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THE USE OF R2P MECHANISM BY INTERNATIONAL COMMUNITY IN CASES OF SERIOUS HUMAN RIGHTS INFRINGEMENTS IN AFRICA

ABSTRACT The article presents the evolution of the approach to humanitarian intervention that in the 21st century had been framed in the concept of *Responsibility to Protect*. The article focuses particularly on the possibility of adopting R2P rule in Africa, especially second and third pillar of this mechanism. Various cases of conflict in Africa and other types of security threats are discussed herein; those which were actually implemented and situations where they were had to be foregone. This description serves the purpose of defining situations when the R2P mechanism is found useful in continental security measures as well as indicating the factors needed to implement it in practice, regardless of pure declarations from regional states and organizations.

Key words: *Responsibility to Protect*, genocide, security in Africa, R2P, intervention

INTRODUCTION

This article presents the issue of R2P mechanism implementation in Africa by international community in cases of serious human rights infringements or intergroup violence. Being aware that R2P mechanism was created not as a legal tool justifying military intervention, but predominantly as a way to prevent atrocities and to rebuild nations and communities that suffered from crimes against humanity, I will be focusing mainly on international community reaction to occurring breaches of human right of a certain country. R2P mechanism is built around three pillars. The first one sets the responsibility for citizens' protection on the country authorities. The second one creates mechanism of international community assistance offered to a country at stake in active protection of its citizens. Both of these tools are strictly preventive measures. As it is often claimed: "Prevention, building on pillars one and two, is a key ingredient for a successful strategy for the responsibility to protect".¹ Only the third pillar allows the international community intervention whenever certain country does not follow the obligation of its residents' protection. We need to be aware that military intervention is not the only option on the table, but as it will be discussed further on in case studies it contains numerous diplomatic moves in response to violence. The input on third pillar does not diminish importance of the first two, but refers to the specifics of the case studies that will be presented in the article, each time revealing the inability of the countries in question to protect its citizens against violence. It was common that international community intervention happened in countries that were politically unstable, without the authority capable to react or control the country. The analysis of the international community intervention in Africa that adopted the R2P model will be preceded by short introduction of the R2P concept evolution, with particular attention to military intervention option, each the time third pillar rules allows it. This issue is still controversial, so it was important to take it into consideration, especially in the context of sovereignty rule protection.

FROM HUMANITARIAN INTERVENTION TO R2P

The concept of the *Responsibility to Protect* (R2P) was derived directly from the humanitarian intervention term used previously in international relations studies. It has, however, a qualifying nature exemplifying a code of conduct and describing the prerequisites that allow the political or armed intervention in a foreign country for the purpose of protecting the civilian population against genocide or other serious human rights infringements. The fundamental problem which appears while examining humanitarian intervention issues is their legitimacy. It is worth remembering that since the peace of Westphalia in 1648, the sovereignty of a country has become a supreme

¹ *Implementing the responsibility to protect. Report of the Secretary-General*, 12 January 2009, A/63/677, at <<http://responsibilitytoprotect.org/implementing%20the%20top.pdf>>, pp. 8-9, 20 December 2018.

matter in mutual relations between states, as well as the basis of the whole world order. *Sovereignty, it might be said, ruled as a sacred foundation for the entire international system.*² On the one hand, it does not permit the violation of borders or the independence of a state and significantly limits aggression on the international arena. On the other hand, it has permitted many leaders, often tyrants or usurpers, to interpret their sovereignty as the right to treat their subordinates in a reprehensible manner, without fear of interference from the outside world. Military intervention is therefore a violation of the sovereignty of a state, and this explains disputes in modern legal doctrine on the force of its application in certain domains.

However, the United Nations Charter (Article 2, paragraph 7) expressly states that: *Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter.*³ Recognizing the sovereignty of a state as a fundamental value, we may however wonder where the limit is of indecency at which the international environment should react. The international community, built on the concept of the rule of law and basic human rights, cannot accept notorious violations of citizen rights, the persecution of groups or committing crimes on civilians, and treat it only as an internal matter of a State, in which no one should interfere. Article 1, point 3 of the United Nations Charter clearly states: *To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.*⁴ One of the key ideas contained in the document is the protection of human rights. Its importance is demonstrated in the words of the preamble to the Charter, which are the objectives facing the international environment: *We the peoples of the United Nations Determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom.*⁵

In the light of the Charter, the protection of human rights is paramount and they should be protected at any cost. Although this document refers to the right of sovereignty of a state, its passages on these aspects of independence need to be read as less important and should be subordinate to the necessity to protect human rights. In certain situations, when it is impossible to implement both rules in parallel, and if there is

² A.S. Sidahmed, W.C. Soderlund, E.D. Briggs, *The Responsibility to Protect in Darfur. The Role of Mass Media*, Lanham 2012, p. 2.

