INTERVENTIONIST NORM DEVELOPMENT IN INTERNATIONAL SOCIETY:
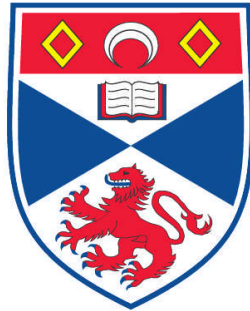# THE RESPONSIBILITY TO PROTECT AS A NORM TOO FAR?

Walter Lotze

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Interventionist Norm Development in International Society

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The Responsibility to Protect as a Norm Too Far?

Walter Lotze

PhD in International Relations

November 2010

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Abstract

This research makes use of a Constructivist approach to norm development, in particular the concept of the norm life cycle, to assess the emergence and development of the responsibility to protect as a norm in international society in relation to the conduct of interventions on humanitarian grounds. This study finds that the responsibility to protect emerged relatively rapidly in international society as a norm relevant to the formulation and implementation of international responses to conflict situations characterised by the commission of atrocity crimes. Indeed, between 2001 and 2010, this study finds that the responsibility to protect norm became codified and entrenched in international organisation, and could therefore have been expected to influence state behaviour, and the discourse surrounding that behaviour, in relation to the conduct of interventions on humanitarian grounds.

However, through an assessment of the application of the norm through the United Nations and the African Union to the conflicts in the Darfur region of Sudan from 2003 onwards, the study finds that the norm, while featuring relatively prominently in discourse surrounding Darfur between 2007 and 2008 in the United Nations, appears to have receded thereafter, disappearing from discourse by 2009 altogether, and appears not to have been useful to the attainment of its content goal, namely preventing or halting the commission of atrocity crimes, in the case of Darfur. Indeed, the norm may even have contributed to complicating, as opposed to facilitating, international engagement on Darfur.

This study explores the apparent contradiction between the emergence and entrenchment of the responsibility to protect norm in international society at the same time as the norm appears to have increasingly faded from discourse surrounding international responses to the conflicts in Darfur, and assesses the implications of this both for the future development and utility of the norm, as well as for future responses to conflicts characterised by atrocity crimes on the African continent.

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List of Acronyms

ADF	Australian Defence Force
AEC	African Economic Community
AMIB	African Union Mission in Burundi
AMIS	African Union Mission to Sudan
AMISOM	African Union Mission to Somalia
APEC	Asia-Pacific Economic Cooperation Forum
ASEAN	Association of South-East Asian Nations
AU	African Union
AUPD	African Union High-Level Panel on Darfur
CIA	Central Intelligence Agency (United States of America)
CPA	Comprehensive Peace Agreement (Sudan)
CSSDCA	Conference on Security, Stability, Development and Cooperation in Africa
DITF	Darfur Integrated Task Force
DPA	Darfur Peace Agreement
DRC	Democratic Republic of the Congo
EASBRIG	East African Brigade
ECCAS	Economic Community of Central African States
ECOSOC	United Nations Economic and Social Council
ECOWAS	Economic Community of West African States
EU	European Union
FCO	Foreign and Commonwealth Office (United Kingdom)
FOMAC	*Force Multinationale de l'Afrique centrale* (Multinational Force for Central Africa)
HCA	Humanitarian Ceasefire Agreement (Darfur)
HRW	Human Rights Watch
HSZ	Humanitarian Safe Zone

ICG	International Crisis Group
ICID	International Commission of Inquiry on Darfur
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICJ	International Commission of Jurists
IDP	Internally Displaced Person(s)
IGAD	Intergovernmental Authority on Development
IGADD	Intergovernmental Authority on Drought and Development
IICK	Independent International Commission on Kosovo
ILA	International Law Association
ILO	International Labour Organisation
IMF	International Monetary Fund
INTERFET	International Force for East Timor
JEM	Justice and Equality Movement
JIM	Joint Implementation Mechanism
KFO	Kosovo Force (NATO)
KLA	Kosovar Liberation Army
MONUC	*Mission d'Organisation des Nations Unies au Republique Democratique du Congo* (United Nations Mission to the Democratic Republic of the Congo)
NAC	North Atlantic Council (NATO)
NAM	Non-Aligned Movement
NARC	North African Regional Command
NATO	North Atlantic Treaty Organisation
NEPAD	New Economic Partnership for African Development
NFZ	No-Fly Zones
NMOG	Neutral Military Observer Group (Rwanda)
OAU	Organisation of African Unity
OIC	Organisation of the Islamic Conference

OPDSC	Organ on Politics, Defence and Security Cooperation (SADC)
OSCE	Organisation for Security and Cooperation in Europe
PAP	Pan-African Parliament
RAF	Rwanda Armed Forces
RPF	Rwanda Patriotic Front
SADC	Southern African Development Community
SCCED	Special Criminal Court on the Events in Darfur
SLM/A	Sudan Liberation Movement/Army
SPLM/A	Sudan People's Liberation Movement/Army
TCC	Troop Contributing Countries
TNI	*Tentara Nasional Indonesia* (Indonesian National Army)
UNAMET	United Nations Assistance Mission in East Timor
UN DPA	United Nations Department for Political Affairs
UN DPKO	United Nations Department for Peacekeeping Operations
UNAMID	United Nations African Union Mission in Darfur
UNAMIR	United Nations Assistance Mission in Rwanda
UNDP	United Nations Development Programme
UNMIK	United Nations Mission in Kosovo
UNMIS	United Nations Mission in Sudan
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNOMUR	United Nations Observer Mission to Rwanda
UNOSOM	United Nations Operation in Somalia
UNTAET	United Nations Transitional Authority in East Timor
UNTSO	United Nations Truce Supervision Operation
USA	United States of America
USSR	Union of Soviet Socialist Republics
WFM	World Federalist Movement
WTO	World Trade Organisation

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Chapter 1

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Research Purpose, Scope and Methodology

1.1 Introduction

Historically, interventions on humanitarian grounds in international society have been conducted and justified on the basis of concepts rooted in understandings of universal human rights, international law and state sovereignty, and a fusion of these in discourse surrounding interventions in particular conducted since the end of the Cold War. Yet despite the increasing fusion of human rights ideals to conceptions of peace and security and the rights of the sovereign, interventions conducted on humanitarian grounds still prove a more comprehensive challenge to the sovereign state concept, and therefore to international organisation, than do notions of universal human rights or the expansion of international law, as it involves the use of coercive measures which infringe upon traditional sovereignty norms. Complicating this is that the challenges posed to human security have been evolving over the course of the last decades, and whereas at the time of the founding of the United Nations (UN) threats to human security were posed primarily by conflicts *between* states, at present the overwhelming majority of threats to human security are posed by conflicts *within* states. The changing nature of conflict, linked to the end of the Cold War, and the changing nature of responses to these conflicts, raises fundamental questions in international society, including whether interventions on humanitarian grounds are legitimate or not, and how response to threats to human security are to be formulated.

These discussions appear to have received increasing urgency as conflicts have come to be characterised increasingly by war crimes, crimes against humanity, ethnic cleansing, and acts of genocide, and as has become increasingly obvious that states are unable to prevent these so-called "atrocity crimes", to respond to them in a timely and meaningful manner, or indeed are themselves the perpetrators of atrocity crimes. Thus, throughout the 1990s it became increasingly clear that the norms of state sovereignty, human rights, and interventionism required re-visiting if states were to meaningfully address the security challenges faced in the 21st century. It also became increasingly clear that the UN, as well as regional and sub-regional organisations needed to become more relevant to the peace and security challenges faced in the modern era. Indeed, the inability of states to prevent or to respond to atrocity crimes, which had been on the rise since the end of the Cold War, perhaps posed one of the most fundamental challenges to international society as a whole.

In his Millennium Report to the UN General Assembly, Secretary-General Kofi Annan picked up on this contentious debate, and laid down a challenge to member states, asking:

> If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity (International Commission on Intervention and State Sovereignty, 2001: 2)?

In response to this challenge, and building on the evolving debates surrounding international intervention in humanitarian crises of the time, the Canadian Government in 2000 initiated the International Commission on Intervention and State Sovereignty (ICISS), which in 2001 released its report titled the *Responsibility to Protect*. The report argued that sovereignty entailed both a right and a responsibility; sovereign states held the right not to be intervened in, yet concomitantly

held a responsibility to protect their populations from war crimes, crimes against humanity and genocide. Should a state be either unable or unwilling to protect its population, the report argued, the responsibility to protect populations at risk ceded to other states, which were tasked with preventing atrocity crimes, reacting to atrocity crimes, by force if necessary, to put an end to extreme human suffering, and to assist in rebuilding states after atrocity crimes had been committed to prevent them from occurring again in future. The responsibility to protect norm therefore sought to void notions of the inviolability of state sovereignty under all conditions, and to make sovereignty, in the sense of non-interference, conditional upon notions of responsibility.

The emergence of the responsibility to protect norm generated much debate in international society, and vocal proponents and opponents could be found both in the global North and the global South. Following further investigation, and some alteration, the responsibility to protect received the endorsement of the UN General Assembly in 2005, and in 2006 of the UN Security Council. Since that time, the norm has been invoked on several occasions at the level of the UN and elsewhere, and appears to have become a firm fixture within the normative framework regulating peace, security and stability within international society. Yet whilst the norm appears to have been accepted, endorsed and increasingly entrenched by states, a stark contradiction appears to have developed. At the same time as the responsibility to protect appears to have gained traction in international society as a norm governing intervention in situations of supreme humanitarian emergency, the conflicts in the Darfur region of Sudan, which gained international attention from 2003 onwards, spiralled out of control, resulting in hundreds of thousands of deaths and millions of persons displaced. Evidence emerging from the Darfur conflicts quickly led to accusations of war crimes, crimes against humanity, attempts at ethnic cleansing and acts of genocide being committed on a routine basis, including on the part of Sudanese state. The conflicts, which were swiftly equated to the 1994 genocide in Rwanda by some, was one of the most brutal and enduring the African continent had witnessed, and of the nature that, in Kofi Annan's words, "shocked the conscience of mankind". Darfur represented precisely the kind of conflict that the responsibility to protect norm had been developed to prevent, and, failing that, to ensure swift international action to bring an end to the commission of atrocity crimes. Yet the international reactions to Darfur were widely criticised as slow, ineffective, and incapable of bringing to an end the conflict, or of protecting the civilians who were bearing the brunt of it. Deriving from this critique, many observers concluded that, despite the best hopes of its advocates, the norm had failed to bring meaningful change to the manner in which states responded to the conflicts in Darfur, the very conflict situation it had been designed to addressed (Bellamy 2005 and 2006, Grono 2006, Udombana 2007). Others however argued not only that international society had failed in its reactions to Darfur, but that Darfur represented a failure of the responsibility to protect norm itself (De Waal 2007).

1.2 Research Purpose

The emergence and development of the responsibility to protect norm in international society concomitant with states' formulation of a response to the Darfur conflicts raises several challenges to the peace and security architecture of international society, and several interesting questions for the fields of Political Science and International Relations. At one level, an analysis of the development of the responsibility to protect and of international reactions to the Darfur conflicts provides deeper insight into the manner in which interventions on humanitarian grounds have changed in international society, both in terms of their permissibility within the structures of that society, and in terms of when and how they are conducted by states within that society. At

another level, an assessment of the development of the responsibility to protect and responses to the Darfur conflicts generates insight into how norms of state sovereignty, human rights, interventions and the use of force develop, change, and are impacted on by one another at the international level. This is interesting on a range of levels. For one, such an analysis generates insight into how states make use of norms to structure international society and their engagements with one another. For another, it sheds light on how the rules of interaction within international society impact on state behaviour, if at all, and how these rules are amended by states in a changing context. Finally, an analysis of this kind contributes towards a greater understanding of the development of norm-based security architectures and actions in an increasingly globalised characterised by multi-polarity.

Yet an assessment of the development of the responsibility to protect norm at the same time that responses to Darfur were being formulated by states at the international level is interesting on a further level. As will be argued later, it appears as though the norm developed along a somewhat different trajectory at the level of the UN than it did at the level of the African Union (AU). For one, while the norm was endorsed and became increasingly utilised at the level of the UN, it received no such endorsement at the level of the AU, and appears not to have entered into discourses in African responses to the Darfur conflicts. Indeed, the African responses to Darfur appear to have been fundamentally different to those of the UN in several interesting ways. Therefore, an analysis of the application and utility of the responsibility to protect at the level of the international (UN) and the regional (AU) responses to Darfur yields interesting insights into the development and application of security norms at different levels of international interaction. Assessing whether norms designed to govern international peace and security hold equal merit at the global and the regional levels, or whether they develop along different trajectories and therefore hold different intrinsic values at different levels, it is argued, will contribute to an enhanced understanding of how norm-based security responses develop and are implemented in practice at the global and the regional levels. Such an analysis, in turn, contributes to the development of an enhanced understanding of the utility of the responsibility to protect norm, and its possible future development and application.

It should be noted that the proposed research is not designed to focus on linear developments in international society, nor is aimed at understanding the "cause" and "effect" of developments. Rather, it is designed to explore the realm of the possible, and of the impossible for that matter, in a system of state interaction developing within a changing global context. As Martha Finnemore argues, understanding how the practice of intervention is constituted socially within international society is essential to explaining much of the behaviour witnessed in global politics. New beliefs about valid behaviour, as Finnemore argues, reconstitute the meaning and rules of behaviour, although not in a mechanistic causal fashion. Rather, new beliefs make possible new behaviour by creating new norms of behaviour and new possibilities for action, which perhaps previously did not exist. *Reasons for action* are of course not to be considered the same as *causes of action* as understood by utilitarian theories. Rather, by creating new social realities (new norms enabling new desiderata for decision-makers), as Finnemore argues, new beliefs create new policy choices and even policy imperatives. Therefore, understanding beliefs about intervention is not merely a descriptive exercise, as beliefs about legitimate intervention constitute certain behavioural possibilities, and in that sense both *enable* and *cause* them. Analyses of this nature, then, are less directed towards answering the "why" questions in International Relations, than they are directed towards the "how", or more specifically, the "how possible" questions (Finnemore, 2003: 14 - 15).

Yet caution must be exercised with this kind of analysis as well, as it should be understood that answers to the "how possible" question are context-dependent, and what may have been possible at one time within a certain context may not be possible either at the same time within a different context, or at another point in time within a changing context. In particular, given the analysis which will be undertaken here, caution should be urged against an interpretation of findings that suggests linear development within international society. Some of the more regarded literature on intervention in cases of human suffering, such as that of Finnemore (1996[b] and 2003), Nicholas Wheeler (2000[a]) and Nicholas Wheeler and Timothy Dunne (Wheeler and Dunne 2001), appears to argue that interventions for humanitarian purposes have come increasingly to be regarded as just and morally defensible, and will occur more frequently in future. Indeed, Finnemore argued that traditional understandings of state sovereignty, which had come to trump all other claims in international society throughout the Cold War, including humanitarian claims, may have peaked in world politics with the Cold War, and that humanitarian activity in the 1990s suggested that certain claims, particularly human rights claims, would trump sovereignty claims and legitimise interventions in ways not previously accepted (2003: 21). Yet the challenges faced when formulating responses to Darfur appear, at least on the surface, to go against such claims. However, to understand this apparent reversal, it is important not to look only at the development of interventions on humanitarian grounds from a historical perspective, but to also investigate the specific context(s) within which understandings of such interventions were developed and applied. Therefore, understanding how the responsibility to protect norm developed both in time and in context, and specifically assessing its application and utility in the case of Darfur, both at the level of the UN and the AU, will generate meaningful insight into the manner in which responses characterised by the commission of atrocity crimes are formulated and implemented, and how these should be evaluated.

1.3 Delineating Concepts

It is useful to provide for some degree of conceptual clarity the major terms which will be made use of during this study. Whilst precise meanings of terms and of their use remains a perpetual construction site in the field of International Relations, and no attempt should be made at the provision of definitive terms, a degree of delineation does prove useful for the purposes of this study. Several terms will therefore require some form of elucidation, before they can meaningfully be applied here.

The concept of *humanitarian intervention* proves inherently controversial in the overlapping discourse of Political Science, International Law and International Relations. This is not least due to the nature of the concept itself; as a principle, humanitarian intervention infringes norms of humanity, humanitarianism and human rights on the norms of state sovereignty, non-intervention, the non-use of force and the prohibition on interference in the domestic or internal affairs of a state, which have proved such fundamental pillars of international society as it has developed since the emergence of the Westphalian state system.

The term 'humanitarian intervention', as Finnemore shows, has evolved over time, focusing first on military action to rescue one's own citizens in other states, then expanding to include the protection of citizens of other states in those states by military means, and today is eclipsed altogether in policy discourse by notions of 'responses to complex humanitarian emergencies' (Finnemore, 2003: 10). Finnemore argues that an intervention on humanitarian grounds is the deployment of military force "across borders for the purpose of protecting foreign nationals from

man-made violence" (2003: 53). Finnemore excludes interventions to protect foreign nationals from natural disasters as well as interventions aimed at the protection of a state's own nationals from abuse (2003: 53 - 54). Nicholas Wheeler sums this concept up well and provides a short yet apt definition of the concept of humanitarian interventionism in the title of his work "Saving Strangers" (2000). Yet humanitarian intervention as a concept should be characterised as much by what it entails as by what it excludes. A notion of humanitarian intervention which offers conceptual clarity and academic rigour is offered by a scholar from the international legal discipline. Thomas Rytter defines humanitarian intervention as:

> coercive action by one or more states involving the threat or use of force in another state *without the consent* of its government, for the purpose of preventing or putting to a halt gross and massive violations of human rights or international humanitarian law (own emphasis, 2001: 122).

Interventions on humanitarian grounds, according to this definition, may be conducted either with or without the authorisation of the UN Security Council. This distinction is important in legal terms, as the use of force authorised by the Security Council under Chapter VII of the UN Charter for the maintenance of international peace and security is considered lawful, whereas interventions without the authorisation of the Security Council find no explicit legal basis in the UN Charter or the international legal system (Rytter, 2001: 122 - 123).

Drawing on the above, interventionism on humanitarian grounds for the purposes of this study will be defined as *coercive action by one or more states involving the threat or use of force in another state without the consent of its government, for the purposes of preventing or putting to a halt gross and massive violations of human rights or international humanitarian and human rights law*.

The concept of *state sovereignty* is also an inherently puzzling one in the fields of Political Science and International Relations. The concept is a frustrating one, as it appears to enjoy little conceptual clarity or agreement, and interpretations of its meaning both vary widely and appear to change regularly. Alexander Wendt approached the sovereignty concept from a rights-based perspective, arguing that state structures constituted state actors with sovereignty, traditionally divided into 'internal' and 'external' sovereignty rights. Internally, sovereignty provided for the right of the state to act as the supreme locus of political authority in society, with the final right to decide and to enforce its decisions. This 'right' of decision and enforcement for Wendt was crucial, as sovereignty was not about *de facto* freedom of action relative to society or state 'autonomy' but about being recognised by society as having both authority and powers. These powers could of course be limited, as with the concept of the night-watchman state, or extensive, as in a totalitarian state, but as rights they were legal rather than political facts, *de jure* as opposed to *de facto* (Wendt, 1999: 206 - 207).

Finnemore approaches the concept of state sovereignty from another angle, investigating the concept not from a rights perspective but from a social perspective. Finnemore argues that the term 'statehood' as the only appropriate and legitimate political unit in international politics has only recently been opened up for investigation, having previously been viewed as a naturally occurring and inevitable form of political organisation rather than as a socially constructed and historically contingent entity (1996[a]: 23). Finnemore argues that sovereignty became universal as a principle for political organisation as colonies, empires and other such forms of political organisation disappeared, with sovereign nations coming to be understood as equal under international law and within international society. During the Cold War sovereignty came to be understood as a right of non-intervention, and an increasing number of states, in particular the

newly independent ones, guarded this interpretation carefully, and utilised it to trump other claims, such as those of human rights and international humanitarian law. Sovereignty, then, connoted the right of non-interference and to conduct the affairs of the state, internally at least, in any manner deemed appropriate by the sovereign power. This understanding of sovereignty, argues Finnemore, appeared to have peaked during the Cold War, and during the 1990s it appeared as though certain claims, particularly human rights claims, increasingly encroached upon and altered the normative understandings of sovereignty. Increasingly then, the inter-state use of force and interventions in the affairs of previously exclusively sovereign states came to be shaped by Weberian rational-legal authority structures, particularly legal understandings of sovereignty and the rules and norms of international organisations (Finnemore, 2003: 21).

Tapping into this discourse, UN Secretary General Kofi Annan in 1999 argued that two concepts of sovereignty were emerging in international society; a 'sovereignty of rights', and a 'sovereignty of responsibilities', whereby states held both internal and external rights and simultaneous responsibilities, both of which mutually constituted sovereignty (United Nations Department of Public Information, 1999: 44). Sovereignty therefore is a malleable concept, and one which has been the centre of much debate since the end of the Cold War. Part of the focus of this research is of course to tap into that debate, and to generate an enhanced understanding of how the normative underpinnings of the state sovereignty concept have been shaped and altered since the end of the Cold War. Indeed, tracking this debate, as will be shown later, is one of the keys to understanding the emergence and development of the responsibility to protect norm in international society. But it is useful at this stage to bear in mind that sovereignty remains a contested and changing concept in International Relations, not only in the study of the discipline, but also in its practice, in other words, in the conduct of international relations.

Finally, it should be highlighted that this research focuses on interventions on humanitarian grounds in situations of extreme human suffering. To this end, the study focuses on what will be labelled the commission of *atrocity crimes*, which in turn is broken down into the commission of war crimes, crimes against humanity, ethnic cleansing and acts of genocide. These terms of course all require further investigation, and will be explored in greater depth in turn throughout the progression of the research, as the meaning of the terms has evolved historically, and tracking this historical evolution is important to tracking interventions on humanitarian grounds, the focus of this study. What should be clarified here however is that the study focuses on interventions on the basis of atrocity crimes as noted above, and not on humanitarian intervention more broadly, which has come to encompass the delivery of humanitarian assistance, disaster relief, food aid and other forms of assistance in situations of humanitarian crisis. Whilst intervention in such situations provide an interesting area of study in the field of International Relations, they do not form the basis of analysis here. For this reason, and as explored above, the term 'interventions on humanitarian grounds' as opposed to 'humanitarian intervention' will be made use of throughout this study, in an effort to reduce confusion between the types of interventions which take place within international society, whereby interventions on humanitarian grounds are conceived of as interventions to prevent, avert or halt the commission of atrocity crimes.

Finally, this research seeks to assess whether the responsibility to protect norm contributed to the formulation of *effective responses* to the conflict situations it was intended to address, through an analysis of the application of the norm in response to the conflicts in Darfur from 2003 onwards. Here, moral and prudential claims must be distinguished from one another. This research does not seek to adopt a moralistic approach, assessing whether intervention for moral purposes at any point in time was justified or not, nor does the research seek to assess the weight of moral

claims for state action or inaction, or discourse surrounding that action. Rather, this research seeks to assess whether the responsibility to protect norm when invoked contributed to the attainment of its content goal, namely preventing or bringing to a halt the commission of atrocity crimes in a conflict situation. In this sense, the research seeks to assess whether the responsibility to protect norm contributed to the formulation of effective responses towards the attainment of its content goal from a prudential point of view. Thus, whether the norm contributed to the development and implementation of international responses which prevented atrocity crimes from occurring, or which halted the commission of atrocity crimes. Effective in this sense then means whether utilisation of the norm facilitated, as opposed to obstructed, international engagement with the conflicting parties, facilitated the delivery of assistance to those affected by the conflict, assisted policy-makers when confronted by hard choices, and ultimately, contributed to bringing an end to the conflict situation and thereby protection to those affected by a conflict. While moral claims are certainly important and valid, this research seeks to go beyond an assessment of the moral value of action or inaction, and to generate an understanding of the impact of the responsibility to protect norm that includes the prudential elements of action, and of inaction.

1.4 Research Questions

To generate meaningful insight into how responses to atrocity crimes are formulated and implemented, and how they should be evaluated, several questions will require investigation. First, an understanding of how norms develop which enable and constrain behaviour within international society must be generated. This analysis must develop both a theoretical approach towards analysing norm development in international society more broadly, and to assess the development of norms governing interventions on humanitarian grounds within that society given changing socio-political contexts. Thus, this research seeks first to assess *how norms develop in the international system.*

Second, and building on the above, a framework which enables an assessment of the development and utility of the responsibility to protect norm since its inception must be generated. Such a framework will allow for the development of an understanding of how the responsibility to protect norm emerged within a historical context, and the manner in which it developed within international society. A conceptual approach that does not also shed light on the utility of the norm in international society, and how this relates to state behaviour within that society, will however not be of much use to generating a deeper understanding of what actions are deemed possible or impossible at any given point in time. Thus, the research also seeks to assess *how it was possible that the responsibility to protect norm emerged and developed in international society when it did.*

Third, the application of the responsibility to protect norm, once its relevance to international society has been demonstrated, must be tested. As will be argued elsewhere, norms governing state behaviour in international society are of little value if they do not either enable or constrain behaviour, and are not utilised by decision-makers when taking actions. Here, the application and impact of the responsibility to protect to the conflicts in Darfur from 2003 onwards will be assessed. It is important that the application of the responsibility to protect is tested at two levels for at least two reasons. For one, it is possible that a disconnect exists between norm development and application at different levels of interaction. For another, context-specific differences (cultural, social, historical or political) may impact on norm development and

application differently within different contexts, which cannot be demonstrated through an analysis at one level, but only through a comparative analysis on at least two levels. Therefore, the responsibility to protect norm, in its development and application, will be tested at the level of the UN and the AU in two ways. For one, the development and application of the norm will be assessed at both levels. For another, the responses both of the UN and of the AU to the conflicts in Darfur, which will be argued was the first test case for the responsibility to protect norm, will be analysed. This will be done in an effort to assess *whether the responsibility to protect contributed to the formulation of effective responses to the kinds of conflict situations it was designed for.*

Fourth, following an analysis of the application of the norm, an assessment of its utility must be made, as well as its role in future responses to conflict situations where atrocity crimes are committed. This is important not just to understanding if and why the responsibility to protect has made a meaningful impact on the formulation of responses to conflicts characterised by atrocity crimes, but also to understanding what possibilities exist in the future to both prevent and respond to atrocity crimes on the African continent, both at the level of the UN and at the level of the AU. Therefore, the research will also seek to assess *how future responses to conflicts in Africa characterised by atrocity crimes may be formulated, and what role the responsibility to protect norm may play.*

This research therefore seeks to (1) how norms develop in the international system, (2) how it was possible that the responsibility to protect norm emerged and developed in international society when it did, (3) whether the responsibility to protect contributed to the formulation of effective responses to the kinds of conflict situations it was designed for, and (4) how future responses to conflicts characterised by atrocity crimes in Africa may be formulated, and what role the responsibility to protect norm may play.

1.5 Research Structure

Following Chapter 1, which contextualises the research, defines the problem statement, sets out research questions, clarifies the research methodology utilised, and sets out the limitations and delimitations of this research, chapter 2 will develop the theoretical approach of this study. The research makes use of a Constructivist approach to International Relations, arguing that international society, as a social system of interaction between states, is both constructed and governed on the basis of norms which both enable and constrain behaviour. More specifically, this research will draw on and make use of the norm life cycle theory, as advanced by Martha Finnemore and Kathryn Sikkink (1998), as a basis for investigating the development of the responsibility to protect norm in international society.

Chapter 3 will then explore the development of interventions on humanitarian grounds in international society from a Constructivist perspective, assessing the role that norms relating to state sovereignty, human rights, the use of force and intervention in international society played in relation to assessments of the *legitimacy* of interventions on humanitarian grounds, and the manner in which, as will be argued, these constrained the conduct of such interventions during the Cold War. The chapter will continue the exploration of these themes in the post-Cold War era, and will argue that the changing international context following, the elevation of human rights norms and standards and the more assertive role played by the Security Council in the maintenance of international peace and security enabled a context in which the responsibility to protect norm could emerge when it did.

Building on the above analysis, chapter 4 will analyse the development and entrenchment of the responsibility to protect norm in international society, utilising the norm life cycle approach. While the principles embodied in the norm are of course recognised as themselves being in existence prior to the development of the responsibility to protect label, this chapter will track the development of the norm from its emergence in 2001 through its endorsement by the UN General Assembly in 2005 and the UN Security Council in 2006 to its utilisation by the Security Council in 2007 and its increasing entrenchment in the UN system to the end of 2010. The chapter will also explore normative developments in the field of peace and security in particular on the African continent following the end of the Cold War, to assess the 'normative fit' of the responsibility to protect in the maintenance of peace and security in Africa, in particular in the context of the transition from the Organisation of African Unity (OAU) to the AU, and in the context of a still developing African Peace and Security Architecture (APSA).

Chapter 5 will in turn track the application of the responsibility to protect norm in response to the conflicts in Darfur between 2003 and 2005, both at the level of the UN and at the level of the AU, to assess the degree to which the responsibility to protect norm impacted on policy decisions and on state behaviour in designing and implementing responses to the Darfur conflicts. The chapter tracks these developments against the backdrop of the emergence of the responsibility to protect norm, to assess whether the still emerging norm impacted on the formulation of responses to Darfur, and what differences, if any, can be observed between the impact of the norm at the level of the UN and at the level of the AU.

Chapter 6 in turn tracks the application of the norm in relation to the Darfur conflicts from 2006 to 2010, against a backdrop where the norm had been endorsed by the UN General Assembly and the UN Security Council. In particular, the chapter seeks to explore how the norm, now increasingly becoming entrenched in the UN, impacted on policy decisions and on state behaviour in designing and implementing responses to the Darfur conflicts. Specifically, the chapter seeks to assess whether the norm contributed to the formulation of effective responses to the conflicts in Darfur, the very conflict situation it was intended to help address. In addition, the chapter will explore and what differences, if any, existed in the interpretation and application of the norm between the two main intervening organisations, namely the UN and the AU.

On the basis of the findings generated, chapter 7 will then assess in particular the utility of the responsibility to protect norm, its impact on responses to situations of conflict in which atrocity crimes are committed, and accordingly, prospects for the future development of the norm, in particular in relation to international responses to future conflicts characterised by the commission of atrocity crimes in Africa. The chapter will also present an assessment of the application of the norm life cycle approach to tracking the development of the responsibility to protect norm, and will generate recommendations for further research.

1.6 Methodology

The present research, employing a qualitative approach, seeks to cover the exploratory, descriptive and explanatory elements of the research process. The research is considered exploratory, as it seeks to apply the norm life cycle concept to a norm which, for all intents and purposes, is still to be considered developing, and which, as will be argued later, has not progressed through all stages of the norm life cycle, and entered into the internalisation phase. Other attempts at delivering a comprehensive analysis of norm development have tended to be

more historical. Researchers have to date focused on assessing norm development retrospectively, making use of the advantages brought with historical hindsight. Thus, norm development research has focused on the rise of environmentalism (Conca 1995), the development of anti-apartheid thinking (Klotz 1995), the abolition of the slave trade, the emergence of human rights, and the fortification of gender equality (Finnemore 1996). Yet very little work has been conducted on norms which are still in the development process, and where their application or strength has not been tested several times.

Whilst it is possible to understand norm development from a historical point of view, it is more difficult to be able to predict the development trajectory of a newly developed or still developing norm. Yet an enhanced understanding of norm development, and the factors which are most likely to impact on the development trajectory of a norm, are critical to generating an enhanced understanding of which normative frameworks are more, and which less, useful to contemporary international society. Such an understanding is critical to the creation and operationalisation of structures and systems which have meaning, and which are relevant to their intended purpose. Therefore, understanding norm development from a historical point of view is useful, but understanding norm development given prevailing contextual conditions is important as well. The current research will thus aim to contribute to this endeavour through the application of norm development approaches to a situation in which a norm is still developing, rather than a situation in which a norm historically developed at one point in time. In addition, the research seeks to be both descriptive and explanatory. Through both describing and making attempts towards analysing findings, the current research seeks to both apply Constructivist norm development theory to empirical data, to assess which data both strengthen and detract from the theoretical approach, and to provide an assessment both of the findings through the perspective of the theory, and of the theory from the perspective of the findings. It is therefore not assumed that only the theory can inform the validity of the findings, or that the findings can inform the validity of the theoretical approach, but that both the theoretical approach and the findings generated through the application of this approach must inform one another. The research process is therefore considered both deductive and inductive and hypothesis-testing and hypothesis-generating.

This resembles quite closely an approach utilised by Finnemore in her 2003 work assessing the changing purpose of intervention in international society. Descriptively, each section of the research lays out a chronological sequence of events, paying attention to the manner in which each affects another, but going further by articulating a cohesive structure for the analysis of these events by configuring them in a particular manner which emphasises aspects of importance for the purposes of the research. Finnemore, borrowing from John Ruggie (who in turn adapted it from the work of Charles Pierce) labelled this approach 'abduction'. Abduction, as described by Finnemore, is neither a process of deduction nor of induction, but a dialectical combination of the two. In each case of analysis, deductively derived hypotheses that shape the initial design of the inquiry are presented, but these are quickly shown to be limited in their explanatory power of events. Consequently, deductive arguments are supplemented with inductively derived insights to create an understanding of events which is plausible to others conducting a similar analysis (Finnemore, 2003: 9 - 13). This approach contains considerable advantages to the research undertaken here, as, as also noted by Finnemore, no deductive arguments about the changing purpose of force (including its legitimacy, its application, and the assessment of its use) are sufficiently well specified to test with dispositive results. On the other hand, the use merely of induction does not provide clear guidance as to where the process of inquiry should commence. Thus, combining both deduction and induction provides a good starting point for the research, but

also allows the research design to be flexible enough to meaningfully evaluate the usefulness of findings in a reflexive manner (Finnemore, 2003: 13 - 14).

Building on this approach, the research will also make use of discourse analysis as a primary means of investigation. Using the state international organisations and the bureaucratic officials of international organisations as the units of analysis, the research seeks, through a review of primary (official records, communiqués, statements, speeches, submissions and other forms of documentation) and secondary (academic research, analyses of primary materials, reports, media analyses and other forms of documentation) source material to apply discourse analysis to generate, compare and assess findings. This application of discourse analysis will be made at the level of individual states, as well as at the level of international organisations and their bureaucratic officials. Indeed, as Michael Barnet and Martha Finnemore (2004) have illustrated, international organisations can be treated as autonomous actors in international relations, which not only regulate but also constitute and construct the social world. In turn, the bureaucratic officials of international organisations can be viewed as representing the interests of international organisations, of formulating and articulating the interests of these organisations, and of using international organisations as platforms for impacting on the behaviour of their member states. This analysis of behaviour individually and collectively should not easily be dismissed as an analysis of diplomatic rhetoric or showmanship. Indeed, it cannot be denied that states use the fora provided by international organisations to pursue their (perceived) national interests, but an undercurrent of Cosmopolitanism also exists in the language and actions of states in these fora. Similarly, international organisations and their bureaucratic officials as actors in the international system hold interests, and use the platforms provided by international organisation to articulate and advance these interests, sometimes representing the interests of states, and sometimes not (Barnett and Finnemore, 2004).

For instance, the UN Security Council refers to itself as representative of states, and tasked with the maintenance of the well-being of that community. Similarly, communiqués emanating from the AU Peace and Security Council refer to the Council as tasked with the defence of the well-being of all members of the Union, and not only of the Council itself. Further, it is acknowledged in the International Relations field that states do take the posturing of the UN Security Council, though perhaps less so of the AU Peace and Security Council, seriously. Whilst it is difficult to precisely measure the influence that the Security Council has on the actions of states, a Security Council review of serious human rights violations, of arms stockpiling, or of cross-border aggression is usually taken seriously by state parties, and does inform the actions of those states, even if it is only to dismiss the actions of the Council. The very fact that states take the trouble to publicly dismiss the Security Council, however, is already evidence of the impact that the Security Council has on state behaviour in international society. Inter-state co-operation at the multilateral level is therefore, as Michael Barnett argues, not merely a technical feat, but is also a connection to a moral order. Through their discourse and practices, state parties to multilateral organisations not only address particular problems but also connect themselves and their activities to a set of transcendental values (Barnett, 1997: 570 - 571). Following this line of inquiry, as argued by Paul Williams, evidence of the security culture of an organisation, in Williams' analysis the AU, can be found in the documents and statements of that organisation and its officials, its predecessors, and foreign policy pronouncements of its member states. Of particular value to Williams are expressions of collective identity, solidarity, and what counts as appropriate and legitimate conduct by member states (2007: 257). A similar approach therefore will be applied both to the UN and the AU in trying to better understand the generation, internalisation and application of security response in line with a developed or developing security culture.

In addition to the utilisation of discourse analysis and an analysis of state behaviour based on a review of primary and secondary materials, the research draws on fieldwork which was conducted between 2007 and 2010. From June 2007 to December 2009, the author worked as intern, senior programme officer and unit head respectively for the African Centre for the Constructive Resolution of Disputes (ACCORD), a non-governmental organisation based in South Africa and working across the African continent specialising in conflict management interventions. From January to June 2010, the author was a visiting researcher at the Norwegian Institute of International Affairs (NUPI), based in Oslo, Norway, and from August 2010 onwards the author worked as a civilian planning and coordination officer in the Peace Support Operations Division (PSOD) in the African Union Commission, based in Addis Ababa, Ethiopia, which is responsible for the planning and management of African Union-mandated peace support operations. During this time, the author conducted fieldwork in support of this research. At all times, the author disclosed the purposes of the research, and sought the consent of research participants prior to the conduct of fieldwork and interviews. A clear distinction was maintained between the author's work in the conduct of professional duties and the conduct of research for the purposes of this study. Where information relevant to the purposes of this study was obtained through the conduct of professional duties, this was disregarded unless it could be alternatively verified at a later stage through the clear identification of the researcher's intentions to participants.

The fieldwork included participation in meetings of various bodies and specialised agencies of the UN and the AU, interaction with and participation in meetings of regional bodies such as the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC), engagements with various Ministries of Foreign Affairs on the African continent and beyond, and field visits to Addis Ababa, Berlin, Bujumbura, Gaborone, Goma, Juba, Kigali, Kinshasa, Khartoum, London, Monrovia, Nairobi, New York, Oslo and Pretoria. The research also draws directly and indirectly on observations made by government officials, employees of non-governmental organisations, academics and other stakeholders involved in international response to conflicts in Sudan throughout the conduct of this study.

1.7 Delimitations

Whilst an analysis of the development of the responsibility to protect norm and its application to the conflicts in Darfur is, by necessity, a wide-ranging undertaking, such an analysis, if it is to be useful, must be both narrow and deep. Narrow in the sense that the unit and level of analysis must be limited, deep in that the research must qualitatively demonstrate analytically relevant findings as opposed to conjecture and loose interpretationism. To ensure that the research is both deep enough and narrow enough, several limitations are placed on the scope of this study. For one, the level of analysis must be limited in two ways. On the one hand, the level of analysis is limited to using the state and international organisations as the units of analysis. Of interest to this research are the actions and interactions of states and the bodies representing their interests in international society, based on understandings of norms which enable and constrain behaviour and thereby state action. Whilst it is acknowledged that other actors (including for example multi-national corporations, civil society organisations, and individuals) impact on the actions of states, and therefore on international society, for the purposes of this research, these roles and relationships cannot be explored in depth. Whilst the impact of some of the above will be assessed where relevant to the actions of states, this is not the primary focus of this study. On the other hand, when analysing the behaviour of states in international society, this analysis of

interaction is limited to the interaction of states at the multilateral and at the bilateral levels, through the formal and informal workings of state agencies, foreign affairs machinery, and other means of engagement.

This is not to say that state behaviour at the international level is governed only by interaction with other states in the system. It is fully acknowledged that domestic factors are also important when it comes to understanding state behaviour in international society, and to understanding the salience of a norm in decision-making, as argued by Thomas Risse-Kappen, Jeffrey Checkel, Jeffrey Legro and James Davis (2000). Yet as Andrews Cortell and James Davis highlight, insufficient attention has been devoted to the measurement of a norm's strength, legitimacy and salience in the domestic political arena, and until this shortcoming has been addressed, it will remain difficult to meaningfully assess the impact that domestic factors have on the behaviour of states externally. In addition, the mechanisms and processes by which international norms can or cannot attain domestic legitimacy remain under-explored, as research has tended to be biased toward processes and dynamics at international society level (2000: 67 – 68). However, for the purposes of this research, it is not feasible to include an assessment of the domestic development of norms, and the impact this has on the behaviour of states at the international level. This is recognised from the outset as a limitation of this study.

A further limitation is placed on the research in its focus of analysis. The UN and the AU have been selected as fora in which to explore reactions to the Darfur conflicts within the context of the responsibility to protect, whereas other fora, such as the European Union (EU), the Intergovernmental Authority on Development (IGAD), the Arab League, the Organisation of the Islamic Conference (OIC), the United Nations Human Rights Council (UNHRC - previously the Human Rights Commission) and other fora which have played a role in shaping international responses to the Darfur conflicts have been omitted, save for instances where their actions have proved relevant for the purposes of this study. Whilst such a broad analysis would certainly have been interesting, it would not be as relevant here as focussing on the UN and the AU. These organisations were selected as one holds the mandate for the maintenance of international peace and security, whilst the other holds the mandate for the maintenance of regional peace and security, and both organisations have been key to shaping the international responses to Darfur. An analysis of actions in these fora, therefore, is deemed as most relevant to the present research. Yet even when narrowing the focus of analysis to actions in these two fora, it would not be possible to assess all actions at every juncture. Rather, emphasis will be placed on actions, as well as instances of inaction, that are relevant to the focus of this research, and which serve to both validate and detract from the line of argumentation presented.

Finally, the research is limited in terms of the timeframe under review. The development of norms governing intervention on humanitarian grounds in international society is assessed from the Cold War to the turn of the 21st century, following which the responsibility to protect, as a norm governing approaches to interventions on humanitarian grounds from 2001 onwards is analysed. The development of the responsibility to protect norm is assessed from 2001 to 2010. Similarly, international reactions to the Darfur conflicts within the context of the responsibility to protect norm are assessed from 2003 through 2010 only. Responses to the conflicts in Darfur, the origins of the current round of conflicts arguably being traced to 1916 or earlier depending on one's perspective, are not assessed prior to 2003, when the AU and the UN first formally took notice of the conflicts and made attempts at responding to them. On the other end of the scale, responses to the conflicts are not assessed beyond the end of 2010, the timeframe of analysis being limited

to the practical purposes of this research and the period during which in-depth desktop and fieldwork research for this study was conducted.

1.8 Limitations to the Conduct of this Study

Whilst every attempt has been made to construct the research design in as rigorous a manner as possible, certain limitations are of course placed on the research process itself. For one, access and security considerations did not permit the conduct of fieldwork in Darfur itself. Whilst this is by no means critical to the outcomes of this study, it does nonetheless place limitations on the ability of the researcher to gain an enhanced understanding of the conflict dynamics, and of perspectives from the ground, both of UN and AU personnel, as well as by those affected by the conflict and the political decision-makers. Where possible, relevant stakeholders have been met with outside of the Darfur region, either in Khartoum or in Juba, or outside of Sudan itself. However, such interactions by their very nature can only be limited. A further limitation placed on the research process relates very much to the political sensitivities related to the Darfur conflict. Whilst valuable insights and perspectives were gained in relation to the responsibility to protect norm, the conflicts in Darfur and the work of the UN and of the AU, not all material could be used meaningfully for the purposes of the current research, as meetings attended by the researcher were generally governed by the concomitant rules of confidentiality and anonymity, and where interviews were conducted, none of these could be recorded. Where valuable information was obtained, this was done so outside of the confines of formal interview processes, and therefore cannot always be rigorously referenced. Thus, whilst extensive fieldwork was conducted, not all findings from the fieldwork could be incorporated in this study. In addition, certain information has been included in this study by means other than through direct reference to interviews conducted.

A further limitation relates to the limited time-frame within which this study could be conducted. The research for the purposes of this study was conducted between January 2007 and July 2010, and therefore is limited to the outcomes of the research process over a three year period. In addition, the limited timeframe of analysis which has been chosen for this study places a limitation on the outcomes generated as well. The conflicts in Darfur, for example, are not new and most certainly did not arise in 2003. Indeed, the genealogy of the current round of conflict can be traced to the 1920s, or to the 1860s, depending on one's interpretation of the conflicts, and an analysis of international reactions to the conflict since that time may have added value to this study. However, such an analysis was considered both impractical to this study, and as one which would add limited value to the overall purposes of the current research. Therefore, reactions to the conflict have been studied only from 2003 onwards, when the conflicts escalated to the point where they formally formed part of the agenda of work of the UN and the AU. This limitation is recognised, and its impact on the research findings clearly acknowledged.

Chapter 2

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Norm Development and Utility in International Relations

2.1   Introduction

The discipline of International Relations is plagued by numerous challenges which, despite the best efforts of its adherents, simply will not be done away with in the immediate future. Challenges are already encountered when breaking down the field itself. The study of International Relations, by default, connotes the study of that which extends beyond the borders of states as the primary building blocks of the discipline (hence the international component), and of the relationships, forms of engagement and interactions between these states (hence the relations component). International Relations therefore refers to the study both of the structure of international society, and of the goings on within that structure. From a positivist epistemological perspective, this in and of itself does not pose a challenge, as positivism advocates that the natural world can be studied by the disciplines that collectively make up the natural sciences, and that, equally, the structures that govern the social world can be studied by the disciplines that combined connote the social sciences, of which International Relations is a firm component.

Building on this understanding, a structuralist approach to the discipline of International Relations advocates that the structures of international society, created as social structures to govern social interactions at the supra-national level, are created on a normative basis which is both defined by, and which defines, interpretations of meaning in that system. The normative basis upon which international society is constructed can of course be shared or contested, but through interactions which both reiterate or re-shape that normative basis, and therefore the system itself, interactions in the world, which result in actions on the part of states, are enabled. These actions can take a variety of forms, and can be articulated in forms of cooperation and collaboration at one end of the spectrum, to competition at the other end of the scale. It is in the study of these structures, and of the actions and inactions which the structures, as social constructs, both enable and constrain, that meaningful understanding of international society is generated. Yet the study of international society can, unfortunately, not be approached in the same scientific manner that the natural world can. Rather, due to the limitations inherent in the study of the social by the social (if human beings are to be considered social beings), an interpretavist approach is necessitated to give meaning both to the study of international society and to give meaning to the findings generated by such an analysis. For the purpose of this research, and as will be further expanded upon below, the interpretavist approach utilised here will be informed by Constructivist approaches to International Relations.

This study is devoted to the study of interactions in international society at various levels of engagement, and to contributing towards an enhanced understanding of their meaning. On this basis, a degree of inter-subjectivity is required, as, through an analysis of relationships and their understanding, meaning is infused into an analysis which aims to be useful to the discipline of International Relations. To be able to understand the importance and meaning of inter-subjectivity, this study will argue that discourse and its analysis are critical components to maintaining and understanding an international system which is constructed and driven by understandings of the nature and content of that construction. It should be highlighted at this point already however that this study will not employ Constructivism as a grand theory in the study of International Relations. Indeed, it would be quite incorrect to argue that Constructivism either serves as a grand theory, or that it is capable of doing so. Rather, Constructivism should be

portrayed as one approach, or perspective, within a range of approaches geared towards making sense of international society collectively and the behaviour of its individual components.

It should be noted however at the outset as well that it would prove very difficult to rely solely on Constructivism to make sense of the world around us, and that, therefore, the research presented here cannot and should not be considered as a purist form of Constructivism, if such a phenomenon exists. Rather, this research will draw on Constructivist influences to assist in the creation of a research framework, and to make sense of empirical phenomena considered useful to this study. However, as will be witnessed relatively early in the application of this framework, other influences, including those of Realism, Neo-liberalism, Cosmopolitanism and Communitarianism, as well as useful approaches such as neo-functionalism, may be drawn upon where these prove useful. As should always be acknowledged in the study of International Relations, no one theoretical framework can claim dominance over the others, or horde claims to epistemological validity. Rather, it is through the combination of approaches and frameworks that an epistemological "truth" is, if not arrived at, at least honed in on, although caution against incommensurability should certainly always be maintained.

This chapter will seek to create the basis for an approach which assumes that international society is both a social construction and representation, before exploring Constructivism, in contrast to other possible theoretical approaches, as a useful tool for the purposes of this analysis. From this basis, the chapter will review Constructivist approaches to analysing and understanding norm development and utility within international society, before reviewing a particular approach, the 'norm life cycle' concept, as developed by Finnemore and Sikkink (1998). While the concept has several limitations and requires further development, attempts at which will be offered, it will nonetheless be presented as a useful approach through which to conduct the present study. The chapter will conclude by presenting the manner in which the theoretical framework will be applied throughout the remainder of this study.

2.2   The Constructivist Approach to International Relations

Constructivism as an approach in the discipline of International Relations focuses on the socially constructed nature of international society, and the social norms which underpin interaction at the level of the international. The key to understanding the importance and influence of social norms, culturally determined roles and rules, and historically contingent discourse on actual outcomes in international organisation is an analysis of change. Patterns of change, for Constructivists, are a clear indicator that social structures are at work. Rapid global changes across dissimilar units, argues Finnemore, suggest structural-level rather than agent-level causes of change. They do not prove these though, and mechanisms of change need to be included in an analysis that indicates a common source of new preferences and behaviour (Finnemore, 1996[a]: 22). An analysis of change therefore is crucial to the Constructivist toolkit. Yet, when analysing change, what role is given to acts of persuasion and acts of coercion in international society on the part of states? Further, of critical importance here is an enhanced understanding of states as rational actors, acting out of rational choice in their interaction with other states. Yet rational choice requires knowledge and understanding of utilities. A rational actor must know what it wants before it can calculate the means to the desired ends. Constructivists argue that social structures, including norms of behaviour and social institutions, can provide states with direction and goals for action, in that the values they embody and the rules and roles they define can channel state behaviour. States as actors conform to these, in part, for rational reasons, but also because they become

socialised into accepting these values, rules and roles as in their own interest. In Finnemore's words, states:

> internalise the roles and rules as scripts to which they conform, not out of conscious choice, but because they understand these behaviours to be appropriate (1996[a]: 29).

Rules, norms and routines are of course followed carefully by states on the basis of considered reasoning, and determining which rules and norms apply in which situations involves sophisticated reasoning processes. Contrasting this 'logic of appropriateness' with a 'logic of consequences' is important. A logic of appropriateness is driven by social structures of norms and rules which govern the kinds of actions that are contemplated and taken. These social structures also define responsibilities and duties, and therefore impact on which actors will contemplate and take certain actions over others. A logic of consequences, on the other hand, is driven by pre-specified agents, making means-ends calculations and devising strategies designed to maximise utilities. Norms, rules and routines may be created in this process, but these will be designed to serve the interests of powerful actors, and would not survive for long if they did not. A logic of appropriateness, on the one hand, would predict similar behaviour from dissimilar actors because rules and norms may make similar behavioural claims on dissimilar actors, while a logic of consequences, on the other hand, would predict dissimilar behaviour from dissimilar actors because actors possess different utility functions and capabilities and will therefore act differently. However, the two approaches to logic are not entirely dissimilar, and should not be totally disconnected from one another. As with the agent-structure debate, the two forms of logic are intimately connected, and actors create structures which take on a life of their own and ultimately shape the action of actors (Finnemore, 1996[a]: 29 - 30).

For Finnemore, this implies that consequentialism can be applied to the agent component of the debate and appropriateness to the structure component, whereby agents create social structures for consequentialist reasons, but these spread for reasons of appropriateness. The construction and dissemination of new normative structures, then, appears to have a strong inherent element of the logic of appropriateness (Finnemore, 1996[a]: 30 - 31). An understanding of 'appropriateness' should not however be confused with an understanding of 'good'. Social norms are not inherently good or bad, they are simply relative to the context in which they arise. Norms allowed for colonialism, slavery and apartheid as much as they did for anti-colonialism, the abolishment of slavery and the end of apartheid, given a certain context. Moral concerns of right, just and appropriate behaviour therefore are context-dependent within the structure in which they exist, and it is this that is referred to by the logic of appropriateness.

