RESPONSIBILITY TO PROTECT: EVOLUTION AND VIABILITY

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ABSTRACT

The Responsibility to Protect (R2P) doctrine is a concept that was formally introduced in 2001. The basic principles of R2P are that state sovereignty implies responsibility, and a state is therefore the primary entity responsible for the protection of the people within a state. Therefore, when a state fails to meet this responsibility and a population is suffering grievous harm, the principles of non-intervention and traditional respect of state sovereignty yields to the international community’s responsibility to protect. The fundamental question examined in this thesis is to what extent has R2P contributed to the resolution of violent crisis in the African context. This thesis will rely on a number of sources to draw these conclusions, such as first hand source material from the commission that formed R2P, AU, and the UN as well as the academic literature, and it concludes that certain aspects of R2P, namely the focus on capacity building and early intervention through diplomacy, are valuable in resolving crisis, while, the discussion of military intervention under R2P undermines the much stronger and more viable aspects that focus on giving states the tools they need to resolve crisis.
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I. Introduction

The Responsibility to Protect (R2P) doctrine is a concept that was formally introduced in 2001. It came out of a commission formed by the Canadian government at the urging of the United Nations (UN) to look at ways of reconciling sovereignty and human rights. The basic principles of R2P are that state sovereignty implies responsibility, and a state is therefore the primary entity responsible for the protection of the people within a state. Therefore, when a state fails to meet this responsibility and a population is suffering grievous harm, the principles of non-intervention and traditional respect of state sovereignty yields to the international community’s responsibility to protect.\(^1\)

According to the report issued by the original commission, there are three key elements of the R2P doctrine. R2P implies an international responsibility to prevent, to react, and finally to rebuild. The responsibility to prevent is, according to the architects of R2P, the single most important element of the doctrine. Prevention entails addressing both the root and direct causes of conflicts that put populations at risk.\(^2\) The responsibility to react is by far the most controversial element of R2P as it advocates that the international community must react to situations involving gross human suffering. Reactionary measures may include coercive actions, such as sanctions, prosecution, and in some cases military intervention.\(^3\) Finally, the responsibility to rebuild requires the international community to provide full assistance in the wake of post conflict situations for recovery, reconstruction, and reconciliation efforts.\(^4\) The purpose of this thesis will be to present an in-depth analysis of the legal and normative concepts as well as historical events that helped to shape the R2P doctrine. This analysis will

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\(^3\) Report of the International Commission on Intervention and State Sovereignty, XI and 29-37
lead into a thorough outline of the many facets of R2P and their implications. This thesis will also seek to determine the status of R2P within international law. Has R2P reached norm status, making it a guiding principle for the behavior of states, or has it not yet been widely accepted within the international community? Taking into account all of these factors, the primary question this thesis will seek to address is to what extent has R2P contributed to the resolution of violent crisis. This question will focus on the resolution of crisis within the African context, and case studies on Darfur, the 2007 Kenyan elections crisis, and Somalia will be examined to help make this determination. This thesis will rely on a number of sources to draw these conclusions, such as first hand source material from the commission that formed R2P, AU, and the UN as well as the academic literature.

This thesis is laid out in four sections. The first section outlines the fundamental aspects of the original R2P concept as well as examines how R2P has developed since its creation in 2001. The second section examines the normative status of R2P while the third section outlines and analyzes the major points of view within the international community on R2P. The third section presents the three cases studies of Darfur, Kenya, and Somalia. These case studies will present both the viable applicability of R2P and the limits of its capacity. The thesis will conclude that certain aspects of R2P, namely the focus on capacity building and early intervention through diplomacy, are valuable in resolving crisis, while, the discussion of military intervention under R2P undermines the much stronger and more viable aspects that focus on giving states the tools they need to resolve crisis.
II. Background

I. Historical Context

R2P is a relatively new concept as it was only introduced in 2001. However, it is one step in the evolving body of international law concerning humanitarian intervention and more broadly the responsibilities of the international community in the face of mass atrocities and large-scale human suffering. For much of the late 19th and early 20th centuries, the predominant norm of international relations was state sovereignty above all else, and states asserted that they had a right to wage war as they saw fit. However, in the aftermath of WWI it was clear that maintaining these norms came at an unacceptably high cost. The League of Nations sought to outlaw war as an instrument of foreign policy and push for the maintenance of peace and security at all costs. The League of Nations was a failure, and following WWII the international community sought middle ground.5

The UN Charter defends the concept of sovereignty as it is principally concerned with keeping states from going to war with each other. In particular, Article 2(7) states, “nothing should authorize intervention in matters essentially within the domestic jurisdiction of any state.” However, the UN Charter provides for two exceptions. Article 24 asserts that the UN Security Council has the responsibility for maintaining international peace and security and can use force to maintain peace, and Article 51 allows for the use of force for the purposes of self-defense.6 Beyond the UN Charter are several important treaties and tribunals that help to form the basis of respect for human rights within the confines of international law. The Universal Declaration of Human Rights, although not legally binding, was adopted by the UN General Assembly on

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December 10, 1948, and it enshrines vital concepts, such as the right to security of person and freedom from torture. Additionally, the Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the UN General Assembly in 1948 and ratified several years later. This convention defines genocide as a crime under international law and mandates that the contracting parties seek to prevent and are authorized to punish any individual responsible for genocide.

During the Cold War interventions were essentially undertaken by the two major powers unilaterally and on many occasions outside the parameters of the UN Charter. In the post-Cold War era many in the international community thought that the world would enjoy a period of relative peace and security compared with the turbulence of the preceding century. However, the many tragedies of the early 1990’s—from Somalia and Rwanda to Yugoslavia – proved that the decade would be anything but peaceful, and the mass atrocities committed against civilian populations brought the question of how to respond and the parameters that should be placed around forcible humanitarian interventions to the forefront.

In 1999, then UN Secretary General Kofi Annan challenged the international community to develop a way forward on reconciling the principles of maintaining sovereignty and protecting fundamental human rights. Annan followed up on this challenge in the 2000 Millennium Summit Report by again asking UN members to look at the perceived tension between sovereignty and human rights while keeping three issues in mind that had been raised since his initial challenge – 1) Could humanitarian intervention be used as a cover for undue interference in the affairs of weaker states; 2) Would rebel movements deliberately use violent tactics to use a...

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norm of intervention based on humanitarianism to their advantage; and 3) How would the international community avoid only selectively applying the principle of humanitarian intervention. Annan was cognizant of the challenges these legitimate concerns would pose to finding an acceptable solution. However, he responded by asking, “If indeed humanitarian intervention is an unacceptable assault on sovereignty… how should we respond to gross and systemic violations of human rights that offend every precept of our common humanity?”.

II. Foundations of the Responsibility to Protect

Canada responded to Annan’s challenge and formed the International Commission on Intervention and State Sovereignty (ICISS). Canada’s then Foreign Minister Lloyd Axworthy was very supportive of the initiative and set out three issues which the commission would urgently seek to address, including the norm of civilian protection, the political will to act when necessary, and the development of military and civilian capacity. The commission was chaired by former Australian Foreign Minister Gareth Evans and by former Algerian diplomat and UN special advisor Mohammed Sahnoun. There were ten other commissioners including five from Western countries (Canada, US, Germany, and Switzerland). The five remaining commissioners were from South Africa, the Philippines, India, Guatemala, and Russia. Only one of the twelve commissioners was a woman. Axworthy chaired the advisory board that oversaw the Commission.

The Commission began its work by looking at previous scholarship on reconciling sovereignty and human rights. One of the most notable scholars in this field of study is Francis Deng, and his work on the concept as sovereignty as responsibility dates back to the early 1990s. Dr. Deng is originally from Sudan. He currently serves as the Special Advisor to the UN.

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10 Alex Bellamy, Responsibility to protect: the global effort to end mass atrocities, 35
11 Evans and Sahnoun, 99
Secretary General for the Prevention as Genocide, and from 1992-2004 he serves as the Representative to the UN Secretary General on Internally Displaced Persons.\(^\text{12}\)

Deng pursued his work as a Brookings Institute Fellow in coordination with several other scholars. Deng recognized that in spite of efforts to re-examine the importance of the state in the aftermath of the great wars and atrocities, there was no adequate replacement for the institution of statehood. Sovereignty must continue to be a paramount principle within international law, but at the same time civilian populations cannot be left to deal with the humanitarian consequences of state failure or inaction. Therefore, the traditional concept of sovereignty needed to be simultaneously reaffirmed and adjusted to meet modern challenges. As a way to remedy the growing divide between states asserting their sovereignty and the need to ensure an adequate response in the face of humanitarian catastrophes, Deng proposed the concept of sovereignty as responsibility.\(^\text{13}\) ICISS began with this premise of sovereignty as responsibility and expanded and refined it over the course of their work.

In addition to previous academic work, ICISS also drew on several concepts already established within international law. In particular, the commission cited UN Charter Article 24, which gives the UN Security Council the responsibility to maintain international peace and security. Beyond Article 24, ICISS based some fundamental R2P concepts as well as the justification for these concepts on existing international treaties and declarations, such as the Universal Declaration on Human Rights, the Convention on the Prevention and Punishment of Genocide, the Covenant on Civil and Political Rights, and Covenant on Economic, Social, and Cultural Rights. These documents were vital in helping to create legal norms within the


international system despite the fact that only some codes of conduct, for instance those banning torture, have taken hold. The commission also cited the Geneva Conventions because they established the concept of international jurisdiction for the punishment of some crimes.\(^{14}\)

Finally, ICISS looked to several developments in international law during the 1990’s, specifically many of the newly created international justice mechanisms and specific instances of humanitarian intervention. International tribunals were established to punish those who had committed war crimes against civilians in Rwanda and the former Yugoslavia. These international judicial bodies were given the jurisdiction to try accused perpetrators, regardless of nationality, for war crimes, crimes against humanity, and genocide.\(^{15}\) The Rome Statue creating the permanent International Criminal Court (ICC) was signed and adopted by 120 countries as of July 1998 (the Rome Statue came into force in 2002 when 60 countries ratified the treaty).\(^{16}\) Additionally, during the 1990’s the UN Security Council began to authorize peace enforcement missions to respond to humanitarian crisis, and regional bodies responded to humanitarian emergencies within their own spheres of influence, such as the Economic Community of West African States (ECOWAS) in Liberia and Sierra Leone and the North Atlantic Treaty Organization (NATO) in Kosovo.

