'Westphalian Sovereignty' or 'Sovereignty as Responsibility'?

A case study of the United Nations' response to the conflict in Darfur

Master's Thesis
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List of abbreviations

AMIS	African Union Mission in Sudan
AU	African Union
DPA	Darfur Peace Agreement
EUFOR	European Union Force
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICISS	International Commission on Intervention and State Sovereignty
JEM	Justice and Equality Movement
MONUC	United Nations Mission in the Democratic Republic of Congo
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organization
SC	Security Council
SLA/M	Sudan Liberation Army/Movement
UK	United Kingdom
UN	United Nations
UNAMID	United Nations African Union Mission in Darfur
UNFICYP	United Nations Force in Cyprus
UNFIL	United Nations Force in Lebanon
UNMIS	United Nations Mission in Sudan
US	United States (of America)

1. Introduction

Darfur: 300.000 deaths, more than 2.7 million displaced people, countless rapes and destruction of villages (United Nations, 2008). The conflict that has started in 2003 in the western region of Sudan is one of the worst humanitarian crises taking place at the beginning of the 21st century (Morris, 2004). According to an independent United Nations (UN) commission, war crimes and large-scale crimes against humanity were committed in Darfur (International Commission of Inquiry on Darfur, 2005). An atrocities documentation team of the United States (US) has even called it genocide[1] (US State Department, 2004). As both the government of Sudan and the international community are watching this crisis deteriorate, the question is raised who is able and willing to bring the violence in Darfur to a halt.

In the genocide in Rwanda (1994), roughly 800,000 Tutsis and moderate Hutus were killed (CIA, 2008). The UN Security Council, primarily responsible for international peace and security, neither prevented this genocide nor brought it to a halt. Former UN Secretary-General Kofi Annan expressed his bitter regret and promised action to prevent another such disaster (BBC, 1999). However, military intervention for humanitarian purposes is controversial. It is unclear under which conditions such interventions are legitimate, and under whose authority these interventions should be taking place.[2]

The International Commission on Intervention and State Sovereignty (ICISS) investigated the issue of military intervention with humanitarian purposes. After twelve months of intensive research, worldwide consultations and deliberation, the commission launched a report 'The Responsibility to Protect' (2001a) which formulates principles for intervention with humanitarian purposes. According to the basic principle, "state sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect" (ICISS, 2001a: XI).

The basic principle of the responsibility to protect was adopted at the 2005 World Summit, a high-level plenary meeting of the General Assembly of the United Nations. This

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[1] Very recently, the US genocide determination was confirmed by the prosecutor of the International Criminal Court (ICC) in The Hague, who presented evidence showing that Sudanese president Al Bashir committed the crimes of genocide, crimes against humanity and war crimes in Darfur (ICC, 14 July 2008).
[2] NATO's military intervention in Kosovo (1999) lacked the authorization of the UN Security Council, and was therefore illegal under international law, but has been widely regarded as legitimate because of its humanitarian purpose (Popovski and Turner, 2008).

summit was the most important international meeting after the 2000 Millennium Summit and included numerous heads of state and heads of government, who made bold decisions in the areas of development, security, human rights and reform of the United Nations. It is considered the largest gathering of world leaders in history (UN, 2005a).

The responsibility to protect principle seems to be totally applicable to the situation in Darfur. The government of Sudan is not willing or able to bring the violence in Darfur to a halt, and therefore the international community has an international responsibility to protect the population of Darfur with coercive measures.

The following section will provide a background about the crisis in Darfur[3], and will show that the Darfur case meets all conditions of the responsibility to protect which justifies a coercive response including a military intervention of the UN Security Council.

Darfur was originally an independent Sultanate, which dated from the late fourteenth or early fifteenth century. Between 1916 and 1956 it was ruled by the Anglo-Egyptian Condominium. Since Darfur became a region of Sudan in 1956, it has been politically and economically marginalized by the Arab central government in Khartoum. Darfur has suffered from maladministration, underdevelopment, famine and violent conflicts (Prunier, 2005).

Historical tensions between farmer tribes (Fur, Masalit, Zaghawa) and nomads about scarce water and land has frequently led to conflicts in Darfur. Desertification and periods of droughts reinforced this in recent years. Existing mechanisms in Darfur for conflict resolution have been steadily weakened and manipulated by the central government of Sudan. Furthermore, Khartoum has polarized the Arab and non-Arab tribes in Darfur, although differences in skin colour and language barely exist (Tubiana, 2007).

Frustrated by the economic and political marginalization by Khartoum, two rebel groups, the Justice and Equality Movement (JEM) and the Sudan Liberation Army/Movement (SLA/M) with a broad base of support across non-Arab tribes in Darfur, attacked government installations in February 2003. The government had most of its own troops located in the south and encouraged Arab militias (from camel-herding tribes in Darfur and immigrants from Chad), Janjaweed, to fight opponents in Darfur (Flint, 2007).

These militias launched a campaign that also targeted thousands of civilians. This devastating civil war between rebel groups and a coalition of government troops and Janjaweed militias has caused at least 300,000 deaths and 2,7 million displacements (UN,

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[3] Given the complexity of the situation in Darfur, this study does not aim to provide a complete overview of events, fighting parties and causes of the conflict. Next section will highlight the most important parts of the background of Darfur and has tried to avoid simplification of the conflict.

2008). A UN international commission of inquiry (2005) found evidence that severe crimes against humanity were committed by government troops and the Janjaweed, including systematic killings of civilians, sexual violence, forced displacements, torture and enforced disappearances. Reports of Amnesty International (2004; 2005) Human Rights Watch (2004; 2005) and the International Crisis Group (2005ab) confirm these crimes. Some countries, including the United States, called the situation in Darfur genocide (Totten and Markusen, 2006). The conflict is also threatening the stability of eastern Chad (Amnesty International, 2007a).

The international community reacted slowly to the crisis in Darfur. Meanwhile, African actors mediated peace negotiations between the fighting parties; the N'Djamena Ceasefire Agreement was signed on 8 April 2004. Resolutions of the UN Security Council included sanctions at Sudan (although not effectively implemented) and referred the situation in Darfur to the International Criminal Court. It has authorized an African Union peacekeeping mission (AMIS) to monitor the N'Djamena ceasefire. This ceasefire was repeatedly violated by all parties.

On 6 May 2006 the Darfur Peace Agreement (DPA) was signed by the government of Sudan and one rebel group. During the course of the conflict rebel groups splintered into many factions and the situation became more complex. Rebel groups were not only fighting with Arab militias, but were increasingly targeting each other. AMIS has largely failed to keep the peace in Darfur because of lack of resources, a weak mandate, insufficient troop levels, equipment and logistics (Tjepkema, 2007).

After the signing of the DPA, the Security Council decided in August 2006 that the mandate of the UN peacekeeping mission in southern Sudan (UNMIS) would be expanded to the territory of Darfur. The government of Sudan rejected this. Instead, it only agreed to a three-phase plan: by strengthening AMIS with a light support package, followed by a heavy support package that would be turned eventually into a hybrid AU-UN operation.[4] This hybrid mission (UNAMID) was authorized by the Security Council in July 2007. The light and heavy support package and preparations for UNAMID suffered from obstruction and delay by the government of Sudan (Amnesty International, 2007b). At this time (mid-2008) only 10,000 of the supposed 26.000 UNAMID peacekeepers are employed. Renewed peace negotiations are going very slowly and have not led to anything. The situation in Darfur is still very unstable.

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[4] The light support package includes technical support and minimal personnel increase of AMIS. The heavy support package includes several hundred UN military, police and civilian personnel. The hybrid mission is composed of UN and African Union troops, with a command and control structure, increased troops levels and stronger logistical support (Citizens for Global Solutions, 2007).

It seems that the principle of the responsibility to protect is applicable to the conflict in Darfur, because the population is suffering serious harm and the government of Sudan is unwilling and unable to halt it. The responsibility to protect embraces three specific responsibilities. First, 'the responsibility to prevent': the responsibility to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk. Second, 'the responsibility to react': the responsibility to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention. Third, 'the responsibility to rebuild': the responsibility to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of harm the intervention was designed to halt or avert (ICISS, 2001a). The responsibility to react and the responsibility to rebuild are relevant to the crisis in Darfur. The conflict has already started and cannot be prevented anymore, but it can be stopped, and rebuilding might be necessary since the conflict has caused much destruction in Darfur. This study will focus on the responsibility to react; if it is justified in Darfur then the responsibility to rebuild is also justified, because it is less coercive in nature.

To justify a responsibility to react with military intervention to a situation of compelling human need, certain conditions must be fulfilled and certain principles must be followed. The ICISS report (2001a) has formulated principles for military intervention: the just cause threshold, precautionary principles (right intention, last resort, proportional means and reasonable prospects), right authority and operational principles. The next section will show whether the Darfur case satisfies these criteria and will use these criteria to explain why the responsibility to protect is theoretically applicable to Darfur.

Firstly, there is a *just cause* for an intervention in Darfur. Because military intervention is an exceptional and extraordinary measure, there must be serious and irreparable harm occurring to human being, or imminently likely to occur. This is defined in the ICISS report as either *a large scale loss of life*, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or *large scale "ethnic cleansing"*, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape. The just cause criterion is further specified in the World Summit Outcome 2005, in paragraphs 138 and 139, as genocide, war crimes, ethnic cleansing and crimes against humanity (A/RES/60/1, 24 October 2005).

There must be credible evidence that one or more of these situations are occurring. According to the ICISS (2001a) ideally there would be a report as to the gravity of the situation, and the inability or unwillingness of the state in question to manage it satisfactory, from a universally respected and impartial non-government source. Such sources included reports by or for UN organs and agencies, assessments made by credible international organizations and non-governmental organizations and on occasion the media. An independent special fact-finding mission could be sent by the Security Council or the Secretary General for the purpose of obtaining accurate information and a fair assessment of a particular situation.

Evidence from credible sources showed that a large scale loss of live and crimes against humanity took place in Darfur. This evidence is found in an early report of the UN Commission of Human Rights (2004), reports of Human Rights Watch (2004; 2005) and Amnesty International (2004; 2005) and an independent special fact-finding mission of the UN (International Commission of Inquiry to Darfur, 2005). This mission found evidence that severe crimes against humanity were committed, including systematic killings of civilians, sexual violence, forced displacements, torture and enforced disappearances. There was also evidence for war crimes by government's troops, Janjaweed militias and rebel movements SLA/M and JEM.

The second criterion of the responsibility to protect is *right intention*. The primary purpose of the intervention must be to halt or avert human suffering. One way of helping to ensure that the right intention criterion is satisfied is to have military intervention always take place on a collective or multilateral rather than single-country basis. Another is to look to whether, and to what extent, the intervention is actually supported by the people for whose benefit the intervention is intended. Another is to look to whether, and to what extent, the opinion of other countries in the region has been taken into account and is supportive. Complete disinterestedness, the absence of any narrow self-interest at all – may be an ideal, but is not likely always to be a reality: mixed motives, in international relations as everywhere else, are a fact of life.

The unit of research is the United Nations Security Council. If there would be an intervention deployed in Darfur, this body seems the most appropriate, because military intervention on a collective or multilateral scale has more chance to satisfy the right intention criterion. The majority of member states of the Security Council and the five permanent members France, United States, China, Russia and the United Kingdom should agree to the intervention. The right intention criterion is satisfied when the Security Council would

intervene in Darfur, because the UN is seen as a credible international organization that is not known for interventions that take place because of self-interest of the countries.

The third criterion of the responsibility to protect is *last resort*. Every diplomatic and non-military avenue for the prevention or peaceful resolution of the humanitarian crisis must have been explored. The responsibility to react – with military coercion – can only be justified when the responsibility to prevent has been fully discharged. This does not necessarily mean that every such option must literally have been tried and failed; often there will simply not be the time for that process to work itself out. But it does mean that there must be reasonable ground for believing that, in all the circumstances, if the measure that had been attempted it would not have succeeded. If the crisis in question involves a conflict between a state party and an insurgent minority, the parties must be induced to negotiate. Ceasefires, followed, if necessary, by the deployment of international peacekeepers and observers are always a better option, if possible, than coercive military responses.

In the case of Darfur it was clear that to stop the large scale systematic killings of civilians, speedy and decisive action was necessary. Diplomatic pressure in Darfur was not sufficient, the Sudanese government resisted cooperating with the Security Council and the ceasefire was violated by all parties. Instead of authorizing AMIS in 2004, the Security Council could have decided that a UN military intervention was the only option left to halt the massive violence in Darfur. One can reasonably argue that a small number AMIS observers were not enough to stop mass killing of thousands civilians, pillages, rape and the destruction of villages.

The fourth threshold criterion that must be satisfied to implement the responsibility to protect, is *proportional means*. The scale, durality and intensity of the planned military intervention should be the minimum necessary to secure the humanitarian objective in question. All the rules of international law should be strictly observed in these situations.

The history of United Nations peace operations shows that the mandates of these operations are in accordance with general principles of proportionality (Bialke, 2001). Furthermore, states could always make available a minimum of troops necessary to fulfill the tasks of the operation. A recent calculation shows that the total active military troop strength in the world was more than 20 million, of which only 1,5 percent was engaged in peace operations (Voorhoeve, 2007: 132-4). Therefore, theoretically the resources necessary for a successful intervention in Darfur are available to the UN. Furthermore, the Geneva conventions and international humanitarian law lays at the heart of UN peace operations and it is expected that in a Darfur operation these will also be strictly observed.