³ "Charter of the United Nations", 26 June 1945, *United Nations*, 12 January 2009, at <<http://www.un.org/en/documents/charter>>, 10 September 2018.

⁴ Ibid.

⁵ Ibid.

a conflict between them, primacy should be given to one of them. Of course such an approach does not disavow the validity of the latter, not to overturn the system, however, one of them should be elevated above the other to back up the primal virtues. In the case of genocide, this even seems undisputable. As indeed you cannot invoke the right to sovereignty of states, which maintains a policy of exterminating its own citizens.

Considering the issue of the Security Council's position on humanitarian intervention, a slight yet significant change since the 1990s has been observed. During the Cold War, it was exceptional to justify the use of force using humanitarian reasoning. Western countries put emphasis on the importance of the protection of civilians during armed conflicts, and this approach affected Security Council positions on the model of humanitarian intervention. It acknowledged that internal political and socio-economical, or even ecological conditions within a country might constitute a threat to international peace and safety. In 1991, for the first time since the reaction to the human rights crisis in Rhodesia and the Republic of South Africa, the Security Council admitted that the infringement of Kurds' rights and freedoms constituted a threat to international peace. It could have been acknowledged as a milestone in the way of making the international reaction effective if not for the lack of reference to Article VII of UN Charter in the 688 Resolution.⁶ Nevertheless, the change in attitude in the reaction on internal conflicts and setting limits on state competences to manage internal affairs were important steps in developing the concept of humanitarian intervention. Over time, the Security Council has broadened the definition regarding the danger to peace and security beyond aggression or armed assault, to include also internal conflicts, humanitarian disasters or the fall of a legitimate government (resolutions on Somalia, Rwanda and East Timor), as well as acts of terror (Security Council resolutions 1368, 1373). The international community has so far accepted that the use of force in international relations must be authorized by the Security Council in order to be considered legal on a case-by-case basis. This strict approach is often rejected by rising numbers of contemporary scholars of international relations studies. They insist that justification of the grounds to use force cannot rely only on legal criteria due to a Security Council deadlock but must consider ethical issues that legitimize intervention, which in such a strict approach would be pronounced illegal. It is worth remembering that: "Humanitarian intervention, even if successful, constitutes a failure; the initiation of such actions is by the definition a response to a situation that has degenerated to a particularly catastrophic nadir"⁷. The use of force is extremely controversial and one of the as yet unresolved problems in public international law. We cannot resign, however, from such an analysis appealing to the concept of sovereignty or a ban on the use of force as in many cases armed intervention becomes the only possible

⁶ N.J. Wheeler, "The Humanitarian Responsibilities of Sovereignty. Explaining the Development of a New Norm of Military Intervention for Humanitarian Purposes in International Society", in J.M. Welsh (ed.), *Humanitarian Intervention and International Relations*, Oxford 2004, at <<http://dx.doi.org/10.1093/0199267219.001.0001>>, pp. 29-33.

⁷ A. Hehir, *The Responsibility to Protect. Rhetoric, Reality and the Future of Humanitarian Intervention*, London 2015, p. 87.

solution to prevent or stop mass killing, genocide or other crimes against humanity and international law.

As Zajadlo notes: (...) *humanitarian intervention must be considered as an ultima ratio and enacted in extraordinary circumstances of mass human rights crises.*⁸ Hence, there is a need to define the conditions of its acceptability to exclude the possibility of abuse and the realization of a particular, neo-imperial policy. While discussing the relation between humanitarian intervention and the sovereignty of states, it must be highlighted that such intervention is only possible when sovereignty is no longer positively attached to the duty to protect citizens and it becomes a threat to internal safety. If a country abuses its governmental obligations, exterminates people on ethnic grounds, or kills its citizens, it cannot be permitted to rely on the exception of sovereignty regarding external intervention.

The key moment for the *Responsibility to Protect* (R2P) project was the Canadian government's decision to establish the independent International Commission on Intervention and State Sovereignty (ICISS). The result of its work was published in an R2P report in 2001. The report emphasized the obligation of states to protect their citizens within their sovereignty. The international community would then be legitimately able to intervene when the government of a particular country breaches this obligation by allowing its citizens to suffer on account of domestic war, repression or persecution. One indicator that allows us to declare humanitarian intervention as legitimate is the definition of the just intention to undertake it. In the report entitled *Humanitarian Intervention. Legal and Political Aspects* the just intention is combined with impartiality and non-involvement. The intervening state shall not support any of the conflicting parties and act directly to put a stop to the humanitarian crisis. The best option is to delegate rights to intervention to a state that has no interests in the country in question, which is obviously difficult to achieve in reality.⁹ As Sharp highlights, it is sufficient for international community members to undertake intervention even without any personal interests: *But when force is needed to discipline rogue nations the system must provide for the major powers to intervene for the common good, even when their own short term national interests are not at risk.*¹⁰ In the process of increasing the transparency or legitimacy of intention in certain operations it is advisable to undertake actions in groups of states rather than by individual country. The best option is cooperation within some regional organization. Its purpose is to minimize the role of other motives other than strictly humanitarian ones, as common political reasons are hard to achieve in groups of states. For that reason, multilateral intervention must be considered as most transparent.