The international agreements and institutions that over decades have helped to develop international law are vitally important to the R2P concept. They form the foundations of the legal norm that individual citizens of states within the international system also have fundamental rights. Although the ideal does not always meet the reality, these treaties and conventions establish that there are some practices, such as torture and mass killings that are

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\(^{14}\) Report of the International Commission on Intervention and State Sovereignty, 14
\(^{16}\) International Criminal Court, “About the Court,” ICC, [http://www.icc-cpi.int/Menus/ICC/About+the+Court/](http://www.icc-cpi.int/Menus/ICC/About+the+Court/)
unacceptable and the state has an obligation to protect citizens from abuse and harm. There are of course cases where the state cannot protect its citizens or is even taking active steps to harm its citizens and violate these fundamental rights. Within international law, there seems to be no clear cut answer for how the international community should react to protect citizens of other states. However, the developments in the 1990’s, specifically the establishment of international justice mechanisms and further exploration of the parameters of humanitarian intervention, are steps that the international community has taken to answer the question of how to react. The creation of R2P is another step in this ongoing process although it may offer more questions than answers.

III. Elements of the Responsibility to Protect

The three elements of R2P as outlined in the ICISS report are the responsibility to prevent, the responsibility to react, and the responsibility to rebuild. According to the commission, the responsibility to prevent is the most important element of R2P. The responsibility to prevent lies first with the sovereign states and the local communities within those states. However, when needed and appropriate the international community should offer support to these efforts. The argument behind prevention is that it helps to eliminate the need for intervention at a later stage, which will save lives and precious resources. The first element of the responsibility to prevent is developing more robust early warning systems. The commission acknowledges that there are non-governmental organizations, such as the International Crisis Group (ICG), that are exclusively devoted to conflict analysis and providing early warnings to policy makers. However, early warning systems need to be far more standardized, and the UN and regional bodies should have permanent and coordinated early warning systems in place.

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17 Report of the International Commission on Intervention and State Sovereignty, 19
18 Report of the International Commission on Intervention and State Sovereignty, 21
Prevention efforts can take on many forms. There should be efforts at both the national and international level to address root causes of conflict, which can include marginalization of minorities, suppression of political and human rights, and poverty. Prevention of the root causes of conflict may involve addressing political needs, economic deprivation, strengthening legal institutions, and making structural reforms to the military. Political reform may involve capacity building assistance, facilitating power-sharing deals, and supporting freedom of the press and civil society. In terms of economic reform, ICISS specifically cites international trade reform and access to major markets for developing nations in addition to traditional development assistance. Legal reform involves a standard set of activities, such as strengthening the judiciary and rule of law in addition to fostering the development of robust legal protections for marginalized groups. Finally, security sector reform may also fall under efforts designated as prevention and can involve any number of activities from professional development education for officers, demobilization programs, and tightened control over weapons.  

Many of these activities are already being undertaken both independently by states and with the assistance of the international community. There are several agencies within the UN, such as the United Nations Development Program (UNDP) and the United Nations Conference on Trade and Development (UNCTAD) among many others, that undertake valuable work to address poverty and development issues. There are also numerous examples of countries offering bilateral assistance on these issues. For instance, the United States provides security assistance to Southern Sudan to help the autonomous Government of Southern Sudan (GOSS) transform its armed forces from a rebel organization into a professional army. This assistance was initiated after the signing of the Comprehensive Peace Agreement (CPA) that ended the 40

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year civil war between North and South Sudan. It is intended to help Southern Sudan develop its governance and security sector capacities and facilitate conflict prevention within the South in advance of a 2011 referendum vote on possible secession. Under R2P, initiatives like these would hopefully expand significantly, and they would also be more coordinated within the international community with a specific focus on conflict prevention.

The ICCIS Commission also advocates for more direct prevention efforts in the face of increasing tensions. The toolbox for direct prevention includes diplomatic, economic, legal, and military aspects, and the goal is to avoid the use of direct coercive measures to stop a crisis. Political prevention efforts can of course include facilitated negotiations and international pressure from regional and international bodies. Economic prevention efforts can take either a positive or negative form. Positive economic prevention efforts being inducements, such as increased foreign assistance or favorable trade deals. On the negative side of the spectrum, the international community can threaten sanctions, reduced World Bank support, or withdrawal of investment.

The use of legal prevention tools has increased in recent years. Criminal tribunals created in the aftermath of massive atrocities as well as the ICC have provided new tools. ICISS argues that prosecutions help to deter future atrocities by sending a message to future aggressors that they will be held accountable for their crimes. Finally, military prevention measures are of course limited, but could include the deployment of a UN Preventative Force. An example of such an effort is in the case of Macedonia, where a preventative force has been successfully

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deployed to help keep the peace.23 All of these measures aim to prevent conflict and mass atrocities before they occur, but in the event that preventative measures fail R2P mandates that the international community must react and put a stop to atrocities.

The responsibility to react tenet of R2P is the most difficult aspect for both practical understanding and implementation. Political and diplomatic sanctions are the first tier of measures that can be taken to react to a crisis. Broad sanctions can hurt already vulnerable populations, so targeted sanctions against individuals or perhaps sanctions against certain industries that are known to be fueling the conflict are viewed as the better option.24 Political sanctions can include the withdrawal of diplomatic representation, bans on travel, or expulsion from regional or international bodies. Sanctions can be a valuable tool as beyond the consequences of the actual sanctions, they deliver a strong public rebuke to governments or individuals involved in a crisis. However, sanctions at these levels are very difficult to enforce and require broad international support. Very rarely is there adequate consensus within the international community to impose universal sanctions (although countries may impose them bilaterally). For example, under Security Council Resolution 1591 there is a Sudan Sanctions Committee that is responsible for monitoring a UN imposed arms embargo on Darfur and also has the power to impose targeted sanctions against individuals. To date, and despite the enormity of the crisis and levels of violence in Darfur, the Committee has only designated four individuals for asset freezes and travel bans under the authority given to them in Resolution 1591.25

If all of these measures fail to stop the violence, ICISS recommends that military action should be taken, but only in extreme cases and when certain other criteria have been met. There are six criteria when considering the possibility of military intervention, including right authority, just cause, right intention, last resort, proportional means, and reasonable prospects of success.\textsuperscript{26} There are very few circumstances where military action would be justified and therefore meet the just cause criteria, and these are large-scale loss of life including genocide, mass killings, or ethnic cleansing (genocidal intent is not relevant). These circumstances could include crimes defined in the 1948 Convention on the Prevention and Punishment of Genocide, crimes against humanity or war crimes as defined by the Geneva Conventions, state collapse leading to civil war or mass starvation, or overwhelming natural disasters.\textsuperscript{27} Right authority entails authorization from the UN Security Council, which is designed to ensure that the intervention is being undertaken with the right intentions. It should be noted that ICISS only goes so far as to state that in ideal circumstances UN approval will be given. However, in subsequent discussions regarding R2P it is inferred that any intervention would have to be authorized by the Security Council. Meeting the criterion of right intention essentially mandates that there can be no ulterior motive for intervention beyond relieving humanitarian suffering and promoting international security. In order to meet the last resort criterion there must be no reasonable expectation that other measures, such as sanctions or diplomatic negotiations, could end the conflict. Finally, the intervention must involve proportional means and follow all norms of humanitarian law, and there must be a reasonable belief among policymakers that intervention will succeed in ending suffering and perhaps more importantly will not escalate or enlarge the

\textsuperscript{26} Report of the International Commission on Intervention and State Sovereignty, 32
\textsuperscript{27} Report of the International Commission on Intervention and State Sovereignty, 33
ICISS does not specify any parameters for how to determine if the ‘reasonable prospects for success’ criteria is met.

The language on the appropriate response to mass atrocities defined by ICISS is strategic. It is meant to change the tone of the humanitarian intervention debate and move away from the extreme of either upholding sovereignty or basic humanitarian principles. Therefore when an R2P situation comes before the UN Security Council members of the Council, the Permanent 5 Members in particular, will have to publicly defend their positions. By creating standard benchmarks for action, ICISS believed states could be more effectively pressured by the public and other players in the international community to respond in a decisive and timely manner. The language is also meant to prevent potential abuses by setting a very high bar for appropriate forceful intervention.

The assumptions made by ICISS in this regard are tremendously flawed. The commission assumes that if states are presented with the facts of a crisis that the international community will come to a unified conclusion. Unfortunately this has not been the case. For example, while the United States has publicly indicated that genocide occurred in Darfur, no other state has agreed with this assertion. Additionally, even if states agree on the facts of a situation, there is not a reasonable expectation that states will agree on the threshold criteria. In particular, there could be disagreement over the criteria of last resort and reasonable prospects.

