

The Failure of International Community to Implement Responsibility to Protect in Darfur

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Keywords: Responsibility, intervention, sovereignty, national interests, motivational deficiency, prevention

Abstract: This article wants to explore the implementation of the Responsibility to Protect (R2P) as a binding international norm in Darfur, Sudan. The R2P commands every state to protect its citizen from any violation of human right, and if the state is unable or unwilling to do so, then the international community should take action of intervention. Darfur is a test case of whether states have adopted the norm or state's interest is still privileged over the norm. This article argues that R2P has not been adopted in Darfur due to the failure of the international community to prevent conflict while there was a great opportunity to prevent the conflict to escalate. Prevention is the core tenet of the R2P. In addition, national interests are great obstacles to enforce the norm in practice.

1 INTRODUCTION

The International Commission on Intervention and State Sovereignty (ICISS) promoted a new norm called the "Responsibility to Protect" (R2P). Before the norm emerged, humanitarian intervention and sovereignty were seen as two contradictory concepts. Nevertheless, the R2P has located those two as complementary to each other. It asserts sovereignty should be understood as a responsibility to protect, not as the right to control, and if a state fails to perform the responsibility, either due to state's weakness or motivational deficiency, the international community has moral obligation to intervene (Evans & Sahnoun, *The Responsibility to Protect*, 2002).

The UN General Assembly Summit had endorsed the norm in 2005; therefore it has officially become a new binding norm in international relations. This implies, if the humanitarian crisis emerges, the international community will intervene if the local government were unable or unwilling to solve the issue. This article intends to assess the implementation of R2P in practice. The humanitarian crisis in Darfur will be the test case. This article argues that the "responsibility to protect" has not been yet implemented as how it should be in practice. Preventing is the most important step in the norm, but in fact, the international community was

reluctant to intervene and ignored the early warning of the crisis which eventually allows the crisis to escalate. The R2P has become a norm in international relation and should be implemented indiscriminately, but in fact, national interest is still the main concern of every country (particularly permanent Security Council states).

This article will be divided into four sections. The first section will discuss the R2P concept. This writing will not focus on the debate of whether the responsibility to protect is legitimate or not, but rather to describe the contents of the concept as well as the timing and the way it should be implemented. The second section will highlight the Darfur case which includes its history and why this case should obtain international responses. The third section will discuss the failure of the R2P's application in Darfur. The last section will explore some options to enforce the application of the R2P in the future.

2 THE RESPONSIBILITY TO PROTECT

The birth of the R2P concept is closely related to the historical events of the 1990s. During these years, many humanitarian tragedies happened and claimed casualties in large numbers. In 1994 for example, the Rwandan army and Hutu militias conducted massive

killing on Tutsi and Hutu people who reach one million casualties (Bellamy, *The Responsibility to Protect*, 2008). In 1999, the Yugoslav government was doing ethnic cleansing against Kosovo's Albanian population (Bellamy, *The Responsibility to Protect* and the problem of military intervention, 2008). Responses to those cases are diverse; some of those responses got permission from the UN Security Council, and some did not. There has been no consensus on how the humanitarian intervention should be carried out because there is still a problem in positioning intervention for human rights in the context of respecting sovereignty.

According to the Westphalia agreement in 1648, it is clear that every country has rights to organize and run the government in whatever way deemed fit by the state and another countries do not have right to intervene (ICISS, 2011). The UN Charter Article 2 (7) also states that the United Nations prohibits countries to interfere in the domestic affairs of other countries. Non-intervention norm has become the foundation of international order for years. Weak states also believed that the non-intervention norm is one of their main defenses against threats and pressures from more powerful international actors that seek to promote their own economic and political interests (Weiss, 2004). Therefore, sovereignty and intervention are then seen as contradictory concepts. This condition has created a problem.

On the one hand, there is an intention to save individuals from genocide, ethnic cleansing and other massive violence, while on the other hand there is no consensus on how to solve the sovereignty issue. Therefore, responses to those humanitarian cases seem inconsistent. Sometimes an intervention allowed by the UN, as taken place in Rwanda, and sometimes it has no permission from the UN such as NATO's bomb attack on Yugoslavia (Bellamy, *The Responsibility to protect* and the problem of military intervention, 2008).

