

# **“Prospects for Future Effectiveness of the Responsibility to Protect”**

**R2P in reality, how to end mass atrocities once and for all?**

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## Abstract

The responsibility to Protect (R2P) is a concept that tries to find an answer to the question how mass atrocities can be prevented, how effective reaction can be deployed to end mass atrocities, and how states and communities should be rebuild if an intervention has been executed.

The United Nations Security Council is appointed by R2P as a key actor to authorise and execute actions to prevent, react to, and rebuild after, mass atrocities. But whether the UNSC is the appropriate institute to bare the responsibility to protect, whenever national sovereign states fail in these responsibility, is the question I first like to examine. The UNSC has never acted in an effective manner to end mass atrocities prior to the foundation of R2P and an examination of UNSC deliberations with regard to the question if there should have been an intervention in Darfur shows that the foundation of R2P will not ensure that the UNSC will react effectively to mass atrocities in the future. The UNSC is subject to specific characteristics, such as multilateralism and a veto vote for the Permanent Five member states; and there are theoretical grounds for the proposition that the UNSC will not end mass atrocities in the future. To this first question is the first part of this article devoted.

After concluding that it is unrealistic to expect the UNSC to end mass atrocities in the future follows a description of the moral imperative. This shows that mass atrocities have been illegally ended in the past, but that these interventions were judged legitimate. Then follows an examination of a theory of common morality, by Bernard Gert. His theory provides three interesting insights. One, it provides a tool for states to determine moral arguments for intervention, even when it is considered illegal, two the moral arguments could convince other states to support intervention, what ideally could lead to support from the UNSC, and three, it provides a philosophical starting point for a discussion how a reformed UNSC should look like, or as a starting point for the foundation of a new (UN related) institution, that should assess interests of states and thereby can advise if intervention is morally the right thing to do and therefore becomes legitimate, with or without UNSC approval for intervention.

## Keywords

Genocide – Just War Theory - Responsibility to Protect – Morality – Bernard Gert –  
United Nations – Reform of the United Nation Security Council

## Introduction

The International Commission on Intervention and State Sovereignty (ICISS) launched the Responsibility to Protect in 2001. The Canadian government installed the commission and it was assigned to find new consensus on the question that Kofi Annan directed to the United Nations General Assembly in 1999:

*“... If humanitarian intervention, is, indeed an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity?”<sup>1</sup>*

The answer that the ICISS delivered was a redefinition of sovereignty, the Responsibility to Protect (also known as R2P). In this new approach sovereign states have the responsibility to protect their own civilians from avoidable catastrophe, but when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.<sup>2</sup>

The Responsibility to Protect is a comprehensive account on the question how the international community of states should prevent human suffering in the first place, secondly react when human suffering is actually happening and, thirdly, rebuild whenever an intervention by the international community of states has been executed in a sovereign country.

According to the R2P, the United Nations Security Council (UNSC) best represents the international community of states. The UNSC is the only legitimate institution that can authorise a military intervention into a sovereign country, in which the government is unwilling or incapable to protect human rights, and events of mass atrocity occur.<sup>3</sup>

Whether it is likely that the United Nations Security Council will react effectively to events of mass atrocities is the question up hand. First, in this paper it is my attempt to put forward a series of argument why it is unlikely that the UNSC will react effectively to future mass atrocities. Arguments will be from historical grounds, on arguments derived

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<sup>1</sup> Available at <http://www.un.org/preventgenocide/rwanda/responsibility.shtml>

<sup>2</sup> ICISS 2001: VIII

<sup>3</sup> ICISS 2001: XII (3)

from an empirical study of UNSC deliberations with regard to intervention in Darfur (Sudan) in the period 2001 – 2008, and on arguments based on theoretical grounds (the just war theory) and philosophical grounds (a theory of common morality by Bernard Gert), which shows that the UNSC is not a right authority and it is not an impartial institute, both reasons to assume that the UNSC will not function as it should according to the R2P.

Secondly I will describe the moral imperative. This phenomenon entails that unilateral interventions to end mass atrocities are illegal but are judged legitimate. Mass atrocities will happen in the future and until the UNSC is reformed, which is a precondition to have R2P effectively incorporated in international politics, people around the world will become victims of mass atrocities. Since the UNSC is unable to protect these individuals, but individual nations states are, and sometimes are willing to protect individuals, I will give a description of Bernard Gert's theory of common morality, which could provide individual states the legitimization for intervention without UNSC approval. At the same time, this description of common morality provides a starting point for an international (UN related) organization, or a starting point for what should be the essence of a reformed United Nations.

### **R2P: United Nations Security Council, a right authority.**

The key vision of R2P is that national sovereign states not only have rights as a sovereign (there is no higher authority than the state and the states are therefore not authorized to intervene in other state's domestic issues) but also have duties. Primarily R2P focuses on the duty of sovereign states to protect its civilian's basic rights.<sup>4</sup> R2P stresses that in the first place the national sovereign state is responsible for the protection of human rights, but when a state is unwilling or unable to do so, the responsibility to protect basic rights must be borne by the broader community of states.<sup>5</sup>

In the first place the international community has a responsibility to prevent mass atrocities. When preventive measures in this first stage did not work and mass atrocities occurred, the international community of states has a responsibility to end these violations of human rights. And thirdly if the international community executed an

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<sup>4</sup> ICISS 2001:8

<sup>5</sup> ICISS 2001: VIII

intervention, the international community bears a responsibility to rebuild the nation state and its institutions.

“Whenever preventive measures fail to resolve or contain the situation and when a state is unable or unwilling to redress the situation, then inventory measures by other members of the broader community of states may be required. These coercive measures may include political, economic or judicial measures, and in extreme case – but only extreme cases – they may also include military action. (... In the case of reaction... less intrusive and coercive measures should always be considered before more coercive and intrusive ones are applied).”<sup>6</sup>

With regard to military intervention the R2P has its foundations in the *just war theory*, in the section *jus ad bellum*. The *jus ad bellum* analogy has the same six features as R2P: right authority, just cause, right intention, last resort, proportionality and probability of success.

Whenever preventive measures failed to resolve situations of mass atrocity the international community should react by military force in order to halt mass atrocities. According to the R2P, the United Nations Security Council (UNSC) best represents the international community of states. “The UNSC is the only legitimate institution that can authorise a military intervention into a sovereign country in which the government is unwilling or incapable to protect human rights and events of mass atrocity occur.”<sup>7</sup> Although the initiators of R2P list ‘a number of questions that can reasonably be asked about its [UNSC] authority and credibility, and we address them: its legal capacity to authorize military intervention operations; its political will to do so, and generally uneven performance; its unrepresentative membership; and its inherent institutional double standards with the Permanent Five veto.’ ... ‘But all that said, the Commission is in absolutely no doubt that there is no better or more appropriate body than the Security Council to deal with military intervention issues for human protection purposes.’<sup>8</sup>

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<sup>6</sup> ICISS 2009: 29

<sup>7</sup> ICISS 2001: XII (3)

<sup>8</sup> ICISS 2009: 49

Despite the fact that the authors of R2P acknowledge difficulties of the UNSC as the right authority I believe there is a series of argument why we should not trust the proposition that the UNSC will protect individuals from mass atrocities in the future.