The element of the responsibility to react is very controversial and will remain so for the foreseeable future. However, the final element of R2P, responsibility to rebuild, is more widely embraced by the majority of states. The international community should aid with rebuilding if

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30 There will be additional discussion of how the six criteria may or may not be met in the Darfur case study.
needed. However, there is an increased responsibility if a military intervention has taken place. ICISS outlines the three areas that need to be addressed in a rebuilding effort, which include security, judicial processes, and development. There are of course varying ways that these issues can be addressed depending on the nature of the conflict or natural disaster and the cultural context, and the key players in the rebuilding efforts must be local actors. Rebuilding is a difficult process that takes time and funding. The international community should seek to ensure that locals or if needed a neutral body owns the process and that sovereignty and local autonomy is obtained to highest degree possible. Additionally, while international actors should have an exit strategy it should not be in the form of a timetable that would place artificial constraints on the organic process of rebuilding.31

IV. Development of Responsibility to Protect

Since the release of the ICISS report formally establishing the R2P concept there has been a significant amount of work done to further define the parameters of the concept and how to implement it. At the UN Sixtieth Anniversary World Summit in 2005 the Summit Outcome Document endorsed the core themes of the R2P doctrine in paragraphs 138 and 139. The Summit Outcome Document was agreed upon by 150 heads of state and governments.32 Article 139 of the Summit Outcome Document states:

“The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian, and other means in accordance with Chapters VI and VII of the Charter, to help protect the 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”.

It is important to note that this paragraph strongly emphasizes that collective peace enforcement action be done through the UN under Chapter VII (however does not obligate authorization by the UN), which is far more explicit than the ICISS report.

Using these paragraphs as a mandate, the Secretary General issued a report in January 2009 on the implementation of R2P. The report identifies three pillars that encompass the obligations under R2P. Pillar One is the basic and fundamental responsibility of individual states to protect their citizens, Pillar Two is the responsibility of the international community to provide assistance and capacity building, and Pillar Three is the responsibility of the international community to act when one of the R2P crimes is occurring, in a timely and decisive manner. The report acknowledges that the United Nations and the international community have failed in the past to live up to basic obligations and prevent or stop mass atrocities. Rwanda and Srebrenica are held up as two particularly egregious examples of these failures. In all of these cases there were warning signs that were ignored, and the UN cited lack of resources and political will on the part of the Member States as impediments to either preventing these atrocities or stopping them once they were underway. The pillars outlined in the report try to address each of these shortcomings and encourage capacity building. However, a serious shortfall of the report is that there are few concrete suggestions, no explicit resource commitments, and the extent of change ushered in by R2P is often overstated.

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35 United Nations, “Implementing the responsibility to protect: Report of the Secretary General,” 6
The report asserts that part of the impediment to responding in the past was doctrinal. Humanitarian intervention implied either a choice between standing by and doing nothing or using military force.\textsuperscript{36} However, the report fails to acknowledge that long before the concept of R2P came into existence there was a range of tools available to deal with atrocities. Targeted and broad sanctions (although difficult at times and limited in their effectiveness) have been used by individual states as well as the international community for many years to put pressure on irresponsible regimes.\textsuperscript{37} Furthermore, the Universal Declaration of Human Rights, the Convention of Refugees, and the Convention on the Prevention and Punishment of Genocide among numerous other treaties and agreements have all helped to establish accepted norms on a range of responsibilities held by individual states and the international community. They have furthermore helped to establish mechanisms, such as the Human Rights Council, the UN Special Advisor on the Prevention of Genocide, the UN High Commissioner for Refugees, and numerous civil society groups to address human rights and mass atrocity issues.

Despite the lack of acknowledgement of the tools already in use to combat mass atrocities and other shortfalls, the report does attempt to allow for further understanding of the R2P concept and how states and the international community might implement its tenets. Pillar One closely follows the ideal spelled out in paragraph 138 of the World Summit Outcome document, which states, “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.”\textsuperscript{38} Under this pillar the report suggests that the international community undertake

\textsuperscript{36} United Nations, “Implementing the responsibility to protect: Report of the Secretary General,” 6
\textsuperscript{38} United Nations, “2005 World Summit Outcome”, UN General Assembly, paragraph 138
further research on why some states fall into chaos while their neighbors remain stable. The report also suggests that states use existing tools, such as the universal periodic review mechanism under the Human Rights Council and ratifying the Rome Statue of the International Criminal Court. The report also lauds previous efforts by civil society organizations to help national leaders better understand the responsibilities of the state. One example of such an effort is the Advisory Service on International Humanitarian Law created by the International Committee of the Red Cross. The Advisory Service works with states to encourage the ratification on humanitarian conventions and assist states in meeting their obligations under international humanitarian law. Specifically, the Advisory Service translates humanitarian law treaties, organizes regional seminars on implementation of humanitarian law, and carries out studies on the compatibility between national law and international humanitarian law.

The responsibility of the international community under Pillar Two comes into play when a government does not have political leadership to avert crisis, is weak and lacks capacity, is being threatened by an external force that is committing atrocities, or is clearly displaying warning signs of committing future atrocities. Responsibilities under Pillar Two mandate that the international community provide assistance and capacity building, and in these circumstances, the report offers several possibilities for action. The international community could act before widespread atrocities occur to impress upon governments the consequences of these actions. It should be made clear that leaders will be prosecuted, and there will be dire consequences for the long term development of the country as investments and aid will be withdrawn. Conversely, the international community could offer incentives in the form of technical assistance or aid if the government worked to reverse troubling trends. The report also

39 United Nations, “Implementing the responsibility to protect: Report of the Secretary General,” 11
cites consent-based peacekeeping missions as a viable option. The peacekeeping mission in Macedonia from 1992-1999 is an example of such a mission that was very successful in preventing conflict in a country where the situation was potentially volatile. Finally, like the ICISS report, poverty alleviation measures are seen as a vital key to helping to build capacity within states and prevent conflict.41

The final pillar is, of course, the most controversial and difficult to implement as it mandates that the international community react to crisis if it cannot be prevented. The report does take a measured approach and lays out a continuum of possible responses to an unfolding crisis. The 2008 Kenyan election violence is cited as an example of an excellent approach, where regional organizations and the UN became involved early on to prevent a larger crisis. Political leaders were contacted and warned that if they promoted violence they would be held responsible while the Kenyan government took the step of suspending all live radio broadcasts to contain inflammatory speech that was stoking the violence.42 Sanctions are also presented as a viable response as they signal the possibility of a more robust response on the part of the international community if the crisis worsens.43 Finally, military action is also seen as a possible response. However, the Secretary-General acknowledges that the more robust the response the more authorization it will require, and any nonconsensual military action would have to receive Security Council approval, most likely under a Chapter VII peace enforcement mandate.44

The report is useful in that it attempts to further codify the way forward on R2P. In particular, it lays out specific mechanisms through which states and the international community can work to build capacity to prevent crises. However, the methods listed are largely already in

41 United Nations, “Implementing the responsibility to protect: Report of the Secretary General,” 19
42 United Nations, “Implementing the responsibility to protect: Report of the Secretary General,” 23
43 United Nations, “Implementing the responsibility to protect: Report of the Secretary General,” 25
44 United Nations, “Implementing the responsibility to protect: Report of the Secretary General,” 22
existence, and there is no discussion in the report of allocating resources to these efforts to increase their effectiveness. The section of the report detailing actions under the final pillar of R2P is valuable in that it highlights some successful early interventions, such as in Kenya. It is important to specify that these diplomatic interventions are an appropriate response under the R2P framework. If the UN and Member States have the will to become involved in a crisis early on and in a sustained and unified manner they could prevent the need for a larger scale intervention. However, the report does little in attempting to identify how the Security Council or the UN might respond more effectively to crises that have spiraled out of control. The report specifically underscores the need for approval by the Security Council, but it does not suggest any innovative approaches to help streamline the debate or approval process. The Secretary-General does acknowledge the possibility of creating a rapid response military capacity within the UN. This is an idea that has been discussed for many years in the corridors of the UN, however, the report only promises to take suggestions from Member States on this matter. If the R2P concept is to be of any value it has to inspire innovative thinking on how to implement the ideas it encompasses, and the UN and the Secretary General must do more to present new ideas or new approaches to utilizing standard tools.

III. Normative Status of Responsibility to Protect

1. Defining an International Norm

The fundamental elements of R2P outlined above are widely known within the international community. However, there is a question on how widely they have been accepted. There is much debate about whether R2P has reached the status of a norm. Norms are difficult to define because they are at the same time both fixed and changing. They are fixed because as norms they must serve the function of, “providing stable standards of conduct to guide the
choices of those subject to them”. However, norms are obviously changing because over time different norms and standards come into practice within the international system.

Finnemore and Sikkink assert that the life cycle of a norm follows three stages. The first stage is norm emergence, the second stage is norm cascade, and the third phase is internalization. Between the first two stages is a tipping point when a critical mass of state actors adopt the norm. In a norm’s life cycle there are actors and institutions that promote the norm. In most cases there is a small group of norm entrepreneurs who introduce the idea of norm and attempt to persuade others of its value. In the case of R2P, the most important norm entrepreneurs were the members of the ICISS, in particular Gareth Evans. The UN also acted as a norm entrepreneur. Once the norm has been introduced, the norm entrepreneurs attempt to persuade others within the international community to accept the norm. States operate within an international society, and it is within this arena that states and other international actors conduct and debate their activities and actions. The defining elements of any international society (which can imply a global society, such as the United Nations General Assembly, or regional organizations, such as the African Union) are membership and mutual recognition and recognized norms of conduct. Under the framework of international society, norm entrepreneurs can exert soft power to help compel acceptance of a norm, which could include playing on a state’s desire to conform within the international system, to adopt the norms that more powerful states see as valuable, and to enhance international legitimization. These points

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47 Finnemore and Sikkink, 896
tie into a state’s interest of gaining prestige in multiple arenas, including with domestic populations, within their region, and within the broader international system.\textsuperscript{49}

A tipping point for the norm occurs when the norm entrepreneurs convince a critical mass of states to adopt the new norm. Finnemore and Sikkink estimate that the tipping point usually occurs when about one-third of total states in the system adopt the norm. However, it does matter which states adopt the norm, and crucial states vary from issue to issue. Generally, states that have more prestige within the international system are viewed as more likely to be critical states because other states will want to emulate their stance. Additionally, if a state is vital to the implementation of the norm then it becomes a crucial state. In the case of R2P, the states that have adequate financial, diplomatic, and military resources to respond to crises effectively would be crucial states.\textsuperscript{50} It is important to note that even after the tipping point a norm may not have universal acceptance. Even widely accepted norms within the international system do not automatically take root in all regions, and commitment to the principles of a norm may vary greatly depending on the local concept.\textsuperscript{51}

