seriously by the heads of states around the world because the failure to implement R2P would determine legal sanctions. A military intervention would get a realistic threat to massive human rights violations contributing to the prevention of crimes against humanity.

R2P could also be considered a ‘third generation’ right like the right to development. That means that new approaches have to be developed to amend existing rights in a particular context to make them more acceptable for states critical of the idea.²¹³ Moreover, R2P redefines sovereignty because borders are not sacrosanct anymore and the monopoly of force within a state’s own boundaries has no monopoly anymore. With R2P, state sovereignty entails not only rights but also responsibilities. It depends on the state itself whether its sovereignty is enjoyed fully. Therefore, R2P can be called a novel vision because the idea of human security is linked with certain duties for the state.²¹⁴ This linkage is based on the legal concept of solidarity and in a positive understanding the responsibility is an obligation for states to inhibit gross human rights violations.

3.6. The Role of the UN Security Council in R2P

International law still has not found consensus on how to deal with humanitarian interventions or R2P, whereby two different readings can be identified, an international legal positivism and a naturalist, human rights-based approach. The former originates from the idea that sovereign states have to agree voluntarily to treaties which in the course of time turn to customary rule, while moral considerations have no validity in this point of view. In contrast, the latter asserts that neutral analysis of custom and treaty of

²¹² Strauss 2009:38.

²¹³ Strauss 2009:39.

²¹⁴ Stahn 2007:115.

international law is impossible and hence the best moral theory, which is a human rights-based approach and sees the individual as a subject, should be taken as a source of interpretation.²¹⁵

These two understandings also reflect the debate on how the UN Charta should be interpreted. In article 2(4), the Charta stresses the territorial integrity and political independence of any state – with the exceptions of unilateral or collective self-defense under (article 51) and UNSC enforcement under Chapter VII (article 42). It is widely recognized among experts in international law that UNSC authorization is necessary to call an intervention legal. Representatives of natural law like Fernando Tesón challenge this view, arguing that the consent of the UNSC is not necessary to undertake a humanitarian intervention on a legal basis.²¹⁶ Since the end of the Cold War it is widely accepted that reinforcement under Chapter VII is taken by the UNSC to tackle “any threat to the peace, breach of the peace, or act of aggression.” Coercive military action is regulated in articles 39, 41 and 42 of the UN Charta, whereby its interpretation is clear concerning external threats to states. It is not so obvious when it comes to internal threats to civilian security although since the 1990s the UNSC has often responded to extreme violence in a nation state as numerous examples have shown. At the same time there have been other examples as Rwanda where the Council failed to act.

One of the important points the ICISS brought up was the suggestion that the P5 have to agree on thresholds that would suspend the threat of a veto. This was weakened by the fact that the P5 powers still play the veto card when a self-claimed vital national interest is at stake, but the commission members knew that otherwise the proposal would be outright objected.²¹⁷ After the World Summit, R2P weakened this position in paragraph 139 even further as there were no obligations imposed on the international community and in particular on the UNSC; rather the council was asked to be committed to “standing ready” when it should be necessary to act.²¹⁸

In addition it was planned to set up a hierarchy of responsibilities. Originally, it is the state, which has the primary and foremost duty to protect its people. In case this state is not able to stop crimes against humanity or even fuels them, in the first place, it is the international community, which has the moral responsibility to act and decide through the UNSC on actions to prevent or halt violent conflicts. If the council is blocked by one of the veto powers, the responsibility is carried on. Secondly, it would be the UNGA, the most

²¹⁵ Pattison 2007:304-305.

²¹⁶ Tesón 2005.

²¹⁷ Bellamy 2008:621.

²¹⁸ Bellamy 2008:623.

representative UN body that has to deal with the matter, although it is facing its own criticism. Thirdly, it would be regional bodies like the EU or the AU to deal with such matters. In the fourth position comes the ICISS-proposed ‘coalition of the willing’ to stop mass atrocities, but after Bush’s use of this term to get support for the 2003 Iraq war, such a coalition became somewhat equivocal. The last level in the hierarchy would be an individual state – it has to be clear that all other efforts have failed before this step can be taken.²¹⁹ All those plans outlined above were removed from the Outcome Document of 2005 because the UNSC has remained the sole authority for allowing coercive measure.

²¹⁹ Bellamy 2008:621.

Figure 2: Map of Sudan



Source: UN Department of Peacekeeping Operations, Cartographic Section in April 2007.

4. The Darfur Conflict

Darfur can be described as a typical northeastern African civil war, where many different overlapping conflicts intermingle. Until 2004, Darfur was one of the least known places in the world – ever since it has gotten into the international consciousness. Eruptions of violence have taken place already for decades, in particular in the 1980s. Local disputes increased in 2001 and in February 2003 when Darfur rebels attacked a military airport of the government escalating the simmering low-intensity conflict dramatically. This was the start of what today is widely referred to as the Darfur crisis. The local governance broke down, provincial elites supported rebels while the GoS recruited militias. The effect was mass atrocities, displacement and famine. It is generally estimated that more than 200,000 people were killed in Darfur, in addition 2.7 million have been displaced.²²⁰ The Darfur conflict is classified according to international law as a “non-international (internal) armed conflict.”²²¹ Still, the rest of the world is avoiding effective efforts to end the killing. Thus, Darfur is taken as a case study in this paper because although mass killings, that some even have referred to as genocide, have taken place, the principle of R2P had no effect. And as Feinstein has put it, “The Darfur problem is an immensely difficult one. No solution is guaranteed to work.”²²²

4.1. Introduction to Darfur

Darfur is located at the western edge of Sudan and is divided into three states – North, West and South Darfur. All in all, it occupies a vast area of 510,888 km², which is slightly more than the territory of Spain. Darfur shares a common border with Chad in the west, Libya in the northwest and the Central African Republic in the southwest. It is hard to give an exact figure of the population in Darfur; the WHO was estimating 6.7 million people in the region out of Sudan’s total 39.1 million people in 2004.²²³ Darfur is literally means “homeland or abode (‘dar’) of the Fur.”²²⁴ It has a complex society stretched between the desert and savanna, ranging through several climatic-vegetational zones because of the

²²⁰ HRW (2009), “The Way Forward: Ending Human Rights Abuses and Repression across Sudan”, 6 October 2009.

²²¹ HRW (2008b), “They Shot at Us as We Fled: Government Attacks on Civilians in West Darfur in February 2008”, 18 May 2008, p. 27.

²²² Feinstein 2007:41.

²²³ WHO (2004b), WHO Work in Greater Darfur, Sudan. Online:

<http://www.reliefweb.int/w/rwb.nsf/0/bb2e3ab1237cc049c1256e7f004096c4?OpenDocument> [accessed 22 January 2010].

²²⁴ Vehnämäki, Mika (2006), “Darfur Scorched: Looming Genocide in Western Sudan”, *Journal of Genocide Research* Vol. 8(1), p. 51.

1,140 km long north-south extension. Three main Black African groups can be identified: the Fur with about one million people and the Masalit and Zaghawa with approximately 350,000 people each.²²⁵ Other large ethnic groups in Darfur consist of Arab or migrants with Arab-descent; the main tribes are Rizeigat, Mahariya, Irayqat and Beni Hussein. There are camel-herding nomadic tribes in the north called *Abbala* while the groups in the east and south herd mainly cattle and are referred to as *Baggara*. To make the situation even more complex, 'African' Zaghawa raise camels and cattle as well. In total, a wide variety of tribes with dozens of smaller subdivisions and clans can be identified in Darfur.²²⁶ The Zaghawa groups of Darfur also have links to the Zaghawa in the neighboring country Chad. As the Chadian president Idriss Déby is himself a member of this ethnic group, the conflict in Darfur flashed over also to the bordering regions of Chad and made the Darfurian conflict international.²²⁷

According to Vehnämäki, Darfur has not been the most deprived area in Sudan although it was certainly marginalized. The most fertile ground for conflict is the political, religious, and physical oppression that Darfur had to face for decades, further fuelled by economic and social injustice.²²⁸ Around Darfur, there are other areas of conflict as well, in particular in the East and the Northeast. The All-Nuba Conference in December 2002 aligned the Nuba with the SPLM/A, who fought a civil war from 1984 onwards in Southern Sudan to gain self-determination. The Beja people in the East frequently suffer from malnutrition and epidemics and are oppressed by Khartoum. Next to Darfur, there are obviously many other conflicts in Sudan. Vehnämäki summarizes it as follows: „Although the conflict in Darfur is essentially a Darfurian catastrophe, its links to the civil war and other skirmishes in Sudan should not be neglected either.“²²⁹ Causes of the conflict are wide-ranging and include desertification, an increase in population, marginalization, rising expectations into a globalized world.²³⁰

4.2. History of Darfur

²²⁵ Ibrahim, Fouad (2006), "Introduction to the Conflict in Darfur/West Sudan", in: Van Ardenne, Agnes/Salih, Mohamed/Grono, Nick/Méndez, Juan (eds.), *Explaining Darfur*. Amsterdam: Vossiuspers, p. 12.

²²⁶ Idriss 1999:10-11.

²²⁷ It has to be stressed that Chad has been highly militarized since the conflict with Libya between 1978-1987. Chad is still flooded with weapons and the power of President Déby is on a fragile basis, but he can count on the support of the French.

²²⁸ Vehnämäki 2006:63.

²²⁹ Vehnämäki 2006:79.

²³⁰ Lusk, Gill (2008), "False Premise and False Response to the Darfur Crisis", *Peace Review*, Vol. 20(2), p. 168.

To understand the present situation in Darfur one has to take into account the historical roots of the conflict.²³¹ These roots can be traced back into the colonial period when Darfur was incorporated into the British colony Sudan in 1916. While it had been an independent Muslim sultanate before, it became a neglected attachment for a 40-year-long colonial interlude. Geographic isolation and a lack of natural resources left the region at the periphery of the country, which was dominated by the riverine north. In the process of state-formation after the independence of Sudan in 1956, the centralistic ideals of the ruling elite in Khartoum were supported by the myth of historical unity.²³² They found their expression in a political and socio-economical marginalization of Darfur because the GoS failed to invest in infrastructure, education and economic development. Prunier claims that meager financial situation was contingent on the peripheral location of Darfur and not on a racial or cultural context.²³³ This situation was typical for Sudan as a tiny elite in Khartoum accumulated wealth and power. It was seen as a necessity in Khartoum to be united against the impacts of the civil war in Chad and the involvement of Libya.²³⁴ The strategy of ‘divide and rule’ was used to prevent opposition and marginalize the rest to stay in power.²³⁵ As a consequence Darfur remained extraordinarily poor. With the civil war in neighboring Chad, Arab tribes in Darfur were armed to support their clans but they used their equipment also against their African neighbors to seize land.²³⁶

In particular the northern areas could not be cultivated anymore with the rainfall diminishing. It forced the semi-nomadic tribes to become fully nomadic to move southwards in search of grazing land and consequently impaired pasturelands that belonged to sedentary peasants.²³⁷ The situation worsened for the Darfuris with the droughts in the mid 1980s, forerunner of the persistent desertification. In November 1983, Ahmad Ibrahim Diraige wrote as governor of Darfur the shocking ‘famine letter,’ but only nine months later the Sudanese President Gaafar Nimeiry called Darfur a ‘disaster zone.’²³⁸ Mainly as a result of the willful neglect of the government in Khartoum, the death toll of the 1984/5 famine is estimated to be more than 100,000 people.²³⁹

This fuelled the anger of ‘African’ farmers who claimed that the ‘Arab’ nomads did not prevent the catastrophe. So, the ‘Africans’ tried, also with gunpowder, to stop the

²³¹ Iyob/Khadiagala 2006:14.

²³² Idris, Amir H. (2005), *Conflict and Politics of Identity in Sudan*. New York: Palgrave, p. 5.

²³³ Prunier, Gérard (2005), *Darfur: The Ambiguous Genocide*. London: Hurst & Company, p. 42.

²³⁴ Prunier 2005:46.

²³⁵ Belloni 2006:333.

²³⁶ De Waal, Alex (2007), “Darfur and the Failure of the Responsibility to Protect”, *International Affairs*, Vol. 83(6), p. 1040.

²³⁷ Prunier 2005:49-50.

²³⁸ Prunier 2005:51.

²³⁹ Daly, M. W. (2007), *Darfur's Sorrow: A History of Destruction and Genocide*. New York: Cambridge University Press, p. 230.

‘Arabs’ from getting any grazing land, claiming that the ‘Arabs’ were stealing their livestock.²⁴⁰ Furthermore, the Sudanese Government applied policies in the mid 1980s that politicized and militarized the different groups in the region. Politicians in Khartoum used these developments in their own interest. As a result, the nomads came into a violent conflict with the local farmers. To facilitate access to pastures, an Arab militia arose, later known as the Janjaweed. While Daly claims that the remoter origins of the Janjaweed are uncertain,²⁴¹ Human Rights Watch argues with grievance how the Arab militia came into being: “[D]esperately poor men, most of whom identify themselves as Arabs, from land severely scarred by desertification and water shortages.”²⁴² The overall development shows that just no one cared about the people in Khartoum. At best, Darfur was a pawn in the power game between Sudan, Chad and Libya.

During the conflict in Darfur between 1987-1989, groups of Arab origin and sedentary Fur fought for water and grazing land. The Fur had to suffer from raids against hundreds of their villages and estates were burnt down.²⁴³ The most notorious carnage was the ‘Massacre of Ed-Da’ein’ in 1987 where thousands of people, belonging to the African ethnic group called Dinka, were burnt alive in cargo-trains.²⁴⁴ After a short democratic interlude offering access to political participation for the region, a coup d’état followed by Omar Hassan al-Bashir in 1989, who had strong support from the Arab militia, which has been incorporated as Popular Defense Forces (PDFs) into the military arm of the National Islamic Front (NIF), which is until today the ruling party in Sudan, but known as the National Congress Party (NCP). These events gave rise to an ideology which declared the Arabs as supreme.²⁴⁵ The government applied policies that spread hatred. During the 1990s, Khartoum was arming Arab groups that were organized as PDFs and by 1996 they outnumbered the regular armed forces. Today PDFs constitute more than 50% of the Sudanese Armed Forces.²⁴⁶ Moreover, new administrative boundaries at the expense of African groups were drawn. Darfur was politically divided in three provinces (*wilayat*) in 1994, namely Northern Darfur, Southern Darfur and Western Darfur, and new capitals were selected although they were ethnically heterogeneous with an Arab elite on top of the social strata. Darfur became even more marginalized, the whole region was stigmatized as violent and frustrated. In addition, the civil war in neighboring Chad affected Darfur as the

²⁴⁰ Prunier 2005:58.

²⁴¹ Daly 2007:265.

²⁴² HRW 2007:16.

²⁴³ ICG 2004:6.

²⁴⁴ Ibrahim 2006:13.

²⁴⁵ Daly 2007:3.

²⁴⁶ Salih, M.A. Mohamed (2006), *Africa’s Governance Deficit, Genocide, and Ethnocide*, in: Van Ardenne, Agnes/Salih, Mohamed/Grono, Nick/Méndez, Juan, *Explaining Darfur*. Amsterdam: Vossiuspers, p. 33.

Arab tribes got support from clans ethnically related to them and seized land from Fur and Masalit tribes. Khartoum ignored the local conflicts, even distributed weapons, and between 1996-1998 Arab militias were raiding villages and displaced tens of thousands of civilians.²⁴⁷ In the late 1990s, Hassan al-Turabi was excluded from the ruling National Congress Party of Omar al-Bashir. With his influence an unknown group called 'The Seekers of Truth and Justice' published *The Black Book: Imbalance of Power and Wealth in Sudan* in May 2000. This pamphlet declared al-Turabi's political aims and while it was not calling for violence, it fuelled ethnic hatred nonetheless.²⁴⁸

From 2001 onwards, more people joined self-defense troops because of their better organization and the failure of Khartoum to protect its own citizens against ongoing attacks of Janjaweed militias. Therefore, tribes from the Zaghawa and the Fur group started to join forces in the defense of their villages. With 9/11, the Bush administration changed its view on Sudan; suddenly they were 'good Arabs' because in 1996 they had offered to deport Bin Laden.²⁴⁹

Lusk points to the fact that already in November 2002 the GoS committed atrocities in Darfur. The international community, however, was concerned with the peace talks between the GoS and the SPLM in Kenya. It permitted Khartoum to relocate the Sudanese Armed Forces from the South of Sudan to Darfur.²⁵⁰

4.3. 'Arab' vs. 'African'

Darfurians, like other Sudanese, define themselves primarily according to tribal or ethno-cultural terms. During the 1990s, the incompatibilities between settlers and nomads witnessed an increased politicization of ethnic lines: 'Arabs' versus 'Africans.' Daly put it bluntly: "While for outsiders all Darfuris might seem just 'black', the Arab identity through imputed Arab blood now became the decisive factor in excluding the Other."²⁵¹ Although it is not possible to draw a line on racial or religious grounds, the government recruited marginalized 'Arabs' while 'non-Arab' respectively 'African' groups fight on the rebel's side. The attacks by the Janjaweed rest upon a racial reasoning because they are *zurga*, which means 'blacks' or 'Africans.' More important are facial features because

²⁴⁷ Belloni 2006:332.

²⁴⁸ Wallis, William (2004), "The Black Book History or Darfur's Darkest Chapter", *Financial Times*, 21 August 2004.

²⁴⁹ Prunier 2005:89.

²⁵⁰ Lusk 2008:172-173.

²⁵¹ Daly 2007:260.

from both, also the ‘Arabs,’ the skin color is black. Yet, this differentiation is not always the case either as the ethnic background is crucial.²⁵²

A differentiation can be done on the grounds to differentiate the ethnic groups between farmers and nomads. While farmers are tied to a certain place, nomads are characterized by an errant life style with their camels. Therefore the conflict mirrors scarcity of farming and grazing land but not yet reflects the whole picture either, because ‘Arabs’ are only semi-nomadic in Darfur.²⁵³ Prunier observes an “increasingly racialized battleground between Khartoum, Tripoli and N’Djamena.”²⁵⁴ The 1970s mark the start of a process to construct a new Arab identity for nomadic tribes in Darfur that continued to grow throughout the 1980s. In comparison to the North-South conflict in Darfur, which was based on racial and religious reasons, ‘Arabs’ and ‘Africans’ in Darfur were distinguished on a constructed ethnical basis. For many tribes it is hard to claim their Arab descent: often ‘Arab’ just refers to the mother tongue instead of using an indigenous language.²⁵⁵ But also some African ethnic groups lost their indigenous languages a long time ago; today most communities speak a Sudanese-Darfuri Arabic that is called *rutana* by the ‘Arabs,’ which is an expression meaning “incomprehensible, nonsensical articulations.”²⁵⁶

In terms of religion, both Arabs and non-Arab Africans belong to the religious denomination of the Muslim Tijaniyyah sect.²⁵⁷ For a long time inter-marriages have taken place, which makes it very hard to distinguish the different groups on their physical appearance. The polarization of identity is consequently not an implication of the physical violence in Darfur, because identities actually overlap each other and individuals shift easily from one group to the other.²⁵⁸ Moreover, ‘Arabs’ in Darfur have often been victims of Khartoum as well. Many ‘Arab’ tribes have started to distance themselves from the NCP because they felt used by Khartoum reaping the rewards they hoped for. Some ‘Arab’ groups even established ties with non-Arabs or joined ‘Arab’-led rebel groups fighting against the government.²⁵⁹

The reason why parts of the groups want to be referred to as Arabs is that being Arab is a sign of ‘civilization’ for them. This stands in contrast to a so-called African ‘savagery.’ At the same time it also distinguishes nomadic from sedentary people.²⁶⁰ What makes it even more complicated is the fact that ‘Arabs’ in the whole Sudan are seen as “mongrels

²⁵² Prunier 2005:4-5.