### **Why the United Nations are no *right authority*.**

#### **And why it therefore is unlikely that R2P will protect people from mass atrocities.**

As said, there is a series of argument why the UNSC are no right authority. First I will show that the UNSC has never executed any effective intervention to end mass atrocities in four decades prior to the foundation of R2P. Secondly I will show, by an examination of UNSC deliberations with regard to the question if intervention in Darfur should be executed, that the UNSC is unable, despite the foundation of R2P, to find consensus to protect individuals from mass atrocities. In this second stage I will lay bare some mechanisms that are incorporated in R2P that will prevent the UNSC to act effectively to mass atrocities in the future. Thirdly I will show on theoretical and philosophical grounds why the UNSC are no right authority, and by consequence no morally right interventions should be expected from this institution.

#### **UNSC prior to R2P**

In essence the dilemma whether (military) intervention is legal or legitimate is derived from the common world order, based upon sovereignty and the norm of non-intervention. There is no world government, nor an international police force that protect individuals around the world, as an effective authority and a police force would do within the domestic sphere.

Despite the lack of an effective world government the R2P sees a predominant role for the UNSC to conduct interventions. But as matter of fact, “during the Cold War (1949 – 1989) the United Nations did virtually nothing to prevent genocide.<sup>9</sup>

The nineties do not present a much better picture: the international community of states failed to reach consensus on any intervention force during the genocides in Rwanda (1994) and Yugoslavia (1995). However there has been agreement upon a UN intervention mission in East Timor (1999), but this was only reached after an invitation

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<sup>9</sup> Totten & Bartrop 2004: 9

of the Indonesian government to intervene. “In fact, many scholars and activists claim that “had the UN not received the invitation from Indonesia then in all likelihood the UN would have cavalierly ignored the ever-increasing violence and not intervened.”<sup>10</sup>

There is another conception of the function of the UN and mass atrocities, which is even more shocking. It states that the UN not only dysfunction with regard to prevention and stopping mass atrocities but it also facilitated states to execute and support mass atrocities. There are two arguments 1) the unequal voting system in the UNSC enabled the Permanent five member states to execute and support mass atrocities in order to pursuit national interests and 2) the majority of the UN member states consists of dictatorial regimes which by default have no commitments to the protection of human rights.<sup>11</sup>

In sum, there is reason to doubt the effectiveness of the UN when it comes to humanitarian objectives, such as the prevention of genocide. “The UN has not been effective in preventing genocide, and has had only a slightly better record in stopping it.”<sup>12</sup> This is mainly because ...”the United Nations is not a humanitarian, but a political, organization, and its humanitarian goals are at the play of political forces, pressure groups, and blocs, in an arena where delegates pursue the divisive interests of the states they represent”.<sup>13</sup>

But the examples above are from a decade the R2P was not founded yet. As a matter of fact, the lack of effective response was the catalyst behind the commission that founded the R2P. It is time to examine a present situation in which genocide, ethnic cleansing, war crimes and crimes against humanity appeared and should be stopped by the international community.

### **UNSC after the foundation of R2P, Darfur**

With regard to the question if the UNSC should enable an interventionist mission in Sudan to bring an end to the violations of human rights the principles (just cause, right

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<sup>10</sup> Totten & Bartrop 2004: 14

<sup>11</sup> Goldstein 2009 p. 605-606

<sup>12</sup> Totten & Bartrop 2004: 18

<sup>13</sup> Kuper 1981: 175

intention, last resort proportional means, reasonable prospects and right authority) for military intervention of R2P matter.

### Just Cause

According to the Responsibility to Protect there are two aspects that fulfil the just cause threshold: (1) large scale loss of life or (2) ethnic cleansing on large scale.

There is comprehensive prove that the Sudanese government contributed to mass killing and ethnic cleansing in the Darfur region either by acts of the governmental army or by support provided to the notorious Janjaweed militia. According to Alex de Waal, a researcher in Darfur, the government of Sudan has “consistently franchised its counter-insurgency operations to militia,” in this case the Janjaweed. The government provides the militia with arms, intelligence and air support and allows them to operate with complete impunity, creating an “ethnics-free zone.”<sup>14</sup>

In April 2004, the UN Human Rights Commission dispatched a fact-finding team to Darfur. The team found “a disturbing pattern of disregard for basic principles of human rights and humanitarian law, which is taking place in Darfur for which the armed forces of Sudan and the Janjaweed are responsible. It concluded, “it is clear that there is a reign of terror in Darfur,” and “that the government and its proxies were almost certainly guilty of widespread crimes.”<sup>15</sup>

Figures from 2004 and 2005 prove this claim: “surveys place the number of deaths caused by direct violence between 73,700 and 172,154. Deaths from malnutrition and preventable disease in internally displaced persons camps stood at 108,588 in January 2005, with approximately 25,000 more having died in inaccessible regions. The British Parliament’s International Development Committee put the total casualty figure around 300,000. At least 1.8 million more had been forced to flee their homes.”<sup>16</sup> In addition Jan Pronk reported to the UNSC ‘numerous’ cease-fire breaches by all parties and militia

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<sup>14</sup> De Waal 2005: 129

<sup>15</sup> Bellamy 2005: 41

<sup>16</sup> Bellamy 2005: 31



attacks on civilians.<sup>17</sup> It is also found that the Sudanese government was responsible for the harassment of displaced people and it prevented the timely delivery of aid.<sup>18</sup>

Whatever the true statistics, it has been acknowledged that the Sudanese government was incapable of the protection of its citizens, and ‘maybe’ even be the perpetrator of crimes against civilians that include large scale loss of life and large scale ethnic cleansing.

So, according to the code of conduct of R2P the first step towards legitimate intervention is taken. Whenever it is been determined that the just cause threshold is met, this should lead (according to the R2P) to efforts of the international community to stop the deprivations of the Sudanese people. Within the next stage of the just war theory, every predominated step to intervene should be negotiated within and declared by the right authority. In the eyes of the R2P, this is the United Nations Security Council. So what was the reaction of the international community, resonated in the UNSC?

#### United Nations Security Council and intervention in Darfur

“The first loud warnings of an impending human rights catastrophe came in October–November 2003, when UN agencies reported that villages had been burned (...). The UN under-secretary for humanitarian affairs and emergency relief, Jan Egeland, visited Darfur and said Darfur “has quickly become one of the worst humanitarian crises in the world.”<sup>19</sup> The government of Sudan responded to this statement by restricting access to the area and launched a new offensive against the black Africans in Darfur. In April 2004, the then-Secretary General of the UN, Kofi Annan, condemned the situation in Darfur and called attention to the human rights abuses. Moreover, he emphasized the fact that the humanitarian crisis in Darfur was growing and “he called on the international community to take swift and appropriate action.”<sup>20</sup>

Only after this clear condemnation of the situation, the UNSC started to pay attention to the crisis in Darfur. A complicating factor for the Security Council in their response was

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<sup>17</sup> UN News Centre, “Sudan Has Failed to Disarm Militias or Prevent More Attacks in Darfur – UN Envoy,” New York, October 5, 2004: available at [www.un.org/apps/news/storyAr.asp?NewsID=12134](http://www.un.org/apps/news/storyAr.asp?NewsID=12134) Accessed 06/29/2009.