Responsibility to Protect presents to solve that problem. The R2P reframes the debate away from one setting humanitarian intervention against sovereignty. This concept positions intervention and sovereignty as complementary, not contradictory. This is through re-interpreting the meaning of sovereignty. Before the concept emerged, sovereignty mainly understood as the right to control, but R2P defines sovereignty as the obligation to protect (International Commission on Intervention and State Sovereignty, 2001). The state has a responsibility to protect its citizen, and this responsibility is paramount. As Francis Deng said,

sovereignty required demonstration of responsibility (Deng et.al, 1996). That represents the first main tenet of the R2P.

However, not all countries are able or willing to implement the obligation. In many cases, the state itself has committed violence to its citizens. As argued by Barry Buzan that state can also become the source of threat for human security (Buzan, 1991). Data has proved, 262 million people died because of crimes committed by states. That figure is six times greater than the number of people killed in the battle by the foreign government during the same period (Bellamy, *The Responsibility to protect* and the problem of military intervention, 2008). In that condition, the international community has to protect those citizens. That is the second tenet of the R2P.

In 2005, the R2P concept was endorsed by the UN General Assembly Summit, implying that the R2P had officially become a new norm in international politics. However, it is important to note that responsibility to protect differs from "humanitarian intervention." The R2P is broader and more binding than humanitarian intervention. Broader in a sense it does not only include reaction but also incorporate prevention and rebuilding, while humanitarian intervention only focuses on reaction (International Commission on Intervention and State Sovereignty, 2001).

Moreover, the R2P is an obligation, not just a right to intervene. It implies, when humanitarian tragedy takes place, the international community has to involve if the set-criteria have been fulfilled. Furthermore, the R2P addresses the intervention from the perspective of the needs of those who seek rather than from the interests and perspectives of those who carry out such action.

It is also important to emphasize that the R2P is theoretically more about prevention rather than reaction and rebuilding. As argued by Gareth Evans, responsibility to protect is mainly about prevention (Evans G. , *From Humanitarian Intervention to the Responsibility to Protect*, 2006). Prevention includes responding to early warning and tackling the root causes. Prevention is more important because referring back to Rwanda and other humanitarian issues before R2P emerges; those cases became worse because the international community failed to respond earlier.

Some people might worry about abuse of this concept. Therefore standards and rules have been set out. It can only be conducted under the Security Council mandate. Moreover, it should meet certain thresholds. The UN set four standards

namely genocide, war crimes, ethnic cleansing, and crimes against humanity (Grono, 2006).

Again, the R2P is a breakthrough in international politics; it mitigates the debate between intervention and sovereignty. Moreover, the R2P can be seen as lifeline facilitator for the growing concern of human security issue as stressed by Kofi Annan in the UN Summit 2005. However, how to turn it into practice? Has it been applied properly? This will be assessed by using the experience of the R2P in Darfur, Sudan.

3 DARFUR CASE

Since 2003 there was a war between the central government and rebellion groups -- Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM). Some say this war is a war between ethnic groups -- the central government represents Arab, while Darfur rebels represent non-Arabs-- and some writers mention this war is a war between Muslim and Non-Muslim(Waal, 2007). However, the majority of writers argue that the real motive behind the war is injustice in which the central government treated Darfur discriminately both in politics and economy. The war started in early 2003 when JEM and the SLA carried out attacks on Sudan's military posts, burned several government-owned aircraft and caught one of the air force generals, El Fasher.

To respond to these attacks, the government conducted a "proxy" war by arming the Arab group known as Janjaweed. The government through the Janjaweed attacked indiscriminately, killing thousands of Darfur residents who are non-Arabs in the majority and forced millions more out of Darfur. Janjaweed also used sexual violence, destroyed the resident's crops, and important cultural and religious sites. Nobody knows exactly how many people have died because of this counter-rebellion war. Some writers estimate that between 300,000 and 400,000 people died. In mid-2004, the World Health Organization estimates that between 240 to 440 people died each day in Darfur. USAID added, from October to December 2004 that number rose to 2400 people every. The total population of Darfur is six million and 2.4 million among them are directly affected by this war. Among that number, 1.8 million have left their homes but remained in Darfur, and about 200 thousand people have fled permanently to Chad.