It is this change over time in the logic of appropriateness, context-specific as it is, that is important for Constructivists. States clearly evolve in an international social context that shapes the direction of change in coordinated and consequential ways. States, therefore, are reorganised, redirected and expanded, at least in part, according to shared normative understandings of what it is that states as political entities of action are supposed to do (Finnemore, 1996[a]: 35). States, then, develop perceptions of interest and understandings of desirable behaviour from social interactions with other states in the structures of international organisation which they share, and are socialised to accept certain preferences and expectations by the international society in which they, and the people which constitute them, live (Finnemore, 1996[a]: 128). On this basis, the defining feature of Constructivism for Finnemore is its focus on the social construction of international politics, with observable phenomena arising as a result not only of an objective, material reality, but also of an inter-subjective social reality. What actors do in international

relations, the interests they hold, and the structures within which they operate, therefore, are defined by social norms and ideas rather than by objective or material conditions (Barkin, 2003: 326).

While Constructivism appears to provide a useful basis for the study of international society as a social structure, and provides a useful basis from which to account for change in that system, several limitations restrict the value which Constructivism can bring to the International Relations field. For one, as argued by Alexander Wendt, Constructivism is not a theory of international politics. Constructivist influences allow for an observation of the manner in which actors are socially constructed, but they do not generate insight into which actors to study or where they are constructed. Before Constructivism as an approach can be useful, units or levels of analysis must be specified, or, for the purposes of the International Relations field, agents and the structures within which they are located must be identified. Wendt criticises the state-centric approach that is so dominant in the International Relations field, but concedes that states must be the key unit of analysis, as, ultimately, within the current system, change happens through states (Wendt, 1999: 7 - 9). States and state systems are real (ontological) and knowledgeable (epistemological), despite being unobservable for Wendt, and as objects are defined by their relationships to one another in a structure, which reinforces and reifies relationships, beliefs and actions (Wendt, 1999: 48 - 74). Despite Constructivism not being a theory, as an approach to International Relations it inherently makes use of inferences from observable events to broader patterns, and inferences always involve a theoretical leap. This, Wendt concedes, is true whether these inferences are purely inductive, generalising from a sample of events, or abductive, positing underlying structures that account for those events. But in neither case does raw data speak for itself, and ultimately requires an infusion of interpretationism (Wendt, 1999: 87).

Another challenge posed to Constructivism is that, as Finnemore articulates, "simply claiming that norms matter" is not enough. Constructivism must be able to demonstrate substantively which norms matter, under which circumstances, how they matter, what their impact is, and, ultimately, why they matter (Finnemore, 1996[a]: 130). Yet, as noted by Ruggie early on, Constructivism was not sufficiently developed to specify a fully articulated set of propositions and rigorous renderings of the contexts within which these were expected to hold (1998: 27 - 28). Political Science research on norms more generally has tended to focus around specific issue-areas, and therefore argues that particular norms matter in particular issue-areas. Constructivists have attempted to tackle this gap but, as argued by Finnemore, have generally not succeeded in presenting an integrated argument about how various norms in different issue-areas fit together (1996[b]: 327).

Added to this is the challenge that, to date, Constructivists have tended to focus on the spread of 'good' norms, despite norms having no intrinsic 'good' or 'bad' characteristics. As argued by one observer, Constructivists who write about human rights have generally tended to look at the role of international civil society, however understood, as changing the behaviour of states for the better. This applied Constructivism, focused on inter-subjective norms affecting definitions of interest, is liberal-idealist, in the sense that these norms are accepted largely uncritically as 'good', as are the elements of international civil society involved in spreading them (Barkin, 2003: 335). The application of Constructivism to the field of International Relations therefore, by some accounts, has appeared to be based on cosmologies influenced by cosmopolitanism, or neo-liberal idealism.

Extending this critique, it should also be highlighted that the application of Constructivist analyses to date has focused predominantly on instances where change has taken place, and not much on

instances where change has not taken place, or where attempts at change have failed. Thus, Constructivism has tended to focus on 'the dog that barked' to make itself useful in the International Relations field, but a focus on 'the dog that did not bark', and 'why it did not bark', is lacking in Constructivist discourse. As a relatively new approach to the discipline of International Relations, this is perhaps to be expected, just as Realist approaches would hesitate to attempt explanations at instances where states seemingly acted in a manner wholly contrary to their apparent national interest. Yet as Constructivist discourse advances, it must be able to investigate more rigorously both instances in which change takes place, and instances in which it does not.

A further critique of the Constructivist approach is warranted at this stage. Constructivism has been demonstrated to be a useful tool in the analysis of norm development and system change in International Relations from a historical perspective. Thus, Constructivist analysis has been applied to, for example, the abolishment of the slave trade, the end of colonialism, the demise of apartheid, and anti-foot binding campaigns in China. However, comparatively little work has been done on ongoing processes of norm development and system change, where the benefit of historical perspective and hindsight is not available to the observer. This may not prove a challenge only to Constructivism, and is a critique that can be levelled equally at neo-utilitarian and other approaches to the study of International Relations or of the social sciences more broadly. However, it does restrict the predictive utility of the Constructivist approach in ongoing processes of social structural change which impact on the practice of the political at the inter-state level, and makes it more useful to the analysis of historical social structural change.

Yet these challenges are inherent to the studies of Political Science and International Relations, if one subscribes to the disciplines as inherently social, in and of themselves. The strengths of Realism and Liberalism lie in their axiomatic structure, which permits a degree of analytical rigour and theoretical specification. As John Ruggie argued, rigour and specificity are desirable on intellectual grounds, as they make cumulative findings more likely, and on policy grounds as they raise the probability that predicted effects will actually materialise. Yet a key weakness also lies in this axiomatic structure, as in its ontology it leads to a distorted or incomplete view of international reality. This, as argued by Ruggie, poses a serious challenge to the study of International Relations at a time when states are struggling to redefine sets of interests and preferences regarding key aspects of international order (1998: 37). Although Ruggie made this argument criticising Realism and Liberalism at the turn of the 21st century, it remains as valid today as it did then. The obverse is of course true of Constructivism. Constructivist analyses rest on a deeper and broader ontology, providing a richer understanding of certain phenomena and shedding light on aspects of international society which simply do not exist in neo-utilitarian assessments of global polity. However, this broad approach lacks both rigour and specification, and is relatively poor at specifying its own scope conditions, the contexts within which its explanatory features can be expected to make how much of a difference (Ruggie, 1998: 37). Improvements are of course to be expected as Constructivist work accumulates over time, but inherent challenges to the approach remain.

Finnemore highlighted similar challenges to the Constructivist approach in the manner in which it had been practiced, at least initially. Constructivism, argued Finnemore, was plagued by its amorphous perspective emphasising the causal nature of social structures. Constructivism emphasises a wide range of social structural elements, yet conceptual clarity on the manner in which different elements of social structures relate to one another either conceptually or substantively was limited. Conceptually, the relationship between principles, norms, institutions,

identities, roles and rules was not well defined, and substantively, the social elements investigated by Constructivist scholars tended to be limited in scope, usually to one issue-area. Focus was placed on particular social frameworks in which interaction took place in discrete issue-areas, and how these shared beliefs, norms and discourse shaped actors and preferences. Thus, social structures in the plural were investigated, with little attention being paid to questions relating to the relations among specific social elements and whether these could exist independently, or only as part of a mutually reinforcing collection of norms, institutions and discourse. On the basis of this limited analysis, Constructivists had not succeeded in exploring the possibility of overarching social structures, or of a single coherent structure (as argued by Ruggie) that coordinates international interaction along coherent and predictable lines (Finnemore, 1996[a]: 16).

Despite these challenges however, and acknowledging the shortcomings inherent in utilising a Constructivist approach as outlined above, Constructivism does still provide the most useful basis from which to study processes of change in an international system which is considered from the outset as being of a socially constructed nature. If it can be assumed that states, as social constructs themselves, operate in a system of international organisation which is similarly socially constructed, and that meaning is both socially created and inter-subjective within this system, then Constructivism should be able to most usefully and meaningfully account for change within this system, and, particularly, under which conditions change becomes possible. Building on this analysis, Constructivism should also prove most useful in analysing inter-subjectivity in relation to norm development in international society.

Of particular importance to this study, of course, is not only the development of norms, but also of their impact, both in terms of the impact that norms have on the evaluation of a particular situation requiring action on the part of states, and on the actions that states take based on this evaluation. However, the utilisation of a Constructivist approach in and of itself, while forming the basis for this analysis, is not enough. Rather, a more detailed framework which assists in observing the development of norms is required for the analysis proposed here to be useful. Therefore, both the role of norms in Constructivist analysis and a framework for observing the development and impact of norms is required.

2.3 The Role of Norms in International Society

Norms are critical to the Constructivist understanding of social systems which are created by socially cognisant actors. Yet the role of norms in a socially constructed system, and the impact that these norms can have, cannot simply be assumed. An understanding of norms should perhaps commence with an understanding of collective intentionality, which, for Ruggie, governed outcomes in international order. Collective intentionality can be explored at several levels in international polity. At its deepest level, collective intentionality governs notions of who counts as a legitimate actor in international society. States exist on the mutual recognition of sovereignty, a recognition which states collectively 'will' into being, and this mutual recognition is the basis for the functioning of an international society of states. Sovereignty, as with any other good or concept, does not exist outside of a social framework which gives it meaning, and this meaning is not static, but changes over time, as understandings of its meaning change. Sovereignty therefore is for Constructivists a matter of collective intentionality (Ruggie: 1998 : 21). Yet the role of collective intentionality is not merely a constitutive one. Collective intentionality also plays a deontic function, in that, within a system of states, it can create new rights and responsibilities, or

alter previously existing ones (Ruggie, 1998: 21). Through both its constitutive and deontic functions, collective intentionality creates inter-subjective frameworks of meaning which include shared narratives within international society, which are represented by 'rules' which form the basis of social interaction. These rules may of course be more 'thick' or 'thin' in different social contexts, however, the recognition of their existence, through adherence or the challenging of them, govern social life, including at the level of international politics. Certain constitutive rules such as exclusive territoriality, as Ruggie highlights, are so deeply sedimented and reified that actors no longer think of them as rules at all. But their durability clearly remains based on collective intentionality, even if they commenced with acts of force, such as the seizing of territory (Ruggie, 1998: 24 - 25). Constitutive rules, based on inter-subjectivity, constitute social facts, which in turn constitute norms, or standards of appropriate behaviour, based on inter-subjective meaning (Ruggie, 1998: 85).

It is important to understand however that norms, whilst both enabling certain forms of behaviour and constraining others through processes of inter-subjective legitimisation, are not able to 'cause' behaviour in a consequentialist sense of the term. Norms are able of course to guide, rationalise, inspire, justify or condemn behaviour, but they are not able to cause behaviour. In addition, as highlighted by Ruggie, norms are counter-factually valid, in that counterfactual evidence does not necessarily refute the existence of a norm. Therefore, neither the violation of a norm, nor necessarily the 'non'-existence' of the norm, refutes its validity (Ruggie, 1998: 97). Such a line of argumentation, of course, must be justified if the analytical value of Constructivist approaches it to be retained.

The impact of norms on international organisation is not a passive one, which can be ascertained in an analogous fashion. Because norms are inter-subjective, the analysis of their utilisation or reference to them is what defines explanations regarding the efficacy of norms (Ruggie, 1998: 98). Put differently, if norms can be conceived of as shared standards or expectations of appropriate behaviour held by a community of actors, then norm violation is as much a testament to the existence of a norm than is norm adherence, in that reference to a norm which has been violated indicates the existence of the norm in the first place. This, notes Finnemore, is the difference between norms and ideas. Whereas norms are inter-subjective and concern behaviour, ideas are subjective, in that they are held individually, and may or may not have behavioural implications (Finnemore, 1996[a]: 22). Evidence for the existence of norms is drawn from two places. First the existence of norms can be witnessed in patterns of behaviour which are in accordance with their prescriptions. Second, norms can be articulated in discourse, although this may not always be true of the most internalised and entrenched norms, as they are not always the subject of conscious reflection. Because norms are inter-subjective and collectively held, they are often the subject of discussion among actors, which may specifically articulate norms in justifying actions, or in attempting to persuade others to act in a certain manner (Finnemore, 1996[a]: 22 - 23). For this reason, the analysis not only of behaviour in international society, but of the discourse surrounding that behaviour, is critical to an analysis of norms, as norms demonstrate the power of social structure, both in that they influence states, and in the manner in which they influence states.

Norms of course do not replace the concept of interest in International Relations, nor can it be argued that norms attain a higher level of importance than interests. Norms do however shape interest, in that norms determine the manner in which interests are constructed. To assess this, a Constructivist approach focuses on behaviour which is either in line with a given norm, or not, and then places focus on discourse surrounding that behaviour, assessing whether actions are

justified according to that norm, or emphasise the importance of that norm. When assessing norm violations, emphasis in analysis is placed on whether norms are challenged, or interpretations of norms are challenged (Finnemore, 1996[a]: 140). Norm contestation is however a prominent feature of norms at work in international society, and, as Finnemore argues, norm contestation processes are inherently political, as they reflect normative contestation, or competing values and understandings of that which is good, desirable and appropriate in collective communal life (Finnemore, 1996[b]: 342).

It is this norm contestation which both allows for and drives change within international society as well, as processes of norm adjustment or replacement allow for the generation of new patterns of behaviour on the part of states. On the basis of this understanding, the work of Constructivist scholars has contributed to an enhanced understanding both of how new patterns of behaviour in international society become possible, and how these shape international organisation. Thus, for example, Constructivist work has shown that whilst domestic human rights conduct (including the most excessive of abuses) was considered the internal affairs of sovereign states and beyond condemnation throughout the Cold War, as human rights increasingly came to be the subject of bilateral, multilateral and transnational international relations, human rights abuses became legitimate standards by which states could criticise and censure one another, should they choose to do so (Donnelly, 1995: 115). Similarly, researchers have shown how the development of norms at the international level has come to affect state behaviour globally, regionally and domestically in areas as diverse as slavery (Donnelly, 1995 and Finnemore, 2003), environmental protection (Conca, 1995), the adoption of anti-apartheid policies (Klotz, 1995), the proliferation of weapons of mass destruction (Nolan, 1995), and anti-colonialism (Finnemore, 2003).

Yet, despite an understanding of the role of norms slowly being generated by Constructivist-inspired work, questions surrounding the manner in which the study of norms is best approached remain a construction site among Constructivists. Two key questions which emerge however are how best an understanding can be generated of *why* states comply with norms, and how an understanding can be generated of *which* norms serve as reference points in international political order. On the first point, of why states comply with norms in the absence of a global enforcement power, focus has been placed on the regulative function, or the 'effect' of norms in world politics to explain opposing and changing sets of institutionalised causal norms that guide action on the part of states. On the second question, focus was placed on the construction and meaning of norms which were ascribed a stabilising role (though the norms themselves were not 'stable'), where rules based on norms were viewed as a means to maintain social order. These questions, as Antje Wiener (2003) notes, lead to the development of two theoretically distinct approaches to the study of norms in Constructivism, which could be classified as the 'compliance approach' and the 'societal approach'. Both approaches could of course be considered as complimentary, and not in opposition to one another. The compliance approach sought to address behavioural change in reaction to norms, whilst the societal approach sought to understand not only the impact but also the emergence of norms (Wiener, 2003: 253). Early Constructivist work focused precisely on honing in on this challenge, based on assessments of the duality of structure. But this reflexive sociological approach was soon abandoned in favour of a focus on the role of social facts. Thus, a focus on assessing the mutual constitution of structure and agency was left behind in Constructivist work, and so too did work focused on the emergence and impact of norms, resulting in a gap in Constructivist applications in International Relations (Wiener, 2003: 254). This lack of serious application of Constructivism to the International Relations discipline raises several questions and challenges.

Whilst Constructivist scholars agree on injecting notions of the social into an under-socialised discipline, they largely disagree on the development of robust analytical approaches to the study of the inter-subjective in political action. Further, whilst Constructivist research has focused on formal institutional change, it has done so at the expense of focusing on changes in supra-national or trans-national norms (Wiener, 2003: 261). This is because much of the body of Constructivist work has focused on stable norms in international society, assuming that stable norms emerge based on the specific identities of actors, and these stable norms impact on institutions, resulting in institutional change and norm diffusion. As noted by Wiener, this basic assumption about the stability of norms has contributed to the consolidation of an impressive research programme on actors' behaviour in world politics, focusing in particular on the problem of norm implementation mostly in the arenas of human rights, social equality, education and the diffusion of administrative culture (institutionalisation at the international level). Yet the change of ideas and norms has received far less attention (Wiener, 2003: 262).

Constructivist work, by this analysis, has either focused on assessing change in the structures of international society on the basis of assumed norm stability, or has focused on identity change on the part of actors on the basis of normative structural changes. Bringing the two strands of thought together, however, has received less attention. As a result, concepts which can meaningfully be utilised to critically and rigorously assess norm *emergence* (under which context and how norms emerge), norm *development* (how norms develop, how are they shaped and driven, and how they find their way into political discourse), how they are *moulded* to fit social requirements (norms are social constructs, and therefore malleable), how they are *institutionalised* (norms must be codified in some form or another to become institutionalised), how they *impact upon the structures of international society* (norms which are institutionalised impact on the social structures of international society in some manner or another), how they *impact on state behaviour* (norms either enable or constrain state behaviour, in that they regulate perceptions of appropriate behaviour), and *how state behaviour in turn impacts on the further development of the norm* (norm development is not a top-down process only) are scarce and under-developed in Constructivist literature.

Despite these limitations, certain concepts relating to the analysis of norms do prove useful when assessing norm development and impact in international organisation, which also prove of value to the analysis presented here. For one, the concept of *norm salience* is a useful way to assess the strength of a norm. As explained by Cortell and Davis (2000), salient norms give rise to feelings of obligation by social actors and, when violated, engender regret or a feeling that the deviation or violation requires justification. When a norm is particularly salient in social discourse, its invocation by relevant actors legitimises a particular behaviour or action, creating a prima facie obligation, and thereby calling into question, or de-legitimising, alternative choices. In policy terms, claims based on salient norms raise the burden of justification necessary to overcome the claims of norm supporters in favour of other, competing, options. As Cortell and Davis highlight, to overcome the objection, facts must be interpreted in an alternative manner, or demonstrate that the norm in question does not apply to a particular form of conduct, or that some other matter legitimises non-compliance with the norm (2000: 69). It would of course be both tempting and incorrect to assign a norm the title of salient merely because state behaviour is observed to be consistent with an existing international norm, and, paradoxically perhaps, the most salient norms may become most evident when they are violated, as actors would feel a strong need to justify their non-compliance, or to apologise for it (Cortell and Davis, 2000: 69 - 71). To meaningfully measure norm salience however, the explanations offered by actors, in this case states, for norm adherence or norm violation must be taken seriously. Yet consistent behaviour on the part of

actors across a range of situations is also to be expected if a norm is to be labelled salient, bearing in mind of course that norms do not 'cause' behaviour in a consequentialist sense, but that they either enable or constrain behaviour, thereby creating choices for actors.

Another useful concept, referred to previously, is that of *norm stability*. The dual quality of norms (their simultaneous regulative and constitutive nature) has been constructed on the Constructivist premise of the mutual constitution of structure and agency, as argued early on by Ruggie (1998) and Wendt (2000). A core assumption drawn from this assessment is that the guiding function of norms is only possible once actors relate to them or have internalised them. On the basis of this core assumption, much Constructivist work focusing on the process of mutual constitution of regulative and constitutive functions has reduced the assessment to one of delving into the relation between the emergence of stable norms and the behaviour and identity-formation of actors in relation to these stable norms. On the basis of this narrative, norms are posited as intervening variables that influence the behaviour of actors. As Wiener notes, norms are therefore anthologised as stable factors in world politics (2003: 265).

This assumption however leads to a broad range of challenges in norm analysis. For one, it does not adequately take into consideration the emergence of norms as a contextualised process, which can potentially be conflictive in nature. Also, it neglects the concern that norm interpretation can vary based on contextual differences. Therefore, questions related to the validity of norms across social boundaries and political arenas, constructed as they may be, and the role of context in norm legitimisation, let alone processes of norm contestation, are left under-explored (Wiener, 2003: 265 - 266). For Wiener, the assumption of norm stability is problematic for research on norm resonance as norm change requires an understanding of the mutual constitution of practices and norms. In addition, for Wiener it is necessary to mediate between international and transnational contexts on the one hand, and domestic contexts on the other, to generate a more meaningful understanding of processes of bargaining and argumentation in norm development (2003: 266). For Wiener, then, the assumed stability of norms generates three challenges, which must be resolved if the concept is to be applied usefully. First, questions around the conflictive potential between different nationally constructed norms must be addressed. Second, the adaptation of norms as a part of transnational interaction must be reviewed. And third, the question of domestic norm resonance requires greater exploration (Wiener, 2003: 266 - 267).

Some of these challenges were of course addressed in the work of Jeffrey Checkel in the later 1990s, when he focused on the concept of *normative cultural match*. However, Checkel's work broadly focused on norm development and processes of institutionalisation in Europe, and its application to norm development processes at a global-local level, both top-down and bottom-up, had not been tested. The work of Amitav Acharya (2004) proved somewhat more helpful in this regard, when Acharya coined the concept of *norm localisation*. Acharya argued that instead of merely assessing the existential fit between domestic and outside norms and institutions, and explaining strictly dichotomous outcomes of acceptance or rejection, norm analysts should focus on complex processes and outcomes whereby norm-takers construct congruence between transnational norms (including norms previously institutionalised in a region) and local beliefs and practices. This process, which Acharya termed norm localisation, witnessed foreign norms, which may initially not have cohered with local norms, incorporated into local norms through a process of adaptation (Acharya, 2004: 241). For Acharya, norm localisation describes a process whereby external ideas are simultaneously adapted to meet local practise, and hence in localisation the existing normative order and an external norm are in a 'mutually constitutive' relationship, but the resulting behaviour of the recipient can be understood more in terms of the former than the latter,

although it can only be fully understood in terms of both (2004: 251 - 252). The concept of norm localisation then is presented as a useful means whereby to investigate why a given region may accept a particular norm while rejecting another, as well as understanding how variations between regions in undergoing normative change can be understood (Acharya, 2004: 269).

Whilst the concept is certainly a useful one, and its future application may yield further refinements, a more holistic basis from which to analyse the emergence, development and utility of norms, is that of the norm life cycle, as developed by Finnemore and Sikkink (1998). While the concept is dated, and limited in many ways, it does provide the most useful basis from which to conceptualise norm development analysis for the purposes of this study.

2.4   The Norm Life-Cycle Concept as a Tool for Understanding Norm Development Processes

Through their work on international norm dynamics and political change, Finnemore and Sikkink (1998) offered the basis for an approach which facilitates an analysis of norms and of the manner in which they change forms and phenomena of international organisation. Finnemore and Sikkink argued that norms evolved in a patterned *life cycle*, and that different behavioural logics dominated different segments of the life cycle. An enhanced analysis of these behavioural logics, through an assessment of state behaviour and discourse, argued Finnemore and Sikkink, should therefore provide an assessment of norm development and utility in each stage of the norm life cycle.

Finnemore and Sikkink argued that norms, as a standard of appropriate behaviour for actors with a given identity, involving both inter-subjective and evaluative dimensions, developed through a life cycle comprised of three stages or phases, termed *norm emergence*, *norm cascade*, and *norm internalisation*. The manner in which a norm emerged in international society, was taken up by state actors, and demonstrably impacted upon state behaviour, argued Finnemore and Sikkink, could usefully be observed through the application of this norm life cycle concept.

Norm emergence, the first stage in the life cycle of a norm, was characterised by persuasion by norm entrepreneurs and norm brokers, in an attempt to convince a critical mass of states, who then become norm leaders, to embrace new norms. It should be stressed here that norms were not presented as simply 'appearing' in international society, but that they were considered to be actively created and propagated by normative agents who held strong notions about appropriate or desirable behaviour within states. Here, norm entrepreneurs were critical for norm emergence, as these called attention to certain issue-areas, or in some cases were able even to create 'new' issue-areas where none had existed before, through the use of discourse which framed, (re)interpreted and loaded issue-areas with value judgements (an activity which social movement theorists have referred to as 'framing') (Finnemore and Sikkink, 1998: 895 - 896).

As Finnemore and Sikkink highlight, the construction of cognitive frames is an essential component of the political strategies of norm entrepreneurs, as, when successful, newly developed frames of reference resonate with broader public understandings and are adopted as new discursive and cognitive frameworks on issue-areas. Of importance, in particular for the current research, is the understanding that in the process of framing, norm entrepreneurs face firmly embedded alternative norms and reference frameworks that create alternative perceptions of appropriateness and logic, which results in discrepancies between old and new norms, leading

to a process of norm contestation. This normative contestation, note Finnemore and Sikkink, has important implications for understandings of the manner in which the logic of appropriateness relates to norms. Efforts to promote new norms of course take place within the standards of appropriateness defined by prior norms, an element elaborated upon by Acharya in the concept of norm localisation, and to challenge existing and dominant logics of appropriateness, norm entrepreneurs may need to be explicitly 'inappropriate' in the advancement of new norms (Finnemore and Sikkink, 1998: 897).

Finally, the institutionalisation of a new norm is an important factor in its success and progression through the norm life cycle. Norm entrepreneurs require some form of organisational platform from and through which to promote new norms, and, in most cases, a norm is required to become institutionalised in specific sets of international rules and organisations before it can reach a threshold level of support and move forwards in its development. Therefore, codification of the norm, its institutionalisation, and the support of state actors is important for an emerging norm to become entrenched in international society. Such institutionalisation, it is argued, contributes to the possibility for a norm cascade to occur both by clarifying what the norm in itself entails, and what constitutes a violation of said norm (which can often be a matter of some disagreement among actors) (Finnemore and Sikkink, 1998: 899 - 900). An important caveat here is that institutionalisation is not necessarily a precondition for the occurrence of a norm cascade, and can follow upon the initiation of a norm cascade. Nonetheless, institutionalisation is an important element in the progression and development of a norm.

Once a new norm has in some manner achieved codification and institutionalisation and a critical mass of actors have adopted the norm, a threshold or tipping point is reached, and a norm cascade is initiated. What precisely is found to constitute a critical mass will invariably depend upon the content of the emergent norm itself. Finnemore and Sikkink argue that some states may be critical to the adoption of a norm, and others less so. Yet what constitutes a 'critical state' will vary very much depending on the content of the norm. One criterion offered is that a critical state is one without the support of which the achievement of the substantive norm goal is compromised. States can be critical either due to their preponderance within international society, or due to elevated moral stature on an issue area (Finnemore and Sikkink, 1998: 901). However, what is clear is that without the support of so-called 'critical' states, and without some form of institutionalisation and codification following an initial process of norm contestation, the norm cascade phase of the norm development life cycle cannot be attained.

The *norm cascade* phase is characterised by a dynamic of imitation as norm entrepreneurs and those states which have adopted the emergent norm, now so-called norm leaders, attempt to socialise other states to become norm followers (Finnemore and Sikkink, 1998: 895). Here the notion of norm-socialisation is drawn upon, a process whereby states and state agents are 'socialised' through their interactions with other states, state agents and international institutions to adopt new norms or to internalise new roles.

The norm cascade phase, then, is characteristic of active processes of international socialisation intended to induce norm-breakers or norm-agnostics to become norm-followers. Within the context of international relations, the process of socialisation may involve diplomatic praise or censure, both bilateral and multilateral, which can be reinforced by material sanctions and incentives. States are however not the only agents of socialisation in international society, and networks of norm entrepreneurs and international organisations can also act as agents of socialisation through the use of awareness, advocacy and activism mechanisms (Finnemore and

Sikkink, 1998: 902). Important in the norm cascade phase are notions of legitimation and esteem. States do not necessarily wish to be seen by others as rogues or pariahs, or as out of step with the remainder of states, and may for that reason adopt emergent norms which have gained the support of critical states (Finnemore and Sikkink, 1998: 903). As argued by Finnemore and Sikkink, if the notion of 'community of states' is employed, the importance of esteem and legitimation are enhanced, as any member of any community must be seen to be adhering to the norms which bind and guide that community. Therefore, as an increasingly larger number of states adopt a norm, and the norm becomes increasingly accepted, codified and entrenched within states, so it can be expected that increasingly more states will come to adopt the norm. Increasingly, then, an emergent norm not only comes to be adopted, but also to be internalised by states. The final stage in the norm life cycle, norm internalisation, is hereby attained.

Norm internalisation, the final stage in the norm life cycle concept, is said to occur when a norm has acquired a taken-for-granted quality, and is no longer considered a matter of broad public debate (Finnemore and Sikkink, 1998: 895). Norms become internalised by actors to the degree that conformance with the norm is almost automatic, and for this reason internalised norms can be both extremely powerful (as behaviour which adheres to the norm is not questioned) and difficult to discern (as actors do not seriously consider or discuss whether or not to conform to the norm) (Finnemore and Sikkink, 1998: 904). It is in this, final, stage of the norm development or life cycle that a norm is no longer considered emergent by Finnemore and Sikkink, but entrenched, or salient if following the logic of Cortell and Davis.

It should be noted that the progression of a norm from emergence to cascade and finally internalisation is by no means to be considered an inevitable process, and Finnemore and Sikkink highlight that many emergent norms fail to reach a tipping point (1998: 895). Norms may therefore emerge, but fail to become institutionalised and codified. Norms which find an institutional platform, and which receive the support of 'critical' states, may not reach a tipping point. In addition, a norm which has reached a tipping point and appears to cascade in international society may never become internalised, and may remain the subject of norm contestation, processes of localisation, and competing efforts at socialisation for a long time, failing therefore to become truly internalised.

Finnemore and Sikkink, whilst recognising this constraint to the applicability and analytical value of the norm life cycle concept, do however argue that norms which adhere to certain conditions appear to enjoy more success than others. For one, norms held by states widely viewed as successful and desirable models within states, it is argued, are more likely to become prominent and diffuse than norms held by less successful states. On this basis, so-called Western norms are argued to be more likely to diffuse throughout international society than non-Western norms. Similarly, norms that advance universal claims about what is good for all people in all places (such as many Western norms) would appear to enjoy greater expansive potential than localised and particularistic normative frameworks. This caveat, whilst an important observation, is limited however in its analytical value. It is not, for example, elucidated whether a 'Western' norm is one that arises in the 'West', one that receives the support of the 'West', or one that conforms to the dominant political form of organisation in the 'West', that of political Liberalism. This caveat therefore requires further investigation and interrogation.

In addition, the relationship between new normative claims and existing normative frameworks can influence the adoption of a new norm. This relationship is applicable both in terms of the relationship between new norms and existing norms at the global level, as well as new norms at

the global level and existing norms at the local level. In terms of the latter relationship, the concept of norm localisation becomes a useful one. In terms of the former relationship, norm contestation and the logic of appropriateness, or perhaps of inappropriateness, come into play more clearly. Concepts of cultural match and of norm socialisation will also come into play here, as the power and the persuasiveness of a new normative claim are tested in relation to existing normative frameworks. This could perhaps aptly be labelled as a process of assessing the 'normative fit' within the social context in which it has arisen, and to which it is to be applied.

Finally, Finnemore and Sikkink argued that major events within international society appear to either accelerate or prevent the spread of new norms. Here, for example, the end of the Cold War appears to have opened doors to normative claims that had been inadmissible throughout much of the 20th century. Major events in international society appear to have the ability of impacting starkly on the normative social context within which international organisation takes place, which appears apparent if international society is considered as a social one composed of social actors; states. Notions of 'world time', then, allow for the dramatic expansion of new norms and create new opportunities for norm entrepreneurs, as much as they can restrict and impede upon the development and expansion of new norms at other times or in other contexts (Finnemore and Sikkink, 1998: 906 - 909).

The norm life cycle concept provides a useful basis from which to analyse norm emergence, norm development, and norm utility in international society. In particular, through the notions of norm emergence, norm cascade and norm internalisation, it is possible to generate an understanding of the role that norms play at different stages of their own development, and the factors that impact on norm development and utility at each step of the way. It also provides a platform from which to enhance the understanding that norms do not simply emerge and become internalised. Rather, the norm life cycle concept is useful in that it is able to incorporate understandings of the complex nature of norm development, of the importance of inter-subjectivity, of norm contestation and socialisation, of norm localisation, and of the importance of codification and institutionalisation in assessing the development and (potential) impact of a norm.

However, the norm life cycle concept contains inherent limitations and deficiencies, which must be acknowledged here and, where possible, bridged as best as possible, if the concept is to be meaningfully applied. For one, and as is acknowledged by Finnemore and Sikkink, the danger of the norm life cycle concept is that it can be seen to portray norm development as a linear process. This is of course not the case, and norms which emerge are not considered as automatically being capable of successfully passing through the norm life cycle. However, it should be emphasised again that norm development is *not* a linear process, and the norm life cycle is useful more for illustrative purposes than for predictive purposes. Norm development can be progressive or regressive, and norms can emerge and cascade before becoming irrelevant or replaced, and thus never becoming internalised. Alternately, norms can emerge but, due to contestation and a lack of 'normative fit', fail to become endorsed, codified or institutionalised. Therefore, norm development can be progressive or regressive, depending entirely on the circumstances under which norms emerge and develop, the content of the norm, and the 'normative fit' of the norm to the social context.

However, the norm life cycle concept, whilst not able to predict the precise form of norm development does provide useful indications for where to look for norm development, and how to recognise it when it is witnessed. If norms emerge, appear to enjoy the support of critical states,

and find institutional platforms which allow for codification, then it could reasonably be assumed that a cascade may take place. In turn, if phenomena are witnessed which appear to indicate a cascade, then it may be reasonably assumed that the norm would become more or less internalised (or more 'thick' or 'thin') by states. For this reason, despite its lack of predictive capacity, the norm life cycle is useful in that it allows for the observer to make sense of phenomena witnessed in the empirical world.

A further limitation, which has been made reference to elsewhere, is the norm life cycle's reliance on the assumption of the stability of norms throughout norm development. Norms are of course not stable, and are subject to change and alteration at every step of development. Similarly, the existing norms that new norms compete with are also not to be considered stable, and may or may not be impacted upon by newly emergent norms. The reliance on notions of norm stability however applies to Constructivist work across the spectrum, and is an inherent limitation to the approach in its entirety. However, one way around this assumption of the stability of norms is to strengthen the focus on the social context in which norms emerge and develop, to assess the 'fit' of the norm to the prevailing normative context, and to test whether or not the norm appears more or less stable at every stage of development.

Building on the above, it must also be argued that the norm life cycle concept does not sufficiently take into consideration the importance of local social contexts, and focuses more on the prevailing international social context. Whilst the nexus between the international and the domestic in norm development remains under-researched, and therefore few meaningful concepts could be applied to address this challenge, the concept of norm localisation is a useful one which, at least to some degree, may assist in bridging this gap both in the norm life cycle concept and in Constructivist literature.

Each of the phases of the norm life cycle, as elaborated above, of course also have inherent limitations in their conceptual validity when it comes to analysing norm development and utility. In the norm emergence phase, a clear limitation is that the importance of norm indeterminacy is not taken adequately into consideration. Norm indeterminacy refers to the fact that the development of a norm, once created by norm entrepreneurs, cannot be controlled or directed in a clear manner. As increasingly more actors take the norm on board, and before the norm is clearly codified, various interpretations of the norm may arise, leading to contestation not only on the basis of the validity of the new norm in relation to existing norms, but also on interpretations of the meaning of the new norm itself. Once a norm is created, and before it is codified, there is no means of controlling the manner in which the norm will be taken up and interpreted. Of course norm socialisation plays an important role here, as actors attempt to socialise other actors to adopt their interpretation of the new norm. However, the limits to socialisation on the basis of indeterminacy must be acknowledged.

In the cascade phase of the norm life cycle concept, it should also be highlighted that insufficient focus is placed on ongoing processes of norm contestation and localisation. While a norm may have become institutionalised and codified, reducing much of the norm contestation which occurred during norm emergence, contestation nonetheless will still take place during the cascade phase, as actors contest the meaning of the norm in its application, and contest interpretations of the situations in which the norm is applicable. Further, norm localisation will in all likelihood take place during the cascade phase of the norm life cycle, as the norm may be adapted to suit local contexts, which impacts not necessarily on the spread of the norm *prima*

facie, but certainly does impact on the application of the norm, as differences between regions and individual states arise.

In the internalisation phase, it must be emphasised again that norms do not cause behaviour, but that they can only be assumed to make behaviour more or less possible through their enabling and constraining functions. Therefore, norm internalisation cannot be tested by an assessment of the degree to which actors comply with the content of the norm. Rather, the degree to which a norm has become internalised, or salient, should be tested through an analysis of state behaviour and discourse surrounding that behaviour. Here, situations both of norm-compliance and norm-violation are important, as the violation of a norm does not necessarily weaken the norm in and of itself. Rather, the degree to which states make reference to normative frameworks either in the justification of their actions or their violation of the norm provides a better assessment of the degree to which the norm can be considered internalised or salient.

Finally, it should be noted that the meaningful application of the norm life cycle concept appears to rest on the availability of complete information. Therefore, it is probably correct to argue that the approach can more usefully be applied to a historical analysis of norm development than to ongoing norm development processes. This weakness also relates to the lack of predictive capacity of the norm life cycle concept. However, and as has been alluded to elsewhere, this weakness appears to be inherent to most if not all Constructivist work, and, more broadly, to the social sciences at large. Whilst little can be done to bridge this gap in knowledge generation, its recognition and acknowledgement should serve to assist in balancing both the analysis and evaluation of findings.

Thus, bearing in mind the limitations and the attempts above at bridging these, the norm life cycle appears to remain the most useful frame of reference when exploring norm emergence, development and utility in international society. Yet the norm life cycle approach has not been drawn on heavily in International Relations literature, and its empirical application is scarce. This is however reflective of most Constructivist work, which has weighed in heavily on the side of developing International Relations theory, and disappointingly lightly on the side of applying said theory to empirical analysis. Therefore, it is important that consideration be given to the manner in which the norm life cycle concept can meaningfully be applied to the purposes of this study; that is, to the analysis of the emergence and development of the responsibility to protect, to an analysis of the impact of the responsibility to protect in the responses of the UN and of the AU to the conflicts in Darfur, and, drawing on this analysis, an assessment of the utility of the responsibility to protect norm to future responses to conflicts in Africa in which atrocity crimes are committed.

To meaningfully understand change within international society, both the change itself, as well as the context in which change takes place must be understood, if the meaning and impact of that change is to be fully appreciated. Therefore, in the field of International Relations, it is not important merely to ask the 'what' question, but also the questions of 'how possible'? The next chapter will therefore provide an analysis of how norms related to interventions on humanitarian grounds evolved prior to, during, and following the end of the Cold War era. Chapter 4 will then trace the emergence and development of the responsibility to protect as a norm in international society, while Chapters 5 and 6 will assess the manner in which this norm impacted on decision-making in relation to responses to the Darfur conflicts from 2003 onwards. Chapter 7 will, on the basis of the findings generated, reflect on the utility of the responsibility to protect norm, and on

how the norm may develop in future, as well as on how future responses to conflicts characterised by atrocity crimes in Africa may be formulated.

Chapter 3

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The Evolution of Normative Discourse Surrounding Interventions on Humanitarian Grounds

3.1 Introduction

As has been noted previously, the concept of interventions conducted on humanitarian grounds in international society is a controversial and disputed one, but also not a new one. The roots of the concept, as it has come to be understood in contemporary International Relations discourse, are usually traced back to 19th century state practice and international legal theory. During the 19th century no general prohibitions on warfare and the use of force existed within international society, yet a sense of necessity to justify the use of force on moral and political grounds, in particular in accordance with the traditions of just war, prevailed. International legal scholarship here traces the emergence of a doctrine of intervention based on the foundational principles of humanity, according to which states had the right to intervene, by force, "in cases in which a state maltreats its subjects in a manner which shocks the conscience of mankind" (Rytter, 2001: 126).

At least seven such instances of military intervention to protect persons other than the citizens of the intervener can be identified between the 19th and 20th centuries. In all instances, European states, employing humanitarian claims, utilised military intervention in situations where the principles of humanity were said to have been abused. On this basis, Great Britain, France and Russia intervened between 1821 and 1830 in the Greek War of Independence to put a halt to reported Turkish massacres and the suppression of the revolutionary Greek population (Finnemore, 2003: 58 and Rytter, 2001: 126). The five European Great Powers intervened in Lebanon between 1860 and 1861 to stop what were described as massacres of Christian Maronites, perpetrated by the Druze under Turkish oversight (Finnemore, 2003: 58 and Rytter, 2001: 126). Austria, France, Italy, Prussia and Russia similarly intervened in Crete between 1866 and 1868 to protect the Christian population from purported Turkish oppression (Rytter, 2001: 126). The European Great Powers interfered again, and Russia directly intervened, in the Balkans between 1875 and 1878 in favour of Christians in Bosnia, Herzegovina and Bulgaria, who had reportedly been subjected to massacres (Finnemore, 2003: 58 and Rytter, 2001: 126), and between 1894 and 1917 the European Great Powers intervened on behalf of Christians who were apparently being massacred by Armenians (Finnemore, 2003: 58). Similarly, the European Greats intervened in Turkey between 1903 and 1908 in favour of the 'oppressed' Christian Macedonian population (Rytter, 2001: 127).

Whilst intervention on humanitarian grounds appears to have remained an exclusively Western/Christian concept throughout most of the 19th century, significant changes to the concept occurred in the 20th century. The expansion of the understanding of 'humanity', which brought about the end of slavery and colonialism, argues Martha Finnemore, also brought about significant changes in the manner in which humanitarian interventionism was viewed. This expansion of humanity both directly and indirectly contributed to change in the normative structure of international society. It contributed directly by creating identification with, and legitimating the normative demands of, people who had previously been invisible and without a voice in the politics of the West, and contributed indirectly through the promotion and legitimation of new norms of sovereignty related specifically to anti-colonialism and self-determination. As Finnemore argues, slavery and colonialism were two large-scale activities in which state force

intersected with humanitarian claims in the 19th century. Slavery in particular, the conceptual opposite of intervention on humanitarian grounds, involved the use of state force to deny and suppress claims of humanitarianism, rather than to provide protection to the vulnerable and oppressed (Finnemore, 2003: 66 - 67). In a similar fashion, colonialism connected views about humanity with understandings about what constituted legitimate sovereignty and political organisation. Colonialism was, in part, justified as a humane form of rule, bestowing humanity with the concept of the *mission civilisatrice.* Decolonisation, however, involved reconceptualising the concepts of *humane* and *humanity*, and the new sovereignty norms that emerged from that re-conceptualisation proved extremely important to the subsequent practice of intervention on humanitarian grounds. As changes of social purpose changed throughout the twentieth century, therefore, so too did attitudes towards intervention (Finnemore, 2003: 66 - 67).

3.2   The Conduct of Interventions and the Use of Humanitarian Claims During the Cold War

Developments in the early 20th century limited the impact of this changing normative attitude towards interventions on humanitarian grounds however. Dominated by the common experience of two world wars, states appeared convinced that recourse to the use of force to solve international disputes was not only a violation of state sovereignty, but, over the long term, also proved detrimental to international society as a whole (Rytter, 2001: 123). Based on this understanding, the UN Charter, which formally created the United Nations in 1945, prohibited the use of force between states, except under two strictly proscribed circumstances. First, states were permitted to resort to the use of force as a means of self-defence against an armed infringement of their territorial integrity and sovereignty, as outlined in Article 51 of the Charter. Second, states were permitted to resort to the use of force as and when authorised by the UN Security Council as enforcement action, as allowed for under Chapter VII of the Charter. All other forms of the use or threat of the use of force between states were strictly prohibited. The Charter therefore made no formal provisions for interventions on humanitarian grounds, which had already been developing conceptually at the international level. The scope for creative interpretations of the Charter was also limited. Article 2(4) of the Charter, for example, set aside a state's historic right to resort to the use of force, arguing that member states should refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state. Article 2(7) of the Charter further proscribed intervention, armed or otherwise, in international society, arguing that:

> nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the jurisdiction of any state […] but this principle shall not prejudice the application and enforcement measures under Chapter VII (Charter of the United Nations, 1945: Article 2(7)).

Chapter VII dealt with collective responses to threats to international peace and security, whereby the Security Council had authorised the use of force on the part of Member States. Article 2(7) therefore vested in the UN Security Council the sole legitimacy for authorising the use of force in international society. Interestingly however, for the purposes of the present study, is historical evidence that the notion that a state could conduct its affairs in any manner it pleased within its own territorial confines, and therefore the prohibition on the interference in the domestic affairs of states enshrined in the UN Charter, did not receive automatic endorsement. Rather, as Connaughton notes, this prohibition had more to do with the fact that, in the new post-war relationship between states, there was no clear vision as to the precise place of domestic sanctity

in world order. John Foster Dulles noted this concern in 1945 when the United Nations was founded, writing that:

> Article 2(7) is an evolving concept. We don't know fifteen, twenty years from now what in fact is going to be within the jurisdiction of nations. International law is evolving, state practice is evolving. [...] Let's just let things drift for a few years and see how it comes out (in Connaughton, 2001: vii).

Whilst Dulles could not have known how prophetic his words may have been at the time, several challenges to the new norm of non-interventionism (and to the concept that the Security Council should be the sole body vested with the right to authorise the use of force in international society) were to emerge throughout the Cold War, which dominated the work of the United Nations for the first half-century of its existence. Yet these challenges were slow to be recognised, and even slower to be addressed. The first genocide in Rwanda, for example, which occurred between December 1963 and January 1964 and in which thousands of Tutsis were killed, passed largely unnoticed (De Heusch, 1995: 5). Indeed, the routine response to humanitarian emergencies throughout the Cold War was one of disinterest and non-intervention, and thus large-scale massacres of Tutsis in Rwanda and Burundi, of Ibo in Biafra, and of East Timorese passed did not elicit widespread condemnation or international moral outrage. Where interventions were conducted, these were always done so on a unilateral basis, and the humanitarian credentials presented by the interventions were consistently rejected; so much so that India, Vietnam and Tanzania framed their justifications for intervention in East Pakistan/Bangladesh (1971), Cambodia (1978 – 1979) and Uganda (1979) respectively within the predominant norms of self-defence, military retaliation or Cold War politics (or a combination of the three). Indeed, even India and Tanzania, which had both initially attempted to frame their interventions within a logic of appropriateness based on humanitarian grounds and human rights norms soon abandoned these efforts and repositioned their justifications based on a normative discourse of self-defence (Wheeler, 2000[a]; Finnemore, 2003; Cotton, 2001; Rytter, 2001; Howard, 2008; Berdal and Leifer, 1996).

State practice and the discourse surrounding this practice throughout the Cold War strongly indicated a restrictionist approach to the principle of interventions on humanitarian grounds. Indeed, the norms of state sovereignty and non-intervention were periodically reinforced throughout the Cold War. In 1965 the UN General Assembly adopted the *Declaration on the Inadmissibility of Intervention* which denied the legal recognition of intervention on any grounds. In 1970 the General Assembly, without holding a vote, adopted the *Declaration on the Principles of International Law Concerning Friendly Relations and Co-operation among States*, which accepted that any use of force between states not explicitly allowed for in the UN Charter was incompatible with international law and reaffirmed that:

> no state or group of states has the right to intervene, directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other state (in Rytter, 2001: 139).

In the 1975 Helsinki Final Act of the Conference on Security and Co-operation in Europe (CSCE – now Organisation for Security and Cooperation in Europe [OSCE]), the then 35 participating states, including the Soviet Union and the United States, adopted a *Declaration on Principles* which, on the principle of the non-use of force, referring to Article 2(4) of the UN Charter, argued that

> no consideration may be invoked to serve to warrant resort to the threat or use of force in contravention to this principle (in Rytter, 2001: 140).

In 1986 the International Court of Justice (ICJ), in its Nicaragua Case, investigated whether any legal exceptions to the non-intervention norm existed. The case was brought before the court by Nicaragua against the United States of America, the former arguing that by supporting armed movements and mining its ports, the United States was acting in contravention of international law. In its judgement the Court found no support in state practice for a customary right of intervention. The Court further argued that establishing such a right would require a "fundamental modification of the customary law principle of non-intervention" (International Court of Justice, 1986). In its judgement the Court drew on the findings of the International Law Commission (ILC), which had previously established that the prohibitions on the use of force contained in the UN Charter had the character of *jus cogens*, that is, a norm which is accepted and recognised by states as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character (Wheeler, 2000[a]: 45). Notably, the findings of the Court should not be weighted too heavily, as it did not consider interventions in cases of mass human rights violations. Nonetheless, in 1987 the trend of reinforcing traditional interpretations of the norms of state sovereignty and non-intervention continued with the adoption by the General Assembly of the *Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations*, which affirmed that:

> no consideration of whatever nature may be invoked to warrant resorting to the threat or use of force in violation of the Charter (United Nations General Assembly Resolution 42/22, 1987).

As Martha Finnemore notes, the critical feature of international society throughout the Cold War for the development of a norm of intervention on humanitarian grounds was the nature of sovereignty under the Cold War spheres of influence system, translating into a general acceptance during the Cold War and the struggle for ideological supremacy that sovereignty in international society was strongly tied to territorial integrity. A firm transition from a conceptualisation of the ruler serving as the embodiment of the state (*l'etat,c'est moi*) in the 18th century to physically demarcated territory serving as the state had been made since the Second World War, and had become firmly entrenched during the Cold War period. This was a process strongly reinforced through the collective experience of decolonisation, in which states in the global South were granted or fought for their independence and territorial sovereignty; something that was keenly defended during the Cold War, or at least hawked to the highest bidder in the ideological warfare that characterised this period in history. Governments could rise and fall, ethnic compositions could shift with migration, but territorial boundaries remained fixed, and could not be violated under any circumstances. This norm became reinforced and indeed entrenched in declarative terms both in state discourse and in state behaviour during this time (Finnemore, 2003: 126).

3.3   Humanitarian Claims in the Post-Cold War Era:
Constructing Normative Frames for Intervention

Yet immediately following the end of the Cold War, threats to international peace and security started to take on different forms, and were interpreted in new ways. The response to these were both complex and, in many instances, new. The UN, quickly realising that traditional forms of peacekeeping were proving insufficient, moved towards multi-dimensional Peace Support Operations (PSOs). Outside of the UN system an increasing array of regional security arrangements sprung up. Humanitarian emergencies were of course no new phenomenon, and,

as previously demonstrated, had existed well before the Cold War had started, and had persisted during the bi-polar era. However, what soon became markedly different was how states responded to these emergencies. The first noticeable shift occurred with a small intervention by states in Northern Iraq in 1991. Although a limited intervention, the intervention did open debate on the legality and legitimacy of interventions conducted on humanitarian grounds. (Wheeler, 200[a]; Connaughton, 2001; Rytter, 2001; Seybolt, 2007). While the discourse surrounding this intervention was extremely contentious in 1991, it was markedly less so in 1992, when states contemplated an intervention in Somalia. When dealing with the unfolding humanitarian emergency in Northern Iraq one year prior, members of the UN Security Council had emphasised their opposition to the use of force solely on humanitarian grounds, and authorised the Council to intervene in the emergency based on concerns of regional insecurity, emphasising that the limited intervention be authorised on the basis of restoring and maintaining international peace and security. However, in the case of Somalia, states were prepared to authorise a Chapter VII intervention based explicitly on stated humanitarian concerns. The intervention was groundbreaking also in that the members of the Security Council for the first time assigned to themselves a moral responsibility to intervene on behalf of the victims of famine and civil strife (Connaughton, 2001; Laitin, 2004; Wheeler, 2000[a]; Kissinger, 1992; Lewis and Mayall, 1996; Finnemore, 1996[b]; Melvern, 2001; Seybolt, 2007; Barnett, 1997).