<sup>18</sup> UN News Centre, “Sudan: UN Reports 10 percent Jump in Number of People in Darfur Who Need Aid,” New York October 22, 2004, available at: [www.un.org/apps/news/storyAr.asp?NewsID=12314](http://www.un.org/apps/news/storyAr.asp?NewsID=12314) and UN News Centre, “Humanitarian Aid in Sudan Limited by Insecurity, Road Closures Says UN Mission,” New York October 27, 2004, available at: [www.un.org/apps/news/storyAr.asp?NewsID=12360](http://www.un.org/apps/news/storyAr.asp?NewsID=12360) Accessed at 06/22/2009.

<sup>19</sup> UN Darfur Timeline, available at: [http://www.un.org/News/dh/dev/scripts/darfur\\_formatted.htm](http://www.un.org/News/dh/dev/scripts/darfur_formatted.htm) Accessed 06/29/2009.

<sup>20</sup> Annan, K. (2004) ‘UN Secretary-General Kofi Annan’s Action Plan to Prevent Genocide’. Available at: <http://www.preventgenocide.org/prevent/UNdocs/KofiAnnansActionPlanToPreventGenocide7Apr2004.htm> Accessed 06/22/2009.

that they not only had to find common ground on the question whether to develop consensus to end the mass atrocities in Darfur but as well on ending the North-South conflict in Sudan. Fear existed that if the Security Council would become too heavily involved in the Darfur conflict, the Sudanese government would end the peace-talks to solve the North-South conflict.

In reaction to the conclusion of the fact-finding mission executed in April 2004 Pakistan and Sudan condemned a leak and called for an inquiry. Therefore there was no resolution drafted on the results of the mission. Unwilling to force the issue, and concerned that a strong resolution would be rejected by African members the final resolution was watered down: it neither condemned nor mentioned Sudan for its crimes<sup>21 22</sup>. Resolution 1547<sup>23</sup> of June 11, 2004, expressed the willingness of the UNSC to authorize a peace operation to oversee the comprehensive peace agreement in Sudan's South. However, this resolution shows the underlying dynamics of the UNSC: the resolution did not mention Darfur and member states reaffirmed Sudanese sovereignty and stated that the sovereign is the primary responsible to solve domestic issues.<sup>24</sup>

On July 30, 2004 the UNSC met again to pass resolution 1556.<sup>25</sup> During this meeting three positions were taken: the first was in line with R2P; it stated that the Sudanese government failed in its responsibility to protect and therefore the international community was legitimized to undertake action. Especially the Philippines put this statement forward.<sup>26</sup> The opposite position was taken by China, Pakistan<sup>27</sup> and Sudan<sup>28</sup>: they rejected all talk of intervention while Brazil and Russia exhibited reluctance to even contemplate the question.

The final resolution reflected the middle line between these two positions: It invoked language of the responsibility to protect, but it did not suggest that sovereignty of the Sudanese government should be overruled. The resolution referred to the African Union

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<sup>21</sup> UN ECOSOC Commission on Human Rights draft resolution E/CN.4/2004.L11/Add7, April 23, 2004 available at: [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.2004.L.11.Add.7.En?Opendocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.2004.L.11.Add.7.En?Opendocument) Accessed 06/29/2009

<sup>22</sup> Bellamy 2005: 41

<sup>23</sup> Available at: <http://www.issafrika.org/AF/profiles/sudan/darfur/unres1547jun04.pdf> Accessed 06/29/2009

<sup>24</sup> Bellamy 2005: 41

<sup>25</sup> Passed with thirteen affirmative votes and two abstentions (China and Pakistan) Available at: <http://www.un.org/News/Press/docs/2004/sc8160.doc.htm> Accessed 06/29/2009

<sup>26</sup> UNSC 5015<sup>th</sup> meeting, S/PV.5015, July 30, 2004 pp. 10-11)

<sup>27</sup> Ibid. p. 10

<sup>28</sup> Ibid. p. 13

(AU) as bearing the primary responsibility for actions should Sudan fail in its responsibilities.<sup>29</sup> In particular resolution 1556 gave the government of Sudan thirty days to disarm the Janjaweed and punish human right abusers, threatened by economic sanctions if it failed to do so.<sup>30</sup>

Despite this clear demand informal consultations of the United States with UNSC members proved no consensus on sanctions to the Sudanese government whenever they breached resolutions. Pakistan opposed sanctions in principle, because they violate Sudanese sovereignty, and the Arab League joined this vision.<sup>31</sup> China and Russia had mixed motives (principle and economic interests) for opposing sanctions.<sup>32</sup> The UK mentioned two arguments not to support sanctions: 1) sanctions could undermine the peace process and 2) “invoking the “responsibility to protect”; the U.K. believed that “the best way to deliver security to the people of Darfur is to get those with primary responsibility for it to do it... the government of Sudan.”<sup>33 34</sup>

Jan Pronk, at the time Special Representative of the Secretary General of the United Nations in Sudan, observed that the Sudanese government’s compliance with resolution 1556 was mixed.<sup>35</sup> Nevertheless he endorsed the UNSC consensus that the Sudanese government had primary responsibility for ending the crisis. His argument was in line with the R2P norm “if the government is unable to fully protect its citizens by itself” it should “request and accept assistance from the international community.”<sup>36</sup> Francis Deng (the founder of the Sovereignty as Responsibility to Protect concept) supported this vision of Jan Pronk.<sup>37</sup>

So after these rounds of resolutions it became clear that the international community was not in favor of violating Sudanese sovereignty. In the latter stage however, it was acknowledged that the Sudanese government should work together with the AU. Basically the case here is that the R2P is explained in a different way than it was supposed to work. States emphasize the fact that the government of Sudan is the primary

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<sup>29</sup> Bellamy 2005: 42

<sup>30</sup> Bellamy 2005: 43

<sup>31</sup> Amil Khan and Mohamed Abdellah, “Arab League Rejects Sudan Embargo,” Reuters, August 9, 2004.

<sup>32</sup> Scott Peterson, “Sudan’s Key Ties at the UN,” Christian Science Monitor, August 31, 2004, p. 5

<sup>33</sup> Quoted in “Security Council Disagrees over Sudan Sanctions,” Sunday Standard (Nairobi) August 22, 2004, p.2

<sup>34</sup> Bellamy 2005: 45

<sup>35</sup> Bellamy 2005: 45

<sup>36</sup> UNSC 5027<sup>th</sup> meeting, S/PV.5027, September 2, 2004, p.3

<sup>37</sup> Bellamy 2005: 46

responsible for the safety of its population, and therefore intervention should not be conducted while the R2P states that if states are incapable to protect their citizens, or becomes the perpetrator of violations of human rights, the responsibility to protect the citizens of that country should be borne by the wider community of states.