²⁵³ Hermanson, Judith A. 2007. “Violence, Poverty and Survival in Darfur, Sudan”, *Development* Vol. 50(2), p. 154.

²⁵⁴ Prunier 2005:47.

²⁵⁵ Lusk 2008:168-169.

²⁵⁶ Ibrahim 2006:12.

²⁵⁷ HRW (2004), “Darfur in Flames: Atrocities in Western Sudan,” Report Vol. 16(5A), April 2004, p. 6.

²⁵⁸ De Waal 2004; Prunier 2005:4-8.

²⁵⁹ ICG (2007), “Darfur’s New Security Reality”, *Africa Report* No. 134, p. 2.

²⁶⁰ Prunier 2005:5.

who hardly deserve their name” by the Arab world.²⁶¹ The identification of a person in Sudan is determined by a social and cultural context. A person from the North of Sudan is considered Arab in the South, while the same person in the North is considered to belong to a local tribe. In the end, the different groups are in various ways related to different political movements and have ties to numerous warlords, who benefit economically from their banditry.²⁶²

The economic motivation of different groups should not be disregarded although factors like politics or ethnicity, as we have seen in this sub-chapter, are important in the first place. Ethnicity still dominates the distinction in Darfur artificially because of the perceived racial differences between ‘Africans’ and ‘Arabs,’ which dominate the politics and sociology in Darfur. It is the underdevelopment in Darfur and the promotion of ‘Arab’ governance by Khartoum that has fuelled this ‘ethnic conflict’ until today.

4.4. Darfur’s Genocidal Conflict in 2003 - 2004

The conflict in Darfur can be explained by the changing ecological reality and the resulting hardship for the Darfuris as covered in chapter 4.2. Marginalization, the lack of identity and economic hardship characterize this remote part of Sudan,²⁶³ which led to “a series of struggles of the inhabitants of a formerly autonomous entity reduced to a periphery of the riverain elites of Khartoum and their clients.”²⁶⁴ Hence, the alienation of Darfurian rebels in 2003 has old roots; its origins are entrenched in relations of inequality between its multiethnic inhabitants, which led to the outbreak of widespread violence.

On 26 February 2003, the SLA attacked with 300 well-armed men the garrison town of Golu, the district headquarter of Jebel Marra in central Darfur, and killed 200 Sudanese soldiers.²⁶⁵ The reaction of the GoS was confusing because they declared the wish for negotiations with the rebels. The governor of Northern Darfur was sent to London to meet Khalil Ibrahim of JEM but achieved no outcome.²⁶⁶ In March, the rebels were able to take the border town of Tinay and seized arms and ammunition. The SLA and JEM even went a step further on 25 April 2003, when they attacked government troops at Al Fasher airport in the night and destroyed military aircraft and captured the base commander. In the course of the following three months the SLA killed hundreds of soldiers and took hundreds of

²⁶¹ Prunier 2005:77.

²⁶² Hermanson 2007:154.

²⁶³ Iyob/Khadiagala 2006:148

²⁶⁴ Iyob/Khadiagala 2006:148; Prunier 2005:42, 81

²⁶⁵ Daly 2007:281.

²⁶⁶ Daly 2007:281.

prisoners as well.²⁶⁷ Apparently the rebels were better equipped to some extent than the Sudanese Armed Forces. In Khartoum the ruling elite got afraid that its own army was undermined by Islamist and rebel forces and launched crackdowns of the ‘African’ populations. Instead of a negotiated settlement that the governors of North and West Darfur wanted to negotiate, they were fired and the devastating counter-insurgency campaigns of the GoS continued.²⁶⁸ It is described as the bursting of a ‘time bomb’ that was waiting to explode since 1985.²⁶⁹ According to Idris, the eruption of violence happened because of ecological factors such as droughts which increased the potential for crisis in a region where tensions have existed since decades. Moreover, the attack was linked with socio-political problems, notably increase in population, grazing rights and land distribution.²⁷⁰

Already before 2003 Darfur had been characterized by insecurity but from then on the conflict escalated dramatically. From then on, violence was not constrained to Darfur anymore but extended the broader region because the GoS not only responded by its regular armed forces but also with militia. These attacks of the militia on the ground were accompanied with the aerial bombardments of the Sudanese Air Force in late July 2003. The bombs used of the air force were “primitive free-falling cluster bombs” that had a deadly effect against civilians but were useless in military terms.²⁷¹ The conflict therefore took on a dramatic scale, unprecedented and unpredicted.

Prunier argues that Khartoum wanted a solution before the start of the delicate negotiations with the SPLA/M started but did not have the military means to respond accordingly.²⁷² The GoS thus exploited the existing tensions in Darfur by mobilizing thousands of men who mostly identified themselves as Arabs. They were desperate because their land was devastated by desertification and water shortages.²⁷³ Those men were easily recruited to what is widely known as Janjaweed militias. ‘The devil on the horseback,’ as the Janjaweed are also known, committed widespread atrocities against the largely non-Arab communities of settled farmers. The GoS already had experience with this strategy having used militia in the North-South civil war very effectively with the *Murahaleen*, as the Arab bands were known. The militia was stirred up against innocent civilians arguing that those locals were suspects supporting the rebels which fought against

²⁶⁷ Daly 2007:282, Prunier 2005:95-96.

²⁶⁸ ICG 2009:3.

²⁶⁹ Prunier:86.

²⁷⁰ Idris 2005:87.

²⁷¹ Prunier 2005:99-100.

²⁷² Prunier 2005:97.

²⁷³ HRW (2007), “Darfur 2007: Chaos by Design. Peacekeeping Challenges for AMIS and UNAMID” No. 15 (A), Vol. 19, September 2007, p. 16.

the government.²⁷⁴ From the beginning of the conflict, it can therefore be seen that the government has strived for a military solution to fight the insurgency.

Consequently, the repeated attacks from the SLM/A since the beginning of 2003 have rarely been responded by attacks of GoS troops as they have been engaged in the South of Sudan. The government rather took advantage of the Janjaweed to raid the rebels, whereby no difference was drawn between insurgents and innocent civilians. On the contrary, while at the beginning the rebel camps were attacked, soon the unarmed sedentary population became the target of attacks most of the time.²⁷⁵ Hence, it was the civilians in Darfur that had to suffer when Janjaweed combated the rebels and left sheer devastation behind them. The militias used the tactic of scorched earth and burnt down villages, even mosques; civilians were terrorized, raped, abducted, displaced and killed. In return, young desperate 'African' men were motivated to join the rebels and take revenge because their houses and the farming had been burnt down.

A vicious circle started that was fuelled by the GoS. The government decided to withdraw the local police and other officials arguing that their safety was not guaranteed any longer. In fact many policemen were 'African' and some were killed while others fled to neighboring Chad. With the disappearance of the local legal authority, the Janjaweed filled the empty space with banditry, executions and kidnapping.²⁷⁶ In early 2004, it was estimated that some 80,000 people were killed and more than one million displaced including 100,000 refugees.²⁷⁷ In comparison to the events in Rwanda or Srebrenica, however, some observers concluded that "Rwanda in slow motion"²⁷⁸ was reappearing in Sudan because of the relatively slow unfolding of events. The tactics of the militias and the Sudanese Armed Forces were characterized by rape, abduction, aerial bombardment, mass execution and the destruction of food and water resources. At this stage Darfur was "commonly described within the UN system and Western states as 'the most serious humanitarian emergency in the world today.'"²⁷⁹ The UN High Commissioner for Refugees found in a report, "[i]t is the manner of the response to this rebellion by the GoS which has led to the current crisis in Darfur."²⁸⁰

²⁷⁴ Bohlander, Michael. 2006. "Darfur, the Security Council and the International Criminal Court", *International and Comparative Law Quarterly* Vol. 55(1).

²⁷⁵ Daly 2007:283.

²⁷⁶ Daly 2007:284.

²⁷⁷ Prunier 2005:100.

²⁷⁸ Prendergast, John/Lake, Anthony (2004), "Stopping Sudan's Slow-Motion Genocide", *Boston Globe*, 20 May 2004.

²⁷⁹ Williams, Paul D./Bellamy, Alex J. (2005), "The Responsibility to Protect and the Crisis in Darfur", *Security Dialogue* Vol. 36(1), p. 31.

²⁸⁰ UNHCR (2004), Report of the United Nations High Commissioner for Human Rights and Follow-Up to the World Conference on Human Rights: Situation of Human Rights in the Darfur region of Sudan, E/CN.4/2005/3, 7 May 2004, p. 6.

There were first attempts to negotiate a ceasefire by the AU, but the government started a ground and air offensive in early 2004, followed by Janjaweed that terrorized the local population. In April 2004, the Chad-mediated ceasefire agreement was signed in N'Djamena, the capital of Chad, between the GoS and SLA/M and JEM. Humanitarian organizations were assured to access to the area and the African Union Mission in Sudan (AMIS) was as a result established. The accord was criticized as a “rushed agreement” because two versions were distributed, as there was no agreed text.²⁸¹ Hence it was unsurprising that the ceasefire was broken within hours after signing. In July 2004 it is estimated that the Darfur conflict destroyed at least 400 villages; moreover 1.2 million IDPs were uprooted, among them 800,000 living in camps and 120,000 refugees in Chad.²⁸² Overall, the UN estimated that a third of approximately six million Darfuris was affected by the violent conflict, in particular in Northern Darfur while in the Western and Southern province the situation was relatively calm at that point of time.²⁸³ The GoS, however, tried to block all humanitarian help from outside and called for “purely Sudanese” solutions. Prunier comes to the conclusion that Khartoum was aware that it would not be able to deny the scale of the emergency and refuse access to humanitarian organizations. The GoS wanted to create an irreversible situation that would prevent a military intervention in Darfur because no prevention would be possible anymore except for dealing with the devastating consequences.²⁸⁴

The GoS denied any involvement in the atrocities. Many observers described the behavior of the GoS as cynical because Khartoum denied the facts they created themselves in Darfur and argued that any such information was Zionist propaganda, Western media bias and the neighboring countries whereas no fault was attributed to the government's own behavior. The GoS could not deny the insecurity in Darfur but the happenings were solely blamed on the rebels and the age-old tribal conflicts that have always characterized this frontier region.²⁸⁵

The UN Security Council approved the deployment of AMIS in resolution 1566 on 30 July 2004. AMIS should observe the N'Djamena ceasefire, although the force of 60 military observers and 310 protection troops was too small and inadequately equipped. At the beginning, the troops only had the mandate to protect the observers. Although AMIS exceeded the mandate authority and had some success, a larger number of personnel, better logistics and more finance would have been needed. This was promised by the AU and the

²⁸¹ De Waal 2007:1041.

²⁸² Prunier 2005:117.

²⁸³ Flint, Julie/De Waal, Alex (2005), *Darfur: A Short History of a Long War*. London: Zed Books, p. 112.

²⁸⁴ Prunier 2005:134.

²⁸⁵ Daly 2007:284-285.

international community but often it was not delivered and when it did, it was often too late.²⁸⁶ In October 2004 and April 2005, the AMIS mandate was strengthened and the force expanded to all in all 6,171 military personnel and 815 civilian policemen.

In the meantime, UN Special Representative Jan Pronk and the Sudanese Foreign Minister Mustafa Osman Ismail were optimistic that their 'Darfur Plan of Action' would bring progress and 'safe areas' in early August 2004. In the same month the rains started and the Janjaweed felt no necessity to attack anymore, the Darfuri population died in any case.²⁸⁷ Peace negotiations started in Abuja and the GoS proposed that AMIS should disarm the rebels while Khartoum would disarm the Janjaweed. According to Prunier, no one could have taken this suggestion seriously because it was obviously flawed and soon the talks collapsed on 15 September 2004.²⁸⁸

The Red Cross announced an "agricultural collapse" in Darfur in a report on 19 October 2004, stating that the situation was worse than during the 1984 famine in Darfur. During December the GoS resumed peace talks in Abuja with the rebels. During the talks, insurgencies were started by Khartoum. During 2004, no ceasefire or peace agreement had been reached. The lack of progress was also blamed on the disorganization of the rebels.²⁸⁹ On 9 January 2005 the CPA with the SPLA/M was announced, bringing an end to the 21-year civil war between the North and the South of Sudan, and the international community was satisfied – but Darfur was left out of the agreement. This got also clear by the report of the International Commission of Inquiry on Darfur presented to the Secretary General on 25 January 2005 that "strongly recommended" the Security Council to refer the matter to the ICC.

4.5. Negotiations Without Result: 2005 - 2006

Two years after its outbreak, the Darfur conflict changed its character. HRW concluded: „In 2005, the pervasive pattern of government and militia attacks on villages subsided in relation to previous years, but an increasing number of armed actors added to the complexity – and danger – of the situation.“²⁹⁰ Four different patterns of violence are identified between 2005 and 2006: 1) military operations by the Sudanese Armed Forces and rebel groups; 2) ethnic inter-tribal clashes on land and at water; 3) banditry and crime;

²⁸⁶ De Waal 2007:1041.

²⁸⁷ Prunier 2005:118-119.

²⁸⁸ Prunier 2005:119.

²⁸⁹ De Waal 2007:1040.

²⁹⁰ HRW (2008a), "Five Years On: No Justice for Sexual Violence in Darfur", 6 April 2008, p. 6.

and 4) cross-boarder tensions linked to internal politics in Chad.²⁹¹ Although the military operations of the GoS and its militias declined in comparison with the time period of 2003-2004, the same mechanisms remained to leave civilians insecure und vulnerable.

The GoS continued with its strategy to pretend complying with negotiations although the commitments were usually not taken seriously by Khartoum. New peace talks started in the beginning of 2005. In July 2005, a declaration of principles was agreed on in Abuja, Nigeria, where also the Darfur-Darfur Dialogue was started. One of the points was to establish a Peace and Reconciliation Council, another that robustly resourced UN peacekeepers would replace AMIS and enforce the peace agreement that should have been signed soon but the talks lasted until May 2006.

As time passed it became more obvious that AMIS was not able to protect the civilians in Darfur and encounters increased again. In October 2005, the Janjaweed attacked an IDP camp for the first time leaving 32 people dead. In the end of 2005 there was no truce to keep anymore because of the ongoing bloodshed. The ICG concluded about 2005 that “the situation has the potential to become another never-ending ‘low-intensity’ conflict in which the international community spends large sums each year keeping IDPs and refugees alive but otherwise fails to protect civilians and to address the underlying political causes.”²⁹² This reflects the situation that AMIS brought some relief of excesses that had taken place during the first one and a half years, but effective civilian protection was not possible and insecurity remained.

In 2006, the chaos in Darfur started to affect the neighboring Chad seriously. For a long time tensions between Chad and Sudan have been existing and both have been using the different parties in Darfur for their own interest. With the so-called Tripoli Agreement in February 2006, Colonel Gaddafi was able to settle an agreement between Sudan and Chad to disarm their cross-border insurgents. It needed the help of Saudi Arabia to ease the tensions 15 months later in a reconciliation agreement between Sudan and Chad in May 2007.

An AU-led peace settlement called Darfur Peace Agreement (DPA) was reached in early May 2006 in Abuja, Nigeria.²⁹³ It was the result of extensive preparation, intensive and long discussions and an enormous effort of international experts and diplomats. It was hoped that the DPA was not a mere ceasefire but a framework for peace and security in the region with a fair share of Sudan’s resources for Darfur. Daly summed up the three main

²⁹¹ HRW (2005), “Entrenching Impunity: Government Responsibility for International Crimes in Darfur”, December 2005, p. 8.

²⁹² ICG (2005), “The AU’s Mission in Darfur: Bridging the Gaps”, *Africa Briefing* No. 28, p. 14.

²⁹³ It seems obvious that the name of the DPA was influenced by the Comprehensive Peace Agreement (CPA), which was reached between the GoS and the SPLM in January 2005 in Naivasha, Kenya.

points of the DPA: security, rehabilitation and political development.²⁹⁴ The DPA is widely perceived as a failure today, it was too limited in signatories and scope. The SLM/A became prone to internal divisions during the negotiations for the DPA and finally only one of the three main rebel factions, the Sudan Liberation Army of Minni Minawi (SLA/MM) signed the agreement with the government. This complicated the overall situation even further, because the rebels themselves started to attack each other, denouncing each other as traitors. Minawi, however, was incorporated in a new 'Government of National Unity' together with groups from the South. The strategy of 'divide and rule' was successfully embarked by Khartoum. The GoS already had a long experience of negotiations because of the North-South conflict and successfully played off the inexperienced representatives of the rebels against each other. In fact, the ceasefire "led to a worsening situation on the ground."²⁹⁵ This is related to the fact that not all armed groups in Darfur were present because they were excluded like the Movement for Reform and Democracy or not able to be present like the commander of the 'Group of Nineteen.' The biggest mistake according to De Waal was the decision of the international community to ostracize the rebels that refused to sign the DPA from the Ceasefire Commission.²⁹⁶ Also in scope the DPA failed to address all issues at hand, particularly land tenure, grazing rights and the reform of local government and administrative structures. An agreement on these matters is considered crucial for any sustainable solution.

Neither the rebels nor the government were in favor of the DPA because it was seen as a threat. Therefore it is not a surprise that violence took a sharp rise prior to and after the signing of the DPA. On the one hand, the GoS feared that the Darfur-Darfur-Dialogue might result in unity among Darfuris and weaken its own position. On the other hand, the rebel leaders were timid of a situation that would have removed them as legitimate representatives of Darfur.²⁹⁷ In August 2006, the GoS started to launch major attacks again to secure victory in the region, which contributed to a worsening of the humanitarian situation.