While the failure to act in a timely manner during the Rwandan genocide of 1994 badly damaged the UN and left many observers sceptical of the weight of humanitarian normative claims in international society, states at large appear to have taken lessons both from the failure of action in Somalia, and from the failure of inaction in Rwanda. While the non-intervention in Rwanda in one manner reflects the decline of normative claims to the necessity and legitimacy of interventions on humanitarian grounds, in another it speaks to the strength of humanitarian claims. The Security Council sat in endless sessions numerous times each day to deliberate on events in Rwanda, and was unable to attain consensus on the way forward. The Africa Group at the UN pushed hard for an armed intervention, something it had not previously done. And sovereignty norms were never invoked to rule out the possibility of an intervention in Rwanda. Thus, the non-intervention in Rwanda could be attributed to a decline in the power of normative claims legitimising humanitarian interventions as much as it could to a misplaced desire on the part of states to uphold the reputation of the UN in an era in which its relevance was increasingly becoming questioned. Thus, despite the lack of an intervention, the genocide in Rwanda firmly entrenched discourse surrounding interventions on humanitarian grounds within international society, and subsequent evaluations of events in Rwanda consistently argued that states had failed by not intervening when they could have, and not that states had been right not to intervene. The genocide in Rwanda would serve, then, to fundamentally alter the weighting of normative claims to sovereignty, human rights and humanitarian interventions (Barnett, 1997; Melvern, 2001; Hintjens, 1999; Khadiagala, 2004; Connaughton, 2001; Feil, 1998; Finnemore, 2003; Wheeler, 2000[a]; De Heusch, 1995; Jones, 1995; O'Halloran, 1995; Annan, 1999; United Nations Press Briefing, 2005)

While the intervention by the North Atlantic Treaty Organisation (NATO) in Kosovo in 1999 served to polarise the Security Council, it did bring discourse surrounding the normative, legal and moral dimensions of interventions on humanitarian grounds to the fore once more, and reinforced a developing notion of the legitimacy of interventions conducted on humanitarian grounds in international society (Papasotiriou, 2002: 42; Wheeler, 2000[a]; Rytter, 2001; Herring, 2000; Turner, 2003; Ainsley and Brown, 2005; Auerswald, 2004; Redd, 2005; Cook, 1999; Blair, 1999;

Connaughton, 2001; Independent International Commission on Kosovo, 2000; Bellamy, 2005; Non-Aligned Movement, 2000) UN Secretary General Kofi Annan sought to draw lessons both from the Kosovo conflict, and from the debates surrounding humanitarian intervention which the NATO intervention had sparked. In his address to the 54th session of the General Assembly in September 1999, Annan reflected on the prospects for human security and humanitarian intervention in the coming century. Annan recalled the failures of the Security Council to act both in Rwanda and in Kosovo, and challenged UN member states to:

> find common ground in upholding the principles of the Charter, and acting in defence of our common humanity. If the collective conscience of humanity… cannot find in the United Nations its greatest tribune, there is a grave danger that it will look elsewhere for peace and for justice (in International Commission on Interventionism and State Sovereignty, 2001: 2).

Annan had recognised the inherent danger posed by interventions on humanitarian grounds to the prevailing systems of international organisation. If states could not find a response to both the legal and the moral challenges posed by humanitarian crises, and multilateral bodies such as the Security Council were unable to respond to these challenges in a decisive manner, then either threats to international peace and security would continue to rise or the Security Council would increasingly find itself bypassed by unilateral action or collective intervention on the part of willing states. Both options however threatened to fundamentally undermine the UN and international society as it had come to be known.

The international intervention in East Timor in 1999 highlighted that attitudes towards interventions on humanitarian grounds had evolved somewhat (Cotton, 2001; Wheeler and Dunne, 2001; Dee, 2001; Connaughton, 2001; Bell, 2000; Seybolt, 2007). On one level, the legitimacy of the intervention was less contested than were both its legality and the means of implementation. It was broadly agreed that a response of some form was required, and, as the levels of violence escalated, discussion quickly turned from whether or not to intervene towards the method of intervention. It was apparent, in particular following the Kosovo intervention, that Western nations could not intervene in East Timor without the consent of the Security Council. Russia, China and most Asian governments however argued that Security Council consent would only be forthcoming if the Indonesian government requested an intervention. Through a range of mechanisms, Indonesian consent for the intervention was secured, and, following authorisation by the Security Council, the intervention forces were rapidly mustered and deployed. Taylor Seybolt argues that, while the issue may have been framed under the notion of 'consent', this was in fact a reflection of the understanding that no humanitarian action could be mounted in the absence of political engagement, which had been learned through previous international engagements in Somalia and Kosovo in particular (2007: 92). While in the case of East Timor the consent of the Indonesian government could be secured, it was recognised that in future cases of humanitarian emergency such consent might not be forthcoming, and that states would be faced with dangerous choices under such circumstances. Recognising these tensions, UN Secretary General Kofi Annan wrote:

> the tragedy of East Timor, coming so soon after that of Kosovo, has focused attention once again on the need for timely intervention by states when death and suffering are being inflicted on large numbers of people, and when the state nominally in charge is unable or unwilling to stop it (in Connaughton, 2001: 244).

Kofi Annan, writing after the rapid succession of interventions in Kosovo and East Timor in 1999, and reflecting on the string of interventions which had been conducted throughout the 1990s, as well as those which had not been conducted, concisely captured both the debate on humanitarian

interventions and the challenges these posed to international society as a whole at the turn of the 21st century. Annan well understood that states, acting in defence of human rights and formulating comprehensive responses to complex conflicts in the maintenance of international peace and security were no longer able to act in an indifferent manner in situations of mass human atrocity. Sovereignty, as Annan had argued previously, was no longer, and perhaps had never been, such an inviolable concept, and claims to the exclusive nature of sovereignty could no longer justifiably be utilised to excuse the gravest of human rights violations. Yet at the same time, Annan also recognised that the concept of state sovereignty, and particularly the norms of non-intervention and the non-use of force, remained as salient as ever, particularly among developing countries. The stakes were high. Undermining the sovereignty norm risked undermining the basis of international organisation. Yet allowing atrocity crimes to continue and to pose increasingly graver threats to international peace and security similarly risked undermining the UN and the basis of international organisation. A useful approach for the way forward was urgently required, as international society could no longer continue to operate in the realm of legal and moral ambiguity.

Annan had indeed well captured the developments of the 1990s in relation to the changing discourse surrounding interventions on humanitarian grounds. Individually, none of the interventions conducted served to fundamentally alter the discourse and the legal or moral underpinnings of a norm of intervention on humanitarian grounds. Thus, no intervention can correctly be labelled as representing a "tipping point", following which interventions on humanitarian grounds were framed in revised discourse, or in which the norms of sovereignty, human rights and non-intervention were re-posited in a new logic of appropriateness. Yet each intervention brought with it unique developments, which served to alter the discourse surrounding state behaviour. The legitimisation of the intervention in Iraq brought with it the concept that humanitarian emergencies could be reviewed by the Security Council, and that the Council could authorise some form of action in response to these. The intervention in Somalia advanced this notion, and entrenched the concept that humanitarian crises could represent threats to international peace and security. The non-intervention in Rwanda reminded states that they could not justifiably avoid action or the responsibility for taking such action, while the NATO intervention in Kosovo affirmed the dangers posed to the UN and the foundations of international order of unilateral or collective responses to humanitarian emergencies outside of the framework of traditional and rigid interpretations of the UN Charter. The intervention in East Timor perhaps witnessed a coming together of all of these developing normative strands, and added to the discourse the notion of responsibility; the responsibility of governments to uphold human rights standards and to ensure the adequate protection of their civilian population.

It is clear therefore that the legitimacy of interventions conducted on humanitarian grounds was coming increasingly under review. The British Foreign and Commonwealth Office, for example, presented legal argumentation in favour of interventions on humanitarian grounds, if conducted in accordance with certain criteria. As the legitimacy of such interventions was advanced, the notion of responsibility was inserted. African states, for example, argued during the Rwandan genocide that the Security Council was vested with a responsibility of intervention (Melvern, 2001: 109 and Khadiagala, 2004: 78). In East Timor, Kofi Annan expanded on this concept, threatening the Indonesian government that if it would not live up to its responsibilities towards it citizens, then states acting collectively would. It is therefore quite clear that a normative discourse surrounding threats to peace and security, the role of human rights, state sovereignty, interventions and appropriate standards of behaviour related to all of these changed significantly, framed within a new logic of appropriateness.

An important development in this regard came shortly after the Rwandan genocide and before the Kosovo intervention when, in 1996, Sudanese diplomat and scholar Francis Deng and his colleagues at the Brookings Institution, working on the question of how to provide better protection to internally displaced persons IDPs) during times of conflict, developed the concept of 'sovereignty as responsibility'. The argument advanced by Deng and his colleagues was that neither sovereignty as an institution nor the myths by which it had endured were any longer appropriate to prevalent global conditions, and that notions of sovereignty and of the state required deeper interrogation. Advancing a notion of 'sovereignty as responsibility', it was argued that, in order to be legitimate, sovereignty must demonstrate responsibility. Thus, governments, to be able to legitimately make sovereignty claims, were required to also demonstrate sovereign responsibility towards their populations, acting in a manner which both advanced and protected their welfare. Where governments failed to exercise this responsibility, it was argued, states could legitimately choose to intervene to provide the necessary remedial action. Thus, the normative principles of sovereignty, responsibility and accountability contained both internal and external dimensions.

The internal dimension related to the degree to which governments were responsive to the needs of their people and were accountable to the body politic. The external dimension in turn related to the degree to which states cooperated with other states to maintain the international order and to provide assistance when a state failed in its responsibilities towards its citizens. Sovereignty therefore referred not only to the inviolability of the state but also to the ability of the state to carry out its functions. States held the right to inviolability as long as they were responsive to the needs and wellbeing of their population. Where a responsible state was unable to provide for its population, it was required to request the assistance of other states. Failing this, Deng and his colleagues argued, the right to inviolability was ceded, and states were legitimately empowered to impose on the culprit state actions in response to the needs of the population which had not been able to escape conflict zones. Therefore, at the level of international organisation, sovereignty became a pooled function, to be protected when exercised responsibly and to be shared when assistance was required. Sovereignty therefore, it was advanced, constituted a dual right and responsibility; a right of non-interference constituted on the basis of responsibility, both inwards and outwards (Deng et. al. 1996).

Although an important development, the sovereignty as responsibility concept did not impact on the intervention debate meaningfully until five years after its development. However, the concept did contribute to a growing body of work on what the pillars of the post-Cold War era should be. Increasingly, the UN came to be employed as a mechanism to foster international order founded on non-threat based principles, and the role of the organisation as a contributor to global security was reconsidered and expanded. Within this context, the concept of 'international security' came to be increasingly investigated. During the Cold War, the UN embodied a state-centred conceptualisation of international security which had focused exclusively on inter-state conflict. As the organisation found itself, unpreparedly, dealing with intra-state conflicts, the definition of international security began to shift from states towards individuals and peoples. Increasingly, therefore, the concept of 'human security' emerged, which recognised that the security of individuals and peoples came before the security of the state, and that the state often represented not a source of security, but of insecurity. Former UN Secretary-General Boutros Boutros-Ghali had recognised this trend early on, and frequently urged the UN to stress the human foundations of security, arguing that the organisation should be as concerned with the security of peoples and individuals as it was with the security of states (Barnett, 1997: 566). The Canadian Foreign Minister, Lloyd Axworthy, appeared to concur with Boutros-Ghali, arguing:

Drawing on the experiences gained from the intervention in Iraq, the UN had appeared increasingly to grapple with this concept, and the early days of the Somali intervention, as one observer recalls, generated excitement within the corridors of the Secretariat. An insider account reveals that many UN officials recalled a sense of excitement and exhilaration during the early post-Cold War period, as, not only had they become unshackled from the Cold War, but their activism was now directed towards helping people rather than helping states. One UN official argued at the time that there were greater rewards from helping the victims of political turmoil than helping its instigators (in Barnett, 1997: 567). Whilst some member states feared that the UN was increasingly infringing on sovereignty norms, others championed the more ambitious agenda and cosmopolitan outlook that seemed to suggest a UN that was on the verge of fulfilling its initial, but long-delayed, promise (Barnett, 1997: 567).

This coupling of the internal-external nexus between human rights and international peace and security considerations also became institutionalised in other international organisations such as the European Union (EU) and the OSCE throughout the 1990s, as well as in the foreign policies of several states. As Finnemore noted, by the turn of the 21st century, international security could barely be said to exist without human rights protections (2003: 136). On the basis of these changing normative structures of international organisation, Finnemore concluded that, in the struggle between the principles of humanitarianism, sovereignty, non-interventionism and the non-use of force, the balance appeared to have shifted since the end of the Cold War, and that humanitarian claims now frequently trumped sovereignty claims. States might of course still not respond to humanitarian appeals, yet they no longer displayed reluctance due to a fear that interventions on humanitarian grounds would be denounced system-wide as illegitimate. On the contrary, Finnemore argued, contemporary intervention norms did more than merely 'allow' for humanitarian intervention; they actually required intervention on humanitarian grounds (2003: 79). Similarly, since the end of the Cold War, argues another observer, a greater acceptance had developed on the part of state actors that humanitarian intervention may be morally justifiable in extreme cases (Rytter, 2001: 144). Wheeler went further in his analysis, arguing that the apparent development of the norm of intervention on humanitarian grounds, despite its limitations and imperfections, was testimony to a humanity that cared more, not less, for the suffering in its midst, and a humanity that would do more, and not less, to end it (2000[a]: 283). Wheeler's hopes were echoed by British Prime Minister Tony Blair in 2001, when he promised publicly that, if Rwanda happened again, Britain would not walk away as it had done many times before, and insisted that states held a moral duty to provide whatever forms of assistance were required whenever these were required to prevent future genocide (Bellamy, 2005: 31).

Yet despite the expansion of discourse surrounding intervention on humanitarian grounds in the 1990s, and despite the hopes of politicians and academics alike that on this basis future atrocity crimes would be prevented or reacted to meaningfully, the fundamental tensions between the norms of sovereignty and human rights, and all the legal and moral quagmires these tensions entailed, had not yet been resolved. UN Secretary General Kofi Annan, recognising the inherent dangers, had touched on this theme numerous times before. In June 1998 for example, Annan had reflected on the challenges posed to the sovereignty norm in the modern age:

State frontiers, ladies and gentlemen, should no longer be seen as watertight protection for war criminals or mass murderers. The fact that a conflict is 'internal' does not give the parties any right to disregard the most basic rules of human conduct. Besides, most 'internal' conflicts do not stay internal for long. They soon 'spill over' into neighbouring countries (in Connaughton, 2001: 74).

Arguing that conflicts crossed sovereignty lines, and therefore responses to conflicts could not necessarily be designed on the basis of traditional sovereignty lines, Annan, in his speech at the opening of the 54th General Assembly in September 1999 made reference to a "developing international norm" in favour of intervention to protect civilians from "wholesale slaughter and suffering and violence" (in Newman, 2001: 244). Annan's comments sparked controversy, and the General Assembly entered into a wide-ranging debate on the legitimacy and legality of interventions on humanitarian grounds. Many, though mostly Western, governments argued that human rights considerations could indeed form a legitimate basis for the Security Council to authorise the threat and use of force. Many developing countries, supported by China and Russia, agreed that human rights considerations were important in the maintenance of international peace and security, but that the sovereignty norm could not be weakened on the basis of these (Wheeler, 2000[a]: 286). No middle ground could be found during these debates, and UN members agreed to disagree on the matter. Annan however was not satisfied, and in his Millennium Report to the General Assembly in September 2000 once more raised the issue. Recognising the pressing need for clarity, Annan posed a challenge to member states:

> If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that offend every precept of our common humanity (in International Commission on Intervention and State Sovereignty, 2001: 2)?

The Secretary General was pushing member states to find common ground on interventions conducted on humanitarian grounds, one of the core challenges facing the UN and the structures of international organisation in the post-Cold War era. International society could no longer afford to be polarised on the question, as this polarisation threatened to impact on the Security Council, on the international peace and security architecture, on human rights norms and frameworks, and on the norm of state sovereignty itself.

3.4 The Emergence of the Responsibility to Protect: Shifting the Sands of Normative Debate

In an attempt to respond to the challenge Kofi Annan had posed to states, the Canadian government launched the International Commission on Intervention and State Sovereignty (ICISS). At the United Nations Millennium Summit in September 2000, Canadian Prime Minister Jean Chrétien announced that the ICISS would be established to address the moral, legal, operational and political questions involved in developing broader international support for a new framework legitimising interventions conducted on humanitarian grounds (ICISS, 2001: viii). The Commission's mandate, broadly speaking, was to build a broader understanding of the problem of reconciling intervention for human protection purposes and sovereignty and, more specifically, to develop a global political consensus on how to move from polemics towards action in response to humanitarian emergencies (ICISS, 2001: 2).

The report of the Commission, released in December 2001 and titled *The Responsibility to Protect* from the outset argued that sovereignty was more than merely a functional principle in international relations, and that consequently sovereignty and the accompanying notion that all

states are equal under international law constituted the very basis upon which the UN was founded (ICISS, 2001: 7). However, the report also noted that state sovereignty did not include any normative claims to the unlimited power of a state to do as it pleased with its own citizenry. Rather, the Commission argued, sovereignty constituted not as much an inviolable right as an inviolable dual responsibility. Externally, every state was required to respect the sovereignty of other states to, in turn, have its own sovereignty respected. Internally, states were required to respect the dignity and the basic rights of all the people residing within the bounds of that state. In international and in internal human rights covenants, in UN practice, and in state practice itself, the Commission argued, sovereignty was increasingly being understood as a recognition of this dual responsibility; both towards other states and towards citizens. Sovereignty as responsibility, therefore, had become the bare minimum content of good international citizenship (ICISS, 2001: 8). The Commission, aligning itself closely to and expanding upon Deng's notion of 'sovereignty as responsibility', thus embraced a fundamental shift in the understanding of state sovereignty from an inherent right towards an inherent responsibility. States, in this thinking, could no longer claim their rights to sovereignty on the basis of their very existence, as had been possible in the Westphalian notion, but rather, would be recognised and respected as sovereign states *conditional* upon their adherence to this dual responsibility; responsibility both inwards and outwards.

Thinking of sovereignty in this manner, which was increasingly being recognised in state practice, the Commission argued, had a threefold significance. First, it implied that state authorities were responsible for the functions required to protect the safety and lives of citizens, and for the promotion of their welfare. Second, it suggested that national political authorities were both responsible to their own citizens internally and to international society at large, through the UN and through regional and sub-regional organisations. Third, the agents of the state were responsible for their actions and inaction, and thus could be held accountable for their acts of commission and omission (ICISS, 2001: 13). The Commission therefore shifted the focus of the sovereignty debate from a focus on the state as the central actor to a focus on the individual holding rights and requiring protection as the central actor. The sovereignty of the state therefore was presented as being contingent on the ability and willingness of that state to protect the sovereignty of the individual.

With this definition of sovereignty in mind, the Commission set out to clearly define its understanding of the concept of intervention. Recognising that the term had broad scope, the Commission clarified the type of intervention under discussion as:

> actions taken against a state or its leaders, without its or their consent, for purposes which are claimed to be humanitarian or protective (ICISS, 2001: 8).

These types of actions would, according to the understanding of the Commission, apart from military intervention as a last resort include all forms of preventive measures and coercive intervention measures (including but not limited to the use of sanctions and criminal prosecutions). Coercive measures would be constituted in two forms; first their threatened use as a preventive measure, designed to avoid the need for military intervention; and second, their actual use as a reactive measure should coercive measures fail (ICISS, 2001: 8). Having established its understanding of the notions of sovereignty and of intervention, based on an assessment of international relations discourse and state practice post-Cold War, the Commission turned its attention to the critical question of when intervention on a humanitarian basis within international society could be justifiable. Intervention, the Commission found, was

justified according to six criteria, identified as those of (1) just cause, (2) right intention, (3) last resort, (4) proportional means, (5) reasonable prospects and (6) right authority.

Just cause for an intervention was established under two conditions; either (1) the large scale loss of life, actual or apprehended, with genocidal intent or not, which was the product of (a) deliberate state action, (b) state neglect or inability to act, or (c) a failed state situation, or (2) large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape, must be *ongoing* if an intervention was to be justified (ICISS, 2001: 32). Importantly, the Commission did highlight the legitimacy of anticipatory measures should one of the above considerations be *apprehended*. Without the possibility of legitimate anticipatory action, the Commission argued, states would find themselves in the 'morally untenable' situation of having to wait until genocide had actually begun before being able to prevent it (ICISS, 2001: 33). *Right intention* denoted to the Commission the necessity that an intervention should be based solely on claims of humanitarian action designed to prevent the large scale loss of life, and that no intervention would be justifiable if its intent, solely or additionally, was to alter territorial borders (internal or external), to attain regime change, or to advance the claims of a group to self-determination. To ensure that interventions were based on right intent, the Commission argued strongly in favour of collective action above unilateral responses. The Commission in addition argued that intervention (staggered from the non-use of force ultimately to the use of force if necessary) should always be the *last resort* of states; once all other measures had been exhausted or deemed likely to fail (ICISS, 2001: 35 - 36).

The use of *proportional means* highlighted the emphasis the Commission placed on the requirement that the means employed to address a humanitarian crisis should always be commensurate to the scale of the crisis and with the end to be attained. Similarly, the importance of *reasonable prospects* of success was stressed; an intervention should have a reasonable prospect of averting further atrocities from taking place if it was to be meaningfully conducted. If an intervention was likely to further inflame a situation, the Commission argued, it may in certain cases be better to take no action at all. Finally, the Commission argued that the *right authority* to authorise humanitarian interventions was primarily vested with the UN Security Council. However, recognising the political realities dominating the working of the Council, the Commission also made allowance for action to be authorised by the General Assembly under the Uniting for Peace Resolution. The UN, as the embodiment of interaction between states, was found by the Commission to be the only international body vested with the authoritative power to authorise interventions which could be seen as infringing upon the sovereignty of its member states. Yet the Commission also conceded that deadlock in the UN would severely hinder the provision of assistance where it was required, and, in cases where the UN was found unable to react to humanitarian crises, interventions on humanitarian grounds could be conducted without the authority of the Security Council by coalitions of the willing, if all other above criteria had been satisfied.

Finally, the Commission stressed the staggered nature of intervention that was inherent in the principle of the responsibility to protect. The responsibility to protect was a responsibility first to help prevent humanitarian emergencies from occurring, second to react to these once they had occurred, and third to assist to rebuild once crises had taken place. *Prevention* was broadly understood by the Commission as the need to support good governance, the rule of law, human rights and development in conflict-prone areas. Failing this, it was incumbent upon states to assist with conflict prevention measures, including fact-finding, mediation, support to peace processes and other peacemaking mechanisms. Reaction was defined in a staggered way by the

Commission. Should prevention measures fail, the Commission foresaw first the non-use of force to put a halt to atrocities taking place, including the use of diplomatic measures, dialogue, and sanctions. Should non-forceful measures fail to put a halt to atrocities, the Commission foresaw the use of force as a last resort to stop atrocity crimes from taking place. Once a humanitarian crisis had ended, the Commission stressed the importance of continued engagement through support to post-conflict reconstruction. *Rebuilding* was defined broadly as a holistic post-conflict peacebuilding process which cumulatively would assist in ensuring preventative peacebuilding was designed to prevent humanitarian crises in future. Thus, the responsibility to protect made use of existing UN responses to conflict situations along the peacemaking – peacekeeping – peacebuilding continuum, as had been outlined in Boutros Ghali's *An Agenda for Peace*, published a decade earlier.

The responsibility to protect, through the use of semantics, combined several elements of the discourses surrounding state sovereignty, human rights, peace and security and intervention in international society. In essence, the Commission attempted to frame the responsibility to protect in a manner that drew on all three founding principles of the UN; respect for state sovereignty, the universal inviolability of basic human rights, and the maintenance of international peace and security. By framing state sovereignty within the sovereignty as responsibility debate, the Commission sought to balance the norms of state sovereignty and human rights as contingent upon one another, as opposed to posited against one another.

The importance of language in shaping the responsibility to protect concept, and the linkages to already existing norms, should not be underestimated. The Commission will have taken note of Kofi Annan's view that it was not the deficiencies of the UN Charter which had brought about the tension between state sovereignty and the need for humanitarian intervention, but rather the difficulties UN member states faced in applying the principles of the Charter in a new era (in Tanguy, 2003: 141). Indeed, Annan had stressed that sovereignty could no longer "be used as a shield for gross violations of human rights" (in Bellamy, 2006: 35), and it was in this light that the Commission made use of the sovereignty as responsibility notion within the responsibility to protect.

Changing the language of the debate, and the normative context within which intervention was understood, was important to the Commission, and the importance of language in shaping state behaviour was well acknowledged by Lloyd Axworthy, Gareth Evans and Ramesh Thakur, three of the ICISS Commissioners (Axworthy et al. 2005: 9). Yet the responsibility to protect was framed in such a manner that not only enabled intervention on genuine humanitarian grounds, but also constrained intervention on non-humanitarian grounds. The same language that was utilised to enable intervention was also employed to constrain potential abuse. Conscious that many would view the report as a weakening of the general prohibition on the use of force enshrined in Article 2(4) of the UN Charter and of comments during the consultation phase that the responsibility to protect would be subject to abuse by states pursuing their own agendas and therefore constituted "law-making by the Western elite", the Commission was careful in its selection of criteria for intervention and argued that these constituted an important barrier to abuse. As one observer noted, by establishing a common framework that intervening states would utilise to justify their interventions and other states would utilise to evaluate the merit of those interventions, the responsibility to protect actually made it more difficult for states to abuse humanitarian claims when intervening (Bellamy, 2006: 147).

The report of the Commission therefore served to change the nature, the content and the focus of the intervention debate. Whereas before sovereignty and human rights violations had been juxtaposed against one another, and interventions had been conducted either by tackling head on (and usually unsuccessfully so) the sovereignty concept, or by circumventing the UN altogether, the report of the Commission offered a normative framework that re-assessed sovereignty concerns in relation to the changing international normative context of the post-Cold War period, and inextricably linked state sovereignty, human rights and the maintenance of international peace and security in one new norm: that of the responsibility to protect.

The changing normative order that emerged with the end of the Cold War, the conduct of an increasing number of interventions on humanitarian grounds in the immediate post-Cold War era, the elevation of human security concerns, and the re-evaluation of the role of the UN at the end of the 20th century commensurate with the peace and security challenges being faced at the time therefore all contributed to the framing of threats and challenges to international peace and security in a manner which enabled the responsibility to protect norm to emerge when it did at the turn of the 21st century. Indeed, the norms entrepreneurs were careful to frame the responsibility to protect within the context of existing norms of state sovereignty, human rights and non-intervention, but to centre the responsibility to protect norm among these through the use of the sovereignty as responsibility principle. This chapter has outlined the manner in which it was possible for the responsibility to protect norm to emerge in international society when it did. The following chapter will assess the further development and entrenchment of the norm, through application of the norm life-cycle approach, in an attempt to generate insights to the questions both of how norms develop in international society, as well as to how the responsibility to protect norm continued to develop. Chapters 5 and 6 will then assess the manner in which the responsibility to protect norm was applied in response to the conflicts in Darfur from 2003 onwards, in an attempt to generate insight into whether the norm contributed to the formulation of effective responses to the kinds of conflict situations it was designed for. On the basis of these findings, chapter 7 will then assess how future responses to conflicts characterised by atrocity crimes in Africa may be formulated, and what role the responsibility to protect norm may play.

Chapter 4

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The Responsibility to Protect:
Assessing the Emergence and Development of a Norm

4.1 Introduction

The release of the report on the responsibility to protect sparked heated debate in foreign policy circles, and generated both a wide following and an equally wide chasm of dissent. Yet despite misgivings by observers, the responsibility to protect rapidly became entrenched in political discourse from December 2001 onwards. Increasingly taken on board by a wider range of states, and ardently supported by its entrepreneurs and by advocates, the responsibility to protect rapidly gained ground in international society in foreign policy circles, among non-governmental organisations, and in academia. Yet many states equally expressed their concerns about, or their rejection of, the concept.

This chapter will explore the development of the responsibility to protect from its initial emergence in 2001 through its increasing entrenchment in international society. The chapter will also assess how the responsibility to protect norm related to simultaneous normative developments related to the maintenance of peace and security internationally, and in particular on the African continent. At the same time as the responsibility to protect norm was being developed and entrenched in international society, in particular at the level of the UN, African states had embarked on their own undertaking to strengthen their ability to prevent and respond to conflict situations, in particular the violent conflict situations which had been so prevalent on the continent since the end of the Cold War and which had so often witnessed the commission of atrocity crimes. From the mid-1990s onwards, African states embarked on an initiative to transform the OAU, the continental body established during the period of decolonisation to articulate and defend the interests of African states, into the AU, an organisation designed to be more responsive to the changing needs of the continent and its peoples. Entrenching the concept of human security, African states sought to empower the AU and the relevant sub-regional bodies with a powerful mandate for peace and security, creating interlocking security structures designed to prevent and manage conflict situations. Thus, whilst the responsibility to protect was being entrenched in international society, the African continent was creating a security mechanism which looked set to edge the continent away from state and regime security towards human security, and which was empowered to advance and defend notions of human security when so required. The salience of the responsibility to protect norm at the international level, and the concomitant development of empowered peace and security organs at the continental level, it was assumed by many, would ensure that powerful notions of human security, as opposed to previously dominant notions of state security, would prevail, and that Kofi Annan's clarion call of 'never again' might finally ring true.

4.2 Entrenching the Responsibility to Protect in Political Discourse

The report of the ICISS upon its release in December 2001 was received most favourably by Canada, the initial sponsor and advocate of the ICISS, and found a favourable reception among the governments of France, Germany and Japan, as well as in the United Kingdom, though received with some hesitation there as to the prescriptive nature of the responsibility to protect. All of these countries had been exploring the potential of developing criteria to guide decision-making within international society for interventions on humanitarian grounds, particularly since the NATO intervention in Kosovo, and found the notion of the responsibility to protect commensurate with the criteria of intervention quite useful. Other early advocates of the norm included Argentina, Australia, Colombia, Croatia, Ireland, New Zealand, Norway, Peru, Rwanda, Sweden South Africa and Tanzania. South Korea also expressed its support for the norm, but argued that the UN should create clear modalities of implementation to limit the extent to which the norm could be invoked to override sovereignty; in essence arguing for greater clarity as to the means by which sovereignty was considered transferred from the host state to states (Bellamy, 2005: 36 and 2006: 151).

Yet while many Western, and some sub-Saharan African and Latin American countries appear to have welcomed the report at an early stage, others particularly in the developing world were more cautious. Russia had a mixed response to the report, agreeing in principle that states were responsible both internally and externally, but remaining opposed to the notion that sovereignty could be rendered violable. China argued that no intervention in the affairs of a sovereign state could be rendered justifiable within international society. Beijing argued that China's rejection of the notion of humanitarian intervention, which had been clearly expressed during the ICISS roundtable discussions in Beijing in June 2001, had not been taken into account by the Commission or incorporated in the final report, and that Western perspectives had dominated the findings of the report and the creation of the responsibility to protect (MacFarlane et. al. 2004: 982).

Whilst the reception of the report was mixed at the state level, non-state actors generally applauded it, and many international NGOs, including the World Federalist Movement (WFM), Human Rights Watch (HRW) and the International Crisis Group (ICG) became vocal advocates of the report, engaging in lobbying activities both domestically and at the level of international organisations to ensure continued dialogue on the norm was taking place. Coalitions of civil society organisations also sprung up, aiming to exert pressure on states to adopt a normative framework of intervention on humanitarian grounds, centred around the responsibility to protect, that would assist in the prevention of future genocide. At the level of the UN too much public support for the norm was expressed, particularly by Kofi Annan, who led the organisation in ardent support of the responsibility to protect. Yet despite these efforts, the regional disparities which had emerged continued to dominate debate. Early in 2002, at a regional forum on military intervention hosted by the Fund for Peace in South America, delegates adopted the language of the responsibility to protect in their outcomes document and explicitly accepted the responsibility of governments to protect civilians from atrocities. Yet a similar conference in East Asia revealed that governments and regional organisations still firmly clung to the norms of sovereignty and non-interference in internal affairs, and support for the responsibility to protect was not forthcoming (MacFarlane et al. 2005: 982).

These regional disparities were felt at several levels. When the UN Security Council, at its annual informal retreat in May 2002, met with ICISS co-chairs Gareth Evans and Mohammed Sahnoun

to discuss the report, almost all of the permanent members expressed disquiet with the notion of formalising criteria to guide intervention, but for very different reasons. The United States was opposed to the establishment of strict criteria as it did not wish to offer pre-commitments to engage its military forces in areas where it had no national interest to advance, and was also reluctant to restrain its right of when and where to utilise force. Russia was not opposed to the responsibility to protect as such, but insisted that no action should be taken without prior Security Council authorisation, warning that the norm risked undermining the UN Charter if the Security Council was bypassed. China similarly insisted that all matters relating to the use of force be deferred to the Security Council, in accordance with the UN Charter. This central focus on the Security Council was rejected by the United States, the United Kingdom and France, all of which argued that a deadlock in the Security Council could constrain action from being taken where most required. France and the United Kingdom, two of the more vocal advocates of the ICISS report, however expressed their own misgivings about the responsibility to protect, arguing that the formulation and acceptance of criteria to govern intervention on humanitarian grounds would not bring about the political will and consensus required to undertake interventions when required (Bellamy, 2005: 36 and 2006: 151 - 152). Taking this point further, according to the British and French Ambassadors, there was widespread agreement during the retreat that, if new situations emerged, such as in Burundi or the Democratic Republic of the Congo, the five permanent members and the broader Council would lack the political will to deliver troops, and would restrict themselves to condemnatory resolutions (MacFarlane et. al. 2004: 983).

At an Asia-Pacific forum hosted to discuss the ICISS report in August 2002, fears were again raised that action by states without the explicit authorisation of the Security Council could set a dangerous precedent, and risked undermining the UN and the stability of international society (MacFarlane et. al. 2004: 983). These fears were not without justification, and states in the Asia-Pacific region probably bore in mind the un-authorised NATO intervention in Kosovo three years earlier when they met to deliberate the ICISS report. Yet it was also the scaling up of the American-led War on Terror which heightened Asian sensitivities around the notion of intervention on humanitarian grounds. The release of the ICISS report in December 2001 could perhaps not have come at a worse time, coming as it did three months after terrorist attacks on the United States in September 2001 and the American invasion of Afghanistan in October of the same year. Also damaging to the debate was the fact that the American administration under President George W. Bush felt obliged to argue that the invasion of Afghanistan would serve to improve the humanitarian situation in the country and to end wide-spread human rights abuses there (Bellamy, 2005: 37). This rhetorical connection between the War on Terror and interventions conducted on humanitarian grounds, a clear abuse of humanitarian and human rights language, nonetheless served to heighten not just Asian but also Southern fears around humanitarian interventions serving as a smoke-screen for the assertion of Western power. Yet if the American-led invasion of Afghanistan and the subsequent militarisation of foreign policy in the United States and the United Kingdom served to raise fears around humanitarian justifications for interventions in international society, the American-led invasion of Iraq in March 2003 dealt a near-fatal blow to the responsibility to protect.

As Bellamy has argued, the weight given to the humanitarian case for the war in Iraq by the political leaders of all the major troop contributors (Australia, the United States and the United Kingdom) in their public justifications, despite the formal legal justification being based on pre-existing Security Council Resolutions, impacted negatively on the development of the responsibility to protect. Indeed, although the humanitarian argument for the invasion was well, as Bellamy demonstrates, was generally widely rejected. Whereas in the Kosovo case NATO could

rely on a moral consensus among liberal states, and in Afghanistan no states seriously challenged the intervention, in Iraq there was no consensus, with liberal states such as Canada, Germany and France publicly opposing the war (Bellamy, 2005: 37). Yet despite such opposition, the use of humanitarian justifications for the invasion of Iraq damaged notions of justifiable intervention on humanitarian grounds. John Reid, the Chairperson of the Labour Party in the United Kingdom, justified the invasion as a "product of the belief in international responsibilities as well as rights." Arguing that the invasion, as unwelcome as it was in certain quarters, was a necessity, Reid noted:

> We do not only have rights to defend in the world, but we also have responsibilities to discharge; we are, in a sense, our brother's keeper globally (quoted in Kampfner, 2003).

Yet such language was seen as an abuse of the responsibility to protect principles by many. David Clark, a former special adviser to the British Foreign Office, for example argued:

> Iraq has wrecked our case for humanitarian wars. As long as US power remains in the hands of the Republican right, it will be impossible to build a consensus on the left behind the idea that it can be a power for good. Those who continue to insist that it can, risk discrediting the concept of humanitarian intervention (Clark, 2003: 16).

Former ICISS co-Chair Gareth Evans echoed this sentiment, arguing one year after the invasion that the "poorly and inconsistently argued humanitarian justification" for the war in Iraq almost:

> choked at birth what many were hoping was an emerging new norm justifying intervention on the basis of the principle of responsibility to protect (Evans, 2004: 63).

Evans was certainly conscious of a shift in support away from the responsibility to protect, notable not only in the global South, but also among states which had initially been more supportive of interventions conducted on humanitarian grounds. At a forum of social democratic political leaders in July 2004, heads of state rejected a draft communiqué prepared by British Prime Minister Tony Blair due to a paragraph which advocated that the responsibility to protect should override sovereignty in supreme humanitarian emergencies. Argentina, Chile and Germany in particular objected to the inclusion of this paragraph, and on their recommendation it was omitted from the final communiqué. Germany had in the past been particularly supportive of the ICISS agenda and the responsibility to protect, yet as German Chancellor Gerhard Schröder later explained, the draft communiqué was rejected because of fears that any doctrine of unauthorised humanitarian intervention would be used by the United States and the United Kingdom to justify the war in Iraq (MacFarlane et al. 2004: 984 and Bellamy, 2005: 39).

Despite this apparent backlash, there remained those that argued that the war in Iraq may not have been as detrimental to intervention on humanitarian grounds as initially thought. Ramesh Thakur, a former ICISS Commissioner, argued that the moral consensus around the responsibility to protect was likely to be strengthened in the wake of Iraq as states came to realise that it provided both enabling and constraining language. Thus, Thakur hoped, the responsibility to protect would increasingly be discovered as a means whereby to oppose the intervention in Iraq as illegitimate. According to Thakur then, attaining consensus on criteria for intervention would make it more, not less, difficult for states to abuse humanitarian language for their interventions (Bellamy, 2005: 40).

Cognisant of the concerns raised, particularly by the global South, in the wake of the Iraq war Kofi Annan nevertheless urged for the debate to continue, and urged states to take stronger action in

the face of human atrocity. In April 2004, Annan addressed the Human Rights Commission in Geneva, Switzerland, commemorating the tenth anniversary of the genocide in Rwanda, and expressing his support for the responsibility to protect announced his intent to launch a UN action plan to prevent future acts of genocide. The plan, mirrored on the responsibility to protect and existing UN conflict management approaches, consisted of five related pillars: the prevention of armed conflicts; the protection of civilians in armed conflicts; the strengthening of local judicial systems to end impunity; better information analysis and early warning; and swift and decisive action, including military intervention (United Nations, 2004).

The Secretary General's support for the responsibility to protect was further advanced later that year by the release of the report of the *United Nations High Level Panel and Treats, Challenges and Change* (the High Level Panel) which strongly endorsed the responsibility to protect as a norm in international society and urged UN member states to formally adopt the norm. Kofi Annan's March 2005 report on UN reform, *In Larger Freedom – Towards Development, Security and Human Rights for All*, drafted as a discussion document in the build-up to the UN Millennium Review Summit of September 2005, focused discussion back on the UN as the central mechanism through which to implement the responsibility to protect however. Annan argued that the lessons of the past had revealed that no principle, not even sovereignty, could be allowed to shield genocide, crimes against humanity and mass human suffering. Annan argued however that, despite a deluge of declarations, states had failed to act consistently and effectively in humanitarian emergencies. Annan therefore urged UN members to embrace the responsibility to protect, arguing that the time had come for governments to be held accountable both to their citizens and to each other (Annan, 2005: 34 – 35). Reflecting on the sensitive nature of the subject, Annan nonetheless agreed with the findings of the ICISS and the High Level Panel, and recommended that member states during the Millennium Summit:

> Embrace the 'responsibility to protect' as a basis for collective action against genocide, ethnic cleansing and crimes against humanity, and agree to act on this responsibility, recognising that this responsibility lies first and foremost with each individual state, whose duty it is to protect its population, but that if national authorities are unwilling or unable to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect civilian populations, and that if such methods appear insufficient the Security Council may out of necessity decide to take action under the Charter, including enforcement action, if so required (Annan, 2005: 59).

Whilst the support provided by the report of the Secretary General did provide further momentum to the responsibility to protect, there was still resistance. The NAM, for example, still largely rejected the norm. Speaking on behalf of the NAM, the Malaysian government argued that the responsibility to protect represented a reincarnation of the traditional debate on intervention on humanitarian grounds, for which there was no basis in international law. Tanzania however dissented from this position, and directly challenged the NAM on it. India on the other hand agreed with NAM, arguing that the Security Council was already sufficiently empowered to act in humanitarian emergencies, observing that the failure of the Council to act in the past had been caused not by a lack of authority but by a lack of political will. The Group of 77 (a developing country bloc) was unable to reach a joint position, but did call for the ICISS report to be revised, emphasising the need for territorial integrity and sovereignty to be more clearly recognised, though not providing clear guidelines as to what was meant by these terms or how they were to be incorporated into the report (Bellamy, 2006: 152).

Addressing these and other concerns, the AU Summit meeting in Nigeria in January 2005 set up a committee of 15 member states to elaborate a common African position on UN reform. African

Ministers of Foreign Affairs, meeting in Swaziland on 8 March 2005 at the 7th Extraordinary Summit of the AU crafted a common African response to the report of the High-Level Panel. The outcomes document from this meeting later came to be known as the *Ezulwini Consensus*, which was approved by the Executive Committee of the AU, and was the only common regional response to the report of the High-Level Panel. The document also served as the basis of the common African position on UN reform, a key topic to be discussed at the opening of the General Assembly in New York later that year. The *Ezulwini Consensus* considered a number of areas of UN reform aimed at making the organisation more effective, efficient and relevant to the challenges encountered on the African continent in the 21st century. Included in the document was a strong endorsement the responsibility to protect as a norm which states should adopt and take ownership of (African Union, 2005[a] and Adebajo and Scanlon, 2006: 3).

Many observers heralded the *Ezulwini Consensus* as an important break with the past as African states had collectively and publicly come out in support of the responsibility to protect, and had argued that states should adopt and take ownership of this emerging norm. Indeed, at one level, the *Ezulwini Consensus* did represent an important step for a continent consisting of states which had historically been known to oppose a weakening of the traditional sovereignty concept, and which had proven opposed to interference in the affairs of other states in the region. For African states to thus support the findings of the report of the High-Level Panel, and to call for the adoption and operationalisation of the responsibility to protect, therefore did constitute an important step in the development of human security norms in Africa. Yet the importance of the support provided to the responsibility to protect in the *Ezulwini Consensus* should not be over-estimated. The responsibility to protect, as an emerging norm in international society, was endorsed by African states as one component among many in a common African position on UN reform. It was therefore endorsed together with calls for reform of the Security Council, the General Assembly, ECOSOC and other bodies, intended to make the UN more democratic and to enable it to better address the concerns of the African continent in the 21st century. Endorsement for the responsibility to protect was therefore provided in unison with calls for the reform of the Security Council (either providing Africa with the veto, or abolishing the veto right altogether), which would serve to ensure that the norm could not be subject to abuse by powerful states. Should Africa feel that the West would abuse the norm, the thinking went, the region would be in a position to block such moves in a reformed Security Council. The responsibility to protect was therefore not endorsed by African states in isolation, but in tandem with anticipation of Security Council reform. Nevertheless, the *Ezulwini Consensus* did represent the first instance in which African states collectively endorsed the responsibility to protect and called for it to be entrenched in international society.

The endorsement, coming as it did six months before the opening of the 60th General Assembly session represented an important milestone in the development of the norm. Building on this, and with the support of African countries, in June 2005 Ministers of Foreign Affairs of the NAM requested the Coordinating Bureau to consider the implications of the responsibility to protect with regards to changing notions of non-interference, non-intervention, territorial integrity and national sovereignty (Luck, 2009: 18). That same month, China's official position paper on UN reform endorsed, at least in part, the principles underpinning the responsibility to protect. The Chinese position was that each state shouldered the primary responsibility to protect its own population, and that when a massive humanitarian crisis occurred, it was the legitimate concern of other states to ease and defuse the crisis. The position paper however argued that Security Council authorisation was a prerequisite for intervention, and that this understanding should form the core of the responsibility to protect (Thakur and Weiss, 2009: 38).

Within the context of these developments, the 60th session of the General Assembly commenced in New York in September 2005, with the opening session used to host the World Summit, designed both to mark the 60th anniversary of the organisation and to allow member states to take bold decisions on the reform of the organisation and on its work in the areas of peace and security, human rights, and development. As Bellamy has argued, advocates of the responsibility to protect, making the most of the opportunity, decided to attempt to accomplish one or both of two things at the Summit. First, they wanted to persuade the General Assembly to support the responsibility to protect in the final outcomes document. Second, they set out to persuade the Security Council to adopt a resolution committing members to (a) act whenever the just cause thresholds of the responsibility to protect had been crossed, (b) submit its decisions to public deliberation on the use of force based on the precautionary principles, and (c) withhold the use or threat of the veto in humanitarian emergencies other than in situations where the vital national interests of members were clearly at stake. Yet as Bellamy notes, responsibility to protect advocates had to overcome two quite distinct challenges. The first concern related to the concerns of the permanent five members of the Security Council that criteria for intervention would constrain their freedom to use force in the maintenance of international peace and security. Second, the concern among the global South in particular (although also among some developed countries since the invasion of Iraq) that criteria for intervention would be abused by the powerful to justify armed interventions against the weak that were anything but humanitarian (Bellamy, 2006: 153). In addition, sovereignty concerns were bound to influence debate on the responsibility to protect during the World Summit.

4.3 From Emergence to Entrenchment:
The 2005 United Nations World Summit

In the build-up to the September 2005 Summit, Kofi Annan felt confident enough that the responsibility to protect had gained sufficient ground among UN members since its inception that the General Assembly would be able to include an endorsement of the responsibility to protect in the outcomes document. The Secretariat was therefore instructed to include references to the responsibility to protect in the draft outcomes document, which was circulated ahead of the Summit. These references, not surprisingly, became the subject of increasingly heated debate as the Summit approached.

Western states were probably the most vocal in their support for the norm, and in arguing that states should, through the General Assembly, endorse the responsibility to protect in the Summit outcomes document. Accordingly, the norm was strongly endorsed particularly by Armenia, Australia, Cyprus, Iceland, Ireland, Italy, Liechtenstein, Lithuania, Monaco, New Zealand, Norway, Sweden, Switzerland, and the United Kingdom in the General Assembly. Canadian Prime Minister Paul Martin was unwavering in his nation's support for the responsibility to protect, arguing:

> Clearly, we need expanded guidelines for Security Council action to make clear our responsibilities to act decisively to prevent humanity's attack on humanity. The 'Responsibility to Protect' is one such guideline. It seeks rules to protect the innocent against appalling assaults on their life and dignity. It does not bless unilateral action. To the contrary, it stands for clear, multilaterally-agreed criteria on what states should do when civilians are at risk. It is a powerful norm of international behaviour. And this week, we have taken a very important step to that end. We are proud that [the responsibility to protect] has Canadian lineage, [and] that it is now a principle for all the world (International Coalition for the Responsibility to Protect, 2005).

Despite initial concerns that African states would shy away from debate in the General Assembly, drawing on the *Ezulwini Consensus* some African nations were more vocal in their support for the norm than had initially been anticipated. Both South Africa and Tanzania publicly endorsed the norm, and were at the forefront of efforts to ensure the African bloc in the General Assembly supported the inclusion of the responsibility to protect in the outcomes document. Supporting South African and Tanzanian diplomatic efforts, Botswanan Preisdent Festus Mogae argued before the General Assembly that:

> we can no longer afford to stand back if a country fails to protect its citizens against grave human rights abuses. In this respect, we embrace the concept of the 'responsibility to protect' (International Coalition for the Responsibility to Protect, 2005).

Mauritius similarly expressed its support, with Prime Minister Navichandra Ramgoolam arguing that his country endorsed the responsibility to protect:

> as a norm of collective action in cases of genocide, war crimes, ethnic cleansing and crimes against humanity (International Coalition for the Responsibility to Protect, 2005).

Rwanda was even more vocal, with President Paul Kagame arguing that responses to atrocity crimes should never again be found wanting:

> Let us resolve to take collective action in a timely and decisive manner. Let us also commit to put in place early warning mechanisms and ensure that preventive interventions are the rule, rather than the exception (International Coalition for the Responsibility to Protect, 2005).

Yet not all states were in favour of the General Assembly endorsing the norm in the outcomes document. Opposition came mostly from developing countries, joined by China and Russia, which refused to concede limitations to sovereignty and to acknowledge a right of intervention in international society. Venezuelan President Hugo Chavez, for instance, argued that developing countries should not allow "a handful of countries" to "reinterpret with impunity" the principles of the international legal system (International Coalition for the Responsibility to Protect, 2005). Among African states, both Egypt and Zimbabwe were opposed to the norm, with Zimbabwean President Robert Mugabe arguing:

> The vision that we must present for a future United Nations should not be one filled with vague concepts that provide an opportunity for those states that seek to interfere in the internal affairs of other states. Concepts such as humanitarian intervention or responsibility to protect need careful scrutiny in order to test the motives of their proponents. We need to avoid situations where a few countries, by virtue of their privileged positions, dictate the agenda for everybody else. We have witnessed instances where the sovereignty and territorial integrity of small and weak countries have been violated by the mighty and powerful, in defiance of agreed rules of procedures and the provisions of the United Nations Charter (in Mwanasali, 2006: 93).

Following numerous rounds of debate consensus was finally attained. Yet this consensus was not arrived at easily. As Bellamy notes, whilst there was broad support for the importance of setting a high just cause threshold, that host states had a primary responsibility to protect their citizens, and that the five permanent members of the Security Council should not voluntarily limit their use of the veto right, disagreement existed in many other areas, including on the level and nature of state obligation in responsibility to protect situations, and the relationship between the UN and regional organisations when the norm was invoked. Three key issues however split states during the World Summit; the right authority for intervention, the use of criteria, and the point at which the responsibility to protect was transferred from the host state to other states. Based on the compromises conceded by both advocates and opponents of the norm, the responsibility to

protect was included in the final outcomes document of the World Summit in September 2005. Paragraphs 138 through 140 of the World Summit Outcomes Document, adopted by the General Assembly as a Resolution, read as follows:

Responsibility to Protect Populations from Genocide, War Crimes, Ethnic Cleansing and Crimes against Humanity

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. States should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.

139. States, 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, to help to protect populations from genocide, 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, 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. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.

140. We fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide.

This endorsement by the General Assembly was a major milestone in the development of the norm in international society and served to fundamentally alter the intervention debate. Whilst the responsibility to protect, as endorsed by the General Assembly, represents an alteration, and a weaker interpretation, of the responsibility to protect as conceptualised and advocated for by the ICISS, it nevertheless represented a fundamental alteration to the norm of state sovereignty in several ways. First, states accepted that they had a fundamental responsibility to protect their citizens from war crimes, crimes against humanity, ethnic cleansing and genocide. The concept of state sovereignty was therefore shifted from a dialogue based on the rights of the state (non-intervention, the use of force and territorial integrity in the Weberian sense) to one based on the responsibilities of the state (internal and external). Second, states accepted that they were responsible to assist other states in meeting these responsibilities through the provision of assistance. Third, states recognised that, in situations of 'manifest state failure', it was the responsibility of other states to react to situations of war crimes, crimes against humanity, ethnic cleansing and genocide. Fourth, should peaceful means prove inadequate, the Security Council, acting under Chapter VII of the Charter, was provided with the authority to use force to put an end to atrocity crimes. Whilst the importance of human rights had been elevated in the peace, security and development nexus over the years, and the Security Council had itself recognised humanitarian emergencies as constituting a fundamental threat to international peace and security, authorising the Security Council to use force in situations of atrocity crimes represented a major weakening of the traditional norm of non-interference in the internal affairs of states. This shift, arguably, represented the most important change to the sovereignty norm that the responsibility to protect affected.