The R2P project became one of the central elements of the United Nations reform that was about to be introduced during the World Summit in 2005. The idea was well received by the international community, which was about to establish the criteria of

⁸ J. Zajadlo, *Dylematy humanitarnej interwencji: Historia – etyka – polityka – prawo*, Gdańsk 2005, p. 206.

⁹ *Humanitarian Intervention. Legal and Political Aspects*, Danish Institute of International Affairs, DUPI, Copenhagen 1999, p. 110.

¹⁰ J.M.O. Sharp, "Appeasement, Intervention and the Future of Europe", in L. Freedman (ed.), *Military Intervention In European Conflicts*, Oxford 1994, p. 34.

international reaction to armed conflicts, the prevention of genocide, ethnic cleansing and other war crimes. Paragraph 138 of the World Summit's Outcome Document declares that: *each individual state has the responsibility to protect its own population from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means (...)*.¹¹ As Zajadło highlights, despite the fact that this declaration is not a legal binding outcome, acceptance of it made the concept of R2P an official UN doctrine.¹²

ADOPTION OF R2P IN AFRICA

What is important to notice from the perspective of this article is that the African Union in their 2000 Constitutive Act allowed for the possibility of intervention in each member state to prevent crimes against humanity, which in fact preceded the announcement of the ICISS report. We need to remember that the predecessor of the African Union, the Organization of African Unity, had no authority to intervene in the internal affairs of its members. This was the main reason why in 2000, having in mind their troublesome history (like the Rwandan genocide in 1994), the African states decided to include in the Constitutive Act of African Union (Article 4 h) a permission to undertake intervention on internal affairs in cases of "grave circumstances".¹³ They state: *The African Union has thus – at least in theory – moved away from the doctrine of non-intervention to a doctrine of "non-indifference"*.¹⁴ Even broader implementation of R2P rules and ideas is connected with the so-called Ezulwini Consensus, adopted by African leaders in 2005. In this declaration, the African Union adopted a Common African Position on the proposed reform of the UN and was then consequently adopted. In addition, the African Union highlighted the importance of empowering regional organizations to take action as the General Assembly of the United Nations and the Security Council (UNSC) are far from the scenes of conflict, which may hinder a correct appreciation of the nature and development of conflict situations. Therefore, the Ezulwini Consensus was the adoption of UN reforms, including the concept of R2P. Another advantage of this important document is the rule set out in point B of paragraph I which describes the possibility of intervention in the case of a United Nations deadlock: *Since the General Assembly and the Security Council are often far from the scenes of conflicts and may not be in a position to undertake effectively a proper*

¹¹ "2005 World Summit Outcome", UN document A/60/L.1, 22 September 2005.

¹² J. Zajadło, "Koncepcja «Responsibility to Protect» jako strategia zapobiegania i karania zbrodni ludobójstwa", in B. Machul-Telus, U. Markowska-Manista, L.M. Nijakowski (eds.), *Krwawy cień genocydu. Interdyscyplinarne studia nad ludobójstwem*, Kraków 2011, p. 104.

¹³ K. Aning, S. Atuobi, "Responsibility to Protect in Africa. An analysis of the African Union's Peace and Security architecture", *Global Responsibility to Protect*, vol. 1, no. 1 (2009), at <<https://doi.org/10.1163/187598409X405505>>, p. 93.

¹⁴ T. Reinold, *Sovereignty and the Responsibility to Protect. The power of norms and the norms of the powerful*, London–New York 2013, pp. 58–59.

appreciation of the nature and development of conflict situations, it is imperative that Regional Organizations, in areas of proximity to conflicts, are empowered to take actions in this regard. The African Union agrees with the Panel that the intervention of Regional Organizations should be with the approval of the Security Council; although in certain situations, such approval could be granted «after the fact» in circumstances requiring urgent action. In such cases, the UN should assume responsibility for financing such operations.¹⁵ It is also worth mentioning that Of all regional organizations, the African Union has endorsed R2P most strongly,¹⁶ P. Williams argues however, that acceptance of R2P is not unequivocal among African states. Strong support for the mechanism comes from Rwanda, Tanzania and Algeria, however, countries like Egypt and Sudan are sceptical regarding the implementation of R2P in the continent.¹⁷ Stronger fears were attached to sovereignty breach in case of African countries and continuous possibility of the international community intrusive interference in internal affairs of those countries¹⁸.