4.6. The Main Parties of the Conflict

Two opposing belligerents characterized the Darfur crisis at the beginning: the GoS and the Janjaweed militia against 'African' rebel groups. While the first were rather coherent,

²⁹⁴ Daly 2007:303.

²⁹⁵ Terrie 2006:31.

²⁹⁶ De Waal 2007:1048.

²⁹⁷ ICG 2007:1.

the latter were hard to discern as a group because the two rebel factions split many times at the beginning. In addition some insurgents have discovered the benefits of being a rebel group and thus being taken seriously by African and Western mediators although their gang existed in fact only on paper or a website. As pointed out in the subchapter above, it is not possible to claim that all ‘African’ groups are involved with the rebels or that all ‘Arabs’ are connected with government militias.

4.6.1. The Government of Sudan

The GoS, based on the elites in Khartoum, has managed to retain power through violence, control of resources and a policy of divide and rule. Outside of the capital, the support is relatively weak and therefore the security apparatus tried eagerly to control local groups in the periphery. The Islamist regime has taken over Sudan in 1989 and holds power by maintaining an Arab supremacy. The GoS kept Sudan in a context of permanent war that has been accompanied by ‘negotiations’ with rebellious groups what actually represents the pursuit of war by other means.²⁹⁸

Until today it is not clear to which extent the GoS has been actively involved in the atrocities in Darfur. This is also a reason why the International Commission of Inquiry on Darfur did not state that genocide is going on in Darfur to the UN Secretary-General in January 2005.²⁹⁹ The GoS denies until today that large killings in Darfur have taken place and in particular it has been involved itself in any atrocities. Khartoum denies any support of the militia because it cannot control them. In addition it downplays the conflict as a solely tribal dispute about the distribution of land, which is carried out by bandits and was started by “rebels.”³⁰⁰ Interestingly, Khartoum has been suspicious towards its own regular military forces because many of its members are Darfuris and the GoS feared that it could not trust them. In general, a climate of mistrust, confusion and contradictions characterized the atmosphere in Khartoum and inside the GoS.³⁰¹

The GoS has accused the West, and notably the United States, that wrong information was spread on purpose to undermine the regime. This interference was perceived as a threat to the sovereignty of Sudan, which is an independent nation state. Such rhetoric is characteristic for many states which do not protect their own citizens. The ICISS tried to overcome that by establishing the idea of R2P as pointed out earlier. Moreover, the GoS

²⁹⁸ Prunier 2005:104-105.

²⁹⁹ Vehnämäki 2006:69.

³⁰⁰ Vehnämäki 2006:70.

³⁰¹ Prunier 2005:109.

argues that the attacks of the Janjaweed are a mere response to the cruelties that at first were committed by the rebels.

President al-Bashir knows that in case an equitable peace agreement would be obtained in Darfur, a serious loss of power for his loyal groups would be the consequence. In other parts of Sudan, like in the Nuba mountains, the Blue Nile province or in Eastern Sudan, there have been upheavals as well. Fouad Ibrahim believes that those riots would worsen in that case because those regions would see a motivation to fight more intensively.³⁰²

4.6.2. Janjaweed militia

Popular defense forces, border intelligence, nomadic police, popular police or foreign combatants compose the Janjaweed militia. Moreover, nearly all 'Arab' militia groups in northern and western parts of Darfur can be added. Also some other tribal 'Arab' groups were included to the Janjaweed militia as they were either armed by the GoS and were involved in attacks or got weapons by other means³⁰³ in principle to defend themselves.³⁰⁴ A racial discourse about Arab identity was fuelled by Khartoum; this narrative united Darfur's 'Arabs' and led to a self-fulfilling prophecy in the construction of identities.³⁰⁵

The roots of the Janjaweed who were also referred to as PDFs date back to the 1980s, when they raided 'African' villages in order to make sure that their cattle had enough grazing lands. In the 1990s, the GoS established the Janjaweed as paramilitary forces. Salih argues that the monopoly over the use of force was given away by Khartoum on purpose and it is almost impossible to differentiate between the Sudanese Armed Forces and the Janjaweed.³⁰⁶ When the violent conflict in Darfur started, at first the Janjaweed attacked rebels but soon their main target became civilians, causing high death tolls in 2003 and 2004.³⁰⁷ In 2004 it was estimated that the Janjaweed amount to 20,000 personnel. Typically, the Janjaweed ride horses or camels although they are equipped with modern technology and arms, provided most probably by Khartoum. According to Prunier the army provided the militias also with uniforms, on which some of the Janjaweed put a patch showing an armed horseman.³⁰⁸ The government allegedly provided ideological and tactical support but also material help like shelter, cars or satellite phones for the ethnic cleansing operation of the militia.³⁰⁹ Often, the Janjaweed are seen as a prolonged arm of

³⁰² Ibrahim 2006:14.

³⁰³ After the GoS, Libya is the main supplier of arms for the Janjaweed.

³⁰⁴ De Waal 2007:1050.

³⁰⁵ Idris 2005:86.

³⁰⁶ Salih 2006:33.

³⁰⁷ Daly 2007:283.

³⁰⁸ Prunier 2005:98.

³⁰⁹ Vehnämäki 2006:65.

Khartoum; the GoS is accused of *aktul al-abid bil abid* (“kill the slave through the slaves”)³¹⁰ by arming ‘Arabs’ to fight the rebels. Instead of disarming the Janjaweed, which was often promised during the last years, the training of the militia continued.

The policy of the Janjaweed is to combat rebels and civilians in Darfur alike. They either occupy fertile land of ‘African’ farmers or leave scorched earth behind them. This strategy is also referred to as ethnic cleansing,³¹¹ because new ‘Arab’ settlements are replacing the former ‘African’ villages. In the course of the last years the GoS has integrated parts of the militia into army or police units, in particular to boarder guards to reward the militia and strengthen the own forces.³¹²

4.6.3. Sudan Liberation Movement/Army (SLM/A)

The Sudan Liberation Movement/Army (SLM/A) derives from the Fur self-defense militias from the late 1980s, which were set up to handle the raids of ‘Arab’ tribal militias. It consisted of the major ethnic groups, principally non-Arab, although some ‘Arabs’ were included as well. After a peace conference in 1989, which officially dissolved the militia, they went underground. Although the SLA was disarmed officially, only the old guns were handed over while the best weapons remained in the hands of the SLM/A. The SLA was successfully including deserted Fur soldiers and additionally trained young recruits with the support of the SPLA. Secularism helped to attract a broad range of tribes, including the three main ‘African’ tribes in Darfur: the Fur, Masalit and Zaghawa.³¹³

In summer 2001, a meeting of Fur and Zaghawa leaders took place which later formed a bloc that was joined by Masalit fighters in November. This bloc was called Darfur Liberation Front (DLF) and started to operate in spring 2002 with the aim of secession from Sudan. The way to achieve this aim, the strategy that should be used, was reason for disagreement; right from the beginning unity was missing. To get broader support they renamed themselves to SLM/A and issued their manifesto on 16 March 2003.³¹⁴ At the beginning of the conflict in 2003, the SLM/A embattled a significant military force, but from the very first day it was divided along clan lines. The rebel soldiers were extremely young and sufficient enough in numbers so no child soldiers were recruited. They were semi-educated and without respect to traditional authorities administered by Darfur.³¹⁵ As the name already suggests, they were inspired by the manifesto of John Garang, the

³¹⁰ Idris 2005:83.

³¹¹ Vehnämäki 2006:68.

³¹² HRW 2008b:31.

³¹³ Prunier 2005:93.

³¹⁴ Daly 2007:278-280.

³¹⁵ Prunier 2005:94.

founder of the SPLA/M.³¹⁶ Garang's manifesto stresses unity, democracy, secularism and equality of all citizens. The ethnic differences in the SLM/A, out of intra-sectional and even intra-clan reasons, have caused difficulties in finding a common political line and summing up the demands. This problem became worse with the lack of political experience, the lack of internal solidarity between clans in the movement and a bottom-up structure that degraded the political authority of representatives of the SLM/A. The GoS has used that situation shrewdly to weaken the rebels during peace negotiations.³¹⁷ At the dawn of the violent conflict, the SLM/A aimed for socioeconomic development in Darfur and a better political representation in Khartoum. Later, the rebels also included as well marginalization, racial discrimination, exclusion and exploitation in their claims. The early aim of the DLF of separation was removed from the agenda and replaced by the objective of "creating a united democratic Sudan".³¹⁸

As a consequence the SLM/A split into several factions, whereby a cleavage along tribal lines can be observed. One of these lines is led by Minni Minawi (SLA/MM), who signed the DPA in May 2006. While most rebel groups left the negotiation table in Abuja, Minawi agreed with the GoS to cooperate and since then has partly been in compliance with the national government. Some former rebels got jobs in the government and were given land. In return they show up as spoilers during negotiations to undermine any serious outcome. In addition, Minawi's SLA has committed atrocities against civilians in the north of Darfur and locally became known as "Janjaweed II."³¹⁹ Moreover, SLA/MM is accused of having attacked AMIS and of having fuelled violence in IDP camps.

Another big faction of SLM/A is under control of Abdul Wahad al-Nur who is living in exile in Paris. There are estimates that he is commanding about a quarter of the rebel forces. Al-Nur was a main opponent of Minawi in Abuja 2006 and refused to sign the DPA, which increased his popularity. In 2007 the SLA/Unity, another faction of the SLM/A, appeared to be the largest rebel group. Moreover, an SLA splinter of Ahmed Abdelshaafie exists, a former associate of al-Nur. Many SLA factions which also separated existed only for a short time like the 'Group of 19' or the 'National Redemption Front' in Northern Darfur, which has made it even harder for the international community to determine whom to bring to the negotiation table. The situation of split-offs from the SLM/A became that bad and complex that many observers of the situation lost track. Therefore there were a couple of efforts made to reunite the different splinter groups again

³¹⁶ Daly 2007:280.

³¹⁷ ICG (2005b) "Unifying Darfur's Rebels: A Prerequisite for Peace", *Africa Briefing* No. 32, p. 2.

³¹⁸ Vehnämäki 2006:66-67.

³¹⁹ ICG 2007:11-12.

but this aim has not been achieved yet and it does not seem likely to happen soon because of rising hatred between the rebels.

The absence of leadership on part of the rebels led to disturbing reports of rebel attacks on humanitarian convoys and international aid workers. The rebels are fighting among themselves for power and control over strategy and resources. The failure to comply with international humanitarian law has undermined the rebels' credibility in the eyes of the international community, which certainly serves Khartoum's purposes.³²⁰

4.6.4. Justice and Equality Movement (JEM)

The Justice and Equality Movement (JEM) is commonly linked to Sudan's Islamist movement. JEM is not an ordinary opposition group as it emerged from the National Congress (NC), the ruling party in Sudan. The radical Islamism spreading from Khartoum was therefore not opposed by JEM. This rebel group was concerned about the racism of the Arab regime with their rhetoric against inferior Africans although JEM had been part of the regime earlier and did not do much about it.³²¹

JEM is a smaller insurgent group than SLM/A and is mainly composed by Zaghawa tribes. The medical doctor Khalil Ibrahim, who is described as "a veteran Islamist and former [Sudanese] minister,"³²² founded the rebel movement in August 2001. Ibrahim, a disciple of Hassan al-Turabi who is an old opponent of President al-Bashir, asserted that the 'Black Book,' mentioned earlier, was written by him and should be considered to be the manifesto of JEM.³²³ As the name of JEM already suggests, this movement strives against marginalization, impoverishment, ethnic oppression and tribal favoritism. JEM had the character of a regional party, uniting disillusioned Islamists and Darfur intellectuals with their aims of a fairer share of Sudan's resources.³²⁴ At the beginning of the violent conflict, JEM left the fighting to the SLA but was still in the headlines and connected with business interests.

Either faction of the SLM/A was suspicious of JEM because of its alleged links to al-Turabi and the accusation of an Islamist agenda. Only at the very beginning of the conflict the rebels fought together but it was mainly based on financial and logistic cooperation, an area where the SLM was weak. Soon, however, they turned against each other and a united political front could not be formed. Internal divisions as well as fights against the SLM/A

³²⁰ Miller, Molly J. (2007), "The Crisis in Darfur", *Mediterranean Quarterly* Vol. 18(4), p. 129.

³²¹ Lusk 2008:170-171.

³²² Vehnämäki 2006:67.

³²³ Daly 2007:275.

³²⁴ Daly 2007:277.

have weakened JEM. With the DPA breaking-apart of the rebel groups was fuelled. It led to a rise in banditry and warlords spread in the region.³²⁵ Like the other rebels, JEM is concerned about influence and power and consequently seeks a good position before negotiations to sell itself to the international community as positive as possible.

In summer 2004 Jibril Abd al-Karim Bari set up the National Movement for Reform and Development (NMRD) as breakaway faction from JEM. This movement demanded its own place at the conference in Abuja but the AU rejected its demand fearing that further splits would be prompted with an approval.

In May 2008, JEM succeeded in attacking the Sudanese capital with a military strike that left 200 people dead. This was exceptional as it was the first raid on Khartoum in 30 years, an event which has not been seen during the whole civil war between the North and South.

4.7. A Difficult Road to Peace since 2007

Since 2007 the situation in Darfur has changed substantially. The number of casualties has decreased in comparison to the other two periods of the crisis which have been identified in this research paper. Some grassroots peace initiatives started in 2007. An example is the reconciliation talks in West Darfur with tribes from Fur and Masalit groups organized by several ‘Arab’ communities in June 2007.³²⁶ The GoS undermined those initiatives because Khartoum had no interest in an ‘Arab/non-Arab’ alliance. To come to terms with the international community, the GoS agreed to new peace talks in Sirte, Libya, which began in the end of October 2007 but were – as so many other endeavors – not crowned with success.

The situation in IDP camps has worsened because of a rise in insecurity since 2007 which is captured by MSF noting that, “[i]n fact, for most people things have got worse.”³²⁷ First attempts of the GoS to empty IDP camps in Darfur were taken in 2005 because they were aware that the international community and the world public would keep Darfur in the spotlight as long as dramatic pictures from those camps could be broadcasted. Already in 2005 al-Bashir had offered the tribal leaders his support as long as the IDPs would leave the camps; in 2007 the Sudanese President even instructed IDP

³²⁵ Belloni 2006:333.

³²⁶ ICG 2007:5.

³²⁷ Altunbas, Banu (2007), “Darfur has Become an Even Greater Challenge for Humanitarian Action”, MSF Article, 26 October 2007. Online: http://www.msf.org/msfinternational/invoke.cfm?objectid=DCAD5415-15C5-F00A-25AC4B9C6129E0E7&component=toolkit.article&method=full_html [accessed 15 December 2009].

return programs – but such efforts of Khartoum failed.³²⁸ Although the GoS claimed ‘voluntary returns’ of IDPs to their villages, IDPs lacked the trust to do so. Such returns would have additionally contradicted the situation on the ground because there would be not many places in Darfur where the IDPs could safely return.³²⁹ Moreover, humanitarian workers were regularly under attack by militias or rebels; in June 2007 every sixth relief convoy was hijacked or ambushed and some areas could not be accessed.³³⁰

In 2008, violence increased again. Darfur remains plagued by conflict and the GoS has been more complacent to claim that the conflict in Darfur is inherently tribal. JEM carried out attacks in West Darfur in December 2007 and January 2008, which were responded by major offensives of the GoS. The conflict between Khartoum and JEM further exacerbated further when the GoS supported an attempted coup d’état in Chad in early February 2008. Since many rebels from JEM belong to the same ethnic group as the ruling elite in N’Djamena, they supported their Chadian ethnic connections. The GoS itself responded with large-scale military campaigns themselves,³³¹ and appointed the Janjaweed commander Musa Hilal as a high-level government advisor although Hilal is a notorious war criminal.

The government but also the rebels discovered that they could make political use out of the displaced people who were full of despair. Both parties were successful to swamp the camps with weapons; banditry dominates the overcrowded communities. This is used by the GoS to argue that IDP camps are a place of refuge for rebels, backed by the humanitarian relief organizations that are running the camp. In their cynical line of argument, Khartoum accuses the international community to undermine their sovereignty with the militarization and politicization of the IDP camps.³³²

On 10 May 2008, JEM carried out an armed attack on Omdurman, a part of greater Khartoum. It was the first time during the Darfur conflict that a rebel group managed to come close to the capital and to launch a raid.³³³ The GoS responded with a strike on an IDP camp in Kalma in southern Darfur, killing approximately 30 IDPs. Moreover, it was estimated that the GoS detained up to 3,000 people in an arbitrary manner by claiming that they were responsible for the armed attack of JEM.³³⁴

³²⁸ ICG 2007:7.

³²⁹ HRW 2007:37.

³³⁰ HRW 2007:45.

³³¹ HRW 2008b:12-13.

³³² ICG 2007:6.

³³³ HRW (2008c), “Crackdown in Khartoum: Mass Arrests, Torture, and Disappearances Since the May 10 Attack”, 16 June 2008, pp. 9-11.

³³⁴ HRW 2008c:14.

The GoS still denies atrocities in Darfur and disavow the gravity of the humanitarian situation in the western province. The request of Luis Moreno-Ocampo, prosecutor of the ICC, for an arrest warrant against president al-Bashir triggered strong international pressure on Sudan. In June 2008 a new AU/UN mediator was appointed, the former foreign minister of Burkina Faso, Djibrill Bassolé. The Arab League defended the Sudanese President but also proposed an initiative in September 2008 to bring the GoS and the rebel groups together in Doha, Qatar. Khartoum argued several times that it was serious about its commitments and launched a “Sudan People’s Initiative” (SPI) in November 2008 to mobilize the support from the African, Arab and Muslim world against the ICC decision. Moreover, the GoS tried to show that they were committed to a broad-based consultation and came up with solutions for Darfur. Yet, International Crisis Group (ICG) criticized that the GoS controlled the proceedings and that its own recommendations were not fulfilled.³³⁵ Reality proved ICGs concerns true because attacks from the government as well as from rebels have continued.

In 2009 the GoS continued with their air raids with ill-equipped Antonovs, which do not allow precise targeting and therefore kill civilians, which is against humanitarian international law and moreover violating UNSC resolution 1591 (2005).³³⁶ Bassolé was able to bring progress in the peace talks between JEM and the GoS but the talks were nevertheless suspended on 18 June 2009 to be continued in Qatar in October 2009.

From the beginning the GoS has refused to cooperate with the ICC. The first two warrants issued by the ICC’s Pre-Trial Chamber against suspected war criminals in April 2007, Ahmed Haroun and Ali Kosheib, were not responded to. In March 2009 another warrant was issued, this time against the Sudanese President al-Bashir himself, and the antagonism of the GoS towards the ICC hardened. Instead of collaboration with the court, Khartoum expelled aid agencies from Sudan so they could not inform the world public and paid lip-service to investigate war crimes but to date only investigated low ranking criminals up to now.³³⁷ Moreover, the Sudanese National Intelligence and Security Services (NISS) arrested national and international aid workers and NGO staff between April and June 2009. As a consequence the number of aid workers had dropped from 17,700 to 12,658 in Darfur by the end of June 2009.

