

Book Chapter: Darfur

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Abstract:

This chapter examines the application of R2P to Darfur by the UN Security Council. It outlines the Security Council's engagement with Darfur prior to the 2005 agreement on R2P, and subsequent engagement with R2P in resolutions on Darfur. Drawing on original interview material, this article reveals the negotiations that led to the Security Council's first application of R2P to a specific conflict. This chapter argues that Darfur does not make a good 'test case' of R2P as the escalation and height of the Darfur conflict occurred prior to the international agreement on R2P in 2005. This means that the early warning and preventative components of R2P were not tested in the case of Darfur.

Keywords:

United Nations, Security Council, Darfur, peacekeeping, R2P, decision-making

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The crisis in Darfur was the first country-specific conflict where the UN Security Council referred to the Responsibility to Protect (R2P). This conflict, which escalated in 2003, fitted the scope of R2P with clear evidence of crimes against humanity, war crimes and ethnic cleansing. There have been divergent perspectives on the legal applicability of genocide to the case of Darfur.¹ As such, the international response to Darfur was bound up with the emergence of R2P. The UN Security Council referred to R2P in a thematic resolution on the Protection of Civilians for the first time in April 2006 and only months later applied R2P to the case of Darfur in resolution 1706. Resolution 1706 was the first time the Security Council had referred to R2P in a resolution on a specific country.² Yet resolution 1706 has been described as a “forgotten resolution”³ and as one of the worst Council resolutions ever.⁴ Since the Security Council’s engagement with Darfur represents new step in the Council’s use of R2P, this chapter will focus on the ways that R2P featured in the Council’s negotiations over Darfur. It will explain the negotiations over resolution 1706 and how it came to be both the Security Council’s first reference to R2P in relation to a specific country and a forgotten resolution.

More broadly, Darfur has often been considered a ‘test case’ for R2P: a lens through which R2P is assessed. This framing of Darfur has been used by academics and NGOs alike.⁵ I argue however that Darfur is not a good ‘test case’ for R2P as the height of the violence in Darfur pre-dated the international agreement on R2P, which meant that its preventive and early warning components could not be utilized in this case. To make this case, the chapter proceeds in four sections. First, a brief overview of the conflict in Darfur and the parallel

¹ For discussion on this debate see Gifkins 2015.

² The Security Council referred to the responsibility to protect in relation to the Great Lakes region in resolution 1653 in January 2006.

³ Williams 2010, 209.

⁴ Lynch 2010.

⁵ Badescu and Bergholm 2009; de Waal 2007b; Grono 2006; Jentleson 2007; Khan, Roth and Evans 2006; Lanz 2009; Mills 2009.

conflict between Sudan's northern government in Khartoum and the south of Sudan. Second, the Security Council's early engagement with Darfur up until 2005, when R2P was formalized. Third, how R2P became part of the Security Council's negotiations on Darfur in 2006. This section also discusses the rise of a major civil society movement on Darfur, particularly within the United States, which called for UN peacekeeping in Darfur. Finally, the status of Darfur as 'test case' for R2P.

Background to the Conflict in Darfur

The origins of the conflict in Darfur have been well documented.⁶ The Darfur region, spanning the western three states of Sudan, suffered a serious drought and famine in 1984-1985, followed by a war between Fur and Arab tribes from 1987-1989, and war between Arab and Masalit tribes from 1995-1999. These conflicts also intersected with regional politics between Sudan, Chad and Libya in particular, where Darfur served as a base for foreign militias and groups in Darfur received weapons from both Libya and Chad.⁷ Conflict was exacerbated by depleted resources, due to environmental degradation and increased population, and extreme marginalization from Sudan's government in Khartoum, which created a highly volatile situation. The ideology of Arab supremacism spread from Libya to Darfur in the 1980s, as part of a deliberate campaign by Colonel Muammar Gaddafi to increase Arab influence in the region.⁸ Famine, conflict, decreased resources, Arab supremacism and violent incursions into Darfur by Libya and Chad, left Darfuri society heavily armed, deeply fragmented and with weakened local processes for conflict resolution.

⁶ See in particular Flint and de Waal 2008; Prunier 2008.

⁷ Seymour 2010.