The next step in the life cycle of a norm is internalization. This happens when a norm is so widely accepted within the international community that it is no longer an issue for discussion.\textsuperscript{52} An example of such a norm could be the prohibition against slavery. It is difficult to pinpoint where R2P falls in the norm life cycle. R2P has certainly not reached internalization as it is still a matter for fierce debate within the international system. However, R2P is also a complex and multi-faceted concept, and it is possible that some aspects of R2P have reached the tipping point while other aspects have still not been widely accepted. Aspects of R2P that have reached the

\textsuperscript{49} Finnemore and Sikkink, 895
\textsuperscript{50} Finnemore and Sikkink, 901
\textsuperscript{51} Williams, “The Responsibility to Protect, Norm Localisation, and African International Society,” 394
\textsuperscript{52} Finnemore and Sikkink, 904
tipping point appear to include the responsibility of the international community to prevent mass atrocities and humanitarian suffering and to assist in reconstruction efforts following a violent conflict. Both of these activities are undertaken on a regular basis by individual states and the international community. For instance, most states in the international system have signed onto the Convention of the Prevention and Punishment of Genocide among other notable treaties. Additionally, in the past two decades several international justice mechanisms have been established to punish perpetrators on the assumption that it will promote reconciliation and help to prevent future atrocities. Finally, tremendous resources pooled from the international community contribute to agencies and programs aimed at reducing poverty, lessoning the likelihood of armed conflict, and caring for vulnerable populations, such as refugees. The element of R2P advocating for humanitarian intervention under certain circumstances has certainly not reached a tipping point as there is still an ongoing and contentious debate.

II. Status of Responsibility to Protect as a Norm

Gareth Evans, formerly the Chair of ICISS, argues that R2P has reached the status of an international norm, indicating that the whole of R2P has reached the tipping point. He cites several events and constituencies that contribute to its status as an international norm. Most notably, Evans cites the inclusion of R2P language in the 2005 World Summit Outcome document. These paragraphs that were formally agreed upon were indeed significant, and they did give the Secretary General and the General Assembly a mandate to further explore R2P, its implications, and how it might be made operational. Furthermore, in April 2006 the Security Council adopted a resolution on the Protection of Civilians in Armed Conflict, and the resolution that re-affirms the World Summit conclusions related to R2P, specifically citing articles 138 and
One could argue that the approval of these documents by most members of the international system indicates that a critical mass of states has accepted R2P. However, this would be a gross oversimplification.

In reality, the R2P paragraphs included in the World Summit Outcome document do not represent a universal consensus on many of the fundamental principles and obligations outlined in the original R2P report. The issues of consensus that emerged during the World Summit were setting a very high bar for meeting just cause, the idea that the host state has the primary responsibility to protect, and against any notion that the Permanent 5 Members should voluntarily give up their veto power. The areas of disagreement were over two essential issues 1) whether only the Security Council had the authority to authorize armed intervention and 2) should any set of criteria guide the decisions on the use of force. The majority of states sought language expressly conveying that the Security Council must authorize the use of force. Paragraph 139 emphasizes approval by the Security Council and through the UN, but it stops short of using stronger language and obliging states to do so. Any mention of criteria for when humanitarian intervention is appropriate and necessary was left out of the World Summit Outcome document. Most states were weary of the use of criteria. Some, such as the US and the UK, were hesitant because it would constrain the potential use of force while others, such as China, Russia, and many developing countries, were not supportive because they feared the criteria would be abused.54

The proponents of R2P were able to get agreement on paragraphs 138 and 139 in the World Summit Outcome document because of compromises on some of the fundamental points and

54 Alex Bellmay, “Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit,” 164-165
also because of the support of some key leaders. The leaders of the African Union were particularly pivotal in helping to secure passage of the R2P paragraphs. This is in part because the African Union has language reflecting the key components of R2P included in its foundational documents. Article 4(h) of the African Union Constitutive Act essentially affirms the principles of R2P by stating, “the right of the African Union to intervene in a Member State pursuant to a decision of the Assembly in respect to grave circumstances, namely: war crimes, genocide, and crimes against humanity.” In addition, there are prominent figures in African politics whose support for R2P and their work as norm entrepreneurs has proved vital in helping to promote R2P. The work of Francis Deng essentially laid the foundation for R2P, and Ambassador Jean Ping of Gabon, formerly the President of the UN General Assembly and currently the Chairperson of the African Union Commission, is a strong proponent of R2P.

Jean Ping was instrumental in rallying support for R2P within the General Assembly in 2005, and he has continued to speak in support of broader adoption of R2P while also acknowledging its complications. Speaking in 2008 at a high-level roundtable of experts on R2P in Africa, Ping outlined the reasoning behind his support for R2P, discussed the legitimate concerns of other nations, and posed several questions aimed at helping to clarify R2P. He cites the Rwandan genocide as an event that galvanized the continent to enshrine the principle of non-indifference in its core principles. He also acknowledges that the sense of ownership felt by African Union (AU) Member States is not shared within the United Nations. Indeed, this is an important point as the AU had typically not looked favorably upon international interference in African matters, for example the 1994 French intervention in Rwanda the 2009 International

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Criminal Court arrest warrant for President Bashir of Sudan were widely condemned by African states.

Ping acknowledged that there is concern about the specific parameters of R2P, and also notes that it is possible that R2P could be misused by the international community. He asks the panel to consider exactly what constitutes a situation where forcible intervention would be appropriate under R2P, specifically citing the Kenyan elections. Did the Kenyan government do enough to stop the violence? If they did not, does a protest situation constitute one of the crimes listed in R2P? Why would the international community consider intervention during the Kenyan elections and not intervene in Somalia, which is a failed state with one of the most dire humanitarian situations in the world?

These are vital questions when considering the normative status of R2P. If there is no consensus regarding the parameters of key components of R2P then norm status cannot be conferred. Paragraphs 138 and 139 in the World Summit Outcome document are important steps in the on-going debate regarding R2P. They are valuable in that they provide a starting point for future discussion by helping to pinpoint the key areas of agreement and disagreement. However, they did nothing to resolve the most controversial issue incorporated into the R2P concept, that of the appropriate use of humanitarian intervention. The support of the leadership of regional organizations is also very valuable for advancing R2P, especially when this support is codified and accepted by the member states of regional organizations in official documents. However, there is still broad disagreement within the AU about the R2P principles, and the AU has also not had a strong record of implementing Article 4(h) or R2P. Until a consensus within the international community can be reached about what R2P obliges, when it is to be invoked, and by whose authority, it cannot be considered a norm. Furthermore, the international community
will also have to do more to implement R2P for it to move beyond an ideal and towards a norm. This does not exclude certain aspects of R2P from norm status. As discussed previously, the responsibility to prevent and to rebuild are supported by international legal documents and broadly implemented. However, the comprehensive R2P concept, in particular the elements obliging the international community to respond to mass atrocities, cannot be considered a norm.

III. Normative Status of Humanitarian Intervention and Implications for R2P

When considering R2P, it is also important to examine how the normative status of humanitarian intervention has evolved as this is still the most controversial aspect of R2P. One of the most prominent examples of armed international intervention is the first Gulf War. The Gulf War was a result of Iraq invading Kuwait and violating its sovereignty. A UN authorized force subsequently intervened to expel Iraq under the provisions of the UN Charter that prevent crimes of aggression and threats to international peace and security. One sovereign state invading another clearly fits into these provisions. However, the UN Security Council furthered the reach of these provisions in the wake of an initial crisis when a humanitarian crisis was unfolding inside Iraq.57 Rebellions began in the north and south of Iraq following the Iraqi government’s expulsion from Kuwait. The government moved quickly to brutally repress the rebellions. Thousands of civilians were massacred, and refugees began to flow over the border into Turkey and Iran. By April 1991 it was estimated that the conflict had generated one million refugees, and 1000 refugees were dying daily due to lack of food, water, and medical necessities.58

On April 5, 1991 the massive flow of Iraqi refugees across borders created a situation that prompted action by the UN in the form of Security Council Resolution 688. The original resolution declared the situation a threat to international peace, appealed to the Iraqi government

57 Thomashausen, 27
58 Thomashausen, 29
to cease repression of rebel groups and allow immediate access for humanitarian relief, and mandated that the UN and member countries use all available resources to contribute to the relief efforts.\textsuperscript{59} However, the resolution was greatly expanded when it became clear that the original mandate would not be enough alleviate humanitarian suffering and stop the massive flow of refugees. On April 6, the United States announced that it and several other coalition partners would implement a no-fly zone in northern Iraq to prevent Iraqi forces from hampering aid efforts.\textsuperscript{60} Furthermore, on April 16, coalition forces announced Operation Provide Comfort, which would commit British, French, and American troops to setting up protective zones for displaced persons within Iraq. There was fierce operation from within the UN and several member states to committing troops to operate within Iraq. However, the coalition forces pushed ahead without gaining further UN authorization beyond the language in Resolution 688. After, the unilateral action taken by the coalition forces the UN, Kuwait, and the Iraq/Iran and Iraq/Turkey border areas signed a memorandum of understanding with Baghdad to allow for UN personnel to help provide humanitarian relief.\textsuperscript{61}

The actions of the international community in Iraq following their expulsion from Kuwait went a long way in helping to develop a norm that humanitarian intervention with the authorization of the UN Security Council is allowable under international law. Declaring a refugee situation that is happening as a result of an internal conflict a threat to international peace and security in a UN Security Council resolution was a huge step, and it is not a step that was not completely unopposed. Cuba, Yemen, and Zimbabwe voted against Resolution 688, and China and India abstained. The countries that voted against the resolution maintained that the actions

\textsuperscript{60} Thomashausen, 33
\textsuperscript{61} Thomashausen, 35-36
mandated would violate article 2(7) of the Charter, and humanitarian catastrophes need to be
addressed by UN agencies not the Security Council.62 The countries that voted in favor of the
resolution were also weary of establishing a precedent of interfering in the internal affairs of a
state based on internal humanitarian concerns. Resolution 688 therefore states, “Recalling the
provisions of Article 2, paragraph 7 of the Charter, Gravely concerned about the repression of
the Iraqi civilian population…which led to a massive flow of refugees towards and across
international frontiers and to cross border incursions which threaten international peace and
security in the region”.63 This language makes it explicitly clear that it is the international
character of the humanitarian crisis-the cross border refugee flows-that warrant UN action under
Article 2(7). Regardless of these reservations the declaration of a humanitarian situation as a
threat to international peace and security was significant, and coalition forces were later able to
use this language to justify more forceful and unilateral action to improve the humanitarian
situation.