Between June and September 2009 fewer clashes took place in Darfur. Although the head of UNAMID already declared that the war “is over,”³³⁸ the fighting has proceeded

³³⁵ ICG (2009), “Sudan: Justice, Peace and the ICC”, *Africa Report* No. 152, 17 July 2009, p. i.

³³⁶ HRW 2009:15.

³³⁷ HRW 2009:15-16.

³³⁸ BBC (2009a), “War in Sudan’s Darfur ‘is over’”, 27 August 2009. Online: <http://news.bbc.co.uk/2/hi/8224424.stm> [accessed 2 January 2010].

because the rainy season had ended. The peace process in Doha, supported by the UN, AU and Qatar, is still going on, but a meaningful outcome remains doubtful. Low-level violence, menace and sexual harassment continue to take place on a daily basis.³³⁹ Ever since the outbreak of the conflict in 2003, it is estimated that “more than 200,000” civilians in Darfur have died,³⁴⁰ some 2.7 million people have been displaced internally; in addition 200,000 refugees in neighboring Chad and Central African Republic are the outcome.

As the conflict is still ongoing currently (January 2010), the center of attention moves back to the South. The Sudanese national elections in April 2010 and the 2011 referendum about the self-determination of the South will determine the future of Sudan. Among others, ICG fears that both events the GoS might undermine and neither a meaningful political reform will take place nor will an eventual secession of the South be allowed.³⁴¹ It is currently unclear which impact a fraud election will have on Darfur in the short run but also in relation to the whole conflict.

The only chance for successful peace talks is a broad participation of all actors involved in the conflict. The weight of the participants has to be apportioned fairer and should not be that centered on the government and the rebels. Moreover, negotiators should be aware of accountability, a concept that is not only referring to ICC prosecutions or locking people in jail but also includes an independent judiciary, professional and capable police and reconciliation initiatives.³⁴² Otherwise the GoS will continue to respond to its human rights abuses with defiance and obfuscation.

4.8. Reactions of the International Community to the Conflict

Darfur was not been an issue in the international community until late 2003 or even spring 2004. This can be explained with the peace negotiations in Naivasha which devoted a lot of efforts to end the conflict between the North and the South of Sudan. The international community therefore only became active when the disaster was already on its way. This was the case in early 2004 when there was no possibility anymore to take solely preventive measures. Thus it was clear from the beginning that reactive measures would have to be

³³⁹ HRW 2009:12.

³⁴⁰ In sharp contrast to the number of 200,000 what is given by UN bodies, the GoS claims that only 9,000 have died. Amnesty International estimates 300,000 (95,000 killed and more than 200,000 dead from conflict-related hunger or disease) and the NGO ‘Save Darfur Coalition’ places the total at 400,000 (Cohen 2007:55). According to Prunier it is clear that in Darfur genocide is going on when the Genocide Convention of 1948 is used (Prunier 2005:156).

³⁴¹ ICG 2009:i.

³⁴² Horowitz, Jonathan/Krishnan, Manu (2008), “Promoting Peace Through Accountability in Darfur”, *Peace Review* Vol. 20(2), p. 186.

taken and not some kind of prevention efforts. For Darfur the first and immediate aim was to provide protection for two million IDPs and the 200,000 refugees in Chad.

4.8.1. Emergence in the International Consciousness

Africa Confidential reported on the situation in Darfur since mid-2003. Advocacy organizations like *Amnesty International* and the *International Crisis Group* followed with articles or reports about the Darfur crisis. In summer 2003 first attempts failed miserably to mediate the conflict in a regional frame. The Chadian president Lieutenant General Idriss Déby offered his good offices as a mediator although it was clear from the beginning that he had his own agenda in the conflict.

The UN Human Rights Coordinator for Sudan, Mukesh Kapila, was the first UN official to raise the question of Darfur together with Tom Vraalsen, Special Envoy of the Secretary-General for Humanitarian Affairs in Sudan. Together, they launched the ‘Greater Darfur Special Initiative’ on 15 September 2003 due to the fact that the “humanitarian situation in Darfur has deteriorated over the past six months [... which] has resulted in the displacement of large numbers of civilians.”³⁴³ Between September and November 2003, a series of meetings took place, which bargained a 45-day agreement for the allowance of humanitarian assistance in Darfur – but the accord ultimately failed. The GoS tried to appear as a serious actor and promised to comply while in fact the number of refugees grew by tens of thousands every month in Darfur. This policy from Khartoum can be observed until today: promising various points during negotiations and trying to be taken seriously as an actor although no agreement has been complied with. In early November 2003, OCHA stated that the humanitarian situation in Darfur became the worst in Sudan since 1988.³⁴⁴ A month later, Jan Egeland, UN Emergency Relief Coordinator, was quoted that Darfur quickly became one of the worst humanitarian situations in the world.³⁴⁵ Yet the world was not listening.

In January 2004, negotiations took place in Geneva and in the following month, the Sudanese President al-Bashir promised a peace conference, full amnesty and complete access for humanitarians.³⁴⁶ In early 2004, French media covered Darfur – mainly because of the French interest in Chad. Yet, for a long time the international reaction to the Darfur crisis was negligible. Ironically, the hopes of parts of the international community increased that the conflict in the South could be settled because the GoS was focusing

³⁴³ OCHA (2003a), OCHA News, Issue No. 114 on 19 September 2003, p. 2.

³⁴⁴ OCHA (2003b), OCHA News, Issue No. 117 on 7 November 2003, p. 3.

³⁴⁵ OCHA (2003c), OCHA News, Issue No. 125 on 5 December 2003, p. 1.

³⁴⁶ Prunier 2005:112-113.

more on Darfur. Sudanese reporters who reported about attacks of rebels were arrested, restrictions and the denial of visas for Western journalists followed soon – even the Arab network *Al Jazeera* had to shut down their office in Khartoum.³⁴⁷

Mukesh Kapila spoke of “the world’s greatest humanitarian crisis” in the end of March 2004 and the “only difference between Rwanda and Darfur now is the numbers involved.”³⁴⁸ According to Kapila it was not just a conflict anymore, but rather an organized attempt to drive away people from their homes. As Kapila was present during the time of genocide in Rwanda, “newspapers went wild, and the *New York Times* started to write about ‘genocide’”³⁴⁹ in Darfur as well because they reasoned that ten years later history repeated itself. The *New York Times* columnist Nicholas Kristof was the first to introduce Darfur to a broader public by an op-ed on 25 March 2004, later Kristof continued to write a series of articles about genocide in “slow motion” in Darfur.³⁵⁰

In April 2004, the UN Secretary-General addressed the situation in Darfur by making it an issue at a memorial ceremony on the occasion of the tenth anniversary of the Rwandan genocide.³⁵¹ Later, also Samantha Power, a popular US-Irish journalist and writer, spoke out loud for Darfur,³⁵² followed by many celebrities from music and movie business. This was problematic because in the US the debate was led to a direction that the common view of the crisis was ‘Blacks’ against ‘Arabs,’ not having in mind that the Arabs could not be that easily differentiated in comparison to the North-South conflict. This is why, in the same year, the common Western idea of genocide in Darfur was also contrasted. In particular the AU disagreed that the Darfur crisis constituted genocide and was supported by the respected humanitarian organization MSF.

The peace talks in Naivasha between the South and North lost its appeal for the Western media, the ‘new’ conflict in Darfur, labeled as ‘genocide’ and illustrated by conscience-shocking pictures, attracted the attention. The media coverage of the situation in Darfur led to a public outcry in the quality press as well as in mass media. Prunier argues, however, that with the Asian tsunami on 26 December 2004, Darfur disappeared largely from the headlines because the media would only present one emotional story at a

³⁴⁷ Daly 2007:287.

³⁴⁸ Reeves, Eric (2009), “Kofi Annan on Darfur”. Online: <http://freeworldnow.blogspot.com/2004/06/kofi-annan-on-darfur-june-17-2004.html> [accessed 22 December 2009].

³⁴⁹ Prunier 2005:127.

³⁵⁰ Kristof, Nicholas D. (2006), “Genocide in slow motion”, review of Julie Flint and Alex de Waal, *Darfur: A Short History of a Long War*, and Gerard Prunier, *Darfur: The Ambiguous Genocide*. *New York Review of Books*, 9 February 2006.

³⁵¹ Annan, Kofi (2004), “‘Risk of Genocide Remains Frighteningly Real,’ Secretary-General Tells Human Rights Commission as He Launches Action Plan to Prevent Genocide,” Press Release, UN Doc. SG/SM/9245 AFR/893 HR/CN/1077.

³⁵² Power, Samantha (2004), “Dying in Darfur: Can the Ethnic Cleansing in Sudan be Stopped?” *New Yorker*, 30 August 2004.

time.³⁵³ The loss of media attention also represented a sort of unease of Western media about the Darfur conflict. Unlike the North-South conflict it was not based on religion, and the complexities in Darfur were hard to explain. Indeed, many people in this area were killed but the question whether this was genocide or not, overshadowed the debate. For the people in Darfur it made little difference whether they were killed because of genocidal intent or any other; their suffering continued. In the media, however, the question of genocide was of utmost relevance.

The Darfur conflict is often linked to South Sudan, which is argued by the fact that other disadvantaged regions in Sudan also want to have a stronger say in Khartoum. The international community decided to prioritize the North-South conflict to leave Darfur out of negotiations. The troika – comprising the US, UK and Norway – decided to take this approach in the first half of 2004 thus Darfur was excluded in the Naivasha talks that tried to settle the North-South conflict. Indeed, the Comprehensive Peace Agreement (CPA) between the South and Khartoum was reached but the Darfur conflict remained unsolved. De Waal criticizes that it should have been a pre-condition to “at least stabilize Darfur before concluding the talks.”³⁵⁴ Ibrahim argues that until 2006 the EU alone has pledged itself to 4.3 billion Euro of aid to Sudan in connection with the peace accord.³⁵⁵ The GoS is aware of the difficult situation for Western diplomats and disregards the threats they are confronted with. During the period between 2004 and 2007, the international community tried to improve the area by a multifarious range of goals that led to an incoherent strategy because the actors were overstrained. Ever since 2004, the international community has noticed a couple of objectives: (1) improving security and guarantee humanitarian access; (2) seeking justice at the ICC; (3) negotiating a peace agreement; and (4) dispatching a military force. Little progress was achieved because impossible aims were declared and unrealistic deadlines were set.³⁵⁶

Soon it was clear that military action would be impossible to use as a tool in Darfur to settle the conflict. Many observers argue that a military intervention would have made the situation even worse in a short run and new seeds of possible conflict would have been spread in the long run, since the international community would have had a hard time to remain impartial.³⁵⁷ A robust international force would be pressured by all sides: Khartoum would claim that the troops are siding with the rebels while the rebels would accuse the

³⁵³ Prunier 2005:128.

³⁵⁴ De Waal 2007:1040.

³⁵⁵ Ibrahim 2006:14.

³⁵⁶ De Waal 2007:1043.

³⁵⁷ Van Ardenne-Van der Hoeven, Agnes (2006), “The Road to Darfur Leads Through Khartoum”, in: Van Ardenne, Agnes/Salih, Mohamed/Grono, Nick/Méndez, Juan (eds.), *Explaining Darfur*. Amsterdam: Vossiuspers, p. 22.

force on the opposite that they are siding with the Sudanese Armed Forces. Moreover, international media would broadcast the atrocities that would happen besides the presence of the international force. It is therefore a political fact that the UNSC could not support an intervention and a robust military operation without a broad international legitimacy. The poor infrastructure and the vast size of the region posed additional difficulties, making it almost impossible to appease the whole area and keep it safe over a longer time. The number of soldiers would have to be about 50,000 – nearly the double size of the biggest UN peacekeeping mission so far. This approach has been unrealistic because the West was occupied with Iraq before and now Afghanistan needs more attention again. Therefore it is neither for political nor for practical reasons suitable to send in troops to intervene.

Lee Feinstein identifies four major problems that the international community is facing: (1) states continue to pursue ethnic cleansing as a national security strategy; (2) current international rules are an obstacle for international action and in case no national interest is at stake there will not be an adequate response; (3) the international capacity to act is limited; and (4) public support to prevent mass atrocities is nearly non-existent which correlates with a lack of political leadership.³⁵⁸ These four points addressed by Feinstein can also be found in the following two subchapters about AMIS and UNAMID.

4.8.2. AMIS

From an African point of view it is seen as a “fundamental shift from the principle of non-interference in the internal conflicts of member states [... to] the right to intervene in such crisis to prevent or stop mass atrocities.”³⁵⁹ As the predecessor of the AU, the OAU, did not work very efficiently, there was hope that the new organization would change the African continent in a positive way. Clearly, conflict management is one of the big tasks that the AU has to fulfill and it is judged upon. The first major crisis the AU had to deal with was Darfur. The peacekeeping mission in Darfur depended, however, completely on foreign donors and AMIS, therefore, was dependent on the good-will of Brussels, New York and Washington. In July 2004 it was decided that the AU should send 132 observers to Darfur together with 300 troops to protect them. According to Prunier, the AU has perceived the crisis as a mass-murder without knowing who the perpetrators are, neither pointing at Khartoum nor at the Janjaweed.³⁶⁰ It helped to stabilize the overall situation to a certain extent that AMIS monitored the situation. Yet, both sides broke the ceasefire a

³⁵⁸ Feinstein 2007:3.

³⁵⁹ Baldo, Suliman (2006), “The African Response to Darfur”, in: Mepham, David/Ramsbotham, Alexander (eds.), *Darfur: The Responsibility to Protect*. London: Institute for Public Policy Research, p. 14.

³⁶⁰ Prunier 2005:145.

number of times, the violence against civilians continued.³⁶¹ Therefore AMIS is also characterized for having “little real impact on the political, security or humanitarian situation in Darfur.”³⁶²

But the AU remained limited with its capacity in Darfur that was not enough to fulfill the mandate. Still, the AU was in a lucky position because it did not have to pay for the mission as it was covered by Western donors and at the same was able to deploy soldiers on the ground to gain experience. A peacekeeping mission of more than 3,300 personnel was decided on, but only 597 soldiers were deployed to protect observers in October 2004. Thus AMIS was put in the untenable position to enforce an agreement that had no backing and could not be hold. In addition, AMIS never reached its authorized troop strength.

In January 2006, the AU called upon the UN to take over its role in Darfur because of its limited mission mandate and the lack of financial and logistical support. In March the AU Peace and Security Council extended the mandate for AMIS for another six months, which suited all sides. After a subsequent coup d'état attempt in Chad, the relations with Sudan were broken off. Daly argues that this potential collapse ironically was an impetus to reach a deal over Darfur between the GoS and the rebels. From the beginning of its mandate in 2004 until the end of 2007, AMIS was hamstrung in Darfur because of its lack of resources, the poor organization and a loss of credibility.³⁶³ The overall performance of AMIS, therefore was not successful.

4.8.3. The UN Security Council and Darfur

The UNSC has been reluctant in putting pressure on the GoS. The Darfur crisis was first recognized in UNSC resolution 1547, which addressed the North-South peace process but also demanded to “bring an immediate halt to the fighting in Darfur.” The first resolution dealing solely with Darfur was only passed in July 2004, 17 months after the violent conflict had started. UNSC resolution 1556 called for an arms embargo on the Janjaweed and the rebels. The resolution was meaningless for the situation on the ground, because the twelve-point Darfur Action Plan, which resulted from talks between the GoS and the UN special representative Jan Pronk removed the threats of sanctions against the government. UNSC resolution 1564 called for robust action on legal grounds, the UN International Commission of Inquiry on Darfur was set up to investigate violations of human rights. As mentioned earlier it is important to understand that the CPA has not addressed Darfur. This

³⁶¹ Belloni 2006:327-328.

³⁶² Terrie, Jim (2006), “Military Options for Darfur”, in: Mephram, David/Ramsbotham, Alexander (eds.), *Darfur: The Responsibility to Protect*. London: Institute for Public Policy Research, p. 30.

³⁶³ HRW 2008a:8.

decision also had an impact on the UNSC, because the most powerful institution in the UN system believed that the peace agreement with the South would automatically bring a resolution for Darfur.³⁶⁴

Later, the GoS was requested to disarm the militia, but resolution 1591 in March 2005 failed to have the desired effect as well. Only at that point of time, the UNSC thought about a broader range of sanctions, in particular targeted sanctions on specific persons, and a Panel of Experts was established. Yet, no instruments have been applied to fulfill the sanctions. In UNSC resolution 1593, the Council adopted a resolution to refer Darfur to the ICC and “bring all those responsible to justice,” an unprecedented step of taking an ongoing conflict to the ICC. Yet, it took time until a report was published and sanctions were still missing by the end of November 2005. The problem of the UNSC was that the first resolution came far too late. One could not speak about preventive actions anymore, rather about the scope, frequency and seriousness of the conflict as well about the measures that should be taken.³⁶⁵

³⁶⁴ Grünfeld, Fred (2009), “Failures to Prevent Genocide in Rwanda (1994), Srebrenica (1995), and Darfur (since 2003)”, *Genocide Studies and Prevention* Vol. 4(2), p. 231.

³⁶⁵ Grünfeld 2009:229.

Figure 3: UNSC Resolutions on Darfur until September 2007

RESOLUTION	DATE PASSED	DETAILS	VOTING
S/RES/1556	30 July 2004	On establishment of an arms embargo in Darfur and monthly reports from Secretary-General on GoS progress disarming the Janjaweed militias.	Abstentions: 2 (China, Pakistan)
S/RES/1564	17 September 2004	On expanding the monitoring mission in Darfur and on the establishment of an international commission of inquiry to investigate human rights abuses in the Sudan.	Abstentions: 4 (Algeria, China, Pakistan and Russia)
S/RES/1591	29 March 2005	On establishment of a Security Council Committee to monitor implementation of the measures in Darfur.	Abstentions: 3 (Algeria, China, Russia)
S/RES/1593	31 March 2005	Referring the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court.	Abstentions: 4 (Algeria, Brazil, China, the United States)
S/RES/1651	21 December 2005	On extension of the UN Panel of Experts established pursuant to Security Council resolution 1591 to monitor implementation of the measures in Darfur.	No abstentions
S/RES/1665	29 March 2006	On extension of the mandate of the UN Panel of Experts established pursuant to Security Council resolution 1591 and extended by resolution 1651 to monitor implementation of the measures in Darfur.	No abstentions
S/RES/1672	25 April 2006	On the implementation of individual sanctions related to atrocities committed in Darfur	Abstentions: 3 (China, Qatar, Russia)
S/RES/1679	16 May 2006	On implementation of the Darfur Peace Agreement.	No abstentions
S/RES/1706	31 August 2006	On expansion of the mandate of the UN Mission in Sudan (UNMIS) to support the implementation of the Darfur	Abstentions: 3 (China, Qatar, Russia)
		Peace Agreement.	
S/RES/1769	31 July 2007	On establishment of AU/UN hybrid operation in Darfur (UNAMID).	No abstentions
S/RES/1779	28 September 2007	On extension of the mandate of the UN Panel of Experts established pursuant to Security Council resolution 1591, and extended by resolutions 1651, 1665, and 1713 to monitor implementation of the measures in Darfur.	No abstentions

Source: Watson, Shari (2007), "The Responsibility to Protect in Darfur: A Critical Analysis of the International Response", *Working Paper Series in Intercultural Conflict Management* No. 6, Berlin, pp. 29-30.