⁸ Flint and de Waal 2008, 47-50.

Violent conflict increased again through 2000 to 2002 setting the context for escalation in 2003.

In early 2003 two separate rebel groups in Darfur announced their existence: the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM). The SLA were mostly comprised of people from Zaghawa and Fur tribal groups, with early attempts to include Arab members, and the JEM were predominantly Zaghawa Kobe.⁹ The conflict in Darfur escalated with a joint attack on an airport at al Fashar in April 2003 by the JEM and SLA where they secured weapons and vehicles.¹⁰ This was a more successful attack than the Sudanese government had previously experienced and it responded with its characteristic use of armed militia to suppress rebellions. The militia used in Darfur were known as the Janjaweed, and were predominantly drawn from Arab tribes, although with some inclusion of non-Arabs.¹¹ Through 2003 a pattern of violence developed where aircraft dropped bombs on villages in Darfur followed by attacks from ground forces, predominantly the Janjaweed militia, although sometimes in conjunction with the Sudanese army, and they would kill, rape, and loot. The aim was to destroy the very foundations of life in these villages, including poisoning wells with corpses and destroying cooking utensils, to remove populations from these areas.¹² Frequent violent attacks on civilians occurred throughout Darfur in 2003 and into early 2004.

The conflict in Darfur cannot be understood in isolation from the parallel conflict between the Khartoum government in northern Sudan and the south of Sudan (now South Sudan). There were two long-running civil wars between Khartoum and south Sudan from

⁹ Flint 2007. The representation of conflict in Darfur as 'Arabs' versus 'black Africans' is a simplification of the conflict, with some of each group on each side of the conflict, and 'ethnicity' is understood as more fluid in Sudan than it is in the West. See Assal and I.D.F. 2010; Willemse 2009.

¹⁰ Flint and de Waal 2008, 120-121.

¹¹ Haggar 2007.

¹² Flint and de Waal 2008, 134.

1955-1972 and from 1983-2005.¹³ Far more devastating than the conflict in Darfur, the two civil wars between north and south were responsible for the deaths of an estimated 2.5 million people.¹⁴ While conflict in Darfur was escalating, peace negotiations between north and south were reaching a critical point, with the first peace agreement signed in Machakos in June 2002 and a strong international focus on achieving peace negotiations between north and south. The push for a peace agreement was driven, in part, by domestic politics in the United States, with connections between the domestic Christian Right and the Christian populations in the south of Sudan.¹⁵ The investment that had been made in the north-south peace negotiations, and the perception that they were close to a breakthrough, led the international community to initially choose a sequential approach to the two conflicts. Prioritizing the north-south negotiations over Darfur actually gave Khartoum freedom in Darfur to pursue their goal of ending the rebellion.¹⁶ The north-south Comprehensive Peace Agreement (CPA) was concluded in January 2005, and the UN Security Council subsequently authorized the United Nations Mission in Sudan (UNMIS) to support implementation of the CPA.

Early Reluctance to Engage with Darfur

Despite high levels of violence against civilians in Darfur through 2003 and early 2004 the UN Security Council did not begin discussing the situation in Darfur until April 2004. By this time, more deaths were occurring as a result of displacement than from violence.¹⁷ There

¹³ See Johnson 2011.

¹⁴ Natsios 2012, 1.

¹⁵ Prunier 2008, 89.

¹⁶ Traub 2010.

¹⁷ On causes of mortality in Darfur see Degomme and Guha-Sapir 2010.

were two reasons for the lack of engagement by the Security Council during the height of the violence. First, what appears to be a genuine lack of information on the situation in Darfur within United Nations agencies and humanitarian organizations more broadly, particularly until mid-2003. The notable exception to this is Amnesty International who publically expressed concern over the deteriorating security situation in Darfur in February 2003 and urged the Sudanese government to establish a Commission of Inquiry.¹⁸ UNICEF were one of the only UN agencies on the ground in Darfur in early 2003 and, with severe restrictions on movement imposed by the government of Sudan, UNICEF headquarters itself says that it did not become aware of the full scale of the Darfur crisis until late 2003.¹⁹ Indeed, in late 2003, months after the conflict escalated, there were very few humanitarian staff on the ground in Darfur.²⁰ With restrictions on journalists and humanitarian agencies, little verified information about Darfur reached the international community until late 2003.