The UN intervention in Somalia was the next step in the progression of developing a
norm allowing for humanitarian intervention. In January 1992, the UN Security Council passed
Resolution 733 which noted that the continuation of the humanitarian and security situation
would constitute a threat to international peace and security and imposed an arms embargo.64 In
April 1992, the UN Security Council passed Resolution 746, which established the United
Nations Mission in Somalia (UNOSOM) with limited personnel to help monitor the ceasefire
and ensure delivery of humanitarian aid.65 Finally, in December 1992, the UN Security Council
passed Resolution 794. It determined, “that the magnitude of human tragedy caused by the

62 Thomashausen, 31
63 United Nations, “Resolution 688 (5 April 1991)”
65Sandholtz and Stiles , 272
conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security”.

This resolution authorized the use of force under Chapter VII of the Charter to restore peace and stability in Somalia, and it was backed up with concrete resources. The UNOSOM contingent was increased by 3,500 personnel, and the Unified Task Force (UNITAF) was created with troop strength of 37,000.

The UN Security Council approved Resolution 794 unanimously, although member states did press for language to be included in the resolution which noted the exceptional nature of the conflict in Somalia. The resolution was incredibly important in establishing the norm of humanitarian intervention as it was the first time the UN Security Council explicitly authorized the use of force to respond to a humanitarian crisis. Furthermore, the situation in Somalia did not pose a grave threat to its neighbors. The humanitarian emergency was dire but largely contained within the sovereign borders of Somalia. Therefore, the UN declared a solely internal crisis a threat to international peace and security. This differs from the intervention in Iraq as the Security Council made it clear that the large refugee flows into neighboring countries was the relevant factor in declaring the situation a threat to international peace and security.

In March 1993, the UN expanded the scope of UNITAF’s mission and folded all work done by the UN in Somalia into UNOSOM II. UNOSOM II would be responsible for nation building in Somalia, including disarming belligerents to create stability, helping with the return of refugees, and re-building economic and political infrastructure. This proved to be an enormous and dangerous mission, and forces began to pull out of Somalia in late 1993 and early

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67 Sandholtz and Stiles, 273
1994 following the loss of over 100 peacekeepers in a string of incidences, the most infamous of which being Black Hawk Down when 18 US Special Forces troops were killed.68

The Black Hawk Down incident was a turning point in the international community’s, and particularly the US’s, willingness to undertake humanitarian intervention. Immediately following the tragedy, President Clinton issued Presidential Decision Directive (PDD) 25. PDD 25 has very stringent criteria for when the US will support a peacekeeping mission and even stricter criteria for when the US will participate in one. For the US to participate in a peacekeeping mission, it has to advance US interests, the participation of US forces is tied to clear goals, there is an endpoint, the necessary funds and resources are available, US participation must be vital to the mission’s success, and there is domestic and Congressional support.69

Iraq and Somalia established that humanitarian intervention is acceptable under international law if undertaken with the authorization of the Security Council. The question of whether or not other the Security Council is the only mechanism through which humanitarian intervention can take place has yet to be resolved. Furthermore, while the norm of the right to intervene under certain parameters was established, it was not mandated. The failed intervention in Somalia, while strengthening the norm, drastically lessened the willingness of the international community to support humanitarian intervention. This highlights the intersection between human security and national security. Over the past several decades, human security has become increasingly important. As discussed previously, international law continues to move in a direction where individuals do have fundamental rights, and certain acts have become unacceptable. States have been increasingly willing to act to protect human security, and many

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68 Sandholtz and Stiles, 275
developed states contribute funding and resources to foreign aid and diplomatic resolution of conflicts. However, states are not willing to jeopardize their national security to protect human security. This has drastic implications for R2P because while states may be willing to act in certain cases to stop mass atrocities the international community will remain reluctant to establish a norm of the responsibility to react, particularly if that involves intervention.

IV. International Opinions

I. Positions of the International Community at the 2005 World Summit

R2P continues to be a controversial concept within the international system, both because of its normative status and how it is viewed. During the 2005 World Summit Outcome debate the European Union (EU), Canada, and the AU were the primary proponents of the R2P concept. Among the Permanent 5 Members of the Security Council, the US, Russia, and China expressed skepticism of R2P during the Summit. The UK and France were supportive in many respects, and the US gradually expressed support for some R2P concepts. Russia and China remained reluctant throughout the debate because of concerns that the intervention component would be abused.70 Given the regional focus of the case studies discusses in the upcoming sections, the views of the AU are of particular importance.

The evolution of an African position on R2P principles is very interesting and tied to specific events. Under the Organization of African Unity (OAU), African states were very reluctant to interfere in the internal affairs of other states and even had a self-imposed ban on peacekeeping, arguing this was the responsibility of the UN. However, the Rwandan Genocide was the catalyst for the re-examination of this policy.71 As discussed, previously the AU Charter (the regional organization that replaced the OAU) under article 4(h) completely reversed this policy and

70 Bellamy, “Whither the Responsibility to Protect? Humanitarian Intervention and the 2005 World Summit,” 151-152
71 Williams, “The Responsibility to Protect, Norm Localisation, and African International Society,” 399
promotes regional responsibility in the event that a Member State is unwilling or unable to prevent mass atrocities. In practice the AU has had difficulty implementing the policy enshrined in article 4(h), and among African states there is still disagreement on the parameters.

While the leadership of the AU helped to push forward R2P during the 2005 World Summit, some countries expressed reservations. For example, Tanzania was hesitant to prioritize newsworthy tragedies, such as mass atrocities, above the everyday suffering of many Africans due to poverty. In addition, South Africa, was uneasy about the continued lack of an international consensus on core R2P principles. There were, of course, ardent supporters of R2P, among them Rwanda and Ghana.\(^72\) It is important to highlight the discord within Africa despite the push of the AU leadership to support the concept. African states may not be seen as crucial states for the purposes of norm diffusion. However, the institutionalization of R2P principles in the AU Charter, and the fact that Africa has increasingly worked to respond to crises on the African continent, indicate a strengthening of the norm of R2P.

II. 2009 General Assembly Debate

After the debate regarding R2P at the 2005 World Summit, and the actions of the AU to institutionalize the norm of R2P, subsequent debates have also worked to promote norm clarification and acceptance. In a July 2009 General Assembly debate, the stark differences within the international community on the purpose, definition, and parameters of R2P were clearly visible. For example, during the debate Nicaragua asserted that during the World Summit, R2P had only been endorsed on the understanding that it would be discussed further. Their representative was further concerned that at the present stage the right to intervene could

\(^{72}\) Williams, “The Responsibility to Protect, Norm Localisation, and African International Society,” 401
be manipulated.73 Swaziland raised further concerns regarding assurances that occupying powers are responsible for the populations of any countries that are invaded under R2P. Citing operational incapacity, Swaziland also questioned the ability of the Security Council to approve military intervention in a timely, efficient, and equitable manner.74 Finally, the representative to Sudan also spoke about the 1994 Rwandan Genocide, arguing that it was not the lack of language in the UN Charter that failed to save lives but rather the lack of political will in the Security Council to act to stop the slaughter. 75

Although many countries did voice concern about R2P, others offered support. Slovakia associated itself with the European Union and voiced strong support for R2P, calling it one of the most important achievements of the 2005 World Summit. Timor-Leste expressed support for the three pillar approach initially outlined in the original R2P report and further defined by the 2009 Report on Implementing the Responsibility to Protect. Pillar One is of course the responsibility of each individual state to protect its people, Pillar Two is international assistance and capacity building to guard against atrocities, and Pillar Three is decisive action in the face of atrocities. Timor-Leste in particular lauded the pillar emphasizing assistance to prevent atrocities and aid states that want to act responsibly but perhaps do not have adequate resources.76 Finally, Botswana also recognized R2P as a central tenet of the international community and emphasized that states have an obligation to protect populations at risk.77

This debate and the broad views of the many states within the international community are important because they highlight the continuing lack of consensus regarding R2P. During the World Summit debate there was disagreement among UN Member States and even among

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73 General Assembly, “Delegates Weigh Legal Merits of Responsibility to Protect Concept as General Assembly Concludes Debate,” (28 July 2009), 1.
74 2009 General Assembly Debate, 7
75 2009 General Assembly Debate, 11
76 2009 General Assembly Debate, 4-5
77 2009 General Assembly Debate, 6
the states of regional organizations whose leadership supported R2P. However, a relatively small number of states worked through the disagreements to reach consensus language on some R2P principles. The 2009 debate allows for a broader cross section of the international community to express their views on R2P. These diverging views highlight both the promise and the pitfalls of the R2P. The doctrine is an opportunity for the international community to bring debate about preventing and responding to mass atrocities to the forefront of the international consciousness, and it is also an opportunity to re-frame the discussion on when and how the world will respond to human suffering. However, despite these benefits there are still major issues with R2P. The norm of humanitarian intervention with Security Council authorization has been established. Going further with the debate and mandating a coercive response through the UN is not wise because it is simply not attainable. Humanitarian intervention will always be done on a case-by-case basis, and putting forward a doctrine that mandates action in certain cases creates unrealistic expectations. Furthermore, the inclusion of the possibility of military intervention has largely overshadowed the rest of the R2P principles, which focus on building capacity to prevent and help states recover from mass atrocities.