The pressure on the UNSC grew in 2006 and all SC members visited and investigated the situation in Darfur and Chad in June 2006. Once more the result was poor. UNSC resolution 1706 in August 2006 proposed to expand UNMIS to Darfur, which was never implemented. The resolution also stressed the consent of the GoS, which led Weiss to conclude that the values of the emerging R2P norm were “mocked.”³⁶⁶ Instead, resolution 1778 in September 2007 authorized a French-led EU peacekeeping mission (EUFOR Chad/RCA) in Chad and the Central African Republic to protect refugees from Darfur. EUFOR operated in the framework of MINURCAT and this multidimensional mission took over the control from EUFOR in March 2009.

When it became clear that AMIS would not be able to fulfill its mandate and a stronger force on the ground was necessary, diplomats tried to win Khartoum’s agreement for a hybrid AU-UN force to protect civilians and deter rebel attacks and spoilers. In the end of July 2007, a combined peacekeeping force was authorized in UNSC resolution 1769, which should deploy 31,000 UN and AU personnel. Grünfeld has called it “very sad to observe” that the peacekeepers lack the authorization to disarm the militias and have to use all necessary men to protect civilians. He draws the conclusion that policy makers have not learnt their lesson from Rwanda and Srebrenica to deal appropriately with Darfur.³⁶⁷

UNAMID started to deploy on 31 December 2007 but had to face difficulties from the beginning on. The biggest problems were staff shortages and attacks on its personnel like the one on 9 July 2008 where seven peacekeepers were killed. Countless envoys or emissaries from the AU or UN tried to bring the ‘Arab’ militia and the ‘African’ rebels together. They have one thing in common: they failed.

The criticism of the UNSC also has to be seen in the context of how the council was created. It was mainly the US, in consensus with the other great powers that the UNSC should not get too strong and act without consent of its most prominent members.³⁶⁸ In comparison to genocides in the 1990s, the UNSC has been fully aware of and has been briefed about the atrocities in Darfur from the beginning on in 2004.³⁶⁹ Nevertheless, the GoS was able to resist the pressure from the council and with the support of two P5 states, China and Russia, Sudan had not much too fear. Also the indictments to the ICC have not been taken seriously by Khartoum and any cooperation has been steadfastly refused. Ironically, the former interior minister Ahmed Haroun, he of all people who is warranted by the ICC, was appointed as minister of humanitarian affairs and adviser on human

³⁶⁶ Weiss 2007:58.

³⁶⁷ Grünfeld 2009:232.

³⁶⁸ Feinstein 2007:46.

³⁶⁹ Grünfeld 2009:232.

rights.³⁷⁰ Also the Janjaweed commander Ali Khosheib, who is sought by an arrest warrant, has not been extradited to The Hague.

All in all, the UNSC has always been looking for the consent of the GoS concerning all measures taken in Darfur.

4.9. Conclusion

The GoS has tried to create ethnic constructs in Darfur, artificially summing up different ethnic groups to either being ‘African’ or ‘Arab.’ The reason of the Darfur crisis is thus not based on ethnic lines but is rather based on power and influence in Darfur and Sudan as a whole. Alex de Waal wondered not why the conflict broke out “but why it took so long,”³⁷¹ bearing in mind the grievances of so many marginalized groups and people in many areas of Sudan. The GoS, constituted of the NCP since 1989, feared to lose control over Darfur and responded disproportionately to the attacks of rebels in the first half of 2003. In a military campaign, carried out by the Khartoum-sponsored Janjaweed, ten thousands of civilians had to die and many more were displaced during the last years of the Darfur conflict.

Murder, rape and hunger have been daily routine since 2003 in Darfur. The GoS has not tried to improve the situation for the people of Darfur, on the contrary the Government is responsible for the deteriorated situation because it is backing the militia and hampered and sometimes even blocked the access for humanitarian organizations. The rebels also have contributed to the anarchic situation in Darfur and at least since the fragmentation of the two main rebel groups after the DPA committed serious crimes during their fights between the different rebel splinters. The Darfur conflict was first addressed by the AU, which ultimately failed their litmus to solve an African conflict with an African force. AMIS was too weak to have a serious impact on the situation in Darfur, but also the AU-UN hybrid peacekeeping force UNAMID is limited in its capabilities because the UNSC has not provided the mission with a strong enough mandate. The road to peace will still take a long time in Darfur.

³⁷⁰ In a ministerial change, al-Bashir transferred Haroun as a state minister to Southern Kordofan state as governor in May 2009.

³⁷¹ De Waal 2007:1040.

5. Should R2P Be Applied in Darfur?

The case of the Darfur crisis proves that some members of the UN Security Council like China and Russia have invoked a primacy of the domestic responsibility of the state. Those members have argued for a long time that it would be premature to take collective action in Sudan because the GoS had not manifestly failed to exercise its responsibility to protect the people in Darfur. The Darfur conflict indicates the ambivalence of the principle of complementarity because domestic ownership is preserved and people still cannot be protected.

In this chapter, it will be discussed whether R2P should have been exercised in Darfur. To answer this question, firstly the debate of genocide in Darfur will be revisited by discussing the concept of genocide and the controversy over the numbers of people having been killed in the Darfur crisis since 2003. Moreover, the role of UNAMID will be debated to understand the role of the peacekeeping mission in Darfur, which tries to protect civilians in the region. Finally, it will be mooted if the international community's response to the Darfur crisis has been a "failure to protect."

5.1. *The Debate on Genocide in Darfur*

Khartoum believed to triumph over Western states in January 2005. The UN International Commission of Inquiry on Darfur reported to the UNSG that not enough evidence of genocidal intent had been found in Darfur, although the Commission blamed the GoS of committing crimes against humanity and war crimes. The UN findings ran contrary to Western allegations, in particular to those of the US, stating that since spring 2004 the ruling elite in Sudan had been responsible for genocide in Darfur. It therefore came as no surprise that Evans noted, "labeling can be counterproductive, particularly regarding allegations of genocide."³⁷² Instead of focusing on the crimes taking place on site in Darfur, the debate shifted to a controversy about numbers. In such a debate it is difficult to keep on track when hypocrisy outweighs a fact-based and knowledge-driven approach.

Differences in the numbers of body count are a given fact and the estimation of how many people were killed in wars, pogroms and genocides in the 20th century varies significantly. Steven Pinker presents a number of 100 million people,³⁷³ while Rudolph

³⁷² Evans 2008:13.

³⁷³ Pinker, Steven (2007), "The History of Violence", *The New Republic*, 20 March 2007.

Rummel estimates 217 million people being killed in the 20th century.³⁷⁴ This enormous difference in numbers can be explained by the definition that is used for the calculations. Are the numbers including only death tolls that are directly related to war or violent conflict? Or are the consequences of war, such as famine or diseases, included as well? Most commonly it is difficult or even impossible to gather exact numbers, they will always remain speculative. In the case of Darfur, too, the numbers of killed people vary considerably between 9,000 and 400,000. To clarify this huge gap, the term genocide will be discussed and the debate about the body count in Darfur will be presented in the following section.

5.1.1. What is Actually Genocide?

In 1933, Raphael Lemkin, a young Polish lawyer of Jewish descent, suggested to declare the extermination of national, ethnic or religious groups an international crime. Lemkin referred in particular to the 1915 mass killings of Armenians by the Young Turks in the Ottoman Empire. After escaping to the United States, Lemkin coined the term ‘genocide’ in his book *Axis Rule in Occupied Europe* in 1944, suggesting that the systematic and deliberate destruction of people is a crime against international law. The international community accepted Lemkin’s idea of genocide whereupon the Nuremberg Trials considered the Holocaust not as a distinct crime committed by individuals but as an aggressive war on a global scale. Lemkin continued to campaign for a universal acceptance to forbid genocide, which in 1948 resulted in the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) passed by the newly established UN and entering into force in 1951. Soon, the Convention was classified as pre-existing customary international law and as an obligation *erga omnes*.³⁷⁵ The CPPCG should investigate crimes committed with the intent to destroy a national, ethnic, racial or religious group. Five characteristic points can be identified: (1) killing members of a particular group; (2) causing serious bodily or mental harm to members of the group; (3) forcibly transferring children of the group to another group; (4) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction; and (5) imposing measures intended to prevent births within the group.³⁷⁶ At the same time, due to a lack of guidance, relevant organs of the UN have not applied the Convention for a long time. With a judgment of the International Court of Justice (ICJ), the attitude of turning a blind eye on

³⁷⁴ Rummel, Rudolph J. (1994), *Death by Government*. New Brunswick, NJ: Transaction Publishers.

³⁷⁵ ICJ (1951), *Reservations to the Genocide Convention on the Prevention and Punishment of the Crime of Genocide: Advisory Opinion of May 28th, 1951*. Leyden: A. W. Sijthoff’s Publishing Company, pp. 23-24.

³⁷⁶ Salih 2006:32.

genocides changed, as specific obligations of the state to prevent and punish genocide were pointed out in the case of *Bosnia and Herzegovina v. Serbia and Montenegro*.³⁷⁷ Based on the decision taken by the ICJ, member states have specific obligations to prevent and punish genocide and make sure its own organs or officials are not involved in committing genocide. States are furthermore requested to establish jurisdiction over all acts of genocide occurring on their territory.

In general, the CPPCG focuses on the punishment and not on the prevention of genocide. With the establishment of ad-hoc tribunals in the 1990s, such as the ICTY and the ICTR,³⁷⁸ there was hope that the preventive effect of international courts would be strengthened. The other side of the coin was the disturbing fact that after the establishment of the ICTY in 1993, ethnic cleansing was used as a deliberate strategy by the three nationalities in Bosnia and Herzegovina. Ad-hoc tribunals were nevertheless a way to fill an institutional gap in international law tackling war crimes and sentencing war criminals on an individual basis. Therefore, seen in an optimistic way, justice has been brought to at least some victims, several perpetrators have been sentenced and international law has been strengthened. Facing up to the facts though, jurisdiction has been slow and expensive and, in addition, many victims have not experienced justice being done to them.

An important step was taken with the creation of the ICC-based Rome Statute in 1998. As Strauss points out, R2P could be the frame of reference for the ICC for preventing and halting crimes.³⁷⁹ State parties have an obligation to cooperate with the ICC and to arrest the culprits when the UNSC refers a matter to the ICC under Chapter VII of the Charter. It was the first time in history that the ICC issued an arrest warrant against a president in office, namely the Sudanese President al-Bashir, causing worldwide attention.

The problem remains that despite the development in international law, history has been paved with failures to halt genocide or crimes against humanity since World War II. Ten years after the Rwandan genocide, Kofi Annan established an Office for the Special Adviser for the Prevention of Genocide in July 2004 and appointed the Argentine Juan Méndez first. The purpose of the Special Adviser is to put a specific focus on genocide in order to prevent failures of the UN like those of the 1990s. The task of the office is to provide information about states where the risk of mass atrocities is the highest. So far, the

³⁷⁷ ICJ (2007). Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment of 26 February 2007, General List No. 91.

³⁷⁸ The International Criminal Tribunal for the former Yugoslavia (ICTY) was established in 1993 in The Hague, Netherlands, and prosecuted the crimes committed during the civil war in former Yugoslavia in the first half of the 1990s. The last indictment of the ICTY was issued in 2004 and all appeals should end by 2010. The International Criminal Tribunal for Rwanda (ICTR) was established in 1994 to judge individuals for violations of international law and genocide in Rwanda during the year 1994. The ICTR became located in Arusha, Tanzania, and all the work should be completed in 2010.

³⁷⁹ Strauss 2009:30.

office has identified different types of assistance it can provide and is especially in favor of a cooperative approach because the state at stake knows that a proper behavior and complicity is expected. Most effective action is therefore undertaken in cooperation with the government and not against it. If the state does not comply with its humanitarian duties, more robust international action becomes necessary. During his tenure Méndez traveled twice to Darfur but some members of the UNSC were not willing to invite the Special Adviser – among them China, Russia and also the US. Also Méndez's successor, Francis Deng, has dealt intensively with Darfur. Deng convincingly argues that the debate on massive human rights violations should not be about labels, but that the focus has to be put on the action that actually stops the crimes being committed. The problem for Deng, however, is the fact that he is not able to settle this issue in the UN because it depends on the member states to set up a body that would specify whether genocide occurs. Furthermore, the ICC can only arrest individuals that are found guilty after genocide has already taken place.

Matthew Lippman speaks about a 'genocide denial syndrome' of global powers concerning the use of the term genocide because of reluctance to invoke the moral and political implications of the conception. Moreover, African victims, like in the case of Darfur, do not appeal in the same way to the Western mind than European ones.³⁸⁰ Lippman further argues that the relation of genocide and the Holocaust "provided the term with enormous moral weight. [...] Our image of genocide remains identified with the 'Nazi Super State.' The acknowledgement of genocide at times seems more a matter of politics than analytical precision."³⁸¹ Following this line of argument, the international community has a hard time to avoid the term genocide because otherwise the states would have difficulties to explain why they are bystanders to yet another catastrophe.

5.1.2. The Fight about Numbers in Darfur

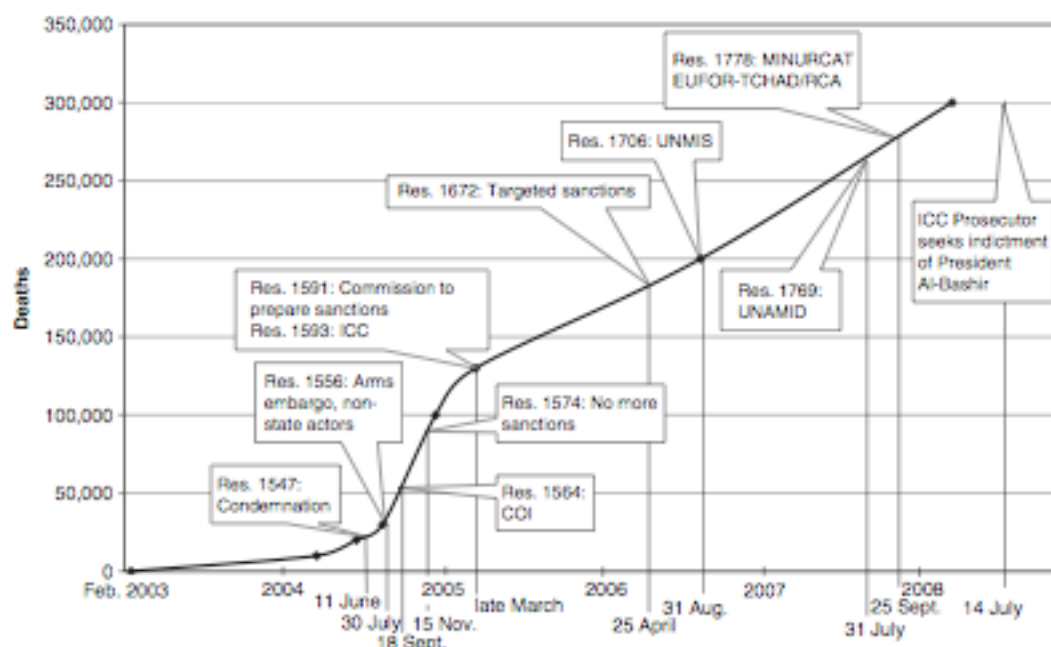
A dispute about numbers soon began to arise after the Western world had taken notice of the conflict in 2004, and indeed very different statistics are given. The GoS has claimed that only 9,000 people have died although international organizations have presented different numbers. The UN usually refers to more than 200,000 Darfuris who have perished since 2003. NGOs like Amnesty International estimate that 300,000 people have been killed although it is differentiated between 95,000 people killed and 200,000 conflict-

³⁸⁰ Lippman, Matthew (2007), "Darfur: The Politics of Genocide Denial Syndrome", *Journal of Genocide Research* Vol. 9(2), pp. 193-213, p. 195.

³⁸¹ Lippman 2007:210.

related deaths like hunger or disease. On the top of the estimates is the US-based NGO network *Darfur coalition*, which gives a total of 400,000 people having been wiped out since the outbreak of the conflict in 2003. Generally speaking, it is not possible to give exact numbers not least because in many areas access for humanitarian workers is not possible. Such an ambiguity over numbers was also the case in the North-South civil war in Sudan, which started in 1984. For a long time, Western media gave the number of one million deaths. The consensus later jumped to two million deaths – but no one really knows the actual toll until today.³⁸² The same fate goes for the Darfur victims, as their exact number is not close to be known.

Figure 4: Estimated Number of Deaths in Darfur until Mid 2008



Source: Grünfeld, Fred (2009), “Failures to Prevent Genocide in Rwanda (1994), Srebrenica (1995), and Darfur (since 2003)”, *Genocide Studies and Prevention* Vol. 4(2), p. 230.

As can be seen above in Figure 4, Grünfeld tried to estimate the number of persons, who have been killed due as direct *and* indirect influence of the miserable consequences since the beginning of the Darfur conflict in February 2003. It was the international community’s failure to put the GoS under strong pressure with UNSC resolutions during the second half of 2004, which led to a sharp rise in the number of killings and a deterioration of the situation.³⁸³ The data given by Grünfeld, however, does not seem to be

³⁸² Daly 2007:314.

³⁸³ Grünfeld 2009:229.

very reliable because he indicated a linear development in the number of dead people from 2005 onward, a trend which does not correspond to reports of HRW or ICG.³⁸⁴

There remains the problem to know where statistics on death tolls derive from and how they are put together because the time frame and the areas included vary for different studies. The impact of the kind of death causes included into the statistic is important. Numbers based on minimalist estimations easily lead to inaction, because the international community would not address a humanitarian crisis adequately on its agenda. On the contrary, credibility is lost in case the numbers given can easily be questioned. It would therefore be necessary to establish an international authority, which, on the basis of standardized data, could bring more reliability in the current confusion of statistics. Currently, however, precise data on death tolls in ongoing violent conflicts does not seem to be available currently or in the near future.