The second reason for the delayed engagement with Darfur was active resistance against including the matter on the Security Council's agenda, even once there was awareness of the situation. From late 2003 members of the Office for the Coordination of Humanitarian Affairs (OCHA) lobbied members of the Security Council to take action in Darfur but this was resisted, particularly by the United States (US), United Kingdom (UK), and Norway, who made up the Troika working on a peace agreement between Khartoum and the south of Sudan, which was close to a breakthrough and they did not want to jeopardize their negotiations.²¹ After delays due to lack of information and delays due to resistance from Security Council members the Security Council began to hold briefings on Darfur only in April 2004, by which time the height of violent killings in Darfur had passed.

¹⁸ Amnesty International 2003.

¹⁹ UNICEF-DFID 2005.

²⁰ Degomme and Guha-Sapir 2010, 295.

²¹ Egeland 2008, 88-91; Traub 2010, 5-8.

Meanwhile, in late 2003 and early 2004 Chad and the African Union (AU) led peace negotiations between the rebels and the Sudanese government, culminating in a ceasefire agreement and an AU peacekeeping operation in Darfur. Peace talks between the SLA, the JEM and the government of Sudan were led by Chadian President Idriss Déby and the Chairperson of the Commission of the African Union, Sam Ibok. This concluded with an agreement signed in N'djamena in April 2004 which called for a ceasefire in Darfur to be monitored by a Ceasefire Commission.²² Subsequent talks in Addis Ababa the following month authorized the deployment of the African Union Mission in Sudan (AMIS) to monitor the ceasefire and report back to the Ceasefire Commission.²³ AMIS was subsequently expanded from an initial monitoring role to a protection role. In July 2004 it was decided that AMIS would have a mandate for “protection, within the capacity of the Force, of the civilian population”.²⁴ The early protection role in Darfur was taken up by the African Union.

Back in New York, language on R2P from the original report by the International Commission on Intervention and State Sovereignty (ICISS) on ‘The Responsibility to Protect’ began to feed into the Security Council’s deliberations on Darfur, albeit in a small way. When Security Council resolution 1556 on Darfur passed in July 2004, the Philippines UN Ambassador Lauro Liboon Baja argued: “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.”²⁵ Beyond the Philippines however the statements from all permanent members of the Security Council explicitly assigned responsibility to Khartoum, without indicating secondary international responsibilities for

²² Inter-Sudanese Peace Talks 2004.

²³ African Union 2004a.

²⁴ African Union 2004b.

²⁵ United Nations 2004, 10-11.

protection.²⁶ Algeria, speaking on behalf of the three African members of the Council, stressed special responsibilities for African states in relation to Darfur.²⁷

To be clear, during the escalation and height of the conflict in Darfur in 2003 and early 2004 there was no international agreement on R2P. The ICISS released their report titled ‘The Responsibility to Protect’ in 2001, however there was no agreement between UN member states on R2P until the World Summit in September 2005 (for discussion on this see the chapter by Charles Cater and David Malone in this handbook). September 2005 marked the point where there was, at least on paper, an international commitment to R2P. This was consolidated in April 2006 where R2P was reaffirmed by the Security Council in thematic resolution 1674 on the protection of civilians in armed conflict.²⁸ By the time an international agreement was forged on R2P the mortality rates in Darfur had fallen below the ‘emergency level’ of one death per 10,000 people per day.²⁹ In 2005 the mortality rates in Darfur were comparable to before the war escalated.³⁰ Indeed, Julie Flint and Alex de Waal explain that data from all sources (including the International Criminal Court) confirm that “the great majority of the killings in Darfur took place in the year leading up to April 2004”³¹, which was prior to any involvement by the UN Security Council. This is not to absolve the international community for their slow and inadequate response to the situation in Darfur but simply to note that by the time R2P was agreed in the UN General Assembly in 2005 the height of the violence in Darfur had abated.

Darfur and R2P in the UN Security Council: 2006-2007

²⁶ United Nations 2004.

²⁷ United Nations 2004, 5-6.

²⁸ United Nations 2006b.