#### Sudanese Government and AU

However the UNSC consensus that the responsibility to end the crisis lay with the Sudanese government, the US continued to push for stronger measures, propelled by its findings that the government of Sudan was guilty for committing genocide.<sup>38</sup> This resulted in draft resolution 1564<sup>39</sup> which stated that the Sudanese government breached resolution 1556, called for an expanded AU force, called for disarmament of the Janjaweed, the prosecution of human rights abusers, the installment of a non-fly zone, invited the UNSC to install a commission of inquiry and indicated its intention to consider further measure if the government of Sudan failed to comply.<sup>40</sup> Finally the resolution contained some of the issues but it failed to find Sudan in breach with resolution 1556 or any critic on the government.

Again, there were three positions taken, the first, skeptical about intervention of any kind because it would violate Sudanese sovereignty by Algeria, Russia, China and Pakistan. The second, by the Philippines and Romania, that the UNSC has the moral and legal authority to violate Sudanese sovereignty. As before (the third), the midway position was taken by the US and the UK in order to get the resolution passed, the Sudanese government was responsible to end the crisis. However the US were actively lobbying to have more measures taken to end the mass atrocities, it did not decide to act without UNSC approval. Military overstretch, by its mission in Iraq and Afghanistan might be the reason. On the other hand it could have pushed for UNSC consensus for more severe measures, but because of the fragile consensus so far, with the AU member states in opposition, it decide not to.<sup>41</sup>

However resolution 1564 was adopted the situation in Darfur deteriorated in 2004. In reaction the Secretary-General recommended a peacekeeping force under chapter VI of

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<sup>38</sup> Power 2004: 270-287

<sup>39</sup> Available at <http://www.un.org/News/Press/docs/2004/sc8191.doc.htm> Accessed 06/30/2009.

<sup>40</sup> UNSC Res.1564, September 18, 2004 paragraphs. 2,3,7,9,12 and 14.

<sup>41</sup> Bellamy 2005: 45-48

the UN Charter. In the end resolution 1590<sup>42</sup> was adopted. This resolution deployed the UNMIS peacekeeping force, authorized under chapter VII of the UN Charter. The choice for authorization under chapter VII became reality, because some liberal states agreed to deliver military force in order to protect themselves and civilians. The main task of UNMIS was to support the AMIS and to observe the cease-fire. The resolution avoided pronouncing on whether UNMIS would be deployed to Darfur.<sup>43</sup>

On March 29 2005 the UNSC passed another resolution (resolution 1591<sup>44</sup>) to halt free movement of war criminals on Sudan and thus imposed a travel ban.

Another significant step in the process to halt the genocide in Darfur was taken on January 25, 2005. The UN commission of inquiry concluded that the Sudanese government did not have a policy of genocide, but thought it proved that the government was implicated in numerous war crimes and crimes against humanity, moreover the commissioners wrote: “in some instances individuals, including government officials, may commit acts with genocidal intent.”<sup>45</sup> On the same day the UNSC passed resolution 1593,<sup>46</sup> in which the case of Darfur was passed to the International Criminal Court.<sup>47</sup> This resulted in July 2008 in the call for the arrest of the Sudanese President al-Bashir for genocide, crimes against humanity and war crimes. In July 2008, the International Criminal Court's top prosecutor called for the arrest of President al-Bashir for genocide, crimes against humanity and war crimes in Darfur. This is the first time that the ICC is requested to arrest a sitting head of state. In March 2009, the arrest warrant against Bashir was issued. This in turn led to the expulsion of several humanitarian aid agencies (amongst others The Red Cross) from the Darfur region by the Sudanese government. The Sudanese government has not -until today- answered the arrest warrant. The Secretary-General of the UN, Ban Ki Moon, has condemned Sudan for the expulsion of humanitarian agencies from Darfur as a response to the arrest warrant, calling the expulsion “an extremely negative development (that) puts well over

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<sup>42</sup> Available at: <http://daccessdds.un.org/doc/UNDOC/GEN/N05/284/08/PDF/N0528408.pdf?OpenElement> Accessed 06/29/2009.

<sup>43</sup> Bellamy 2005: 48-50

<sup>44</sup> Available at: <http://daccess-ods.un.org/TMP/4857641.html> Accessed 29/06/2009

<sup>45</sup> “Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General,” Geneva January 25, 2005, p.4: available at [www.reliefweb.int/library/documents/2005/ici-sud-25feb.pdf](http://www.reliefweb.int/library/documents/2005/ici-sud-25feb.pdf) Accessed 07/26/2009.

<sup>46</sup> Available at <http://www.un.org/News/Press/docs/2005/sc8351.doc.htm> Accessed 06/27/2009.

<sup>47</sup> Bellamy 2005: 49

one million people at life-threatening risk."<sup>48</sup> However, because the ICC does not have its own police force, it is liable on Sudan, or states that al-Bashir travels to, to extradite him, which is not likely to happen since the government of Sudan supports his president and there is wide support for him in the countries he decides to travel to.<sup>49</sup>

## UNAMID

On 31 July 2007 the UNSC authorized resolution 1769 in which the AMIS and the UNMIS missions were combined in the African Union/United Nations Hybrid operation in Darfur. The UNSC authorized the mission under Chapter VII of the UN Charter, and stated "UNAMID was given the authority to take necessary action to support the implementation of the Darfur Peace Agreement, as well as to protect its personnel and civilians, without prejudice to the responsibility of the Government of Sudan."<sup>50</sup> UNAMID took over several functions of the earlier established observer-mission AMIS. UNAMID would, at its full strength, consist of 26,000 peacekeeping troops. For the fiscal year 2008-2009, US\$ 1.7 billion was going to be invested in the mission which makes it the largest UN peacekeeping operation ever. In the resolution it was planned that UNAMID would be fully functioning by mid-2008.<sup>51</sup>

Despite this ambitious plan it turns out that "Western disinterest in peacekeeping missions in Africa is already evidenced by the Darfur crisis and the compelling lack of means for the UN-AU hybrid [operation]."<sup>52</sup> This is evidenced by the fact that only nearly 9,000 troops of the required troops were available.<sup>53</sup> Other evidence is fact that the international community did not provide enough helicopters, while they were available.<sup>54</sup> This last point remarks on the proportional means feature of *jus ad bellum*.

However there are more remarks to make with regard to the other *jus ad bellum* features, I will continue to focus on the argument that the UNSC is not a right authority. There are two more arguments I will elaborate on: 1) why the UNSC cannot and will not

<sup>48</sup> [http://news.yahoo.com/s/afp/20090614/wl\\_africa\\_afp/sudanconflictdarfurunamid](http://news.yahoo.com/s/afp/20090614/wl_africa_afp/sudanconflictdarfurunamid) Accessed 06/26/2009.

<sup>49</sup> <http://www.alarabiya.net/articles/2009/03/30/69538.html> Accessed 06/30/2009

<sup>50</sup> <http://www.un.org/Depts/dpko/missions/unamid/> Accessed 06/26/2009.

<sup>51</sup> Fact sheet UNAMID available at: <http://www.un.org/Depts/dpko/missions/unamid/facts.html> Accessed 06/29/2009.

<sup>52</sup> JIPO vol. 4, no. 4 January-February 2009 Available at: <http://peaceops.com/web/v4n4/25-v4n4/87-v4n4areviewofafrican.html> Accessed 07/07/2009.