That war shifted from a mere counter-rebellion into a mass slaughter and ethnic cleansing. As reported by International Criminal Court, in Darfur

there is much evidence of large-scale massacres and thousands of "slow deaths" from forced displacement and destruction of food-stocks and hundreds of rapes with many more going unreported (Grono, 2006). That is the first reason why this case should get the international community's response. Another reason is that the government knew what exactly happened in the field, but the government did not do anything. The government even still launched a ground and air offensive in early 2004. At the same time, it gave the Janjaweed a free hand to kill, terrorize and displace the civilian population of Darfur (Belloni, 2006).

Back to the thresholds that set by UN and ICISS, it is clear that Darfur has met those criteria. There was mass killing, and ethnic cleansing and the government had a motivational deficiency to solve the problem. Therefore, the R2P should be adopted because it is not a choice, but a duty to protect. Since it has become a norm in international relations, the international community should commit to enforcing this agreed-norm. Darfur provides an important test case of the international community's commitment to an emerging norm of humanitarian intervention and the ideas set out in the Responsibility to protect.

4 HAS RESPONSIBILITY TO PROTECT APPLIED AS HOW IT SHOULD BE?

It is argued by some people that "responsibility to protect" has been applied properly in Darfur. The international community, through the African Union, has responded by forming a monitoring mission which composed of 60 monitors and 300 troops in 2004 (Grono, 2006). Security Council also had issued several resolutions on Darfur such as resolutions number 1547 and 1556. In the first resolution (June 2004), the Security Council called on all involved parties to stop the war as quickly as possible and make an agreement without delay. In July, the second resolution came out which becomes a reason to impose arms embargo to the region.

Through this resolution, Security Council also supports the deploying of African Union protection force. This resolution also contains an order for the Sudan government to disarm the Janjaweed within 30 days. Compared to previous resolution, resolution 1556 was more decisive, and it emphasized more on sanction rather than urging for negotiation. On 31 August 2006, the UN Security Council adopted Resolution 1706, which invited Sudan's consent to

the UN force – implying that if consent was not forthcoming, such a force might be dispatched without it (Waal, 2007).

Security Council also established an International Commission of Inquiry to investigate the crisis. Security Council had asked the International Criminal Court to conduct further research on genocide issue in the country. Besides Security Council, other parties also provided response and help to Darfur. The European Union (EU) responded by providing funding assistance to the Africa Union (AU) peacekeeping force. In 2004, EU allocated €92 million for humanitarian assistance in Darfur.

However, despite offering some technical and financial support, EU left the AU to take the lead in conflict resolution and effort to achieve a political settlement. EU believes in "African solutions for African problems." NATO also provided help in the form of logistics support for the African Union troops. America also responds to Darfur by providing assistance to the rescue mission. The US has been generous in its aid contributions, supplying much of the food supplies to the displaced Darfurians.

However, those reasons are not strong foundations to conclude that the responsibility to protect has been carried out properly in Darfur. The R2P document clearly says that prevention is the most important part of the mission. As Gareth Evan said, prevention --which includes responding to an early warning -- is the most important part (Evans G. , *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and For All*, 2008). However, in fact, the international community failed to fulfill this mandate which eventually allowed conflict to grow. The international community did not prevent that crisis from becoming worse when it is still possible to be prevented.

True, international community made various efforts. In 2004, African Union established an investigation team, in the same year the UN issued resolutions 1547 and 1556, and in 2005 the UN began providing supports. However, those responses were late. The "tragedy" began in the early 2003 and since the time massacre had occurred and took many lives, while the international responses just started in the mid-2004. Between early 2003 and mid-2004 almost there was no response to Darfur tragedy. Due to this late response, hundreds of thousands of people died.