²⁹ Degomme and Guha-Sapir 2010, 297.

³⁰ Flint and de Waal 2008, 173.

³¹ 2008, 150.

By 2006 the situation on the ground in Darfur had changed. Violence had decreased and humanitarian relief efforts had made a significant impact on reducing mortality rates.³² However, the ongoing AMIS operation in Darfur struggled due to obstructionism by the government of Sudan, lack of troops and resources, and increasing factionalism of the conflict.³³ These limitations led to reluctance from donors to continue funding the AU operation.³⁴ The international community began to search for an alternative to AMIS, for which the only viable option was UN peacekeeping. However, UN peacekeeping is premised on there being a 'peace to keep' so in 2006 it became a key international priority to secure a peace agreement in Darfur as a precursor to deploying a UN peacekeeping mission.³⁵ The team who led the mediation for the Darfur Peace Agreement (DPA) worked from the premise that once a peace agreement was signed, Khartoum would consent to the deployment of UN peacekeepers. The Vice-President of Sudan Ali Osman Mohamed Taha had assured the US Deputy Secretary of State Robert Zoellick that this was the case, and as a result UN peacekeeping was taken as a given and not discussed in the peace negotiations.³⁶ Under significant international pressure, the DPA was signed in May 2006, by the government of Sudan and one faction of the SLA led by Minni Minawi, which paved the way for UN peacekeeping.

Alongside this push for UN peacekeeping in Darfur was a powerful and growing advocacy movement, particularly in the United States. As shown, there was little international awareness or advocacy on Darfur until late 2003. The UN Resident and Humanitarian Coordinator for Sudan, Mukesh Kapila, made a strong statement on 19 March

³² Flint and de Waal 2008, 147 and 173.

³³ Murithi 2009.

³⁴ Hamilton 2011, 79; MacKinnon 2010, 91-92.

³⁵ de Waal 2007a, 376-381.

³⁶ Toga 2007, 239.

2004 which described the situation in Darfur as “ethnic cleansing” and likened the situation to the Rwandan genocide.³⁷ This statement, combined with the tenth anniversary of the Rwandan genocide in April 2004, led to a rapid increase in mainstream media interest in Darfur.³⁸ The advocacy movement on Darfur, particularly in the US, grew rapidly with student groups on university campuses, and groups from the Christian Right who had prior involvement in advocacy on the south of Sudan.³⁹ The common refrain from activists on Darfur through 2005-2007 was that “things are getting worse” on the ground, in contrast with the figures from this time which show significantly less violent deaths than during 2003-2004.⁴⁰ Despite the improvements on the ground, advocacy on Darfur grew and became what is commonly characterized as the largest US advocacy movement since the anti-apartheid movement.⁴¹ By 2006 there was a convergence of interests between state donors who did not want to continue to fund AMIS and advocacy groups who called for UN peacekeeping in Darfur.⁴² From early 2006 the UN Security Council began to discuss a transition from AMIS to UN peacekeeping.

In April 2006, the same month as the Security Council endorsed R2P in resolution 1674, a reference to R2P appeared in a draft Security Council presidential statement on Darfur. This draft statement was penned by the UK, and in order to secure a quick consensus, the reference to R2P was removed at the request of China. In exchange China offered greater flexibility on other language.⁴³ Although R2P was removed from this draft, it is interesting to note that the UK had advocated for R2P within these Security Council negotiations. Referring to R2P in relation to a specific case was considered an important next step by the UK after

³⁷ BBC 2004.

³⁸ For discussion see Hamilton 2011, 31-33.

³⁹ Hamilton and Hazlett 2007.

⁴⁰ Flint and de Waal 2008, 187.

⁴¹ Flint and de Waal 2008, 184; Stedjan and Thomas-Jensen 2010, 157.

⁴² Hamilton 2011, 82.

⁴³ Wikileaks 2006d.

the Council's general endorsement in resolution 1674.⁴⁴ These negotiations foreshadowed the negotiations which occurred four months later on resolution 1706.