<sup>53</sup> *Ibid.*

<sup>54</sup> JIPO vol. 4, no. 2, September-October 2008p. 30 Available at: <http://peaceops.com/web/v4n2/22-v4n2/138-4n2unindarfuratleasttryandlookbusy.html> Accessed 07/07/2009.

function as a right authority as it is supposed to according to the just war theory, and 2) by describing what impartiality has to do with moral decision-making.

### **UNSC, no right authority on theoretical and philosophical grounds**

Because the UNSC did not function as a body to prevent mass atrocities and did not enabled an effective reaction to end mass atrocities prior to the foundation of R2P, nor after the foundation of R2P, there are no reasons to assume that the UNSC will end mass atrocities the future. In addition there are also arguments from the just war theory that provide reason why the UNSC did never act as a right authority. Secondly there are arguments from moral philosophy that provide reason why the UNSC fails in its responsibility to make morally right decisions.

#### Just War Theory and right authority

According to the Just War Theory the right authority to execute intervention is determined as the sovereign nation state, usually specified in its constitution.<sup>55</sup> Orend argues that the right authority becomes blurred whenever it relates to an internal conflict.<sup>56</sup> This argument holds validity whenever the UNSC is appointed as the right authority, because matters that the UNSC has to reply on, are often interrelated with internal affairs of the UNSC member states (such as principle and economic interests of Russia and China that made them opposing resolutions that would pressure the Sudanese government to end atrocities in Darfur). Therefore the UNSC cannot be a moral right authority since it will always be influenced by the internal motivations of member states in the same way the sovereign member state cannot be the right authority, whenever issues are up hand that relate to its own interests.

The result is a stalemate, since there is no higher moral authority then the UNSC (according to the R2P). But by claiming to work with this authority the responsibility to protect is subject to the characteristics of the authority (sovereigns can abuse the R2P to pursue self-interest, political will motivates commitments to protection). And the characteristics of this authority (such as multilateralism and decision-making procedures on consensus) make it unrealistic that the objectives of the R2P will be met.

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<sup>55</sup> Orend 2005: 6

<sup>56</sup> Orend 2006: 44

### Common moral theory and right authority

‘At the core of the task of all those who want the R2P principle to prevail is the reality that there is a role for morality in the foreign policy of every country in the world, from the greatest to the smallest.’<sup>57</sup>

This quote is from Gareth Evans, who was minister of foreign affairs, president of the International Crisis Group, and co-chair of the commission that founded the R2P doctrine. Since morality plays a big role in R2P, as the subtitle of the book this quotation is from announces, I have examined a theory of common morality by Bernard Gert.

An important feature of common morality is that moral agents (the ones making moral decisions) should be morally impartial in order to make morally right decisions. Gert makes a distinction between impartiality and moral impartiality. Impartiality does not eliminate discriminatory actions that moral agents would judge to be immoral. Moral impartiality on the other hand necessarily includes treating a specific group, (‘that includes oneself, one’s friends and family, and at least a minimal group containing of moral agents who are still conscious’) impartiality with respect to moral rules that prohibit causing harm or significantly increasing the likelihood of causing harm without adequate justification.<sup>58</sup>

With regard to decision-making in the international arena, sovereignty enables states to make discriminatory decisions, (states can choose to pursue national interests over human rights). So what’s relevant for R2P and successful reaction to mass atrocities is moral impartiality.

According to Gert impartiality should be defined as: “A is impartial in respect R with regard to group G if and only if A’s actions in respect to R are not influenced by which member(s) of G benefit or are harmed by these actions” in other words “a person is impartial with regard to a group in a given respect if he does not favour any member of the group over any other member in that respect.”<sup>59</sup>

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<sup>57</sup> Evans in Responsibility to Protect, by Cooper and Kohler

<sup>58</sup> Gert: 2005:155

<sup>59</sup> Gert 2005: 132



Since R2P wants to be ‘the global compact for the 21<sup>st</sup> century’ and it sees the UNSC as the ‘most appropriate body to authorize military intervention for human purpose’, it is relevant to examine whether the UNSC is morally impartial, since a right authority should make morally difficult decisions. This is also relevant since, according to the just war theory, a right authority becomes blurred whenever it has to deal with internal conflicts.<sup>60</sup>

Primarily the UNSC is a political arena in which national interests are pursued. This suggests already that there is a risk that states are willing to deploy discriminatory policies. In addition the examination of UNSC deliberations with regard to intervention in Darfur, proved that China and Russia had principle and economic interests in Sudan and therefore had reasons not to vote for an intervention that would have ended mass atrocities, but to support the Sudanese government in order to maintain economic growth by maintaining access to the Sudanese markets. This points out that the UNSC is not a morally impartial moral agent. Since it is unrealistic to expect moral right judgements from a non-impartial institution, while the R2P upholds the idea that morally right decisions should be taken, it is rather strange that the R2P appointed the UNSC as the right authority.

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<sup>60</sup> Orend 2006:28

## Summary

The first argument, why the UNSC is not a right authority and why it will not function as such is described in the prior paragraphs. What follows is a summary of the arguments I have made so far.

The UNSC has never functioned as the institution that enabled effective response to events of mass atrocities in the decades prior to the foundation of R2P. And its even claimed that the UNSC did the opposite; it enabled member states to conduct policy that supported mass atrocities around the world in order to create loyalty for either one of the two camps in the Cold War. Formal procedures enabled member states to conduct such policy legitimately and concepts of sovereignty and the norm of non-intervention prevailed in this period.

The fact that the UNSC is such an inappropriate institution to end mass atrocities urged the former secretary general of the UN, Kofi Annan, to request a new consensus of the UN member states to solve this problem. The answer is the Responsibility to Protect.

An examination of deliberations in the UNSC with regard to the question whether intervention in Darfur, to end mass atrocities, should be executed nevertheless proves, that even after the foundation of R2P the UNSC is still inappropriate to execute intervention for humanitarian goals.

The UN remains a collection of self-interested states; nothing is been changed on that level by R2P. The result of deliberations within the UNSC did not match the objectives of R2P (to prevent genocide or to have an effective reaction whenever genocide occurs). Even when it is been acknowledged that the just cause threshold met - large-scale loss of life or ethnic cleansing on large scale - there is no guarantee the UNSC will bare the responsibility to protect or to react.

Furthermore the study of UNSC deliberations proved also that R2P did not changed a fundamental thing on the characteristics of the UNSC that enable states to let national interests prevail over humanitarian principles. UNSC member states can obstruct intervention by their veto right (China and Russia obstructed intervention in Darfur for economic and principle reasons) and multilateral decision making procedures enables

dictatorial states to obstruct intervention. The R2P could thereby function as an excuse for states to intervene. Because the R2P claims that the first and foremost responsible for the protection of basic rights are the sovereign nation states. States misuse this, and therefore claim that a violation of sovereignty is not legitimate.

By consequence states can restrain other states to conduct a legitimate intervention. And since the UN consists primarily of dictatorial regimes<sup>61</sup> it is rather doubtful whether decision with regard to intervention for the sake of protecting human rights will be executed, since dictatorial regimes are primarily responsible for using military force in order to increase territory, its sphere of influence, seize fame or establish economic growth.<sup>62</sup>

Furthermore multilateral decision-making procedures could also restrain other states to intervene. The US pushed for more appropriate reaction to end the mass atrocities in Darfur. But whether the US really wanted to intervene is still questionable, for example the US government could have only stated that they wanted more severe measures because they knew in advance the UNSC would not come to consensus, and their statement that they were willing to act could function as a political trick to prove their commitment to the protection of human rights, while in practice they were expelled from action since the UNSC would not to consensus anyway. But imagine the US was really willing to intervene. Then we must conclude that features of R2P (multilateral decision-making procedures) can function as an obstruction for states to execute their responsibilities to protect.