That was not because of lack of information. The evidence and facts of massive killing have existed since the beginning of 2003. The evidence was

collected not only by the mass media but also by credible investigative agencies. Amnesty International, the International Crisis Group, Justice Africa, and Medecins Sans Frontieres warned the world about the emerging crisis in Darfur from the very start of 2003, but the international community did not respond. Even, the International Commission on Inquiry formed by the UN has clearly stated that there was a mass killing in Darfur. Those warnings were not taken seriously. Those organizations were even criticized for exposing this case. It can be said that policymakers and leaders around the world have known exactly what was taking place in Sudan.

Moreover, even when Darfur turned into a clear humanitarian emergency, no attempt was made to stop the disaster at an early stage. The UN Security Council, for example, only began debating the most appropriate international response in mid-2004, when the worst atrocities against civilians had already been committed. The international community should have learned from the previous humanitarian crises. In Rwanda for instance, because of ignoring the early warning, within three months 800,000 people died.

This R2P is actually construed in order to prevent the same tragedy to happen; therefore it emphasizes more on prevention rather than reaction. However, it failed to be implemented in Darfur. As senior of UN official bitterly said that "the international community is keeping people alive with our humanitarian assistance until they are massacred". The slow response has allowed the crisis to grow, and a larger crisis requires stronger, more intrusive, intervention.

Moreover, prevention in the R2P document also includes tackling the root cause of the crisis. In Darfur, the root cause is injustice. However, the international community did not do anything to solve the very root cause of the problem. The international community focused only on logistics and financial assistance. Darfur did not only need food and shelter but more than that, it needs protectors and saviors which can protect them from crime and injustice conducted by its own government. That is the reason why JEM and the SLA intentionally continue to wage war against the government despite the loss of many lives because those groups believe that the international community will come to rescue them and help to solve the injustice problem. However, the international community was preoccupied with the debate of whether they should intervene or not. If the R2P is truly believed as a norm, that debate

should not happen, because it is clear that Darfur has fulfilled the requirements for intervening.

Those imply that the international community was reluctant to implement the R2P comprehensively in practice. They failed to fulfill the most fundamental aspect of the R2P namely prevention. This reluctance was also obvious from the number of authorized-personnel who was sent to Darfur. Compared to other humanitarian cases, the number of international personnel in Darfur is very small. In Croatia, Bosnia, and Herzegovina crisis there were 38,599 personnel deployed, in Sierra Leone there were 17,500 personnel, in Democratic Republic of Congo crisis there were 16,700 troops, in Somalia crisis there were 28,000 personnel, while in Darfur only 300 troops involved in 2004 and gradually increased to 7000 (Grono, 2006).

In fact, Darfur is the worse humanitarian crisis in the era which needed more skilled personnel in the field. As Lieutenant General Roméo Dallaire, the commander of UN forces in Rwanda in 1994 has estimated that 44,000 troops are required to bring peace to Darfur. However, it did not take place in Darfur.

Moreover, the UN resolutions were also not firm. Resolution 1547, for instance, is merely a persuasion. Persuasion was not the proper decision because the level of violence has been very alarming. Resolution 1556 also did not give a significant output. Although China and Russia assumed this resolution is too hard for Sudan, actually this resolution did not go far enough. That resolution failed to ensure the appalling human rights situation, and it abandoned the people of Darfur and an abdication of the Security Council's role as human rights enforcing agent. The UN Security Council failed to put concerted pressure on the Sudanese government to allow humanitarian access; and failed to make the government take its responsibilities seriously for protecting the people of Darfur and for complying with its ceasefire commitments and legal obligations.

The R2P concept also suggests that protecting people is a paramount obligation. Therefore no other norms could stop this obligation to be performed. However, in fact, Darfur clearly portrays that every country still positioned national interest as the highest concern as well as become a measure of whether to intervene or not. National interests still *de facto* become the main concern of every state. This is the main obstacle to implementing this norm. When the R2P is in line with the national interest, the international community will respond quickly even without clear evidence such as in Iraq case.

Otherwise, when the moral obligation is not in line with national interest, the international community will be reluctant to involve, and this is what happened in Darfur.