The fifth criterion is *reasonable prospects*. Military action can only be justified if it stands a reasonable chance of success, that is, halting or averting the atrocities or suffering that triggered the intervention in the first place. Military intervention is not justified if actual protection cannot be achieved, or if the consequences of embarking upon the intervention are likely to be worse than if there is no action at all.

Darfur is a large region of Sudan; it is the same size of France and has 6 million inhabitants. One can argue that there will never be enough peacekeepers to provide safety to the whole population. However, the UN has authorized many peace operations, and most of them were at least successful in keeping the fighting parties apart and preventing violent conflict erupt again. Peace operations usually bring a minimum of stability to a conflict zone. Troops bring safety by patrolling crucial places and by defending civilians against violent attacks. A peace operation will not save the lives of every civilian, but a strong force will definitely improve the situation in Darfur. Without international action the outcome will be worse.

The sixth criterion of the responsibility to protect is *right authority*. According to the ICISS (2001a) there is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes. The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council more effective. The Security Council is the most appropriate body to assume international responsibility to protect the population of Darfur.

Finally, a number of *operational principles* have to be satisfied that include clear objectives, a common military approach among partners, acceptance of limitations, suitable rules of engagement, acceptance that force protection cannot become the primary objective and maximum coordination with humanitarian organizations.[5] Theoretically, an UN military intervention in Darfur does follow these principles, because they are reflected in the Brahimi report (2000). This report was the result of an examination of UN peace operations by a panel of international experts led by Lakhdar Brahimi, the long-time advisor of former Secretary-General Kofi Annan. It offered advice about minimum requirements for a successful UN peacekeeping mission (UN, 2008). In general, the United Nations has demonstrated clear progress in implementing a majority of reforms recommended by the Brahimi report (Durch *et al,* 2003).

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[5] These are only a small number of the operational principles of the responsibility to protect (ICISS, 2001). A complete overview of operational principles is included in the appendix of this thesis.

Above section showed that the implementation of the responsibility to protect in Darfur with coercive action, including a military intervention, is theoretically possible. All criteria of the responsibility to protect were satisfied: the just cause threshold, precautionary principles (right intention, last resort, proportional means and reasonable prospects), right authority, and the operational principles. Therefore Darfur serves as a unique and critical test case for the responsibility to protect.

This study will analyze the response of the United Nations to the conflict in Darfur. It will show to what extent UN actions towards Darfur reflected the responsibility to protect and how these actions can be interpreted. Furthermore, this study will show the effect of the Darfur case on the responsibility to protect.

However, the responsibility to protect is not a principle that suddenly emerged. It is influenced by the norm of 'sovereignty as responsibility', that emerged in the 1990s. According to this norm, sovereignty is not absolute; a state cannot do anything that it wants to its citizens. When national governments cannot fulfill certain basic responsibilities, the international community will assume this responsibility and might act against the will of the government in question. In extreme situations in which civilians are threatened by large-scale violence such as genocide, the international community is allowed to take measures to protect civilians if their state government fails to halt this violence (Deng, 1993; Hoffman, 1995; Weiss, 2000). These kind of extreme situations may trigger a response with measures that were not allowed by the norm of Westphalian sovereignty: intervention in the form of sanctions, international prosecution and military intervention (Bull, 1977; ICISS, 2001ab).

Sovereignty as responsibility and the responsibility to protect are challenged by the norm of Westphalian sovereignty. Westphalian sovereignty has been the fundamental principle of international order since the Treaties of Westphalia (1648). According to the norm of Westphalian sovereignty a state has supremacy over the other authorities within a territory and population, and is independent of foreign authorities. This independency is protected by the norm of non-intervention that does not allow states to intervene in the domestic affairs of other states (Bull, 1977). Westphalian sovereignty lies at the heart of international law; it is included the Charter of the United Nations and is reaffirmed by other treaties and the International Court of Justice in the last century.[6] According to this norm a

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[6] A recent international treaty that reaffirms 'sovereignty, territorial integrity and the independence of its member states' is the constitutive act of the African Union (2000). In 1949, the International Court of Justice (ICJ) observed that 'between independent states, respect for territorial sovereignty is an essential foundation of international relations' (ICJ Reports, 1949: 35). In 1986, the ICJ referred to the 'fundamental principle of state sovereignty on which the whole of international law rests' (ICJ Reports, 1986: 263) cited in ICISS (2001b).

Security Council intervention in Darfur is not allowed; it is considered a violation of Westphalian sovereignty and a violation of international law.

The research question of this study is 'To what extent shows the response of the UN Security Council to the conflict in Darfur a shift from the norm of Westphalian sovereignty towards the norm of 'sovereignty as responsibility'? Three periods are analyzed: the initial reaction of the Security Council to the conflict in Darfur in 2004 (chapter 4), the actions of the Security Council after the Darfur Peace Agreement of May 2006 (chapter 5), and the establishment of the hybrid UN-AU peacekeeping mission in Darfur (UNAMID) authorized in July 2007 (chapter 6). The study will also investigate whether UNAMID has characteristics of traditional peacekeeping operations (related to Westphalian sovereignty) or characteristics of post-Westphalian peace operations (related to sovereignty as responsibility and the responsibility to protect).

This study uses constructivism as its theoretical background. The focus is on norms in international society: the norm of Westphalian sovereignty and the norm of sovereignty as responsibility. This study assumes that ideas about sovereignty have influenced state interests and behavior in discussions in the United Nations Security Council resulting in corresponding statements and resolutions. This study assumes that norms are not static and change over time.

These assumptions are grounded in constructivist theory, which focuses on the ideas and beliefs that inform the actors on the international scene as well as the shared understandings between them (Jackson and Sorensen, 2006). Constructivism is able to explain states' decisions to employ military interventions for humanitarian reasons, because these decisions are influenced by norms and ideas. The other two important theories of international relations – neo-realism and neo-liberalism – cannot explain these interventions for humanitarian reasons. Neo-realism and neo-liberalism assume that the international system is composed of self-regarding, interest-maximizing states (Sanders, 1998). According to neo-realism, the most important motive underlying external policy is always the attainment of national security (Sanders, 1998), or in other words 'power politics' (Nye, 1988). According to neo-liberalism, the fundamental goal of the state is to maximize the absolute gains that it makes (Sanders, 1998). However, military interventions for humanitarian reasons do not have a goal that is related to power or to economic gain. These interventions are authorized because of altruistic humanitarian reasons, not because of self-interests of states (Finnemore, 1996b).

Finnemore (1996a) shows the manner in which norms influence state behavior. She argues that state behavior is defined by identity and interest. Identity and interest are defined by international forces; the norms of behavior embedded in international society. The norms

of international society are transmitted to states through international organizations. They shape national politics by 'teaching' states what their interests should be (Finnemore, 1996a). Moreover she argues that norms change over time and that some norms increase in importance while other norms decrease in importance (Finnemore, 1996b).

The norm of Westphalian sovereignty is under attack, as former UN Secretary-General Kofi Annan mentioned in his famous speech 'Two Concepts of Sovereignty' (1999: 49): "State sovereignty, in its most basic sense, is being redefined". Annan attacks Westphalian sovereignty and the non-intervention principle by stating that "When we read the charter today, we are more than ever conscious that its aim is to protect individual human beings, not to protect those who abuse them" (Annan, 1999: 49). Attributes of state sovereignty are not being viewed as part of a predetermined superstructure but as something which is subject to change (Weiss, 2000).

The present study is taking the constructivist assumptions of Finnemore as a starting point: norms matter in international politics; norms can change over time. The aim of this study is to investigate whether a norm of 'sovereignty as responsibility' has emerged in international politics and to what extent the norm of 'Westphalian sovereignty' has become of less importance. These norms can explain the actions or inactions taken by member states of the UN Security Council towards the conflict in Darfur. The study will show which norm of sovereignty is more applicable to the reactions of the international community towards the conflict in Darfur, by analyzing debates of the United Nations Security Council about Darfur between 2003 and 2007. This will be done by document analysis, complemented by secondary material.

A single case study is justified because Darfur represents both a critical case and a unique case. The conflict in Darfur represents the critical case in testing the concept of the responsibility to protect as formulated by ICISS (2001a) and adopted by the UN World Summit 2005. The basic principles of the responsibility to protect are applicable to the conflict in Darfur, as shown by the previous section of this introduction. The case of Darfur can confirm, challenge, or extend this concept and can be used to determine whether the propositions of this concept are correct or whether some alternative explanations might be more relevant (such as the adherence to Westphalian sovereignty). Darfur represents also a unique case. It is the first and only case since the adoption of the responsibility to protect which meets all conditions. The key difference with other conflicts in which the UN recently has established a peace operation is that the government of Sudan is a party in this conflict and has been opposing international involvement since the beginning. The question of

sovereignty has never been so compelling. This case is so rare that it is well worth documenting and analyzing. Moreover, if the norm of sovereignty as responsibility is not supported by the international community in this very clear case of mass killing in Darfur, then it is expected that in other cases where the atrocities are less severe, this norm is also not supported.

The unit of analysis of this study is the Security Council of the United Nations. The United Nations is the only international organization of which all countries in the world are member. This organization is responsible for international peace and security and is therefore of relevance to the situation in Darfur. According to the UN Charter, the Security Council has the prime responsibility for international peace and security, and has authorized international peacekeeping operations. The General Assembly and other organs of the UN are only indirectly relevant to peacekeeping decision making. Military operations done by other international organizations like the North Atlantic Treaty Organization (NATO) without the authorization of the Security Council are controversial and are suffering problems of legitimacy. Therefore, I will only study the response of the UN Security Council. Within this unit of analysis attention is also given to subunits, these are the member states. Most important are the states that are permanent member of the Security Council: China, France, Russian Federation, the United Kingdom and the United States. The statements of non-permanent member states are also analyzed because they also influence debates and voting. These are elected for two years; between 2003 and 2007, 28 different states were non-permanents members of the Security Council. Although these states are individually studied, at the final part of the case study the attention will return to the larger unit of analysis: the Security Council. Because of the involvement of several subunits of analysis, the design is called an embedded case study design (Yin, 2003: 42-43).

This study will focus only on the conflict in the Darfur region of Sudan, and not on the civil war between the North and the South that took place between 1955-1972 and 1983-2005. Although both wars are partly caused by the historical marginalization of the peripheries by the government in Khartoum, the choice to focus only on Darfur can be justified by the following arguments.

The wars occurred on different places. The conflict in Darfur is taking place in the Western Darfur region of Sudan. The North-South war took place in the Southern region of Sudan. Second, the wars happened in different periods: The North-South war took place between 1955-1972 and erupted again between 1983-2005, whereas the war in Darfur has started in 2003. Furthermore, the wars are at different stages: the war in Darfur is still raging,

but the war in the South has officially ended by a peace agreement in 2005. This agreement been relatively successful and has been accompanied by a UN peacekeeping mission (UNMIS). Another argument is that the parties of the conflicts are distinct. The Darfur rebel groups JEM, SLA/M, splintered factions and the Janjaweed were not ruled by the same leaders as the fighting parties in the South, and have different objectives.[7] The war in the South was a religious conflict between a Muslim North guided by Arab supremacy, and a non-Muslim South that was striving for more autonomy and a fairer distribution of resources. In Darfur, religion is not a factor because almost the whole population is Muslim. Different issues are at stake.

The most important argument not to focus on the North-South war is the nature of this particular research, which is only appropriate in analyzing the conflict in Darfur. The notion of sovereignty has not played a role in the international discussions about the North-South war of Sudan. Peace negotiations led to the Comprehensive Peace Agreement in January 2005, and all parties (including the government of Sudan) rapidly agreed to a UN mission that was established in March 2005. The question whether the international community should have intervened in this war without the consent of the government of Sudan was not relevant. In contrast, this question is highly relevant to the conflict in Darfur.

The following section will deal with the disadvantages and advantages of case study research, and assess the validity and reliability of the present research strategy. According to critics, the fundamental problems of descriptive and causal inference are generally more difficult to avoid with a small-n than a large-n research design. It is not possible to make generalizations from studying only one case (King *et al.,* 1994). However, generalizations can occur on a different level. Survey research relies on statistical generalization, whereas case studies rely on analytical generalization. In analytical generalization, the investigator is striving to generalize a particular set of results to some broader theory (Yin, 2003). A case study is the preferred research strategy because the conflict in Darfur is a contemporary phenomenon within some real-life context. The boundaries between phenomenon and context are not clearly evident in this case, and contextual conditions are deemed necessary to cover in this study. Furthermore, the relevant behaviours cannot be manipulated. This inquiry benefits from the prior development of theoretical propositions to guide data collection and analysis and relies on multiple sources of evidence. The case study's unique strength is its

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[7] Although some groups were linked at the start of the conflict in Darfur, as can be shown by the (marginal) deliverance of weapons from the Southern party Sudan People's Liberation Army (SPLA) to the SLA/M in 2003 (De Waal 2007a).

ability to deal with a full variety of evidence – documents, interviews, and observations – beyond what might be available in other studies (Yin, 2003).