The solution endorsed by the UNSC was to swift responsibility from the global level to the responsibility for regional organizations. Thus the answer to the crisis in Darfur has been an “African solution for African problems”<sup>63</sup> by putting the responsibility to protect civilians in the hands of the Sudanese government and the African Union. But the Sudanese government is the perpetrator of mass atrocities. Moreover, the African Union has refused to act without the consent of the Sudanese government.<sup>64</sup> To put this simple: the response of the United Nations Security Council, the *right authority*, on behalf of the international community, was to appoint the acknowledged perpetrator of mass

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<sup>61</sup> In 2009 38% of the UN member states are dictatorial (Goldhagen 2009, page 606, 668-339)

<sup>62</sup> Goldhagen 2009, page 671)

<sup>63</sup> Williams & Bellamy 2005: 35

<sup>64</sup> Williams & Bellamy 2005: 35

atrocities as a confederate for solution of the conflict. Whenever other principles, such as the right intention, of the just war theory and the R2P were taken into account it should have been known that this solution was not an effective measurement to end mass atrocities in Darfur.

It seems clear that the foundation of R2P did not changed that conceptions of non-intervention and sovereignty are victorious over conceptions of protecting human rights and responsibilities to prevent and react to mass atrocities. In essence, the wider international community of states (represented by the UNSC) fails in its responsibility in the same way the sovereign nation states fail in theirs to protect civilians from mass atrocities.

The examination to this point proves that the UNSC has never functioned as a right authority and it is unlikely it will do in the future. This is proven by theoretical arguments from the just war and from moral philosophy.

The right authority, as defined in the just war theory, should not decide over intervention that has to do with internal affairs since if it has to it becomes blurred. Because member states of the UNSC have tight connections with states around the world on economic, strategic or geopolitical level it is not hard to imagine that member states have other interests than the protection of human rights. Since all these interest play a role in the UNSC, the UNSC will be blurred whenever it has to decide if an intervention to end mass atrocities should be executed.

From the theory of common morality it becomes clear that moral decision could only be expected from a morally impartial moral agent. Within the UNSC states have to decide on issues that involves the interest of the state itself. Therefore the UNSC is not morally impartial, and by consequence, no morally right decision should be expected from the UNSC.

Despite the fact that the R2P acknowledges that the UNSC has ever been the institute that reacted effectively to and mass atrocities prior to the foundation of R2P, the founders of R2P did not specify how it should become more effective, the authors only note that the UNSC should work more effectively.

### **Moral imperative**

Does the analysis end here, where we conclude that no effective mechanism can lead to effective reaction to end mass atrocities? The answer is no.

I have argued that the UNSC has a bad record in ending mass atrocities in the past and in the present. However mass atrocities have been ended in the past.

Most effective responses to mass atrocities have come from regional organizations and it been done by unilateral interventions. Such as in Liberia (ECOMOG, 1990), Kosovo (NATO, 1999), Sierra Leone (led by the UK, 2000) and the Solomon Island (led by Australia, 2003), India's intervention (1971) in East-Pakistan, the Vietnamese intervention (1978-1979) in Cambodia, that resulted in the overthrow of the Pol Pot Regime and the use of force by the Tanzanian government in 1979 to protect the Ugandans civilians from suffering under the rule of Idi Amin.

These interventions have in common that none of them were legal, by R2P standards; all of them were executed without UNSC approval. However these humanitarian interventions, were illegal, 'the interventions are considered legitimate by large sections of the international society.'<sup>65</sup> The founders of R2P note that 'cases (listed above) since the end of the cold war, in which was decided to act unilaterally in order to end humanitarian suffering, were not justified by humanitarian means, but as time passed it became widely accepted that these interventions were legitimate and even could 'have been based on humanitarian grounds'.<sup>66</sup>

That interventions can be illegal but legitimate at the same time describes the so-called moral imperative. The Independent International Commission on Kosovo were the first to describe this phenomenon, published in the Kosovo Report.<sup>67</sup> The moral imperative provides the opportunity for effective intervention in case of severe humanitarian crisis. It is noticeable that, (in all of the mentioned cases) either a regional organization, a adjacent state or a Western power was prepared to bear the political and material costs of

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<sup>65</sup> Williams & Bellamy 2005: 42

<sup>66</sup> ICISS SV 2001: 165

<sup>67</sup> Availbale at: <http://www.reliefweb.int/library/documents/thekosovoreport.htm> accessed 12/12/2009

intervention. But more important, in none of these cases did the UNSC provide the lead.<sup>68</sup>

On the one hand this proves the unlikeness that the UNSC will react effectively to future mass atrocities again, on the other hand it provides hopeful prospects for future victims of mass atrocities.

It is important to examine, with regard to the moral imperative, the question whether the illegal (not authorised by the UNSC) wars of the 'coalition of the willing' in Iraq is legitimate. On the one hand it seems fair to argue that Saddam Hussein was a dictator. That he started illegal imperialistically wars with Iran in 1980 and in Kuwait in 1990, that he was responsible for three ethnical cleansings, against the Madam, the Shiites and the Kurds, and that he treated political opponents cruelly, with torture and murder, to remain in power.<sup>69</sup> However, on the other hand there are also (principle) arguments to oppose an intervention in Iraq. The Bush administration widely misled the world, the American people and Congress with claims that exaggerated Saddam Hussein's military capacity, its nuclear capacity and ambitions, and Hussein's connection with Al-Qaeda.<sup>70</sup>

But whether intervention in Iraq and Afghanistan were legitimate is of my point here. It is my aim to propose a vision of morality to which unilateral action should be measured. This could 1) provides states the legitimization they seek to intervene unilateral for the protection of human rights, 2) could convince states to support intervention, by which perhaps UNSC approval could be obtained, 3) could function as a philosophical starting point for UN reforms, and 4) as a philosophical starting point for the foundation of a (UN related) institution that should assess motivations of states that are willing to intervene for humanitarian purposes on the one hand and assess the motivations of states that are obstructing intervention for humanitarian purposes on the other hand.

The vision of morality, I wish to propose here, is based on a theory of common morality by Bernard Gert.

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<sup>68</sup> Williams & Bellamy 2005: 42

<sup>69</sup> Goldhagen 2009: 611

<sup>70</sup> Goldhagen 2009: 614

### **Common morality, by Bernard Gert**

The theory of morality described by Bernard Gert contains a definition of morality as an ‘informal public system applying to all rational persons, governing behaviour that affects others, and includes what are commonly known as the moral rules, ... and has the lessening of evil or harm as its goal.’<sup>71</sup> This is exactly what decision-making procedures of the UNSC should do, when it has to react effectively to mass atrocities. But the UNSC is subject to formal procedures, such as the voting system with veto rights and concepts of multilateralism.