5.1.3. No Genocide in Darfur?

Those who doubt that during the Darfur conflict the GoS committed genocide, often refer to the UN International Commission of Inquiry on Darfur, which noted that no genocide has taken place. This result was achieved because the intent of the GoS to destroy the whole or a part of an ethnic group was not seen. Moreover, the ICC has not issued any warrants to genocide so far with their indictments against Sudanese officials. The same can be said about Amnesty International and Human Rights Watch, who refrain from speaking about genocide in this case. Nevertheless, the GoS is accused by HRW of war crimes, crimes against humanity, and a systematic failure to protect civilians.³⁸⁵

Pressure groups in the US have used the term genocide quite often to mobilize civil society and gain donations. They were successful in terms of the speech of the US Secretary of State, Colin Powell, in September 2004 claiming that genocide is going on in Darfur in front of the Senate Committee on Foreign Relations – the first time in history that the US government declared that a conflict was ‘genocide’ while the events were still ongoing. Ironically, the statement of Powell had no practical consequences on the US policy on Darfur. Prunier argues that Powell was advised to use the term genocide and satisfy the Senators but not to take any military action as a consequence.³⁸⁶ In June 2009, General Scott Gration, Obama’s Special Envoy for Sudan, characterized the situation in Darfur not as genocide, but he stated that remnants of genocide can be seen.³⁸⁷ In general,

³⁸⁴ HRW 2009; ICG 2009.

³⁸⁵ HRW 2007:27.

³⁸⁶ Prunier 2005:140.

³⁸⁷ ICG 2009:4.

parallels were drawn between the framing of the Darfur conflict as ‘genocide’ and the Rwandan genocide. In 2004, particularly with the tenth anniversary of the Rwandan genocide, “Darfur became an occasion to vent ruminations for failing to act in genocides past, and expressed the fear of failure in genocide present.”³⁸⁸

The atrocities in Darfur are rightly labeled as ‘genocide,’ argues De Waal – as long as the interpretation of the ICTR is taken as given.³⁸⁹ In comparison with many other conflicts, like the civil war in Sudan between the South and the North or the events in the DRC, which involve a much higher number of deaths, the killings in Darfur are comparatively few. For an event to count as genocide, however, does not necessarily imply an absolute annihilation of a group but the deliberate damage to the group as a whole. Indeed, enough evidence of physical attacks, ethnic cleansing and the policy of scorched earth, which ultimately leads to famine and people dying of hunger, has been collected.³⁹⁰ Following the reasoning of the ICTR, the ideological construct between ‘Arabs’ and ‘Africans’ would be overcome by defining genocide victims as “a stable and permanent group, whose membership is defined largely by birth.”³⁹¹ The problem arises that many more events would have to be called ‘genocide’ as well, and the reservation of this term for the most extreme cases would get lost.

Many actors – among them the UN International Commission of Inquiry on Darfur, the AU, HRW and Amnesty International – neglected the use of the term ‘genocide’ with regard to Darfur. What they have in common is that they shy away from the label ‘genocide’ although they are aware of the atrocities on site. As the Commission of Inquiry stated, the “crucial element of genocidal intent appears to be missing at least as far as the central Government authorities are concerned [...] and does not evince a specific intent to annihilate, in whole or part, a group distinguished on racial, ethnic, national or religious grounds.”³⁹²

So far, only two incidents are generally recognized as genocides – the Holocaust and Rwanda.³⁹³ The events in Armenia, Bosnia, Cambodia or the DRC – to name just a few – are largely recognized as horrible mass killings but not all refer to them as genocide because the convention is not applied. The same problem occurs with the Darfur conflict

³⁸⁸ Brunk, Daren (2008), “Dissecting Darfur: Anatomy of a Genocide Debate”, *International Relations* Vol. 22(1), p. 33.

³⁸⁹ De Waal, Alex (2005), “Defining Genocide”, *Index on Censorship* Vol. 34(1), p. 8.

³⁹⁰ ICG 2005a; ICG 2007; ICG 2009.

³⁹¹ De Waal 2005:9.

³⁹² Brunk 2008:36-37.

³⁹³ Ironically, the Genocide Convention is legally not being applied to the Holocaust because only genocides which have taken place after 1951 are covered. Moreover, the legal maxim *nullem crimen sine lege* (‘no crime without law’) prevents prosecutions for crimes committed before a state has become a party to the Convention. The CPPCG is a product of the time after World War II and therefore reflects the Soviet interventions to exclude a social and political dimension of genocide, which mirrors the Soviet fear of being accused of the Gulag system in the Soviet Union. Hence it is difficult to declare an event ‘genocide’ according to the five criteria outlined in the CPPCG.

because crimes against humanity, war crimes and ethnic cleansings clearly took place on a large scale. For all those crimes the GoS and the Janjaweed are claimed to be responsible for, but also the Darfur rebels committed horrible crimes against civilians. Anyhow, the events in Darfur are termed, the atrocities committed – whether labeled genocide or not – should have been tackled immediately by the UNSC to enforce human rights; enough evidence has been collected to proof what had happened. It would not have mattered in practical terms if the UN International Commission of Inquiry would have used the term genocide, because China and Russia as well as the non-permanent members of that time, Algeria and Pakistan, would have rejected the findings and calls for a robust intervention. Hence there was a necessity of Western states to gain the upper hand against allegations from Muslim and African countries that a neo-imperial and anti-Islamic agenda was pursued.

Darfur was framed in the Western debate as ‘genocide,’ which had the positive side effect that it was not neglected as a marginal humanitarian crisis, like so many others in sub-Saharan Africa are, but seen as a prominent human rights disaster. The international consciousness was directed towards Darfur; during 2004, media and civil society in Europe and the US focused a lot on the events in Darfur. The Western ignorance to the complexities of the Darfur conflict, however, has induced a decrease of Western media attention and the events in Sudan were forgotten again. Instead of debating possible measures to repel the atrocities in Darfur, many Western policy makers were occupied with the debate whether or not genocide had occurred. Hence, no action like effective sanctions or military campaigns could be taken because P5-members blocked the UNSC.

5.2. UNAMID

With UNSC resolution 1769 of July 2007, a 26,000 strong African Union-UN force, the biggest UN peacekeeping operation in history, was supposed to be established to protect IDPs, civilians and humanitarian workers by “all necessary means” within the beginning of 2008. In comparison to AMIS, UNAMID has to be seen as an improvement, at least in theory. The mandate of the mission is under Chapter VII and there was hope that the AU peacekeepers would be able to protect civilians effectively thanks to the additional UN troops. Reality proved to be different because additional capacity in Darfur has been deployed very slowly and in minor steps, and the provided resources have remained insufficient.

By 1 January 2008, only about a third of the promised force was on the ground in Darfur; equipment and training did not have enough funding. Sudan insisted that predominantly African troops and police should be sent to Darfur. Western actors therefore claimed that the GoS was undermining the efforts of the international community. Among others, Khartoum rejected Scandinavian engineers to be deployed. UN member states with existing military means, however, did not provide the equipment, like helicopters or trucks, which would be required by UNAMID to fulfill its mandate. As long as African and Arab states do not pressure Sudan with sanctions and incentives to reach an agreement with the rebels, Khartoum remains in a comfortable position. Also the UNSC was not able to impose targeted sanctions against Sudanese key officials although they did not comply with the UNAMID deployment, which had often been seen as a vital component to pressure Sudan. Hence the GoS was able to delay visa applications, especially for Western staff, and the custom procedure of critical equipment was deferred as well.³⁹⁴

UNAMID has an enormous budget of 1.6 billion USD from 1 July 2009 until 30 June 2010. Yet, only 70% of the 20,000 troops and 6,000 policemen are on the ground³⁹⁵ and critical equipment like tactical helicopters are still missing two years after UNAMID's establishment, although the Department of Peacekeeping Operations (DPKO) of the UN tried hard to convince governments to provide the equipment.³⁹⁶ Harsh criticisms against UNAMID from various sides saying that civilians were not protected was answered late, but it was reacted to it, after all, in August 2009 in form of 24/7 patrols across Darfur. The protection mandate is used more immediately and effectively in terms of preventive patrolling because it provides safety for civilians fleeing from fighting, or allows stronger advocacy for the different parties.³⁹⁷

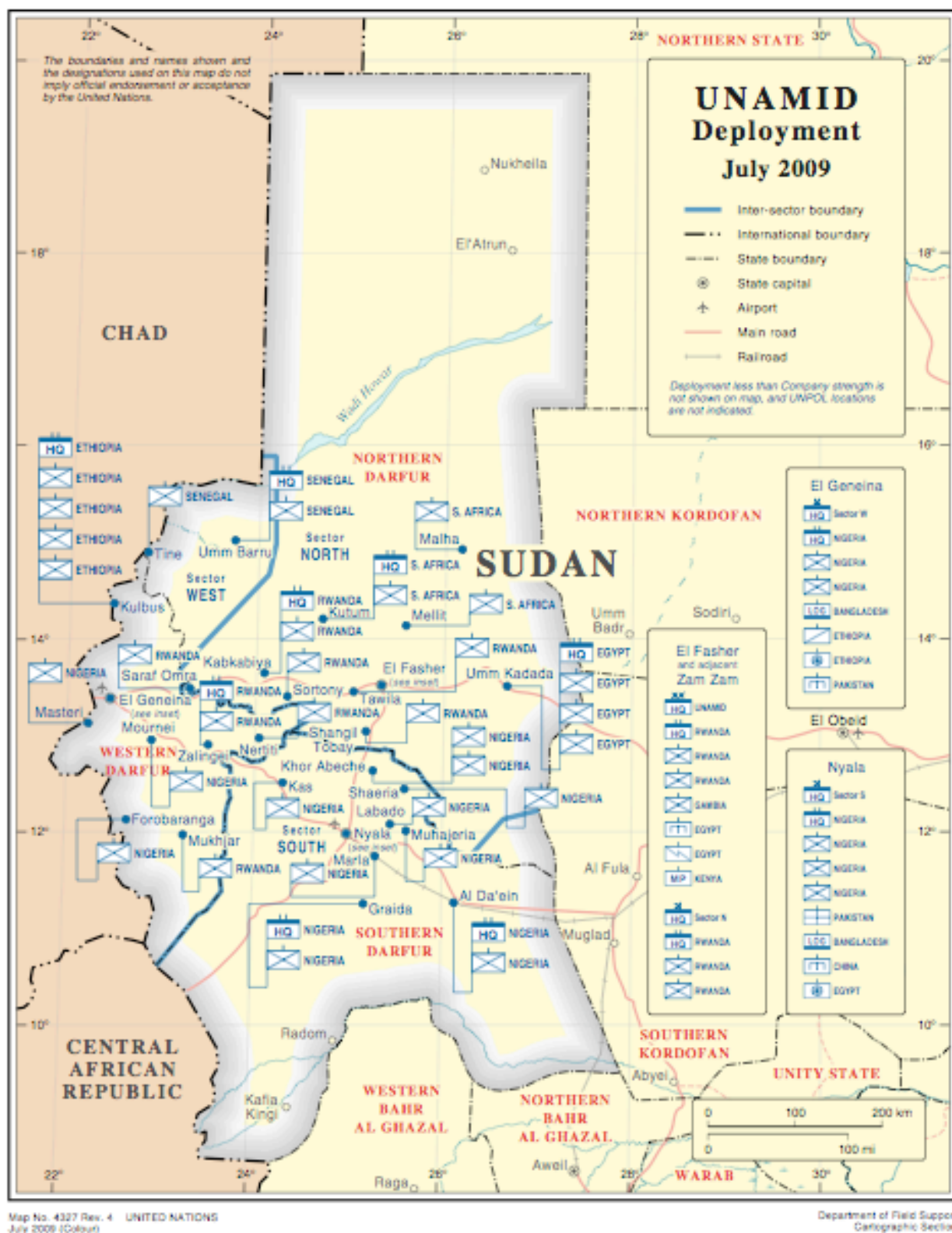
³⁹⁴ HRW 2009:16.

³⁹⁵ According to the latest figures of UNAMID on 31 October 2009, the peacekeeping operation consisted of 14,803 troops, 207 military observers and 4,280 policemen. 48 people have been killed since 1 January 2008. See: UNAMID (2009), "UNAMID Facts and Figures". Online: <http://www.un.org/en/peacekeeping/missions/unamid/facts.shtml> [accessed 3 January 2010].

³⁹⁶ HRW 2009:16.

³⁹⁷ HRW 2009:17.

Figure 5: UNAMID's Deployment in Darfur in July 2009



Source: UN Department of Field Support, Cartographic Section in July 2009.

5.3. The Failure to Protect

Many civilians died in the course of the Darfur conflict since 2003. Nevertheless, the international community has not been able to protect the local population. At first, it was simply not aware of the atrocities on site, and afterwards because it proved unable to condemn the GoS strongly enough and finally because of an under-resourced UN peacekeeping mission. Thus, the international community has failed during all those years of the conflict to adequately respond to the Darfur crisis.

5.3.1. Need for Proper Peace Talks

One of the biggest problems that the international community faced in dealing with Darfur was the scope and inclusiveness of peace talks. Often enough, it was stated that the AU/UN mediation teams would be prepared for inclusive negotiations but in the end they always faced the dilemma of whom to invite. Which rebel group was big enough to be representative on the negotiation table and bring in its interests? There were rebel groups which only existed in the internet or had a charismatic person in the lead but no vigilantes. Another problem was that the Arab tribes often have a different stance than the GoS, but no obvious representative. Although the main targets of violence in Darfur were non-Arab, also 'Arab' tribes suffered from violence of Khartoum or their supporters.

The main aim is to reach sustainable peace, hence the GoS must address long-term grievances of Darfurians and the power issue between Darfur and Khartoum must be clarified. Clearly, it very much depends on the scope of negotiations and which issues are to be addressed to bring stability in the long run. It is recognized that those who have committed crimes since 2003 have to be held accountable, in particular the Janjaweed. Similarly, it has to be sure that the militias as well as the rebels are disarmed. There also has to be found a solution for giving new grazing areas to the 'Arabs,' who have to return land to the former settlers.

5.3.2. Military vs. political solutions

From the very beginning, actors in the West, particularly politicians and humanitarians, have called for military action. They have argued that without an armed intervention, lives will be lost on a massive scale. Khartoum will continue its path of indifference or even involvement in the mass atrocities. In the long run, the security situation would be

improved. A flight ban, for example, could be achieved by destroying or disabling the aircraft on the ground.³⁹⁸

Opponents argue that no-fly zones, air strikes or a non-consensual NATO-intervention would cause more harm than help. No-fly zones would be very costly and it would be difficult to run them effectively without troops on the ground. Moreover, such no-fly zones would also interrupt humanitarian flights.³⁹⁹ The Muslim world and the global south would understand and interpret a military interference as a 'Western imperialist intervention.' Moreover, it is said that only limited results are possible, because military interventions would not solve any deep-rooted problems. Relief organizations argue that a deterioration of the humanitarian situation would be followed by an intervention because the GoS, that would evict humanitarian workers, and the suffering of civilians would become even worse.

Whatever position is taken, neither the UN nor a 'coalition of the willing' will undertake coercive military action in Darfur. The national interest of Western states is not threatened by the Darfur conflict. In comparison to Iraq or Afghanistan, Western leaders cannot sell to their electorate that soldiers are dying in Sudan. Any military action would as well need a broad military consensus in the UNSC but Sudan can rely upon China, Russia and the Arab League to safeguard robust international action.

In the US more than 100 NGOs have united in the SaveDarfur coalition with the aim to help the people of Darfur. The campaign *Million Voices for Darfur* was launched in January 2006 and by the end of June of the same year a million postcards were collected and delivered to US President George W. Bush.⁴⁰⁰ Such campaigns of SaveDarfur had a strong impact on the debate in the US about the policy towards Darfur, grass root movements tried to pressure the government. The US administration was, however, reluctant of a robust military intervention that SaveDarfur asked for.

The scale of the tragedy in Darfur is enormous and it is often said that Darfur constitutes the worst humanitarian crisis so far in the new millennium. Important political actors in the West even called the atrocities 'genocide.' Nevertheless the Darfur conflict was not sufficient enough for the international community to intervene, in particular for the West. A key influence was the US-led humanitarian intervention in Somalia in 1993, which ended as a disaster for the US army. Thenceforward, the US has hesitated to be actively engaged with military personnel on the African continent; neither in Rwanda nor

³⁹⁸ Feinstein 2007:45.

³⁹⁹ Feinstein 2007:45.

⁴⁰⁰ Hehir 2008:82.

in Darfur the US stopped the atrocities on site because national interest favored the aim of decreasing human suffering.

5.4. Conclusions

Darfur has been an evident R2P situation since 2003. According to R2P standards, as outlined in Chapter 3, the Darfur crisis was an ‘extreme case’ involving large loss of life. Nevertheless the UNSC was not able to address the Darfur conflict before summer 2004, one and a half years after the outbreak of the fighting. The response of the Council towards the actors, especially the GoS, was weak and insufficient. The African Union reacted quicker but their peacekeeping troops were inadequately equipped. Eventually, AMIS was expanded to a hybrid AU/UN mission with the start of 2008 – the biggest peacekeeping deployment of the UN in history. At least in theory, because until today the mission is understaffed; and in addition, tactical equipment has not been provided.

Since 2003, the GoS and its militia have killed thousands of Darfuris during the course of the conflict. Many more people have suffered from the consequences of rape, expulsion and the destruction of crops, which led to famines. Refugees and IDPs all over the region identify a policy of ethnic cleansing. Overall, five million Darfurians have been affected by the conflict. Nonetheless, the term genocide does not seem to be appropriate in the narrow legal understanding. No clear distinction between the different groups in Darfur can be drawn, whereas an artificial distinction between ‘Africans’ and ‘Arabs,’ an ideological construct of Khartoum, has been made.

The international community has failed to take up the responsibility to protect the people of Darfur. Clearly, the GoS was not only unwilling to protect its own citizens but there is a lot of evidence that Khartoum concerted the atrocities. Therefore, it was up to the international community to fulfill their duty to react – as prevention efforts would have been already too late. The setup of the UNSC with the veto power of the P5, however, prohibited mutual understanding between the powerful members in the Council. Hence, neither effective sanctions nor military action was possible. Although resolution 1769 (2007) passed in the UNSC to establish UNAMID, the consent of Khartoum for every major step taken was necessary. As a consequence the mandate of the peacekeeping mission is rather weak and the suffering of the people in Darfur, although on a lower level now, continues.