It was not only the African Union, but also other regional cooperative bodies in Africa that decided to implement the R2P mechanism in its declarations and statutes. The Economic Community of West African States (ECOWAS), founded in 1975, had an initial mission to integrate the region and tighten economic cooperation. Due to the instability of the continent and its ongoing political crises, it then turned its interest to security measures and the maintenance of peace. The R2P mechanism was included in the ECOWAS agenda and declarations (particularly in the ECOWAS Conflict Prevention Framework from 2008). When establishing numerous security measures in relations between member states, there is a reservation included that in cases where member states are negligent of their responsibilities to their citizens, ECOWAS also arrogated to itself the right to intervene in cases where its member states were unwilling or incapable of protecting citizens.¹⁹

CASE STUDIES

The example of the ECOWAS R2P engagement was the 2008 Guinea coup that led directly to the atrocities the following year.²⁰ Guinea was suspended from the organiza-

¹⁵ “The Ezulwini Consensus”, at *United Nations*, <http://www.un.org/en/africa/osaa/pdf/au/cap_screform_2005.pdf>, 13 September 2018.

¹⁶ “The Responsibility to Protect (R2P): Moving the Campaign Forward”, Human Rights Center, University of California, Berkeley, October 2007, p. 11.

¹⁷ P.D. Williams, “From Non-Intervention to Non-Indifference. The Origins and Development of the African Union’s Security Culture”, *African Affairs*, vol. 106, no. 423 (2007), p. 277.

¹⁸ A. Abbas, “Africa”, in J. Genser, I. Cotler (eds.) *The Responsibility to Protect. The Promise of Stopping Mass Atrocities in Our Time*, Oxford 2012, p. 111.

¹⁹ “ECOWAS Conflict Prevention Framework”, Regulation MSC/REG.1/01/08, January 2018, at <<http://documentation.ecowas.int/download/en/publications/Conflict%20Prevention%20framework.pdf>>, 20 September 2018.

²⁰ K. Aning, S. Atuobi, “The Economic Community of West African States and The Responsibility to Protect”, in W.A. Knight, F. Egerton (eds.), *The Routledge Handbook of the Responsibility to Protect*, London–New York 2012, at <<https://doi.org/10.1163/187598409X405505>>, pp. 224-225.

tion until constitutional order was restored and was strongly condemned by the leaders of ECOWAS. The latest example of successful intervention took place in Gambia in 2017 when following the presidential elections the former president refused to step down. ECOWAS voted for a military mission and threatened Gambia with around 7,000 troops entering the country if democratic election results were not accepted. The armies of the ECOWAS members surrounded the Gambia border by January 2017 and gave the President time to reconsider. This could be viewed as a classic example of the implementation of the R2P mechanism in order to re-establish democracy, stabilize a country and enable the peaceful transition of power. The day the elected president Adama Barrow was sworn in at the Gambian Embassy in Dakar (Senegal), ECOWAS troops entered Gambia but halted the mission a day later to enable further negotiations. These, led by the Mauritanian and Guinean Presidents, led to a compromise.

As a result, President Yahya Jammeh went into exile, and half of the ECOWAS military mission troops remained in the country for the transitional period.²¹ In reaction to the ECOWAS moves, the United Nations Security Council passed Resolution 2337 requesting a peaceful transition of power. While not endorsing or condemning the military option it requested ECOWAS to pursue political means first.²² ECOWAS had taken the decision independently, which happened to be the correct choice. The main legal justification was that the sworn-in president-elect Adama Barrow approved the intervention so in fact the ECOWAS troops had been invited to restore constitutional order. Another option was pro-democratic intervention, to some extent approved by Security Council. These justifications did not fall precisely under international law regulations which led to the conclusion that this intervention, as many others, was in fact unlawful and led to a breach of sovereignty. However, it was one of the first interventions that had been internationally acclaimed. No government opposed the right of the newly elected President, who had no control over the country, to invite external intervention to secure his power, nor did the Security Council. It was showcased as a model of preventive diplomacy.²³ In order to gain such great attention for the implementation of the R2P model, the international community had to take a long road fraught with failure. One of them was most certainly Darfur.

The conflict in Darfur, which erupted in this Sudanese province in 2003 was recognized by many scholars and analysts as 'the first test case' for R2P.²⁴ In July and August 2004, an international group of investigators called the Darfur Atrocities Documentation Team (ADT), travelled along the Chad-Sudan border interrogating approximately 12,000 refugees from Darfur. The data collected by the team was evaluated by the US Department of Intelligence and Analysis, effecting Colin Powell's declaration before

²¹ M.S. Helal, "The ECOWAS Intervention in Gambia – 2016", in T. Ruys, O. Corten (eds.), *The Use of Force in International Law. A case-based Approach*, Oxford 2018, p. 913-919.

²² *Security Endorses Recognition by African Union, Regional States, of Adama Barrow as President-Elect of Gambia, Unanimously Adopting 2337 (2017)*, United Nations, 19 January 2017.