The first Security Council resolution that discussed R2P in relation to a specific country was resolution 1706 on Darfur in August 2006. This resolution authorized the expansion of UNMIS, which had previously only operated in the south of Sudan, into Darfur to replace AMIS. During the negotiations towards resolution 1706 there were two highly contentious points: referring to R2P in the resolution, and gaining consent from the government of Sudan. At the time of negotiations, the DPA had been signed but the government of Sudan continued to declare that they would "defeat any forces entering the country".⁴⁵ This left the Security Council in a difficult position, since UN peacekeeping is premised on consent, and donors to the AMIS operation wanted to move from African Union peacekeeping to United Nations peacekeeping which activists also called for.⁴⁶ The US, in particular, tried to find a way to authorize UN peacekeeping despite the clear lack of consent from the government of Sudan. Indeed, US Ambassador John Bolton glossed over the issue of consent the day before the vote saying "we think it's important that the question of consent not hold up the operational steps that need to be taken to get this force deployed as rapidly as possible."⁴⁷ The US advocated the idea of authorizing the deployment of peacekeepers first and then seeking consent afterwards which was somewhat reluctantly agreed to by the UK and France.⁴⁸ There was no real indication that this strategy would work, given the clear statements from Khartoum that they rejected the idea of UN peacekeeping in Darfur.

The question of consent became entwined with the issue of R2P in negotiating resolution 1706. The initial country positions were that the UK wanted R2P to appear in the

⁴⁴ Author Interview 2011a.

⁴⁵ AP/ST 2006.

⁴⁶ For discussion see Hamilton 2011, 79-82.

⁴⁷ ST/AFP 2006.

⁴⁸ Author Interview 2011d.

resolution; the US did not want the word ‘consent’ to be included in the resolution; and China wanted standard language of “with the consent of the Government of Sudan” to be part of the resolution, which could not be done without prior consent from Khartoum. The UK proposed a horse-trade to China whereby language on consent would be included *and* language on R2P, and three days prior to the vote the US reported that they were waiting on a decision from Beijing on whether this compromise was acceptable.⁴⁹ We can infer from the final version of resolution 1706 that Beijing accepted this proposal, given that consent and R2P both appear in the final version. This inference is also consistent with the trade in language on R2P and other provisions in the presidential statement in April 2006.

Resolution 1706 was the first Security Council resolution to relate the R2P agreement in the World Summit outcome document to a specific country. What is more, after the vote for resolution 1706 the majority of Council members spoke about international responsibilities towards the situation in Darfur. While also highlighting international responsibilities, the UK, drawing on language from the 2005 World Summit, said “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.”⁵⁰ By 2006 there was some recognition that the international community had responsibilities within Darfur and an engagement with R2P.

Unsurprisingly, given its earlier statements, the government of Sudan maintained its position against UN peacekeeping in Darfur after resolution 1706 was authorized. For example, in October 2006 it sent a letter to potential troop contributing states saying that volunteering troops “will be considered a hostile act, a prelude to an invasion of a member

⁴⁹ Wikileaks 2006c.

⁵⁰ United Nations 2006a, 4.

country of the UN".⁵¹ Khartoum's rejection of resolution 1706 left the Security Council in a compromised position since it was politically and logistically unable to implement a resolution which had been issued under the binding powers of Chapter VII of the UN Charter. Indeed, practitioners and academics alike have described the failure of resolution 1706 as a threat to the very credibility of the UN Security Council.⁵² At this time, the Security Council not only needed to project an image of strength in response to this failure but still faced the ongoing reality that donors of AMIS did not want to continue to fund the African Union mission. The lesson learnt here was the importance of securing consent from the government of Sudan and the subsequent negotiations on Darfur were approached in a more outward-looking and consultative way that incorporated the requirements of Khartoum.

It took almost another year of negotiations before the Security Council was able to pass another resolution on peacekeeping in Darfur, this time with the consent of Khartoum. Resolution 1769, in July 2007, authorized an interim support package for AMIS followed by a transfer to the United Nations/African Union Mission in Darfur (UNAMID). There were three key changes in the negotiations which made it possible for resolution 1769 to pass. First, permanent members of the Security Council presented a united front to the government of Sudan in these negotiations. With only weeks left in his tenure as UN Secretary-General, Kofi Annan's office met with the permanent members of the UN Security Council to secure their cooperation in presenting a phased peacekeeping approach to Khartoum, culminating in the hybrid peacekeeping operation.⁵³ Second, diplomacy between Beijing and Khartoum helped shift the Sudanese government towards formal consent by knowledgeable participants in the negotiations. Former UN Under-Secretary-General for Peacekeeping Operations, Jean-Marie Guéhenno, and former US Special Envoy to Sudan, Andrew Natsios, have both

⁵¹ Wikileaks 2006b.