Despite the endorsement of the norm by the General Assembly being heralded as a success by many observers, its dilution from the original ICISS report brought with it several challenges. First, the abandonment of the use of criteria severely weakened the implementation of the responsibility to protect, as it would be close to impossible to tell when responsibility shifted from a host state to other states, and when the threshold for different kinds of action by had been reached. Second, reducing the responsibilities of states from an 'obligation' to a 'responsibility' lowered the level of responsibility external actors held when decisive action was required in a humanitarian crisis. Third, the levels of responsibility, as outlined by the ICISS report, were not clearly dealt with during the World Summit. Whilst the Security Council was mandated with the authority to authorise interventions, and the role of regional organisations was mentioned through a reference to Chapter VIII of the Charter when it came to non-forceful means of intervention, the modalities of interaction between the state in question, regional organisations and the Security Council were left vague. This, in an era where regional and sub-regional organisations were increasingly taking on greater peace and security mandates and responsibilities could greatly confuse the implementation of the responsibility to protect, or lead to a situation where responsibility for action was shifted between stakeholders due to varying interpretations of who held responsibility for action.

Fourth, the responsibility to protect, as agreed upon in the outcomes document, represented a merging of the responsibilities to *prevent, react and rebuild* into one concept. References to the responsibilities of states to assist in the prevention of atrocity crimes are made in the outcomes document, as are references to the responsibilities of states to build capacity to assist in the prevention of conflicts. Yet through the merger of these concepts into one responsibility to protect, without a clear delineation between what the responsibility to protect, to react and to rebuild entailed, risked blurring the concept, and of placing a heavy emphasis on the *reaction* component alone. States may have felt that the responsibility to prevent was well covered by existing UN capabilities in the fields of early warning, mediation and conflict prevention, and that the responsibility to rebuild would be addressed by the newly-created Peacebuilding Commission (called for in the same outcomes document). Yet through watering down these notions, the General Assembly appears to have concentrated on endorsing a responsibility to *react* more than a holistic responsibility to *protect*.

Finally, as French and British diplomats had already cautioned during a Security Council retreat three years prior, an endorsement of the responsibility to protect by the UN would not yield the necessary political will to actually implement that responsibility when required. Indeed, the endorsement by the General Assembly provided no insight into how political will was to be generated when required, and through its focus on providing the Security Council with the sole mandate to authorise interventions, appears to have ignored the political realities by which the workings of that Council had been characterised since its founding in 1945.

With these concerns in mind, many observers, while warmly welcoming the endorsement of the norm, also wondered whether the compromises which had been reached in attaining this endorsement did not risk undermining the norm itself. Indeed, many observers dubbed the version of the responsibility to protect endorsed by the General Assembly 'responsibility to protect – light' (Luck, 2009: 20). The impact that the norm, now endorsed by the General Assembly, would have on international society was, despite past successes, now in doubt. As one observer remarked:

Despite the misgivings of some observers, it is clear that the responsibility to protect norm underwent relatively rapid development since its emergence in 2001 to being endorsed by the General Assembly, though in a revised manner, in September 2005. Drawing on the norm life cycle approach, it could usefully be argued that the norm emerged from 2001 to 2005, and that in September 2005, following endorsement by the UN, it entered into a cascade phase. Yet how is this emergence phase to be understood?

The norm was 'created' by the report of the ICISS, released in December 2001, although the norm functioned more as meta-norm, serving as an umbrella concept for several normative frameworks and operational components. The responsibility to protect norm, as highlighted elsewhere throughout this study, drew heavily on existing norms and concepts, including historic normative human rights frameworks, the sovereignty norm, and norms related to humanitarian law. The concept of intervention on humanitarian grounds was of course drawn on, as was the notion of sovereignty as responsibility. Building on this normative discourse, the responsibility to protect was framed in a logic of appropriateness employing a deductive approach, based on a rights- and responsibility-based approach to human security. Thus, the norm was framed as the logical outcome of changes in international society, of state behaviour, and of the discourse surrounding state behaviour since the end of the Cold War. The norm was thus perhaps not 'created', but rather forged from a Liberal and idealist analysis of the status quo in international society. Yet the norm had now been inserted into international relations discourse.

From early 2002 onwards, the new norm was championed by norm entrepreneurs, both at the level of state actors and non-state actors. States such as Canada, Sweden, Norway, South Africa and Tanzania championed the norm publicly and exerted diplomatic efforts behind the scenes to generate momentum around the responsibility to protect. Similarly, non-state actors played both public and private roles in generating support, and the importance of the personal efforts of individuals such as Kofi Annan, Gareth Evans, Ramesh Thakur and Paul Martin, as well as the collective efforts of organisations such as the ICG, the WFM and, later, the International Coalition for the Responsibility to Protect should not be underestimated. Indeed, collectively, these efforts ensured that the norm was receiving the attention of decision-makers at the highest levels.

Increasingly, Finnemore and Sikkink's so-called 'critical states' (a critical state being one without which the achievement of the substance of the norm goal is compromised) came to take the norm on board, and to advocate either certain components or the emerging norm in its entirety. With the support of both developed and developing countries, countries from the global north and the global south, and the big powers, such as the United States and the United Kingdom, as well as regional powers, such as South Africa, Tanzania and Australia, the norm quickly gained ground not only within multilateral institutions, but at regional and sub-regional levels as well. Processes of contestation occurred here as well. Russia and China remained opposed to a right of unilateral intervention, though not necessarily to the sovereignty as responsibility component of the norm, or to interventions on a humanitarian basis. Through this discourse, the emerging norm was framed in a logic of appropriateness which drew legitimacy from past state behaviour and which was presented as the status quo of international society. On this basis, the responsibility to protect was framed in discourse which highlighted the responsibilities of the state, and not any longer the rights of the state. As this logic of appropriateness was developed, so too were the

cognitive frames underpinning it, drawing heavily on human rights, humanitarian law and human security discourse.

Following a period of norm contestation, and overcoming the impact of the American-led invasion of Iraq, the responsibility to protect, having developed in legitimacy as an emerging norm in international society, was institutionalised through the provision of an institutional platform by the UN. Kofi Annan in 2004 endorsed the responsibility to protect through his Action Plan to Prevent Genocide, as did the report of the High Level Panel in 2004 and the *In Larger Freedom* report of 2005. Indeed, in response to the Secretary General's report on UN reform, the AU crafted a common position on the responsibility to protect through the endorsement of the *Ezulwini Consensus*, the only regional response to the proposals of the Secretary General and the first regional endorsement of the norm. Emerging from these developments, the responsibility to protect received the endorsement of the General Assembly in September 2005, serving both to legitimise the norm, and to codify it in the international legal system. Kofi Annan was later to refer to this as one of his "most precious achievements" (in Thakur and Weiss, 2009: 25). It therefore appears as though the responsibility to protect norm emerged quite rapidly, from being forged in late 2001 to being endorsed and codified by the UN in late 2005.

4.4 From Summit to Substance: Cascading the Responsibility to Protect Norm

Typically, norms take time to become entrenched in international society. The emergence and development of a new norm is usually a drawn out process, and, once a new norm has become accepted and endorsed, it must usually contend with other pre-existing norms before it finds a place in state discourse and practice within international society. The length of time required for a norm to move from emergence to acceptance and utilisation, termed by Finnemore and Sikkink in the norm life cycle concept as 'cascade', is dependent on a variety of factors, including, but not limited to, the nature of the norm content, the limits of application of the norm, the origin of the norm, and the degree to which the norm encroaches on other pre-existent norms. The responsibility to protect norm, as argued above, had already undergone processes of alteration due to criticism directed at the legitimisation of interventions conducted on humanitarian grounds in an international system which did not recognise the legitimacy of such forms of intervention, the encroachment on state sovereignty which the norm entailed, and the perceived 'Western' nature of the norm. The norm, as endorsed by the General Assembly in 2005, therefore represented a variation of the norm which had already taken into account the concerns of member states, and was therefore more acceptable at large. The new norm, it would then be expected, should cascade relatively quickly and enter into use by the UN, by regional organisations, and by states themselves, as a process of norm contestation had already been witnessed. Yet further challenges to the development of the norm could be found in the areas of indeterminacy, application, contextual relevance, and operationalisation.

First, the challenge of indeterminacy means that a norm, once it has developed from the 'emergence' to the 'cascade' phases of the life cycle, can no longer be shaped by its entrepreneurs alone. Rather, it is shaped and interpreted by whoever chooses to utilise the norm. The norm therefore becomes open to interpretation by anyone wishing to utilise it. Thus, states arguing before the Security Council that a responsibility to protect in a particular situation where atrocity crimes were being committed existed could be opposed by states arguing that the responsibility to protect lay not with other states, but with the responsible state, as a situation of manifest failure had not yet taken occurred.

Second, simply because a norm has been recognised by states does not guarantee that it will be applied in the correct instances, and not misapplied in incorrect instances, either purposefully or in error. Therefore, even once a norm has been endorsed, there is nothing which forces states to adhere to the norm, or to enforce adherence by others. Thus, the application of the responsibility to protect, particularly immediately following on its endorsement by the World Summit, would in large part determine its future development. Should the United States, for example, make use of the responsibility to protect to advocate an armed intervention along the lines of argumentation presented in defence of the Iraq war the norm would certainly face a rapid decline. Similarly, should a situation of supreme humanitarian emergency arise, and the responsibility to protect was not invoked, then the relevance and usefulness of the norm would be in doubt.

Third, norms are developed and applied within a system of social relevance, be this at the international, the regional, the national or the local level. The contextual relevance of the norm therefore both influences its initial acceptance and endorsement as well as its use later on. If a norm is contextually no longer relevant, or circumvented due to context-specific factors, that norm could be rendered weakened, or, in extreme cases, even quite useless. For example, the Security Council was mandated as the sole entity which could authorise interventions under the responsibility to protect norm. Yet many African states felt that the AU, with its newly established peace and security architecture, should play a central role in peace and security matters on the continent. In an effort to reach a compromise, African states dropped their proposal in favour of granting the Security Council the sole responsibility to authorise armed interventions. Should an intervention under the responsibility to protect norm however in future be authorised by the AU Peace and Security Council, without the consent of the UN Security Council, this would impact on the responsibility to protect norm and its usefulness in guiding and regulating state behaviour in international society.

Finally, the operationalisation of the norm, once it has become accepted, poses challenges. Simply because a norm has been accepted does not necessarily mean that it can be easily invoked by those states supporting it. As noted by some diplomats during a Security Council retreat in 2002, the responsibility to protect norm would not succeed in mustering the political will, and the financial and other resources required, to prevent or react to situations of mass atrocity crimes. The UN, as well as regional organisations such as the EU and NATO, had already for years been struggling to maintain their existing peace support operations, and to secure the financial and personnel commitments from member states to meet existing mandates. A commitment to the responsibility to protect by member states, therefore, would by no means ensure a similar commitment to carry the costs of bearing that responsibility.

Despite these concerns, the true test of whether the norm would further develop and cascade in international society lay in its application. Should the now endorsed responsibility to protect norm find fertile ground, and enter into state discourse and practice, then it could be considered as having found a firm place in international society. Norm usage by states here can imply one of two things; either that states made reference to the responsibility to protect norm in arguing for intervention, of whatever kind, on grounds of war crimes, crimes against humanity, ethnic cleansing and genocide, or that states argued against intervention by utilising or making reference to the responsibility to protect norm. The strength of the norm would be decided not by the number of interventions authorised by the Security Council on the basis of the responsibility to protect, but rather by the degree to which states made use of responsibility to protect language, both in support of and in opposition to interventions in situations of atrocity crimes. It is therefore

through an analysis of state practice and the discourse surrounding that practice as of September 2005 that the further development, relevance and salience of the responsibility to protect norm can be better understood.

In April 2006 the UN Security Council for the first time invoked the responsibility to protect in a resolution on the protection of civilians in armed conflict. Resolution 1674 reaffirmed paragraphs 138 and 139 of the World Summit Outcomes Document, reminded states of their responsibilities both internally and externally, and urged states to assist other states in meeting their responsibilities, whilst reaffirming the role of the Security Council as outlined in the UN Charter (United Nations Security Council Resolution 1674, 2005). Resolution 1674 served as a reinforcement of the responsibility to protect norm as outlined in the World Summit Outcomes document. Supporters of the norm, as Gareth Evans notes, were pleased with this development, exclaiming that:

> the evolution of the 'responsibility to protect' concept from a gleam in a commission's eye to what now might be described as a broadly accepted international norm is an extremely encouraging story (Evans, 2006: 10).

Yet despite the enthusiasm of some supporters, the responsibility to protect could not yet be described as a 'broadly accepted international norm', and required further investigation and, perhaps more importantly, application. On 28 June 2006 the Security Council held its first open debate on the protection of civilians in armed conflict, based on Resolution 1674. The representative of the United Kingdom, Sir Emyr Jones Parry, argued that the Council held:

> a shared responsibility to protect populations from large scale abuses and, in particular, from crimes against humanity, including the prospect of genocide (in International Coalition for the Responsibility to Protect, 2006[a]).

During the ensuing debate it was an African country, Ghana, which most prominently reaffirmed the role of the responsibility to protect for the protection of civilians in armed conflict. Ghanaian Permanent Representative Leslie Kojo argued:

> It has generally been recognised, and rightly so, that the primary responsibility for the protection of civilians in armed conflict rests with their governments. By the tenets of international humanitarian law and resolutions of the Security Council, this responsibility has also been extended to non-state actors, especially belligerent groups involved in the conflicts. (...) Based on my government's firm conviction on human rights, we hold the view that in the event of the failure by both governments and armed groups to abide by their commitments under international humanitarian law, conventions and agreements, it behoves the United Nations to intervene and protect innocent populations against such crimes as genocide, ethnic cleansing and other gross human rights violations (in International Coalition for the Responsibility to Protect, 2009[c]).

Ghana was clearly attempting to link the responsibility to protect with the protection of civilians in armed conflict, making the latter the operational arm of the responsibility to protect. Perhaps agreeing with Ambassador Kojo, the Security Council met on 31 August to adopt Resolution 1706 on Sudan, reaffirming both Resolution 1674 on the protection of civilians in armed conflict and the responsibility to protect norm as outlined in paragraphs 138 and 139 of the World Summit Outcomes Document. On 8 January 2007 newly-appointed UN Secretary General Ban Ki Moon, in his first address to the Security Council, referred to the Council's responsibility to protect the victims of war crimes, crimes against humanity and genocide. In addition, the Secretary-General noted important achievements which could be built upon to help address peace and security challenges in the current era, including the newly created Human Rights Council and the responsibility to protect norm (United Nations News Centre, 2007).

Later that same month, members of the Security Council again inserted references to the responsibility to protect into a draft resolution on Burma (Myanmar), yet this draft was vetoed by both China and Russia on 12 January 2007. Both countries argued that the situation in Burma (Myanmar) did not pose a threat to regional or international peace and security, and therefore should be treated as an internal matter. Conceding that large scale human rights violations were taking place, and that the humanitarian situation was worsening, China and Russia argued that more appropriate bodies, such as the newly-formed Human Rights Council, should address the situation. On 30 April 2007 the Security Council again made reference to the responsibility to protect in Resolution 1755, which extended the UN peacekeeping operation in Sudan (United Nations Mission in Sudan - UNMIS) to Darfur and expressed grave concerns over the deteriorating humanitarian situation there. The Resolution again reaffirmed the World Summit Outcomes Document, as well as Resolution 1674 (United Nations Security Council Resolution 1755, 2007).

On 29 May 2007 another significant step was taken towards entrenching the norm when Ban Ki Moon announced the appointment of Francis Deng, former Sudanese diplomat and the author of the sovereignty as responsibility concept, as the Special Advisor for the Prevention of Genocide, replacing Juan Mendez of Argentina. Deng took up this new post on 01 August 2007. On 31 January 2008 the Secretary General, addressing the AU Summit, stated that he was fully committed to implementing the decisions made by African states during the 2005 World Summit, and that he would spare no effort in operationalising the responsibility to protect (Evans, 2008: 51). Less than a month later, the Secretary General appointed Edward Luck as his Special Adviser Focusing on the Responsibility to Protect on 21 February 2008. The Secretary General faced stiff opposition to this move, particularly from the 5th Committee of the General Assembly (the budget committee, which denied funding for the new post) and from member states, which agreed to the move only once the title had been revised from its previous incarnation of 'Special Advisor on the Responsibility to Protect' (International Coalition for the Responsibility to Protect: 2009 [a]). With the appointment of Luck as Special Advisor, Ban Ki Moon demonstrated a commitment both to entrenching and to operationalising the responsibility to protect norm within the UN. Shortly after Luck's appointment, the Secretary General commissioned a report outlining recommendations on implementing the responsibility to protect, and on turning policy into practice within the UN system, and tasked Luck to explore the conceptual, institutional and political dimensions of the norm for the UN. This was the first comprehensive step that the Secretariat of had taken related to the responsibility to protect since its endorsement by the General Assembly in 2005. Lending some divine support, Pope Benedict XVI placed his weight behind the norm, when in his address to the UN General Assembly in April 2008 he asserted:

> Recognition of the unity of the human family, and attention to the innate dignity of every man and woman, today find renewed emphasis in the principle of the responsibility to protect. […] This principle has to invoke the idea of the person as image of the Creator (in Thakur and Weiss, 2009: 22 – 23).

Strengthening his commitment to the operationalisation of the norm Ban Ki Moon delivered a speech at the *Responsible Sovereignty: International Cooperation for a Changed World* conference in Berlin, Germany, on 15 July 2008, intended to clarify the responsibility to protect. In his speech, Ban argued that the norm did not represent a new incarnation of humanitarian intervention, but that it represented a positive and affirmative concept of sovereignty as responsibility as developed by Francis Deng. Outlining a three-pillared approach, Ban argued that the responsibility to protect affirmed the legal obligations of states to protect their populations from atrocity crimes, underscored the commitment of states in international society to assist other

states to meet these obligations, and reaffirmed the responsibility of states to respond in a timely and decisive manner to protect populations at risk. Ban further argued that the current conception of the norm was both narrow and deep:

> Its scope is narrow, focused solely on the four crimes and violations agreed by the world leaders in 2005. Extending the principle to cover other calamities, such as HIV/aids, climate change or responses to natural disasters, would undermine the 2005 consensus and stretch the concept beyond recognition or operational utility. At the same time, our response should be deep, utilising the whole prevention and protection toolkit available to the United Nations System, to its regional, sub-regional and civil society partners and, not least, to the Members States themselves (Ban, 2008).

The Secretary General also used the speech to deflate criticism that the norm represented an essentially Western concept which had been forced on developing countries, arguing that the foundations for the norm had been created by Francis Deng, and the development of which had been driven by two prominent Africans: Boutros Boutros-Ghali and Kofi Annan (Ban, 2008). Through this speech, the Secretary General attempted to achieve three things. First, Ban attempted to reinforce the notion that the responsibility to protect was an established and accepted norm. The challenge now lay not in gaining acceptance for the norm, but in operationalising it by turning policy into practice. Second, Ban put in place the three pillars of operationalisation of the norm, which would re-appear in his report on the same topic a few months later. Third, Ban attempted to widen the norm to more closely resemble its initial format. Much of the debate preceding the 2005 World Summit had centred on whether or not a right of armed intervention existed, and during the Summit debate tended to centre on where the right to authorise armed intervention resided. Following the World Summit, debate within and outside of the UN centred on when an armed intervention might be considered legitimate, and debate in the Security Council had focused on linking the responsibility to protect to the protection of civilians in armed combat. Thus, the focus on the armed intervention component of the responsibility to protect had detracted from the responsibilities to *prevent* and *rebuild*, turning the concept from the responsibility to *protect* into the responsibility to *react*.

By focusing his speech on a three-pillared approach, and by highlighting the importance of states' acceptance of their responsibility to protect populations from atrocity crimes through a range of responses under Chapters VI, VII and VIII of the Charter as the implementation of the third pillar, Ban reinforced an understanding of the norm as a wide-ranging responsibility, involving not individual responses but a systematic approach at the domestic, regional and international levels to prevent and react to atrocity crimes. Ban's speech therefore was important in reinforcing a more holistic understanding of the responsibility to protect than had perhaps been developed since the 2005 World Summit.

Building on this, the Secretary General released his report titled *Implementing the Responsibility to Protect* on 12 January 2009. The report, broadly speaking, was a re-iteration of the three-pillared approach which Ban had outlined in his Berlin speech in July 2008, focusing on a tiered approach towards the responsibility to protect. Overall however, the report focused not on revisiting the responsibility to protect debates of the past, but on the means of concretising and operationalising the norm within the UN and international society more broadly. As argued by the report, the Secretary General felt that the best means of discouraging states or groups of states from misusing the norm for inappropriate purposes lay in fully developing UN strategies, processes, tools and practices for the implementation of the norm (United Nations General Assembly Report A/63/677, 2009: 1). Emphasising the three-pillared approach, the Secretary General elaborated on the operational means of reinforcing and supporting the protection

responsibilities of the state, international assistance and capacity-building towards supporting states in meeting their responsibility to protect, and the delivery of timely and decisive responses when required. In elaborating on the operationalisation of the norm, the Secretary General embedded the responsibility to protect within existing UN and regional and sub-regional conflict management responses, arguing that the responsibility to protect should be constituted in strengthened conflict analysis, early warning, mediation, conflict prevention, peacekeeping and peacebuilding responses if it was to be an effective norm for preventing and reacting to atrocity crimes. Ban also used the report to call for a review of the voluntary restriction of veto use by the permanent members of the Security Council, of the creation of criteria to guide the implementation of the norm by the Security Council, and of collaboration between the UN and regional bodies. All of these were of course matters outstanding from the 2005 World Summit, and the Secretary General used the opportunity to urge member states to again drive discussions on these, to him critical, areas of contention forward.

Following the release of the report, the General Assembly convened its first debate on the responsibility to protect on 23 July 2009, which continued on 24 and 28 July 2009. This debate led to the adoption of Resolution 63/308 on 7 October 2009, the first Resolution adopted by the UN solely on the topic of the responsibility to protect (United Nations General Assembly Resolution 63/308: 2009). The Resolution, in all its brevity, did no more than to affirm the continued consideration of the responsibility to protect by the General Assembly, but it was the clearest affirmation of the responsibility to protect as a norm in international society since the 2005 World Summit. The fact that the General Assembly agreed to a resolution simply affirming the responsibility to protect and the need for further debate on the norm also provides an indication of the degree to which the norm had cascaded since 2005, not just in the West, but also among developing countries. The draft resolution was sponsored by Guatemala, and co-sponsored by 67 Member States, including Argentina, Colombia, Costa Rica, Fiji, Haiti, India, Mexico, Panama, Paraguay, Papua New-Guinea, Peru, Timor-Leste, Trinidad and Tobago and Uruguay. Among African states the resolution was co-sponsored by Benin, the Democratic Republic of the Congo, Côte d'Ivoire, Guinea, Madagascar, Rwanda, Swaziland, and Tanzania (International Coalition for the Responsibility to Protect, 2009[b]).

Yet not all states were pleased with the adoption of the Resolution, and, following the vote, Venezuela, Cuba, Syria, Sudan, Iran, Ecuador and Nicaragua took the floor. All stressed that the resolution was a procedural one which did not commit the General Assembly to implementing the responsibility to protect norm. Further, these states argued that the norm could be abused by powerful states to interfere in the affairs of weaker ones. The Iranian representative went further, stating that states remained far from having achieved a consensual understanding of the responsibility to protect, let alone the emergence of such an authoritative norm, and that the failure of the UN to respond effectively to atrocity crimes in the past had not been the result of the absence of a normative framework, but due to the failure of the Security Council to act when required. Sudanese representative argued that no consensus existed as to the applicability of the norm to current political realities (International Coalition for the Responsibility to Protect, 2009[b]). Yet Sudan was the only state to argue that the norm was poorly aligned to existing political realities, and indeed the only African state to feel the need to explain its rejection of the norm. Apart from these states, no other nations felt the need to argue against the adoption of the resolution, which was adopted unanimously.

It is apparent that the responsibility to protect norm 'cascaded' in international society between 2005 and 2010 relatively rapidly, becoming further codified, institutionalised and entrenched in

international organisation. Indeed, the norm was included in several Security Council resolutions, strengthening the *jus cogens* and customary law value of the responsibility to protect. Certainly, contestation also characterised this phase of the norm's development, witnessed in particular by the Chinese and Russian veto of the draft resolution on Burma (Myanmar), and the opposition of the 5th Committee to the appointment of a Special Advisor on the Responsibility to Protect. Yet, increasingly, this opposition appears to have diminished, resulting in the unanimous adoption of General Assembly Resolution 63/308 on the responsibility to protect norm in October 2009. The perceived opposition towards the norm on the part of the global South also failed to materialise. It was feared in particular that African states, apparently strong supporters of traditional interpretations of the sovereignty norm, would prove reluctant to support the entrenchment of the responsibility to protect in international society. Yet, as Paul Williams has demonstrated, between 2005 and early 2009, seven African states (Burkina Faso, Congo, Ghana, Libya, South Africa, Tanzania and Uganda) had sat as non-permanent members of the Security Council, and a further eight (Angola, Egypt, Kenya, Morocco, Nigeria, Rwanda, Senegal and Sudan) had participated in the Council's debates on the responsibility to protect. Of these, it was only Sudan that was explicitly opposed to the responsibility to protect, and even then Sudan was supportive of some components of the norm (Williams, 2009: 403).

The norm therefore appears to have cascaded at the level of the UN quite quickly, and became an increasingly fixed feature in political discourse. Indeed, notions of intervention on humanitarian grounds, which had previously been used to focus discussions on responses to humanitarian emergencies, appear to have become replaced by responsibility to protect discourse, with humanitarian intervention increasingly coming to refer to acts of humanitarianism, and no longer interventions on humanitarian grounds. Taking the above into account, and from a norm development perspective, it could then be argued that the responsibility to protect had become a relatively salient norm in international society within a short space of time.

At the same time as the norm appeared to be gaining ground in the UN, another development was taking place in Africa which would impact on the development trajectory of the responsibility to protect norm. At the turn of the 20th century, African states transformed the OAU into the AU, and under the framework of the African Peace and Security Architecture (APSA) developed a robust interventionist framework for the maintenance of peace and security on the continent. As will be explored below, this development held important consequences for the future formulation of responses to threats to international peace and security, and for the conduct of interventions designed to halt the commission of atrocity crimes in Africa.

4.5 The Evolving African Peace and Security Architecture: Institutionalising the Responsibility to Protect?

The transition from the Organisation of African Unity to the African Union in 2002 represented a turning point on the African continent. The OAU, which had been launched in 1963, had operated on the basis of four principles, namely (1) that imperialism represented a principal obstacle to African unity, and that the continent should work to address its own challenges, (2) that the sovereign equality of states was an inviolable norm, and that the OAU and African states should work on the basis of consensus, (3) that intervention in the affairs of member states was unacceptable, and (4) on the basis of *uti possideitis,* that state borders were inviolable (Williams, 2007: 265). The OAU was therefore created on the basis of the needs of its member states at the time, and within the dynamics of the Cold War and of the period of decolonization. The

organisation's security culture was reflective of this, and while the Charter reinforced state security (and by default, regime security), broader notions of collective security were sidelined. As John Akokpari notes, the establishment of the OAU barely improved the fortunes of human rights in Africa. On the contrary, in addition to sanctioning the continent's arbitrary and hastily demarcated boundaries, the OAU adopted principles which left human rights questions at the discretion of its member states (Akokpari, 2008[b]: 2).

Increasingly, as debates around good governance, transparency, human rights and democratization intensified throughout the 1990s, so too were these debates linked to efforts aimed at conflict prevention on the continent. During the Harare summit in June 1997 and again the Algiers summit in July 1999, debate came to centre on whether or not the OAU should be vested with a right of intervention in the international affairs of member states to protect human rights and constitutional order. Increasingly, consensus was being established that the OAU notions of sovereignty and non-interference should be revised, infused with a more nuanced understanding of sovereignty which was more akin to the notion of sovereignty as responsibility (Mwanasali, 2006: 90). Following the Algiers Summit in July 1999, it was Libyan leader Muamar Gadaffi who called for an extraordinary summit at the level of Heads of State and Government to discuss ways and means of making the OAU more effective and relevant to the continent. Thus, in Sirte on 9 September 1999 Gadaffi presented his grandiose vision of a United States of Africa, complete with a unified defence capability, a single currency and a powerful central leadership. Following heated exchanges in Libya, member states agreed to a process of transitioning the OAU into the African Union, of negotiating a new Constitutive Act, and of strengthening the scope and mandate of the organisation (Baimu and Sturman, 2003: 38). By July 2000, discussions on the work of the new AU had been completed, and during the Lomé summit that month the *Constitutive Act of the African Union* was adopted. The intention was to launch the AU at another extraordinary summit in Libya in 2001, yet at the Lusaka summit in 2001 it was decided that South Africa should host the inauguration, given the role the country had played in drafting the Constitutive Act, and the emphasis which had been placed in the Act on the advancement of human rights, democracy and good governance. As the newest member of the OAU, South African President Thabo Mbeki travelled to Libya to seek Gadaffi's blessing to have the African Union launched in South Africa, in exchange for accepting Libya into the New African Partnership for African Development (NEPAD) (Baimu and Sturman, 2003: 38). It was thus that the AU was inaugurated in Durban, South Africa, in June 2002, replacing the OAU 39 years after its founding.

The Constitutive Act tasked the AU with a range of objectives related to the political, social and economic integration of the African continent, the promotion and advancement of human rights, regional integration, good governance, sustainable development, and the promotion and defence of common African positions in international society. Yet the radical departures from the OAU were to be seen in the strength of the peace and security mandate vested in the African Union. Already as the transition from the OAU to the AU was being prepared, it became evident that the former principles of non-intervention and sovereign inviolability were coming under assault. Through the late 1990s, the OAU began to play a key role in mediation efforts in the Democratic Republic of the Congo. In 1997, the OAU requested ECOWAS to intervene militarily in Sierra Leone following a coup in that country. The intervention again was conducted without UN Security Council authorisation, and once more took the UN by surprise, although, as previously, the intervention was later praised by the Security Council (Sarkin, 2008: 46 - 49). In 1999, the OAU intervened in what would later turn out to be the first of many crises in Côte d'Ivoire (Mwanasali, 2008: 50). In 2000, in contrast to its earlier silence on the matter, the OAU helped broker a peace deal between Ethiopia and Eritrea following a two-year revival of the armed

conflict between the two countries. That same year, the OAU also adopted the *Declaration Framework for an OAU Response to Unconstitutional Changes of Government* (Sarkin, 2008: 46 - 49).

Traditional interpretations of the principles of non-intervention and state sovereignty, which had underpinned the workings of the OAU for four decades, were increasingly coming under assault. During the discussions leading up to the adoption of the Constitutive Act in July 2000, negotiating teams had reflected on the inadequacies of the OAU's peace and security arrangements, and had generally come to a shared acceptance that the African Union should work to ensure the protection of civilians in conflict situations, and in particular from war crimes, crimes against humanity and genocide – atrocities which had haunted the continent even through the 1990s. Interestingly, it was also during the Lomé summit that the OAU's *Panel on the Rwandan Genocide* presented its report, which contained scathing criticism of the OAU, the United Nations and states at large. The release of the report focussed discussion in Lomé on two issues in particular; the authorisation of interventions in situations where atrocity crimes are committed and the need to add the preservation of political stability, in particular in a post-conflict setting, to legitimation for interventions. It was therefore decided in Lomé that interventions conducted by the new AU in the most extreme of circumstances should be authorised at the highest political level, the Assembly of Heads of State and Government, and that the preservation of political stability constituted a legitimate reason for intervention (a decision which was incorporated into the Constitutive Act at the Maputo summit in 2003) (Mwanasali, 2006: 92). The AU, it seemed, was going to provide a far more interventionist peace and security architecture than its predecessor had. When the organisation was launched in 2002, the Constitutive Act clearly reflected this.

Article 3(b) of the Constitutive Act articulates that a primary objective of the Union is to defend the sovereignty, territorial integrity and independence of its member states, yet Article 3(f) clearly states that a further primary objective of the Union is the promotion of peace, security and stability on the continent, while Article 3(h) mandates the Union to promote and protect human and people's rights in accordance with the African Charter on Human and People's Rights and other relevant international human rights instruments. The principles by which the Union would operate to reconcile these, perhaps at first glance somewhat contradictory, objectives were laid out in Article 4 of the Constitutive Act. Article 4(a) upholds the sovereign equality and interdependence among member states, while Article 4(f) prohibits the use of force or threat of use of force among member states, and Article 4(g) prevents the interference by member states in the affairs of one another. However, Article 4(h) provides the Union with the right of intervention in a member state, pursuant to a decision at the level of Assembly of Heads of State and Government, in respect of grave circumstances, namely war crimes, genocide and crimes against humanity. Article 4(j) further provides member states with the right to request the Union to restore peace and security in other member states. Therefore, while member states were prohibited from interfering in each other's affairs, the Union was vested with full rights of intervention on behalf of member states, where this was authorised by the Assembly. Article 4(m) mandates the Union to uphold respect for democratic principles, human rights, the rule of law and good governance, while Article 4(o) mandates the Union to respect the sanctity of human life, and to condemn and reject impunity, political assassination, acts of terrorism and subversive activities (African Union, 200: 4 – 6).

Importantly, the Constitutive Act was not framed as narrowly as the UN Charter, and the definition of intervention is not restricted to the use of force. Indeed, the definition is left open, and therefore has both in theory and in practice come to include early warning measures, mediation efforts, the

use of good offices, sanctions, the deployment of peace support operations, post-conflict efforts, and other non-forcible and forcible measures. While the scope of the intervention mandate would come to be refined in later years, the most remarkable of achievements had already been made; the AU Constitutive Act allowed for intervention on the part of the Union without the consent of the host government. This development, as Tim Murithi and Angela Ndinga-Muvumba have argued, placed notions of human security at the very centre of the African Union (2008: 7). Mwanasali goes further, arguing that this development constituted a "normative revolution" in the history of the continent (2006: 92).

To operationalise this new interventionist peace and security regime, the 1st ordinary session of the Assembly of the AU, meeting in Durban on 9 July 2002, adopted the *Protocol Relating to the Establishment of the Peace and Security Council of the African Union*. The Protocol allowed for the creation of what has commonly been referred to as the African Peace and Security Architecture, the operational organs of the Union's peace and security framework. In essence, the Protocol mandated the establishment of the Peace and Security Council, as well as its supporting structures. The Peace and Security Council would replace the defunct Central Organ of the Mechanism for Conflict Prevention, Management and Resolution established in 1993, and would be the central standing decision-making organ for the prevention, management and resolution of conflicts, supported by collective arrangements to facilitate timely and efficient responses to conflict and crisis situations in Africa. The Protocol set out the entry points, determined the modalities for action and identified the institutional arrangements that would support the work of the Council in the fulfilment of its responsibilities for conflict prevention and management in Africa. The Council was however one of several organs mandated with a peace and security role. Indeed, the Assembly of Heads of State and Government, the Executive Council of the African Union, the Pan-African Parliament, the Chairperson of the African Union Commission, the Panel of the Wise, the African Standby Force and the Military Staff Committee were all mandated with roles in the maintenance of peace and security. In addition, the regional economic communities were mandated with conflict prevention, human rights protection, and in some cases, such as SADC and ECOWAS, with explicit peace and security responsibilities (Sarkin, 2008: 58).

Yet the Peace and Security Council would be the central mechanism in the maintenance of peace and security on the African continent. The launch of the Council in 2004 was described by some observers as a "momentous event" in the articulation of the doctrine of non-indifference on the African continent (Mwanasali, 2008: 44). At its first formal session in May 2004, the Peace and Security Council reaffirmed the commitment of African leaders to the "promotion of a stable, secure, peaceful and developed Africa" and the "desire to assume a greater role in the maintenance of peace and security in Africa". Political leaders were quick to emphasise that a new era of non-indifference was dawning, which they hailed a radical departure from the OAU policy of non-interference, which had crippled it and made it powerless to prevent violent conflicts from consuming the continent (Mwanasali, 2008: 41). The first Chairperson of the AU Commission, Alpha Omar Konaré, liked to refer to the doctrine of non-indifference as *ingérence courtoise* (courteous interference), and argued that the Union was empowered both with a legal basis and powerful guiding normative principles that would legitimise intrusion in the affairs of member states (Mwanasali, 2008: 42). The interventionist stance of the AU appeared to have solid backing, and already during its first year of existence, the Peace and Security Council would come to hold more sessions than its defunct predecessor, the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution (established in 1993), had held in its ten years of existence (Mwanasali, 2008: 44). In 2004, with the Panel of the Wise and the Pan-African Parliament established, the *Common African Defence and Security Policy* adopted and

the African Standby Force rapidly being developed, it appeared certain that the African Union would come to play a far more prominent role in peace and security on the African continent in the years to come.

One challenge left open-ended in the initial discussions on the Constitutive Act would however likely come to the fore very quickly. Both the Constitutive Act and the Peace and Security Protocol took note of and reaffirmed the provisions of the UN Charter, in particular Chapter VIII as related to the role of regional arrangements in the maintenance of international peace and security. Yet in both documents, the AU is empowered to authorise interventions without explicit clarification on whether prior Security Council authorisation is required or not. Ben Kioko noted that when this matter was addressed in negotiations, the requirement for Security Council authorisation was dismissed, reflecting a deep sense of frustration with the slow pace of reform of the international order and with instances in which states were perceived to have failed the African continent (Kioko, 2003: 821). Indeed, as Kioko argued, African leaders displayed themselves willing to:

> [...] push the frontiers of collective stability and security to the limit without any regard for legal niceties such as the authorisation of the Security Council" (Kioko, 2003: 821).

Mwanasali similarly argued that the recognition that the Security Council had failed in its responsibilities towards the African continent ran so deep that member states decided, through the African Union, to acquire the greatest degree of self-sufficiency possible in matters of peace and security (2008: 55).

Chapter VIII of the UN Charter authorizes regional arrangements to deal with matters of peace and security in their regions. This is subject to two conditions; first that no enforcement action is taken without the Security Council's authorization, and second that the Security Council is at all times informed of the activities undertaken or contemplated by regional organizations in the maintenance of regional peace and security. When the matter needed to be addressed, in particular in the build-up to the 2005 UN World Summit where it was perceived that an opportunity for genuine reform of the United Nations had presented itself, the AU articulated its position on Security Council authorisation for intervention. In the *Ezulwini Consensus*, African states argued that while the UN should not abdicate its responsibility for the maintenance of international peace and security, and that regional organisations should intervene when necessary with the approval of the Security Council, under certain circumstances where urgent action was required, it would be sufficient for approval to be granted post-facto. The reasoning provided was that:

> Since the General Assembly and the Security Council are often far from the scenes of conflicts and may not be in a position to undertake effectively a proper appreciation of the nature and development of conflict situations, it is imperative that regional organizations, in areas of proximity to conflicts, are empowered to take actions in this regard (African Union, 2005[a]: 6).

Through empowering itself to intervene in the affairs of member states, in particular in respect of grave circumstances including war crimes, crimes against humanity, ethnic cleansing and genocide, the AU adopted the most interventionist collaborative security arrangement in the world. In particular its right of intervention, rested on notions of sovereignty as responsibility, were revolutionary given that they were negotiated before the ICISS was launched, and well before the notion of responsibility to protect first appeared in international discourse. Many commentators argued that the AU was the first organisation to give meaning to the responsibility to protect norm,

despite the fact that no legal document of the Union has made reference to the concept (Mwanasali, 2006: 95). As Mwanasali argued, it would be reasonable to assert that, even in the absence of a specific reference by the AU to the responsibility to protect before the *Ezulwini Consensus*, the Constitutive Act and the Peace and Security Protocol provided a sufficient legal basis for the AU to operationalise the responsibility to protect norm (2006: 95). Others saw an even closer alignment between the peace and security architecture of the continent and the responsibility to protect. Williams, for example, argued that the Union's security architecture was in many ways being built around the ideas set out in the responsibility to protect, and was arguably the first region in the world to institutionalise the ideas in a systematic manner, representing the closest institutional embodiment of the responsibility to protect's three-pillar structure, as laid out by the UN in 2009 (2009: 399 - 400). Kwesi Aning and Samuel Atuobi similarly argue that the African peace and security architecture embodies norms and principles which mirror the responsibility to protect (2009: 92).

4.6   Prospects for Dealing with Conflicts Characterised by Atrocity Crimes in Africa

As demonstrated above, the AU was provided with a powerful mandate by its member states to prevent and respond in particular to war crimes, crimes against humanity and genocide. To many observers, it appeared as though the AU had become the first multilateral organisation to truly embrace the responsibility to protect norm and to operationalise it through the Union's peace and security structures (Aning and Atuobi, 2009). Given the relatively rapid emergence and cascade of the responsibility to protect norm in the UN, and the concomitant development of a strongly interventionist AU mandated in particular to prevent and respond to conflicts characterised by atrocity crimes, the assumption that interventions conducted on humanitarian grounds in Africa, either by the AU or the UN, or by the two organisations working in unison, would receive greater attention could easily be drawn. Indeed, given the entrenchment of the responsibility to protect norm in the UN and its mirroring in the AU, the assumption that responsibility to protect discourse would increasingly come to inform the formulation and conduct of interventions on humanitarian grounds could easily be drawn. Indeed, the conceptual underpinnings of the responsibility to protect seemed to resonate well across the African continent. During the UN Security Council debate on the responsibility to protect held on 9 December 2005, Benin, Rwanda and Tanzania all provided strong support to the norm. The Rwandan representative drew on his country's own traumatic past, before arguing forcefully that international "business as usual" was inadequate and could no longer prevail, arguing that the use of Chapter VII action where states failed to live up to their sovereign responsibilities was not only justified but indeed required. The representative from Benin ventured further, arguing that the collective responsibility to protect was the basis for the creation of the AUI, and that its structures concerned with the maintenance of peace and security represented an embodiment of the responsibility to protect norm (Williams, 2007: 275 - 276). Similarly, the new Commissioner for Peace and Security in the AU, Said Djinnit, argued that:

> Africans cannot watch the tragedies developing in the continent and say it is the UN's responsibility or somebody else's responsibility. We cannot as Africans remain indifferent to the tragedy of our people (in Williams, 2007: 276).

Both the development and the entrenchment of the responsibility to protect in the international system, in particular at the level of the UN, and the apparent positive resonance of the norm across the African continent appeared to indicate that the norm would play a role in the

formulation of international interventions on humanitarian grounds, in particular in conflict situations characterised by the commission of atrocity crimes. Indeed, the endorsement of the responsibility to protect norm by the UN and the development of a strongly interventionist peace and security regime in Africa commensurate to the content claims of the responsibility to protect norm itself appeared to indicate that the norm had become relatively salient in a short space of time.

The challenge with this observation, however, is that its utility must be clarified. Arguing that a norm appears to be salient does not shed sufficient light on the impact that this norm can or could be expected to have in international organisation. Rather, the relevance of this norm salience must be explored further. As highlighted elsewhere in this study, it is clear that norms do not determine behaviour, and the existence of a norm does not guarantee that states will adhere to the prescriptive, enabling or constraining components of the norm. Thus, norms do not determine behaviour, nor can they serve as a framework through which to predict behaviour at an actor or system level. Norms do however influence the behaviour of actors, through their enabling or constraining components tied to cognitive frameworks or a logic of appropriateness. Therefore, norms either enable or constrain actor behaviour; enabling new forms of behaviour which were not previously possible, or constraining forms of behaviour which were previously admissible, on the basis of appeals to a reframed logic of appropriateness. If a norm is relatively salient, in that it has emerged, developed, become institutionalised and codified, and has attained a general level of acceptance as a norm, then it could be expected that evidence of the impact of the norm should be witnessed in the international system through state practice and the discourse surrounding that practice. Here, reference to the norm would either be made to justify the actions of states in the international system, or states would argue that the norm did not apply to a certain type of action, or actions which violated the norm would be justified as a necessary violation of an acknowledged norm. Therefore, a fair dialectical expectation of a salient norm would be to witness this norm featuring in the international system, not necessarily in that states either comply with or act in contravention to the norm, but that the norm features in actor discourse surrounding state practice.

With regards to the responsibility to protect norm, and extrapolating from the above analysis, it could be argued that, given the rapid development, entrenchment, institutionalisation and codification of the norm, it would play a prominent role in state discourse and practice in cases of war crimes, crimes against humanity, ethnic cleansing and genocide. Naturally, the norm development process must be taken into account, and it should be anticipated that the norm would play a more prominent role as its salience increased in the international system. Overall, however, in cases where the norm should apply, based on an assessment of the norm content, it should reasonably be expected that responsibility to protect discourse would feature in actor discourse. Therefore, as the strength of the norm increased over time, it should be expected that the norm would come to feature in discourse surrounding state behaviour in response to humanitarian emergencies, and that state action (or inaction) would be justified within the same logic of appropriateness as that which governs the norm. Here, then, it could be expected that responses to future humanitarian emergencies should not witness debate on whether or not a right of intervention existed, or whether a humanitarian emergency was to be considered an internal matter or a matter of international peace and security. Rather, it would be expected that dialogue surrounding a humanitarian emergency would be framed within the discourse of the responsibility to protect. Therefore, in a humanitarian emergency, a dialectical expectation of the responsibility to protect norm would be that states, in deliberating on and designing their responses, would use the responsibility to protect norm as a framework, as a reference point, or

as a socially weighted argument in favour of, or in opposition to, a course of action. In essence, and in its most simple form, it could be reasonably expected that the responsibility to protect norm would impact on state behaviour, evidenced through discourse analysis, in cases of war crimes, crimes against humanity, ethnic cleansing and genocide. This is not to argue that the responsibility to protect would actually *succeed* in attaining the substance of its content goal (ensuring the prevention of and meaningful reaction to atrocity crimes), but certainly that it would *impact* on state behaviour, or be of *relevance* in decision-making, in these situations. If a norm is salient, which as argued above the responsibility to protect was rapidly becoming, then this dialectical expectation should hold.

Thus far, this study has focussed on generating an understanding of how norms develop in the international system, and has applied this understanding to tracking the emergence and development of the responsibility to protect norm in international society. The findings thus far indicate that the norm emerged from 2001 to 2005, and from 2005 onwards entered into what has been labelled the cascade phase of norm development. While much of this norm development was centred around the UN as an institutional platform, the transition from the OAU to the AU, and the development of a strongly interventionist peace and security regime, appears to have reinforced the responsibility to protect norm, and much of the security thinking underpinning the AU was commensurate with the principles underpinning the responsibility to protect norm. The dialectical expectation therefore would be that the norm would increasingly be of relevant to decision-making on intervention on humanitarian grounds, and would feature in discourse surrounding state practice.

However, as will be demonstrated throughout the remainder of this study, a major discrepancy quickly emerged with regards to the responsibility to protect norm. At the same time as the norm emerged, developed, became institutionalised, was further codified, and became increasingly entrenched in international society, a humanitarian crisis began to unfold in the Darfur region of Sudan. The conflicts in the Darfur region quickly came to test not only the resolve of the AU and the UN, but also came to test the utility of the responsibility to protect norm itself. Chapter 5 will assess the manner in which the norm was applied in response to the conflicts in Darfur from 2003 to 2005, the same time period in which the norm was in the emergence phase of development. Chapter 6 will in turn assess the manner in which the norm was applied to the Darfur conflicts over the period 2005 through 2010, the same time period in which the norm was in the cascade phase of development. This assessment will be conducted in an attempt to gain insight into whether the responsibility to protect norm contributed to the formulation of effective responses to the kinds of conflict situations it was designed for. Building on this analysis, chapter 7 will assess how future responses to conflicts characterised by atrocity crimes in Africa may be formulated, and what role the responsibility to protect norm may play in future.

Chapter 5

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Whose Responsibility to Protect? Responses to the Darfur Conflicts from 2003 – 2005

5.1 Introduction

While a general sense of optimism accompanied the launch of the AU and the new peace and security architecture of the continent, few member states or Commission staff could anticipate that the organisation would at its very creation come to face a conflict that would shake it to its core, and force it to confront every normative contradiction embedded within its founding documents, and which would come to define the African understanding of and approach to the responsibility to protect. As the Peace and Security Council was inaugurated in Addis Ababa in May 2004, accompanied by a ceremony in which fifteen African leaders released white doves as messengers of peace and symbols of the determination to bring an end to decades of misery, pain and suffering inflicted on the African people, one of the worst conflicts the African continent has witnessed was already raging in Darfur, in the Western regions of Sudan. The conflict would be the first to be addressed by the new Peace and Security Council, and would prove to confound it and the work of the AU for years to come. Indeed, the conflict in Darfur would at times pit the AU and the UN directly against one another, and would test whether the responsibility to protect, increasingly embedded in the work of both organisations, held any relevance at all when it came to responding to the worst of atrocity crimes on the African continent.

This chapter will track international responses, in particular at the level of the UN and the AU, to the conflicts in Darfur between 2003 and 2005, focussing in particular on the role played by the responsibility to protect norm, in its emergence phase, to assess whether the norm at this early stage in its development proved of relevance or benefit when responses to the Darfur conflicts were being formulated.

5.2 Delving into Darfur: Sailing into the Perfect Storm

Darfur increasingly came to dominate political discourse from 2003 onwards, yet the origins of the conflicts, and the dynamics which sustained them, are rooted in the history of Darfur and of Sudan itself. Darfur had remained an independent sultanate until 1916, when it was forcefully incorporated into Anglo-Egyptian Sudan. While initially a centre of power in colonial Sudan, Sudanese independence in 1956 initiated a spiral of marginalization, neglect and impoverishment for Darfur, with Khartoum focused increasingly on developing northern Sudan and waging war against renegade elements in the South (Iyob and Khadiagala, 2006: 134). The rise of the theocratic state in 1989, dominated by riverian elites from Northern Sudan and from Khartoum, brought further repression and an intensification of the North-South conflict, pursued more vigorously and violently by the new military regime in Khartoum. The period also witnessed an intensification of conflict between Khartoum and peripheral areas of Sudan. Indeed, the 1990s were a decade when Sudanese state was confronted with the emergence of armed movements in the West, East and Centre, while the armed movements of the South had fought Khartoum into a stalemate from which it was not likely to be able to extract itself through the use of traditional military means (Iyob and Khadiagala, 2006: 32). As Khartoum focussed its attention on finding a negotiated end to the North-South conflict, several opposition movements, some armed, others political in nature, rapidly sprung up in Darfur, the largest of which were the Justice and Equality Movement (JEM) and the Sudanese Liberation Movement (SLM). Khartoum however from the

outset refused to engage with the JEM and the SLM on a political level, and the movements turned increasingly to the use of armed insurrection. From 2000 onwards, intermittent conflict commenced between the armed movements and the police and armed forces in Darfur. Yet the armed movements mostly focused their efforts on attacking police stations, small garrisons and administrative facilities, and the conflict did not draw the attention of Khartoum, which left the regional administrative authorities to deal with the 'tribal' conflict.

Khartoum had assumed by the end of 2002 that the small insurrection in Darfur had been nipped in the bud, and was at the time largely unprepared for the emergence of a military threat in the West, with most of its forces deployed in the South. Yet by early 2003 the armed movements had rapidly gained ground, threatening to take control of Darfur from Khartoum (Flint and de Waal, 2008: 121). In Khartoum's calculation, the stakes were high, as the conflict had the potential of destabilizing the central government at a time when its attention was focused on regaining international legitimacy through the North-South peace process, where it was negotiating from a position of strength (Iyob and Khadiagala, 2006: 151). Khartoum was however not able to utilize the regular armed forces in quelling the uprising, due to the high number of Darfuri soldiers serving in the national army, and the need to maintain a robust military presence in the South. Thus, Khartoum resorted to the use of a counter-insurgency campaign in Darfur, modelled on similar campaigns which had been conducted in South Sudan and in the Nuba Mountains in previous years (Clough, 2005: 3). The government armed and deployed the Janjaweed, tribal groups supplied with weapons and promises of financial reward in return for engaging the armed movements on Khartoum's behalf. The Janjaweed, working alongside the intelligence services, the regular armed forces and the national police, quickly unleashed a reign of terror in Darfur, fighting not only the SLM and the JEM directly, but focusing their destructive power on the communities from which the armed movements had emerged, and which provided shelter and supplies to them. Khartoum thus focused both on engaging the movements directly, and on destroying the communities which enabled them operate. A brutal conflict ensued, characterized by millions of displacements, hundreds of thousands of combatant and non-combatant deaths, a scorched earth policy on the part of the government, rape, mutilation, aerial bombing of villages and communities, forced starvation, mass killings, and the commission of war crimes and crimes against humanity, perpetrated on all sides.