The next sections cover the case studies for Darfur, Kenya, and Somalia. The case study for Darfur will demonstrate that responses to crisis must be undertaken with a realistic comprehension of the resources the international community is willing and able to commit. The international community cannot speak of their obligations under R2P and then fail to muster the political will to implement difficult and costly solutions. The case of Kenya will demonstrate the strengths of R2P when the region and the international community conceive solutions to a crisis under R2P obligations in a viable and consistent manner. In Kenya, the international community responded early and with sustained and unified diplomatic pressure, and the result was an end to

78 Williams, “The Responsibility to Protect, Norm Localisation, and African International Society,” 402
the immediate crisis and support to continue working through the fundamental issues that helped create the crisis. Finally, the case of Somalia will demonstrate the lack of capacity to respond to a crisis when there is no political will to commit to finding a solution solely because of obligations under R2P. Somalia ultimately represents the lack of consistency with which R2P is applied, which is a fundamental weakness.

V. Darfur Case Study

I. Background of the Conflict in Darfur

The crisis in Darfur became violent in 2003. However, tensions had been festering for years because of the political and economic marginalization of western Sudan by the central government in Khartoum. It is this marginalization that led the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM) to begin attacking government targets in early 2003. The government in Khartoum responded brutally by deliberately undertaking a campaign to ethnically cleanse African tribes. In response to the attacks by the Darfuri rebel groups, the government launched counter-attacks against civilian populations, using both conventional military forces and local Arab militias. The government would equip the Arab militias, and they would ride into a village and destroy anything left after the completion of a government aerial bombardment.79

The consequences of this violence for the people of Darfur have been catastrophic. Deaths resulting from the conflict have been estimated at anywhere from 300,000-500,000 and 2.5 millions Darfuris have fled their homes. It has been difficult for humanitarian workers to maintain a constant presence in the region because of harassment by the government. Additionally, the rapid deterioration in the humanitarian situations in many parts of Darfur have

led to outright shortages in basic supplies, such as food and medicine. Beyond the immense tragedy of the loss of lives is the loss of livelihoods. When the militias sweep into villages they methodically burn homes and arid land, poison wells, destroy food stocks, and kill livestock. These actions represent the destruction of all the resources that villagers have amassed over generations and will make it immensely difficult for them to adequately provide for themselves and their families.

II. Is Darfur an R2P Situation?

Gareth Evans has sought to address the feasibility of applying R2P to the situation in Darfur. He argues that it is vital that methodology should form the basis of any R2P discussion, particularly if the use of nonconsensual military force is being discussed as an option. When addressing the case of Darfur, Evan looks at the five conditions that must be met for a nonconsensual military intervention to be a viable option and if the Darfur situation meets these conditions.

Condition 1: Seriousness of Harm- Is the harm to the state of the population serious enough to merit a military intervention? Does it rise to the level of one of the four crimes (genocide, war crimes, crimes against humanity, and crimes of aggression)?

Condition 2: Proper Purpose-Does any military intervention have the right intention behind it? In other words, is the main purpose to stop human suffering and not to undertake any actions that would benefit the countries of the invading force?

Condition 3: Last Resort-Have all other non-military options been exhausted?

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82 Evans, “Responsibility to Protect: From Idea to International Norm,” 23
Condition 4: Proportional Means—Is the scale and duration of any planned intervention adequate to ensure adequate civilian protection and meet the defined goals of the mission?

Condition 5: Balance of Consequences—Is there a reasonable belief that the military intervention will actually be able to end the ongoing atrocities and not make the situation worse?\(^83\)

Evans concludes that Darfur does fulfill conditions one and two. The situation in Darfur was arguably genocide and gross human rights violations continue, and any military intervention would be undertaken for the right reasons as Sudan is not geo-politically important in the global scheme nor does Darfur have significant natural resources. According to Evans, the situation in Darfur does not meet the third condition. There are other non-military tools that could be employed, such as broader sanctions, targeted sanctions against government leaders, or military actions short of an invasion, such as a no fly zone. It is not possible to determine if a military mission would be of adequate scale and duration, but Evans assumes that adequate plans would be put into place. Finally, on the fifth criteria Evans cannot make a conclusive determination because this is by far the most difficult condition to predict. However, he does cite several complications, such as the logistical challenges present in Sudan because of lack of development, the vulnerability of displaced populations, renewed conflict in Sudan between the government and other regions, and the collapse of humanitarian relief operations.\(^84\)

Evans uses these conditions to evaluate the appropriate response to a situation under the R2P concept. As he explains it a strict set of criteria and a methodology for evaluating this criteria will help to determine the situations where military intervention clearly should have been used, such as in Rwanda, Srebrenica, and Kosovo, and when a less drastic response is more appropriate. However, can these criteria only truly be met in retrospect? R2P places a high

\(^83\) All conditions from Evans, “Responsibility to Protect: From Idea to International Norm,” 23-24.
\(^84\) Evans, “Responsibility to Protect: From Idea to International Norm,” 23-24
burden on demonstrating that military intervention is taken only as a last resort and with the reasonable belief that an intervention will improve the situation. These conditions may prove impossible to meet in the present context. Evans cites Rwanda as a particular crisis in which an international military intervention should have taken place to end genocide before catastrophic human casualties that resulted from the international community doing nothing. However, if one analyzes the thinking among policy-makers at the time of the genocide it is clear that these conditions would not have been met.

The Rwandan genocide began on the evening of April 6, 1994 immediately after the assassinations of the Rwandan and Burundian presidents. The masterminds of the genocide had been planning this moment for years. By 1992, the Hutu extremists in the government had stockpiled and begun distributing thousands of tons of ammunition and over 500,000 machetes.85 In addition, the names, addresses, and even license plate numbers of moderate and influential Hutus and Tutsis had been collected. It was not the everyday citizens of the country who were killed first. Rather it was the politicians and the government ministers who may have had the influence to restore order to the country. There were signs of an impending disaster, and UN officials had even been warned by a Hutu informant about the existence of a plan to commit mass slaughter.86 However, when the killings began the international community appeared to not understand the nature or scale of the killings.

Much of the misunderstanding came from the portrayal of the situation in the media and subsequently in policy briefings. In the very first days of the genocide the mainstream coverage of the event was chaotic and vastly incorrect. Many mainstream papers and policymakers had

the facts, but did not know what they meant, and this ignorance was reflected in the media coverage as well as the response. *USA Today* ran a story on April 11, 1994 with the headline, “Rwanda bloodbath rooted in tribal conflict/ Tutsi, Hutu struggle for dominance”. The first paragraph went on to say, “The slaughter between the Hutu and Tutsi tribes in Rwanda is the latest round in a bloody battle for domination…. The fighting has killed more than 10,000… including the prime minister and several cabinet ministers, all Tutsi, plus nuns, priests and aid workers”\(^i\) This story was run nearly five days after the genocide began, and it is estimated that nearly 32,000 Tutsis and moderate Hutus had already been killed.\(^{87}\) A Toronto based paper, the *Toronto Sun*, ran a story on April 12, 1994 with the headline, “Tales of Horror: Canadians, Who Fled Rwanda, Tell of Orgy of Violence”. The article goes on to state, “Mobs of drunken soldiers and civilians were reported to be roaming the streets killing people by the hundreds…the death toll could go into the thousands as the tribal bloodshed precipitated by a political assassination continues.”\(^{88}\)

Rwanda in the spring of 1994 was, of course, not a situation of tribal violence. It was the clearest case of genocide the world had seen since the Holocaust, and “far from tribal warfare erupting in the vacuum created by the collapse of the state, the genocide in Rwanda resulted from the machinations of state actors seeking to extend and consolidate their power”.\(^{89}\) The situation in Rwanda represents a complete failure of understanding. Policymakers were either unable or unwilling to accept the situation in Rwanda for what it really was and reacted or did not react in a way that reflected their level of understanding . If the conditions Evans outlines were applied to thinking surrounding the Rwandan Genocide at the time of the genocide, it is


unlikely that conditions one, three, and five would have been met. Policymakers did not believe the violence in Rwanda constituted genocide. The international community would not have been willing to concede that all other means of stopping the violence had been pursued, and finally if the understand was that the situation was intractable tribal violence there would not have been a reasonable belief that a military intervention would have stopped the killing.90

III. How R2P was Used in the Darfur Context

Evans makes the argument that Darfur would not have met the conditions laid out under R2P for military intervention. However, the R2P concept was applied by the international community when trying to formulate an acceptable response to the crisis. Unfortunately, it was applied in such a way that it led to an ineffective response. The response to Darfur amounted to a series of hastily drawn together agreements that did not fully address the underlying conflict factors, and the deployment of an AU, and then UN-AU hybrid, peacekeeping mission, both of which were under-resourced and overstretched.

The first agreement seeking to end the conflict in Darfur was the N’Djamena Humanitarian Ceasefire Agreement. The agreement was deeply flawed in that some passages were not even fully agreed upon before it was signed. However, it did allow for the creation and deployment of the AU African Mission in Sudan (AMIS).91 AMIS started out with just 60 military observers and a protection force of 300, and the mandate was severely limited. It only allowed for the Mission to observe a ceasefire agreement that had been signed in 2004 between the Government and the rebel groups. Officers were not allowed to intervene and could only use their weapons if directly threatened. At its peak in late 2007 the Mission grew to 7,000 troops.

90 Romeo Dallaire, Force Commander of the UN Assistance Mission in Rwanda, made it very clear that in his estimation a small well-trained force could have stopped the genocide. However, policymakers and UN officials were skeptical because of their understanding of the situation.