Based on national interest calculation, the Sudan Government is far more important than Darfur for every member of the Security Council. For the United States, Sudan is a strategic ally in the war on terror. Sudan is the country where Osama bin Laden hid before moving to Afghanistan. The US assumed that Sudan could be one of the important sources of intelligence to destroy terrorist's network. Therefore, in 2005, the US flew the Sudanese chief of intelligence and one of the architects of the Darfur atrocities, out of Virginia to meet with the CIA (Grono, 2006). By pressing the Sudan government, the U.S will lose the important information that it could get from Sudan.

For China and Russia, Sudan is important because Sudan purchased the weapon from those two countries. There was a big wariness of China and Russia if the intervention is conducted, there would be an economic instability in Sudan which eventually will affect Sudan's ability to pay its debt to China and Russia, as well as decreasing Sudan's purchasing power toward China and Russia weaponry products. Moreover, China and Russia were also suspicious that their involvement in Darfur would drag international attention to violence committed by Russia in Chechnya and China in Xinjiang and Tibet. Therefore, getting involved in the Darfur case was not a good choice for their national interests.

For the international community in general, Sudan is important because of its oil production. Sudan oil production started since the 1950s. It has 1 percent of total world oil reserves. Although it's not a huge number, it's crucial in the mid of international effort to find alternative oil sources. Therefore, many countries have invested and run oil production in Sudan. There are six oil production blocks in Sudan. The first and second block belongs to Canada, China, and Malaysia, the third block is owned by China and Qatar, the fourth block belongs to GNPOC, the fifth block is for French, Sweden, Austria and Sudan and the last block mastered by China. Therefore, if the intervention is carried out, Sudan would nationalize those oil productions or stop cooperating with foreign companies which will have an impact on oil price and disadvantage those who own oil production companies.

The clash between national interest and moral obligation has resulted in the inability to respond Darfur case properly. To cover this reluctance, the

international community tries to use several reasons. The first reason is the issue of sovereignty. Sovereignty is always used as the bastion for not taking firm action in Darfur. However, if sovereignty really matters, why sovereignty has not become the major impediment to council mandated armed intervention to prevent gross violence of human rights? It also did not stop the Security Council from authorizing intervention in Northern Iraq, Bosnia, Haiti or Somalia.

The second reason is the Comprehensive Peace Agreement (CPA) between the central government and the Sudan Liberation Movement (SLMA). Many people worry that by involving in Darfur, the peace process between North (central government) and South (SLMA) would fail. True, civil war between North and South is the longest war ever happened in Africa and has killed millions of people. However, the reason to prioritize CPA over Darfur is not really reasonable. International community argues that by resolving North and South conflict, it will be easier to solve Darfur (William and Ballemey, 2005, p. 38). The peace agreement between north and south will become prototype to create peace between the Sudan and Darfur.

However, this is misguided and unnecessary and had predictable, deadly, consequences for Darfur. The international community has downplayed the fact that the process remains based on a simplified north-south dichotomy that assumes the SPLM/A speak for all southerners and does not accurately reflect the complex reality of political forces in Sudan. A more holistic approach to the problems of Sudan was possible, preferable, and would have provided a more secure basis for building a sustainable country-wide peace.

The international community could have pushed harder on Darfur without risking the CPA negotiations. A more holistic approach would not have prevented the signing of the CPA (it may have delayed it by a few months, but as the North-South peace had already been established, this would have been at no great practical cost, and it would certainly have prevented the crisis in Darfur getting as bad as it did. In the simple terms of balancing likely costs and benefits, prioritizing the CPA was misguided. A more holistic approach was possible, and, in terms of likely impact, was preferable.

Moreover, the promotion of "African solution for African problems" could also be seen as a strategy to tolerate the international community's reluctance from involving directly in Darfur. Actually, if the African Union (AU) has the required-capabilities (material, finance, mandate, and skilled-personnel),

the international community could leave the problem to African Union. However, in fact, AU lacks those fundamental capabilities. Moreover, Sudan is surrounded by Chad, Central African Republic, Republic of Congo, Niger, Ethiopia, which are included as the poorest countries in the world. Rather than helping Sudan, they barely help themselves. The international community was aware of the problem, but it kept relying on AU without initiating to involve directly in the field. This attitude leaves the R2P to become an inconsistent concept. There is still a distinction between "our" problem and "their" problem. This principle is certainly not in accordance with the spirit of the R2P.