Yet when Darfur first erupted onto the international stage in mid-2003, the attention of the world's foreign policy-makers was not focussed on Sudan. Indeed, international attention was squarely focussed on conflicts in Iraq and, to a lesser extent at the time, in Afghanistan. What little attention was directed towards Sudan was focused squarely on the Naivasha peace process in Kenya, which held the potential of finally bringing an end to the North-South conflict. Thus policy-makers in Western capitals tended to ignore the emerging Darfur conflict as a distraction from broader efforts aimed at bringing peace to Sudan. Khartoum exploited this opening, quickly escalating the conflict in Darfur both through regular but mostly through irregular military means, and attempted to isolate Darfur from international attention, imposing tight travel restrictions to the region, even for Sudanese citizens (Clough, 2005: 3). Both the UN and non-governmental organizations thus found themselves having to travel to Chad to assess the situation in Darfur. The American Embassy in Khartoum began to include reports of ethnic cleansing in its internal cables to Washington, but these had little impact, and policy-makers in Washington were not particularly interested in a further complication in their Sudan policy (Flint and de Waal, 2008: 169).

During the summer of 2003, an increasing number of representatives from Darfur arrived in Khartoum, pleading with the UN for protection from the Janjaweed and government forces. By September, the UN Resident Coordinator, Mukesh Kapila, sent a report detailing atrocities in Darfur to New York and requested guidance. Yet the Security Council and the troika of Norway, the United States and the United Kingdom, who were leading the North-South mediation efforts, feared that engaging Khartoum on Darfur would stall progress in the Naivasha negotiations, as the SPLM and Khartoum had already reached a ceasefire agreement in October 2002, and diplomats believed that a final settlement was only weeks or months away (Traub, 2010: 5-6). Darfur was therefore not prioritized. Kapila could also not elicit much interest among diplomats in Khartoum, and in October 2003 travelled to Washington and European capitals, briefing officials there on the deteriorating humanitarian situation and the string of atrocities taking place, and urging for Darfur to be placed on the agenda of the Security Council. No interest was forthcoming however (Traub, 2010: 6). On 30 November, the UN office in Khartoum issued a briefing to New York estimating that 600,000 Darfuris had been displaced, and that the humanitarian situation in Darfur could soon emerge as the worst humanitarian crisis in Africa. The report recommended strong international pressure be placed on Khartoum to control the militias. The report again fell on deaf ears however (Traub, 2010: 6-7). Yet by December Kapila's reports had gained some traction, and Jan Egeland, the UN's chief humanitarian coordinator, and Kofi Annan within days of one another convened press conferences stating that Darfur had already become the worst humanitarian crisis in the world (Traub, 2010: 7). The Security Council however refused to take up the matter.

Increasingly, the conflict was spiralling out of control, with the armed movements engaged in continued acts of defiance against government forces, and the government responding with increasingly brutal acts of retaliation against the movements and the civilian population. Despite efforts to keep Darfur off the international agenda, pressure from non-governmental organizations and humanitarian agencies, the obstruction of humanitarian efforts on the part of the Sudanese government, and the rapidly escalating numbers of displaced persons raised a crescendo of condemnation, which swiftly led to accusations that genocide was being committed in Darfur (Iyob and Khadiagala, 2006: 152). Making the most of these developments, JEM members began to portray the conflict in Darfur as genocide by early 2004, both within and outside of Sudan, calculating that a successful portrayal of the conflict as genocide would serve to delegitimise the government in Khartoum, would contribute to fostering regime change, and perhaps would even forestall independence in the South (Flint and de Waal, 2008: 101). Labelling the conflict as 'genocide' however did not gain much traction at the time, and Western policy-makers were keen to steer away from any such portrayals of what was keenly portrayed at the time to be nothing more than a humanitarian emergency.

By early 2004 Jan Egeland was urging the Security Council to place Darfur on its agenda. Egeland was convinced that ethnic cleansing was taking place, but the United States and the United Kingdom, together with Norway, blocked any moves to have Darfur placed on the agenda of the Council. Egeland's efforts also received no support from the UN Department of Political Affairs (UN DPA), which was focused entirely on the North-South Naivasha process (MacKinnon, 2010: 83 and Traub, 2010: 7 - 8). Egeland would later complain that the three members of the troika were "obsessed with getting a North-South agreement" (in Williams, 2010; 206). Some UN officials did attempt to get member states to take a stance on Darfur, but even the Secretariat itself was divided on the matter. One UN political affairs officer stationed in Khartoum noted:

The AU was at the time also not prepared to address the situation in Darfur. At the Second Extraordinary Assembly of the Union, meeting in Libya from 27 – 28 February 2004, no mention was made of Darfur, although a one-page Resolution was adopted on the humanitarian situation in Haiti (African Union, 2004[c]).

As international attention began to focus on the ever-increasing numbers of refugees and IDPs emerging from Darfur and on swelling evidence that widespread and systematic violations of human rights were occurring, it became evident that some form of policy response was required. By mid-2004, the US-British-Norwegian troika that was supporting the Naivasha process came to understand that some form of response needed to be formulated. Two options were considered by the troika. The first was to deal with Darfur as part of the North-South peace process, and to enlarge Naivasha to become a more inclusive inter-Sudanese peace process. Should this fail, the troika would consider at the very least stabilising Darfur before concluding the Naivasha process. The second option was to proceed with the Naivasha process until its completion, and then to focus attention on Darfur. The latter option was favoured, and the troika focused on pressing ahead with the negotiations along the North-South axis. As one observer notes, this decision was based on considerations of both timing and of feasibility. Neither the SPLM nor Naivasha partners were keen on having the North-South process held hostage by an unpredictable conflict in Darfur, and thus the conflicts were separated from one another, to be dealt with in sequence (De Waal, 2007: 1040 - 1041). As another observer further notes, there was also a real fear that a discussion on Darfur would cause the government in Khartoum to pull out of the Naivasha talks, and set back progress in one of Sudan's many conflicts (Clough, 2005: 4).

Khartoum was therefore left to deal with the situation in Darfur as it saw fit, as long as it was cooperating in the Naivasha process. Yet as James Traub argues, both diplomats and activists quickly became convinced that Khartoum was using the Naivasha process to pursue its conflict in Darfur unhindered, and one deadline after another was missed in Naivasha, prolonging the negotiations. At the same time, the SPLM quickly came to view the SLM and the JEM as proxy forces of its own, weakening Khartoum at the bargaining table both politically and militarily and draining the government's attention and resources from the North-South conflict (Traub, 2010: 8). The SPLM thus also began to support the armed movements in Darfur, in an effort to strengthen its own bargaining position. The pace of negotiations in Naivasha thus slowed down, with both parties focused on Darfur in the struggle for political power in Sudan. Yet the partners adhered to the decision that Darfur be dealt with purely as a humanitarian problem, and continued to pressure for the politics of the broader Sudan conflict to be negotiated in Naivasha, to the exclusion of the movements in Darfur (Seymour, 2010: 59 – 60).

5.3 Dancing with the Devil: Whose Responsibility to Protect Whom?

Sensing that the UN was not keen to have Darfur on its agenda, and perhaps sensing an opportunity to legitimate itself, the AU appointed a Special Representative to Darfur, and Ambassador Baba Gana Kingibe was quick to hold consultations with the Government of Sudan in Khartoum to ensure that the AU would be recognized as having the lead role in any future responses to the Darfur conflicts (Badescu and Bergholm, 2010: 101). At the same time, frustrated by the unwillingness of the UN to formulate a response, Mukesh Kapila on 21 March

2004 arranged an interview with the British Broadcasting Corporation (BBC) in which he described the violence in Darfur as "an organized attempt to do away with a group of people", and compared the situation there with the early stages of the Rwandan genocide. Kapila's comments infuriated UN officials, and the ensuing fallout ensured that international attention was focused increasingly on Darfur.

By 31 March 2004 negotiations aimed at establishing a humanitarian ceasefire agreement for Darfur commenced in N'djamena, Chad. Sudanese authorities, considering the Darfur matter an internal one, refused the presence of outside parties, except for the AU, as long as the AU recognized the Darfur conflict to be an internal matter of Sudan (African Union, 2004[d]. By 01 April the EU had called for the imposition of a no-fly zone over Darfur, to be policed by the UN, and diplomats and UN officials in New York were scrambling to find a consolidated position on Darfur (Traub, 2010: 9). On 02 April Jan Egeland was finally able to use the German presidency of the Security Council to deliver a general briefing, and inserted an update on the critical nature of the situation in Darfur. The proposed presidential statement included language condemning the parties to the conflict, but through the efforts of China, Algeria and Pakistan this was watered down to language which called on the parties concerned to fully cooperate in order to address the grave situation prevailing in the region (Traub, 2010: 9).

On 07 April, Kofi Annan, with a sense of increasing urgency, used his speech to the Human Rights Commission to commemorate the 10 year anniversary of the Rwandan genocide to highlight that the unfolding events in Darfur left him with a deep sense of foreboding. He concluded:

> Whatever term is used to describe the situation [in Darfur], the international community cannot stand idle. […] States must be prepared to take appropriate action. By "action" in such situations I mean a continuum of steps, which may include military action (Annan, 2004).

Following Annan's statement, the Commission dispatched a fact-finding team to Darfur, which reported a "disturbing pattern" of disregard for basic principles of human rights and humanitarian law, for which the armed forces of Sudan and the Janjaweed were found to be responsible. The report of the Human Rights Commission, released on 07 May 2004, concluded that a reign of organized terror was being orchestrated in Darfur, and that the government and its proxy agents were guilty of widespread crimes. Before the Commission could vote on a resolution however, its content was leaked to the press. Both Pakistan and Sudan condemned the leak and called for an immediate inquiry, and, unwilling to force the issue and concerned that a strongly worded resolution would be rejected by the Commission's African and Asian members, European members softened the draft resolution they were preparing. The redrafted resolution thanked the Sudanese government for having allowed the fact-finding team to visit the country, without making mention of the outcomes of the mission. It was passed with fifty votes in favour, with the United States, Australia and the Ukraine voting against the resolution (Bellamy, 2005: 41). Two weeks later, Sudan was elected as a full member of the Commission (causing the United States to walk out in protest), but the High Commissioner on Human Rights quickly moved to issue a statement strongly condemning the large-scale violations in Darfur, demanding that those responsible be held accountable (Scanlon, 2006: 136). Kofi Annan also began to press Sudan's Ambassador to the UN to allow humanitarian access to Darfur, and Khartoum responded by easing some restrictions on the movement of aid workers, on a temporary basis (Traub, 2010: 9-11).

While the UN struggled to find either a position on Darfur or a mechanism for engagement, the AU moved swiftly. The Peace and Security Council had already been briefed on the escalating situation at the end of March 2004, and by the end of that month Alpha Omar Konaré, the Chairperson of the Commission, had dispatched a delegation to N'djamena in Chad, were dialogue between the SLM, JEM and the Government of Sudan was being convened by the Chadian Government. On 08 April 2004, and with AU support, the N'djamena Humanitarian Ceasefire Agreement (HCA) was signed between the Government of Sudan, the SLM and the JEM. On 13 April the Peace and Security Council commended the parties to the conflict for having signed the HCA, and requested the Government of Sudan to implement its commitments in line with the agreement, and bring to justice those responsible for violations of human rights, "in line with the AU's expressed commitment to fight impunity" (African Union, 2004[e]: 3).

During May, the parties to the ceasefire signed a further agreement in Addis Ababa on the implementation modalities of the N'djamena agreement, and acknowledged the AU as the primary international partner and the operational arm of the ceasefire agreement (Iyob and Khadiagala, 2006: 153). That same month, the Peace and Security Council was officially launched in Addis Ababa. Sudan was one of the inaugural members, serving a two-year term. Despite its engagement on Darfur, in its communiqué on conflict situations in Africa, the Council made only passing reference to the peace process between the Government of Sudan and the SPLM, with no mention of Darfur. The Council did however note that:

> With the tenth anniversary of the commemoration of the Rwandan Genocide of 1994, still fresh in our minds, we insist that the findings and recommendations of the International Panel of Eminent Personalities, as contained in their *report Rwanda: The Preventable Genocide*, must serve as the basis for ensuring that the ultimate crime of genocide shall never again deface this continent (African Union, 2004[f]: 3).

The report, commissioned by the OAU following the Rwanda genocide, had heavily criticized the UN, the OAU and the international community at large for failing to prevent and intervene in the Rwandan genocide, and the OAU had subsequently committed to never again allow genocide to take place on the African continent. The Peace and Security Council, in its inaugural communiqué, moved to reaffirm this commitment, yet at the same time failed to even include the events in Darfur in its review of conflict situations in Africa. In a separate meeting, the Council did move to review the situation in Darfur, and called on the Government of Sudan to ensure the protection of the civilian population. The Council further requested the AU Commission on Human and Peoples Rights to dispatch a mission to Darfur to investigate reports of human rights violations, and to report back to the Council (African Union, 2004[g]).

By late May, the Peace and Security Council approved the establishment of a Ceasefire Commission in support of the HCA, and the AU dispatched a small team of observers to Darfur to monitor compliance with the ceasefire agreement, which commenced operations on 09 June 2004 under the banner of the African Union Mission to Sudan (AMIS). What was not entirely clear at the time, as Henry Anyidoho argues, was why the AU began by only deploying an observer mission when reports at the time had extensively detailed the plight of displaced persons and shown that refugees were pouring into Chad's Abeche region (2006: 150). Yet the AU had received the consent of the Sudanese government for the deployment of an observer mission only, and would not have been able to deploy a mission with a mandate which reached beyond the confines of the ceasefire agreement. AMIS thus consisted of 60 monitors and 305 protection troops from Rwanda and Nigeria mandated to protect the monitoring team and to provide security to IDPs receiving humanitarian assistance, within the means and areas of operation of the

mission (Iyob and Khadiagala, 2006: 154). Confusion soon set in however. The United States, which had taken the lead on the humanitarian response and which was playing an important role in the North-South negotiations, began taking initiatives without consulting partners, the EU jealously guarded its role as deputy head of the Ceasefire Commission, and a tangle of responsibilities often saw the UN become a competitor as opposed to a coordinator (Flint and de Waal, 2008: 172). Within this context, the AU sought to monitor a ceasefire agreement which had no tangible impact on the conflict on the ground, contributing to further confusion.

Confusion also arose as to the role of the force itself. Rwandan President Paul Kagame stated that his troops would use force to protect civilians if necessary, and although the AU had indicated in a communiqué to the Security Council that its forces would indeed fulfil this role, some AU members quietly expressed reservations. The Sudanese government itself rejected Kagame's interpretation of the mandate. Sudanese Foreign Affairs Minister Abdelwahad Najeb insisted that the mission of the force was very clearly limited to the protection of the deployed monitors:

> As far as the [protection of the civilians is] concerned, this is the clear responsibility of the government of Sudan (in Bellamy, 2005: 44).

Thus when Nigeria deployed the first of its troops, President Obasanjo insisted that his forces would only protect AU observers and operate only with the consent of the Sudanese government (Bellamy, 2005: 44). This sense of confusion was exacerbated once mission personnel had been deployed, as the security situation in Darfur proved to have been grossly underestimated. As the mission was deploying, the conflict rapidly escalated in ferocity, yet the AU had intended only to deploy a small observer mission which could facilitate the maintenance of political dialogue, on the assumption that all parties would respect the ceasefire agreement (Anyidoho, 2006: 149). On the ground, AMIS operations were constrained by the Sudanese authorities, which, amongst others, prevented AU helicopters from flying by denying them fuel, and limited the areas where AMIS personnel could operate, arguing that the mission was an observer mission, and not a peacekeeping mission (Bellamy, 2005: 44).

Whilst the mandate of AMIS was limited, and its operations constrained, the mission did achieve some initial success in Darfur by creatively exceeding its mandate where possible, without incurring public scrutiny (De Waal, 2007: 1041). Yet the ceasefire agreement did not hold, with the Government violating the agreement shortly after its signing, and internal differences between the SLM and JEM surfacing, splitting each of the movements. With the fragmentation of the movements, Khartoum and its allies quickly regained the political and military initiative and continued to pursue a military victory over the movements (Iyob and Khadiagala, 2006: 153). While the N'djamena Agreement had made reference to the responsibility of the Government of Sudan to disarm the Janjaweed, Khartoum moved to strengthen the militia through the provision of arms and material.

While AMIS continued struggling to deploy in Darfur, the UN Security Council passed Resolution 1547 on 11 June 2004, expressing its willingness to authorize a peace operation to oversee the Comprehensive Peace Agreement (CPA), the agreement which was slowly emerging from the North-South negotiations in Naivasha. Fearing that the Resolution might spark a debate on Darfur, some Council members were quick to reaffirm Sudanese sovereignty, and expressed deep scepticism about the notion of interventions on humanitarian grounds (Bellamy, 2005: 41). Pakistan, for example, reminded the Council:

While the Council debated the emerging CPA and the role of the UN in support of this agreement, Pakistan, China and Russia argued that the scale of human suffering in Darfur was insufficient to provoke serious reflection on whether Sudan was fulfilling its responsibilities towards its population, and the United States, the United Kingdom and France proved reluctant to force the issue in the Council (Bellamy, 2005: 42). Germany however noted that peace in Sudan was indivisible, and required an end to widespread human rights violations. The United States, keen to avoid becoming entangled in Darfur and happy to let the AU take the lead, highlighted a range of violations of human rights and international humanitarian law, before asserting its firm support for the AU initiatives to end the conflict (United Nations Security Council Official Records, 2004[a]: 4).

Germany, a non-permanent member of the Security Council at the time, following the passage of Resolution 1547 informally began to propose the deployment of a UN operation to Darfur, yet support for this was not widespread outside of the Nordic countries, and although the Nordic countries offered troops for such a deployment, no other countries did. The notion was quickly, and quietly, dropped. Yet while no solutions could be found at the political level, calls for action grew louder in other fora. The *New York Times* ran a series of articles exposing the massive human rights abuses taking place in Darfur, and called for action on the part of the United States, incurring severe criticism from Sudanese Embassy in Washington in the process. Non-governmental organizations such as Human Rights Watch, Amnesty International and the International Crisis Group also began to actively lobby for action in Darfur (Bellamy, 2005: 41). In the United States advocacy groups were perhaps the most active, and in response to mounting pressure from lobby groups and increasing levels of interest on the part of the American Congress, the American State Department in May 2004 launched an investigation into whether the atrocities being committed in Darfur constituted acts of genocide (Bellamy, 2005: 47).

Kofi Annan, sensing that the mounting pressure might create an opening for engagement, travelled to Darfur and met with al Bashir in Khartoum, where a joint communiqué was signed, committing the Sudanese government to removing all obstacles to humanitarian efforts, to ending impunity for human rights abuses, to disarming the Janjaweed, and to resuming political dialogue on Darfur. A Joint Implementation Mechanism (JIM) was established, jointly headed by the UN representative to Sudan, Jan Pronk, and Sudanese government, tasked with monitoring compliance with the agreement. Yet Annan's aircraft had barely left Sudanese airspace before aerial bombing in Darfur resumed. Annan later conceded that he had not been able to meaningfully engage with Sudanese government as the Security Council had not mandated him to warn Sudanese authorities of the consequences of inaction (Traub, 2010: 12). Pronk, seeking guidance from New York, received instructions from the Department of Peacekeeping Operations (UN DPKO) not to push for a greater role in Darfur beyond his two mandated areas of overseeing humanitarian efforts and providing good offices on behalf of the Secretary General (MacKinnon, 2010: 86).

Reporting to the Peace and Security Council on the situation in Darfur on 4 July 2004, Konaré noted that he remained "very concerned" about the abuses of international humanitarian law and

the continued human rights violations in Darfur, and again appealed to the Government of Sudan to ensure the protection of the civilian population and to disarm the Janjaweed. Konaré also reported that the AU Commission was working to ensure the rapid deployment of the observer mission to Darfur, and requested international assistance to ensure that the mission could meet its mandate as soon as possible (African Union, 2004[h]). Sudan, a member of the Council from 2004 to 2006, was not pleased that the matter had been brought before the Council. Given the Council's consensus-based style of decision-making, Sudan was able to play a powerful role in the debates of the Council. Reacting to the report of the Chairperson the Council did move to reiterate its "serious concerns" over the situation in Darfur and the need to bring to justice those responsible for human rights violations. However, the Council argued that, despite the gravity of the crisis, the situation in Darfur could not be defined as genocide, and called on the Government of Sudan to assist in ensuring the protection of civilians and facilitate the delivery of humanitarian assistance. Sudan also worked to ensure that international attention on Darfur be as limited as possible, and was instrumental in urging the Council to assert the primacy of the AU in dealing with the crisis in Darfur. The Council thus stressed that:

> the African Union should continue to lead the efforts to address the crisis in Darfur and that states should continue to support these efforts (African Union, 2004[i]: 1).

Noting the rapid deterioration of the situation, the AU at its Assembly of Heads of State and Government in Addis Ababa from 06 to 08 July 2004 registered its "serious concern about the humanitarian crisis", but went on again to state that "even though the humanitarian situation in Darfur is serious, it cannot be defined as a genocide" (African Union, 2004[b]: para. 2). That same month, negotiations between the Government of Sudan and the armed movements were convened under the auspices of the AU in Addis Ababa, before being moved to Abuja, Nigeria, in August 2004 under the auspices of the Nigerian Chairmanship of the AU. Yet the negotiations were centred primarily around securing an enhanced ceasefire and humanitarian agreement, and did not relate to a broader political process, let alone to the CPA negotiations underway at the time (Seymour, 2010: 61).

From 15 to 17 July 2004, the AU again convened a meeting for representatives of the Government of Sudan, the SLA and the JEM in Addis Ababa, this time to deliberate on the conditions necessary for the establishment of a comprehensive political settlement on the crisis in Darfur. Acknowledging the serious humanitarian conditions unfolding in Darfur, AU mediators nonetheless argued that the conflict was a political one, and that a political dialogue which would address the root causes of the conflict needed to be established (African Union, 2004[j]). This position was reinforced on 27 July by the Peace and Security Council, which welcomed the support of the UN Security Council, but stressed that the AU should continue to lead efforts to resolve the crisis in Darfur, and called on the parties to the conflict to enter into a political dialogue (African Union, 2004[k]).

Members of the UN Security Council however began to view the situation in a more serious light, and with progress on the North-South negotiations seemingly secured, the United States, with the backing of the United Kingdom, now moved to introduce a draft Security Council resolution threatening the imposition of sanctions against Sudan should the Janjaweed not be disarmed. Yet China, Russia, Pakistan, Algeria, Angola, the Philippines and Brazil objected. France, which was expanding its commercial interests in Sudan, provided a mixed reaction to the notion of sanctions. The resolution was therefore amended, and Resolution 1556 of 30 July determined that the situation in Sudan constituted a threat to international peace and security and demanded

the Government of Sudan disarm the Janjaweed and bring to justice those who had violated international humanitarian law, but made no reference to the threat of sanctions in case of non-compliance (United Nations Security Council 1556, 2006). The debate preceding the passage of Resolution 1556 (which was passed with thirteen votes, and from which China and Pakistan abstained) was heated, and witnessed the first infusion of responsibility to protect discourse into the debate of the Security Council on Darfur. The Philippines, whilst opposed to sanctions and other coercive measures, argued that Sudan had failed in its duty to protect its citizens, and that some form of international action was warranted. The Philippine Ambassador stated that:

> Sovereignty also entails the responsibility of a State to protect its people. If it is unable or unwilling to do so, states has the responsibility to help that Sate achieve such capacity and as such will, in extreme necessity, assume such responsibility itself (United Nations United Nations Security Council Official Records, 2004[b]: 10 – 11).

The United States, the United Kingdom, Germany and Spain concurred, similarly invoking responsibility to protect language. None, however, suggested that the responsibility to protect ought to cede from the Government of Sudan to the Security Council. Rather, all argued that the AU now bore primary responsibility for action, should Sudan fail in meeting its responsibilities towards it citizens. China, Pakistan and Sudan, participating in the debate, rejected this notion however, and Brazil and Russia proved reluctant to legitimize the responsibility to protect discourse. Pakistan in turn argued that it did not believe that the threat or imposition of sanctions against Sudan was advisable (Bellamy, 2005: 42). The Sudanese Ambassador had stronger words, inquiring whether Sudan:

> …would have been safe from the hammer of the Security Council even if there had been no crisis in Darfur, and whether the Darfur humanitarian crisis might not be a Trojan horse? Has this lofty humanitarian objective been adopted and embraced by other people who are advocating a hidden agenda (United Nations United Nations Security Council Official Records, 2004[b]: 13)?

While the Resolution did not include the threat of sanctions or other coercive measures in case of non-compliance, it did impose a ban on the sale of weapons to all non-governmental entities and individuals in Darfur, but not, following Chinese insistence, on the government which was supplying the Janjaweed with arms (Holslag, 2007: 7). Whilst Khartoum agreed to this move, the Janjaweed were not disarmed, and on the contrary received greater material support than before, whilst the Security Council failed to follow up on its request of disarmament, or to take action against Khartoum for supplying the Janjaweed with arms. In reality however, as one observer notes, Khartoum was in all likelihood not capable of disarming the Janjaweed at this point in time in any case, without risking turning it into an armed movement operating against the government (De Waal, 2007: 1041).

Following the passage of Resolution 1556, the United States pressed ahead to gain support for the use of sanctions against Sudan, including for an arms embargo against the Sudanese government and for a travel ban on senior officials. Yet support for sanctions was scant, with Pakistan remaining opposed on the grounds that they would not attain fruitful engagement with Khartoum, and the Arab League issuing a statement voicing its opposition to sanctions under any circumstances. Russia and China remained opposed to sanctions, mostly on grounds of their own economic interests, as Russia was selling arms to Sudan and China was both selling arms to Khartoum and exporting Sudanese oil. The United Kingdom, sensing the lack of support for a sanctions regime, quickly distanced itself from the American position. A senior Foreign and Commonwealth Office official told reporters that the United Kingdom was opposed to sanctions

on two grounds. First, the threat of sanctions could undermine the Naivasha process, which diplomats felt was now only weeks away from conclusion. Second, making direct reference to the responsibility to protect, the United Kingdom believed that the most suitable manner in which security could be delivered to the people of Darfur was to encourage the actor with the primary responsibility, the Government of Sudan, to assume its responsibilities. Sanctions, it was argued, would not prove useful in supporting the government to take on this responsibility (Bellamy, 2005: 45).

While members of the Security Council proved reluctant to provide a unified position on whose responsibility it was to ensure the protection of the people of Darfur (with members alternating between that responsibility residing with Government of Sudan, the Security Council or the AU), the situation on the ground deteriorated, with combat-related deaths and displacements increasingly on the rise, and the humanitarian situation spiralling out of control, while AMIS officials struggled to get the mission up and running. The AU Commission therefore proposed a plan for the conversion of AMIS into a fully-fledged peacekeeping operation that would protect civilians, neutralize the Janjaweed, and facilitate the provision of humanitarian assistance. Yet Khartoum opposed the deployment of a larger force with an expanded mandate (Iyob and Khadiagala, 2006: 154). When the AU subsequently proposed the deployment of a UN operation, Khartoum was even more opposed, arguing that it would strongly resist a UN deployment and any efforts on the part of the Security Council to deploy an international force, threatening to use force against any UN peacekeepers deployed in Darfur (Bellamy, 2005: 43). As the violence began to sweep into the IDP camps, the Security Council in August 2004 demanded that Khartoum take a series of steps to ensure the security of those in the camps, but when Khartoum stalled on the matter, the Council dropped its demands once more (De Waal, 2007: 1041). The Peace and Security Council, not to be outdone, again reiterated that the AU should be in the lead on efforts aimed at addressing the Darfur crisis, and called on states to focus their support on the Abuja negotiations (African Union, 2004[l]).

That same month, Nigerian President Olusegun Obasanjo, in his capacity as Chairperson of the AU, hosted the Government of Sudan, the SLM and the JEM in Abuja for a series of political negotiations aimed at laying the groundwork for a larger negotiation process for Darfur, the first dialogue since the collapse of the N'djamena ceasefire agreement of April 2004 (Iyob and Khadiagala, 2006: 154). While the negotiations were underway, the Security Council adopted sanctions against those who might obstruct the peace process, yet follow-up was weak, and it took a year for the sanctions to be instituted, and then only against four individuals; a low-ranking commander in the Sudanese air force, a Janjaweed commander and two mid-ranking leaders in the armed movements (Grono, 2006: 626). By the end of August, as the Abuja dialogue was collapsing, Kofi Annan submitted his report on Resolution 1556 to the Security Council, in which he concluded that the Government of Sudan had not met its obligations to stop attacks against civilians and to ensure their protection, calling for the rapid expansion of AMIS to enforce the protection of civilians (Iyob and Khadiagala, 2006: 155). The Council was unsure of how to proceed however, and disagreement raged on whether the responsibility for protection of civilians rested with the Government of Sudan or with AMIS.

By September 2004 both American President George Bush and Secretary of State Colin Powell, based on the findings of a State Department report and following a unanimous vote in the United States Congress, publicly stated that genocide had been committed, and was ongoing, in Darfur (Bellamy, 2005 : 31). This was no insignificant statement. As Marisa Katz remarked later, never before since the signing of the Genocide Convention had one government officially accused

another of committing the act of genocide (2006: 20). Some commentators were left angry however. Gareth Evans, a former ICISS commissioner and director of the International Crisis Group, for example, argued:

> it is hard to judge which is morally worse: not using the 'g' word because you don't want to act (as with the Clinton administration on Rwanda in 1994), or (as now) using the 'g' word but still not acting (Evans, 2006: 5).

Despite these criticisms, the United States in September 2004 began to lobby in the Security Council for stronger measures, and in mid-September circulated a draft resolution labelling Sudan in material breach of Resolution 1556, and in line with Annan's recommendation, calling for an expanded AU presence. The draft resolution also called for international over-flights to monitor the situation, moves to prosecute those responsible for acts of genocide, a no-fly zone for Sudanese military aircraft, and targeted sanctions against the ruling elite in Khartoum (Bellamy, 2005: 46). As the draft resolution was being circulated in New York, the Peace and Security Council meeting in Addis Ababa on 17 September called for a focussed commitment on the negotiation process and to work with determination towards a lasting and comprehensive political settlement to the conflict in Darfur, as opposed to the use of coercive measures, and reiterated its call for the need for the AU to play the leading role on Darfur (African Union, 2004[m]). Yet these calls had only limited impact in New York. Resolution 1564, adopted by the Security Council a day later on 18 September, contained some coercive language, but in a weakened format, and the Resolution did not find Sudan to be in breach of Resolution 1556, nor did it impose measures on the government or criticize it. The Resolution did however establish an International Commission of Inquiry on Darfur (ICID), mandated to investigate allegations of violations of human rights and international humanitarian law (United Nations Security Council Resolution 1564, 2004). The Commission would be led by an Italian judge, and included commissioners from Egypt, Ghana and South Africa (African Union, 2004[n]: 16). Algeria, China, Russia and Pakistan abstained from the vote (Clough, 2005: 5).

Explaining its abstention after the vote, Algeria argued that, although the intrusive measures which had been proposed in the American draft which represented "unacceptable assaults" on Sudanese sovereignty had been removed, the Resolution remained problematic as it failed to recognize Sudan's cooperation with the AU and the UN, and did not recognize the role to be played by the AU. Russia, China and Pakistan explained their abstentions in light of what they viewed as the improving situation in Darfur, and while Brazil voted in favour of the Resolution, it raised concerns over the excessive use of Chapter VII, which it feared ran the risk of misleading all parties concerned (Bellamy, 2005: 47). Yet not all members of the Council agreed. The Philippines once more argued that, should a state prove unwilling or unable to protect its citizens, the Security Council held both the moral and legal authority to enable that State to assume its responsibilities. Romania endorsed this view and argued that the Council had not fulfilled its responsibilities and international obligations towards the people of Darfur (United Nations United Nations Security Council Official Records, 2004[c]: 12). The United Kingdom however, whilst noting the ceasefire violations by all parties to the conflict, reiterated its view that the ultimate responsibility to protect the people of Sudan lay with the government, and that the armed groups operating in Darfur also held a responsibility to protect the people of Darfur (United Nations United Nations Security Council Official Records, 2004[c]: 10).

By late September Jan Pronk, the UN representative to Sudan, reported that the situation in Darfur was deteriorating further, and that government compliance with Resolution 1556 and 1564 was receding (Bellamy, 2005: 48). On 27 September 2004 the Special Representative of the

Secretary- General on Internally Displaced Persons, Francis Deng (later the Special Representative on the Prevention of Genocide) presented his report on his visit to Sudan to the Commission on Human Rights of the Economic and Social Council (ECOSOC – Third Commission) of the UN. In his report, Deng argued that although the Government of Sudan probably lacked both the capacity and the will to disarm the Janjaweed, it nonetheless retained the primary responsibility for doing so. Deng further noted that the government had expressed its strong preference for cooperation with the AU as opposed to the UN, and was fearful of direct international involvement in Darfur to the extent that it would probably resist it, by direct or indirect means. Concluding that international intervention in Darfur would only serve to complicate and aggravate the crisis, Deng argued that the best way forward would be to encourage the AU to increase its presence in the region, in collaboration with the Government of Sudan (ECOSOC – Commission on Human Rights, 2004: paras. 22 – 36).

Several African nations endorsed this approach, and an African mini-summit on Darfur in Libya on 17 October 2004 led by Libya and Egypt reaffirmed a commitment to preserve Sudanese sovereignty, expressly rejecting "any foreign intervention by any country whatsoever in this pure [sic] African issue" (African Mini-Summit on Darfur, 2004). This echoed an earlier rejection of foreign intervention in Sudan by the SPLM, which was now informally operating as the government in the South of Sudan. A spokesperson for the movement, Farouk Abu Eissa, insisted that his organisation was:

> against foreign military intervention in Darfur. We have before us the case of Iraq. We do not want a similar situation to develop in Darfur, or Sudan (in Bellamy, 2005: 48).

It had become increasingly clear to members of the Security Council in favour of a stronger response to the worsening situation in Darfur that both a UN force and action on the part of the predominant powers had become unfeasible. On the guidance of Annan's report to the Council, and following the report presented by Francis Deng to ECOSOC, it became increasingly clear that the only form of response possible was through an expanded AU presence, despite Khartoum's reluctance to accept anything other than a limited monitoring mission to Darfur. An AU-led assessment team was therefore dispatched to Darfur, including representatives of the UN, the EU and the United States, to assess the modalities for an expanded mission. The report of the mission outlined possibilities for an expanded AU presence, and in October 2004 the United Nations Assistance Cell for Darfur Operations was established in Addis Ababa. The cell, working closely with the EU, the United States and Canada, began to support the AU Darfur Integrated Task Force (DITF) in planning for an expanded AMIS (Anyidoho, 2006: 155).

On 20 October 2004 Konaré again reported to the Peace and Security Council on the situation in Darfur. The Chairperson noted that the commission of atrocities was ongoing, and that the Government of Sudan had not met its obligations to stop attacks against civilians, to disarm the militias, or to stop the culture of impunity in Darfur (African Union, 2004[n]). The Peace and Security Council authorized the expansion of AMIS on the same day to 3,320 personnel, including 670 observers, a protection force of 1703, 815 civilian police and 132 substantive civilian personnel, mandated to monitor camps for the displaced, militia attacks against civilians, the government disarmament of militias, and the cessation of hostilities by all parties to the conflict. AMIS however, at Khartoum's insistence, remained a monitoring mission, although with a larger personnel component (Iyob and Khadiagala, 2006: 155). The Peace and Security Council did however include a limited protection mandate, tasking AMIS with the protection of civilians:

whom it encounters under imminent threat and in the immediate vicinity, within resources and capability, it being understood that the protection of the civilian population is the responsibility of the Government of Sudan (African Union, 2004[o]: 2).

Despite the growing list of atrocities, and the report of the Chairperson of the Commission of non-compliance on the part of the Government of Sudan, the Council called for flexibility in working towards "a lasting and comprehensive political settlement to the conflict in Darfur" (African Union, 2004[o]: 4). Rwandan and Nigerian reinforcements began arriving in Darfur a week later, assisted by the United States airforce which provided the airlift, but, as one observer notes, the mission remained unable to do much more than report cease-fire violations (Bellamy, 2005: 44). A UN support cell was also integrated into the Peace and Security Directorate of the AU Commission to provide logistical and planning support to AMIS, but this did not yield results on the ground in the short term (MacKinnon, 2010: 75). The mission was later expanded to include 6170 military personnel and 1560 civilian police, and renamed AMIS II. The expanded mission however remained plagued with challenges, and was unable to do much more than report on the growing number of violations taking place in Darfur. Key posts in the DITF remained vacant in Addis Ababa, agreements between the AU and troop contributing countries were challenging to complete, and AU members by and large remained reluctant to send troops to participate in AMIS II. Rwanda, Nigeria, Senegal, Gambia, Kenya and South Africa were the main contributors of troops, while Rwanda and Nigeria provided the bulk of the protection force. The deployment of AMIS II was however slow, and created gaps for the warring factions to continue the conflict unabated (Anyidoho, 2006: 157).

As AMIS II was deploying, mediation efforts continued. The Libyan Government, which had been engaging with the armed factions for some time, convinced the JEM and the SLM to return to the Abuja negotiations. In November 2004, the Abuja negotiations resumed, at the same time that there was a complete breakdown in relations between the parties and fighting on the ground escalated. On 09 November AU mediators obtained a minor agreement, with Khartoum agreeing to neutralize and disarm the Janjaweed and other armed groups it was supporting, to abide by the provisions of the N'djamena ceasefire agreement, to prevent all attacks and other forms of violence against civilians and to protect the rights of displaced persons. In a major concession, Khartoum also agreed to ban military flights over Darfur. Yet the agreement represented a reiteration of the N'djamena agreement, and quickly failed. Within hours of the agreement being signed in Abuja, Sudanese armed forces were reported to have attacked the El Geer camp for displaced persons near Nyala in Southern Darfur. Towards the end of that year, the government mounted a heavy offensive against the JEM and the SLM, seriously weakening both movements. As Iyob and Khadiagala argued, these attacks demonstrated that in the absence of a political process to deal with the escalating problems, the negotiations in Abuja were not going to break new ground (2006: 155). Yet with the signing of the North-South CPA close at hand, Western powers were reluctant to put pressure on Khartoum in Abuja. Indeed, the Security Council moved only to endorse the Abuja negotiations, under AU auspices, and to insist that the responsibility to protect civilians lay with the Government of Sudan, or with AMIS.

The Abuja negotiations however proved challenging for the AU, and subsequently received widespread criticism. For one, as argued by de Waal, the Abuja negotiations were focused on obtaining a text which was acceptable to the parties, without the benefit of an expert security assessment on the ground. At another level, the parties proved reluctant to negotiate in any serious manner, viewing the negotiations as a continuation of the military conflict on the ground, and the mediation team and the international partners present did not welcome any process that

brought additional complexities to the mediation effort, such as the inclusion of civil society in the negotiations. The Government of Sudan also repeatedly refused AU requests to attach additional military advisers to the mediation team, and the AU proved reluctant to press the government on the matter, as the confrontation with the government delegation and the additional advice of the military experts would have slowed down a negotiation process which was operating under extremely tight timeframes. Of those security advisers who were present, many left in frustration, while others complained that their expertise were not being utilized. Many of Darfur's now numerous armed movements were not represented in Abuja, with the Arab militias excluded on the assumption that they were represented by the government delegation, and other armed groups either barred from the negotiations altogether or allowed observer status only (De Waal, 207: 1048). One adviser closely associated with the Abuja negotiations argued further that the AU mediation team was simply unable to meaningfully direct the process, preferring to tell anecdotes in the hotel bar than push the parties towards an agreement (Interview 1, 2009). Differences between the AU and the UN on how to approach the mediation, while initially trivial, increasingly came to undermine the negotiation process. While the UN favoured a phased approach, the AU was aiming for a comprehensive agreement, as the parties had already signed previous agreements, which the AU believed would provide the basis for a final settlement (Bah, 2010: 9)

Increasingly, these differences between the AU and the UN would come to be exploited by those party to the negotiations, playing states off against one another, and exploiting these delays to make military headway on the ground in Darfur. While the Abuja negotiations failed to make progress on resolving the conflict, they did increasingly highlight that the notion of inserting an international peacekeeping force which could impose the will of states in Darfur, by force if needed, was "naïve, impractical and dangerous" (De Waal, 2007: 1051). But 'deadline diplomacy' proved powerful.

The United States, Britain, Canada and the EU, who were funding the Abuja negotiations, repeatedly threatened to withhold their financial support if the parties failed to reach agreement, in the hope that an accelerated political settlement would pave the way for a transition from AMIS to a UN operation in Darfur. Laurie Nathan, an advisor to the AU mediation team in Abuja, argued that the deadline diplomacy approach proved far too "simplistic, vacuous and rigid" for the complexities of Darfur, arguing that the external pressures fixed in place a process and trajectory in which neither the mediator nor the parties had any confidence, but from which little deviation was possible (in Bah, 2010: 10). 'Drive-by diplomacy', with American diplomats parachuting in and out of Abuja to ensure that deadlines were being adhered to, also did not curry favour with the parties to the mediation, nor with the AU mediation team, which viewed this as an arrogant effort designed to "push a deal down their throats" (Stedjan and Thomas-Jensen, 2010: 170). Despite its obvious failings, the Abuja process rumbled along towards attaining a peace agreement; any peace agreement.

Pushing for a swift conclusion to the Naivasha peace process before the Darfur issue could derail it, the Security Council held a special session in Nairobi, Kenya, from 18 to 19 November 2004. The purpose of the special session was to put pressure on the Government of Sudan and the SPLM to conclude negotiations in Naivasha, with no mention of Darfur. Senior representatives of the SPLM and the Government of Sudan signed a memorandum of understanding in Nairobi committing themselves to a final settlement. In return, Resolution 1574, adopted unanimously during this session of the Council, failed to include any specific criticism of the Government of Sudan for failing to meet the demands of Resolutions 1556 and 1564, and instead called on the UN and the World Bank to provide immediate development assistance and debt relief to Sudan.

The Resolution did recall that the primary responsibility for the protection of civilians lay with the Government of Sudan, but failed to outline any measures to assist the government in meeting this responsibility, or measures to be taken should the government fail in meeting this responsibility (United Nations Security Council Resolution 1574, 2004). Pressure to ensure that a final settlement for the North-South dispute would be attained was exerted elsewhere in the UN system as well. Five days after the signing of the memorandum of understanding in Nairobi, the General Assembly's Third Committee, responsible for human rights, adjourned for the year without having debated Sudan once. The South African representative, representing the AU, worked to ensure that Sudan would be kept off the agenda, accusing the West of using "double standards" by singling out developing countries for criticism, declaring:

> the Africa Group regrets the abuses of a multinational organization like the United Nations to settle disputes on human rights (quoted in Traub, 2010: 18).

The Pan-African Parliament, recently inaugurated, moved on this criticism, and in an effort to highlight the relevance of the new African peace and security institutions, sent a mission to Darfur from 19 November to 3 December, consulting with the parties to the conflict and generating a set of recommendations for the way forward. In particular, the parliamentary delegation recommended that the mandate of AMIS be enhanced, and that its structures be developed to better enable it to attain this mandate. The delegation also recommended that the question of justice be addressed in Darfur, and that the AU consider mechanisms, including through working with the International Criminal Court, to address impunity and seek justice in Darfur (Salla, 2007: 21). The recommendations were subsequently conveyed to the AU Commission, but were buried (Mbete, 2008: 310).

One month later, on 20 December, the AMIS leadership complained that government forces had attacked villages in Darfur using aircraft, and two days later Kofi Annan acknowledged that the peacekeeping strategy for Darfur was not working, and that AMIS had failed to protect civilians and to prevent the crisis from deteriorating (Bellamy, 2005: 44). As one observer noted, the decisions taken by the Security Council in Nairobi had called into the question the commitment of Council members to follow through on earlier resolutions on Darfur, and did not bring into sight any hope for an end to the suffering of the people of Darfur (Clough, 2005: 1).

Flint and de Waal argue that Darfur during 2004 was a firestorm of violent displacement, man-made famine and obstruction of relief. While an international humanitarian relief operation slowly gained momentum, the commission of atrocity crimes had continued unabated, with the Government of Sudan doing everything in its power to deal with the insurgency in the manner it knew best; through the indiscriminate use of outright force, while simultaneously doing everything in its power to black out all news from the region, isolating Darfur from the outside world (Flint and de Waal, 2008: 147). Journalists in Sudan were prohibited from mentioning human rights abuses in Darfur, and independent newspapers that violated this prohibition were soon suspended. Al Jazeera, the most-watched television station in the Arab world, had already been closed down in Sudan after it became the first station in the world to report the atrocities in Darfur. The Sudanese Parliament was barred from discussing Darfur (Flint and de Waal, 2005: 115).

By the beginning of 2005, almost 2 million people had been driven into camps for the internally displaced, while a further 200,000 had sought refuge across the border in Chad. The conflict, however, showed no signs of coming to an end. On the contrary, it was clear that the conflict could only escalate (Flint and de Waal, 2008: 145). But international attention, for the time being

at least, was fixed squarely on the North-South peace process, with the UN, and the AU reluctant to assume responsibility for dealing with Darfur. The AU sought political leadership, positioning itself as the primary actor in negotiating a political settlement for Darfur, while shifting the responsibility to protect civilians to the Government of Sudan. The UN in turn took the lead in humanitarian relief efforts, but argued that the responsibility to protect civilians resided either with AMIS or with the Government of Sudan, depending on the current situation. Meanwhile, the Security Council had outsourced the responsibility of attaining whether or not atrocity crimes were being committed in Darfur to a commission of inquiry, preferring not to take a decision on the matter itself. Thus, by the beginning of 2005, responsibilities for the crisis were being shifted from one actor to another, it being clear that civilians were not being protected, but no clarity being attained as to who should bear the responsibility for dealing with this.

On 09 January 2005 the Comprehensive Peace Agreement (CPA), consisting of six protocols, was signed in Nairobi, concluding the IGAD negotiations and, at least formally, bringing to an end the North-South conflict. At the signing of the CPA, Ugandan President Yoweri Museveni, the serving Chair of IGAD, contended that the peace agreement was a success both for IGAD and for Sudan, noting that:

> We in the IGAD region and Africa as a whole have created a viable partnership, which reduces the chances for outsiders to jump into regional conflicts where they have very little knowledge about them (in Iyob and Khadiagala, 2006: 124).

While the signing of the CPA indeed represented an important milestone towards peace in Sudan, this had come at the expense of the security of the people of Darfur. The UN Security Council in particular had allowed Khartoum to continue its engagements in Darfur as it saw fit, pursuing an increasingly violent counter-insurgency campaign, in exchange for bringing to an end the North-South conflict. Whilst spirits were high in Nairobi, the list of atrocity crimes being committed in Darfur mounted, with no end to the conflict in sight, and with the humanitarian situation rapidly deteriorating.

5.4 The Responsibility to Protect Thy Image

On 11 January 2005, two days after the signing of the CPA, Jan Pronk reported to the Security Council that violence in Darfur had seeped into the IDP camps, and that the previous month had witnessed an arms build-up, ongoing attacks on all sides, the spread of violence into West Kordofan, and the emergence of new rebel groups. Pronk argued that the only recourse to stabilizing the situation was the deployment of a further expanded and strengthened AU presence in the ground. Pronk, in his address to the Security Council, explicitly called for a robust armed AU presence, arguing that the AU was now the organization responsible for the protection of civilians in Darfur (United Nations United Nations Security Council Official Records, 2005: 2 – 3). Yet with the recent signing of the CPA, the United States was reluctant to push African members to accept this position, and urged Council members to await the findings of the ICID, established by Resolution 1564 in September 2004.

The Commission presented its report to the Security Council two weeks later on 25 January 2005, affirming that crimes against humanity and war crimes had been and continued to be committed in Darfur, and asserting that these were no less serious or heinous in nature than acts of genocide. Specifically, the Commission found that government forces and militia had

conducted indiscriminate attacks, killings of civilians, torture, enforced disappearances, the destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement throughout Darfur. Moreover, in certain instances, the Commission noted that individuals, including senior government officials, may have committed acts with genocidal intent. However, given the complex nature of these dynamics, the Commission found that only a competent court would be able to determine whether specific acts had been committed with genocidal intent or not (International Commission of Inquiry on Darfur, 2005). Yet as the report of the Commission was being presented, the dynamics of the conflict were already changing. The government had to a large degree attained its goal of blocking the direct military threat posed by the armed movements, and had succeeded in turning the movements and the Janjaweed against one another (Flint and de Waal, 2008: 150). Khartoum was now happy to let the conflict of all against all – armed movements, Janjaweed, tribal militia, police and armed forces – run its course, and to focus its efforts, for the time being at least, on the South. Displaying goodwill towards the South, and making it clear that Khartoum was indispensable to a resolution of the ongoing conflict in Darfur, it was calculated, would ensure that the Government of Sudan gained both political credibility while maintaining sufficient leverage to resist Western pressure when needed. While the report of the Commission sparked a heated debate in the Security Council, it found little traction among African members or the AU. The AU Assembly, meeting in Abuja, the scene of the Darfur negotiations, from 30 – 31 January 2005 came out only as strongly as to condemn the ceasefire violations by all parties concerned, and called for a political settlement to the conflict (African Union, 2005[b]).

In the Security Council, members of the EU, including the United Kingdom, pushed for a referral of the Darfur matter to the ICC, with the British Ambassador arguing that an ICC referral was "non-negotiable". The United States however, opposed to the ICC since its creation, proved reluctant to legitimize the Court, and instead proposed the creation of a special tribunal in Arusha, coupled with the special tribunal for Rwanda, which could indict and prosecute war criminals. African states, led by Nigeria, were however opposed to both notions, proposing instead the creation of an AU tribunal, a proposal which received Sudanese support. This proposal was however countered by the European members, which feared that any compromise on the ICC would undermine the Court. For more than two months, the debate continued in the Security Council, with uncertainty on whether a referral to the ICC would necessitate the authorization of a UN intervention in Sudan (Bellamy, 2005: 49 and Iyob and Khadiagala, 2006: 155 - 156).

In late February, Jean-Marie Guehenno, the UN Under-Secretary General for Peacekeeping, forwarded a proposal containing four options on Darfur to the Secretary General. Guehenno proposed that the UN could provide logistical support to a strengthened AU presence in Darfur, deploy a joint UN/AU mission to the region, replace AMIS with a robust UN peace support operation, or authorize a multinational force, as had been done in East Timor, to intervene in Darfur. Each option was noted to be more robust than the previous, but in turn less politically viable. On 7 March 2005 the Secretary General convened a meeting with all the members of the Security Council in his office, a highly unusual move in UN protocol. Annan personally presented each option to the members of the Council, arguing that the Council's decision-making should not be governed by Khartoum's refusal to allow the UN to play a role. Yet the Council proved reluctant, and unanimously favoured the provision of logistical support to AMIS. Guehenno later remarked that it was perfectly clear to him that the Council would never have authorized a UN intervention without Khartoum's express authorization (Traub, 2010: 19). This approach by the Council was criticized, even from within the UN Secretariat. A former official working in the Department of Political Affairs later remarked that the Council failed to engage with Khartoum at a

political level, with too much emphasis being placed on peacekeeping as the only option to resolve the crisis. Rather than attempting to intimidate Khartoum, or shy away from intimidation, UN officials argued that the Council should have paid more attention to the political dynamics at play in Sudan, and which were driving calculations in Khartoum (Traub, 2010: 20).