²³ M.S. Helal, "The ECOWAS Intervention in Gambia – 2016"..., p. 931.

²⁴ B. Beardsley, "Lessons Learned or Not Learned from the Rwandan Genocide", in A. Grzyb (ed.), *The World and Darfur. International Response to Crimes Against Humanity in Western Sudan*, Montreal-Kingston 2009, p. 42.

the *United States* Senate Committee on Foreign Relations, in which he stated that what had happened in Darfur was genocide and that it may still be taking place. The investigation clearly showed that the refugees, most of whom were non-Arabic residents of the region, had been the victims of attacks by the Sudanese army and Arab militias. About half of the refugees declared the combined forces of the Government and Janjaweed as responsible for the attacks on their villages, while another quarter of the respondents said only Government forces were responsible. In two thirds of the cases, the attacks were accompanied by Sudanese bombardment.²⁵ The report on the inquiry was presented by the Department of State to the UN Security Council. This directly contributed to the adoption of the UN Secretary-General's decision on the establishment of the International Commission of Inquiry on Darfur (ICID).

In the first years of the conflict in Darfur, dealing with the problem was more about debate than action. There was also no recall to the Responsibility to Protest mechanism. Even though it was already well-known within the international community, until the World Summit in 2005 it did not have any media coverage. In July 2004, the United States Congress adopted a resolution which labelled the events in Darfur genocide (On 9 September 2004, the Secretary of State Colin Powell argued before Congress that (...) *genocide has been committed in Darfur and the government of Sudan and the Janjaweed bear responsibility*).²⁶ The report of the ICID was issued in January 2005, which was requested of the United States by the UN Security Council. The commission was formed to examine the accuracy of reports about breaches of international law and human rights, as well as to determine whether what had happened in the province was actually genocide. The Report did not confirm expressly that genocide had taken place in Darfur but pointed at the people who could be responsible for it, and were responsible for significant violations of international law. Among them were senior representatives of the Sudanese authorities.²⁷

For many analysts the lack of an official statement from the United Nations Investigation Commission about the nature of events in Darfur was astonishing. The Commission stated that there were contradictions in the evidence that suggested the committing of genocide in Darfur by the Sudanese government and Janjaweed. Surprisingly, one of the Commission's arguments was that in the attacked villages the entire population was not always killed. However, it is important to remember that the Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as attempts to destroy even a part of, and not necessarily the whole group. The Commission disagreed that there might be an attempt to eradicate some groups, pointing at the camps organised for the victims of the conflict, providing them with shelter and allowing international humanitarian aid to operate.²⁸

²⁵ A.S. Natsios, "Moving Beyond the Sense of Alarm", in S. Totten, E. Markusen (eds.), *Genocide in Darfur: Investigating the Atrocities in the Sudan*, New York–London 2006, p. 38.

²⁶ N. Grono, "Darfur: The International Community's Failure to Protect", in *Explaining Darfur. Four Lectures on the Ongoing Genocide*, Amsterdam 2006, p. 39.

²⁷ "Darfur atrocities do not amount to genocide, UN team says", *Global Security* (2005), <<http://www.globalsecurity.org/military/library/news/2005/02/mil-050201-irin04.htm>>, 12 September 2018.

²⁸ J. Fowler, "A New Chapter of Irony: The Legal Definition of Genocide and the Implications of Powell's

Although the UN Commission of Inquiry stated clearly in its report of January 2005 that genocide did not occur in Darfur, US President George Bush maintained the view that it had. It is worth asking why Bush's administration used the rhetoric of genocide while already being militarily engaged in Iraq and Afghanistan, and wished to avoid new interventions at any cost. The prevailing trend was advocacy from the evangelical lobby urging the US administration to condemn the Sudanese regime and to actively defend Christians from the South, who had suffered as a result of the conflict with Khartoum. The final ambiguity between radical statements and the soft reaction was caused by fear that stronger opposition to the Darfur events against the Sudanese government might endanger the peace agreement between Sudan and South Sudan (CPA), in which the Americans played a dominant role.

The years 2005-2006 became a period in which the events in Darfur had a great deal of media coverage initiated by international social campaigns, often led by non-governmental organizations. In these campaigns, the R2P mechanism began appearing as the key word.²⁹ After 2005, the United Nations began to refer to R2P in reference to the Darfur situation more frequently but as Spencer recalls: (...) *it does not seem to have enabled the international community to act decisively to halt genocide.*³⁰ Greater public interest in Darfur, beyond doubt, prompted the African Union to establish the African Union Mission in Sudan (AMIS), however without expected success as the mission had been underfinanced and had a limited mandate. It should be noted, however, that it was an important step in the reaction policy of the African Union on mass crimes committed by governments on its citizens.³¹ Evaluating the African Union Mission in Sudan Evans points out that: (...) *there has been a significant gap between the aspiration to prevent massive abuses and the reality of the protection supplied.*³² In 2007, the AMIS mission was transformed into the UN-African Union Mission in Darfur (UNAMID), and despite its actions still causing numerous controversies, it was perceived as more effective than AMIS. As pointed out before, there were several reasons why the R2P mechanism had not been properly implemented in the case of Darfur, including a lack of mechanism recognition among members of the international community, isolation of the province and greater importance of the other conflict reconciliation taking place between Sudan and Southern militias.