The validity of this study is decreased by the uncertain value of the documents, but increased by adding secondary sources. The reliability is increased by creating a case study database. Minutes and resolutions offer the most reliable source of arguments the Security Council members used about a possible humanitarian intervention in Darfur. Most meetings of the Security Council are followed by resolutions in which the final conclusions and actions to be taken are included. In these meetings draft resolutions are circulated and member-state diplomats share arguments. These meetings lay at the heart of Security Council decision making and are therefore important in guiding their action. The statements of various countries can be analyzed to find out which role sovereignty plays in the decision-making process and underlying assumptions. These minutes and resolutions offer the most reliable source of arguments the Security Council members used about a possible humanitarian intervention in Darfur. Documents in the UN archive are credible and authentic. However, minutes can be unreliable sources of evidence, because they are a summary of what has been said and tend to underestimate the wider political debate in which policy is formulated. Furthermore, this method might create problems of bias because the personal interpretation of the concepts may be different than what the member-state originally meant. There is also a problem of validity: only formal debates are recorded, informal diplomatic tasks are not known. Real motives might be kept secret from the public. However, within the limitations of time, money and access, this documentary analysis is the most accurate way to answer the research question. To strengthen the validity I should discover as much as possible about the conditions under which the statements were produced and on that basis, make sense of the state's situation and intentions. The motives of states are genuine when they are repeated in other sources. Secondary sources are important to reconstruct the process, but also to support or criticize the evidence found in the primary sources (data triangulation).

The operations of the study can be repeated with the same results, with the help of a case study database, which contains a formal assembly of evidence distinct from the final case study report. It will include case study notes (handwritten, typed in computer files), all documents (in an annoted bibliography), tabular materials (surveys, observational counts or archival data, eg. voting records) and narratives (open ended answers to the questions of the case study). To increase reliability, a chain of evidence will be created, with explicit links between the questions asked, the data collected and the conclusions drawn. Steps should be able to trace in either direction.

Documents are the main source of data. Primary documents that were used are: verbatim minutes of meetings of the UN Security Council, resolutions of the UN Security Council, reports of the UN Secretary-General, reports of the UN Special Representative in Sudan, and voting records of the UN Security Council. The most attention was given to verbatim minutes, resolutions and voting records because these most clearly articulated the opinions of member states. Secondary documents will occasionally be used in the analysis to improve validity. These documents include books and articles in scientific journals about the debates, actions, and motives of the UN Security Council related to the situation in Darfur.

The UN Security Council discussed the situation in Darfur many times between 2003 and 2007. Arguments that the different member states have used in these discussions about intervention in Darfur are influenced by Westphalian sovereignty or sovereignty as responsibility, or are direct manifestations of these concepts. In the data analysis I tried to find patterns in the evidence, and linked arguments to the theoretical concepts.

Next chapter will elaborate on the theoretical concepts of this study: Westphalian sovereignty and sovereignty as responsibility; it will clarify these concepts and list indicators of these concepts, which are used in the analysis of the Security Council discussions and resolutions about Darfur. The analysis is divided in three periods: the initial reaction of the Security Council to the conflict in Darfur in 2004 (chapter 3), the actions of the Security Council after the Darfur Peace Agreement of May 2006 (chapter 4), and the hybrid UN-AU peacekeeping mission in Darfur (UNAMID) authorized in July 2007 (chapter 5). Chapter 6 will provide an overview of the results of this analysis and will answer the research question. Furthermore, in this chapter recommendations are formulated to improve the situation in Darfur and to strengthen the responsibility to protect.

2. Sovereignty

This chapter will elaborate on the major concepts of this study: on the one hand Westphalian sovereignty and traditional peacekeeping missions; on the other hand sovereignty as responsibility, the responsibility to protect and post-Westphalian peace operations. More information will be given about the meaning of these concepts, their history, and the extent of institutionalization. Furthermore, indicators of these concepts are listed, which will be used in the analysis of the Security Council discussions and resolutions about Darfur in the following chapters.

2.1 Westphalian sovereignty

Westphalian sovereignty has been the fundamental principle of international order since the Treaties of Westphalia in 1648. Westphalian sovereignty lies at the heart of international law; it is included the Charter of the United Nations and is reaffirmed by other international treaties such as the Constitutive Act of the African Union (2000) and reaffirmed by the International Court of Justice (1949; 1986).

The norm of Westphalian sovereignty means that a state has supremacy over the other authorities within a territory and population (internal sovereignty), and is independent of foreign authorities (external sovereignty). This independency is protected by the norm of non-intervention that does not allow states to intervene in the domestic affairs of other states (Bull, 1977). This means in practice that governments have the power to make and implement laws within their territories, and are free to choose their political, economic, social and cultural systems and to formulate foreign policy (ICISS, 2001b). Important authors about sovereignty have narrowed down Westphalian sovereignty to the external component, and find the rule of non-intervention the key element of Westphalian statehood. Krasner (1999: 3-4) for example, defines Westphalian sovereignty as 'political organization based on the exclusion of external actors from authority structures within a given territory'. Governments can do anything they want on their territory without being influenced or compelled by external actors. External actors include other states, international financial institutions, international organizations and supranational courts. These actors violate Westphalian sovereignty by contracts, conventions, coercion and imposition. Contracts and conventions are voluntary and therefore not a problematic violation of the non-intervention principle (Krasner, 1999).

Intervention is defined as "action taken against a state or its leaders without its or their consent" by the International Commission on State Sovereignty and Intervention (2001a).

Three forms of interventions are distinguished by this commission: sanctions, military actions and criminal prosecutions. Sanctions inhibit the capacity of states to interact with the outside world, for example by an imposing an arms embargo, the ending of military cooperation, freeze foreign assets and travel bans. These measures are an example of coercion; they leave states worse off, although governments have some bargaining leverage. The cost of sanctions can be avoided by altering domestic politics. Military intervention directly interferes with the capacity of a domestic authority to operate on its own territory. It is a form of imposition; the target rulers cannot effectively resist and have no choice (ICISS, 2001ab; Krasner, 1999).

European states established the foundations of sovereignty in the Peace of Westphalia, codified in the Treaties of Osnabrück and Munster in 1648. The Peace of Westphalia ended the Thirty Years War (1618-1648) which involved most of the major European powers. Motives for this war were mainly religious; provinces pitted against each other seeking to impose their religious beliefs on the states that professed differently. The treaties proclaimed that each king would have the authority to select the religion of his state. Furthermore, each ruler was not only able to determine the religion of their choosing but could also make all other decisions in behalf of its people (Fosson, 2007). Westphalia created a system of independent and equal unites, which can be seen as the beginning of modern statehood (Aalberts, 2006). In the Montevideo Convention on the Rights and Duties of States (1933) three requirements for sovereignty were codified: a permanent population, a defined territory and a functioning government.

The United Nations reflects the notion of Westphalian sovereignty in Article 2 (1) of the Charter (1945). It states that the organization is based on the principle of the sovereign equality of all its members. The use of force against a country's sovereignty is addressed in Article 2 (4): "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations". The only exceptions are the use of force in self-defence and enforcement action under Chapter VII of the Charter. The principle of non-intervention can be found in Article 2(7): "Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially with the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter".

Traditional United Nations peacekeeping operations are influenced by the norm of Westphalian sovereignty. The concept of peacekeeping is not be found in the Charter but has been invented by the UN Security Council as an ad-hoc response to international political

violence which the Charter failed to prevent. Peacekeeping has been indirectly legitimated by the Charter and by the practice of the Security Council. In the literature, divisions are frequently made between different types of peace operations. The majority of the missions that took place between 1948 and 1989 are classified as traditional peacekeeping operations[8] (Bellamy *et al.,*2004). Traditional peacekeeping takes place in the period between a ceasefire and a political settlement and is designed to cultivate the degree of confidence between belligerents necessary to establish a process of political dialogue (Gareis and Varwick, 2005). Examples are UNFICYP[9] in Cyprus (1964) and UNFIL[10] in Lebanon (1978). Traditional peacekeeping is characterized by consent, impartiality, the minimum use of force, and the direct responsibility of the United Nations (Bellamy *et al,* 2004; Gareis and Varwick, 2005). Supporters of Westphalian sovereignty argue that the role of peace operations in international politics should be limited to ensuring the peaceful settlement of disputes and orderly relations between states. Political violence and human suffering within states should not concern peacekeepers, so long as states subscribe to the Westphalian norms of sovereign autonomy and non-intervention. The UN should only act when those sovereigns give their consent and even then should not interfere with matters that are deemed to be essentially domestic (Bellamy *et al.*, 2004).

2.2 Indicators of Westphalian sovereignty

States in the UN Security Council that are guided by the Westphalian sovereignty might act in the following manners:

In discussions in the Security Council:

a) States will directly refer to the sovereignty and territorial integrity of Sudan. In discussions about sanctions, international prosecutions or military intervention, they will refer to sovereignty and find this notion important in this context.

b) States will make it clear it is respecting Sudan's sovereignty and will state not to impinge on it.

c) States will refer to the United Nations Charter. The principle of Westphalian sovereignty is to be found in the Charter.

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[8] Instead of traditional peacekeeping, some authors use the term 'classical peacekeeping' (Gareis and Varwick, 2005). This study will use the term 'traditional peacekeeping' from now on.
[9] United Nations Force in Cyprus.
[10] United Nations Force in Lebanon.

d) States will refer to international law. The most important element of international law is the United Nations Charter. See c).

e) States will argue against sanctions. Sanctions are a form of intervention. Intervention is not allowed according to the non-intervention principle.

f) States will argue that the consent of the government of Sudan for the deployment of a peacekeeping mission is needed.

g) States will argue that Sudan is responsible for what happens in Darfur. The Security Council should be very reluctant to take action. Responsibility to protect its citizens cannot be transferred to the international community, but will always be part of the sovereignty of Sudan.

In voting patterns:

a) States will abstain or vote against resolutions that impose sanctions, and will therefore use Westphalian arguments as specified in the section above.

b) States will abstain or vote against resolutions that impose peacekeeping missions without the consent of the host state, and will therefore use Westphalian arguments as specified in the section above.

In resolutions and mandates of peacekeeping operations:

a) Peacekeeping operations take place after a cease fire or peace agreement.

b) Peacekeeping operations are characterized by impartiality / neutrality.

c) Peacekeeping operations are characterized by the minimum use of force.

d) The United Nations is directly responsible for peacekeeping operations.

e) The consent of the host-state and other parties is needed for peacekeeping operations.

f) Resolutions refer to the sovereignty and territorial integrity of the government.

2.3 The responsibility to protect and sovereignty as responsibility

The Responsibility to Protect report (2001a) was written by The International Commission on Intervention and State Sovereignty (ICISS) as a reaction to the call of the Secretary General of the UN Kofi Annan in 1999 and 2000 for new standards about intervention. Is there is a right of intervention, how and when it should be exercised, and under whose authority? In particularly, he asked this question: if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica - to gross and systematic violations of human rights that affect every precept of our common humanity

(Millennium Report, 2000)? The government of Canada responded and created the ICISS, which worked together with a range of international experts on military intervention and sovereignty. The core principle of the Responsibility to Protect reflects the idea that in certain extreme circumstances, the protection of civilians is more important than the principle of non-intervention: "State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect" (ICISS, 2001a: XI). The basic principle of the responsibility to protect has been included in some important documents about reform of the United Nations[11], was adopted at the United Nations World Summit 2005 and was confirmed by the Security Council in resolution 1674 (2006) about the protection of civilians in armed conflict.

The responsibility to protect principle has been directly influenced by modern interpretations of sovereignty that have challenged Westphalian sovereignty. Westphalian sovereignty centers on the rights of states. It allows states to have full authority in their domestic affairs, and forbids states to intervene in the domestic affairs of other states. A challenge comes from authors who see people instead of states as the source of legitimacy and authority. The notion of 'sovereignty as responsibility' is most explicitly formulated by Francis M. Deng, the Representative of the UN Secretary-General on Internally Displaced Persons (Deng, 1993). This doctrine stipulates that when states are unable to provide life-supporting protection and assistance for their citizens, they are expected to request and accept outside offers of aid. Should they refuse or deliberately obstruct access to their displaced or other affected populations and thereby put large numbers at risk, there is an international responsibility to respond. Sovereignty then means accountability to two separate constituencies: internally, to one's own population; and internationally, to the community of responsible states and in the form of compliance with human rights and humanitarian agreements. Proponents of this view argue that sovereignty is not absolute, but contingent. When a government massively abuses the fundamental rights of its citizens, its sovereignty is temporarily suspended (ICISS, 2001b). States are not free to do whatever they want to its citizens. If the state lacks the will or the capacity to stop injustice against its own population

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[11] The responsibility to protect was part of the recommendations of the High-Level Panel on Threats, Challenges and Change report 'A More Secure World: Our Shared Responsibility' (2004) and was included in Secretary-General Kofi Annan's 'In Larger Freedom: Towards Development, Security and Human Rights for All' (2005).

then the international community is responsible and may intervene in domestic affairs (Hoffmann, 1995; Weiss, 2000).

The norm of sovereignty as responsibility has challenged traditional peacekeeping operations. New kinds of peace operations were established in the 1990s: post-Westphalian peace operations. Post-Westphalian peace operations are not limited to maintaining order between states, but include maintaining security within states. This is to be achieved by creating liberal democratic societies and polities within states that have experienced violent conflict. This idea is associated with liberal interventionism. In cases of genocide, ethnic cleansing or state collapse, supporters of post-Westphalian peacekeeping advocate limiting sovereignty and intervention of the international community (Bellamy *et al*, 2004).