Once the Security Council's reluctance to deal with Darfur had become clear, the only feasible option was to decouple the issues before the Council. By the end of March, the Security Council adopted three separate resolutions. Resolution 1590 authorised the establishment of the United Nations Mission in Sudan (UNMIS), tasked with supporting the North-South Comprehensive Peace Agreement, and with exploring modalities for the provision of support to AMIS. The Resolution condemned human rights violations in Darfur, but moved to reaffirm the commitment of the UN to the sovereignty, unity, independence and territorial integrity of Sudan (United Nations Security Council Resolution 1590, 2005). Resolution 1591 imposed travel bans and an asset freeze on individuals committing human rights violations and obstructing the peace process in Darfur (China, Russia and Algeria abstained) (United Nations Security Council Resolution 1591, 2005). Efforts were again made to include an arms embargo against Sudan, but at Chinese insistence, this was dropped once more (Holslag, 2007: 7). Evidence soon emerged that China and Russia had continued to supply Khartoum with attack helicopters, fighter-bomber aircraft and other forms of weaponry which were now being used in Darfur (Taylor, 2010: 182).

Resolution 1593 then dealt with the findings generated by the ICID. After it was agreed that an ICC referral would not necessitate further intervention by the Council, and the United States had committed to abstaining from the vote despite its continued objections to the ICC, the Security Council through Resolution 1593 on 31 March 2005 (Algeria, Brazil, China and the United States abstaining) referred the Darfur matter to the ICC (United Nations Security Council Resolution 1593, 2005). Two African nations, Benin and Tanzania, voted in favour of the referral, despite strong objections from the AU. Algeria, the third African non-permanent member of the Council at the time, abstained however on the grounds that the Council had failed to explore alternate options which had been proposed by the AU (Shabas, 2010: 139). Explaining its decision to abstain from the vote, the United States reaffirmed its fundamental objection to the ICC, which it claimed "strikes at the very essence of the nature of sovereignty", but noted the importance of a unified response to Darfur and the need to end impunity in the region (United Nations United Nations Security Council Official Records, 2005[b]: 3).

Sudanese President al Bashir quickly responded to the referral, insisting that his government would not cooperate with the ICC, and would refuse to surrender Sudanese nationals to the Court for trial (The American Journal of International Law, 2005: 693). Nevertheless, the Security Council forwarded 51 names to the ICC for investigation of alleged atrocities committed against civilians. At the same time the Council moved to strengthen the existing arms embargo and imposed an asset freeze and travel ban on those suspected of violating the cease-fire agreement (Iyob and Khadiagala, 2006: 156).

In Addis Ababa members of the AU found themselves unable to forge a common position on Darfur, divided over the referral to the ICC. This was heightened by the proliferation of diplomatic efforts, taking place in Nigeria, Egypt, Libya, Eritrea and South Sudan. This proliferation of initiatives led Konaré, on 25 April 2005 to request that all Darfur-related initiatives be coordinated through the AU. Certainly this move sought to reduce duplication of effort and overlaps which could undermine the peace process, but it also sought to re-position the AU at the centre of the Darfur negotiation process and establish the Union's pre-eminent authority (Badescu and

Bergholm, 2010: 102). Konaré again reported to the Peace and Security Council on 28 April 2005 that the situation in Darfur had not improved, and that attacks against civilians were ongoing, with both the Government of Sudan and the armed movements engaged in ongoing violations (African Union, 2005[c]). The Council, while voting to increase the AMIS force to 6,171 military personnel and 1,560 police officers, did not move to expand the mandate of the mission. Rather, the Council commended the Government of Sudan for committing to withdraw its Antonov bombers from Darfur. The Council did however urge states to ensure that all efforts at arriving at a political settlement on Darfur be coordinated through the AU, again seeking to establish primacy on Darfur (African Union, 2005[d]). While the Council moved to assert political leadership and responsibility over Darfur, no moves were made to assume greater responsibility for the protection of civilians, either through AMIS or through engagement with the Government of Sudan.

Attempting to circumvent the international legal processes now instigated against Sudan, Khartoum moved to negate the need for an international criminal investigation on Darfur. On 7 June 2005 Sudanese Chief Justice instituted the Special Criminal Court on the Events in Darfur (SCCED) to prosecute crimes committed during the Darfur conflict under Sudanese criminal legal jurisdiction. In November 2008, the mandate of the SCCED was extended to include crimes under international humanitarian law. The Government of Sudan sought through the instigation of the SCCED to undermine any international legal proceedings in Darfur through the principle of primacy of jurisdiction, yet it quickly became evident that the SCCED could not be used to substantiate such claims. By the end of 2009, only 13 cases had been brought before the Court, all of which involved ordinary crimes. Where charges did relate to the large-scale attack against civilians, convictions were only handed down for theft where this had taken place after an alleged attack (African Union, 2009[a 56 – 57). In a similar move the Sudanese Minister of Justice announced on 18 September 2005 that a Specialised Prosecutor for Crimes against Humanity would be established in Khartoum, but this office never got off the ground. On 3 August 2008 a Special Prosecutor was appointed by the Minister of Justice to focus in particular on crimes committed in Darfur since 2003, yet by the end of 2009 no cases had been submitted to the courts by the Special Prosecutor, and there was no expectation that any would in future (African Union, 2009[a]: 58 – 59).

The Government of Sudan therefore quickly demonstrated that its measures at criminal prosecution were designed only as political tools to bypass the ICC and not as mechanisms which would seek to seriously investigate allegations of atrocity crimes and prosecute those found to be responsible for their commission. Konaré, fearful that a perceived culture of impunity in Darfur would undermine the AU's credibility, quietly proposed the establishment of an African inquiry into Darfur to al Bashir, along the lines of the international panel which the OAU had established for Rwanda. Konaré's envoy even indicated to the Sudanese Minister of Foreign that an African panel could be used to forestall a UN inquiry, but al Bashir rebuffed Konaré's offer, confident that international attention on the North-South peace process would limit a push for justice in Darfur (Flint and de Waal, 2008: 182). A culture of impunity, therefore, would remain a guiding principle in Darfur on the part of Khartoum for years to come. Efforts elsewhere to bring some form of accountability for Darfur also failed to gain traction. Following the ICC referral, the United States Congress proposed a Darfur Accountability Act, but this was buried by heavy resistance on the part of the State Department, which argued that the proposed measures would constrain its negotiating position with Khartoum and that it failed to sufficiently recognize Khartoum's cooperation in South Sudan (Katz, 2006:25).

The AMIS mission meanwhile, in anticipation of receiving expanded support through UNMIS for the implementation of a future peace agreement in Darfur, began preparations on the ground for the disarmament of the Janjaweed and the armed movements, despite the absence of a mandate from the Peace and Security Council to do so (de Waal, 2007: 1050). It became clear however that this was an impossible task, not least because AMIS would be forced to disarm members of the government security services to put an end to the violence in Darfur. Facing more urgent challenges, AMIS quietly moved away from notions of disarmament. The AU continued to face a raft of increasingly serious challenges in Darfur. Troop generation proved extremely challenging, the mission had no financial sustainability, logistical support measures were stretched well beyond their limits, and the deterioration of the security situation on the ground confined AMIS personnel to defending themselves from attack in their own camps. As one observer notes, it became increasingly clear that the mission was not up to the tasks of ensuring the protection of civilians and facilitating humanitarian assistance (Mwanasali, 2006: 97). Partners quickly stepped in to provide expanded support to AMIS, particularly through the provision of financial and logistical support for the mission. The British government, through the EU, for example provided over 400 vehicles, while the United States, through the use of contractors, constructed camp facilities, office space and accommodation for the mission. Canada contracted 16 helicopters for the mission, and the Netherlands provided three further helicopters. In 2005, Norway provided office accommodation for the mission's police in IDP camps. Yet despite this support, AMIS reported that it still required $200 million in 2005 just to address its most urgent needs (Anyidoho, 2006: 155).

As UN support to the AU was escalated, so too did the tensions between the two organizations rise. Senior AU officials reportedly were not keen to accept UN advice on peacekeeping operations, with the Chairperson of the AU Commission, reportedly blocking UN efforts in Addis Ababa, insisting that the AU needed no advice from the West (Traub, 2010: 21). Yet as the situation in Darfur deteriorated, AMIS found itself increasingly unable to perform its tasks while the Sudanese government worked to ensure that the mission would operate in as limited a manner as possible. Khartoum insisted, for example, that a Sudanese soldier accompany every detachment of AU troops, closely identifying the mission with the Government of Sudan as opposed to an independent actor and a source of protection in the minds of many civilians in Darfur. The mission was also obstructed in other ways. The supply of jet fuel was delayed, grounding AMIS aircraft, while visas were denied to non-African trainers and support staff, ensuring that nobody in the mission could operate the donated Armoured Personnel Carriers (APCs). UN pressure on the AU to hand over the mission steadily began to increase, with the EU and the United States exerting increasing levels of diplomatic pressure on the Peace and Security Council.

As these efforts were underway, and as the ICC commenced with its lengthy process of investigations on Darfur, diplomatic wrangling reached new heights. Pakistan, China and Russia moved to argue before the Security Council that the scale of human suffering in Darfur was insufficient to provoke serious reflection on whether Sudan was fulfilling its responsibilities to its citizens, and sought to have Darfur removed from the agenda of the Council arguing that the UN had no business dealing with the matter. Great Britain, France and the United States became increasingly reluctant to force the Darfur issues on the Council and this left only the Philippines still pushing seriously for a UN intervention on humanitarian grounds. Invoking responsibility to protect language, the Philippines argued that Sudan had failed in its obligations to its own citizens, and that the responsibility to protect the citizens of Darfur had now ceded to other states. Yet these calls went unheeded. The Security Council, meeting on 23 September, adopted

Resolution 1627 on Sudan, extending the mandate of UNMIS and congratulating the Government of Sudan for its efforts towards peace in the South with no mention of Darfur (United Nations Security Council Resolution 1627, 2005).

The Government of Sudan continued to reject notions of human rights violations, and states such as Brazil proved increasingly reluctant to even contemplate the matter in the Security Council (Bellamy, 2005: 41 - 42). Unwilling to further pursue the matter within the chambers of the Council, Chile, Germany, Great Britain, Spain and the United States invoked responsibility to protect language outside of the Council, and argued that the responsibility to protect civilians had now been ceded by Sudan not to the Security Council, but to the AU. As the responsible regional mechanism, this group of states argued, the AU now bore the primary responsibility for protection in Darfur above and beyond its efforts at forging a political settlement in Abuja (Bellamy, 2005: 42). Reinforcing the leadership of the AU, the Council met on 21 December 2005 to argue that while the situation in Sudan continued to pose a threat to international peace and security, the sovereignty, unity, independence and territorial integrity of Sudan were recognised, and the Council expressed its commitment to the AU-led negotiations on Darfur in Abuja and the responsibility of AMIS to ensure the protection of civilians (United Nations Security Council Resolution 1651, 2005).

The United States in particular was keen to now position the AU as holding the primary responsibility over Darfur, given its increasingly complicated relationship with Sudan which it did not wish to jeopardize before the Security Council. While it wanted to push Khartoum for an end to the conflict in Darfur it was also increasingly relying on Khartoum for assistance in the war on terror and was developing closer links with Sudanese government in the intelligence sector. In mid-2005, the United States had flown Salah Gosh, Sudanese chief of intelligence and one of the primary architects of Khartoum's engagement in Darfur, to the headquarters of the Central Intelligence Agency (CIA) in Virginia on a private plane for meetings on intelligence cooperation in the American 'War on Terror' (Grono, 2006: 628 and Stedjan and Thomas-Jensen, 2010: 166). Gosh was later accused by a UN panel of having command responsibility for many atrocity crimes committed in Darfur. Yet Sudanese cooperation was seen as vital to combating the Al Qaeda armed movement, and the American administration was reluctant to place this relationship under unnecessary strain over Darfur. When details of the meetings later became public, activists and members of the American Congress were furious, yet none felt that they could publicly oppose the Bush Administration's efforts aimed at 'making America safer', and the matter soon faded away (Stedjan and Thomas-Jensen, 2010: 166).

By December 2005 AMIS had reached a force strength of approximately 7,000 personnel, drawn from Nigeria, South Africa, Senegal, Rwanda, the Gambia, Kenya, Ghana, Egypt and Libya (Badescu and Bergholm, 2010: 104). Yet the AU appeared weary of continuing to take primary responsibility for action in Darfur, and in January 2006 the Peace and Security Council expressed its support, in principle, for a transition from AMIS to a UN-led operation within the framework of the partnership between the AU and the UN in the promotion of peace, security and stability in Africa. As one observer notes, the belief became increasingly widespread that the AU had failed in Darfur, and the AU was keen to ensure that the UN took responsibility for Darfur sooner rather than later (Mwanasali, 2006: 97).

Chapter 6: The Rise and Demise of Responsibility to Protect Discourse: Responses to the Darfur Conflicts from 2006 - 2010

6.1   Introduction

As demonstrated in the previous chapter, the UN and the AU struggled to formulate responses to the Darfur conflicts over the period 2003 through 2005, the same period in which the responsibility to protect norm first emerged. The AU sought to establish political primacy over Darfur, but was unable to articulate or implement an effective response beyond the establishment of a political process of engagement. The UN on the other hand prioritised the North-South peace process, and asserted that the protection of the civilian population was first the responsibility of the Government of Sudan, and later, the responsibility of AMIS. Responsibility to protect discourse only started to surface as of July 2004 in Security Council discourse, but in a limited manner. The Philippines was most vocal in its utilisation of responsibility to protect discourse, supported by the United States, the United Kingdom, Germany and Spain, however each adopted a different interpretation of whose responsibility it was to protect the civilian population in Darfur, with responsibility being allocated to the UN, the AU and the Government of Sudan alternately. The norm however during this period remained in the emergence phase, and it therefore is not surprising that it did not feature that prominently in discourse surrounding Darfur.

By the end of 2005 however the norm had been endorsed by the UN General Assembly, and from 2006 entered into the cascade phase, becoming increasingly codified and entrenched. While the norm had featured in a limited manner in discourse surrounding Darfur, in particular between 2004 and 2005, given the entrenchment of the norm in the UN and its mirroring in the AU's emerging peace and security regime, it could reasonably be expected that from 2006 onwards the norm would increasingly come to feature in discourse, both at the UN and perhaps in the AU, in the formulation and implementation of responses to Darfur. This chapter will track the application of the responsibility to protect norm to the international responses to Darfur over the period 2006 through 2010, in an attempt to assess both the manner and the degree to which the norm featured in the formulation and implementation of response to Darfur, in a continued effort to assess whether the norm was useful in addressing the type of conflict situations it was designed to address.

6.2   The Rise of Responsibility to Protect Discourse over Darfur

In January 2006 Sudan was poised to have taken over the rotating Chairmanship of the AU for a one year period, yet fearful that this would risk undermining all credibility for the organisation, influential members worked to ensure that Sudan's Chairmanship be delayed by at least a period of one year. The negotiations which ensued resulted in a compromise, whereby the Chairmanship of the Union would be handed to the Republic of the Congo (under the Presidency of Sassou-Nguesso, who had come to power in a *coup d'etat* in 1997), and Sudan would instead assume the Chairmanship in 2007 (Williams, 2007: 278). The final declaration of the Summit read as follows:

> The leaders expressed their appreciation for the initiative taken by HE President Omar Hassan Al-Bashir to accept the postponement of his term of Chairmanship for the AU until 2007. The leaders consider this gesture to be a true reflection of the great sense of responsibility and leadership demonstrated by President Al-Bashir. The leaders agreed after extensive consultations that Sudan will assume the Chairmanship of the Union in the year 2007 (African Union, 2006[a]).

While the reluctance of African states to allow Sudan to accede to the Chairmanship of the AU was seen by some as a punishment of Khartoum's actions in Darfur, other observers argued that the political undercurrents, reflected in the final declaration, showed that group solidarity mattered more in Africa than the protection of human and peoples' rights (Udombana, 2006: 111). Yet Sudan was blocked time and again by member states from assuming the Chairmanship of the Union. In 2007, despite Khartoum's protests, Ghana assumed the Chair of the Union, and when Khartoum sought finally to assume leadership of the Union in 2008, this was blocked by the East African Region, and Tanzania assumed the Chair (Williams and Black, 2010: 15). In 2009 Sudan abandoned its efforts, and Libya took over the Chairmanship, followed in 2010 by Malawi.

In January 2006, the UN Secretary General reported that serious abuses against civilians continued in Darfur, perpetrated in particular by Sudanese armed forces and militias supported by the government (United Nations Security Council, 2006[a]). The same month, a panel of experts submitted a lengthy report to the Security Council, documenting a string of violations, in particular on the part of the Government of Sudan (United Nations Security Council, 2006[b]). Yet no action was taken by the Security Council on these reports. Instead, the President of the Council on 3 February commended the AU for the contributions of AMIS to the provision of a "secure environment for civilians" (United Nations Security Council, 2006[c]). Two months later, the Security Council "took note" of the report, and requested all relevant international partners to continue to provide relevant information to the panel of experts, whose mandate had been extended for a further six months (United Nations Security Council Resolution 1665, 2006).

The Peace and Security Council, fast losing credibility over Darfur, again moved to accept, in principle, a UN presence in Darfur, and in February 2006 the Security Council authorised the UN Secretariat to begin preparations for a possible deployment of a peacekeeping operation to Darfur. Despite the reluctance of most members of the Council to have the UN assume primary responsibility in Darfur, it had become increasingly clear that some form of UN presence was becoming unavoidable. The thinking however was that a UN presence would operate in support of an AU operation with primary responsibility for the protection of civilians, and that the Council's responsibilities would thereby be limited, at least in the immediate future. This decision nonetheless angered Sudanese authorities, with President al Bashir declaring that Darfur would be "a graveyard for any foreign troops" (quoted in Traub, 2010: 22). Sudanese officials quickly worked to tone down this message, insisting that a UN peacekeeping force could only be acceptable once there was a peace to keep, and that the Security Council should wait until the Abuja process had produced a viable political settlement. The AU, somewhat reluctantly as it would prolong the AMIS mission, agreed with this approach, and in March 2006 the Peace and Security Council reaffirmed its in principle commitment to accepting UN peacekeepers in Darfur once a political settlement had been reached, and extended the mandate of AMIS by a further six months.

The situation on the ground however continued to deteriorate rapidly, and stretched AMIS to its limits. In March 2006, the Sudanese air force began painting its aircraft in AMIS colours and used them to re-supply their forces and to conduct bombing raids against civilian targets, in clear violation of the ceasefire agreement and international law. AMIS troops took photographs, but the mission leadership refused to take the matter up with Sudanese authorities, let alone to have reports on the matter filed (Flint and de Waal, 2008: 178). AMIS was at this stage reliant on the government for force protection, and in some cases for daily rations for its peacekeepers, and was simply incapable of acting on such flagrant violations. The UN Secretary General reported on a similar violation in his report to the Security Council on 9 March 2006, a clear breach of

international law, but the Council took no action to address the matter (United Nations Security Council, 2006[d]).

An attempted coup in Chad in April 2006 by rebels purportedly backed by the Government of Sudan further soured relations between Khartoum and N'djamena, and placed Darfur at the centre of an escalating regional conflict. The UN Secretary General, reporting to the Security Council on 5 April, warned that the civilian population in Darfur continued to suffer the brunt of the violence, perpetrated in large part by forces over which Khartoum had direct or indirect control. In unusually strong language, the Secretary General reminded the Government of Sudan of its unconditional duty to protect its citizens (United Nations Security Council, 2006[e]).

Perhaps growing more fearful of the regional implications of the Darfur conflict than of the human rights violations, the Security Council met on 25 April 2006, adopting Resolution 1672. The Resolution, for the first time, instituted targeted sanctions against those suspected of having committed war crimes and crimes against humanity in Darfur, but only four individuals were targeted: a low-level air force commander, a Janjaweed commander, and two leaders of the armed movements (United Nations Security Council Resolution 1672, 2006). Beyond the sanctions, no measures were taken to address the worsening crisis in Darfur. As one senior UN official bitterly noted:

> The international community is keeping people alive with humanitarian assistance until they are massacred (in Grono, 2006: 628).

The AU, feeling overwhelmed by the task it was now facing, and sensing a reluctance on the part of the Security Council to take on the responsibility for dealing with Darfur, decided that the primary responsibility for protecting civilians and for bringing an end to the conflict actually lay not with itself, but with the belligerents party to the conflict. During the final days of the Abuja negotiations leading up to the signing of the Darfur Peace Agreement, AU representatives framed debate around the challenge of implementing the international responsibility to protect civilians in Darfur from the most egregious of crimes. Indeed, on numerous occasions from 2004 up until the end of the negotiations in 2006, representatives from the SLM and JEM demanded that states fulfil their commitment to protect civilians as a precondition for pursuing peace talks with the government. AU mediators however were quick to circumvent the framing of negotiations in such terms, and reframed the task as having to achieve security by emphasizing the responsibilities of the parties themselves for the protection of civilians (De Waal, 2007: 1052). Discussions in Abuja on precisely who was responsible for protecting the people of Darfur from war crimes, crimes against humanity and systematic violations of human rights had thus shifted this responsibility from the major powers to the Government of Sudan, to the Security Council, to the AU, and finally, in the final days of Abuja, back to the belligerents themselves. In frustration at these developments, Gareth Evans, then President of the International Crisis Group, during a public speech at the University of New South Wales on 30 April 2006, asked:

> Whether we really are capable, as an international community, of stopping nation-states murdering their own people. How many more times will we look back wondering, with varying degrees of incomprehension, horror, anger and shame, how we could have let it all happen (Evans, 2006: 1)?

Increasingly, pressure was exerted on the Abuja negotiations to yield a peace agreement, driven in part by the impatience of donors, and in part to enable a transition from AMIS to a UN-led peacekeeping force, as demanded by the powerful lobbies, in particular in the United States, pushing for states to 'save' Darfur (Flint, 2010: 14). The Darfur Peace Agreement (DPA) was

signed on 5 May 2006 in Abuja by the Government of Sudan and the SLM faction led by Mini Minawi. The other factions of the SLM and the JEM refused to sign, arguing that the agreement could not resolve the political conflict in Darfur nor bring an end to the atrocities still being committed on the ground. What remained of the SLM and the JEM quickly splintered into numerous factions, returning to Darfur to continue the military campaign against the Government of Sudan and the Janjaweed.

The fact that only two parties to the conflict had signed the DPA proved a death blow to the agreement. Yet to make matters worse, technical advice on the implementation of the agreement was ignored, and neither the UN nor the AU fulfilled their commitments to take rapid practical steps to support key tasks outlined in the agreement, such as the verification of the positions of armed groups or the disarmament of the Janjaweed (in the latter case, because the AU Special Representative, in his own words, "forgot"). The worst error however, as noted by de Waal, was the decision by the AU to expel the non-signatory parties from the Ceasefire Commission, breaking all links with the movements which had refused to sign the Abuja agreement (2007: 1048). Indeed, the DPA had been drafted in the anticipation that all the armed movements would sign, and therefore included provisions for the AU to provide technical assistance, supplies and logistics to the movements once they had signed. In effect, this clause led AMIS to provide technical and logistical support to SLA-Minawi, making it a belligerent to the conflict and the direct adversary of the non-signatory movements (Flint and de Waal, 2008: 233).

The immediate effect of the DPA, argues one observer, was to deepen the crisis, and within days of the signing of the agreement, riots broke out in the displaced camps and fighting intensified, resulting in a further 100,000 displaced persons (Flint, 2010: 16). Frustrated at the failure of the Abuja process to bring about an inclusive agreement, Abdul Wahid, one of the armed movement leaders, left Abuja fuming that "the international community wants success, not peace" (in Flint, 2010: 17). While the Darfur Peace Agreement fell to pieces, the ICC investigations into Darfur were left to collapse as well. The degree to which the Security Council remained accountable over Darfur received increasing attention, in particular with regards to the ICC referral. Juan Mendez, the UN Secretary-General's Special Advisor on the Prevention of Genocide at the time, argued that:

> The Council acted as if once they made the referral, everything was in the hands of the ICC, and they didn't need to worry about it. That was fatal to the ICC's opportunity to do its work inside the country. […] The international community basically allowed Khartoum to dictate the pace and sequence of negotiations on everything – from accountability to protection to humanitarian assistance and the peace process (in Traub, 2010: 22 – 23).

The Security Council however, sensing that political means to resolve the Darfur crisis had been exhausted through the ICC referral and the signing of the DPA, and still reluctant to take the lead responsibility for solving the crisis, pushed for a strengthened AU peacekeeping presence on the ground. On 16 May 2006, shortly after the signing of the DPA, the Security Council adopted Resolution 1679 which called on the AU and the UN to agree on requirements necessary to strengthen the capacity of AMIS to enforce the security arrangements of the Darfur Peace Agreement, and noted the intent to launch a follow-on UN operation in Darfur at some point in the distant future (Security Council Resolution 1679, 2006). While supporting the Resolution, both China and Russia made it clear that any UN presence in Darfur would have to first be made acceptable to Khartoum. Sudanese authorities, despite the attainment of a political settlement, remained reluctant to accept a UN presence, and President al Bashir in June threatened an international jihad against any UN deployment in the region, asserting:

there will not be any international military intervention in Darfur as long as I am in power (in Grono, 2006: 629 – 630).

Reports emanating from Darfur also made it likely that Khartoum would continue to resist a UN presence there. Indeed, while Sudanese government continued to argue that villages were being attacked on the basis of their being used as operations hubs by the armed movements, evidence continued to emerge which suggested that Sudanese air and ground forces, working closely together with the Janjaweed, continued to attack villages where no prior presence of the armed movements could be established. Further, the evidence continued to suggest widespread violation of human rights, international humanitarian law and continued and purposeful breach of the Geneva Conventions (Marong, 2007: 3). Khartoum was unlikely to allow a UN presence in Darfur while it continued its counter-insurgency campaign against the civilian population. While Darfur continued to burn, and while the Security Council sought to avoid taking responsibility, the Council, somewhat ironically, met on 28 June 2006 for its first open debate on the protection of civilians in armed conflict. Jan Egeland, the Under-Secretary General for Humanitarian Affairs, sought to remind the Council of its unavoidable responsibilities:

> We, as the United Nations, and the Security Council specifically, now have the responsibility to protect, as reaffirmed in resolution 1674 (2006). There are too many times when we still do not come to the defence of civilian populations in need. When our response is weak, we appear to wash our hands of our humanitarian responsibilities to protect lives. The world is, indeed, a safer place for most of us, but it is still a death trap for too many defenceless civilians – men, women and children (quoted by International Coalition for the Responsibility to Protect, 2006[a]).

Argentinean representative Garciá Moritán argued that:

> the principle of non-intervention must be balanced by the principle of non-indifference against massive violations of human rights and humanitarian law. […] Both elements, the responsibility to protect and the new resolution [1674] of the Council on the protection of civilians are the start of a new phase regarding the actions to be taken by states in this subject (in International Coalition for the Responsibility to Protect, 2006[a])

The Canadian representative, Allan Rock, agreed, but warned that words alone would not make the agenda of protection of civilians a reality, and that only concrete steps and the willingness to make flexible and pragmatic use of all levers of power available to the Council would enable it to meet its responsibility to the vulnerable The Chinese representative, Liu Zhenmin, however argued that the primary responsibility for the protection of civilians lay not with the Council, but with the governments concerned, and that the sovereignty and territorial integrity of states should not be undermined for the purposes of protecting civilians (International Coalition for the Responsibility to Protect, 2006[a]). Interestingly, the United States changed tack as well, with representative William Brencick arguing that:

> The primary responsibility for protecting civilians lies with these nations and their governments, and international efforts should only complement government efforts (in International Coalition for the Responsibility to Protect, 2006[a]).

By the end of the same month the Secretary General reported to the Security Council that large-scale attacks against civilians in Darfur were ongoing, and that serious thought needed to be given to the transition from AMIS to a UN-led operation (United Nations Security Council, 2006[f]). While many members of the Security Council and the broader membership of the UN therefore were willing to endorse the responsibility of the Council for the protection of civilians in conflict zones, and others were quick to argue that this responsibility lay with the member states

themselves, this debate seemed to have taken place in complete isolation from the realities of the Council's engagement with and actions on Darfur, where the conflict continued to spiral out of control.

Unperturbed by the developments on the ground and by the struggle of AMIS to give meaning to its mandate, the AU Assembly met in the Gambia from 1 to 2 July 2006. The Assembly adopted a range of decisions, but no mention of Sudan or Darfur could be found in its outcomes document. The Assembly did move to invoke article 4(h) of the Constitutive Act of the Union however; the first time the article had been invoked since the founding of the AU. Recalling articles 3(h), 4(h) and 4(o) of the Constitutive Act, the Assembly decided that the criminal accusations levelled against Hissène Habré, the former President of Chad, fell within the jurisdiction of the AU, and that criminal proceedings against Habré were the responsibility of the Union. The Assembly duly requested Senegal to conduct the criminal proceedings against Habré on behalf of the AU (African Union, 2006[c]: Dec. 127(VII)). This decision was based on an earlier decision on the Habré matter, taken in January 2006, that the Union would adhere to the principle of the total rejection of impunity, and that priority would be given to an African mechanism through which to seek justice for Habré (African Union, 2006[b]: Dec.103(VI)). Yet while the Union was willing to invoke article 4(h) of the Constitutive Act at the level of the Assembly against Habré, not a single declaration or decision was made on Darfur or Sudan.

6.3 Building Castles of Sand: Responding to Wars within Wars

In August 2006 the Arab League expressed its support for Khartoum, arguing that the UN should not move to deploy a peacekeeping force to which the Government of Sudan remained opposed. As the Security Council prepared to consider a further draft resolution on Sudan, President al Bashir moved to garner further African support for his opposition to a UN deployment. On 26 August, Bashir met with Alpha Konaré in Khartoum to reiterate his opposition to a UN deployment, and expressed his disappointment that African members of the Security Council were poised to support the draft resolution. Al Bashir's efforts were to no avail however. Despite continued opposition by Khartoum, the Security Council adopted Resolution 1706 on 31 August 2006, by a vote of 12 in favour, with China, Russia and Qatar abstaining (Udombana, 2007: 97). Ghana, Tanzania and the Congo, the three non-permanent African members of the Council at the time, all voted in favour of the Resolution (Bah, 2010: 17). The Resolution affirmed both Resolution 1674 on the protection of civilians in armed conflict and the responsibility to protect norm as outlined in paragraphs 138 and 139 of the World Summit Outcomes Document and extended the operations of UNMIS into Darfur, handing responsibility for the implementation of the Darfur Peace Agreement to UNMIS no later than 31 December 2006, the anticipated date of expiration of the latest AMIS mandate (Security Council Resolution 1706, 2006). The Resolution, notably, reminded the Government of Sudan of its responsibility to protect civilians under threat of violence, and invited Sudanese consent to the deployment of a UN force to Darfur, implying that if consent was not forthcoming, such a force might be deployed without consent. While the invitation for Sudanese consent was included at the insistence of Russia and China, some members of the Council felt that this provision critically weakened the Resolution. The Ghanaian representative, Nana Effah-Aptengeng, for example, indicated her concern that the Council had even requested Sudanese consent, and argued that the Council did not require the consent of the Government of Sudan to intervene given the seriousness of the violations concerned (O'Neill, 2006).

One week after the passage of Resolution 1706, al Bashir called the bluff of the Security Council and rejected the terms of the resolution. Al Bashir, argues one observer, decided to draw a red line, and refused to be pushed into a further UN deployment in Sudan without renegotiating the terms of engagement, insisting that he would not accept a UN force designed to place Sudan "under mandate, a sort of trusteeship" (in Udombana, 2007: 102). Privately, senior figures in the Sudanese government made it clear that no consent for the deployment of an international force would be given at any level, declaring that the resolution constituted "unjustifiable hostility against Sudan" (in Grono, 2006: 629). In New York, Sudanese officials sought to clarify that the biggest obstacle lay not with the resolution itself, but with the notions which French Foreign Minister Bernard Kouchner was seeking to advance under the guise of Resolution 1706; authorisation for the establishment of humanitarian corridors, by force if needed, from Chad to Darfur. Khartoum, fearing that N'djamena would use these corridors to continue arming and supporting the movements in Darfur, therefore reacted so violently to Resolution 1706, denouncing it as a form of intervention on humanitarian grounds under the guise of the responsibility to protect (Interview 14, 2010). An array of senior UN officials visited Khartoum in September, hoping to find common ground with the government, but to no avail.

On 11 September, the Security Council met to debate the latest report of the Secretary General on Sudan, which had documented a string of ongoing abuses. The Secretary General, opening the debate, argued that the "tragedy in Darfur" had reached a critical point, which merited the urgent attention of the Council. Kofi Annan questioned whether the Council could in conscience leave the people of Darfur to their fate:

> Can the international community, having not done enough for the people of Rwanda in their time of need, just watch as this tragedy deepens? Having finally agreed – just one year ago – that there is a responsibility to protect, can we contemplate failing yet another test? Lessons either learned or not, principles either upheld or scorned, this is no time for the middle ground of half measures or further debate. […] The consequences of the Government's current attitude – yet more death and suffering, perhaps on catastrophic scale – will be felt first and foremost by the people of Darfur. But the Government itself will also suffer if it fails in its sacred responsibility to protect its own people. It will suffer opprobrium and disgrace in the eyes of all Africa and the whole international community. Moreover, neither those who decide such policies nor those who carry them out should imagine that they will not be held accountable. But my voice alone will not convince the Government. It is time now for additional voices to make themselves heard. We need Governments and individual leaders in Africa and beyond who are in a position to influence the Government of Sudan to bring that pressure to bear without delay. There must also be a clear, strong and uniform message from this Council (United Nations United Nations Security Council Official Records, 2006: 3 – 4).

The United Kingdom representative, Sir Emyr Jones Parry, argued that the Government of Sudan had a clear responsibility towards its citizens, but questioned whether the Government was willing to discharge this responsibility. The Congolese representative went further, arguing that the Government of Sudan was clearly failing in its responsibilities, and that the events in Darfur should by now already have elicited a clear response by the Council. Argentina moved further, arguing that:

> along with the responsibility of each individual state to protect its own population, the international community has a responsibility to help states exercise that obligation. In the context of the crisis in Darfur, the only way to protect its civil population is through the presence of peacekeeping troops in the region – neutral and impartial troops that would neither constitute an occupation force nor limit the sovereignty and territorial integrity of Sudan. In other words, we are trying to protect the lives and security of millions of innocent civilians, since the Government of Sudan cannot do so (United Nations United Nations Security Council Official Records, 2006: 15).

Danish representative Ellen Margareth Løj supported this position, arguing that no effort should be spared to prevent yet another genocide from taking place in Africa, and that the ongoing situation in Darfur directly challenged the moral credibility of the Council. The Tanzanian representative went even further, arguing:

> Never before has the international community abandoned a humanitarian and political crisis on the scale of what exists in Darfur. We cannot leave the people of Darfur alone (United Nations United Nations Security Council Official Records, 2006: 12).

Yet whilst members of the Security Council condemned the ongoing atrocities in Darfur and proved in general agreement that states held a responsibility to act, it was not clear what form that action should take. In the end, the Chinese proposal to leave the Peace and Security Council and AMIS in the lead won the day, and the Security Council took no new action other than to extend the mandate of UNMIS in the South two weeks later (United Nations United Nations Security Council Official Records, 2006: 11).

On 16 September 2006, demonstrators at rallies across the world donned blue berets to demand that the UN send troops to 'save' Darfur (Flint and de Waal, 2008: 191). Despite this pressure, at the opening of the General Assembly that month al Bashir succeeded in garnering sufficient opposition to a UN deployment in Darfur, and members of the Security Council began to shy away from the matter (De Waal, 2007: 1042 and Traub, 2010: 25). As Kofi Annan summarized several days later:

> The fact is, without the consent of Sudanese government, we are not going to be able to put in the troops. So what we need is to convince Sudanese government to bend and change its attitude and allow us to go in (United Nations Information Service, 2006).

One disappointed observer noted that the Security Council had by this time expressed every sentiment except a desire to take strong action to save the people of Darfur (Udombana, 2007: 98). Seizing the moment, the Peace and Security Council extended the AMIS mandate through the end of 2006, without altering the mandate of the mission to include stronger provisions for the protection of civilians. The Council did repeatedly request the Government of Sudan to disarm the Janjaweed militia, and to cease obstructing the deployment of AMIS in accordance with its mandate, but most often, Khartoum did not heed such calls (Mwanasali, 2006: 98).

Throughout the remainder of 2006, tensions between the AU and the UN on how best to proceed in Darfur mounted, and the AU remained reluctant to accept a substantial UN role in the peacekeeping operation. Following intense negotiations with Kofi Annan in Addis Ababa in November 2006 the AU agreed to sign a memorandum of understanding with the UN to cooperate on political, humanitarian and military measures. The UN agreed to support the AU mission with both a light and heavy support package, but negotiations on the modalities of this support would continue for eight months. Reaching agreement between the AU and the UN on the political leadership and command and control of the mission would prove particularly thorny (Traub, 2010: 25 – 26). Following further negotiations during a high-level meeting in Addis Ababa, it was agreed at the end of November 2006 between the AU, the UN, the permanent five members of the Security Council, key African member states, the EU, the Arab League and the Government of Sudan that Resolution 1706 would effectively be shelved. Instead, it was agreed that three general objectives would now be pursued. First, the political process would be reinvigorated. Second, attempts would be made to revive and strengthen the, now moribund,

ceasefire. Third, it was agreed that the AU and the UN would mount a joint or 'hybrid' operation in Darfur (MacKinnon, 2010: 80).

While these negotiations were underway AMIS continued to find itself in a perilous situation. Increasingly, the mission came to be seen as supporting the Government of Sudan, and earned the ire of both the local population and the armed movements. The JEM, increasing its attacks on AMIS, argued that the AU had turned itself into "an executive body of President Omar al Bashir's junta" (in Flint, 2010: 19). Given this deteriorating situation, AMIS peacekeepers increasingly remained in their compounds, with mission resources strained simply to provide protection to the AMIS bases, let alone the population of Darfur.

External pressure on AMIS also began to mount, with many donors, members of civil society and the media highlighting the weaknesses of the mission and pushing publicly for a rapid transition into a fully fledged UN 'boots on the ground' operation, authorized to use force if needed, even against the Government of Sudan should this be required. This pressure, particularly on the part of donors who both criticized the AU for failing to do its job and withheld the resources necessary for AMIS to achieve its objectives, was perceived by many in the AU as disrespectful, short-sighted and selfish. Jan Pronk likened the situation to donor "blackmail", while now retired Ghanaian General Henry Anyidoho, the senior UN official liaising with the AU at the time, grumbled despondently that "the donors call the shots" (in MacKinnon, 2010: 92 – 93). International attention increasingly focused not on what was happening on the ground in Darfur, nor on the political negotiations aimed at finding a negotiated settlement, but on calls, led by the 'Save Darfur' lobbyists, for armed intervention by NATO or other Western forces or, failing this, for a UN peacekeeping operation mandated to protect civilians by force if necessary (Flint, 2010: 21). Despite publicly supporting the transition to a UN operation, many AU leaders, resentful of what was perceived as a Western effort to discredit the Union, resolved to drag the transition process out (MacKinnon, 2010: 92). Moreover, African members of the Security Council, normally prone to pushing the Darfur agenda, changed tact and proved hesitant to the transition plan being proposed by the UN, arguing that the Peace and Security Council make any decisions before the Security Council. While these tensions persisted, pragmatism prevailed and the massive funding deficit as well as the depressed morale of AMIS ensured that a transition timetable was agreed to sooner rather than later (Flint and de Waal, 2008: 199 and MacKinnon, 2010: 92 – 93). The AU quietly received the support of many senior diplomats and humanitarian agencies operating in Sudan.

During this time, senior staff in the UN estimated that they spent approximately five to ten times as much effort on dealing with calls for a robust peacekeeping force than on peacemaking efforts for Darfur, and that this was leading to increasingly stiff opposition from Khartoum. Humanitarian workers acknowledged that while activist pressure did serve to keep Darfur on the agenda of Western governments, the focus on the notion of a military intervention as the answer to all of Darfur's problems being advocated by some groups increasingly distracted attention from the immediate needs of the people of Darfur, and from finding a meaningful and workable solution (Flint, 2010: 22).

In November 2006 the United Nations High Commission for Human Rights released its sixth report on the human rights situation in Sudan. The report documented a systematic pattern of attacks against the civilian population in Darfur which, at the very least, demonstrated the government's continued failure to disarm the militias and, at worst, the government's use of militia forces to target the civilian population. The report argued that the government held the

responsibility both to refrain from participating in such attacks, and to protect its civilian population from them, but that there was no indication that the government was either preventing or responding to the ongoing attacks against the civilian population (United Nations High Commissioner for Human Rights, 2006). While AMIS continued to make the best of an impossible situation political efforts continued elsewhere. During a further open Security Council debate on the protection of civilians on 4 December 2006 attention was drawn by Tanzania to the question of what should happen when states manifestly failed in their responsibilities to protect their citizens. Without drawing directly on the Darfur case, Tanzanian Ambassador Mahiga nevertheless highlighted that:

> The greatest challenge to the Council and to states as a whole occurs when Governments not only fail to protect their citizens, but are themselves the cause of insecurity to their citizens. How can we exercise our collective responsibility to protect under such circumstances? We should hold such Governments responsible and accountable for their actions (in International Coalition for the Responsibility to Protect, 2009[c]).

Kofi Annan expressed similar sentiments on 8 December 2006 during a speech commemorating International Human Rights Day. Annan gravely remarked that:

> The tragedy of Darfur has raged for over three years now, and still reports pour in of villages being destroyed by the hundreds, and of the brutal treatment of civilians spreading into neighbouring countries. How can an international community which claims to uphold human rights allow this horror to continue? There is more than enough blame to go around. It can be shared among those who value abstract notions of sovereignty more than the lives of real families, those whose reflex of solidarity puts them on the sides of governments and not of peoples, and those who fear that action to stop the slaughter would jeopardize their commercial interests. The truth is, none of these arguments amount even to excuses, let alone justifications for the shameful passivity of most governments. We have still not summoned up the collective sense of urgency that this issue requires (United Nations News Centre, 2006)

Frustrated at the lack of progress on the part of the UN, the European Parliament adopted a Resolution on 15 February 2007 calling on the UN to deploy a forceful intervention to Darfur, even in the absence of the consent of the Government of Sudan. The Resolution called for a UN force to establish and secure humanitarian aid corridors (based on a proposal by French Minister of Foreign Affairs Bernard Kouchner) and called on the organisation to act in line with its responsibilities under the responsibility to protect, arguing that the Government of Sudan had failed to live up to its responsibilities to protect its population from war crimes and crimes against humanity, and was deliberately obstructing the delivery of humanitarian assistance. The Resolution, while adopted with vigour in the European Parliament, fell on deaf ears and passed largely unnoticed (Keane and Wee, 2010: 126 – 127). In New York meanwhile an expert report had emerged which described in detail how Khartoum had violated the interdiction on transferring arms to Darfur and recommended the imposition of a tightly controlled arms embargo and other measures designed to limit the use of illicit weapons. Efforts were made to have the report brought to the attention of the UN Sanctions Committee, but Chinese diplomatic effort ensured that the report did not find fertile ground (Holslag, 2007: 7).

On 16 March the Human Rights Council met in Geneva to deliberate a report which had been compiled by a high-level mission which the Council had dispatched to Sudan. In describing the report, the head of the mission, Jody Williams, listed a litany of ongoing abuses, before concluding that Sudan had "manifestly failed in its responsibilities to protect its citizens". Sudanese representative unleashed a barrage of criticism, supported by several nations from the global South. The Algerian representative, speaking on behalf of the League of Arab States, rejected the report on the basis that the mission had not been mandated to consider whether or

not Sudan was fulfilling its responsibilities towards it citizens. Similarly, Pakistan, speaking on behalf of the Organisation of the Islamic Conference, argued that the report could not be considered by the Council as the responsibility to protect had no place in discussions on Sudan's human rights record. Five other African states (Ghana, Morocco, Senegal, Tunisia and Zambia) however spoke in favour of the report. Ultimately however the report was shelved by the Council (Williams, 2009: 407).

While discussions on the applicability of the responsibility to protect deadlocked in the Human Rights Council, on 30 April 2007 the Security Council again utilised responsibility to protect discourse in Resolution 1755 which extended the UNMIS mandate and expressed grave concerns over the deteriorating humanitarian situation. The Resolution again reaffirmed the World Summit Outcomes Document, as well as Resolution 1674. In addition to extending the mandate of UNMIS the Resolution expressed grave concern over the deteriorating humanitarian situation in Darfur, condemned attacks on the civilian population, and called on all parties to put an immediate end to the violence and atrocities. But the Resolution did not mention the possibility of a UN role in assisting the parties to put an end to the violence in the region. Without UN support, AMIS continued to struggle to generate the resources required to implement its mandate, in particular with regards to the protection of civilians. While the Peace and Security Council approved the use of attack helicopters in Darfur in April 2007, by the end of 2009, it was only Ethiopia which had provided any (African Union, 2009[a]: 102).

In May that year ten members of the Pan-African Parliament (Eritrea, Ghana, Kenya, Mali, Mozambique, Nigeria, South Africa, Sudan, Tanzania and Uganda) linked the events in Darfur to Article 4(h) of the AU Charter, arguing that the AU had a responsibility to mediate and resolve the conflicts. The parliamentarians however cautioned against enforcing the collective will of outside parties on Sudan. Thus, whilst the parliamentarians noted that the AU had a responsibility to intervene on the collective behalf of the members of the Union, this did not extend to a responsibility to force the Government of Sudan to adhere to external demands, in particular with regards to human rights violations (Badescu and Bergholm, 2010: 111).

By 22 June 2007, during the third open debate of the Security Council on the protection of civilians in armed conflict, Ghana and Rwanda lamented on the confusion as to whose responsibility it actually was to protect the civilian population in Darfur, and the manner in which multilateral organisations were assigning this responsibility to one another. Without referring directly to the developments in Darfur, both African nations challenged the Security Council to play a more decisive role in situations of mass atrocity. Ghanaian representative Robert Tachie-Menson argued that the Council should recognize the importance of its own role when he noted that, based on the outcomes of the World Summit and Resolution 1674, it was undeniable that:

> The international community has the legal and institutional tools to deal with this issue [the protection of civilians in armed conflict]. The challenge for us now is to translate the mechanisms at our disposal into effective practical systems for the protection of civilians. When states and combatants prove unwilling or unable to act, the international community has a moral and legal duty to intervene to avert a humanitarian catastrophe (in International Coalition for the Responsibility to Protect, 2009 [c]).

Rwanda's Permanent Representative, Ambassador Joseph Nsengimana, did not mince his words during the same debate, arguing that:

> The most serious crimes in situations of conflict are committed against poor, defenceless and voiceless people, often living in remote locations far from the sight of the international community and the media. It is for such

people that the implementation of resolutions 1674 (2006) and 1738 (2006) is most urgent. Despite these resolutions, and despite the endorsement by all states at the 2005 World Summit of the principles of the responsibility to protect, which my Government strongly supports, too many people continue to suffer unspeakable horrors in situations of armed conflict. It is clear that much more needs to be done, particularly by this Security Council, which is the Charter-mandated body responsible for international peace and security.

We believe that our common humanity should unite us in the resolve to put an end to the suffering of millions of people who live in, and are threatened by, situations of conflict. This resolve entails national Governments taking full responsibility to protect civilians, and, where they are unable or unwilling to do so, the international community acting through the Security Council to take appropriate steps to provide such protection. It is essential that, in taking such actions, the Security Council be seen as consistent and just, acting in the best interests of the international community, and that it shows special concern for those who are most defenceless and vulnerable and most in need of protection from states (in International Coalition for the Responsibility to Protect, 2009 [c]).

While these positions enjoyed broad support in the open debates of the Council, they did not seem to impact on the Council's approach to dealing with the protection of civilians in Darfur. In the meantime, French Minister of Foreign Affairs Bernard Kouchner had embarked on a diplomatic blitz of Chad, Mali and Sudan to promote a French plan to stabilize Darfur. This culminated on 25 June 2007 with an international conference in Paris intended to confirm the unity of the international community in dealing with Darfur. However, no African state attended save for Egypt, Sudan had never been invited in the first place, and the AU boycotted the conference, arguing that it had not been consulted and that the French initiative was another one too many, undermining the Union's own mediation efforts (Charbonneau, 2010: 225).

Brushing the French effort aside, and following the conclusion of negotiations between the UN and the AU, together with considerable American, Chinese and Egyptian diplomatic effort in Khartoum (which secured the consent of the Government of Sudan) the Security Council adopted Resolution 1769 on 31 July 2007 which authorised the deployment of a joint AU/UN peacekeeping force to Darfur, known as the hybrid United Nations - African Union Mission to Darfur (UNAMID). The Resolution reaffirmed the strong commitment of the Council to the sovereignty, unity, independence and territorial integrity of Sudan, and authorized the deployment of 19,555 military personnel, 3,772 police officers and an appropriate civilian component; the largest UN peace support operation in history. Acting under Chapter VII of the Charter, the Resolution also authorized the mission to protect civilians "without prejudice to the responsibility of the Government of Sudan" (United Nations Security Council Resolution 1769, 2007: 5). The section referring to the protection of civilians was vague however, and did not provide UNAMID with clear guidelines as to the role of the mission with regards to protection. Indeed, the section of the mandate relating to sexual exploitation and abuse on the part of the peacekeepers was 14 times longer than the section related to the protection mandate of the mission.

While the Security Council had now jointly with the AU taken on responsibility for a more direct role in Darfur, members of the Council were quick to highlight the fact that the responsibility of the Council itself was limited, and that the Government of Sudan actually bore the primary responsibility to ensure the protection of civilians and bring an end to the string of abuses ongoing in Sudan. The Russian representative, Ambassador Churkin, reminded the Council that UNAMID should work to ensure the protection of civilians only insofar as this observed the sovereign prerogatives of the Government of Sudan (United Nations United Nations Security Council Official Records, 2007[a]:5). Belgian Ambassador Verbeke argued that protection for the civilian population could now only be attained "if all actors in [the] political process take responsibility" (United Nations United Nations Security Council Official Records, 2007[a]:7). Ambassador Kleib

of Indonesia was the only representative who ventured to argue that the implementation of Resolution 1769 rested on the basis of a partnership between the UN, the AU and the Government of Sudan, and that only through such a partnership of shared responsibilities the endeavours reflected in the Resolution could succeed and the people of Darfur could be helped (United Nations United Nations Security Council Official Records, 2007[a]:8). Members of the Council, despite taking on a direct responsibility for the situation in Darfur through the adoption of Resolution 1769, were thus at pains to ensure that the responsibility for the protection of civilians and the implementation of UNAMID's mandate was either handed back to the Government of Sudan, or at least was framed as a shared responsibility between the UN, the AU and the Government of Sudan.

As the mission commenced with the logistics of transitioning an AU peacekeeping operation into a joint AU - UN mission, UNAMID, which commenced operations in January 2008, still had no tangible peace to keep, something which increasingly concerned in particular the UN Secretariat. As the Darfur Peace Agreement of 2006 had still only been signed by one faction of the SLM and the government in Khartoum, and remained both widely disputed and violated, the onus was on creating a peace for UNAMID to keep. Thus, with the passage of Resolution 1769 a flurry of political activity commenced to negotiate an inclusive peace agreement for Darfur, and the AU and UN envoys, Salim Ahmed Salim and Jan Eliasson respectively, quickly attempted to launch a new round of negotiations (De Waal, 2007: 1042 – 1043). Yet while negotiations on UNAMID and on a political settlement for Darfur were commencing yet again, the situation on the ground was becoming more intricate. Fearing that UNAMID would seek as a first priority to provide security around the displaced camps, Khartoum made moves to empty the camps, seeking to deprive the armed movements of safe recruitment grounds and attempting to display to the outside world that the situation in Darfur had stabilized to the point where displaced persons were now 'voluntarily' returning home once more (Brosché, 2008: 45 – 46). The UN and the AU would need to move quickly to provide the security envisaged through the establishment of UNAMID.