It should be noted that over time, the international community and the UN itself were extremely active in the case of Darfur, which was confirmed by UNAMID, and the issuing of an international arrest order for President Omar Al-Bashir by the International Criminal Court. Nevertheless, we still need to assume that: *There is also wide*

Determination", in S. Totten, E. Markusen (eds.), *Genocide in Darfur. Investigating the Atrocities in the Sudan*, New York-London 2006, p. 133.

²⁹ J. Kościółek, *Kulturowe uwarunkowania polityki Stanów Zjednoczonych Ameryki wobec ludobójstwa w Afryce*, unpublished PhD dissertation, Kraków 2016, pp. 98-104.

³⁰ P. Spencer, *Genocide since 1945*, New York 2012, p. 122.

³¹ J. Kościółek, *Konflikt w Darfurze*, Toruń 2010, pp. 75-78.

³² G. Evans, *The Responsibility to Protect. Ending Mass Atrocity Crimes Once and For All*, Washington DC 2008, p. 189.

*spread academic agreement that R2P failed to protect the people of Darfur.*³³ It was probably too early, despite the 'Never Again' slogan on the 10th Anniversary of the Rwandan genocide in 2004. Some lessons for the future might however be learnt in regard to the Darfur conflict. Bellamy notes that: *RtoP can be used as a speech act which has the effect of elevating certain issues above normal politics to a catalyst for decisive action. In other words, RtoP can be used as a label that is attached to particular crises in order to generate the will and agreement necessary to mobilize a decisive response.*³⁴

The most recognized example of R2P implementation in the recent years was the decision of the Security Council to allow intervention in Libya in order to prevent mass atrocities in Benghazi. The tense situation in Libya had been noticed by the USC a week after the massive protests had begun, and the Council was ready to introduce more radical decisions shortly after the protests escalated to a regular war between the opposition and the Gaddafi regime. Unlike previous attempts, in March 2011 it was easier for this UN body to justify the use of military force in the protection of citizens against state-perpetrated persecution than to justify the absence of reaction.³⁵ In the case of Libya, two milestone decisions for the international security system had been made. Resolution 1970 vested the International Criminal Court prosecutor with the competence to investigate the situation in the country, hence Resolution 1973 allowed the use of all necessary measures short of foreign occupation to protect civilian lives in the country. For the first time and without much doubt or hesitation, it was obvious for the international community that the principle of sovereignty could no longer excuse the mass atrocities of a particular country on its own citizens, and if a state fails to protect the lives of citizens, the international community is legitimately obliged to act in order to provide this protection. The resolution was preceded by an unprecedented, unequivocal statement made both by international organizations like the Arab League or the African Union and human right advocates, such as HRW or AI. Each agreed that the violence was deliberate, intentional and planned. The intervention was also singular because for the first time the use of military force was authorized against an active UN member. It suggests then that the meaning of sovereignty has been re-conceptualised to include at least the commitment to the most fundamental human rights.³⁶ Regardless of the essential failure of the intervening states to stabilize the region, it also appeared that allegiance to the R2P mechanism boosts the ability of many countries to cooperate internationally for peace, supported and welcomed by UN agencies. This was confirmed later with cases such as the situations in Ivory Coast, Kenya, South Sudan, and Gambia, as mentioned previously.

In Kenya, tensions and violence were caused by protests after the 2007 elections leading to 1,200 casualties and more than 600,000 internally displaced persons. In this

³³ A. Salam Sidahmed, W.C. Soderlund, E.D. Briggs, *The Responsibility to Protect...*, p. 103.

³⁴ A.J. Bellamy, "The Responsibility to Protect: Added Value or hot air?", *Cooperation and Conflict*, vol. 48, no. 3 (2013), p. 336.

³⁵ C.B. Walling, *All Necessary Measures. The United Nations and Humanitarian Intervention*, Philadelphia 2013, p. 214.