⁵² Author Interview 2011b; Gowan 2008, 454; Williams 2010, 209.

⁵³ Wikileaks 2006a.

stressed the key role played by China in encouraging Sudanese consent.⁵⁴ China's shift in position has been attributed to increased US-China bilateral engagement on Darfur and increased criticism from African states.⁵⁵ Third, having learned shared lessons from the failure of resolution 1706, the Security Council approached the negotiations for resolution 1769 in an outward-looking manner including extensive negotiations directly with the government of Sudan. Where much of resolution 1706 was negotiated between Security Council members in New York, the framework for resolution 1769 was negotiated with the government of Sudan in Addis Ababa to achieve 'in principle' consent in November 2006⁵⁶ and to alleviate subsequent concerns in June 2007.⁵⁷ These three differences enabled resolution 1769 to pass with the consent of the government of Sudan and for the subsequent implementation of this resolution, unlike resolution 1706.

One of the 'costs' of negotiating resolution 1769 closely with Khartoum was the need to make concessions. An early draft of resolution 1769 included reference to R2P, just like resolution 1706.⁵⁸ Again, the UK wanted to refer to R2P in this resolution, but both China and Sudan did not want R2P in the draft, and unity and consent were higher priorities for drafters.⁵⁹ In a similar vein, the usual Council practice of referring to previous resolutions on the same situation was subverted in the negotiations towards resolution 1769. Referring to resolution 1706 in the preamble was opposed by China⁶⁰, South Africa⁶¹, and the African Union⁶², all largely on behalf of Khartoum. References to R2P and to resolution 1706 were removed from the draft before resolution 1769 was put to a vote. As a failed resolution, here

⁵⁴ See respectively, Brookings Institute 2006, 12; US Committee on Foreign Affairs 2007, 21.

⁵⁵ US Committee on Foreign Affairs 2007, 5-6.

⁵⁶ Brookings Institute 2006.

⁵⁷ UN News Centre 2007.

⁵⁸ Wikileaks 2007a.

⁵⁹ Author Interview 2012.

⁶⁰ Wikileaks 2007c.

⁶¹ Wikileaks 2007a.

⁶² Wikileaks 2007b.

we can see resolution 1706 becoming deliberately ‘forgotten’ in the ongoing Council negotiations on Darfur. Resolution 1769 passed with affirmative votes from all Security Council members, and crucially, with the consent of the government of Sudan.

Darfur as a ‘Test Case’ of R2P

Darfur has regularly been described as a key ‘test case’ for R2P by academics and also by Amnesty International, Human Rights Watch, and the International Crisis Group.⁶³ As the chronology suggests however, Darfur does not make a good test case for R2P. This is significant, particularly because many of those who interpret Darfur as a test case for R2P then read R2P as having failed.⁶⁴ To be sure, this is not to absolve the international community of responsibility for not taking more decisive action to protect civilians in Darfur, particularly during the height of the conflict through 2003 and early 2004. However, to say that R2P ‘failed’ in the case of Darfur is misleading. The escalation of violence in Darfur preceded international consensus on R2P by almost three years, which meant that R2P’s preventative and early warning components did not yet exist and could not be utilized in the case of Darfur. Indeed, by the time an international consensus emerged on R2P the height of the violence in Darfur had passed.

As the preceding discussion has shown there is a chronological problem in framing Darfur as a test case of R2P. The height of violent attacks in Darfur was in the period 2003-2004, at a time when, although the ICISS report existed, it was simply a report from a

⁶³ Badescu and Bergholm 2009; Grono 2006; Jentleson 2007; Khan, Roth and Evans 2006; Lanz 2009; Mills 2009. There were also articles published prior to the 2005 World Summit agreement on R2P which discuss Darfur as a test case of R2P, for example, Gberie 2004; Williams and Bellamy 2005. This is reasonable because these authors were measuring Darfur against the proposals outlined in the ICISS report. From September 2005 however the ICISS formulation of R2P was superseded by the version of R2P agreed to by 192 UN member states. From September 2005 it is reasonable to assess action on R2P against the agreement which was made, rather than the ICISS report, as the meaning of R2P had changed.