After the end of the Cold War in 1989 international circumstances changed and led to an increase of intra-state conflicts. Consent, neutrality, and self-defence were no longer appropriate as guiding principles to deal with this type of conflicts. Peacekeeping mandates were expanded beyond traditional peacekeeping, to include a wide variety of military, civilian and political tasks. This change of mandates led to new categories of peace operations. United Nations Secretary-General Boutros Boutros-Ghali presented his 'Agenda for Peace' in 1992. It identified four types of peace operations: preventative diplomacy, peacemaking (including peace enforcement), peacekeeping and post-conflict peace building.

Post-Westphalian interpretations of sovereignty are also related to humanitarian intervention; a more controversial form of military intervention. Humanitarian intervention is a symptom of the increased importance of human rights in international politics. There is disagreement in the literature about the definition of humanitarian intervention.

Some authors understand humanitarian intervention as military intervention for humanitarian reasons (Wheeler and Bellamy, 2005). Interventions of the US, UK and France in Iraq (1991), the US in Somalia (1992), France in Rwanda (1994), and NATO in Kosovo (1999) were all legitimated in humanitarian terms by the intervening states. The intervention in Iraq (1991) was aimed at creating protect 'safe havens' for the Kurdish people. The purpose of the intervention in Somalia (1992) was to establish a secure environment for humanitarian relief operations, after the collapse of civil order. Although in both cases the decisions of policy makers were influenced by public opinion and media attention, no vital national interests were at stake. The French intervention in Rwanda (1994) was far too late to halt the genocide. France claimed to have a humanitarian motive, but evidence suggests that their decision was based on national self-interest in restoring French credibility in Africa. The UN Security Council authorized the interventions in Iraq, Somalia and Rwanda, by calling the

situations a threat to international peace and security and/or passing the resolutions under Chapter VII. The most controversial example of humanitarian intervention was NATO's operation in Kosovo (1999). NATO intervened without explicit authorization of the UN Security Council, but it legitimated its action by considering the situation in Kosovo a supreme humanitarian emergency (Wheeler and Bellamy, 2005).

To other authors this intervention in Kosovo is the most interesting case because it includes the lack of consent of the receiving state and the absence of a mandate of the UN Security Council. To them the definition of humanitarian intervention must include these two characteristics. Holzgrefe and Keohane (2003) use such a definition in their volume about humanitarian intervention: '[...] the threat or use of force across state borders by a state (or group of states) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied' (18).

This type of humanitarian intervention is accompanied by legal, political and moral debates. Restrictionists argue that humanitarian intervention cannot be justified under international law (Bernhardt, 1995; Beyers and Chesterman, 2003), while counter-restrictionists consider it a legal right (Nardin, 2002). Solidarists consider humanitarian intervention a moral duty (Charvet, 1997; Rogers, 2003-2004; Tesón, 2003). Realists argue that states are not allowed to risk the lives of their armed forces on humanitarian crusades (Parekh, 1997), and that there will be selectivity of response (Wheeler and Bellamy, 2005). Furthermore, humanitarian intervention should not be permitted because the humanitarian reason will be abused by powerful states which will intervene for other (for example economic) reasons (Ayoob, 2001; Farer, 2003). Constructivists however believe in the strength of norms and ideas (Finnemore, 1996a; Glanville, 2006; Weiss, 2000). Pluralists argue that in the absence of a consensus on what principles should govern a right of individual or collective humanitarian intervention; such a right would undermine international order (Wheeler and Bellamy, 2005). Political philosophers use the criteria of the 'just war' doctrine to judge whether a particular humanitarian intervention can be justified (Fixdal and Smith, 1998).

Most important for this research however, are debates about humanitarian intervention that include the contradiction between the protection of human rights and the upholding of Westphalian sovereignty (Chopra and Weiss, 1992). Westphalian sovereignty forbids intervening in the domestic affairs of states. According to the idea of sovereignty as responsibility in some instances the international community may intervene in domestic

affairs when a state is not able or willing to stop massive atrocities targeted at its population. Of all forms of peacekeeping missions, humanitarian intervention is most directly attacking Westphalian sovereignty and is connected to sovereignty as responsibility.

2.4 Indicators of sovereignty as responsibility

States in the Security Council that are guided by the notion of sovereignty as responsibility might act in the following manners:

In discussions in the Security Council:

a) States will directly refer to the Responsibility to Protect document of the ICISS in 2001 or its basic principles.

b) States will refer to the 2005 United Nations World Summit Outcome. Paragraphs 138 and 139 of this outcome include the basic principles of the responsibility to protect.

c) States will refer to international humanitarian law and international human rights law. The responsibility to protect is inspired by the protection of human rights. In the compelling human situations where the responsibility to protect is meant for, there are large violations of international humanitarian law and international human rights law.

d) States will argue for sanctions in the case of compelling human situations, when the state is not able or willing to protect its population.

e) States will refer those responsible for compelling human situations to an international prosecution body, such as the International Criminal Court in The Hague.

f) States will support an international peacekeeping mission, without the consent of host-government. This is justified in compelling human situations, where the state is not able or willing to protect its population.

g) States will argue that the Security Council has a responsibility to take action in compelling human situation, when the government is not willing or not able to protect its population.

In voting patterns:

a) States will vote in favour of resolutions that impose sanctions, and will therefore use responsibility to protect arguments.

b) States will vote in favour of resolutions that impose peacekeeping missions without the consent of the host-state, and will therefore use responsibility to protect arguments.

In resolutions and mandates of peacekeeping operations

a) Resolutions will refer to the responsibility to protect.

b) Resolutions will refer to the 2005 World Summit Outcome.

c) Resolutions will impose sanctions or threat with sanctions.

d) Resolutions will refer situations to the International Criminal Court.

e) Resolutions will refer to international humanitarian law or international human rights law.

f) Peace operations include a Chapter VII mandate to use force.

g) Peace operations are authorized without the consent of the host-state.

h) Peace operations have civilian protection as the major goal.

3. The initial reaction of the Security Council to Darfur

On 25 May 2004 the crisis in Darfur came for the first time on the agenda of the United Nations Security Council. The Security Council President made a statement on behalf of the Council in which it expressed its grave concern over the deteriorating humanitarian and human right situation in the Darfur region of Sudan. It emphasized the urgent need for all parties to observe the ceasefire agreement of 8 April 2004 and expressed support for the African Union's effort to establish a ceasefire commission. It called on the government of Sudan to cooperate fully with the humanitarian aid efforts and called on the international community to respond rapidly to assist the imperilled populations (S/PV.4978, 25 May 2004). No debate in the Security Council took place and no resolution was endorsed. On 30 July 2004 the first debate in the Security Council took place and resolution 1556 was adopted. In the paragraphs below this resolution and corresponding discussion were analyzed. It was investigated whether states were acting according to the norm of Westphalian sovereignty or according to sovereignty as responsibility.

3.1 Analysis resolution 1556 (2004)

Resolution 1556 endorses the deployment of international monitors, including the protection force envisioned by the African Union, to the Darfur region of Sudan under the leadership of the African Union.

In the first part of the resolution an indicator of Westphalian sovereignty can be observed. The resolution is "reaffirming its commitment to the sovereignty, unity, territorial integrity, and independence of Sudan" and is "recalling in this regard that the Government of Sudan bears the primary responsibility to respect human rights while maintaining law and order and protecting its population within its territory". This shows support for the norm of Westphalian sovereignty, because it does not mention that if Sudan is not able or willing respect human rights their will be an international responsibility, which would be expected if the responsibility to protect was supported.

On the other hand, the resolution does also impose coercive measures on Sudan – sanctions – which could be interpreted in the light of the responsibility to protect. The resolution claims that the situation in Sudan constitutes a threat to international peace and security and to stability in the region, and the second part of resolution 1556 is under Chapter VII of the Charter of the United Nations. This part of the resolution imposes sanctions and

threatens with further sanctions against the government of Sudan if they do not fulfil immediately all of the commitments it made in the 3 July 2004 Communiqué.

The resolution imposes an arms embargo. It decides that all states shall take the necessary measures to prevent the sale or supply, to all non-governmental entities and individuals, including the Janjaweed, operating in the states of North Darfur, South Darfur and West Darfur, by their nationals or from their territories or using their flag vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, whether or not originating in their territories. It also decides that all states shall take the necessary measures to prevent any provision to the non-governmental entities and individuals identified of technical training or assistance related to the provision, manufacture, maintenance or use of the items listed above

The resolution demands that the Government of Sudan fulfil its commitments to disarm the Janjaweed militias and apprehend and bring to justice Janjaweed leaders and their associates who have incited and carried out human rights and international humanitarian law violations and other atrocities, and further requests the Secretary-General to report in 30 days, and monthly thereafter, to the Council on the progress or lack thereof by the Government of Sudan on this matter and expresses its intention to consider further actions, including measures as provided for in Article 41 of the Charter of the United Nations on the Government of Sudan, in the event of non-compliance (S/RES/1556, 30 July 2004). The international community feels responsible to take action if the government of Sudan fails to protect its population. This international responsibility and the imposition of sanctions are indicators of sovereignty as responsibility.

3.2 Analysis discussion 30 July 2004

Only one country in the Security Council – the Philippines – refers in its statement to the argument of the responsibility to protect and finds this principle relevant to the situation in Darfur and the actions of the government of Sudan. It states that "sovereignty also entails the responsibility of a state to protect its people. If it is unable or unwilling to do so, the international community has the responsibility to help that state achieve such capacity and such will and, in extreme necessity, to assume such responsibility itself".

No other country in this debate is willing to go that far. Most countries argue that Sudan is responsible for protecting its citizens, but do not mention that in some cases this responsibility yields to an international responsibility. Some see this as an obligation of a

government in general, such as the United Kingdom that wants to "ensure that all governments fulfil that most basic of obligations – the duty to protect their own citizens". Most other states in the Security Council do not see the protection of civilians as a general obligation of a state, but mention it in the context of the commitments of Sudan to disarm the Janjaweed and actions which would help the population.

In this discussion in the Council it is made clear what will happen when Sudan does not or can not protect the citizens of Darfur against gross atrocities; sanctions will be imposed. However, no country suggested that the international community would have the responsibility to protect the citizens of Darfur. The supporters of the resolution mentioned in their statements that the responsibility is solely in the hands of the government of Sudan, and this government should solve the crisis, and will be pressured until it will. For example the United States states that "the responsibility of this disaster lies squarely with the government of Sudan". On the other hand, Angola, Benin and Algeria believe that they "as Africans, we believe that whenever and wherever there is a conflict in Africa, we – more than anyone else – have a special duty and a primary responsibility towards our sisters and brothers when they suffer and when their lives are at risk", the Security Council should support and complement the actions of the African Union.

China and Pakistan abstained from this resolution. China refers to Sudan's sovereignty and territorial integrity. It rejected to vote in favour of the resolution because its concerns were not taken seriously by the drafters and no appropriate adjustments were made. It could not agree to the coercive measures against the Sudanese government. Also Pakistan "did not believe that the threat or imposition of sanctions against the government of Sudan was advisable under this resolution" and "did not believe that the adoption of the entire resolution under Chapter VII was necessary". At the insistence of Pakistan, the text of the resolution includes the principle of preserving the territorial integrity of the Sudan. China and Pakistan are guided by concerns of Westphalian sovereignty. Although Brazil has voted in favour, it wanted to emphasize the responsibility of the government of Sudan, above all others, and expresses its concern about the fact that the whole operative part of the resolution is under Chapter VII while that was not needed (S/PV.5015, 30 July 2004).

To conclude, one country supports the principle of the responsibility to protect, most other countries assume that the primary responsibility is the in the hands of Sudan (and not with the international community) and some countries are directly supporting the principle of Westphalian sovereignty. No country makes the claim that sovereignty is not absolute and will be taken away by the international community when Sudan is not fulfilling its basic

obligation to protect its citizens, which would be expected if the norm of sovereignty as responsibility is supported. Countries showed in the Security Council that they would like to cooperate with Sudan instead of endorsing sanctions. Sanctions are only imposed when Sudan does not fulfil the commitments it has made.

3.3 Conclusion

There is a striking contrast between the discussion in the Security Council on 30 July 2004 and the resolution 1556 that has been adopted. The language of responsibility to protect is barely used in the discussion, countries want to cooperate with the government of Sudan and find that government responsible for the situation in Darfur. The discussion seems largely influenced by the norm of Westphalian sovereignty. On the other hand, resolution 1556 seems to be influenced by sovereignty as responsibility. The situation in Darfur is considered a threat against international peace and security and part of the resolution is under Chapter VII of the UN Charter. The resolution imposes an arms embargo and threatens with other sanctions if the government of Sudan does not comply with the resolution. The willingness to use coercive measures indicates the support of the notion of sovereignty as responsibility and violates Westphalian sovereignty. Coercive measures deemed necessary to improve the situation in Darfur are a sign of putting the responsibility to protect principle into practice. Resolution 1556 is one of the toughest resolutions that has been adopted by the Security Council in response to the crisis in Darfur.