³⁶ *Ibid.*, p. 215.

period, mediation from Kofi Anan on behalf of the African Union was fruitful; however, the crisis erupted again in 2010 during the constitutional referendum. Thanks to the mutual efforts of the US State Department, the Kenyan government, European and African diplomats, including the Tanzanian President Jakaya Kikwete, as well as the United Nations, Kenyans were able to adopt the constitution without violence and with massive support (2/3 of votes in favour). The same strategy allowed them to pursue presidential elections in 2013.³⁷ It is assumed that: *The intervention of the international community, including the United Nations special adviser on the prevention of genocide, Francis Deng, in Kenya and the success in finding a solution to the crisis there in February 2008, may give some credence to the notion that principles are realizable in Africa.*³⁸ Such optimism was shared by Gareth Evans, who argued that Kenya in early 2008 was the best example of Responsibility to Protect appearing to play an important energizing role in stimulating effective response.³⁹ Engagement of the international community to boost talks between different political stakeholders on certain issues and an internal reform of the political system in fact caused the end to violence. People saw politicians talking about a deal where there are no losers and which would lead to permanent long-term peaceful solutions. Important judicial and electoral reforms were passed including the establishment of the National Cohesion and Integration Commission. This actually worked.

In the case of Ivory Coast, crisis also flamed around the presidential election in 2010, when the incumbent president did not want to step down after losing the elections. During disturbances, 450,000 people were forced to flee (mostly from the capital city), and hundreds lost their lives in riots. The implementation of the R2P rule had been directly and officially announced by regional and world leaders as a response to crimes committed on civilians by supporters of the former president. Additionally, France and the United Nations refused to withdraw their military peacekeeping contingents. The coalition formed by France, ECOWAS, the African Union and the United Nations created a successful but very limited armed intervention, enhanced by international sanctions that weakened the regime. It allowed the opposition armies to take control of the country, restoring peace and the lawfully-elected president to take the country's helm. The former president awaits trial in the ICC in Hague, which was the first ever case of the head of a country to be arrested by the ICC.⁴⁰ It needs to be highlighted, however, that Resolution 1975 which authorized UNOCI (the UN Operation in Cote d'Ivoire) to use all necessary measures to implement its mandate in protecting civilians and in self-defence, had been prompted by the example of Libya.

³⁷ M.K. Albright, R. Williamson, *The United States and R2P: From Words to Action*, Washington 2013, p. 15.

³⁸ J. Sarkin, "The Role of the United Nations, the African Union and Africa's Sub-Regional Organizations in Dealing with Africa's Human Rights Problems. Connecting Humanitarian Intervention and the Responsibility to Protect", *Journal of African Law*, vol. 53, no. 1 (2009), at <<https://doi.org/10.1017/S0021855309000011>>, p. 32.

³⁹ J. Genser, I. Cotler, *The Promise of Stopping Mass Atrocities in Our Time*, Oxford 2012, p. 279.

⁴⁰ J. Sarkin, *The Role of the United Nations...*, pp. 15-16.

Before the Libyan precedent, the situation in Ivory Coast had greatly escalated and caused a massive influx of refugees and an outbreak of atrocities without the adequate reaction from UN forces⁴¹ which were present there. For that reason, the Ivory Coast case cannot be considered a success in the implementation of R2P. It might, however, be reconsidered as a moderate achievement of the international community and an example of a consistent approach to protecting human rights after the international community learnt its lesson in Libya. It needs to be noted that: (...) *the gradual inter-nalisation of RtoP goals by the UN Security Council has supported the emergence of what have been described as 'habits of protection'. Habits of protection mean that the Council gives consideration to RtoP related issues as a matter of routine, but they do not determine particular courses of action.*⁴²

In the cases of Sudan and South Sudan, due to the size of the countries, poor infrastructure and the dispersed population, it was extremely hard to effectively implement R2P rules, especially taking into account these countries' reluctance to allow for international monitoring. Nevertheless, the international community undertook a great deal of effort to stabilize them and to prevent violence within the borders of these two countries. As a result, both Sudan and South Sudan were subject to numerous UNSC resolutions, witnessed several interventions of international peacekeeping forces, international diplomatic efforts and were effectively used to test the effectiveness of the prevention mechanism led by diverse and numerous groups engaged in the process of preventing atrocities. Such efforts can contribute to the growth and development of these countries if better leadership emerges. The main role of the current international community is to keep those governments in check to enable relative stability, which appears to be achievable. The most recent information on the development of such an approach comes from the Global Centre for the Responsibility to Protect. According to reports posted on the Network's website between December 2013 and August 2015, at least 50,000 people in South Sudan were killed because parties to the civil war perpetrated war crimes and crimes against humanity, including widespread extrajudicial killings, torture, child abductions and sexual violence, with both sides targeting civilians as part of their military tactics.⁴³ As we read further on, in 2017 the Intergovernmental Authority on Development (IGAD) launched the High-Level Revitalization Forum (HLRF) in an attempt to reinvigorate the August 2015 peace agreement, which eventually failed. In response, President Yoweri Museveni of Uganda, President Omar Al-Bashir of Sudan, and President Uhuru Kenyatta of Kenya brokered a new comprehensive agreement that was signed by the parties on 12 September 2018. Despite the failure of numerous past agreements, the latest peace deal represents a significant diplomatic attempt to permanently end the armed conflict in South Sudan and re-establish a power-sharing government. Furthermore the South Sudanese president Salva Kiir promised

⁴¹ T.G. Weiss, *Humanitarian Intervention. Ideas in Action*, Cambridge 2012, p. 64.