6. Systematic Failures of R2P?

R2P is a concept with limited applicability. It is a principle that will be not applied uniformly around the globe – power and circumstance will determine the decision whether and how the international community will act in case of gross human rights violation. A particular difficulty is the use of last resort, military action, in case all other political or diplomatic efforts have failed. States often do not use their force because it is not in their national interest to provide the necessary resources. Another remaining challenge is the fact that R2P may be used as an excuse for an intervention primarily based on economic interests. This chapter firstly sums up again why the international community has not interfered actively until 2008 in Darfur despite an R2P situation had been assessed earlier. Secondly, other cases of possible or alleged R2P cases are briefly introduced to look for systematic failures of R2P. Finally, alternatives to R2P will be presented.

6.1. Why R2P Has Not Been Applied in Darfur

Khartoum has the responsibility to protect its citizens, but it has willfully and impudently not done so. Atrocities against civilians have taken place constantly since 2003. Although the GoS promised at numerous times to stick to peace negotiations, cease-fires and the disarmament of the militia, it has failed to comply with these commitments. Despite the pressure from the international community and various UNSC resolutions, Khartoum has continued with its brutal policy in Darfur. Clearly, the international community would have had the responsibility to protect the civilians in Darfur, but has not done so. As Chapter 5 of this research paper showed, the UNSC was not able until summer 2004 to address the Darfur crisis at all. Later, the Council was not able to pass a meaningful resolution to either impose targeted sanctions against the GoS or disarm the Janjaweed militia, let alone to deploy troops in Darfur. After an unsuccessful attempt of the AU to control the situation in the Western provinces of Sudan, UNAMID took over the lead in 2008. The hybrid peacekeeping mission of AU and UN forces was established too late and until today has not been equipped adequately. Moreover, the peak of the atrocities was already over when the troops were deployed. Today the clashes continue, but on a lower level of intensity. China and Russia were able to block the UNSC, thus the architecture of the UN institutional set up would have had to be changed if R2P should have been applied in the case of Darfur. Not only in Darfur atrocities on a large scale were committed – a lot

of other mass killings can be identified in the 21st century where the question arises whether it was an R2P situation or not.

6.2. *An R2P Case or Not?*

Several humanitarian crises have been referred to as a 'R2P situation' since 2001, when the term R2P was introduced. Although R2P supporters argue that only few cases should be classified as being of R2P concern, there is a long list of countries that have been identified as R2P cases since 2001: Burma/Myanmar, China, Democratic Republic of Congo (DRC), Georgia, Iraq, Israel, Kenya, Russia, Sri Lanka, Somalia, Sudan and Zimbabwe. These countries either were no R2P cases (Burma, Georgia and Iraq), the threshold was not reached (Israel/Gaza Strip, Sri Lanka and Zimbabwe), the UNSC would have been blocked (China and Russia) or the international community failed to react (DRC, Somalia and Sudan). The only exception where R2P was applied is the case of Kenya, where the international community took the 'responsibility to prevent' to stop the Kenyan post-election crisis in 2008. In general, however, the international community continues to fail in its effort to protect civilians suffering repression in their country. The following cases briefly present the debate on R2P in other cases than Darfur.

6.2.1. Wrong Claims of R2P

Since the 1962 coup d'état, the Burmese people had suffered from constant human rights violations. The military junta cracked down brutally the 'Saffron revolution' of peaceful Buddhist monks in 2007 and brought the country back to the international attention. One year later, cyclone Nargis destroyed vast parts of Burma and affected an estimated 1.5 million people but the junta neglected international aid and did not permit humanitarians to enter the country. Therefore, some humanitarian organizations like the International Federation for Human Rights (FIDH) advocated R2P,⁴⁰¹ but were abandoned by R2P proponents because any intervention in the aftermath of cyclone Nargis would be counterproductive for the Burmese people, who would suffer even more.⁴⁰²

Russian politicians referred the crisis between Russia and Georgia in August 2008 to R2P because of an alleged imminent threat of genocide to the South Ossetians and to Russians in Georgia. Thereby Russia pleaded R2P, thus legitimizing its own intervention

⁴⁰¹ FIDH (2007), "International Day of Burma: Demonstrations all over the World", 6 October 2007. Online: <http://www.fidh.org/Catastrophe-in-Burma-a-Wake-Up-Call-to-the> [accessed 19 January 2010].

⁴⁰² Evans 2008:67.

in South Ossetia. The events around the 2008 South Ossetia War was no R2P situation, however, because Russia has to protect the people within its own borders. When Russia wants to shield vulnerable people, whether they live in a neighboring country like in Georgia or not, a concerted approach in the UNSC is needed to respond to the crisis, but not a unilateral intervention.

Like Russia, also the US tried to invoke R2P to legitimate the 2003 Iraq War. Although President George W. Bush was able to form a 'coalition of the willing,' no UNSC authorization was obtained and therefore the US-led intervention 'Operation Iraqi Freedom' was not in accordance with international law. Although Saddam Hussein committed crimes against humanity, like the gas attack in the Kurdish city of Halabja in March 1988, and can be described as a dictator, no imminent threat against an ethnic part of the population in Iraq was on hand in 2003.

6.2.2. Unreached R2P Threshold

Sri Lanka had faced continued violence with more than 100,000 victims since the civil war between the Tamil Tiger (LTTE) and the government had started in 1983. In 2006, the Sri Lankan army started massive attacks against the Tigers, which eventually led to a victory for the Sinhalese government after a 30-month-long military campaign eventually. During the last months of the brutal fighting, civilians were trapped between the battle lines. Between May and December 2009, 280,000 civilians were detained in IDP camps in the North of the island whereby 100,000 people remained in camps by the end of 2009.⁴⁰³ Thakur argued that R2P was not pleaded during the violent conflict because Sri Lanka had the right to defend its own citizens against "one of the most ruthless terrorist organizations" also by military means. Nonetheless, the Sri Lankan government has the responsibility to rebuild and reconstruct the Tamil areas of Sri Lanka.⁴⁰⁴

The Gaza War, lasting for three weeks in December 2008 and January 2009, was also referred to as an R2P situation. The Hamas ended the ceasefire with Israel and fired rockets on Israeli territory, which was responded by an offensive of the Israeli Armed Forces into the Gaza Strip. According to the UN, over 1,300 lives had to be claimed in the Gaza Strip during the three weeks of the conflict.⁴⁰⁵ In particular Richard Falk, UN Special Rapporteur on the Occupied Palestinian Territories, claimed that "no world circumstance

⁴⁰³ ICG (2010), "Sri Lanka: A Bitter Peace", *Asia Briefing* No. 99, 11 January 2010, p. 2.

⁴⁰⁴ Thakur, Ramesh (2009), "Waging Peace", 8 June 2009. Online: <http://www.balsillieschool.ca/blogs/rameshthak/wagingpeace> [accessed 20 January 2010].

⁴⁰⁵ UN (2009b), "Senior UN officials survey 'shocking' aftermath of Israeli offensive in Gaza", 22 January 2009. Online: <http://www.un.org/apps/news/story.asp?NewsID=29630> [accessed 27 January 2010].

combines the misery and vulnerability of the people more urgently than does the situation of the people of Gaza living under occupation since 1967” and made reference to R2P because of the crimes committed in the Gaza Strip by Israel.⁴⁰⁶ The US, however, blocked any proposal for a resolution condemning Israel in the UNSC. The Independent Fact Finding Committee on Gaza produced the report *On Gaza: No Safe Place* in February 2009 for the Arab League accusing the UNSC of having failed in protecting civilians in Gaza. On 15 September 2009, the UN Fact Finding Mission on the Gaza Conflict, mandated by the UN Human Rights Council and headed by Justice Richard Goldstone, released its report on the investigation of crimes committed in Gaza and found evidence of serious violations of international humanitarian law committed by Israel. The Fact Finding Mission also found evidence that Palestinian armed groups had committed war crimes. Nonetheless, the threshold of R2P was nonetheless not reached and the claims of R2P were rather based on ideology, formed during the decade-long Middle East Conflict, than on facts

6.2.3. The Failure to React

In the Democratic Republic of Congo four million lives during the civil war, which ended in 2003, were claimed. Although ‘Africa’s First World War’ is officially over, crimes like rape, murder, forced displacement and the use of child soldiers have continued on a daily basis in the DRC, especially in the northeast. Deng found at a visit in the North Kivu region in late 2008 that in the DRC “massive violations of international human rights and humanitarian law were being committed on the basis of ethnicity and national origin.”⁴⁰⁷

Also in Somalia, commonly referred to as a ‘failed state,’ the insecurity of civilians continues because of the escalating clashes between the Transitional Federal Government (TFG) and Ethiopia with its anti-government elements. Both parties in the conflict are responsible for numerous attacks against civilians, which in some cases were classified as war crimes. The security situation in Mogadishu, the Somali capital, is particularly bad because of constant violence, and in south-central Somalia more than a million people have been displaced. The problem in Somalia is the lack of state authority; rebels or state-like entities control major parts of the country. Hence, the TFG clearly fails to protect its citizens, but the international community fears to plead R2P because of the shameful

⁴⁰⁶ Falk, Richard (2008), “Entry denied, detention and expulsion”, *Today’s Zaman*, 26 December 2008. Online: <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=162277&bolum=109> [accessed 27 January 2010].

⁴⁰⁷ Deng, Francis (2008), Statement by the Special Adviser of the Secretary General on the Prevention of Genocide, Mr. Francis Deng, on the situation in the Democratic Republic of Congo, 12 December 2008. Online: <http://www.un.org/preventgenocide/adviser/state3.shtml> [accessed 27 January 2010].

experience in the first half of the 1990s with UNOSOM I and II and the US-led robust intervention with UNITAF. Since 2005, Somalia has made the headlines again because of the rise of Somalia pirates and their ship hijackings in the Gulf of Aden. Although a naval force tries to protect vessels, the international community neglects the humanitarian situation.

6.2.4. One Successful Example

On 30 December 2007, it was announced that Mwai Kibaki had won his second term in a contested Kenyan presidential elections. The result was a political crisis on a scale not seen in Kenya since its 1963 independence. Ethnic violence started to spread from the Rift Valley Province to other parts of the country and parallels were drawn to the 1994 situation in Rwanda shortly before the outbreak of the genocide. In Kenya, more than 1,000 people were killed in ethnic-related violence, in a few weeks an estimated 300,000 people were displaced, and churches were burnt down.⁴⁰⁸

In the end of January 2008, former UNSG Kofi Annan arrived in Kenya and successfully mediated and negotiated a political settlement that was achieved on 28 February 2008. Since April 2008, politics are again relatively calm again in Kenya and hence Evans claimed that the easing of the situation in Kenya was a successful example of how R2P can succeed – in particular the responsibility to prevent.⁴⁰⁹ A BBC investigation, however, found that Kenya remains a ticking time bomb and ethnic communities in the Rift Valley are rearming for the upcoming election 2012 – on this occasion with sophisticated weaponry, which might cause even more bloodshed.⁴¹⁰ Officially, Annan's preventive efforts have rescued the country from wide-spread violence and the formation of a unity government. Nonetheless, as the BBC article shows, Kenya's peace remains fragile.

6.3. Inherent Problems of R2P

In Section 6.2. it was shown that the international community does not yet know how to deal with the R2P concept. In some cases R2P was either misused by major powers like the US or Russia, in other cases the R2P threshold was not reached. As soon as an event would

⁴⁰⁸ ICG (2008), "Kenya in Crisis", *Africa Report* No. 137, 21 February 2008.

⁴⁰⁹ Evans 2008:287.

⁴¹⁰ BBC (2009), "Kenyans 'Rearming for 2012 poll'", 7 October 2009. Online: <http://news.bbc.co.uk/2/hi/africa/8293745.stm> [accessed 27 January 2010].

have been declared an R2P case, the international community would not have been able to deal successfully with the humanitarian crisis. One of the biggest problems of R2P are the various understandings of the concept by different states and scholars. Moreover, the R2P concept failed to include a sanction regime because neither the ICISS nor the Outcome Document included any kind of penalization in case UNSC members or regional actors do not follow the duty to protect civilians.

This section discusses inherent problems related to the R2P concept. Firstly, non-UN-led humanitarian interventions as a last resort will remain fraught with problems. Secondly, Western countries with military might do not intervene in areas like Darfur because there is no national interest at stake. Thirdly, international humanitarian law is not strong enough to commit the international community, in particular the UNSC, to the protection of civilians. Fourthly, oppressed groups are ultimately encouraged to take up arms and start a rebellion knowing that R2P might help their cause. Finally, the threshold by which an R2P situation has been reached is not obvious.

6.3.1. Discussion on Intervention Revisited

In Section 3.1. of this research paper it was shown that a humanitarian intervention is a two-edged sword. The legitimacy of the interveners' intent is questioned not least within the country of the intervener because even in democratic states the government is unrepresentative of its citizens, in particular regarding foreign policy issues.⁴¹¹ Chandler argued that by circumventing the international legal system, an illegal humanitarian intervener reintroduces chaos into international affairs and fundamentally challenges the pre-existing structures of international order. This leaves the judgment to an individual state, rather than having it referred to the UN, thus withdrawing consensus and reliability from international law.⁴¹² Although R2P has tried to overcome such constraints it has not yet been able to turn the tide of the debate and a lot of questions remain open. As long as the UNSC may get blocked also regional alternatives are of interest. In the Western world there are actually only two organizations that can be mentioned, NATO and the EU.

In 2005, NATO identified “oppression, ethnic conflict, economic distress, the collapse of political order, and the proliferation of weapons of mass destruction” as threats to the member states of the organization. NATO has the military capacity to act against mass atrocities against civilians but with the exception of Kosovo has not used its military might

⁴¹¹ Buchanan, Allan (2003), “Reforming the International Law of Humanitarian Intervention”, in: Holzgrefe, J. L./Keohane, Robert O. (eds.), *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*. Cambridge: Cambridge University Press, p. 152.

⁴¹² Chandler 2002.

in any other case. In Darfur, NATO airlifted around 16,000 troops into and out of Darfur for AMIS. Moreover it provided training in operational planning to AU officers on an ad-hoc basis.⁴¹³ Otherwise, the main concern in the last couple of years was the focus on Afghanistan.

Another actor whose importance has grown significantly during the last decade is the EU, which set itself a goal in 1999 to raise 60,000 troops that could be deployed within 60 days to carry out humanitarian or peacekeeping operations to prevent or stop atrocities. Later, this initiative was pushed back and the focus was given to the creation of two 1,500-person battle groups as a short-term measure in December 2004. The first experience outside Europe was gained at the short-term military mission called Operation Artemis in the DRC in 2003 securing the situation for MONUC.

A robust intervention with ten thousands of soldiers in Darfur was never a realistic option for Western policy makers as it would have cost additional lives of thousands of people and the overall chaos in Sudan would have been fortified. Moreover, the international community would not have had the capacity for rebuilding Darfur because of the lack of knowledge how to address the grievances of the heterogeneous groups in the region. It would have been important to negotiate an open outcome agreement with all rebel groups and also non-violent representatives of Darfur.

The two most important goals would be a viable cease-fire between Khartoum and the rebels and the firm promise of the GoS to commit itself to a fair wealth sharing with the neglected region. Hence, the biggest problem for the international community is the slow and inadequate international response to gross human rights violations. If the international community relies only on diplomatic efforts to repel violence, it might not be taken seriously by an abusive state that might misconstrue this as a weakness. Nonetheless, a multilateral military action without a valid post-conflict reconstruction plan would not bring success either; on the contrary, it would worsen the situation on site.

6.3.2. Why the West Will Not Intervene in Darfur

The international community has failed to address the humanitarian issues in Darfur. Western policy circles have often condemned the situation in Sudan and provided humanitarian assistance to Darfur. Nonetheless, no real efforts were taken over a long time to pressure Khartoum to a valid peace agreement with the rebels or deploy troops in Darfur

⁴¹³ Feinstein 2007:31.

to rescue civilians. The killings in Darfur did not harm the national interest of powerful states, which reduced the political motives of an intervention enormously.

Humanitarian interventions take place when states feel obliged to it, either out of humanitarian reasons or self-interest. The will of political actors and not considerations on sovereignty ultimately leads to the decision to conduct an intervention.⁴¹⁴ An intervention to rescue civilians appears as ‘unvarnished good’ because of the alleged altruistic motives of the intervener, although economic and geo-strategic motives are decisive.⁴¹⁵ As the case of the 2003 Iraq War proves, the US-led intervention force was mostly interested in securing access to resources – in this case it was oil. Also, an intervention is more likely when no P5 member has a strong national interest in the country and one powerful state pressures for action.

During the civil war in Bosnia, the international community made an effort to provide humanitarian relief although more costly steps were avoided. Instead of reducing the tensions and bringing about a recovery of the situation, the conflict was fuelled. It even encouraged the rebels to sustain their engagement, and a compromise between the fighting parties was delayed. Refugees and IDPs assumed that they could rely on the humanitarian efforts of the international community and would be secured. The reality of the 1990s showed that also IDP camps and convoys of humanitarian organizations and the UN were attacked. Instead of bringing the conflict to an end, yet another humanitarian catastrophe was erupting.⁴¹⁶

Actors in the humanitarian community often criticize countries which divide their population on an ethnical basis and identity. At the same time the idea of separating different groups in the post-conflict process is popular because perpetrators and victims do not have to live next to each other. Such a separation, however, goes in line with the aim of many perpetrators of mass human rights violations – ethnic cleansing.⁴¹⁷

6.3.3. Enforcing International Law

The vast majority of legal scholars consider interventions that are not sanctioned by the UNSC illegal. In international law, however, there are many treaties that entitle the individual to basic human rights. The UN Charter outlines in Article 55(3) and Article 56 the respect for human rights and fundamental freedoms, which should be defended. The

⁴¹⁴ Bellamy 2006:145.

⁴¹⁵ Kuperman, Alan J. (2008), “The Moral Hazard of Humanitarian Interventions: Lessons Learnt from the Balkans”, *International Studies Quarterly* Vol. 52(1), p. 49.

⁴¹⁶ Belloni, Roberto (2007), “The Trouble with Humanitarianism”, *Review of International Studies* Vol 33(3), p. 463.

⁴¹⁷ Belloni 2007:471-472.

provisions of the Charter are vague and open to different interpretations, which causes the dilemma that there is no guidance on how the international community should sanction a state in case it fails to commit to human rights. Some legal scholars thus argue for a reform of the UN Charter to close the legal loopholes.