4. The 2006 Darfur Peace Agreement and its consequences

On 5 May 2006 the Darfur Peace Agreement (DPA) had been signed. It was a good moment for an international peacekeeping mission to observe this ceasefire and support its implementation. It became clear that the African Union Mission (AMIS) lacked the capacity and mandate to do its work successfully. After the DPA violence in Darfur continued. AMIS was scheduled to withdraw from Sudan by the end of September 2006. The Peace and Security Council of the African Union had shown its support for a transition of AMIS to United Nations operation (PSC Communiqué 46). The Secretary-General was requested to submit recommendations on all relevant aspects of the mandate of the United Nations operation in Darfur (S/RES/1679, 16 May 2006). This report recommended "a large, agile and robust military force that entails 'high troop density to provide wide area coverage, high mobility to move forces rapidly in response to developing crisis; and robust military capability to deter and defeat spoilers'" (S/2006/591, 28 July 2006). Following the recommendations of the Secretary-General, resolution 1706 of 31 August 2006 mandated the expansion of UNMIS (the UN peacekeeping mission in Southern Sudan) to the territory of Darfur, no later than 31 December 2006. Acting under Chapter VII of the Charter of the United Nations, UNMIS was authorized to use all necessary means to protect civilians.

Firstly, this chapter will show to what extent the contents of resolution 1706 refer to Westphalian sovereignty and/or to the notion of sovereignty as responsibility (the Responsibility to Protect). Secondly, the corresponding discussions in the UN Security Council about the implementation of resolution 1706 in August and September 2006 will be analyzed.

4.1 Analysis resolution 1706 (2006)

Resolution 1706 of 31 August 2006 includes the recalling of previous resolutions about Darfur and mentions paragraphs 138 and 139 of the 2005 United Nations World Summit Outcome. These paragraphs contain the basic principles of the responsibility to protect.

At the same time, two paragraphs of the resolution are influenced by Westphalian sovereignty. Firstly, this resolution "is reaffirming its strong commitment to the sovereignty, unity, independence, and territorial integrity of the Sudan, which would be unaffected by transition to a United Nations operation in Darfur, and to the cause of peace, expressing its determination to work with the Government of National Unity, in full respect of its sovereignty, to assist in tackling the various problems confronting the Sudan and that a United

Nations operation in Darfur shall have, to the extent possible, a strong African participation and character".

Secondly, the Security Council determines in this resolution that the situation in the Sudan continues to constitute a threat to international peace and security, and decides that the mandate of UNMIS shall be expanded and that it shall deploy to Darfur "and therefore invites the consent of the Government of National Unity for this deployment".

The mandate of UNMIS in Darfur shall be to support the implementation of the Darfur Peace Agreement of 5 May 2006 and the N'Djamena Agreement (2004). It includes a large list of tasks. A part of the mandate is under Chapter VII of the Charter of the United Nations. UNMIS is authorized to use all necessary means, in the areas of deployment of its forces and as it deems within its capabilities, to protect United Nations personnel, facilities and equipment, to ensure the freedom of movement, to prevent disruption of the implementation of the Darfur Peace Agreement and to protect civilians under threat of physical violence. However, this is 'without prejudice to the responsibility of the Government of the Sudan'.

The Security Council also reiterates its intention to take strong and effective measures, such as an asset freeze or travel ban, against individual or group that violates or attempts to block the implementation of the Agreement or commits human rights violations (S/RES/1706, 31 August 2006).

The conclusion is that both the norm of Westphalian sovereignty and the norm of sovereignty as responsibility are reflected in this resolution. Two parts of resolution 1706 (2006) show support of the norm of sovereignty as responsibility. Firstly, the resolution refers to the paragraphs of the 2005 World Summit Outcome in which the principle of the responsibility to protect is mentioned. Secondly, it threatens to impose sanctions, such as an asset freeze or travel ban, against an individual or groups that violates or attempts to block the implementation of the Darfur Peace Agreement or commits human rights violations. However, other parts of the resolution show support of the norm of Westphalian sovereignty. The resolution reaffirms the Council's strong commitment to the sovereignty, unity, independence, and territorial integrity of the Sudan. It decides that the mandate of UNMIS shall be expanded to Darfur and invites the consent of Sudan for this deployment. Moreover, the mandate to protect civilians is without prejudice to responsibility of the Government of Sudan.

4.2 Analysis discussion 30 August 2006

At the meeting of the Security Council on 30 August 2006, 12 members voted in favor of resolution 1706, and three countries abstained: China, Qatar and Russia.

On one end of the scale is the principle of the responsibility to protect. Only one member state of the Security Council, Ghana, really shows it support for this principle in this meeting. Ghana stated that the Sudanese government was given an opportunity to cooperate, but "if the Sudanese government persists in conducting military operation in Darfur, that would be a clear breach of the commitments undertaken under both Darfur peace agreement and previous Security Council resolutions". Ghana was the only country that did not state that the consent of Sudan was needed for an intervention. Instead, waiting for it could increase the cost in human lives: "The situation in the Sudan merits some form of international engagement that is timely, meaningful, well-coordinated and effective. It is for those reasons that we have reservations about the inclusion in the draft text of explicit language that implies that the government of the Sudan can take all the time it wants before allowing the United Nations to deploy in Darfur, or even refuse to do so, regardless of the cost in human lives".

On the other end of the scale, there are countries that abstained from this resolution: China, Russia and Qatar. China deemed it unnecessary to put the draft resolution to the vote in a hurry, because they wanted the consent of the Sudanese government first. China "consistently urged the sponsors to clearly include 'with the consent of the government of national unity' in the text of the resolution, which is a fixed and standardized phase utilized by the council when deploying United Nations missions'". Russia and Qatar followed the same line of argumentation. Qatar mentioned that it has consistently upheld the provisions of the United Nations Charter and the tenets of international law, and shows its reluctance to adopt a resolution that will have a bearing on the sovereignty of the Sudan.

Most other states are between these opposites. These states acknowledge the urgency of the situation in Darfur, the responsibility of the international community to react on this, but they need the consent of the government of Sudan before the adopted resolution can be put into practice.

The position of the United Kingdom is especially striking. It directly refers to the World Summit Outcome 2005 and "notes the responsibility of each United Nations member state to protect its citizens and the international community's responsibility to assist in this if the state could not provide for such protection alone. The United Kingdom was at the forefront to secure this. We are very pleased that this is the first Security Council resolution mandating a United Nations peacekeeping operation to make an explicit reference to this

responsibility. It has always been, and it remains, the primary responsibility of the Government of the Sudan to ensure the security of its own citizens. Over the past few years, it manifestly has not done so". The UK was a drafter of this resolution and is proud that it refers to the World Summit Outcome, and included a clear Chapter VII mandate to use all necessary means to protect civilians.

Nevertheless, it drafted the resolution in such a way to make it as acceptable as possible to the Sudan: it does not include a reference to the International Criminal Court, the resolution is not under Chapter VII in its entirely. It is also stated in the resolution that the Council remains committed to the sovereignty and territorial integrity of the Sudan, which will be unaffected by transition to a United Nations operation.

It seems that the United Kingdom supports both notions of sovereignty: sovereignty as responsibility and Westphalian sovereignty. However, the words of the responsibility to protect are just words, in the end the sovereignty of Sudan is respected and the norm of non-intervention is still guiding its behavior, because without the consent of Sudan to this extended peacekeeping mission, the United Kingdom will not intervene.

Also Argentina supports both norms; it believes that "the Security Council cannot shirk its responsibility to protect, in particular, vulnerable groups, women and children, since they are defenceless". Nevertheless, the country also says that "there must be no infringement of the sovereignty territorial integrity of that country" (S/PV.5519, 30 August 2006).

To conclude, the discussion in the Security Council shows a division between China, Russia and Qatar, and the other member states. These three countries abstained from the resolution because they found it an infringement on the sovereignty of Sudan. Sudan had to give their consent first. Although many countries, such as Ghana, United Kingdom and Argentina mention the responsibility to protect, they also state that the consent of Sudan is necessary for an intervention.

After it became clear that consent of the government of Sudan was not forthcoming, the Security Council could have decided that urgent action was necessary to halt the grave situation in Darfur. They could have implemented resolution 1706 (2006) without the consent of Sudan and expand the peacekeeping mission UNMIS to Darfur. However, the Security Council did not want to intervene without the consent of Khartoum. Official statements of the members blame the government of Sudan for the lack of cooperation. However, not to intervene without the consent of the state is a choice that has been influenced by the Westphalian sovereignty and the principle of non-intervention. Although the international community took much preparations for an international force that was aimed to save the

population of Darfur, a choice was made in favor of Westphalian sovereignty. The lack of action in implementing this resolution shows that the Security Council is influenced by the notion of non-intervention; it is not willing to intervene against the will of Sudan.

4.3 Analysis discussion 11 September 2006

In the weeks between the discussion on 30 August 2006 and the next discussion of the UN Security Council on 11 September, the security situation in Darfur worsened. The non-signatory parties of the DPA and the government of Sudan are engaged in renewed fighting. The Security Council made clear in the discussion on 30 August that the transition will not be possible without the consent of the government of Sudan. The government of Sudan does refuse to accept the transition from AMIS to a United Nations mission in Darfur.

In the meeting of the Security Council on 11 September 2006, it showed its concerns about the present situation in Darfur and is asking the government of Sudan to agree to the transition. States have different approaches at reaching an agreement with the government of Sudan. Greece, the United States and Russia want the international community to put more pressure on the Sudan, while others go further and see sanctions as an option (Denmark, Congo). Other states repeat their support of sovereignty (United Kingdom, Ghana and Qatar) or say that a peacekeeping mission cannot be imposed (China). Qatar is even not supporting the peacekeeping mission but instead asks attention for the military solution of the plan of Sudan.

Many countries are repeating the ideas of the responsibility to protect, including UN Secretary-General Kofi Annan, United Kingdom, France, Russia, Argentina, Peru and Denmark. However these states do not go further than saying that the government of Sudan has the responsibility to protect, and that the international community is helping with that, assisting Khartoum to protect its citizens. No country does acknowledge that the norm of non-intervention yields to the international responsibility to protect when Sudan does not or cannot protect its citizens. According to this discussion there will be no consequences when Sudan does not have its consent, despite some sanctions. The international community does not have the responsibility to intervene without Sudan's consent. The Security Council is not willing to override the rule of non-intervention, and shows its support for the norm of Westphalian sovereignty. However, many countries mention the responsibility to protect. According to themselves they are acting upon that principle, when they offer help to the Sudan. They use the language of the responsibility to protect. It seems credible to do that, which means that the

principle is gaining ground when it is in fact used by members of the Security Council, including permanent members.

The Security Council also mentions the importance of strengthening AMIS, the establishment of a new ceasefire including those who have not signed the DPA, and the need of more humanitarian help (S/PV.5520, 11 September 2006).

Compared to the discussion two weeks earlier, the Security Council is using the language of the responsibility to protect more often in this discussion. They are supporting the idea of sovereignty as responsibility, when they acknowledge that the government of Sudan has the responsibility to protect its citizens. It shows that sovereignty is not absolute. Sudan cannot do anything that it wants to its citizens. The Security Council does also feel responsible because it is clear that Sudan cannot protect its citizens of Darfur against the gross atrocities that are taking place. The Security Council wants to help Sudan, and is offering a peacekeeping operation. To this point, they are following the responsibility to protect and the norm of sovereignty as responsibility. When it becomes clear that Sudan does not agree to that peacekeeping mission and shows that is not willing to protect its population, according to the basic principle of the responsibility to protect, the norm of non-intervention yields to the international responsibility to protect. But the Security Council is not willing to violate the norm of non-intervention. A choice is made to respect the sovereignty of the Sudan. Although these are signs that there is a move towards the norm of sovereignty as responsibility, in the end Westphalian sovereignty is still the guiding principle, which is proven by the lack of action towards Sudan.

4.4 Analysis discussion 18 September 2006

On 18 September 2006 the Security Council is meeting again about the situation in Darfur because Special Representative of the United Nations in Sudan, Jan Pronk is warning that the situation in Darfur has worsened after the signing of the Darfur Peace Agreement (DPA). This peace agreement is nearly dead. He offers five solutions, including the transition of AMIS a United Nations peacekeeping force as mandated by resolution 1706 (2006). All members of the Security Council show their support for this peacekeeping mission and ask for the consent of the government of Sudan. That is again the main theme of this discussion (S/PV.5528, 18 September 2006).

In this discussion in the Council states are trying to convince the government of Sudan to accept the transition of UNMIS to the territory of Darfur. Tanzania: "we continue to urge the government of the Sudan to accept the transformation of AMIS into an United Nations

mission". China states that "the United Nations Mission in the Sudan has played a very positive role because it has the support and cooperation of the government of the Sudan. The deployment of a United Nations mission to Darfur should be based on the same principle". Slovakia hopes "that the Sudanese government will understand that active United Nations involvement in protecting civilians and facilitating the implementation of the Darfur Peace Agreement is in the best interests of all Sudanese people". Congo is worried about the situation when the government of Sudan does not agree to UNMIS in Darfur "I cannot fail to observe that rejecting a United Nations peacekeeping force and the withdrawal of UNMIS from the Darfur region pose an enormous risk".