⁴² A.J. Bellamy, *The Responsibility to Protect...*, p. 335.

⁴³ See: *Global Centre for the Responsibility to Protect*, at <http://www.globalr2p.org/regions/south_sudan>, 23 September 2018.

a pardon to “those who waged war against the government”, despite the fact that some of the soldiers who committed atrocities were sentenced by the military courts. As for the international response in March 2018, the Human Rights Commission extended its mandate for another year, emphasizing that the government has: (...) *the responsibility to protect all of its population in the country from genocide, war crimes, ethnic cleansing and crimes against humanity*.⁴⁴ The same month, the Security Council extended the mandate of the UN Peacekeeping Mission in South Sudan (UNMISS) until March 2019, and imposed an arms embargo in July. The adopted Resolution 2428 reiterates that the government of South Sudan: (...) *bears the primary responsibility to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity*.⁴⁵

One of the worst situations in Africa is taking place in the Democratic Republic of Congo, where ongoing crises, a weak government and state institutions, deep ethnic disparities, wars over resources and the actions of hostile neighbours have cost 5.5 million lives in the past two decades. This all happened despite the permanent presence of international peacekeeping forces and the occasional engagement of world leaders. Yet in the last year (2017), at least 4.5 million people were internally displaced, and half this number was displaced in 2017. Several provinces in eastern DRC, notably North Kivu, South Kivu, Ituri and Tanganyika, have been plagued by a recent rise in inter-communal violence and attacks by armed groups. Recent clashes over access to land and water between the Banyamulenge and Bafuliro ethnic groups and affiliated militias near Uvira, South Kivu, have displaced more than 76,000 people.⁴⁶ Violence caused a massive influx of refugees to neighbouring countries, particularly Uganda. These tragic events lead us to perhaps a different approach in the case of DR Congo, and to engage most international community efforts on the improvement of the R2P mechanism. Following these indications, new internal talks were held under the Conference Episcopale du Congo (CENCO), which decided that current president Joseph Kabila will abstain from the next presidential elections scheduled for 23 December 2018. Unfortunately, the governing party nominated former Interior Minister Emmanuel Ramazani Shadari, who has been on the European Union sanctions list since May 2017 for his alleged role in the Kasai region atrocities. As in the case of South Sudan, on 31 March the UNSC extended the MONUSCO (peace keeping forces in DRC) mandate until March 2019, emphasizing that the DRC government *bears the primary responsibility to protect civilians within its territory and subject to its jurisdiction, including protection from crimes against humanity and war crimes*, which again is an example of a rather moderate and reserved reaction to human rights violations in the region. It might also be the case that ECOWAS will again take the lead and show more courage and advancement in the approach to human rights protection.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ See at <http://www.globalr2p.org/regions/democratic_republic_of_the_congo_drc>, 23 September 2018.

CONCLUSION

In conclusion, one must admit that it is extremely difficult to make any judgments on the development of the R2P mechanism in Africa. The above examples in which the mechanism was implemented show that frequently the particular circumstances of individual conflicts or the geographical and political surroundings of the state where it occurs might affect the implementation of R2P. What can most certainly be highlighted is the declarative sphere of which most African countries and regional organizations are supportive regarding the adoption and use of the R2P mechanism in the case of serious human rights violations. However, the practice of its implementation is still disappointing. *Responsibility to Protect may be the accepted creed of the international community, but creeds take time to be translated into practice or to be given an interpretation which the majority of people or states can live with comfortably.*⁴⁷ It is obvious that the concept of R2P affected the withdrawal of the former strict framework of state sovereignty in order to give priority to civilian protection. To clarify: *Although it is early days for judging R2P, it has made significant progress in terms of generating political support and overcoming several of the obstacles that stymied earlier debates about humanitarian military intervention. Now that support needs to be translated into positive results on the ground.*⁴⁸ Recent humanitarian interventions show that international law or rather international customs have become more supportive to the universalism of human rights and the concept of welfare for everyone regardless of their nationality, in opposition to the sovereign right of states to exercise authority without any external control. One could risk the statement that the internalization of R2P goals and their incorporation into the international context have contributed to the emergence of an international habit of responding to mass atrocities. This habit has also become evident on the African continent.

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⁴⁷ A. Salam Sidahmed, W.C. Soderlund, E.D. Briggs, *The Responsibility to Protect in Darfur. The Role of Mass Media*, Lanham 2012, p. 107.

⁴⁸ P.D. Williams, “Humanitarian Military Intervention After the «Responsibility to Protect». Obstacles and Prospects”, in J. Apse, E. Verdeja (eds.), *Genocide Matters. Ongoing Issues and Emerging Perspectives*, New York 2013, p. 167.

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