Again, if we look back to the R2P concept, national interest should not become an obstacle for the application of R2P. It is not merely a right to intervene but obligation to protect. Therefore it should be implemented although it does not contribute to – or maybe contradicts - the national interest. This notion is absence in Darfur; every party tends to play safely and distance themselves from involving in a more serious way.

5 WHAT SHOULD BE DONE TO MAKE IT APPLICABLE IN THE FUTURE?

The experience of Darfur suggests that the R2P concept has failed to be implemented in practice. This is because the R2P has not yet become an embedded-norm in international politics and the R2P itself has substantial weaknesses. However, it does mean that the R2P concept should be abandoned. The R2P is the perfect mechanism to facilitate the growing concern on human security issues. As Kofi Annan argues that individu deserves freedom from fear, freedom from want and live in dignity (Annan, 2005, p. 63-74).

International community has an obligation to enforce the norm unless the problems will grow and affect not only the country but also the neighboring countries, the region and even the international community. In the case of Darfur for instance, the problem was not only a destabilized Sudan, but also affecting neighboring countries such as Chad. Millions of people have moved to Chad, while on the other hand, Chad also face its own problems and these refugees will add new burden for Chad.

Based on Darfur case, some options can be applied in order to make it applicable in the future.

The first, there should be an independent institution which replace the role of Security Council (SC) in giving mandate. In Darfur case, the SC's response is divided based on their national interests, therefore it cannot give proper responses. By establishing a new independent institution, which comprised on experts (like ICISS) not countries, it is more unlikely to mix the moral obligation and national interest, because those members do not represent certain state's interests. However, this institution should still under the UN observation, because acting without UN-authorization will be more open to abuse and will be less responsive to humanitarian need.

However, if the Security Council still want to run this task and refuse to establish new institution, so there are two things should be done. First, there should be punishment when international community abandons this obligation. When we talk about collective obligation it could be an obligation of no one. One party counts on another and when every party counts on each other, it is likely this obligation will not be carried out. Therefore, there should be a punishment when this obligation is abandoned.

Again, R2P is not a choice, it is an obligation and it is reasonable to put punishment when the responsible parties abandon this obligation. This punishment will control the states from abandoning moral obligation due to any reason. In addition, the R2P will have problem if the local government is unwilling to open its country for international help. This happened in Darfur. It was clear that the government has committed violence both directly and indirectly to the Darfurian, while on the other hand, only by the government's permission the international community could get in to the country. Rationally, the government will never let other parties get involved because it did not want other countries know what was happening in Darfur. This is another weakness of the R2P. It does not have mechanism to intervene if the local government does not give permission. Therefore, the international community should construct new mechanism to respond this weakness as well as find strategies to persuade the local government to accept the help from outsiders.

5 CONCLUSION

The experience of Darfur clearly suggests that the R2P is not yet implemented as how it should be in practice. This is because international community failed to respond the early warning that announced

by credible investigation agencies while responding to the early warning is a crucial step in the R2P concept. Moreover, the international community also ignored the report from the International Commission on Inquiry for Darfur, which explains that mass killing had taken place. Darfur also reflects that the R2P has not become the embedded-norm in international politics because every country particularly the P-5 (US, China, Russia, UK, and France) still prioritize national interest more than their moral obligation, while in fact, the R2P has mandated them to take this responsibility.

However, the R2P is still an important norm, particularly in the growing concern of human security issues. After the end of the Cold War, civil wars or asymmetrical wars between state and its citizens take place in many countries such as in Lybia, Syiria, Yamen, Myanmar and so on. The R2P is the only mechanism as well as legal justification for international community to save people affected by mass killing and genocide. Therefore, the R2P should be strengthened and enforced so international community aware of its moral and legal obligation. To make it more applicable in the future, there should be somekind like punishment when international community ignores this obligation, or there should be an institution that runs this task other than UN Security Council in order to distance or prevent the clash between moral obligation and national interest which by far make the R2P difficult to apply in practice.

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