In this meeting, the language of the responsibility to protect is not as much used as in the meeting of 11 September 2006. Argentina states that "we must respond" to fulfil the responsibility to protect. The rest has Sudan to do. According to the United Kingdom, the UN is not responsible for failures, increased conflict and death in Darfur; Sudan is responsible. According to the UK the people of Darfur will pay a terrible price. Ultimately, the leaders in Khartoum bear full responsibility for the road they ultimately choose (S/PV.5528, 18 September 2006).

4.5 Conclusion

In discussions and resolutions of Security Council in 2006 about Darfur, the Security Council used both the language of the responsibility to protect and Westphalian sovereignty. Westphalian sovereignty was eventually the norm that had the most influence. The Security Council was not willing to intervene without the consent of Sudan. The rule of non-intervention was not violated.

5. The UN-AU mission in Darfur (UNAMID)

After the adoption of resolution 1706 (31 August 2006), the Security Council did not get the consent of the government of Sudan for this extended UNMIS mission. The Security Council was not willing to intervene without this consent, and decided to negotiate with the government of Sudan to find a new solution to the crisis in Darfur. Sudan agreed to a three-phase plan: by strengthening AMIS with a light support package, followed by a heavy support package and to turn it eventually into a hybrid African Union United Nations operation. On 31 July 2007 the UN Security Council adopted resolution 1769 that authorized the employment of the United Nations African Union Mission in Darfur (UNAMID).

Firstly, this chapter will investigate whether the discussion of the Security Council in which it adopted resolution 1769, and the resolution 1769 itself, reflect the norm of Westphalian sovereignty or the norm of sovereignty as responsibility. Secondly, the analysis of the mandate of UNAMID will show whether it has characteristics of traditional peacekeeping missions (influenced by Westphalian sovereignty) or has characteristics of Westphalian peace operations (influenced by the responsibility to protect).

5.1 Analysis discussion 31 July 2007

The United Kingdom speaks about the impartiality of the UNAMID: "The sponsors made great efforts to consult the government of the Sudan during the negotiation of this resolution. Its unanimous adoption is a strong signal from the Council that we expect and we want cooperation from all sides in the Sudan and that cooperation should develop and grow. The path set out in this resolution is one of cooperation with the Sudan – with its government and all the parties in the Sudan – with the African Union and across the United Nations". The cooperation with the government of Sudan and all the parties in Sudan means that UNAMID in the field does not want to take side, and wants to be impartial.

Qatar, Russia and China mention the sovereignty and territorial integrity of Sudan. According to Russia, the peace process must become genuinely comprehensive, with full respect for the sovereignty and territorial integrity of the Sudan, and with the constructive cooperation of the international community with the Sudanese leadership in the political and peacekeeping spheres. Russia actively supported that this tenets were reflected in the resolution. The main objective of the peacekeeping activities in Darfur is to move this peace process forward along with protecting the civilian population, while observing the sovereignty prerogatives of the Government of Sudan.

Qatar again formulates its interest in acting in conformity with the United Nations Charter and international law: "Sudan […] also needs that the promise made by the Council during its meeting with the Sudanese Government to be honoured. I refer to the promise to continue to assist the country while respecting its sovereignty and its legitimate right to receive assistance from the international community and to compel the rebel movements to renounce violence and to join the peace".

China, president of the Council, has always stood for political settlement of the Darfur issue and is committed to the sovereignty and territorial integrity of the Sudan. China is also defending the non-intervention principle by emphasizing that "the purpose of this resolution is to authorize the launch of the hybrid operation, rather than the exert pressure or impose sanctions".

Countries repeat that the goals of UNAMID are twofold: implement the Darfur Peace Agreement, especially the ceasefire, and to protect civilians against violence. Almost all countries agree that the solution for the Darfur conflict cannot be purely military, and this mission is not enough. A political solution should be found, and the rebel groups and government of Sudan should start talks again and negotiate a new peace agreement.

It is interesting that this resolution has been adopted by all 15 Security Council members, including Qatar, China and Russia that have abstained from resolution 1706. However, these members, as they did in the debate on 31 August 2006 again give much attention to the sovereignty of Sudan.

The UN Security Council found that the consent of the government of Sudan was necessary for the employment of a peacekeeping mission in Sudan. Much of the process of creating the mandate of UNAMID has taken place behind closed doors, and negotiations with the government of Sudan took a long time. Important issues in the negotiations were the disarmament of the Janjaweed and the composition of the troops. The disarmament of the Janjaweed is not included in the mandate, despite the efforts of permanent members of the Security Council. Furthermore, the mission should be composed by a majority of African troops, instead of Western troops. It is said that China played a decisive role in pressuring Sudan to agree to this mission.

Westphalian sovereignty and the principle of non-intervention is still guiding the behaviour of the Security Council, because intervention without the consent of the government of Sudan was not an option for them. The Westphalian sovereignty of the Sudan is protected by provisions in the mandate of UNAMID. The three most active supporters of this Westphalian sovereignty again directly include this norm in their statements in the

Security Council: Russia, China and Qatar. Other countries do not directly refer to sovereignty, but mention in their speech the importance of the cooperation of Sudan in implementing the resolution. No country shows its support for the responsibility to protect. What the international community is going to do when Sudan does not cooperate with UNAMID, and does not want to protect its own citizens against genocide and crimes against humanity, is not part of the debate. Only the United Kingdom thinks further, and states that sanctions might be considered when the parties do not cooperate with the resolution: "if compliance fails, consequences will follow" but those not elaborate on this (S/PV.5727, 30 July 2007). In words the responsibility to protect is dead, however finally the UN led peace operation in Darfur is a fact.

5.2 Analysis resolution 1769 (2007)

The opening statement of resolution 1769 (2007) shows a commitment to Westphalian sovereignty: "Reaffirming its strong commitment to the sovereignty, unity, independence and territorial integrity of Sudan, and to the cause of peace, and expressing its determination to work with the government of Sudan, in full respect of its sovereignty, to assist in tackling the various problems in Darfur, Sudan". While resolution 1706 (2006) that authorized the expanded UNMIS referred to documents about the protection of civilians and the outcome of the UN World Summit Outcome 2005, this language is not part of resolution 1769. The resolution has been drafted in full negotiation with the government of Sudan. It had to agree to it, before it went to vote in the Security Council. The mandate of UNAMID shows the limits of the operation, as cited below. There is no reference to the threat of sanctions. The Security Council "decides that UNAMID is authorised to take the necessary action, *in the areas of deployment of its forces and as it deems within its capabilities* in order to protect its personnel, facilities, installations and equipment, and to ensure the security and freedom of movement of its own personnel and humanitarian workers; support early and effective implementation of the Darfur Peace Agreement, prevent the disruption of its implementation and armed attacks, and protect civilians, *without prejudice to the responsibility of the Government of Sudan'"* (UN/RES/1769, 31 July 2007).

5.3 Analysis mandate UNAMID: traditional peacekeeping

This section will analyze whether the mandate of UNAMID has the characteristics of traditional peacekeeping operations (influenced by Westphalian sovereignty) or whether it is more like Westphalian peace operations (influenced by sovereignty as responsibility).

Furthermore, the characteristics UNAMID will be critically reviewed because not all of them seem to be appropriate to the situation in Darfur. UNAMID has three characteristics of a traditional peacekeeping operation: it deploys after a cease-fire, it has the consent of the host-state and aims to be neutral/impartial.

UNAMID is aimed at keeping the fighting parties apart and implementing a ceasefire (the Darfur Peace Agreement of May 2006). The UN and AU must keep the peace and assist the government of Sudan with that. The mandate lacks some features of Post-Westphalian peace operations such as the disarmament of the parties or peacebuilding activities. However, the deployment is either too late or too early (Van der Lijn, 2008). It is too late when considering the DPA has been signed in May 2006, while UNAMID is 1,5 years later employed in January 2008. It is too early because a new peace process has started with negotiations in Sirte in October 2007. This is a slow and difficult process, because of the many splintered rebel factions are not all present in this negotiations and it is estimated that a new peace agreement will not be present in a very short time.

The government of Sudan agreed to this mandate. In the resolution a year earlier that authorized the expansion of the UN peacekeeping mission in the South of Sudan to Darfur, it was included in the mandate that the consent of the government of Sudan was necessary before it could be implemented. Reality showed that the government did not give its consent so this mandate was not put into action. Therefore this new mission was negotiated with Khartoum and which imposed some conditions to it. The government agreed to this mission before the resolution went to vote, therefore all countries in the Security Council voted in favour. In practice in the deployment of this mission has been totally dependent on the cooperation of the government of Sudan.

Neutrality is a characteristic that should be present for UNAMID to be successful. To perform it tasks the mission needs the support of both the rebel groups and the government of Sudan. However, the operation will have to cooperate with the government of Sudan and its local security organization. Many past peacekeeping operations were guided by the principle of consent. However this is problematic in the case of Darfur because the government of Sudan is party of the conflict, and UNAMID is likely to be viewed as partisan by the rebels as everything has to be coordinated with the government (Van der Lijn, 2008). In fact, UNAMID is then even at the side of the wrong party because Sudan has committed more crimes than the rebel groups, although violence of these groups recently intensified. To completely implement the responsibility to protect this mission should have been aimed at protecting people against

genocide or mass killing. Protecting civilians in Darfur will be limited because one the parties cannot be fought against.

5.4 Analysis mandate UNAMID: post-Westphalian peacekeeping

UNAMID has three characteristics of post-Westphalian peacekeeping: it has an enforcement mandate under Chapter VII, one of its tasks is civilian protection, and it is a hybrid operation.

Traditional peacekeeping operations were not authorized to use force, except in self-defence (Bellamy *et al,* 2004; Gareis and Varwick, 2005). UNAMID is in that sense not a peacekeeping mission, but more like a post-Westphalian peace operation. The use of force is authorized to protect the mission, to protect civilians and to support the implementation of the Darfur Peace Agreement. Under Chapter VII of the UN Charter, UNAMID is authorized to take the necessary action, in the areas of deployment of its force and as it deems within its capabilities in order to: protect its personnel, facilities, installations and equipment, and to ensure the security and freedom of movement of its own personnel and humanitarian workers, support early and effective implementation of the Darfur Peace Agreement, prevent the disruption of its implementation and armed attacks, and protect civilians, without prejudice to the responsibility of the Government of Sudan (S/RES/1769, 31 July 2007). In contrast to resolution 1706 (2006), this mission is not authorized to use all necessary means to seize or collect arms or related material, whose presence in Darfur is in violation of the agreements and the measure imposed by paragraphs 7 and 8 of resolution 1556 (2005), and to dispose such arms and related material as appropriate.

Another post-Westphalian characteristic of peace operations is the goal of civilian protection. Since the 1990s peace operations were not only concerned about keeping the peace, but also contained new elements of civilian protection. This was a reaction to the increase of civil wars and the consequent increase in the number of civilians that became the targets of gross violence (Holt and Berkman, 2006). New types of missions have strong mandates to protect civilians, when they are under attack, or to prevent attacks on them. This mandate may include the protection with all necessary means. The UN operation in Congo (MONUC) (2005) had such a strong mandate[12] and also UNAMID has a civilian protection mandate. However, the Security Council usually recognizes that the protection of civilians is primarily the responsibility of the host government where the mission is operating "without prejudice to the responsibilities of the Government". The mandate to protect civilians 'within

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[12] MONUC initially started with a weaker mandate, which has been strengthened during its deployment (Holt and Berkman, 2006).

its area of deployment' and 'within its capacity' for nearly all operations limits what the operation is expected to do (Holt and Berkman, 2006). It is possible that one or two of the resolution's clauses could be used to weaken UNAMIDs protection mandate. One can only guess how this will be interpreted and applied. In the negotiations leading up to the resolution, Sudan insisted that the protection of civilians was its responsibility and objected to UNAMID being authorized to seize and collect arms; as a result, Resolution 1769 provides only for UNAMID being able to 'monitor' the presence of arms in Darfur. Moreover, when the resolution speaks of 'full respect' for Sudan's sovereignty, it does not point out that sovereignty must mean responsibility for the security and well being of one's population and that Sudan's sovereignty can only be fully respected if it in turn respects the rights of those under its jurisdiction (Cohen, 2007).

Another interesting characteristic is that UNAMID is the first hybrid operation. Starting as an African Union peacekeeping mission, UNAMID is the first joint mission of the United Nations with a regional organization. Troops of most peace operations in history were employed by a coalition of states who acted with blue helmets or were employed by a regional organization that was authorized by the UN Security Council. A hybrid mission is new characteristic of peace operations.

5.5 Conclusion

The mandate of UNAMID is problematic because it combines both features of traditional peacekeeping operations with features of Westphalian peace operations. It combines a mission to implement a peace agreement with civilian protection, but it does not have a mandate to disarm fighting factions. There are severe problems with the peace agreement, it is more than a year old, and the parties are still fighting, so in fact there is no peace. New peace negations are taking place, but this peacekeeping force is already employed before this agreement. In traditional operations peace agreements already existed. To implement this peace, UNAMID does not really have a strong mandate, although it is the largest UN peace operation ever. On the other hand, the mission has a civilian protection mandate, and it is a military intervention for humanitarian purposes. It is aimed at protecting the population of Darfur against massive killing, and other atrocities. It wants to reach both goals, but it is also acting upon the traditional principle of the consent of the state. However, the mandate is weakened for this reason and the mission does not get the full cooperation of Sudan. This is hindering the effectiveness, and the possibility to fulfil the post-Westphalian mandate of civilian protection. To sum up, this mission combines old and new elements. It wants to

achieve both traditional goals and modern goals, and also the methods are both traditional and modern. By choosing to have the consent of Sudan in every situation on the field is hindering other elements of the mandate.