Yet progress was slow, as the Darfur conflict had degenerated into a series of wars within wars, marked by low-intensity conflict on all sides, the fracturing of the armed movements, and Khartoum's near total loss of control over the Janjaweed, which it had both armed and trained with great effort. The UN was also losing ground with Khartoum during this time, and on 28 September the Security Council, deploring the ongoing violence, impunity and deterioration in the humanitarian situation, was forced to demand that Sudanese airforce cease aerial bombings and the use of aircraft painted with UN markings in bombing raids in Darfur (United Nations Security Council Resolution 1779, 2007). AMIS too was losing legitimacy on the ground, and on 29 September 2007 the AU base in Haskanita was attacked by the JEM, leaving 12 Nigerian peacekeepers dead. The AU was increasingly fighting to protect itself within its own encampments, as opposed to contributing to stabilizing the situation in Darfur, let alone protecting civilians there (Bah, 2010: 9). As Khartoum deployed Chinese MiG fighter-bomber aircraft in Darfur for the first time in September 2007, the civil society lobby movements increased their condemnation (Flint and de Waal, 2008: 263). Some North American activists proclaimed that Darfur's camps for the displaced were becoming the "new frontline in Khartoum's genocidal counter-insurgency war". The Prosecutor of the ICC, Louis Moreno-Ocampo, went further, arguing that the Government of Sudan was seeking to turn the camps into "concentration camps" (Flint and de Waal, 2008: 241).

As UNAMID planners in New York sought to establish a joint AU-UN mission in Darfur, a first for both organisations, and as political efforts resumed to find some semblance of peace for the

mission to keep, frustration mounted on all sides. While the UN had commenced with an integrated planning process, drawing together the relevant organs of the Secretariat and the UN agencies, the AU was by and large left out of the planning process, as was the Sudanese government. Approved plans for the integrated mission were routinely taken to Addis Ababa where AU buy-in, as opposed to ownership, was sought. While UN collaboration with the EU and NATO increased as preparations for the deployment of UNAMID progressed, the AU was left to work with the Government of Sudan on seeking political acceptance for the mission, while the Sudanese government, mostly left out of the planning process, chose to work exclusively with the AU, and no longer the UN on Darfur. Complicating matters, UNDPKO officials soon noted that a human rights agenda quickly came to dominate discourse on the planning for UNAMID. Representatives from the ICC, humanitarian planners from the Office of the Coordination for Humanitarian Affairs (OCHA), the UN High Commission for Refugees and the office of the Special Advisor of the Secretary General on the Prevention of Genocide all participated in UNAMID planning meetings, and increasingly DPKO planners noted that the emphasis of the UN approach in Darfur was shifting from a political and security agenda to a humanitarian and human rights agenda. The exclusion of the AU from the planning process, DPKO officials later argued, ensured that the human rights agenda came to dominate preparations for UNAMID (Interview 5, 2010).

At the opening of the 62nd session of the UN General Assembly in September 2007, Lesotho's Deputy Prime Minister Archibald Lesao-Lehohla lamented on the continued failings of the organisation in Darfur:

> We must recall that, in the year 2005, this Assembly solemnly proclaimed the role of the entire international community, acting through the United Nations to protect populations from genocide, war crimes, and other crimes against humanity. Unfortunately this is not what is happening on the ground. We still notice inaction on the part of the Security Council, or its reaction coming too late! The harrowing experience of Rwanda and now Darfur are living testimony to this (in International Coalition for the Responsibility to Protect, 2009[c]).

By November of that year Nigeria too joined the call for more decisive action in the face of atrocity crimes. Nigerian Ambassador Felix Aniokoye, during the fourth open debate of the Security Council on the protection of civilians in armed conflict, noted that:

> More than ever, the challenges of protecting civilians in armed conflicts have expanded and become more daunting. My delegation therefore believes that the time has come for the international community to re-examine when it is its responsibility to protect, without prejudice to the sovereignty of Member States. Genocide, ethnic cleansing, and crimes committed against unarmed civilians in situations of conflict are grim reminders that the time is right for the international community to determine when to exercise its responsibility to protect (in International Coalition for the Responsibility to Protect, 2009[c]).

The African Commission on Human and People's Rights went further. Meeting at its 42nd ordinary session in Brazzaville from 15 – 28 November 2007, the Commission adopted a *Resolution on Strengthening the Responsibility to Protect in Africa*. The Resolution noted the deep concern of the Commission that:

> in the recent past, the international community has not responded quickly enough to situations of genocide, war crimes and crimes against humanity, and the [sic] continued slow response to the allegations of genocide and crimes against humanity (African Union, 2007).

The Resolution went on to condemn the string of abuses ongoing in Darfur, and called for greater cooperation between the UN and the AU in arriving at a negotiated settlement for Darfur and in strengthening peacekeeping efforts there (African Union, 2007). Yet the Resolution failed to elicit

any meaningful response from either organisation. Slowly, Eliasson and Salim's efforts began to yield some results, and, on the insistence of the AU, a new round of peace talks commenced in Libya at the end of October 2007. The choice of location proved fatal however, given Libya's intricate role in the conflict. Jan Eliasson later reflected that things had gone awry right from the beginning of the negotiations:

> One of the two groups wouldn't come to Libya. Then the deployment of the hybrid force was proceeding so slowly. The psychological impact was that the movements, who felt this was so important, saw that in fact nothing was happening. Second, the movements were split. In the beginning of September, JEM split into two factions who hated each other. Once the faction that left the JEM accepted to come to Sirte, the other leader refused. Third, the major issue for the Government of Sudan and the SPLM was the north-south issue. That cooperation got very bad. In October, the SPLM suspended work with the government. So they refused to go to Sirte, with the Government of National Unity. Then another movement dropped out because they said they were coming to the talks on the basis that they were dealing with the Government of National Unity (in Traub, 2010: 28).

A further challenge was that the prospect of a UN deployment in Darfur raised both erroneous and unrealistic expectations of what such a force could actually do on the ground, which de Waal notes were echoed and amplified by many Darfur activists and appeared to be endorsed by an extraordinarily high level of international diplomatic effort vested in bringing the UN to Darfur. This however notes de Waal fed both fears and hopes in Sudan, which contributed to the challenge of finding a political path to bring an end to the conflict. In Khartoum in particular, fears were raised as to the threat that a UN force might pose to the ruling regime, that a UN force may be able to execute arrest warrants on behalf of the ICC, and that the United States had ulterior motives which would be attained through the deployment of a UN force. It was also not lost on the Government of Sudan that NATO's intervention in Kosovo appeared to be leading towards the independence of the region, and that the US government was providing military assistance to the SPLA in South Sudan in anticipation of a move for independence there in 2011. As wrangling on what to do about Darfur escalated outside of Sudan, the political dynamics in Khartoum began to heat up as well, as previous political divisions between moderates and hard-liners were once again brought to the fore. In spite of the re-establishment of relations with the United States, many in Khartoum did not perceive that the rewards were adequate for the concessions which had been made over the CPA.

Indeed, government leaders in Khartoum felt that they continued to be sanctioned and pressured, a fact that was continually reiterated first privately and later, and more vocally, publicly. Increasingly, mistrust mounted in Khartoum and raised the reluctance among hardliners to meaningfully implement the provisions of the CPA, let alone to engage on Darfur, where only further concessions would be made without any tangible rewards for the regime in Khartoum (I.D.F and Assal, 2010: 30). Inability to engage meaningfully with Khartoum on a political level ensured that the hardliners within the Government of Sudan, in particular those in control of the security establishment, ultimately came to dominate, led by President al Bashir and supported by members of the extremely powerful security establishment which had exercised control over the government's response to Darfur. In addition, the dominance of the interventionist discourse over Darfur, it was later criticized, served to undermine the political efforts aimed at seeking a negotiated settlement. Indeed, the AU High-Level Panel on Darfur observed that throughout 2007 political negotiations on Darfur were largely overshadowed and undermined by interventionist discourse, noting that:

> peace negotiations were conducted in the shadow of international efforts to bring a United Nations peacekeeping force to Darfur under a Chapter VII mandate drawn from the principle of the "Responsibility to

Protect." These efforts consumed far more time, effort and political capital at an international level than the revived Joint Mediation (African Union, 2009[a]: 43).

As 2007 ended, Khartoum demonstrated once more that despite international pressure it was not willing to engage meaningfully on Darfur. Within a month, Khartoum appointed first Musa Hilal, a Janjaweed commander and wanted by the ICC for a range of crimes, as advisor in the Ministry of Internal Affairs overseeing state policy on Darfur, and then Ahmed Haroun, a military officer who had been responsible for the government's Darfur interventions between 2003 and 2004, as primary liaison officer with UNAMID. The appointments, as Flint and de Waal note, were a clear snub to the international community (2008: 262). The Security Council concurred. Meeting on 27 November, members of the Council were infuriated with the lack of progress in Darfur, and it was broadly agreed that the Government of Sudan was failing to comply with the demands of the Council. Ambassador Sawers from the United Kingdom argued that the Government of Sudan was blatantly "insulting" the Council, while Belgian Ambassador Verbeke argued that the cooperation of Sudanese authorities had deteriorated "to the point of non-existence". Ambassador Verbeke threatened that the Council:

> do[es] not and will not tolerate the continued indifference of the Government of Sudan to the appeals of the international community in the face of grave violations of international humanitarian law (United Nations United Nations Security Council Official Records, 2007[b]: 24).

Despite the Council's frustrations, Jan Eliasson's appeals that the Darfur peace process be considered irreversible finally prevailed, and the Council elected not to take stronger measures against Khartoum. Meeting again on 5 December, the Council found that Sudan was still deliberately refusing to comply with previous Security Council Resolutions and was refusing to cooperate with the ICC. Yet it was only Ambassador Verbeke that took a strong stance, arguing:

> This blatant refusal to cooperate shows great contempt not only for alleged victims of crimes against humanity and war crimes, but also for decisions taken by the Security Council on behalf of the international community (United Nations United Nations Security Council Official Records, 2007[c]: 9)

But Verbeke's pleas for stronger action went unheeded, and the Council acted only to request the cooperation of the Government of Sudan in the implementation of previous Resolutions. With the transition from AMIS to UNAMID weeks away, the Council was not prepared to further jeopardise its already poor standing in Khartoum any further, no matter how outrageous the violations in Darfur may have been. On 01 January 2008, UNAMID became operational, although in effect AMIS peacekeepers simply donned blue UN berets that morning as opposed to their green AU ones. The sad reality, as Flint and de Waal argue however, was that UNAMID was designed to satisfy Western public demand for military intervention, with the vision of the mission based on images of Darfur from 2003 and 2004 rather than the complex conflict which Darfur had developed into since. Senior UN and AU staff in Khartoum worried that, at best, the mission would be AMIS in new clothes, and at worst, it would "trip over itself and become the world's worst peacekeeping operation" (in Flint and de Waal, 2008: 270).

By February 2008, following four months of stalled negotiation efforts in Sirte, Jan Eliasson reported to the Security Council, frustrated, that the armed movements were not ready to engage in substantive negotiations and lacked consolidated positions. The Council was divided on how to proceed. The representative from Costa Rica, Ambassador Weisleder, called for compliance on the part of Khartoum:

This is an organisation of sovereign states – states with equal rights, but also equal responsibilities. Costa Rica is convinced that sovereignty is not so much a right as an obligation, and that the principal obligation of every state is to protect those who live within its territory. Therefore, we call respectfully but forcefully on the Government of Sudan to exercise its sovereignty by protecting the hundreds of thousands of persons who are suffering daily the consequences of a fratricidal war (United Nations United Nations Security Council Official Records, 2008[a]: 12).

The Chinese representative, Ambassador Wang Guangya, however took a different position, arguing that:

the implementation of Resolution 1769 is not the exclusive responsibility of the Secretariat, the African Union or the Government of Sudan. The international community must share that responsibility (United Nations United Nations Security Council Official Records, 2008[a]: 10).

Yet the Council could not agree on what that responsibility might be, and in the end it was decided that the conflicting parties bore the responsibility to ensure the implementation of previous Resolutions and to revive the peace process, as well as to protect civilians. One week later, on 19 February 2008, Ashraf Qazi, the Secretary General's Special Representative for Sudan, briefed the Security Council. Qazi warned the Council that its emphasis on the Darfur question was threatening to undermine the North-South peace process, and that the Council would need to be careful in how it engaged with Khartoum, lest the CPA be threatened:

Should the CPA unravel, the prospects for a peaceful outcome in Darfur would largely disappear. On the other hand, should the implementation of the CPA succeed in bringing about a democratic transformation and in making unity attractive to the people of Southern Sudan, the prospects for an end to the humanitarian crisis and a peaceful resolution of the conflict in Darfur would brighten. I say this because the perception that the overwhelming concentration on Darfur has distracted attention from the CPA is especially real among the Southern Sudanese. […] We must also recognise the need for better and more effective engagement with the Government of National Unity. The experience of the past three years strongly suggests the need for a policy of engagement, rather than sanctions. While our Charter and mandate obligations, as well as the several delays in CPA implementation commitments, often leave us with little choice but to give public voice to our concerns, it remains just as essential to retain the confidence of both our main interlocutors if we are to successfully assist the parties in implementing the CPA (United Nations United Nations Security Council Official Records, 2008[b]: 5).

The Council, reluctant to threaten the CPA, decided to back away from Darfur and framed its efforts according to a three-pronged approach of utilising the ICC, UNAMID and the mediation efforts under Eliasson and Salim to find a solution to Darfur. The Council thus pushed the burden of attaining a way forward in Darfur over to the ICC, the peacekeeping operation and the mediators themselves. By June that strategy quickly unravelled. On 5 June, the Prosecutor of the ICC, Louis Moreno-Ocampo, briefed the Council, sighting a total lack of cooperation on the part of the Government of Sudan and ongoing atrocities in Darfur:

Sudanese officials are protecting the criminals and not the victims. Denial of crimes, cover-ups and attempts to shift responsibility have been another characteristic of the criminal plan in Darfur. We have seen it before. The Nazi regime invoked its national sovereignty to attack its own population, and then crossed borders to attack people in other countries. In my own country, Argentina, the military dictatorship had a well-documented strategy to disguise the criminal system of disappearances. They denied the crimes, they minimised their crimes, they denied the involvement of members of the Government in the crimes, and finally they proposed to forget the crimes and focus on political solutions. Remember also Karadzic's Directive 7, instructing his army to create a situation of total insecurity, with no hope of survival for the people of Srebrenica, while making sure to avoid international outcry. […] Let me conclude. A rebellion is going on in Sudan. Under international law, a Government has the right and the responsibility to maintain control of its territory. There is no doubt about that. But there is no military justification for bombing schools, and no legal excuse for raping women. Those crimes have been carefully prepared and efficiently implemented. They are not mistakes. They are not inter-tribal clashes. They are not cases of collateral damage. They are, quite simply, criminal acts against civilians –

unarmed civilians. Citizens from Sudan are being deliberately attacked by Sudanese officials. […] Their own state is attacking them. If the international community does not protect the Darfuris, they will be eliminated. It takes a lot to commit massive crimes. It takes planning and organisation. It takes commanders and many executioners. But mostly, it requires that the rest of the world look away and do nothing. […] Silence has never helped protect the victims. Silence only helps the criminals (United Nations United Nations Security Council Official Records, 2008[c]: 5)

Costa Rican Foreign Minister Bruno Stagno Ugarte, who had travelled to New York for the meeting, had harsh words for the Council:

The actions of the Council, and thus of the Member States gathered around this table that give life to it, have clearly been inadequate to the situation in Darfur. Internal differences and political calculations have thus far impeded effective action by the Council. What we can agree on, although it is not of much comfort, is that the Council has complied with the final paragraph of Resolution 1593 (2005), in that it has remained seized of the matter. However, the perpetuation of the situation is in and of itself part of the problem, because as time passes, the Council runs the risk of accommodating evil as the graves continue to be filled in Darfur. […] I exhort the Council to find a solution that adequately addresses the imperatives of both peace and justice. It certainly cannot continue with what, as time passes, seems to be a policy of appeasement of Khartoum and of indifference to the atrocities that are occurring in Darfur. […] The Government of Sudan is toying with us, toying with human dignity, toying with the authority of this Council (United Nations United Nations Security Council Official Records, 2008[c]: 6).

Costa Rica was however the only nation to make an appeal for stronger action. Despite the fact that the European Union had at that time already made over 70 'statements of concern' over Darfur, one of the organisation's more robust foreign policy tools, European members of the Council were reluctant to push the matter (Evans, 2009: 187). Council members thus argued that, despite the concerns of the ICC Prosecutor, additional emphasis should now be placed on UNAMID and on the mediation efforts, led by Eliasson and Salim. Yet the two mediators brought with them two different approaches, and the mediators were soon played off against one another by the belligerents. Eliasson, it appears, was favoured by the armed movements, as through him they could play to the sympathies of the West. Salim on the other hand was favoured by the Government of Sudan, which through him could play to the AU (Interview 20, 2010). Indeed, while the UN increasingly appeared to apply sympathy for the armed movements and the displaced persons, the AU was looking to the elite politics in Khartoum (Interview 21, 2010).

The three-pronged approach to Darfur increasingly came to resemble a two-pronged approach. On 24 June, Eliasson and Salim jointly briefed the Security Council, their last briefing before stepping aside to make way for a single joint AU-UN mediator, Djibril Bassolé, the former Minister of Foreign Affairs from Burkina Faso. Maintaining two mediators, with two different approaches, had simply proven too challenging, and Eliasson and Salim had not been able to make sufficient headway. Both mediators reluctantly admitted that the political process in Darfur had reached an impasse. The Government of Sudan refused to consent to a peacekeeping operation with an enhanced mandate before agreement had been reached on the political goals which the mission would help protect, while the armed movements were reluctant to sign up to a political process which would be enforced by a joint AU-UN presence which they did not trust. UNAMID, the fledgling peacekeeping operation with no peace to keep, found itself trapped in the middle, desperately reliant on the political engagement of the AU and the UN with Khartoum and the armed movements to be able to play a meaningful role on the ground in Darfur (Traub, 2010: 28). With the mediation and UNAMID in peril, the Security Council appeared left with a zero-pronged strategy for Darfur.

Responding to tough questioning by the Costa Rican representative, Salim Ahmed Salim argued that while the Government of Sudan had indeed not met the international expectations or its internal obligations, the primary responsibility for the situation in Darfur remained with the regime in Khartoum, and that the Security Council needed to accept the reality that:

> you have to deal with the nice guys and the bad guys wherever they appear, whether they come from the Government side or the side of the movements (United Nations Security Council Official Records, 2008[d]: 26).

Reflecting on the dire situation, British representative John Sawers urged the Council not to get too distracted by Darfur, and that exerting too much effort there could prove detrimental to gains made elsewhere:

> First of all, I think it is quite right to put the centrality of the peace agreement first, even in discussions on Darfur. It was very clear to us all in Sudan that the Comprehensive Peace Agreement (CPA) is the cornerstone of peace in Sudan. If the CPA founders, then there is no hope in the short term or the medium term for progress elsewhere. We have to do everything we can to keep the CPA on track (United Nations Security Council Official Records, 2008[d]: 10).

Andrew Natsios, the former US Special Envoy to Sudan, wrote shortly thereafter that the main strategic objective of the United States should no longer be to stop the violence in Darfur, but to support the North-South process, and instead of confronting Khartoum, should seek to engage it, even in the face of vocal objections on the part of the powerful Darfur advocacy community (Traub, 2010: 31). As international attention shifted back to the North-South peace process, Bassolé commenced work as the Joint Chief Mediator on Darfur. Yet the attention of the AU had already shifted elsewhere. Overwhelmed, the Peace and Security Council was now dealing with the Comoros, Kenya, Somalia, Ethiopia and Eritrea, Chad, the Central African Republic, the Democratic Republic of the Congo, Burundi and Côte d'Ivoire. Meeting in Sharm el-Sheikh from 30 June to 1 July 2008, the Assembly of the Union adopted a range of decisions and declarations. Darfur received one short paragraph of attention in the outcomes document, while Zimbabwe merited a two-page resolution (African Union, 2008). The AU, it appeared, was happy for Darfur to become the UN's responsibility, and to move on to other conflict areas where it might be able to play a more meaningful role and save face.

Yet while the challenge of engaging with peacekeeping efforts in Darfur was handed by the AU back to the UN, the AU still sought to retain political primacy over the international response to Darfur. The Peace and Security Council on 21 July 2008 mandated the establishment of an AU High-Level Panel on Darfur (AUPD) to examine how the issues of accountability and combating impunity on the one hand, and reconciliation and healing on the other, could be effectively and comprehensively addressed in Darfur (African Union, 2010). The Panel, consisting of prominent Africans, and under the chairmanship of former South African President Thabo Mbeki, soon set to work attempting to generate fresh political options for the AU on Darfur. The same day, the Peace and Security Council requested the UN Security Council to defer the ICC process for a period of one year, allowing for the Panel to undertake its work and for political efforts on Darfur to gain momentum in Doha. The Security Council however refused the request, and the ICC investigations and the work of the Panel continued side by side. While the AU shifted its efforts from UNAMID to the AUPD, the Security Council placed its bets on UNAMID. Yet meeting on 31 July, the Council was forced to admit that UNAMID was not yielding the desired results. The Council noted that, one year after adopting Resolution 1769, the security and humanitarian situation in Darfur continued to deteriorate. The Council, noting the ongoing attacks on civilians, requested UNAMID to make "full use of its current mandate and capabilities with regard to the

protection of civilians", but with equal measure stressed the need for the mission to focus its efforts on enhancing the safety and security of UNAMID personnel themselves (United Nations Security Council Resolution 1828, 2008). UNAMID found itself having to divide its resources between protecting mission personnel and assets and protecting the civilian population in Darfur within the constraints of the weak mandate it held to do so. Whatever civilian protection expectations the mission had raised were now coming into serious doubt.

While the AUPD gained momentum the AU and the UN on 2 October 2008 forwarded a list of available units for UNAMID to Khartoum, seeking authorization for the enlargement of the mission beyond its previous AMIS forces. While Khartoum had initially agreed to the deployment of UNAMID on condition that the mission be "predominantly African in character", units from Thailand, Nepal and the Scandinavian countries were rejected. Khartoum now demanded an exclusively African peacekeeping force. While some African countries stepped forward offering additional troops, the numbers required could not immediately be found on the continent, and UNAMID by the close of 2008 remained critically under-staffed. On the political front, Bassolé had since his appointment sought to promote dialogue between Khartoum and the JEM, at the time the largest of the armed movements in Darfur, shifting the negotiations to Doha under the auspices of the Arab League. Negotiations were fraught with challenges though, and throughout 2008 and 2009, little progress would be made. The choice of location was also heavily criticized by some of the movements, given Qatar's open support for the Government of Sudan in previous years, in particular during its tenure as a non-permanent member of the Security Council. Indeed, Qatar had abstained on the vote to establish a UN peacekeeping operation in Darfur, and in 2008 had been the first Arab country to accuse the ICC of "interfering in the internal affairs of Sudan" (Flint, 2010: 33).

The ICC Prosecutor again briefed the Security Council again on 3 December, citing the ongoing obstructionism by Khartoum as a major concern. Yet the Council was divided. Some, though supportive of the work of the ICC, were reluctant to push the matter too strongly. Others, such as South Africa, openly challenged the work of the Prosecutor, arguing that the ICC was ignoring progress made in the political negotiations on Darfur and was sidelining the work of the AU. It was only Costa Rica which once more called for any action on the part of the Council, with Ambassador Urbina appealing to other members of the Council:

> We are in the presence of a State that does not want to – or is not able to – protects its population, who are the target of war crimes, crimes against humanity, genocide and ethnic cleansing. How much longer will the Council delay in examining whether we are seeing the first case of the responsibility to protect, as stipulated in the 2005 World Summit Outcome (United Nations Security Council Official Records, 2008[e]: 14)?

Ambassador Urbina's calls went unheeded though, and the Council remained divided on how to proceed on the question of the ICC investigation of al Bashir. Meeting just a few weeks later for a further open debate of the Security Council on the protection of civilians in armed conflict however, UN member states spent four hours successively professing their deep and unwavering commitment to the protection of civilians, the defence of human rights, and the rejection of impunity. Member states from the global South were quick to lambaste Israel for its human rights violations in Gaza, yet Darfur barely found mention in the debate (United Nations Security Council Official Records, 2009[a]).

Meeting from 1 to 3 February 2009, the AU Assembly expressed its deep concern at the possible indictment by the Prosecutor of the ICC against President al Bashir, and argued that the approval of the Prosecutor's application and the issuing of an arrest warrant against al Bashir would

"seriously undermine" ongoing efforts at facilitating a resolution to the conflict. Instead, the Assembly requested that the UN wait for the findings of the AU High-Level Panel on Darfur, which it hoped would chart a way forward on the questions of accountability, combating impunity, peace, justice and reconciliation (African Union, 2009[b]: Dec.213(XII)). This request went unheeded by the UN however, which appeared eager to demonstrate its commitment to attaining tangible outcomes on Darfur. On 4 March 2009 the ICC ordered an arrest warrant for President Bashir on charges of war crimes and crimes against humanity. Following the indictment, some of the armed movements refused to negotiate with the Government of Sudan, arguing that they would not negotiate with an indicted war criminal (Bah, 2010: 11). President al Bashir in turn scoffed at the arrest warrant, and threatened to bring the United States of America to book over genocide against the Native Americans, in Vietnam and over the atomic bombing of Hiroshima in 1945 (BBC, 2009).

The indictment served to deepen the rift between the Security Council and the Peace and Security Council, with dire consequences for the faltering Darfur peace process, now taking place in Doha. The Peace and Security Council moved quickly to request the Security Council to suspend the indictment for a period of one year, under Article 16 of the Rome Statute. Yet the Council's requests failed to elicit even a response from the Security Council. Angered, Burkina Faso, Libya and South Africa, the three African non-permanent members of the Security Council at the time, sought to amend a draft resolution extending the UNAMID mandate with Article 16 language. But this move was blocked, in particular by the United Kingdom, the United States and France. The United States in particular argued that it would veto the draft resolution if it contained Article 16 language, and that the prosecution of al Bashir needed to proceed. While China and Russia felt that the ICC indictment would undermine efforts aimed at attaining a political settlement on Darfur, they did not move to support the AU call for a suspension of the indictment either. Thus, the ICC indictment against al Bashir was allowed to continue (Bah, 2010: 12 and Traub, 2010: 30). Representatives of the AU Commission and member states were not pleased that this process had gone ahead despite their objections. Jean Ping, the Chairperson of the AU Commission, argued:

> we support the fight against impunity […] but we say that peace and justice should not collide, that the need for justice should not override the need for peace (in Bah, 2010: 12).

At its subsequent Summit in Tripoli in July 2009 the AU decided not to cooperate with the ICC. The decision was presented as an African consensus, but this was shaken as Ghana, Botswana, South African and Chad distanced themselves from the decision and committed to adhering to their treaty obligations under the Rome Statute. Ghana's Minister of Foreign Affairs later lamented that African states had decided not to cooperate with the ICC not out of reluctance towards the ICC itself, but in retaliation for the unwillingness of the Security Council to respond to the request of the Peace and Security Council to delay Bashir's indictment (Bah, 2010: 14).

The fallout following this decision proved challenging for the AU. Senegal, the first African signatory to the Rome Statute, voiced reservations over the move to indict Bashir, while Botswana publicly lauded the move. Libya on the other hand moved to condemn the ICC, and using its position of Chair of the AU called on African states to withdraw their membership from the ICC (Bah, 2010: 14). While President al Bashir embarked on a whirlwind tour of defiance across North Africa and the Middle East, planned visits to Nigeria, South Africa and Uganda were quietly cancelled as it became clear that these countries remained committed to the Rome Statute and their treaty obligations. By this time however, Darfur had been classified as a low-

intensity conflict by the head of UNAMID, Rodolphe Adada, with the armed movements, the government and the Janjaweed having fought each other to exhaustion, and the willingness of the UN to address the situation on the ground had mostly waned. Meeting on 30 July 2009 the Security Council expressed its concern that two years after the adoption of Resolution 1769 the situation in Darfur continued to deteriorate, and found that the Government of Sudan was still failing to comply with its obligations. Resolution 1881 again made reference to Resolution 1674 on the protection of civilians and to the provisions of the 2005 World Summit Outcomes Document related to the responsibility to protect, but went only as far as to call on UNAMID to make better use of its existing mandate related to the protection of civilians in Darfur (United Nations Security Council Resolution 1881, 2009). The Security Council, it appeared, was tired of dealing with Darfur, and sought only to ensure that the mandate of UNAMID was continued, disinterested in the actual developments on the ground.

6.4   A Bitter Compromise: CPA, DPA or GPA?

On 29 October 2009, following a year of exhaustive consultations, the AUPD submitted its report to the Peace and Security Council meeting at the level of Heads of State and Government in Abuja. The report clearly mapped the Darfur conflict within the context of the broader centre-periphery conflict in Sudan as well as within the conflict dynamics dominating the region. The report argued that the settlement of the Darfur conflicts required primarily a political approach, the application of justice, and a process of reconciliation in a society in which the social fabric had been all but destroyed. The report further argued that the AU had clear responsibilities to act on Darfur, but that the fundamental obligation to take a lead in restoring peace in Darfur fell on the Government of Sudan, which as a sovereign government held responsibilities towards its people which were not subject to negotiation (African Union, 2009[a]).

The report noted that, seven years after the latest round of conflict, the attacks against civilians in Darfur had left an estimated 2.7 million persons displaced, tens of thousands killed and maimed, and a people who had once entrusted their security to their government without faith in its readiness or ability to protect them (African Union 2009[a]: 48). Yet the way forward for the AU, and for the international community at large, was to seek political dialogue with Khartoum and the negotiation of a political settlement, not only for Darfur, but one which would be representative of the broader social and political conflict in Sudan taking into account the realities of the CPA, the DPA, the Eastern Sudan Peace Agreement (ESPA - signed in 2007), the upcoming national elections in 2010 and the referendum on independence in the South in 2011. This "Global Political Agreement" (GPA), as the report conceptualised it, required engagement with the central political powers in Khartoum, and would by necessity need to re-shape the political landscape in Sudan, not only as related to Darfur but as related to Sudanese society as a whole.

In presenting the report to the AU, Thabo Mbeki emphasized that a resolution to the conflict in Darfur had to be brought about by Sudanese people themselves, and could not be imposed from the outside. In this context, Mbeki argued that the AU, and international society at large, needed to consider the "Sudan crisis in Darfur" as opposed to the "Darfur crisis in Sudan". The AU, argued Mbeki, could only assist in bringing the relevant stakeholders together and in uniting them behind a common vision and programme in Sudan. The rest, the Panel found, was up to the Sudanese people themselves (Social Sciences Research Council, 2009).

Responding to the submission of the report, the Peace and Security Council moved quickly to ensure that the findings of the AUPD guide the way forward on Darfur. The same day as the report was submitted the Council endorsed the report and its recommendations and stressed that these provided a clear roadmap for achieving peace, justice, reconciliation and healing in Darfur, and would contribute to the overall objective of promoting sustainable peace and stability in Sudan. The Council therefore decided that the recommendations in the report would form the basis of further AU engagement in Darfur and its interaction with international partners. The Council again condemned the ongoing human rights violations in Darfur and expressed its commitment to combating impunity, but once more called on the Security Council to defer the ICC indictment against Bashir "in the interest of peace, justice and reconciliation" (African Union, 2009[c]). The Council also cautioned the UN, expressing its conviction that:

> the achievement of lasting peace and reconciliation in Darfur requires that Sudanese stakeholders take full ownership of the process and that, given the necessary support, the people of Sudan will be able to bring to an end the conflict in Darfur in an inclusive, peaceful and expeditious manner, bearing in mind that Darfur is a manifestation of the broader political and other challenges facing Sudan as a whole. Council [sic] *stresses* that the international community needs to play a supportive role, based on a proper understanding of the causes and consequences of the conflict in Darfur (emphasis in original, African Union, 2009[c]: 2).

At the end of 2009 the focus of international engagement on Sudan had shifted back towards the management of national elections in 2010, and the conduct of the referendum on self-determination for the South in 2011 and the referendum on the future status of the Abyei region in an attempt to prevent a worst-case scenario of a renewed all-out civil war in Sudan. Yet as one observer has noted, the international process had become so complicated that disagreements among the permanent five members of the Security Council, within the UN, between the UN and the AU, and among Sudan's neighbours had come to consume as much energy as the mediation of the Darfur conflict itself (Flint, 2010: 43). By early 2010 agreement had largely been reached that the Doha negotiations would be left to proceed as a joint AU – UN effort, should Bassolé manage to revise a process which faltered in May 2010 shortly before the hosting of national elections in Sudan. Indeed, privately many officials in New York and in Addis Ababa described the Doha negotiations as moribund.

Rather, effort would be placed on supporting the work of the AUPD, and the Peace and Security Council in early 2010 extended the mandate of the Panel to cover the whole of Sudan, and an implementation mechanism was established at the AU Commission in Addis Ababa. While publicly supporting the work of the AUPD, many UN officials expressed reservations that the AU was being overly assertive and were dissatisfied that the UN had once again been outmanoeuvred on the political front (Interview 7, 2010). As the mandate of the AUPD was being extended, quiet negotiations, with Norwegian support, between the SPLM and Khartoum were resumed in a remote location in Western Ethiopia, designed to prepare Sudan for partition in 2011. As one senior Norwegian diplomat observed, partners had finally come to the realisation that making unity attractive between the North and the South was a strategy which had long ago failed, and focus now needed to shift towards ensuring that the potential fallout from the 2011 referendum could be limited as best as possible (Interview 25, 2010). This approach once more necessitated positive engagement with Khartoum. Any willingness on the part of the AU or the UN to engage critically with the leadership in Khartoum on Darfur, therefore, appears to have all but disappeared by early 2010. Indeed, both organisations by 2010 appeared to have reverted to the strategy utilised between 2003 and 2005; ignore Darfur and engage with Khartoum to ensure the best possible outcome for the North-South peace process. The addition of genocide to President Bashir's arrest warrant by the ICC in July 2010 appeared not to have impacted on this

decision. While the AU and the UN shifted their strategies back towards the CPA, the Security Council held a further open debate on the protection of civilians in armed conflict on 11 November 2009. Initiating the debate, the President of the Security Council, Austrian Foreign Minister Spindelegger, argued:

> We, the international community, have to do better. We need to live up to our shared responsibility to effectively respond to situations in which the safety and security of civilians are in danger. No conflict justifies breaches of international humanitarian law. No conflict justifies the refusal of access for humanitarian workers to civilians in need. No conflict justifies impunity for those who have committed serious crimes against civilians. The Security Council has a key role to play. The Council has a broad range of tools at its disposal to ensure compliance by all parties with their obligations under international law to protect civilians, to facilitate access for humanitarian aid and to ensure accountability for serious crimes against civilians. Today, the protection of civilians is at the core of United Nations peacekeeping (United Nations Security Council Official Records, 2009[b]: 3).

For eight hours that day, member states one after the other highlighted the achievements of the UN and their unwavering commitment to the protection of civilians. Indeed, many highlighted the unique set of responsibilities placed upon states and on the UN and the Security Council in particular in ensuring the protection of civilians (United Nations Security Council Official Records, 2009[c]). The Darfur situation was not even mentioned in the Council's debates that day. The responsibility to protect also did not feature in this debate. Indeed, the responsibility to protect had already decreasingly featured in discourse since 2007, and had all but ceased to be highlighted in debate on Darfur since the middle of 2008. By the end of 2009, it had all but vanished from discourse surrounding Darfur.

Chapter 7
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Findings and Recommendations for Further Research

7.1   Introduction

International interventions failed to prevent both the outbreak and the escalation of the conflicts in Darfur, to bring to an end the conflicts, and to deal effectively with an ever-mounting threat to international peace and security. Interventions designed to protect the people of Darfur from war crimes, crimes against humanity, ethnic cleansing, and, ultimately, acts of genocide similarly failed. In addition, based on the analysis above, it is also apparent that the responsibility to protect norm did not have the impact its proponents intended in Darfur. At the same time as the norm was becoming increasingly entrenched and salient in international society it also came to feature ever less in the international discourse surrounding responses to Darfur. Indeed, it appears as though the more the norm was gaining ground within international society, the less it was actually featuring in discourse surrounding the very phenomena in international society for which it was intended. Thus, it would appear that whilst at a normative level the responsibility to protect was developing and gaining in acceptance, in its application the norm proved less useful, and ultimately disappeared entirely from the discourse within which it was intended to be embedded.

This chapter seeks to explore why this apparent contradiction developed, and why the responsibility to protect norm ultimately failed to contribute to the formulation of effective and meaningful responses to the Darfur crisis. The chapter will also explore the possible consequences of this apparent norm failure more broadly, both for the responsibility to protect norm itself as well as for future responses to atrocity crimes in Africa. Indeed, as will be argued below, the failure of the norm in Darfur is quite instructive. As will be argued, this represents not only a failure of the responsibility to protect norm in the case of Darfur itself, but indeed reveals weaknesses in the very norm itself. Despite having emerged and cascaded so rapidly, it will be argued, the norm ultimately has not been that successful in its application, and is unlikely to meaningfully feature in discourse surrounding interventions on humanitarian grounds in its current iteration. Advancing this argument even further, it is possible that the norm may in future recede more than it advances and becomes further entrenched, let alone internalised. Building on these findings, and given the apparent failure of the responsibility to protect as a norm for framing responses to atrocity crimes, this chapter seeks to generate insights into how future conflicts in which atrocity crimes are committed may be dealt with by states, and to assess whether responses to atrocity crimes, as envisioned by the responsibility to protect norm, may in fact be more or less likely in future. Finally, this chapter seeks to reflect on the Constructivists research agenda in International Relations on norm development, diffusion and utility in international society, and to recommend areas of research which require further attention if the Constructivist agenda in International Relations, as well as our understanding of norms and their role within states, is to be advanced.

7.2 The Responsibility to Protect and Darfur – A Case of Norm Failure?

The UN, when the conflict first gained international attention in early 2003, proved extremely reluctant to address the deteriorating situation in Darfur, dismissing the conflicts in the region as tribal in nature, and member states and Secretariat staff proved unwilling to have their attention drawn away from the North-South negotiations which after years of deadlock were finally yielding progressive results. It was only when the rapidly deteriorating situation in Darfur and the mounting evidence of large-scale and wide-spread human rights violations, including early accusations of atrocity crimes, could no longer justifiably be ignored that member states turned their attention to Darfur.

Yet the decision was quickly made; the North-South peace process would not be jeopardised, and while a humanitarian relief operation was mounted and the conflicting parties were encouraged to refrain from violating human rights further, the UN refused to be drawn into the political dimensions of the conflict, let alone to engage with Khartoum on the matter when the Government of Sudan was proving compliant in the negotiations on the Comprehensive Peace Agreement. The trade-off was quite apparent, and was also correctly interpreted by Khartoum; the Government of Sudan was free to act in Darfur as it pleased, as long as progress was being made in the negotiations on the future of South Sudan. As the signing of the CPA drew nearer, and as the scale of atrocities in Darfur began to exceed belief, the Security Council was cautious to praise Khartoum in public, and to keep any criticism over Darfur at the level of bilateral relations and private discussions in Khartoum. Yet, as was made clear in every Security Council meeting until early 2005, the responsibility to protect civilians in Sudan as a whole resided exclusively with the Government of Sudan.

Following the signing of the CPA in January 2005 the Security Council mustered the will to turn its attention to Darfur, in the hope that there might now be more room for manoeuvre with Khartoum. Initial calls for the deployment of a peacekeeping force were pushed aside in favour of a peacemaking approach, and the UN sought to engage with Khartoum and the armed movements in a negotiated process to bring the violence to an end. Yet when it became clear that the UN had no leverage on Darfur members of the Security Council were quick to assert that the efforts of the AU should take primacy. The decision to hand the responsibility for dealing with Darfur to the AU found broad support, but for very different reasons. For officials in the United States and Europe, handing responsibility for Darfur to the AU was viewed as a means of preventing their armed forces getting embroiled in another African conflict zone when their attention was drawn primarily towards Iraq and Afghanistan. For African leaders this proved an opportunity to establish the credentials of the AU as the dominant peace and security institution on the continent. For the Government of Sudan in turn this decision proved welcome, as engaging with the AU was deemed preferable to engaging with the West, as well as a means of avoiding sanction over Darfur when Khartoum needed to play a strong hand (Clough, 2007: 8).

The AU was therefore left to get on with the business of securing a political settlement in Darfur and, through the deployment of AMIS, to bear the brunt of the responsibility for the protection of civilians. Yet when the report of the ICID highlighted the string of abuses, including the commission of atrocity crimes in Darfur by the Government of Sudan, the Council was forced to take stronger action, or at least publicly be seen to be taking stronger action. Again the Council was able to absolve itself of a responsibility to react by referring the Darfur file to the ICC. While the ICC investigations commenced, the UN began to exert pressure on the AU to finalise a political settlement for Darfur, the pre-requisite for any further UN engagement. Indeed, by the

end of 2005 it was broadly recognised within the UN and the Security Council in particular that the deployment of a peacekeeping operation had become unavoidable, lest the UN be accused of watching over another Rwanda. The endorsement of the responsibility to protect by the World Summit in September 2005 and by the Security Council shortly thereafter did very little to influence this line of thinking however, and by the end of 2005 it would appear that the deployment of a peacekeeping operation to Darfur was viewed primarily as a face-saving measure for the UN, and not in light of any responsibilities which member states felt the organisation may have held. Indeed, at this time the pressure being exerted by what was broadly labelled the 'Save Darfur' coalition was mounting both on the UN and on its leading Western member states, and both needed to be seen to be doing something.

It was thus that the UN and members of the Security Council, in particular the United States and the EU, began to exert pressure on the mediation team and the negotiating parties in Abuja, rushing through the DPA which was anticipated to pave the way for a UN deployment. As soon as the DPA had been signed, the Security Council pushed heavily for a UN peacekeeping deployment, adopting Resolution 1706 three months after the signing of the DPA which authorised the deployment of a UN operation in Darfur, and invited, but did not require, Khartoum's consent. Yet Khartoum did not consent, and the Council did not muster the will to enforce its own resolution. In November 2006 it was agreed that Resolution 1706 would effectively be scrapped, and a new approach to Darfur was sought. As the security situation continued to deteriorate and it became increasingly apparent that the DPA had failed, the Council again left the responsibility for action in Darfur with the AU, watching first as the mediation efforts stalled, and then as Khartoum blocked the efforts of the ICC to investigate atrocity crimes in Darfur. It was only in late 2007 that the Security Council re-engaged, when the possibility of a transition from AMIS to UNAMID had been facilitated. After January 2008, the UN began to play a more prominent role in Darfur through UNAMID, yet the Security Council was reluctant to assume a responsibility for the protection of civilians. UNAMID was handed a weak mandate with regards to the protection of civilians, and the DPKO proved reluctant to provide guidance to the mission on how to interpret or execute the mandate. The resources which would have been necessary for the mission to execute its protection mandate where in any case never provided.

UNAMID was thus deliberately prevented from taking on a strong protection role in Darfur while the Security Council sought, through the failing mediation effort, to strengthen its ability to engage with Khartoum politically. When the ICC indictment against al Bashir was issued, the Council provided political support to the ICC but did not seek to enforce the indictment, just as it had failed to enforce the other indictments which the Court had issued on Darfur. Increasingly it became apparent that the Council was unable to engage with Khartoum on Darfur in a meaningful manner, and when the North-South peace process began to unravel in mid-2009 the Council decided to disengage from Darfur and focus its efforts on the CPA once more. Indeed, the Council appears to have been reluctant to jeopardise the gains made in the South of Sudan for what appeared an intractable situation in Darfur. The new approach would be one of appeasement, rather than confrontation, with Khartoum. The indictment of al Bashir in July 2010 on charges of genocide did little to alter this approach. As one observer notes, the sad reality is that Darfur simply did not matter enough, and Sudan mattered too much, for the Security Council to ever consider taking serious action to prevent or put a halt to war crimes, crimes against humanity, ethnic cleansing and, ultimately, acts of genocide (Grono, 2006: 628). Throughout its engagement with Darfur, once it had decided to deal with the Darfur matter following a two-year period of avoidance, the Security Council was willing to concede that a responsibility to protect the civilian population in Darfur existed, and that the international community was vested with a

responsibility to protect the population of Darfur should the Government of Sudan prove unable or unwilling to do so. Initially, the Security Council argued that this responsibility resided with the Government of Sudan, but when this position could no longer viably be maintained, the responsibility to ensure the protection of the civilian population of Darfur was ceded by the Council in turn to the AU, to AMIS, to the ICC, to the belligerents themselves during the negotiations in Abuja, and to the Government of Sudan once more following the signing of the DPA.

Since that time, even with the establishment of UNAMID, the Security Council remained reluctant to assume any direct responsibility for the protection of civilians in Darfur, lest this propel the Council onto a collision course with Khartoum; a confrontation which the Council had lost many times before. While initially featuring between 2005 and 2007, between 2007 and 2010 the use of responsibility to protect discourse in the Security Council and in discourse on Darfur rapidly diminished. Whereas member states were keen to make use of the norm and to justify action on the part of the Council and of states as a whole on the basis of the norm, over time this waned, and by mid-2009 it was only Costa Rica which still sought to invoke the norm in the Security Council. By 2010 no state was attempting to frame the international response to Darfur within responsibility to protect discourse. Where the responsibility to protect norm was invoked, in particular in the period between 2006 and 2007, this was done so mostly by advocacy groups and early supporters of the norm.

Yet the pressure to 'do something' about Darfur based on the responsibility to protect norm resulted only in a framing of the solution to Darfur as a UN intervention, by force if needed, resulting in the disastrous adoption of Resolution 1706. Whereas the responsibility to protect norm was intended to facilitate effective and meaningful responses to conflict situations in which atrocity crimes are committed, in the case of Darfur it contributed only to alienating Khartoum even further, to exposing the weaknesses of the UN and in particular of the Security Council, to obstructing the path of political engagement, and ultimately, to impeding the international response to providing humanitarian assistance and the protection to the civilian population in Darfur. By many accounts, in the UN context it could well be argued that the responsibility to protect norm did not contribute to the formulation and implementation of effective responses to atrocity crimes, but indeed served only to complicate, confuse and weaken the international response. The responsibility to protect norm then, in the case of the UN response to Darfur, appears to have achieved results entirely contrary to its stated purpose and normative content.

The AU similarly seemed uncertain of how to deal with Darfur. Political engagement emerged in 2004 through participation in the N'djamena negotiations, but this was aimed only at obtaining a humanitarian ceasefire agreement. The AU held no desire to become embroiled in the conflicts in Sudan and quickly sought engagement with the Security Council on Darfur. Yet when it became clear that the Security Council did not intend to address the Darfur crisis, the Peace and Security Council decided to take the lead itself, sensing an easy opportunity through which to assert the political authority of the newly established AU in a conflict situation on the African continent. It was thus that a symbolic observer mission was sent to Darfur to monitor the ceasefire agreement. Yet the AU had neither the intention nor the capacity to support a fully-fledged peacekeeping operation. As events in Darfur spiralled out of control, the Peace and Security Council and AMIS found themselves irrevocably sucked deeper into the Darfur quagmire. AMIS was strengthened, but only to the degree that the mission could protect itself while political engagement with the armed movements and with Khartoum was sought through the Abuja negotiations. Yet the AU sought to engage in high politics, and adopted an approach of constructive engagement with the

Government of Sudan, more hesitant to move without the approval of Khartoum than without the approval of the Security Council. The AU thus focussed all its efforts on the Abuja negotiations, leaving AMIS mostly to fend for itself while a hasty political agreement, anticipated to facilitate the entry of the UN into Darfur, was sought.

Abuja however proved disastrous for the AU, as AMIS suddenly found itself a combatant in Darfur (fighting on the side of the Government of Sudan and SLM-Minawi) with no peace to keep. The UN shied away from sending in a robust peacekeeping operation, and the AU was left to seek renewed engagement with Khartoum and the armed movements over a period of two years before, finally, responsibility for Darfur could be ceded to the UN, as had already been intended four years prior. With UNAMID commencing operations, and with the UN keen to now minimise the role of the AU in the mission, the AU could finally renew its approach on Sudan afresh. Seeking the political upper hand, the AU High Level Panel on Darfur was established, the mandate of which was extended from an initial remit of Darfur to cover the entire Sudan. To the frustration of many in the UN, Khartoum was eager to maintain positive working relations with the AU, and by early 2010 the UN had, politically speaking, been left out in the cold with regards to both Darfur and Sudan more broadly.

Despite an interest in maintaining political and moral leadership on Darfur, the AU at no point appears to have held a particular interest in assuming responsibility for the protection of civilians there. Both the AMIS and the UNAMID mandates remained particularly weak with regards to the protection of civilians, despite continuous enlargements of the missions and expansions of their mandates. The AU consistently affirmed that the primary responsibility for the protection of civilians resided with the Government of Sudan, and when, during the Abuja negotiations, it was suggested by some international partners that provisions be inserted into the final text of the peace agreement strengthening the protection mandate of AMIS, the AU refused, arguing instead that the responsibility for the protection of the civilian population in Darfur rested with the armed movements and the government; the belligerents to the conflict themselves.

Interestingly also, despite the continuous support of many African states for the responsibility to protect norm within the UN at various levels of engagement, within the AU the norm never once surfaced with regard to the Union's response in Darfur. Even more curious however is the absence of discussion on the applicability of Article 4(h) of the Constitutive Act of the Union to Darfur. The Union has only invoked Article 4(h) language once since its founding in 2002, and this was in connection to the trial of a former Chadian president. Indeed, the Peace and Security Council consistently argued that, while grave, the situation in Darfur did not merit consideration in light of Article 4(h), which would have allowed the Union to respond to the commission of atrocity crimes. Curiously therefore, while member states of the AU proved avid supporters of the responsibility to protect norm in the UN context, even calling for the Security Council to act in Darfur on the basis of the norm, no evidence exists that it appears to have played any role whatsoever within the AU itself when it came to Darfur, or any other conflict situation for that matter.

On the basis of this analysis it then becomes clear that the responsibility to protect norm, despite its increasing salience in international society, failed to contribute to the attainment of its content goal in the case of Darfur. Indeed, it could even be argued that the norm contributed to outcomes explicitly contrary to its content goal. The director of a research and advocacy organisation established to promote the responsibility to protect norm concurred with this position, conceding that, in the case of Darfur, the norm had not been useful, and had probably served only to

encourage unconstructive behaviour on the part of all stakeholders (Interview 2, 2010). Another prominent researcher and activist on the responsibility to protect goes further, arguing that whereas the responsibility to protect had been intended to facilitate the shaping of engagement at critical moments, in the case of Darfur the norm had probably done more harm than good, isolating external actors from constructive engagement with Khartoum and weakening their position to bring to an end the commission of atrocity crimes (Interview 3, 2010). Other observers are even more critical. A senior official in the UN DPKO argued that the haphazard application of the responsibility to protect norm, when its proponents did seek to apply it, served only to raise false expectations and placed responsibilities on the peacekeeping missions which could not be met. These unrealistic expectations only served to antagonise Khartoum further, argued this official, contributing to a rapid breakdown in relations between Sudan and the UN. In the end, UNAMID suffered from this breakdown in relations, as, in the words of the DPKO official, cooperation with the Government of Sudan deteriorated to the level of "a joke, a big joke" (Interview 9, 2010). Indeed, many UN officials and member states later reflected that the UN had to a large degree been pushed into Darfur by advocacy groups, resulting in the organisation entering Darfur with the wrong mindset and a lack of will to be there in the first place (Interview 9, 2010).

It is clear, therefore, that the responsibility to protect norm appears to have encountered a distinct, and curious, contradiction. At one level, the norm emerged, was consolidated and codified, became increasingly entrenched and institutionalised in international society, and from 2005 onwards became increasingly salient, in particular at the level of the UN, but also among African states within the UN context. In addition, the norm can easily be recognised in the peace and security regime which the AU has been creating since 2003. Yet at the same time as the norm was being codified, institutionalised and entrenched, its relevance, applicability and utility receded, being applied decreasingly in relation to Darfur, the type of conflict situation for which the norm was conceived and developed. Where the norm was applied, its application appears to have complicated as opposed to facilitated the formulation of meaningful and effective responses. Indeed, in certain instances, it could be argued that the use of responsibility to protect discourse may not have contributed to addressing Darfur, but perhaps made this close to impossible. The question, of course, is why?