Hehir points out two key deficiencies of the current view on sovereignty, which have to be addressed by the international community. Firstly, objective assessments must identify cases in which a state forfeits its sovereignty. Secondly, automatic action and intervention in intra-state crises at a certain level has to be possible. To reach this aim, an international body with officials elected by the UNGA would have to be set up, determining whether intervention is recommended or not.⁴¹⁸ Hence, the doctrine of the superiority of state sovereignty would have to change further. There are a number of scholars, like Cohen, who argue that limited sovereignty is not contradicting constitutionalism and the rule of law.⁴¹⁹ Yet many 'developing states' are hostile to the idea of a Western military intervention and accuse the US and the EU of applying double standards and politicization of human rights abuses. The fear of the 'global south' could be reduced by clear guidelines that constitute a framework for an external military intervention. The principle of non-interference would remain in principle, but when states commit serious crimes, the state is losing its absolute domestic autonomy. Such a restriction of sovereignty is only possible when a state neglects codified criteria and is inactive in the face of humanitarian crises outlined by the ICC. Otherwise a politicized UNSC will prompt other unilateral interventions like the US-led invasion in Iraq in 2003.

Due to its structure, the UN is not able to compel states to act in case of humanitarian emergencies and form peacekeeping operations, in particular with a robust mandate. Moreover, the UN cannot act quickly enough on its own in cases like Darfur. Certain powerful states, especially the P5, do violate human rights considering situations in Tibet, Chechnya and Guantánamo Bay. A non-reformed UN system will always remain limited in terms of treating all member states on an equal basis. In the center of UN reform would have to be the UNSC, whereby four main issues would have to be addressed regarding R2P: 1) objective and practical criteria have to be established to guide decision-making on when the threshold to intervene is reached; 2) the responsibilities of R2P must be understood as an obligation in international law 3) a code of conduct has to be introduced in the UNSC in case the veto right for the P5 remains in force; 4) regional organizations like the EU, AU or ECOWAS should be enhanced to take coercive measures.

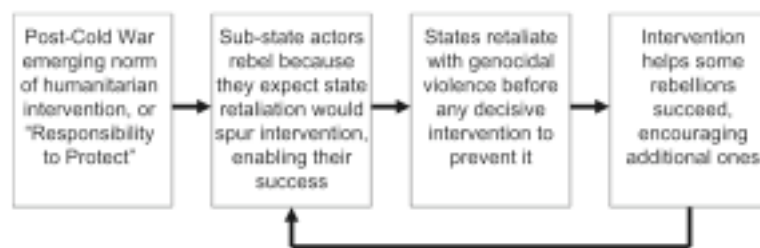
⁴¹⁸ Hehir 2008:130.

⁴¹⁹ Cohen Jean L. (2004), "Whose Sovereignty? Empire versus International Law", *Ethics and International Affairs* Vol. 18(3), p. 14.

6.3.4. The ‘Moral Hazard’ with Rebels

With the shift to the human security paradigm, the attention has focused on the individual or on vulnerable groups. It remains a problem, however, that the individual is not seen as a complex actor but rather as either a victim or a perpetrator, in other words either good or bad, which is not reflecting reality.⁴²⁰ Victims of human rights abuse have to organize on their own social movements in order to acquire the skills to ‘frame’ the ongoing events in a way that they will get international attention and consequently international support and resources.⁴²¹ Hence, gross violations of human rights occur for the most part when a vulnerable group challenges the state’s authority by violent means and the state responds disproportionately.⁴²² It has to be kept in mind that most groups suffering from discrimination and oppression do not launch rebellions.⁴²³ Alan Kuperman argues that the chance to reinforce the own grievances or greed increases with attacking state officials, as it provokes retaliation against civilians from one’s own group because the state fears the attention of the international community will be attracted. Thus, the likelihood for rebels to achieve their political goals with the help of an international intervention fuels genocidal violence that would not occur otherwise as it shown in Figure 6.⁴²⁴ Kuperman further states that R2P and its desire to protect civilians can provide strategic benefits to rebels.

Figure 6: Moral Hazard of Humanitarian Intervention



Kuperman, Alan J. (2008), “The Moral Hazard of Humanitarian Interventions: Lessons Learnt form the Balkans”, *International Studies Quarterly* Vol. 52(1), p. 51.

When an abusive state perceives an intervention as a credible threat, there are commonly two options. Either any responsibility for violence against civilians is denied, blaming the rebels to prohibit an intervention, or the violence is even intensified to

⁴²⁰ Belloni 2007:455.

⁴²¹ Belloni 2007:459.

⁴²² Valentino, Benjamin/Huth, Paul/Balch-Lindsay, Dylan (2004), “Draining the Sea: Mass Killing, Guerrilla Warfare”, *International Organization* Vol. 58(2).

⁴²³ Gurr, Ted R. (2000), *Peoples Versus States*. Washington: U.S. Institute of Peace.

⁴²⁴ Kuperman 2008:51.

eliminate the rebellion at first hand and decide facts on the ground.⁴²⁵ In the case of Darfur it can be seen that the GoS applied both options, denying any involvement in the conflict and denouncing the atrocities as ‘tribal wars’ but at the same time supporting the Janjaweed to establish facts of ethnic cleansing on site. Moreover, resolutions in the UNSC were successfully delayed by China and Russia and consequently a robust humanitarian intervention did not make sense in 2007 when UNAMID was established. Posen describes a phenomenon as the case of Darfur as a ‘security dilemma’ because the central authority does not provide the protection for all groups in a state.⁴²⁶

Thus, the moral hazard is widespread and persistent, as the case of Darfur also proves. After the attacks by the Darfur rebels on Sudanese military camps, the GoS responded brutally but also predictably because Khartoum feared another secessionist movement. The rebel factions in Darfur rejected the 2006 DPA because the peace agreement with Sudan’s South, the CPA, had involved many more concessions of the GoS to the SPLM/A. With the deployment of AMIS or also UNAMID, and the ICC indictments, the rebels successfully pressured Khartoum and gained concessions by the international community.

Nevertheless an intervention by the international community in Darfur would have been justified because of the grossly disproportionate retaliation of the GoS in Darfur. Effective policy options have to consider the complex local and also regional context in which Darfur is situated. In a war-torn area like Darfur it is important that accountability of the actors is achieved and impunity is stopped. The following three points are important for the UN to avoid similar rebellions: 1) substantial financial resources should be expended to urge states to address the legitimate grievances of nonviolent domestic groups; 2) coercive regime change or surrender of sovereignty are weak options without deterrence or actual robust preventive military intervention to protect civilians from a violent backlash; and 3) humanitarian aid like food, water or medical care should be delivered directly to civilians; any possible benefits of the rebels have to be minimized.⁴²⁷

6.4. Conclusions

R2P as a concept adopted at the 2005 World Summit Outcome has failed as a practical tool. Although R2P has constituted the moral commitment of many Western states and also from other parts of the world, powerful states like China, India or Russia still have

⁴²⁵ Wagner, R. Harrison (2005), “The Hazards of Thinking About Moral Hazard”, *Ethnopolitics* Vol. 4(2), pp. 243-244.

⁴²⁶ Posen, Barry R. (1993), “The Security Dilemma and Ethnic Conflict”, *Survival* Vol. 35(1).

⁴²⁷ Kuperman 2008:73.

constraints. Legally speaking, R2P is a concept and not a norm and consequently it is not binding. In comparison to the proposals of the ICISS, the version of R2P that is today referred to is weak. To actually be able to function, R2P would have to rest on a reformed and non-politicized UN Security Council. In the near future, no changes in the institutional set up of the strongest UN body seem to be likely. Consequently it is the R2P concept that would have to adapt to reality and not the other way around. Regional organizations must have a stronger influence and a better legal grounding when they intervene militarily as a last resort to stop mass violence.

Concerning potential interveners, who act on the grounds of R2P, it is important to bear in mind that they do not act on behalf of rebel groups but remain impartial. Although sovereignty of states does not constitute a dogma anymore, interveners should not fight side by side with non-state actors. A risk assessment what may be achieved by the interveners has to be conducted. The case of Darfur proves that potential interveners have to act rapidly, because otherwise they are confronted with even more complicated facts on the ground. It has to be repeated yet another time: prevention of abuses of human rights is of foremost importance. Without better prevention efforts, the international community will be overloaded with serious human rights abuses. R2P cases have to remain a high threshold to mark it as a priority on the international agenda.

So far, R2P has not worked and will not in the future. In contrast to the findings of UNSG Ban Ki-moon in January 2009 that it would be counterproductive to revisit articles 138 and 139 of the Summit Outcome,⁴²⁸ the author of this research paper argues that indeed changes have to be taken because so far inherent problems remain within the concept and its understanding. Without major changes in the concept, R2P will fade in the discourse as so many other popular terms in the past decade. It would be of particular importance to look again on the proposals of the ICISS and reconsider the suggestions of the Commission to broaden the concept. The future of R2P is not a gloomy one, but important changes have to be made to prevent another Darfur from taking place.

⁴²⁸ UN (2009a), "Implementing the Responsibility to Protect. Report of the UNSG", A/63/677, 12 January 2009.

7. Conclusion

The concept of military intervention for humanitarian purposes has caused intensive debates in international relations. Discussions on whether there is a legal right to humanitarian intervention are important to address the widespread suffering and death among civilians. Notably many policymakers, scholars and humanitarians agreed on protective intervention as a last resort to prohibit a tragedy after the 1994 Rwandan genocide. With the emergence of the Responsibility to Protect in 2001, humanitarian interventions should get a legal basis on which the international community can act. The shift to the term 'R2P' was a conceptual move because of the more positive framing in comparison to the negative connotations of humanitarian intervention.

From the beginning, R2P has had its critics among states as well as analysts. In particular developing states⁴²⁹ along with the P5 powers China and Russia have been among the loudest critics. The criticism comes as no surprise taken into account the human rights record of these countries and their apprehension of increased public awareness about it. Also scholars criticize the concept, ranging from those who fear it will become an instrument of abuse by powerful states⁴³⁰ to others who worry that it will give the powerful states an excuse to avoid international action.⁴³¹

Nonetheless, R2P has moved in remarkably short time to an important concept in world politics. The international community, however, has failed to commit itself to its own standards because it has not yet been able to operationalize the concept after the endorsement at the World Summit in 2005. R2P has redefined the debate on the prevention of gross human rights violations, locating the responsibility first within the affected state. In case the state is unable or unwilling to repel the atrocities, it is the duty of the international community to act through the UN and comply with its obligation to prevent mass atrocities.

Thakur and Weiss, two leading supporters of R2P, wrote, "[s]overeignty no longer implies the license to kill."⁴³² Reality, however, proves that the world stands on the sidelines of mass atrocities like in the case of the Darfur conflict, although the atrocities and the sufferings shocked the conscience of humankind. As shown in Chapters 4 and 5, the situation on site makes Darfur an obvious contemporary example of an R2P situation,

⁴²⁹ Among others, Algeria, Malaysia, Egypt, India, Cuba, Sudan, and Venezuela have to be mentioned.

⁴³⁰ Ayoob, Mohammed (2002), "Humanitarian Intervention and State Sovereignty", *International Journal of Human Rights* Vol. 6(1).

⁴³¹ Bellamy 2006.

⁴³² Thakur, Ramesh/Weiss, Thomas G. (2009), "R2P: From Idea to Norm – and Action?" *Global Responsibility to Protect* Vol. 1(1), p. 23.

hence approving the first research question. At the same time, the debate of a need for R2P in the Darfur crisis is polarized by “the stark options of ‘Doing Nothing’ and ‘Sending in the Marines,’”⁴³³ which does not contribute to a solution.

Addressing the second research question, the UN was very slow to address the Darfur crisis, which was an obvious R2P situation in the first years of the conflict. Although the R2P concept was at hand, the international community failed to respond quickly and effectively to the mass atrocities in Darfur. As the UNSC reflects the power structure of 1945 and not 2010, the P5 can follow their own national interests. In the case of Darfur, China had economic interests in Sudan – namely oil. The US has a mixed record on Darfur. In comparison to Rwanda 1994, where the US actually was reluctant to use the ‘G-word,’ Bush and Powell publicly called the Darfur crisis genocide. At the same time, the US was not prepared to threaten the GoS with a robust intervention force. Hence, Darfur was not significant enough for powerful states to actually take action. By and large, the conflict has been ignored by many states because the relations to Sudan have been seen as more important than the humanitarian situation in Darfur.

Proceeding with the third research question, a duty to intervene in abusive countries can only be successful with objective criteria. The 2005 World Summit Outcome was not able to provide a practical framework for R2P because no agreement was reached on how to break a deadlock in the UNSC. Therefore, the ICISS proposals of R2P should be reconsidered to make the concept more applicable. A central issue is the reform of the UNSC, which has to be adjusted to the 21st century. Current reservations on R2P may be overcome by plain policy guidelines on *if*, *when* and *how* to use the concept. Of utmost importance remains a high threshold for using force in humanitarian emergencies. In addition, military force always has to be taken as a last resort to halt mass slaughter. The moral consequences of using force has to outweigh the moral costs of inaction, consequently the responsibility to react is limited to extreme cases of humanitarian emergencies like the one in Darfur.

So far, R2P is still a political catchword and not a legal norm. Ending impunity and promoting accountability is an achievable goal with R2P, but the concept has to be further advanced to be a liable tool halting gross human rights violations. There is thus still a long way to go until the aim of the ICISS report will be reached which stated in 2001 that, “[t]he most compelling task now is to work to ensure that when the call goes out to the

⁴³³ Feinstein 2007:48.

community of states for action, that call will be answered. There must never again be mass killing or ethnic cleansing.⁴³⁴

⁴³⁴ ICISS 2001:70.

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Abstract (English)

The present thesis assesses the concept of the 'responsibility to protect' (R2P) based on the case study of the Darfur conflict. R2P was introduced to overcome the 'dilemma of intervention' of the 1990s, to shift the terms of the debate from the 'right to intervene' to the 'responsibility to protect.' The paradigm change from a traditional understanding of security towards the concept of human security played a crucial role. This thesis examines the development of R2P and critically reflects on the substance of R2P. The Darfur crisis illustrates that the R2P concept is entrenched too weakly in the international community. Lip service is often paid to the will of halting mass atrocities, yet national interest and state sovereignty proves to be stronger. An important factor is the failure of the most powerful UN body, the Security Council, to prevent crimes against humanity or genocide. To avert crimes like those in Rwanda, Bosnia or Darfur in the future, R2P has to renew its basis and has to refer back to the 2001 recommendations of the *International Commission on Intervention and State Security* again.

Keywords: *Darfur, humanitarian intervention, human security, responsibility to protect, Sudan, United Nations, UN Security Council*

Abstract (Deutsch)

Die vorliegende Diplomarbeit untersucht das Konzept der "Schutzverantwortung" (R2P) anhand der Fallstudie Darfur. Um das so genannte Interventionsdilemma der 1990er Jahre zu überwinden, sollte ein Wechsel vom "Recht zur Intervention" zur "Schutzverantwortung" bewirkt werden. Dabei spielt der Paradigmenwechsel im Sicherheitsverständnis hin zum Konzept der „menschlichen Sicherheit“ nach dem Kalten Krieg eine entscheidende Rolle. Diese Arbeit zeichnet die Entwicklung von R2P nach und beleuchtet kritisch die Kerninhalte der Schutzverantwortung. Wie das Beispiel Darfur zeigt, ist das Konzept R2P noch zu schwach in der internationalen Staatengemeinschaft verankert. Es gibt zwar das Lippenbekenntnis, Gräueltaten Einhalt zu gebieten, tatsächlich sind aber nationales Interesse und staatliche Souveränität noch stark ausgeprägt. Ein wichtiger Faktor ist dabei das Versagen des mächtigsten UN-Organs, dem Sicherheitsrat, Verbrechen gegen die Menschlichkeit oder Genozid zu verhindern. Um künftige Verbrechen wie jene in Ruanda, Bosnien oder Darfur verhindern zu können, muss R2P auf eine neue Grundlage gesetzt werden und sich stärker an die Überlegungen der *International Commission on Intervention and State Security* orientieren.

Tags: *Darfur, Humanitäre Intervention, Menschliche Sicherheit, Schutzverantwortung, Sudan, Vereinte Nationen, UN-Sicherheitsrat*

Lebenslauf

PERSÖNLICHE INFORMATIONEN

Geboren 25. Februar 1985 in Saalfelden am Steinernen Meer
Nationalität Österreich
Familienstand Ledig

AUSBILDUNG

06/2009 Fulbright Scholarship für das akademische Jahr 2010 / 2011
M.A. in Internationalen Beziehungen mit Schwerpunkt auf Konfliktresolution von 2010-2012 in den USA
08/2007-06/2008 ERASMUS an der Universität Uppsala, Schweden
Friedens- und Konfliktforschung, Eurasische Studien
Seit 10/2005 Diplomstudent der Universität Wien
Politikwissenschaft, Diplomarbeitsthema: "The 'Responsibility to Protect' and the Case Study of Darfur"
Geschichte, Diplomarbeitsthema: "Current Discourses of the Holocaust in Lithuania"
10/2001-03/2003 Außerordentlicher Student der Universität Salzburg
'Hochbegabtenprogramm' vom Landesschulrat Salzburg; Kurse in Geschichte, Politikwissenschaft, Rechtswissenschaft
09/1999-06/2004 Bundeshandelsakademie 1 Salzburg

SPRACHKENNTNISSE

Deutsch: Muttersprache
Englisch: Fließend (TOEFL IBT: 108/120)
Schwedisch: Basiskenntnisse
Französisch: Basiskenntnisse
Litauisch: Basiskenntnisse
Latein: Kleines Lateinum

AUßERUNIVERSITÄRE TÄTIGKEITEN

Chefredakteur des unabhängigen Magazins "Global View" (07/2008-12/2009)
Vierteljährliche Zeitschrift, herausgegeben von der Österreichischen Gesellschaft für Außenpolitik und die Vereinten Nationen und dem Akademischen Forum für Außenpolitik <http://www.globalview.at>
Leiter des Debattierclubs in Uppsala (09/2007-05/2008)
Organisiert von der Uppsala Association of International Affairs (UF) in Uppsala, Schweden <http://www.uf-uppsala.se>
Aktives Mitglied des Akademischen Forums für Außenpolitik (AFA) (seit 08/2003)
Consultant (seit 01/2010); Vorstandsassistent (10/2006-06/2008) <http://www.afa.at>
Teilnahme bei acht Model United Nations (MUNs) in London, Oxford, Reykjavik, Stockholm, Uppsala und Wien
Aktives Mitglied bei den Jungen Europäischen Föderalisten (JEF) (seit 10/2002)
Direkt gewähltes Mitglied des Federal Committee der JEF Europa (2005-2007), Vorstandsmitglied von JEF Österreich (2005-2007), Vizepräsident von JEF Österreich (2003-2005) Generalsekretär von JEF Salzburg (2002-2004) <http://www.jef.eu>
Aktiv engagiert in der Schülervvertretung (2001-2003)
Mitglied der Bundesschülervvertretung (2002-2003) <http://www.bsv.at>; BMHS-Landesschulsprecher in Salzburg (2002-2003)
<http://www.lsv.salzburg.at>; Schulsprecher-Stellvertreter in der HAK 1 Salzburg (2001-2002),