6. Conclusion

In the Darfur region of Sudan one of the worst humanitarian crises of the beginning of the 21st century is taking place, which has been caused by a violent conflict between rebel groups, militia and government troops. According to a United Nations source, more than 300,000 civilians have been killed and 2,7 million civilians have been displaced since 2003 (United Nations, 2008). The government of Sudan is of one the main perpetrators of this conflict and has no interest in halting the violence (International Commission of Inquiry to Darfur, 2005). However, according to the norm of sovereignty as responsibility, a state government has a responsibility to protect its citizens against mass killing. Sovereignty is not absolute; a state cannot do anything it wants in its territory. In extreme situations in which civilians are threatened by large-scale violence such as genocide, it is allowed for the international community to assume responsibility for the protection of the civilians if their state government fails to halt this violence (Deng, 1993; Hoffman, 1995; Weiss, 2000). These kinds of extreme situations may trigger a response with measures that were not allowed by the norm of Westphalian sovereignty: intervention in the form of sanctions, international prosecution and military intervention (Bull, 1977; ICISS, 2001ab).

The International Commission on Intervention and State Sovereignty (ICISS) codified the norm of sovereignty as responsibility in the report the Responsibility to Protect (2001). The basic principle of this document is "State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect" (ICISS, 2001a: XI). The basic principle of the responsibility to protect was adopted at the 2005 World Summit, a high-level plenary meeting of the General Assembly of the United Nations, which has been considered the largest gathering of world leaders in history (UN, 2005a).

The implementation of the responsibility to protect in situations of compelling need is surrounded by a number of restrictions. To justify an international reaction with coercive measures and military intervention certain conditions must be present and certain principles have to be followed. The ICISS report (2001a) has included threshold criteria for military intervention: just cause, right intention, last resort, proportional means, reasonable prospects, right authority and operational principles. The crisis in Darfur satisfied all criteria and was the first real test case for the responsibility to protect. The government of Sudan was not willing

to protect its citizens in Darfur against mass killing. Theoretically the United Nations Security Council was the most appropriate body to assume the responsibility to protect the population of Darfur by coercive measures, including a military intervention.

However, the competing norm of Westphalian sovereignty has been the fundamental principle of international order since the Peace of Westphalia (1648). The norm of Westphalian sovereignty means that a state has supremacy over the other authorities within a territory and population, and is independent of foreign authorities. This independency is protected by the norm of non-intervention that does not allow states to intervene in the domestic affairs of other states (Bull, 1977). Westphalian sovereignty lies at the heart of international law; it is included the Charter of the United Nations and is reaffirmed by various other treaties during the last century. According to this norm a Security Council intervention in Darfur is not allowed; it is a violation of Westphalian sovereignty and a violation of international law.

The aim of this study was to investigate whether a norm of 'sovereignty as responsibility' has emerged in international politics and to what extent to the norm of 'Westphalian sovereignty' has become of less importance. The study has analyzed debates of the United Nations Security Council about Darfur between 2003 and 2007. Next paragraph will provide an overview of the results of the analysis of the response of the Security Council towards the conflict in Darfur and the analysis of the mandate of the United Nations-African Union mission in Darfur (UNAMID). Thereafter, it will be shown what these results imply for the principle of the responsibility to protect in general. This chapter will end with recommendations to improve the situation in Darfur and to strengthen the responsibility to protect.

6.1 Darfur

In discussions in the Security Council many states directly referred to the responsibility to protect document (2001) or to the 2005 World Summit Outcome. Although not all countries in all discussions referred to this principle, the language was used often, especially after the principle was adopted at the World Summit. The majority of states have argued to impose sanctions or to threaten with sanctions to press the government of Sudan to assume its responsibility to protect the people of Darfur. Many states argued that the Security Council had a responsibility to take action in the crisis in Darfur, and supported a resolution that authorized a peacekeeping mission that did not had the consent of the government of Sudan yet.

Despite this support for the responsibility to protect principle and the norm of sovereignty as responsibility, states in the Security Council also made statements that showed that they were still strongly influenced by the Westphalian notion of sovereignty. States argued that they were respecting the sovereignty of Sudan and assumed the government of Sudan was eventually responsible for the crisis in Darfur. In many discussions the majority of states did not assume that this responsibility would yield to the international community. Although a peace operation was authorized that lacked the consent of the government of Sudan, it became clear that the Security Council did not want to put that in practice. Member states were not willing to impose a military intervention against the will of the government of Sudan. Despite the fact that according to the responsibility to protect this consent was not needed in the extreme circumstances in Darfur.

The majority of countries in the Security Council, including the permanent members France, the United Kingdom and the United States were ambivalent in their actions. Their statements indicated that these countries were very concerned about the situation in Darfur, and found that the international community had to take action to help the population of Darfur. However, the actions of these countries were limited by traditional Westphalian sovereignty, and intervention in countries without the consent of the host government was not regarded as justified.

The other two permanent members of the Security Council, Russia and China, were not ambivalent in their actions. These countries clearly showed that they were guided by Westphalian sovereignty. Russia and China abstained from resolutions that imposed or threatened with sanctions or authorized a peacekeeping mission without the consent of Sudan. These states made clear in their statements that they were not willing to violate the sovereignty of Sudan. They referred to the sovereignty and territorial integrity of Sudan, to the Charter of the United Nations and to international law.

The mandate of the United Nations-African Union Mission in Darfur (UNAMID) is influenced by both the norm of Westphalian sovereignty and the norm of sovereignty as responsibility. These norms have been reflected in the mandate of UNAMID by respectively characteristics of traditional peacekeeping operations and characteristics of post-Westphalian peace operations.

On one hand, the mandate includes three characteristics of traditional peacekeeping operations. Firstly, UNAMID is aimed at implementing a ceasefire (Darfur Peace Agreement, 2006). Secondly, the consent of the government is a basic principle of this operation. The mandate has been fully negotiated with Khartoum that would only agree to the mission if

some conditions were met. For example, the mission is not authorized to use all necessary means to seize or collect arms or related material, because the government of Sudan objected (Refugees International, 2008). Thirdly, an important element of UNAMID is the neutrality and impartiality. To perform its tasks the mission needs the support of both the rebel groups and the government of Sudan.

On the other hand, the mandate also includes three characteristics of post-Westphalian peace operations. Firstly, traditional peacekeeping missions were not authorized to use force, except in self-defence. UNAMID is authorized to use force under Chapter VII of the United Nations Charter to protect the mission, to protect civilians and to support the implementation of the Darfur Peace Agreement. Nevertheless, the use of force is limited to the areas of deployment of its force and as it deems within its capabilities, without prejudice to the responsibility of the government of Sudan. Secondly, civilian protection is one of the major goals of UNAMID. This reflects the responsibility to protect principle in which civilian protection is the main area of attention. Thirdly, UNAMID is the first hybrid operation of the United Nations and a regional organization; the African Union.

The presence of UNAMID since January 2008 has not changed a lot in Darfur. Of the 26.000 uniformed personnel that was authorized, only less than 10.000 personnel has been deployed so far (UN DPKO, 2008). The lack of cooperation of the government of Sudan forms a major obstacle for UNAMID to fully employ and to perform its tasks. The mandate of the mission creates possibilities for the government of Sudan to hinder the effectiveness of the operation. It depends on the leadership on the ground how things will work out in practice.

6.2 Responsibility to protect

The basic principle of the responsibility to protect (ICISS, 2001a) has been adopted at the United Nations World Summit 2005, the largest gathering of world leaders in history (UN, 2005a). This reflects the underlying norm of sovereignty as responsibility; a state cannot do anything it wants on its territory. In extreme situations of human need, for example genocide, the international community may assume responsibility and intervene in a state's domestic affairs. The 2005 World Summit has embraced this idea and on paper this means that this new norm of sovereignty as responsibility has been supported by all countries in the world. It would be expected the principle of the responsibility to protect would be implemented when a clear situation of mass killing is taking place in a country where the government cannot or does not want to protect its citizens. The crisis in Darfur was the first real test case for the responsibility to protect. The Security Council has held a large number of meetings between

2004 and 2007 that dealt with the situation in Darfur. The results of this case study show that the language of the responsibility to protect has been used by the majority of members of the Security Council in response to the conflict in Darfur. This shows that sovereignty as responsibility is an emerging norm in international politics. The Security Council recognized its existence and referred to it. However, the measures that the Security Council took were not firm enough to bring the crisis in Darfur to a halt. The norm of Westphalian sovereignty and the non-intervention principle strongly influenced actions of the Council. Adherence to this norm hindered the implementation of the responsibility to protect. If the responsibility to protect was not brought into practice in Darfur – a situation in which all conditions were present and a Security Council intervention with coercive means was clearly possible – it is expected that in future crises this principle is also not implemented. The norm of Westphalian sovereignty is still the fundamental principle of international politics, and the responsibility to protect principle is a dead letter.

The recent international response to the crisis in Birma shows that there is still attention to the responsibility to protect principle and this brings some hope for the future. On 2-3 May 2008 Birma was struck by the tropical cyclone Nargis. Food, shelter, medical supplies and water were all critical needs (OCHA, 2008; Reuters AlertNet, 2008b) and there was increased danger of disease and starvation for 1,5 million people. International relief workers were sent to Birma, but were restricted in their movement by the government of Birma (Reuters AlertNet, 2008c). The level of aid remained far below what was required to meet the needs on the ground (OCHA, 2008).

When it became clear that the government of Birma was not able or willing to protect its citizens against this humanitarian crisis, French foreign minister Bernard Kouchner was ready to invoke the principle of the responsibility to protect to impose help to the people in Birma without the military junta's approval (Reuters AlertNet, 2008a). This proposal received mixed reactions. Some authors found it justified because the military junta in Birma was failing the most basic responsibility of any government – to take care of its citizens. These authors asked for a Security Council resolution that should hold open the possibility of additional measures, including air drops of relief supplies, if the government did not stop restricting international workers (Daalder and Stares, 2008).

There were also experts who disagreed with Kouchner, such as Edward Luck, the UN's special advisor on the responsibility to protect. The 2005 World Summit Outcome limited the applicability of the responsibility to protect to four crimes and violations: genocide, crimes against humanity, war crimes, and ethnic cleansing. There is no agreement

on applying them to other situations. Whether a non-response, or in this case a partial response, to a natural disaster could qualify as a crime against humanity is a matter to be debated by legal scholars and jurists (Inner City Press, 2008). Furthermore, it was also doubtful whether a coercive response would be effective. Air drops are hugely expensive and very limited in what they can deliver. Food and mosquito nets cannot be targeted at the most vulnerable. Clean water systems and safe sanitation cannot be dropped from the sky and if there is not an aid operation on the ground to distribute the aid, the air drops can exacerbate tense relations within communities with only the fittest and fastest benefiting (Maddox, 2008).

The responsibility to protect was not the solution to the crisis in Birma. International pressure on the government of Birma was the most effective way to help the population: it slowly allowed international aid flights to land and let foreign aid workers into the country. Nevertheless, the international attention to the responsibility to protect strengthened this norm.

6.3 Recommendations

The responsibility to protect has not been effectively implemented in Darfur. The deployment of UNAMID has been restricted by the lack of cooperation of the government of Sudan. It has also been restricted by the adherence of the Security Council to Westphalian sovereignty; the Council is not willing to act against the will of the government of Sudan to help Darfur. Under these circumstances in three ways the situation of the population in Darfur can be improved: by political negotiations, by strengthening UNAMID, and by creating safe conditions in refugee camps. Furthermore, existing international human rights law may offer a way to force the government of Sudan to implement their responsibility to protect the population of Darfur.

Most important for a long term solution to the conflict in Darfur is that political negotiations between rebel factions, Arab militias and the government of Sudan will take place and include all fighting parties. There should be a ceasefire, and political will of the parties to have peace. At this moment there are no real signs of such a will and the future for Darfur is very pessimistic as there seems no party interested in peace, except the population (Van der Lijn, 2008). Rebel groups have splintered in many factions and some cannot be distinguished from usual bandits. After the attack of rebel group JEM on Khartoum in May 2008 the government of Sudan is not willing to negotiate with this rebel group anymore (Sudan Tribune, 2008). Earlier negotiations in Libya were postponed because rebel groups

could not reach a common statement (Al Jazeera, 2007). It is also said that the rebel groups Darfur lack negotiating capabilities, and leave the talks if they do not get full support for their proposals (Toga, 2007). Talks are further complicated because the Comprehensive Peace Agreement in the South of Sudan is no longer supported anymore by all parties and seems to be in danger (Wereldomroep, 2008) Moreover, government forces and rebel groups of neighbour Chad are also involved in the conflict in Darfur (Marchal, 2007). The best solution would be a regional peace agreement which include parties of the neighbour countries of Sudan. Last years have shown that it is very difficult to reach agreement in Darfur between all parties, and it will therefore be even more difficult to reach agreement between even more parties from other states. However, a peace agreement is the only way to reach long-term peace in Darfur.