Several factors are of importance here. For one, where the responsibility to protect norm was invoked, this was done almost exclusively to justify calls for military action in Darfur or, failing this, for the deployment of a UN peacekeeping operation there. This invocation of the norm worked to ensure that responsibility to protect discourse was not appropriate or relevant to dealing with the challenges being faced by states in seeking to formulate a response to the crisis. Indeed, as Flint has demonstrated, the subordination of peacemaking efforts to calls for peacekeeping, driven in large part by advocacy campaigns to 'Save Darfur' through military intervention, only served to harden the intransigence of the armed movements and to strengthen the belief of the Government of Sudan that the West maintained an only partially hidden agenda for regime change (2010: 12). During the two years of negotiation it took to enable the transition from AMIS to UNAMID, again driven by a belief that a UN-led operation would be able to protect civilians, the conflict resolution approaches demanded by those in Darfur were ignored, and mediation efforts largely put on hold. During this time, fighting continued to escalate between the armed movements communities themselves, banditry was on the rise, and the government continued its offensives against the civilian population, causing the numbers of civilians requiring humanitarian assistance to double from an estimated 2 million to an estimated 4 million, while the number of

internally displaced persons rose from an estimated 1,8 million to an estimated 2,5 million (Flint, 2010: 23).

During this time, while protection was linked to a UN peacekeeping operation at the international level, aid agencies and humanitarian workers on the ground continued to suffer harassment, vilification and expulsion, often accompanied by accusations that they were providing information to the ICC or fabricating incidents to exert pressure on states to undertake military intervention (Flint, 2010: 23). Yet for many vocal Darfur activists and advocates of the responsibility to protect, a military intervention by the UN was heralded as the primary solution, and as the direct responsibility of the international community. Indeed, calls for more forceful action on Darfur were not confined to civil society, and prominent foreign policy-makers, in particular such as Susan Rice and William Cohen in the United States, pushed for a harder line on Darfur. Some activists called for intervention not only in Darfur, but also in Chad, arguing that the UN should remain firm in its resolve:

> The Sudanese regime will likely balk at each step, but in each case, the international community must push back (Smith, 2007)

Others were however more nuanced in their approach, arguing that the best means of influencing Khartoum lay in exerting greater international pressure in the form of UN sanctions and robust diplomacy, and that debating military intervention alone against a backdrop where meaningful multilateral solutions had not yet been exerted was unproductive, and indeed dangerous. Here responsibility to protect discourse was moved away from interventionist discourse, and centred firmly on the development of a range of multilateral forms of engagement, of which intervention, by forceful means if necessary, was only one component (Prendergast and Spiegel, 2007). Nevertheless, as Flint and de Waal noted, the high expectations for a what a UN peacekeeping operation implemented under the rubric of the responsibility to protect norm should do were simply astonishing to officials in UNDPKO (Flint and de Waal, 2008: 196). Even outside of the UN system, there was criticism towards this interpretation of the responsibility to protect in relation to the Darfur agenda. The advocacy officer of a major international relief agency for example argued that:

> Many activists were hugely detrimental in terms of looking for solutions. They created mass hysteria which limited the ability of decision-makers to pursue legitimate options. They have no concept of the fact that Sudan is a country and Darfur is just one part of it. These groups sucked up the space available for seeking solutions to the immediate needs of the people on the ground in Darfur because they focused all the attention of decision-makers on the far-fetched, long-term and debatable notion of a 'military solution' to the conflict, and of a UN-led intervention being the panacea to all Darfur's problems. For many humanitarians on the ground, the takeover was a far-off objective that we all knew would probably not work even if it did occur because no matter what people believe, you can't bring peace and safety for civilians to a place as big and complicated as Darfur by the barrel of a gun – even if it is 20,000 guns (in Flint and de Waal, 2008: 185).

A further challenge the responsibility to protect brought to international policy-makers framing responses to Darfur lay in the inapplicability of the norm to complex conflict situations in which a range of human rights violations and atrocities take place, but which do not neatly adhere to what are already loose definitions and understandings of war crimes, crimes against humanity, ethnic cleansing and genocide. In Darfur in particular these definitions came as much to support calls for intervention, framed in responsibility to protect discourse, as to oppose intervention, similarly framed in responsibility to protect discourse. The AU for example consistently argued that while atrocity crimes were being committed in Darfur, genocide was not, and that forceful intervention was therefore not merited. The AU thus chose to adhere to the genocide provision of its Charter

only, dismissing war crimes, crimes against humanity and ethnic cleansing as legitimate grounds for intervention on the part of the Union. In the UN the reluctance of the Security Council to admit the scale of crimes being committed pushed the United States to publicly declare that genocide was ongoing in Darfur, the first time a state had publicly accused another of committing genocide since the signing of the Genocide Convention.

In the Security Council no agreement could be found on whether the scale of the crimes either justified or necessitated international intervention, and the task of assessing the scale and nature of crimes was handed to the ICID. The subsequent report of the Commission, confirming the worst fears of many observers, was left to languish in limbo for several months before the Darfur file, at least the atrocity crimes component, was handed over to the ICC. Yet the Court, as was known by the members of the Security Council, would take years to investigate, and would only have the capacity to prosecute a handful of individuals. The Court would not be able to put an end to the violence on the ground, nor to prevent the further commission of atrocity crimes in Darfur. In addition, the emphasis placed on atrocity crimes and the use of the ICC to deal with these during an ongoing conflict as part of a conflict management strategy would later prove problematic. As Flint noted, the use of the ICC by the Security Council highlighted the contradictions inherent within the international responses to Darfur with, on the one hand, a flawed peace process seeking to legitimise an equally flawed peacekeeping operation that, to be successful, required the cooperation of the ruling elite in Khartoum and, on the other hand, the instigation of an international criminal process that alienated the ruling elite and made any dealings with it or concessions to it, even in the interest of peace, unsavoury and politically unfeasible (Flint, 2010: 26). The emphasis on atrocity crimes and the choice of using the ICC to deal with these in an ongoing complex conflict situation increasingly left states with fewer viable options to dealing with Darfur.

Yet the biggest challenge the responsibility to protect norm brought to those seeking to frame international responses was, quite simply, ascertaining *whose* responsibility it was to protect or to intervene, be this through means of non-coercive or coercive measures. The Security Council alternated between assigning this responsibility to the AU, the Government of Sudan, the armed movements, the ICC, and then finally to the peacekeeping operation in Darfur. Once it had become clear that UNAMID would not be able to do much more than AMIS had however, the Security Council was happy to re-assign the responsibility for dealing with Darfur to the AU once more. The AU, in turn, was happy to retain political primacy over the international responses to Darfur, but not once sought to take responsibility for the protection of the civilian population there, leaving this to the Government of Sudan and the armed movements, the very parties to the conflict which were committing the atrocity crimes in the first instance. Between them the UN and the AU also sought to shift the *responsibility* to protect on to the humanitarian community, human rights bodies, AMIS and UNAMID (both of which never held anything other than exceedingly weak protection mandates), and, through the AU Panel on Darfur, to the Sudanese people themselves. As one senior legal officer in the UN pointed out, "when everybody is responsible, nobody is responsible" (Interview 16, 2010).

In this regard then it can then be noted that the responsibility to protect norm hampered international responses to Darfur primarily in three areas; namely in terms of *how* to respond, in terms of *when* to respond and in terms of *who* should respond. In the final assessment on Darfur then, it is clear that the responsibility to protect was not a particularly useful norm, proving rather damaging and at least to a degree working precisely counter to its intended purpose. Yet given this assessment, and bearing in mind that the norm emerged between 2001 and 2005 and only

entered into a cascade phase from 2006 onwards, should international policy-makers move away from the norm, as it seems to have complicated the framing of international responses to atrocity crimes, or should Darfur be considered a unique situation, the first test case for the application of the responsibility to protect norm from which lessons can be learned and the norm further refined, providing an improved basis for future international responses to war crimes, crimes against humanity, ethnic cleansing and genocide?

7.3 The Utility of the Responsibility to Protect Norm in International Society

The apparent failure of the responsibility to protect norm in the case of Darfur can be interpreted in one of two ways. First, as many of the norm's supporters and advocates would claim, the failure of the norm in Darfur is not reflective of a broader failure of the norm in and of itself. For one, it could be argued that the failure of the norm is indicative of the fact that the norm had indeed not cascaded and become meaningfully entrenched in international society but that the norm was still emerging and located in a process of norm contestation when the Darfur crisis first erupted. The norm could therefore not meaningfully be applied to the Darfur case, but in future will have a greater impact on international responses to atrocity crimes. Others might in turn argue that the norm indeed may not have contributed to an effective response to the Darfur crisis, but would remind that norms do not determine actor behaviour but merely enable or constrain it, and that the infusion of responsibility to protect discourse over Darfur is already a success on its own, highlighting the manner in which the norm is increasingly becoming entrenched and internalised in international society. In addition, the argument has recently emerged that the responsibility to protect should perhaps not be considered so much as a norm but rather as a normative agenda which requires further investigation and implementation (Bellamy, 2010).

A second way of understanding the failure of the responsibility to protect norm in Darfur is however to view this in light of the failure of the norm more broadly and its lack of utility in international society. Here the argument would be that despite the emergence and cascade of the norm in international society over a relatively short period of time, in its application the norm is not useful to the attainment of its content goal, and indeed may contribute to outcomes which are explicitly contrary to its content goal. Indeed, as the case of Darfur highlights, in its application the responsibility to protect norm appears to have receded, and therefore it could be considered either as a 'failing' or as a 'failed' norm. The assumption here would be that the responsibility to protect, despite having emerged and cascaded so quickly, will gradually change or simply fade away, becoming replaced with other emerging norms or already entrenched ones. To gain deeper insight into this perspective however requires an analysis of several factors which have already impacted on the norm, or are likely to impact on the norm in future, and which will either enable or constrain the further entrenchment and development of the norm in international society.

One factor which has impacted on the development of the responsibility to protect norm already is the perception that the norm is a predominantly Western one within a context in which the moral authority of the Western world is rapidly declining. While the moral authority of the West is declining in many aspects (in particular in the realm of human rights, environmentalism, free-market capitalism and democracy), it is perhaps the military interventions in Kosovo, in Iraq and in Afghanistan which have most undermined the West and which have most impacted on the responsibility to protect norm. MacFarlane, Thielking and Weiss, for instance, argued that the post facto justification of the invasion of Iraq in 2003 on humanitarian grounds highlighted the potential for abuse of the notion that an international responsibility to protect those suffering

serious harm if their own state is either unable or unwilling to avert it exists, shrinking the normative space for consensus on the legitimacy of interventions on humanitarian grounds which had emerged during the 1990s. Indeed, MacFarlane, Thielking and Weiss already in 2004 argued that future attempts to intervene in cases of mass murder or systemic human rights violations could be discredited merely by referring to the war in Iraq (2004: 977). This line of thinking was also advanced by David Clark, a former Special Advisor to the British Foreign and Commonwealth Office. Clark explicitly argued that Iraq had wrecked the case for interventions conducted on humanitarian grounds, and that as long as power in the United States remained in the hands of the Republican right it would be impossible to build a consensus behind the idea that the responsibility to protect could be a power for good. "Those who continue to insist that it can," argued Clark, "risk discrediting the concept of humanitarian intervention" (in Bellamy, 2005: 38 - 39).

As Bellamy correctly notes, if the credibility of those states most associated with the new norm is undermined by perceptions that they have abused it or raised it primarily for self-serving purposes the process of normative change is likely to be slowed or reversed (Bellamy, 2005: 32 - 33). Similarly, the justification of the invasion of Afghanistan in 2001, and the subsequent and continued armed presence of the West there, has likely served only to delegitimize the human rights and interventionist agenda of the West in the eyes of many observers. Yet even the NATO intervention in Kosovo has not aided the responsibility to protect norm. While the intervention itself proved controversial at the time, the manner in which the West has subsequently handled the question of Kosovo's status has proved problematic for notions of interventions on humanitarian grounds. Indeed, as de Waal notes, it was not lost on Sudanese leadership that NATO continued to maintain a presence in the former Yugoslav province and appeared to be leading Kosovo ever closer to independence. A further concern was that while the United States of America openly supported Kosovar independence it was simultaneously providing military training and assistance to the SPLA in Southern Sudan in preparation for a referendum on independence scheduled for 2011 (De Waal, 2007: 1046). As one aid worker in Sudan noted, public rhetoric by Western leaders and human rights advocates only served to confound the Darfur problem:

> What appeared to be strong and important statements in the US or UK had a negative impact in Sudan, where they fed into a very public paranoia that the West was only interested in Darfur to justify taking Sudan's oil and stealing Muslim territory as they claimed had occurred in Iraq (in Flint and de Waal, 2008: 188).

Moral appeals to human rights and interventions on humanitarian grounds on the part of the West therefore began to wring increasingly hollow. With regards to the responsibility to protect norm, in particular, it seemed increasingly as though the West sought to assert a *right* to intervene on humanitarian grounds, but to abrogate any *responsibility* to do so. As one observer notes, while the proponents of the norm were right to be concerned with the danger that states might abuse humanitarian justifications to legitimate unjust interventions, they should have paid more attention to the danger that the norm could equally be used by those same states to avoid assuming responsibility for intervention (Bellamy, 2005: 53).

A second factor impacting on the responsibility to protect norm is its reliance on an alignment of state interests as opposed to a reformulation of state interests. This is, to a degree, the normative contestation that Finnemore and Sikkink made reference to; or a clash of interests as states construct them. Although Tony Blair asserted in 1999 that the protection of human rights was a state interest in and of itself for the United Kingdom, this state interest remains in competition with

other interests of the state, however defined. The advancement of the responsibility to protect norm does appear to have become an explicit interest for certain states such as Canada, France and Norway, which made the norm an active part of their foreign policy. Yet these states sidelined the norm in favour of other interests when it came to the case of Darfur. Other states never sought to frame their foreign policy in human rights and humanitarian terms. Russia, for instance, viewed arms sales to Sudan as its vital interest, while China's interests lay in the arms trade and in securing access to Sudanese oil (Udombana, 2007: 110). The United States, on the other hand, sought, quite unsuccessfully, to balance its state interests in the defence of human rights on the one hand with security cooperation with Sudan on the other. The balance was a delicate one, but one which the Government of Sudan knew to exploit in its favour all too well. Indeed, whenever international rhetoric on Darfur began to heat up Sudanese authorities appeared to be at pains to prove most co-operative in the global war on terror (Grono, 2005: 628). Add to this American support for the likes of Pakistan's Pervez Musharaf or Uzbekistan's Islam Karimov, and the extent to which the major powers are willing to write off their human rights agendas as part of counter-terrorist strategies or other concerns raises real questions about the viability of the responsibility to protect as an embodiment of international human rights solidarity and humanitarianism as state interests in international society (MacFarlane et al. 2005: 985). Even Tony Blair would have difficulty in explaining the inclusion of human rights and humanitarianism as a core interest of the United Kingdom in Sudan. The United Kingdom has continuously sidelined Darfur in favour of the CPA, in which it has invested heavily both politically and financially. The United Kingdom, rather than implement existing sanctions against Sudan, has consistently sought ways to cancel portions of Sudanese external debt, to increase development assistance and to lift earlier sanctions in a bid to ease tensions between North and South Sudan (Udombana, 2007: 110). As one experienced Foreign and Commonwealth Office diplomat observed with regards to the United Kingdom and the responsibility to protect:

> We are not moral because we *are* moral. We are moral because we believe it is in our strategic interests to be so (Interview 17, 2010).

It therefore cannot with any conviction be argued that the responsibility to protect has become a state interest, or that it has succeeded in formulating discourse on state interest to the degree required for the norm to have a meaningful impact in international society. Even the norm's most ardent supporters, states such as Canada and Norway, have increasingly moved away from the responsibility to protect. As one senior Norwegian diplomat expressed, Norway was simply no longer interested in supporting "another bad Canadian idea" (the other having been the concept of human security) (Interview 25, 2010).

An apt critique of the responsibility to protect norm is then that the norm represents more a clever twist of vocabulary than a first step towards an operational doctrine. While providing standards of behaviour, the norm does not, for example, provide a politically realistic blueprint for the changes in state practice that would be required to make the norm meaningful in policy and operational terms. The norm, it has been argued by some, can therefore be considered as little more than a reformulation of Augustine's doctrine of just war, with too little useful refinement to adapt it to contemporary conditions (MacFarlane et al. 2004: 980).

Related to the above, a third challenge the responsibility to protect brings with it is the prescriptive component of the norm. Indeed, the norm appears to be founded on the solidarist assumption that governments can be persuaded to act in response to a humanitarian crisis, either in line with or contrary to the interests of the state, by the force of international opinion or on the basis of

domestic pressure. Indeed, as one observer has noted, the responsibility to protect norm appears to rely to a large degree on the 'CNN factor' (Bellamy, 2006: 150). Yet the degree to which international or domestic pressure can 'force' a state to act has not been ascertained in the field of International Relations, and, as became evident both in Rwanda and in Darfur, even a crescendo of international condemnation is not enough to force states to intervene. Tony Blair's promise that "if Rwanda happens again we would not walk away as the outside has done many times before", and his insistence that international society held a "moral duty to provide military and humanitarian assistance to Africa whenever it was needed" was apparently not enough to convince anyone of an inherent shared responsibility to intervene or to spur states into action (in Bellamy, 2005: 31).

A fourth factor impacting on the responsibility to protect norm is one that plagues every norm in international society; that of norm indeterminacy. Norms, once propagated and established, can no longer be controlled in their application and further development by the norm entrepreneurs and norm brokers who assisted in developing and entrenching the norm in international society in the first place. While this is an inherent aspect of norm development at the international and domestic levels, in the case of the responsibility to protect norm indeterminacy resulted in misapplication of the norm at several levels, rendering the norm increasingly obtuse and less useful. While the norm therefore came to feature increasingly in discourse at the international level it simultaneously decreased in utility.

A group of retired NATO generals, including a former ICISS Commissioner, for example, argued that the responsibility to protect justified the first use of nuclear weapons to prevent nuclear proliferation, while activists have used the norm to refer to action to halt the spread of HIV/Aids or to protect indigenous populations from climate change. Michael Ignatieff argued that the responsibility to protect should be invoked to eliminate the international threat of terrorism, Lee Feinstein argued for a duty to prevent based on the responsibility to protect, and Allan Buchanan and Robert Keohane called for the cosmopolitan use of preventative military force, based on the responsibility to protect norm (MacFarlane et al. 2004: 989). In May 2008, when a cyclone struck Burma/Myanmar and the ruling military junta refused external humanitarian assistance, French Foreign Minister Bernard Kouchner publicly requested the Security Council to invoke the responsibility to protect to allow the provision of humanitarian assistance by force. UN Under-Secretary General for Humanitarian Affairs John Holmes argued that this placed the UN in an unnecessarily confrontational approach, while British Secretary for International development Douglas Alexander referred to the move as 'incendiary' (Thakur and Weiss, 2009: 49). Indeed, as Ramesh Thakur and Thomas Weiss argue, invoking the responsibility to protect would only have angered the military regime and raised reluctance to accept international assistance. This would also likely have risked antagonising Southeast Asian nations, whose political support for engaging with the regime was very important. In addition, such a move would likely have alienated India, China and Japan, whose assistance ultimately proved key to the delivery of the humanitarian relief supplies which was finally negotiated with the military regime (Thakur and Weiss, 2009: 49).

The responsibility to protect was similarly invoked by activists over Zimbabwe, a political conflict in which atrocity crimes were not committed (although political violence was rife), and Russian diplomats publicly invoked the responsibility to protect to justify their military intervention in Georgia in 2008 (Axworthy and Rock, 2009: 55). The norm was also invoked to refer to mediation efforts undertaken in the wake of election violence in Kenya in 2008. Francis Deng, for instance, urged the Kenyan authorities to meet their responsibilities to protect their civilian population, while

Archbishop Desmond Tutu argued that the African and international reaction to Kenya was a manifestation of the responsibility to protect norm in action. Kofi Annan, the chief mediator in Kenya, and Secretary General Ban Ki Moon later also argued that the intervention in Kenya represented the implementation of the responsibility to protect on the part of states (Thakur and Weiss, 2009: 52 and Evans, 2009: 51). Yet whether mediation efforts in a political conflict, spurred on by election-related violence, is a correct framing of the responsibility to protect is not certain, and this may indeed be a dangerous framing of the norm. Indeed, whether the ongoing conflicts in the Philippines and Indonesia, for example, can usefully be labelled responsibility to protect scenarios, or whether such labelling would prove damaging, requires further investigation. Consistency also becomes a challenge here. While states was quick to label Kenya a responsibility to protect success, the norm was never applied to the escalation of conflict in Sri Lanka in 2009, or to the conflicts still ongoing in Somalia to date. Inconsistency in its application has served to undermine the responsibility to protect norm in recent years. Indeed, as one observer of the UN has noted, through selective application supporters of the norm have sought to give the responsibility to protect "easy wings". Yet through being opportunistic as opposed to consistent, both the validity and utility of the norm have been eroded (Interview 7, 2010).

Further, attempts by advocates of the norm to link the responsibility to protect to other normative developments in international society have not always yielded positive results. The Special Adviser of the Secretary General on the responsibility to protect, for example, has sought to link the norm to the development of a normative framework on the protection of civilians in UN peacekeeping operations, portraying peacekeeping operations as the operational arm of the responsibility to protect. Many in the UN system however worry that this has stalled progress on the protection of civilians agenda. In the Specialised Committee on Peacekeeping (known as the C-34), for example, states have begun to oppose the development of protection of civilians guidelines for UN peacekeeping operations due to attempts to link this to the responsibility to protect, resulting in the UN DPKO re-framing its protection of civilians approach and undertaking initiatives below the policy level. Many DPKO officials now worry that the responsibility to protect agenda has undermined the protection of civilians agenda, while complaining that the responsibility to protect places both unrealistic and undue expectations on the peacekeeping architecture of the United Nations (Interview 11, 2010). A similar situation has developed in the AU, where the protection of civilians agenda has been slowed down due to fears by member states that this represents an incarnation of the responsibility to protect norm.

It would thus appear that the indeterminacy factor of norm development has had a particularly negative impact on the responsibility to protect. Indeed, the inconsistent, and at times opportunistic, manner in which the norm has been utilised by a range of actors has not served to strengthen the norm, but at times has rendered the norm largely unrecognisable and quite inapplicable.

A fifth challenge is that the responsibility to protect norm emphasises the human rights and humanitarian dimensions over and above the social and political dimensions of conflict situations. Indeed, the complex social intricacies which give rise to and sustain conflict systems are neglected in favour of moralistic human rights discourse. As a leading responsibility to protect advocate noted, in its application the norm represented a moral high ground which positioned actors against one another in a moral end-game. This however did not lead to useful engagement, nor did it allow for compromise when required. Ultimately, therefore, the responsibility to protect norm forced states to adopt a position of extremes from which it was not easy to retreat and seek political compromise when required or feasible without losing face or

irrevocably undermining the responsibility to protect norm itself (Interview 2, 2010). The infusion of responsibility to protect discourse into policy debates on complex conflict situations therefore risks obscuring or de-emphasising the political and social dimensions of conflict situations, and thereby risks detracting from effective conflict management efforts. Indeed, one senior AU official argued that the utility of the responsibility to protect norm was limited in practice, as it did not allow for context-sensitivity or specificity once invoked (Interview 24, 2010).

In Darfur for instance, the framing of the problem in a responsibility to protect paradigm led many observers to believe that the only viable means to halt the killing on the ground was through a robust, 'boots on the ground', peace enforcement operation. That this was an entirely unfeasible option, and that a robust peace enforcement mission would have served only to aggravate the conflict, was obscured by responsibility to protect discourse. The political solutions, both feasible and required, to bring an end to the conflicts in Darfur, though these would have been slow to negotiate and implement and would not have brought an immediate end to the killing there, were sidelined both as immoral and as too mild given the gravity of the crisis. The framing of the Darfur problem within a responsibility to protect paradigm therefore placed the UN in an increasingly confrontational approach with Sudan. Indeed, UN DPKO officials would later criticise that the use of responsibility to protect discourse proved, if anything, provocative in the case of Sudan and served only to endanger UNAMID personnel and the population of Darfur even further (Interview 8, 2010). Similarly, many in the UN system worried that the responsibility to protect discourse heightened expectations of what could be achieved, both among member states and among the civilian population in Darfur. Yet these expectations could of course not be met. As one UN official noted:

> These [responsibility to protect] notions are meaningless if they cannot be backed up by implementation on the ground. Then they are just words... (Interview 10, 2010).

A sixth challenge faced by the responsibility to protect norm, and clearly evidenced by the Darfur case, as with any other conflict situation, is that in the long term states cannot be the guarantor of human rights; within the current international system, only a state can. While states can advance human rights norms and seek compliance with these by other states, it is ultimately states themselves that choose to interpret, guarantee and uphold human rights, not the international system. Yet the responsibility to protect norm assigns the right and responsibility for the maintenance of human rights to other states where a particular state has manifestly failed to uphold human rights standards. As one observer notes, the use of such language is dangerous, as the incapacity of the international system to implement the human rights commitments assigned to it through the responsibility to protect norm, based on altruistic notions, offers false hope, in particular of sustained responsibility and commitment, and serves only to undermine the human rights regime already developed (Warner, 2003: 114).

Fusing the above lines of argumentation, a seventh and final challenge to the responsibility to protect norm can be identified. The norm, it appears, was developed and advanced without due recognition for the current realities of international society and without sufficient linkages made to tie the norm to existing, more accepted, norms within that system. Instead of building the responsibility to protect on the basis of other norms, such as the normative shift underpinning the establishment of the AU (broadly labelled as a move towards 'non-indifference') or on developing notions of the protection of civilians in peacekeeping operations, proponents of the responsibility to protect chose to frame the norm as a further development of the notion of humanitarian intervention. The responsibility to protect norm however appears to assume that consensus on

the legitimacy of humanitarian interventions had indeed been reached at the turn of the 21st century and proposed a framework through which interventions on humanitarian grounds could be operationalised within the existing structures of international society. Yet by the end of the 1990s, debate on interventions on humanitarian grounds had only commenced, and no common ground had been reached. Instead of enhancing and concretising this debate, proponents sought to use this as the foundation of constructing the responsibility to protect norm.

The norm therefore appears to have reached too far, or have been built on weak foundations, lacking an existing normative basis or logic of appropriateness on which to base itself. Indeed, the norm appears to have been based more on a *Bessinungsethik* (our intentions are good, therefore the outcome must be good) than on a *Verantwortungsethik* (our intentions are not confused with responsible behaviour), and the norm it would therefore appear seems to have become somewhat quixotic. With striking historical accuracy, John Bolton, the permanent representative of the United States to the UN at the time of the 2005 World Summit, argued that the UN Charter had never been interpreted as creating a legal obligation for the Security Council to support enforcement action, and that neither the UN nor individual states could hold an obligation to intervene under international law. While Bolton argued that states, individually and acting collectively, had a *right* of intervention, this could not be confused with an *obligation*, and what the UN did in a particular situation should depend entirely on the specific circumstances themselves (in Luck, 2009: 19). The responsibility to protect, it would appear, was simply stretched normatively further than could be sustained by its proponents or the dynamics of international society at the time.

Advocates of the norm appear to have recognised the challenges posed to the responsibility to protect, in particular given the failures in Darfur, and since the appointment of the Special Advisor of the Secretary General Focussing on the Responsibility to Protect have moved to shore up the norm. Evans for instance argued in 2008 that the norm faced three challenges, these being conceptual, institutional and political. At the conceptual level, Evans argued that the scope and limits of the responsibility to protect needed to be better understood to ensure that the norm was not viewed as a 'Trojan horse' legitimising Western interventionism but as a starting point for states to prevent and react to atrocity crimes. At the institutional level Evans argued that the capacity should be built to ensure that there was sufficient physical capability to react, while at the political level the requisite political will should be generated to ensure that responses were implemented when required (Evans, 2008: 54).

The 2009 report of the UN Secretary General on the implementation of the responsibility to protect appears to follow a somewhat similar line of thinking. Emphasising a three-pillared approach, the Secretary General elaborated on (1) the operational means of reinforcing and supporting the protection responsibilities of the state, (2) international assistance and capacity-building measures towards supporting states in meeting their responsibility to protect their populations, and (3) the delivery of timely and decisive responses when required. Placing primary emphasis on the role states could play in providing support to states facing protection challenges, the Secretary General nonetheless noted that when the political leadership of a state remained determined to commit crimes and violations relating to the responsibility to protect assistance measures would be of little use, and states should seek to assemble the capacity and will for a 'timely and decisive' response (United Nations General Assembly Report A/63/677, 2009: 15). The report further argued that in effect, when dealing with conflicts in which crimes and violations relating to the responsibility to protect occur, there was no room for sequential approaches, but that flexible, outcomes-oriented approaches were required, focussed on substance and results as

opposed to procedure and process (United Nations General Assembly Report A/63/677, 2009: 15 - 16). The Secretary General concluded:

> It is true that we have yet to develop the tools or display the will to respond consistently and effectively to all emergencies relating to the responsibility to protect, as the tragic events in Darfur, the Democratic Republic of the Congo and Somalia remind us. Nonetheless, when confronted with crimes or violations relating to the responsibility to protect or their incitement, today the world is less likely to look the other way than in the last century (United Nations General Assembly Report A/63/677, 2009: 24).

Many observers argue that the re-framing of the responsibility to protect norm on the basis of three pillars by the Secretary General has been useful, and has created more room for engagement on the norm, in particular with the global South, through broadening the platform for engagement away from a focus on military intervention and towards a focus on state responsibility, international assistance and, ultimately when required, international intervention (Interview 2, 2010). In June 2010 the General Assembly, under Libyan presidency, held a debate on early warning and conflict prevention, and by the end of 2010 a debate on the role of regional organisations, under Swiss presidency, was expected. Efforts have also been underway to link the responsibility to protect to the protection of civilians in peacekeeping operations. The office of the Special Advisor on the responsibility to protect will by the end of 2010 also have been merged with the office of the Special Advisor on the Prevention of Genocide, with the Secretary General of the UN taking a keen interest in the promotion of the responsibility to protect.

Yet, in light of the inherent challenges the norm faces, its limited utility in international society and, in the harshest assessment, its failure, it is unlikely that these efforts will yield much result. Rather, while the norm will continue to play a role in discourse at the inter-state level and perhaps more prominently so in the non-state sector, emphasis will likely shift back towards the *how* of interventions on humanitarian grounds, centring on notions of robust peacekeeping, the protection of civilians, international humanitarian law, early warning, and effective conflict prevention and management, including post-conflict peacebuilding. In addition, Western states are likely to continue to retreat from the norm, favouring an emphasis on norms which they can advance, but to which they cannot be held accountable. It is therefore likely that the West will return to a discourse centred on notions of democracy, good governance and human rights, as was prominent in the early 1990s. Of the Secretary General's pillars, the first (the responsibilities of the state) and third (the responsibilities of international society) will likely be avoided, with debate focussed on the second pillar (international assistance for conflict prevention and management). In time, discussion may even return to a *right* of intervention on the part of states on humanitarian grounds, but not to a *responsibility* to do so. While elements incorporated by the responsibility to protect norm will therefore continue to feature in international society, the norm itself will likely increasingly be altered. The responsibility to protect thus emerged, cascaded in international society, and then, instead of becoming internalised, appears to have become less useful through its application. Yet if the responsibility to protect norm has failed to contribute towards the attainment of its content goal, and is an example, at least at present, of an unsuccessful norm, how will states respond to future conflict situations in which atrocity crimes are committed, in particular in Africa?

7.4   The African Union, the United Nations and
Future Responses to Atrocity Crimes in Africa

From this study it has become clear that while states have sought to strengthen their ability to shape a common peace and security agenda and to act in a joint manner when threats to international peace and security arise, operationalising this agenda has brought numerous challenges with it. In particular, defining and giving meaning to the relationship between the UN, the primary international organisation mandated with the maintenance of peace and security, and the AU, since 2003 an increasingly important actor in the peace and security field in Africa, has proved challenging. Following the establishment of the Peace and Security Council in March 2004 the Security Council adopted two presidential statements recognising the importance of strengthening cooperation with the AU and of assisting the Union in developing its own capacity to deal with security challenges. The importance of cooperation between the two organisations was reinforced through the adoption of Resolution 1625 by the Security Council in 2005, which supported the establishment of a ten year capacity-building programme for the AU. Yet as Aning and Atuobi note, while the UN and the AU talk of partnership fundamental differences have emerged about what such a partnership entails, what the guiding principles should be, and who is responsible for the successes and the failures of this partnership (Aning and Atuobi, 2009: 102).

Differences between the AU and the UN are likely to continue to appear as the AU further develops and operationalises its peace and security architecture, and differences are also likely to arise between the AU and the sub-regional organisations mandated with peace and security tasks in Africa, which also form part of the African peace and security architecture. Indeed, as one observer argues, the transformation from the OAU to the AU represents a qualitative improvement in the evolution of intra-African cooperation and integration (Mathews, 2008: 33). Yet the approach that sub-regional organisations and their dominant member states have to dealing with threats to peace and security on the continent are not necessarily the same, and may diverge in critical areas.

ECOWAS, for instance, is currently establishing the ECOWAS Standby Force under the African Standby Force concept. The arrangement is to be used in four particular cases; namely (1) aggression or conflict within a member state, (2) conflict between two or more member states, (3) internal conflicts that threaten to trigger a humanitarian disaster, pose a serious threat to regional peace and security, result in serious and massive violations of human rights, and / or following the overthrow or attempted overthrow of a democratically elected government, and (4) any other situation that the ECOWAS Mediation and Security Council may deem appropriate (Adebajo, 2008: 142). Outside of the use of the standby arrangement, the Mechanism for Conflict Prevention, Management, Resolution, Peace and Security (established in 1975) is authorized to mandate intervention in member states in cases of aggression or conflict, or threats thereof, in or between member states (Sarkin, 2008: 61). Of importance, ECOWAS member states have empowered the organization to act without prior Security Council or AU authorization, indicating that such authorization need only be sought after an intervention has been conducted.

SADC on the other hand is establishing the SADC Standby Force, also under the African Standby Force arrangement, which is intended for use (1) in cases of large-scale violence including genocide, ethnic cleansing and gross violations of human rights, (2) a military coup or other unconstitutional change of government, (3) a civil war or insurgency, and (4) a conflict that threatens regional peace and security (Adebajo, 2008: 148). In addition, the Organ on Politics, Defence and Security Cooperation (OPDSC), established in 1996, is mandated to protect against

instability arising from the breakdown of law and order, intra-state conflict, inter-state conflict and aggression. The Chairperson of the SADC Organ, acting on the advice of the Ministerial Committee of the OPDSC, is also authorized to recommend to the SADC summit that enforcement action be taken, although this can only be sanctioned as a last resort, and in line with Article 53 of the UN Charter. SADC, therefore, requires the authorization of the UN Security Council before it can undertake enforcement action (Sarkin, 2008: 62).

In addition to SADC and ECOWAS, the Economic Community of East African States (ECCAS) established a Council for Peace and Security in 1999, and is currently operationalising its own standby arrangement for the African Standby Force, the Multi-National Force for Central Africa (FOMAC). The Arab Maghreb Union is similarly establishing the North African Regional Command (NARC), and the East African region has established the East African Standby Force, already operational and headquartered in Nairobi. IGAD, headquartered in Addis Ababa, has also lately joined the list of organizations seeking a peace and security role in Africa and is in the process of establishing a conflict prevention and intervention framework. While these developments at the sub-regional level are important and should be viewed in a positive light, it is also important to recognize that each region is developing its peace and security architecture in a unique fashion, and that normative differences between the organizations can already be witnessed. The more the AU seeks to give meaning to its own security arrangements, the more it will also need to rely on cooperation with the sub-regional organizations which form the foundations of that architecture, at least with respect to the African Standby Force, and the more important these normative differences become.

Based on these developments, it becomes clear that the relationship between the AU Peace and Security Council and the UN Security Council will be key to any responses to future conflicts in which atrocity crimes are committed in Africa. Yet this relationship must be developed in an environment in which the Security Council, in the words of a senior UN official in New York, maintains a condescending view of the Peace and Security Council and of the AU as a whole (Interview 13, 2010). While the Peace and Security Council thus views its role as maintaining peace and security in Africa on behalf of the UN, the Security Council continues to view the Peace and Security Council as attempting to undermine its authority and primacy (Interview 19, 2010). Although countries such as South Africa have worked to foster greater collaboration between the UN and the AU, the Security Council remains uncomfortable with the growing role of the Peace and Security Council. At a joint meeting between the two Councils in Addis Ababa in 2009 the Russian delegation refused to meet formally with the Peace and Security Council, insisting that the meeting be held informally. This served only to anger the African members of the Security Council and the members of the Peace and Security Council (Interview 15, 2010). Yet this was nothing new. In January 2005 the Peace and Security Council, meeting in Libreville, decided to forcefully disarm the *Interahamwe* in the Eastern Democratic Republic of the Congo, given the inability of the UN to do so (Mwanasali, 2006: 99). By early 2006 the AU had conducted a technical assessment mission and was preparing to launch an armed intervention when the Security Council blocked the intervention, not wanting to discredit its own mission in the region (Interview 18, 2010). One observer has noted that the strained relations between the Security Council and the Peace and Security Council have served to increase the potential for normative incompatibility between the two Councils (Interview 22, 2010).

This is not to say that the AU is more likely to intervene in conflicts or situations where atrocity crimes are perpetrated any more than the UN may be. In fact, these differences could even lead to fewer interventions being conducted in future. John Akokpari, for instance, highlights that while

the AU has established the grounds for intervention, the modalities for intervention remain far from established, potentially leaving room for interpretation and contestation between perpetrating states and the AU and ultimately serving to delay interventions when these are required (Akokpari, 2008[a]: 373). A senior official in the UN's Department of Political Affairs similarly argued that in the case of Darfur the Government of the Sudan was able to both identify and exploit the normative space between the AU and the UN as these organisations sought to assert themselves politically (Interview 6, 2010). Delving deeper, a senior African diplomat in New York argued that the challenge in Darfur was not the absence of agreement that threats to peace and security needed to be addressed. Rather it was giving these meaning and relevance within the complex set of interactions that govern peace and security in Africa, and the increasingly deteriorating relations between the United Nations and the African Union (Interview 12, 2010). Within this context, then, it may become increasingly difficult to formulate and conduct interventions in conflict situations, in particular those involving the commission of war crimes, crimes against humanity, ethnic cleansing and genocide.

This is not to say, of course, that interventions in cases of atrocity crimes will not occur in future. In 2008 the AU for the first time authorised the use of force, deploying a military force to the Comoros to restore the authority of the government there. In addition, as Solomon Gomes has noted, the engagement of the AU in Darfur represented a radical departure from the OAU when it was confronted with similar situations in the past (Gomes, 2008: 126). However, the organisation's actions in Darfur also highlighted the inability of the AU to effectively deal with its more powerful members, such as the Sudan. Sudan, for instance, was a member of the Peace and Security Council when the violence erupted in Darfur, and the Council found itself constrained in attempting to formulate a response. This proved a recurring challenge. When in 2005 the AU Commission called for a Peace and Security Council meeting to review video evidence that the Government of Sudan was painting its Antonov bomber aircraft in AU colours and using these to conduct aerial assaults on civilian targets in Darfur, the Sudanese government was able to block the motion and have the evidence buried (Badescu and Bergholm, 2010: 111).

Thus, while the Union may be willing to use force against its weaker members, it appears unlikely that interventions against the more powerful members of the organisation will be considered in the near future. The issue of consent is also critical at this juncture. For the AU the consent of the member state being intervened in appears to remain crucial to its interventionist security regime. The lack of cooperation on the part of the Government of Sudan clearly exposed the complexities of implementing the AU's interventionist principles, even in cases where the Union recognised that grave crimes against humanity were being perpetrated. Humanitarian interventions, by definition conducted in the absence of the consent of target state authorities, conducted against larger member states therefore appear unlikely within the context of the AU in the immediate future. Indeed, interventions conducted without the consent of the target state authorities still appear to run contrary to the evaluative political culture currently underpinning the AU. In addition, as noted by Sarjoh Bah, the African deployment in Darfur and the subsequent deployment to Somalia sharply exposed the risks of mounting humanitarian responses without having the necessary resources in place (Bah, 2010: 4). The AU will be sure to avoid making that mistake again in the near future.

Nevertheless, the AU, the sub-regional organisations and UN continue to breathe life into an enhanced and more robust peace and security architecture for the African continent. As Chris Landsberg has argued, the African calabash is now half-full as far as new norms and principles are concerned. Over the coming years, the major challenge will be to implement these and to

operationalise the new institutions. African leaders will indeed have to muster the political will to encourage and cajole one another to live by the new norms and values which they themselves have articulated and agreed to (Landsberg, 2002: 140). Francis Deng, optimistically and accurately, argues that while these initiatives remain largely prescriptive, they do indicate incremental progress in the response of African governments to the plight of their peoples (2006: 127). How African governments will respond to the commission of atrocity crimes in Africa, once again, remains to be seen however.

Outside of the AU, responses to conflicts characterised by the commission of atrocity crimes are not likely to change much in the immediate future. The UN will likely continue to resort to mediation, the delivery of humanitarian assistance, the deployment of peace support operations following the settlement of a conflict, and the provision of support to post-conflict peacebuilding efforts. Indeed, the UN Secretariat is currently working to strengthen its ability to respond to conflict situations along these lines, enhancing its mediation capabilities, strengthening the coordination of humanitarian assistance, developing the Peacebuilding Commission and strengthening the 'One UN' concept to provide more holistic support to peace processes.

It is however not likely that the UN will move towards conducting more robust interventions, or that it will take a stronger stance in censuring its member states. It is also not likely that the responsibility to protect norm will feature strongly in discourse surrounding humanitarian crises, or the conduct of humanitarian interventions, in a manner that will alter behaviour on the part of UN member states. While some states may generally move towards a stronger recognition of a *right* of intervention, it is not likely that a *responsibility* of intervention will be recognised any time soon. Rather, states, and the Security Council in particular, will likely work to retain the highest degree of flexibility possible in the formulation and implementation of interventions, when these are deemed necessary. However, the roles and responsibilities of the intervening states or coalitions of the willing will in future be curtailed as opposed to expanded. Thus, while interventions on humanitarian grounds will continue to be conducted, these will likely not be conducted along the lines advocated by the responsibility to protect norm, but instead will likely be limited in nature, designed to avert or halt the most immediate mass violations of human rights in a responsive manner. The degree to which the *responsibility* to protect, as opposed to the *right* to protect, will feature in discourse surrounding such interventions however remains to be seen.

7.5   The Constructivist Research Agenda on Norm Development, Diffusion and Relevance in International Society

At the level of International Relations theory, several observations on the Constructivist approach can be drawn from this study, which require further consideration and application by International Relations scholars. As has been highlighted throughout this study, while Constructivism provides a useful perspective to the study of change in international society, the study of norms and their development does require further conceptual development and application if the utility of the Constructivist approach is to be enhanced. From this study, several areas of further investigation can be highlighted.

At one level, while the norm life cycle concept is useful, it does entail inherent limitations, as illustrated earlier. Yet what becomes clear from a study of the development and diffusion of the responsibility to protect norm is that, in what is labelled the norm emergence phase, greater attention needs to be paid to processes of norm contestation and the manner in which new norms

seek either to find ontological 'fit' in existing logics of appropriateness, or the manner in which they seek to re-frame logics of appropriateness. Indeed, Constructivist literature to date does not provide sufficient insight into the manner in which new norms seek to build on existing ones during processes of norm contestation and what would differentiate a successful framing attempt from an unsuccessful one. At another level, in what is labelled the cascade phase, more attention needs to be placed on processes of norm socialisation. How do socialisation processes work in environments which are not static, but which are dynamic and in which the content goal of the emerging norm may no longer be relevant or must be altered to remain relevant to a dynamic context? And what happens if norm entrepreneurs and socialisation agents no longer support the norm itself, but other actors do? Is the support of the so-called 'critical' states critical only to attaining a tipping point, or is the further development of a norm contingent on that support throughout? Similarly, as this study has illustrated, the concept of norm indeterminacy requires greater attention in Constructivist literature. In particular, of importance here is enhancing the understanding of whether norm indeterminacy relates to the inability of norm entrepreneurs to control the manner in which the norm is internalised by other actors, or to the deliberate misapplication of the norm by those seeking to undermine it or alter it for their own purposes, or both, and the manner in which this impacts on the development of the norm more broadly.

Another challenge is the non-linearity of norm development processes. Finnemore and Sikkink in presenting the norm life cycle concept were certain to highlight that the progression of a norm through the life cycle was not an inevitable process, and that norms which emerge may never cascade, and norms which emerge and cascade may never become internalised. Similarly, norms which appear to develop rapidly and successfully in international society may equally as suddenly recede and prove unsuccessful norms, as appears to be the case with the responsibility to protect. Yet our understanding of norms which fail to succeed is quite limited, with norm research to date having tended to focus on norms which have succeeded, the proverbial dogs which have barked. Thus far, Constructivists have shied away from a focus on norms which appear to have enjoyed less success; the dogs which have not barked. Yet generating an enhanced understanding of norms which have not been that successful is important if we are to recognise these, to study them, and to better understand the criteria which may define the success or failure of a norm in international society. Indeed, as Finnemore has highlighted, simply claiming that norms matter is not enough for Constructivists. Rather, they must provide substantive arguments about which norms matter, as well as how, where and why they matter (Finnemore, 1996[a]: 130). Taking this argument further, one could equally argue that Constructivists should also be in a position to provide substantive arguments as to which norms may not matter, and how, where and why they may fail to matter.

Finnemore and Sikkink provide some indications in their work on the norm life cycle as to which norms may prove more successful than others, and why. The argument is advanced, for example, that norms held by states viewed as successful and desirable models in international society will be more likely to succeed. Thus, Western norms are deemed to be more likely to be successful than non-Western norms. In addition, universal norms which advance claims of what is good for all people in all places (such as many Western norms), it is argued, would enjoy greater expansive potential than localised and particularistic norms (Finnemore and Sikkink, 1998: 909). However, whether this refers to norms which emerge in the West, norms that receive the support of the West, or norms that conform to the dominant political form of organisation in the West, political Liberalism, is not explored. Nevertheless, in an era of declining moral authority and legitimacy of the West, the argument that Western norms will likely enjoy greater success is

an uncertain one. Indeed, the danger here is that Constructivist work may become too closely associated Liberal forms of political organisation.

Certainly, in the case of the responsibility to protect, the perception of the norm as a Western one proved quite damaging, in particular following several military interventions by the West in the first decade of the 21st century. Similarly, the developing world appears to be tiring of the human rights rhetoric of the West and seeking to generate its own path with regards to human rights questions. It is therefore not certain what success norms which are perceived to be 'Western' will have in future. Yet, at present, Constructivism is not able to offer further insights into which norms may prove successful, or which criteria may define the success or failure of a norm in future. This shortcoming will need to be addressed if the Constructivist approach is to generate the added value to the field of International Relations its proponents intend it to. What emerges from this study, however, is that successful norms may be closer to reflecting already accepted ideas, and as such find ontological fit, as opposed to articulating new ideas which have no solid foundation in an existing logic of appropriateness. Unsuccessful norms may be those which reach too far ahead from the given, and which lack a normative basis, the cognitive frame of reference and the logic of appropriateness on which to justify themselves.

In addition, it should also be noted that much norm research does not sufficiently take into consideration the importance of local social contexts and focuses more on the prevailing international social context, or the dominant social context of international organisation. As long as the nexus between the international, the regional and the local in norm development remains under-researched Constructivist research will continue to be hampered. The work of Acharya on the concept of norm localisation has to some degree assisted in bridging this gap, but the dynamic processes inherent in norm emergence, development, contestation and internalisation remain under-researched. The observer therefore tends to assess the manner in which social and cultural norms in pre-identified geographical regions impact on processes of norm internalisation and socialisation with regards to norms which originate from the outside, as opposed to the manner in which these social and cultural norms play a role in bargaining processes at the international level, and thus also on norm emergence and development there. It is not correct, for example, to assume that Western countries create norms, and through a process of norm contestation and localisation the remainder of the global polity seeks to respond to these. In an increasingly interdependent global community, norm emergence and development processes must be assumed to be far more dynamic and complex if we are to meaningfully understand them.

It should also be noted that the meaningful application of the Constructivist approach appears to rest on the availability of complete information. Therefore, it is probably correct to argue that Constructivism can more usefully be applied to a historical analysis of norm development than to ongoing norm development processes. The application of Constructivist analyses to date has therefore focused predominantly on instances where change has taken place and not much on instances where change has not taken place, or where attempts at change have failed. Yet as Constructivist discourse advances it must be able to investigate more rigorously both instances in which change took place and instances in which it did not. Constructivism has been demonstrated to be a useful tool in the analysis of norm development and system change in International Relations from a historical perspective. Thus, Constructivist analysis has been applied to, for example, the abolishment of the slave trade, the end of colonialism, the demise of apartheid, and anti-foot binding campaigns in China. However, comparatively little work has been done on ongoing processes of norm development and system change, where the benefit of

historical perspective and hindsight is not available to the observer. This may not prove a challenge only to Constructivism, and is a critique that can be levelled equally at neo-utilitarian and other approaches to the study of International Relations or of the social sciences more broadly. However, it does restrict the utility of the Constructivist approach to International Relations in ongoing processes of social structural change which impact on the practice of the political at the inter-state level and makes it more useful to the analysis of historical social structural change. This may prove an inherent limitation, given that Constructivism is a social approach to the study of International Relations. However, Constructivists should seek to apply the approach to ongoing processes of change, both where norms prove successful and unsuccessful, as much as to historical processes of change where norms have proved successful, to strengthen the Constructivist research agenda and to enhance its utility to the study of international society and of international relations. In particular, the further study of norms which have been unsuccessful, and why, will be of importance to Constructivist work. As this study of the responsibility to protect norm has illustrated, norms which appear to be relatively successful can, in their application, do more harm than good and therefore quickly become irrelevant and fail. Understanding the 'how' and 'why' of such norm failure is as important as understanding the 'how' and 'why' of norm success. With regards to the responsibility to protect norm, understanding failure is important so that we may understand how more successful responses to war crimes, crimes against humanity, ethnic cleansing and genocide may be formulated in future.

In the case of Darfur, it is possible that more effective responses could have been formulated without the existence of the responsibility to protect norm, though this is not likely. Indeed, without the norm, the UN and the AU would likely still have formulated strategies of engagement founded on notions of dialogue, mediation, appeasement, the deployment of peace support operations with limited mandates, and the provision of humanitarian assistance. Certainly none of these strategies would have been able, in and of themselves, to bring an immediate end to the violence and the commission of atrocity crimes. However, it is possible that without the use of responsibility to protect discourse, these strategies may have yielded better results, and constructed a platform of engagement with Khartoum and the armed movements which could have led to a swifter resolution of the conflict without entirely alienating the regime in Khartoum, without the cooperation of which no end to the conflict could have been brought about. Instead, responsibility to protect discourse, when it did feature prominently between 2007 and 2008, seems only to have pushed those seeking an end to the violence and Khartoum further away from one another. It was only when responsibility to protect discourse was dropped from 2008 onwards that finding an end to the Darfur conflicts proved feasible again. However, by that time the worst of the atrocities had already been committed, and the Darfur conflicts declined in veracity, the belligerents having fought one another to a stalemate.

As de Waal argues, in pursuit of the responsibility to protect, those intervening in Darfur failed to achieve the practical solutions that lay within their grasp (2007: 1054). It is often said that the world is divided among those who make things happen, those who watch things happen, and those who wonder what happened (from Evans, 2008: 241). With regards to the responsibility to protect, it was the norm entrepreneurs who sought to make things happen, states that watched what happened, and the people of Darfur who were left wondering what had happened. But one thing is strikingly clear. For the Allied soldiers during the Second World War, Arnhem simply proved a bridge too far. For the people of Darfur, the responsibility to protect simply proved a norm too far. Regrettably for those against whom the worst of atrocity crimes are perpetrated in

future, it appears that the responsibility to protect will continue to prove a norm too far for quite some time to come.

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