However, it remained largely ineffective because of the limitations of the mandate and a lack of critical resources and funding (which was promised by the AU and the international community but never delivered).\textsuperscript{92}

The inability of AMIS to protect civilians led to a decision by many UN Member States, most notably the United States, that AMIS should be transitioned into a UN peacekeeping force. On August 31, 2006 the UN adopted Resolution 1706, which, among other points, requested the Sudanese government’s consent for a UN peacekeeping force to be deployed in Darfur.\textsuperscript{93} The implication was that if the consent was not given a force would be deployed without the government’s consent. The government of Sudan rejected this tactic and declined to give permission for a UN peacekeeping force to be deployed in Darfur, and the international community was not willing to commit the resources that would be necessary to invade Sudan and impose a peace enforcement mission. A compromise therefore had to be reached, which was a hybrid AU-UN force. After obtaining the consent of the Sudanese government, the UNSC passed Resolution 1769 on July 31, 2007 authorizing the AU-UN African Mission in Darfur (UNAMID).\textsuperscript{94}

UNAMID was given a Chapter VII mandate, and protecting civilians was designated as a core duty. UNAMID was also mandated to assist in humanitarian assistance, assist in an inclusive peace process and monitor any agreements, promote human rights and rule of law, and monitor the Chad-Sudan border. Once fully deployed UNAMID will have 20,000 peacekeepers and 6,000 police with a $1.7 billion annual budget.\textsuperscript{95} The expectations placed on the

\textsuperscript{94} De Waal, 1042
peacekeeping force were enormous, and unfortunately the details behind the strategic purpose of UNAMID and the concept of operations was not given adequate attention. Professional staff and security experts within the UN Department of Peacekeeping Operations (DPKO) urged political leaders to concentrate more on the specific goals and realistic capacities of UNAMID. However, the over-riding assumption among political leaders and Darfuri civilians was that UNAMID would simply be capable of providing physical security without any security plan or negotiated settlement.96

Unrealistic expectations of what the international could and was willing to do tainted the atmosphere during the negotiations for the Darfur Peace Agreement (DPA). The DPA was signed by the Minni Minnawi faction of the SLA and the Sudanese government in Abuja in May 2006. Other key rebel leaders had the expectation that armed intervention comparable to NATO interventions in Bosnia or Kosovo would be possible, and were therefore less willing to negotiate and agree to real compromises. This thinking led to an insufficient peace agreement that quickly fell apart. Following the signing of the DPA, the UN reported that an additional 200,000 people were displaced in Darfur due to intense fighting and insecurity between July and September 2006. The increased violence was due to fighting between the signatory and non-signatory parties of the DPA (between rebel groups) and attacks by the government and Janjaweed forces on civilians.97 Minni Minnawi lost much of his territory and troop capacity. He also lost a tremendous amount of credibility among the Darfuri people because his troops were seen fighting alongside government forces and were accused of committing atrocities. Subsequently, the non-signatory rebel groups briefly unified against the government. However, their efforts at

96 De Waal, 1044
unification did not last long as differences between ethnic groups and the desire for prestige and power drove deep wedges between the factions.98

The response to the situation in Darfur strove to meet the ideals encompassed in the R2P concept. However, as Evans argues, forcible military intervention to stop the violence and protect civilians was not possible. Instead, the international community strove to meet with the ideals of R2P through half measures and overblown promises. Extremely high expectations were created for the consensual AU-UN peacekeeping mission in Darfur. However, the UN and international donors failed to acknowledge the limits of the peacekeepers’ capacity, did not invest the necessary effort into creating a workable peace agreement that could have facilitated UNAMID’s mission, and did not deliver on key resources needed by the Mission to fulfill its stated mandate. As Sudan expert Alex de Waal states, “in pursuit of an unachievable ideal, the international community has failed to achieve practical solutions that lay within its grasp”.99 The next cast study covers the international response to the 2007 post elections crisis in Kenya. It is valuable in highlighting the results the international can achieve if the capacity building and early response R2P mechanisms are the primary drivers of policy.

VI. Kenya Case Study

I. Background of the Elections Related Violence

The December 2007 elections in Kenya were hotly contested between Mwai Kibaki, the president of Kenya representing the Party of National Unity (PNU), and the opposition leader, Raila Odinga, representing the Orange Democratic Movement (ODM). Politics in Kenya can fall along tribal lines. PNU supporters are usually from the Kikuyu, Embu, and Meru tribes while ODM supporters are typically from the Luo, Luhya, and Kalenjin tribes. After a long and

98 Fadul and Tanner, 289-292
99 De Waal, 1054
fierce campaign the opposition looked poised to win the presidency. However, when the vote
tabulations were announced on December 30 Kibaki had won the contest by a two percent
margin. ODM immediately accused the government of vote rigging, and this accusation was
later confirmed by national and international observers.\textsuperscript{100} Widespread violence erupted almost
immediately, and the crisis continued for months. Over 1,000 people were killed and 300,000
were displaced. Kenya, once seen as a model for African democracy and stability, was plunged
into violence with tremendous human, political, and economic consequences.\textsuperscript{101}

II. International Response to the Kenya Elections Crisis

Immediately following the polling, many in the international community congratulated
Kenya on its elections and called for results to be respected. However, as the extent of the
rigging became clear and the violence spiraled out of control, world leaders exerted significant
diplomatic pressure on the Kenyan government. For example, on January 2, U.S. Secretary of
State Condoleezza Rice and U.K. Foreign Secretary David Miliband issued a joint statement
urging Kenya’s political leaders to call for a cessation of the violence and pledging diplomatic
and political resources to help end the crisis and support reconciliation.\textsuperscript{102} Former UN Secretary
General Kofi Annan was also dispatched to Kenya to begin negotiations with the two parties on
1) finding measures that would end the violence and restore the political rights of the Kenyan
people; 2) addressing the humanitarian crisis and promoting reconciliation; 3) finding a political
solution to Kibaki-Odinga stand-off; and 4) creating institutional reforms that would address the
underlying cause of the violence. The international community strongly supported this effort and

\textsuperscript{100} International Crisis Group, “‘Kenya in Crisis,’” ICG, \url{http://www.crisisgroup.org/~/media/Files/africa/horn-of-
\textsuperscript{101} Michelle Gavin, “Policy Options Paper-Kenya,” Council on Foreign Relations,
\url{http://www.cfr.org/publication/15727/policy_options_paperkenya.html}
\textsuperscript{102} Stephan Kaufman, “US and British Leaders Call for End to Kenyan Violence” Global Security,
\url{http://www.globalsecurity.org/military/library/news/2008/01/mil-080102-usia01.htm}.
devoted high level political resources to help ensure its success. For example, Assistant Secretary of State for African Affairs Jendayi Frazer traveled to Kenya in early January to persuade the parties to find a solution. The Security Council issued a statement expressing support for Annan, and when the negotiations were stalling, US Secretary of State Rice and AU Chairperson Jakaya Kikwete both weighed in to push for a settlement. The United States also put financial pressure on Kenya by publically stating that foreign aid would be reviewed.\textsuperscript{103}

The agreement, achieved with the help of Annan, created a power sharing government. Kibaki would maintain the presidency while Odinga would become prime minister. The prime minister has considerable powers and can only be dismissed by Parliament. The cabinet positions in the government are split between ODM and PNU, and both the president and the prime minister must agree before a minister can be removed from office. Two deputy prime minister positions were also created with each party appointing one. Finally, the newly formed cabinet agreed to work out a new constitution that would address the long-standing grievances within Kenyan society that helped inflame the post-elections violence.\textsuperscript{104} Progress has been in slow in implementing this agreement, and the political elite in Kenya appear to be delaying on key benchmarks, such as constitutional reform, forming a commission to organize the next national elections to be held in 2012, and creating a judicial process to investigate and potentials prosecute politicians for war crimes related to the violence.\textsuperscript{105} These are serious deficiencies that need to be addressed. However, it is promising that violence has not broken out again in Kenya, and the international community has remained involved in continuing to pressure Kenya’s political leaders to fully implement the power-sharing agreement.

\textsuperscript{103} Gavin, “Policy Options Paper-Kenya”.
\textsuperscript{104} BBC, “Q&A: Kenya Peace Deal,” BBC, \url{http://news.bbc.co.uk/2/hi/africa/7165962.stm}.
\textsuperscript{105} BBC, “Has Kenya’s power-sharing deal worked” BBC, \url{http://news.bbc.co.uk/2/hi/africa/7921007.stm}.
III. Implications for Responsibility to Protect

Kenya is an example of one of the strengths of the R2P concept. The international community recognized the potential for a humanitarian catastrophe and responded quickly. However, the tools that the international community employed were not inappropriately coercive and focused more on offering the Kenyan government support for crafting a workable solution. The UN provided diplomatic capacity by sending Kofi Annan to help mediate a settlement, and the region and the international community gave unified support to this approach. Furthermore, in the beginning of the crisis and when negotiations were stalling, the international community appropriately pressured Kenya’s political elite by publicly stating that those who fostered violence would be held criminally responsible and foreign aid and investment could be jeopardized. This early intervention supported at the highest levels of international politics help to stave off a much larger crisis that could have been far more devastating for the Kenyan people and the larger region.

The previous two case studies are examples of when the obligations of the international community and the region under R2P played a serious role in crafting the response to a crisis. In the case of Darfur, the discussions around R2P obligations centered around the forcible intervention aspects of R2P and actually served to undermine an effective response. In the case of Kenya, the obligations under R2P were perceived differently, and the international community focused on early and sustained diplomatic intervention to stop the crisis. The case of Somalia is differentiated from the Kenya and Darfur as the response to the ongoing crisis was driven predominantly by national security concerns as opposed to R2P obligations.