On the short term the situation in Darfur can be improved by strengthening UNAMID. More military personnel and police units have to be sent to Darfur. Countries should make that commitment, since many troops are theoretically available. States should also make at least four attack- and eighteen transport helicopters available for the UNAMID mission, these are still missing. According to the agreement with the government of Sudan, most of the troops should come from African countries. The helicopters however can also be provided by Western countries which have high quality standards of military material. Besides the helicopters, what also needed is: aerial reconnaissance so the force can monitor and verify events and respond accordingly; medium and heavy transport trucks to move personnel and materials; additional engineers to build and expand installations necessary for troop deployment; multi-role logistical support units critical to the deployment and sustainability of infantry battalions (Fowler and Prendergast, 2008).

The most urgent need is to create safe conditions in refugee camps. More than 2,7 million people in Darfur (one third of the population) have been displaced from their villages and live in refugee camps (UN, 2008). The conditions in these camps are not very well, especially in periods of water shortage (UNICEF, 2008). International relief organizations have an important role in providing these displaced people water, food, shelter, and medical help. However, both aid personnel and civilians in these camps are attacked by bandits, militias and rebels. Not only UNAMID but also the European force on the border with Chad (EUFOR) is protecting these displacements camps. By maintaining a visible presence, these patrols play an essential role in making people feel more secure. UNAMID still has no presence in some camps, and minimal presence in some of the remote villages that need it most. UNAMID is not conducting extended, multi-day patrols. Daily patrols start after

breakfast and end before dinner because the troops do not have the ability to sustain themselves with food and water for long periods. Around Nyala in South Darfur, UNAMID has enough resources only to patrol the ten internally displaced persons camps closest to the city center. Conducting extended, multi-day patrols will improve the situation in the camps (Fowler and Prendergast, 2008).

Furthermore, the international community can pressure the government of Sudan to implement their responsibility to protect the population of Darfur by the use of existing international human rights instruments. International human rights law is a stronger instrument than the principle of the responsibility to protect, which is just a norm. States do not have a legal obligation to put the responsibility into practice as the case of Darfur has shown. The implementation depends on the political will of a government to protect its citizens. However, international human rights law is legally binding for states that ratify or accede to them. The most important human rights covenants that are relevant to the case of Darfur are the International Covenant on Civil and Political Rights (ICCPR) (1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966). The government of Sudan is one of the parties of these covenants; it has ratified them in 1986 (OHCHR, 2008a). Sudan has an obligation to undertake steps to achieve the full realization of the rights recognized in the ICCPR (1966: art. 2) and to take the necessary steps to give effect to the rights recognized in the ICESCR (1966: art. 2).

In its role in the conflict in Darfur the government of Sudan has violated a number of articles of the ICCPR, such as the inherent right to life (article 6.1); the protection against torture or cruel, inhuman and degrading treatment or punishment (article 7); and the prohibition of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (article 20.2). Sudan is also not fulfilling a number of obligations under the ICESCR in Darfur. The failure of Khartoum to provide the necessary help to the civilians in the refugee camps violates the right to an adequate standard of living, including adequate food, clothing and housing (article 11.1); the fundamental right to be free from hunger (article 11.2); the right to the enjoyment of the highest attainable standard of physical and mental health (article 12.1); the creation of conditions which would assure to all medical service and medical attention in the event of sickness (article 12.2(d)) and the right to education (article 13.1).

These covenants can be used by the international community to pressure the government in Khartoum to stop their role in the conflict in Darfur and to improve the

humanitarian situation in Darfur. Sudan is not fulfilling their obligations under international law; it refuses to grant its population basic rights.

The implementation of these covenants is monitored by two different bodies of international experts. The ICCPR is monitored by the Human Rights Committee[13], while the ICESCR is monitored by the Committee on Economic, Social and Cultural Rights. Both bodies are composed of 18 independent experts who are persons of high moral character and recognized competence in the field of human rights. States parties must submit reports every five years on the measures they have adopted to implement the ICCPR and the ICESCR. In the case of Darfur, state parties[14] of the ICCPR can complaint that Sudan is not fulfilling its obligations under these covenants and are allowed to bring this under the attention of the Human Right Committee. The Committee on Economic, Social and Cultural Rights has no mandate to accept and review state complaints against other states, but examines only states parties' reports (OHCHR, 2008b). International human rights law can force Sudan to change its policies and improve living conditions of the population in Darfur.

To strengthen the norm of the responsibility to protect there should be a larger role of non-governmental organizations and the media, a better use of military capacity and more attention should be paid to the operational part.

The UN Security Council used in some discussions the language of the responsibility to protect in response to the situation in Darfur, but did not put that effectively in practice. Non-government organizations (NGOs) and the media can fulfill an important role in pressuring member states of the Security Council to make the principle of the responsibility to protect part of all debates, and to pressure the Council to implement it when necessary. It is clear that Westphalian sovereignty hinders the implementation of the responsibility to protect and therefore it is necessary that NGOs and the media pressure the international community to embrace the responsibility to protect. A global public opinion survey shows that there is large support under civilians in the world for the responsibility protect. Respondents in 12 countries were asked whether the UN Security Council "has the responsibility to authorize the use of military force to protect people from severe human rights violations, such as genocide, even against the will" of the government committing such abuses. The most common response in

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[13] The Human Rights Committee (a treaty-based body) should not be confused with the discredited United Nations Human Rights Commission (UN Charter-based body) that recently has been replaced by the United Nations Human Rights Council.
[14] The first Optional Protocol of the ICCPR would have allowed the population of Darfur to submit individual complaints against Sudan to the Human Rights Committee. However, the government of Sudan has not signed this protocol. The ICESC has no optional protocols that allow individual complaints (OHCHR, 2008b).

all 12 countries polled - a majority in eight countries and a plurality in four - is that the UN Security Council has a responsibility to authorize the use of military force in such cases. There is an even stronger consensus that the UN Security Council should have the 'right' to authorize the use of military force in such cases. Among the 12 countries asked this question, large majorities say the Security Council should have such a right (Worldpublicopinion.org, 2007). Media and NGOs can transfer this message to state governments and the Security Council. In the case of Darfur, many articles in large newspapers from the United States (Murphy, 2007) and NGOs such as the Save Darfur Coalition[15] and the Enough Project[16], have called the situation in Darfur genocide and argued that according to the Genocide Convention (1948), international action was necessary (Hamilton and Hazlett, 2007). Consequently, there was much less attention to the responsibility to protect principle. To strengthen this principle, in future crises the media and NGOs should campaign to invoke the responsibility to protect, instead of referring to the general idea of 'doing something' or referring to the Genocide Convention. A global coalition of civil society organizations that support the responsibility to protect is in development[17] but must be strengthened. Also the Global Centre for the Responsibility to Protect that has been launched earlier this year is a promising initiative[18].

The second recommendation to strengthen the responsibility to protect is to make better use of the global existing military capacity. The military response to the crisis in Darfur is hindered by a lack of resources; UNAMID was mid-2008 not fully employed and lacking 16,000 military, police and civilian personnel. It has therefore problems in fulfilling its mandate. In future human catastrophes where the responsibility to protect can be invoked, there should beforehand be enough troops and money available to employ a peace operation. States spend a lot of money to their standing forces and their defence expenditures. Governments should make a few percent of this existing capacity available for responsibility to protect operations; so that they can be employed in a short period. A recent calculation shows that the total active military troop strength in the world was more than 20 million, of which only 1,5 percent was engaged in peace operations (Voorhoeve, 2007: 132-4) Countries such as France, Germany, Italy, Japan and others are supporters of the responsibility to protect

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[15] www.savedarfur.org

[16] www.enoughproject.org

[17] The World Federalist Movement – Institute for Global Policy (WFM-IGP) has launched in September 2007 a new initiative to build a global civil society network for the Responsibility to Protect.

[18] The Global Centre for the Responsibility to Protect has been created by key supporters from government, NGOs, and academia to ensure that the responsibility to protect doctrine is understood and put into practice by governments and at the United Nations (http://globalr2p.org/).

and have a low ratio of participation in UN or European Union peace operations. 'Neutral' countries such as India, South-Korea, and Turkey have hundreds of thousands active troop strength. They can make a large number of troops available for responsibility to protect operations. The estimated costs of a responsibility to protect operation is €15,7 billion a year. The annual military expenditures in the world amounted to €906 billion in 2006 (Voorhoeve, 2007: 141). A responsibility to protect operation would cost only 1,73 percent of the global military expenses. When this operation would be a responsibility to react mission without a peace building element, the percentage would be even lower.

The mandate of UNAMID shows that the UN is facing difficulties in translating the principle of the responsibility to protect into a peace operation. The implementation is hindered by Westphalian sovereignty but also by a lack of military preparation for a responsibility to protect operation that differs from other peace operations. This operational part has been ignored in the continuing debate on the responsibility to protect that has focused itself on when and whether to intervene, not how to do so and with what aim in mind (De Waal, 2007b). The implementation of the responsibility to protect has consequences for the mandate of peace operations. In responsibility to protect operations civilian protection needs to be defined as the major goal, instead of one of the tasks listed. Besides another mandate, responsibility to protect operations need new military doctrines, new rules of engagement, and new kinds of training for militaries. These are not clearly provided by the report of the ICISS (2001). Deploying peacekeepers without either a clear vision of how to protect civilians or the means and authority to do so may result in a tragic shortfall. Key issues should be incorporated into the strategic planning and preparation for such missions prior to deployment: when and how to use force, proactive or reactive tactics in coercive protection, concerns over consent of local parties, the question of whom to protect where, and the potential challenge of transferring from a robust protection mission to a more traditional peacekeeping operation (Holt and Berkman, 2006). Mandates of UN peace operations are to be found in Security Council resolutions. The protection of civilians have been increasingly become part of the mandate, but has been limited because the language contains the passages 'without prejudice to the responsibility' of the host government, within the mission's 'capabilities and areas of deployment'. Rules of engagements should specify such situations, particularly under circumstances in which communication with higher authority is not possible. These rules should be adopted for this new type of operation. Furthermore, there is little well-developed or well-known doctrine addressing operations authorized to use force to protect civilians under imminent threat either in the context of a peace support operation or as

a stand-alone mission. There is also no common terminology to identify such missions or the likely tasks 'triggered' by a mandate to protect civilians. States should develop new and revised doctrine for responsibility to protect operations. Existing training programmes for human protection should be expanded (Holt and Berkman, 2006). It is very important to translate the responsibility to protect idea into effective operational action. Without effective military preparation these missions will fail and will not be able to protect civilians that are threatened by genocide or other gross atrocities.

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THE RESPONSIBILITY TO PROTECT: CORE PRINCIPLES

(1) Basic Principles

A. State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself.
B. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.

(2) Foundations

The foundations of the responsibility to protect, as a guiding principle for the international community of states, lie in:

A. obligations inherent in the concept of sovereignty;
B. the responsibility of the Security Council, under Article 24 of the UN Charter, for the maintenance of international peace and security;
C. specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law and national law;
D. the developing practice of states, regional organizations and the Security Council itself.

(3) Elements

The responsibility to protect embraces three specific responsibilities:

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

(4) Priorities

A. **Prevention is the single most important dimension of the responsibility to protect:** prevention options should always be exhausted before intervention is contemplated, and more commitment and resources must be devoted to it.
B. The exercise of the responsibility to both prevent and react should always involve less intrusive and coercive measures being considered before more coercive and intrusive ones are applied.

The Responsibility to Protect: Principles for Military Intervention

(1) The Just Cause Threshold

Military intervention for human protection purposes is an exceptional and extraordinary measure. To be warranted, there must be serious and irreparable harm occurring to human beings, or imminently likely to occur, of the following kind:

    A. **large scale loss of life,** actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or

    B. **large scale 'ethnic cleansing'**, actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.

(2) The Precautionary Principles

    A. **Right intention:** The primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering. Right intention is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned.

    B. **Last resort:** Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for believing lesser measures would not have succeeded.

    C. **Proportional means:** The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective.

    D. **Reasonable prospects:** There must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction.

(3) Right Authority

    A. There is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes. The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it has.

    B. Security Council authorization should in all cases be sought prior to any military intervention action being carried out. Those calling for an intervention should formally request such authorization, or have the Council raise the matter on its own initiative, or have the Secretary-General raise it under Article 99 of the UN Charter.

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

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

    E. If the Security Council rejects a proposal or fails to deal with it in a reasonable time, alternative options are:

    I.   consideration of the matter by the General Assembly in Emergency Special Session under the "Uniting for Peace" procedure; and

    II.   action within area of jurisdiction by regional or sub-regional organizations under Chapter VIII of the Charter, subject to their seeking subsequent authorization from the Security Council.

F. The Security Council should take into account in all its deliberations that, if it fails to discharge its responsibility to protect in conscience-shocking situations crying out for action, concerned states may not rule out other means to meet the gravity and urgency of that situation - and that the stature and credibility of the United Nations may suffer thereby.

(4) Operational Principles

A. Clear objectives; clear and unambiguous mandate at all times; and resources to match.

B. Common military approach among involved partners; unity of command; clear and unequivocal communications and chain of command.

C. Acceptance of limitations, incrementalism and gradualism in the application of force, the objective being protection of a population, not defeat of a state.

D. Rules of engagement which fit the operational concept; are precise; reflect the principle of proportionality; and involve total adherence to international humanitarian law.

E. Acceptance that force protection cannot become the principal objective.

F. Maximum possible coordination with humanitarian organizations.