There are ten moral rules:

- |                                 |                       |
|---------------------------------|-----------------------|
| 1. Do not kill                  | 6. Do not deceive     |
| 2. Do not cause pain            | 7. Keep your promises |
| 3. Do not disable               | 8. Do not cheat       |
| 4. Do not deprive from freedom  | 9. Obey the law       |
| 5. Do not deprive from pleasure | 10. Do your duty      |

The first five moral rules prohibit actions that cause direct harm; the second five rules prohibit or require intentional actions that would indirectly cause harm if individual violations were made into general practice.

The legitimization for universal application comes from three universal facts of human nature. All human beings are vulnerable<sup>72</sup>, fallible<sup>73</sup> and most are rational.<sup>74</sup>

Common morality is concerned primarily with actions, not with beliefs and desires. It is a system that all rational people accept and use by definition. All human beings are vulnerable to harm, and all rational people want to avoid unjustified harm. Thus, no rational person would conclude that killing a moral agent for no reason is morally permissible. In essence, ‘because human beings are vulnerable, rational persons universally agree that a few basic actions that cause harm are prima facie immoral.’<sup>75</sup> Mass

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<sup>71</sup> Gert 2005: 27

<sup>72</sup> Gert 2005: 9

<sup>73</sup> Gert 2005: 4-5

<sup>74</sup> Gert 2005: 38, 206, 240-241

<sup>75</sup> Hallgarth 2003: 89

atrocities are, as defined in the genocide convention,<sup>76</sup> actions that cause harm to an extent that all rational person would agree these are prima facie immoral.

The theory of Bernard Gert is of relevance since R2P has a moral vision and the theory entails an universally applicable guide to behaviour affecting others. This is exactly what the question entails whether there should be an intervention or not. The function of the common moral system is to lessen evil or harm because all rational people want to avoid unjustified harm. Since people have this common goal, it is possible to formulate the moral rules that prohibit causing harm. Finally, the common moral system provides all moral agents with a subconscious tool to use and make moral judgements about others' actions.<sup>77</sup>

Gert continues his theory by putting forward the two-step procedure. This procedure enables fully informed moral agents to decide whether a violation of moral rules is justifiable.<sup>78</sup> Morally seen, committing mass atrocities is never acceptable since it will cause serious harm and evil to human beings. Nevertheless the two-step procedure is useful to determine whether a violation of moral rules in the sense that one should not violate sovereignty or intervene without UNSC approval is morally justifiable.

The first step in the decision procedures involves fact gathering of morally relevant facts.<sup>79</sup> To bring order in the enormous amount of information Gert lists ten questions,<sup>80</sup> to which all answers are morally relevant facts. The second step involves the estimation of consequences and where the concepts of impartiality, publicity, and rationality are employed. In this second step its actually determined whether a violation of the moral rules is publicly allowed or not.

To my opinion the theory of morality by Bernard Gert can be used in four manners, I have order them in two categories. One, the theory can provide legitimation for unilateral intervention and by consequence it can function as a catalyst to convince other states of the fact that intervention is the right thing to do, in theory this could even result in enough support for intervention by the UNSC. And two, the theory can function as a

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<sup>76</sup> Available at: <http://www.preventgenocide.org/law/convention/text.htm> Accessed 31/12/2009

<sup>77</sup> Hallgarth 2003: 96-97

<sup>78</sup> Gert 2005: 236

<sup>79</sup> Gert 2005: 226

<sup>80</sup> The list is enclosed in appendices A



starting point for United Nations reforms or the draft of new institutions that have as primarily task to make moral decisions, or has a task to determine what morally right decisions with regard to intervention are. The second function should be seen as suggestion what is necessary to have an institution that takes a global responsibility to protect.

### **Legitimization for unilateral intervention**

Examining Gert's common moral theory provides moral justification for interventions. First, the will to bring an end to large-scale violations of human rights is rationally allowed. If there are thousands and thousands (or maybe millions) of people suffering from violations of moral rules it is even irrationally to not want to have an intervention for the sake of the lives of innocent, since "a person correctly appraises an action as irrational when she correctly believes (1) it will cause, or significantly increase the probability of, the agent's suffering (avoidable) death, pain, disability, loss of freedom, or loss of pleasure, and (2) there is no objectively adequate reason for the action."<sup>81</sup> Since moral rules are universal, morality does not allow causing significant risks of harm to people who are temporally distant, and all rational agents would want others to obey the moral rules it would be irrational to not support an intervening force that will end mass atrocities. Especially victims of mass atrocities judge intervention as rationally required.<sup>82</sup>

Furthermore, unilateral interventions can be justifiable for three reasons: (1) the fulfilment of moral ideals can justify violations of moral rules. Ending large-scale violations of human rights can be such a moral ideal. Hereby it is of great importance that intervention is conducted for moral ideals, not for religious, national or personal ideals, since these are unjustifiable. Violations of moral rules should always be evaluated on a case-by-case basis. Relevant in this aspect is that the harms suffered by violation one moral rule should outweigh the harms suffered by not violating that moral rule. In case of a possible intervention that could stop mass atrocities the moral ideal to save human lives could outweigh the moral rule 'obey the law' i.e. do not intervene without UNSC approval.

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<sup>81</sup> Gert 2005: 31-32

<sup>82</sup> See "Putting People First: The Protection Challenge Facing Unamid in Darfur." The Darfur Consortium An African and International Civil Society Action for Darfur. Kampala, Uganda. Available at: [http://www.darfurconsortium.org/darfur\\_consortium\\_actions/reports/2008/Putting\\_People\\_First\\_UNAMID\\_report.pdf](http://www.darfurconsortium.org/darfur_consortium_actions/reports/2008/Putting_People_First_UNAMID_report.pdf) Accessed 07/04/2009.

Secondly, states have primarily an obligation to lessen the amount of pain and secondly an obligation to increase benefits, what are utilitarian goals.<sup>83</sup> And “following moral ideals often justifies violating moral rules, whereas following utilitarian ideals rarely justifies violating moral rules.”<sup>84</sup> On the national level this is a common vision i.e. constituents expect the state first to build hospitals and a police force and secondly to develop parks and museums. However on the international level this is not the common view; states primarily pursue national interests that contribute to more of the good for its constituents and it is even legitimized while doing so to harm people in another country at the same time. This is however inconsistent with morality, since morality is universal, it regards all human beings. So states should not cause any pain, dead, disability, and the loss of freedom and the loss of pleasure for people in other states while pursuing national interests. Especially states should not obstruct policy that has the lessening of pain as its goal. If states are doing so, it should be morally expectable to condemn the vision that is not derived from the philosophy to lessen pain.

And thirdly, intervention, legitimately conducted, can also be honourable since the prevention of moral rules is a moral virtue. It contributes to the vision that all moral agents would like to live in a world where people are encouraged to prevent harm. Not only is it a virtue to act in a manner that lessens the amount for the greatest number of people. Everyone is also judged on moral virtues. So for states intervening it is not only morally good to lessen the harm or evil, it will also be regarded as a morally good act, and thereby, the state will be judged morally right.