⁶⁴ de Waal 2007b; Grono 2006; Grünfeld and Vermeulen 2009; Jentleson 2007.

commission and did not yet carry the normative weight that it received in 2005.⁶⁵ Prior to 2005 there was no international agreement on what R2P was or whether it existed, let alone how to implement it. Just as laws cannot be retroactively applied, it does not make sense to measure the situation in Darfur against an agreement that did not exist during the escalation and height of the conflict.

The issue of timing leads into the second reason that Darfur does not make a good test case for R2P. R2P has been framed by the UN as consisting of three pillars: first state responsibility to protect their people from mass atrocity crimes; second the role of the international community in assisting states to develop their capacity for protection; third the role of the international community, via the UN Security Council, to take action where a state is manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.⁶⁶ If we understand R2P as being comprised of three pillars, as the UN Secretary-General Ban Ki-moon does⁶⁷, then an appropriate test case of R2P would need to allow for early prevention activity under pillars one and two, rather than simply a response under pillar three. Ideally, the international community would have worked *with* the government of Sudan in Darfur in the period 2000-2002 to mitigate the escalating social tensions, sporadic violence and extreme marginalization. The conclusion that Darfur does not make a good test case for R2P has also been reached by the former Special Advisor to the UN Secretary-General with a focus on R2P Edward Luck: “fighting broke out in Darfur some three years before the World Summit adopted R2P, making this an inappropriate test case for a doctrine that did not yet exist”.⁶⁸

⁶⁵ This is concordant with Alex Bellamy’s formulation of R2P as a ‘concept’ between 2001 and 2005 and as a ‘principle’ follow the adoption of R2P at the World Summit. See Bellamy 2009, 7.

⁶⁶ United Nations 2009.

⁶⁷ Ban 2008.

⁶⁸ Luck 2008, 6.

Arguing that Darfur does not make a good test case of R2P, when much of the literature suggests it does, raises key questions over what we mean by R2P. Alex Bellamy outlined two different functions that are commonly ascribed to R2P: as a 'policy agenda' or as a 'rallying cry'.⁶⁹ Here I will consider each of these functions of R2P and their implications for how we understand the case of Darfur. UN officials and states commonly interpret R2P as a policy agenda to be implemented.⁷⁰ This interpretation ascribes the 'goal' of R2P as mainstreaming mass atrocity crime prevention throughout international society and its core institutions. Taken from the 2005 World Summit outcome document this interpretation of R2P includes: preventing mass atrocity crimes and their incitement, developing better early warning capabilities, helping states build their capacity for prevention, *in addition to* the role envisaged for the Security Council of diplomatic and peaceful means through to collective action on a case-by-case basis.⁷¹ Here I consider early warning and prevention in relation to the conflict in Darfur. There is still crucial work to be done in the area of early warning, given that there was limited international awareness of the situation in Darfur through the build-up to the conflict through 2000-2002 and escalation in early 2003. There was a lack of UN personnel in Darfur and few humanitarian agencies and the government of Sudan restricted access to outsiders, limiting the flow of information. The preceding analysis also suggests that stronger diplomatic engagement with the government of Sudan on Darfur during the crucial period from 2003 to early 2004 could have changed the incentives for Khartoum in Darfur. The international community was focused on the north-south peace negotiations during this time, giving Khartoum time and political space to use violence to suppress the rebellion in Darfur. Conceptualizing R2P as a 'policy agenda' shows that there was much more that could have been done by the international community,

⁶⁹ 2010.

⁷⁰ Bellamy 2010, 158-159.

⁷¹ United Nations 2005, 30.

especially during the critical periods immediately before and after the conflict escalated in early 2003.