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106 United Nations, “Implementing the responsibility to protect: Report of the Secretary General,” 23
VII. Somalia Case Study

I. Background of the Current Violence and Humanitarian Crisis in Somalia

Somalia has had no effective national government since 1991, when President Siad Barre was ousted. The tragedies that engulfed Somalia in the early 1990s are well documented and continue to the present day, although in varying political forms. In 2006, a fundamentalist Islamic rebel group, the Islamic Courts Union (ICU), tried to take control of the country. However, the group was ousted from power by Ethiopian troops that invaded the country with U.S. support. Since then the ICU has splintered. The former leader of the ICU, Sheikh Sharif Sheikh Ahmed, is now the president of the Western-backed Transitional Federal Government (TFG) based out of Djibouti. The other factions of the former ICU are Al-Shabaab (which the U.S. has designated as a terrorist organization) and Hizbul Islam. These factions often engage in violent clashes with each other and are also trying to overthrow the TFG.107

The United Nations Humanitarian Coordinator in Somalia, Mark Bowden, has tried to draw attention to the alarming humanitarian situation. Half the population of Somalia, approximately 3.6 million people, are in need of continuing support from humanitarian actors. Additionally, Somalia is now suffering a fifth straight season of drought with no relief for the food crisis in sight.108 The crisis created by the intensified fighting and severe drought is exacerbated by recent attacks on humanitarian agencies. During the summer of 2009 there were at least four deliberate attacks on humanitarian agency compounds. In one incident, Al-Shabaab stormed into UN compounds and confiscated radio and communications equipment, office supplies, and an ambulance. Medecins Sans Frontiers (MSF) has had to relocate staff and close programs in

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some regions that offer vital medical care to civilians because of heavy fighting and abductions of its staff.\textsuperscript{109}

II. International Response to the Somali Crisis

The situation in Somalia most certainly represents a situation envisioned under the R2P concept. There is massive humanitarian suffering and strong evidence of war crimes and crimes against humanity. President Sharif recently visited the United States, and during his visit he unequivocally stated that Somalia is not receiving adequate assistance from the international community. In April 2009 there was a donor conference in Brussels which netted $213 million in aid pledges. However, several months later only a fraction of the promised aid had made its way to Somalia. Sharif noted that he thought the international community did not seem ready to assist Somalia and even U.S. support had been lacking.\textsuperscript{110}

The lack of response from the international community to the profound humanitarian crisis in Somalia is striking for several reasons. First, the situation in Somalia certainly qualifies as a scenario envisioned under R2P. The basic principle as stated by ICISS is that when a population is suffering serious harm as a result of internal war, insurgency, repression, or state failure, and the state is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.\textsuperscript{111} Somalia has been a failed state with an ongoing civil war for nearly 20 years, and over half the population needs humanitarian aid to survive. Furthermore, armed groups are at times halting or severely impeding the delivery of this aid to civilian populations. Second, if the international community chose to act to alleviate the suffering in Somalia it would be much simpler from a theoretical perspective. Somalia has not had a government that is able to govern or even control large portions of its territory for many

\textsuperscript{110} Lobe and Rosenberg, “Somalia: Besieged President Call for More Aid in U.S. Visit”.
\textsuperscript{111} ICISS Report, 1
years. The TFG based in Djibouti would most likely welcome international involvement to assist them in taking control of Somali territory, and the debate over sovereignty would be unnecessary.

The international community has recently intervened in Somalia. In 2005 the Intergovernmental Authority on Development (IGAD) proposed the IGAD Support Mission in Somalia (IGASOM). However, the idea for IGASOM did not gain much traction until the following year when the Islamic Courts Union (ICU) took control of Mogadishu and began consolidating power within Somalia. Several countries in the region and the international community perceived the ICU as a threat to their vital national interests because of the ICU’s fundamentalist Islamic views. Ethiopian troops invaded Somalia in August 2006 to form a buffer zone between ICU forces and eastern Ethiopia, and IGASOM was approved by the AU in September 2006 and by the UN Security Council in December 2006. It was extremely difficult to raise funds and troop contributions for an IGAD sponsored mission, so in January 2007 the AU Peace and Security Council proposed an AU Mission that would be supported by the UN.112

The AU Mission in Somalia (AMISOM) was mandated to provide assistance to the TFG in their efforts to bring stabilizations to Somalia, to facilitate the provision of humanitarian assistance, and to help create conditions for long-term stabilizations and reconstruction. Specifically, AMISOM would provide protection to key TFG personnel and infrastructure to enable them to carry out their government functions and help to re-establish training programs for Somali security forces.113 UN Security Council Resolution 1744 approved the AU Mission under a Chapter VII mandate. Resolution 1744 also requested that the UN Secretary General

send an assessment mission to look into the possibility of a United Nations peacekeeping operation following the deployment of an AU Mission.114

Despite approval by the international community and the region, AMISOM had difficulty obtaining the necessary resources to fulfill its mandate. The envisioned troop strength for AMISOM was 8000. However, the AU could not get pledges from its member states for that number of troops. In total, the AU was able to obtain pledges for about sixty percent of the needed troops, and by April 2009 there were 4300 deployed troops, all of which were from Uganda and Burundi. In 2007 the UN Secretariat also declined to deploy an assessment mission to Somalia to determine the feasibility of an UN follow-on mission saying that the deployment of UN peacekeepers to Somalia was neither realistic nor viable. The UN became serious about the possibility of deploying a multinational peacekeeping force after the Djibouti Agreement was signed in August 2008. The agreement called for a cessation of hostilities between the government and various armed factions and the withdrawal of Ethiopian troops. However, it quickly became clear that the international community had no real interest in committing resources for such a force. Fifty countries were approached about the possibility of supporting an multinational force, and of these only 14 responded with two pledging financial resources and no countries offering troops.115

In sum, AMISOM was created and deployed with little hope of receiving the resources needed to fulfill its mandate. AU peacekeepers were thrust into a severely unstable and violent situation without adequate support, and the international community failed to live up to its commitment to muster a follow-on UN force that might have had the capacity to make a tangible

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115 Paul Williams, “Into the Mogadishu Maelstrom”.

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difference in helping to stabilize Somalia and bring relief to the civilian populations. In addition, the deployment of AU peacekeepers was clearly directly tied to the ICU seizing power in Mogadishu. Somalia became a national security concern for many countries, most notably Ethiopia, and this was the catalyst for serious discussions about IGASOM and subsequently AMISOM. Peacekeeping troops often used unnecessary force when responding to attacks from the ICU and as a result were not trusted by local populations. Ultimately, the deployment of AMISOM led to increased insecurity because the mission did not have adequate resources to fulfill its mandate and were not trusted by the populations because of the politics behind their deployment and the tactics of peacekeepers on the ground. These case studies highlight both the strengths and weaknesses of R2P. In the case of Somalia, the particular weakness of lack of uniform implementation is stark.

**VIII. Conclusions**

R2P has made some positive contributions to conflict resolution in Africa. The aspects emphasizing the role the international community can play in building capacity within states and responding to crisis early through diplomatic means are especially valuable. The case study of Kenya illustrates that if the world recognizes a crisis early and responds with robust diplomatic pressure while also providing resources, such as international mediators, the crisis can be resolved before reaching catastrophic levels. It is important to note that Kenya is a relatively democratic country with political leaders that are responsive to the concerns of the international community. There are countries with far more repressive leadership where the same strategy may not have produced the same results. Despite this caveat, the value of the early response through appropriate means and capacity building mechanisms remains.

116 Paul Williams, “Into the Mogadishu Maelstrom”.
The pillar of R2P that recognizes that states have the primary responsibility for protecting their citizens from mass atrocities is also valuable. This pillar is reinforced through the capacity building mechanism. However, it is unfortunately undermined by the aspect of R2P that promotes forcible military intervention to stop atrocities if certain threshold conditions are met. There is an inherent tension between these two aspects of R2P, and many states are extremely skeptical of R2P because of the military intervention component. In the case of the AU, it is true that the Charter is very forward leaning and also mandates the responsibility of its collective members to respond if a state is unwilling or unable to stop mass atrocities within its borders. However, in practice the AU has been unwilling to enforce this aspect of its Charter. In the case of Darfur, the African Union responded with a peace process and peacekeeping force but only with the consent of the Sudanese government.

A tremendous weak spot for R2P is the inconsistency with which it is applied. In Kenya, R2P concepts were applied effectively. In Sudan, the focus on R2P ideals without a careful consideration of the political and practical limits of the response of the international community made the response less effective. For Somalia, arguably the most dire case in terms of humanitarian suffering, there has not been any serious commitment on the part of the international community to fulfill its obligations under R2P. The AU did deploy a peacekeeping mission and has been trying to contribute to viable solutions in Somalia. However, the AU interventions have only been able to gain significant traction when the national security interests of regional states were at risk, and the AU simply does not have the capacity or the resources to support a peacekeeping mission even when there is the political will to do so. It may be that Somalia is too large and too complex for the international community to be able to conceive any plan with a reasonable chance of success. However, for the ideal of R2P to be put forward
without a serious commitment on the part of the international community to consider how it could be applied in all appropriate scenarios undermines its credibility.

On the whole, R2P would be a far more effective and applicable concept if the military intervention aspect was removed. The tension between the fundamental R2P pillar of states maintaining primary responsibility for their populations while including language on military interventions is simply too great. Many states are suspicious of the norm of R2P because of the inclusion of military intervention aspect. The appropriate use of military intervention to stop humanitarian suffering should continue to be discussed. In the case of Darfur, the AU-UN peacekeeping mission that is in Darfur, with the permission of the Sudanese government has been valuable in helping to at least stabilize the situation. However, there are some states that will simply not be willing to respond to diplomatic and economic pressure. There is a precedent for military interventions to stop atrocities and crimes of aggression, and the debate within the international community regarding when and how these interventions take place should continue. However, it should continue outside of the R2P framework because the inclusion of the military intervention aspects significantly weakens the stronger and more effective R2P principles. R2P should focus on how to further early warning systems and capacity building within states and how the international community can better assist in this effort. This will allow R2P to focus on its truly productive and attainable aspects rather than allowing for the ideal to get in the way of effective and timely responses to crises.
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