Theory in practice, the two-step procedure

Deciding to intervene without UNSC approval is a violation of moral rules. First, because it is only legitimate to violate sovereignty in act of self-defence. If this is not the case, the UNSC should approve intervention in order to become legitimate. So to intervene unilateral is a violation of the moral rule ‘*Obey the law*’. Secondly, it is likely that an intervention will cause harm, it is like that military intervention will violate moral rules ‘*Do not kill*’, ‘*Do not cause pain*’, ‘*Do not disable*’ and maybe others too.

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<sup>83</sup> Gert 2005: 367-370

<sup>84</sup> Hallgarth 2003: 148

In order to justify violations of moral rules states willing to intervene could use the two-step procedure. The two-step procedure helps moral agents to make morally difficult questions. First it will enable the moral agents to find relevant facts to the case up hand. Secondly if moral agents have considered the consequences of each action it is possible to answer the question whether the harms caused outweigh the benefits gained. Not always will there be agreement. But according to Gert the two-step procedure will help to make moral difficult decisions.

In addition, if there is disagreement the two-step procedure will also show why there is disagreement. In political deliberations this might be interesting since the most common source of resolvable moral disagreements is disagreements over the facts of the case, Gert's ten questions will enable moral agents 'in isolating what facts are morally relevant to a particular case.'<sup>85</sup> Gert's moral theory is of relevance since "when we agree on all of the relevant facts of a particular case, then we usually agree on the moral judgment that we make concerning that case"<sup>86</sup> and "if disagreement is not about the facts, it helps to isolate where the source of disagreement really lies."<sup>87</sup> Not only will the two-step procedure help the UNSC to make morally right decision, it also lays bare the interests of states and this will then become subject to judgement of national constituents and civil society organizations what could lead to pressure on its leaders to act morally right.

In essence, states can find arguments based on morality for intervention by using the two-step procedure. The answers to the ten questions provide moral reason why an intervention is necessary. Furthermore it will expose arguments on morality, not on other interests, which could be national, religious or otherwise not deliver universally acceptable arguments. Whereas all rational moral agents should accept moral arguments for interventions, and all representatives in the UNSC can be expected to be rational.

## **2) Wider support for intervention on moral grounds**

If a state or a group of states finds legitimization for military intervention to end mass atrocities on moral grounds this could lead to support from other states and I could even lead to UNSC approval for that intervention and thereby become a legal decision. It is

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<sup>85</sup> Hallgarth 2003: 183

<sup>86</sup> Hallgarth 2003: 183

<sup>87</sup> Gert 2005: 238-239

likely that motivation for intervention on moral grounds work as a catalyst for states to enable support for an intervention to end mass atrocities since it has the lessening of harm and evil as its goal and all rational moral agents should support acts with these goals. Furthermore arguments for intervention on moral grounds are universally adoptable whereas arguments from based on religious, national or personal ideals, are not. If states that are willing to intervene can clarify that their will to intervene is based on moral grounds it is more likely that other states will support an intervention. States should always try to gather as much support as possible for an intervention, because this will enlarge the legitimization of intervention. But, naturally states will always try to do so, for the simple fact that the financial, material and humane, costs would be reduced if more states participate in an intervention.

### **3) Institutional starting point**

Gert's theory of common morality could also function as a fundament for United Nations reform or the fundament of a new (UN related) institution.

Primarily the central aim of an institution for global affairs should be the lessening of harm or evil. On the national level this is a common vision, i.e. constituents expect the state first to build hospitals and a police force and secondly to develop parks and museums. But the UNSC and the UN are arenas for political debate. Within these arenas agreements will be made that coordinate the relations between states. But considering intervention relates to internal issues. Gert makes a distinction between particular moral rules and general moral rules. 'Particular moral rules are rules that apply to all rational persons in a society and general moral rules concerns action open to all rational persons in all societies at all times.'<sup>88</sup> One could argue that state leaders are guided by particular moral rules, they will primarily focus on national relevant stakes, while within an institution that has to make difficult decision whether an intervention should be executed, general moral rules should prevail over particular moral rules. The UNSC is not the institute that is guided by general moral rules; it is subject to national interests of its member states. In addition, the focus of the UNSC is not being morally impartial. Its task is to deliberate between issues concerning behaviour between states, not to interpret the particular moral rules of each state within the light of moral rules and judge them.

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<sup>88</sup> Gert 2005: 114

An institution that is considering intervention should impartially assess the variety of interests that fuels the behaviour of states. Since the UNSC is (1) not impartial and (2) is an arena of political deliberation in which all interests are regarded equal, it is unlikely that effective reaction to mass atrocities can be expected from the UNSC.

This is also fuelled by the utilitarian concept of equality.

Within UNSC deliberations there is an unequal representation of interests, formalized by the veto right of the Permanent Five member states. However, there is also a dimension of equality incorporated. States may pursue national interests, they can vote on resolutions in the way they want to, this is a direct consequence of sovereignty. Whether a state is willing to intervene for economic reasons, or a state is unwilling to intervene for principal reasons (supporting intervention could create a precedent for future interventions), the content of the motivation to vote in one way or the other is not being assessed nor judged by standards of morality. For the prevention of mass atrocities, or the deployment of an effective reaction to stop mass atrocities however judgement of interests is necessary since states around the world have different interests and various commitments to the obligation to prevent harm for citizens worldwide. Therefore an institution that has the capacity and the legitimacy to assess interests of states and may judge them on moral grounds could be an asset for the protection of mass atrocities to happen, and an asset to enlarge the protection of civilians against mass atrocities, such as genocide, ethnic cleansing, war crimes and crimes against humanity.

The assessment over content of interests on moral grounds should become a key fundament of a reformed UNSC. And if this is unrealistic to create, we should consider a new (perhaps UN related) institution that assesses interests of states on moral grounds, in order to provide vision what is legitimized to do to end mass atrocities in the light of morality. Until that time victims of mass atrocities should rather expect, or hope, for effective unilateral interventions with right intentions, than trust on the UNSC to enlighten the suffering.

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## Appendices A

The ten questions of the two-step procedure.<sup>89</sup>

1. *What moral rule is being violated?*
2. *What harms are being caused, avoided and prevented?*
3. *What are the relevant desires and beliefs of the person toward whom the rule is being violated?*
4. *Is the relationship between the person violating the rule and the persons toward whom the rule is being violated such that the former has a duty to violate moral rules with regard to the latter independent of their consent?*
5. *What goods (including kind, degree, probability, duration, and distribution) are being promoted by the violation?*
6. *Is the rule being violated toward a person in order to prevent her from violating a moral rule when the violation would be unjustified or only weakly justified?*
7. *Is the rule being violated toward a person because he has violated a moral rule unjustifiably or with only a weak justification?*
8. *Are there any alternative actions or policies that would be preferable?*
9. *Is the violation being done intentionally or only knowingly?*
10. *Is the situation an emergency such that no person is likely to plan to be in that kind of situation?*

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<sup>89</sup> Gert 2005: 226-236



### **About the author**

Steven Trijsburg (1981) recently obtained a Master's degree in Political Science, specialized in International Relations. He wrote a thesis that concerned Genocide, the Responsibility to Protect and Morality in a broader philosophical perspective. This paper is a distillation of the thesis' main findings.

For further reading, the thesis is available at <http://www.steventrijsburg.nl>