The second way of conceptualizing R2P, as outlined by Bellamy, is as a ‘rallying cry’ to escalate a situation above ‘politics as usual’.⁷² In this interpretation, R2P is a label that can be applied to a situation in an attempt to generate a strong and robust international response once a situation is at a point of escalation. This interpretation of R2P is encapsulated by Gareth Evans, who argues that it is important to keep R2P narrow, because “we need to preserve the focus and bite of “R2P” as a rallying cry in the face of mass atrocities”.⁷³ Advocacy, entwined with R2P, was prominent over Darfur but there was a disconnect between the understanding of advocates and the situation on the ground in Darfur. One of the key experts on the Darfur advocacy movement, Rebecca Hamilton, shows the clear limits to what this movement achieved. She explains that activists had little to no role in the decision to refer Sudan to the International Criminal Court in 2005; that their calls for UN peacekeeping in Darfur happened to align with broader international interests at the time rather than being causative; and that advocates had some role in the US push towards a peace negotiation.⁷⁴ This leaves them with a patchy track record, especially since the rushed peace agreement is attributed with causing the further splintering of rebel groups which has only made the conflict more difficult to resolve.⁷⁵ The area where advocacy on Darfur did have a significant impact was in generating funding for humanitarian aid.⁷⁶ While the advocacy movement contributed to the availability of humanitarian assistance for Darfur, the ‘rallying cry’ phenomena, which was so strong over Darfur, had a limited impact on the prevention of mass atrocity crimes.

⁷² 2010.

⁷³ 2008, 65.

⁷⁴ Hamilton 2011.

⁷⁵ Nathan 2007.

⁷⁶ Hamilton 2011, 197.

In considering these two different interpretations on the function of R2P the proceeding discussion suggests greater potential for R2P as a policy agenda, than R2P as a rallying cry. The case of Darfur shows that there was much more that could have been done on early warning through 2000-2002, and greater diplomatic engagement on Darfur in 2003 could have changed the calculations made by Khartoum. The advocacy movement on Darfur was considerably stronger and better resourced than advocacy for comparable conflicts more recently, yet it is difficult to pinpoint precisely what these efforts achieved beyond increasing the level of funding for humanitarian aid.

Conclusion

Prior to the 2005 World Summit, the Security Council showed minimal engagement with R2P and argued that the responsibility to address the conflict lay with the government of Sudan, rather than the international community. The Council's slow engagement with Darfur was initially due to lack of information on the situation on the ground in Darfur, followed by active resistance against addressing Darfur when there was so much invested in the peace process between the north and south of Sudan. This sequential approach to the conflicts was advantageous for the government of Sudan and has been widely criticized.⁷⁷ After the World Summit, R2P became part of the Security Council's 'frame' for Darfur and the negotiations towards UN peacekeeping in Darfur show some recognition of international responsibilities from Security Council members. The Security Council was hamstrung during 2006 on the issue of consent, with no willingness to engage in a non-consensual military action in Darfur. Resolution 1706 – the Security Council's first country-specific resolution on R2P – failed spectacularly due to the lack of consent from Khartoum for UN peacekeeping. To maintain

⁷⁷ Traub, 2010; Stedjan and Thomas-Jensen, 2010: 165-166.

consent, R2P was negotiated out of the subsequent resolution on Darfur. This highlights how contentious R2P language was during 2006 and 2007. In the years since, the Security Council has shown a far greater willingness to engage with R2P and it is no longer as controversial as it was on Darfur.⁷⁸ Even though it could not be implemented, resolution 1706 was an early attempt by the Security Council to engage with R2P and it deserves to be restored from its ‘forgotten’ status. The negotiations towards resolution 1706 also offer lessons on the importance of consent for the implementation of peacekeeping.

Darfur is not an apt case to use to assess the utility of R2P. The height of the violence in Darfur preceded any form of international agreement on R2P, meaning that the prevention aspects of R2P were not yet developed when the Darfur conflict escalated. What we can see through this case however is a broader normative shift towards international engagement with mass atrocity crimes. As explained by Edward Luck, the situation in Darfur was taken more seriously by the UN than it would have been in any earlier decade.⁷⁹ Alongside this broader normative shift, Darfur represented a new step – evolutionary rather than revolutionary – in the Security Council’s willingness to engage with R2P.

⁷⁸ Bellamy 2014.

⁷⁹ Author Interview 2011c.

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